Religious Values Left Outside the Scope of Penal Protection

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Abstract

The history of mankind under the influence of divine inspiration of accumulated experience has decanted values that are viewed as the foundation of the functioning of society. Such values have been passed on from one generation to another and have been protected by religious, moral or legal means. However, while religious values remain the same over time, as they are perennial, the same does not happen with those values protected by criminal law. Accordingly, over time, some offences may be criminalised while others are decriminalised. In the present paper, I seek to analyse the offences that have been decriminalised through penal legislation in Italy, France and Romania in the modern and post-modern period. Offences that have been decriminalised in Romania recently include adultery and prostitution, two acts which have been denounced constantly by the Church. Lawmakers have invoked several grounds for decriminalising these offences. In the case of adultery, for instance, it was considered that the lack of trial cases for this offence type indicates a sharp decline in the number of offences perpetrated, which would justify decriminalisation. I intend to analyse in the present paper whether the reasons underlying the decriminalisation of these offences are consistent in the face of the arguments of the Church.

Keywords: religious values; decriminalisation of offences; reasons of decriminalisation; arguments of the Church; legal-religious values

Introduction

Lawmakers around the world are constantly dealing with proposals demanding that laws be changed, expanded or repealed, such proposals are made by natural persons on their own behalf or by ad hoc or by legally constituted collective entities.

In order to legitimise the legislative proposals that the Church puts forward, it must be emphasised that it is not only the repository of God’s revealed teaching, but also the representative of certain social groups that believe in its teaching and are citizens of the state, who are entitled to and must participate in the law-making process.

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1. Prostitution in France, Italy and Romania

Lately the discussions on the decriminalisation or the criminalisation of prostitution in France, Italy and Romania have been at the forefront of public debates. Such discussions have engaged both private persons and official figures in the political, legal and religious fields. Globally, legislations on prostitution fall into three groups:

Legislations that prohibit the practice of prostitution and punish prostitutes and pimps (in Ireland, Lithuania, Malta, Sweden);

Legislations known as “regulatory” that subject prostitution to strict rules of practice (in Austria, Greece, Hungary, Latvia, the Netherlands and the United Kingdom);

“Abolitionist” legislations that refuse to recognise a legal status of prostitution, punishing prostitutes, pimps and the solicitation of clients (in France, Italy, Romania) (Joachim Renzikowski, 2007, p. 12-13)

In France, at the end of 2013, Parliament voted for a law aimed at reinforcing the fight against the prostitution system by incriminating the act of a person offering money in exchange for the services of a prostitute. There were 268 votes in favour, 138 votes against and 79 abstentions. The law provides that the client of a prostitute is liable for a fine of at least 1,500 Euros for the first breach of the law and up to 3,000 Euros in case of a repeated offence. The reasons stated by the sponsors of the law were that prostitutes are victims and that they ought to be protected by the state. VALLAUD-BELKACEM, minister for women’s rights, was a firm supporter of the law, going as far as stating that in the future prostitution would have to be abolished in France. There were also voices that did not agree with the proposed legislation, arguing that intimate relations fall within the scope of the right to private life and that the state has no right to violate this right. The aim of the law is to disincentives the French from resorting to the services of prostitutes and thereby to curb the prostitution phenomenon in France. It is also hoped that the law will help dismantle the foreign prostitution networks and reduce human trafficking. The law does not incriminate prostitution nor does it decriminalise pimping. (Loi no. 1437/2013 renforçant la lutte contre le système prostitutionnel)

By this legislation, France chooses to adopt the Swedish model and deviates from the situation in Germany where, since legalisation in 2002, prostitution has led to a record number of prostitutes who pay taxes and social security contributions.

Scandinavian countries (Sweden, Iceland and Norway) adopted, beginning with 1999, a legislation aimed at curbing the prostitution phenomenon, based on the idea that prostitution is an act of violence of man against the woman, hence the man should be the party to be punished. Although the woman gives her consent, it is viewed as vitiated because she is either in a financial situation that pushes her to this act or is forced into the practice by pimps. The means of punishment is aimed at the social stigmatisation of the offender. The persons determined as being interested in finding prostitutes are placed under surveillance, photographed, notices are mailed to them informing them of their offence and are treated as exploiters during the proceedings opened against them. In other words, the focus is on protecting the victims of exploitation by discouraging the potential clients. (Joachim Renzikowski, 2007, p. 14-15)

In Italy, prostitution itself is not condemned, but facilitation, instigation, exploitation and involvement of minors in this act are punished. Analyses on prostitution in Italy have revealed that prostitutes are vulnerable persons that are victims of exploitation, acts of violence, disease, theft, rape, robberies and even murder, with many such offences remaining unreported or undiscovered. (Legge n. 381/2013 modifiche al codice penale e altre disposizioni concernenti la prevenzione e la disciplina dell'esercizio della prostituzione, la riduzione del danno e il reinserimento sociale dei soggetti che la praticano, nonché l'individuazione di aree per il suo esercizio e la tutela delle comunità locali)

During 2008, a draft law was prepared in Italy, which provided for prison sentences between 5 and 15 days and fines of 200 up to 13,000 Euros to persons who practice prostitutions and who solicit the services of prostitutes in public areas. Those caught in the act would be immediately detained. The project incriminates pimping, for which prison sentences of up to 12 years and 150,000 Euros fines are laid down. (Legge approvato dal Consiglio dei Ministri l'11 settembre 2008)

On the other hand, the draft law signed by Maria Spilabotte and Alessandra Mussolini stipulates that prostitution should be practiced based on a professional license, in licensed private properties, be subject to taxation and that
prostitutes should have access to psychological and physical check-ups. (Legge n. 1370/7.03.2014 Disciplina dell’esercizio professionale della prostituzione)

In Romania, as of 1 February 2014, the decriminalisation of prostitution came into force (Law no. 286/2009, Criminal Code). The motivation for this decision was attributed to the low number of cases classified in the courts. Following the decriminalisation of prostitution, the Orthodox and the Catholic Churches in Romania expressed their points of view on the fact that a value that had been long-time defended would be left outside the scope of criminal law protection.

In its press release following the publication of the new Criminal Code, the Romanian Patriarchate stated: “Based on the Holy Scripture and the teaching of the Holy Fathers, and in accordance with the decisions of the Holy Synod of the Romanian Orthodox Church (1988), the Romanian Patriarchate rejects the proposals for the decriminalisation of prostitution and incest in the draft of the new Criminal Code, currently being debated by Parliament. Legislative acts in general and the Criminal Code in particular are intended to defend the dignity of the person, the institution of the family and the values of social life, however it is apparent that in this draft law the dignity of the person, the sacred institution of the family and public morality are completely ignored by the author’s of the proposal.

Far from solving a serious social problem, the decriminalisation of prostitution will exacerbate the problem by establishing a financially motivated slavery, which intensifies the moral degradation of society, the proliferation of various illnesses and the increase in the number of divorces, while women trapped in such slavery would suffer permanent damage to their psychological and physical health and to their social dignity” (http://theologhia.wordpress.com/tag/viitorul-cod-penal-nu-mai-pedepseste-incestul-si-prostitutia/-3.04.2014).

The press release emphasises human dignity, which must be defended for each person, and the protection of the institution of the family and of the morality of society.

The Roman-Catholic Archdiocese of Bucharest takes the same stand, disapproving of “the decriminalisation of prostitution and incest in the New Criminal Code, viewing it as an open and justifiable road to contempt and abuse towards the human being. The Church has never stopped and will never stop defending the dignity of the human person and to disapprove of prostitution and incest. Such acts, as Pope Benedict XVI stated, proliferate due to the “dictatorship of moral relativism”, which characterises modern society.

Prostitution is considered by the Church to be a form of modern slavery. According to the CBC, prostitution is an attack upon the dignity of the person who practices it, as they are reduced to a mere object of pleasure and a base trade. A veritable social scourge, to which women and men, adolescents and children fall victims, prostitution is a degradation of the body, the latter being, according to the Christian view, the dwelling of the Holy Spirit. Legalising prostitution would equate to accepting a culture that trivialises human sexuality, interpreting it and experiencing it in reductive and impoverished manner, in connection with the body and egotistic pleasure (John Paul II, 1981).

The disapproval of prostitution and incest by the Catholic Church is founded on the natural moral law, on the teaching of the Holy Scripture and on the tradition of the Church.” (http://theologhia.wordpress.com/tag/viitorul-cod-penal-nu-mai-pedepseste-incestul-si-prostitutia/-3.04.2014)

The Catholic Church therefore emphasises the degradation to which the human being practising prostitution is subjected and points to the ideal that man must tend to, namely becoming a temple of the Holy Spirit.

2. Adultery in France, Italy and Romania

As regards adultery, the situation worldwide is very diverse. There are countries where adultery is no longer an offence, just as there are countries where adultery is punished by fines, flagellation or even death by stoning or hanging.

In France, the Law of 11 July 1975 repealed articles, which incriminated adultery, (Loi n° 75-624 du 11 juillet 1975 modifiant et complétant certaines dispositions de droit pénal Version consolidée au 01 janvier 1976) the act being now treated as a civil misdemeanour that can be invoked in a divorce case. Indeed, article 212 of the French Civil Code stipulates that “the spouses have a duty to be faithful to each other” (Code civil français de 1804 tel que modifié par le Loi n° 2006-399 du 4 avril 2006 renforçant la prévention et la répression des violences au sein du couple ou commises contre les mineurs), while article 242 of the same code states that divorce due to the fault of one of the spouses can be pronounced when the infidelity of one of the spouses becomes a “serious or repeated
violation of the rights and obligations resulting from marriage”, making “life together intolerable” (Code civil français de 1804 tel que modifié par le Loi n°2004-439 du 26 mai 2004). It is worth mentioning also that prior to the enactment of the law of 3 January 1972, French law discriminated against illegitimate children and those born out of wedlock compared to children born to a married couple (Code civil français de 1804 tel que modifié par le Loi n° 72-3 du 3 janvier 1972 sur la filiation). Furthermore, the provisions of the Civil Code of 4 July 2005 eliminated the notion of illegitimate child (Code civil français de 1804 tel que modifié par le Ordonnance n° 2005-759 du 4 juillet 2005 portant réforme de la filiation).

The decriminalisation of adultery in France was prompted by two reasons: the decline in the number of cases of adultery that resulted in court sentences and the global context.

In this respect, it is worth emphasising that in the middle of the 20th century, the number of adultery cases that resulted in court sentences started to decline increasingly from 5,000 sentences at the beginning of the 1950s to 196 in 1974. In fact, it was observed that, although adultery cases continued to occur, the cheated spouses no longer demanded the punishment of their life partner but rather the dissolution of the marriage due to infidelity.

Worldwide, there was a desire to decriminalise adultery, an intent expressed as a recommendation of the 9th Criminal Code International Congress held in the Hague in 1954.

In conclusion, adultery in France is at present one of the reasons that can be invoked as grounds for divorce exclusively due to the fault of one of the spouses, this aspect being assessed by the court according to the judicial debates on the issue.

In Italy, article 559 of the Criminal Code that entered into force in 1930 punished the adulterous wife and the adulterous relationship on the initial complaint of the husband (Italian Penal Code,1930).

The decision no. 126 of 1968 of the Constitutional Court declared unconstitutional the first and second paragraph of article 559, arguing that it was discriminatory and violated article 29 of the Constitution, which establishes the “moral and legal equality of the spouses” (La Corte costituzionale, con sentenza 16-19 dicembre 1968, n. 126 (Gazz. Uff. 28 dicembre 1968, n. 329). Based on the same motives, decision no. 147 of 3 December 1969 of the Constitutional Court declared to be unconstitutional the third and fourth paragraphs of the article 559 (La Corte costituzionale, con sentenza 27 novembre-3 dicembre 1969, n. 147 (Gazz. Uff. 10 dicembre 1969, n. 311).

In Romania, the offence of adultery was stipulated by article 304 of the Criminal Code of 1969 (art. 304 Cod penal român, 1969). The article was repealed by law 278/2006 modifying and completing the Criminal Code of 4 July 2006. (Legea 278/2006 pentru modificarea și completarea Codului penal, precum și pentru modificarea și completarea altor legi)

The motivation for decriminalisation was that increasingly fewer cases of adultery were brought before the courts. Moreover, according to article 304, the proof of adultery was rather difficult to produce, as it could only be provided through report establishing the flagrante delicto or letters from the accused spouse.

Adultery was condemned by Moses’ law which proclaimed “You shall not commit adultery” (Deuteronomy 5: 18). Likewise, the Saviour Christ condemns the adulterers, but forgives the dissipate woman who repents. He redefines adultery, declaring that “anyone who looks at a woman lustfully has already committed adultery with her in his heart” (Matthew 5: 27). Moreover, the Holy Apostle Paul shows that adulterers will not inherit the kingdom of God (I Corinthians 6: 9).

In accordance with its tradition, the Orthodox Church accepts divorce in case of conjugal infidelity, although it urges forgiveness on the part of the one who was cheated and repentance for the one who was at fault. Canon 58 of St. Basil the Great states that whoever commits adultery shall not be allowed to take communion for a period of fifteen years. (Canonul 58 al Sfântului Vasile cel Mare)

3. Conclusions

One can see that coercive measures in France and Italy attempt to reduce the prostitution phenomenon as it has been observed that it generates numerous social problems. In Romania, with the entry into force of the new Criminal Code, prostitution shall be punished as a contravention, yet the experience of other states shows that too much liberty in this area triggers other crimes. The Christian Church in Romania has expressed its disagreement at the
decriminalisation of prostitution, seeking to protect the family and vulnerable families that may fall victim to prostitution.

Regarding adultery, we have noted that it is decriminalised both in France and in Italy and Romania. The punishment for committing this act has remained a civil one, adultery being a reason for divorce too. Nonetheless, the criminalisation of adultery without discriminating against women could have had a role in preventing this act. The Church, in agreement with her Founder, condemns adultery as an act that is an attack on the unity and sacredness of the family.

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