UNIVERSITATEA LUCIAN BLAGA DIN SIBIU

Doctoral School of Social Sciences
Doctoral field: JURIDICAL SCIENCES (LAW)

PhD THESIS

SUMMARY

The emergence of parallel jurisdictions in Europe
- Religious courts and the pluralization of justice -

Doctoral student:
Emanuel-Pavel Tăvală

PhD supervisor:
Prof. Univ. Dr. Manuel Guțan

SIBIU

SUMMARY

In the 21st century, the interaction between law and religion has rarely been far from the headlines around the world. Researchers have paid increasing attention to international and national laws dealing with the religious element, extending attention beyond constitutional provisions on religion to explore human rights, the various types of discrimination, criminal law and other provisions affecting religious freedom, both individual and collective. Some attention has also been paid to the laws, rules and norms generated by religious groups themselves, which can be identified under the term "religious law"[1]. . However, most of this literature has focused on the interaction and compatibility of religious laws with international and national laws. Less attention has been paid to the study of religious law itself as systems of law parallel to systems of national or supranational law and the implications of these systems for civil or criminal procedural law. In addition, where such works have existed, they have tended to focus on a religious tradition in isolation. There are important works on Islamic law, Jewish law, Christian law and Hindu law, as well as works that focus on traditions within each faith.

However, until now, very little attempt has been made in European and Romanian legal literature to make a comparative study on the existence of legal pluralism and judicial pluralism determined by the existence and enforceability of religious law systems in European societies.

In contemporary liberal democracies, relations between state law and religions, both as belief systems and as sets of rules and institutions governing the lives of adherents, are characterised by certain tensions that are increasingly visible and require new approaches to new problems.[2] These tensions revolve around the constitutional principle of equality and involve an emerging body of anti-discrimination laws applicable to a variety of institutional behaviours and practices. The recognition of full personal autonomy that underpins life in modern liberal democracies can collide with religious norms on issues such as abortion, end-of-life decisions (euthanasia), marriage and its dissolution, best interests of the child, inheritance, etc. Modern liberal democracies are not always interested in, nor do they have moderate

[1] I prefer this more comprehensive and non-discriminatory name to the denomination of canon law (characteristic only of some Christian denominations) or the denomination of civil ecclesiastical law, which excludes canon law.

[2] Marie-Claire Foblets, Katayoun Alidadi, Jørgen S. Nielsen, Zeynep Yanasmayan (eds.), *Belief, law and politics: What future for a secular Europe?*, Farnham, Ed. Ashgate, 2014.

claims to, the religious beliefs of their citizens, recognising in principle the value of pluralism in society, despite laws that often bear the marks of a different past, and if we follow the thread of history, this past has religious foundations, and in the case of Europe these are Christian foundations. All modern liberal democracies, however, protect religious freedom, which is indeed an essential part of the constellation of freedoms that modern democracies generally seek to guarantee and uphold, yet the concept is not always understood in the same way or recognised to the same extent everywhere.

To put these issues in context, it is necessary to go back to the beginnings of modern states and what has led to the reshaping of the relationship between political authorities, law and religion that lies at the heart of modern religious freedom. The creation of modern states from the 16th century onwards in Western Europe took place in the midst of bloody wars, bitter battles and controversies that marked the Christian world. We can start here with the French situation, which would set the tone for much of the later continent, and we will see that it is emblematic to this day, taking as our point of reference the ideas of a pre-liberal French thinker, Jean Bodin (1530-1596), whose great political and philosophical work on sovereignty, Les Six livres de la République, published in 1576, marked a turning point in the philosophical and political vision of the age and beyond.

Bodin's views sparked opposition, which condemned the work as a defence of religious pluralism. To refute the arguments, Bodin accepted that religion remains a source of legitimacy for state power. Having conceded this, he also argued that even a false religion can contribute to maintaining peace in a kingdom, according to him, repression is not an effective strategy in such matters, as it is defeated by itself, since violence will breed further violence.

This line of argument is linked to a broader theme, namely the possibility of strengthening the authority of the state by limiting its jurisdiction and placing constraints on its actions. One of the implications of this reasoning was that Christian kings must also keep their promises to non-Christians, an assumption that has been crucial in the formation of modern liberal democracies as well as in laying the foundations of an international society in the period since, just as in contemporary times we realise that migration has brought about a change in the European confessional landscape, which is now facing Islamisation in the West - a situation that each state deals with differently. This position on the relationship between political

authority and religion has been accompanied by a theory of law that has been associated with positivism. Bodin argued that voluntas, not veritas, facit legem. This doctrine operated in a society divided into factions, where endless disputes and battles were about precisely what reason or religion demanded. However, Bodin was careful not to overstate what legislation based solely on sovereignty could achieve, noting that custom and custom set limits on sovereign commands and sovereign authority.

Legal positivism thus emerges as a first response to the problem of how to establish authority in a divided society, but realism concludes that civil laws can govern society only to the extent that coercion is not used every time they need to be applied. The leading theorists of modern sovereignty, such as Thomas Hobbes, were acutely aware of this aspect of religious dissent and the dangers associated with it for political order and state authority. But, to be true to Hobbes, his arguments did not just apply to religious dissent. Hobbes also pointed to other factors - secular factors - as a source of problems for the stability of governments, such as the rhetoric based on readings of the classics that prevailed in his time in the universities.

According to Hobbes, the basic decisions that individuals should be able to make regarding the choice between submitting to sovereign powers or suffering the consequences of disobedience, including death, do not necessarily lead to the former being chosen over the latter. Surprisingly, contrary to the instinct of self-preservation, one may choose death over violating religious precepts or betraying a particular (cultural) ideology, simply because personal choices are shaped by opinions and beliefs, and the prospect of death may in some cases be more attractive than life without dignity or condemnation, especially if death promises salvation. Ultimately, as Hobbes makes clear, even political power depends on opinion, for the powers of the powerful have no foundation other than in the beliefs and opinion of the people. Therefore, even when not backed by force, as Hobbes properly noted, words and breath have enormous political impact. The lesson is that force alone fails to persuade, it is political realism that suggests that legal positivism is hollow if public opinion is dominated by passions that can completely destroy respect for the common good and authority, whether religious or secular passions.

The arguments discussed above regarding the problems that legal positivism has when confronted with rules of conduct based on religious beliefs raise a number of questions precisely in order to approach the subject of our research. I will try to

summarize them as follows: Are these rules in any sense different from other normative or cultural manifestations that enter the public sphere and govern social interactions? Does the public regulation of conduct consistent with religious beliefs pose a special challenge compared to the public regulation of other behaviors that face state authority?

Some religions regulate more strictly the truth of faith, the internal rules of the denomination and the behaviour that believers must respect. On the other hand, contemporary states were formed under different historical conditions, and therefore the governments of these states have to take into account disparate dynamics and forces when deciding what policies to implement, especially when these policies concern the religious sphere or collide with certain religious precepts (as we have also shown above). Even liberal democracies in Europe do not all share the same stance towards behaviour inspired by religious precepts in the public sphere, as we have sought to show in the second chapter of this paper. Therefore, the different historical and institutional paths of state formation result in different constitutional settings and governmental policies regarding religious matters. In addition, history shows that both civic and religious obligations can change over time, even within a single state, with respect to the same religion. Generalizing the relationship between state law and religious norms is impossible without considering the temporal dimensions of the comparisons and how these concepts are interpreted over time and in different places.

This paper deals with the interaction between religious norms and state law from the perspective of legal pluralism, but also from the perspective of the judicial pluralism brought about by the existence of the former. This issue can be approached from different angles. It will examine how the recognition of religious norms by the state can affect the degree of legal diversity available to citizens and how this legal diversity also leads to or entails judicial diversity in the form of the possibility of recourse, in specific situations, to the religious courts recognised and operating in each of the states studied. I am aware that religious norms and state law are two normative systems, among many others, and their interaction cannot be fully understood outside this broader horizon. As incisively pointed out, "the existence and interaction of multiple written and unwritten normativities in a given social domain, their differentiated extent, their spatialization and temporalization, and the worldviews

in which they are embedded"[3] must be carefully considered in order to make sense of today's global pluralism. However, as any legal anthropologist knows, focusing on one part can help shed light on the whole mosaic, provided that the part under analysis is not confused with the whole. In this particular case, focusing on the intertwining and interaction between state law and religious norms can help answer two questions.

First, it can be seen that opposition to political power and state law based on religious grounds is notoriously difficult to overcome or overturn for a number of reasons, including the possibility that many religions appeal to beliefs about a world of eternity, or a supernatural world, to take a stand on every aspect of social life. This remark seems to imply that the transcendence of religious norms gives them particular force over state law, but we shall try to clarify this below. **Second**, researchers debate whether and how the bond of citizenship can be reconciled with the bonds that derive from adherence and membership of a religion and, in particular, whether religion should be considered distinct from other cultural phenomena in this respect. This question is linked to the relationship between equality and religious freedom, i.e. the question of how the equal treatment of those belonging to a religious community or assuming a particular religious identity, in the classical sense of the word, and believers of different religions can be reconciled with respect for the different beliefs and practices related to each religion or non-religious worldview. The data and information contained in the second chapter of this paper will provide the material on which the answers to these two questions are based.

There is a growing consensus that legal pluralism is on the rise around the world. Although the expression legal pluralism can have many different meanings, as will be shown in the first chapter of this paper, it is generally argued that legal centralism (a system based on the state's monopoly on law) is now being challenged (in the sense that society is tending towards plurality which implies a renunciation of pluralism) and that, as a consequence, state legal systems are becoming or are being forced to become (more) pluralistic.

Support for this conclusion comes from various quarters. Jurists point to the extension of human rights provisions to states and the limits imposed by international

---

[3] Martin Ramstedt, „Anthropological perspectives on the normative and institutional recognition of religion by the law of the state", în Rossella Bottoni, Rinaldo Cristofori, Silvio Ferrari (eds), *Religious rules, state law, and normative pluralism – A comparative overview* , ed. Springer, 2016, p. 57.

law on state sovereignty; anthropologists point to the growing importance of customary law and the rights of indigenous peoples; sociologists note that mass migration has increased cultural, religious and therefore also legal diversity; economists point to the impact of financial globalisation in reducing the independence of states in economic matters and in weakening them in relation to transnational corporations; political scientists look with interest at the decentralisation of nation states and the transfer of law-making power from central authority to local and regional entities, but all conclude that legal pluralism is an inevitable consequence of these processes.

The introduction to this paper will focus on the following questions: should this development be welcomed as a recognition of individual and collective freedom or should it be perceived as a threat to the equality of citizens before the law; should it be interpreted as a manifestation of the inclusion of diversity in the social fabric or as a step towards segregation and social unrest? Should it be understood as a way of allowing citizens to manage their lives according to their own choices? These are very generous questions, to which no clear answers can be given, even in a doctoral research such as the present one (although we have tried, as will be seen from the following chapters), without taking into account the historical and cultural context of each country. However, it is possible to identify some conditions that the legal systems of different countries should meet in order to achieve a positive outcome from this process.

These questions will be addressed through an examination of religious law, i.e. the rules which, for reasons that have not yet been determined, are considered different from state rules, especially in those legal traditions that have been more strongly influenced by the Christian religion. Since the latter are frequently identified with state law, religious laws are seen as a challenge to the monopoly of the rule of law. First, we will need to see what can be understood by religious norms; second, I will identify the tensions between religious and secular/state norms; third, I will examine the different types of religious and state norms, strategies and instruments implemented and used by states to regulate these tensions, thus returning to the questions posed earlier in this section and placing the research under clear auspices from the outset.

What conclusion can be drawn from these brief observations?

Religious norms cannot be defined in a comprehensive, clear and precise way, because religion itself (its nature, its content, its characteristics) cannot be defined abstractly in terms of the cultural framework of which it is a part. This conclusion does not mean that we cannot understand what religion and religious norms are: it means that the understanding we have is inevitably embedded in history and culture, and is dependent on these factors. Specifically, while there are a number of rules that are considered religious in many cultural and geographical regions of the world, there is an equally large grey area in which the distinction between religious and non-religious rules depends on the cultural traditions prevalent in a particular part of the world and at a particular time. The indication that follows from this conclusion is that we must apply a rather broad and comprehensive criterion, qualifying as religious rules all the commandments and exhortations [...] postulated by manifestations of faith which may or may not be related to traditional religions (such as Christian denominations or Judaism), but which play, in people's lives, a role similar to that played by traditional religious commandments.

Given the very different and heterogeneous situation at European level, this concept is best suited to the dynamic nature of religious phenomena and, by encouraging the inclusion of different religious experiences and manifestations, is best suited to the requirements of neutrality on the part of the law and the state in an increasingly plural and diverse social environment.

As will become clear from the present research, the generalised tensions between religious norms and state law have no recognisable pattern: tensions arise in different areas of the relationship between religions and the state and do not depend on variables such as the existence or absence of a system of religious jurisdiction or personal laws based on religion. These tensions may have different manifestations depending on the national historical context and legal systems, but they affect secular and religious persons equally, as well as states with different religions. It is therefore natural to ask whether religious norms have certain structural features that may help to explain these tensions with state rules. I am aware that this is a dangerous question, which could easily be seen as vitiated by an essentialist approach.

However, labelling the question as one of essentialism and dismissing it without further consideration is not the most appropriate decision. I am not arguing that the tensions between religions and state norms can be explained by referring

exclusively to their different essence or nature, but I believe that the particularities of religious norms cannot be ignored when considering the different historical, social and cultural aspects that explain the specific manifestations of each country. Two examples may be useful to elucidate this statement.

This tension stems from the fact that most state laws have a territorial scope, while most religious norms have a personal scope. Religious rules follow the member of the religious community wherever he or she may be, from their point of view, national borders being irrelevant. By contrast, state norms do not apply across state borders, except in limited and carefully circumscribed cases. Of course, there are exceptions to this rule on both sides: Islamic law knows the difference between dār al-Islām and dār al-Ḥarb, and in certain circumstances, Mosaic law can be applied to Jews living outside Israel.

However, the exceptions mentioned above are limited in scope and do not affect the general validity of the principle that religious laws, like human rights law, are capable of transcending the law of the land and surviving the crisis of traditional law. This personal-territorial tension is an old one. In nineteenth-century England, Catholics were called 'Papists' (just as in the Roman Lands or medieval Transylvania) because they were subject to an authority, the Pope, who lived outside the state: consequently, they could not be fully trusted as citizens of that state, and their political rights were limited. Something similar happened in France, where the most conservative Catholics were called ultramontanists, because they sought direction beyond the mountains (the Alps) to the Roman Pontiff. After the First World War, this distrust waned, but has recently revived, as many European countries, anxious about their Muslim citizens or residents listening to fatwas pronounced in Mecca or other sacred spaces in the East, tend to regard this behaviour as a threat to national security. The same is also true of some predominantly Muslim states in North Africa and the Middle East. Arab Christians are viewed with suspicion by part of the Muslim population who consider it impossible to be truly Arab without being Muslim.

For a long time, this tension was successfully regulated by the secularisation of the state legal system and, in a small number of cases, by the instruments offered by private international law. Now, the secular character of the state is increasingly called into question and the instruments of private international law are becoming less and less effective, because the people giving rise to these tensions are no

longer foreigners but citizens. Nation states are looking for new instruments to protect social cohesion, which is threatened by the ability of major religions to transcend national borders and provide citizens of different states with a supranational bond and identity. But governments vacillate between two different strategies, reaffirming the exclusivity of state law as a way to recreate a strong national identity or adapting religious laws within the state legal system as a way to domesticate religions and exploit their new power for the benefit of the state. How much space is left for the application of religious norms in state law depends on the choice between these two strategies.

The second point of tension reaches an even deeper level, as it directly questions the foundation of the right itself. The problem was already highlighted more than a century ago by Max Weber, who pointed out that it is impossible to completely rationalise religious rules. This is because their source is attributed to an authority outside and at the same time superior to human beings, and in the legal systems of most religions there is a set of basic rules that cannot be explained in a purely rational way. The strength of this set of rules does not lie in their ethical or rational basis, nor can they be explained by reference to tradition and custom alone, but they are observed simply because they are dictated by the deity (for some religions) or rooted in the cosmic order (for others).[4]

1. Community-oriented strategies

A first set of strategies focuses on the rights and obligations of the group, with the community taking centre stage and the rights and obligations assigned to the group. Individual rights may be limited as a consequence of group membership, and the emphasis is more on respecting religious diversity than on protecting the equality of citizens regardless of religious belief. Examples of this will be found in the analysis of the situation in national spaces reflected in chapters two and three of this research.

Minority rights, for example, can take different forms, based on the idea that religious minorities are entitled to a set of rights designed to compensate for the disadvantages inherent in their minority status. A prime example is provided by Greece, where the Muslim community living in Thrace enjoys certain privileges

[4] Asher Maoz, „The application of religious law in a multi-religion nation state: The Israeli model", în Rossella Bottoni, Rinaldo Cristofori, Silvio Ferrari (eds), *Religious rules, state law, and normative pluralism – A comparative overview* , ed. Springer, 2016.

relating to family law and, to some extent, inheritance law. Disputes on matters relating to these issues are settled on the basis of Islamic law and are assigned to the jurisdiction of the religious leaders of the Muslim community. In the case of Greece, minority rights have been granted through international law instruments, the status of the Muslim community in Thrace being defined in the Treaty of Lausanne, concluded in 1923. The special regime for the Muslim community in Thrace was largely imposed on Greece as part of a wider agreement on the definition of borders with Turkey after the collapse of the Ottoman Empire. This explains the exceptionality of the Greek case, as protection systems for religious minorities are unusual in Western European countries. What we will note from the analysis of the last two chapters is that we cannot identify a situation similar to that of Greece arising from national constitutionalism at European level.

However, minority rights systems are not free from criticism. In particular, they are sometimes criticised for fostering segregation and preventing the consolidation of a tradition of shared citizenship. These criticisms are based on the belief, strongly rooted in post-World War II declarations, that recognition of individual rights is sufficient to give members of minorities all the freedoms they need. In line with this approach, Article 27 of the 1966 International Covenant on Civil and Political Rights addresses the issue of minority rights in terms of the rights of individuals belonging to a minority, without considering minorities as subjects of collective rights. It is only in the last 20 years that this individualistic perspective has been partly balanced by the recognition that states have an obligation to protect the existence and identity of minorities, but this protection has been much more effective with regard to racial minorities than religious minorities. In conclusion, although the issue of minorities has gained importance since the last decade of the 20th century, minority rights have never become the main instrument for the protection of religious minorities, whose problems have been and are still largely addressed through general provisions on religious freedom.

2. Individual-oriented strategies

The legal systems of most of the countries analysed here are individual-oriented, in the sense that the focus is on the individual, whose rights to religious freedom and equal treatment are granted by the state. This does not mean that collective rights are unknown in these legal systems. However, they do not have a

central position, so that religious affiliation has a limited impact on the definition of the legal status of citizens.

In the presentations throughout this work, the claim that there is no personal law system based on religious affiliation is recurrent. This statement is essentially correct, but it does not mean that a citizen's religious affiliation is completely irrelevant in defining his or her rights and obligations. For example, as will be seen in the situation of Portugal, the state pays great attention to the personal religious affiliation of citizens, allowing a certain degree of choice of opposable law in relation to marriage, meaning that citizens belonging to certain faiths can celebrate religious marriages recognised by the state, while members of other religions are obliged to celebrate a civil marriage, a religious marriage being impossible or devoid of civil effects. The same system, with some variations, is in force in Italy, Spain and other countries, as was also the case in Romania until Cuza's reforms. In Italy, only pupils who are members of the Catholic Church have the right to attend religious classes in public schools, while pupils belonging to other religions do not enjoy this right, but can only benefit from religious classes if a number of conditions are met, just as, in the United Kingdom, only a member of the Anglican Church can become head of state and therefore head of the Church. Therefore, the assertion that there is no system of personal law in force in these countries must be understood in the sense that there is no substantial and coherent set of rules covering a whole field of legal relationships (family, inheritance, etc.) which apply to citizens according to their religious affiliation.

A similar remark can be made with reference to religious court systems that presuppose judicial pluralism. In this case too, the presentations in the following chapters state that the state legal system does not attribute formal jurisdiction to religious courts, it must be qualified. Thus, in Austria, for example, the appointment and dismissal of professors at Catholic theological faculties (which are part of the state universities, through the withdrawal of the missio canonica) is decided by the competent Catholic bishop, and professors have recourse only to the ecclesiastical courts. In a number of countries the decisions of Catholic courts on the nullity of marriage have civil effect in the state legal system, without any judicial review by the state courts or on condition that they are confirmed by the competent state courts (as in Italy, Spain and Portugal). In England and Wales, the courts of the Church of England which adjudicate on matters falling within the scope of the Church's

jurisdiction are at the same time state courts, whereas in the Greek peninsula of Mount Athos, minor criminal offences and misdemeanours are judged by ecclesiastical bodies. In general, the courts in many countries are inclined to affirm the exclusive jurisdiction of religious courts in matters concerning relations between members of a religious community, such as the excommunication of a member or the dismissal of a priest by the competent religious authority.

As in the case of personal laws, the absence of a system of religious courts must be understood in the sense that there are no religious courts with general jurisdiction in a particular area of law, not in the sense that there are no cases in which the decisions of religious courts have effect in the legal system of the state.

A second difference between community-oriented and individual-oriented legal systems is demonstrated by the implicit role played by state law. As a rule, states following the latter trend have established a default mechanism that is available to citizens of any (or no) religious faith, in all of which, for example, it is possible to enter into a civil marriage that is accessible to all citizens, including those who have the option (but, under state law, not the obligation) to enter into a valid religious marriage in accordance with their religious affiliation.

At the end of these observations, one question remains unanswered: how do the countries in this second group address the need for recognition of the legal pluralism that derives from the increasing religious diversity of their populations? They do not make use of minority rights, personal laws or religious courts. What legal instruments are put in place instead? To answer this question, we need to identify the main reason behind the rejection of these models of regulating state-religious relations. They are not unknown in the history of these countries, most of which have a long history of personal statutes, religious courts and special laws for religious minorities. But these have been progressively abandoned in connection with the strengthening belief that religious freedom can be better granted through equal treatment of citizens than through legal recognition of diversity based on religion.

Similar observations can be made when we move from the field of legal pluralism to that of judicial pluralism. While rejecting the work of religious courts, some states accept religious arbitration as part of their dispute resolution system, in which case a religious body can act as a mediating body in relation to matters that can be mediated under state law, such as wills in England and Wales.

Religious norms have a stronger position in the legal system of the state when internal autonomy and self-determination of religious organisations are at stake. Most states in this group generally recognise the right of a religious organisation to apply its own rules in legal relations taking place within the religious organisation itself or within institutions owned or administered by the religious organisation and, as already mentioned, most state courts recognise the jurisdiction of religious courts in this area, sometimes with certain limitations (see Greece, Romania, etc.).

In conclusion, it would be wrong to say that States belonging to this second group are unaware of the rules concerning personal laws and religious judicial activity. But it is correct to say that these rules do not have the scope and force that personal laws and religious judgement have in the countries of the first group. These laws and judicial systems are at least unusual legal instruments in a context dominated by the equality of citizens and the irrelevance of religious affiliation in defining civil and political rights.

After presenting these introductory aspects that anchor us better in the research topic, we realize that, in a world marked by rights and freedoms, globalization and migration, pluralism and ultra-modernity, tackling a topic dealing with the religious element at a law school is no longer perceived as a reckless or meaningless gesture. However, and especially in the context of the deprivation of religion[5] or the manifestation of a secularism that leads to the ignoring of all that is related to the religious element in society, tackling a res mixta topic only draws attention to existing and sometimes ignored legal realities.

Justification of the topic (scientific relevance)

The topic of the present research is a long-standing personal concern, which has been deepened over time, and now developed and expanded with the broadening of the spectrum and horizon determined by the interaction with people concerned with this topic, as well as by going through an appropriate volume of literature (literature covering these issues both nationally and internationally). It is easy to see the concern of researchers on this topic, given the challenge that the existence of these courts poses at European level and the implications. What has

[5] Jose Casanova, „The Secular and Secularisms”*,* în *Social Research,* vol. 76, no. 4, The Religious-Secular Divide: The U.S. Case, winter 2009, pp. 1049-1066, aici p. 1053.

prompted further research and investigation has been both the history and evolution of these courts and the criticisms levelled at them. Thus, if we refer here to the situation in Romania, for example, we can see sustained criticism from academics or those who have been held accountable by these disciplinary bodies, whose authority has subsequently been challenged before the Constitutional Court.[6]

At the European level, the interest shown in this topic is growing due to the phenomenon of migration, which is causing a social and religious paradigm shift, and this is evident from the research carried out (generally at the national level) in order to discover (being at this stage) how great has been the impact of these courts over the centuries for the history of law in each country, as well as to highlight their character and activity today.

Thus, we could identify a concern limited, however, to the situation in Great Britain by Russell Sandberg, who approaches the situation of religious bodies in terms of the multiple identities existing on a given territory, creates the concept of common governance in a contemporary and applied sense, but does not take the discussion in the direction of the work of historically based bodies on national territories. Also in this direction, but from the perspective of minorities seeking to assume and affirm their legal identity, are the writings of A. Shachar (see, for example, Multicultural Jurisdictions: Cultural Differences and Women's Rights) or M. Malik, with approaches specific to the Western space. The work coordinated by Richard Potz and Wolfgang Wieshaider (Jurisdictions religieuses et l'Etat) at the University of Vienna provides some information characteristic of the European Union, but does little to anchor the reality of the courts in the sphere of legal culture and legal pluralism.

What led us to choose this research topic is the fact that at the moment the writing in this field is either strictly theological (see bibliography), or of a strictly legal nature, or material containing completely erroneous information coming from a lack of knowledge of the principles governing these aspects of res mixta (see, for example, M.C. Barbu, D. Barbu, "The possibility for Orthodox clergy to exercise their rights as

[6] See the article by Gabriela Cristina Frenţiu, "Competence to settle actions brought against disciplinary sanctions applied to the staff of religious cults", in Dreptul, no. 10/2008, pp. 56-77, in which the author presents all these aspects in a truncated manner without a minimum of information and documentation on the jurisdictional competence of the courts of religious cults that operate on the basis of the principle of the autonomy of cults established in national and international legislation in this field. In the same situation is the material: Mihail Barbu, Dana Barbu, "The possibility of Orthodox clergymen to exercise their rights as subjects of procedural law by virtue of new normative acts", in Noua Revista de Drepturile Omului, Nr. 2/2008.

subjects of procedural law under new normative acts", in New Human Rights Review, no. 2/2008, pp. 28-47). Only recently, a study on the activity of the courts of justice of the cults and disciplinary authorities by the magistrate Mihail Stănescu-Sas has appeared in Romania, which approaches the subject from the perspective of the principle of the autonomous organisation of the cults, this principle being the subject of his doctoral research. Therefore, what we want to show is that the situation in Romania is not unique in Europe, neither from a historical nor from a present perspective, but that it is integrated into the European reality, and that legal and jurisdictional religious pluralism is topical and poses challenges even for the future.

As for the literature on which the research was based, it differs according to the chapter. Chapter I is mainly based on studies, articles and works in foreign languages, given that the theme of legal culture and legal pluralism has not been a particular concern in the Romanian area. We start from Andrei Rădulescu's studies in his volume Pagini din istoria dreptului românesc (Pages from the History of Romanian Law)[7], from which we see how legal culture was perceived in the second half of the 20th century, with the emphasis on the manifestation of culture through customary and written law or through legal education, with a strong emphasis on the law faculties in Romania. Thus, the author perceives and presents legal culture in these two studies, rather through the perspective of its sources, of the sources that determine the formation of social legal culture, and what justifies us to state this is the fact that Rădulescu analyzes the formal sources of law as sources of culture. The author tries to go further in the direction in which European thought had already been going for some time, but concludes, remaining within the sphere of the analysis of sources, that, although original, Romanian legal culture is not sufficiently researched and highlighted.

Starting from this existing literature in the Romanian space, I wish through this research to show that we cannot talk only about legal culture without analyzing the phenomenon of legal pluralism, the latter being a reality, including in the Romanian space. Legal pluralism with its various forms of manifestation, which we will present and analyse, will create a different perspective on the legal system, on state centralism, finally leading us to meditate on the concept of multiple monoculturalism

[7] Andrei Rădulescu, Pages from the History of Romanian Law, Ed. Academy of the RSR, Bucharest, 1970. These are the studies "Romanian Legal Culture" (pp. 71-79) and "Legal Culture in the Last Century" (pp. 80-95).

as a form of manifestation in the current European society of those who belong to legal subcultures different from the state legal culture.

As regards the second chapter of the present research, the basic sources were the volumes of national studies and reports edited by Professor Gerhard Robbers, *State and Church in the European Union*, the latest edition published in 2019 by Nomos Publishing House, and the older volume by Prof. Wolfgang Lienemann from 2005, also from Nomos Publishing House, which covers only Central and Eastern Europe, namely *Das Recht der Religionsgemeinschaften in Mittel-, Ost- und Südosteuropa*. These volumes provide an insight into the relationship between religions and the state across the European Union, and even look at how certain legal institutions have changed over time. What was really helpful was the reference to the existing sources of positive law at national level, which were a starting point for the formulation of what is contained in Chapter II. At the same time, Russell Sandberg's material and that of Professor Norman Doe (Cardiff), as well as personal reports and interactions at Consortium for State and Church Research scholarly events, have played a particular role in the development of this research and, in particular, Chapter Two.

Chapter III presented the historical aspects from a theoretical perspective, using the studies already published mainly on the ecclesiastical level and the few attempts to present them from a civil perspective, using the volumes of documents published so far to prove what has been said. At the same time, the CNSAS archives and the archives of the Ardeal Metropolitanate were the sources of unpublished documentation of the cases analysed in order to place in the practical sphere the theoretical statements. In addition to the unpublished aspects that these archives bring to light, we could not ignore the studies already written on this topic, either from a church or a legal perspective, studies that only include the presentation of the situation in Romania and without looking at these courts and their activity in a wider, comparative, European context. As far as the literature on this aspect is concerned, we should mention the works of Andrei Saguna and Nicodim Milaș , and later those of the canonists Liviu Stan and Ioan Floca , as starting points for the right of clerics to exercise their judicial activity.

Taking into account this status questionis of the issue, we believe that the present research is welcome, on the one hand, through the overall historical perspective both on the religious line and on the national law line, and on the other

hand, bringing the information up to date is also done by aligning and anchoring in the European reality so varied and in which the courts with religious substrate play an important role. The present work deepens and anchors this reality of religious jurisdictional pluralism at the European level by drawing attention to the finer points in understanding the character of religious law norms in comparison with the cultural elements of the individual or a community. The approach is also unique for the Romanian area, which, as we have already pointed out, has so far enjoyed strictly theological or strictly legal approaches, but none interdisciplinary and with the approach from the perspective we propose.

Precisely because of this complex approach, the title of the paper is not one that expresses a clarity resulting from the existence and historical evolution of these religious disciplinary bodies or instances, but is a provocative title. The challenge lies precisely in the fact that the historicity and tradition of these bodies operating at European level by virtue of a historically based legal culture is the subject of the emergence of new religious bodies which are recognised on the basis of existing and assumed legal pluralism at European level. We are therefore in a position to note the existence of an ongoing process from this point of view and, implicitly, from the perspective of the judicial pluralism that it implies.

Aim, objectives and limits of the research

The main aim of the research is to address from an interdisciplinary perspective little addressed and, implicitly, unknown chapters of the history of Romanian and European law: the historical evolution of religious courts in Europe and in Romania from the perspective of their historical evolution and the reality of legal and judicial pluralism. This historical evolution is also seen from the perspective of comparative law, which brings to the forefront of Romanian legal research issues that seemed to be only of the ecclesiastical domain, but which turn out to be part of the phenomenology of national law, as will be seen in chapters 2 and 3 of this research. The aim of the paper is also to show once again that, although we are talking about different paradigms of relations in the various European cultural spaces, legal pluralism is a reality and, regardless of the extent to which its existence is assumed, it leads to a pluralization of law, and the uniqueness of the monolith represented by the legal system of a national territory risks being broken by the manifestation of pluralism.

This anchoring in the European reality will be done from the perspective of legal culture, which influences the recognition and acceptance of legal pluralism and, implicitly, of jurisdictional pluralism through the functioning of religious courts at national level in European countries, as will also emerge from the analyses carried out.

Therefore, if now, at the beginning, after stating these aspects that form a red thread of the work, we were to start by offering an answer to the question of whether legal pluralism influences legal culture or vice versa, this answer will be, starting from the two concepts well presented in all their constitutive components in the chapter of the research, that it depends. We will see that, starting from the main objective of the research, namely that we wish to show a pluralization of the dispensation of justice (and, implicitly, to articulate the existence of a jurisdictional plurality through the existence and recognition of the activity of religious courts of justice at the level of European countries) according to the legal culture of individuals or communities (which is possible). At the same time, we will see that the two phenomena of pluralism and legal culture are interlinked in different ways, depending on geographical and historical positioning (not necessarily on one side or the other of the cultural iron curtain).

Therefore, in this research we aim to achieve the following secondary objectives:

O1 - To present the concept of legal culture and legal and judicial pluralism from a European perspective, highlighting the close link between legal culture, legal pluralism and judicial pluralism;

O2 - Demonstrate that legal and judicial pluralism exists at European level, analysing the situations in 14 countries;

O3 - Placing Romanian legal and jurisdictional pluralism in the European legal spectrum, highlighting the presence of judicial pluralism through the existence and activity of religious courts of law established by Law 489/2006 and which operate on the basis of the constitutional principle of the autonomy of religions.

Research methodology

With the present research I will present the aspects related to religious courts, first of all, in the context of European legal pluralism (also very little researched and highlighted in the Romanian national context), but taking into account the principle of

autonomous organization of religions. The Constitutional Court of Romania has also taken account of the latter principle and has twice ruled (Decision No 640/2008, published in the Official Journal of Romania, Part 1, No 506 of 4 July 2008 and Decision No 797/2008, published in the Official Journal of Romania, Part I, No 575 of 30 July 2008) on the constitutionality of judging disciplinary cases within the framework of the churches' own courts without the possibility of appealing against the decisions of these bodies before the state courts. Therefore, we want a research based on the principles of comparative law and religious law.

As for the research methodology, it consists, first of all, in documenting the European legislation developed in time and space (here we have to take into account the factors that determined the promotion of a certain legislation in a certain national or supra-national space), as well as the literature in the field. Of course, given the subject of the present research and the methodological issues, we can say that it is determined by the crisis of law (represented by the challenges brought by legal pluralism), as Mircea Manolescu sarcastically stated in the middle of the last century. Since the method is the structure of the whole, we must say that the deductive method is at the basis of the research, given that it, being purely rational, cannot be separated from experience, from the desire to discover the origin and experimental implications of legal institutions, as well as from an approach based on facts and concepts (which characterizes the inductive method).

Structure of the proposed work

This paper is situated at the convergence of legal history, comparative law, canon and religious law, legal sociology and legal anthropology. I wanted to make this point at the outset in order to highlight the fact that the red thread of the research may sometimes seem to be unravelling, but in the end it will be possible to formulate some conclusions anchored in the plural legal reality grafted on the equally diverse European legal culture. This convergence is explained by the fact that I wish to capture the emergence and activity of religious courts in Europe (or rather in most of the countries that make up the Community bloc and in the United Kingdom). The legal implications of this research are clear, given that the existence of these courts, which bear this or similar titles (canonical disciplinary authorities, tribunals, courts, etc.) in all national legal systems, falls within the decision-making sphere of national courts, as they are established on the basis of the principle of the autonomy of

religions, and their existence, often contested, is recognised and reinforced by the competent national courts. This is why I have emphasised this in the title, drawing attention to the pluralisation of the dispensation of justice both in the present and in the past, speaking of a legal pluralism, i.e. a plurality of rules, but at the same time, as will be seen from chapters 2 and 3 of the work, also of a jurisdictional plurality, as I have already pointed out in the introductory part. We have shown how this is done from a historical perspective, both in Chapter II, where we make a comparative presentation at European level (from the perspective of jurisdiction rationae materiae and rationae personae), and in Chapter III, where we make a case study on the situation of religious courts in Romania, from their emergence (those of the Orthodox Church) until today.

These courts operate within national societies (in general), with few cases of supranational courts, and it is for this reason that the first part of the paper addresses the issue of legal culture and legal pluralism, the former being the fertile ground on which legal and jurisdictional pluralism can manifest itself. In this context, taking Lawrence Friedman's view that 'the legal culture of any society - which is made up of the legal subcultures of the different groups that make it up - shapes public knowledge and patterns of behaviour in relation to law and legal systems', it must be said that in the sphere of law, as in other spheres of everyday activity, individuals' perspectives on law and the functioning of legal institutions in society vary widely. We emphasise this point at the outset of our research in order to be able to substantiate and show how these courts were created, what their jurisdiction has been over time, how this jurisdiction has changed and what have been the determining factors that have marked it and how they have continued to exist from ancient history to the present day. By taking this approach we want to underline, if it were necessary, that law is an integral part of culture and culture of law. Often seen as a distinct and rigid field with rules and strange language, law is in fact part of the way a culture expresses its sense of order.

In the era of globalisation, knowledge of subcultures becomes all the more important now that societies are made up of people (individuals) with very different cultural backgrounds, which also influence their behaviour towards legal culture. The fact that, within a single multi-ethnic and multicultural society, law and its institutions may have different reverberations for different cultural groups can be a difficulty, since such differences in perception can lead to tensions between the existing

system of law and the behaviour of different groups within a given society. Therefore, the exploration and analysis of subcultures is particularly important in the context we highlight in this research, that of the multiplication of the dispensation of justice, which is also achieved through religious courts at European level. That is why, in the first part, in addition to the relationship between legal culture and legal pluralism, we will find, as defining elements that influence the European legal architecture, several approaches and terminological clarifications of concepts that will lead us to a (better) understanding of the subject of our research.

In the second part of the paper we apply the concepts analysed in the first chapter to the situation in several European states with different legal cultures (which implies different legal traditions and legal awareness), analysing to what extent the pluralization of the dispensation of justice is a recent result of the phenomenon of migration and the changes in the sphere of legal pluralism that migration brings about, or are we faced with historically founded patterns of relationship from the Middle Ages onwards that have now been repositioned in the legal structure of the nation state.

Before embarking on an analytical policy on these, I think it would be desirable to see the panoply of religious bodies that have historically existed in Europe, and in this part of the research it would be even better to place the situation of legal pluralism and its functioning or functionality in the context of national legal culture. Thus, we will present the old Sacra Rota Romana (for the Roman Catholic Church), the canonical disciplinary courts/authorities of the Orthodox Churches (we will try to present those of the Orthodox member countries of the European Union, such as Greece, Cyprus, Bulgaria and Romania), the courts of the Protestant Churches (where possible and necessary), the Beth Din court (for the Mosaic cult) and, of course, the Muslim courts which may have been at the origin of our research.

For this chapter we will use the national legislation of the countries studied and the existing compendia at European level with useful information for the concretization of the research, and for the perception at the CJEU level of these courts we will start from Michal Rynkowski's well-established study on the subject. The case law of the CJEU will also be defining in order to formulate some intermediate conclusions at the end of this chapter.

The third part will be a case study of the ecclesiastical courts in Romania under the same aspects presented above for Europe. In contrast to the previous part,

we will make a more detailed history of these courts and we want to see how these courts functioned starting from the Middle Ages, highlighting their Transylvanian particularities, showing what their functioning meant during the communist regime, especially in the early period, when many of those who appeared before them were removed from the clergy not because they had violated any ecclesiastical canon, but because they rebelled against the social order supported by the authorities of the time. The diocesan archives in Romania and the CNSAS archives will help us to present some conclusive and, we hope, interesting cases for the present research, to show the trial procedure, to show from concrete cases how the ecclesiastical canons were applied as a source of law, what the accusations against a cleric could be and how the accused defended himself. At the same time, through examples of random cases from the archives of the Metropolis of Transylvania, we will also show the implications that the legal conscience has in the manifestation of the individual in society and in front of the court, and through those after the establishment of the communist regime we wanted to emphasize the involvement that the authorities had in taking a decision against a person from the clergy who, in addition to the punishment pronounced by the civil courts of the state, also lost his quality of minister (sometimes).

FINAL CONCLUSIONS

After the conceptual presentations of legal pluralism, legal culture and, implicitly, judicial pluralism, after the presentation of the situation of the recognition and implementation of these concepts in the European national spaces and after the presentation of the situation in Romania, we are in the position to suggest that it might be appropriate to talk about the fear of religious norms of law and, implicitly, about the fear of the perspective of Sharia courts. In the post-September 11, 2001 world, concerns about Islam have become an increasingly preoccupying topic and the writing is getting richer. These fears existed even before 2001 and had previously given rise to moral panics around the world, as is evident from the historical perspective on the situation in each country presented. In the 21st century, however, these panics have become more frequent, with concerns about fundamentalism spilling over into debates about the wearing of religious dress and symbols in the public sphere, the appropriateness of publishing words and images that satirize religious imagery, and the functioning of courts and tribunals that enforce religious rules. These examples show that talking about fear of Sharia is just a convenient shortcut. European anxieties run deeper than that.

For most of the continent, the late 20th century was a period of accelerating social change that led to widespread uncertainty. Geographical barriers began to be broken down. A revolution of individuation took place, and realised identities became more important than ascribed ones. A subjective turning point occurred, with people placing greater emphasis on the construction and reconstruction of personal identities as the main source of meaning, significance and authority.

These profound changes, which are ongoing, have had a significant effect on religious law and systems of law. It is often said that we live in an age of culture wars, where there is conflict over the basic commitments and beliefs of people that provide a source of identity, purpose and unity for those who live by them. These culture wars involve the various moral panics about religion, such as those about the workings of religious courts. Religion is no longer seen as a benign force in decline. Rather, those who profess adherence to a faith are seen as the other, and their loyalty to a source of authority other than the state is viewed with suspicion. Commentators have struggled to explain this shift. Some still refer to the death of God, while others speak of the demise of the secularisation thesis. Some deny, paradoxically, that the secularization thesis was ever correct, but then talk about the return of religion. The

only clear point is that simplistic reactions cannot capture the complexity and contradictions in what has happened.

The fear of Sharia - or, more precisely, the persistent anxiety about the place of religious manifestations in the public sphere in many Western states - explains the increased frequency of moral panic about the regulation of religion, which seems to be identifiable as a feature of legal culture in contemporary European societies. Moral panics about religious courts, religious dress, religious caricatures and so on are not simply the consequence of the breakdown of consensus. They are not simply the result of religion becoming controversial. They are means by which societies (or institutions within them) vent. By discussing the claims made by litigants or the public statements of religious officials, we are able to address the major concerns in concrete terms. Streamlined public debates allow us to address broader issues such as immigration, national identities and changing attitudes to gender and sexuality. The fears that unite us are addressed as discrete issues, with different social actors taking part in the conversation, playing different roles.

The law plays a role in this, which is why in the introduction to this research paper we have identified two ideal types in terms of the strategy adopted by states. The first type comprised community-oriented strategies that focus on group rights and obligations by protecting the rights of minorities (as in Greece). The second type were referred to as individual-oriented strategies that focus on religious freedom and equal treatment of individuals by granting specific rights or exceptions to generally applicable rules (such approaches are prevalent in Western Europe). This does not mean that the second group does not recognise collective rights, indeed international human rights instruments protecting religion emphasise that it is both a collective and an individual right. Moreover, the difference between the two types of ideals is a matter of degree: the two strategies start from different perspectives, but both offer some recognition of religious legal systems. As we have tried to show concretely through the presentation of the 15 European countries, the frequent claims in Chapters 2 and 3 that countries following the second strategy do not have a personal law system based on religious affiliation and do not allow formal jurisdiction of religious courts are true only as a result of the words system and formal jurisdiction. While it is true that countries following the second strategy do not have rules on personal laws and religious jurisdiction that have the breadth and force that are commonly found in countries in the first group, this does not mean that they do not

recognise religious legal systems; the difference is simply that acceptance is usually much more ad hoc and depends on legal mechanisms that are not exclusively reserved for religious and cultural groups. The two ideal types under which we have placed the present research are perhaps best seen as the two ends of a spectrum within which all legal systems can be found.

Although no country falls on either extreme of the spectrum, in the sense that they neither emphasise collective rights to the exclusion of individual rights, nor individual rights to the exclusion of community rights, countries can be placed at different places on this spectrum not only according to their guiding principle (i.e. which of the two ideal strategies they adopt).

The recognition of two ideal-type strategies is also useful, given that legal systems do not exist as abstract entities in a social, cultural, historical and political vacuum, and it is wrong to ask "which state legal system gives citizens the best chance to live their lives in accordance with their religious (or non-religious) beliefs?". The search is not for a universal solution, but rather to identify ways in which legal systems with different emphases and in different contexts can balance the needs of religious and non-religious individuals, groups, wider communities and the state. The question for the future is "what can each legal system do to enable citizens to live according to their religious (or non-religious) beliefs without jeopardising social cohesion and without encouraging (self-)segregation?".

Despite all the controversy, the days of legal centralism seem to be over, and the legal world described by Max Weber and Hans Kelsen no longer has much influence on how today's legal systems operate in a global world of interconnectivity. Legal formalism has been somewhat overshadowed by legal realism and Roscoe Pound's idea of 'sociological jurisprudence', despite his conservative leanings in legal theory that law is a social function rather than an abstract construct of the formal legal system. The formal separation of morality and law has also been widely contested. To the extent that the state has become a political institution more open to the new with globalisation, we can expect the sovereign basis of national legal systems to be exposed to increasing legal diversity from external sources.

Legal pluralism would seem to solve the problem of religious diversity by recognising the basic principle of freedom of religion, in which the state is usually seen as not competent to judge religious matters. In this respect, legal pluralism can be seen as a modern platform for political liberalism. However, as a solution to

diversity, it also raises difficult issues. It often works by recognising derogations from general secular principles, as we have shown throughout this research. For example, slaughtering animals according to halal rules conflicts with the general requirements for the slaughter of animals by individuals and therefore offends animal rights activists. Religious groups often obtain exemptions that are not fundamental to their faith, so the spread of exemptions is usually incompatible with the fundamental rules of equality of citizens in a democracy. In all these cases, we see that the law helps the state to manage the religious life of citizens in a way that is generally incompatible with the separation of religions from the state. In other cases, the law indirectly shapes religious life, for example, by recognising same-sex marriages or, as we have shown in the case of Great Britain, by ratifying rules allowing the ordination of women.

In various disputes between religion and law - over homosexuality, marriage, abortion and so on - the law seems to be a secularising force (which some now deny) by rejecting much of the religious heritage. In other respects, legal pluralism, as we have shown in the second chapter of this research, contributes to the erosion of established cults and confessions by recognising a common playing field between traditional European confessions and new religious movements. Finally, while these generalizations hold true in many Western societies, it is important to recognize important national differences. While we can say, based on the presentations in chapters 2 and 3 of the present research, that the UK, Spain, Italy, Portugal, Belgium, Hungary, Austria or Germany adopt in practice a pragmatic approach to religious diversity (despite the official defence of sovereignty), France, Luxembourg, the Balkan countries (of course the two categories have different motives) seem to adopt a much more active and occasionally aggressive response to religious diversity. The question we now ask is to what extent is legal pluralism compatible with a common citizenship? To the extent that neoliberalism, with its emphasis on individualism and markets, has already weakened the collective bonds of citizenship, then can we expect the extent of legal pluralism to increase?!

The universal recognition of the principle of equality by liberal democracies stands in opposition to ancient regimes, which were rooted in the division of societies. Such divisions were sanctioned by social custom and enshrined in law (which sometimes even retained its customary character). To overcome them, a state-centred notion of legality was devised, which was joined to the establishment of

democratic governments in modern constitutions. In Europe, a uniform national concept of citizenship was the end result of this revolutionary project in all states; however, the notion is not universal.

This new political bond, which we must bear in mind in order to understand the contemporary situation, was created to overcome the particular and different legal conditions of the individuals and communities that existed in the territory. The corresponding civil institutions were created ex novo to extend the powers of states to areas of social life that had previously been regulated by religious institutions, such as civil marriage, state education, public hospitals, cemeteries and so on. The idea of equality that underpinned this new statute was intended to be inclusive, and the state thus became the point of reference for the life of the whole national community. This process involved the construction of an abstract and egalitarian notion of subjectivity, which freed people from the bonds imposed by previously existing customary regimes, as well as from the status imposed by the religious factor. As is often the case with major changes, this too has proved to be a mixed benefit.

Indeed, the state-centric model of legality, which is linked to the rise of the nation-state, was and is hardly contested in terms of its central mechanism. State-centred legality still tends to deny the overlapping communities (in terms of religious identity, for example) in which people live their lives and in which personal identities are shaped, etc. For the state, these social spaces cannot generate competing legal regimes, so the order that provides structure to these social spheres is represented by the state in vague terms or tacit, rarely express, acceptance. The state can, however, establish coordination mechanisms with these alternative sources of normativity, but this should not be taken for granted, and for good reason. The strategy of promoting a notion of citizenship based on a highly selective approach to the construction of citizens' national identities was considered to be the most inclusive strategy that public institutions could pursue at the time. The reluctance to change this model is not too surprising and should not be confused with recent movements, such as the enactment of the anti-sharia laws, which are the expression of an entirely different political inspiration from what we have dealt with in the present research.

In our age, this classical model is challenged by the open recognition that a monistic notion of legality is not really all we have, even in countries that have traditionally adhered to it.

The dynamics of law, both within and beyond state borders at the international level, highlight the breakdown of the notion of sovereignty, highlighting a renewed interest in legal pluralism at all levels of analysis. In this context, national courts may or may not tacitly recognise the need to coordinate their jurisdiction with that of alternative adjudicative bodies, such as religious ones (see the case of Greece and elsewhere): if justice is best served by a collaborative approach, implicit recognition of the existence of alternative fora may be the rule of the game. On the other hand, the decline of sovereignty and the rise of legal pluralism as a form of legality in highly complex national and international situations has not ended the debate about what legal pluralism brings to modern contemporary democracies.

The approach in this research comes, against the background of European legal tradition and culture anchored in the traditional Christian element, to highlight this changing landscape in terms of religious pluralism, marked (also) by the existence of religious norms and their application, leading to jurisdictional pluralism, and I need not say more on this. Rather, I would like to insist on an aspect that is too often neglected in contemporary debates and which we cannot ignore, namely that state legality itself, although often presented as monolithic, is in fact rather porous and malleable, being the result of a complex set of social forces, checks and balances, customs and values that often point in different directions. Any jurist will quickly recognize this when considering the hesitations of legislators on controversial issues (as we have already shown) and causing divisive, judicial dissensions related to different judicial ideologies that can arise in difficult situations. State law is itself an amalgam of very different things. Seen through the prism of legal pluralism, state law is not stable, it is constantly being made and unmade, it is not autonomous and is subject to centre-periphery tensions.

The credibility of state law is largely due to the fact that, of all the organisations on a given territory, the state is usually - but not always - the actor with the most resources and, above all, the most coercive power. So state law, as has been rightly said, is no more and no less than an assumption about social life.