

The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania

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Under the provisions of Decree 177/1948, in Romania 14 religious cults have been recognized until December 1989, when a decree re-established the Greek Catholic Church as recognized religious cult. At the same time, the State Secretariat for Religious Denominations reported in May 2001 that 50 new religious associations received approval for the registration in 2000 and other 3 associations were approved as of May 2001.

In February 2001, the new Government circulated for comment to the 15 recognized religions the text of a possible new draft bill on religious denominations. This bill was actually the same bill that had been submitted by the previous Government to the Parliament in September 1999.

Despite this reality, the International Religious Freedom Report, published on October 26 2001 by the Bureau of Democracy, Human Rights, and Labour of the U.S. Government, informed that “The Romanian Government has refused to register a number of religious groups, and no religious group has received status as religions since 1990. The State Secretariat for Religious Denominations stated that this was due to provisions of Decree 177/1948, which stipulates the recognition of religious denominations by a decree issued by the Presidium of the Grand National Assembly, a Communist institution that no longer exists. Since no new legislation has been passed in this regard, the State Secretariat stated that the registration of any new religion is not possible”¹.

In the same Report, we find that the registration process of the religious groups “was arbitrary and unduly influenced by the Romanian Orthodox Church, and that they did not receive clear instructions concerning the requirements”². Jehovah's Witnesses, for example, “complained that the State Secretariat for Religious Denominations consistently had refused to grant this groups the religion status, despite the March 2000 Supreme Court ruling that recognized the modified statutes of Jehovah's Witnesses as a Christian religious denomination. The court ruling asked the State Secretariat for Religious Denominations to issue an administrative document recognizing Jehovah's Witnesses, but

¹ Romania, *International Religious Freedom Report, Bureau of Democracy, Human Rights, and Labor*, <http://www.state.gov/g/drl/rls/irf/2001/index.cfm?docid=5745>

² Ibidem.

the State Secretariat refused to do so. In response, Jehovah's Witnesses asked for damages in court and, consequently, the Ministry of Culture and Religious Denominations will have to pay a symbolic \$0.02 (500 lei) per day fine to the State as of May 9, 2001”³.

On the 13th of December 2006 The Chamber of Deputies gathered in plenary session adopted the draft bill regarding the religious freedom and the general regime of cults “by the overwhelming majority of 220 votes, one abstention, and one vote against”⁴. Afterwards, The Law promulgated by the President of Romania through the Decree n. 1437/27.12.2006 was published in The Official Gazette n. 11/08.01.2007 as The Law n. 489/2006.

For more than sixteen years (since December 1989 – when the Communist regime was prohibited – till 2006) in Romania no new legal provisions have been enforced regarding the juridical regime of the Religious Cults. Therefore, the cults continued to comply with the provisions of the Law-Decree n. 177/1948, which had nothing in common with the framework provisions enforced by the main international legal documents (Treaties, Conventions, Pacts, Statements, etc.) dealing with the religious freedom. Romania had already ratified most of such legal instruments before the “events” of December 1989. It is needless to say that after 1989 the Romanian socio-political and religious reality itself has not been in harmony with the provisions of The Law of The Cults enforced by the decision-makers of the Communist State aligned to the Soviet interests. At the same time, it is worth mentioning that a number of Romanian analysts did not understand why the Romanian authorities have not repealed The Decree n. 177/1948. “As long as the authorities are concerned with eliminating the effects of the Communist legislation it is hard to understand why The Decree n. 177/1948 has never been formally abrogated”⁵.

The term “Religious Cult” has occurred in the European culture during the modern period of time. This term reflected in the modern law terminology the “Religious juridical institution”⁶ of one specific religious community or religion.

The Romanian Constitutional Law considers that the term “Cult” covers two acceptations. “Under organic acceptation the cult means an association (sic), or a religious organization; the functional acceptation covers the rite. Nevertheless, both acceptations – mention the Romanian Constitutional Law experts – consider the religious cult as the exteriorisation of a religious belief, both

³ Ibidem.

⁴ *The Law n. 489-2006 on Religious Freedom and General Regime of Religious Cults. Brief presentation and history*, <http://www.culte.ro/Documente Html.aspx?id=1663>

⁵ Dorina Năstase, *Corectitudinea politică și Legea cultelor (Political correctness and The Law of religious cults)*, <http://www.revista22.ro/corectitudinea-politica-si-legea-cultelor--3456.html>

⁶ Liviu Stan, *Legea Cultelor în R.P.R. (The Law of Religious Cults in the Popular Republic of Romania*, in Theological Studies), in Studii Teologice, II (1949), n. 9-10, p. 841.

bringing together the persons having the same belief in a religious association (church or cult), and practicing the rituals required by the specific faith, i.e. processions, religious gatherings, etc.”⁷.

Thus, for the Romanian Constitutional Law experts the terms Church, Religious Cult, and Religious Association are identical. However, the three terms are not identical from juridical, ecclesiastical, and canonical points of view, as they cover different realities. For example, the term “Church” means – from juridical and ecclesial points of view – “The Christian Cult regarded as social and juridical institution of the Christian religion”⁸.

In the long course of time The Church, i.e. the Christian Cult as institution has taken – similarly to The State – various appearances, “... in such ways that the Christian cult taken as a whole divided in a number of small Christian cults, and social-juridical organizations having specific confessional character. Thus, at present we can speak about The Orthodox Christian Cult (The Orthodox Church), The Catholic Christian Cult (The Catholic Church), The Evangelic Christian Cult (The Evangelic Church), The Protestant Christian Cult (The Protestant or Calvinist Church), The Unitarian Christian Cult (The Unitarian Church), etc.”⁹.

Not all Constitutions of the European Union Member States expressly refer to “The Church” or “The Churches”. Instead, other terms or collocations are used, e.g. “Religious Confession”, Religious Cult, or similar expressions. For instance, The Constitutions of Belgium (cf. Art. 20) and Portugal use the term “Religious Church and Confessions” (Art. 41, par. 3), and The Constitution of Germany considers the term “Religious Association” (Art. 137 and 140). However, all such terms and collocations express in the end the idea of “Religious Community” “understood according to the European tradition, i.e. The Church”¹⁰.

From canonical (Orthodox) point of view, “The Religious Community” is defined as “administrative unit within a Church or cult organization”¹¹.

As regards the term “Confession” – included in the text of the Constitutions enforced in a number of European Union Member States – we should mention that its connotation is in a high degree religious, not juridical. At the same time, the literal sense of the term “Confession” strictly expresses “the declaration of religious belief”¹², which emphasizes the first element of a specific religious cult or Church.

According to the Orthodox ecclesial and canonical doctrine, the term “Religious Association” means “... a group of believers established within the Church or one given cult, which aim at fulfilling

⁷ I. Muraru – E. S. Tănărescu, *Constituția României. Comentarii pe articole* (*The Constitution of Romania. Comments on articles*), Ed. C.H. Beck, Bucharest, 2009, p. 284.

⁸ Liviu Stan, Op. cit., p. 841.

⁹ Ibidem.

¹⁰ S. Ferrari – I. C. Ibán, *Diritto e religione in Europa Occidentale*, Milano, 2001, p. 49-50.

¹¹ Liviu Stan, Op. cit., p. 841.

¹² Ibidem, p. 842.

certain objectives subordinated to the general goal of the Church or cult, using the means belonging to the specific Church or cult and not being a distinct entity, but sharing the same nature with the Church or cult it belongs to”¹³.

The Constitutions of the European Union Member States stipulate: “The Churches are not considered as distinct categories, but as one specific entity based on historical reasons”¹⁴. Indeed, in all countries where the Churches have brought major contributions in building the national history – as it has been for Romania – The Church was part of the public power of the State. It is well known that The Church has been part of “the European power for centuries. This reality was inevitably mirrored in the juridical documents, which is revealed by the uninterrupted mentioning of the prevalent Church in the juridical provisions of each country”¹⁵.

In juridical terms, The Orthodox Church is a religious cult, as many others. Unlike other cults, this Church “lives a more developed juridical life, materialized in its own juridical order...”¹⁶, and is under the governance of its own canonical legislation; hence its ancient autonomy status in the relationships with The State. Nevertheless, although such autonomy was stipulated in the canonical legislation since the 4th century (cf. can. 4, 6, 7 I ec.), it is worth noting that it has not always been considered and respected by the Byzantine State and later on by the South-East European national states, where The Orthodox Churches continued their existence as institutions organized according to well-defined ethnical and geographical conditions.

According to certain Romanian law experts, The Law n. 489/2006 brought a number of legislative and cultic “innovations”, as result of emphasizing the difference between “The Religious Associations” and “The Religious Groups”. These experts also consider that The State should not make the difference between The Religious Association and The Cult”, as such distinction is “discrimination and stratification applied not to the cults, but the believers, and the secular “State” has not this competence”¹⁷.

The same experts note that “... after enforcing a number of regulations addressing to two levels, i.e. religious cults and associations, on the one hand – that is juridical personality entities – and religious groups, on the other hand, the law (489/2006, our note) makes stipulations regarding the first two entities and only mentions the existence of the religious groups. The law could have simply eluded this aspect, as such groups can be established as provided by The Civil Law”¹⁸. Therefore, the experts

¹³ Ibidem.

¹⁴ S. Ferrari – I. C. Ibán, Op. cit., p. 49.

¹⁵ Ibidem, p.47.

¹⁶ Liviu Stan, Op. cit, p. 842.

¹⁷ Judge Anton Paraipan, *Câteva considerații asupra Legii nr. 489/2006 privind libertatea religioasă și regimul general al cultelor* (Some considerations on Law no. 489/2006 regarding religious freedom and the general regime of religious cults, in The Annals of Ovidius University of Constantza, the Theology Series), in Analele Universității Ovidius Constanța, Seria Teologie, nr. 1/2007, p. 252.

¹⁸ Ibidem.

consider that the religious groups take advantage of “... special legislative provisions, besides the common right”, as such groups are mentioned in the text of The Law 489/2006. This “is extremely hazardous”, as they are entitled to require association agreements aiming at acquiring legal objectives. These agreements are issued by the City Halls, which have “no possibility to maintain the situation under control”¹⁹. According to the same scholars, this type of association can become not only “the doorway for certain sects”, but also “the screen behind which the terrorist groups can hide, bringing forth the so-called lawfulness of the religious group about which nobody knows anything, and which is not controlled and verified by anybody”²⁰.

As regards the cults, the first legitimate task that should be solved by The State is to establish and guarantee – through the text of its fundamental law – the religious freedom, considered as “each person’s unlimited freedom to embrace or to reject any religious belief”²¹.

The internal aspect of the religious freedom, i.e. the consciousness, “is complete and unlimited by anything. Regarding the external aspect, i.e. the manifestation through acts that influence the social life, the freedom is not complete and unlimited, as it cannot be and should not be like that. As long as no limitation are enforced, it inevitably results in suppressing the religious freedom of certain cults and advantaging others; therefore, the assertion of the religious freedom can result in the very denial of this right, the assault upon this freedom, and the cancellation of each person’s equal right to this freedom”²².

The consistency in applying the “principle of religious freedom” and “equal right” of each person to this freedom involves as well the compulsion of asserting and applying – both in the life of the society and the cults – “the principle of the equality between the religious cults as regards the legal provisions”, and, *ipso facto*, “the equality of the religious cults as regards their rights and obligations, as well as the equal treatment by The State”²³.

Yet, all these principles are already stated and asserted in the text of The Law 489/2006. For instance, it is enough to lecture the Articles 1, 4, 5, 9, etc. to understand beyond any doubt that the new Law regarding the religious cults has asserted “*expressis verbis*” all these fundamental principles concerning the religious freedom.

As regards the autonomy of the cults – residing in “their religious and institutional independence related to The State”²⁴ – we should mention that a number of differences occur in their manifestations. The differences are caused by the socio-political realities in each country, as well as by the national juridical systems, resulting in different relationships between each cult and The State, which produced

¹⁹ Ibidem.

²⁰ Ibidem, p. 252-253.

²¹ Liviu Stan, Op. cit., p. 847.

²² Ibidem.

²³ Ibidem, p. 848-849.

²⁴ Ibidem, p. 849.

specific juridical regimes, e.g.: the regime of the State Churches, the regime based on agreements established between The State and the cults, the regime of juridical recognition of cults, the regime of juridical rejection of cults, etc.²⁵.

As regards the relationships between The State and the religious cults, the Romanian Constitution guarantees the autonomy of the cults. At the same time, it compels The State to support the cults, including the religious assistance for the military personnel, in hospitals, prisons, asylums, and orphanage houses. Thus, the text of Article 29 of the Romanian Constitution stipulates: “The religious cults are independent and organized according to their own Status and the legal provisions” (Art. 28 par. 3), “are autonomous in their relationships with The State, and take advantage of the State’s support including the religious assistance for military personnel, in hospitals, prisons, asylums, and orphanage houses” (Art. 29 par. 5).

The Romanian Constitutional Law experts comment Article 29 and conclude that through the “consecration of the separation of The State from The Church, The Romanian State has adopted a position of indifference regarding the religions and avoids advantaging or rejecting the cults, taking measures against the disturbance of the public order caused by the cultic manifestations”²⁶. By contrary, as mentioned by the Article 29 of The Romanian Constitution, The State did not take “a position of indifference” in relationship with the religious cults. The State has only separated the fields of activity, i.e., between the religious (sacred), and telluric (profane).

The new Law of cults specifically provides that “all recognized cults are juridical persons of public utility. The cults are organized and develop their activity according to the provisions of The Romanian Constitution and the present law, based on autonomy, and according to their own statutes or canonical codes”²⁷. As regards the autonomy status guaranteed by The Law 489/2006 we have already remarked that “... The Romanian Orthodox Church together with other *recognized cults* faces not only with the risk of having limited autonomy, but also with the transformation into plain administrative instruments of The Romanian State. Faced with such a situation – usually characterized by the occidental scholars as ontologically specific for the Orthodoxy – The Romanian Orthodox Church is not only entitled, but also under the imperative obligation of presenting the political authorities this legislative abuse and claiming its specific rights”²⁸.

However, there are Romanian lawyers that apodictically assert that “The State cannot have the right to condition the existence and the activities of the cult; The State can only control the legal

²⁵ See, Patriciu Vlaicu, *Problematica autonomiei cultelor în sistemele de drept european*, (*Religious cults` authonomy problems in European legal systems*), <http://reprezentanta.typepad.fr/reprezentanta/2009/01>

²⁶ I. Muraru – E. S. Tănasescu, Op. cit., p.285.

²⁷ *The Law n. 489-2006 on Religious Freedom and General Regime of Religious Cults* (published in The Official Gazette of Romania, Part I, n. 11/8. 01. 2007), art. 8, al. 1.

²⁸ G. Grigoriță, *Legea nr. 489/2006 și Biserica Ortodoxă Română* (*Law no. 489/2006 and The Romanian Orthodox Church*, in Theological Studies), in *Studii Teologice*, III (2007), n. 2, p. 203.

activity in terms of aligning the cult activities to the legal provisions. The cults do not need to be recognized (as a matter of fact, authorized), and their statutes have only to be recorded in the judiciary accounts. In case of infringement – the lawyers mention – the judiciary institution can take action through the specific juridical bodies”²⁹.

The same Romanian Christian lawyers mention: “it is unacceptable that The State decides the existence of a specific cult, because “it is created as it exists through the will of God and the manifestation of the believers”. But, they also mention, “The State can establish administrative functioning regulations that do not jeopardize the natural activities of the cult within the agreements concluded between The State and the cults”. At the same time, the Statute of the religious cult should only be written by the members of the specific cult, i.e. by the clergy and the believers, who should afterwards submit the text “to the competent authority (The Court of Law) in order to be taken into consideration as civil association”³⁰.

The Romanian legislation regarding the association activities stipulates: “... The professional associations are established and develop their activities according to their Statutes and the legal provisions”³¹. However, the Romanian experts in Constitution mention about this article (Art. 9) that “... the political parties, the syndicates, and the religious cults do not make the object of this regulation. The juridical documents concluded for the establishment of the associations and foundations are governed by The Civil Law”³².

Based on the Government Decision n. 26/2000 approved with modifications by The Law n. 246/2005, the natural and juridical persons can establish associations “... aiming at developing activities for general or community interest, or for their own un-patrimonial interest. The associations established according to this provision are juridical persons with no patrimonial objectives”³³.

In Romania, the Religious Cult is established through Government Decision, based on the proposal of the Minister of Culture and Cults. However, a number of Romanian lawyers consider that establishing, organizing a religious cult, and developing its activities, should only be recognized “by Judge Decision (the judge is apolitical and independent). The objections could exclusively regard the infringements of the legal order”³⁴. As result, each Romanian religious group or association must register in the account of the judiciary institution and submit The Organization and Functioning Statute to the Court of Law. Besides, the Statute has to be published in The Official Gazette of Romania.

²⁹ Judge Anton Paraipan, Op. cit., p. 249.

³⁰ Ibidem, p. 248.

³¹ Romanian Constitution (2003), Art. 9, apud I. Muraru – E. S. Tănasescu, Op. cit., 92.

³² I. Muraru – E. S. Tănasescu, Op. cit., p.101.

³³ Ibidem.

³⁴ Judge Anton Paraipan, Op. cit., p. 249.

As regards Romania, the same lawyers wonder if “an atheist Government, followers of atheist ideas”, is legally entitled “to decide for a cult”³⁵. This suspicion can only be eliminated through the Decision of the Court of Law, not of the Government, as the members of the last one can have non- and anti-religious attitudes and positions. Therefore, we consider that “the registration as juridical person” allow the religious cults “concluding contracts with The State with the stipulation of all aspects needed to develop normal and natural relationships”³⁶. As long as the Romanian religious cults accept the need of recognition by the Government, “they accept the provisions of the Law issued in 1948”, when such a recognition used to be approved “by the Party and State authorities”³⁷.

At the same time, as the Government recognizes the cults based on the proposal submitted by the Ministry of Culture and Cults, “in other words, by an executive, a subordinated authority”, the religious cults in Romania were under the sign – according to The Law n. 489/2006 – of “less valuable” appreciation, because “at that time”, i.e. during the communist regime, the recognition or functioning authorization “was enforced by The Presidium of the Grand National Assembly (the old “Parliament”), which was the most representative authority (The Parliament is “the supreme authority”). More attention was paid to the cults, as the recognition of a cult was not transferred to a subordinated body. Thus – a Romanian judge concluded -, more attention and consideration were paid to these aspects, though by a communist law”³⁸.

As for the Law n. 489/2006, there have been assertions according to which “... the Law is favourable for the Orthodox population, and more, it was exclusively elaborated for the Orthodox persons”. “This is the falsest assertion”, because “this Law (re-) enforces the regime of the *recognized cults* in Romania, which has nothing to do with the Orthodox doctrine”³⁹. Besides, “*the system of the recognized cults* is entirely unknown to the Orthodox pattern and does not bring any privilege to The Romanian Orthodox Church. By contrary, certain fundamental rights of this Church are diminished. Therefore, The Romanian Orthodox Church is entitled not only to reject all accusations in this respect, but also to point out the inaccuracy and errors of the legal document”⁴⁰.

The conclusion is that the disadvantaged part in The Law n. 489/2006 is The Romanian Orthodox Church. This Church did not aimed at obtaining advantages as result of publishing such a law, which is “... certified by the fact that during the elaboration of the new law it acted maturely and flexibly, abjuring the title of National Church”⁴¹. Thus, “such accusations uttered to The Romanian Orthodox Church are not based on objectivity”⁴².

³⁵ Ibidem, p. 248.

³⁶ Ibidem, p. 249.

³⁷ Ibidem, p. 250.

³⁸ Ibidem, p. 251.

³⁹ G. Grigoriță, Op. cit., p. 201.

⁴⁰ Ibidem, p. 203.

⁴¹ Ibidem, p. 202.

⁴² Ibidem.

As regards “the recognition of cult attribute”, The Law n. 489/2006 stipulates: “the attribute of cult recognized by The State is acquired through Government Decision, on the proposal submitted by the Ministry of Culture and Cults, by the Religious Associations that guarantee their sustainability, stability, and public interest, as result of their activities and number of members” (Art. 17 par. 1). Based upon The Order n. 2603/14.10.2008 – issued by the Ministry of Culture and Cults – the procedure for recognizing the cult attribute of a Religious Association is initiated “as result of the decision made by the steering body appointed by the Statute of the religious association applying for the recognition ...” The Ministry of Culture and Cults is in charge with granting the consultative approval – taking into consideration the documentation submitted – regarding the recognition⁴³. A number of Romanian law experts consider that the Statutes of the religious cult should be submitted to the “Judiciary body with jurisdiction over the territory where the association has the headquarter, not to the Ministry of Culture and Cults, The Government, or any other political authority. Not the politicians – the experts mention – can decide, but the judges that are entirely dedicated to the legal provisions...”⁴⁴.

The religious association that apply for the recognition of the cult attribute has also to submit “to the Ministry of Culture and Cults” both “the documents that certifies the legal establishment and the continuous activity on the territory of Romania as religious association for more than 12 years”, and “the original lists including the adhesions of at least 0.1% Romanian citizens resident in Romania from the whole population of the country, according to the most recent census” (Art. 18, par. a and b of The Law 489/2006).

The main European juridical documents, e.g. The Amsterdam Treaty (The 11th Statement), stipulate the freedom of European Union Member States to regulate the national legislation of cults considering their own traditions. Indeed, the Statement adopted in Amsterdam in 1997 mentions that The European Union respects the Status of the religious cults elaborated according to the national legislation of each State”⁴⁵.

Thus, in the field of the juridical regime of the Religious Cults, the European Union recognizes the pre-eminence of the national legislations compared with the provisions of the European and International Treaties and Conventions (cf. The European Convention on Human Rights, Art. 9 and 10; The Directive n. 97/36/C.E. Art. 22, etc.).

Regarding the obligation of the religious association to certify the legal establishment and functioning on the Romanian territory “for at least 12 years” (Art. 18 par. a), it is worth mentioning that the national legislations of other European Union Member States provide longer periods of time.

⁴³ The Ministry of Culture and Cults, *Order n. 2603/14.10.2008*, Art. 1-3.

⁴⁴ Anton Paraipan, Op. cit., p. 249.

⁴⁵ See, *Déclaration adoptée par la Conférence d'Amsterdam*, in Journal Officiel, no. C 340 du 10 november 1997, la <http://www.europa.eu.int>

For example, in Portugal and Hungary the religious cult needs 30 years before it is recognized and, *ipso facto*, granted certain legal rights.

As for the 1% criterion, the promoters of the draft bill had to solve as well a number of objections especially raised by The Helsinki Commission of The United States. Among other things, the members of the Commission underlined that “... the model is not specific for Romania alone, but it covers the European pattern of the legal provisions that govern the relationships between The State and the cults”⁴⁶. Indeed, in other countries (e.g., Belgium and Czech Republic) the administrative procedures for the process of recognizing the cult requires the existence of 10,000 believers, which represents about 0.1% of the population of such countries. Other countries, as Germany or the Concordat States, did not establish the percentage, and left this estimation to The State’s responsibility. Certainly, such a practice of leaving these criteria to the legislative or executive power is not useful for the implementation of transparent policies.

Regarding the provision that The Romanian State recognizes the cult attribute granted to an association having the number of members at least 1% of the national population, Mr. Aurel Vainer, Deputy and Chairman of the Jewish Community Federation in Romania, declared in an interview that “the percentage only refers to the new cults applying for registration, not the other 18 cults already recognized by The State”⁴⁷.

Dr. Daniel Ciobotea, Metropolitan Bishop of Moldavia and Bukovina and Chairman of the delegation of The Romanian Orthodox Church for the consultation of the religious cults in order to elaborate the new Law of Cults, declared: “... The Romanian State grants financial support to the religious cults not in order to obtain the subordination of the cults, but to recognize their role and contribution brought to the social life, as mentioned in Art. 7”; “Therefore, the requirements regarding the minimum 12 years of uninterrupted existence and the minimum number of members (0.1% of the Romanian population) fulfilled by a religious association to be recognized as cult represent certifications of the public interest of the association and stand for the contribution brought in the development of the social life. The conditions seem to be restrictive, but they express the intention of the Romanian cults that the recognition of the new religious cults is not an arbitrary one, but based on objective and verifiable criteria”⁴⁸.

According to the provisions of Art. 4 of The Law n. 489/2006, “any person, cult, religious association or religious group in Romania is free to establishing and maintaining ecumenical and

⁴⁶ *The Law n. 489-2006 on Religious Freedom and General Regime of Religious Cults*. Brief presentation and history ...

⁴⁷ F. C. E. R. President considers the new Law of Cults, “A concentrated expression of the Romanian democracy”, in Religious Life, Year XV, no. 684, 31 January 2007, p. 38.

⁴⁸ † Daniel, Metropolitan Bishop of Moldavia and Bukovina, *Libertatea cultelor religioase de a fi factori ai păcii sociale - Considerații privind noua Lege a cultelor (The religious cults' freedom of being agents of social peace. Considerations regarding the new Law of Religious Cults)*, http://www.crestinism-ortodox.ro/html/stiri/3_IANUARIE_2007.html

brotherly relationships with other national or international persons, cults, or religious groups, inter-Christian and inter-religious organizations” (Art. 4).

Thus, based on the present Law of Cults, in Romania the Religious Cults, Associations, and Groups are not the only ones allowed initiating and maintaining national and international ecumenical relationships, but also “any person”. This right clearly stands for the religious freedom of the humans, plenary manifested and based on the inter-confessional and inter-religious theological dialogues⁴⁹.

The same Law of Cults stipulates: “The relationships between the cults, as well as those between the religious associations and groups are established on the basis of mutual understanding and respect” (Art. 1 par. 1) and “in Romania any forms, means, acts, or actions aiming at religious defamation and quarrelling” (Art. 13 par. 2).

This clear interdiction of the public offence uttered against the religious symbols, which was not included in the initial text of the draft bill, was introduced by The Juridical Commission and The Human Rights Commission and adopted by The Parliament after “the international scandal generated by the publication of the caricatured images representing Mahammed The Prophet”⁵⁰.

The members of certain so-called Romanian humanist associations (free-thinkers, agnostics, communists, etc.) raised their voices against this appendage, considering that such an interdiction represents the limitation of the freedom of speech. Beyond the fact that the interdiction “has no penal consistency, but a declarative one”, we should keep in mind that “it is constitutional and aligned to the

⁴⁹ See, N. V. Dură, *Relațiile ecumenice actuale dintre Biserica Ortodoxă și Biserica Romano-Catolică și bazele lor ecleziologice* (Present ecumenical relations between the Orthodox Church and the Roman Catholic Church and their ecclesiological basis, in Voice of the Church), in Glasul Bisericii, XLII (1983), nr. 9-12, p. 625-633; Idem, *Sensul receptării textelor rezultate din dialogurile teologice ecumenice* (The sense of texts` comprehension, resulting from ecumenical theological dialogues, in The Orthodoxy), în Ortodoxia, XXXVI (1984), nr. 3, p. 379-390; Idem, *Receptarea textelor rezultate din dialogurile teologice ecumeniste. Considerații ecleziologice-canonice* (The comprehension of texts resulting from ecumenical theological dialogues. Ecclesiological and canonical considerations, in Banat`s Metropolitan Church), in Mitropolia Banatului, XXXIV (1984), n. 11-12, p. 692-706; Idem, *Autocefalia Bisericii Ortodoxe Române și bazele sale canonice* (The autocephaly of the Romanian Orthodox Church and its canonical basis, in Orthodox Testimony. The Magazine of the Romanian Orthodox Community in Holland), in Mărturie ortodoxă, Revista Comunității Ortodoxe Române din Olanda, Haga, IV (1985), nr. 8, p. 91-107; Almanahul Vestitorul, Paris, 1985, p. 105-110; Idem, *Considerații canonico-ecleziologice privind Documentul de la Lima (B.E.M.)* (Canonical and ecclesiological considerations regarding the Document of Lima (B.E.M.), in The Orthodoxy), in Ortodoxia, XXXVIII (1986), n. 2, p. 119-147; Idem, *Teologia ortodoxă și teologiile confesionale în ecumenismul contemporan* (Orthodox theology and confessional theologies in contemporary ecumenism, in The Orthodoxy), în Ortodoxia, XXXVIII (1986), n. 3, p. 61-88; Idem, *Dialogul teologic ortodox-romano-catolic și implicațiile sale ecleziologice* (The theological Orthodox – Roman Catholic dialogue and its ecclesiological implications, in Banat`s Metropolitan Church), in Mitropolia Banatului, XXXVI (1986), nr. 1, p. 24-41; Idem, *Documentul de la Lima (B.E.M.) și evaluarea sa teologică* (The document of Lima (B.E.M.) and its theological assessment, in the Metropolitan Church of Moldavia and Suceava), in Mitropolia Moldovei și Sucevei, LXII (1986), n. 1-2, p. 46-58; Idem, *Bisericile Europei și „Uniunea Europeană”*. Ecumenism, Reconciliere creștină și Unitate europeană (The Churches of Europe and “European Union”. Eccumenism, Christian reconciliation and European unity, in Theological Studies), in Studii Teologice, LIII (2001), n. 3-4, p. 102-117; Idem, *Bisericile Europei și „Uniunea Europeană”*. Ecumenism, reconciliere creștină și unitate europeană (The Churches of Europe and “European Union”. Ecumenism, Christian reconciliation and European unity, in the work The Church in mission. The Romanian Patriarchate by the anniversary), in vol. Biserica în misiune. Patriarhia română la ceas aniversar, Ed. Inst. Biblic, Bucharest, 2005, p. 771-794; Idem, *Ecumenismul interreligios. Dialogul teologic cu religiile necreștine (Iudaismul și Islamul)* (Interreligious ecumenism. The theological dialogue with non-Christian religions (Judaism and Islam), in The Voice of Church), in Glasul Bisericii, XLIII (1984), n. 7-9, p. 611-621.

⁵⁰ The Law n. 489-2006 on Religious Freedom and General Regime of Religious Cults. Brief presentation and history ...

European legislation”⁵¹ and Art. 13 of the new Law of Cults “... regards both the mutual respect of the religious cults, and the respect of the Romanian citizens for the faith shared by other persons”⁵².

The text of The Romanian Constitution stipulates “the freedom of beliefs” and “the freedom of any creation, by words, in writing, in pictures...” etc. and forbids any instigation “to religious hatred” and “any incitement to discrimination”. At the same time The Constitution stipulates: “Freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and the right to one's own image” (Art. 30).

Based on the provisions of The Romanian Constitution, the freedom of expression represents “the possibility” of the persons to express by words, in writing, in pictures, etc. “the religious beliefs and the spiritual creations of any kind”⁵³. We should mention as well that the freedom of expression is only unlimited in political speeches or debates on general interest issues⁵⁴, and is limited as soon as it reaches the field of the religious and the sacred. Therefore, this freedom should not go beyond the limit where the freedom of the person next to us is active, especially when we deal with religious freedom. As any actions against this freedom by words, in writing, or in picture can offence the dignity of the human person, the blasphemy is under the provisions of The Penal Law in the national legislations of a number of European Union Member States.

During the inter-religious (Jewish, Christian, and Muslim) meeting held in Sydney on July 18 2008, Pope Benedict the 16th asserted that the religious freedom is “the fundamental right that allows men and women worshiping God according to their conscience, educating their spirit, and reacting in line with their ethnical convictions derived from their belief. This freedom involves the existence of the harmonious relationships between the religions and the public life ...”⁵⁵. Wherever the harmonious relationship between the public life and religion is absent, the religious freedom (that involves the cessation of the discrimination of any kind regarding the expression and the manifestations of the religious beliefs) is absent as well. Nevertheless, this does not involve that “the non-discrimination is an absolute principle. It is true that a minority can be subjected to the discrimination by a majority, but at the same time the majorities should be protected against the extremist and violent minorities”⁵⁶.

There are more than 60 minorities in Europe, different from the majorities and from each others in terms of race, colour, ethnic belonging, culture, religion, etc. In Romania there are 20 minorities and The State “guarantees and recognizes – in The Romanian Constitution – the persons belonging to the national minorities” and “the right of maintaining, developing, and expressing their ... religious

⁵¹ Ibidem.

⁵² † Daniel, Metropolitan Bishop of Moldavia and Bukovina, art. cit.

⁵³ I. Muraru – E. S. Tănasescu, Op. cit., p. 291.

⁵⁴ *The Law n. 489-2006 on Religious Freedom and General Regime of Religious Cults*. Brief presentation and history ...

⁵⁵ Apud. V. M. Neagu, *Întâlnire interreligioasă la Sydney (Australia) în cadrul Z M T (Interreligious meeting in Sydney (Australia) within the Z M T*, in *The Life of Religious Cults*, in Viața Cultelor, XVI (2008), n. 753-754, p. 38.

⁵⁶ Conférence des Eglises européennes. Commission Église et Société, Bruxelles, mai 2001, 3, 5 (www.cec-kek.org).

identity” (Art. 6). The right to express the religious identity is manifested through the right of the minorities to practice their own religions, establish religious education institutions, celebrate their own religious holidays, organize religious wedding ceremonies, obtain financial State allocation, etc.

Therefore, the Romanian minorities have the right “to adhere to a religious belief”⁵⁷ and to organize “according to their own Statutes and in line with the legal provisions” (Art. 29 par. 3 of The Romanian Constitution). The same provisions can be found in The Law n. 489/2006⁵⁸, which stipulates that in Romania “the cults are equal from juridical point of view and in relationship with the public authorities. The State through its authorities will not promote and encourage the privilege or discrimination to any cult whatsoever” (Art. 9 par. 2). The same Law stipulates that “in Romania there is no State Religion; The State is neutral to any religious belief...” (Art. 9 par. 1), but “The Romanian State through the competent public authorities supports the spiritual-cultural and social activity outside the Romanian borders of the cults recognized in Romania” (Art. 9 par. 4) and “the public authorities cooperate with the cults in the fields of common interest and support the cult activities” (Art. 9 par. 3).

The neutrality of The State regarding the relationships with the religious cults legally recognized is expressed through the un-discriminatory attitude and support to all cults that make the object of the cooperation with the public authorities. As a matter of fact, “The State is neutral to any religious belief” – the text of this expression was taken from the French Declaration in 1789 – which should be considered not only in the context of the whole national legislation regarding the religious cults, but also taking into account the Romanian realities, where The State – through The Government – concluded partnership agreements with a number of religious cults (e.g., the partnership concluded between The Romanian Government and The Patriarchy of The Romanian Orthodox Church on Social Assistance).

It is useless to add that The Romanian National Emblem, which symbolizes The Romanian national, independent, unitary, and indivisible State, includes a golden eagle with the cross in its beak, and The State Seal – the sign of the national sovereignty – represents the national emblem with the cross.

Whether for certain representatives of the Romanian religious cults the text of The Law n. 489/2006 includes many gaps and inconsistencies, for other representatives this Law creates a new juridical framework for the relationships between The State and the Romanian religious cults. For example, for Dr. Daniel Ciobotea, The Patriarch of The Romanian Orthodox Church – former Chairman of the Delegation of The Romanian Orthodox Church for the consultation of the religious cults in order to elaborate The Law of Cults n. 489/2006 – “... the new Romanian Law of Cults opens the favourable juridical framework for religious freedom, which consecrates on the one hand the

⁵⁷ Ion Diaconu, *Minorităile în dreptul internațional contemporan* (*Minorities in international contemporary law*), Ed. C.H. Beck, Bucharest, 2009, p. 1.

⁵⁸ Ibidem.

existing reality in the Romanian society, and offers on the other hand new perspectives to bring together the freedom and the peaceful responsibility and coexistence between the cults, with their common vocation to bring valuable contributions to the spiritual enrichment of the Romanian society and international spiritual heritage, as result of the good relationships between the Romanian cults and other cults acting abroad the Romanian borders”⁵⁹.

The same personality of The Romanian Orthodox Church emphasized that The Law n. 489/2006 “is valuable, firstly, because it represents the result of the consultations carried on with the Romanian religious cults, which was unacceptable during the atheist communist regime. The friendly atmosphere during the consultations that brought together the representatives of the cults and The Romanian State (The Ministry of Culture and Cults and other ministries), as well as the new direction that represented the fundament of the draft bill certified the intention of the Romanian religious cults to be not only free and autonomous in their relationships with The State, but also to bring their contribution to the stability and progress of the present-day Romanian society, based on harmony and cooperation with each other, on the one hand, and social partnership with The State, on the other hand”⁶⁰.

Last but not least, The Press Department of The Conference of Romanian Catholic Bishops stated: “The new law can be improved and each cult wants to adjust it according to its own Statute and dogmatic regulations. However, the present-day text of The Law is in equilibrium – although imperfect – for all religious cults”⁶¹.

In the elaboration of the text not only the religious cults in Romania have been consulted, but also a number of international competent bodies. This fact was understood as an obvious manifestation of the interest “of The Romanian State to have a Law of Cults well harmonized with the European legislation”. At the same time, it was understood as a constant preoccupation of The Romania State “to obtain a Law harmonized with the international standards – the High Representative of The Romanian Orthodox Church declared. At present, there are not throughout the world two identical laws regarding the religious freedom and the general regime of the cults; we can only remark major convergences based on democratic fundamental principles, besides numerous differences from one state to another”⁶².

The same High Representative mentioned that “the legislative diversity proves that each state took in consideration in the process of elaborating the democratic law of cults the historical traditions and the national specificity” and “... the new Romanian Law of Cults is entirely in line with the European specificity and international standards. Attempting to oblige a person to adopt one unique

⁵⁹ † Daniel, Metropolitan Bishop of Moldavia and Bukovina, art. cit.

⁶⁰ Ibidem.

⁶¹ *The Catholic Church in Romania on the New Law for the Religious Cults*, in Religious Life, Year XV, no. 684, 31 January 2007, p.38.

⁶² † Daniel, The Metropolitan Bishop of Moldavia and Bukovina, art. cit.

pattern is under the risk of becoming “democratic fundamentalism”, which does not consider the freedom of the democratic states and the religious specific character of the peoples”⁶³.

According to The Romanian Constitution, the freedom of the religious cults regarding their organization is materialized “in line with the legal provisions” (Art. 29 par. 3). These provisions and the juridical stipulations that enforce the Constitutional text are established in the text of “The Law n, 489/2006 on Religious freedom and general regime of the cults”⁶⁴. The Romanian experts have issued different conclusions based on the discussion on this law. Obviously, on the one hand this is because their expertise cover one juridical discipline or another (International, Constitutional, Canonical, etc.), and on the other hand because their religious convictions and political orientation and belonging.

Among other things, certain Romanian law experts mentioned that the former Romanian Law of the religious cults, i.e. The Decree n. 177/1948, did not ensure “the control”⁶⁵ of The State exercised over the cults. Therefore, they conclude that, “as soon as we remove the communist censorship from the text of the Decree we obtain a better juridical document considered from the technical point of view”⁶⁶.

The above-mentioned experts also express their discontentment regarding the fact that “... no theologian and law expert was contacted in the elaboration of The Law 489/2006, in other words, valuable Romanian scholars that combine both expertises”⁶⁷. Indeed, the representatives of the 18 recognized religious cults – except the representatives of The Roman-Catholic Church and those of The Romanian Church United with Rome, i.e., Greek-Catholic Church – did not combine the both qualities, as they are not Juridical Sciences experts; hence the numerous inconsistencies and deficiencies of The Law 489/2006, already mentioned – be it in part – by certain Romanian lawyers.

One of such obvious inconsistencies is found in the text of Art. 49 of The Law 489/2006, which stipulates: “on the date of enforcing the present Law in Romania there were 18 recognized religious cults ...” and “within 12 months from the date of enforcing the present Law the religious cults in Romania ... are under the obligation of submitting their Statutes and Canonical Codes to The Ministry of Culture and Cults, in order to be recognized. The recognition is obtained through Government Decision, based on the proposal of The Ministry of Culture and Cults ...” (Art. 49).

As mentioned above, in Romania there are 18 “recognized” religious cults. Nevertheless, they are under the obligation to submit their Statutes and Canonical Codes in order to be “recognized”. In this case, we wonder together with Mr Anton Paraipan, Judge, Bucharest Court of Law: “What is to be complied with: the first thesis (they are recognized), or the second one (they are obliged to submit the official documents in order to be recognized)? As long as they are recognized, why do the cults need to

⁶³ Ibidem.

⁶⁴ I. Muraru – E. S. Tănasescu, Op. cit, p. 284.

⁶⁵ Cf. Judge Anton Paraipan, Op. cit., p. 248.

⁶⁶ Ibidem, p. 253.

⁶⁷ Ibidem.

submit official papers in order to be recognized? Nobody observed that we are faced with a legislative inadvertence?”⁶⁸.

The same Romanian magistrate considers that at present The State is not entitled to “recognize” the religious cults. The State can only take cognisance of their organization and functioning Statutes. Through the “recognition” or “authorisation” of the cults, The State only subjugates the religious cults and interferes in their life.

The Evangelic Churches in Romania submitted a Document to the national and international bodies, expressing their dissatisfaction regarding “the discriminatory, ambiguous, and un-democratic provisions of The Romanian Law on Religious Freedom and General Regime of the Cults”⁶⁹. The same cults organized as well a number of protest marches, e.g., in Timisoara on January 21, 2007.

As regards The Pentecostal Christian Cult, The Law n. 489/2006 has been enforced “with significant changes compared with the initial bill; the law brings prejudice to the religious freedom and creates the framework for non-democratic and non-constitutional practices... After numerous meetings and debates, the joined efforts of the cults succeeded in drafting a bill accepted by the majority of the persons involved, but all these efforts have been in vain, as the Judiciary Committee for Human Rights and The Judiciary Committee of The Chamber of Deputies have amended the draft with no consultation with the cults regarding the modifications produced in the final text”⁷⁰.

The objections of the Pentecostals have been focused on Articles 13, 21, and 28. Among other things, they have mentioned that Art. 13 “violates the principle of democracy and, in legislative terms, does not take into consideration the legal aspects regarding the elaboration of the laws”, as “it incriminates the public offence uttered to the religious symbols”⁷¹. As for Article 21, they claim that the reference “to the public health and to moral represents the subterfuge of The State to create oppression and control instruments ...”⁷². Finally, as regards Article 28 par. 2 in their opinion it “creates the possibility of misinterpretations”. Thus, they underline the expression “religious recognition”, which regards “the Statutes of the cults, not the cults themselves ... The 18 cults are already recognized; it is only their Statutes that should be recognized ... The procedure – they mention – does not represent the recognition, but the harmonization of the canonical provisions of each cult with the present law”⁷³.

Obviously, such objections reveal that The Law n. 489/2006 is perfectible. Yet, beyond the inconsistencies and gaps, we afford saying that the new Law of Cults has created in Romania a new

⁶⁸ Ibidem.

⁶⁹ <http://www.confesionala.ro/anunturi.php>

⁷⁰ *Pentecostal Christian Cult addresses the Romanian President and the Government in Relation to the New Cults Law*, in Religious Life, Year XV, no. 684, 31 January 2007, p. 38.

⁷¹ Ibidem, p. 39.

⁷² Ibidem.

⁷³ Ibidem.

juridical regime of the religious cults, which principles are in line with the national legislations of other European Union Member States regarding the religious freedom. Besides, there are few national legislations throughout the world that recognize the existence of 18 religious cults – as The Law n. 489/2006 does – taking into consideration their autonomy in the relationships with The State. Indeed, “no other national legislation within The European Union enforces guarantees regarding the expression of the religious freedom for so many cults. The recognition of the cults by The Romanian State is the direct result of the presence of the inter-confessional context rich in historical experiences of peaceful cohabitation”⁷⁴.

Attempting to draw the conclusion on the brief considerations regarding The Law n. 489/2006 – both based on the text, and a number of comments and evaluations advanced by the representatives of the cults, law experts, policy experts, theologians, journalists, sociologists, etc. – we can say that The Law n. 489/2006 on Religious Freedom and General Regime of Cults is in line with “... all standards established on international level that guarantee the religious freedom considered as individual or group activity. Therefore, any denial of the law on reasons of incompatibility with the European values that Romania should comply with, can only be formulated based on rejecting the existing juridical and confessional realities”⁷⁵.

⁷⁴ *Europenismul Legii Cultelor (The Europeanism of the Law of Religious Cults)*, in Rost, n. 47-48, ianuarie-februarie 2007, <http://www.rostonline.org/rost/ian-feb2007/legea-cultelor.shtml>

⁷⁵ *Legea Cultelor, salutată de Institutul INTER (Cluj-Bucharest-Kishinev) (The Law of Religious Cults, saluted by The INTER Institute (Cluj-Bucharest-Kishinev))*, <http://grupareaaproape.wordpress.com/2007/01/09>