

New relationship models for the Ecclesiastical Law in Europe^{*}

of Giovanni Cimbalo

Summary: 1. Protection of religious freedom of individuals and groups in the construction of Europe. - 2. Eastward enlargement of the Union: towards the identification of new models between “symphony” and secularism. The needs of identity and separation between state and religions. - 3. The policy of agreements: a) the Orthodox Churches between the second and third Rome. b) The special structure of Balkan Islam. c) The role of the Catholic Church and its structures. d) The “new religions.” - 4. Restitution of confiscated church properties. - 5. Licodu.cois.it, a database on freedom of religion and conscience in Eastern Europe.

The process of convergence towards the common goals of the European Union countries continues to deploy its effects, despite the negative economic phase and the strong contrasts that characterize the international level of relations that are slowing down the construction process of unity of the continent around the EU institutions. It is so sorely tested the strategy of promotion of the requests coming from the territories and populations, in order to create a new political and administrative structure capable of representing the best interests of its inhabitants¹. To understand what is, however, the direction in which it goes, to the 28 current members already part of the EU four candidate countries must be added, while for other three of them accession is certain, albeit with different methods and times². If our analysis moves on this projection of

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¹See for all: Castro A. Kover, *Diversidad Religiosa y Gobierno Local. Marco jurídico y modelos de intervención en España e Italia*, Pamplona, Navarra, Ed Aranzadi, 2013; Id. *Interculturalidad y Derecho*, Pamplona, Navarra, Ed Aranzadi 2013 and the essays contained therein.

²Hungary, Poland, Estonia, the Czech Republic, Slovenia, Slovakia, Latvia and Lithuania signed the Accession Treaty in Athens on April 16, 2003 by joining the EU on 1 May 2004. Bulgaria and Romania signed the accession Treaty in Luxembourg on April 25, 2005 by joining the EU on 1 January 2007. Croatia signed the accession treaty in Brussels December 9 2011, joining the Union since 1 July 2013. The following states obtained the status of EU candidate states: the Republic of Macedonia, December 16, 2005; Montenegro December 17, 2010; Serbia March 2, 2012; Albania June 28, 2014. Bosnia and Herzegovina is in a pre-accession and should get candidate status in October 2014. The application for membership of Kosovo, although advanced, cannot be accepted because only 23 EU Member States on 28 recognize him. Another exception should be made for Moldova: for this state, there seems to be the consensus of the majority of EU countries, but the likely secession of Transnistria could produce the unification with Romania and the entry into the EU in this way. At present, it seems to be excluded the accession of Belarus and as we write is going through a difficult crisis with Ukraine. Transnistria, whose official name is Republic of Moldova of Pridnestrov'e, [Приднестровская Молдавская Республика], has as its capital Tiraspol and is a Russian-speaking territory, which unilaterally declared its independence from Moldova on 2 September 1990, confirming it on 24 August 1991. On 18 March 1914, Transnistria asked to be part of Russia following the annexation of the Crimea. After twenty years of separation from Moldova it has its own legislation on matters of interest to the site. The current development of the portal

the future borders of 35 countries that would be part of the Union, 17 can be defined as "Western" and a good 18 belong to the East of the continent.

As we can see, the Union as it stands now is almost definitively composed of an equal number of states of East and West and the same equilibrium is played at the level of amplitude of the territory. Of course, the same cannot be said of the economic, financial and production, yet allocated mainly to the west, while the strong immigration from the East produces a transfer of population, that makes it inevitable to continue on the road of territorial rights and among them also those related to religious freedom.

But in order that the instances Community policies and jurists may operate without producing harmful and unnecessary rejection reactions, the different needs and traditions of different religious bodies and rituals must be taken into account, together with the many models of relation between public authorities and confessions, giving them the same operating space, to feel well with the effective exercise of worship and the celebration of the rites, even if different legislative and administrative instruments are used. It must also protect the majority of citizens from compulsory religious affiliation, since the majority of the European population does not adhere to any religion and often ranks of active positions of secularism and rejection of their religious beliefs, especially in relation to what concerns the actual delivery of services, from the school to the most diverse public activities of social inclusion³.

In other words, you must necessarily act on the rules concerning the relationships between individual and collective freedoms, with reference to the freedom of conscience and religion and the relationship between public authorities and the Confessions / community / religious groups. This requires a careful examination of the legal instruments that different jurisdictions have produced, since it is known that between behaviors and traditions that found institutional models attempt to reproduce themselves, beyond the contingent policy choices and end up exerting "pressure", with centrifugal effects into the new unified system that is taking shape. Therefore, there is need for a new ecclesiastical law for the Europe⁴ that is taking shape before our eyes.

Licodu not allow further examination of the legislation in force in the territories in which legal institutions have not taken a stable and definitive structure.

³The so-called return of religion happens rather than in terms of the practice of worship, as a tool through which you claim membership in traditions and customs, to respect the holidays, etc. On this point, see G. Cimbalo, *Il diritto ecclesiastico oggi: la territorializzazione dei diritti di libertà religiosa. Il riformismo legislativo in diritto ecclesiastico e canonico*, Pellegrini Editore, Cosenza, 2011, pp. 335-386.

⁴M. Ventura, *La laicità dell'Unione Europea. Diritti, Mercato, Religione*, Giappichelli, Torino, 2001; Id., *Diritto ecclesiastico e Europa. Dal church and state al law and religion*, in *Il nuovo volto del diritto ecclesiastico italiano*, (edited by) G.B. Varnier, Soveria Mannelli, Rubettino, 2004, pp. 199-200; G. Cimbalo, *L'incidenza del diritto dell'Unione europea sul diritto ecclesiastico. Verso un «Diritto Ecclesiastico» della Comunità europea*, in *L'incidenza del diritto dell'Unione europea sullo studio delle discipline giuridiche nel cinquantesimo della firma del Trattato di Roma*, 2008, E.D.I., Napoli, 2007, pp. 213-239; Id., *Problemi e modelli di libertà religiosa individuale e collettiva nell'Est Europa: contributo a un nuovo diritto ecclesiastico per l'Unione Europea. Scritti in onore di Giovanni Barberini*, Università degli Studi di Perugia, Pubbl. Facoltà di Giurisprudenza, Perugia, 2009, pp. 159-192.

This need is stimulated not only by the processes of convergence of the various states, but also from the effects of multilevel protection of the rights of freedom of confessions, religious groups, religious communities, reinforced by the relationship they have with ethnic components of the population. To it, we have to add the space that find now the protection of religious indifference, atheism, agnosticism, even in regulatory and institutional framework. It occurs not only in the most individual form, but also in the associated one and that, on this second ground, is asking for specific measures that affect and influence the different solutions adopted by juridical systems⁵.

The complexity of the process in place, which we have just pointed out, requires research tools and scientific knowledge that first have the character of the whole and that are able to cover gaps and delays of scientific inquiry and study of phenomena. Those gaps and delays are mainly because for a long time we considered the European territory divided into two parts. On one side: the legal systems of Western Europe, manufacturers of best practices and effective tools to protect freedom of religion and conscience, in respect of consolidated and verified systems that offered the model of what they wanted to build. On the other hand a different space, consisting of the countries of Eastern Europe, not only placed beyond a wall which in some parts of Europe also took on a physical form, but placed in an area of "not right" of "not institutions". These countries were just totally "wrong", the result of unacceptable political systems, characterized by violent oppression of those requests and needs that animated the people of the west of the continent. Hence, the belief that to solve the problem was enough to abolish those regimes to restore, extending its effectiveness, the juridical system of protection of freedom and the relationship between the State and religious denominations. In particular, it was believed that the strong compression at the institutional level of religious feeling and of the organizational capacity, including the institutional one, of religious denominations, was hiding an irrepressible need of religion in these populations.

It is now thirty years since the beginning of the process of dissolution of the legal systems of the Eastern Europe countries, and we have to realize that the problems are much more complex and that what we thought was largely wrong. First, the transformation of the political situation has produced a redefinition of the institutional entities and boundaries of individual states, process still taking place, as evidenced by what is happening in Ukraine. Second, it is accompanied by the discovery and research, by those systems, of the memory of previous legislation, as if that of socialist democracies was an interlude to close, almost an accident of history, and it was necessary to restore the riverbed and to ensure that this flow in its natural course. There are certainly elements of truth, rationality in this trend, in seeking thereby the solution to current problems, but what has happened is that about half a century of life of Soviet-type laws have left at least a number of issues common to the countries of this area. It

⁵G. Cimbalò, *Ateismo e diritto di farne propaganda tra dimensione individuale e collettiva*, in «QDPE», 1, 2011, pp. 113-126.

allows us to say that the related problems must be addressed in an overview, developing solutions similar to each other, because similar are the problems⁶.

The institutional and political situation in Europe after the end of World War II was characterized inter alia for a profound ignorance of what was happening beyond the so-called "Iron Curtain." Especially as regards the religious phenomenon, some pioneers had the task of exploring and report⁷ while others continued to study, following the thread and weaving the fabric of a thousand-year long history of inter religious contrasts and comparisons between Christian East and West⁸ in the certainty that grow roots served to reproduce the salient features of the religious phenomenon and starting again. Both of these activities are valuable today, especially while in the East a new generation of scholars of these disciplines is forming. Besides, the vacuum created by the adoption of particular rules that tended to deny the very existence of the religious phenomenon is bridged by organisms developed by the Western countries that dictate their conditions and offer their 'recipes'. Often they do not have specific knowledge of tools developed by different juridical systems to which they address⁹. Often those who work in these organizations consider the legal institution related to the previous experience of socialist democracies obsolete to be useful today and that can be ignored. Besides, they believe the experience of the 45 years following the Second World War, influenced by the

⁶See for all: G. Ajani, *Il modello post-socialista*, Torino, Giappichelli, 2008.

⁷An important and irreplaceable contribution to the study of the right of individual and collective religious freedom in Eastern Europe has been given since the 70s by G. Barberinii, *Stati socialisti e confessioni religiose*, Giuffrè, Milano, 1973; Id., *Dossier sullo stato giuridico delle confessioni religiose e sull'esercizio della libertà religiosa nei Paesi dell'Europa centro orientale*, in *Chiese, associazioni, comunità religiose e organizzazioni non confessionali nell'Unione europea* (edited by), A.G. Chizzoniti, Milano, Vita e Pensiero, 2002, pp. 93-132; Id., *La libertà di religione nel processo di democraticizzazione degli Stati dell'Europa centrale ed orientale*, in S. Ferrari, C. Durham, E.A.Sewell, *Diritto e religione nell'Europa post-comunista*, Bologna, 2004, pp. 9-30; F. Bolgiani, F. Margiotta Broglio, R. Mazzola (edited by), *Chiese cristiane, pluralismo religioso e democrazie liberali in Europa*, Bologna, Il Mulino, 2006. On Islam in Europe see: R. Aluffi Beck-Peccoz, G. Singone (edited by), *The legal treatment of Islamic Minorities in Europe*, Leuven, Peeters, 2004; X. Bougarel, N. Clayer (sous la direction de), *Le Nouvel Islam Balkanique. Les musulmans, acteurs du post-communisme. 1990-2000*, Paris, Maisonneuse & Larose, 2001.

⁸G. Codevilla, *La libertà religiosa nell'Unione Sovietica*, Milano, La Casa di Matriona, 1985; Id., *Dalla rivoluzione bolscevica alla Federazione Russa* Milano 1996; Id., *La rilevanza delle leggi non scritte e dei provvedimenti extragiudiziari nelle relazioni tra Stato e Chiesa in Unione Sovietica negli anni Venti e Trenta*, in *Libertà di coscienza e diversità di appartenenza religiosa dell'Est Europa* (a cura di G. Cimbalò, F. Botti), Bologna, BUP, 2008, pp. 217 ss.; Id., *Lo Zar e il patriarca. I rapporti tra trono e altare in Russia dalle origini ai giorni nostri*, Milano, La Casa di Matriona, 2008.

⁹Certainly there are considerable difficulties in finding sources, knowledge of the particular experiences of those jurisdictions, in the understanding of language, in the diversity of relation systems as they are stuck in time. This is accompanied by the difficulty of knowing the internal structure of religious groups and the differences settled by now. The site Licodu, which will examine the activities, aims to help overcome these difficulties by reconstructing the historical sequence of rules as well as offering texts otherwise difficult to find, in order to stimulate legal studies.

institutions of the "Soviet" law and therefore just as if they were erased from history or to be deleted.

However, juridical systems have always been an upward trend to conservation and institutional continuity and the State is never left without rules. Then the new State fill the regulatory gaps and restore ancient instruments, norms and laws, which are part of their history and shall integrate juridical elements produced by the legal order of socialist democracy. Some of the produced phenomena cannot be influenced by the effects of the rules that had an impact on the legal framework of rights, such as the legal form of ownership, and therefore it must be taken into account to handle the situation. The rules introduced as a result of the "normalization" of the Western type, and the regulatory changes required by the European Union to join it, are connected therefore to a fairly complex regulatory landscape that we need to investigate if we want to give solutions to the problems that arise.

2. Eastward enlargement of the Union: towards the identification of new models between symphony and secularism: the needs of identity and separation between the State and the cults.

In its policy of institutional adaptation of the Eastern European countries to become part of the Community area, the Union elaborated and established a set of parameters and steps that start from the Helsinki accords to arrive until today, enriched of new and more binding elements¹⁰. Among these parameters certainly that of respect for freedom of religion and conscience is one of those who has served as a lever to pluck up the Eastern bloc, introducing elements of modernization, adaptation to the values elaborated at international level for the protection of freedom of religion and conscience and taken as its own by the West. The Union has created appropriate international bodies to manage these processes and act as a constant monitoring and support to the development of democracy into the states in a liberal direction. The adjustment to the processed parameters has become a precondition for membership. The Union's competences have increased in fields and sectors far more extensive than those defined in the Treaties, and institutions such as the Council of Europe have acted together in this action, taking on the task of guiding the choices of national laws.

The development of legal science and the study of political institutions that occurred in the States of socialist democracy was characterized by delays in the reconstruction of the knowledge of what was the institutional fabric and what were the experiences of those systems. The direction taken after the end of World War II was different and saw solutions in a gradual adaptation to Soviet law and its application. The experiences of the past were now to be overcome as a result of obscurantism of bourgeois counterrevolutionaries legal systems. However, changed political regimes, was natural

¹⁰G. Barberini, *I Concordati di Giovanni Paolo II nell'Europa Centrale e Orientale*, in «QDPE», 1, 1999, pp. 49-71. Id., *L'Ostpolitik della Santa Sede. Un dialogo lungo e faticoso*, Bologna, Il Mulino, 2007; Id., *Pagine di storia contemporanea. La Santa Sede alla Conferenza di Helsinki*, Siena, Cantagalli, 2010.

to turn to the tradition and experiences of the past. Today to recover the delay in legal studies needs to be filled with new tools that enable agile and rapid knowledge and a direct approach to the sources of law in the countries of East. While it is true that the problem has a global dimension, it takes specialized tools for sectors and disciplines. Very specific skills are required according to the fields in which we decide to work, looking for materials often found scattered in archives and libraries¹¹.

That is why today the Ecclesiastical Law, understood as a science, studies not only the rules relating to the protection of freedom of religion and conscience in its individual dimension, but also at the collective level and in its relations with the institutions. Therefore, it needs to be equipped with tools that do not provide only the framework of the existing legislation, but also provide access to the historical sequence of rules regulating matters of ecclesiastical interest, at least since the formation of states in the modern era. It must find those fundamental rules underpinning the current structure of the living law, to allow not only regulations reconstructions, but also to make comparisons and to extract those solutions, which together interact with those currently used within the Union. Hence the need to think of a database to serve as a driving force for legal studies of a specific area, that of the topics covered so far with reference to the countries of Eastern Europe.

The legal systems of the countries of Eastern Europe, regulating the relations between the State and communities / denominations / religious groups, are characterized by relational models that differ in part from those of Western Europe because of the different nature of the cults that have inhabited and inhabit those territories. The same Catholic worship, prevalent in the West, changes in the East often taking the rite Greek to conform itself to the traditions and sacred perception of those populations.

Quite peculiar is the relationship that Orthodoxy - widely prevalent and adopted by the majority of believers - develops with the State, as it inherits the Byzantine experience and therefore gives rise to a symphonic relationship between the two entities¹². Rooted

¹¹Most of the institutional archives of a legislative nature, prepared by governments in Eastern Europe, do not offer the historical sequence of the legislation, but generally start at the beginning of the '90s merely limited to raids in the past, from time to time some need arises. Thus, it is difficult to reconstruct the historical sequences, easier on the thematic level, because supported by specific studies on the subject, as is the case with the site <http://licodu.cois.it>.

¹²The system of overlapping "symphony" between Church and State, was drafted by Justinian inducing the Orthodox Church does not claim its own legal autonomy from the State. This does not mean that is denied to the institutional autonomy of the Church, but between the two entities - church and state - there is collaboration but not sharing of competences. The greatest gifts made by God to men are the priesthood and the empire: the first in the service of divine things, and the second at the helm of human affairs. Both originate from an identical and unique principle-From this will emerge, says Justinian "... a kind of harmony (concentus) capable of providing mankind everything that is useful,"Giovanni Codevilla writes ([http://www.dirittoestoria .it/10/memorie/Codevilla-Stato-Chiesa-tradizione-russa.htm](http://www.dirittoestoria.it/10/memorie/Codevilla-Stato-Chiesa-tradizione-russa.htm)): "The symphony of powers (Simfonija vlastej) or *consonantia*, or harmonious relationship between *Sacerdotium* and *Imperium* finds its formulation in the *Praefatio* of the Sixth Novel of Justinian, addressed to Epiphanius, *Most Holy Archbishop of the imperial city and the Ecumenical Patriarch*, which states that" ... the key points of this doctrine are set by the Saints Basil the

in Slavic world, this pattern of relationship then moves through the expansion of the Kingdom of Rus' and the growing influence of the Russian Orthodox Church, to the territories to the east of the great rivers and to the north, until it reaches the States that have adopted the Protestant Reformation. From it, a different meaning followed not only of the relationship between the State and religious social formations, but also the concepts of secularism and separation. The secularity of civil institutions will often be relative and separation frequently marked by a special legal consideration given to traditional religion, however, because of its identitarian character : the Autocephalous Orthodox.

The Balkan area, particularly the West one, has known along the orthodox one, the simultaneous presence of Islam, for centuries politically dominant. In this contamination with institutions, society and European legal experience, Islam has developed particular institutions, especially in the travail of transition from dominant religion to minority religion, after the fall of the Ottoman Empire¹³. Hence, the particular structures of Islamic communities that organized themselves, whether legally, to maintain its cohesion within the different countries. Despite the strength of internal cohesion ensured by community organisation, the growing power of the State has led to the gradual abandonment of the judicial protection entrusted to the religious courts, for the Orthodox as for Muslims, and the recognition of State jurisdiction, even for customizable matters. It led Islamic communities to develop internal rules that have

Great, Gregory of Nazianzus (the Theologian, Bogoslov, in the Russian tradition), Leo the Great, Ephrem the Syrian, John of Damascus, Isidore Pelusiota, John Chrysostom and others, including Augustine and Ambrose. The quoted passage reads: «*Maxima inter homines Dei dona a superna benignitate data sunt sacerdotium et imperium, quorum illud quidem rebus divinis inservit, hoc vero humanas res regit earumque curam gerit: quorum utrumque ab uno eodemque principio proficiscitur et humanam vitam exornat. Quare nihil imperatoribus aequae fuerit atque sacerdotum honestas; si quidem hi etiam pro illis ipsis semper Deo supplicant. Nam si alterum omni ex parte integrum est et fiducia Dei praeditum, alterum recte et decenter rempublicam sibi traditam exornat, bonus quidam contentus existet, qui quicquid utile est humano generi praebeat*». Bibliography on the subject is very extensive. I will just remember: C.G. PITSAKIS, *Empire et église. Le modèle de la Nouvelle Rome: la question des ordres juridiques*, in *Diritto e religione. Da Roma a Costantinopoli a Mosca. Rendiconto dell'XI seminario «Da Roma alla Terza Roma»*, Campidoglio 21 Aprile 1991, Roma 1995, 107-123; N.V. SINICYNA, *Tretij Rim. Istoki i evoljucija russkoj srednevekovej koncepcii XV – XVI vv.*, Indrik, Moskva 1988, 41-45 e letteratura citata; N. SINICYNA, *Simfonija svjaščenstva i Carstva*, in «*Istoričeskij Vestnik*», 2000, N° 9-10; A. NIKOLIN, *Cerkov' i gosudarstvo. Istorija pravovykh otnošenij*, izd. Sretenskogo monastyrja, Moskva 1997, 7 e ss.; I.N. ANDRUŠKEVIČ, *Doktrina sv. Imperatora Justiniana Velikogo o dobroj simfonii meždu svjaščenstvom i gosudarstvom*, in «*Pravoslavnaja Rus'*», 1995, N° 4. See about it the beautiful and meaningful pages of Codevilla on the importance of ritual in the Slavic world and the special relationship that develops between political power and the Orthodox Church: G. Codevilla, *Chiesa e Impero in Russia, Dalla Rus' di Kiev alla Federazione Russa*, Milano, Jaca Book, 2011, *passim*.

¹³The presence of a community structure is typical of a multi-ethnic and multi-religious State, which was also the Austro-Hungarian Empire. On this point I may be permitted to return to G. Cimbalò, *Tutela individuale e collettiva della libertà di coscienza e modelli di relazione tra Stato e Confessioni religiose nei paesi dell'Est Europa*, in *Libertà di coscienza e diversità*, cit., pp. 15-29.

partly changed, developing through contamination with other legal experiences, the institution of Waqf, to give it the function of representing the entire community¹⁴.

In this way, the concept of the religious community has changed the meaning and scope in order to the legal consequences that the belonging to it produces. The loss of religious affiliation does not drop the cultural and sometimes ethnic affiliation of individuals, and allows maintaining political and solidarity ties, which on the one hand strengthen the relationships within the Community and on the other reproduce the fragmentation of society for *zuil* and *stroming*, to quote the Dutch legal experience¹⁵. It is therefore necessary to investigate the different significance of religious communities in this legal area to see what are the boundaries that assumes the confessional and cultural belonging to a religious-social formation, even in relation to the agreements with the State, to the legal specific guarantees of confessional pluralism to the relations between the different social formations that arise from these institutional relations¹⁶. To handle these legal relationships most of the countries of Eastern Europe was equipped with a Commission or Committee for Relations with the creeds, with the task of preparing the necessary legislative and regulatory changes affecting communities / denominations / religious groups, also through prior consultation of stakeholders, and to exercise, where the contingent political circumstances demanded it, control over them¹⁷. The existence of this kind of political-administrative structure has been a constant of the various juridical systems, in spite of the changing of governments and institutional characterizations of the State and survives today with functions similar to those of the past. Where the law so requires, these structures manage the lists of recognized religions, prepare laws and measures for the protection of religious freedom, agreeing with the different social formations religious arrangements and subject to the approval of the parliaments and governments.

Often, through this kind of bodies, the tendency of the systems is encouraged to develop meaningful forms of control of the activities of creeds, even when the management of

¹⁴This is for example the case of Bosnia and Herzegovina. See: *Statuto dell'Associazione Ilmiyyah della Comunità islamica in Bosnia-Erzegovina* 2008, <http://licodu.cois.it/?p=4083>.

¹⁵Lijphart A., *Le democrazie contemporanee*, Il Mulino, Bologna, 2014; G. Cimbalò, *Il consociativismo olandese alla prova della globalizzazione*, in *La libertà di manifestazione del pensiero e la libertà religiosa nelle società multiculturali* (edited by) N. Fiorita e D. Loprieno, Firenze University Press, Firenze, 2009, pp. 75-90.

¹⁶After the fall of the socialist democracies and the dissolution of the former Yugoslavia, the States of Eastern Europe have stipulated many agreements not only of the same nature of the Concordats with the Catholic Church but also cooperation agreements with many other creeds. Licodu through contextual consultation of laws on religious freedom offers the chance to not only find the texts of such agreements, but to reconstruct the historical sequence, even through the changing configuration of the States.

¹⁷The origins of this structure dates back to the experience of the Russian Provisional Government, which created the Ministry for religious professions, and similar bodies at ministerial level had life in many Eastern European countries. The activities carried out by these bodies during the 45 years of political subordination to the USSR emulate the functions of the Soviet for the affairs of the Russian Orthodox Church established after 4-5 September 1943, date on which Stalin decided the revival of the Russian Orthodox Church. See A. Roccucci, *Il patriarcato di Mosca da Lenin a Stalin. Un nuovo soggetto della politica internazionale*, Roma, 2001, pp. 167 ss.

different matters of common interest between them and the State is done using the common law. Hence the importance of access to legislative sources identifying, among general rules, those susceptible of application / use by the religious social formations¹⁸.

Another characteristic element is the traceability of the competence for relations with the creeds, within the Government to the Ministry of Culture, as it is believed that this aspect of community life is part of the cultural and / or identity values of the people and does not constitute mainly an issue of public order, to the point of having them to fall within the competence of the Ministry of the Interior¹⁹.

They are the institutional choices that affect the perception of the religious phenomenon and this should be taken into account. In fact we cannot forget that with the gigantic process of migrating east / west many religious communities are already present in the western territories of the continent and here they organize their presence by changing their statutes of organization and adopting structures that are organically linked with those of the country of origin²⁰.

So the knowledge and study of legal experience now settled, formed by religious rights and established relationships with legal systems in societies that have seen their the birth and consolidation, can help understand the nature and implications of their demands. They also contribute to broaden the range of solutions available to the new problems of management of intercultural and interfaith coexistence. Moreover, in different legal context of Eastern Europe particular significance assume the due protection of linguistic, ethnic and religious minorities as the majority religion has played and plays an identitarian role in relation to the very idea of nation and people and has allowed the birth and accompanied in the history and struggles both for the construction of the language and to get recognition of national independence²¹.

For this reason, the formation of religious denominations today outside the historical experience of these countries does not necessarily give rise to the formation of a community. Therefore, the concept of a religious group is now used and from this, it follows in some jurisdictions a different relationship between recognized religions and those that do not have the same legal treatment. It is consistent with the provisions of the general laws on religious freedom, especially with regard to the creation of catalogs

¹⁸In this case, the selection of sources of law requires the study and general knowledge of the juridical system as a whole and the team that runs the site has experimented this task. It follows a direct assumption of responsibility for the choices made and the needs for the users of the site to verify them.

¹⁹This choice is not unknown in the West. For example it is the case of the Dutch system.

²⁰For example, the case of Biserica Ortodoxa Române that has significantly altered its statute including the establishment of a diocese in Italy. See the *Statutul pentru organizarea si functionarea Bisericii Ortodoxe Române* <http://licodu.cois.it/?p=1370>. Widely: F. Botti, *Sui contenuti di una possibile Intesa con la Chiesa ortodossa romena in Italia*, in *Libertà di coscienza e diversità di appartenenza*, cit., pp. 151-174.

²¹See for example the Bulgarian law on the conferral of citizenship: законзабългарите, живеещиизвънрепубликабългария, Prom. SG. 30/11 Apr 2000 <http://licodu.cois.it/?p=976>. It provides for the acquisition of Bulgarian citizenship for foreign-born baptized in the Bulgarian Orthodox Church in the country of birth.

containing the list of recognized religions. Faced with the complexity of the religious phenomenon and the emergence of differences within specific cultural areas, some jurisdictions choose to resolve conflicts between different intra-denominational religious organizations forcing communities / religious groups to give a single denomination valid for the whole country, that only can receive the civil juridical personality and the assets, even if they belong to different components of worship; to this denomination all the believers must refer to be guaranteed in the celebration of worship. There will be only one Orthodox Church, one Islamic organization etc. This *modus operandi* puts under a different light confessional autonomy and religious pluralism, especially when legal consequences arise from these choices regarding the allocation of the ownership and administration of ecclesiastical property, because these choices affect the actual exercise of religious freedom. Therefore, tools serve to learn and study the procedures for recognition of religious social formations, their catalogs, their legal *status*, internal regulations and all is useful to reconstruct the legal effect of their activities.

3. Policy of agreements: a) the Orthodox Churches between the second and third Rome. b) The special structure of Balkan Islam. c) The role of the Catholic Church and its structures. d) The "new religions"

The problems to which we have referred exist not only for the minority groups, but also for those denominations like the Catholic who, despite having an international organizational dimension, gave rise to internal organizational instances on a national or interstate dimension that take legal significance in the legal systems of the respective state entities. We refer to the Episcopal Conferences of which one must know the statutes and internal organization also to understand their role in signing agreements with the public authorities. Those agreements sometimes have the natural tool of reference in the Concordat, but frequently use direct negotiations with the government and an agreement can assume institutional roles of internal relevance, especially for what concerns the activities of social interest²².

For these reasons, the rules object of interest in this research area are not only the source of state origin, those of territorial bodies or enacted by international institutions, but also those that are the result of the autonomous confessional regulatory capacity.

²²It is used to deal with the Episcopal Conferences, not only because of the Concordat agreements, but for the work that they play in society. See in this regard the agreement of prior consultation with the State concerning the adoption of rules of social inclusion in Romania. See: *Protocol de Cooperare, în domeniul incluziunii sociale între Guvernul României și Patriarhia Română*, <http://licodu.cois.it/?p=1355>; *Protocol de cooperare. în domeniul incluziunii sociale, În vederea reglementării act, iunilor de cooperare dintre Guvernul României și Conferința Episcopilor din România – CER*: <http://licodu.cois.it/?p=1357>; On the matter F. Botti, *Le confessioni religiose e il principio di sussidiarietà nell'Unione europea: un nuovo giurisdizionalismo attraverso il mercato*, in «Stato, Chiese e pluralismo confessionale», "Riv. tel.", Jan. 2011, pp.1-38.

The reconstruction of their statutory fabric allows highlighting the areas of operation of religious institutions, their community dimension and their role in the management of legal interpersonal relations, directing studies and legal investigation on the particular role attributed to the different denominational affiliations in the enjoyment of rights and participation in social life. The reconstruction of these rules is complex, because you need to navigate and orient between the different denominations of the various Orthodox Churches, which often insist on the same territory, claiming the exclusive control with a view to revisiting the notion of canonical territory. In particular, it must correctly place the different events organized by the orthodoxy with respect to relations with the Ecumenical Patriarchate and the Moscow Patriarchate, maybe considering that the tendency to establish ecumenical relations, at least among the various Christian denominations, should allow better relations today²³.

We must also reflect on the particular structure of Balkan Islam and on the different locations of the communities formed after the dismembering of Yugoslavia. We also must give account of a different organizational structure as the Bulgarian one; moreover we must inform about the tools used by the Albanian Islamic pluralism that allows the coexistence of multiple Islamic communities within the same national space²⁴.

Moreover, to accept the existence of pluralism in the Islamic world is to grasp even the supranational dimension of the different communities and therefore the need for equal protection, but also the emergence of possible conflicts between different religious organizations in this area. It should be understood and studied the organizational form chosen by the Catholic Church which consists of the Bishops' Conferences of the Latin rite the Eastern Rite and those Interritual, with consequences not only internal, but also with regard to the allocation and management of church property and relations with the public authorities. The widespread existence of a Greek rite Catholicism has fueled the phenomenon of Uniatism that had profound legal consequences in Eastern Europe and is a serious problem on the road of ecumenism and of a policy of non-conflicting relations between different confessional Christian belonging.

All to investigate is then the legal status of the so-called "new" religions, which spread to the east, is not just a consequence of the opening to religious freedom in those countries, but a phenomenon oldest and most profound of which the legal regulation should be rebuilt if we want to understand the current problems and identify appropriate solution²⁵.

²³F. Botti, *La transizione dell'Est Europa verso la libertà religiosa*, in «Stato, Chiese e pluralismo confessionale», Riv. Tel., 31/2013, 1-38.

²⁴See: G: CIMBALO, *Pluralismo confessionale e comunità religiose in Albania*, BUP, Bologna 2012.

²⁵With the Protestant Reformation were recorded migrations of populations of German who created urban settlements especially on the border between Romania and Hungary. In the area names retain traces of these historical events and the presence of numerous Protestant churches, as exemplified by the example of Sibiu, which hosted the third Ecumenical Conference of Churches in 2007

The study of the legal protection of freedom of conscience cannot be reduced to the analysis of the effects of atheist policy endorsed by the States of socialist democracy. From the study of the legislation before 1945, it is understandable that it has ancient and complex origins and has produced rules on the protection of religious freedom, including provisions relating to the protection of the freedom not to believe²⁶. These issues are reflected on the agreements that social and religious formations conclude with the State, even more as these pertain to organizational experiences that have had a significant role in regards to the construction of national identity.

4. *The restitution of confiscated church property.*

Finally, a problem peculiar and exclusive of all the countries of Eastern Europe is the return of property confiscated as a result of the abolition of private property and, within these measures in general, from the acquisition by state of the assets of religious communities. It was a complex and gradual process, aimed at organizational and functional disarticulation of worship, deprived of the means of livelihood, in a first phase of subjection to support state before moving to the dispossession of the structures for the exercise of worship that has reached its peak in Albania with the banning of all religion.

The institutional change that took place in the 90s led to the adoption in all countries of an *ad hoc* legislation within which there are special standards and measures directed to deal with the church property question. This is because the problem of the church property is more complex: the expropriation did not stop at the acquisition by the state of such assets and the public or collective use of them, but also involved the transfer of some of them to other religious denominations, better tolerated by the governments of the time. It is the case of assets of the Uniate Church for the benefit of Biserica Ortodoxa Română, in Romania. It also happened that many of these assets, acquired by the State, were sold to private, once liberalized the political system. This creates an absolute uncertainty on the actual ownership of assets that may be claimed by the previous owner and obliges us to envisage the possibility of a return for compensation where possible. From here a difficulty setting at least twenty years to provide solutions to a dispute that has come before the Court of Human Rights. To rebuild it is necessary to resume the legal framework that led to the confiscation of such property and the reconstruction of the legislation on restitution / compensation that occurs often fragmented, cumbersome, of difficult and tormented application.

5. *Licodu.cois.it, a database on freedom of religion and conscience in Eastern Europe*

To meet these demands was created the portal that provides the regulatory and legislative sources useful for studies on religious freedom and human rights²⁷. The team is working to ensure that for each country there are all the Constitutions that have

²⁶ See for example Article 160 of the Criminal Code of Zog 1928 in <http://licodu.cois.it/?p=4397>

²⁷The scientific project is the responsibility of COIS (Interuniversity Consortium Sites), chaired by Prof. Giovanni Cimbalò; Coordinator and Scientific Director of the project is Prof. Federica Botti.

occurred over time and the entire criminal codes, focusing on those in force, as well as the abstract of their articles aimed at protecting freedom of religion and conscience. A similar choice concerns the civil codes of which are highlighted rules relating to the religious phenomenon, especially as regard to the achievement of civil juridical personality. Recently, the portal has been restructured in order to improve its usability. It currently contains about 1000 measures issued by the countries of Eastern Europe (including Russia, since 1917), from the attainment of independence till today. It also published the internal statutes and the most important documents relating to the structure of the religious community / groups operating in the country. The site is enriched with 40 rules/laws per month, reported to the scientific community with a newsletter.

The site also contains administrative measures (regulations, decisions, orders, regulations, circulars, etc.), where these are useful to reconstruct the effective exercise of the freedom of individual and collective consciousness. The measures are present in the original version, and sometimes in the major vehicular languages, using, where possible, the official translations of the texts. In matters of greater importance, the editor provides translation by the staff of the site, where necessary or required by the user. The documents are divided into thematic entries that allow a more rapid and effective consultation. The site provides information on the nature of the measures, so as to allow placement in the hierarchy of sources of different countries. When deemed necessary by the editorial staff, the site provides information on specific topics through the notes to the measures, or by general notes. Interested parties may receive a periodic e-mail containing the information about updates introduced. In the right column of the site you can register to receive the newsletter that is compiled every two weeks. It was also prepared, in the right sidebar of the site, a tab to view the integral history of acts updates. We welcome reports or suggestions from the users. To ensure the greatest effectiveness of scientific information provided, the editor of the site asks for the cooperation of the users who are required to report any deficiencies and documents they deem necessary to know. The scientific direction of the site is available to meet any requests for documents, where these are deemed useful to the research and are consistent with the topics of interest of the portal. They are part of the Scientific Committee of the site: Prof. Giovanni Barberini, Prof. Francesco Onida, Prof. Giovanni Cimbalo, Prof. Luciano Zannotti, Prof.ssa Maria Cristina Folliero, Prof. Nicola Fiorita, Prof. Francesco Altimari, Prof. Nicola Colaianni, Prof.ssa Federica Botti.

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