

CANONICAL OPERATIONAL LAW IN THE CONTEXT OF THE ORGANIZATION AND FUNCTIONING OF NATIVE MILITARY AND ECCLESIAL ORGANISMS

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The organization and functioning of military and ecclesiastical bodies also attract the legal assumption of missions executed for and in favor of the nations and denominations represented, for each of them or in an alliance system, having to observe the norms of operational and canonical law on which we will reflect through What's next.

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The existence and functionality of military-ecclesiastical bodies are governed by canonical laws and regulations, and their knowledge represents above all a military and sacramental obligation in resonance with the constitutional, legislative-secular and ecological order, as the jurist consultant Ulpianus entrusts us in this sense (170-228), namely that the law consists of three precepts: "jurispraeceptasunchae: honestevivere, alterum non laedere, suumcuiqvtribuere"- the precepts of law are as follows: to live honestly, not to injure another, and to give to everyone what is his; the same author defining the meaning of religious law: "juristprudencia est divinarum atqve humanarum rerumnotitia, justu atqve injustu scientia" – in the sense of wisdom of law, science consists in knowing the divine and human things and in understanding what is right and what is unrighteous¹.

Operational law

Operational law integrates military-specific missions in the spectrum of legality and legitimacy as an integral part of public law, including necessary and sufficient legislative-military rules, found in treaties, conventions, agreements, international truces, directives, combat orders, specific branch provisions, issued by national or foreign military commanders².

The current conditions of the war at the beginning of the third millennium require the design of military operations, governed by an effective and functional legislative framework for the security of any state, which must not lack the constituent elements of respecting host state law, international human rights law, humanitarian aid, the fight against crime and terrorism.

In the context of the international legal systems, the internal operational law includes the set of norms meant to regulate the situation of the armed conflicts, and by observing them the priority is to limit the loss of human lives and destroy the patrimony of the belligerent states by precisely applying the measures of protection against combatants, wounded, civilian population, prisoners of war, cultural and religious goods. Operational law invites the military body to use the means of armed violence for the purposes of national defense and security, responsibilities, prohibitions and limitations, the rights and freedoms of military and civilian contractual personnel, to achieve "good governance" in the armed forces, as recommended by specialized legal studies³.

Internal constitutional provisions and other laws on the organization and functioning of the national defense system, respectively art. 118 of the Constitution of Romania, the laws 80/1995, 195/2000, 415/2002, 346/2006, with the implementing methodologies, by regulations and military orders, make their acknowledgement and observance compulsory to the military

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professionals, the more so as they have sworn to defend their country, even at the cost of life. After classifying the law enforcement methodologies in the national army, they cover at least six organizational and functional levels: general internal regulations containing the principles and norms related to the establishment, organization and execution of military and military discipline preservation activities in all army structures; regulations of military and operative-strategic actions and troop training; logistic regulations; information security regulations, military security, computer science, topography, hydrography and navigation, and regulations on the organization and operation of military departments, headquarters, command, institution and formation, and military regulation on religious assistance.

In the Romanian army, specialized legal assistance covers the whole range of activities of legal advisers through which the Ministry of National Defense is represented in justice, as well as for the approval of the legality of commands and the orders of the commanders and military chiefs. From among these judicial officers, prosecutors and military judges are recruited within the Prosecutor's Offices, the Military Tribunals in Bucharest, Cluj-Napoca, Iasi, Timisoara and the Military Court of Appeal in Bucharest. There is an increasing need for people qualified as military lawyers for the defense of the personnel of the national defense system, which, although it is found in the partner armies, is still missing from the organizational chart of the functions of the Ministry of National Defense.

In the context of the references presented in the public and national defense system, the implications on operational law are more than obvious, because no commander entrusted with a mission is in danger of planning, preparing it and carrying it out, through the subordinate structures, without real and rigorous legal coverage, the very legality and justice of the command acts in question having a decisive role in the success and victory of the struggle. There should not be any antinomies between the orders of the deciding military authority and domestic and international laws; on the contrary, the subordinate has the obligation not to execute the unlawful orders of his superiors, hence the need for a thorough development of the operational law norms, coordinated with the regulations stipulated by international law and international humanitarian

law, both for the one invested to order and for the forced to execute military orders.

The collective defense missions assumed by the national defense body reflect the training of the combatant personnel from all points of view, including the legal one, and the way how the rules of the operational law have been assimilated has consequences on the ability to react and to implement the international regulations specific to the armed conflicts, the experience in theaters of military operations having an undeniable pedagogical role regarding the adaptation to the conditions of the war, as well as the adoption of effective fighting strategies, which brought to the Romanian military the well-deserved praise of the allies.

Canonical law

The emergence of canonical law as part of the jurisdictional systems is inseparably linked to the need to organize the Church. Thus, the Orthodox Church, which has preserved ratio between the sacred and legal dimensions, has traced its historic path to institutionalization, knowing – in its millenary history – periods, such as the Byzantine domination, in which the state itself declared norms of canonical law as mandatory in the public administration.

In order to legitimize its existence, to be able to function and to organize itself, initially known as a catacomb church and persecuted for at least three centuries, the first millennium Church needed a code of laws to complement religious and moral norms, meant to eradicate social inequities, either in terms of their own internal activity or in relation to the world, the secular state, and other entities throughout a history that was anticipated and actually proved to be extremely agitated, the tendency to divide the world into masters and mastered people being a constant of time, which gradually led to the grafting of the law also on the body of the Church-jus ecclesiasticum, with obvious Roman and Mosaic influences, from the first century of the Christian era.

In the constitution of church administrative law, the canonical norms comprise those principles, rules of general conduct, instituted and sanctioned by the Church, whose observance is obligatory, for the application of which church authority is invested, in order to maintain discipline and religious-moral order, in full agreement with the

opinion of clergy and faithful who make up the Church, including in the general code of church laws: the apostolic canons, the canons of the ecumenical councils, the canons of the particular synods and the patristic canons, recognized by the decisions of the ecumenical councils, with general validity in the Church, the resolutions of the pan-orthodox councils, statutory-canonical norms, the regulation of disciplinary canonical authorities and courts of law.

Until the completion of the collection of apostolic, ecumenical, private and patristic, pan-Orthodox canons, and above any statutory canonical norm or disciplinary regulation, we must mention that the Orthodox Church of the East has always had a canonical consciousness, based on the unmistakable testimony of its Founder: "I am the Way, the Truth and the Life"⁴ and we really find this canonical consciousness as the Church's self-consciousness in the interference between the confessed faith and the lived life of the members of the Church or in the words of priest professor Liviu Stan, PhD "we can speak of canonical consciousness when we refer to what expresses the way of living the faith"⁵.

The Church, like any other institution, was not deprived of situations in which the law had to be restored, the church law being the fundamental basis for the special necessity and importance of canonical law in the ecclesial environment, very convincing in this respect being the trial procedure recommended by Christ, in whose content the Church is mentioned as the ultimate and supreme court of appeal: "If your brother sins, go and show him his fault in private; if he listens to you, you have won your brother. "But if he does not listen to you, take one or two more with you, so that by the mouth of two or three witnesses every fact may be confirmed. If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector"⁶.

In the apostolic period there were also incidents involving the restoration of justice, mentioning Gamaliel's role of advocate in favor of the apostles, when they were on trial before the Sanhedrin, the situation of Saint Apostle Paul before being converted on the road of Damascus when he was like a prosecutor he made the indictments of condemning Christians, and last but

not least the judgment of the Ananias and Saphiras by Saint Apostle Peter⁷, and such examples are quite consistent to strengthen our conviction that the initial organization and leadership of the Church, the maintenance of dogmatic and liturgical communion in the Church were and remained conditioned by a rigorous discipline that is the subject of canonical law.

Church administrative law or canonical law appears as a branch of study in the practical theology by which the canonical-juridical norms are methodologically and systematically studied, according to which the Church is organized and conducted only in the sixth century, namely first in the west through the canonical work of Dionysius Exiguus +545, canonized by the Romanian Orthodox Church in 2008 and celebrated on September 1 and then in the middle of the sixth century and in the East by the work of Saint John the Scolastic +577, both being recognized as the founders of administrative-church law.

Considering the three Christian dimensions: didactic, sacramental and organizational-leadership dimensions, transmitted through apostolic and patristic succession to the hierarchy and other members of the Church, their exercise is effectively conditioned by canonicity before any other conditions. Thus, we observe that the didactic mission in the Church involves canonical customs on preaching and catechesis, ritual books, sacred songs, iconography, and so on. The exercise of the sacramental mission also includes canonical customs concerning sacred mass and service, the Sacred Sacraments – Baptism, Anointing, Eucharist, Penance, Matrimony, Holy Orders, as well as the canonical rules of the ierurgies. Exercising the organizational and leadership mission in the Church results in the canonical character of a synod, canonical leadership and execution organs, statutory and canonical norms of organization and functioning. Then, all these didactic, sacramental and leadership dimensions are added the administrative-legislative and judicial dimension of the Church under the direct influence of canonical law.

The Orthodox Church in general and the Orthodox Church which has the majority of people in Romania have synodal representation, as a system of communion, exercising their jurisdiction through the three deliberative, executive and

judicial forms, either directly or through bodies having a specific mission, determined by canonical norms and church customs.

Like any other institution in Romania, the Romanian Orthodox Church has always respected the constitutional order and the laws of the rule of law, being autonomous and autocephalous, but not separate from the Romanian state, from which – just like all other cults in Romania – it received consultative recognition, being an ecclesial institution of public utility.

Conclusions

The references to operational-canonical law are reflected both on organizational and functional regulations regarding military-ecclesial entities, with all that pertains to their specificity, which justifies us to conclude that as far as the army is concerned, we could not become credible partners of the Allied countries or within the framework of international peacekeeping organizations, as long as we did not have solid knowledge of operational law and we did not provide legal training for combatant and civil-contractual personnel employed at the level of the operationalized structures. On the other hand, members of the clergy could not assume a missionary role tailored to the demands of the contemporary world, just as they would not be able to engage - with positive results - in promoting irenic and ecumenical diplomacy, without respecting the canonicity of their own actions, without the knowledge and training of clerical and civilian employees on the rules of canonical law, through which they legitimize their assigned missions.

Deepening the knowledge of military and canonical law also provides a clear perception of the ability of military-ecclesial entities to act effectively, applying their own doctrinal precepts within the limits of the law, and also explaining the phenomenology of religious right that differs from to a confession to another, the sharia being applied in Islam - the amount of sacred and categorical laws, which legitimize among other prescriptions also jihad-war against those of another faith.

In the context of these considerations, we finally express our hope that in future which is not too distant, the organizational chart of the

military and clerical functions will be completed with the auxiliary functions of a military attorney and military chaplain assistant, through which even more effective protection of rights military professionals and the constitutional right of religious freedom through ecclesiastical structures designated to provide religious assistance within the national defense system.

NOTES:

1 Arhid. Prof. Ioan N. Floca, PhD, *Orthodox Canon Law – Church Legislation and Administration*, vol. I, pp. 23-24.

2 Prof. univ. Constantin Iordache PhD, *Operational Law*, National Defense University Publishing House, 2003, Chapter VI.

3 Prof. univ. Ion Dragoman, PhD, *Legal Studies-Human Rights in the Armed Forces-Good Governance*, C.H. Beck, Bucharest, 2006.

4 *The Bible*, "The Gospel of John", XIV, 6. The Publishing House of the Biblical Institute and Orthodox Mission, Bucharest, 2005.

5 PR. Prof. Liviu Stan, PhD, *Church and Law*, Orthodox canon law studies, Andreiana Publishing House, Sibiu, 2012, p. 111.

6 *The Bible*, "The Gospel of Matthew", XXVIII, 17. The Publishing House of the Biblical Institute and the Orthodox Mission, Bucharest, 2005.

7 *Ibidem*, "Acts of the Apostles" V, 1-10; 34-39; VIII.

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