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Thoughts on the Religious Freedom in Romania (a Few Reflections on the Margin of the Law on Religious Denominations)

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Abstract

According to the fundamental law of any country, *the Constitution*, we must remember *the Law on Religious Denominations*, a law that regulates religious life in a State. *The Constitution* and *the Law on Religious Denominations* are in a close connection, even inseparable, as is the connection between body and soul. The appearance of *the Law on Religious Denominations* in 2006 meant the moment of the spiritual maturation of the Romanian society. *The Law on Religious Denominations* cannot claim any “sacred” character, but it has cultivated respect for the “sacred”, for religious beliefs and fundamental human rights. It did not create any other system of values, but sought to legislate the old Romanian traditions of mutual understanding and respect. The Romanian Law on Religious Denominations did not disregard any religious faith, did not overestimate any atheistic cult or ideology, nor did it introduce any State religion.

Keywords

Law, Constitution, State, denominations, faith, sacred, values, rights, obligations.

Introduction

The fundamental law of any State is, indubitably, *the Constitution*. Nevertheless, right away, next to this law, we need to remind the Law on Religious Denominations, which is a law regulating the religious life in a State. Between the two laws there might be seen a comparable relation with the one between body and soul. *The Constitution* defines the State, its relations with the citizens and the relations between citizens, the ones regarding especially the body. *The Law on Religious Denominations* defines, however, the manner of organization of the citizens' religious life, and therefore, has in view, firstly, the religious feeling of people, the spiritual life of their soul. In consequence, these two laws – *The Constitution* and *the Law on Religious Denominations* – find themselves in tight connection, even inseparable, in equivalence with the relation between body and soul.

Moreover, if death is defined as the separation of the soul from the body, similarly the spiritual separation of *the Constitution* from *the Law of Religious Denominations*, in the sense of ignoring people's religious lives, means a civil death of the citizens of a state. This sad experience was tried during the communist period, when the religious life of the people was deprived of complete freedom, it was theoretically forbidden, the religious feeling was blamed, it was deeply suffocated, that is why the citizens felt it as a spiritual death, suggestively called "totalitarianism". The paradox is that "totalitarianism" does not mean the total or complete vision of man (body and soul), but the total restriction of man in the exercise of his fundamental rights. In other words, "totalitarianism" means the dictatorship of insufficiency, the monopoly of incompleteness or the exclusivism of reductionist philosophy.

Fortunately, Romania has freed itself, since 1989, from this passion. The beginning was made with a new democratic Constitution (1991, revised in 2003) which restored to people the fundamental rights of citizens and the spiritual freedom of their souls. The culmination of this return of Romanians to the rule of law was fully achieved when the new Law on Religious Denominations was drafted in 2006. The elaboration of this law took relatively long (over 15 years), because the legal framework of the religious life of citizens it is a particularly difficult and sensitive process. When drafting any law of this kind, many aspects, conditions and consequences must be taken into account, some mainly theoretical, others

practical, so that it does not neglect anyone and does not harm anyone. In this context, allow some legal-theological reflections.

I. The Relation between “Law” and “Sacred”

For many people, the relationship between “law” and “religious feeling” is contradictory, as the law is seen as a limiting rule, while religiosity is seen as an expression of complete freedom, which cannot be restricted from the outside¹. That is why, they believe, it is impossible to regulate, to legalize, something that cannot be regulated². After all, the problem with this relationship is as old as humanity³.

A first solution to the exit from this conceptual opposition was given by the idea of sacralizing the law, this explains why the oldest laws of mankind had a sacred character (Hammurabi’s Code, Manu’s Laws etc.), namely, they were seen as laws given directly by the divinity. Through this, the concept of law, as a constraining rule, was reconciled with the religious feeling, as a manifestation of full freedom. This was, perhaps, one of the first cultural-social manifestations of that “homo religiosus” defined by Mircea Eliade.

All the laws of mankind that followed remained tributary to this sacred vision. Even though the law later began to be given only by man, at least the legislative act was always seen as an act influenced by divinity⁴.

Certainly, the fundamental question followed: *Which divinity?* Here the answer was and is differentiated, the emphasis we keep, from Moses onwards, is that determined by the Revelation, by the true God, Who reveals Himself and saves man.

¹ Irimie MARGA, “Teologia Dreptului Canonic Ortodox”, in: *Statutul actual pentru organizarea și funcționarea Bisericii Ortodoxe Române. Tradiție și înnoire. Simpozion internațional, Caransebeș, 6-8 octombrie 2015*, Presa Universitară Clujeană and Editura Episcopiei Caransebeșului, Cluj-Napoca 2016, pp. 128-144.

² Liviu STAN, *Ontologia iuris*, Sibiu 1943.

³ A se vedea și Liviu STAN, *Biserica și Dreptul. Studii de Drept Canonic Ortodox*, Editura Andreiana, Sibiu, 6 vol., 2010-2015.

⁴ Mircea DJUVARA, *Precis de filosofie juridică*, Tipografia ziarului „Universul”, București 1941; Eugeniu SPERA, *Introducere în filosofia dreptului*, Tipografia Cluj, 1946; Giorgio DEL VECCHIO, *Lecții de filosofie juridică*, Editura Europa Nova, București, 1993; Ion CRAIOVAN, *Filosofia dreptului*, Editura Pro Universitaria, București 2012.

II. The Relation between “Law” and “Right”

On the other hand, any law seeks to create a state (order)-in-fact. The question that arises here is this: Who has priority,

- *the law* that creates the state-in-fact?
- or the *value of the right* itself, which underlies the drafting of the law?

This question is similar to the question: what came first, the egg or the hen?

Obviously, all antiquity put the value of right before the law, as a norm or social rule. This order was determined by the vision of the sacred origin of law, which leads to the birth of the law⁵.

In Justinian’s “Institutions” it was said: “*Non ex regula jus summatur, sed jus quod est regula facit*”, meaning “Law does not result from the sum of laws, but the right that (pre) exists gives rise to the law”. It is clear that the basis of this conception is the Christian faith, which would raise Roman law, from a practical philosophy to the perfection of a civilizing and culturizing system.

This conception was maintained until the French Revolution, when things were reversed, namely, first the law was put in place, and then, by law, an order of law independent of any “preconceptions” was created. This change has spread throughout the world, but not everywhere. To this day, there is this struggle between the old conception that “pre-existing right causes the law”, and the new upside-down vision, namely, “the law creates the new right, devoid of preconceptions”.

A current example concerns the problem of the family. In the old conception, the laws on the family are born from the natural and revealed law on the family, as a union between a man and a woman, while in the “new”, post-modern vision, the law freed from any “preconception” creates other laws, which allow the family to be formed according to “new criteria”, determined by sexual orientation. As things stand at present, the two conceptions co-exist and the struggle between them will not end soon.

⁵ Eugenio CORECCO, *Theologie des Kirchenrechts. Metodologische Ansätze*, Paulinus-Verlag, Trier, 1980; Pierre L’HUILIER, “L’Esprit du droit canonique orthodox”, in: *Messenger de l’Exarchat du Patriarcat Russe en Europe Occidentale*, Paris, 1964, nr. 46-47, pp. 108-119.

III. The Relation between “Law” and “Faith”

When the word “faith” is used, most people think of religious faith. But the term “faith” has a much broader meaning. In essence, “faith” means accepting a “truth” that man cannot reach on his own⁶. But many such “truths” to which man reaches have no religious character, so the principle of faith has a very wide spectrum, which goes beyond the religious sphere. In mathematics, for example, such “truths” are called “axioms”, and in physics we find many “theories”, some even contradictory.

That is why, philosophically speaking, the man who confesses a religious faith cannot be underestimated compared to the one who develops a totally unproven theory. The idea of disregarding man as a religious being is a totally outdated idea. This opinion, fortunately, was also shared by the authors of the Romanian Law on Religious Denominations, when it was provided that “the State is neutral against any religious belief or atheistic ideology” (art. 9, par. 1).

Unfortunately, there have been many tendencies that have sought, and still seek, to raise atheism above religious beliefs (I am referring, in particular, to the dispute over the religion class in school). Atheism, in principle, also has a form of faith, in another more or less logical structure. But, in essence, the law must remain equidistant from any form of faith⁷, religious or non-religious, and this new vision has been shared by the Romanian *Law of Religious Denominations*.

Conclusions

The appearance of the *Law on Religious Denominations* in 2006 meant the moment of spiritual maturation of the Romanian society. Obviously, this law cannot claim any “sacred” character, but it has cultivated respect for the “sacred”, for religious beliefs and fundamental human rights. It did not

⁶ *Filocalia*, Sibiu, vol.1, 1947; Nicodim MILAȘ, *Canoanele Bisericii Ortodoxe însoțite de comentarii*, Arad, 4 vol., 1930-1936.

⁷ Peter L'HUILLIER, *Dreptul bisericesc la sinoadele ecumenice I-IV*, Ed. Gnosis, București 2000; Ioan N. FLOA, *Drept canonic ortodox, legislație și administrație bisericească*, București, 2 vol., 1990; Vlasios PHIDAS, *Droit canon*, Chambesy, Geneve, 1998 (Ed. Trinitas, Iași 2008); Richard POTZ, Eva SYNEK, *Orthodoxes Kirchenrecht*, Verlag Plöchl, Freistadt, 2014.

create any other system of values, but sought to legislate the old Romanian traditions of “mutual understanding and respect” (art. 13, par. 1).

The Romanian *Law on Religious Denominations* did not disregard any religious faith, did not overestimate any atheistic cult or ideology, nor did it introduce any State religion (art. 9, par. 1). In the time that has elapsed since its appearance, the cults, associations and religious groups have felt the beneficial effects of the application of this law in the Romanian society. The vision and structure adopted by the Romanian legislator made this law one of the best in the world.