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HISTORICAL JURISPRUDENCE OF STATE-CHURCH RELATIONSHIP IN FRANCE: PARAMETERS OF PUBLIC ESTABLISHMENTS AND CONFERMENT OF GOODS IN THE LAW OF 1905

Anca Parmena Olimid[*]

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Abstract

Background: This article proposes a legal analysis of the legislative provisions as well as the canonical, statutory norms and special regulatory provisions adopted in the sphere of French legislation at the beginning of the XXth century, especially in the context of the adoption of the Law of Separation of the Churches and the State in 1905 (1905), but also considering the normative changes disposed of by other laws and orders adopted in 1998, 2015, 2019, and 2021.

Methods and methodology: The article uses the research method of historical jurisprudence and also the legal analysis aimed to reflect the legal regime of the religious organizations and associations bringing a complex overview of the policy parameters of public establishments, the practice of religion and the legal status of the moveable and immoveable property.

Results and discussion: The results of the analysis individualize three particular dimensions of the new legislative framework, namely (*1*) the importance given to the property administration, (*2*) the regulatory norms of the relationship between state and church, as well as (*3*) the general regime of cults and the administration of the public property, here including state and other administrative bodies: departments, municipalities and ecclesiastic establishments.

Conclusions: The present study highlights a multidisciplinary approach to ecclesiastical jurisdiction focusing both on the determined role of institutional policies and also on the role of the historical and legislative factors in the relationship between state, society and church.

Key words: *church, state, France, public policies, conferment of goods, property.*

Introduction

The law of the separation of the state and the church adopted and promulgated in 1905 (1905) represents a defining stage both for the evolution of the French state at the beginning of the XXth century but above all a moment of redefinition of social conscience, of political and administrative organization of the state focusing on four legal principles: the principle of neutrality of the state, the freedom of conscience, the right to religious practice and exercise and the role of public authorities following the new legal framework.

[*] Associate Professor, Ph.D., University of Craiova, Faculty of Social Sciences, Department of History, Political Sciences, International Relations, Craiova, Romania, Email: anca.olimid@edu.ucv.ro, https://orcid.org/0000-0002-7546-9845.

The specialized literature analyzed the state-church relationship in France following the implementation of the law of 1905 considering several central aspects namely institutional parameters (Guerlac, 1908), the worship association, the attribution and administration of ecclesiastical belonging, the public policies, the municipal decisions and the system of administration of movable and immovable assets of the old ecclesiastical settlements and also the worship organization and the role of ideas and ideological and political currents in France at the beginning of the XXth century (Lalande, 1906).

In this context, this research will analyze and explore the main legal provisions of the first three headings and first seventeen articles of the law from 1905 as the law of separation includes 44 articles organized in six main headings. Therefore, the first part of the research investigates the most important and innovative directions of research launched and developed by the scientific literature on the contents and principles of the Law of Separation (1905), prioritizing the contemporary explorations of the legal and social consequences.

The second part of the research focuses on the main legal regulations of the Law of 1905 focusing on the following four directions: (*1*) the legal provisions regarding ecclesiastical institutions and the administration of ecclesiastical assets; (*2*) the heritage of the public religious establishments and places of worship; (*3*) the approach to the role of political institutions at the municipal and departmental levels and (*4*) the supplementary classification of buildings used for public exercise of worship.

Methods and methodology

The present research uses two research methods, namely historical jurisprudence and legal analysis. Therefore, for monitoring of the institutional parameters of public policies and administration of assets, historical jurisprudence will be used to monitor the evolution from the legal point of view of the state-church relationship in France in the contents of the Law of Separation (1905).

Second, for the legal analysis, we will use the official database of the French Government [legifrance.gouv.fr]. For the legal monitoring, the research analysis will evaluate also other legislative acts and documents namely Law No. 98-546 of July 2, 1998 - Article 94 (1998), Law No. 2021-1109 of August 24, 2021 - Article 79 (2021), Order No. 2015-904 of July 23, 2015 - Article 13 (2015), Order No. 2019-964 of 18 September 2019 (2019).

Literature review on state and church relationship in France

A key approach of the scientific literature focused on the evolutionary approach to state-church relations in France centered on the situation of the clergy and Catholicism and the role of religious

organizations in France. In this context, Baisnée (1940) appreciates that in the period 1905-1938, two major crises characterized French Catholicism: the first focused on the legal status of cults, and the second crisis engaged a debate regarding the attitude towards Catholicism and the new parish life at the level of Catholic parishes after 1905 as well as the discrepancy between the different provinces on the religious map of France, as well as the legal and administrative situation of Catholic charitable and educational institutions in France.

The second approach to the theoretical background is primarily developed in the second half of the last century, employing new perspectives aimed at analyzing the consequences of the Law of 1905 for the educational system and religious schools (Brown, 1958). Other discussions integrated the moral and spiritual life of the population and the facets of the spiritual vitality in France (Monod, 1921) corresponding to a new conceptualization of the citizen relationship with church and religion.

These theoretical arguments recently questioned the doctrinal, legal and secular status of the French state noting the policy of non-recognition adopted by the French Republic and the removal of public funding for any religious service.

In this context, the first approach of the studies released during the 2000s argued the role of constitutional values and implications of the legal norms of secularism. In this context, Boyer (2005) analyzes the legal provisions of the separation of church and state in the interpretation of Article 2 of the 1905 law, as an expression and a major attribute of the new secular state, a unique differentiation of the French regulatory spectrum in Europe at the beginning of the XXth century. Boyer (2005) also evaluates the geographical and historical extension of the implementation of the law and the territorial exceptions of application in the Alsace-Moselle regions, but also other regions and areas such as Guyana, Mayotte, Saint-Pierre and Miquelon. The same author (Boyer, 2005) emphasizes the role of the legal mentions of the 1905 law regarding the secular status of the French state. From an analytical point of view, Leruth (2005) focus on three pillars of the evolution in republican France, namely: secularism, religion and beliefs.

In the same period, Mongin and Schlegel (2005) questioned the institutional, moral and ethical foundations of the Law of 1905 by advancing a complex analysis of the status of religious communities and cultural associations.

A year later, Bertrand (2006) also argues the theoretical and conceptual distinction between secular and religious, but also the doctrinal and analytical evolution of secularization supporting a complex analysis of the engagement of public authorities and state guarantees. Further, in a larger context, Bertrand (2006) distinguishes the historical evolution of the

phenomenon to which the research associates the perspective of socio-cultural pluralism.

Extending the scope of the discussion at the level of micro and macro communities, Bertrand (2006) proves the role of the state, of the institutional and political authorities for the state-church relationship in France and debates the social input of religious pluralism and religious freedom at the local and regional level.

Following the monitoring of religious freedom and public order, at the beginning of the 2000s, a new stage of analysis of the state-church relationship is evaluated and monitored taking into account the theoretical and doctrinal context of the idea of French secularism and the role of liberalism in Republican France (Daly, 2012; Dubois, 2012). Another concern developed and analyzed by specialized literature focused on the determining key elements of the practice of secularism in France, as well as the mechanisms of social recognition of cults (Willaime, 2005).

Therefore, the research of Zuber (2008) develops in the same direction, as it carries out a complementary analysis of the legal regime of the separation of church and state, presenting a historiographic approach and research scenarios for France in the years 1905-1907. For a comparative overview, other historiographic studies highlighted a wider spectrum of analysis of state-society-elite relations in the XIX-XX centuries and focused on the historical evolution and the role of political institutions, as well as the role of the modernizing initiatives and reform in other European countries (Rafferty, 1994; Lehmann, 1998; Damean, 2009; Henkel, 2006; Damean & Oncescu, 2015; Stokłosa, 2015; Rutjes, 2017).

The second phenomenon was developed by Kazarian (2015) addressing the social praxis and an innovative perspective on French secularism and the comparative evolution of the religious spectrum of orthodoxy. In the same direction, Baubérot (2012) addresses the legal provisions of the French Constitution and the main principles of Republican France, namely indivisibility, laicity, democracy and social foundation by evaluating the characteristics of French secularism with primary reference to the ideal society of Durkheim.

In a study recently published by Doyle (2017), the author argues the state, church, and education relationship by exploiting a doctrinal and ideological register centred on the historical and social evolution of the Catholic Church and the legacy of the principle of egalitarianism consecrated by the French Revolution. In the same year, Bouwers (2017) launched an extensive research focused on the analysis of French society using a double perspective to explore social inputs and outputs in France, but also to explore the facets of secularism in the French public discourse (Prades, 2019).

Historical context and institutional establishment: norms and general legal provisions of the Law of 1905

Analyzing the legal framework as well as the social and historical context of the 1905 law, this research individualizes the general legal norms and provisions by focusing on the most important provisions related to ecclesiastical institutions and the administration of ecclesiastical assets.

The law of December 9, 1905 regarding the separation of Churches from the State contains six main headings and 44 articles. There are two articles in the first heading of the law [Title I: "Principles" (Law of 1905, Articles 1-2)]. Seven other articles expressly legislated by the second heading of the law refer to the movable and immovable assets of ecclesiastical institutions [Title II: "Allocation of property, pensions" (Articles 3-10)]. Six other articles complete and regulate the legal status of buildings of worship in Title III entitled "Buildings of worship" (Law of 1905, Articles 12-17-1).

The second part of the Law of 1905 legislates also the status of religious gatherings, religious associations, the role of state authorities and the need to respect public order in two titles, namely Title IV, which regulates associations for the exercise of religion (Articles 18-24) and Title V regarding public order norms (Law of 1905, Articles 25-36-3).

The last title of the regulation from 1905-Title VI refers to the framework of rules and general provisions and comprises seven articles (Law of 1905, Articles 37-43). We have to mention in this context that the main scope of the law regards the general regime of the separation between the state and it is expressly established by the new provisions of 1905 by substantiating the principle of freedom and the free exercise of religion (Title I, Article 1).

Therefore, the first article highlights the secular regime of the French State ensuring the legal guarantees for the cults focusing on a double institutional and legal protection. The condition of free exercise of conscience (Law of 1905, Title I, Article 1) that every cult benefits from is expressly and strictly regulated in correlation with the observance of public order (Title I, Article 2).

Provisions regarding ecclesiastical institutions and the administration of ecclesiastical assets

Article 2 focuses on three collaborative dimensions of financing and funding of religion. In the regulation provided by provisions of Article 2, first paragraph, it is stipulated that the French State will not recognize and financially support any religion after the publication and entry into force of this law. This fundamental principle regards also all expenses supporting the practice of religion from the state budget or the departmental and municipal council finances (Law of 1905, Article 2).

In a broad and complex analysis of the legal provisions of Article 2, we have to mention that the main types of expenses that will no longer be supported by the state within the municipal and departmental budgets are multilevel. An exception is provided in paragraph 2 of the same article regulating the financing of access to services of the chaplaincy and the free exercise of religion in public institutions such as secondary schools as explicitly described and mentioned in the same article.

In the legal regulation provided by Title II regarding the allocation of property and pensions, the legislator provided three referential norms regarding the provisional functioning of ecclesiastical institutions until the attribution of property to some associations following the administrative norms provided by Title IV of this law. In this context, we must specify that Article 3 engages and creates the functional and administrative framework for the inventory of ecclesiastical assets carried out by financial administration agents.

Three procedural phases are mentioned with a descriptive and structural character: (*1*) the inventory of movable assets as well as immovable assets; (*2*) the state property status at the departmental and municipal levels; (*3*) the status of the inventory made by the representatives of the ecclesiastical institutions procedurally notified by means of an administrative notification.

Article 4 also sets fundamental administrative procedures alongside the role of public authorities calling for the conformity with status of special allocation, transfer to the association of the property, and the respect of the rules of general organization.

Other mentions of the same article provide mandatory measures provided within over a year from the implementation of the new legislative framework engaging a special framework regarding the movable and immovable assets of ecclesiastical institutions. The new framework is regulated by the provisions of Article 19 following the rules of order and general organization, the transfer to the associations of all the tasks and obligations of the old religious settlements.

This provision relating to the administration of movable and immovable property was amended by the Order No. 2019-964 of 18 September 2019 (2019) which provides particular administrative procedures for the assets regulated by Article 4 with regard to right to property of ecclesiastical establishments, the alienation by the religious association and institutional heritage (Law of 1905, Article 5, paragraphs 1, 2, 3 and 4).

The administration and allocation of the assets of the religious settlements is regulated by three other articles (Law of 1905, Articles 6, 7 and 8). Thus specific measures are arranged regarding the distribution of the properties of the abolished ecclesiastical institutions, the transfer and

responsibility regarding the debts of these religious settlements, the legal status of the generating assets of income and the legal conditions regarding the return of income to the state.

Other legal regulations were recently amended by Order No. 2015-904 of July 23, 2015 - Article 13 (2015). The new regulation refers to the assets of the ecclesiastical institutions not claimed according to the new legal statement.

Moreover, for the legal context of the Law of Separation of 1905, in one year since the implementation of the new legal provisions, beginning on 9 December 1905, the ecclesiastical establishments will be allocated by decree to the communal charitable or assistance establishments according to the local territorial limits namely municipalities or parts of municipalities. The main legal reference of the new provision points to the condition regarding all the income or products of these assets (Law of 1905, Article 9, paragraph 1).

This provision explicitly refers to the assets allocated to charitable or assistance services, except for the following situations: buildings that at the time of the promulgation of the law were intended for worship, the furniture of religious settlements, other buildings that did not serve the function of worship, goods owned by episcopal and archbishopric seminaries, books, acts, documents, manuscripts, art objects that belonged to ecclesiastical institutions. In this context, there is also other relevant legal mention regarding the assets of pension funds and aid houses not claimed within one year and six months from the promulgation of this law and which will be allocated by decree at the level of the department of which the respective religious institution is a part (Law of 1905, Article 9, paragraphs 1 and 2).

Other situations regarding the dissolution of a religious association (Article 9, paragraph 1), unused resources related to pensions (Law of 1905, Article 9, paragraph 1), but also other income from the property of ecclesiastical institutions following the legal provisions of the Law of 1905 will be allocated and distributed to charity services or assistance units operating in the respective territorial area.

According to paragraph 3 of Article 9, from the point of view of the legal rules and the legal term for introducing a recovery action, including here also claims, revocation, but also resolution cases, the terms expressly provided for in Article 9 must be respected.

From the point of view of the administrative procedure, the law sets precise dispositions and procedural steps in which an important role belongs to the decision-making and political factors at the municipal, departmental, but also at national level: the State Council (Article 9, paragraph 8), the prefect (Law of 1905, Article 9, paragraph 11), different administrative and territorial units (Law of 1905, Article 9, paragraph 14), the prefect and the prefecture council (Law of 1905, Article 9, paragraph 14), the administrative commission (Law of 1905, Article 9, paragraph 14).

The public religious establishments and places of worship: an approach to the role of political institutions at the municipal and departmental levels

Title III of the Law of 1905 focuses on places of worship and regulates, starting with Article 12, the legal and administrative situation of buildings that have been owned by the state, as well as the functional status of their real estate dependencies and the legal condition of other movable assets. Therefore, Article 12 of the Law of 1905 was amended according to Law No. 98-546 of July 2, 1998 - Article 94 (1998). Therefore, the goods expressly mentioned in Article 12 are and remain the property of the state, with the explicit mention of the institutional and administrative system for managing the goods mentioned at the departmental, municipal and inter-municipal level, which engages the responsibility of religious buildings.

Article 13, subsequently amended by Order No. 2015-904 of July 23, 2015 (2015), stipulates that buildings intended for public worship, as well as the objects and movable goods that supply them, will benefit free of charge at the disposal of public places of worship, as well as at the disposal of the associations called to administer them and which will have the property of these settlements.

Supplementary classification of buildings used for public exercise of worship

Article 16 specifies a supplementary classification of buildings intended for public worship. The classification highlighted by Article 16 paragraph 1 sets a horizontal classification residing in the legal protection of public order and following the "artistic and historical value" (Law of 1905, Article 16). These dispositions on additional classification regard "cathedrals, churches, chapels, temples, synagogues, archbishoprics, bishoprics, presbyteries, seminaries" (Law of 1905, Article 16). According to the provisions of the same Article 16, paragraph 1, the law covers buildings as a whole or parts of these buildings with artistic or historical value addressing all buildings serving and assisting public worship.

From a functional and administrative point of view, within three years from the adoption of the Law of 1905, the competent ministry will make an inventory of all these goods, taking into account the two criteria of relevance previously mentioned, namely the historical value but also the artistic value.

An important legal mention is provided by Article 16 paragraph 3 which expressly states that the movable and immovable goods that have been allocated and distributed to the associations in accordance with the provisions of the Law of 1905 can be classified according to the rules of common law as well as public institutions.

The same classification rules are provided for ecclesiastical archives and libraries that legally belong to archbishoprics, bishoprics and, but also at the seminary or eparchial level. Article 17 amended five years ago by the Order No. 2019-964 of September 18, 2019 - Article 35 (VD) (2019) provides an exception to the new legal framework and specifies in the first two paragraphs two important mentions regarding the legal framework of the law of March 30, 1887 on the classification of real estate by destination. In this context, "real estate is inalienable and imprescribable" (Law of 1905, Article 17, paragraph 1).

The second mention regulates the situation of an object in case of sale or exchange. In this context, if the competent minister authorizes the sale or exchange procedure, the law has a right of pre-emption which is granted in accordance with the provisions of Article 17 paragraph 2 to religious associations, at municipal and departmental level (Law of 1905, Article 17).

The other legal mentions expressly regulate the situations such as the right of pre-emption of museums and art and archaeology societies, as well as the state (Law of 1905, Article 17, paragraph 3).

The sale or exchange price will be established at the level of the three experts, representatives of the seller, the buyer and the president of the court. The norms and provisions specified above delimit both the institutional framework and the new framework of public policies at the municipal and departmental level, regulating both legal aspects related to the old and new legal classification of real estate according to destination, but also the regulation of the right of pre-emption granted to religious associations.

Conclusions

In conclusion, this research presents fundamental aspects of the legal analysis of the state-church relationship in France following the Law of 1905. The central objectives of the study focused on the research of the institutional parameters and the new public policy framework are circumscribed to the two determining factors: the functionality of the state and administrative system, but also the responsibility of the decision-making factors and public requirements. The results of the analysis reveal in this context several fundamental aspects of the new institutional framework provided by the Law of 1905 such as the legal status of buildings intended for public exercise of worship, the foundation of the principle of freedom, the free exercise of religion and supplementary legal classification of buildings used for public exercise of worship.

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