

“OVIDIUS” UNIVERSITY, CONSTANTA
DOCTORAL SCHOOL OF THEOLOGY
DOCTORAL FIELD: Theology

DOCTORAL THESIS
SUMMARY

Ph.D. Supervisor: **Ph.D. Prof. Nicolae V. Dură**

Ph.D Candidate: Penca Dragos

Constanta, 2022

**LEGAL REGIME OF CERTAIN RELIGIOUS CULTS IN
ROMANIA.
CONSIDERATIONS AND EVALUATIONS**

Ph. D. Supervisor: **Ph.D. Prof. Nicolae V. Dură**

Ph. D Candidate: Penca Dragos

Keywords: religious cults, human rights, laicism, international legislation, national legislation

In order to assess the evolution of relationships between the Romanian State and the Religious Cults, especially after 2006, when the freedom of religion and the legal regime of religious cults was first legislated after the 1989 Revolution, as well as the manner in which the state regulated the rights and the individual freedoms in the field of religious belief and consciousness, I have examined both the national and international legislation and the European and the national jurisprudence regarding this subject.

During my scientific research, I have used the following methods: a) the analytical method to clarify certain imprecisions specific to specialized literature; b) the hermeneutical method which helped me discover the sense of legislative texts; c) the interpretative method to better understand not only national and international jurisprudence, but also the ecclesiastic doctrine of religious cults; d) the historic method which helped me get acquainted with the evolution of national and international legislative texts regarding legal aspects of religious cults; e) the comparative method which eased my scientific approach and the realization of a comparative study of different provisions in the Statute of the respective religious cults.

I mention that, in my work, I also used elements of the monographic method, especially to understand certain particularities of the Cults that I couldn't find in the specialized literature, therefore I had to meet with members of the Religious Cults I have studied.

The work of research, examination and evaluation of the documentary texts as well the processing of the documentary material needed to create my doctoral thesis were all made in accordance with the methodology of scientific research which made the entire work to be written following the rigors of scientific accuracy and honesty.

Since we cannot speak about the legal regime of religious cults, in today's Romania, without being acquainted to the evolution of relationship between the State and the Church, that is, between the State and the Religious Cults, I also made some references to the texts of old laws which I have corroborated with references studies of Christian legal scholars which helped me bring more clarity to the subject of my doctoral thesis.

For example, in the canonical legislation of the 4th Ecumenical Council (Chalcedon 451), we could notice that, at that time, "... the collaboration between the Christian Church and the Byzantine State had been consolidated" and that this collaboration between the two main

institutions of the human society was amplified in time and even turned into “... bicephalous government of the Byzantine Empire”, that is, a government through both the organs of the State and the Church, the latter being given “more and more duties in the administration of the empire”.

At the same Ecumenical Council (Chalcedon 451), “...the principle that the Church must organize itself after the administrative division of the State” had been definitively established.

In accordance with the main provision set forth by the text of 17th Canon of the 4th Ecumenic Council, “... if by the command of the Emperor a city be renewed now or in the future, the order of ecclesiastical parishes shall follow the civil and public forms”.

These provisions of the canonical legislation of the 4th Ecumenic Council were rooted in the canonical tradition of the Old Church, as part of the “Holly Tradition”. Indeed, both the dogmatic and the canonical decisions of the Ecumenical Councils “... are parts of the Holly Tradition which were continuously received, kept and clarified by the consciousness of the Church without councils, as well as during and trough the councils.”

As a canonist of the Romanian Orthodox Church recently stated, “... precisely because the canonical decisions are an intrinsic part of the heritage of the “Holly Tradition” of the Eastern Church, they cannot be ignored, cancelled or abrogated, nor located in the area of the “Church Tradition””.

Since our work is an interdisciplinary approach (theological, canonical, legal and historical), we have made express references to works with theological, canonical, legal and historical content. This also explains the fact that even the works of historians like Nicolae Iorga, Onisifor Ghibu and Mircea Păcurariu were sources of inspiration and starting points for a brief history of the life of Romanian religious cults.

The keen reader of our work will also notice that one of the motivations for approaching the subject of this thesis was the desire to examine the documents regarding the activity of religious cults and associations in Romania between 1918 and 1989, in the archives of the C.N.A.S (the National Council for the Study of the Secret Police Archives). These documents showed us a glimpse not only of the legislation regarding the cults and the freedom of belief in Romania, before and after the communist regime installed in 1947, but mostly of the state policy regarding the religious cults.

I must also mention that I had the privilege to benefit from the studies of contemporary, prestigious jurists (canonist theologians) which were really useful in the matter of freedom of conscience and religious belief.

The text of the Statute and Regulation of religious Cults was studied and corroborated with information found in the comments provided by important Romanian canonists such as: Constantin Erbiceanu, Liviu Stan, Nicolae Popovici, Gheorghe Soare, Valerian Şesan, Iorgu Ivan, Ioan Floca, Nicolae V. Dură etc. as well as other authors or leaders of the Orthodox and Neo protestant Church in nowadays Romania.

The jurisprudence specific to the subject was consulted using two specialized software: Sintact and Lege5, but also in the works published by several jurists: Mihail Stănescu-Sas, Ioan-Daniel Chiş, Teodor Manea, Ionuţ Gabriel Corduneanu etc. At the same time, I used the database of the European Court of Justice.

Concerning the approach and the drafting of the chosen subject, I should mention that a “sui-generis” contribution was the comparative analysis of national and international legislation regarding the freedom of conscience and the freedom of the religious cults.

In the same keynote, I analyzed and evaluated the entire national legislation referring to religious cults and, ipso facto, to their legal regime, as well as to the rights and obligations of the members of religious cults.

On this occasion, I tried to illustrate to our reader how the national and European courts of law interpreted the legislation of the individual and collective rights regarding the freedom of conscience and religious belief.

Hence the finding that within the European Court of Human Rights or the European Court of Justice there is no unified practice to interpret the freedom of conscience, religious belief and association to practice a religion and that, many times, although motivated, the courts analyze subjectively, depending on the country of the plaintiff, the local culture or the circumstances.

Despite all this, we must notice and emphasize that, for the last five years, at least, the courts commonly ruled that the Member States should observe the right of every person to freedom

of conscience, the right to practice a religion in the public space and the right to associate in religious organizations and to benefit from the rights of religious organizations.

Therefore, in this work I have examined the Romanian legislation that stipulates the rights of individuals to their own conscience, as a fundamental human right and how the Romanian State understood or understands to observe the right of conscience in delicate matters like mandatory military service, religious rights of a citizen in detention etc.

Meanwhile, I examined and assessed the national and international legislation regarding the freedom to adopt a religion because the possibility to change one's religion is a manifestation and a warrant of the religious freedom and my conclusion was that both the legislator and the courts of law understood that the right to religious belief is equal to the right to express one's religious belief in public or private space and that this right is expressed not only by private or public confession of the religious belief, but also by the right to change one's religion.

In accordance with the international law, the religious belief of an individual or a group must be observed in all aspects of everyday life, such as, in education, where parents have the right to decide on the religious education of their children, the right of children to receive their own religious education or their parents', the right of students to have their own weekly rest; in the army, the right of men to have their own conscience and religious options during active military service and weekly rest; in healthcare, the state must observe a person's religious beliefs and convictions in all aspects related to his dignity, his right to accept or refuse medical procedures or treatments or his options regarding funeral services and his burial.

With regard to the right of people to associate with other people who share the same religious beliefs in order to form a religious organization, I looked both at the religious organizations, as a way to commonly express an opinion or religious belief and how the state, as a political institution, regulated the formation of religious organizations, their rights and obligations, as well as the relationship with other religious cults and organizations.

Of course, I did not ignore or hide the fact that the right of conscience, the right of religious belief and the right to practice one's religion in the public or private place, alone or with other persons sharing the same convictions are all fundamental human rights stipulated by both the "divine law" and the "natural law".

From the point of view of Judeo-Christian doctrine, conscience is part of the human being, is a divine fundamental right which cannot be limited, restricted, regulated or shaped. And, as even laic jurists admit it, conscience differs from thinking which is the entire set of genetic, cognitive or ontological information that manifests itself especially in areas of wide interest, “which have a direct connection with the exercise of state power, politics, religion, law, economy etc.”

I also pointed out that the freedom of thought and the freedom of conscience are not always correlated with the freedom of belief, as a person can have an opinion and do actions in the name of its conscience without really having a religious belief.

Following the same logic, we will see that the freedom of belief and the freedom of cults is not the same thing. This is why the legislator engaged itself, in the Constitution, to respect both the freedom of belief and the freedom of cults because a religious belief can also exist in the absence of a religious cult.

In the text of our work, I also mention the fact that Civil Law and Criminal Law represent forms of social organization and that some laws have their origin not only in the divine law, natural law and Roman law (old and new), but also in the canonical law and the Byzantine law.

The fact that the main elements of our research were the texts of international legislation first and then the national legislation, that is the text of the Romanian Constitution, the Law on the freedom of religion and the general regime of cults and, finally, the entire legislation regarding the relationship between the State and the Cults represents the proof that our scientific research aimed to identify the national and international legislative framework for regulating the freedom of religious belief as well as the organization and operation of religious cults in Romania.

One of the conditions needed for a religious cult to be recognized by the Romanian State is “to observe the Constitution and the laws of the country and not to affect public safety, order, health and ethics as well as the fundamental human rights and liberties.”

Therefore, during my research work, I tried to also capture the autonomy forms stipulated in the status of every cult.

Since a cult must have a national distribution and a minimum number of believers, according to the Law on freedom of religion and the regime of religious cults, I tried to verify if

there are some differences in the organization of the cults and their territorial units and, in the case of cults which are part of international religious organizations I also made references to the religious structures abroad in order to find out how their status was translated according to the national legislation.

Most of the cults have central bodies with administrative role, but I noticed that some cults – for example the Orthodox and the Catholic Cult – have a central administration with full powers while others, - for example the Neo-protestant Cult – are constituted as national structures of international religious organizations only, with limited powers.

I also analyzed the legal framework of central and local ecclesiastic institutions of the religious Cults with an executive role in the administration of the clerical life through their central forums that enforce their decisions. And I also noticed that their organization and attributions differ from one cult to another.

The historical cults (Orthodox and Catholic), which manage a considerable patrimony and have a significant number of believers, stipulated in their statute central, territorial and local administrative institutions. And, in that regard, I wanted to see how these internal institutions manage to organize themselves and how this is related to national legislation.

I have also found that some religious cults do not offer the same legal status to their territorial units across Romania. Some units (churches or local communities) are juridical persons, others are branches of juridical persons and others do not have a juridical status and do not have their own patrimony. According to their status, local communities have or do not have certain patrimonial rights, rights to make their own decisions or even their institutional autonomy.

Church property and its legal nature represents a subject worthy of ample debate. The cults have their own patrimony or they use other persons' patrimony. The patrimony of the cults have a preferential status, different from the legal status of other patrimony. The way in which patrimony is acquired or a certain legal status is obtained differs sometimes from common law, in terms how the state can regulate the legal regime of church property.

While dealing with such subject, I had the opportunity to present my reader with an overview – albeit brief – of how religious cults in question approach property and that this can be very different from one cult to another.

To this end, I examined and assessed the legal statute of clerical staff or church ministers from the perspective of both national legislation and ecclesiastic legislation of the cults.

Regarding their staff, the religious cults have different ways of electing their leaders or recruiting staff, whether clerical or laic. I also tried to see what the representativeness of church leaders consist of and what criteria are used to recruit clergy or laic staff who work for the Church as volunteers or employees.

Based on the autonomy granted by the State, Church has a special statute regarding internal court. The State does not have the ability to judge the deeds of cleric or laic members from a doctrinal or canonical point of view.

In their relation with the cult, the clergy members or believers are subject to internal judgement procedures using the ecclesiastic law. Every cult has its own rules when dealing with the trespassing of clergy staff or members. At the same time, the cults also stipulated punishments in their internal organization, statutes or laws.

It is a known fact that the religious literature in the communist era was strictly regulated by propaganda staff and the secret police. The cults could barely get to print their own informative materials and religious literature was even more difficult to print.

After the 1989 Revolution, the Romanian people craved for religious freedom, spirituality and uncensored expression which led to an explosion of religious printings. The cults were free to publish newspapers and magazines, to have TV or radio stations. Moreover, the clergy members independently published religious books, magazines and newspapers, hence our efforts to identify the official media channels of every Cult as, according to Church internal regulations, these media channels represents an official source of information.

This work tried to respond some of the questions asked by those who were interested in knowing the internal or European legislation regarding the freedom of conscience and association into religious organizations in order to practice a religion.

I hope that that all historical, legal and ecclesiastic references used in this work to be perceived in an objective manner as I used them only to inform the reader about the specific context

when a law was published, a court order was issued or an important law impacted the religious life in Romania.

I assure the readers of my doctoral thesis that the laws cited are up to date. But, I also made references to past laws, such as the Decision 23/2009 of the High Court of Cassation and Justice of Romania which was based on a preliminary ECHR decision that did not recognize insubordination on grounds of conscience in the case of military men in compulsory active service, although, in less than a year, the decision was invalidated by the Great Chamber of the European Court of Human Rights.

In the light of these preliminary considerations, we must embrace the certainty that only the natural law of divine origin has a permanence, irrespective of the political, historical, social, cultural or religious context. Or, the fundamental right to freedom of conscience, freedom of religious belief, freedom of association to practice a religion is a God given right which is recognized by all three monotheist religions: Judaic, Christian and Islamic.

Regarding the structure of my doctoral thesis, it has six chapters that judiciously analyze and assess the provisions of the Law on religious freedom and the general regime of the cults, in the light of the main themes that the legislator has regulated by this law: a) the religious freedom; b) the relation between the State and the Cults; c) the recognition of the quality of a cult; d) the legal status of staff of the religious cults; e) the legal regime of the patrimony of religious cults; f) the legal status of education organized by religious cults and g) the legal status of religious associations.

Referring to the right of freedom of religion as a general legal provision, I exposed the issues relating to the human right to freedom of thought, religion and the practice of religion as well as the right and liberties of persons in detention, the rights of parents to provide an education for their children, the rights and obligations of members of religious cults, the freedom of conscience during military service and the affiliation of religious cults to international structures.

Meanwhile, I tried to capture the most frequent situations in the religious life in Romania and in nowadays jurisprudence, thus conveying their implications on the social life.

As I previously mentioned in the paper, the majority of religious cults in Romania are national structures of international organizations. Although they share the same doctrine and

religious beliefs with Churches in other countries, some cults remain autonomous in their organization, as it is the case of the Romanian Orthodox Church “which has its own independent management, with its own representative bodies, with clergy and laic staff according to the Holy Canons and the provisions of this statute and other provisions of the church authority (art.3, al.2)”

But there are also totally independent cults, from a legal and doctrine point of view. Therefore I tried to see how the rights of the believers are reflected and how these cults maintain fraternal, ecumenical and hierarchic relations with other religious organizations outside the country.

Concerning *The relation between the religious cults and the State (chapter II, section 1 of the Law on religious freedom and the general regime of cults)* I wanted to comment on the neutrality policy of the State in relation with the religious cults, as well as the autonomy of the religious cults.

I also made some clarifications about the origin of State neutrality in relation with the religious cults, how this neutrality is perceived by the social and juridic actors and the effects of state neutrality in the life of cults or social life, in general.

The autonomy of religious cults has been treated in distinctive manner, by including a short overview of the most important decision of ECHR or national courts. In the light of jurisprudence and the adjacent legislation, I tried to identify both theoretical and practical, real aspects regarding the autonomy of cults in relation with the State, how they appear in national legislation by analytical comparison with the provisions of article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted by UN on November the 25th, 1981.

In this chapter, I also analyzed the legislative provisions that governs the material aid given by the State to religious cults and the fiscal policy of the State in relation with the cults and religious organizations legally recognized in Romania.

Obviously, I made express references to the recognition of state authority and its forms, but also to the authority as it appears stipulated in the statute of each cult.

In order to talk about *Recognizing the juridical personality of religious organizations (chapter II, section 2 and chapter III of the Law on religious freedom and the general regime of cults)* I made references to the legislative text regarding juridical religious persons, to some of the most important provisions of the law on religious cults, to the juridical situation of religious cults after the Union of 1918, to the juridical personality of religious organizations, to the juridical regime of religious gatherings etc.

As such, I also presented the legal conditions for acquiring the juridical personality of religious organizations in Romania, the similarities and the differences between these organizations and other juridical forms of associative organization etc.

As much as I could, I also briefly presented the history of every cult, especially when they appeared in Romanian territories and the how they became a religious cult. Yet, I wanted to introduce several facts related to the history of the cults so that the reader could understand the social, theological, political and juridical context at the time the respective cult was recognized. To this purpose, I used the official version for each cult.

Chapter II, Section 3rd of the Law on religious freedom and the general regime of cults deals with the juridical status of the staff of religious cults. As the author of this thesis, this chapter was the most interesting one because the legislator stipulated in this portion of the law provisions regarding the juridical status of the clerical staff, wages of the staff, the juridical status of social and health insurance for the clerical and monastic staff. I also included an analysis of the legal exceptions regarding the inheritance of patrimony for the monastic staff.

An important aspect of this chapter, which I treated thoroughly in my thesis, is about the control institutions and internal court of laws specific to the religious cults as they represent the most obvious manifestation of autonomy in the relation with the State.

In my opinion, from a juridical point of view, this chapter is the most challenging if it is to be judged by the exceptions from the general provisions of the labor legislation, the Civil Code and other laws.

Regarding the *Juridical Regime of the Patrimony of Cults (chapter II, section 4th, The Patrimony of Cults of the Law on religious freedom and the general regime of cults)* I presented the legal framework that allow churches to acquire their patrimony, the juridical status of church

patrimony, the sacred quality of church patrimony, the juridical regime of religious schools, the specific legislation for retirement benefits and social security offered by religious cults and, finally, the institutions for social assistance, the so-called charity houses.

In fact, in this chapter, I made an up-to-date analysis of the legislations that governs, directly or indirectly, the juridical regime of all kind property belonging to religious cults, including the exceptions provisioned by the legislator.

It is an undeniable fact that the church patrimony and its juridical nature represents a really interesting subject for our society. The cults have their own patrimony or they use other persons' patrimony and the legal framework that allow its acquisition is different from one cult to another.

Although this is a vast subject, I hope I succeeded to present a general overview of the particularities related to the legal framework that allow religious cults to acquire their patrimony and the reader will be able to tell that the differences are quite notable for every cult.

Regarding the juridical status of *religious education, presented in Chapter II, section 5th of the Law on religious freedom and the general regime of cults* I underlined the right of parents to provide religious education to their children as well as the legal provisions of religious education and religious schools.

In this context, we tried to bring to the reader's attention the framework of the functioning of the discipline Religion, before 1947 and after 1995, the year of the reintroduction of religion in schools, making a comparison with the situation in other European countries.

We also analyzed the legal regime of the state or private confessional education institutions, as well as the legal regime of the teaching staff in the two forms of confessional education. Last but not least, we also talked about the legal status of students in state and confessional university education.

Finally, the Law 489/2006 expressly provides that "religious freedom may also be exercised within religious associations, which are legal persons made up of at least 300 persons, Romanian citizens or residents in Romania, who associate in order to manifest a religious belief" (Art. 40, al. 1).

However, even using this approach and formulation of the rights and freedoms of the Religious Cults, the Romanian legislator proved to be in full compliance with the provisions of the European Union legislation, thus providing an adequate legal framework for the affirmation of the legal regime of the Religious Cults in our country.