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Ph.D. THESIS

**HISTORICAL MARKS IN THE
DEVELOPMENT OF RELATIONS
BETWEEN STATE AND THE CHURCH AT
THE ROMANIANS**

- SUMMARY -

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HISTORICAL MARKS IN THE DEVELOPMENT OF RELATIONS BETWEEN STATE AND THE CHURCH AT THE ROMANIANS

- ABSTRACT -

General Considerations

The doctoral thesis entitled "*Historical Marks in the Development of Relations between State and the Church at the Romanians*" comprises some 308 pages, while being structured in four chapters, which, at their turn, are divided in more subchapters.

In realizing a comprehensive view on this work, I may say that it has in view to analyze the way in which the State and the Church have interacted in the history of the last 150 years at the Romanian people, since the State, by virtue of its sovereignty, has legislated in the sphere of the ecclesiastical, also, and these laws show clearly, both at the ideological and intentional level, the way in which the Romanian State has looked to this relation.

The legal frame within which the cults are carrying on their activity for the time being was modified by the 1993 Constitution (correctly 2003) which provides that the Romanian citizens enjoy the same rights and liberties regardless of their religious faith. At the same time, there is proclaimed and guaranteed the religious liberty and its forms of concrete manifestation. There are established the essential principles for the normal development of the religious life: the cults are free and they are organized in conformity with their own by-laws under the conditions given by law, they are autonomous in comparison with the State and enjoy its support, the enabling of the religious assistance in the military, in the hospitals, in the penitentiaries and orphanages included. In the public schools the religion is specified as a distinct education subject matter.

The religious frame concerning the religious life is completed with the *Law nr. 489/2006* which is concerned with the religious liberty and the general social system of cults (The New Law of Religious Cults of Romania).

Of course, the main place in this picture is occupied by the Romanian Orthodox Church, the traditional Church of the Romanian people which has had an essential role in its history, it representing some 87% of the country's population. The Romanian Orthodox Church throughout the history of the Romanian people was its oldest Church, unique during the first millennium after Christ and then overwhelmingly in the majority up until today. Also, the Romanian Orthodox Church was identified herself with the Romanian people's ideals throughout its history and has contributed, definitively and categorically, at the development and cultivation of its language, culture, art, and traditions, as well as at the preserving its ethical identity.

During the communist regime, the Church was marginalized and persecuted, having been considered a backward and reactionary institution, and submitted to a severe control by the communist state. The Orthodox Church was in great straits to make the compromise of renouncing some aspects of its activity: she felt the need to accept her complete removal from the public life, her activity being strictly limited by

the religious services in the houses of worship; she could no longer go on with her philanthropic work and the work of social assistance, since all such ecclesiastical establishments have been undone, and the religious education in the schools have been suppressed, and the social assistance in the hospitals and in the elderly asylums, in the army and in the prisons, etc, has been prohibited.

The historical transformations after the year 1989 have brought back the Church in the current events, while the State has granted her the necessary support for the reconstruction of her structures, for becoming again that which she was in the history of our country: a fundamental institution of the society. Therefore, it is expected that the Romanian Orthodox Church as well as the other religious cults realize a revival of the moral Christian values which are to normalize the relations between our neighbors.

In order for us to pertinently evaluate the position of the religious cults and particularly of the Romanian Orthodox Church – as the Church in the majority – within the frame of Romanian society, it is called for to appeal to a complex of historical, socio-cultural, ideological, demographic, administrative, political, and of some other nature elements.

As a religious cult, the Romanian Orthodox Church carries on her activity on the State's territory, in accordance with her religious teaching, her canons and traditions, in conformity with her By-laws for organizing and functioning approved by the State, by respecting the State's laws, while her practices and rites pay respect to the Constitution, to the State's security or to the public order and the good mores.

The activity of the Romanian Orthodox Church has a major impact on the Romanian society's availability for setting the bases of some stable institutions, guaranteeing the democracy, the rule of law, the respect for human rights and the protection of minorities. The Romanian Orthodox Church has become the most popular institution of the post-communist Romania, by enjoying an increasing influence in all the domains of the Romanian society's life (in education, in the social, cultural, and juridical, as well as in the economic and political role). All of the opinion polls realized during the last decade place distinctly the Church on the top of confidence of Romanians as far as all the country's institutions are concerned.

All of the State's competent institutions must take into account these aspects when they make decisions or adopts laws in the religious field. The State's laws and regulations with regard to religious life should not be considered an attempt to hampering and limiting the freedom of faith, an interference of politics and the judiciary into a field which exclusively belongs to the sacred and the divine. The attempt to exempt the religious communities from the "*earthly*" regulations loses from sight the fact that, even though "*they do not belong to this world*" they are in this "*world*," their essence is related to the supernatural but their existence is social, and the religious communities, as the sociologists say, do represent social groups as any others, obviously with their specific features.

The faithful and the communities made by them are found in the most varied relations with the other social sub-systems, by simultaneously being partners in the economic life, in the cultural, administrative sub-system, and so on. By not regulating

the relations from some domains leaves an open field for the manifestation of the free will, in as much as it may reach some consequences which are quite difficult to imagine. In the social conception, the faithful and the religious communities, by their specific character, are more vulnerable than other agents and factors of the social activity. The law related to organizing and the activities of religious system protects this field and equalize the coexistence and collaboration' chances in the social life. In fact, the juridical regulations referring to the cults and faiths do not establish norms for the religious life and for the internal activity of the churches. To this goal each religious cult elaborates its own norms within the frame of by-laws and confessions of faith. The norms elaborated by the State have as goal to secure the free development of the each cult's activity and its relations with the other social subsystems. They do not aim at their faith but at the "lay" activity of the faithful and the churches. All the churches administer material goods, plots of land, they build houses of worship, redistribute the revenues of the faithful, have a hierarchy and a territorial-administrative organization, etc. These non-religious activities remain within the competence of political and juridical authorities. By regulations, the economic, financial and cultural activity of the churches and of the religious cult' staff is integrated within the aggregate of the social system. The other social subsystems offer to the faithful communities' revenues, goods, protection, etc, and express some requirements as compared to the religion: to contribute to the realizing of the social unity and harmony, to the enlightenment of the population, to the increasing of morality and civic spirit, etc. There is a functioning interdependence between religion and society. The religious systems and faiths which have exhausted their role and functions throughout the history have been abandoned.

The topicality of the theme is certain and proved by the general interest aroused both on national and international plan, by the multitude of debates with a numerous laic and ecclesiastical participation which have taken place and will take place in the future on the theme of the implications of relations between the State and the Church. The novelty and the contribution of this thesis to the sphere of scientific research consists both of the development and the graduation of the theoretical field referring to the State laws regarding the Church, seen from a historical-juridical perspective, and in the facilitating the comprehension of the aspects which belong to the national and community institutions' influence over the activity of the Church. The juridical system has as its goal and effect the reduction of behavioral variety of the persons, of the individuals, or of the institutions, all of these obeying the law in the "rule of law" state. The action of the state law, either generally or particularly, influences the life of the Church and of her institutions.

The deepening of these aspects has determined me to choose the topic ***"Historical Marks in the Development of Relations between the State and the Church at the Romanian people,"*** in order for it to be useful for the Orthodox priests, theologians and faithful, by giving them some important and argued marks in order for them to better comprehend the phenomenon which refer to the apparition of the juridical norms and their evolution on the ecclesiastical plan in our country. It is necessary for the Church, for her servants and faithful, within the democratic society

in which we live, to be so educated as they have to know the religious rights and liberties which are or should be guaranteed by law and to employ the means for public/political expressing of them in order for them to impose the respecting of these rights and liberties.

Research Objectives and Hypotheses

Within the frame of treating the selected theme I have realized an objective analysis of the following aspects: *The history of the relation between the State and the Church; the evolution of the Romanian law – from the canon law to the secular law; in what limits does the State allow, within the legislative frame adopted, the expressing of religious liberty, the carrying on of the activities which are specific to the Church and to what extent the State supports her social and educational mission; which are the results of cooperation between the State and the Church seen through the prism of the legislative frame in force and of the carried out protocols.*

Thus, I intended to realize as the **main objective** of the thesis the analysis and evaluation of relations between the Church and the State from the perspective of the juridical regime applied to the religious entities, of the financing sources and of results of the cooperation protocols carried out. The setting of this objective stemmed from the necessity to observe the legislation in force and of the relation between *the Church and society*, against the background of the present day moral and spiritual crisis.

Within the context of the secularizing of today's society, I have pointed out the importance which is played by the Church for the well functioning of the society, for the filling of some spiritual needs of the citizens, by supporting the ecclesiastical public services. I have intended to realize the research by following the two tackling – lay and religious, in order for me to reach an objective result, concretized through a *de facto* conclusions and findings, but by expressing some general suggestions, also.

Related to the main objective, I have settled the following **secondary goals**:

- The defining of the notions, the identifying of the origins, concepts and doctrines;
- The explanation of the evolution of the democratic and worship institutions which deal with the issuing and promoting the religious legislation;
- The identifying and suggesting some cooperating opportunities between the State's institutions and the Church, aiming at the diminishing the effects of the present day social crises.

*

In commencing from the above-mentioned goals, I conceived the following **research hypotheses**:

1. The in force legislation in the field of religious cults represents the negotiated frame, which is adapted to both the realities and to traditions, also, for the free expressing of the religious faith and for organizing and supporting the activity of the recognized cults.
2. The relation between *State and Church* is not determined by the doctrinaire orientation of the cults, being founded on the principle of the State

equidistance in comparison with the religious entities and the personal options of the citizens.

The Structure of the Thesis

This thesis is organized in four chapters, in which I had in view to make a presentation of the general and nuanced aspects which characterize the evolution of the national legislation in the field of the ecclesiastical life throughout the history. I have kept in mind the getting thoroughly through the legislative frame, of ecclesiastical and lay legal regulations, within the historical-social context by brief incursion in the history of *Romanian state and law*.

In the first chapter, ***“The historical marks in the relations between State – Church,”*** the undertaken researches have aimed at explaining some terminological notions, by trying to clarify the notions of *Church* and *State* in the context of the social sciences. In starting from some conceptual delimitation I tried to go thoroughly through the report between State-Church (the European model of relation between State and the religious structures and the Orthodox model), the cooperation between State and Church, the principle of separation of the Church from the State and the autonomy of the Church.

In the second chapter, ***“The evolution of the Romanian state and law (or from the canon law to the laic law)”*** I had in view to establish concretely the frame of social-political life in which the Romanian people was formed and has developed – the Romanian states and Romanian Church – pointing out the historic relation between the ecclesiastical laws and the state laws during the past of the Romanian Orthodox Church and of the Romanian governmental system. The nomocanons have been juridical monuments which have entered into the Romanian space by the agency of the Church. Throughout the time they have been replaced by (from 17th to 19th century) laws and autochthonous law collections, which have guarded their religious influence, and continuing on the Byzantine religious vein which they were coming from.

From this brief incursion into the history of the Romanian state and law, which is absolutely necessary for comprehending the evolution of the ecclesiastical and state laws that are the object of this work, we notice that the Church was guided and is still guided today by employing both kinds of laws.

The third chapter, ***“The laws of the Romanian Orthodox Church during the contemporary period,”*** represents the canonical-juridical part of the work, made up of the ecclesiastical laws, that is, of canons and some other ecclesiastical rules (by laws, regulations, decisions or synod decisions).

The fourth chapter, ***“The State laws and their impact on the Church life. Historical and juridical analysis (1859-2013),”*** represents the historical-juridical part of the work, made up of State laws that refer to the Church and her activity. The proper presentation of the Romanian legislation, starting with the year 1859, aims at a synthesis of all laic regulations concerning the Church until the year 2013, and having as an object the laws issued by the state as a sovereign authority in supporting the activity of the Church (both as an worship institution and as far as the life of the Church with her various aspects is concerned).

Keeping in mind the complexity of the selected theme, it is called for an interdisciplinary tackling; therefore, the elements of conceptual nature interpenetrate one another, by completing them with the analysis of some fields specific to the rule of law state (the history of the state and the law, the constitutional law, the administrative law, the administration science, the canon law), and with the study of some adjacent fields which are complimentary to the law (political science, sociology, the history of religions, etc).

The utilized methodology.

While redacting this thesis, I appealed to the analysis of the actions and of the historical, political, juridical, administrative, etc, documents related to the relations between the Church and the State, the analysis of the State law concerning the Church, as well as the analysis of the content of all the document categories.

The historical-juridical perspective intended in the tackling of this subject implies without doubt, the combinations of the methods for scientific research, by placing a stronger accent on the law principles, but keeping the framework of the faith teaching established by the sources of Christianity and, of course, the exigencies, the exactingnesses of the work of theological research.

To this end I applied *some specific research methods*, for improving our understanding of some studied aspects. These methods are: *historical method*, which is based on the study and chronological analysis of the social and religious phenomena, the apparition, formation, and development of State-Church type, the evolution of the specific legislation at the national level ascribed to the present day European requirements.

I employed, also, some classical research methods, such as the *analytical method* by which the theme of this work is tackled and systematically analyzed, then the *observation method*, as a form for gathering information by accessing some public documents through which I selected and examined the vast information material, as related to the selected research theme. Another used method, from the category of the scientific methods of the law, is the *comparative method*, which is based on the necessity to find out the identifying or the differentiating elements of some researched phenomena.

Also, I employed from this category of the classical methods the *logic method of research*, which is frequently utilized in the historic-juridical field. By this method's agency I have structured the information into a logic manner with regards to social and historic phenomena of lay or religious nature that have influenced the elaboration of the specific legislation.

By the *method of dialectical analysis* I have emphasized the static and dynamic state of the legislative process, of the evolution of relation between State and Church (state power – ecclesiastical power, with identifying periods, with harmonizing or complete delimitation) during the different historic periods.

During the course of elaborating my doctoral thesis I studied, interpreted and singled out the useful and pertinent information from the content of the biographical material consulted (the internal and international regulations in the field of legislation

referring to the religious cults). Likewise, I used important works from the Romanian and foreign doctrine, dictionaries, encyclopedias, reports containing statistical data.

Thus, this present work tackles under a historic-juridical aspect the legal frame in which the relation between *State and Church* is carried out. The action of the state law, either generally or particularly speaking, influences the life of the Church and of her institutions. Under her visible aspect, as a human institution, the Christian Church has needed, and still needs, juridical norms, for accomplishing her mission. This is why, the means which the Church has at her disposal to accomplish her goal are in part obeying the forms of law.

The Church needs some juridical studies which are to complete the ecclesiastical canon law and to give to the canon law the lay completion, based on which the nomo-canonical tradition may be completed; and the lay law is called for to rediscover, despite the secularizing and the post-modern challenges, its Christian roots. This kind of studies may contribute to the maintaining of the dialogue which must exist between the lay and ecclesiastical law. The step is useful both to the lay law which, despite the challenges of the modern life, may find out the influence of Christianity in the course of formation of social regulations and to the ecclesiastical law, a law which in this way penetrates the lay space.

CHAPTER I

HISTORICAL MARKS IN THE RELATION STATE-CHURCH

Founded by our Savior Jesus Christ as a divine-human institution, with the historical special mission to save the souls, the Church is a social-religious organization which has at her foundation, as a determining element, the Christian religious faith which unites and ties all those who share in it. This is the Church which may be talked about in her relations with the state. Only under this aspect she may constitute a research and study object for the social sciences, among which are the history and the law. Consequently, as to her relation to the State, the Church must be seen under her social aspect, and not under the grace aspect.

Both the State and the Church are submitted to social evolution, since they depend of the human life and of the conditions in which they are carried out. These conditions produce changes both in the organizing of the State and of the Church and they determine the relations which are established between them.

The Church exists within the frame of the State; therefore she cannot discard the types and the realities of the State social life. The relations between the Church and the State acquire new characteristics in each historical epoch and are depending on the social regime from each country.

The Orthodox Church has never wanted to overlap the State; moreover she has urged her faithful to respect the State and its laws. In return, the only thing which the Church demands from the State is the faith liberty and religious freedom.

The State, by the power levers it owns, must secure the promoting and respecting of the religious liberty. This religious liberty represents a fundamental right of man which, even if this is an individual one, is exerted at the collectivity

level. The rights of the persons may be realized only in society, but an equilibrated society, free; they cannot be realized except for the respect of the individual rights. The liberty of the persons makes no sense outside of the society, the State being called for to exert its role through the public administration and to assume its obligations towards its citizens. On the other hand, the spiritual liberty enters the orbit of the Church's preoccupations, and she naturally desires to establish clearly defined reports with the authorities of public administration. The disputes around the religious liberty, due to a great extent to the evolution of society, as well as the position of the Church in relation with the State make of the public administration the determining equilibrium element in the distributing and solving of the public issues, with a major role in the dynamic process of continuous adaptation of the administrative mechanisms to the needs of the contemporary society.

The State is the only institution which disposes of the instruments necessary for the guaranteeing of the conscience liberty and of the religious one, which secures the frame that is necessary to the affirmations of the individuals and of the human groups, in conformity with their own ideals and needs, as well as for creating the necessary conditions to prevent the conflicts and confrontations which have as object problems related to the freedom of conscience, for the removal of intolerance and of persecution based on conscience or religious reasons.

At her turn, the Church does focus for the time being on the religious activity for the raising of the moral life's parameters but, at the same time, together with the State and non-governmental institutions is preoccupied to satisfy all the needs and aspirations of the contemporary man.

The Orthodox model.

The relation between the State and the Church in the countries which are predominantly Christian throughout the centuries is one characterized by agreement and cooperation between the two institutions which are completely different, yet complimentary; the first one is of a spiritually revealed nature, and the other one is of a political-administrative nature, the connecting element being the common social, economic political and economic life of the Church's faithful, as citizens of the State. In the modern and post-modern epoch, the State represents the secular power, while the Church represents the spiritual power.

The Orthodox Church in general, and the Romanian Orthodox Church in particular, have not created a "*credo*" neither a doctrine related to a certain social regime. From the fact that the kingdom of Christ is of a spiritual and eschatological nature, the Orthodox Church has never identified herself with a lay ideology or with a political regime or system, whatsoever would it be. Despite this, she is not indifferent to the social structures and political regimes, since the Church always took care of the welfare of the human society, inasmuch as she accomplishes her spiritual mission under the condition offered by the way of organizing the society from a social and political point of view.

For the time being, the local Orthodox Churches, by their By-laws for organizing and functioning, assert that as far as the ecclesiastical activities are concerned they are absolutely independent as compared with any other institution.

The Orthodox ecclesiology makes more precise the fact that the Church manifests herself within the frame of human society – organized in a political community – and because of this the place of the Church is always inside the State. The base of this type of relationship between the Church and State is founded on the Orthodox teaching in accordance with which the Church is both a spiritual, sacramental reality and an institutional, social reality and the man – as subject of history – belongs both to the kingdom of Heavens and to the Caesar's kingdom. This type of relation is carried out only between certain limits and is founded on the base of some conditions mutually invoked.

Accordingly, the Orthodox model of relation between the Church and the State demands both the autonomy as against the political authority, and a distinct collaboration, in a spirit of mutual respect, between the two institutions.

The European model.

The modern states have recognized the juridical personality of the local Churches organized inside their borders, by regulating their existence through laws under the form of some social-juridical institutions with a religious character, called *cults*. Throughout the history, the relation between State and the subjects of religious life (Churches, cults, communities, associations, foundations and religious organizations) was one of the most important and disputed problems in all societies, regardless of the specific of the cult found in the majority.

Due to the fact that the legislative systems employed within the frame of the European Union fluctuate from a radical separation (France) to an almost total identifying between a certain religious structure and a state (Greece, England) the European jurists, who are specialized in the ecclesiastical law, have attempted to realize different classifying, taking into consideration in the first place the collaboration degree between the State and the religious structures. Thus, the most known specialists in the field assert that the relations between the State and the religious structures could be classified in three types of systems: *the system of strong collaboration, the neutrality system, and the system of total separation*.

The issue is posed: Which state assures more religious liberty, the lay one or the religious one? In the European Union does not exist a common model for defining the relations between State and the different religious structures present on its territory; moreover, the European Union does not intend to demand a certain model, it leaves to each member state the liberty to create its own legislation in accordance with its own tradition and with its present day realities.

The provisions of the modern contemporary constitutions referring to the religious life have been established depending on the democracy principles and on the religious rights of man. In accordance to the evolution of democratic life, of creating the organizing frame for the participation to the socio-political life of new groups and social categories, the constitutions and other normative acts have reflected into a new manner the rights and obligations of the ecclesiastical authorities, as well as the rights and liberties of the faithful.

It is called for to remark the fact that in each country the constitutional provisions referring to the religious life are the outcome of the historical experience,

of the confessional structure of the population, of applying in practice of the newest fundamental right of man, the freedom of conscience respectively, which means that each and every individual may be a faithful, an indifferent one, a free thinker or an atheist, his own will being the sovereign judge. In this sense, I mention that in all of the democratic constitutions does not exist not even one article which prohibits one of the conscience liberty's manifestations, as much as do not exist provisions to blame those who are indifferent or critically mark themselves the limits of the religious faiths. In other words, the modern constitutions have been guided themselves by the principle which says that the guaranteeing of the fundamental right of man – to have a religious faith – must not lead to the annulling of another fundamental right of man, the one to be a free thinker, without accepting any kind of tutelage, guidance or conditioning from the part of a divine force.

The constitutional forums have been preoccupied to create the necessary frame for the free manifestation of all religious cults, regardless of the fact that they are more or less related to the history of that respective nation, of the number of faithful, of the color of confession, etc. This was the great constitutional innovation in the modern times, the assuring of equal rights for all the religious cults, a fact which has led to the end of the official churches' epoch and to the recognizing of the legality of a single church or of a reduced number of churches.

CHAPTER II

THE EVOLUTION OF THE STATE AND ROMANIAN RULE OF LAW (OR FROM THE ECCLESIASTICAL LAW TO THE LAY LAW)

While the state laws are the natural product of the historical process of life development, they cannot be understood without an objective knowledge of the situations and circumstances under which they have been issued. For the apprehension and appreciation of these laws as well as of their impact in the life of the Church, in this second chapter there will be done a short incursion in the history, in order for us to more deeply penetrate the mystery of the beginning of organizing, on law foundations, both of the Romanian Orthodox Church and of our State life.

The problem of the beginning of the rule of law in our country, of its origin, constitutes an old and steady preoccupation of historians, of the jurists, of the canonists and of the theologians, researchers of our historical past. Thus, the historic origin of written law at the Romanians may be solved only by scientifically studying the processes of formation and separate development – yet in a close relation – of the Romanian state formations and of the Romanian Orthodox Church.

As far as the relations between the Romanian Orthodox Church as well as of the Romanian state formations and between their legislations are concerned, we may really understand them only in the broad frame of development of the Byzantine-Slavic socio-political communities and the one of the Orthodox Church. Outside of this wide frame we cannot understand the nature and the reason for the real relations which have existed between the Church and State, as well as between the

ecclesiastical laws and the state laws, on the land of our country throughout the history.

By the agency of the canon law, which was a nomo-canonic law, our nation has known, also, a portion of the civil legislation of the Byzantine State, found into a symbiosis with the Orthodox Church. Through the Church, also, the feudal Romanian States – also, in symbiosis with the Church – assimilate the Byzantine law by lending, adapting and assimilating as something which was corresponding to their socio-political stage of development.

The written law appears in the ecclesiastical and state history of our people as a necessity imposed by the conditions of its socio-political and ecclesiastical development. This necessity was first satisfied by assimilating legislation in the Greek and Slavonic language, and beginning with the XVII century, by writing Romanian nomocanons in the living language of the Romanian people, the Romanian language.

By the Church's canon law, assimilated by the State, the gates to the Byzantine culture have been opened for the Romanian state and Romanian people. The Church's canon law was written and unitary, and by being assimilated, it has contributed to the unitary development of the Romanian people and to unitary formation of its national conscience.

This chapter comes to defense of the national and ecclesiastical interests and rights of the Romanians and it constitutes a rejoinder given to those who agitate some problems by which they strike the interests and rights of the Romanian people and of the Romanian Orthodox Church.

As naturally as it seems, it was required to do the research of the historical, socio-political and religious frame within which the Romanian people was formed and within which it lived centuries in a row, in order for us to emphasize the importance of law and the evolution of laws throughout the time.

CHAPTER III

THE ROMANIAN ORTHODOX CHURCH'S LAWS NOWADAYS

In this chapter of my thesis I intend to present the ecclesiastical laws. They are of more kinds, namely: *canons, organic laws, synod laws, laws of organization, by-laws (statutes), regulations, synod decisions or resolutions, diocesan decisions or resolutions, circular letters, orders.*

Each one of these, no matter how it is called, has a law power in the Church. The order which I used while enumerating them is the order of the historical apparition, as well as the hierarchical order of power and importance.

The canons.

The canons are the oldest and the most important ecclesiastical laws. They are divided in four categories: Apostolic canons, canons of the ecumenical synods, of the local (private) synods, and canons of the Holy Fathers. The canons make up together a body or a code, the canonical code of the Church, her fundamental law or the Constitution of the entire Orthodox Church. Ecclesiastical legislation must be in

conformity with the canons; otherwise it is anti-canonical and is abrogated or is not applied.

The conformity with the canons is called canonicity. By standing on the foundation of canons, the Church stands in canonicity. By and large, *the canonicity* in the Church has the same meaning with the *constitutionality* in the State.

All the ecclesiastical laws must unconditionally stand on the canonicity's foundations, as much as the Church consequently stands in canonicity.

The by-laws (statutes).

The Church's by-laws are laws exclusively made by the Church and accepted and approved by the State, as are, also, the statutes of other self-ruling organizations within the State, either of a religious nature (the cults), or of a lay nature (trade-unions, etc).

Our Church has elaborated her first Statute in the year 1949, which was adopted by the Holy Synod as far back as 1948 and approved by the Presidium of the Great National Assembly of the Peoples Republic of Romania by the *Decree nr. 233* of February 23, 1949. It was called "*The Statute for the organizing and functioning of the Romanian Orthodox Church.*"

The change of political regime in Romania after December 1989, and the re-orientation of our country to the European Union, by democratic aspirations and full liberties, has offered to our Church the opportunity to bring, as early as the year 1990, more than 100 amendments to the *Statute for the organizing and functioning of the Romanian Orthodox Church* of the year 1948. These amendments had in view: *the affirmation of the faith liberty and of the ecclesiastical autonomy, the redefining of the relations between State and Church, the eliminating of the provisions with a restrictive character which were obstructing the ecclesiastical work in the liturgical field, with no pastoral- missionary access within the public institutions and with no right to carry out social activities.* Within this context, the dynamism and complexity of life and of the mission of the Romanian Orthodox Church have demanded during the last years a systematic and coordinated action of correlation of her own ecclesiastical legislation with the State legislation, in conformity with the Holy Canons, with the Orthodox Tradition and keeping the dogmatic, liturgical and canonical unity in communion with the Universal Orthodox Church.

The process of elaborating the new Statute for the organizing and functioning of the Romanian Orthodox Church (205 articles) was tackled by the Holy Synod with much responsibility, taking into consideration the necessity to guard the universal Orthodox unity dogmatically, liturgically and canonically, but, also, the pastoral and socio-missionary needs of today's Romanian Orthodox Church.

While based on the *Law nr. 489/2006* concerning the religious liberty and the general regime of religious cults, at the Patriarch's request, the Romania's Government, by the *Ordinance nr. 53* from January 16, 2008, has recognized the *Statute for the organizing and functioning of the Romanian Orthodox Church*, which was published in the Official Monitor of Romania, part I, nr. 50, from January, 22, 2008.

The regulations.

They make up the third category of legislations of our Church. By their nature, they contain only norms for the applying of the principles and provisions written down in the statute.

Synod decisions or resolutions.

They represent the fourth category of measures with a normative character; therefore they have law power in our Church. Besides them, there should be, also, mentioned the *decisions or resolutions of other central authorities, or of the bishops*, as well as *the circular letters and the orders*.

These decisions are numerous and they refer, depending on the competence of the authority which issues them, either to dogmatic, liturgical and disciplinary problems, or to the interpreting and applying the canons, the texts of the Statute and of the Regulations (with the mention that the Statute and the Regulations texts could not only be interpreted, but completed, modified and abrogated, also).

By the Church's legislations in force, starting with the Statute and ending with the different decisions of the ecclesiastical authority, the Romanian Orthodox Church is organized and led in a unitary way, taking into account correspondingly the importance and the relation in which are found the various unities, institutions and ecclesiastical activities. All of them make up the body of the legislations in force of the Romanian Orthodox Church, which express both the common canonical background of organizing and functioning of our Church and her specific and particularities as the autocephalous Romanian Orthodox Church.

From the general analysis of their content, as well as from the analysis of the basic principles and of their concrete norms, there comes out that the in force legislations of the Romanian Orthodox Church write down the whole work and organizing of the Church in line with the revealed canonical principles. The entire current legislation of the Romanian Orthodox Church expresses a fully canonical orientation in concordance with the most authentic Orthodox tradition.

By observing and applying as faithfully as it is possible the canonical regulations of the Ecumenical Church in her content, our Church guards her canonical unity with the entire Orthodoxy and contributes to the consolidating of this unity, and the guarding and consolidating of the canonical unity within the Orthodoxy constitutes an important means for the fortifying of the ecclesiastical unity. From the unity of the Church and from her canonical unity, for all the autocephalous Churches flows the obligation that all the legislations that are issued should be maintained within the frame of canonicity, as within a constitutional frame, with an inter-ecclesiastical or inter-Orthodox character. Which means that inside a Church or the other cannot be adopted other legal norms than the ones which could be founded either on a canonical principle, or on the canons' text.

It shall be noticed from this that, as compared with the canonicity, and, more precisely, as compared with the canons, any other ecclesiastical law (any statute included) represents a secondary normative (according to the model of relation between laws and Constitution). The obligatory character of the canons with a constitutional character and of the canonical principles for organizing and leading any

ecclesiastical unit, be it autocephalous, or a less unit within the frame of an autocephalous Church, is expressly provided in the text of canons.

Only on the common background of the canons, within the ecclesiastical canonicity or constitutionality space, is possible the apparition or the adoption of some local law norms within the autocephalous Churches. In fact, there exists very many an order or ecclesiastical legal norms, which were issued depending on the need of each Church, under special circumstances and times. It is exactly because of the circumstances under which each Church has carried out her activity, the orders contained by their own legislations differ under many aspects, and by this they give a wider or a more restraint expression to the fundamental principles for organizing and leading the Church.

CHAPTER IV

THE STATE LAWS AND THEIR IMPACT ON THE CHURCH'S LIFE. HISTORICAL AND JURIDICAL ANALYSIS (1859-2013)

The totality of the normative acts makes up the legislation of a country and its legislative system, a system which allows changes and re-adaptations to the social conditions in a permanent changing.

The modern conception on the legislative system grants a special priority to the law, which includes, also, other norms of the State legislation: laws adopted by the parliament, decrees issued by the president, decisions and ordinances issued by the government, orders issued by the ministries, decisions issued by the local councils, orders issued by the prefect, dispositions issued by the mayors.

There exists among these types of normative acts a hierarchical priority. The supremacy is detained by the law adopted by the Parliament after a certain procedure, either in separated chambers, or in reunited chambers or in the plenary. In the current Romanian legislative system, the law can be issued only by the Parliament, by regulating the most important social relations, under the form of three types of laws: constitutional laws, organic laws and ordinary laws. All the other normative acts are issued by the respective authorities in conformity with the law.

The most important law of a State is the Constitution. In being the fundamental law of the State, the Constitution will consecrate in certain forms and juridical means the political ideas and the organizing means which are reflected by the respective political system. In any democratic society, the Constitution establishes the basic principles of the relations between State and the Church.

In the fourth chapter is presented the modality by which the State creates laws and regulates the activity of the Church. The subject is of great amplitude, involving, also, some tackling of the State legislation concerning the Church prior to the year 1900 (more exactly beginning with the first laws issued after the union of the Romanian Principalities – 1859) which are necessary for understanding the legislative evolution until today.

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The laws of the United Principalities. The union of the Principalities, accomplished by the double election of Alexandru Ioan Cuza, was followed by the realization of a democratic reforms program. For carrying out these reforms, Alexandru Ioan Cuza and his collaborators, led by Mihail Kogălniceanu, has proceeded first to organize the State into a form which was able to secure an authentic political unity of the nation and the frame for initiating the democratic reforms.

The ecclesiastical laws of A. I. Cuza are, by and large, a gain for the Church of our country.

The laws from the period of 1918 to 1945. The memorable act of December 1, 1918, which was sanctioning the union of Transylvania to Romania has opened a new era in the life of the national state, in the socio-economic development, in the cultural creation and in the international exchange of material and spiritual values.

After the accomplishment of the great union, in Romania has followed a series of fundamental actions for the consolidation of the unity in all aspects, with priority for the administrative and legislative plan. Only doing this, the government could have efficiently worked for the advancement of the country. But the reunification act has brought on the social plan an especially complex problem, namely, the religious one. The reunion of the four Romanian provinces has firstly determined a homogenizing of the State institutions. Within this context, one of the problems of major importance for the evolution of the Romanian society and of the reunited Romanian state was constituted by the regulation of the religious cult's regime of Romania.

The Romanian State had to clarify its relations with the cults in the minority from the joined Romanian provinces (Bucovina, Bessarabia, Banat and Transylvania) which were not existing in the Old Kingdom and which were functioning in Romania by virtue of the legislations from the states within which they have been incorporated before the year 1918. It was demanded with necessity the adoption of a special law which was to regulate the general regime of the religious cults of the country, a requirement stipulated in point of fact by the Constitution of the year 1923 (article 22).

The regulation of the State relations with the Church was realized successively, within a certain order of priorities. There have been promulgated first, on May 6, 1925, the *Law and the Statute for organizing the Romanian Orthodox Church* by which was recognized the fact that the Romanian Orthodox Church was dominant in the Romanian State.

In the inter-war Romania there were the following religious cults in the minority with a historical character: the Romanian Greek-Catholic cult (united to Rome), the Catholic cult (of Latin, Greek and Armenian rite), the reformed cult (Calvinist), the evangelic-Lutheran cult, the Unitarian cult, the Mosaic cult and the Muslim cult. By virtue of this existent reality, after realizing the reunited Romania, between the years 1926-1928, the Romanian government was in search of legislatively regulating the regime of cults in the minority from Romania, in the spirit

principles of sovereignty and of edifying the democratic society, well précised in Constitution of Romania of the year 1923.

In the period from 1918 to 1945 there was realized an ensemble of legislative measures which were aiming at organizing and functioning of the cult institutions, by connecting all of them at the law and life principles of the Romanian modern, unitary, and Christian State, with respect for the human rights, regardless the ethnical background or the faith.

The laws from the period of communist regime 1945 to 1989. The extending of the sphere of influence of the Soviet Union to the south-East of Europe could not have avoided the quite important segment of the Church. After the year 1944, the Church was gradually removed from the life of the State. It was written to this end an entire legislative ensemble which was to serve the interests of the leadership of the RCP in the field of relations between State and cults.

The studying of the relations between the Church and State during the post-war period and of the dimensions of repression against the clergy is a difficult endeavor, keeping in mind the numerous obstacles with which the researcher is confronted while attempting to reach the pertinent documents. In order for one to catch the frame within which the Churches from Romania have evolved after the year 1945, one is almost obliged to analyze the published sources, particularly the main normative acts which have regulated the organizing and functioning of the religious cults. Many of the abuses directed towards the Church have had a legal basis, facilitated after changing the laws adopted during the inter-war period.

The year 1948 was the year of the great community reforms, with grave consequences for the Church: in the month of April there was adopted the new *Constitution*, which was copied after the Soviet constitution of 1936; on August 3, there was adopted the *new law of education*, by which all the confessional and private schools have been nationalized; the religious education was eliminated from schools, the religious services from hospitals, asylums and barracks have been prohibited; the ecclesiastical periodical publications of the dioceses have been suppressed. There have been abolished: the Faculty of Theology of Suceava (former at Cernăuți), four theological Academies from Ardeal and Banat, as well as the Theological Seminaries of the Eparchies of Muntenia and Moldova; the catechization of the youth have been stopped, and on August 4 there was in force the new *Law of cults*, which was imposing a restrictive regime for all the confessions from the country. In the same month there was added to the Law of cults *The Decree law nr. 176*, by which the state was confiscating the ecclesiastical goods of the monasteries and of the monastic orders, which have been destined to maintaining and functioning of the confessional education's institutions. The law of cults has been completed by the *Decree nr. 178* for the organizing of the Ministry of Cults issued, also, on August 4, 1948.

On October 19-20, 1949, the Holy Synod has voted the *Statute for organizing the Romanian Orthodox Church* (which was based on the principles of the Organic Statute of Andrei Șaguna), approved by the Ministry of Cults. It was provided for the lay people the participation in the leadership of the Church, in the parish Assemblies and Councils, in the Eparchial Assemblies and Councils and in the Ecclesiastical

National Assembly (for the entire Patriarchate) in the well known proportion: 1/3 clergy and 2/3 lay people.

For the Romanian Orthodox faithful who were living abroad have been organized: the Romanian Orthodox Missionary Archdiocese from the United States and Canada with the headquarters at Detroit and the Romanian Orthodox Missionary Archdiocese for the Central and Occidental Europe with the headquarters at Paris. The old Diocese of America, established in the year 1934 (which in the meantime has become an Archdiocese) has lost her relations with the country and with the Patriarchate.

It has to be mentioned the fact that the situation of the religious liberty in the socialist States of Europe, during the period from 1945 to 1989, has constituted a study and research object for the jurists of the western Europe, also. But, unfortunately, they have not known always the true politics of the respective countries, neither the way of applying the legislation and the fact that “*the Marxist atheism*” has acquired in these countries a real “*religious dimension*,” while Marxism has become for many an “*ant-religion*,” wherefrom stems the transfer of a deformed and incorrect image, created and spread by the very men of the regime, who have employed even the service of some jurists for their propaganda in the western world.

Regulations by State laws concerning the Church between 1989 and 2013.
After the fall of communism, in Romania take place a process for elaborating of a political, juridical and administrative system for securing the religious liberty and for mending the existing one, for elaborating of some laic and ecclesiastical conceptions concerning the religious field.

After the December 1989 revolution, at the initiative of cults, of faithful, of the state institutions and of some political parties, there have been elaborated ways of thinking, there have been spontaneously and deliberately instituted some practices which have secured a promising starting to the religious liberty.

Thus, the governments, the parliaments, all the democratic institutions of the Romanian political system in process of being well-built have acted for initiating the juridical frame necessary for the guaranteeing of the religious liberty, for the creation of the institutional premises necessary to each and every citizen, in order for them to be able to practice, publicly or privately, the faiths and religious practices they share. The three powers of the Romanian state have proved to have common interests and preoccupations; they have made manifest the desire to collaborate for the securing of religious liberty.

A series of normative acts details the conditions under which the religious rights may be exerted. Of them, the most important one is the *Law nr. 489/2006 concerning the religious liberty and the general regime of the cults*. Likewise, there have been adopted more government decisions which remove a series of obstacles from the way of exerting the religious liberty.

The clergy, the politicians and the men of culture of Romania have carried out broad debates about the set of religious rights which must be guaranteed by the Romanian state for the cults and for the religious associations. It has to be underlined

the fact that the provisions of the Constitution, of other normative acts, and the political and administrative practice in the field of securing the religious liberty, are in conformity with the international standards.

The analysis of the normative acts adopted by the parliament and by the governments up until now, as well as the administrative measures taken by the State Secretariat for the Cults and by other organisms of the public administration with attributions in the field of religious life do allow us to point out that, from a juridical and administrative point of view, the Romanian public authorities have intended, and most of the time they have succeeded in granting rights and religious liberties at the level of United Nations standards and of other democratic countries.

The creation in Romania of a juridical, political and administrative frame, necessary for granting some broad rights and religious liberties is a process which cannot be over in a few years and particularly under the unfavorable conditions of the economic, social and political transition. But what is important is the fact that the governmental political forces have a favorable attitude as compared to religion and Christianity, that they are neutral from a confessional point of view and that they are determined to undertake all the steps for the granting of some religious rights and liberties. Under these conditions, it is clear that in the years which have elapsed, there were taken important steps on the line of guaranteeing the religious liberty and especially it is certain that there have been created the premises for making possible in the future to be taken all the necessary steps for the consolidation of this process.

CONCLUSIONS

Today, we are witnessing a spectacular dynamic of the internal and international social relations. We live into a world of the great transformations which shows us both its positive and negative aspects. The individual, as well as the state, is obliged to actively participate in these transformations with the goal of realizing a corresponding adaptation to the natural evolution of society. The law, and implicitly the jurists, the theologians, the politicians are among those who may bring their positive, beneficial contribution to accomplishing a harmony between the finality of juridical norms, and the development of society, thinking, culture and civilization. The State's functions in the democratic societies have acquired new valences, by granting a special attention to the social one, which contributes to the development of society in its ensemble, but in an equal measure they contribute to the needs of the individual.

In this present study I tried to go thoroughly into the relation between the State and the Church, as well as into the impact of the national legislation on the right development of religious life. The selected thematic may equally preoccupy both the theologians, the jurists and each and every Christian, in order for them not to become vulnerable before those who, willingly or unwillingly, encroach upon certain rights of theirs, while being known that, on an ideational plan, the human being has some fundamental rights which cannot be ignored. All of these rights must be found regulated again in the national legislation. To this end, I have deemed fit to

effectively contribute at the clarifying some sensible aspects from a historical-juridical point of view, by realizing an ample analysis of the main State laws, which essentially determine today the juridical laic content of the nomo-canonical tradition of our Church. Under her seen aspect, as a human institution, the Christian Church had needed and still needs, for accomplishing her mission in the world some juridical norms. This is why the means which the Church has at her disposal for realizing her goal are partially submitted to the law forms.

Even from the first chapter I had in view to point out the evolution of the relations between the state and the Church throughout the time. In starting from the historical extension and the existence in the European plan, I presented the relations between Church and State, by emphasizing the Roman-Byzantine legislation concerning the Church, that is, the legislation which was the foundation of the main norms of law that have regulated the relations of the Church with the State, many of them preserving their value and being topical (up-to-date) up until today.

Thus, it could have been noticed that the Church has maintained relations of collaboration and agreement with the State authorities. The normalizing of the relations Church-State should not appear as a concession of the political power, but as a desire for collaboration to the man's welfare which does not support the division between citizen and Christian. What may give profoundness and coherence for a long term to the attitude of the Church in her relation with the State and with the civil society is the elaboration of a theology as much faithful to her traditional criteria as she is receptive to the problems with which is confronted the present day society. The efficiency of the decisions of the ecclesiastical institution and the efficacy of the hierarchs' and of the priests' mission depend on the accuracy of the theological manner by which the main elements of the present day context of the socio-political elements are tackled.

In the second chapter I realized a short incursion in the history of the Romanian State and law in order for me to point out the passing from the ecclesiastical canon law to the laic law.

The nomocanons have been the first codes of laws which, even if were inspired by the Roman-Byzantine laws, were adapted to the social and life conditions of Romanians. In the Romanian nomocanons the canon law was cohabitating with the laic law, while there was a parallelism between the trial courts of the State's and the religious ones, between the laic sanctions and the spiritual punishments. Through her representatives, the Church had an important role in the distribution of justice, especially in the civil law and the family law.

There have appeared in the Phanariot epoch the first codes of laws which were systematizing the juridical norms up until then and, even though they were influenced by the juridical principles of the time, they were granting a special importance to the religious life, at the same time recognizing the role of the Church in the life of the State. The culmination of the State's legislating in the ecclesiastical field was reached during the reigning time of Alexandru Ioan Cuza, when the State has brutally but efficiently interfered in the life of the Church. Under the Occidental influence, Cuza has reformed the entire Romanian juridical system, by laicizing it. If by the previous

laws there was made an attempt to separate the canonical norms from the laic ones, by the apparition of the Romanian State and by the complete reform of the legislative system after the Occidental model, there appear the first collisions between the canon law norms and the civil law and the family law.

The last two chapters contain a historical-juridical evaluation of the ecclesiastical legislation and of the State legislation concerning the Church, containing the main normative acts adopted from the year 1859 up until today.

In starting with the union of the Romanian Principalities, there was witnessed a continuous evolution and metamorphosis of the reflecting the religious life in a juridical plan, in other words, there was an uninterrupted work to elaborating some new principles and juridical norms which have modeled and directed the organizing and the activity of the Church.

After the year 1948, all at once with the installing of the communist regime in Romania – a regime which has imposed for some decades a strict limitation of the Church's activity both on a practical domain and on a theoretical one – the Church was excluded from the public institutions of which she was traditionally tied, the school, the hospitals, the penitentiaries, the army.

After the fall of communism, the Church is reintegrated in the public life, in conformity with the new constitutional provisions. In the following period, in our country took place a great unfolding of energies and initiatives on the plan of revitalizing the ecclesiastical and religious action and some ample debates referring to the relation between the State and the Church and to the way in which the religious liberties and rights should be warranted and protected have been carried out. The public authorities have acted for the creation of the necessary juridical and political frame for the constituting of some new relations between State and Church, based on the respect for the specific mission and for the dignity of each institution as well as on the increasing the responsibility with the view to the collaboration for the promoting of the common welfare and of the general interests of society.

In looking from an administrative-political perspective, the governments which have succeeded one another at the leadership of the country have each one put a great accent on the democratic liberties which are to be enjoyed by the citizens, yet the Church is the one which gives a moral direction to this liberty. Where the State does not solve the most intimate problems, the Church succeeds in giving the citizens an ideal, a model.

The Romanian political system is based on the principle of separation of the churches from the State; in this sense, the Constitution provides: "*The religious cults are autonomous as compared to the State and enjoy its support...*" (art. 29, paragraph 5).

The cults and the religious associations have the right to manifest themselves with no interdictions to their faithful, the Romanian State recognizing their liberty and autonomy.

There have been undertaken a series of legislative and administrative measures to secure a full and real equality of the cults in comparison to the law, as well as the

necessary conditions for the eliminating of manifestations of inequality or religious and confessional intolerance.

Likewise, there have been adopted some other measures destined to remove the abuses suffered by the Church during the communist regime. The Greek-Catholic Church was again legally recognized. It was allowed the activity of some religious groups which have prohibited during the communism, there was allowed the establishing of some new religious organizations which have been by and large established by foreign missionaries. In this way the confessional picture of today's Romania was considerably enriched.

The ensemble of undertaken measures has constituted the base for the *Law nr. 489/2006 concerning the religious liberty and the general regime of the cults*, which was elaborated with the contribution of the representatives of all the religious cults from Romania. At the redaction of this law have been taken into consideration the provisions of the *Romania's Constitution (2003)*, as well as of the international conventions ratified by our country in the field of human rights, securing and guaranteeing the religious liberty for all the Romanian citizens, with no distinction of nationality, race, sex, and religious or confessional affiliation.

Based on the provisions of article 29 of the *Constitution of Romania*, referring to the support given by the State to the religious cults, there have been adopted a series of normative acts (laws, emergency ordinances, decisions of the Romania's Government) for the granting of material accommodations by the Romanian State to all the religious cults which look for this support in the following field: the building of houses of worship, the preserving and restoring of the most important ecclesial buildings which are part and parcel of the national patrimony; the repairing of the old houses of worship and the securing of a contribution from the budget for the maintenance expenses of the cult units, etc.

The reversion of the goods confiscated by the State during the period from 1948 to 1989 has made the object of more normative acts: recently, there has been adopted a *Law concerning the retrocession of all the ecclesiastical goods which have been taken over by the State during the period from 1948 to 1989*. This law is in the applying stage.

In the public education system have been introduced, from 1990, the courses of moral-religious education for the pupils and students (today, this discipline is called *religion*) as a facultative, optional and obligatory study object.

There was taken the measure of granting the religious assistance in the Romanian army, in the hospitals and the social assistance establishments. In this sense, it was issued the *Law for the military clergy and for the religious assistance in the army*, and it was elaborated a *By-law for organizing and functioning of this clergy*, by making more precise that the participation of the military in the religious activity is facultative and the religious assistance will be offered by taking into consideration the confessional affiliation of the military.

For the completion of material base of the Churches, the *Law of the landed fund* stipulates the attributing in property of an area of arable land up until 10 hectares

for each parish and up until 50 hectares for monasteries and 100 hectares for the diocesan centers, as well as up until 50 hectares of woods.

The Churches have their own budget, realized by the benevolent contribution of the faithful and by the selling of the various cult objects, as well as by financial subventions granted by the State. The salaries of the cult staff are secured by the state at the level of the base function and are completed by the specific personal incomes.

Another measure undertaken by the State in order for it to help the cults consists of the exemption from the paying of the taxes for the products and the services done in the units which belong to the cults and which are necessary for the carrying out of the cult activity.

Also, there have been created some facilities for the attributing land plots by the State for the building of new churches.

A special attention was shown for the formation of clerical staff in theological schools of high school and university level which belong to the cults. For the time being there exist 164 theological schools of university, high school and post high school levels. They have been integrated in the public education system, by benefitting of the same rights as the public school units, the salary of the didactic corps and the scholarships for the pupils and the students included.

I emphasize that the distribution of the subventions to the cults is done un-discriminatingly, on the basis of the full equality of the cults as compared to the law, depending on the real needs and on the emergencies interposed in the solving of the concrete cases. The financial subventions are distributed to the cults in a way which is proportional to the number of their faithful.

Also, for the support of religious cults has been issued the regulation which establishes the exclusiveness right in producing the goods and objects necessary to the cults. Likewise, the State has granted the cults some fiscal and custom facilities as well.

The legal frame created, as well as the material support granted to the cults determines the natural, free carrying out of religious life. Thus, it may be asserted that the religious and faith liberty are fully secured and guaranteed in Romania.

By and large, the elaborating of the legislation in the religion and conviction matters must have in view the following values: the internal liberty (*forum internum*), the external liberty (*forum externum*), the equality and the non-discrimination, the neutrality and the impartiality, the non-coercive character, tolerance and respect, the right to associating, the right to effective reparations for claiming in the religious field.

Within this context, the developing of a competent *religious civil right* is a high necessity for our country. We have a great need of laws or regulations which are to secure the legal frame that corresponds to the free and authentic manifestation of the religious feeling, in general, and of the Orthodox living in particular. This extremely complex process must have in view, especially, the following aspects:

1. *The objective and efficient valuing of our historical tradition.* This tradition may furnish to the legislator some valid solutions and may draw his attention to eliminating the law errors made in the past. The tradition and the continuity

constitute values of any law system in the world, the more so in Romania we cannot ignore the nomo-canonical Byzantine tradition, and neither the Romanian legislation orientation's to the west European tradition.

2. *The integration of the Romania's laws in European context.* The law system of Romania must be integrated in the European context, but not with the meaning of sameness, yet in the sense of a *unity in diversity*. The uniformity, in fact, is not possible, since there is no uniformity between the countries of the European Union. Europe is a space of the cohesive diversity, not a uniform space or a space of some divergent diversity. The integration of Romanian law in Europe must be realized in the sense of respecting some common principles, of respecting the fundamental human right, of respecting the democracy, but of keeping our specific, also.
3. *The harmonizing of the State law with the Orthodox canonic law.* This harmonizing must be understood in the sense that the philosophy of the Romanian law cannot impose or superimpose the principle with the theological fundament of the Orthodox canon law. The philosophy of law must be a simple one, oriented to the creating the context for manifesting the Orthodox canonic law, and on no account to pursue the imposition of some principles which are contrary to the Orthodox doctrine. Thus, the law system may reach a conflict with the canon law, and the religious liberty may be encroached. The Orthodox canon law must be by no means vulnerable as against the State law. This harmonizing is very important and quite delicate for the present day and it requires a foundational preparation, both juridical and theological. It means the rediscovering of the old Romanian law (of which the *canon law* was part and parcel), which has given valued specialists. The elimination of the canon law from the law schools of Romania during the communist period has led to an impoverishment of the juridical preparedness.

The re-Christianizing of the world cannot take place without the spiritualizing of the law norms, which do regulate the religious field. The law and the religion are two distinct spheres and sciences of human life, but they do exist into a dialectical interaction, permanently interpenetrated and mutually enriching one another. The Christian ethics is directed towards the others and is based on justice, and even if it places the accent on our relation with God, it values the social relations, also, since by the last one the first is consummated.

If we take a comparative look at the implications of religion and the law, we find out that the religion brings the spirit in the juridical processes and norms – the authority they need in order for them to acquire submission and respect. The religion grants to the law its structural honesty, the innermost morality. It confers to the law authority and legitimacy by inducing the respect towards the law and the authority's structure, by creating a faith in the truth, justice, into a justice which transcends the social utility, in the citizens and its subjects. The law and the religion are two great systems of values and faiths which are interpenetrating one another. The religion is inextricably integrated in each aspect of life. No law system, which ignores or depreciates this crucial role of religion, can be respected and adopted.

By leaving liberty to the faith, the juridical norms must regulate the way in which the faith is made manifest in social forms, becomes public and enters in relations with the other realities of the society's existence.

The Romanian State, in order for it to realize its current and future destiny, needs the support and the collaboration of the Romanian Orthodox Church in the first place, but of the other cults, also, and the cults in order for them to realize their divine and human mission, need the understanding and the support of the State. In this sense, the Church actively collaborates with the institutions of the central public administrations: the Labor, Family, and Social Protection Ministry, the Health Ministry, the National Education Ministry and the Youth and Sport Ministry.

A viable and durable partnership between the State and the Church is a real necessity. There must be redacted, promoted and adopted some protocol acts between these institutions for all the interest fields, covered by various adequate normative documents and, not in the last run, by law, since by this we may talk about relations with an institutional durability.

Today the Church concentrates herself on the religious activity and on the activity for raising the parameters of the moral life, but, simultaneously, together with the state and non-governmental institutions, she is preoccupied to satisfy all the needs and aspirations of the contemporary man.¹ By the assumed theological-social mission, the Church has the destiny to offer answers to the moral problems, to the quandaries, to the essential questions of the citizens, but to initiate models and to suggest some way to be followed, as well.

The science, the technology, the cybernetics, is parts of the civilization's endowments, but they cannot replace, neither remove the culture, the faiths, and the spiritual values. The culture and the religion does allow the contemporary man to obtain an identity act, a passport with the help of which he may travel in all the countries, through all the nodal points of the new modernity. The religion was and must remain the indispensable ferment of the culture and of the humanity's civilization. The essential spiritual and moral values of the European culture have as the foundation the Christian religion, and the Romanian people, despite all the vicissitudes of the last four-five decades, has guarded and perpetuated them to the greatest extent. The moral principles stemmed from religion are the foundations on which the public good is built. As a support of the moral and social life, religion is both "*auctoritas spiritualis*" and "*auctoritas civilis*." As a consequence, we cannot talk about the "*homo europaeus*" without appealing to its Christian spiritual composition.

The spiritual life must not be reduced to the role of one of the multiple manifestations of the collectivities, since the Church is not only an ordinary human institution, besides the school, army, justice, treasury, the health system, etc. Even when the State laws are correspondingly accomplishing their destiny in society, the religious, moral, and educational steps of the churches contribute to the prevention of

¹ We stress the importance of the ROC's implication in the effort for finding solutions to the labor problems and the developing of the social assistance programs, by signing some protocols: *The protocol for cooperation in the field of social inclusion*, carried out with the Romanian Government, and *The protocol for cooperation concerning the partnership in the field of medical and spiritual assistance*, carried out with the Ministry of Public Health.

committing immoral deeds, to the strengthening of the society's morality. The spiritual space of human life, revealed to man and cultivated by him from the age-old times, cannot be annulled since it is proper and inseparable to the quality of man.

The Church is the one which has the mission to guard and to transmit these values to the next generations, but in order for her to do this she needs a legal frame in conformity with her mission. As to the Romanian Orthodox Church, it is essential that she becomes aware of the fact that she has internal resources (value, canonical, doctrinal, cultural and human) which may be fructified at the social, political, administrative and civic level, as well.

On the other hand, the State has the duty to solve the social, cultural, economic, and of any other nature problems. In these problems, the religion and the Church have been and remain determining factors, which cannot be neglected without giving birth sooner or later to some unforeseeable consequences, not to say to devastating consequences.

The increasing religious conscience is confronted with a change of perspective not only in Romania, but at the level of European community, also. The broad specter of the juridical-religious relations referring to the state Churches and laity, neutrality and cooperation has their origin in the huge diversity of the community countries. The European Union must include the religion in its institutional dimension. If it ignores this thing, it does not do anything but challenge the essential aspects of its citizens' life.

The European Union detains an important role in realizing the men's liberty. A few people still exclude today from the Europe's definition, the Christian tradition. Despite this, the religious dimension of European construction seems to lag much behind as compared to the economic, political and social dimension, but the Churches have expressed their desire to be among the main characters of this edifice. The Churches combat the idea of secularization of the European Union, but accepting the one of neutrality and of respect for the specific individualities, since the European Union simply cannot take over one of the existing religious systems.

PROPOSALS

In finalizing the research, I considered useful to formulate some consolidation proposals of the relation between the Church and the public institutions. Also, I considered useful a legislative proposal, as well.

1. The implication of the Church in accessing European and national funds for the social projects. In conformity with the statistics furnished by the EUROSTAT², Romania is counted among the countries with the highest rate of pauperization risk. Moreover, 32.2% of the Romanians suffer of severe hardship, (as compared to EU average of 8.1%). In the context of deterioration of the national, European and global economic climate, of the last three years, due to the economic-financial crisis, the growth of the level of absorption of the European and national funds by the Church for the social assistance projects, would have, of course, beneficial effects. The current legislative frame does not give the possibility of financing the above mentioned projects by accessing these funds – from the EU by

² Eurostat is the organism of the European Commission which deals with the statistics.

the ***Regional Operational Program 2007-2013 (P.O.R.-REGIO)***, and at the national level by the ***Government Ordinance nr. 82/2001 concerning the establishing of some forms of financial support for the cult units belonging to the recognized religious cults of Romania***.

Thus, the Church can access funds through P.O.R.-REGIO for projects which have as object the rehabilitation/modernization/development and equipping of infrastructure for social services.³ The beneficiaries of the *Program* are: authorities of the local public administration in partnership with the providers of social services of private law accredited under the law conditions, among which are the cult units, also. I consider that the putting in practice of the above exposed proposal could contribute to the growing of the effects of the humanist mission of the Church, which will make more visibly felt and seen her presence in the society. By humanist mission I mean the appreciation and defense of human dignity and liberty, the caring in comparison with the citizen and the spiritual and material values of his existence.

2. The implication of the Church in preserving the national cultural patrimony by accessing European and national funds. In these cases the cult units can access funds by the same ***P.O.R.-REGIO 2007-2013***⁴ for projects which have as object the restoring and durable capitalization of the cultural patrimony as well as the creation/modernization of the connected infrastructures taking into account the fact that the greatest part of the Romanian national cultural patrimony is represented by the religious patrimony. Within the frame of this major field of intervention are financed the projects which have as the objective the preserving, the restoring, the consolidating, the rehabilitating and the protecting of the historical monuments. The beneficiaries of the *Program* are: cult units which have as their property houses of worship and immobile historical monuments.

From our point of view, the historical monuments represented by the Churches, monasteries, houses of prayer, cemeteries, which constitute valuable goods of the national cultural patrimony (some of them even from the universal patrimony UNESCO), should better fructify these funds. Thus, by accessing the European funds with this goal, the Church may come to complete the State's contribution which guarantees and secures by law the protection of historical monuments.⁵

3. The supplementing of financing the Church, besides the funds allotted from the State Budget, ***by identifying and managing some alternating sources/programs/activities which are generating revenues*** or based on the partnerships through which to find/identify financing sources:

a. The completion of partnerships with economic agents which are willing to contribute financially to the social activity of the Church or may offer various types of products (for instance raw materials, agricultural products);

c. The gathering of funds for the development of social actions by organizing cultural events (musical, artistic, exhibitions, of museography).

³ ***Priority axis 3 – *The improving of the social infrastructure*, Major field of intervention 3.2.

⁴ ***The priority axis 5 – *The durable development and the promoting of tourism*, the major field of intervention 5.1.

⁵ Cf. art. 7, paragraph (1) of the *Law nr. 422/2001* republished, concerning the protection of historical monuments.

c. The supporting of the social activities of the parishes by developing activities which are to generate revenue (for instance, exploiting and valuing the products of vinification, apiculture, agriculture, woven materials, etc).

4. *The taking over of the tasks and the State's attributions towards the Church.* Taking into account the difficulties met by the State through its administrative institutions in solving the problems with a social character, our proposal consists in reduction of the national-public budget concerning the expenses done with the unprivileged social categories, by them being supported of the Church, by some activities of promoting a social inclusion of the vulnerable groups inclusively. More exactly, I refer to the establishing and developing at the national level of institutions and establishments from the network of the socio-philanthropic and medical units, such as: hospitals, pharmacies, dentistry cabinets, elderly asylums, and centers for the homeless people, orphanages, and social canteens.⁶

5. *The creating of an organized frame in which the fundamental institutions of society – the family, the church and the school – will act coherently and in concert for the spiritual and cultural defining and consummating of the youth.* This mission could be realized, also, by the re-strengthening of the Christian customs and of the Romanian traditions to the detriment of imported non-values which have been assimilated from the Occident through the mass media.

By the findings out at which I arrived, but especially by the *conclusions* and *proposals* formulated I tried, from my point of view, to express ideas which may contribute to the consolidating of the juridical mechanisms for protecting the religious liberty and to a better and better understanding of the active and beneficial role of the Church in society, by her educational, philanthropic, social and even medical mission which she accomplishes (mission assumed by the Church through her statute), as well as to express some opinions referring to the effects of the Church's interaction with the State (the public administration), some suggestions for improving the cooperating frame of these lay and religious entities inclusively.

6. *The introducing in the Penal Code of one article which is to prohibit the proselytizing.* The juridical and political organisms of our country many times manifest an excessive prudence in the regulations which refer to cults and churches. The laws which refer to cults are permissive; they do not contain special tasks, and many times are understood as recommendations and references.

Exposition of reasons. Each Church, each religious community has the right, in accordance with its own vocation, to go thoroughly through its message and to attempt to persuade all the others of its authenticity. This right must be respected and protected; but the actions of aggressive proselytizing, with no respect towards the convictions of the other people should not be respected and protected. The only weapon of the faith is and must remain the word.

The new religious denominations place a special accent on the activity of spreading their own teachings. To this end, they invest significant material, financial and logistic means and important human resources; all the adherents, depending on

⁶ This model already functions of more years at Iassy, created and coordinated by the Metropolis of Moldova and Bucovina, and proving itself as a viable model.

their level of preparedness and of their capacity to persuade, have ample attributions in this activity.

Through a discourse in which are left-handedly mingled the aggressiveness with the attitude of victim, the neo-protestant sects do not stop complaining about the discrimination at which they are subdued by the Orthodox majority. It is not taken any notice of the expansionist policy, the fact that after the year 1990 Romania was the favorite target of the proselytizing sects from the Eastern Europe. More than 300 sects and groups have tried to get installed in Romania, some with more, some with less success. The activity of the old and new sects is not limited by the acquiring of new members by propaganda. The political-financial influence is, unfortunately, the main weapon and the most efficacious one of the sectarian invasion. After the boisterous stage from the beginning of the year 1990es, we find ourselves for a few years into an abeyance period. Without knowing conversions en masse, the sects are prepared for a long term confrontation and they know very well what propaganda tramps they do have into a member of the European Union's country.

The current religious organization employ the most advanced and efficient lay techniques from the field of persuasion and conversion. Unfortunately, some of them go as far as to use narcotics and some other manipulative means which hurt the psychical and physical integrity of men. For these reasons, our Church's representatives, but the lay specialists and the public authorities as well, accuse some organizations for practicing an aggressive proselytizing which encroach the rights and the liberties of other faithful.

This is why I consider that the necessary distinction must be made between the evangelizing concept, of religious propaganda, of spreading one's own religious teachings (as an essential dimension of the religious liberty) and proselytizing or aggressive proselytizing which, in some religious, cultural and even political media, have pejorative, negative connotations. It is considered that the State's institutions do not have the right to get involved in preventing or prohibiting some proselytizing actions up until a juridical definition of this concept will be realized.⁷

Proposal: Under the conditions in which in Romania have been legislated new cults and have been recognized many religious associations, I consider necessary that the theologians and the doctrinaires of the churches and of the religious associations, together with the jurists, political scientists and sociologists, etc, initiate a debate which is to finalize by adopting some common points of view, which may be thereafter made operational in normative acts, that will have the mission to remove any possible frictions and accusations from among the different subjects of our religious life. Thus, in the new Penal Code may be introduced an article which prohibits the *religious proselytizing* and to provide the possibility for applying some

⁷ Up until now the majority of political parties and the scholars from the democratic countries, excepting Greece, have considered that the very attempt to define from a juridical point of view the *proselytizing* leads to the creation of some favorable premises for the encroaching upon the religious liberty. (Based on the Penal Code, The State Council of Greece has thus defined the proselytizing: *the attempt to penetrate, by illegal means, inside the conscience of a person, with the goal to change its religious conviction in favor of other religion*. The Greek penal law defines thus the proselytizing: *"the offering of some material or moral advantages or promising some such offerings; the use of illegal means; the taking advantage of the lack of experience or the confidence of an individual; the exploiting of the needs, of the mental incapacity or of the naiveté of the aimed person."*

sanctions in the case in which the deeds committed contain the constituting elements of the respective breaking of the law.

In the absence of some legislative provisions which may clearly develop a climate of good living together, the way to proselytizing and religious hostility remains open. Even if there is no clear article in the Constitution, however there exist a few law articles which prohibit the religious proselytizing. *The audio-visual law* expressly prohibits the sponsoring of the shows which make religious proselytizing, and the *Law of national education*, by article 7, paragraph (1), prohibits the religious proselytizing in schools.

The problem of attracting by dishonest means of the members of one confession or sect⁸ to the next concerns not only the inter-confessional life, but the social one, also, as long as the proselytizing challenges stand at the base of the disturbances and of the tension between the communities and individuals. The effects profoundly noxious of the sect invasion will best be seen in the future, when there may be too late for corrections of high proportions.

At the end, I desire to express my conviction that the habilitated organs of the State will truly action in the spirit of the Law, by releasing the proper procedures for sanctioning those who encroach on the Law. Essentially, Democracy means a legal frame well elaborated in concordance with the requirements of life and time, accompanied by a high degree of applying the spirit and the letter of the Law.

⁸ Related to the use of the term “sect” in the juridical tongue, there are some controversial tendencies. Even if there are European countries in which exist some organizations which are paid by the state to fight against the sects, the term “sect” is systematically replaced with the terms: associations, societies and religious organizations.

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