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## From the Church Autonomy of the Archbishop Andrei Șaguna to the Autonomy of the Religious Denominations in the Romanian State : Ecclesiological-Canonical Considerations

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## From the Church Autonomy of the Archbishop Andrei Șaguna to the Autonomy of the Religious Denominations in the Romanian State: Ecclesiological-Canonical Considerations

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A few years ago, an Evangelical Lutheran theologian Johann Schneider,<sup>1</sup> wrote that, “in the twentieth century,” the Romanian Orthodox Church was declared “dominant Church” but, in reality, it was “a state-run institution.”<sup>2</sup>

According to Johann Schneider, who specialized in the pastoral-canonical activity of the Romanian hierarch Andrei Șaguna († 1873), the “Archbishop of Transylvania” (which in his times was under the rule of the Habsburg Empire), and the “Metropolitan of the Romanian Orthodox people from Hungary and Transylvania,” “we could once again exploit the concept of a free and autonomous Orthodox Church” promoted by Șaguna. Moreover, he considered that, under this concept, we

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<sup>1</sup> Born in Mosna (near Medias), in Transylvania (Romania), Johann Schneider moved to Germany, where he prepared a PhD thesis on the ecclesiology of the Metropolitan Andrei Șaguna. The thesis was defended in 2004 at the University of Erlangen.

<sup>2</sup> J. SCHNEIDER: *Ecleziologia organică a Mitropolitului Andrei Șaguna și fundamentele ei biblice, canonice și moderne* (The organic ecclesiology of the Metropolitan Andrei Șaguna and its biblical, canonical and modern foundations). Sibiu 2008, p. 271.

could “negotiate on equal terms with the Romanian state, conscious of its power, and we could even criticize this one [...]”<sup>3</sup>

In his ecclesiological-canonical analysis, the Evangelical Lutheran theologian reached the conclusion that the contemporary Romanian Orthodox Church should also rediscover and assert the content of the canonical principle of external autonomy in entirety, as the Metropolitan Șaguna did, by circulating and brilliantly valorizing it in his Church relationships with the Habsburg state and with the Royal House in Vienna.

For the canonical Orthodox ecclesiology, “the essential content of Orthodoxy” is included “in the truth of faith and in the general principles of organization and functioning thereof.”<sup>4</sup>

These fundamental canonical principles of the Orthodoxy are included “in the universal constitutional charter of the Church, which consists of the collection of the Holy Canons,” [and] “in the length and constant practice of church life, which become custom for the canon law.”<sup>5</sup>

It should also be mentioned and noted that “some of these principles” have “a dogmatic content or foundation” and others have “only a juridical or canonical basis.”<sup>6</sup>

The principle of external autonomy is part of the former category, that is of the fundamental or basic canonical principles, with dogmatic content, which are, otherwise, “juridical and canonical expressions of dogmatic truths, the main Church teachings which apply to the Community organization of the Christian life.”<sup>7</sup>

Since the assessment of the mood in which the “external autonomy” — that characterizes the forms of organization and manifestation of the relations between the state and the Church, *recte* between the state and the religious denominations of its administrative-territorial area — was or was not asserted during a certain historical period,<sup>8</sup> could help us to better understand the contemporary realities regarding the juridical status<sup>9</sup> of religious

<sup>3</sup> Ibidem.

<sup>4</sup> L. STAN: “Despre principiile canonice fundamentale ale Ortodoxiei” (About fundamental canonical principles of the Orthodoxy). In: *Autocefalia, libertate și demnitate* (Autocephaly, freedom, and dignity). Bucharest 2010, p. 18.

<sup>5</sup> Ibidem, pp. 18—19.

<sup>6</sup> Ibidem, p. 19.

<sup>7</sup> Ibidem.

<sup>8</sup> For example, see N. V. DURĂ: *Political-Juridical and Religious Status of the Romanian Countries and the Balkan People during the 14th-19th Centuries*. “Revue des Études Sud-Est Européennes”, XXVII, 1—2 (1989), pp. 159—170.

<sup>9</sup> See IDEM: *Despre libertatea religioasă și regimul general al Cultelor religioase din România* (About religious freedom and the general regime of religious Denominations in Romania). “Analele Universității Ovidius Constanța / Seria Teologie” (Ovidius University Annals / Theology Series), VII, 1 (2009), pp. 20—45; IDEM: *Proselytism and the Right to*

denominations, in our paper we examined and assessed first the type of relations between the state and the Church during the pontificate time of the Romanian Archbishop Andrei Șaguna the Metropolitan of the Romanian historical province, that is Transylvania.<sup>10</sup> Then, we examined the current legislation of the Romanian state, in order to assess both the contemporary relations between state and Church and the mood in which it was perceived the assertion of the canonical principle of external autonomy.

According to the canonical Orthodox doctrine, the Church<sup>11</sup> carries out its earthly activities within the geographical area of a state, and her members are state's citizens, but the Church differs from the state both in origin and nature, and in her spiritual-religious means used in order to achieve her goals,<sup>12</sup> that is *salus animarum* ('the salvation of souls').

On the ground of the same canonical doctrine of the Eastern Orthodox Church, the Church is a "divine-human institution," while the state is a purely human one.<sup>13</sup> However, following the statements of some canonists, the Church is to be understood as merely a "religious institution," a "religious society,"<sup>14</sup> a "social body"<sup>15</sup> (sic!).

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*Change Religion: The Romanian Debate.* In: *Law and Religion in the 21st Century. Relations between States and Religious Communities.* Ed. S. FERRARI, R. CRISTOFORI. England 2010, pp. 279—290.

<sup>10</sup> The ancient Greek and Latin historical sources attest that Transylvania was a province of Dacia, inhabited 2,000 years ago by our forefathers, Dacians, that is northern Tracians. The archeological results confirm also "à l'évidence" this historical reality. See A. MADGEARU: *The Romanians in the Anonymous Gesta Hungarorum. Truth and Fiction*, Centrul de Studii Transilvane (Transylvanian Studies Center), (Bibliotheca Rerum Transsilvaniae, XXXIV). Cluj-Napoca 2005.

<sup>11</sup> See I. IVAN: *Importanța principiilor fundamentale canonice de organizație și administrație pentru unitatea Bisericii* (The importance of the fundamental canonical principles of organization and administration to Church Unity). "Mitropolia Moldovei și Sucevei" (Metropolitan Church of Moldavia and Suceava), XXI, 3—4 (1969), pp. 155—165; N. V. DURĂ: *Principiile canonice, fundamentale, de organizare și funcționare a Bisericii Ortodoxe și reflectarea lor în legislația Bisericii Ortodoxe Române* (Canonical fundamental principles for the organization and functioning of the Orthodox Church and their impact on the legislation of the Romanian Orthodox Church). "Revista de Teologie Sfântul Apostol Andrei" (St. Andrew Review of Theology), V, 9 (2001), pp. 129—140.

<sup>12</sup> See A. ȘAGUNA: *Compendiu de Drept canonic al unei Sfinte sobornicești și apostolești Biserici* (Compendium of Canon Law of a Holy Synodal and Apostolic Church). 3rd edition. Sibiu, 1913, pp. 18—19; N. MILAȘ: *Dreptul bisericesc oriental* (Oriental Church Law). Translation by D. I. Cornilescu, V. Radu, and reviewed by I. Mihălcescu. Bucharest, 1915, pp. 569—570.

<sup>13</sup> Cf. N. V. DURĂ: *Biserica creștină în primele patru secole. Organizarea și bazele ei canonice* (The Christian Church during the first four centuries. The organization and its canonical basis). "Ortodoxia" (The Orthodoxy), XXXIV, 3 (1982), pp. 451—469.

<sup>14</sup> I. N. FLOCA: *Drept canonic ortodox. Legislație și administrație bisericească* (Orthodox canon law. Legislation and Church administration). Bucharest, I, 1990, pp. 151—152.

<sup>15</sup> Foreword to the edition of 2004 of the *Pidalion*. Iași 2004, p. 18.

Some canonists also claimed that “the Church and the state are divine establishments, which aim is temporal and eternal happiness.”<sup>16</sup>

The canonists of the Eastern Church also noted that the state, by virtue of its sovereignty, “does not tolerate on its territory any other sovereign power, namely, any other organization that voices a claim to be one,”<sup>17</sup> and, as such, the relations between the state and the Church cannot be perceived as equal.<sup>18</sup> Hence the obvious need that the relations between the two institutions, that is the state and the Church, be determined and justified only by the common necessity and endeavour to work *in solidum* (jointly), in order to promote social peace<sup>19</sup> and human society’s welfare.<sup>20</sup>

However, this does not entail the claim or assertion of the so-called right of sovereignty, because, in this situation, one cannot speak of the right to religion,<sup>21</sup> and neither about the Church autonomy, which was expressly asserted both by the Roman-Byzantine Law<sup>22</sup> and by the current legislation of several states.<sup>23</sup>

<sup>16</sup> N. MILAȘ: *Dreptul bisericesc...*, p. 569.

<sup>17</sup> I. N. FLOCA: *Drept canonic...*, II, p. 283.

<sup>18</sup> See L. STAN: *Biserică și cult în Dreptul internațional (Church and religious organization in international Law)*. “Ortodoxia” (The Orthodoxy), VIII (1955); IDEM: *Relațiile dintre Stat și Biserică (The Relationships between State and Church)*. “Ortodoxia” (The Orthodoxy), V, 3—4 (1952); L. IACOB: *Stat și Biserică (State and Church)*. “Ortodoxia” (The Orthodoxy), 1942, vol. I; G. POPESCU—PRAHOVA: *Raporturile dintre Stat și Biserică (The Relationships between State and Church)*. Chișinău, 1936.

<sup>19</sup> The Edict of Milan (313) also regulates in the same way (see N. V. DURĂ: *Edictul de la Milan (313) și impactul lui asupra relațiilor dintre Stat și Biserică. Câteva considerații istorice, juridice și ecleziologice (The Edict of Milan (313) and its impact on the relationships between State and Church. Some historical, legal and ecclesiological considerations)*. “Mitropolia Olteniei” (The Metropolitan Church of Oltenia), 5—8 (2012), pp. 28—43; N. V. DURĂ, C. MITITELU: *The Freedom of Religion and the Right to Religious Freedom*. In: *SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism*, I, 2014, Albena, pp. 831—838).

<sup>20</sup> See N. V. DURĂ, C. MITITELU: *The State and the Church in IV—VI Centuries. The Roman Emperor and the Christian Religion*. In: *SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism*, I, 2014, Albena, pp. 923—930.

<sup>21</sup> See N. V. DURĂ: *Drepturile și libertățile fundamentale ale omului și protecția lor juridică. Dreptul la religie și libertatea religioasă (Human rights and fundamental freedoms and their legal protection. The right to religion and to religious freedom)*. “Ortodoxia”, LVI, 3—4 (2005), pp. 7—55; N. V. DURĂ, C. MITITELU: *The right to Freedom of Religion in the Jurisprudence of the European Court*. “Journal of Danubius Studies and Research”, IV, 1 (2014), pp. 141—152; IDEM: *The human fundamental rights and liberties in the Text of some Declarations of the Council of Europe*. In: “*Exploration, Education and Progress in the Third Millennium*”, I, 5, Bucharest, 2015, pp. 7—22.

<sup>22</sup> See N. V. DURĂ, C. MITITELU: *The State and the Church in the fourth-sixth Centuries...*, pp. 923—930.

<sup>23</sup> See N. V. DURĂ: *The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania*. “Dionysiana”, II, 1 (2008), pp. 37—54.

In the Romanian principalities, since the establishment of the Romanian states (13th—14th centuries) and their legitimization by the Basileus and the Patriarch of the Eastern Roman Empire (i.e. The Byzantine Empire),<sup>24</sup> the two basic institutions of society, namely the state and the Church, have worked together harmoniously, according to the classic Byzantine model,<sup>25</sup> in order to promote and materialize the common good, that is *ad utilitatem publicum*, without causing any collision or confusion within each other's jurisdictional power.

According to the assessment of Johann Schneider, the Roman-Catholic confession of the Habsburg Empire played “the role of state religion,” while the Orthodox Church “was always suspected of religious and political disloyalty”<sup>26</sup> because it actually claimed the same status, both for itself, as a divine-human institution, and for its members, namely the Christians of “Romanian law,” that is the Romanians of Orthodox Christian faith.

This type of “privileged” relationships still exist today in some EU countries,<sup>27</sup> as revealed by their legislation, hence the statement that — in this regard too — *nihil novum sub sole*.

According to Schneider, the ephemeral and short-term improvement of the less humane treatment applied to the Orthodox Church in Transylvania — by the Habsburg Empire — was triggered largely by “its foreign policy relationships with Russia and the Ottoman Empire.”<sup>28</sup>

Despite some temporary relief, one can notice, as Schneider already did, the “marginalization” and discrimination of the Orthodox Church and of the Orthodox citizens in the Habsburg monarchy were not been officially condemned by the Metropolitan Șaguna. In fact, even “in his *Compendium of Canon Law* Șaguna does not exemplify his statements with examples of political practice.”<sup>29</sup>

<sup>24</sup> See M. ȘESAN: *Bizanțul și România (Byzantium and Romania)*. “Mitropolia Ardealului” (The Metropolitan Church of Transylvania), XXIV, 9—10 (1971).

<sup>25</sup> See N. V. DURĂ: *The Byzantine Nomocanons, fundamental sources of old Romanian Law*. In: “*Exploration, Education and Progress in the third Millennium*”, I, 3, Galați 2011, pp. 25—48; C. MITITELU: *Dreptul bizantin și receptarea lui în Pravilele tipărite, în Țările Române, din secolul al XVII-lea* (The Byzantine law and its reception of the Codes of Laws printed in the Romanian Principalities, in the seventeenth century). Bucharest 2014.

<sup>26</sup> J. SCHNEIDER: *Ecleziologia organică...*, p. 244.

<sup>27</sup> See N. V. DURĂ: *Relațiile Stat-Culte religioase în U.E. „Privilegii” și „discriminări” în politica „religioasă” a unor State membre ale Uniunii Europene* (The Relationships between the State and the Religious Cults in the EU. “Privileges” and “discrimination” in the “religious” policy of some EU Member States). “*Analele Universității Ovidius. Seria: Drept și Științe Administrative*” (Ovidius University Annals. Series: Law and Administrative Sciences), 1 (2007), pp. 20—34.

<sup>28</sup> J. SCHNEIDER: *Ecleziologia organică...*, p. 244.

<sup>29</sup> *Ibidem*, p. 245.



In his *Compendium of Canon Law*,<sup>30</sup> Șaguna indeed assessed that “the Church of Christ is different from the state, in such way as the body is different from the soul; the former is subject to the state, and the latter to the Church; however, Șaguna wrote that the state and the Church can and must be able to coexist, because, the body and the soul, despite being two heterogeneous elements, still form together the human being, and from the perspective of the soul the human being is a member of his/her Church and, from the perspective of the body, he/she is a citizen of the state; by the same token, Christ’s Church and the state can and should be able to coexist in order to solve the issue of Christ’s Church and of the state. The problems and the means are not in any collision, nor are they dangerous to each other, regardless of the state regime, even when the Church has to operate within an unchristian state” (sic).<sup>31</sup>

Therefore, according to the Metropolitan Andrei Șaguna,<sup>32</sup> between the state and the Church there should be a relationship similar to the one that exists between body and soul. Also, Șaguna asserted that the state has legitimacy regardless of its “form of state regime” that is “absolutist, constitutional or republican,”<sup>33</sup> provided, however, that it “ensures the freedom of conscience and the religious beliefs of its citizens.”<sup>34</sup>

Moreover, in accordance with the Andrei Șaguna’s perception, the legitimacy of the state does not depend on its form of government (constitutional, republican, etc.), but on insuring the legal protection of “the freedom of conscience”<sup>35</sup> and of the “religious freedom”<sup>36</sup> to all its rightful subjects.

<sup>30</sup> A. ȘAGUNA: *Compendiu de Drept canonic al unei sfinte, sobornicești și apostolice Biserici* (Compendium of the Canon Law of a Holy Synodal and Apostolic Church). Sibiu 1868.

<sup>31</sup> Ibidem, 2nd edition, Sibiu, 1885, p. 274.

<sup>32</sup> On his canonical-pastoral activity and his canonical work, see I. IVAN: *Statutul șagunian (o sută de ani de aplicare)* (Șaguna’s Status (one hundred years of application)). “Mitropolia Ardealului” (The Metropolitan Church of Transylvania), 4—6 (1969), pp. 330—334.

<sup>33</sup> A. ȘAGUNA: *Compendiu de Drept canonic...*, 2nd edition, p. 274, note 2.

<sup>34</sup> J. SCHNEIDER: *Ecleziologia organică...*, p. 267.

<sup>35</sup> N. V. DURĂ: „Conștiința” în percepția Teologiei și a Filosofiei (“Consciousness” in the perception of Theology and Philosophy). “Revista de Teologie Sfântul Apostol Andrei” (St. Andrew Review of Theology), XIII, 1 (2009), pp. 27—37; IDEM: *The Theology of Conscience and the Philosophy of Conscience*. “Philosophical-Theological Reviewer”, 1 (2011), pp. 20—29.

<sup>36</sup> IDEM: *About the “Religious” Politics of Some Member States of the European Union*. “Dionysiana”, III, 1 (2009), pp. 463—489; IDEM: *Religious Freedom in Romania*. “Theologia Pontica”, V, 3—4 (2012), pp. 9—24; N. V. DURĂ, C. MITITELU: *Dreptul la libertatea de Religie. Edictul de la Milan și afirmarea principiilor lui în Legislația europeană și internațională* (The right to the freedom of Religion. The Edict of Milan and the assertion of its principles in the European and international legislation). “Revista de Teologie Sfântul Apostol

Nowadays, these freedoms are seen as the matrix of the fundamental human rights<sup>37</sup> wherefore the EU legislation otherwise expressly provided rules in order to ensure their juridical protection.<sup>38</sup>

Archbishop Şaguna, who was influenced by the juridical-canonical Roman Catholic thinking of the Vienna School of his time, by the organizational model of the Evangelical Church of Augsburg Confession from the Habsburg Empire and by the declarations of some “liberal Catholic reformers” from Hungary,<sup>39</sup> said that the state uses its “means,” that is, “political and criminal laws,” in order to achieve its goal, namely “to guarantee the maintenance of good order between citizens and to exempt them regarding life, honour, wealth and honest and useful occupations, that is the preservation of the legal State; [...].”<sup>40</sup>

According to Şaguna, “the legal State,” that is “the Rule of law,” should therefore be the state that practically and effectively uses the means at its disposal, namely, the political and legal laws, hence his plea for preserving it. But, what precisely was the Metropolitan Şaguna’s perspective on the autonomy of his Church and on her relationships with the Habsburg State?

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Andrei” (St. Andrew Journal of Theology), 1 (2013), pp. 43—60; C. MITITELU: *Legea nr. 489/2006 și relațiile dintre Stat și Biserică* (Law no. 489/2006 and the relationship between State and Church). In: RO-RUS-NIPPONICA, I, Craiova 2010, pp. 36—43.

<sup>37</sup> See N. V. DURĂ, C. MITITELU: *Human rights and their universality. From the rights of the “individual” and of the “citizen” to “human” rights*. In: “Exploration, Education and Progress in the third Millennium”, I, 4, Galați, 2012, pp. 103—127; N. V. DURĂ: *Les droits fondamentaux de l’homme et leur protection juridique* (Fundamental human rights and their legal protection). “Analele Universității Dunărea de Jos Galați” (Annales of Dunărea de Jos University), Fascicle XXII, Drept și Administrație publică (Law and Public Administration), 2 (2008), pp. 19—23; N. V. DURĂ: *The European juridical thinking, concerning the human rights, expressed along the centuries*. “Acta Universitatis Danubius. Juridica”, VII, 2 (2010), pp. 153—192; IDEM: *Principii și norme generale ale Dreptului Uniunii Europene privind protecția juridică a drepturilor omului* (Principles and general rules of EU law on the legal protection of human rights). In: RO-RUS-NIPPONICA, I, Craiova, 2010, pp. 32—36; C. MITITELU: *The European Convention on Human Rights*. In: *10th Edition of International Conference The European Integration — Realities and Perspectives*, Galati 2015, pp. 243—252.

<sup>38</sup> N. V. DURĂ, C. MITITELU: *Principii și norme ale Dreptului Uniunii Europene privind drepturile omului și protecția lor juridică* (Principles and rules of EU law on human rights and their legal protection). Constanța, 2014; C. MITITELU: *The Human Rights and the Social Protection of Vulnerable Individuals*. “Journal of Danubius Studies and Research”, II, 1 (2012), pp. 70—77; IDEM: *The Right to Life. From the Prevention of Torture and Inhuman Punishment to the Abolition of the Death Penalty*. “Ovidius University Annals, Economic Sciences Series”, XIII, 2 (2013), pp. 128—133; IDEM: *Europe and the Constitutionalization Process of EU Member States*. “Ovidius University Annals, Economic Sciences Series”, XIII, 2 (2013), pp. 122—127.

<sup>39</sup> J. SCHNEIDER: *Ecleziologia organică...*, p. 266.

<sup>40</sup> A. ŞAGUNA: *Compendiu de Drept canonic...*, 2nd edition, p. 274.



In the view of the Romanian hierarch, they were expressed and primarily materialized by “the factual recognition of the freedom of conscience and of the religious belief of its citizens.” Secondly, “in refraining from any interference in religious and purely dogmatic matters.” Thirdly, “in compliance with dogmas and with other positive church institutions and with the decisions taken by the ecclesiastical authorities.” Fourthly, in compliance with the canon law. Fifthly, “in the pecuniary support of the clergy’s subsistence, of schools and of philanthropic institutions.” And last but not least, in promoting “the development of the Church and the country’s citizens’ religious life.”<sup>41</sup>

If we compare the six obligations of the state mentioned by Șaguna — with the contemporary Romanian reality, we can say that only some of them are really still observed and applied, namely: the guarantee of the freedom of conscience and religious belief (Art. 29 of the Constitution); the (relative) Church autonomy and the pecuniary support (in a form of either social aid or assistance) granted to religious denominations, including therefore to the Orthodox Church (cf. Law 489/2006).<sup>42</sup>

Regarding the rights to freedom of conscience and to religious freedom,<sup>43</sup> we should mention that they are distinct both in their content and in their forms of expression.

The fundamental human rights<sup>44</sup> provided both by international instruments,<sup>45</sup> which have the power of *Jus cogens*, and by the legislation of EU member states (constitutions, laws on religious denominations etc.), which reaffirm in fact the principles enunciated by the Universal Declaration of Human Rights (New York, 1948), by the European Convention on Human Rights (Rome, 1950), by the Charter of Fundamental Rights of the European Union (Nice, 2001) etc., differ from those invoked by the

<sup>41</sup> Ibidem, p. 282.

<sup>42</sup> See N. V. DURĂ: *The Law no. 489/2006 on Religious Freedom...*, pp. 37—54.

<sup>43</sup> See IDEM: *Dreptul la demnitate umană (dignitas humana) și la libertate religioasă. De la “Jus naturale” la “Jus cogens”* (The right to human dignity (Dignitas Humana) and to religious freedom. From “Jus naturale” to “Jus cogens”). “Analele Universității Ovidius. Seria: Drept și Științe Administrative” (Ovidius University Annals. Series: Law and Administrative Sciences), 1 (2006), pp. 86—128.

<sup>44</sup> See IDEM: *The Fundamental Rights and Liberties of Man in the E.U. Law*. “Dionysiana”, IV, 1 (2010), pp. 431—464.

<sup>45</sup> IDEM: *General Principles of European Union Legislation Regarding the Juridical Protection of the Human Rights*. “Journal of Danubius Studies and Research”, III, 2 (2013), pp. 7—14; N. V. DURĂ, C. MITELU: *International Covenant on Economic, Social and Cultural Rights*. In: *8th Edition of International Conference The European Integration — Realities and Perspectives*, Galati, 2013, pp. 130—136; IDEM: *The Treaty of Nice, European Union Charter of Fundamental Rights*. In: *8th Edition of International Conference The European Integration — Realities and Perspectives*. Galati 2013, pp. 123—129.

Metropolitan Andrei Șaguna, both by their universal dimension, which by far exceeds the other geographical areas of the Habsburg Empire of his time, and by their content.

The text of these legal international and EU instruments makes also express reference to *dignitas humana*<sup>46</sup> (human dignity) (cf. Art. 6 of the European Constitution), which it was first ranked as the supreme value of the humanity by the founder of Christianity, our Lord Jesus Christ, and asserted afterwards by His disciples and by the Church Fathers of East and West in the first millennium AD,<sup>47</sup> by invoking the rules set by the “Natural Moral Law as the grounds for its mandatory compliance.”<sup>48</sup>

Regarding the autonomy<sup>49</sup> of the religious denominations in contemporary Romania — including the Romanian Orthodox Church and the Roman Catholic Church, which both occupy a prominent place — we should also highlight the fact that it differs substantially from the one perceived and stated by Andrei Șaguna.

According to the Romanian constitution, currently in force, religious denominations are legal persons of public utility, and they “are autonomous from the state and enjoy its support [...]” (Art. 29 par. 5).

Among others, in his commentary to this constitutional article — regarding the relationships between the state and religious denominations — Ioan Muraru, a professor of Romanian constitutional law, wrote

<sup>46</sup> See N. V. DURĂ: *Dreptul la demnitate umană (dignitas humana)*..., pp. 86—128.

<sup>47</sup> See IDEM: *Dreptul în percepția Părinților Bisericii ecumenice din primul mileniu* (The Law in the perception of the ecumenical Church Fathers of the first millennium). “Revista de Teologie Sfântul Apostol Andrei” (St. Andrew Review of Theology), X, 1 (2006), pp. 7—16; IDEM: *Thinking of Some Fathers of the Ecumenical Church on the Law*. “Christian Researches”, VI, 2011, pp. 230—245.

<sup>48</sup> IDEM: *Loi morale, naturelle, source du Droit naturel et de la Morale chrétienne*. In: *La morale au crible des religions* (Studia Arabica XXI), coord. M. Th. URVOY, Paris, 2013, pp. 213—233; IDEM: *Law and Morals. Prolegomena* (I). “Acta Universitatis Danubius. Juridica”, 2 (2011), pp. 158—173; IDEM: *Despre „Jus naturale”*. *Contribuții filosofico-juridice* (About “Jus naturale”. Philosophical and legal contributions). “Revista de Teologie Sfântul Apostol Andrei” (St. Andrew Review of Theology), XVIII, 1 (2014), pp. 39—52.

<sup>49</sup> Regarding the canonical status of the autonomy, see L. STAN: *Despre principiile canonice fundamentale*..., pp. 18—26; N. V. DURĂ: *Organizarea Bisericii etiopiene și bazele ei canonice* (Ethiopian Church organization and its canonical basis). Bucharest 1990; N. V. DURĂ: *Le Régime de la synodalité selon la législation canonique, conciliaire, oecuménique, du I<sup>er</sup> millénaire*. Bucharest 1999, pp. 816—915; IDEM: „Scythia Mynor” (*Dobrogea și Biserica ei apostolică. Scaunul arhiepiscopal și mitropolitan al Tomisului (sec. IV—XIV)*) (“Scythia Minor” (Dobrogea) and its apostolic Church. The Archbishopric and Metropolitan See of Tomis (fourth-sixth centuries)). Bucharest 2006, p. 19 ff.; IDEM: *Forme și stări de manifestare ale autocefaliei Bisericii Ortodoxe Române. Mărturii istorice, ecleziologice și canonice* (Forms and conditions of manifestation of the Romanian Orthodox Church autocephaly. Historical, ecclesiological and canonical testimonies). In: *Autocefalia, libertate și demnitate* (Autocephaly, freedom and dignity). Bucharest 2010, pp. 113—155.

that the separation between the Church and the state actually guaranteed “the autonomy of the religious denominations, but required the state to support them [...]”<sup>50</sup> But, in reality, the constitution makes no mention — either direct or indirect — to the so-called separation of the Church and the state, which occurred in France by the Law of 1905. Moreover, in reality, neither can we speak in terms of separation of the two basic institutions of human society, but only of the separation of their fields of activity, that is, the terrestrial (earthly) and the spiritual-religious (ecclesiastical) one.

However, most constitutionalists — and, in general, jurists, political scientists, historians etc. from the EU member states — still pay heed to the ideological-political thought of the French Revolution of 1789, and to the Law of 1905, drafted in order to ensure the separation between the Church and the state, confirmed afterwards, *expressis verbis* by both the constitutions of France and those of other European countries.

The same Romanian constitutional text states that religious denominations “are free to organize themselves according to their own statutes, under the law” (Art. 29 par. 3). It refers, of course, to the Law no. 489/2006,<sup>51</sup> which expressly provides that the religious denominations recognized by the state “are organized and function under the constitution and under the present laws, autonomously, according to their own statutes and canonical codes” (Art. 8 par. 1).

This law also provides that, “in Romania, there is no state religion; the state is neutral towards any religious faith or atheistic ideology” (Art. 9 par. 1). In other words, in accordance with this law, the Romanian state has adopted a position of neutrality not only towards religious faith, but also to Communism ideology.

We underline also the fact that the Law 489/2006 did not provide the separation between the two basic historical institutions of human society, or a “position of indifference towards religions,” as it is still stated incorrectly by some Romanian constitutionalists who were trained in some French law schools or who remained tributary to the ideas conveyed by these schools regarding the relations between the state and religious denominations, as provided by the Law of 1905.

Regarding the financial aid granted to the clergy by the Romanian state, the Law on Religious Denominations refers only to “the support” can offer, “upon request,” regarding the “remuneration of the clerical and non-clerical staff belonging to recognized religious denominations” (Art. 10 par. 4).

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<sup>50</sup> I. MURARU: “Commentary on Article 29.” In: *Constituția României. Comentariu pe Articole* (The Romanian Constitution. Commentary on Articles) Bucharest 2008, p. 285.

<sup>51</sup> Published in the *Official Gazette*, Part I, no. 11/18. 01. 2007.

Additionally, in accordance with stipulations of the Law no. 489/2006, “the religious denominations recognized by the state may benefit, upon request, the state’s financial support for the expenditure regarding the functioning of worship establishments [...]” (Art. 10 par. 6).

Therefore, we could say that, in the text of this law, there is not mention so much about the remuneration of the clerical and non-clerical staff of the religious denominations recognized by the Romanian state, but about the financial support or help,<sup>52</sup> granted “upon request.”

According to the currently enforceable statute for the organization and functioning of the Romanian Orthodox Church, “the worship units of the Romanian Orthodox Church, in the country and abroad, can also apply for subsidies from the state budget and local budgets for supporting patronal, spiritual, cultural, social and urban activities” (Art. 191, par. 1).<sup>53</sup>

Although these subsidies are sometimes long in coming or do not always cover the amount of money required for these activities, it is noteworthy that the Romanian Orthodox Church signed the Protocol of cooperation with the Romanian Government on 2 October 2007, that is 18 years after the events of December 1989. This is the Protocol on cooperation in social inclusion,<sup>54</sup> which the prime minister at that time considered “an important partnership for the promotion and respect of fundamental social human rights,”<sup>55</sup> and which the current Patriarch of the Romanian Orthodox Church His Beatitude Daniel, saw as “a natural and practical consequence of the new law on religious Denominations, which recognizes the contribution of the Romanian Orthodox Church [...] to the Romanian social life.”<sup>56</sup>

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<sup>52</sup> See C. MITITELU: *Regulations Regarding the Organisation and the Governance of the Accounting by the Legal Persons Without Patrimonial Purposes*. “Ovidius University Annals, Economic Sciences Series”, XI, 2 (2011), pp. 815—820; N. V. DURĂ: *Accounting, Institution of the Economic Liberal System, and the Great Religions of the World. Prolegomena*. “Ovidius University Annals, Economic Sciences Series”, XI, 2 (2011), pp. 396—400.

<sup>53</sup> *Statutul pentru organizarea și funcționarea Bisericii Ortodoxe Române* (The Statute for the organization and functioning of the Romanian Orthodox Church). Bucharest 2008, p. 105.

<sup>54</sup> C. MITITELU: *The Cooperation Protocol on Social Inclusion, Concluded between the Government of Romania and the Romanian Patriarchate. Juridical and Canonical Considerations*. “Teologia” (The Theology), XVIII, 2 (59) (2014), pp. 58—70.

<sup>55</sup> *Colaborarea la nivel social dintre B. O. R. și Guvern s-a întărit ieri printr-un acord* (The social collaboration between the ROC and the Government strengthened yesterday by an agreement). In: Ziarul Lumina (“Lumina” newspaper), Miercuri, 3 decembrie 2007 (Wednesday, 3 December 2007), p. 2.

<sup>56</sup> Ibidem.

The Romanian state grants to the 18 recognized religious denominations via their executive central or local bodies,<sup>57</sup> which act as social service providers, a modest financial support.<sup>58</sup> Certainly, this kind of support remains an evident expression of the process regarding the reactivation of the traditional cooperation relationships between the state and the Church.

The (historical) traditional relationships of collaboration,<sup>59</sup> between state and Church, based on customary law and *jus positivum* (written law), that is on *Jus valachicum* or “the Law of the Land,”<sup>60</sup> could be also invoked as an evident testimony of the autonomy of the religious Denominations in their relationships with the Romanian state.

As regards the compliance with the canon law to which the Metropolitan Andrei Șaguna made express reference, it must be said that the law on the religious Denominations” mentions only the “canonical Code,” which is none other than the canonical code of the Roman Catholic Church, and, by extension, of the Greek Catholic Church. But, it is not the state’s fault that the canon law or the “canonical legislation” of the Orthodox Church are not mentioned directly or indirectly; it is the fault of the representatives of the Romanian Orthodox Church, who either did not know — since they were not accompanied by the Church jurists (canonists) — or unfortunately overlooked this aspect.

<sup>57</sup> See N. V. DURĂ: *Organismele executive centrale și locale ale Bisericii Ortodoxe Române și activitatea lor managerială* (The central and local executive bodies of the Romanian Orthodox Church and their managerial work). In: *Contribuții la conturarea unui model românesc de management* (Contributions to the outline of a Romanian management model), coord. I. Petrescu. Bucharest 2014, II, pp. 413—447.

<sup>58</sup> C. MITITELU. *The Cooperation Protoco...*, pp. 58—70.

<sup>59</sup> Regarding these old collaboration relationships between state and Church, see C. MITITELU: *Vechi instituții europene prevăzute de legislația nomocanonică din secolul al XVII-lea (Pravila de la Iași și Pravila de la Târgoviște)* (Old European institutions under the nomocanonical Legislation from the seventeenth century (the Nomocanons of Iasi and Targoviste)). Bucharest 2014; N. V. DURĂ, C. MITITELU: *Legislația canonică și instituțiile juridico-canonic, europene, din primul mileniu* (Canonical legislation and European juridical-canonical institutions of the first millennium). Bucharest 2014.

<sup>60</sup> See N. V. DURĂ, C. MITITELU: *Istoria Dreptului românesc. Contribuții și evaluări cu conținut istorico-juridico-canonic* (The history of Romanian Law. Contributions and assessments of legal-historical-canonical content). Bucharest 2014; N. V. DURĂ: „*Lex terrae*” în percepția unor juriști și istorici ai vechiului Drept românesc. *Evaluări și precizări* (“*Lex terrae*” in the perception of some jurists and historians of ancient Romanian law. Assessments and clarifications). “*Revista de Teologie Sfântul Apostol Andrei*” (St. Andrew Review of Theology), XIV, 1 (2010), pp. 18—42; C. MITITELU: *Considerații privind Legea Țării și instituțiile ei* (Considerations on the Law of the Country and its institutions). “*Anal-ele Universității OVIDIUS Constanța / Seria Drept și Științe Administrative*” (Ovidius University Annals / Series Law and Administrative Sciences), 1 (2007), pp. 291—312; IDEM: *Începuturile Dreptului scris la români* (The beginnings of the Romanian written law). “*Dionysiana*”, 1 (2009), pp. 417—426.

The express reference to the canon law — in the Law on religious denominations — could have been invoked as grounds stating that the canonical legislation of the Eastern Church, and, *ipso facto*, of the Romanian Orthodox Church, are part of the legal heritage or of the *Corpus juris* of the Romanian state, being thus invested with the authority of civil power, as it was in Byzantium, where the canon law had precedence<sup>61</sup> over the imperial law of the Eastern Roman State.

Regarding the aid provided by the Church to the state, Metropolitan Şaguna reduced it to five obligations, namely:

1. “Performing daily prayers, prescribed by the Church rule for the Prince and his dynasty, for his soldiers and for all citizens.”
2. “Preaching the word of God, concerning the fulfillment of Christian and civic desires.”
3. “Religious admission for the citizens’ submission and obedience to their superiors.”
4. “Performing the emperor’s doxology upon his birthday” (sic!).
5. “Performing prayers in extraordinary cases of epidemic, internal rebellion, external war and other similar cases.”<sup>62</sup>

As it is well known, of those five obligations, only the performance of prayers “for the country’s rulers and for the Romanian people,”<sup>63</sup> as well as in extraordinary cases (epidemics, wars etc.) remained binding until our days.<sup>64</sup> But, the second and the third obligations — provided by Metropolitan Andrei Şaguna — had been fulfilled only until the “events of December 1989.”

Until these “events,” the Clergy of ancestral shrines were indeed forced to preach from the pulpit — in accordance with the party ideological directives they received — about the Christians’ civic “duties” towards the country and the “people,” and about their duty to obey and submit to state authorities, even if they were living during a totalitarian regime and a communist-atheist ideology.

Andrei Şaguna granted the Emperor in Vienna the “right to supreme inspection”<sup>65</sup> (sic!) in the jurisdictional area of the Orthodox Church.

<sup>61</sup> Emperor JUSTINIAN (527—565) apodictically expressed himself in this way (see Justinian’s Novels, especially Novel 123).

<sup>62</sup> A. ŞAGUNA: *Compendiu de Drept canonic...*, 3rd edition, p. 282.

<sup>63</sup> See the Litanies of the Orthodox Liturgy.

<sup>64</sup> See the Special Prayers of the Orthodox Euchologion.

<sup>65</sup> A. ŞAGUNA: *Statului organicu alu Bisericei ortodoxe romane din Ungaria și Transilvania* (The Organic Statute of the Romanian Orthodox Church from Hungary and Transylvania). Sibiu 1868, p. 1. See also the German translation: *Organisches Statut der griechisch-orientalisch-romanischen Kirche in Ungaru und Siebenbürgen*. “Archiv für Kirchenrecht”, 25 (1871), pp. 235—276.



However, by recognizing the emperor's right to "inspection" in the territorial boundaries of his Church, Metropolitan Șaguna unwillingly gave up the autonomy of his Church in her relations with the Habsburg State, autonomy which he had actually expressly stipulated in the Organic Statute published in Sibiu in 1868. Indeed, this statute provided expressly that "the Romanian Orthodox Church from Hungary and Transylvania [is] an autonomous Church, according to its canon law, also guaranteed by the law of 1868 [...]" (Art. 1).<sup>66</sup>

The fact that the autonomy of Metropolitan Andrei Șaguna's Church was restricted or limited in its content of expression — and sometimes even abolished by the imperial Habsburg power — is also attested by Johann Schneider, who — among others — wrote that, "in the eyes of the Austrian Ministry of the Interior, both before and after 1848, the Orthodox priests from Transylvania were primarily accomplishers of its measures of order and, although they were often incriminated themselves, they were used in police roles."<sup>67</sup>

If we compare the situation of the Orthodox clergy during the pontificate of Metropolitan Andrei Șaguna with that of the years 1948—1989, we could say — quoting the Ecclesiast — that "there is nothing new under the sun," because, during the communist regime in Romania, the external autonomy of the Church, namely the one concerning its *status quo* in terms of the relationships with the state, was not respected in its entirety. Moreover, during the post-war period, no hierarch could not be elected or invested in his See without the consent of the proletarian-communist state authority. Nonetheless, we should not ignore or hide the fact that, during that period of repression<sup>68</sup> there were some Romanian Orthodox clerics who protested — with courage and dignity — against the demolition of the Romanian people's churches,<sup>69</sup> and whose biographies should

<sup>66</sup> IDEM: *Statului organicu alu Bisericei ortodocse...*, p. 1.

<sup>67</sup> J. SCHNEIDER: *Ecleziologia organică...*, p. 247.

<sup>68</sup> About this period, and its victims — among which we mention particularly the Rev. Prof. G. Calciu († 2007) and the Rev. C. Sîrbu († 1975) — see M. VALICĂ, P. CHIRILĂ: *Prigoana cea dinăuntru* (The inner persecution). Bucharest 2011, pp. 83—126.

<sup>69</sup> See C.T. DĂRȚU: *Personalități române și faptele lor (1950—2000)* (Romanian personalities and their deeds (1950—2000)). Iași, VIII, 2004, pp. 115—171. See also the articles published by N. V. DURĂ, in the Magazine of Father G. CALCIUM (USA), and in those of his twin brother, Prof. Rev. PhD Ioan V. DURĂ, published in the Magazine "Mărturie ortodoxă" (Orthodox Confession) (Romanian Orthodox Community Magazine in the Netherlands, The Hague). It is worthy to be noticed the fact that the Reverend Professor Ioan V. DURĂ was the only Romanian Orthodox priest from the diaspora of the Romanian Orthodox Church who openly condemned the communist atheist totalitarian regime, and the only one who took concrete actions so that the Church on the Metropolitan Hill and the Patriarchal headquarters not to be demolished. Among other

not be obscured, forgotten or ignored, but, on the contrary, they have to be honoured.

We cannot conclude this brief presentation concerning the manner in which the Romanian Orthodox Church asserted or not her right to autonomy in its relationships with the state without emphasizing the fact that, under Law 489/2006,<sup>70</sup> all recognized religious denominations are considered to be “independent from the state” (Art. 29 par. 5). As such, they can organize themselves and function “autonomously, according to their own Statutes and canonical Codes” (Art. 8 par. 1).

Nevertheless, it has been a long way leading from the *sui generis* autonomy of the Orthodox Church in the Habsburg Empire, guided by Metropolitan Andrei Șaguna, to the autonomy of the 18 religious denominations recognized by the Romanian state, provided by Law no. 489/2006. This long process has been marked by transformations actually determined by the party ideology of different time periods.

Over time, the autonomy of the Church or of the religious denominations — in their relationships with the state — was perceived differently, and often the very content of the autonomy principle was affirmed, extended, limited or even abolished by some political rulers, as dictated by the interests of those times and imposed by their party ideology.

This reality is also clearly confirmed by the canonical-juridical status of the Romanian Orthodox Church from Șaguna’s epoch, which represents a documentary landmark whenever we tackle the topic concerning the relationships between the state and the religious denominations, and whenever we assess the manner in which “the external autonomy principle” was or was not fully stated.

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things, he also appealed to the Secretary General of the Ecumenical Council of Churches (Geneva) to demand expressly the igh ommunist authorities from Bucharest not to fulfil their criminal intentions.

<sup>70</sup> See N. V. DURĂ: *The Law no. 489/2006 on Religious Freedom...*, pp. 37—54.

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NICOLAE V. DURĂ

From the Church Autonomy of the Archbishop Andrei Şaguna  
to the Autonomy of the Religious Denominations  
in the Romanian State:  
Ecclesiological-Canonical Considerations

Summary

From the pages of this study, the reader familiar with the canonical organization of a local Orthodox Church could become acquainted with the fact that one of the main canonical fundamental principles of the Eastern Church, that is the principle of (external) autonomy, was affirmed and applied by the Archbishop of Transylvania, Andrei Şaguna, in his Church, in the totality of its content. But, through its forms of manifestation, this principle characterizes not only the relationships between the Church and the state, during Andrei Şaguna's times († 1873), the Metropolitan of the Orthodox Church from "Hungary and Transylvania," but also the contemporary relationships between Romanian state and religious denominations, expressed in the Romanian Constitution and the Law no. 489/2006, although, in its content, this principle was not affirmed and applied in the same manner during these two periods of time.

NICOLAE V. DURĂ

Dès l'autonomie de l'Église à l'époque de l'Archevêque Andrei Şaguna  
jusqu'à l'autonomie des organisations religieuses en Roumanie  
Réflexions ecclésiastiques et canoniques

Résumé

L'un des principes fondamentaux de l'Église orientale, c'est-à-dire le principe de l'autonomie (extérieure) a été perpétué et appliqué par Andrei Şaguna, Archevêque de Transylvanie. Ce principe, et les formes sous lesquelles il apparaît réellement, définit non seulement les relations entre l'Église et l'État à l'époque d'Andrei Şaguna (décédé en 1873), Métropolitain de l'Église orthodoxe de « Hongrie et Transylvanie », mais aussi les relations contemporaines entre l'État roumain et les organisations religieuses. Ces relations ont été exprimées dans la Constitution roumaine et dans la loi 489/2006; notons que dans la dernière, le principe de l'autonomie extérieure n'a pas été confirmé et appliqué de la même manière que précédemment.

**Mots clés:** relations Église-État, doctrine canonique orthodoxe, liberté religieuse, codes canoniques

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Dall'autonomia della Chiesa dei tempi dell'Arcivescovo Andrei Şaguna  
fino all'autonomia delle organizzazioni religiose nel diritto romeno  
Riflessioni ecclesiologico-canonistiche

Sommario

Uno dei principi canonici fondamentali della Chiesa Orientale, ossia il principio dell'autonomia (esterna), fu consolidato e applicato dall'Arcivescovo di Transilvania Andrei Şaguna. Tale principio definisce, attraverso le forme nelle quali si manifesta effettivamente, non solo i rapporti tra la Chiesa e lo stato ai tempi di Andrei Şaguna († 1873), Metropolita della Chiesa Ortodossa di "Ungheria e Transilvania", ma anche i rapporti contemporanei tra lo stato romeno e le organizzazioni religiose. Tali rapporti sono stati espressi nella costituzione romena e nella legge n. 489/2006 anche se nel contenuto di quest'ultima il principio dell'autonomia esterna non è stato confermato e applicato nello stesso modo in cui ebbe luogo originariamente.

**Parole chiave:** rapporti Chiesa-stato; dottrina canonica ortodossa; libertà religiosa, codici canonici