SUMMARY

of the Habilitation Thesis “Evolution of Some Fundamental Rights in the Present Social Context”

The present Habilitation Thesis aims to analyze the substance of some fundamental rights and freedoms, especially the rights and freedoms to opinion, in the present context and as a consequence of a quite long evolution since they have been proclaimed in constitutions and declarations of rights.

The rights and freedoms to opinion have been firmly established, as their substance is very sensitive to the changes of a democratic society, being perceived as “the voice” of the citizen in relationship with the secular State or with the church, the religious belief. In other words, the freedom of expression, the right to information, the freedom of thought, the freedom to public assembly, the right to associate play an important role in the citizen’s education, in his aspiration to a certain position and opinion in a democratic society.

The content of the Thesis is about the way the evolution of the social relations influences the substance of a number of fundamental rights and freedoms.

Since the proclamation of the fundamental rights and freedoms many changes occurred in the society that should be reflected in the very essence of these rights and freedoms. This process rarely happens though, so, negative effects appear, such as social movements and even worse, rebellions or other similar abominable actions.

Hence, it is necessary to analyze the core aspects of certain fundamental rights and freedoms which are to be altered, completed or declared obsolete.

It should be mentioned that, among the freedoms of opinion, this analysis refers mostly to the freedom of thought, which is now-a-days the source of serious problems, especially related to recently arouse basic non-consistencies, sometimes unreasonably limited, and to the structure of the State power, without ignoring the other freedoms to opinion.

Also, so much as scientific analysis required, other fundamental rights and freedoms have been examined - the right to life, the right to privacy, marriage and family, the right to health protection, the right to property, the worker’s rights, the right to education, the social security rights, the rights of the children, youth, and disabled, as well as their fundamental principles (equality and restraining some rights). It should be mentioned that this analysis was performed at whatever time new aspects of their content came out.

In order to materialize the aforementioned, the thesis is composed by thirteen chapters:

Chapter I presents some general considerations on aspects related to certain fundamental rights.

Chapter II analyzes the content of the freedom of thought and the freedom of expression from the terminological, historical, philosophical, and constitutional points of view, taking into account the associated case law.

In **Chapter III**, two absolutely new aspects are scientifically examined: the religious groundwork of the fundamental rights and their relationship with the *imago dei*. In our opinion, to ignore such an analysis would produce huge harmful effects, as it would entail the misunderstanding or even the omission of some content-related aspects of the fundamental rights, and the objective of the social actions would be deflected in a similarly negative sense.

Imago dei is not only a biblical expression, but also a doctrinaire religious one. It represents the image of God, but it reflects - as a doctrine – the convictions of common repugnance against abuses on human rights, which have nothing to do with their philosophical foundation. Therefore, the rights have as they should a moral foundation.

All men are born equal and blessed with the wisdom not to harm each other, and in the real world there cannot be subservience, like the one of the beings inferior to mankind, to the benefit of the latter. To this end, people are to be protected through natural rights, meant as individual responsibilities which shall produce prosperity, as initially planned by God. Exercising the human rights is a kind of human duty.

Imago dei is associated with dignity of man in its standard sense of right to dignity of man, highly important amongst the human rights, especially as far as issues like abortion, stem cells, embryo (unborn), women autonomy, or freedom to reproduce, are concerned. Consequently, imago dei should have an essential contribution in the shaping-up of the dignity of man and the right to dignity of man, still not regulated by our Constitution.

Within living memory, human rights and morality, which represents itself an ideal, have been considered as related disciplines, the legal framework, including those referring to the human rights, being limited (restrained) to the moral rules provided more recently with state sanction. The morality, including the Christian one, represents a fateful influential factor and legal source.

The relationship between the imago dei and the human rights may also be studied from the standpoint of the fundamental right to life, particularly with regards to the forbiddance to kill. Imago dei is reticent in relation to the regulation and enforcement of the death penalty. Also, imago dei substantiates the right to live a decent life, as there must be a proper response with regards to the people in need.

Imago dei may be, and actually is, based on the right to personal integrity, in the sense that nobody has the right to hurt another person through inhumane, cruel, and degrading treatments, as these are completely divergent to the image of God within us.

The part dedicated to the relationship between rights and reason, substantially demonstrates that the imago dei doctrine has been associated with the human capacity to reasoning, even practically, a continuously improving capacity since it has been granted by God. Saint Augustin and Thomas Aquinas strongly substantiated this idea linked to the right to choose, that is the practical rationale and capacity of man to shape up his own life and his own actions.

Men have subjective rights because of the human rationale, a notorious fact according to the theory of the natural rights.

An interesting correlation is nonetheless the one of imago dei and the freedom of thought, stressing out the human self-control, without imposing external rules. Such process may lead to the misuse of right in exercising the human rights.

The involvement of the imago dei doctrine in the foundation of the political rights is equally interesting, as a factor able to motivate the participation or not of the church in politics.

Imago dei has an influence on the classification of the subjective rights, individual and collective, according to the opinion that either God created men individually, therefore their rights cannot be but individual, or God created men collectively, thus their rights cannot be but collective.

Chapter IV analyzes the relationships between religion and equality. The content of the principle of equality is historically determined. Two opinions have been issued: one states the necessity the elimination of differences between men, and the other proclaiming the deepening of these differences.

Of course, sometimes, the measures taken by the State power may contradict to the ways different religious communities accept them or not.

Presently, our concerns with regards to equality as far as the freedom of thought is concerned are regulated by different international legal instruments, quoted in the present Habilitation Thesis.

Also, three actual topics related to the freedom of thought – equality relationship, are examined herein: whether legislative concessions aimed at religious practices are necessary; whether the religious groups should get support for the projects of protecting their parishioners; if and to what extent the exercise of the freedom of thought should get a special treatment, which is related to the interdiction of the religious discrimination.

Chapter V analyzes the relationship between religion and the freedom of expression.

Religions have an inside, contemplative constituent, due to the religious faith perceived as an individual substance, as well as a way of materialization of the freedom of expression. Every other

use of symbolic expressions (clothing and other symbolic objects) is seen as a manifestation of the freedom of expression. The choice to wear them belongs to each individual, but depends also on the rules established by the respective religion or State, with some exceptions.

The second part of Chapter V deals with an interesting theme, the religious hatred and defamation of religion and faith, which represents an aspect of the relationship between the freedom of thought and the freedom of expression, too.

In a third section (part) the religious education is analyzed as it is carried out in different state institutions such as schools, penitentiaries, army, etc. In this sense, The European Court of Human Rights decided that the classes of religious education do not represent a special case, as religion and beliefs of the parents must be respected in the teaching process. The choice of the students not to participate in the religious education classes seems to be enough for the protection of their rights and for protecting them against pressures and social discomfort.
The fourth section (part) deals with the exposure of religious symbols in public space, especially the cross, the Ten Commandments, the birth of Jesus, etc.
Chapter VI presents some new aspects reflected in the American doctrine related to the freedom of thought, which are affiliated to many Revivals between 1740 and 1970.
Chapter VII analyzes the relationship between the freedom of thought and the autonomy of the church, and in the first part the issue of defining of the freedom of thought is considered, having in view the international and European instruments.
The second section (part) comprises recent aspects of the categorization of the freedom of thought as a fundamental right, making a reference to the classification of the fundamental individual and collective rights, beginning with the opinion of Theodor van Boven and the 1968 Declaration of Tehran.
In the third section (part), the means of protection of the religious group rights are presented, in relation with the theme of determining the content of the freedom of thought.
The fourth section (part) examines the separation between the church and the State. Some consider this separation as a principle of organization of the church which is apart and independent from the state authorities.
Therefore, the separation between the church and the State should rather be considered an aspect of the evolution of the right to freedom of thought, than an anti-religious doctrine.
Chapter VIII studies the ecclesiastic policies and their relation with justice, beginning with some short terminological considerations related to the two notions mentioned in the title of the chapter. The constitutions have to include rules which neither forbid, nor cross the ecclesiastic policies to apply. The church autonomy is not absolute, which is why it must conform to the legislation, and the State is able to monitor its policies on a control basis. The issue is the one of the guiltiness and of the joint responsibilities, based on the canonical law.
Chapter IX analyzes the right to self-determination of the religious communities. The matter of recognition of the right to self-determination of the peoples is very disputable, all the more so the right to self-determination of the religious or other kinds of communities.

In the process of the emergence and evolution of the right to self-determination of the religious communities, an interesting fact is that the right to self-determination of the peoples appeared in the formation of the economic and political socialism.
In the wake of the World War I, the right to self-determination gained four meanings, the last one pertaining to the self-determination of the national, ethnic, religious, lingual communities in a State organized human society.
In this respect, the 1968 International Pact on civil and political rights which defined this right as the one belonging to ethnic, religious, and lingual minorities and cannot be denied was meant to give the members of those minorities the possibility to enjoy their own culture, public recognizance, to practice their own religion and to use their own tongue.
The same right has been confirmed by the 1992 Declaration on the rights of the persons belonging to national, ethnic, religious and lingual minorities and by the Conference of Security and Cooperation in Europe – Helsinki, 1975, and Theodor van Boven proclaimed it as the most fundamental of all human rights.
The second part presents the content and the limits of the right to self-determination of the religious communities.
The content of the right to self-determination of the religious communities is not identical to the one of self-determination of the peoples.
When applied to the freedom of thought, its limits may generate serious effects.
The third section (part) analyzes the relationships between the right to self-determination and the action of secession. The right to self-determination should not belong to religious groups, even though many attempts have been made to this end. Hence, the secession may not be grounded on religious, cultural, linguistic, or ethnic diversity. Only peoples may separate. Nevertheless, the religious, cultural, ethnic, or linguistic groups might have the right to establish their own political status, which could be seen as a “right to self-determination” with a much restricted content than the true right to self-determination of the peoples.

The typical example is the 1999 self-determination of Quebec act, on which the Supreme Court of Canada rejected the petition formulated, with the motivation that, in this State, there were many religious, cultural, ethnic, or linguistic groups, but they could not constitute peoples with the right to self-determination.
The relation between marriage, family, and religion, and finally the fundamental right to marriage, are analyzed in **Chapter X**.
Marriage is the sole institution of private law which comprises legal, constitutional, and spiritual aspects, too.
Chapter XI presents few profound arguments of the freedom of thought. It is a difficult substantiation which has been subject to a number of studies within the doctrine. The substantiation is historical, philosophical, and Christian.
Chapter XII is about the classification of the guarantees for the freedom of thought and its permissible limitations imposed, as well as some recent aspects of their content.

An interesting matter seems to be the one raised in the third section of this chapter, on the differences between conviction and conduct (behavior) in expressing one's faith. The freedom to have religious beliefs cannot be submitted to any state control, while the freedom to conduct or the freedom to express one's faith or convictions can and is so. The freedom of convictions or faith must be considered as the interior forum (forum internum), and the freedom to express them, as the exterior forum (forum externum). Consequently, there is a clear distinction between the freedom of conviction or religion, which is absolute, and the one to express them, which cannot be absolute.
Therefore, the freedom to express one's belief should have some limitations whenever it overpasses the legal and constitutional framework. These limitations are to be regulated according to certain relevant conditions provided by the international instruments.
Chapter XIII analyzes the secular power in relation with the freedom of thought.
The secular power is not necessarily a state one, but then political, and belongs not only to the crowned head, or to other head of State, but also to some religious leaders who wish to impose a certain point of view.
The peaceful coexistence of the two supposes the need to regulate properly the freedom of thought and their limitations.