"WHO COULD CHALLENGE DEMOCRACY?"
The Law on Religious Freedom – an expression of Romanian Democracy?

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Abstract
This paper aims to analyze the place of religion in the Romanian society and politics, by focusing specifically on the process of readjusting religious freedom in Romania after 1990. Although the regulation of religious life in accordance with international human rights principles was considered one of the cornerstones of the Romanian democracy, the replacement of the communist legal framework with a new one took more than 17 years and was accompanied by numerous tensions among the religious actors themselves, state institutions and civil society organizations. The analysis of the state of religious freedom two decades after the fall of the communism in Romania reveals ambivalent developments. Despite some undeniable signs of progress, there are still significant areas that require improvement. The most problematic aspects are the maintenance of the two-tier system and the financial dependence of the *culte* on the state.

Keywords: religion and politics, democracy, religious freedom, recognized *culte,* Romanian Orthodox Church

Introduction

After the fall of communism in Romania, in 1989, one of the main political priorities was the readjustment of religious freedom in a society that had been subjected for decades to an aggressive atheistic campaign meant to uproot religion from the public sphere and from people's lives. Although the regulation of religious life in accordance with international human rights principles was considered one of the cornerstones of the Romanian democracy, the replacement of the communist legal framework with a new one took more than 17 years and caused numerous tensions among the religious actors themselves, state institutions and civil society organizations.

Bearing in mind the normative framework comprising various international human rights instruments – such as the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, the UN Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief and the Copenhagen Document

of the Organization of Security and Co-operation in Europe – the concept of religious freedom will be understood as the right of any person to choose a religion or no religion, in accordance with the dictates of his/her conscience, to worship (or not to worship) God, in the form that he/she chooses to, in private or in public, alone or in community with others, to manifest his/her beliefs in teaching, practice, observance, etc., to express and disseminate his/her thoughts, ideas and opinions by word of mouth, in writing or by any other means of divulgation (as long as it does not interfere with the rights of other persons), without any interference of the state. One of the main implications of such a definition is that religious freedom requires an independent religious sphere, both separated from and protected by the state. This means that the state should not interfere within the religious sphere in order to annihilate theological errors or to regulate religious practices, and no one should suffer discrimination based on his/her religious convictions. Such an understanding of religious freedom makes room for competing claims to truth in society, each person having the right and freedom to accept one or the other, without governmental interference. Accordingly, the state should treat the various religious actors equidistantly; these actors should not only be separated from the state but they should also be able to freely organize and perform their ceremonies and worship. As well, in our understanding, freedom of religion means that no one should be bound to pay taxes to support a religious institution of which he or she is not a member.

By analyzing the post-communist legal framework for the freedom of religion, the country reports elaborated by some of the most important national and international human rights agencies, in addition to having carefully examined articles, books and interviews of some of the most prominent religious and/or political figures, the current article aims at assessing the freedom of religion in Romania after the collapse of the communist regime, adding to the rather limited literature available on this topic.

The Romanian post-communist legislative framework for the freedom of religion

Religious freedom was one of the first issues on the agenda of the post-communist political regime following the 1989 Revolution. However, Romania was the last of the ex-communist countries in the region to adopt a new Law on Religion, seventeen years after the Revolution, to replace the 1948 bill issued by the communist regime (Stan and Turcescu 2007, 25). Consequently, until 2006, religious life in Romania was officially regulated

by the communist Decree 177/1948, by the 1991 Constitution (revised in 2003) and by other complementary pieces of legislation.[1]

The Constitution of 1991, revised in 2003, guaranteed the fundamental human rights, which included freedom of religion and belief, provided that they were manifested in a spirit of tolerance and mutual respect. It allowed religious denominations to organize themselves freely in accordance with their statutes and prohibited the restriction of the freedom of thought, opinion and religious beliefs in any form. It also granted parents or legal tutors the right to direct the education of underage children in their care according to their own convictions and, most importantly, it stated that international instruments ratified by Romania and their principles with respect to religious freedom take precedence over domestic law (art. 20). Although this provision has actually turned the communist Decree 177/1948 into an unconstitutional and unenforceable norm, the decree was not officially abrogated until 2006, when it was replaced by Law 489/2006.

Despite undeniable improvements, the Constitution has also perpetuated some of the previous communist regulations[2] – such as the two-tier system – which operated the distinction between the officially recognized and unrecognized denominations. The Constitution has in fact substantiated the protection offered to the officially recognized *culte*, which were granted not only the right to organize confessional schools and provide religious instruction in the public school system, but also the autonomy and financial

[1] Such as: the Decree 9/31 December 1989, by which the former suppressed Greek Catholic Church was officially recognized and the annulment, in 1991, of the communist regime's Decision 810/1949, by which the activity of Catholic orders and congregations in Romania had been forbidden; the Decree 126/24 April 1990, by which the Romanian state bound itself to retrocede to the Greek Catholic Church the properties that had been confiscated by the communist regime on the basis of Decree 358/1948 and which had been turned over to the Romanian Orthodox Church. With respect to the last issue, one can notice retrospectively that successive governments have continuously postponed and delayed the restitution of properties to their legitimate owners, and by the Law 182/2005, the state eventually transferred its responsibility to unravel the issue to the tribunals. The retrocession of the Greek-Catholic properties, as well as those of other religious communities, remains the thorniest religious issues of the post-communist era.

[2] Decree 177, issued by the communist authorities in 1948, not only provided a distinction between the religious denominations that enjoyed a favourable position in relation to the state and those that were in no such a position, but also placed religious life under state control and restricted the religious rights of citizens, although seemingly guaranteeing the free exercise of religious faith and the autonomy of all denominations.

support from the state, while other religious communities enjoyed neither such protection nor any support.

Other special laws further perpetuated the protection and privileges offered to the recognized *culte*. Law 84/24 July 1995, for instance, introduced religion as a discipline in the public schools' curricula and set the legal framework for confessional education. In 1996, Law 46 on Preparing the Population for Defense provided the exemption of the clergy and theology graduates from military training. Law 216/17 November 1998 (and Law 248/20 July 2005) entitled the clergy of the recognized *culte* (namely the patriarch, the cardinal, metropolitans and the heads of the recognized *culte*) to diplomatic passports and service passports. Law 142/27 July 1999 granted the heads of the recognized *culte* the status of public dignitaries and regulated state support for the recognized *culte*. Under this law, the ROC (Romanian Orthodox Church) has been given special privileges: Article 5 of the law, for example, provided financial state support for the ROC's settlements abroad. The state granted the Romanian clergy abroad salaries equivalent to those of the Romanian staff of permanent diplomatic missions, of consulate offices and of other representatives of Romania abroad, and allowed huge expenses for external projects and church buildings - expenses that could not be monitored due to the lack of the transparency regarding governmental decisions.

Law 195/6 November 2000, on establishing and organizing military clergy, also included some provisions that accorded privileges to the Orthodox clergy: according to Article 11 (1), for instance, the head of the Department for religious assistance (within the Ministry of Defense, the Ministry of Interior and the Ministry of Justice) "shall possess the honorific position of senior administrative vicar and shall be appointed by the respective minister, from among the priests who fulfill the conditions for this function, at the proposal of the Romanian Orthodox Church, after consultations with the ecumenical denominations represented in the ministries." (The ecumenical denominations refer to the recognized *culte*).

Some forms of protection of the freedom of religion were then included in the Criminal Code (Law 301/2004), and Government Ordinance 137/2000.
Obviously, an exhaustive account of all the fragments of legislation which regulated Romanian religious life during the last two decades would exceed the space allotted to this article. The purpose of our short review of these pieces of legislation was to identify the general trends and to support our argument that, although some areas of improvement could be

identified, the legislative framework built after the 1989 Revolution, which had regulated the Romanian religious life until the adoption of the new law on religious freedom, in 2006, institutionalized a model of the relationship between the State and the Church that perpetuated some of the previous communist provisions, such as the preservation of the two-tier system with its inherent privileges granted to the several recognized *culte* (and especially to the ROC). While the state bestowed financial assistance to the recognized *culte*, in the form of the monthly wages for the clergy, fiscal exemptions, monopoly over the manufacture of specific religious objects, etc., other new religious movements and groups, aiming at obtaining legal entity status, were more or less ignored.

The Law on Religious Freedom and the General Regime of Religious Denominations no. 498/28 December 2006

The "unfinished odyssey" (Rogobete 2004) of the new Law on Religious Freedom began in the early 1990s, but the dissensions between the ROC, minority denominations and civil society representatives made it almost impossible to reach a consensus so that "early drafts were successively proposed and abandoned" (Andreescu 2008, 145).

The first draft law was elaborated in 1991 and submitted to the Parliament in 1993, but it was not adopted, due to pressures exerted by both religious denominations and national and international civil society organizations. Later on, in 1998 – and, as Andreescu (2008, 145) argues, the episode is "worth recounting because it serves as an important illustration of the ROC's modus operandi"– the State Secretary for Religious Affairs (SSRA), headed by Orthodox theology Professor Gheorghe Anghelescu, circulated two draft laws simultaneously, creating a lot of confusion and tensions. Both drafts were severely criticized by civil society and religious organizations, and consequently, the SSRA elaborated a third draft, from which "the most harmful provisions had been excised" and presented it in a conference organized by the SSRA at the end of the year. Several months later, however, in September 1999, the SSRA submitted to the government a draft which "not only reinstated some of the most criticized articles, but did so in aggravated form." Eventually, Radu Vasile, then Prime-Minister, submitted it to the government in this form, without considering the amendments proposed by the cabinet (Andreescu 2008, 145).

Besides the thoroughly unprincipled way in which the situation was handled, one of the main discontents with respect to this draft law (PL

341/1999) was its designation of the ROC as the "National Church," a designation which stirred the fears of the minority denominations that it "would reinforce the myth that there was a mystical unity between the Orthodox Church and the soul of the Romanian people and that only Orthodox believers could therefore be trusted as loyal Romanian citizens."(Pope 1999, 194) In Iosif Ton's (one of the prominent evangelical leaders) words: "the national church addition was a dangerous threat to the minority religious communities who would then be treated as 'foreign intruders' in the life of the nation".(Ton cited in Pope 1999, 195-6) Such fear was not without reason, to be sure, since many Orthodox theologians and even Dumitru Staniloae (the most important Romanian Orthodox theologian of the 20th century) argued that to be Romanian means to be Orthodox, and vice versa, and that any break of this bond is a result of either the individual's instability or of the aggression of a sect (Staniloae 1992).

PL 341/1999 contained some other problematic provisions that ran against the Constitution and the European Convention of Human Rights and Fundamental Freedoms. Article 15 of the draft law, for instance, stated that in order for a religious group to be allowed to open new places of worship, it had to represent 5% of the local population registered with the local administration. Accordingly, only the ROC, which represented over 85% of the population (and in some geographical areas the Hungarian Reformed Church), could have benefited from the freedom of association, and none of the already recognized *culte* could possibly open new places of worship. Also, in order to obtain the status of legal entity, a religious group had to present a nominal list with the identification dates and signatures of all the adherents of the respective religious group, and their number had to represent at least 5% of the total population of the country according to the last census. Undoubtedly, had the draft law been adopted by the Parliament, the freedom of belief and the freedom of association would have been gravely violated (Rogobete 2004). Fortunately, the grave deficiencies of this project law were eventually acknowledged, and the search for a better law continued.

In 2005, there were again two draft laws circulating simultaneously. One of them, worked out by the former Minister of Culture Razvan Teodorescu, was submitted directly to the Parliament, taking "by surprise the drafters of the second bill, namely the SSRA and its head, Adrian Lemeni, an Orthodox theologian" (Andreescu 2008, 145). Eventually, Teodorescu's draft was abandoned both because he had not consulted the recognized

culte and civil society before its submission to the parliament and because of its partisan (it designated the ROC as "the national church") and its restrictive provisions (among them, it required that changes in *culte*'s bylaws be approved by the government). Consequently, after consultations with civil society and the recognized *culte*, the second draft was submitted to the parliament (it is important to note that the Greek Catholic Church did not support the draft law, while the other *culte* proposed some amendments and conditioned their support for the bill on the acceptance of these amendments) (Andreescu 2008, 146).

We will not insist on the sinuous trajectory of this project in the two Chambers of the Parliament due to space considerations. What is important to mention is that the draft law was rushed to the Senate under "emergency procedures", and the Senate adopted it "tacitly", that is without debating it, thus ignoring more than 60 "substantive amendments." Then, the draft law was registered with the Chamber of Deputies also by breaking parliamentary procedures. Thus, the members of the Chamber of Deputies were not given the five days required by law to analyze the draft, and the committees' report on the text of the draft law reached deputies only a few hours before the final vote, although the period between the distribution of the committees' report and the final vote had to be at least five days (Institute on Religion and Public Policy Report on Romania, 2008).
Despite the domestic and international critiques, the president promulgated it on 27 December 2006, just in time for the country's accession to the European Union on 1 January 2007. Law 489/2006, therefore, came into force as the Law on Religious Freedom and the General Regime of Religious Denominations No. 489 of December 28, 2006 (available at http://www.cdep.ro).

Despite its weak points, it must be noted that, due to both national and international pressure, some of the most problematic clauses of previous drafts were abandoned - among them the designation of the ROC as the "national church." Still, ignoring the at least equally important role of the Greek Catholic Church in Romania's history, most notably in the rousing of the national conscience during the 18th century in Transylvania, the drafters still made special reference to the ROC. The formula adopted by the new law was (Art. 7. 2): "The Romanian State acknowledges the important role of the Romanian Orthodox Church and of other recognized churches and *culte* in the national history of Romania and in the life of the Romanian society."

With respect to the registration conditions, the new law (Article 18) provided that, in order to be legally recognized as *culte*, religious associations must prove that they have functioned for at least 12 years in Romania and their membership amounts to at least 0.1 % of the population. Even so, some organizations, such as the Institute on Religion and Public Policy, for instance, still considered that "the law creates the most burdensome registration system in all of Europe" and called the law's two-tiered system as "completely inconsistent with fundamental rights as it contravenes the principles of equality and non-discrimination," since "of the currently registered religious groups, approximately one-fourth would fail to meet the proposed numerical threshold" (Institute on Religion and Public Policy Report on Romania, 2008).

However, Law 489/2006 guarantees "the freedom of thought, conscience and religion" (Art.1.1) and stipulates 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" (Art.1.2). According to Art. 2, "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 does not mention, however, the right to have no religion at all). There are no limitations to these rights "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 fundamental human rights and liberties" (Art.2.2).

A significant aspect in light of our discussion is that the law does not explicitly mention the principle of the separation between church and state (although some deputies proposed such an explicit formula) on the grounds that the state neutrality in relation to any religion or ideology was already stated in Art.9 of the law.[3]

[3] According to Art. 9, "There is no State Religion in Romania; the State is neutral towards any religious persuasion or atheistic ideology" and "the denominations are equal before the

Instead, the law established a model of cooperation or partnership between the state and the church. Thus, according to Article 8 (2), the recognized *culte* are public utility legal entities, and as such, they are entitled to financial support from the state, proportionally with their membership. (This provision of the law has opened the way towards the elaboration of another controversial project law on the Partnership between the State and Church in the social care sector, which has been voted by the Chamber of Deputies on March 8, 2011, amidst protests and petitions initiated by various civil society organizations. According to the project law, the religious denominations providing social care services would be allotted state subventions of 80 percent of the total cost of the accepted projects. Complementing the funds allotted from the state budget for these projects developed by the church, local authorities would also contribute with buildings, land and other facilities for the development of these projects. On April 2011, however, president Basescu sent the law into Parliament for re-examination on the ground that it would introduce a discriminatory treatment of non-religious social services providers with respect to public funding of their activities. At the moment of this paper writing, the law still waits to be re-examined in Parliament.)

Resuming the previous argument, according to Law 489/2006, state support for religious actors is granted both in terms of salaries for the clergy and non-clergy staff of the Church and in terms of state funds for building and repairing churches. In this respect, the law differentiates between religious groups (which do not receive any support from the state nor tax exemptions), religious associations (which are exempted from taxes only for their places of worship but do not receive government funding) and recognized *culte* which are eligible for state support and enjoy tax-exempt status and other facilities). With respect to the latter, the state grants the recognized *culte* financial support on the basis of subjective criteria: on demand, proportional to the amount of their membership and according to their real needs - i.e. the support is granted not for specific projects but according to the size of each denomination. The ambiguous formula thus leaves room for discriminatory financing. As the APADOR-CH report, State and religions in Romania - a transparent relationship? (2008), pointed out, in practice the principle of proportionality has not been

law and public authorities. The State, through its authorities, shall neither promote nor support the granting of privileges or the instatement of discrimination towards any denomination."

respected and state support for social, spiritual and cultural activities developed abroad has been granted almost exclusively to the ROC (at least in the period covered by this report). The ROC has in fact received many other significant privileges and benefices due to its ability to strengthen its relationship with state authorities. Andreescu (2007, 476-7; 2008, 150) was probably right in his assumption that at least partially, the reason for granting *culte* a public utility status was to allow them (and especially the ROC) to receive legally public land in concession, free of charge - before the adoption of this law, the practice, though very common, was actually illegal under the Local Public Administration Laws of 1991 and 2001 and the Public Property Law, which restricted such land grants to entities engaged in charitable activities or to public utility associations. Under the new law, the state could grant the ROC 110,000 square meters of public land in Bucharest (valued at approximately 300 million Euros) on which the National Redemption Orthodox Cathedral (Catedrala Mantuirii Neamului) will be built, and the Deputies Chamber could decide to provide governmental assistance for the building of the cathedral by covering 50 percent of the total expenses - of approximately 400 million Euros (Andreescu 2007; Stan & Turcescu 2007, 2006; Dobreanu 2007).

These facts are difficult to reconcile with the provisions stated in Article 10.5 of the law: "No one can be coerced, through administrative measures or other methods, to contribute to the funds of a religious denomination." Since public funds used by the state for financial support of the *culte* are not received from taxes collected for this purpose, one can wonder if those who do not want to contribute financially to the *culte*'s building construction are not indeed coerced to indirectly do so under this very law (Andreescu 2008).

Nevertheless, one of the thorniest issues during the last two decades was the religious education one. Law 489/2006 stipulates the right of parents or guardians to "opt for their underage wards' religious education, based on their own beliefs" (Art.3.1) and acknowledges only the right of the recognized *culte* to organize confessional education in every state school; furthermore, the state bound itself to provide financial support for this type of education (Art.32-39).Yet, unlike other post-communist countries, such as Albania, Macedonia or Slovenia, for instance, which opted for neutral religious instruction in the public schools - education about religion, which is more consonant with the principle of the separation between the state and the church (Stan & Turcescu 2007, Ferrari & Durham 2003), Romania opted for what Glanzer (2009) calls "a managed pluralist type" of religious

education - i.e. the state does not promote a particular religion according to the establishment model but allows some particular confessions (the recognized *culte*) to offer religious education in public schools. According to the law, religious teachers in public schools are appointed by the denominations they belong to, then verified by the Ministry of Culture and Religious Affairs and then approved by the Ministry of Education, Research and Youth. The same managed pluralist model applies to the confessional education in state universities; the right to operate confessional religious institutions of higher education is limited to the recognized *culte*, which can organize Bible colleges or seminaries (Glanzer 2003, 102-3). However, as some authors observe, this kind of pluralism is unevenly enforced and, like in many other areas, the Orthodox Church is granted special privileges; for instance, Orthodox private schools receive substantial public funding unavailable for other denominations (Iordache 2003, 257).

Moreover, the curriculum and content of some of the orthodox textbooks were denounced not only by some of the religious minorities (the Baha'i Community denounced the orthodox textbook for 10th grade, Religion - The Orthodox Cult, published in 2006 by the Corint Publishing House, because it depicted the Baha'i community as an "insistent proselytizer", as one of the "tools of Satan, or gates to hell", as a danger for society, a "sectarian group in the West" that make use of "indoctrination, bribe, blackmail, exploitation of poverty, fanaticism." Jehova's Witnesses criticized the Orthodox religion textbook for 9th grade because it depicts Jehova's Witnesses as a sect, although it was recognized as a cult by the Romanian state - see the APADOR-CH report, 2008: Stat si religii în România - o relatie transparenta?) but also by some parts of civil society, because they "include elements that are potentially problematic from the viewpoint of the twin tolerations democratic requirement and the state's need to be impartial with respect to denominations…" (Stan and Turcescu 2007, 165). Thus, for instance, Stan and Turcescu reprobate the fact that the role of other religious groups, most notably the Greek Catholic Church in the emancipation of Transylvanian Romanians and the formation of the Romanian Kingdom in 1918, is not acknowledged in Orthodox manuals, which "blend Orthodoxy and nationalism, and […] alternate lessons about Jesus with lessons about the lives of Romanian saints and political rulers", present the Orthodox Church "as the most important religion of the Romanians, key to their ethnic identity, nation and state" and define "the Romanian law" as "belief in God and love of the country" (the 9th grade

lesson on 'Love of Nation and Country') (Stan and Turcescu 2007, 165-7. See also Stan and Turcescu 2005).

A confrontation between two models?

Looking at it as a whole, the new law was certainly a step forward in regulating religious life in post-communist Romania. However, there remain a lot of sensitive areas that have the potential of bringing about discriminatory situations. Against such instances, a series of national and international organizations reacted promptly.

The evaluation of the Institute for Religion and Public Politics, one of the most important international human rights organizations that have criticized the law, was probably the harshest, as it considered the law as the "worst religion law in Europe". According to the Institute's report: "Religious freedom in Romania is at risk. Legislation passed at the end of 2006 endangers the ability of many religious minorities to function as a religious organization and carry out many of the tasks necessary to fulfill the religious needs of their adherents. The Romanian government fails to protect religious minorities both through a lack of legislation and judicial will, and in many cases, where this does exist, local authorities lack the necessary will to enforce these laws and rulings. Further, a lack of restitution of religious property confiscated by the previous Communist regime hampers the functionality of several religious minorities." In conclusion, the report stated that: "the promulgation of this law by President Basescu is a blatant attack on religious freedom and fundamental rights and demonstrates little if any move away from the previous Communist regimes which he had promised to shift Romania from during his campaign."

The Annual International Freedom Reports of the U.S. Department of State have also repeatedly highlighted faults in the law and the discriminatory treatment of religious minorities in Romania and the Helsinki Commission criticized the law before its adoption, especially on the grounds that it created "the most burdensome registration system in the entire OSCE region."

However, the critiques of these institutions were largely disavowed on the simple grounds that they were representing an exclusive American understanding of religious freedom. Radu Preda, Orthodox theologian and one of the main figures among the drafters of the law, described the various tensions and clashes during the process of elaborating and

adopting the new law in terms of a confrontation between two models: the American and the European one, with respect to the relationship between the State and the Church. Thus, while the American model makes no qualitative distinction between religious denominations, the European model to which Radu Preda makes reference was, in his own words, neither the British one that integrates the religious into the political sphere, nor the French model of complete separation of the two spheres (it is however not very clear why Preda would speak about "the European model" to which he relates the Romanian law, as if there were only one European model, although he acknowledged the existence of more than one European model), but the German inspired one, called "die hinkende Trennung" ("a halting separation"), which requires the interpretation of religious freedom in terms of the responsibilities of the churches towards the civil community. Provided these churches meet certain conditions, such as persistence and certain numerical consistence, according to the German model, they become part of the public sphere ("Koerperschaft des oeffentlichen Rechts") and are entitled to receive state support for their social projects, tax exemptions and free access in public places (schools, garrisons, penitentiaries) (Preda 2007).

Pr. Constantin Stoica, the spokesman of the Romanian Patriarchate, asserted that the law respected all the international treaties ratified by Romania with respect to the freedom of religion and conscience, that it was "deeply democratic and European" and that it "respects all the provisions of the international treaties with respect to the freedom of conscience and religion." Also, he reminded all the contesters of the law that, as president Basescu said, "we are entering the EU with our own specificities, traditions and cultural identity that have to be defended at length against the anti-European streams." Moreover, the argument continues, "the provisions of the Law were discussed and approved by the experts of all of the *culte*, which represent 99.9% of the nation. Then, the Law was analyzed by the chambers of the highest democratic forum of the country, the Parliament. Finally, the president promulgated the law. *Therefore, it is the expression of the Romanian democracy. Who could challenge democracy?"* Adrian Lemeni, the state secretary for *culte* also warned against that part of civil society that run counter to the majority of 99%.

To say this, however, is to overstate the case. Minority denominations have organized a "march of the *culte*" against the law, on 21 January 2007, immediately after its adoption. The fervent supporters of the idea of a wide

acceptance of the law have ignored the fact that the Greek-Catholic Church did not support the law because of the restitution issue and the support of most of the minority *culte* for the draft law was conditioned upon the acceptance of their amendments - amendments that were largely ignored. In their official communiqué, these minority *culte* spoke against the law which "offers little guarantees for the religious freedom and is inconsistent with respect to the affirmed principles and the real protection that it offers" and criticized the barriers that the law allows to stand in the way of the *culte*'s autonomy. Thus, the Union of Baptist Churches has officially withdrawn its support for the law after its "tacit" approval by the Senate, and many other religious leaders have expressed their reticence with respect to the bill, together with other NGOs in the field of religious freedom and human rights. But, as Andreescu (2008, 155) pointed out, they were marginalized by the media and by supporters of the law concerned with defending the myth of the "unanimous" support for the law among the *culte*.

Conclusion

The analysis of the state of religious freedom, two decades after the fall of the communism in Romania reveals ambivalent developments. On one hand, despite the quasi-anarchy which prevailed during the first post-communist years, there were also some undeniable signs of progress. The opening of the borders allowed religious denominations to develop international links with similar religious groups and cooperate in the field of social assistance, mission, religious education, humanitarian aid, etc. Religious meetings and conferences were allowed (though incidents have been repeatedly reported), even within the former communist headquarters - The Palace Hall, for instance, where the congresses of the Romanian Communist Party had been previously organized. The right to create confessional schools and even universities represented a gain of the post-communist period, as well as the right to offer religious assistance in hospitals, in orphanages, in the army and in asylums. Progresses have also been made in recognizing the history of the Holocaust in Romania. And the list could continue.

However, the prolonged legal uncertainty made room for abuses, especially against religious groups that had not been recognized as *culte*, but also against other religious minorities that enjoyed such recognition. For instance, most of the properties owned by religious communities, which had been confiscated by the communists, have not yet been returned to their legitimate owners. Thus, over 1000 Jewish properties remained

under governmental control, and no rent or compensations have been paid to their owners. Also, more than 2000 schools and other buildings used for charitable activities by the four historic Hungarian religious communities - the Roman Catholic, the Hungarian Reformed, the Evangelical Lutheran and the Unitarians - have remained in government use (in all but about 30 cases). And, as Byrnes (2002, 469) argues, "the sharpest edge of the problem at the moment is the Romanian Orthodox Church's refusal to return Greek Catholic property that was seized by the communist government in 1948 and then, passed on to the Romanian Orthodox Church", which "has caused tremendous resentment within the Greek Catholic community and rendered relations between Romanian Orthodox and Romanian Greek Catholics very tense", as "the Greek Catholics, without churches of their own in which to worship, continue to hold Sunday masses in open air city squares throughout Transylvania, in some cases only a few feet away from their pre-1948 churches and cathedrals." This fact obviously offers credibility to statements such as Andreescu's, according to whom the main beneficiary from the legal uncertainty after 1990 was the ROC (Andreescu 2008, 144).

Adding to the legal uncertainty was the difficulty of defeating the old mentalities and behavioral patterns towards religious minorities, and, as Rogobete has argued, "there is an undeniable link between the prevailing mentalities rooted in decades of violent communist indoctrination and the difficulty of promoting and building democracy with its inherent human rights principles" (Rogobete 2004, 280). To give just an example, Petre Dugulescu, a representative of a religious minority denomination, was elected deputy in 1992, on the list of the National Christian Democrat Peasant Party (P.N.T.c.d.). However, as he recalls in two of his books (*Ei mi-au programat moartea*, 329 and *Democratie si persecutie*, 74-81), a group of Orthodox priests harshly reacted against his inclusion on the party's list by sending a letter to the party's leadership in which they argued that there had never been a "repentant" (*pocait*) – a pejorative term - running for public office in an Orthodox country, and that his election would be a shame. Moreover, during the investiture ceremony of the Parliament, Corneliu Vadim Tudor, the secretary of the Senate at that time, even accused Dugulescu of being an infiltrated American spy (it was common during the communist era to suspect anybody who had relations with persons from abroad of being a spy and a threat for the state security).

Despite the prolonged quasi-anarchy in the religious sphere, however, some authors argued that the situation was not without advantages for the state of religious freedom in Romania. According to these authors, the delay in adopting a new legislative framework has actually ensured that the new law would be much better than it would have been if adopted during the first years after the revolution. As Andreescu (2008, 141) argued: "if one takes a realistic look at the political context of the 1990s and the degree of influence then exercised by the ROC, the late-coming of the 2006 law may in fact have been a blessing in disguise," because although "the 2006 law is hardly an ideal, it looks much better than all the various bills that preceded it."

Indeed, the law of 2006 represents an important step forward, despite significant areas that still require improvement. The most problematic aspects of the law are, in our opinion, the two-tier system and the financial dependence of the *culte* on the state.

On the one hand, by making a distinction between the privileged recognized *culte* and other religious groups and associations, by deciding which religious actor fits either of these categories and by offering its financial support and fiscal exemptions on this basis, the state actually claims to represent the supreme instance in religious affairs, at least from some points of view. The restrictive and discriminatory conditions - such as, for instance, the requirement of 300 registered Romanian citizens for the creation of a religious association, while the creation of any other kind of association requires only 3 members - were actually meant to preserve the status-quo in the religious sphere, by protecting the already recognized *culte* from competitors.

On the other hand, we consider that there is an inherent risk in *culte*'s dependence upon state resources. This dependence encourages them to seek to establish strong connections with the state, in order to consolidate their privileges and rights. In the process, churches may lose their freedom and independence, two crucial conditions for becoming part of a strong civil society that is able to sustain a strong democracy.

Therefore, in consistence with the definition given to religious freedom at the beginning of this article, we consider that instead of the current model that assimilates the church as an institution of the state (despite this being called "distinct cooperation" or "partnership"), whose organizational statute and creed have to be approved by the state and whose personnel is

paid by the state, the law should have provided a model for a clear separation of the Church and State. Although the model of the "dominant church" is not necessarily antinomic to liberal democracy per se, as Stan and Turcescu argue (Stan and Turcescu 2011), a model of strict separation would have better meet the condition of "twin tolerations" (the freedom of governments from religious actors and the freedom of the latter from governments - See Stepan 2000), would have allowed churches the greatest degree of autonomy, and would have encouraged them to become significant parts of civil society instead of simple annexes of the state apparatus. It would have allowed them to become a counter balance to political power, to amend the political forces when needed. History has proved that those churches that depended upon state support have never been able to resist the abuses of political power. As Borowik (2006, 269) pointed out, the long tradition of strong links and close ties with the state, along with its dependence on the secular power, kept the Orthodox Church (not just in Romania, but in other former communist countries, too) from opposing the illegitimate communist regimes, by providing instead the basis for the submission of the church and for its cooperation with the state (whatever the state might be).

A clear separation between State and Church would have also allowed a greater degree of pluralism and would have created equally favorable conditions for the full expression of religious worship and freedom for all religious groups and communities.

By implication, a clear separation would have meant the elimination of the state financial support for *culte,* each religious denomination having to support its own clergy and building projects for places of worship. This way, the equal treatment of all religious denominations and the right of each person not to contribute financially to the expenses of a religious denomination he/she is not a member of would have been secured.

The main beneficiaries of the separation would have been the churches themselves, as they would have been given the opportunity to rediscover their genuine mission, that of guiding people's spiritual journey, of protecting the weak and the poor and that of fulfilling the role of a conscience for politics, not that of political actors per se.

Obviously, such a model would not entirely forbid state support for some particular social projects of the churches, such as caring for the poor and

elderly, for the invalids, etc. - but state financial support would be granted based on some objective criteria: the state should evaluate correctly the quality and utility of each project proposed, the churches' capacities to perform these services and it should also be careful not to allow the monopoly of churches in social assistance services, by encouraging them to compete in a transparent way with other NGO's and providers of social services for state resources.

A model of separation between the church and state would have thus contained the principles of tolerance and respect for all religious beliefs and practices (as long as they do not violate the rights and liberties of others), the principles of neutrality and non-discrimination, and the principles of equitableness and impartiality.

We consider that these principles are the marrow of a strong and genuine democracy and they should have been endorsed by the Romanian society as well. However, the new law on religious freedom in Romania has done little to change the old patterns, and it has mainly sanctified the already existing state of affairs. In Andreescu's possibly slightly harsh words: "The law cleaned the house, but made no notable home improvements" Andreescu (2008, 154).

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