

I. STUDII. CERCETĂRI. ARTICOLE

RELIGIOUS RULES APPLICABLE IN ROMANIA ACCORDING TO THE ROMANIAN LEGISLATION

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Abstract:

Credința este o opțiune personală și presupune o libertate liber consimțită, care este autonomă și separată de stat. Legea Cultelor, cel mai important act normativ pentru cadrul legal care reglementează domeniul religios, este o parte esențială a modelului de relație între instituțiile statului și cele religioase, o proiecție la nivel macro în administrația publică a conceptului de cetățean binom, pe care lumea contemporană îl propune ca răspuns la noile provocări lansate de conceptul în sine de libertate religioasă.

Cuvinte cheie: libertatea de conștiință, libertatea religioasă, religie, biserică, culte religioase, drepturi fundamentale, administrație publică.

Résumé:

La foi est un choix personnel et la liberté requiert le consentement libre, qui est autonome et séparée de l'Etat. La loi religieuse, la pièce la plus importante de la législation pour le cadre juridique régissant les questions religieuses, est un élément essentiel du modèle de la relation entre les institutions étatiques et religieuses, une projection au niveau macro dans l'administration publique du concept de citoyenne, proposé par le monde contemporain, en réponse aux nouveaux défis posés par la notion de liberté religieuse elle-même.

Mots-clés: la liberté de conscience, la liberté de religion, la religion, l'église, les organisations religieuses, les droits fondamentaux, l'administration publique.

Introduction

Romania is a laic country where the majority of the population unrestrictedly declared their religious affiliation after half a century of communist dictatorship¹. Acknowledgement of the role and the place enjoyed by the cults is proved by the acceptance of religion in contemporary Romania in general and especially of the Orthodox Church (which is the prevailing religion for the majority of the population), as well as the participative interest taken by the civil society, in a laic and democratic State, in solving issues related to the religious field in the social and political life. The role of the State should not be limited to its political contribution; one should take into account the moral, social, cultural and educational consequences that the political decisions have exerted upon people in their capacity as adepts of a particular religious cult and

also as citizens of the respective country.² What is important is to properly understand religious freedom in the contemporary context, to realistically approach the relationship between the State and the Church and assess the main vectors including each country's tradition preceding the communist period, the intensity of religious persecutions during that period, the extent to which freedom and democracy were implemented after the political change.

Romanians enjoy a Christian initiation of apostolic origin, for in the second half of the 1st century A.D., Saint Andrew the Apostle was one of the propagators of Christianity in Dobrogea – formerly known as Scythia Minor³. After the year 106, the conquest of Dacia's territory by the

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¹ See **Victor Dan Zlătescu**, *Mari sisteme de drept in lumea contemporana*, Editura. De-Car-Complex, Bucuresti, 1992.

² The All Holy **Daniel Ciobotea**, in the opening address to the Symposium on "The Church and the State in today's Romania and eastern Europe", Eparchial Centre, Iași, 5-6 October 2005. Also see **Papa Benedict XIV**, UNO-United Nations Organization Headquarters, New Yourk, 2008, address to the General Assembly of the United Nations.

³ See **Georges Ory**, *Originile creștinismului*, Ed. Științifică și Enciclopedică, București, 1981, pp. 305-307; Also see **Mircea Eliade**, *Istoria credințelor și ideilor religioase*, Editura Univers Enciclopedic și Editura Științifică, București 1999, p. 613 et seq.

Roman Empire made the number of believers increase and favoured the establishment of the first churches. Persecutions of Emperor Diocletian (284-305 A.D.) extended over the Lower Danube area leaving for posterity the evidence that the region knew a Christian Church organization⁴. As a result of the Edict of Milan of 313 providing for religious tolerance, Emperor Constantine's peace favoured the expansion of Christianity over the Danube area⁵

. An important element for the rooting of the Christian religion was the fact that the language used in worship was Latin and addressed Latinized believers, as a result of their living together with the Romans. Thus, Latinity and Christianity are an integer part of the Romanian people's ethno-genesis. Therefore, owing to the specific circumstances of its constitution, the Romanian people was born as a Christian people, while being the oldest Christian nation in this part of Europe and, at the same time, the only Latin people of Orthodox religion⁶.

After the year 1000, Europe's confessional division fixed the delineation among Roman-Catholicism, Orthodoxy and the Mongolic and, later on, Ottoman-Islamic Empires along the Carpathian Mountains, which stand in the central, the western and the northern parts of the country.

The first evidence of Catholicism in today's territory of Romania comes from the 11th century, being owed to the missionaries involved with the spreading of Roman Christianity.

The Reformed Movement appeared in today's territory of Romania in the first half of the 16th century.

The Romanian Church United with Rome, Greek-Catholic appeared in the western part of the country, in Transylvania, in the middle of the 16th century. The new cult of Greek-Catholicism was officially acknowledged in 1568 in Transylvania.

The accomplishment of the Romanian State's unity on 1 December 1918 had as religious

consequence the fact that the Romanian Orthodox Church was promoted to the rank of Patriarchate in 1921. Another important moment is the year 1948, when, as a result of the instalment of the communist regime, in Alba Iulia the United Church was suppressed and the Romanian Orthodox Church of Transylvania was reunited, while the Greek-Catholic cult could only resume its independent activity after the downfall of communism.

The presence of the first Jews on the territory of our country was recorded as far back as the days of Roman Dacia, owing to their military service in the Roman legions and the auxiliary troops⁷. Starting in the 16th century, there is evidence about the organization of the first Jewish communities in the Romanian Principalities⁸ to be found in numerous documents, chronicles or travel notes.

Another cult of old tradition on the territory of Romania, even though its importance doesn't lie in the number of believers, is the Islamic one. The Muslim presence was recorded as far back as the 15th century, when part of today's Dobrogea was occupied for a long time (1420-1878) by the Ottoman Empire⁹. At present, most Muslim believers are adepts of the Sunni doctrine and they belong to the traditional ethnic communities of Turks and Tartars.

Armenians settled in the territory of our country starting in the 6th-7th centuries for they found here religious tolerance and a general atmosphere that favoured the practicing of their traditional activities. Later on, the Armenians in Transylvania united religiously with the Catholic Church.

The Christian Cult of Old Rite ("The Lipovenian Church") includes the Russian Orthodox believers who started to come to the Romanian Principalities in the first half of the 13th century, as a result of the persecution unleashed against them by the Russian Orthodox Church and the Russian

⁴ See coord **Adrian Lemeni**, *Biserica Ortodoxă Română, Viața religioasă din România*, Editura Bizantină, București, 2005, p. 17.

⁵ See also **Georges Ory**, op. cit., pp 120-121.

⁶ See **Victor Dan Zlătescu, Irina Moroianu Zlătescu**, *Repere pentru o filozofie a drepturilor omului*, IRDO, București, 2003, p. 1 et seq. Also see **Irina Moroianu Zlătescu**, *Religion and the secular state in Romania*, National Report for the IACL Congress, Washington, 2010.

⁷ See also **F.V. Joannes**, *Le Judaïsme*, Edition MAME, Paris, 1983, p. 3 et seq.

⁸ There were three Romanian Principalities: Transylvania (north-western and central part of today's Romania), Moldavia (north-eastern part of today's Romania) and Wallachia (southern part of today's Romania, from west to east and part of the central part of today's Romania as well).

⁹ See also **Nadia Angheliescu**, *Introducere in islam*, Editura Enciclopedica, Bucuresti, 1993, p. 15 et seq.

authorities following their disagreement with the reforms of the cult's rites initiated by Patriarch Nikon.

In Romania, neo-Protestant groups emerged, as elsewhere in Europe, in the middle of the 19th century and the beginning of the 20th century, through foreign evangelists (Swiss, Germans, Poles, Hungarians), the first to be converted being from among the Romanian citizens belonging to national minorities (Germans, Russians, Hungarians).

Freedom of conscience and of religion implicitly was formally acknowledged during the communist regime (1945-1989) as well. However, the State imposed its control to the Churches and the Cults. The systematic antireligious and atheistic pressures exerted upon the clergy and the population by the communist State, by its administrative and judicial bodies entailed mutations of mentality gradually changing the perception and the relationship between individuals and the cults. As the imposition of the communist ideology made its debut with a real religious purification – seen by the clergy as a genuine ecumenism of suffering in the name of Christ¹⁰ – the conservation of spirituality suffered a transposition from the level of religious groups and communities to personal level, while thus the element of national individuality was preserved. In the name of freedom of conscience, the Department of the Cults of the communist period, in close collaboration with the police, imposed as much as possible the prevention of religious activities (religious traditions, religious holidays, religious weddings and christenings, Sunday schools or pilgrimages). The communist period was also characterized by the fact that the State authorities: interfered in the appointment/election of new members in the church hierarchy and the hierarchy of the denominations; influenced the political orientation of the contacts the Romanian religious institutions had with similar institutions from abroad; censored the theological literature and imposed low numbers of copies; politically neutralized the possible resistance forces, by fighting against opposing church circles or imposing their collaboration with the authorities.

The sudden secularization of the social life failed to transform the Romanians' mentality into

¹⁰ *Mărturisitori de după gratii. Oameni ai Bisericii în temnițele comuniste*, Editura Arhiediecezana, Cluj-Napoca, 1996, p. 15.

a laic one, a fact that has been proved (since December 1989, after the collapse of the communist regime) by the importance the civil society attached to participation in debates on religious topics. At the beginning of the post-communist parliamentary democracy, the church institutions, particularly the prevailing Orthodox Church, re-asserted their theological view in terms of their independence from the State, under such circumstances that the topic of the relationship between the Church and the State, between religion and the administrative system, was reinvigorated on the general background of regained freedom of expression.

Under the Constitution of 1991¹¹, freedom of conscience and freedom of religion regained their natural status as fundamental rights in a democratic State, where the Church is separated from the State¹². In terms of the Churches and the cults officially acknowledged in Romania, the chance offered by the change of the regime consisted in the possibility to unrestrictedly resume the religious activities, which was unacceptable in a totalitarian State, both in the individual attitude towards faith, at the level of society, as well as at the level of the activities carried on by the religious institutions. After December 1989, the danger came not from the application of the fundamental human rights in terms of freedom of conscience and freedom of religion, from the natural resuming of activities by the acknowledged Churches, but from the reaction of society. After December 1989, in the name of religious pluralism and democracy, Romania faced the emergence of numerous sects for which the country was not yet prepared. This happened without a rigorous judicial control upon certain organizations and groupings that declared themselves to be religious, but some of which proved to have different purposes, promoting an aggressive proselytism under such circumstances characterized by the corruption of the authorities and an increased degree of poverty with certain social categories. In spite of the opposition, the

¹¹ See **Mihai Constantinescu, Ion Deleanu, Antonie Iorgovan, Ioan Muraru, Florin Vasilescu, Ioan Vida**, *Constituția României – comentată și adnotată*, Regia Autonomă Monitorul Oficial, București, 1992, p. 11 et seq.

¹² See **Irina Moroianu Zlătescu**, *Constitutional Law in Romania*, Wolters Kluwer International, The Netherlands, 2013, p. 23 et seq.

negotiations and the delays caused by the various interests of the involved actors, including the interests of those in power, as happens in any field, the religious phenomenon was finally regulated.

Thus, the Orthodox Church was free to organize its activities, while also having to assume some obligations in the newly created democratic context. At present, it has assumed the position of the prevailing Church in the country, which involves both certain advantages and a number of responsibilities. It requested the State, which is neutral and impartial, to adopt a proportional approach, in accordance with the confessional composition. It promoted a religion-related legislation based on a formula of separation in substance and collaboration in attributes between the social and the spiritual space – hardly an easy task under the present ideological and historical circumstances, which seem to remain unchanged for the time being.

In the early 90's, the neo-Protestant cults complained about the disadvantages they were facing from the position of a minority in relation to the Orthodox majority as well as the discriminating position of the representatives of several State institutions. Marginalization refers to these newly emerged movements, which can legally function as associations. Obviously, the status of a cult would involve more access to resources, having its own media, education, etc.

The relationship between the Orthodox and the Catholic institutions, in the Romanian context, was a special one. This was also reflected by Pope John Paul II during his visit to Bucharest in 1998, the first visit by a Head of the Catholic Church to an Orthodox country after the great schism. A widely broadcasted issue, which was also the main topic of the dialogue between the bishoprics of Transylvania, was that of the Greek-Catholic patrimony¹³.

Integration under the normal circumstances created after the downfall of the iron curtain, Romania's joining various international structures, and its integration in the structures of the European Union, made the Romanian authorities accept or

consider certain evaluations, advice or recommendations on various issues.

The State Secretariat for the Cults is a specialized body of the central public administration which is subordinated to the Government and which elaborates and implements the strategies and the policies related to the cults. The Secretariat carries on its activity in the field of cults based on the principle according to which all the acknowledged cults are free, autonomous and equal in their relationship with the authorities. As a result, the following Churches, cults and religious associations are acknowledged in Romania (also see Appendix): *The Romanian Orthodox Church*, organized into: The Metropolitan Church of Muntenia and Dobrogea, The Metropolitan Church of Moldova and Bucovina, The Metropolitan Church of Oltenia, The Metropolitan Church of Ardeal, The Metropolitan Church of Cluj, Alba, Crișana and Maramureș, The Metropolitan Church of Banat;

The Catholic Church: The Roman-Catholic Church, The Romanian Church United with Rome, Greek-Catholic; *The Orthodox Serbian Bishopric of Timișoara*; *The Christian Russian Church of Old Rite*; *The Armenian Church*; *Protestant Cults*: The Reformed Church, The Evangelic Church, The Evangelic Lutheran Church, The Unitarian Church; *Neo-Protestant cults*: The Union of Christian Baptist Churches, The Pentecostal Union-God's Apostolic Church, The Christian Adventist Church of the Seventh Day, The Christian Gospel Church, The Romanian Evangelic Church; *The Muslim Cult*; *The Mosaic Cult*; *The "Jehovah's Witnesses" religious organization*.

It is noteworthy that, following a brief examination of the data, it comes out that only a small part of Romania's inhabitants (0.4%) declared they had different religion from those mentioned in the census questionnaires; 13,834 meaning 0.1% declared they were people of no religion; 9,271 declared they were atheists, while 18,492 meaning 0.1% did not declare what their religion was. Definitely, the more than 18.8 million Romanians who declared they were Orthodox also include the about 500,000 believers registered as believers of the Church of Old Rite¹⁴.

¹³ See **Irina Moroianu Zlătescu**, *Religion and the secular state in Romania*, National Report for the IACL Congress, Washington, 2010, op. cit.

¹⁴ *Viața Cultelor*, issue No. 545 / 2004.

The foundation of the Romanian modern state was laid at the beginning of the 17th century when the three Romanian Principalities – Muntenia (Walachia), Moldavia and Transylvania – were united for the first time by the great Prince Mihai Viteazul (Michael the Brave).

The union of the Romanian Principalities proved ephemeral: Transylvania gradually fell under the domination of the Hapsburg Empire, while Walachia and Moldavia were successively dominated by the Ottoman Empire and the Tsarist one.

In 1877, as a result of the Russian-Romanian-Turkish war, Romania, led by Prince Charles I of Hohenzollern-Sigmaringen, proclaimed its independence (till then it had been dominated by the Ottoman Empire, with a strong autonomy). The independence, however, was to be acknowledged only four years later, in 1881. That same year, Prince Charles I was crowned King of Romania and the country became The Kingdom of Romania. It was to remain so till after World War II when, in 1947, the communist regime imposed by the Soviet Union forced King Michael I to abdicate.

Romania's first proper Constitution was issued in 1866 and was adopted after the independence had been gained. It was further subject to a number of amendments, particularly after the proclamation of the Kingdom when it became the Constitution of the Kingdom of Romania.

The next Constitution of Romania was passed in 1938. It was adopted under the authoritarian reign of King Charles II after a referendum and applied only for two years, between 27 February 1938 and 5 September 1940, when it was suspended by a Royal Decree.

In December 1947, the King was dethroned and a new constitution, the first Constitution of the communist regime, was adopted in 1948 after the Romanian People's Republic had been proclaimed.

The new communist Constitution started from the idea of the unity of power. Totalitarianism primarily means rejection of the separation-of-powers theory and concentration of power in one single hand. It is this meaning that has to be given to the provisions of Article 3: 'In the Romanian People's Republic, the entire power emanates from the people and belongs to the people.' A striking difference in comparison to all previous constitutions was the way this Constitution

regulated property. Of course, in 1948, State property was poorly developed. Nationalization of the main means of production was only achieved on 11 June 1948, on the basis of the Constitution. The latter created the premise of a 'unique fund of State property.'

The second communist Constitution was adopted on 27 September 1952, after a period when the totalitarian regime had been considerably consolidated and the national economy had been subjected to central planning.

By the year 1989, the living standard of the Romanian people had dramatically gotten worse. The 'magnificent' socialist economy was on the verge of bankruptcy. Lack of political and civil rights had for some time now been added lack of basic aliments (bread, flour, sugar, milk, meat, oil, etc.), energy (electricity, heating, fuel), hot and cold water, etc., everything on a general background of increased communist propaganda and increased cult of personality.

Under the circumstances, it came as no surprise that a tiny spark (the abusive arrest of a minister in Timișoara) lit the fire of massive revolt, which turned into genuine revolution. The date of 22 December 1989 marked the victory of the Romanian Revolution and the collapse of the communist regime. The new democratic regime proclaimed the elimination of the communist State's structures. The old Constitution had not yet been formally abrogated, but the only part that remained applicable was the one referring to the citizens' rights and duties.

Also, a Constituent Assembly was elected. It had the function of an ordinary Parliament as well and, on 21 November 1991, the new Constitution was passed. This Constitution was subjected, on 8 December 1991, to a national referendum which approved it with 77.31 per cent of the expressed votes. The Constitution became effective on the date of its approval by referendum.

The national unity of the entire Romanian people was achieved after the victory obtained in World War I, where Romania was allied to the Triple Entente. Thus, on 27 March 1918, Bessarabia (the eastern part of Moldavia), which had proclaimed its independence from Soviet Russia under the name of the Democratic Republic of Moldavia, united with Romania. It was followed by Bucovina, a former province of

the Hapsburg Empire, which united with Romania on 15 November 1918.

Finally, Transylvania, together with Crișana, Maramureș and Banat, united with Romania as a result of a decision by the Great National Assembly in Alba Iulia, on 18 November 1918.

In 1940, after the Molotov-Ribbentrop Agreement had been concluded, Soviet Russia occupied, following an ultimatum, Bessarabia and Northern Bucovina (a province that had never been a Russian possession). The same year, by the Dictate of Vienna imposed by Hitler and Mussolini, Northern Transylvania was surrendered to Hungary. Also in 1940, the southern part of Dobrogea, called the Quadrilateral, was surrendered to Bulgaria.

As far as *freedom of religion* is concerned, the 18 cults functioning in Romania¹⁵ are given the possibility to use their mother tongue in all their specific activities and to offer moral-religious education in schools. The State, on the basis of the support it is obliged to provide according to the Constitution, covers part of the wages of the clergy and the full wages of the teaching staff in theology schools. At the same time, the State provides funds for the building and repairing of churches.

As a rule, national minorities and denominations do not overlap, meaning that national minorities do not belong to one denomination only. Thus, most persons of Hungarian ethnic origin belong to the Reformed and Unitarian denomination; however, some of them belong to the Roman Catholic, the Evangelic Synod-Presbyterian, the Baptist, the Adventist of the Seventh Day, the Pentecostal and the Christians after the Gospel denominations. Nevertheless, there also are minorities belonging to one single denomination such as the Armenians who exclusively belong to the Armenian Church, the Lippovans who belong to the Christian Church of Old Rite, the Jews who observe Mosaic Judaism, the Turks and Tartars who are Muslim, the Croats who are all Catholic, etc.

Romania does not have a State religion, while the Constitution of Romania¹⁶ guarantees equality

¹⁵ See the list of religious cults in the Appendix to Law on the religious cults no. 489/2006.

¹⁶ The Constitution of Romania of 1991, as amended and supplemented under Law No. 429/2003 on revising the Constitution of Romania, republished.

of all citizens and freedom of religious faith¹⁷. However, the prevailing church in the country remains the Orthodox Church being the cult of the majority of the Romanians.

Article 4 paragraph 2 provides that Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.

Chapter I, Article 20, paragraph 1 refers to the international documents on human rights where Romania is a party and the obligations following from that. Therefore, it is indispensable that the constitutional provisions referring to the citizens' rights and freedoms should be interpreted and implemented in conformity with the Universal Declaration of Human Rights, the covenants and the other treaties. This is a very important provision for it creates a direct link to all the international instruments that guarantee the fundamental rights and the citizens' freedoms, explicitly including the religious freedom and freedom of beliefs. For the special case of inconsistencies between the international provisions and the domestic ones, paragraph 2 provides for the pre-eminence of the former, except for those cases when the domestic provisions are more favourable.

Article 29, paragraph 3 refers to the constitutional autonomy of the religious cults that shall be free and organized in accordance with their own statutes, under the terms laid down by law, which thus provides the necessary framework for a normal spiritual life¹⁸.

Paragraph 5 of the same article provides for the autonomy of the religious cults in relation to the State¹⁹.

Article 29 also states the citizens' right to enjoy religious assistance in the army, in hospitals, penitentiaries and orphanages. At the same time, the State has the duty to provide freedom of the religious education, in conformity with the

¹⁷ In this respect, also see **Victor Dan Zlătescu**, *Rapport introductiv* in "Les droits de l'homme. Dimension spirituelle et action civique", IRDO, AIF, București, Paris, 2001, p. 33 et seq.

¹⁸ See **Ioan Muraru, Gheorghe Iancu**, *Drepturile, libertățile și îndatoririle constituționale*, IRDO, București, 1992, p. 18 et seq.

¹⁹ See **Cristian Ionescu**, *Tratat de drept constituțional contemporan*, Editura All Beck, București, 2003.

specific norms of each cult²⁰. According to Article 3, paragraphs 5 and 6, the teaching of religion in public schools shall be organized and guaranteed by the law²¹.

Legislation²²

Faith is a personal option and assumes a freely consented freedom that is autonomous and separated from the State. The Romanian Criminal Code sanctions violation of freedom of expression of religions and the prevention of a normal performance of religious activities but, at the same time, it includes provisions against a cult or religious activities that would infringe upon public order or, even worse, would have anti-social connotations.

After the downfall of the communist regime, prior to the year 2006 Romania did not have a normative act to regulate the activity of the religious cults and the status of the religious freedom. In order to respond to the new social and religious realities, that is, in order to be functional, the legal framework based on the Cults Act of 1948, harmonized with the Constitution and the agreements, the conventions and the treaties where Romania is a party, was complemented with other laws and regulations. The discussions, the negotiations, the meetings, the analyses, and the comments regarding the new Cults Act were long and enjoyed genuine decisional transparency and the participation of all the cults, the civil society, the ministries, the State authorities, the international community or forums, the public opinion, etc. Finally, in May 2005 the representatives of sixteen religious cults together with the representatives of the Ministry of Culture and Cults had signed a draft text, and an international symposium was organized. The participants included a large number of organizations and

institutions from Romania as well as representatives of international bodies, and renowned specialists from Europe and the United States. Advisory opinions were requested from prestigious institutions such as ODIHR/OSCE and the European Commission for Democracy and Law (The Venice Commission), which endorsed the bill, while also recommending some improvements. The debates in the Commissions of the Parliament of Romania took place between February and December 2006. In the framework of the parliamentary procedures of the Senate, the Judicial Commission of Nominations, Discipline, Immunities and Validations and the Commission on Human Rights, Cults and Minorities elaborated a joint report proposing that the bill should be passed with a number of amendments. The final decision was that of the Chamber of Deputies’.

In the spirit of the “system with two parity classes in steps”, this is not discrimination, but realism, as long as the State, while staying neutral, takes into account the confessional reality of the moment without closing the door to a later evolution. It should be mentioned that in present-day Romania there are numerous associations and foundations of a religious nature, registered on the basis of Law No. 21/1924 or, later on, on the basis of Government Ordinance No. 26/2000. According to the new provisions of the Act on religious freedom and the general regime of religious cults, each of these forms of organization shall be able to apply for acknowledgement of its capacity as religious association. Religious associations enjoy fiscal advantages, in conformity with the Fiscal Code²³ and, in many aspects, according to Article 44 paragraph 2 in Law No. 489/2006 they are assimilated to acknowledged religious cults.

As far as the time limit for the definition of a cult is concerned, it is completed by articles 17 and 18, which provide the required conditions for a religious association to become a cult. Thus, article 18 provides that a religious association applying for acknowledgement of its capacity as a religious cult shall submit an application to this effect to the Ministry of Culture and Cults, accompanied by precise documents, such as the evidence that it has been functioning uninter-

²⁰ See **Ioan Muraru**, *Articolul 29. Libertatea conștiinței*, în **Ioan Muraru, Elena Simina Tănăsescu** coord., *Constituția României. Comentarii pe articole*, Editura C.H. Beck, București, 2008, pp. 281-288.

²¹ See **Gheorghe Iancu**, *Drept constituțional și instituții politice. Tratat*, Editura C.H. Beck, 2010.

²² Some basic ideas of this study have been dealt with in the National Romanian Report to the Congress of the International Academy of Comparative Law, Vienna 2014. Beside the author of this volume the team preparing the documentation for this Report included Daniela Albu, Valeriu Andrei Rendec, Adrian Bulgaru, Marius Mocanu, Petru Emanuel Zlătescu.

²³ See art. 15 and 250 of the Fiscal Code updated by Government Ordinance no 77 of 5 February 2014.

ruptedly as a religious association within the territory of Romania for at least 12 years. The documentation shall also be annexed the original lists including the adherence of a number of members – Romanian citizens residing in Romania equal to at least 0.1% the population of Romania, in conformity to the data of the latest census. Also required as an annex is the document including the Association's own confession of faith, as well as the Statute for its organizing and functioning, which should include: the name of the cult, its central and local organizational structures, management, administration and control, its representative bodies, the methods by which the units of cult can be established or abolished, the status of the personnel, as well as the specific provisions of the respective cult.

Article 40, paragraph 1, provides how a religious association can be established as legal person.

Law No. 489/2006 on religious freedom and the general regime of religious cults is the main regulation in the field of religion²⁴, clarifying the latter's intersection with other fields, under the circumstances of Romania's political-social space, where the Romanian citizens exercise their religious freedom in their interaction with the State. The most important provisions of this law include: the guaranteeing of religious freedom, in its multiple forms; the role of religious cults as suppliers of social services and as social partners of the State; equality of all religious cults before the law and before the public authorities; establishment of a new financing system for the cults, based on transparency and subsidiarity; establishment of a new form of expressing the religious freedom through religious associations; provisions related to the patrimony of the cults, including the status of sacred objects; provisions related to the education organized by the cults; consecration of the principle according to which any amendment or complementation of this law may only be done after prior consultation of the religious cults.

The text of the law is structured into four chapters. In the first chapter, entitled "General provisions", the legal text starts by making reference to the generous principles in the

international treaties on the fundamental human rights. Observance of these freedoms by the authorities is the response to the responsibility before the law of those enjoying the religious freedoms and the guarantees the State provides. The system regulating the religious life that was chosen comes from the existing realities.

The second chapter of the law, entitled "The religious cults" regulates the relationship between the State and the religious cults, the procedure for obtaining the capacity as a religious cult, the personnel, the patrimony and the education organized by the cults.

The third chapter of the law, entitled "Religious associations", particularly refers to a new legally created institution, that of religious associations as legal persons.

The last chapter, "Transitory and final provisions", clarifies that there is no need for a new acknowledgement procedure for the religious cults already acknowledged and functioning within the Romanian State.

The Romanian law-maker's devotion to the fundamental rights is explainable if one were to look at this Law on the religious cults of 2006 (which is in consonance with the general attitude of protecting the individual and the citizens' rights and freedoms) in light of the events that took place during the last century. The source is represented by the international documents in the field, starting with the Universal Declaration of Human Rights, whose Article 18 provides that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance²⁵. This provision is also to be found in the International Covenant on civil and political rights, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Romania.

Article 5 of Law No 489/2006 provides that the legal forms for the manifestation of religious freedom in Romania are the cults, the religious associations and the religious groups. Without offering definitions for each form in part, it nevertheless makes a distinction between the first

²⁴ Romania had two previous acts on the religious cults, the one of 1928 and the one of 1948, the latter being in effect till 2006.

²⁵ See **Irina Moroianu Zlătescu** coord., *Dimensiunea spirituală a drepturilor omului. Educația pentru toți*, IRDO, București, 2013, p. 3 et seq.

two and the last, by means of the legal status of the cults and the associations. Article 6 provides for the possibility that certain forms may evolve into other forms.

Without having to clarify what the cults are in terms of theological value, which is obviously not the task of the lay power, the Romanian law-maker clarifies what they are in comparison to associations and groups of a declared religious nature. Law No. 489/2006 on religious freedom and the general regime of the religious cults introduces in the Romanian legal system a new structure guaranteeing the right to association in terms of religion, which protects the religious groups – as a form of organization that does not have the status of legal person, religious associations – legal persons of private law, and the cults, which are acknowledged by the effect of the law.

Article 1 of the law provides that the Romanian State respects and guarantees the fundamental right to freedom of thought, conscience and religion to any person on the territory of Romania, in conformity with the Constitution and the international treaties where Romania is a party. Article 1 also provides that Romania has no State religion, while the State shall be neutral in terms of religious faith or beliefs. All cults shall be equal before the law and before the public authorities. Moreover, it insists on the impartiality of the State, which, through its authorities, shall not promote and shall not favor privileges or discrimination in relation to a particular cult. Article 2 of the law defines religious freedom as everyone's right to have or adopt a religion or a religious belief. It further provides that no one may be compelled to share an opinion or adhere to a religious faith contrary to his own conscience and beliefs. This article of Law No 489/2006 re-instates the content of article 29 in the Constitution of Romania to the effect that freedom of thought and opinion, as well as freedom of religious beliefs shall not be restricted in any way, while no one shall be compelled to embrace an opinion or religion contrary to his own convictions.

Adjudication

The return to a democratic society, in late 1989, was a crucial moment to Romania, a time of renewed hopes and rediscovered ideals, and also the starting point for the restoration of the traditional relationship between the Church and

the State²⁶. This is the restoring perception of the cooperation partnerships lately concluded between the Church and the State, that is, the Protocol of cooperation in the field of social inclusion, concluded with the Government of Romania, and the Protocol of cooperation related to the Partnership of Medical and Spiritual Assistance, concluded with the Ministry of Public Health.

The religious court –Holy Synod has an internal purpose for establishing the internal regulations and hierarchy of the Church, to establish the promotion in rank of a clergyman or to remove him from office. The state courts have no obligation to apply rules of the religious system. The neutrality of the State, so much invoked by the militating European currents as an imperative for the respect of human rights, including the religious freedom, means neither its atheist nature nor the legalization of proselytism, but treating the cults in consonance with the clear principles of subsidiarity and proportionality. According to these principles, the Orthodox Church is the prevailing religious cult in Romania, holding an important place in the framework of the cooperation between the State and the cults. The relationship between the prevailing Church and the State is that of collaboration between two social partners with equally shared powers, even though they are completely different in their ultimate quality, the theological one²⁷.

The Cults Act, the most important normative act for the legal framework regulating the religious field, is an essential part of the model of relationship between the State's institutions and the religious ones, a projection at macro level of the public administration – citizen binomial, which the contemporary Orthodox world advances in response to the challenges released by the concept of *religious freedom*.

²⁶ See **Dorel Nicolae Motoc**, *Parteneriate pentru misiunea socială*, în "Drepturile Omului", nr. 12/2007.

²⁷ Based on the Constitution of Romania and Law No. 489/2006, the Government of Romania issued Ordinance No. 53/16 January 2008 by which it acknowledges the Statute for the organizing and functioning of the Romanian Orthodox Church, which abrogated the Decree of the Presidium of the Great National Assembly No. 233/1949 and all the subsequent modifications that referred to the above mentioned Statute.

Religious adjudication is permitted only in the internal regulations of the church.

Religious court (Holy Synod) is exclusively functioning internally while it is bound to respect the laws of the state but its internal decisions are not subjected to judicial review on the part of the State courts. In order to cooperate more efficiently with the authorities of the central and the local administrations, priests were granted permission by the Holy Synod to run as independent candidates for the positions of local councillor or county councillor, which differs from a political activity that would derive from running for those positions on the lists of a political party. The Church made a declaration of political autonomy in relation to the political parties.

The religious cults in Romania have the duty to redress the moral life and the humanism of the Romanian society without violating its neutrality or exceeding its Statutes. The cults' mission is not to recover their past privileges by means of political pressure, but to join those who build a future for Romania. Without abusing their power upon the conscience of the believers,²⁸ the cults can play an active part in building a social consensus that indirectly helps the system stabilize.

It is noteworthy that solving a series of social problems is not the unique mission of the Church. The latter is urged to play its role in improving the relationships between people, by cultivating a spirit of tolerance and promoting the dialogue, the religious pluralism and a resolute position in relation to the realities of applied sciences.

The religious court can interpret laws of the state but its judgment is mainly based on religious rules and has an internal character. The legal norms in the field of cults are meant to regulate the activity of religious institutions, in an impartial and non-discriminating way, while taking equal actions in relation to all the actors involved.

The religious cults exist and function in Romania based on principles and decisional and conjectural elements that made possible the emergence and the adoption of the due legal framework. The transition process in the post-communist period, the post-modern challenges, the sectarian proselytism, integration in the European Union were and still are vital

²⁸ Ibidem.

dimensions for the social life and the State's administrative activity²⁹.

Therefore, the regulations referring to the religious field have taken into account the international standards, the already existing national legal system, as well as the present-day conditions for the State to function properly. A supporting argument in this respect is the Cults Act.

Social implementation of religious rules

In Romania there are social implementations of religious rules in the conduct of people even if these are not necessarily official rules. For instance, while civil marriage is obligatory in the Romanian state for a marriage to be recognized, the state only needs the certificate of marriage from the Mayor's office. It is up to the married couple to decide upon the religious marriage. However, the unwritten law of the Orthodox Church states that the marriage is not recognized until the religious marriage takes place. Romanian citizens usually do both laic and religious marriages without being compelled by any law of the state to marry religiously³⁰.

Present Cults Act in its article 13 states that the relationship between the cults as well as the relationship between the religious associations and religious groups, shall be based on mutual understanding and respect. Any forms, means, deeds, or actions of religious defamation or public offence against religious symbols are prohibited in Romania. In this respect the Cults Act brings no new elements as compared to Article 29 in the Constitution of Romania and this is the reason why it might be necessary to have it complemented with certain provisions that would ensure a correlation between freedom and responsibility, required in any State governed by the rule of law. The problem is a

²⁹ Also see **W. Cole Durham Jr.**, Modern trends in European State-Church relations: A general comparative perspective, in *Libertatea religioasă în context românesc și European*, editura Bizantină, București, 2005, p. 23. et seq.

³⁰ Also see *RIHR Report on evolution of laic and religious rules*, **Irina Moroianu Zlătescu, Marius Mocanu, Daniela Albu, Viorel Dima, Petru Emanuel Zlătescu**, IRDO, București, 2013, p. 3; Also see the documents of the 9th Conference of experts in the field of religious freedom on "The Discourse of Hatred and Defamation of Religion", organized by International Religious Liberty Association of Washington in collaboration with the Ministry of Culture and the Cults – State Secretariat for the Cults, Parliament of Romania, the Romanian Institute for Human Rights and the National Association for the Defense of Religious Freedom "Conscience and Freedom", Bucharest, 8-10 September 2008.

very delicate one for it shall not be perceived as a confessional police or an attempt to get rid of the “competition”, consists in finding the balance between the freedom of winning adepts in prejudice of another cult and the multitude of rights, duties and interests of religious groups, individuals and institutions of the public administration that might conflict with those freedoms.

The Romanian people are very tolerant towards the different cults and religions of the minorities. Therefore, in everyday life there is no hostility of the main population towards the manifestations of other religions. With the prevailing Orthodox religion, many Romanians wear religious symbols like the cross or a small icon but this did not face hostility from minorities since they can also wear their religious symbols without disturbing or raising any hostility. There are no manifestations of religious fanaticism from any segment of the population in Romania. However, in respect of religious symbols, there were debates in the Parliament and the Civil Society regarding prohibiting the orthodox religious symbols that exist in some schools on the reason that school is attended by pupils pertaining to different religious cults. But the proposed law did not pass due to the prevailing Orthodox faith and convictions.

As far as the importance of the symbolic language is concerned there is no doubt about it. The sacred texts in particular make use of a specific language.

There are situations when the mere action of nodding could acquire a special connotation, if performed between representatives of different religions. Everything can be triggered by apparently simple gestures that nevertheless have a strong significance. Several years ago, for example, the issue of the presence of icons in schools awoke older hard feelings.³¹ These could be added each cult's self-preservation or expansion policy, the political interests, the economic interests, etc.

Such controversies are also fuelled by the Romanian historical-religious background.³²

As far as the situation of the acknowledged religious institutions and cults is concerned, we believe that it cannot fit a pattern that could stand the ‘word for word’ application of solutions

³¹ In its Decision No. 323/2006, the National Council for Combating Discrimination confirmed the discriminatory situation created by the exhibition of religious symbols in public educational units, except for the optional class of religion, while the Court of Appeal of Bucharest confirmed the legality of the decision.

imported from other European countries and implemented here by all means.

Making the international commitments related to the observance of human rights and fundamental freedoms determined Romania to take constitutional and legislative measures to protect the citizens against any constriction or limitation of their religious freedoms³³. This entailed, on the one hand, limitation of the jurisdiction of the Churches (the term is used generically) so that a Church's norms should be applicable only to its adepts and, on the other hand, each citizen should be guaranteed the manifestation of his/her own religion and faith³⁴.

Citizens do not make use of services provided by religious adjudication bodies that are devoid of State recognition, civil effects or other services forbidden by State law.

Conclusion

In terms of the legal framework, after the political regime was changed, Romania took efforts at all levels to meet the national needs, alongside the European and the international standards. Observance of the religious freedom, freedom of conscience, freedom of expression, freedom of opinion and all the other fundamental rights was always a major preoccupation for the various authorized institutions in the country and from abroad³⁵. The situation was also analyzed, assessed and studied to monitor the Romanian progress in various fields, for various reports or in response to complaints, which was a supportive element for the Romanian State.

The strengthening of individualism and the stronger and stronger preoccupation for the personal wealth of individuals made the State include the increase of the individual wealth among the objectives of good governance and, by

³² Also see in this respect **Ioan P. Culianu**, *Arborele gnozei. Mitologia gnostică de la creștinismul timpuriu la nihilismul modern*, Editura Nemira, București, 1998.

³³ See **Silvio Ferrari**, *L'enseignement a propos de la religion dans l'Union Européenne: aperçu juridique*, in *Libertatea religioasă în contextual românesc și European*, Editura Bizantina, București, 2005, p. 325 et seq.

³⁴ See **Viorel Dima**, *Libertatea religioasă în relația administrație-cetățean în statele membre ale Uniunii Europene în „Drepturile Omului” nr. 3/2008*, p. 40 et seq.

³⁵ See **Irina Moroianu Zlatescu**, *A culture of peace, democracy and tolerance in Romania*, National Commission of Romania for UNESCO and Romanian Institute for Human Rights, p. 91 et seq.

way of consequence, adapt the public offer to the individual needs. This preoccupation also implies, among other things, to protect the citizens against any restrictions imposed by the Church and offer them the possibility to enjoy religious services corresponding to their own expectations. Thus Romania, in its capacity as member country of the European Union, took such measures that take into account the citizens preferences and offer services adapted to those preferences in relation to the teaching of religion in schools or the administration of assistance in public institutions.

The plurality of society strengthened by the free circulation of persons and ideas, by the religious missionary activities, etc., made the State acknowledge the need for the protection of the cultural, religious, linguistic, etc., identity of all its citizens. Thus, acknowledgement of the cultural rights made possible the creation of the framework needed for the specific religious manifestation of each citizen, no matter whether he/she belongs to the majority or to an ethnic or religious group. This framework guarantees the peaceful coexistence of several religions and religious denominations and the unrestricted manifestation of them.

Educations in one's mother tongue, the teaching in public schools of the specific religion of each community and these communities' access to other public institutions than the educational ones have all become possible.

"The State's non-confessional nature provides all the citizens with an equal moral and religious status in relation to the State, for they will prefer no particular religion in the name of the nation and there will be no second hand citizens on grounds of their religious beliefs."³⁶

In terms of marriage and the family, the Churches' documents and decisions related to marriage and the family have no legal value, as the civil law does not take into account the religious norms.

In Romania, only "the wedding officiated before the civil status delegate" has legal effects.³⁷ The religious wedding has no legal effects and shall be officiated after the civil wedding has been achieved.

According to the current Civil Code, "the minimum age needed for marriage is eighteen". The personal and free consent of the man and the woman is needed for the marriage to be accomplished. The minor who is 16 can marry by exception and for solid reasons on the basis of a

³⁶ See **Jacques Robert**, *La liberté religieuse*, în *Conștiință și libertate* nr. 2/2004.

medical certificate, with the parents's consent or with the consent of his or her legal guardian and should be authorized by the court in whose tutelage the minor has his or her domicile. If a parent refuses to consent to the marriage, the tutelage court decides on this divergence considering the superior interest of the minor. The approval of a parent is enough if one of the parents is deceased or is unable to manifest his or her will. According to article 398 of the Civil Code the approval of the parent who exerts his or her authority is sufficient. In cases where there are no parents and no guardians to approve the marriage, the approval of the person entitled to exert guardianship and parental rights is needed.

Marriage between direct ascendants and descendants, between collateral relatives, fourth degree included, between the adopter and his/her ascendants, on the one hand, and the adoptee and his/her descendants, on the other hand, as well as between the adopter's children and the adoptee or the latter's children, shall be prohibited.³⁸

The laic Romania State promotes through its institutions a fair attitude towards different religions. There is no preferential treatment of religious over non-religious individuals.

Since religions have a high potential for the cultivation of human dignity, equality, liberty and solidarity, taking into account the traditional link between religion and morality and since the dialogue *with* and *among* religions creates a platform which will hopefully entail global respect for human rights and a global approach, the Romanian Institute for Human Rights, in collaboration with higher education institutions and representatives of the religious cults in Romania, has been organising ever since its creation an annual symposium with national and international participation devoted to the spiritual dimension of human rights. The purpose of these reunions is to provide a basis for debates and stimulate the dialogue between the lay society and the religious communities, on the one hand, and between the various religious communities in Romania, on the other hand. And, as always proved, the dialogue was, is and will be possible and necessary, if not for solving immediate and pressing problems, then for the creation of a favourable climate for finding the correct solutions.

³⁷ The current Civil Code of Romania (Official Gazette no. 255 of 17 April 2012). See also law No. 60/2012.

³⁸ *Ibid.*, art. 6.7.