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## INTERFERENCES BETWEEN MORALS AND LAW IN ROMANIAN CONTEXT

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### ABSTRACT:

*IN THIS ARTICLE, AUTHOR PRESENTS THE WAY HOW, DURING THE HISTORY, MORALS AND LAW INTERFERED IN ROMANIAN CONTEXT AND SHOWS HOW IN DIFFERENT MOMENTS OF HISTORY, CHURCH WAS THE ONE WHICH, THROUGH THE MORALS ALSO CONTROLLED THE CIVILE LAW. IT ALSO EMPHASIZES THE PROCESS OF DEVELOPMENT OF CIVILE LAW AND ITS SEPARATION FROM THE MORALS IN THE HISTORY AND IT SPEAKS ABOUT THE CONTEMPORARY SITUATION, BUT ALSO ABOUT SPECIAL MOMENTS OF THE ROMANIAN HISTORY LIKE THE COMMUNIST PERIOD. AREAS LIKE POLITICAL THEOLOGY, MEDIAEVAL HISTORY, RELATIONSHIP BETWEEN CHURCH AND STATE AND FIRST ONE'S CONTRIBUTION TO THE APPARITION AND DEVELOPMENT OF MODERN STATE, ARE ALSO FACED THERE, INSIDE AN ARTICLE THAT AIM IS TO BE AN OVERVIEW OF THE WAY HOW MORALS, PRIVATE AND CIVILE LAW INTERFERED DURING THE CENTURIES AND INFLUENCED THE HISTORICAL DEVELOPMENT OF ROMANIAN SPACE. IN HIS DEMARCHE, THE AUTHOR USES INFORMATION PROVIDED BOTH BY HISTORICAL, THEOLOGICAL OR LAW SOURCES, BUT IT DOES NOT NEGLECTS OTHER SOURCES THAT, AT LEAST PARTIALLY, APPROACH HIS TOPIC.*

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**KEY WORDS:** PRAVILA, CHURCH, STATE, SECULARISATION, ALEXANDRU IOAN CUZA, SECULAR STATE.

### INTRODUCTION

Morals and law have been, since the ancient times, important elements of the social life. While the first one was used in the religious space,<sup>2</sup> the other one is relevant for the social order and for aspects like social justice or the life and organisation of a state. If the first one uses principles and is related with religion and intrinsic motivation,<sup>3</sup> the other one offers a pack of rules and is also related with a coercive system that sometimes uses punishment for correction of behaviour with negative social effects.

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<sup>2</sup> Dumitru Stăniloae, *Teologia Morală Ortodoxă, vol. III [Orthodox Moral Theology, 3rd volume]*, (Bucharest: Press of Biblical and Missionary Institute of Romanian Orthodox Church, 1981), 14.

<sup>3</sup> Ştefan, Ştefan, *Morala Creştină şi Etica Postmodernă. O Întâlnire Necesară [Christian Morals and Postmodern Ethics. A Necessary Encounter]*, (Cluj-Napoca; Cluj University Press, 2009), 20.

But despite of these differences, there must be said that, in the history<sup>4</sup>, there were many moments of interference between the two ones. Therefore if one takes a look on the Byzantine history, will surely see that there were moments when law was seen as practical extensions of morals,<sup>5</sup> fact that explains why even the religious life developed a branch deeply related with juridical rules, offered so much to the canon law or influenced the publication of some juridical documents like Justinian's *Eclogue*<sup>6</sup> or the later legislative Byzantine documents. A similar situation can also be encountered in the Western space, where the relationship between law and morals will be also visible during the Middle Age.

Conscious of this fact, we will try there to speak about the interferences between morals and law in the Romanian context. Placed in the Eastern Europe, Romanian lands have been since the formation of the Mediaeval Kingdoms that were later united in the contemporary country,<sup>7</sup> at the crossroads of powers like the Ottoman Empire, the Russian or the Austro-Hungarian one. This explains why, while in Moldavia and Wallachia there is a law tradition with a strong Byzantine influence, whose evolution was also related with the history of the Orthodox Church, in Transylvania, there was a different approach, with a smaller Church influence. In order to see how the morals have influenced the development of the law and which were the main points of interference between the two aspects during the history, we will use there books dedicated to the history of the law<sup>8</sup>, history of the Church<sup>9</sup>, canon law<sup>10</sup> and other similar topics. While the influence of Byzantine law on the Romanian context have also been previously investigated,<sup>11</sup> we will also try there to not neglect this topic and to bring into debate its most important aspects.

The presentation will try to emphasize the dynamics of this interference between morals and law from the medieval context and until nowadays, when there is a separation between Church and state and moreover, due to a misunderstood manifestation of secularism, often regarded as a problem of political theology<sup>12</sup> the first one is often considered as being too conservative and therefore sent out from the table of public debates.

<sup>4</sup> Flavius Cristian Mărcău, Mihaela Andreea Ciorei, "The role of intelligence in the fight against terror," in *European Scientific Journal*, IX (2013), no. 2, p. 1-11

<sup>5</sup> Helene Arhveiler, *Ideologia Politică a Imperiului Bizantin [Political Ideology of The Byzantine Empire]*, (Bucharest; Corint Press, 2002), 42; Ioan Bitoleanu, *Introducere în Istoria Dreptului [Introduction in Law History]*, (Bucharest: Press of Tomorrow's Romany Foundation, 2006), 38; Stelian Brezeanu, *O Istorie a Imperiului Bizantin [A History of Byzantine Empire]*, (Bucharest: Albatros Publishing House, 1981), 5; A. A. Vasiliiev, *Istoria Imperiului Bizantin [History of Byzantine Empire]*, (Iassy: Polirom Press, 2010), 18.

<sup>6</sup> Avram Andea, *Sintează de Istorie Bizantină [Synthesis of Byzantine History]*, (Timișoara: Mirton Press, 1995), 105.

<sup>7</sup> For more information about this aspect, see: Ioan Aurel Pop, *Istoria Românilor [History of Romanians]*, Bucharest, Cluj, Chișinău, Litera Press, 2011).

<sup>8</sup> Mihai T. Oroveanu, *Istoria Dreptului Românesc și Evoluția Instituțiilor Constituționale [History of Romanian Law and the Evolution of Constitutional Institutions]*, (Bucharest: Cerna Press, 1992); George Fotino, "Ce Este Dreptul Românesc? [What Is the Romanian Law?]," in *Analele Facultății de Drept din București*, 12 (1939), no. 1: 174-201.

<sup>9</sup> Ioan Rămureanu, *Istoria Bisericească Universală [History of Universal Church]*, (Bucharest, Press of Biblical and Missionary Institute of Romanian Orthodox Church, 2004); Nicolae Chifăr, *Istoria Creștinismului, Vol. II [History of Christianity, Second Volume]*, (Iassy: Trinitas Press, 2000).

<sup>10</sup> Ioan Floca, *Drept Canonic Ortodox. Legislație și Administrație Bisericească, Vol. II [Orthodox Canon Law. Church Legislation and Administration, Second Volume]*, (Bucharest, Press of Biblical and Missionary Institute of Romanian Orthodox Church, 1990).

<sup>11</sup> Iuliu-Marius Morariu, "Receptarea Dreptului Bizantin în Țările Române [The Reception of Byzantine Law in Romanian Countries]," in *Cetatea Culturală*, 14, (April 2013), no. 4: 81-88.

<sup>12</sup> Iuliu-Marius Morariu, "Aspects of political theology in the spiritual autobiography of Dag Hammarskjöld," in *HTS Teologiese Studies / Theological Studies*, 74 (2018), no. 4: 1-5; Iuliu-Marius Morariu, "Aspects of political

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According to the *Statute for the organization and function of Romanian Orthodox Church*,<sup>13</sup> which is the majoritarian church in the Romanian space (with more than 86 per cents of faithful), nowadays, between state and Church there is a clear separation. During the history it has not always been the same. Being a *Byzance after Byzance*,<sup>14</sup> the Romanian space known, as already mentioned, especially in Wallachia and Moldavia, strong Byzantine influence.

Therefore there, the first documents with juridical value had a religious influence. This explains why, especially during the Middle Age it is difficult to separate the civil law by the religious one and why in many cases the motivations of a law from the lay space is religious. In an attempt to offer an overview of the canonical and juridical documents released in this space in the aforementioned period, but also to show which was the Greek contribution in this area, a contemporary Romanian canonist shows that:

"Between the collections of laws (names) of the Romanian-Byzantine state and the collections of canons (canones), especially in the form of nomocanones that circulated on the Romanian space, the following were kept as Greek, Slavic and Romanian manuscripts: Alphabetical Syntagm of Matei Vlastaris (1335) - (translated into Slavic language in 1345 or 1348); The Teachings of the Holy Fathers; The nomocanon of Manuil Malaxos (1563); The Law Manual or the Hexabibl of Harmenopulos (1345); Syntax of Jacob by Ianina (1645); The Canon of John the Postman; Byzantine agricultural law (8th century); The basilicals, etc.

The legal codes of Romanian-Byzantine origin used by the Romanians have always been adapted to the concrete situations, with the time appearing and a series of compilations, especially in the Romanian language, of which the following have been kept and are known: "Pravila of the priest and scholastic Luca (1581); Pravila of Father Toader from Lower Râpa (1610); Prava of the Holy Fathers of Codex Neagoianus (1620-1621); The spine of the people (17th century); Pravila in short choice (17th century - before 1632); and many other fragments kept in different libraries still not studied, kept in manuscript form."<sup>15</sup>

As it can be seen, it is even difficult to differentiate between religious and pure juridical documents. The "Pravils" were prepared as documents that regularise the life of the society, but they had a strong influence from the moral side. The same aspects can be seen also in other documents with juridical value, like the *Chronicals of Stephen the Great*<sup>16</sup> or *The advices of Neagoe Basarab to his son Teodosius*.<sup>17</sup> Moreover, in the Middle Age, in the two aforementioned Kingdoms, the bishops and priests had also juridical attributions, as

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theology in the spiritual autobiographies of the Orthodox space? New potential keys of lecture," in *Astra Salvensis*, 5 (December 2017), no. 10: 129; Maxim Morariu, "O Perspectivă Ortodoxă Asupra Fenomenului Secularizării [An Orthodox Perspective on Secularisation Phenomenon]," in *Altarul Banatului*, 16 (March-June 2015), no. 3-6: 76.

<sup>13</sup> Romanian Orthodox Church, *Statutul pentru Organizarea și Funcționarea Bisericii Ortodoxe Române [The Statute for the Organisation and Function of Romanian Orthodox Church]*, (Bucharest, Press of Biblical and Missionary Institute of Romanian Orthodox Church, 2008), 5.

<sup>14</sup> Nicolae Iorga, *Bizanț după Bizanț [Byzance after Byzance]*, (Bucharest: Romanian Encyclopaedic Press, 1972).

<sup>15</sup> Ioan N. Floca, *Din Istoria Dreptului Românesc, Vol. 1 [From the History of Romanian Law, First Volume]*, (Sibiu: Archdiocesan Press, 1993), 6-7.

<sup>16</sup> Stephen the Great, *Cronica lui Ștefan cel Mare – Versiunea Germană a lui Șchedel [Stephen's the Great Chronical- Schedel's German Version]*, (Bucharest: House of the Schools Press, 1942).

<sup>17</sup> Neagoe Basarab, *Învățăturile lui Neagoe Basarab Către Fiul Său Theodosie [The Teachings of Neagoe Basarab to His Son Teodosius]*, (Bucharest: Roza Vânturilor Press, 1996).

contemporary research shows.<sup>18</sup> If this was the situation in the Wallachian and Moldavian space, in Transylvania, things looked a little bit different. The "Pravils" were also used there,<sup>19</sup> but starting from the 16<sup>th</sup> century, they had relevance only for the Church space while in the civil life, the rules imposed by the authorities of the Transylvanian Autonomous Principate and later by the Austro-Hungarian or Habsburg authorities will be the normative ones for the lay space.

The emancipation of the law from morals will come later, in the 19<sup>th</sup> century. It will be Alexandru Ioan Cuza's secularization law<sup>20</sup> the one of the moments that will contribute to its initiation.<sup>21</sup> Still, the total separation between the two will come on 11<sup>th</sup> of July 1866.<sup>22</sup> This will be the moment that marks a definitive separation between moral and possible future practices with law or, in other words, between moral and an ideological interference with law. Adopted under the pressures of King Carol I, freshly installed as king of Romania, the document will have a big relevance not only for the future evolution of the country, but also for the context when it became its fundamental document. But it was a Constitution based on the French model. This explains the clear demarcation between State and Church and the individualization of juridical aspects by the moral ones.

The prerogatives of the state and the one of the Church, but also their relationships will be clearly defined there and in the later outcomes of the document like the Civil or the Penal Code. At the bureaucratic level there will be also changes. For example, if before the document released by Church authority is enough to justify a birth, marriage or a death, since then, in parallel with Church registers, the state will also initiate to have its own documents. Moreover, the Church will not be able anymore to officiate a matrimony without having an official document. Even later, when the Catholic Church will have a Concordat with the

<sup>18</sup> Constanța Vintilă Ghițulescu, *În Șalvari și cu Ișlic. Biserica, Sexualitate, Căsătorie și Divorț în Țara Românească a Secolului al XVIII-lea [In Șalvari and with Ișlic. The Church, Sexuality, Marriage and Divorce in the Romanian Country of the 18th Century]*, (Bucharest: Humanitas Publishing House, 2004); Constanța Vintilă Ghițulescu, *Evgheniții*, (Bucharest: Humanitas Publishing House, 2006); Constanța Vintilă Ghițulescu, *Focul Amurului. Despre Dragoste și Sexualitate în Societatea Românească, 1750-1830 [Fire of Love. About Love and Sexuality in the Romanian Society, 1750-1830]*, (Bucharest, Romania: Humanitas Publishing House, 2013); Constanța Vintilă Ghițulescu, *Patimă și Desfătare [Passion and Delight]*, (Bucharest: Humanitas Publishing House, 2015).

<sup>19</sup> Mircea Păcurariu, *Istoria Bisericii Ortodoxe Române [History of Romanian Orthodox Church]*, (Bucharest: Press of Biblical and Missionary Institute of Romanian Orthodox Church, 2006), 98.

<sup>20</sup> Antonie Plămădeală, *De la Filotei al Buzăului la Nicolae Bălcescu și Andrei Șaguna [From Philotheos of Buzău to Nicolae Bălcescu and Andrei Șaguna]*, (Sibiu: Press of Sibiu Romanian Orthodox Diocese, 1997); \*\*\*, *Secularizarea Averilor Bisericești (1863): Motivații și Consecințe - Simpozion Național, București, 12 Noiembrie 2013 [The Secularization of Church Fortunes – National Symposium, Bucharest 12th of November 2013]*, (Bucharest: Basilica Press, 2013).

<sup>21</sup> In 1863, the Prince of Wallachia and Moldavia, united in 1859, will decide to nationalise the fortunes of the most important monasteries from the two countries and to use the lands for starting an agrarian law, that aim was to help the peasants by offering them half of hectare of land for agrarian purposes. At that moment, most of the Romanian monasteries were dedicated to the Mount Athos or to the Holy Land. For this reason, the abbots were in majority Greeks and the use of the products of those lands (Monasteries like Voroneț had at that time about 50 villages belonging to them) were used by them. Cuza also intended a second phase of the law, that aim was to offer to the peasants also the tools needed to use properly the lands. Unfortunately, in 1866, he was sent into exile at Florence and did not succeed to accomplish his plan.

<sup>22</sup> \*\*\*, *Constituția din 1 Iulie 1866 cu Modificările Adunărilor Constituante din 1879 și 1884 după Edițiunea Oficială [The Constitution from 1<sup>st</sup> of July 1866 with the Changes of the Constituent Assemblies from 1879 and 1884 According to the Official Edition]*, (Bucharest: Press of the Bookstore Alcalay & Co, 1890).

Romanian state, during the interwar period (Moldovan 1942; Runcan 2000),<sup>23</sup> this aspect will remain the same and the topics stipulated there will be related with Church's possessions, educational system for clergyman and other aspects, not with making as it would be in Italy, the matrimonial document released by a priest, to have an official value for the state too.

During the communist period, there will be stipulated an official separation between Church and state.<sup>24</sup> In fact, the state will try as much as possible to eliminate Church (will also succeed to do it with the Greek-Catholic Church, partially with the Catholic one and will also persecute many Orthodox priests and bishops that were not thinking according to the "exigencies" of the regime. In this period, more than before, there will not exist anymore any interference between law and morals. The last one will not be anymore used to justify any legislative aspect, and the role played by the religion in the history will not be anymore emphasized in these decades. This can be surely considered the moment of total separation between morals and law, as the one of separation between Church and state. If in previous situations, documents like Nicodim Sachelarie,<sup>25</sup> normative for private law will define different law using moral criteria (for example, seeing matrimonial aspects in terms like "sin" and classifying them on basis of elements like the adultery), and some of these aspects will be invoked even later in the interwar period, in cases with ambiguity, during the communist one, this will not happen.

After 1989, although the Church will start to regain its place in society and the need for spiritualisation will become, at least in the first years after the fall of communism, an important and debated topic, morals will not be from now on considered normative for the society. Moreover, little by little, state will start to see the Church as a concurrency and with the help of other institutions seeking for credibility (like mass-media), will contribute to its diminishing. If before the 2000's, the similitudes regarding the morals and law or the role played by the Church or morals in development of a certain juridical aspect will be neglected, after this moment, the secular society will even start to criticise the religious institution and to see it as a promoter of old-fashioned or even anti-social ideas. Therefore, since this moment, the so called lay area or the scientific field will not only neglect the potential moral interferences between morals and law, but will also argue against them. This seems more strange in a context where the scientific discourse is always directed towards interdisciplinarity and the need to create bridges and holistic approaches.

One of the most visible examples and for sure the most recent one, can be considered the referendum for the sustaining of the traditional family, from 2018.<sup>26</sup> Promoted by a

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<sup>23</sup> Ștefan Moldovan, *Concordatul în Dreptul Internațional și Concordatul Statului Român cu Vaticanul [The Concordat in International Law and the Concordat of Romanian State with Vatican]*, (Sibiu: "Dacia Traiană" Press, 1942); Nechita Runcan, *Concordatul Vaticanului cu România: Considerații Istorico-juridice [The Concordat of Vatican with Romania. Historical and Juridical Considerations]*, (Constanța: Ex Ponto Press, 2020).

<sup>24</sup> For more information about the relationship between the Orthodox Church and communist state, see for example: Iulia Conovici, *Ortodoxia în România Postcomunistă. Reconstrucția unei Identități Publice, Vol. 1 [The Reconstruction of a Public Identity: Orthodoxy in Post-communist Romania, 1<sup>st</sup> Volume]*, (Cluj-Napoca: Eikon Press, 2009); Iulia Conovici, *Ortodoxia în România Postcomunistă. Reconstrucția unei Identități Publice, Vol. 2 [The Reconstruction of a Public Identity: Orthodoxy in Post-communist Romania, Second Volume]*, (Cluj-Napoca: Eikon Press, 2010).

<sup>25</sup> Nicodim Sachelarie, *Pravila Bisericească [Church's Rules]*, (Cernica: Credința Strămoșească Press, 1940).

<sup>26</sup> For more information about this event and its reception, see also:

[https://en.wikipedia.org/wiki/2018\\_Romanian\\_constitutional\\_referendum](https://en.wikipedia.org/wiki/2018_Romanian_constitutional_referendum), accessed on 22. 12. 2019;  
<https://www.libertatea.ro/stiri/referendum-pentru-familie-2018-2408195>, accessed on 22. 12. 2019;

coalition of the Christian Churches and denominations from the Romanian space, the initiative aimed to change the Constitution and to make it clear that the family represents the union between a man and a woman (it was so in previous constitutions, until its final revised version from 2011). Although it started from a Christian initiative and it has moral arguments, it was also relevant from the juridical point of view, due to its consequences in this area. Unfortunately, only 21 per cents from the ones who had the right to vote did it<sup>27</sup> and its results were invalidated. Strongly criticised by different political representatives as also by some non-governmental organisations and some of mass-media organs and deeply sustained by the Churches and some political parties or NGO's on the other sides, the referendum was often presented as a confrontation between the retrogrades values of the Church and the society or as a testimony of the abjuration of the Church itself from fundamental principles such as that of love or tolerance.

Most of its contesters refused to see the principles that were at the base of the demarche, while the sustaining Churches, most probably from an error of communication, presented it rather as a fight against the ones who are different then as a manifest for an aspect that can be seen in the juridical area since millennia (as in the moral area too). It is not the purpose of this research to present the intrinsic motivations of one side or other and therefore we will not insist there more on this topic. Still, one aspect is as clear as possible, namely the fact that the initiative represented a moment that proved that the moral is not anymore wanted to interfere with juridical space and a testimony that its influence towards the development of a clear way of thinking and understanding the law and offering complementary arguments in its understanding it is not anymore recognised or wanted.<sup>28</sup> As a moment where there can be seen the interference between the two important domains, the moment from 2018 surely emphasized the fact that although, morals and law are two different domains with different instruments of thinking and understanding the reality and different purposes, they can be seen in a complementary way and although if today the influence of morals towards law is not anymore recognised, in the past, it was a reality.

## CONCLUSION

As we have tried to show in the rows above, the relationships between morals and law knew, in Romanian space, a special dynamics. Therefore, in certain moments of history it was difficult to separate them and the law was rather considered as an outcome of morals than as an independent branch of science. Due to the fact that Romanian space was, as the most important historian from this space says, a "Byzance after Byzance,"<sup>29</sup> there can be found many byzantine influences there and the byzantine way of thinking can be also used in order to understand the civil and ecclesiastic mechanisms from Romanian Medieval space.

The later development of juridical life from the pre-modern and modern age, materialised in documents like the *Pravila's*,<sup>30</sup> knows also the interference of morals and law. Aspects of civil or private law are seen through the lengths of the morals or justified on its

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<https://www.vaticannews.va/ro/mapamond/news/2018-09/romania-referendum-pentru-familie.html>, accessed on 22. 12. 2019; <https://www.digi24.ro/referendum-familie-2018/referendum-schimbare-constitutie-redefinire-casatorie-familie-1008821>, accessed on 22. 12. 2019.

<sup>27</sup><https://www.digi24.ro/referendum-familie-2018/rezultate-finale-referendum-au-votat-2110-dintre-alegatori-1010305>, accessed on 22. 12. 2019.

<sup>28</sup>[https://ro.wikipedia.org/wiki/Discu%C8%9Bie:Referendumul\\_de\\_modificare\\_a\\_articolului\\_48\\_din\\_Constitu%C8%9Bia\\_Rom%C3%A2niei](https://ro.wikipedia.org/wiki/Discu%C8%9Bie:Referendumul_de_modificare_a_articolului_48_din_Constitu%C8%9Bia_Rom%C3%A2niei), accessed on 22. 12. 2019.

<sup>29</sup> Nicolae Iorga, *Bizanț după Bizanț [Byzance after Byzance]*.

<sup>30</sup> For example: Nicodim Sachelarie, *Pravila Bisericească [Church's Rules]*.

basis. If one takes a look on topics like the matrimonial law and its punishments in the aforementioned period, he will surely see that it is difficult to distinguish between sexual morals and matrimonial law.

The separation between the two ones will start, as we have already mentioned<sup>31</sup> with the first Romanian Constitution. The fact that the first constitutional Romanian document is based on the French one partially explains this aspect.<sup>32</sup> Still, the separation and the impossibility to see interferences between the two ones will become clear in the communist period. After 1989, there will be an increasing tendency not only to separate the two ones, but also not to show anymore the influence exerted by the first one on the second one and even a certain "fight" that will mark, with a certain delay compared with the Occident, the "exit from the religion."<sup>33</sup>

In conclusion, it can be said, as we have also tried to show there that, if the law is seen in the Christian mediaeval pre-states from Romanian space, as an outcomes of religion and morals, little by little, the interferences between the two ones will become more and more rare nowadays and the contemporary society will even try to deny the influences of morals on the law and to cancel the ones that are too visible.

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<sup>31</sup> \*\*\*; *Constituția din 1 Iulie 1866 cu Modificările Adunărilor Constituante din 1879 și 1884 după Edițiunea Oficială [The Constitution from 1<sup>st</sup> of July 1866 with the Changes of the Constituent Assemblies from 1879 and 1889 According to the Official Edition].*

<sup>32</sup> Due to the fact that in France the Constitution was an emanation of the Revolution and this moment of the history was marked not only by a separation between Church and state, but also by the rejection of the Church and its withdrawal from the state activities.

<sup>33</sup> Marcel Gauchet, *Ieșirea din Religie [The Exit from Religion]*, (Bucharest; Humanitas Publishing House, 2006).



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