

CHRISTIAN VALUES PROTECTED  
BY THE NORMS OF CRIMINAL LAW

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**Christian values protected by the norms of criminal law**

**-Overview-**

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To begin with there were identified social institutions that represent the subject of the research, namely: the state, the law, the religion and the society. Religious values are of interest to both religions and states and their nationals. The present study comes from a curiosity of knowing which are the Christian origins of existing legal institutions, to what extent the Christian theology provides arguments to support some rules and which are conflicts that arise between the secular State and the Church. This study can be a source of information in view of dialogue between the State and the Church on issues of common interest.

Then there was presented the motivation for choosing the topic, namely that both religions and different worldwide legal systems are currently undergoing a period of valorization and relocation under the heavy pressure of society that is campaigning for the affirmation of individual values and the subjective rights that it wants to establish as having universal vocation. From a scientific perspective, the content of this thesis belongs equally to Criminal Law, Social Theology and Political Theology.

There were analyzed the stages the relationship between Church and State went through over the centuries, underlining the types of countries that currently exist. There have been references to the relationship between the Roman Empire and the Church and were presented aspects of secular states that have minimized the influence of religious values. Also, the characters of theocratic states and neutral states were presented .

At present, there have not been declared any international standards regarding the relationship between religion and political power, in other words there is no unanimously accepted global or regional model, this legal relationship being governed by national traditions.

In the study there were mentioned the legal means available to religious cults to attend the lawmaking process. The representation and the participation of cults in the work of lawmaking is a guarantee of non-discrimination.

There were also identified other entities that can promote Christian values in the political sphere these being the religious parties and religious pressure groups.

## CHRISTIAN VALUES PROTECTED BY THE NORMS OF CRIMINAL LAW

Then the issue of values in general, legal and Christian values especially was approached by underlining the characteristics, sources, interference between them, the differences and similarities. Social values take the form of social rules and are part of the culture of a social group. Through the state intervention the social rules turn into legal rules.

The totality of the values create a system that supports a supreme value. Christian values do not impose themselves by constraint, but the failure to comply with them generates negative consequences in the relationship of communion with the divine and with others for the person who violates them. In the Orthodox Church, the canons which provide moral values aim to identify the deeds classified as sins, their description and the remedy the confessor needs to give in order to restore communion. Penitence consisting of prostrations, prayer, fasting, charity is not punishment expressing the social anger for a wrongdoing but a therapeutic remedy arising from the love of God for the world which has as purpose to heal the soul. The penitence is given according to the age and attitude of the penitent toward the committed and confessed sins. The canons address to a determined group namely the one consisting of valid baptized human persons and that holds the communion of faith in thought and deed.

For Christians, the obligation of obeying the law is an obligation before God before being an obligation towards others and towards society. There was a period of time in the Byzantine Empire when the idea of law had fallen so much that the society was governed by the rules of morality and faith. The role of Christianity in humanizing, unifying and configuration of law was recognized. The symphony between religion, power and law with the religion in the role of conductor has resurfaced in the Byzantine Empire. Emperor Justinian the Great was issuing laws for the activity of the Church, these being called the nomocanons.

The religious values take also the form of religious law. It is common ground that some of the current legal institutions have their origin in religious institutions taken over as they are and adjusted to the requirements of the state. This aspect gives a great importance to the history of legal institutions and to the religious concepts when interpreting those mentioned rules as well as when it is desired to modify, supplement or repeal these rules. Our view is also supported when referring to the necessity for a "theological archeology of the juridical "

In the Middle Age, the Church took position on archaic legal issues - ordeals

## CHRISTIAN VALUES PROTECTED BY THE NORMS OF CRIMINAL LAW

or judicial duel. However it took over the position to punish, in criminal law, the heretics by the Inquisition setting up.

Another contribution of the Christianity to the social progress was that it determined the governors to accept the Christian idea that "all people are equal to each other and that each of them has the duty to respect the dignity of others. Translated into legal terms, this idea was the basis of many legal rules designed to protect the freedom and dignity of the people: punishing libel; prohibiting the arrest or detention without a warrant and for unlimited period of time etc.

Between religion and state there should be an area of acceptance and recognition of religious values in the states' legislation, a space of negotiation on certain values between states and religions and an area of conflict regarding some values related to religious ideals that is considered as unacceptable to be a part of the legislation of states.

It is enlightening the way Pope Paul VI motivates before the UN General Assembly in 1965 the need for the Vatican to be a sovereign state. He states that: "The Vatican is invested with a small and symbolic temporary sovereignty; minimum needed to be free to exercise his spiritual mission and to ensure those dealing with it that is independent of all sovereignties of this world."<sup>1</sup>

It was stressed out that Christian values are embodied in the saints at an individual level and at a collective level in theocratic states of which we have analyzed the State of Vatican and the State of Israel.

Considering that the rules of a state are the expression of the constitutional provisions in that state we have analyzed provisions of the Romanian Constitution that have relevance to the religious values. The 1991 Constitution revised in 2003 does not insert into the opening of its text any preamble. The importance of the preamble is underlined by specialists in the constitutional domain. There were examined human dignity and justice as values that are also found in the Christian theology.

I have insisted on the issue of freedom of conscience and teaching religion in public schools. I have identified and presented the offenses which violate freedom of conscience as a legal and Christian value at the same time.

In this study, I have highlighted the way in which the Venice Commission and

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<sup>1</sup> Prof. Dr. Marțian I. Niciu, Public International Law, Volume I, Publishing House of the Foundation „Chemarea” Iași, 1992, p. 100.

# CHRISTIAN VALUES PROTECTED BY THE NORMS OF CRIMINAL LAW

the German Constitutional Court appreciate the importance of religious freedom in relation to the freedom of expression and the fulfillment of duties of citizenship.

There have been identified institutions from the Criminal Code, both from the general and the special part which were compared to Christian values expressed in specific sources.

In this chapter I have not chosen the classic modality of crime analysis, but I have exposed by comparison acts which are punishable as offenses in the Criminal Code and that are Christian values as recorded in the Old Testament, New Testament, the Canons of the Orthodox Church and ,where applicable , other sources which are part of the Tradition of the Church.

These institutions are: determining the penalty, religious motivation for an offense as an aggravating circumstance, retrieval of the supervised person , the criminal responsibility of the minor dissolution and suspension penalties can not be applied to the activity of religious organizations, rehabilitation of law, amnesty or pardon, withdrawal of prior complaint and reconciliation of parties, usury, termination of pregnancy, murder, hitting or other violence and injury, appropriation of lost property, lethal hitting, theft, incest, bigamy, desecration of graves, desecration of religious objects, robbery, perjury, rape.

There have been also approached legal institutions of a religious nature, established by rules of Labor Law and legal institutions established by the rules of Civil Law.

There were identified the facts that have been decriminalized and were classified as sins as it follows: prostitution in France, Italy and Romania, adultery in France, Italy and Romania, homosexuality and abortion.

Euthanasia has been presented as an offense currently incriminated but that could be decriminalized and that is not in accordance with the way that Christian theology regards the right to life of man , that is as a given right by the divinity and it can not be given up by man.

There has been brought into discussion the problem of the incrimination of some religious values as the ritual circumcision and the rites of exorcism.

Finally, some conclusions have been drawn and the following proposals were made, as follows:

## **1. Conclusions**

The approach to the issue of law and religion, from a comparative perspective raises

## CHRISTIAN VALUES PROTECTED BY THE NORMS OF CRIMINAL LAW

questions related to the authority which issues the norms. While the religious norms result from the revelation, therefore being meta-rational, legal norms are the expression of human reasoning which analyses and, through specialised institutions, proclaim rules of law. Religious norms are not imposed through reasoning but through the fact that they are inspired by the divinity, while rules of law are imposed through the power of reasons coming from different social areas. Religious values become legal values to the extent in which they are promoted by the political factor. This equation involves theologians, jurists and politicians, but the role played by the citizens of a certain state in this context should not be ignored. It is obvious that, between the religious values and the legal ones, there have been, there still are and there will always be inter-conditionings, also motivated only by the fact that, both have the quality of social values.

Throughout the history Christianity was at the beginning persecuted in the Ottoman Empire, then, during the Middle Aged determined the appearance of some legal institutions. Starting with the Renaissance, secular ideologies materialized, and after all these led to the appearance of there types of state, namely: secular state- in France, the state of religious pluralism- in the USA and the atheist state- in Albania.

Nowadays the main type of state in the democratic societies, is the neutral state, but, at a global level there are more types of neutrality towards religious organizations. It should be noted that at present there are also theocratic states and that there is a tendency to recognize the theocratic constitutions at the level of the states of the world.

The constitution of Romania also promotes religious values, some of them, such as religious liberty, having a great importance for the maintenance of equilibrium between religious and non-religious people.

We conclude as well that more institutions of the Criminal Law, from both general and special parts, are relevant in relation to Christian values.

Last but not least, it should be emphasised that the institution of holidays and the institution of sacred and common goods, as labour law institutions, respectively civil law, originate from Christian concepts.

In the final part of the paper, I thought it was necessary to approach some facts which should be decriminalized and which should be incriminated, these being determined by the fact that, related to these there are intense debates at the level of the civil society, in which the state and the cults are also involved.

# CHRISTIAN VALUES PROTECTED BY THE NORMS OF CRIMINAL LAW

The doctoral thesis entitled CHRISTIAN VALUES PROTECTED BY THE NORMS OF CRIMINAL LAW analyses from a historical and comparative perspective law institutions and theological conceptions, which determine each other, coexist or get into a conflict.

## **2. Suggestions**

Measures required include coherent politics at a national level, to expand religious values through the study of origins, evolution and the way in which they are shared and supported by those who practise religion.

This study is necessary and is relevant when the issue of adopting new norms, abolishing, modification or completion of law norms, comes into question. Through this, the state can prevent social tensions that religious people can determine, in case their values are restricted excessively.

In order to implement the suggestion, at the level of the Parliament of Romania, there should exist a structure which should be concerned with the relation between religious values and law norms.

This structure should also organize annual conferences with specialised people and should also edit a magazine in which the results of the research should be published.

The second suggestion is that, in case the preparation of a project of review of the Constitution of Romania will start again, the possibility of the introduction of a preamble which consecrates, both European and universal values, as well as national ones, should be analysed.