

# ORTHODOX BIOETHICS ON THE PRACTICAL TEST OF LAW IN EASTERN EUROPE MATERIALIZACIÓN DE LA BIOÉTICA ORTODOXA EN LOS ORDENAMIENTOS DEL ESTE EUROPEO

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## ABSTRACT

*The relationship between orthodox bioethics and bioethical legislative choices in the countries of Eastern Europe necessarily passes from the analysis of the relations that in these countries exist between the State and the Churches and the role played by orthodoxy, not only understood as religion but as a cultural factor and national identity. The study of the development of abortion legislation, starting from Soviet Russia, on the one hand, and the current regulations in those countries of surrogacy, on the other, make us understand how the relationship between bioethics and law is not only constantly evolving, but also how it reserves surprises, but without betraying completely the legacies of orthodoxy.*

## KEYWORDS

*Orthodox bioethics, abortion, surrogacy, bioethical legislation in Eastern European countries, State-Church relations in Eastern Europe.*

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## RESUMEN

*El análisis de la relación entre la bioética cristiano-ortodoxa y las opciones legislativas que adoptan en esa materia los países de Europa del Este, requiere conocer cuáles son las relaciones que existen en estos países entre Estados e iglesias, al igual que el papel desempeñado en cada territorio por la ortodoxia, entendida como religión y como factor cultural e identitario. El estudio del desarrollo de la legislación sobre el aborto en la Rusia soviética, por un lado, y la normativa vigente en esos países sobre gestación subrogada, por otro, nos hacen comprender cómo la relación entre bioética y derecho no solo está en constante evolución, sino que también nos reserva sorpresas, aunque sin traicionar por completo el legado ortodoxo.*

## PALABRAS CLAVE

*Bioética cristiano-ortodoxa, aborto, gestación subrogada, legislación bioética en los países del Este de Europa, Relaciones Estado-confesiones en la Europa del Este.*

**SUMMARY:** 1. A brief introduction. 2. Orthodox bioethics. 2.1. Orthodox bioethics between theological principles and State-Church relations. 3. Russian influences in abortion legislation. 4. Remove the suspension dots Orthodox bioethics in Eastern European countries. 5. Surrogacy in Orthodox countries. 6. Toward a conclusion.

## 1. A BRIEF INTRODUCTION

For the purpose of the present investigation of the relationship between Orthodox bioethics and State legislation in Eastern European countries, a premise must necessarily be made that best delimits the object of the research I am about to expound. Orthodox bioethics originates within Orthodox theology and initially does not constitute a discipline with definite boundaries since it is fully absorbed by the latter. In fact, bioethics as a discipline in its own right begins to be discussed from the late 1960s when the Churches see and feel directly involved in the debate on the ethicality of new discoveries in the medical-scientific field.

The need for justification (or condemnation) of ethical choices being made in the medical field is not peculiar, in fact, only to exponents of

secularized thought, but is also widely present in the Christian tradition, and it is at this point in history that religious bioethics as a discipline was born and developed, acquiring its own identity even within the broader Orthodox theology.

To understand the impact that Orthodox bioethics has had on State legislation, it is necessary to focus attention on the study of State-Church relations that especially over the past two centuries have characterized and are characterizing the Orthodox countries of Eastern Europe.

Among the elements that unite and characterize these legal systems we find the peculiar relationship that States have established with the majority Church, shaped in light of the so-called «symphony theory,» enunciated by Justinian in the *Praefatio* of *Novella 6* in the year 535<sup>1</sup> and revived in recent decades with the rediscovery of nationalisms and the spread of populist movements.

Eastern European countries following World War II underwent the Sovietization of their legal systems<sup>2</sup> introjecting to varying degrees the symphonic relationship with indigenous religious denominations, albeit behind a declared atheist option that in fact coexisted with state Churches, controlled and subservient to political power. With the end of the States of socialist democracy in 1989, the paths of some of these diverged, and while Bulgaria and Romania embarked on a process of transformation that would bring them into the European Union –followed in time by the many States into which Yugoslavia splintered–, Russia, Belarus and Ukraine, countries in which Orthodoxy of observance of the Moscow Patriarchate is in the majority, followed a completely different path.

Bulgaria, in adopting the Constitution currently in force in 1992, decided to establish a close link between civil institutions, the principles that inspire them and the Orthodox religion in the form professed by its national Church<sup>3</sup>. Romania, on the other hand, chooses to establish a

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<sup>1</sup> In this regard see: CAPOZZA, M.T., *Sacerdotium nelle Novelle di Giustiniano. «Consonantia» (συμφωνία) e «amplificatio» della «res publica»*, Torino, Giappichelli, 2018.

<sup>2</sup> AJANI, G., *Il modello post-socialista*, Torino, Giappichelli, 2008.

<sup>3</sup> On the relationship between religion and the state in Bulgaria: PETROVA, K., *La Bulgaria e l'Islam. Il pluralismo imperfetto dell'ordinamento bulgaro*, Bologna, BUP, 2015. See also *infra*: footnotes 27 and 31.

special relationship with the two majority religious denominations, the Romanian Orthodox Church and the Greek Catholic Church in Romania, denominations with which it enters into prior consultation agreements before issuing measures of an economic-social nature<sup>4</sup>.

Different and more complex is the relationship between the Orthodox Patriarchate of Moscow and its Churches on the territories of Russia and Belarus<sup>5</sup>; while Ukraine is undergoing a relevant transformation due to the recognition of autocephaly by the newly established Autocephalous Orthodox Church of Ukraine (2019) and due to the ongoing war.

That said, for the purposes of this investigation it is necessary and appropriate to look at the evolution of relations between the temporal power and the Russian Orthodox Church in order to understand the past and present bioethical choices of the Orthodox-majority countries that revolved around the Soviet bloc.

Emblematic from this point of view are the events that accompanied the legalization of abortion in the 1920s in the former Soviet Union and that partly conditioned the regulation of the former socialist republics, leading them to the adoption of legislation that we might call moderately liberal from the 1950s onward, the result of the secular and progressive reach of early communism<sup>6</sup>. At the same time, the legalization of

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<sup>4</sup> Protocol of cooperation, in the sector of social inclusion between the Government of Romania and the Romanian Patriarchate, in <http://licodu.cois.it/?p=1355>; Protocol of cooperation, in the sector of social inclusion between the government of Romania and the Conference of Bishops of Romania, in <http://licodu.cois.it/?p=1357>.

<sup>5</sup> In Belarus, relations between the state and the Russian Orthodox Church in the exarchate of Minsk are regulated by agreements on all matters of a social and cultural nature to the point of making it a confessional state. In this regard see: CIMBALO, G., «La Bielorussia alla ricerca della propria identità e il processo di confessionalizzazione dello Stato», in *Stato, Chiese e pluralismo confessionale*, Rivista elettronica (<https://www.statochiese.it>), n. 39 del 2018, pp. 1-34.

<sup>6</sup> The dissolution of the Duma in 1917 and the establishment of the Soviet government saw the most radical revolutionary demands prevail in a short period of time, leading to the introduction of free unions and divorce in the field of civil rights. The rise to power of the Bolsheviks led to «regulatory normalization» to the point that in 1918 it was deemed necessary to establish by decree both the separation of Church and State [Декрет о свободе совести, церковных и религиозных обществах, (20 января (2 февраля) 1918 г.)] than to introduce divorce by law, while the project to adopt a law on euthanasia was abandoned.

abortion in Russia initiated a process of return to the ethics of the Orthodox tradition by Russian intellectuals and clergymen in the diaspora produced by opposition to Bolshevism; some of them, having fled the persecutions of the time, were among the founders of the *Institut de théologie orthodoxe Saint-Serge* in Paris, the oldest institution of Orthodox theology in Western Europe. This institution, beginning in the 1970s, with the emergence of bioethical science and the development of U.S. Orthodox bioethics, represents one of the main stages in the evolution of Orthodox bioethics, which increasingly became an autonomous discipline of ethics, aimed at applying theological thought and Orthodox tradition to practice, but not without making some compromises such as the theological acceptance of the artificial termination of pregnancy upon the occurrence of particular and defined conditions. This thinking, combined with the local Orthodox Churches' work, has an impact on legislation in bioethics matters today. Abortion legislation is the first to be affected by this process, so much so that in post-Soviet societies since the end of the twentieth century, abortion issues have become dominant in public debates, seeing an increasing involvement of the Churches and organizations related to them<sup>7</sup>.

## 2. ORTHODOX BIOETHICS

To a secular bioethics inspired by the motto «etsi Deus non daretur», signifying that secular is one who reasons as if God were not given and therefore not in the name of faith, but in the name of human reason<sup>8</sup>, religious bioethics in its various denominational declinations, from Protestant and Catholic to Orthodox, has been contrasted from the outset, but perhaps it is precisely the latter that is among the three the least explored in Western legal studies devoted to the Christian bioethics.

If secular bioethics, while admitting within it various currents, is probably the easiest to circumscribe since it is connoted by its a-religiosity and thus to exclude in the practical application of its ethics metaphysical or religious premises that claim to apply to everyone<sup>9</sup>, more com-

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<sup>7</sup> For further information see: CIMBALO, G., «Strategie sovraniste e politiche familiari nell'Est Europa», in *QDPE*, n. 2, 2018, pp. 404-435.

<sup>8</sup> FORNERO, G., *Bioetica cattolica e bioetica laica*, Milano, Mondadori, 2005, p. 71 ss.

<sup>9</sup> NUOZZI, L., *La bioetica: visione laica e cattolica*, Montenero di Bisaccia, UniMol, 2019.

plex to define is Christian religiously oriented bioethics, all the more so when we also consider the different variables in which it can be articulated and which contribute to moving it away from a model that we might call pure.

Strictly speaking, Christian bioethics can be spoken of only in relation to that specific branch of theology of reference to each religious denomination that addresses the ethical implications of human conduct in the fields of science, life, care and health, in the light of values and moral principles whose referents are not only neighbor and nature, but God himself<sup>10</sup>. This moral obligation, however, in practice is affected by a number of variables ranging from the more or less liberal inspiration taken by some Protestant Churches<sup>11</sup>, to the appeal to philosophy and natural reason on the part of Catholic morality, which thus contribute to distancing their reflections on bioethics from a specific ethical paradigm<sup>12</sup>. Instead, the existence of this archetype subsists in Orthodox Christian bioethics, which places the foundation of its morality entirely on a liturgical basis, unlike the basis of Catholic morality, which appeals not only to Christian Revelation but also to natural philosophy and reason<sup>13</sup>. In Orthodoxy, on the other hand, Tradition, which unites in itself Holy Scripture, the writings of the Fathers, the conciliar canons, iconography, etc., is not only primary but in fact the only source of morality. All Orthodox anthropology is Christocentric; the archetype of man is Christ, fully God and Man. The moral life in turn is perceived as an essential dimension of deification in Christ and becomes at the same time the outcome of the same process of deification<sup>14</sup>.

The renewal of moral theology that the Orthodox Church experienced during the 20th century, mostly carried out by representatives of a renewing tendency, did not include the development of a separate, con-

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<sup>10</sup> MANCINI, S., «L'etica teologica e i principi della bioetica: una prospettiva protestante», in *Bioetica*, 4, 2011, p. 741.

<sup>11</sup> Schematically, on the distinction between more liberal Protestant Churches, such as those included in the historical nucleus present in Italy, and more traditional Protestant area Churches, such as the Pentecostals, see: FUCCILLO, A., *Giustizia e Religione*, vol. I, Torino, Giappichelli, p. 213.

<sup>12</sup> MANCINI, S., *L'etica teologica e i principi della bioetica*, cit., p. 747.

<sup>13</sup> PETRA, B., «I fondamenti antropo-teologici della bioetica. La prospettiva ortodossa», in *Studia Moralia*, 54/2 luglio-dicembre 2016, pp. 293-295.

<sup>14</sup> YAREMA, M., *La bioetica ortodossa. La storia e la particolarità*, Roma, Ateneo Pontificio Regina Apostolorum, 2016, p. 22

crete branch of moral ethics dealing with contemporary issues of a bio-medical nature, since moral theology for most Orthodox authors «appears as either a part of Christian spirituality or theological anthropology, [and] the ethical specificity remains obscured, which naturally prevents the generation of Orthodox bioethics as such»<sup>15</sup>.

The situation changed beginning in 1978, when the first concise presentation of orthodox thought in the field of bioethics by Samuel Stanley Harakas appeared<sup>16</sup>; «until then, problems related to fertilization/ birth of life, sexuality and illness/therapy/death had been addressed –when they had been considered– within special moral treatises, following the order of commandments or the order of duties, or in guides for confessors or even in treatises on criminal canon law»<sup>17</sup>.

The process of generating Orthodox bioethics is the result of Orthodoxy's realization of the need to take a stand in the area of conflict between Christian values and scientific novelties. Orthodox bioethics is thus the Church's response to the need to take a stand in matters concerning the fundamental values of the Faith.

The emergence of bioethics science dating back to 1970, in fact, in addition to arousing scientific interest starting in the United States, causes very soon the interest of different religious denominations as well. The scientific world provides new technologies and inventions along with the moral dilemmas associated with their use, however, that world

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<sup>15</sup> YAREMA, M., *La bioetica ortodossa*, cit., p. 137.

<sup>16</sup> Samuel Stanley Harakas, a priest of the Greek-Orthodox archdiocese of America, belonging to the Ecumenical Patriarchate of Constantinople, is considered the dean of Orthodox bioethics since he was the first to pronounce himself in 1978 on the Orthodox understanding of bioethics, drafting the dedicated encyclopedic entry to the Eastern Orthodox Christianity. HARAKAS, S.S., *Eastern Orthodox Christianity*, in *Encyclopedia of Bioethics*, I, New York, Warren Reich ed., 1978, pp. 347-355. His contribution remained for twenty years the only voice of orthodoxy in the field of bioethics, until BRECK, J. a convert from Protestantism to Orthodoxy, presented his bioethics manual *The Sacred Gift of Life. Orthodox Christianity and Bioethics*, Crestwood – New York, St Vladimir's Seminary Press, 1998. Tristram Engelhardt jr., also a convert to Orthodoxy, in turn elaborates a new approach to Orthodox bioethics in his 2000 work *The Foundations of Christian Bioethics*. Next to his most famous *The Foundations of Bioethics* of 1986, after his conversion in 1991 from Catholicism to Orthodoxy we thus find a specular manual: ENGELHARDT, H.T. JR., *The Foundations of Christian Bioethics*, Lisse, Swets & Zeitlinger Publishers, 2000.

<sup>17</sup> PETRÀ, B., *L'etica ortodossa. Storia, fonti, identità*, Assisi, Cittadella, pp. 49-50.

is not capable of guaranteeing the moral and spiritual side of life. It therefore turns out to be inevitable that such issues would also find a place within the local Orthodox Churches, which are thus called upon to respond in a structured way to the problems posed by bioethics<sup>18</sup>. In Greece, within the Greek Orthodox Church, the first Greek Center for Ethics and Biomedical Ethics and Deontology was founded by this route in 1993 by then Archimandrite, later Metropolitan, Nikolaos (Hatzinikolaou) who also became chairman of the Bioethics Commission of the Church of Greece from the year of its founding in 1998<sup>19</sup>. Not to be outdone is also the work of the Russian Orthodox Church, which, in conjunction with the Greek establishment of the Bioethics Commission, in turn established the Church-Public Council on Biomedical Ethics in January 1998 on the basis of the decisions of the Orthodox medical community adopted in the (VI) biomedical section of the «Christmas Educational Readings» (Рождественские образовательные чтения). The latter is a public forum in the field of education, culture, social service, and spiritual and moral education that, since 1993, has been held annually under the honorary chairmanship of the Patriarch of Moscow and all of Rus'. The Holy Synod of the Moscow Patriarchate, moreover, at a meeting on April 13, 2021, noted the importance of «studying bioethical problems from the perspective of orthodox dogma with the participation of specialists from different specialties and viewpoints», evidenced by the existence of a Commission at the Synod that deals specifically with bioethical issues and their dissemination in the population. To this end, it established the Synodal Commission on Bioethics by abolishing the former Church-Public Council on Biomedical Ethics<sup>20</sup>.

Given then that religious, or secular, bioethics finds its concreteness when it is translated into a legal norm<sup>21</sup>, in order to be able to identify

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<sup>18</sup> YAREMA, M., *La bioetica ortodossa. La storia e la particolarità*, cit., pp. 11-12.

<sup>19</sup> PETRÀ, B., *I fondamenti antropo-teologici della bioetica*, cit., pp. 308-309.

<sup>20</sup> To consult the related documents, see: <http://www.patriarchia.ru/db/text/5798131.html>.

<sup>21</sup> The subjects of interest in bioethics are among the most sensitive to the formalization process, as they refer to values that have always been considered as indispensable, the catalog of which is destined to expand in a now globalized world, in which cultures, traditions, habits, customs, religions. The complexity of the relationships that are established in a context, in a de facto limitless space, has stimulated the search for shared values, capable of gathering a common adhesion, capable of generating social cohesion. RODOTÀ, S., *Tecnologie e diritti*, Bologna, Il Mulino, 1995; *Id.*, *Modelli culturali e orizzonti della bioetica*, in S. Rodotà (ed. by), *Questioni di bioetica*, Roma-Bari, Editori Laterza, 1997.



the contribution that Orthodox religious bioethics has made to the normative production of individual Orthodox-majority States, one cannot disregard knowledge of the State-Church relations that characterize their legal systems, just as, on the other hand, one cannot entirely exempt oneself by a reference to Orthodox theology.

## 2.1. Orthodox bioethics between theological principles and State-Church relations

Orthodox bioethics is perhaps the least known in the European West among the bioethics of the Christian area; the reasons for this niche role, which often gives it nuanced features since its inferences in bioethics tend to be generically absorbed by the broader category of Christian or at least religious bioethics, can be found in several factors that, if analyzed with the sensitivity of an ecclesiasticist, can be traced back to two in particular, which are closely related to each other and have come back into vogue with the emergence of nationalistic and populist currents affecting (also) the Eastern territories.

I refer in particular to the principle of canonical territory that permeates the canonical and jurisdictional structure of the Orthodox Churches and to the Byzantine principle of the symphony of powers that inextricably links the life of the latter to political power.

As for the principle of canonical territory, «in the current Orthodox sense, is a relatively recent phenomenon, but with much older theological references»<sup>22</sup>. Under it, each Orthodox Church claims exclusive jurisdic-

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<sup>22</sup> ERDÖ, P., «Un trattato costituzionale per i rapporti tra Chiesa latina e Chiese orientali», in Pontificio Consiglio per i Testi Legislativi (edit by), *La Legge canonica nella vita della Chiesa. Indagine e prospettive, nel segno del recente Magistero Pontificio*, Study conference on the occasion of the twenty-fifth anniversary of the promulgation of the Codex iuris canonici, 24-25 January 2008, available at <https://www.vatican.va/>. On the evolution and meaning of the concept of canonical territory, see: CODEVILLA, G., «Stato e Chiesa nella tradizione ortodossa russa», in *La laicità nella costruzione dell'Europa – Dualità del potere e neutralità religiosa* (Atti del colloquio internazionale a cura di COPPOLA, R.), in *Diritto@Storia*, n. 10, 2011-2012 (Memorie), url: <https://www.dirittoestoria.it/10/memorie.htm>; CIMBALO, G., «Autocefalia vo' cercando ch'è sì cara», in *Stato, Chiese e pluralismo confessionale*, Rivista elettronica (<https://www.statoechiese.it>), n. 19 del 2020, pp. 24-61; BOTTI, F., *La transizione dell'Est Europa verso la libertà religiosa*, in *Stato, Chiese e pluralismo confessionale*, Rivista elettronica (<https://www.statoechiese.it>), n. 31/2013, pp. 4-10.

tion over a territory that usually coincides with the ethnic boundaries of a population and which, in turn, may coincide with the territory of a State to which corresponds a single episcopal see. This type of territorial structure in which the Orthodox Churches are organized entails a «controlled» religious pluralism, that is, based on the coexistence of two elements: the majoritarian one, that is, based on the existence of a majority Orthodox Church, and the traditional one, which finds its *raison d'être* in the link between the majority Church and the (few) other confessions recognized with the history of the territory, so much so that they are considered by the legal system itself to be precisely traditional Churches. The existence of the canonical territory of a traditional Orthodox Church implies that the other religious denominations can yes operate on the same territory, but they must accept to be subjected to a subordinate relationship since they must recognize the status from the majority Church and its consequent role of preeminence and privilege in relations with the State. This hierarchical relationship is even more evident since other local Orthodox Churches are prohibited by the principle of canonical territory from establishing their own structures in the canonical territory of another Orthodox Church<sup>23</sup>.

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<sup>23</sup> As far as the Russian Orthodox Church is concerned, the canonical territory is identified on the one hand with ethnic belonging or with the territories once incorporated into the Soviet Union (Russian Federation, Belarus, Ukraine, Moldavia, the Baltic republics, Azerbaijan, Kazakhstan, Kirgizija, Tajikistan, Turkmenistan, Uzbekistan). Georgia was also part of it during the Soviet period, but its autocephaly was recognized again in 1989; while Armenia has kept its own Apostolic Church, one of the oldest in the world. Furthermore, according to the Statute of the Russian Orthodox Church, approved by the Council in August 2000 (<http://www.patriarchia.ru/db/text/133115.html>), it has created its own structures in Mongolia, Japan, Latvia, Estonia and Lithuania. Consequently, no other local Church belonging to another Patriarchate could settle in these territories (ALFEEV, I., *La chiesa ortodossa, I, Profilo storico*, Bologna, EDB, 2013, p. 363), this led the Ecumenical Patriarchate to accuse the Russian one of neo-phyletism (love for the nation more than for the Church).

The Orthodox Church of Ukraine, whose autocephaly was recognized with the Tomos of 2018, was born from the confluence of previous autonomous Orthodox Churches as opposed to the Ukrainian Orthodox Church Metropolia of Kiev, belonging to the Moscow Patriarchate. With regard to the Orthodox jurisdiction over Ukraine, disputed between Constantinople and Moscow: see: BOTTI, F., BIANCHI C., «Cultural heritage and religious phenomenon between uricide and cancel culture: the other side of the Russian-Ukrainian conflict», in *Religions*, Special Issue: «Law and Religion in Europe in an Age of Fear and Insecurity», n. 14, 2023.

The fact, then, that canonical territory and State territory coincide implies that the population will find in Orthodoxy a strong element of identity, not only in the religious aspect, but also, and more generally, in the cultural one, coming by this way to create in fact a substantial overlap between the status of citizen and that of believer.

The convergence of religious identity and national identity on a single territory and the Orthodox cultural imprint that characterizes the culture of these countries, emphasizes since 1989, and today with the rediscovery of populisms even more<sup>24</sup>, the emergence of close ties between political power and the local traditional Orthodox Church<sup>25</sup>. So much so that principles of a theological nature, such as that of canonical territory, are in a sense made their own by the political institution, finding their legal legitimacy in the relationship between the State and the Churches, where the State power is entrusted, according to dictates inspired by a jurisdictionalist model, with the exercise of legal sovereignty over the territory<sup>26</sup>. The State always performs the task of determining the legal status of the local Church and other religious denomi-

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<sup>24</sup> PETRÀ, B., «La teologia morale ortodossa dal XX secolo all'inizio del terzo millennio», in *Il Regno -Moralia Dialoghi*, 25 aprile 2017, url: <https://www.ilregno.it/moralia/dialoghi/la-teologia-morale-ortodossa-dal-xx-secolo-allinizio-del-terzo-millennio-basilio-petra>.

<sup>25</sup> The link between the autocephalous national Orthodox Churches and their respective governments has intensified since 1989 with the fall of the Soviet bloc and the rediscovery by the new states of cultural identity-formers, among the latter those linked to orthodoxy and to the traditional role played by the majority Orthodox Church. On this point see: CIMBALO, G., «Tutela individuale e collettiva della libertà di coscienza e modelli di relazione tra Stato e Confessioni religiose nei paesi dell'Est Europa», in G. CIMBALO - F. BOTTI (ed. by), *Libertà di coscienza e diversità di appartenenza religiosa nell'Est Europa*, Bologna, BUP, 2008, pp. 15–29. Also with regard to the Russian Federation, «[...] today the aspiration of the Russian Orthodox Church is to return to the situation prior to the upheaval of 1917, when the principle was valid: «Orthodoxy is recognized as the first among the various religions professed in Russia»; and: «Consequently, the Orthodox faith enjoys priority ( *preimu šč estvom* ) in all acts of state life in which the state turns to religion and in public religious ceremonies».

CODEVILLA, G., «Stato e Chiesa nella tradizione ortodossa russa», cit.; Id., «Laicità dello Stato e separatismo nella Russia di Putin», in CHIZZONITI, A., (ed. by), *Chiesa cattolica ed Europa centro-orientale. Libertà religiosa e processo di democratizzazione*, Milano, Vita & Pensiero, 2004, pp. 137-286 e pp. 430-454.

<sup>26</sup> In this context, adherence to the jurisdictionalist model entails «[...] on the one hand the legitimation of the sovereignty of the State and on the other the granting of a privileged position to the Church», for which the latter proposes itself «as an instrumentum Regni, in the hope that the State actively works to contribute to the *salus animarum*». CODEVILLA, G., «Stato e Chiesa nella tradizione ortodossa russa», cit.

nations since it has the legal responsibility for the legitimacy of its relations with them; in fact, it is part of the public powers to guarantee (or limit) to the Church all the conditions necessary to fulfill its mission<sup>27</sup>.

This coexistence between Church and State takes place in fields of action that are different from each other and, although these two institutions remain independent of each other, it is neither substantiated by an attitude of State neutrality toward the religious phenomenon nor «in

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These jurisdictional relations that characterize relations between the State and the majority Orthodox Churches present exceptions, as evidenced by the cases of Greece and Cyprus, although even in these two countries attempts are being made to embark on a path of effective separation between State and religious institutions.

In the Greek Constitution, for example, the reference in the art. 3.1. which defines the religion of the Eastern Orthodox Christian Church as «predominant» not only involves an effective imbalance in the field of the protection of religious rights which inevitably distorts pluralism, but also recalls the concept of a heterointegrated legal system, whereby the legal system is integrated (also) by the use of sources other than the law. See: FERRI, D., «La «religione predominante» e l'ordinamento giuridico in Grecia: una differenza persistente», in BALDIN, S., (ed. by), *Diritti tradizionali e religiosi in alcuni ordinamenti contemporanei*, Trieste, E.U.T., 2005, p. 118. This mingling between the State and the Greek Orthodox Church is not actually an isolated case, since it can be compared to what happens in Denmark and Sweden with their respective Traditional Lutheran Churches or, again, in Great Britain with the Anglican Churches of England, Scotland, Northern Ireland and Wales. All these relations between the State and the Church, despite being inserted in a juridical context based on the neutrality of the State with respect to the religious phenomenon, are nonetheless characterized by a principle of collaboration by virtue of which «a partial exception is made for those historically majority confessions in the respective tradition national. Therefore, it is not excluded that preferential regimes are envisaged for some recognized confessions [...]. This preference takes on more marked juridical contours when certain confessions coincide with the recognition of national Churches». DE VERGOTTINI, G., *Diritto costituzionale comparato*, VI ed., vol. I, Padova, CEDAM, 2004, p. 349. On this point see also the reflections of: RIMOLDI T., «I rapporti Chiesa-Stato nell'Europa dei Quindici», in AA. VV., *I protestanti e l'Europa*, a cura della Federazione delle Chiese evangeliche in Italia e dell'Unione italiana delle Chiese cristiane avventiste del 7° giorno, Roma, Edizioni Com Nuovi Tempi, 2003, pp. 41-61.

The relations between the Cypriot State and the Orthodox Church of Cyprus are also particular, since over the centuries the archbishop has also assumed the function of «ethnarch», that is, representative of the Greek population of the island vis-à-vis the established power. His role has therefore also taken on a political character and it is for this reason that he has been directly elected by the people since the long Ottoman domination of 1571-1878. JEDIT H., (ed. by), *Storia della Chiesa. Vol. 10: La Chiesa nel ventesimo secolo (1914-1975)*, vol. X, Milano, Jaca Book, 2006, pp. 431-432.

<sup>27</sup> ZYPIN, V., «Sinfonia di sacerdotium e Imperium in Russia. Studio storico e prospettive», in *Diritto@Storia*, n. 8, 2009 (Memorie), url: [https://www.dirittoestoria.it/8/Memorie/Roma\\_Terza\\_Roma/Zypin-Sinfonia-sacerdotium-imperium-Russia.htm](https://www.dirittoestoria.it/8/Memorie/Roma_Terza_Roma/Zypin-Sinfonia-sacerdotium-imperium-Russia.htm).

the disharmony of caesaropapism or papocesarism», finding instead a balance in the «*equisonanza (ravnosztvúchie)* between *Imperium* and *Sacerdotium*»<sup>28</sup>.

It constitutes a peculiar element of the jurisdictionalist model hitherto mentioned and which connotes the relations between the State and the traditional Orthodox Church<sup>29</sup> The second aspect (principle) to which I wanted to draw attention, namely that of the symphony between *Sacerdotium* and *Imperium*. In many of the countries in which the Orthodox Church is the majority traditional Church, it was seen *supra* that there is a tendency to give rise to a privileged collaboration between Orthodoxy and public power, far beyond a simple regime of separation that instead sets as its goal the peaceful coexistence and coexistence of the two orders<sup>30</sup>. The relationship that binds State and Church in these cases is precisely called symphonic and implies that

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<sup>28</sup> CODEVILLA, G., «La politica ecclesiastica russa», in *QDPE*, n.1, 2014, p. 243.

<sup>29</sup> For an overview of the jurisdictional model and an examination of the other systems of relations between the State and the Churches, among others, cfr. MUSSELLI, L., *Diritto e religione in Italia ed in Europa dai concordati alla problematica islamica*, Torino, Giappichelli, 2016, pp. 5-17 in part.

<sup>30</sup> CODEVILLA, G., «La politica ecclesiastica russa», cit., pp. 243-257 The symphonic relationship between State and Church is strongly linked to the Orthodox tradition, in fact, although ups and downs have affected this alliance making it not always continuous, in general we can state that in countries with an Orthodox majority, despite the existence at least formally of a regime of separation, the Traditional Churches not only enjoy respect from the State, but constitute an important social force. PITSAKIS, C.G., «Dalla Nuova Roma al Commonwealth bizantino: il modello politico-religioso di Costantinopoli e la sua espansione oltre i confini dell'Impero», in A. PACINI (ed. by) *L'ortodossia nella nuova Europa. Dinamiche storiche e prospettive*, Torino, Edizioni Fondazione Giovanni Agnelli, 2003, pp. 5-6. So much so that they always assume a position of privilege by virtue, for example, of the role they have played in the country's national history, as happens in Romania where the 2006 Law on cults in art. 7.2 states that «The Romanian State recognizes the important role of the Romanian Orthodox Church and of the other recognized Churches and cults present in the national history of Romania and in the life of Romanian society», <http://licodu.cois.it/?p-1378>). Or again, this privileged role is reported in the Constitution itself, as occurs in Bulgaria where, despite the proclamation of pluralism and the principle of separation, it is affirmed that the Eastern Orthodox faith is a traditional religion (see: art. 13.3 Constitution of 1991 with the amendments of 2015, [https://www.constituteproject.org/constitution/Bulgaria\\_2015.pdf?lang=en](https://www.constituteproject.org/constitution/Bulgaria_2015.pdf?lang=en)). Even in Greece, although an attempt was made in 2018 to reach an agreement between then Prime Minister Alexis Tsipras and the Primate of the Greek Church to distinguish the roles of the two institutions, and despite the amendments to the 1975 Constitution that took place in 2019, the art. 3.1. remained unchanged. While not recognizing Orthodoxy as a State Church, it continues to define it as the predominant religion («The prevailing religion in Greece is that of the

between these two institutions there is «consonantia, harmonic combination (sočëtanie) of respective spheres of action and allocation (raspredelenie) of responsibilities [...]»<sup>31</sup>. The harmonic combination of the respective spheres implies that the State and the majority Church in some areas, and especially those involving ethics, cannot be indifferent to either. We mean to refer especially to social bioethics<sup>32</sup> which on the one hand is related to the salvation of man which is the mission of the Church, and on the other is the pivot of the solidity of State government and corroborates the legal status of the Church in the State<sup>33</sup>. The symphony thus delineated that characterizes the relations between temporal and spiritual power in countries with an Orthodox cultural majority thus reverberates in the normative production that, in tending to privilege the traditional majority Church, also incorporates, while secularizing them, its orientations in ethical matters<sup>34</sup>.

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Eastern Orthodox Church of Christ»), thus making an effective separation of powers and functions increasingly distant. between the State and the Greek Orthodox Church.

<sup>31</sup> CODEVILLA, G., «La politica ecclesiastica russa», cit., p. 255.

<sup>32</sup> ACOCELLA, G., *Etica sociale*, Napoli, Guida editori, 2003; ID., *Elementi di bioetica sociale. Verso quale mondo nuovo?*, Napoli, ESI, 1998.

<sup>33</sup> ZYPIN, V., op. cit. Although the Russian Orthodox Church itself underlines the separation between the two entities, the theandric one –the Church– and the secular one (CHIESA ORTODOSSA RUSSA, *Fondamenti della dottrina sociale (2000)*, Bologna, Edizioni Studio Domenicano, 2011, pp. 34-36), it is highlighted, however, that the desire to preserve the common good and freedom of conscience are fundamental principles for both, which creates important bridges of dialogue between them, see: MORAIU, I.M., «Fondamenti della dottrina sociale della Chiesa ortodossa russa», in *Oikonomia*, n. 2, June 2020, p. 34.

<sup>34</sup> On the other hand, the case of the *mixtae subjects* that characterize the relations between the State and the Catholic Church in Italy is partially different. These are also subjects which in some respects (think of marriage, education, cultural heritage, spiritual assistance, health and healthcare) concern both systems and for this very reason they can be the subject of conflict. While the power of command over these matters remains with the State, the path that has been chosen to follow in order to settle any disputes on the application of these matters is that of confrontation and dialogue with the Catholic Church (see: art. 14 of the Concordat of 1984 on the basis of which «the Holy See and the Italian Republic will entrust the search for an amicable solution to a joint Commission appointed by them»). See: LILLO, P., «Le materie miste nei protocolli internazionali concordatari», in *Archivio Giuridico Filippo Serafini*, 2014, pp. 239-270.

This means, or at least should mean, that legislative solutions are never the result of a single vision (secular or Catholic) and that they take into account the process of secularization which affects society. In purely bioethical matters, for example, this happened with abortion, assisted fertilization, law 219/2017 on informed consent and advance treatment provisions, all *mixtae* matters whose regulation is the result of a compromise since in them one ideology never prevails over another. This way of operating ensures that there is never a strong position taken by the State, therefore, despite the enactment of a law,

If we add to these two factors the influence that Soviet law had on State-Church relations and on the legislative production of the countries falling within its orbit, the picture thus sketched cannot but have also affected the very spread and application of Orthodox bioethics. The local Orthodox Churches, trapped at first between the meshes of Soviet law and the ups and downs of relations with the State<sup>35</sup>, then found themselves, with the fall of the USSR and the disappearance of Soviet or Soviet-inspired law, able to externalize relations with the new governments and be able not only to assert themselves in the legal system, by virtue of the identity and traditional role they played for the nation and the territory, but also to acquire a more incisive and structured power of direction in conditioning the ethical choices gradually made by the legislature. This ethical and identity role, however, soon had to clash with a highly secularized context such as that of the European Union and the European Court of Human Rights, which not only reshapes State-Church relations from a pluralist and inclusive perspective, but also requires them to open up to changing social ethical

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often the cracks left to give voice to even the religious «counterpart» lead to a partial or at least inconstant of bioethical legislation. On the point and on the question of conscientious objection, I refer to BOTTI, F., «La fine di un lungo viaggio al termine della notte: la legge 219/2017 sul consenso informato e sulle disposizioni anticipate di trattamento», in *QDPE*, 2, 2018, pp. 619-640.

<sup>35</sup> In the troubled relationship between communism and the Orthodox Church, in the USSR starting from 1917 the Orthodox Church and other religious communities were subjected to a fiercely repressive policy since they were the only social realities that could not be homogenized to the principles of Marxist-Leninist ideology present in Soviet Union. This, however, did not prevent the Patriarchate of Moscow, or what was left of it, from surviving since Stalin realized that the Orthodox religion represented a strong identity and unifying element also for the new Soviet citizens, acquired following the events of the 1939-1940. This awareness meant that in 1943 Stalin authorized the convening of a council and the consequent election of a new patriarch with the aim of involving the Russian Church in his plans to expand Soviet influence. This allowed the reconstituted Moscow Patriarchate to survive albeit in a subservient role to the *imperium*. ROCCUCCI, A., *Stalin e il patriarca. La Chiesa ortodossa e il potere sovietico*, Torino, Einaudi, 2011, pp. 132, 174; GRAZIOSI, A., *L'Urss di Lenin e Stalin. Storia dell'Unione Sovietica*, Bologna, Il Mulino, 2007, p. 381.

The experience of real socialism, therefore, has never eliminated the coincidence between national identity and Orthodox identity, so much so that even in the republics of socialist democracy the relations between the majority Orthodox Church and the government have never completely subsided, even in the darkest times, since the top of the ecclesiastical hierarchy managed to maintain good relations with the communist regime. See: BOTTI, F., «La transizione dell'Est Europa verso la libertà religiosa», cit., pp. 2-3.

needs and to renounce the homogeneity of traditional Orthodox culture on their territory.

### 3. RUSSIAN INFLUENCES IN ABORTION LEGISLATION

The October Revolution of 1917, the pro-abortion legislation of 1920, and the formation of the Union of Soviet Socialist Republics and its subsequent dissolution were the events that had a decisive influence on the bioethical normative production of the countries falling within the Soviet orbit and in which previous legal norms were in force.

Russia was among the first countries to legalize abortion when the Bolsheviks came to power with the publication in 1920 in the then established Russian Soviet Federative Socialist Republic of Decree No. 471<sup>36</sup>. Prior to the October Revolution, relations between the Empire and the Orthodox Church had long since abandoned the symphonic connotation that in fact as early as 1645<sup>37</sup> had shown the first signs of breaking down. But it was with the advent of Peter the Great that this symphony was completely replaced by a process of secularization which, with the abolition in 1721 of the Moscow Patriarchate, transformed the Orthodox Church into an apparatus of the State, thus causing it to permanently lose that independence which it still maintained until then. The situation of State-Church relations remained virtually unchanged even under Catherine II whereby the Church remained a mere administrative branch of the state, despite the position of absolute privilege assigned to it by the fundamental laws of the State<sup>38</sup>. The Orthodox Church, however, while not playing a decisive role in the events of the time and exerting marginal influence on the cultural level, nevertheless managed to keep the religious sentiment of Orthodoxy alive in the population, so much so that legislation punishing with the death penalty the killing of «unborn children» responded to the imperatives of the Christian countries of the time; in accordance with this view in Rus' there was in fact

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<sup>36</sup> Decree of the People's Commissariats of Health and Justice n. 471 of November 18, 1920, *On women's health*. Available in Russian at: <https://istmat.org/node/42778>

<sup>37</sup> With the reign of Aleksej Michajlovič (1645-1676), father of Peter the Great, a symphonic climate prevailed with the Orthodox Church, despite the fact that with the *Uloženie* of 1649 the Church was subjugated to the State. AMMANN, A.M., *Storia della Chiesa russa e dei paesi limitrofi*, Torino, Utet, 1948, p. 241.

<sup>38</sup> CODEVILLA, G., «Stato e Chiesa nella tradizione ortodossa russa», cit.



the death penalty for abortion. Introduced in 1649 in the Code adopted under ruler Alexei Mikhailovich, ch. 22, art. 26 punished by beheading women who practiced witchcraft or had committed murder, while those who had culpably killed children or had abortions were buried alive<sup>39</sup>. In 1715 the death penalty for abortion was abolished by Peter the Great, but it nevertheless continued to remain a crime and to be severely punished despite the fact that symphonic relations with the Orthodox Church as we have seen had permanently disappeared at the behest of the Tsar himself.

According to the provisions on punishment of 1845, abortion was equated with deliberate infanticide, and guilt was extended not only to the woman but also to the persons who aided her in the expulsion of the fetus. Abortion was punishable by hard labor for 4 to 10 years for the doctor and exile to Siberia or confinement in a correctional institution for 4 to 6 years for the woman herself. More specifically, the Punitive Regulations (Art. 1461-1462) condemned those guilty of «criminal fruition» by subjecting them, if the pregnancy termination operation was successful, to «deprivation of all property rights and exile to a settlement in the remotest places of Siberia» (Art. 1462). If the abortion was later found to be detrimental to the woman's health, the abortionist would be punished with hard labor for a period ranging from six up to a maximum of eight years if he or she had medical training. With the Criminal Code of 1903, the penalties were softened and it was provided for the mother guilty of killing her fetus to be imprisoned in a correctional home for not more than three years, while the accomplice was punished with imprisonment from 1.5 to 6 years<sup>40</sup>. However, abortions committed for health reasons were permitted, the explicit condemnation of abortion by the Orthodox Magisterium, in fact, is not to this day as absolute as it is in the documents of the Catholic Magisterium<sup>41</sup>.

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<sup>39</sup> My translation from the original: «А смертные казни женскому полу бывают за чаровство, убийство – отсекают головы, за погубление детей и за иные такие же злые дела – живых закапывать в землю»

<sup>40</sup> L. BERDNIKOV, *Дерзкая империя. Нравы, одежда и быт Петровской эпохи*, Russia, ООО «Издательство АСТ», 2018.

<sup>41</sup> CONGREGAZIONE PER LA DOTTRINA DELLA FEDE, *Chiarificazione della Congregazione per la dottrina della fede sull'aborto procurato*, in *L'Osservatore Romano*, Anno CXLIX, n. 157 (11 luglio 2009), p. 7: «an intervention that directly causes the death of the fetus, sometimes called inappropriately a «therapeutic» abortion, [which] can never be lawful as it is the direct killing of an innocent human being».

Orthodoxy allows so-called «therapeutic» abortions, as also reported in the contemporary 2000 official Russian Church document, which states: «In the case where the mother's life is seriously endangered by the continuation of the pregnancy, especially if there are already other children, pastoral practice recommends indulgence: thus the woman who has had an abortion under these circumstances is not excluded from the Eucharistic communion of the Church, but is nonetheless called to personal repentance through prayer, in the forms established by the priest who received her confession»<sup>42</sup>.

With the October Revolution, which was consistent with the Marxist ideas that animated it, a rejection of religious ideas about pregnancy and the soul of the fetus made its way into medical ethics, which in 1920 with Decree No. 471 legalizing the termination of pregnancy helped to sweep away, though as we shall see not in its entirety, Christian Orthodox influences on abortion.

Although the main motive behind the Bolsheviks' religious policy lay in eliminating the presence of believers in communist society, this overt and fiercely implemented anti-religiosity was not, however, the only reason that led to the legalization of abortion. Especially since despite the suffering of the Orthodox Church due to the bloody persecution of clergymen that forced many of them to leave the country, the adoption of measures for the separation of Church from State and school from Church, the expropriation of church lands and the transfer of denomi-

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<sup>42</sup> CHIESA ORTODOSSA RUSSA, *Fondamenti della dottrina sociale (2000)*, cit., p. 224.

Regarding the conception of repentance in Orthodox ethics, see: *Fondamenti dell'insegnamento della Chiesa ortodossa russa su dignità, libertà e diritti umani*, Mosca, Cattedrale di Cristo Salvatore, June 26, 2008, available at <https://www.patriarchia.ru>, whereby, according to point 1.5. «Repentance, which is based on the awareness of sin and the desire to change one's life, is of particular importance in restoring the conformity to one's dignity to the person. In repentance, a person recognizes the inconsistency of his thoughts, words or deeds with God-given dignity and testifies before God and the Church of his unworthiness. Repentance does not humiliate a person, but gives him a powerful incentive for spiritual work on himself, for a creative change in his life, for preserving the purity of God-given dignity and growing in it». For an in-depth analysis of the Russian ethical vision applied to abortion, see also: PETRA, B., «Basilio il Grande e l'aborto. L'insufficienza dell'interpretazione tradizionale e la necessità di andare oltre», in *Nicolaus. Rivista di teologia ecumenico-patristica*, n. 37, 2010, pp. 247-266; ID., «Vita del feto, aborto ed intenzionalità omicida in Basilio il Grande (329-379)», in *Studia Moralia*, n. 19, 1981, pp. 177-193.

national institutions to the State<sup>43</sup>, Orthodox religious sentiment had managed to survive, however, and continued to remain widespread throughout the territory<sup>44</sup>.

In fact, Decree 471 of 1920 on the authorization of planned abortion, rather than an affirmation of anti-religiosity and a detachment from orthodox ethics, was functional to the realization of the goals of historical materialism pursued by the socialist revolution, which intended to eliminate the economic system of the old patriarchal peasant or artisan family also through the emancipation of the role of women<sup>45</sup>. Such ideals, however, still seem far from a true protection of individual rights since even in the manifestos made since the 1920s, women appeared as workers, but always in a subordinate position to men<sup>46</sup>.

As can be seen then from reading the decree in question, the workers' and peasants' government actually held firm in its condemnation of abortion in accordance with previous legislation and the unacceptability of this practice for traditional Christian ethics for which, as confirmed by the Orthodox liturgy itself, people must be recognized as such in the womb<sup>47</sup>. In fact, what the decree wanted to avoid was not the impossibility for women to resort to abortion, but for them to resort to clandestine abortion with serious consequences for their safety as well as for the entire community.

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<sup>43</sup> On December 31, 1917, the newspapers published the draft decree for the separation of the Church from the State and the prohibition of the teaching of religion in schools, the closure of all ecclesiastical educational institutions, including the eparchial ones (3), the nationalization of charitable institutions, of assistance and charity, the closure and subsequent confiscation of the Synodal Printing House of Moscow and that of Petrograd. Furthermore, the decree deprives religious bodies of legal personality and nationalizes all Church assets, including monasteries, in which the most genuine Orthodox tradition was kept since ancient Rus'.

<sup>44</sup> GRAZIOSI, A., *L'Urss di Lenin e Stalin. Storia dell'Unione Sovietica*, Bologna, Il Mulino, 2007, p. 382.

<sup>45</sup> ZETKIN, C., *La questione femminile e la lotta al riformismo*, Milano, Mazzotta, 1977, pp. 3-4; SICARI RUFFO, G., «Clara Zetkin», in *Enciclopedia delle donne*, url: <http://www.enciclopediadelledonne.it/biografie/clara-zetkin/>

<sup>46</sup> PERONI, G., «Raisa Orlova: radici ebraiche, educazione russa. Un percorso comune a diverse protagoniste dell'intelligencija sovietica», in *Letteratura Ebraica al femminile*, 05/2014, p. 283

<sup>47</sup> PETRÀ, B., *Tra cielo e terra. Introduzione alla teologia morale ortodossa contemporanea*, Bologna, EDB, 1992, pp. 225-254, in particular pp. 232-234.

Therefore, by implementing the principles of Maternity and Child Protection<sup>48</sup>, the decree provided for the gradual disappearance not of the provisions against abortion, but of its clandestinity by allowing only doctors to perform artificial termination of pregnancy, which was to be free of charge and carried out exclusively at Soviet hospitals to ensure the necessary sanitary conditions (I and II). This circumstance led to tighter control over abortion procedures by allowing clandestine abortion to be combated through pregnancy planning. If a doctor performed such an operation in a private practice, he or she would be brought to justice (IV). The midwife or whoever else, guilty of procuring an artificial termination of pregnancy was deprived of the right to practice and was subject to the people's court (III).

This provision was soon modified as demographic, social and political conditions and needs changed, by virtue of which it suffered progressive limitations. From 1936 to 1954, due to the difficult demographic situation, abortion operations were banned by decree of the Central Executive Committee and the Council of People's Commissars of the USSR on June 27, 1936<sup>49</sup>. Now abortion was performed only for stringent medical reasons related to the woman's health or the transmissibility of serious disease to the fetus with the hope that by doing so it would be possible to increase the birth rate and thus the population.

The October Revolution had then resulted in an exodus to the West of Russian theologians and intellectuals who «in the late 1800s and early 1900s had gone through positivism and through Marxism, and finally

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<sup>48</sup> Issues related to motherhood and childhood entered the debate that began in 1914, when the need to safeguard the health of women who resorted to clandestine abortions had emerged from the medical circles [see: *supra* in the text] and criminologists the decriminalization of the crime of abortion. The debate was soon joined by working women who, organized in Departments [Отделы работниц], were among the proponents of the approval of the decree itself.

<sup>49</sup> Decree dated June 27, 1936 «On the prohibition of abortion, the increase in material assistance to women in childbirth, the establishment of State assistance for large families, the expansion of the network of maternity, nurseries and nursery schools, the tightening of criminal penalties for non-payment of alimony and some changes to the law on divorce», Постановление ЦИК и СНК СССР от 27 июня 1936 г. «О запрещении аборт, увеличении материальной помощи роженицам, установлении государственной помощи многодетным, make the choice of a single home, whether you are in a house or a house, use a single dish to choose from without paying for the food в и некоторые изменения в законодательство о разводах». The text in Russian is available at: <https://istmat.org/node/24072>.

found Orthodoxy and the anti - Western critique bequeathed by Slavophilic thought»<sup>50</sup> found in the theological tradition of Greece, Bulgaria, Romania, and Serbia.

#### 4. ORTHODOX BIOETHICS IN EASTERN EUROPEAN COUNTRIES

A key role in the Russian diaspora was played by the Saint Sergius Institute in Paris, which, from the period from the two wars to the present has witnessed, despite having also gone through dramatic vicissitudes<sup>51</sup>, of Orthodox theological renewal in continuity with the patristic tradition as a reaction to the critique of Western rationalism that had infected the theological disciplines. With the end of World War II, the Institute was transformed from a Russian emigration scholastic institute into an international theological scholastic institute, so in 1949-1951 Greeks, Serbs, Syrians, Germans, Poles and Finns were drawn into its orbit. In 1953 the Institute hosted the first Liturgical Congress, which was attended by liturgical scholars from all over the world. This Congress, which today has become an annual scholarly forum for Orthodox worship researchers, helped elevate the Institute among the most significant centers of the Orthodox world, developing the various branches of theology, religious and philosophical thought. Two parallel currents have marked the Institute's activity: 1) the emphasis on the tradition of Orthodoxy, namely liturgy and patristics; 2) the attempt to find «a new religious synthesis in dialogue with the contemporary world»<sup>52</sup>.

As the Institute grew and with it Orthodox ethical reflection, in those same years the decree on the prohibition of abortion that had remained in force in the USSR from 1936 until 1955 lapsed. On August 5, 1954, a first decree of the Presidium of the Supreme Soviet of the USSR «On the Abolition of the Criminal Responsibility of Pregnant Women for Abortion» was introduced, decriminalizing the practice<sup>53</sup>; it was fo-

<sup>50</sup> PETRÀ, B., «La teologia morale ortodossa dal XX secolo», cit.

<sup>51</sup> On the vicissitudes of the St. Sergius Institute, see.: Parlato, V., «Le Chiese ortodosse in Italia», in *Studi Urbinati di scienze giuridiche, politiche ed economiche*, n. 61, 3, 2010, p. 492 ss., pp. 481 - 501.

<sup>52</sup> YAREMA, M., *La bioetica ortodossa*, cit., pp. 152-153

<sup>53</sup> Vedomosti of the Supreme Soviet of the USSR, 1954, n. 15, art. 334. Указ Президиума ВС СССР от 05.08.1954 (с изм. от 13.04.1959) «Об отмене уголовной ответственности беременных женщин за производство аборта».

llowed on November 23, 1955, by the decree «On the abolition of the prohibition of abortion.»<sup>54</sup>, which allowed abortions up to 12 weeks and within specialized medical facilities. Abortion performed outside these facilities remained a criminal offense, and the complicit physician faced imprisonment of up to one year and, in the case of the patient's death, up to eight years. This legislation was supplemented by the USSR Ministry of Health Order of November 29, 1956, which adopted the instruction «On the Procedure for Performing the Operation of Artificial Termination of Pregnancy (Abortion)»<sup>55</sup> which was later amended in 1961 in the part concerning the granting of sick leave from work<sup>56</sup>.

In line with the general approach of the socialist bloc countries at that time, Romania and Bulgaria also legalized abortion. Although Romania had few cultural and historical ties with Russia, especially since it had strongly opposed the domination of the Soviet Union, abortion legislation was strongly affected by its influence. Prior to Sovietization, abortion was in fact forbidden all the more because Romanian society between the wars had experienced a revival of religious sentiment, especially by the peasant class, which, thanks to the introduction of universal suffrage and the great agrarian reform that took place after World War I, allowed them to express themselves as citizens and to be able to transmit their values, the main dimension of which was the reli-

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<sup>54</sup> Vedomosti of the Supreme Soviet of the USSR, 1955, no. 22, art. 425: «[...] In order to provide an opportunity for a woman to decide the question of motherhood for herself, as well as to prevent harm to women's health from community abortions, the Presidium of the Supreme Soviet of the USSR

Decides:

1. Cancel Article 1 of the Decree of the Central Executive Committee and the Council of People's Commissars of the USSR of June 27, 1936 on the prohibition of abortion.

2. Operation for artificial termination of pregnancy is permitted only in hospitals and other medical institutions in accordance with the instructions of the USSR Minister of Health.

3. Maintain the established criminal liability of both doctors and persons without special medical education who perform abortions outside hospitals or other medical institutions».

<sup>55</sup> Приказом Минздрава СССР от 29 ноября 1956, Инструкция «О порядке проведения операции искусственного прерывания беременности (аборта)».

<sup>56</sup> This amendment, rather than the decrease, led to an increase in the use of clandestine abortion since the word abortion appeared in the diagnosis in the certificate of incapacity for work which was issued by the hospital and, since not all women were willing to make such details of their lives were public, they preferred to go underground.

gious dimension of the Romanian Orthodox Church<sup>57</sup>. The final establishment of the communist regime in 1948 brought with it the drastic restriction of religious freedom in Romania. The new legal framework and the exercise of ecclesial mission in Romania now followed the Soviet Stalinist model, and the Romanian Orthodox Church was progressively removed from the life of the State; however, as was the case with the Russian Orthodox Church, it still managed to survive by coming out of the shadows<sup>58</sup>. This was the background to the introduction of new legislation on abortion, which, for the first time in Romanian history, was legalized in 1957<sup>59</sup>. The new legislation allowed abortion if the woman's life was in danger or if one of the parents suffered from mental alienation and there was a risk of transmitting this disease to the child. In any other situation, abortion remained punishable. In the early 1960s, the Romanian government began to distance itself from the policy of the Soviet Union, and Ceaușescu's consolidation in power led in 1966 to the adoption of a law banning the use of abortion and contraception. This measure not only contrasted with the other communist States, in which abortion remained legalized, but was used as leverage for the Romanian Orthodox Church to promote the new regime and the final detachment of the Socialist Republic of Romania from the Soviet Union<sup>60</sup>. After 1989, with the second legalization of abortion, the Romanian Orthodox Church began to express a concern for the souls of aborted children by recommending prayer and, in particular, the sacred Liturgy. Orthodox bioethics was at this point in search of a new religious synthesis in dialogue with the contemporary world. With the 1970s and the development of bioethics as a discipline from the U.S. experience, this dialogue was fostered within the Institute of St. Sergius where interest

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<sup>57</sup> ENACHE, G., «Biserică – societate – națiune – stat în România interbelică I. Explorări în orizont liberal», in *Revista teologică*, n. 2, 2010, p. 170.

<sup>58</sup> On the situation of the Romanian Orthodox Church in the period 1945-1964, see: GEORGESCU, B., *Biserica Ortodoxa Romana Si Puterea Comunistă (1945-1964)*, Eikon, 2015.

<sup>59</sup> Only then to be condemned again with very severe penalties starting from 1966 with the advent of Nicolae Ceaușescu. Before 1957 abortion in Romania was regulated under the Penal Code of Charles II, which came into force on 1 January 1937, which in turn brought about an important modification to the Code of Cuza, valid in the Old Kingdom, which did not it admitted abortion in no case, while the 1936 Code introduced some exceptions, broadly tracing the Soviet legislation of 1924. CIMBALO, G., *Strategie sovraniste e politiche familiari nell'Est Europa*, cit., p. 418.

<sup>60</sup> STAN, L. and TURCESCU, L., *The Romanian Orthodox Church and Post-Communist Democratization. Europe-Asia Studies*, Vol. 52, No. 8, Dec., 2000, pp. 1467-1488

in the field of bioethics initiated the development of Orthodox bioethics in the Parisian and European context.

Precisely since 1989, social, political, economic, family and sexual issues have increasingly become the subject of theological reflection not only in the diaspora, but also in the various national Orthodox Churches<sup>61</sup>. The fall of the USSR and the Socialist Republics and the greater freedom assigned to the local Orthodox Churches in the public life of the new States led the latter to an increasing interest in bioethical dynamics.

With the fall of the Soviet Union on December 26, 1991, in the immediate term there were no particular repercussions in its legislation regarding the voluntary interruption of pregnancy, except becoming progressively more and more restrictive within a decade thereafter, thus marking a breakaway from White and Little Russia<sup>62</sup>.

Thus, in the Russian Federation and Belarus in 2003 they initially allow unrestricted termination of pregnancy only up to the 12th week while up to the 22nd week abortion can be performed for so-called social reasons<sup>63</sup>. The abortion procedure is regulated by the Instruction on the Procedure for Performing an Artificial Termination of Pregnancy

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<sup>61</sup> PETRÀ, B., «La teologia morale ortodossa dal XX secolo all'inizio del terzo millennio», cit.

<sup>62</sup> With the collapse of the Soviet Union, Russia found itself having to build a new identity. Amputated from the territories of the former socialist republics, where millions of Russians suddenly found themselves cut off from their homeland, Moscow has entrusted itself to the Orthodox Church, guardian of the imperial vestiges and with a multinational vocation. Accustomed to holding and containing different peoples under a single creed, Muscovite Orthodoxy has become a pillar of the «Russian world», the *Russkij Mir*, a cultural and political project drawn up in the mid-1990s with the aim of consolidating the interior to guarantee outside close. It is no coincidence that Kirill I and all his predecessors are not patriarchs of Russia alone, but of all the Russias, i.e. of the Great Russia, the White one – Belarus – and the Little one – Ukraine.

<sup>63</sup> The «social reasons» consist of a detailed list of social and medical reasons which legitimize access to abortion in situations in which it would normally be prohibited. The list of these exemptions changes with the change of government requirements which gradually become more or less restrictive. So it happened for the Decree of the Government of the Russian Federation of August 11, 2003 No. 485 «On the list of social indications for the artificial interruption of pregnancy» which was repealed with the resolution of 6 February 2012 n. 98 «On the social indication for artificial termination of pregnancy», in <http://www.consultant.ru>.



(approved by the Order of the Ministry of Health of the Russian Federation No. 242 of June 11, 1996); failure to comply with it by the physician results in imprisonment for up to 5 years with deprivation of the right to engage in medical activities. Pregnant underage women under the age of 15 may have an abortion only with the consent of their parents or persons standing in for them, such as a physician or a board of experts<sup>64</sup>. This legislation was amended and tightened by Federal Law No. 323-FZ of Nov. 21, 2011 (amended Dec. 28, 2022) «On the Basics of Protecting the Health of Citizens in the Russian Federation,» effective Jan. 11, 2023. Its article 56 on artificial termination of pregnancy continues, however, to provide that each woman makes her own decision on the issue of maternity by giving free and informed consent to artificial termination of pregnancy that is carried out at gestational age up to 12 weeks. After 12 weeks, pregnancy may be terminated in two cases. Within 22 weeks when it falls within the social indications provided by law, to date restricted only to the case of a pregnancy occurring as a result of rape. The second case in which abortion is permitted even after 22 weeks is the presence of medical indications when the pregnancy may threaten the life and health of a woman (death of the fetus in utero, the need for medical procedures that may adversely affect the fetus and abnormal intrauterine development of the fetus, severe developmental abnormalities that are incompatible with life). However, this provision should be read in conjunction with Article 123 of the 1996 Criminal Code of the Russian Federation<sup>65</sup>, as amended on December 29, 2022, which severely punishes illegal abortion<sup>66</sup>. In Ukraine, on the other hand, the legislation in addition to allowing legal abortion without restriction up to 12 weeks, stipulates that up to 22 weeks it is permitted for legal, genetic, medical and social reasons, as well as for personal reasons, after obtaining permission from a local medical commission<sup>67</sup>.

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<sup>64</sup> See: Article 32 of the Fundamentals of the Legislation of the Russian Federation on the Protection of Citizens' Health, approved by the Supreme Court of the Russian Federation on July 22, 1993, No. 5487-1 and amended on December 7, 2011.

<sup>65</sup> Criminal Code of the Russian Federation of June 13, 1996 N 63-FZ, as amended on December 29, 2022.

<sup>66</sup> Available at: <https://www.consultant.ru>.

<sup>67</sup> The list of social reasons that allow abortion between 12 and 22 weeks is contained in the resolution of the Council of Ministers n. 144 of February 15, 2006, «On the Implementation of Article 281 of the Civil Code of Ukraine», available at <https://zakon.rada.gov.ua/laws/show/144-2006-%D0%BF#Text>.

## 5. SURROGACY IN ORTHODOX COUNTRIES

Surrogacy or surrogate motherhood or uterus for rent is the practice whereby a woman contractually obligates herself to carry a pregnancy on behalf of the so-called intended parents or principals. The surrogate mother, who may act for free or in exchange for a fee, agrees to relinquish any rights to the child from the moment the child is entrusted once born to the intended parents.

Given the high risk of exploitation of the surrogate woman's status and the danger of the establishment of child trafficking, surrogacy is banned in many countries, such as Italy<sup>68</sup>. In the Russian Federation, Art. 55.3<sup>69</sup> of Federal Law No. 323-FZ of Nov. 21, 2011 (amended Dec. 28, 2022) «On the Basis of Citizens' Health Protection in the Russian Federation» (effective Jan. 11, 2023)<sup>70</sup> provides for the possibility of surroga-

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<sup>68</sup> Law 40/2004 containing «Regulations on medically assisted procreation techniques», provides, in article 12, paragraph 6, that «Anyone who, in any form, carries out, organizes or advertises the commercialization of gametes or embryos or the subrogation of maternity leave is punished with imprisonment from three months to two years and with a fine from 600,000 to one million euros».

Paragraph 9 of the same article 12 establishes that: «It is established that the professional practice is suspended from one to three years for a healthcare professional convicted of one of the offenses referred to in this article».

<sup>69</sup> «[...] The right to use assisted reproductive technologies in the form of surrogacy does not apply to a man and a woman who are not married». While a single man can never access the service, «a single woman has the right to use assisted reproductive technologies if there is her voluntary and informed consent to medical intervention».

Surrogacy is therefore now allowed only to married Russian citizens and single Russian women who, for medical reasons, cannot give birth to a child on their own. The law also provides that a child born in Russia to a surrogate mother who has entered into a surrogacy agreement with prospective parents or a single woman acquires Russian citizenship at birth.

Even Russian citizens who have contracted a regular marriage with a foreigner can access surrogacy; a child born on the territory of the Russian Federation from a surrogate mother acquires (by birth) only the citizenship of the Russian Federation.

<sup>70</sup> There is no special law regulating surrogacy in Russia as some of its aspects are regulated by different laws and regulations. Thus, in addition to the Federal Law «On the Fundamentals of the Protection of Citizens' Health in the Russian Federation» (article 55. Use of assisted reproductive technologies), we find the Family Code (article 51. Registration of the child's parents in the birth register); the federal law «On civil status records» (Article 16. Declaration of the birth of a child); the order of the Ministry of Health of the Russian Federation dated July 31, 2020 No. 803 «On the procedure for the use of assisted reproductive technologies, contraindications and restrictions on their use». Some amendments to the above-mentioned legal acts, as well as to the Federal Law «On Citizenship

cy by hetero-married couples only and for single women. In both cases, women (single or in couples) requesting surrogacy must be able to provide their own oocytes for fertilization. This condition is a very important one because the child should be genetically related to at least one of the two parents. As a result of the ongoing Russian-Ukrainian conflict, as of May 24, 2022, Russia has banned the surrogacy for foreign nationals by providing a requirement of citizenship of the Russian Federation in order to be able to access this service.

Surrogacy has been allowed in Belarus since 2006<sup>71</sup> and since 2012 it has been considered a real health treatment that provides public medical care<sup>72</sup>. The conditions of access are very similar to the conditions that are provided by the Russian Federation, but unlike the latter, it remains allowed for foreign (married) couples to have access; for all those who want to access the surrogacy procedure, there must be medical reasons for requesting it<sup>73</sup>. Surrogacy is also allowed in Ukraine for foreigners, but not for homosexuals and singles although it is currently suspended due to the war. Surrogacy in accordance with the «Procedure for the Use of Assisted Reproductive Technologies in Ukraine,»

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of the Russian Federation», were introduced by the Federal Law No. 538-FZ dated December 19, 2022 «On amendments to certain legislative acts of the Russian Federation». Available at: <http://publication.pravo.gov.ru/Document/View/0001202212190052?index-0&rangeSize-1>.

<sup>71</sup> Also in Belarus surrogacy is regulated by numerous legal acts, such as: the Civil Code; the Code of the Republic of Belarus on marriage and family; the law on assisted reproductive technologies n. 341-3 of 7 January 2012; resolution no. 1454 of the Cabinet of Ministers of December 14, 2005 «On the procedure for organizing work with citizens in bodies registering civil status documents on issuing certificates or other documents containing confirmation of facts of legal relevance» (as amended in 2014); decision no. 54 of the Ministry of Health of 1 June 2012 «On some issues relating to the use of assisted reproduction technologies»; the decision of the Constitutional Court of 28 December 2011 n. P-673 / 2011 «On the conformity of the Constitution of the Republic of Belarus with the law of the Republic of Belarus On assisted reproductive technologies», aimed at the realization by citizens of reproductive rights as a guarantee of the constitutional right to motherhood, paternity.

<sup>72</sup> Law on assisted reproductive technologies n. 341-3 of 7 January 2012.

<sup>73</sup> The medical reasons are identified by the Belarusian Ministry of the Republic in the Order of Belarus No. 54 of 1 June 2012 (and subsequent amendments). The list of such medical indications for the mother includes: the absence of the uterus (congenital or acquired); the deformation of the cavity or cervix with congenital malformations or due to diseases; a uterine synechia, not amenable to therapy; presence of somatic diseases for which pregnancy is contraindicated; failed attempts at IVF when repeatedly receiving high-quality embryos.

approved by Ministry of Health Ordinance No. 787 of September 9, 2013, is defined as one of the assisted reproductive technologies, which allows a couple to become the biological parents of their child if one of them has congenital or acquired diseases that cause infertility.

The relationship between the couple and the surrogate mother is governed by a contract that is signed before the program begins. The contract protects the rights of the parties and determines their obligations. The couple gives the surrogate mother monetary compensation for services rendered in the amount specified in the contract; while the surrogate mother agrees to deliver the infant to the parents after delivery, she does not acquire any parental rights to the child and does not have the right to contest in court. It also does not require the approval of a court to include the names of the genetic parents in the child's birth certificate<sup>74</sup>.

In Romania, surrogacy legislation is still incomplete; however, it is considered ethically worthy and is practiced in public clinics only for medical reasons and after psychological screening of the surrogate mother and would-be parents. In Greece, surrogacy is regulated by Article 1458 of the Civil Code introduced by Law 3089/2002 on «Medical Assistance in Human Reproduction» and as amended by Law 3305/2005 and Law 4272/2014, the latter, in particular, allows only altruistic gestational surrogacy and permits access to this practice even for those who are not permanent residents of Greece (Article 17). Additional provisions are provided in the Code of Conduct for Medically Assisted Reproduction (Decision No. 73 of January 24, 2017). Surrogacy is allowed for heterosexual couples (married, unmarried, or in a legal union) and single women.

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<sup>74</sup> Surrogacy is carried out under the IVF program. Its feature is that the embryo received from the genetic parents is transferred into the uterine cavity to another woman. Also in Ukraine, as in Belarus and the Russian Federation, there is not a single legislative act that comprehensively regulates the provision of surrogacy service. The legislative acts to which reference is made are the Civil Code (art. 139.2); the Family Code (art. 123); the law 2801-XII of November 19, 1992 on «Basics of the legislation of Ukraine on health care» (art. 48); the order «On the approval of the procedure for the use of assisted reproductive technologies in Ukraine», approved by the Ministry of Health of Ukraine on September 9, 2013 No. 787 ([https://zakononline.com.ua/documents/show/344653\\_\\_\\_495915](https://zakononline.com.ua/documents/show/344653___495915)). Other documents can be found at: <https://www.dec.gov.ua/>.

In Cyprus, surrogacy for foreigners is allowed only in a few specialized clinics in the north of the country. The surrogate mother receives compensation while the child's legal father and mother become genetic parents immediately after delivery when the official birth certificate is issued. Interestingly, compared to the countries previously examined, sex selection of the unborn child is allowed.

This excursus on the permissibility of surrogacy in Orthodox-majority countries makes me rewind the tape of the reasoning I had envisaged at the beginning of these conclusions. Surrogacy seems to be one of the very few bioethical cases, if not currently the only one, for which there is no apparent consonance between Orthodox bioethics and the legislative output of the majority of Orthodox States.

For Orthodox bioethics, in fact, Tradition opposes not only the practices of heterologous assisted fertilization, but also substitute motherhood since the former and the latter «injure in various ways the unity of marriage, mother-child intimacy in gestation, and the identity of the child»<sup>75</sup>.

Although this dissonance does not take away from the fact that there are stances against governmental choices by the local Orthodox Churches, their voices, in this case, fail to break through the wall of easy revenues that the presence of clinics (private and public) offering this service guarantee the country. The fact that these are countries in which there is a widespread poverty does not seem to speak in favor of ethical awareness of legalization of this kind on the part of the respective governments. However, the fact that this practice is governed by a strict proceduralization that allows access to surrogacy only in the case of the presence of medical issues that make pregnancy impossible for the requesting parents, argues instead for a choice made conscientiously and in any case in a thoughtful manner. The selection and treatment of surrogate mother candidates is also the result of ethical reflection since they are required to be mothers of at least one child and that their remuneration, where provided, covers only the costs of the pregnancy to avert the risk of instrumentalization and exploitation of the woman's body.

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<sup>75</sup> PETRÀ, B., «Ortodossia (chiese ortodosse) e Bioetica», in S. LEONE - S. PRIMITERA (ed. by), *Nuovo Dizionario di Bioetica*, Roma, Città Nuova Editrice, 2004, p. 797.

## 6. TOWARD A CONCLUSION

Orthodoxy like many religious manifestations cannot be defined as a simple religious confession since it is a broader phenomenon that, as we have seen, affects not only religion but also culture and traditions. Orthodoxy, in fact, in addition to faith marks identity, so much so that the bond that binds it to the temporal power in the countries of the East is such that today it is recognized by the order that credits the Church that represents it with a historical and traditional role in the birth of national identity. An identity, this one, founded on the strong traditions that have been handed down from generation to generation and that make the people «a unified and homogeneous entity in thought and will»; prerequisites these are indispensable not only for the entrenchment of orthodoxy, and more generally of religion, but also of populism, which, like the former, resents pluralism and differentiation of any kind<sup>76</sup>.

The search for their own identity after the collapse of the regimes led the Eastern countries to balance between the restoration of the past, which justified the privileged role assigned to Orthodoxy and the Orthodox Churches, and the imitation of Western liberal values and models.

And it is precisely on (and against) the latter that a «silent war» is being waged today by the Churches and nationalistic currents in politics, which, while recognizing the process of European integration as useful since it brings benefits to belong to a large continental economic and political space, see the limits of the Western model. Factors such as the economic crisis of 2008, the globalization process and the phenomenon of migration flows, just to name a few, have not only highlighted them, but have inevitably brought with them upheavals both socially and culturally that have contributed to rekindling in the Eastern countries a return to their roots and their traditions as opposed to the Western model, which evidently was not as infallible as the initial enthusiasm after the fall of the regimes might have led one to believe.

The reclaiming of their identity led to at least a partial renunciation of the separatist agenda of the liberal State and the sacrifice of restoring

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<sup>76</sup> COLAIANNI, N., «Populismo, religioni, diritto», in *Questione giustizia*, 1, 2019.

the principles of freedom that membership in the West had entailed. Particularly affected were matters related to bioethics, primarily abortion, evidenced by the fact that, beginning in 2011, a process of restricting women's reproductive rights began<sup>77</sup>. Suffice it to say that in that very year the Romanian government stopped funding contraception subsidies, making access to birth control much more difficult, and stopped teaching responsible sex education in public schools<sup>78</sup>. The proliferation then of pro-life organizations, whose anti-abortion activists are often members of orthodox fundamentalist movements that oppose not only sex education but also contraception, has contributed to very limited access to termination of pregnancy, with the risk of an increase in clandestine abortions and infanticide.

Also in 2011, the government of the Russian Federation passed a law that restricted the possibility of legal abortion to 12 weeks. Every Russian woman has the right to terminate her pregnancy free of charge by 12 weeks, in cases of rape up to 22 weeks, and at any time if there is a medical indication. However, women cannot have an abortion immediately. According to the law, the doctor must give the woman «time to think,» so that the decision is considered, and the «reflection» period is 2 to 7 days.

During this time, doctors are required to show the woman the embryo on the ultrasound screen and let her hear its heartbeat. Among other things, doctors who were able to dissuade a woman from having an abortion can take part in the «Holiness of Motherhood» contest and receive prizes from 60 to 100 thousand rubles (833 to 1,138 euros). The Russian Orthodox Church has also succeeded in having an interview with a priest introduced into the procedure for voluntary termination of pregnancy. Although this is provided on a voluntary basis and not mandatory, it can become binding from the moment it is included among the prescriptions of public hospitals. In addition, at the urging of Patriarch Kirill, who has repeatedly sent the leadership of the Russian Fe-

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<sup>77</sup> CIMBALO, G., «Strategie sovraniste», cit., p. 406 ss.

<sup>78</sup> The first law approved after the revolution of December 1989 was the one that legalized abortion. In the 1990s and up to the first decade of the 2000s, sex education courses and family planning programs for contraception were booming in Romania. But then the country began to take great steps backwards, also in consideration of the fact that the EU health legislative initiatives are not binding on the Member States which therefore are not required to respect them. See <https://www.balcanicaucaso.org/>.

deration to make abortions only chargeable and completely ban their advertising in 2013, a federal law was signed by Putin restricting the possibility of making commercials not only with reference to abortion, but also with regard to the illegal practice of «folk medicine» as well as the prohibition of offering free samples of medicines that contain narcotic substances<sup>79</sup>.

Even in Belarus, whose current legislation stipulates that a pregnancy can be terminated up to 12 weeks while in subsequent pregnancies (12 to 22 weeks) an abortion can be performed only for medical or social reasons, there has been a heated debate on abortion, again beginning in 2011. Indeed, in that year, an international philosophical and theological conference was held in Krakow on the questions posed by human beings on ethical issues. The traditional forum was attended by representatives of humanitarian scientific circles from Poland, Slovakia, Ger-

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<sup>79</sup> The federal law «On amendments to certain legislative acts of the Russian Federation and on the recognition as invalid of certain provisions of legislative acts of the Russian Federation on the protection of citizens' health in the Russian Federation» was adopted by the State Duma on November 15, 2013 and approved by the Federation Council on the 20th of the same month. The law specifies the organizational and legal form of medical organizations, provisions relating to the rights of patients to receive medical treatment. The document also aligns with the Federal Law «On the Fundamentals of the Protection of Citizens' Health in the Russian Federation» the norms regarding the types, forms and conditions of the provision of medical care, as well as unifies the concepts and terminology used in the federal law» On the circulation of medicines» and «On the foundations of protecting the health of citizens in the Russian Federation». Furthermore, the Federal Law No. 61 introduces restrictions for pharmaceutical companies and their representatives in carrying out activities in the field of drug circulation. The 2013 law also amends Federal Law No. 320-FZ of December 17, 2009 «On amendments to article 24 of the Federal Law *On Advertising* », according to which «Abortion cannot be advertised in printed publications, audio and video products for minors, in television and radio broadcasts, in film and video services, on public transport and transport infrastructures (railway stations, airports, metro, etc.), on the first and front pages of newspapers, as well as on the first and last pages and on the covers of magazines. In addition, advertising of abortion is prohibited in children's, educational, health and healthcare organizations, theaters, circuses, museums, houses and palaces of culture, concert and exhibition halls, libraries, classrooms, planetariums, in sports and recreation, facilities sportsmen at a distance of less than a hundred meters from them. It is not allowed to advertise abortions using advertising structures mounted and placed on the roofs, external walls and other structural elements of buildings, structures or outside them. Advertisements about abortion should not target minors directly. The fact is that such advertising creates a misunderstanding among young people about abortion as a cheap and safe method of birth control», see: <https://www-garant-ru>.



many and Belarus. In particular, the latter supported and reaffirmed the Moscow Patriarchate's stances expressed in the documents Foundations of the Social Concept of the Russian Orthodox Church adopted in 2000 by the Synod of Bishops of the Russian Orthodox Church and Foundations of the Teaching of the Russian Orthodox Church on Dignity, Liberty and Human Rights, which is a development and deepening of the former in the aspect of Orthodox interpretation of human rights issues<sup>80</sup>.

In short, the influences of Orthodox bioethics in the last decade now seem to have taken the path of consolidation even at the legislative level, so much so that in countries like Romania where the Orthodox Church is very influential in society, even the beliefs and orientations of the Ministry of Health as well as the public health employees themselves are inevitably affected by its ascendancy.

If I were to end my conclusions here, I could undoubtedly say that Orthodox bioethics has succeeded or at any rate is succeeding in imposing itself in legislation, the accomplices being nationalistic tendencies, the failure of the Western model that has not led to the hoped-for prosperity, the exaltation of Orthodox identity as opposed to European and Western identity, and, again, the redefinition of family policies dictated by the gradual decline in the birth rate in those countries as well<sup>81</sup>. However, not in all areas of bioethics is there this acquiescence to orthodox bioethics. Particular in this sense is the case of surrogacy, especially when one considers that among the countries regulating it in the orbit of the European continent, the orthodox ones are the majority. It thus happens that, with the exception of Bulgaria<sup>82</sup>, Russian Federation,

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<sup>80</sup> See: *supra* note 35 e 43.

<sup>81</sup> CIMBALO, G., «Strategie sovraniste», cit., pp. 403-436.

<sup>82</sup> In Bulgaria, surrogacy has been expressly prohibited since 13 October 2006, both by articles 182a and 182b. of the Penal Code (the second paragraph of article 182b punishes with imprisonment and a fine the pregnant woman who agrees to the sale of her child before its birth; article 182a instead punishes both the one who, for the purpose of patrimonial utility, induces a parent to abandon or have their child adopted, whether he plays the role of mediator between a person or family who wishes to adopt a child and a parent who wishes to abandon him, or a woman who agrees to carry a child in her womb for renounce it by having it adopted), both by order no. 28 of 20 June 2007 on assisted reproductive activities, available in Bulgarian at: [https://www.mh.government.bg/media/filer\\_public/2015/04/17/naredba28-ot-20-06-2007g-asistirane-reproduksia.pdf](https://www.mh.government.bg/media/filer_public/2015/04/17/naredba28-ot-20-06-2007g-asistirane-reproduksia.pdf).

Belarus, Ukraine, Romania, Greece and Cyprus are all countries that allow this practice in various capacities.

If at first glance the regulation of surrogacy would seem to be placed to protect women, a closer look reveals—as has already happened in history for hateful racial reasons—that subtle mechanism that, behind the simulated and declared desire to protect a subject qualified as weaker, dissimulates the will to prevent their freedom and self-determination.

The surrogacy system enriches an audience of operators such as mediation agencies, doctors, hospitals, and generates induced income for collateral sectors as well, but the only profit that is not free and must be controlled is that of the woman, and this is because otherwise one would end up allowing her to exploit her body, and this is deplorable; on the contrary, if it is everyone but her who exploits it then it suddenly becomes more acceptable.

Although, therefore, in the case of surrogacy the legislative choice does not totally reflect the dictates of orthodox bioethics, it is also true that circumstances such as the preference that the legalization of this institution accords to the birth of a new life —always placing it above everything else—, to the institution of the traditional family and parenting within it, as well as to the subordinate role of the surrogate woman-mother, are still part of the legacies of orthodoxy, not only in a religious and therefore bioethical sense, but also and above all in a cultural sense.