

Original Paper

The Legal Framework for Protecting the Right to Freedom of Thought, Conscience and Religion in Romania as a Member State of the European Union

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Abstract

The freedom of thought, conscience and religion constitutes nowadays a basic right of individuals for determining their perception of human life and society, which is why it represents a necessary requirement for all democratic societies. Taking into account that violations of the right to freedom of thought, conscience and religion may exacerbate intolerance and often constitute early indicators of potential violence and conflicts, the aim of this study is to raise public awareness on the fact that this freedom is a fundamental right of every human being, a right that needs to be protected everywhere and for everyone. For this purpose, the analysis is focused, in a first stage, on clarifying the essential features of the right to freedom of thought, conscience and religion so that, in a second stage, to be presented the European and Romanian legal frameworks for protection of the right to freedom of thought, conscience and religion. As a novelty, this study attempts to outline how it is implemented the right to freedom of thought, conscience and religion in Romania, highlighting achievements, but without trying to avoid weaknesses and the less pleasant aspects as it shown in US Department of State's report.

Keywords

human rights, European and Romanian legal frameworks, freedom of thought, conscience and religion

1. Introduction

The struggle for recognition and guarantee of the right to freedom of thought, conscience and religion it lasted for a long time and only in the 20th century there was an evolution in codification of common values related to this right in numerous international treaties, declarations and conventions, as well as in all national constitutions of all democratic states in the world. Therefore, it can be said without a doubt that in today's world the guarantee of religious liberty and respect for conscience and belief represent a necessary requirement for all democratic societies and, as well, that this freedom constitutes a basic right of individuals in a multi-faith society.

Considering the fact that violations of the right to freedom of thought, conscience and religion may exacerbate intolerance and often constitute early indicators of potential violence and conflicts, the aim of this study is to raise public awareness on the fact that this freedom is a fundamental right of every human being, a right that needs to be protected everywhere and for everyone.

Although the specialized literature comprises many studies on this topic, I am convinced that a new study is necessary in the context of the large-scale population movements registered throughout Europe in recent years, circumstance in which the violations of religious liberty and respect for conscience and belief have increased both in number and also in their complexity.

In relation to this undesirable situation, the importance and the novelty of this study results from the approach of the issue in question. Thus, in a first stage, the analysis is focused on the international standards regarding freedom of thought, conscience and religion, in order to clarify the essential features of the freedom of thought, conscience and religion as a human right. Taking into account that in recent years the European Union countries (including Romania) have experienced an unprecedented influx of refugees and migrants from different religious, ethnic, linguistic and cultural backgrounds, in the second part of this study is presented and analyzed the European legal framework on protecting the freedom of thought, conscience and religion with reference also to the provisions of Romanian law in this field. As a novelty, this study attempts to outline how it is implemented the right to freedom of thought, conscience and religion in Romania, highlighting achievements, but without trying to avoid weaknesses and the less pleasant aspects

2. International Human Rights Standards on Freedom of Thought, Conscience and Religion

As shown in Article 18 of the Universal Declaration on Human Rights (UDHR), "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 observance".

This right has been reaffirmed in Article 18 paragraphs 1 and 2 of the International Covenant on Civil and Political Rights (ICCPR), according to that "Everyone shall have the right to freedom of thought,

conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. In addition, the Covenant states that “no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

Considering that UDHR and ICCPR proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief, the UN General Assembly adopted in 1981 the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. According to Article 1 paragraphs 1 and 2 of Declaration: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching”. Also shows that “no one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice”.

In the light of the above-mentioned international standards, every person has the right to freedom of thought, conscience and religion, which includes not only a right to have or not to have, adopt or change a religion or belief of one’s choice, but also a right to manifest one’s religion or belief, individually or in community with others, in public or private, through worship, observance, practice and teaching.

Starting from these rights we can highlight some essential features of the freedom of thought, conscience and religion. Thus, according to the general comment No. 22/1993 of the Human Rights Committee, the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) “is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others”. In light of these considerations, the Human Rights Committee drawn the attention to the fact that “the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief”, the fundamental character of these freedoms “being reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the ICCPR”. In the Committee’s view, “although the ICCPR distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief, it does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice”. Consequently, “these freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1 and in accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief”.

3. The Legal Framework of European Union for Protection of the Right to Freedom of Thought, Conscience and Religion

Pursuant to Article 6(1) and (3) of the Treaty on European Union (TEU), “the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties”. In addition, TEU provides that “fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law”.

Article 10 of the Treaty on the Functioning of the European Union (TFEU) states that “in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. More than that, Article 17(1) of TFEU shows that the Union “respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States”.

According to Article 10(1) of the Charter of Fundamental Rights of the European Union, “everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance”. Therewith, in Article 10(2) is recognized “the right to conscientious objection in accordance with the national laws governing the exercise of this right”. As shown in the official explanations relating to the Charter, the right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the European Convention on Human Rights (ECHR) and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Closely with the right to freedom of thought, conscience and religion, in Article 14 of the Charter is stipulated that “everyone has the right to education”, right which include, among others, “the freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions”.

Starting from the provisions of the Charter of Fundamental Rights of the European Union, it is necessary to deepen the ECHR, especially because it also includes some limitations. Thus, under the terms of Article 9(1) of ECHR, “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 worship, teaching, practice and observance”. As can be seen, these provisions enshrine, on the one hand, the right to deeply hold any

belief, whether religious or not, and to change one's religion or beliefs (a right which is absolute and unconditional) and, on the other hand, the right to manifest one's beliefs alone and in private, but also to practice them in company with others and in public (a right which is not absolute) since the manifestation by one person of his or her religious belief may have an impact on others.

For this reason, Article 9(2) of ECHR states that "freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others". This enumeration of legitimate aims is strictly exhaustive and the definition of the aims is necessarily restrictive; if a limitation of this freedom is to be compatible with the Convention it must, in particular, pursue an aim that can be linked to one of those listed in this provision.

In line with the European standards on rights mentioned above, on 24 June 2013, the Council adopted EU Guidelines on the promotion and protection of freedom of religion or belief, a document explaining what the international human rights standards on freedom of religion or belief are and, at the same time, reaffirming the EU's determination to promote, in its external human rights policy, freedom of religion or belief as a right to be exercised by everyone everywhere, based on the principles of equality, non-discrimination and universality. This is because, according to the EU Guidelines, "there are no rights exclusive to holders of any particular religion or belief: all rights whether in regard to the freedom to believe or to manifest one's religion or belief, are universal and are to be respected on a non-discriminatory basis".

4. Romanian Legal Framework Protecting the Right to Freedom of Thought, Conscience and Religion

Basic principles regarding the freedom of thought, conscience and religion in Romania are established in Article 29 of the Constitution, according to which "freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever, no one shall be compelled to embrace an opinion or religion contrary to his own convictions". As well, "freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect". As stated by the constitutional provisions, "the right of parents or legal tutors to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them", especially that under Article 32(7) "the State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult".

It should be noted that Article 29(3) and (4) of the Romanian Constitution provides that "all religions shall be free and organized in accordance with their own statutes, under the terms laid down by law, any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the

cults”.

In close connection with the above mentioned provisions, it should be mentioned that in accordance with Article 11 of Constitution, the Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to, that’s because the treaties ratified by Parliament, according to the law, are part of national law. If we strictly refer to the provisions concerning the citizens’ rights and liberties, under Article 20 of Constitution these “shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to” and “where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions”.

Moreover, Article 148 of Romanian Constitution provides that, as a result of the Romania’s accession to the European Union, “the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act”.

In the application of the constitutional provisions and based on the international instruments referred to, it was adopted the Law 489/2006 on the freedom of religion and the general regime of cults, a normative act that constitutes the legal basis for ensuring the right to freedom of thought, conscience and religion.

As is stipulated in Article 1(1) of the Law 489/2006, the Romanian State “observes and guarantees the fundamental right to freedom of thought, conscience and religion for any individual on the territory of Romania, under the Romanian Constitution and the international treaties Romania is a party to”. Under this fundamental right, Article 1(2) of the Law 489/2006 states that “no one shall be prevented from adopting a religious opinion or joining a religious faith; no one shall be coerced into adopting a religious opinion or joining a religious faith, contrary to his/her persuasion, and no one shall be subject to any discrimination, or be harassed or placed in an inferior position on account of their faith, membership or non-membership in a religious group, association or denomination, or for the exercise, within the law, of their freedom of religion”.

An extensive definition of religious freedom is given in Article 2(1) of the Law 489/2006, where it is shown that “freedom of religion includes the right of every individual to have or embrace a religion, to manifest it individually or collectively, in public or in private, through practices and rituals specific to that denomination, including through religious education, as well as the freedom to preserve or change one’s religion”. The Law 489/2006 also establishes in Article 2(2) that “the freedom to manifest one’s religion cannot be subject to any restrictions other than those required under the law and which are necessary in a democratic society for the protection of the public, of public order, health or morality, or for the protection of human rights and fundamental freedoms”, limitations that are in accordance with

Article 9(2) of ECHR.

Religious freedom is also protected by the rules set forth in the Romanian Criminal Code, under Title VIII—Offenses that harm social relationships, in Chapter III—Offenses against freedom of religion and respect owed to the deceased, articles 381-384. Thus, Article 381 states that shall be punishable “the act of hindering or disturbing the freedom to practice any ritual specific to a religion, which was organized and operates according to the law” as well as “the act of compelling a person, by coercion, to take part in the service of any religion or to perform a religious act related to the practice of a religion”. Moreover, as it emerges from Article 382, shall be punishable “the desecration of a place or object of worship belonging to a religious denomination which is organized and operates according to the law”.

5. The Status of Respect for Religious Freedom in Romania as It Shown in US Department of State’s Report

As is clear from the International Religious Freedom Report for 2017 submitted by the U.S. Department of State, in Romania the Constitution prohibits restricting freedom of thought, opinion, conscience or religious beliefs, as well as forcing individuals to espouse a religious belief contrary to their convictions. It stipulates all religions are independent from the state and have the freedom to organize “in accordance with their own statutes” under terms defined by the law. The law specifies the state’s recognition of the “important role of the Romanian Orthodox Church” as well as the role of “other churches and denominations as recognized by the national history” of the country. The constitution also states religious denominations shall be autonomous and enjoy state support, including the facilitation of religious assistance in the army, hospitals, penitentiaries, retirement homes, and orphanages. The law forbids public authorities or private legal entities from asking individuals to specify their religion, with the exception of the census. The provisions of the law devoted to religion stipulate a three-tier system of religious classification with “religious denominations” at the highest level, followed by “religious associations”, and “religious groups” at the most basic level. Organizations in the top two tiers are legal entities, while religious groups are not. Under separate provisions of the law governing associations and foundations, civil associations may also engage in religious activities and have the status of legal entities.

It is true that, besides the positive aspects, the report also refers to some less pleasant things, for instance: the slow pace of restitution of confiscated properties, especially reports from the Greek Catholic Church and the Jewish community, and the number of agency and court decisions returning properties remained low; minority religious groups continued to state that the national and local governments gave preference to the Romanian Orthodox Church, to report incidents of discrimination against them, and to object to government implementation of laws regarding religious instruction in schools; Prosecutions for anti-semitic speech and Holocaust denial remained rare, while Holocaust

education remained optional in schools (However, the report stresses that Government leaders continued to speak out against anti-Semitism, and the government transferred property to the Wiesel Institute to establish a museum on the history of Romanian Jewry); the naming of some streets, organizations, schools, and libraries after persons convicted of Nazi era war crimes or crimes against humanity continued.

6. Conclusions

As is evident from the provisions of international human rights treaties, conventions and declarations, as well as in all from the national constitutions of all democratic states in the world, the right to freedom of thought, conscience, religion or belief is a fundamental right of every human being, not a privilege.

Consequently, in line with international and European human rights standards, Romania has committed to respect, protect and promote the freedom of religion or belief as a right that can be exercised by everyone in the base of the principles of equality, non-discrimination and universality.

As can be seen from the annual reports of submitted by the U.S. Department of State, Romania has made substantial progress with regard to the guarantee of the right to freedom of thought, conscience, religion or belief. Thus, the constitution and other laws constitute a sound legal basis which provides adequate and effective guarantees of freedom of thought, conscience, religion or belief to all without distinction.

We have to admit that past infringements has been committed but the Romanian government is currently seeking to prevent any violation of the right to freedom of thought, conscience, religion or belief. As shown in the 2018-2020 Government Program posted on the official website, the Romanian authorities intend to implement a set of concrete measures, especially with regard to prevention of violent extremism and religious radicalization as well as combating discrimination on grounds of religion and belief, thus ensuring a climate of peaceful coexistence between all confessional groups.

In addition with measures taken by the Romanian government it is understandable that is required a collective involvement of individuals, cults, religious associations or religious groups in Romania. Only through the involvement of Romanian society as a whole in condemning acts of hatred, violence, intolerance, and discrimination based on religion or belief can be assured in the future the right to freedom of thought, conscience and religion.

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