

“AUREL VLAICU” UNIVERSITY OF ARAD
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INTERDISCIPLINARY DOCTORAL SCHOOL
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**THE RELATIONSHIP BETWEEN CANON LAW AND CURRENT
CIVIL LAW IN THE FIELD OF RELIGIOUS FREEDOM, THE
GENERAL REGIME OF RELIGIOUS CULTS AND RELIGIOUS
SYMBOLS**

PhD Thesis Summary

SCIENTIFIC COORDINATOR:

PR. PROF. UNIV. DR. CONSTANTIN RUS

DOCTORAL STUDENT:

IONESCU RAREȘ-ȘTEFAN

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PHD THESIS SUMMARY

1. The motivation and the choice of the subject

In a world influenced by change, the human rights and the freedoms face new challenges, too. The religious human rights, a relatively new subject in legal science, are continually evolving. With a recent achievement, namely after the Second World War, this discipline continues to be on a real advancement. The situation is even more dynamic when we refer to the religious rights and freedoms of the individual at European level. Political and especially social transformations at continental level have many effects on the freedom to exercise religious rights. The results of these changes have very specific consequences on the life of every person, whether a believer or even an atheist. On this first reason, each of us must have a minimum knowledge of the rights and freedoms of the individual, information on the basis of which we can be legalized or not to use our religious rights.

Timeliness is a key feature of this topic. In certain conditions of space and time we can all be harmed in the exercise of religious rights. Starting with interaction with people of a different ideological orientation, continuing with the desire to manifest our religious affiliation and even going as far as feeling aggrieved by certain limitations, such as those during the recent COVID-19 pandemic, we need to know where there is abuse or where there is exaggeration in measures limiting the exercise of this right. Moreover, the increasingly precise instruments for protecting the individual in matters relating to the exercise of religious life must be used correctly and rationally, which is why each of us must know when our request to defend that right is truly justified. However, over and above all these reasons, perhaps the most important reason in favor of dealing with such a subject relates to the need for the exercise of religious freedom. Lack of basic knowledge of religious rights can lead to abuse or discrimination. The older among us have lived times when making the sign of the Holy Cross, going to Church or attending various religious meetings were reprehensible actions by the country's leadership and questionable by public officials in charge of so-called social order. These were years of sad memories, years that killed not only dreams and hopes, but above all, took human lives. Without comparison, even today European society is at a deadlock of religious freedom. The contemporary religious mosaic is perhaps a little too colorful for Europe to accept. This gives rise to various disagreements among European citizens, or rather those who live their lives on

this continent. As we shall see in the paper, it is not uncommon for religious tensions to lead not only to the restriction of a religious right, but even to violence and murder. Unfortunately, most serious attacks have a religious basis. Being also a graduate student of the Faculty of Law from the University of Bucharest and having the opportunity to get in touch with students of different religions by attending numerous theology and law courses at the Karls Eberhard University of Tübingen, due to a Brot für die Welt scholarship, I found the topic of religious rights and freedoms of the individual very attractive. A well-documented topic in Western Europe, but still at the beginning in our country, promises to be increasingly followed by Romanian society. The debate over the situation of icons in classrooms is testimony to this. In the context of this exchange of views, I felt obliged to clarify, and above all, to clarify for myself, certain aspects concerning this area. My visit to the same Berlin Christmas Fair a few days before the terrorist attack of the 19th of December 2016, an attack in which the lives of 12 people were taken and 40 others injured, was yet another reason to ask myself what religious freedom is and what the border is between religious right and abuse of religious right. If much has been written at European level from a legal point of view, we cannot say the same about the legal literature in our country, and much more about the insertion of the Orthodox view into this issue. Under these circumstances, I felt compelled to provide some answers to myself and, further, to those interested in this subject.

2. Research focus

The research focus of this study is the religious situation at European and national level, seen from the perspective of canonical and civil law. In order to make the premises and draw conclusions, we have taken as tools both international and national legislative documents, cases and decisions of the dedicated courts, as well as elements not indispensable in a canonical study: Holy Scripture, the Holy Fathers, various canonical collections, the views of outstanding Christian theologians. In support of the object of research, I find it important to treat also the emergence and evolution of the notion of the right and freedom of the person. In this regard, I propose to analyze the concept of religious freedom in various European and national legislative documents in full force, as well as in the history of our country, the Christian Church's vision of Christian dignity, rights and freedoms and other related topics.

I consider the lack of the religious rights and freedoms of the individual in relation to Christian culture and history to be a fact that causes numerous damages to both Christian and secular society. By cancelling the Christian roots of human rights and freedoms, they are distanced from the person and from his or her true needs, which leads to a lack of respect for the person.

3. The state of research

If Mallarmé said that the purpose of man is to "give a purer meaning to the words of the tribe"¹, this statement is also valid for any researcher, especially regarding the expression "human rights". The apparent simplicity of these words probably explains the ease with which they are used in current speech. Appearing in almost all modern discourses, "human rights" seem to have become a new ideology, a kind of "third way" between summary Marxism and traditional liberalism, as they represent a common point reached starting from ideologies difficult to reconcile. For a scientific approach to the notion of "human rights" it is therefore necessary to make a clear distinction between the different levels of analysis that this implies. Mainly three levels can be distinguished.

First of all, it is about the philosophy and morality of human rights (today it is more about the ethics of human rights), the material source of the legal formation of these rights.

Second, it is about the practical ideology of human rights as it is put into practice, both domestically and internationally, by the Church, humanitarian associations, political parties, trade unions, governments and international organizations. Within international society, "human rights diplomacy" offers a picture full of contrasts. Human rights, the focus of excessive media coverage, but also the object of misinformation, seem to have become an instrument of struggle in front of public opinion, suffering extreme politicization that led to their perversion. However, the merits of this diplomatic approach to human rights should not be underestimated: without forgetting that the outcome of painful cases of human rights violations must most often be attributed to it, it must be emphasized that the legal texts that protect human rights actually represent the consequences of such diplomatic debates, which are often difficult.

Finally, it is about the positive law of human rights, with all the institutional mechanisms of guarantee that it implies. The positive law of human rights is, in a way, the

¹ Stéphane MALLARMÉ, *Le tombeau d'Edgar Poe*, Ed. NRF Poésie, Gallimard, 1992, p. 60.

visible part of the iceberg called "human rights", which could not exist without the lower layers (philosophical basis, political expressions, diplomatic debates). As for the positive law of human rights, it should be revealed that the expression "public liberties" was much more preferred by the majority of authors instead of the phrase "human rights" to designate, in a general way, the rights and attributes that ensure freedom and the dignity of the human being and benefiting from institutional guarantees. This differentiation between human rights and public liberties has a double meaning. First, in most cases, it is specified that only public liberties belong to positive law and have a legal reality, while human rights, because they refer to the notion of "natural rights, belong to the field of ethics, even to that of " the imaginary". Domestic law is then contrasted with international law: for example, when studying the case of a particular country, reference is made to public liberties within domestic law, but in the case of international society, human rights are evoked. Such a presentation results in reducing the positive law of human rights (called "public liberties") to domestic law. It should also be emphasized that the current trend is to adopt the phrase "human rights", which is undoubtedly more mobilizing, sometimes alongside that of "public liberties" or "fundamental liberties", in order to be able to continue to deal with legal regime of domestic law the various liberties (excepting the work of Yves Madiot²).

From our point of view, the phrase must be preserved, especially since the most important international texts in this matter refer to "human rights" and not to public liberties. The expression "human rights" will therefore be used in the present paper, with the mention - previously made - that our analysis is situated in the plane of positive law.

Therefore, in the attempt to develop a Romanian theology and against the background of the poverty of a specialized literature, systematically drawn up, the theme of the research project with the title: "The relationship between the canonical legislation and the current civil legislation, with incidence in the field of religious freedom, the general regime of cults and religious symbols" is welcome. We do not have a reference work on this topic in the Romanian theological space. If in Romanian specialized literature there are few works that only tangentially approach our research topic, in foreign literature there are many works. Among these we mention:

1. Regarding public liberties:

² Yves MADIOT, *Droits de l'homme*, ed. a 2-a, Ed. Masson, Paris, 1991.

Apart from public liberties textbooks, other references are J. Murgeon, for a very personal view of this field³ and D. Lochak⁴; also Yves Madiot, who proposes a stimulating interpretation of the evolution of the overall mechanism of freedom; M. Villey, for a philosophical critique of the notion of "human rights"⁵. In addition to these, two works can be mentioned: that of R. Cabrillac, M. A. Frison-Roche and T. Revet⁶ and that of S. Guinchard and M. Harichaux⁷. For selected reference texts, we mention the work of J. Robert and H. Oberdorff⁸.

To understand the distinction between human rights and public liberties, one must refer to the one proposed by J. Rivero⁹. In the opinion of J. Rivero, the two notions "are located on different planes". Freedom is manifested by the power to act or not to act, and all liberties "are public liberties in that they do not enter the field of positive law only when the state has established their principle, made their exercise possible and ensured their observance ". The phrase "human rights" has, on the other hand, a wider meaning: it starts from the concept of natural law according to which man, because he is human, has a series of rights inherent in his nature; even if positive law does not enshrine them, they still exist. In short, public liberties "correspond to some human rights that, recognized and regulated by the state, were included in positive law"¹⁰.

2. Regarding international human rights law:

³ Jaques MURGEON, *Les droits de l'homme*, PUF, "Que sais-je?", ed. a 6-a, no. 1728, Ed. PUF, Paris, 1996.

⁴ Danièle LOCHAK, *Les droits de l'homme*, Ed. La Découverte, Paris, 2002.

⁵ Michel VILLEY, *Le droit et les droits de l'homme*, Ed. PUF, Paris, 1983.

⁶ Marie-Anne FRISON-ROCHE, Thierry REVET (coord.), *Libertés et droits fondamentaux*, ed. a 8-a, Ed. Dalloz, Bruxelles, 2002.

⁷ Serge GUINCHARD, Michelé, HARICHAUX, *Protection des libertés et des droits fondamentaux* ed. a 2-a Ed. Montchrestien, Paris, 2004.

⁸ Jaques ROBERT, Henri OBERDORFF, *Libertés fondamentales et droits de l'homme. Textes français et internationaux*, ed. a 5-a, Ed. Montchrestien, Paris, 2002.

⁹ Jean RIVERO, *Les libertés publiques*, Ed. PUF, "Thémis", t. I, ed. a 8-a, 1997, t. II, ed. a 6-a, Paris, 1997.

¹⁰ J. RIVERO, *Les libertés publiques*, t. I, p. 22.

The most significant are the public international law textbooks of P. M. Dupuy¹¹; the short work of P. Wachsmann, for a correct approach to this issue¹²; H. Thierry's course¹³; and that of J. Y. Morin¹⁴; as well as the papers of the SFDI Colloquium¹⁵ and K. Vasak¹⁶.

The use of international texts is indispensable. For the fundamental texts, we mention: Council of Europe¹⁷; P. Rolland and P. Tavernier¹⁸; O. De Schutter, F. Tulkens, S. Van Drooghenbroeck¹⁹; M. Delmas-Marty and C. Lucas de Leyssac²⁰; UNESCO²¹; as well as the two French-language journals dedicated specifically to international human rights law: *Revue universelle des droits de l'homme*, edited by N. P. Engel, since 1990, and *Revue trimestrielle des droits de l'homme*, edited by Némésis-Bruylant, since 1990.

For the definition of international human rights law, the definition, very abstract but of a high intellectual level, that René Cassin, laureate of the Nobel Peace Prize in 1968 and the "founding father" of the Universal Declaration of Human Rights, cannot be overlooked, gave it to the "science of human rights": "Special branch of social sciences whose object is the study of relationships between people taking into account human dignity, determining the rights and capacities that are necessary as a whole for the development of the personality of each human being"²².

3. Regarding European human rights jurisprudence:

¹¹ Pierre-Marie Dupuy, *Droit international public*, ed. a 6-a no. 191-228, Ed. Daloz, Bruxelles, 2002.

¹² Patrick WACHSMANN, *Les droits de l'homme*, ed. a 4-a, Ed. Daloz, Bruxelles, 2002.

¹³ Hubert THIERRY, "L'évolution du droit international", in *Recueil des cours de l'Académie de droit international de La Haye*, III, 1990, t. 222, p. 9-186.

¹⁴ Jacques-Yvan MORIN, "L'état de droit: émergence d'un principe du droit international", in *Recueil des cours de l'Académie de droit international de La Haye*, 1995, t. 254, p. 9-464.

¹⁵ Actele Colocviului SFDI, *La protection des droits de l'homme et l'évolution du droit international*, Pedone, 1998, in special G. COHEN-JONATHAN, "Conclusions générales", p. 307.

¹⁶ Karel VASAK, *Les dimensions internationales des droits de l'homme*, Unesco, 1978.

¹⁷ Consiliul European, *Droits de l'homme en droit international. Textes de base*, ed. a 2-a, 2002, Consiliul European, *L'émergence des droits de l'homme en Europe. Anthologie de textes*, Ed. Consiliul European, aprilie, 2001.

¹⁸ Patrice ROLLAND, Paul TAVERNIER, *Textes sur la protection internationale des droits de l'homme*, "Que sais-je?", ed a 2-a, Ed. PUF, Paris, 1994.

¹⁹ Oliver De SCHUTTER, François TULKENS, Sébastien Van DROOGHENBROECK, *Code de droit international des droits de l'homme*, Ed. Bruylant, Bruxelles, 2003.

²⁰ Mireille DELMAS-MARTY, Claude Lucas de LEYSSAC (coord.), *Libertés et droits fondamentaux. Introduction, textes et commentaires*, Ed. Le Seuil, "Points", Paris, 1996.

²¹ UNESCO, *Le droit d'être un homme*, Lattès, 1984.

²² René CASSIN, "Colloque de Nice, 1971, Science des droits de l'homme: méthodologie et enseignement", in *Revue des droits de l'homme*, vol. V, 1972, in Frédéric SUDRE, *Drept European și Internațional al Drepturilor Omului*, prefață de Conf. Univ. dr. Valentin CONSTANTIN, traducere de Raluca BERCEA (coord.), Violeta-Irina Avram, Magdalena ROIBU, Flaminia-Nera-Flavia STĂRC-MECLEJAN și Andreea VERTEȘ-OLTEANU, Ed. Polirom, Iași, 2006, p. 29.

The most important works related to our topic are: Court decisions²³; of the Commission²⁴ and the Committee of Ministers²⁵.

For the analysis of European jurisprudence, we especially mention: F. Sudre, J. P. Marguénaud, J. Adriantsimbazovina, A. Gouttenoire and M. Levinet²⁶; V. Berger²⁷; M. De Salvia²⁸; G. Dutertre²⁹; the chronicles of the jurisprudence of the European Court by R. Pelloux, then V. Coussirat-Coustère³⁰; P. Rolland and P. Tavernier, as well as E. Decaux and P. Tavernier³¹; F. Sudre³²; J.P. Marguénaud³³; as well as the comments made on the Commission's jurisprudence by G. Cohen-Jonathan and P. P. Jacqué, starting in 1976.

4. Regarding the European Convention on Human Rights, we mention the works of L. E. Pettiti, E. Decaux and P. H. Imbert³⁴; J. F. Renucci³⁵; P. Tavernier³⁶; and J. Velu and R. Ergéc³⁷; and for a synthetic analysis, G. Cohen-Jonathan³⁸.

²³ For the decision of the Court: *Série A. Arrêts et décisions de la Cour, Série B. Mémoires, plaidoiries et documents*, și, din 1996, *Recueil des arrêts et des décisions*, Köln, Carl Heymanns Verlag. The Court's decisions and judgments are also available on its website at <http://www.echr.coe.int>.

²⁴ For the decision of the Commission: *Consiliul European, Recueil de décisions de la Commission européenne des droits de l'homme*, vol. 1-46, 1960-1974, și *Décisions et Rapports de la Commission européenne des droits de l'homme*, vol. I, 1975 și urm.

²⁵ For the decisions of the Committee of Ministers: *Recueil des Résolutions du Comité des ministres adoptées en application des articles 32 et 54, de la CEDH, 1959-1983 and the following.*, Strasbourg, Conseil Européen, 1984 and the following. A summary of the Commission's main decisions and the Court's judgments can be found in *Annuaire européen*, Haga, Martinus Nijhoff, din 1955.

²⁶ Frédéric SUDRE, Jean-Pierre MARGUÉNAUD, Joel ADRIANTSIMBAZOVINA, Adeline GOUTTENOIRE, Michel LEVINET, *Les grands arrêts de la Cour européenne des droits de l'homme*, "Thémis", ed. a 2-a, Ed. PUF, Paris, 2004.

²⁷ Frédéric SUDRE, Jean-Pierre MARGUÉNAUD, Joel ADRIANTSIMBAZOVINA, Adeline GOUTTENOIRE, Michel LEVINET, *Les grands arrêts de la Cour européenne des droits de l'homme*, "Thémis", ed. a 2-a, Ed. PUF, Paris, 2004.

²⁸ Michel De SALVIA, *Compendium de la CEDH. Les principes directeurs de la jurisprudence relative à la CEDH*, ed. a 2-a, Ed. N. ENGEL, 1998.

²⁹ Gilles DUTERTRE, *Extraits clés de jurisprudence. Cour européenne des droits de l'homme*, Ed. Council of Europe, Strasbourg, 2003.

³⁰ Robert PELLOUX, Vicent COUSSIRAT-COUSTÈRE, in *Annuaire français de droit international*, Ed. National Center for Scientific Research, Paris, 1961 and the following.

³¹ Patrice ROLLAND și Paul TAVERNIER, in *Journal de droit international*, starting up 1978.

³² F. SUDRE, in *Jurisclasseur périodique, Semaine juridique*, ediție generală, starting up 1993, F. SUDRE (et al.), in *Revue universelle des droits de l'homme*, starting up 1992.

³³ J. P. MARGUÉNAUD, in *Revue trimestrielle de droit civil*, starting up 1996.

³⁴ Louis Edmond PETTITI, Emmanuel DCAUX, Pierre Henri IMBERT (coords), *La Convention européenne des droits de l'homme. Commentaire article par article*, Ed. Economica, Paris, 1995.

³⁵ J. F. RENUCCI, *Droit européen des droits de l'homme*, ed. a 3-a, Ed. LGDJ, Paris, 2002.

³⁶ Paul TAVERNIER (coord.), *Quelle Europe pour les droits de l'homme?*, Ed. Bruylant, Bruxelles, 1996.

³⁷ Jacques VELU, Rusen ERGEC, *La Convention européenne des droits de l'homme*, Ed. Bruylant, Bruxelles, 1990.

³⁸ Gérard COHEN-JONATHAN, *Aspects européens des droits fondamentaux*, ed. a 3-a, Ed. Montchrestien, Paris, 2002.

5. Regarding the protection of fundamental rights in the community order and the Charter of Fundamental Rights of the European Union, we mention: J. Rideau³⁹; F. Sudre and H. Labayle⁴⁰; PhD Alston⁴¹; L. Dubouis⁴²; F. Benoît-Rohmer⁴³; J.P. Jacque⁴⁴; and F. Turpin⁴⁵

6. Regarding the League of Arab States, Islam and human rights we mention: S. Aldeeb Abu-Salieh⁴⁶; A. Mahiou⁴⁷.

7. Regarding freedom of thought, conscience and religion, we recall: G. Gonzalez⁴⁸; R. Goy⁴⁹; P. Rolland⁵⁰; J. Duffar⁵¹; J. F. Flauss⁵²; as well as the Bulletin of the Constitutional Jurisprudence of the Venice Commission⁵³.

Regarding specialized works written in Romanian, we can divide them into two categories:

³⁹ Joël RIDEAU, “La rôle de l’Union européenne en matière de protection des droits de l’homme”, in *Recueil des cours de l’Académie de droit international de La Haye*, 1997, t. 265, p. 9-480.

⁴⁰ F. SUDRE și H. LABAYLE (coord.), *Réalité et perspectives du droit communautaire des droits fondamentaux*, Bruylant, “Droit et justice”, no. 2007, 2000.

⁴¹ F. SUDRE și H. LABAYLE (coord.), *Réalité et perspectives du droit communautaire des droits fondamentaux*, Bruylant, “Droit et justice”, no. 2007, 2000.

⁴² Louis DUBOIS, “Les principes généraux du droit communautaire, un instrument périmé de protection des droits fondamentaux?”, Ed. Dalloz, Paris, 2007.

⁴³ François BENOÎT ROHMER (coord.), “La Charte des droits fondamentaux de l’Union européenne”, in *Revue universelle des droits de l’homme*, no. 1, 2000, p. 28-33.

⁴⁴ Jean-Paul JACQUÉ, “La Constitution pour l’Europe et les droits fondamentaux”, in *L’Europe des libertés*, 2004-2014, p. 9-13.

⁴⁵ Fabienne TURPIN, “L’intégration de la Charte des droits fondamentaux dans la Constitution européenne”, in *Revue trimestrielle de droit européen*, 2003.

⁴⁶ Sami ALDEEB ABU-SALIEH, *Les musulmans face aux droits de l’homme*, Ed. Winkler, Bochum, 1994, S. ALDEEB ABU-SALIEH, “Les mouvements islamiques, la loi islamique et les droits de l’homme”, in *Revue trimestrielle des droits de l’homme*, 1998, p. 22-54.

⁴⁷ Ahmed MAHIOU, “La Carte arabe des droits de l’homme”, in *Mélanges H. Thierry*, Pedone, 1998.

⁴⁸ Gérard GONZALEZ, *La CEDH et la liberté des religions*, Ed. Economica, Paris, 1997.

⁴⁹ Raymond GOY, “La garantie européenne de la liberté de religion. L’article 9 de la Convention de Rome”, in *Revue de droit public et de la science politique en France et à l’étranger*, 1991, p. 5-59.

⁵⁰ Patrice ROLLAND, “Ordre public et pratiques religieuses”, in J. F. Flauss (ed.), *La protection internationale de la liberté religieuse*, Ed. Bruylant, Bruxelles, 2002.

⁵¹ Jean DUFFAR, “La liberté religieuse dans les textes internationaux”, in *Revue de droit public et de la science politique en France et à l’étranger*, 1994, p. 939-967.

⁵² Jean-François, FLAUSS, “Laïcité et Convention européenne des droits de l’homme”, in *Revue de droit public et de la science politique en France et à l’étranger*, 2004, p. 317-329.

⁵³ The Venice Commission, “Liberté confessionnelle”, in *Bulletin fr jurisprudence constitutionnelle*, special edition, 2000.

1. Works written from a legal perspective, such as the scientific efforts of professors like Ilie Fonta⁵⁴, Adrian Năstase⁵⁵ or Ioan Dura⁵⁶. This list also includes the very well-documented analysis of professor Cătălin Raiu⁵⁷, namely the book "Religious freedom between politics and policies". The Guide to the legislation in force regarding the exercise of religious freedom in Romania cannot be omitted either, with special regard to the Romanian Orthodox Church⁵⁸.

2. Regarding the study of the subject in a theological approach at the national level, we note works such as "Religion and violence in secular Europe"⁵⁹ by professors Nicu Gavriluță, Nicolae Dima and Sorin Mihalache. A remarkable study is also that of professors George-Eugen Enache, Adrian-Nicole Petcu, Ionuț-Alexandru Tudorache, and Paul Bruszanowski⁶⁰, with the title "The Romanian Orthodox Church during the years of the communist regime. Observations on the chapter dedicated to cults in the final report of the Presidential Commission for the analysis of the Communist dictatorship in Romania". Published in 2009, it represents a reference work regarding the relationship between the State and the Romanian Orthodox Church during the years of communist rule.

At the level of the articles, we mention the contributions of parents and teachers such as Ioan Zăgrean⁶¹ or Nicole Gorun⁶². To the same extent, we also emphasize the writings of

⁵⁴ Ilie FONTA, *Religious freedom in the contemporary world*, Ed. Romanian Institute for Human Rights, Bucharest, 1994.

⁵⁵ Prof. Dr. Adrian Năstase, *Human rights, religion of the end of the century*, Romanian Institute for Human Rights, Bucharest, 1992.

⁵⁶ Ioan DURA, *Dialogue, tolerance, freedom. Configurations of religion in the transition from secularization to pluralization*, Cluj University Press Ed., Cluj-Napoca, 2022.

⁵⁷ Cătălin RAIU, *Religious freedom between politics and policies*, Ed. Doxologia, Bucharest, 2021.

⁵⁸ ROMANIAN PATRIARCHY, *Guide to the legislation in force regarding the exercise of religious freedom in Romania, with special regard to the Romanian Orthodox Church. Chronological and thematic presentation (1990-2014)*, Publishing House of the Biblical and Orthodox Mission Institute, Bucharest, 2014.

⁵⁹ Nicu GAVRILUȚĂ, Nicolae DIMA, Sorin MIHALACHE, *Religion and violence in secular Europe*, Ed. Trinitas, Bucharest, 2016.

⁶⁰ George-Eugen ENACHE, Adrian-Nicole PETCU, Ionuț-Alexandru TUDORACHE, Paul BRUSANOWSKI, "The Romanian Orthodox Church during the years of the communist regime. Observations on the chapter dedicated to cults from the final report of the Presidential Commission for the analysis of the Communist dictatorship in Romania", in *Theological Studies*, Series III, year V, no. 2, 2009.

⁶¹ Ioan ZĂGREAN, "Christianity and fundamental human rights", in *Theological Studies*, Series I, year IV, no. 3-4, 1952, p. 134-141.

⁶² Nicolae GORUN, "The democratic state and the Church" in *Theological Review*, year XXXV, no. 3-4, Sibiu, 1945, p. 3-188.

young perspective theologians such as Nicolae Răzvan Stan⁶³ or Radu Preda⁶⁴. Unfortunately, the latter also reserve their contribution at the level of articles. Therefore, although the subject has been touched upon by specialist teachers, there remains the need for both a wider study and the provision of answers from theological light. Through this paper we aim to cover these gaps, as well as to boost research in this subject.

4. Purpose, limits and originality

In the context of an increasingly religiously diversified Europe, with full transformations in the spiritual life of the individual, we, the people used to a quiet, if not static, religious environment, must be prepared too. The tirelessly population movements caused by the conflicts in the Middle East, and now also in north-eastern Europe, force us to be prepared, not only by knowing how to protect our own religious rights, but also by knowing how to respect the rights of others. Having the title "The relationship between canon law and current civil law in the field of religious rights and freedoms, the general regime of cults and religious symbols", this paper aims not only to systematize the notion of religious rights and freedom itself, but also to update it, highlighting the national and international articles on the basis of which the religious freedom of the individual is protected. Of course, for a full understanding of what religious law means, elements of the history of the subject are not omitted. Although the subject is by no means a new one at European level (as mentioned above), throughout the work I have sought to treat things with an objective Orthodox view. As a member of the Orthodox Church by baptism, I intended to approach the subject with full professionalism, highlighting only the Christian Orthodox elements necessary for the study. In this regard, I found useful for our project to highlight what is the connection between the rights of the person seen in a secular way and those seen through Christianity, what specifically this religion brings and where the rights of the person are founded in Orthodoxy. Nor have I omitted what the difference is between the rights and freedoms of the person from a philosophical and Christian perspective. Basically, I point out what Christianity specifically brings, without omitting to say what freedom means in the

⁶³ Pr. Conf. Univ. Dr. Nicolae Răzvan STAN, "Human Rights Between Secularism and religion: an esternorthodox christian theology and spirituality approachin", in *Theological Studies*, Series III, year XII, no. 1, Bucharest, 2016, p.251-271.

Pr. Conf. Univ. Dr., N. R. STAN, "The relation between human dignity and human rights in the ortodox perspective", in *Theological Studies*, Series III, year IV, no. 2, Bucharest, 2008, p. 35-71.

⁶⁴Pr. Prof. Radu, PREDA, "Orthodoxy and human rights I", in *Tribuna magazine*, no. 158, April 1-15, 2009, p. 17-18.

Orthodox Church, a state that is often disregarded and often misperceived. Alongside these, and before moving on to the legal aspects of the subject, we have also prepared a distinction between the views of the Roman Catholic Church and the Orthodox Church on the rights of the person and, in particular, the religious rights of the person. In this paper, I have sought to resort on both the knowledge acquired in the two faculties completed in the country (namely the Faculty of Orthodox Theology and the Faculty of Law), but also on the experience of the scholarship in the German city of Tübingen. With these premises, I wanted to understand and apply the principles on which religious freedom is based, and, above all, what the right to exercise one's faith means in practice. Entitled "The relationship between canon law and current civil law in the field of religious rights and freedoms, the general regime of cults and religious symbols", this work intends to systematize and clarify what is meant by the exercise of religious rights. As to the limitations of the paper, I would like to say that, although this paper promises to take the subject to a higher level, it cannot be exhaustive. Although I have used numerous specialized works, both in Romanian and in international languages, treating this analysis with seriousness and interest, the limitation remains that the great theologians of the Orthodox world have written too little on this subject. This shortcoming means that Christian-Russian thought has not fully conveyed its message on the rights of the individual in religious matters, and there is still much of value to be said. As a peculiarity of this study, the recent period of limited person-to-person contact has meant that my scientific effort has been damaged by access to certain physical documents, which has been replaced, as far as possible, by online means.

5. Research Methodology

Since the rights of the person have existed since the earliest days of human civilization (as Holy Scripture tells us, when the foreparents were given the freedom to choose whether or not to obey the first commandment), and since they are in a real state of evolution, we have used the historical method. Since the law of the person, as a general theme, has been and is treated by both secular and Christian philosophers, we have also used the comparative method. This method has brought many benefits to the study, moving the need to respect the rights of the other out of the fear of the lawgiver to respect from love and love of the fellow, which makes the rights of the fellow treated with sincere respect. Through the analytical method, we have highlighted the differences of vision on the subject, both between the philosophical and the Christian one, and at the inter-Christian level, through references to the main branches of the

Christian religion. In the same way, we also used this method to analyze the various legislative documents on the religious rights and freedoms of the individual, both in European, Union and even national legislation. By analyzing and comparing laws directly related to the subject of our research, I was able to note the advantages or disadvantages, the superiority or inferiority of different laws in different historical and geographical spaces. Because the subject is a very current one, characterized by many conflicts that have taken the form of legal actions, we could also approach the methodology of sociological observation. Thus, we investigated the principles invoked by the complainants, as well as the settlements that imposed (or not) a certain behaviour on the defendant. Due to the fact that the present study also caused numerous questions, I considered it appropriate to also approach the synthetic method, on the basis of which I intended to provide various answers and clarifications as they made their way into the research. Having at my disposal a large number of cases on the subject of the religious rights and freedoms of the individual, I was able to use both the inductive and deductive methods, research systems that helped me to distinguish between apparently identical situations, but with different settlements by the European Court of Human Rights.

6. Structure and content of the work

As for the form of the work, it is structured in six chapters, preceded by an introduction. The conclusions of this research are at the end. As an overview of the chapters, it can take the following form: The first Chapter of the thesis presents the concepts of religious rights and freedoms of the individual in both the European Union and Romania. In this chapter of 80 pages, I have found it necessary to give a brief introduction to the general concept of human rights and freedoms, where the historical background has also been highlighted. To this end, I have analyzed the origin of the rights of the person and the evolution of this subject, with a brief outline of the key stages in the subject. The concept was strengthened much later, thousands of years after its creation. I have briefly written the significant moments, reserving a little more space for the recent period, when the rights and freedoms of the individual will take their modern form as we know it today. In this sub-chapter, we describe not only how the defending of human rights came into being as a subject of law, but also which are the main documents in this regard.

Alongside the history of the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and other similar documents of interest to the study, we will also look at the content of these documents. We will name the similarities that are of

interest for the religious rights of the individual, but especially the differences. The differences will decide on the applicability of the main human rights documents at the continental level. I consider that without understanding the framework in which this general system of protection showed up, the causes that led to its emergence and the main instruments for the protection of human rights, we will not be able to have a clear vision of the religious rights of the individual. In the same first Chapter, we have reserved a sub-item for the debating of the actuality of religious rights and freedoms in the European Union, where we have analyzed this subject at a higher technical level through definitions, through the presentation of the articles of the Conventions on Human Rights and Freedoms and even with cases. Further on, very concisely, I gave an overview of the legal situation in Romania, reminding that this will be dealt with in more detail in the dedicated chapters. Given that our country has been a full member of the European Union since 1st January 2007, and that membership requires full compliance with the protectionist instruments adopted by the Union, our study will focus on international acts. As a third part of this first chapter, I intended to present the concept of rights and freedoms in the Christian Church, as a general treatment in which I put in connection the right of the person, his freedom and dignity.

The treasure offered by the Christian Church on this subject cannot be ignored and deserves a very thorough approach. As I said above, unfortunately, Christian culture is separated from all that means by the rights and freedoms of the individual. Many passages of Holy Scripture in which the person is treated with respect, dignity and as a beneficiary of rights and freedoms (in an initial form, for sure) are often deliberately ignored by society and even by specialists in the field. Therefore, we intend to present this side of human protection, with principles that also originate in the Old Testament. Taking this assumption and starting from the example of the Book of Genesis, when the first parents are endowed with dignity and freedom, created in His image and similarity (Genesis 1:26-27), continuing with the message of true freedom in the New Testament (Galatians 5:1, 13), we will offer various examples in which we highlight the respect for the Old and New Testament towards the human rights. With specific examples, we will draw out various verses in which rights are very clearly guaranteed, rights that are still protected today. We do not omit any description of the concept in Roman Catholic and Orthodox theology, highlighting the particularities of the two confessions. They both provide a complete space for the respect and protection of the person, but also keep a place for

the particularities of each part, namely the Western and the Eastern. On the basis of these constructive differences, we will be able to create the true gifts of Christian lessons for the legal field which deal with ensuring respect for the person. We will not be trapped in the beautiful words of Holy Scripture.

We will go further, up to the present day. We will find out whether these Christian principles of human rights are still applicable and, more important, how European society reacts to them. This time too, we intend to approach the relationship between the Catholic and Orthodox Churches in a specific and different way. In the last subsection of this first chapter, we will precisely highlight what is the Christian meaning of the terms "rights", "freedoms" and, above all, "obligations" (a very important notion, but often forgotten by society). The second chapter starts with a challenge, namely the idea of religious freedom in the Church. By considering more than 20 pages for this matter, I wanted to clarify certain aspects that are essential to our study. I have often heard that the freedom in the Church takes a second place; that this institution is an old-fashioned one and one in which the rights of the person are placed far behind the obligation to obey without the possibility of refusal. The long services, the lack of pews in the place of worship or the Holy Confession treated much more seriously than in other cults have led the Orthodox Church being very often associated with forced slavery. Even the often-used phrase "Believe and do not search" (an exhortation that is not found at all in the Holy Scripture) has a strong labelling effect on the Eastern cult. Starting from this idea, I wanted to show the opposite, succeeding in explaining that the Church is precisely the home of true freedom. With brief references to various philosophers, but with several references to the treasury of the Roman Catholic Church, I have stressed that the full freedom can be only in the Church, because the rights and freedoms of the person are respected only here, and above all the person, not out of fear of a worldly legislator, but out of love of the fellow. We have also approached a more technical spectrum, noticing that the existence of the Holy Scripture, the commandments and the teachings of the Savior do not mean enslavement of man, but an acquisition of a higher degree of freedom. Also in this subsection, I intended to explain what is the true origin of human freedom and how it has to be understood in its full meaning. Under these aspects, I intended to start from the wrong "Believe and do not search" to arrive at Christ's exhortation to the Apostle Thomas: "Bring your finger here and see my hands and bring your hand and put it in my side and do not be unbeliever but believer" (John 20:27).

Specifically, I devote five themes to this chapter, namely: the origin of religious freedom in the Christian Church, its content, the specificity of the Church community and the possibility of religious freedom, the special outcome and religious freedom in the family. Even if this last point seems to be outside our theme, it is not so. In today's changing times, the Christian family has also undergone changes. With the breaking down of barriers between countries and the easing of access from one country to another, the mixed family has become increasingly common. For this reason, we owe to explain the rights and the limits of religious freedom within it. So the family, like the miniature church, also faces challenges in this regard, with love within the family, enlightened by the grace of the Holy Spirit, being the way to resolve all trials.

Towards the end of the approaching of the religious rights and freedoms of the person from a theological point of view, and before going into a more legal approach to the concept, I thought it appropriate to highlight in the third Chapter of the work some aspects of natural law and ecclesial power. In a chapter in the form of three sub-sections, spread over 29 pages, I wanted to introduce the characteristics of the canonical legal system. I have highlighted in these lines the principles of natural law and ecclesial power in the Church. I also dealt here with what obedience in the Church means, and finally I intended to describe the relationship between rights and obligations in the Christian view. Since today's society is quicker to take up rights than obligations, I wanted to keep a place for the concept of duties. Once again Christian theology reveals its merits, giving the true meaning of the rights of the person, acquired rights only in close connection with its obligations. Unfortunately, this association is increasingly forgotten today. The 4th Chapter (to which 33 pages are assigned) begins the more technical approach to the subject by presenting the general regime of religions in the European Union. We know that there is a veritable patchwork of denominations within this organization. Each country has its own history and tradition, which is why it also has its own individual relationship with these religious institutions. This chapter is organized around two main questions. These questions are: "How does each state relate to the religions on its territory?" and "How does the European Union relate to the religions on its territory?". Given that the European Union is an organization of states, and that it does not have a separate and distinct territory from that of the Member States, but only by virtue of their existence, the second question will be easier to answer. However, in order to be able to understand the complex mechanism and, in the end, to have the most accurate

answers to the questions above, we find ourselves forced to make a historical presentation within the boundaries of the European area, as well as a more concise reiteration of the main articles protecting the individual in religious matters. A very important point, not only in this part but also in the whole work, is the Lisbon Treaty.

"What is this document?", "What is its history?", and more important, "What is its usefulness?" are questions that will be answered in these pages. I will only briefly mention that this treaty is the main piece of legislation in force at the level of the European Union which sets out the principles by which the European Union relates to the religious system within it. The conditions that have established the importance of this act will be discovered within this part. What should also be emphasized (as we shall see in detail in this chapter) is that the Union sees the recognized religious cults as partners in dialogue, in a way testifying to their historical and social value. Once we have seen how the European Union guides its Member States in their relations with the recognized religions on their territory (in theory), we will also see how they choose to apply European directives. We will see that, within the Union's acceptance, each state will find its own way of interacting with the states. This will also create some religious tensions and under certain conditions, these conflicts will end up in lawsuits at the European Court of Human Rights, as we will present through various very topical and reference cases. Therefore, the analysis of the relationship between the European Union/Member States and the cults is not limited to an overview. The pages of the above-mentioned section also include a survey of the main legislative methods for regulating the general regime of

14 religions, namely secularity or total separation, recognition of several religions and recognition of a dominant religion. The research is carried out with clear examples taken from the Constitutions of each of the presented countries.

Going beyond the international approaching, I intend to start an analysis of the general regime of cults and religious rights in our country. A basic chapter of this work, extending over a total of 108 pages, is the Vth Chapter entitled "The State and Religious Cults in Romania". We describe here the relationship between the state and religious cults in Romania since the 19th century, where the main documents of study are the Organic Regulations of 1831 and 1832. The Constitutions of 1866, 1938 and the Law of Cults of 1928 are not omitted. We will note that, although these documents present our country at the very beginning of modernization, the

elements proposing the protection of the person, his rights and freedoms are very well presented. Under certain conditions, as we shall see in the following lines, the old laws offered even greater protection to the individual than the current laws. All the explanations, backed up by the articles of the laws to which we refer, will be found in this chapter.

Also here we find a special section dedicated to the regime of the cults under the communist government, a passage in which I explore both the main fundamental laws of the country during this period and Decree no. 177 of 1948. Using both excerpts from the laws of those times, as well as analyses and studies by renowned specialists, we once again present the abuses to which Romanian society was subjected during the sad communist period. A central element of this sub-chapter is to underline the fact that, in order to provide a legal basis, or rather to motivate abusive actions, the laws offered protection to the harassers. I have tried to point out that each communist law explaining the relationship of the state to the recognized cults reserved a very wide space for interpretation. But often the state's actions of intervention against cults or even believers were exposed very obviously, without any fear of appeal. We present such examples in the chapter to which we refer. A very important element of the relationship between the state and the cults in Romania, as well as very necessary for the protection of freedom and religious rights of the individual in our country today, is the current law on the general regime of cults. I am referring to Law no. 489 of 2006, a legislative document which appear quite late after the fall of the communist system. In the following pages of the same V-th Chapter, a brief analysis of the current Statute of the Romanian Orthodox Church is made, without omitting comparisons with the previous ones.

15 documents of this type, references with relevance to what is meant by the freedom and independence of the Romanian Orthodox Church from the state. Through a separate analysis we will compare all four laws of organization and functioning of the Romanian Orthodox Church, a comparison that will reveal the real existence of the rights and freedoms of the cults in our country. Starting with the current Statute of 2020, continuing with the Statute of 2007 and going back to the first organizing Laws, namely those of 1949 and 1925, we will compare each article that is relevant to religious rights and freedoms. Since a Statute of Organization is the main document showing the freedom of a religion or how independent it is from the State, we cannot omit the presentation of the current Statute, which will also note the main changes

made. We thought it appropriate to make this comparison, bearing in mind that at the time of completing this doctoral thesis, no comparative study of the present Statute with the one adopted in 2007 had been carried out. Under the aspects of cooperation between the Romanian Orthodox Church and the post-revolutionary Romanian State, various protocols of cooperation between these two parties are presented. Although we often hear accusations that the Romanian Orthodox Church is facilitated by these protocols, while the other religions are discriminated, we will present the legal framework on the basis of which such protocols are concluded, debunking all these accusations without legal basis. The chapter preceding the conclusions, Chapter VI-th, is devoted to religious symbols. A very important point, religious symbols are the main subject of conflict at European level, disagreements that are very often concluded by lawsuits at the European Court of Human Rights. It is interesting to follow the principles by which the judges of the Court resolve cases that are apparently identical, but with small details that make a difference. Taking a more technical approach in which different examples of tensions on this issue have been presented, I have managed to extract the criteria on the basis of which a state can be sanctioned or not by the European Court of Human Rights for the violation of certain rights of the individual (but also of religious institutions, although such cases are rare). In the second part of this chapter, also very rich in ECHR case law, I intended to present the limits of the exercise of religious freedom, but also to differentiate between right and abuse of right. Finally, in Chapter VII-th dedicated to conclusions, I have proposed to summarize the main ideas of this scientific research project, noticing the importance of human rights in European history, which is very rich in this respect.

The meaningful concretizations of the matter would be made after World War II, as a response of some of the world's great powers to these horrors. In the whole set of human rights, religious rights and freedoms play an important role. Their relevance is defined by political and social changes in Europe. A very important element with vast cultural, ethnic and religious effects is the immigration caused by the military conflicts in the Middle East. The large number of refugees coming to the West also has consequences for the rights and religious freedoms of the individual. This is proven by the numerous court cases in the European Court of Human Rights on this subject, as we have also shown in this paper. By analyzing the cases, we can draw conclusions regarding the relationship between the European Union and its Member States and the religious and atheistic citizens (as the latter are also protected by the protective articles). The

interest in human religious rights and freedoms is also found in the history of our country. With certain exceptions, deviations that were made more practically than theoretically (we refer here to the communist period, where the rights of the individual were written into the laws, but abuses were made by disregarding the law), Romania has always been a country with a democratic spirit. The Organic Regulations, the Constitutions, starting with that of 1866 and continuing to the one in force today, and the laws dedicated to cults, such as the current Law 489/2006, evoke a character of supporting for the religious life of the person, as well as a spirit of cooperation between the Romanian State and the recognized cults.

7. The experienced difficulties

In the course of the research work, some difficulties were encountered. They are few in number, but they were immediately linked to the somewhat limited bibliography in Romanian. The lack of studies dedicated to the theme of the religious freedom in the Romanian Orthodox Church, the religious freedom in the Orthodox Church and the Christian Church or research on religious symbols in our country made the study not only more difficult, but also slightly prejudiced by the beautiful color of Eastern theology.

CONCLUSIONS

On the basis of what we have studied, we notice the importance of the rights of the person in European culture. The whole history of Europe is one in which there is interest in this subject, the concept of the notion of protection of the person being a progressive one. We have shown that, before the philosophical concepts that define the rights and freedoms of the individual, useful principles can be found in the Holy Scriptures. We can certainly say that these true pillars that we have discovered in both the Old and New Testaments are the guidelines on which the whole idea of "human rights and freedoms" now rests. There are not a few passages in the Old Testament where the right to life of the person, to his property, to a fair trial and so on are protected. Not infrequently Our Saviour Jesus Christ urges us to love our fellow, to honor our fellow, and to do this by actions, for "Not everyone says to me: Lord, Lord, shall enter the kingdom of heaven, but he who does the will of my Father in heaven" (Matthew 7:21).

Among other things, honoring one's fellow is done by thirsting and hungering for righteousness (Matthew 5:6), by purity of heart (Matthew 5:8) or by making peace (Matthew 5:9). In other words, the Christian's relationship to his fellow, according to the teaching of Christ, must be in full respect for him and his rights. Their importance in Christian culture is further proven by the fact that the rights and freedoms of the person are also protected by the Holy Canons of the Orthodox Church. Although they were written down in the first centuries after Christ, we must not separate them from the Tradition of the Church in which they found their place long before the Ecumenical Synods were held. Even if the notions closely related to the protection of the person have been standardised by the canons of the Ecumenical Synods, Local Synods or some Holy Fathers, they have been taken from Christian culture and used in a specific manner as a response to certain challenges. Today they find their place in the Orthodox Church just as well as they did then. The passing of time has not altered them but, on the contrary, has increased their value. It is true that, as we have seen in the lines above, there are some canons which no longer have direct applicability today, but they are preserved for use by analogy. By analysing the framework in which they arose and comparing them with various similar situations today, the Church can resolve situations of conflict or misunderstanding. By extracting principles from the various canons, other principles can be found to resolve new

challenges. The preservation of the entire and intact canonical treasury is also because there is always the possibility that such old problems will reappear in the life of the Church. The respect for the dignity of the person, for his body integrity, for his possessions and not only, had a very ancient tradition for Christians in the Old Testament and especially in the Decalogue (Jn 20:1-17). These principles were taken up and developed to a higher level by the Saviour Christ, who gives them a higher interpretation, one to which even today's society is limited. If man is protected today out of fear of the legislator, Christ taught us and teaches us that true respect for human rights comes from love, because the love of the fellow, together with the love of God, is the commandment in which all the law and the prophets are contained (Matthew 22:38-40). Just as, from a philosophical perspective, the limit of my right is the freedom of the other, in the Christian perspective, the "limit" of my right is only the love for my fellow. We must not limit ourselves to do good or not to do wrong for fear of civil punishment, nor for fear of eternal punishment, but we must respect the rights and freedoms of the other only out of love for God and the fellow. The adoption of this Christian treasure, or rather of this ideal form of human relationship in society, is appreciated, praised and even envied by the legal world specialising in the rights and freedoms of the individual. This matter has always been limited to punishments, fixed sanctions which have limited the life of this very dynamic and vital legal field. We notice that personal freedom is one of the active and constantly changing rights. Ethnic, social and political changes at European and even global level can be much better controlled by general respect for Christian principles than by the force of the law, which cannot adapt as quickly to new situations as the simple commandment to love one's fellow can. Famous professors such as Grigoriană Manuela Preduca, Irina Moroianu Zlătescu or even Andrei Pleșu are just a few of those who recognise the value of Christianity as a foundation on which the rights and freedoms of the individual have emerged, as well as the superiority of Christianity in terms of the rights and freedoms of the individual, as we have also shown in the first part of this thesis. Along with the Old and the New Testament teachings, another important role was played by the writings of Greek philosophers. Solon the Athenian is recognized with setting the foundations of pre-democracy. Pericles is the one who brings democracy closer to the people (even if he does not offer it to all the citizens of Athens), and Aristotle invites all citizens to active participation in the life of the city, as we have seen in the specific lines of this work. Although these are small steps, they point to the evolution of the field and the tendency of citizens of each city to progress

in and through the rights and freedoms of the individual. The examples mentioned in the first part of this work represent real "bricks" which, combined with the Christian ones, have become the foundation of what the rights and freedoms of the individual are today. On the basis of these pillars, the subject of personal protection has evolved continuously, at the same rhythm as the whole of human civilisation. From place to place, real turning points, landmarks marking different moments in the development of the concept, have been marked. Such an example is the Magna Charta Libertatum, which gave rights to the individual, freedoms that might have been difficult to conceive of at the time in 1215. We are referring here to free elections in the Church, the protection of merchants and the peasantry, or the promise of a fair trial. All these were received with amazement by the people of those times. The oppressed received the news with surprise and disbelief, while the oppressors received it with displeasure and disdain. Another landmark that cannot be overlooked is the declaration known as the Bill of Rights. Adopted in early 1689, it guaranteed free elections, freedom of speech and the prohibition of torture and violence as punishments. The society's reference to the novelty of personal rights and freedoms was met with distrust this time too. The story goes on and on and reaches the golden age of civil rights, the final days of the Second World War. We point out that from now on the human rights and freedoms were a concrete matter, very well known to society and even pursued by it. The wars of independence of some European states and the much more important revolutions to acquire citizenship rights provided a solid framework in which citizens experienced the idea of rights, freedom and protection. For these reasons, and taking into account the cruelties caused by the two world wars, an organisation that will protect the mankind from such conflicts is hoped to be created. The material losses, sometimes to the extreme through the destruction of cities, the large number of deaths, especially among civilians, and the even greater number of wounded, forced the world leaders to adopt measures. It was expected that, from then on, such long and bloody episodes would have no place in the modern world. The United Nations was born in these circumstances on 24th October 1945, the institution that would establish the United Nations Charter and the Universal Declaration of Human Rights. The Declaration will have the merit of being the most important international document protecting the individual. The publication of the document showed the responsibility of some of Europe's leading leaders towards the governed, and the desire to contain these exaggerated forms of violence.

With this foundation, the rights and freedoms of the individual will really blossom at European level. From the second half of the 20th century onwards, the concept will experience new stages of development, reaching the highest level in human history. Thus, alongside the United Nations, other institutions will be set up with the central aim of raising Europe from the ashes of the greatest military conflict of all time. We are referring here to the Council of Europe or the European Coal and Steel Community and the European Economic Community (the latter two will be the foundations of today's European Union). With the main aim of reviving the continent by restarting the economy, they did not leave the human rights on the back level either. To this extent, the Council of Europe would issue the European Convention on Human Rights (also known as the Convention for the Protection of Human Rights and Fundamental Freedoms). The document, which has been dated since 1950, is remarkable for its applicability, as it is a more practical treaty than the one issued at United Nations level (which was more of a general presentation of human rights). Some time later, the third important document at European level, the Charter of Fundamental Rights of the European Union, adopted on 7th December 2000 by the Nice Council, would also make its appearance. The Charta is the main instrument for the protection of the individual at European level. By the appearance of these protective instruments means that the subject of individual rights and freedoms has reached the highest level in the history of mankind. Never in universal history was the individual so well protected as now. However, the political situation in certain areas of our continent, and especially in the world, shows us that the protection of the person is not at the highest possible point, a point at which the person can be fully and directly protected. Although at the highest historical level, the rights and freedoms of the individual are still being violated without the authorities responsible for these statements be able to have a concrete reaction and rapid intervention. All over the world, people are still suffering from the abuses of the strongest against the weakest, injustices which extend not only to the disregard of democratic principles and of rights and freedoms such as the right to correspondence, the right to free assembly and association or the right to family and so on. These injustices even result in numerous losses of life and, as in the Second World War, most of them are among civilians. Religious rights and freedoms play an important role in all these documents, which are historically perfect but still imperfect. The protection of each person's faith or non-belief is guaranteed in concrete terms through specific articles. As we showed in the first part of our thesis, all three protective documents guarantee the religious

freedom of the individual. The Universal Declaration of Human Rights adopted by the United Nations guarantees this protection in Article no. 18, the European Convention on Human Rights, drawn up by the Council of Europe, guarantees freedom of religion in Article 9, and the Charta of Fundamental Rights of the European Union in Article no10. The content of these articles is similar, with all three issuers providing "the right to freedom of thought, conscience and religion; this right shall include freedom to change the religion or belief, and freedom, either alone or in community with others and in public or private, to manifest the religion or belief in teaching, practice, worship and observance", as Article 18 of the United Nations Declaration states. However, the article presented above is not a simple piece of law to which all people and institutions are submitted, making this right untouchable and fully protected in all conditions of space and time. As described in the previous pages, social changes at the European level, more specifically, the wave of refugees from the East - people with confessional views different from the traditional Christian ones - require the discussion and enforcement of religious rights to be raised to a higher level. We refer here to the cases brought before the European Court of Human Rights, in which, with varying degrees of justification, various individuals are seeking justice in situations where various religious conflicts occurred. Claimed as religious discrimination, the wisdom of the Court decided when these were indeed incorrect and exaggerated measures of some individuals or institutions, but also when there were situations where the petitioner was right. The cases presented above have shown that, although there may apparently be two almost identical circumstances with two diametrically opposed solutions, this cannot be translated as an error or a lack of interest on the part of the judges, but with the existence of a detail that will make the difference. I mentioned earlier two similar cases involving employees of an airline and a medical institution respectively. Both were ordered by their employer to stop wearing a religious cross around their necks. If, after the trial, the Court gave two different judgements, this was based on the argument that the flight attendant could wear the religious symbol in public, without affecting her services, while the nurse, by wearing such a medallion, could endanger the lives of patients, who, through direct contact, could be injured or infected under certain conditions. This demonstrates that the institution of the European Court of Human Rights treats each application with particular discretion, considering all conditions in order to obtain a fair solution. Small details that can be easily overlooked by a simple reader will tip the balance one way or the other, often to the displeasure of uninformed and subjective analysts. The

European Union's interactions with religious life are not limited to trials and courts. A very important element is also how the Union relates to the religions recognised in each country. I have highlighted the importance of these issues above, stressing the European Union's support and recognition of religions. Although the support offered is equal and non-discriminatory, the founding fathers of this organisation appreciated the importance of the Christian religion for the history of this continent. Moreover, the appreciation of the benefits of the cults at European level is described in the Treaty on the Functioning of the European Union itself, which is a key document in the organisation of this institution. Article no.17 of the Treaty on the Functioning of the European Union states that:

"(1) The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

(2) The Union also respects the status under national law of philosophical and non-confessional organisations.

(3) Recognising their specific identity and contribution, the Union shall maintain an open, transparent and constant dialogue with these churches and organisations."

This way of reporting between the Union-States and the Cults is the general framework which offers not only respect to the latter, but also the promise of support and cooperation where appropriate. It is remarkable that, in this type of relationship, the European Union leaves each Member State the freedom to manage its relationship with recognised religious institutions according to local tradition and custom. The way of life of citizens differs not only from state to state, but also within states. Given the huge ethnic and social differences across the continent, the European Union's governments have found it more equitable and more efficient to leave the administration of state-church relations to each Member State. However, the interaction is not without meaning or without order, but on the basis of principles that are well known throughout the Union. Under these circumstances I introduced above the three systems of State-Church reporting recognised at European level, not only mentioning them, but also presenting important aspects related to them. The way in which each State relates to the religious life within it was also recorded by presenting the articles of the Constitutions. The precise study of each article that guarantees religious freedom and the way in which each government supports, delimits or treats with neutrality each recognised cult can give us a better picture of the religious

phenomenon on a continental level, a picture that introduces the reader to all that the religious phenomenon means today. An overview of the religious rights and freedoms of the individual at European level would be incomplete without analysing them at national level. The respect for religious freedom and the rights of the individual in confessional matters has been a major concern in our country as well. Starting with the medieval period and materializing even with the Organic Regulations, the religious rights of the person become central elements in the formation of our country. In these pre-modern acts of organisation, not only the religious rights of the individual are protected, but also the relationship between the State and the cults. Without making an incorrect statement, we can affirm that the Romanian State, whether it is unitary and independent, or at the level of the three countries as they were before the Great Union, offers its direct support to the recognized cults and, in particular, to the Orthodox one. Considering the country's history and tradition, where we find the value of the Eastern Christian religion for our nation, it is natural that this should be so. We notice in these old regulations the interest of the State in the Orthodox Church having a worthy priesthood of service, as stated in Article 363 of the Regulations dedicated to Moldavia, or that the Archbishop and bishops accomplish their administrative and liturgical duties independently and without pressure. Good relations between the State and the Cults at national level continue in Modern Romania. The Constitution of 1866 provides in Article no.21 the freedom of conscience as well as the freedom of worship. Thus, in the Fundamental Law mentioned, it is stated: "The freedom of conscience is absolute. The freedom of all cults is guaranteed as long as their celebration does not prejudice the public order or the morality. The Orthodox religion of the Eastern is the dominant religion of the Romanian State. The Romanian Orthodox Church is and remains unattached to any other Church, while preserving its unity with the ecumenical Church of the Eastern in terms of dogmas. The spiritual, canonical and doctrinal affairs of the Romanian Orthodox Church shall be managed by a single central synodal authority according to a special law. The archbishop and eparchial bishops of the Romanian Orthodox Church shall be elected in the manner determined by a special law." The same respect will be extended to the cults in the next Constitution of the country, which guarantees freedom of conscience in Article no.22. As we have noticed, the cooperation between the state and the cults will be reduced following the arrival of the communist government. Within this process, the Fundamental Law and the Law on Cults will put pressure on both the priesthood and the citizens of the country, and the religious freedom of the individual is affected.

The situations of abuse, very well presented by specialists in the field, have left deep traces in the modern history of the country, but also in the cultural life of our state. Many places of worship were closed many cults were subjected to pressure too. Unfortunately for the matter of the religious rights and freedoms of the individual, there have been cults that have simply been abolished, doing a real dishonour to a state that claims to be the defender of its citizens. All these pressures on cults or religious leaders will have direct effects on believers. What is more, the already unhealthy fear of some Communist leaders of being removed from government led to persecution (in the most extended forms) of ordinary Christians. In addition of being harmed by being unable to exercise their religious rights and freedoms, most are subjected to physical and psychological violence, torture or even murder. However, after many challenges and trials, the situation will return to a degree of normality with the reinstatement of democratic government and the corresponding Constitutions. It should be mentioned that today, under Romania's 2003 Constitution, the freedom of religion is guaranteed under Article no.29. This provides the religious freedom very precisely and completely.

"(1) The freedom of thought and opinion and freedom of religious belief shall not be restricted in any manner whatsoever. No one may be compelled to adopt an opinion or subscribe to a religious belief contrary to his or her convictions.

(2) The freedom of conscience is guaranteed; it must be expressed in a spirit of tolerance and mutual respect.

(3) The religious cults are free and organise themselves in accordance with their own statutes, under the conditions stipulated by law.

(4) All forms, means, acts or actions of religious enmity shall be prohibited in relations between religions.

(5) Religious cults are autonomous in relation with the State and I enjoy its support, including by facilitating religious assistance in the army, hospitals, prisons, homes and orphanages.

(6) Parents or guardians have the right to ensure, according to their own convictions, the education of minor children for whom they are responsible."

Another important document in our country with direct reference to the life of cults is the Law no. 489/2006, better known as the Law of Cults. As I have described in the previous pages, it guarantees the confessional freedom of people throughout the country and the relations between the cults at national level. The state-culture relationship is proving to be a cooperative one, with benefits for both sides and especially for the citizens. The offering of rights and facilities to cults even from the time of the Organic Regulations and the first Constitutions makes us understand that modern Romania was created on the basis of respect for religious rights and freedoms. Although in the recent history of our country there have been moments of tension or abuse in this matter (as we have pointed out in the above paragraph and especially in the chapters dedicated to the communist period), the situation returned to normal with the return to democracy. The state's respect for cults and the cultivation of a dignified religious life on the territory of our country has been taken to the highest level in the country's history by the Law on Cults 489/2006, which is effective now. In the same way, at the level of our state, the protection of the person is done both by Article no.29 of the Romanian Constitution and by international legislation in this area, to which our country is a party. Recognizing the value of partnerships between the State and the Cults, on the basis of the Romanian Constitution, the Statute for the Organization and Functioning of the Romanian Orthodox Church and especially, in accordance with the Law on Cults, the State, as well as its institutions, may sign collaboration contracts with any of the legally recognized cults at national level. This is yet another mark of Romania's maturity in terms of religious rights and freedoms. In this respect, Article no. 9 of Law no.489/2006 clearly sets out the right of association.

"(3) Public authorities cooperate with the Cults in areas of common interest and support their activities (...).

(5) The central public authorities may conclude with registered Cults both partnerships in areas of common interest and agreements to regulate specific aspects of the tradition of the Cults, which shall be subject to the approval by law." Under these aspects, the Romanian Orthodox Church has concluded to various cooperation protocols in which the main beneficiaries are the citizens of the country, not only the Christian-Orthodox, but also the rest, believers or non-believers. The protocols, as I mentioned before, are carried out in different fields, not only in the ecclesiastical field, but also in the civic one. The partnerships for health,

education or the restoration of buildings of historical and cultural interest, they have brought and still bring much benefit to society. It is very important to underline that these cooperation protocols are not reserved strictly to the Romanian Orthodox Church. Each nationally recognised religion has the right to sign such cooperation contracts, acts which may have as beneficiaries not only the members of the signatory cult, but also other persons in the territory of our State. Taking into account this fact, as well as the fact that every legally constituted cult in Romania has representatives at the highest state level, no accusation of discrimination and advantage of the national majority cult, namely the Romanian Orthodox Church, can be made. Remaining on the level of laws, we cannot overlook the mention of the Statute for the organization and functioning of the Romanian Orthodox Church. As a requirement of the Law of Cults (and not only of the current Law of Cults, but also of the previous legislative material aimed at establishing the relationship between States and Cults at the national level), the Statute was updated in the first part of 2020. As we presented in the chapter dedicated to it, the new document brings significant changes, both in number and in significance. The updates are of real interest not only to clergy but also to lay people. By increasing the responsibilities and duties of the hierarchical ministers or by reorganising the system of disciplinary research at church level, the interest of the Romanian Orthodox Church to have a perfect functioning is shown. Also, the attention with which each article is covered, making a refinement in the true sense of the word, underlines the seriousness with which this document has been worked on. The involvement of the Romanian Orthodox Church in the needs of Romanians (Orthodox or not) at home and abroad is at the highest level in the history of our country. The development of the Christian-Russian Church, which is not limited to religious services, but also enters the realm of medical and social aid, required a revised and a more precise law on the organization of the Romanian Orthodox Church. Nor can we leave issues of human rights and freedoms in the Church on the back place. As mentioned above, the modern society often wrongly associates Christian churches with a lack of freedom. Much more inclined to this error is the Orthodox Church itself. Its location in Eastern Europe, an area recently subjected to totalitarian governments, true symbols of discrimination and lack of rights, makes this association easy. Well, we have shown in the chapter on this subject that it is precisely the Christian Church, and the Orthodox Church in particular, that represents true freedom. It is within it that man is endowed with freedom and dignity from the moment of his creation. The verses in the Book of

Genesis which show that man is the image of a just, dignified and free God (Genesis 1:26-27) are the supreme argument. But we do not restrict the fact that man is dignified created, with rights and freedoms, to a single passage. Even though this is a fundamental pillar of Creation, there is plenty of other evidence in Scripture that reveals the free being quality of man. Beginning with the freedom of Eden, continuing with the Decalogue in the Book of Jonah and ending with the words of the Word who sacrificed himself for us, showing us the true dimension of love, freedom, dignity and rights, we are shown very clearly where true freedom belongs, namely in the Church.

As we noticed, under the topic of "freedom" in the Christian Church, I have also brought arguments from valuable Western theology. The teaching words of the Catholic friars, such as *Pacem in Terris* or *Dignitate Humanae*, are true sources of freedom, being writings that explain the origin and the connection between rights, dignity, freedoms and man created by God. But Eastern theology is no less important. In the chapter on this subject we also discovered the words of renowned theologians such as Father Dumitru Stăniloae and Professor Georgios Mantzaridis. From their writings (and not only) we have extracted the concept of freedom in the Christian sense, a form in which it is unlimited precisely through the perspective of love for one's fellow and the commandment of love that guides our Christian life.

The Orthodox Church's approach to freedom, tolerance and religious symbols is different from that of secular authorities. The involvement highlights the Orthodoxy's respect for human freedom, for human dignity. If the earthly legislator can impose himself by force of law in the matters mentioned, the Divine Legislator is merciful, forgiving and very gracious, who seeks the lost until he finds them and is pleased in their return (Luke 15:4). All this patient seeking is done with love. It is only through this sincere love that we can truly relate to the freedoms and rights of the one next to us.

It is also important that in the Christian Church, the human rights and freedoms have a high value, being taken to an entirely higher level than in secular society. While in the secular world a right is usually respected out of fear of punishment (as mentioned above), in ecclesial society the rights of one's fellow are respected out of pure love, as the Saviour also instructed (Matthew 22:38-40). We can safely say that the true freedom is found in the Christian Church, for this freedom is the servant of good and not of sin, as modern society tends to understand:

"Live as free men, but not as though you had liberty for a covering for evil, but as servants of God" (I Peter 2:16). Using our freedom in a healthy sense would bring many benefits to European society today. Further, and the true responsibility is also found in the Church, according to the words of the Saviour: "Not everyone who tells me: Lord, Lord, shall enter the kingdom of heaven, but he who does the will of my Father in heaven" (Matthew 7:21).

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