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Religious Freedom in Romania

Ecumeny and Law 4, 221-234

2016

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

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Keywords: religious denominations, fundamental freedoms, Romanian legislation

The right to religion, and consequently the right to religious freedom,¹ is an integral part of the sum of rights and fundamental freedoms of the human being² the legal protection of which has been ensured by the European legislator.³

¹ N. V. DURĂ, C. MITITELU: *The Freedom of Religion and the Right to Religious*. In: *SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism*, I, 2014, Albena, pp. 831—838.

² See N. V. DURĂ: *Drepturile și libertățile fundamentale ale omului și protecția lor juridică. Dreptul la religie și libertatea religioasă* (The rights and fundamental freedoms of the human being and their legal protection. Right to religion and religious freedom). “Analele Universității Ovidius. Seria: Drept și Științe Administrative”, 3 (2005), pp. 5—33; IDEM: *Drepturile și libertățile omului în gândirea juridică europeană. De la „Justiniani Institutiones” la „Tratatul instituind o Constituție pentru Europa”* (The rights and the freedoms of the human being in the European legal thinking. From “Justinian Institutiones” to the “Treaty establishing a Constitution for Europe”). “Analele Universității Ovidius. Seria: Drept și Științe Administrative”, 1 (2006), pp. 129—151; IDEM: *Dreptul la demnitate umană (dignitas humana) și la libertate religioasă. De la “Jus naturale” la “Jus cogens”* (The right to human dignity (Dignitas Humana) and to religious freedom. From “Jus Naturale” to “Jus cogens”). “Analele Universității Ovidius. Seria: Drept și Științe Administrative”, 1 (2006), pp. 86—128; IDEM: *The European juridical thinking, concerning the human rights, expressed along the centuries*. “Acta Universitatis Danubius. Juridica”, (VII), 2 (2010), pp. 153—192; N. V. DURĂ, C. MITITELU: *The human fundamental rights and liberties in the Text of some Declarations of the Council of Europe*. In: *Exploration, Education and Progress in the Third Millennium*, I, 5, Bucharest 2015, pp. 7—22.

³ N. V. DURĂ: *Principalele organisme și organizații internaționale cu preocupări și atribuții în domeniul promovării și asigurării protecției juridice a drepturilor omului* (The

Over the centuries religious freedom constituted one of the basic moral values derived from Christianity in Romania, even though Romanians perceive it as a part of “humanist legacy” of Europe⁴ which has served as a basis and frame of reference both in the “constitutionalization” process of the member states of the European Union⁵ as well as in the jurisprudence of the European Court of Justice.⁶

Undoubtedly, we cannot speak of religious freedom in Romania⁷ without making express reference to the way in which religious denominations are established, organized, and recognized by the state.

The legal framework is provided by Law 489/2006,⁸ which is aligned with the EU legislation.⁹ In turn, the source for the latter is

main international bodies and organizations with concerns and responsibilities in promoting and ensuring the legal protection of human rights). “Dionysiana”, I, 1 (2007), pp. 18—25; IDEM: *Les droits fondamentaux de l’homme et leur protection juridique*. “Analele Universității Dunărea de Jos Galați, Fascicula XXII, Drept și Administrație publică”, 2 (2008), pp. 19—23; N. V. DURĂ, C. MITITELU: *Human rights and their universality. From the rights of the “individual” and of the “citizen” to “human” rights*. In: “*Exploration, Education and Progress in the third Millennium*”, I, 4, Galați, 2012, pp. 103—127; N. V. DURĂ, C. MITITELU: *Principii și norme ale Dreptului Uniunii Europene privind drepturile omului și protecția lor juridică* (The principles and the rules of the European Union Law on human rights and their legal protection), Constanta, 2014; C. MITITELU: *The Human Rights and the Social Protection of Vulnerable Individuals*. “Journal of Danubius Studies and Research”, II, 1 (2012), pp. 70—77; IDEM: *The Right to Life. From the Prevention of Torture and Inhuman Punishment to the Abolition of the Death Penalty*. “Ovidius University Annals, Economic Sciences Series”, XIII, 2 (2013), pp. 128—133.

⁴ N. V. DURĂ: *Valorile religioase și „moștenirea culturală, religioasă și umanistă a Europei”*. „Laicitate” și „libertate religioasă” (The religious-Christian values and the “cultural, religious and humanist heritage of Europe”. “Secularism” and “religious freedom”). In: “*Modernitate, postmodernitate și religie*”, Iasi, 2005, pp. 19—35.

⁵ C. MITITELU: *Europe and the Constitutionalization Process of EU Member States*. “Ovidius University Annals, Economic Sciences Series”, XIII, 2 (2013), pp. 122—127.

⁶ N. V. DURĂ, C. MITITELU: *The right to Freedom of Religion in the Jurisprudence of the European Court*. “Journal of Danubius Studies and Research”, IV, 1 (2014), pp. 141—152.

⁷ Regarding this liberty, see N. V. DURĂ, *Religious Freedom in Romania*. “Theologia Pontica”, V, 3—4 (2012), pp. 9—24.

⁸ See IDEM: *Legea nr. 489/2006 privind libertatea religioasă și regimul general al Cultelor religioase din România* (Law no. 489/2006 on religious freedom and the general regime of religious denominations in Romania). In: *Biserica Ortodoxă și Drepturile omului: Paradigme, fundamente, implicații*, Bucharest, 2010, pp. 290—311; C. MITITELU: *Legea nr. 489/2006 și relațiile dintre Stat și Biserică* (Law no. 489/2006 and relations between the State and the Church). In: RO-RUS-NIPPONICA, I, Craiova, 2010, pp. 36—43.

⁹ N. V. DURĂ: *Statele Uniunii Europene și cultele religioase* (The European Union States and the religious cults). “Ortodoxia”, 2 (2009), pp. 49—72; IDEM: *The Fundamental Rights and Liberties of Man in the E.U. Law*. “Dionysiana”, IV, 1 (2010), pp. 431—464; IDEM: *General Principles of European Union Legislation Regarding the Juridical Protection of the Human Rights*. “Journal of Danubius Studies and Research”, III, 2 (2013), pp. 7—14;

the Edict of Milan¹⁰ (313) describing basic principles of the right to religion.

As it is well known, despite the favourable climate relating to freedom of expression, the religious freedom itself, otherwise expressly provided in the texts of EU legislation, in some member states may still be infringed upon by means of “privileges” and “discrimination” present in their religious policy¹¹ hence the existence of some “international bodies and organizations with concerns and responsibilities in promoting and ensuring the legal protection of human rights.”¹²

After the events of the year 1989, Romania had no provision regarding the religious freedom that would be in accordance with the constitution, conventions, agreements, and international realities to which Romania was a party.

Therefore, in the entirely new social reality, up until 2006, in the absence of an up-to-date normative act the state operated on the conjectural bases.

A Romanian jurist and canonist noticed that for more than 16 years, from December 1989 — when the removal of the communist regime took place — until 2006, Romania had no new regulation concerning the legal status of religious organizations as such, they continued to observe and apply the provisions of Decree-Law no. 177/1948, which were remote from the provisions of principles enunciated by the main international instruments (treaties, conventions, declarations, etc.) on religious freedom, to which Romania had already been a party, largely even before the “events” of December 1989. In fact, even the socio-political and religious realities after 1989 in Romania no longer corresponded to those mentioned in the

C. MITITELU: *The European Convention on Human Rights*. In: *10th Edition of International Conference The European Integration — Realities and Perspectives*, Galati, 2015, pp. 243—252; N. V. DURĂ, C. MITITELU: *The Treaty of Nice, European Union Charter of Fundamental Rights*. In: *8th Edition of International Conference The European Integration — Realities and Perspectives*, Galati, 2013, pp. 123—129; IDEM: *International Covenant on Economic, Social and Cultural Rights*. In: *8th Edition of International Conference The European Integration — Realities and Perspectives*, Galati, 2013, pp. 130—136.

¹⁰ See N. V. DURĂ: *Edictul de la Milan (313) și impactul lui asupra relațiilor dintre Stat și Biserică. Câteva considerații istorice, juridice și ecleziologice* (The Edict of Milan (313) and its impact on relations between State and Church. Some historical, legal and ecclesiological considerations). “Mitropolia Olteniei”, 5—8 (2012), pp. 28—43; N. V. DURĂ, C. MITITELU: *The State and the Church in IV-VI Centuries. The Roman Emperor and the Christian Religion*. In: *SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism*, I, 2014, Albena, pp. 923—930.

¹¹ N. V. DURĂ: *Proselytism and the Right to Change Religion: The Romanian Debate*. In: *Law and Religion in the 21st Century. Relations between States and Religious Communities*, Edited by S. FERRARI and R. CRISTOFORI, England, 2010, pp. 279—290.

¹² N. V. DURĂ: *Principalele organisme și organizații internaționale...*, pp. 18—25.

Law on Religious Denominations enacted by the rulers of the communist states of Soviet origin. Moreover, even some Romanian political scientists did not understand why the Decree no. 177/1948 was not repealed by the Romanian authorities. “Given the concern of the authorities to remove the effects of communist legislation, it is difficult to understand why the Decree no. 177/1948 was never formally repealed.”¹³

The prospect of European integration necessitated the adoption of a law that could regulate the governing of religious communities according to the similar regulations in the EU countries and, at the same time, adjusted to the specific reality of Romania.

Along this line, since March 2005 there had been many meetings with the representatives of religious denominations and in the period of April—May 2005 four rounds of discussions with the representatives of the Religious Affairs took place.

The representatives of 16 religious denominations in Romania signed on 31 May 2005, along with the representatives of the Ministry of Culture and Religious Affairs, a draft text which, from 1st of June to 1st of July, was brought to the attention of the public, in accordance with the Law on Decision-Making Transparency in Public Administration, during which a number of comments were made, some of which included in the final form of the project.¹⁴

In order to popularize the bill both nationally and internationally the Ministry of Culture and Religious Affairs organized on 12—13 September 2005 the International Symposium entitled “The religious freedom in the Romanian and European context” which was attended by representatives of some international bodies such as the European Commission for Democracy through Law (the Venice Commission), OSCE, as well as leading experts from Europe and the United States. In addition, a number of organizations and institutions from Romania were invited. Prestigious institutions as the ODIHR/OSCE and the Venice Commission were asked for their opinion and advice.

The Venice Commission analysed the text of the draft bill of the 64th plenary session held on 21—22 October 2005 and wrote a favourable opinion recommending a number of improvements to the bill.

Unlike the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR)¹⁵ which had issued no remarks regarding the draft bill

¹³ IDEM: *Despre libertatea religioasă și regimul general al Cultelor religioase din România* (On religious freedom and the general regime of religious Denominations in Romania). “Analele Universității Ovidius Constanța / Seria Teologie”, VII, 1 (2009), pp. 20—21.

¹⁴ See <http://www.culte.gov.ro/detaliu-legislatie/vrs/IDleg/18> (accessed 3.03.2015).

¹⁵ The Office for Democratic Institutions and Human Rights (<http://www.osce.org/ro>).

the U.S. Helsinki Commission has drafted and submitted a number of comments on the text of the Bill.

In the parliamentary proceedings in the Senate, the Judicial Committee for appointments, discipline, immunities and validations, and the Commission for Human Rights, denominations and minorities have developed a joint report of the bill for admission with a series of amendments that were otherwise admitted by the government representatives present on the debate.

The draft was adopted by the senate on 21 December 2005 through silent procedure in accordance with Art. 75 par. 2 of the Constitution.¹⁶ It is not a case of an extraordinary procedure, since it occurred in the conditions where the lower house (Chamber of Deputies) was notified. In such a case the upper house does not pronounce on the draft within the statutory period of maximum 60 days.

The decisive chamber here was the Chamber of Deputies, the Judicial Committee, and the Commission of the Human Rights, Religious Affairs and Minorities drafting favourably joint report with amendments. The debates of the commission lasted from February until 7 December 2006.

During the debates, among others the U.S. Helsinki Commission sent their specified position on the discussed matters to the specialized committees of both chambers and to the Romanian government. The former expressed a negative opinion regarding to the quantitative and sustainability criteria defined by the bill for the recognition of new religious organizations.¹⁷

In the positions formulated, the U.S. Helsinki Commission have shown that this model is not specific only to Romania, but falls within the scope of broader European model for the regulations of the relations between state and religious organizations. Subsequently, the text by the government was drawn which said: “[...] in Romania there are prohibited any forms, means, acts, or actions of slander and religious enmity” with the express prohibition of “public offense to religious symbols.” This amendment, adopted by the parliament, however, was heavily criticized by some associations of so-called freethinkers, as well as agnostics, atheists, etc. from Romania, who felt that this limits the freedom of expression.¹⁸ We

¹⁶ The current Constitution of Romania was approved by national referendum on 18–19 October 2003 and entered into force on 29 October 2003, following its publication in the *Official Gazette* of the Constitutional Court Decision no. 3 of 22 October 2003 to confirm the result of the national referendum of 18–19 October 2003 regarding the amending of the Law of the Romanian Constitution.

¹⁷ See <http://www.culte.gov.ro/detaliu-legislatie/vrs/IDleg/18> (accessed 3.03.2015).

¹⁸ See † T. PETRESCU: *Libertatea de expresie și libertatea religioasă, libertăți fundamentale ale persoanei umane* (The freedom of expression and the freedom of religion, fun-

should add that the amendment did not have a punitive element, but only a declarative character, so that the freedom of expression will not affect an area as sensitive as religious faith.

This provision is equally constitutional and in line with the European legal regime. It constitutes indeed an application of the provision of Art. 29 (2) of the Constitution which states that: “Freedom of conscience is guaranteed, it must be manifested in a spirit of tolerance and mutual respect.” And as for the penal enforcement, for example, of the blasphemy, it is also found in the legislation of many European countries.

The plenary meeting of the Chamber of Deputies approved the draft of the bill on 13 December 2006 by an overwhelming majority of 220 votes in favour, one abstaining and one vote against. The President of Romania promulgated the Law by Decree no. 1437 on 27 December, that acquired the number 489/2006. It was published in *Official Gazette* no. 11 with a date 1 August 2007.

According to Law no. 489/2006 on Religious Freedom and the General Regime of Religious Affairs, published in the *Official Gazette*, part I, no. 11 of 1 August 2007, “the Romanian state respects and guarantees the fundamental right to freedom of thought, conscience and religion of any person in Romania, according to the Constitution and international treaties to which Romania is a party. Nobody can be prevented or constrained to adopt an opinion or to adhere to a religion contrary to their beliefs, nor be subject to discrimination, prosecuted or put in a position of inferiority for his faith or affiliation to a religious group, religious denominations or religious association or for the exercise under the conditions provided by law of religious freedom” (Art. 1 par. 1–2).

Regarding the content of religious freedom, the law provides as follows:

The religious freedom includes the right of every person to have or to adopt a religion to express it individually or collectively, in public or in private, through the services specific to every religious denomination, including religious education and freedom to maintain or change religion.

The freedom to manifest one’s religion may not be subject to any restrictions other than those which are prescribed by law and are necessary in a democratic society for public security, protection of public order and health as well as the public morality, or for the protection of rights and fundamental freedoms of human being. (Art. 2 par. 1–2)

damental freedoms of the human person). “Analele Universității OVIDIUS Constanța, Seria: Drept și Științe Administrative”, 1 (2006), pp. 26–29.

Therefore, according to the provisions of the law no. 489/2006, the right of every person to have or to adopt a religion is an inherent right of the religious freedom, which is however subject to restrictions prescribed by the law.

As for parental responsibilities in this respect: “Parents or guardians have the exclusive right to choose the religious education of minors, according to their own beliefs.

The religion of a child that reaches the age of 14 cannot be changed without his/her consent; the child who has reached the age of 16 has the right to choose alone his/her own religion” (Art. 3, par. 1—2).

It follows from the text of the law that the freedom to choose one’s own religion without any interference from others, authorities, associations, denominational groups, organizations, etc., is guaranteed not only by the constitution but also by the Law 489/2006.

According to the constitutional text from 2003, the Art. 29 provides that:

- (1) Freedom of thought and opinions as well as the liberty of religious beliefs shall not be restricted in any way. No one may be compelled to adopt an opinion or to adhere to a religion contrary to his/her beliefs.
- (2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
- (3) All religious denominations are free and shall organize themselves according to their own statutes under the law.
- (4) In the relations between denominations are forbidden any forms, means, acts, or actions of religious enmity.
- (5) The religious denominations are autonomous from the state and shall enjoy support from it, including the facilitation of religious assistance in the army, hospitals, prisons, homes, and orphanages.
- (6) Parents or guardians have the right to ensure according to their convictions, the education of the minor children which is entrusted to them.¹⁹

In light of the constitutional provisions and the Law 489/2006²⁰ on religious freedom and the general governance of denominations, any person, religious organization, religious association, or religious group in Romania is free to establish and maintain ecumenical and brotherly relations with other people, religious organizations or religious groups and

¹⁹ Art. 29, Law no. 489/2006 at <http://www.culte.gov.ro/detaliu-legislatie/vrs/IDleg/18>.

²⁰ For the content of this law, see <http://patriarhia.ro/legea-nr-489-2006-privind-libertatea-religioasa-si-regimul-general-al-cultelor-539.html> (accessed 17.05.2015).

inter-Christian and inter-religious organizations, nationally and internationally, and to manifest their religious beliefs collectively, according to their own beliefs and provisions of this law, both in religious structures with or without legal personality.

The religious structures with legal personality regulated by this law are religious denominations and associations, and structures with no legal personality, that is religious groups. The right of religious communities to freely choose their association structure in which to manifest their religion such as, for instance: religious organization, religious association, or religious group, was also granted. It is applicable in accordance with discussed law, but under the condition of upholding the obligation to respect the constitution and laws of the country and not to affect public safety, order, health, or morals, as well as to the rights and fundamental freedoms of humans.

Regarding the mentioned religious structures, namely, religious organizations, religious associations, and religious groups, some Romanian jurists claimed that the state should not differentiate between religious association and religious denomination because this distinction is discriminatory.

The same jurists believe that the implementation of Law 489/2006 gives religious groups “a special legislation, in addition to the state law” and that as they argue it “is especially dangerous,” since they have the right to request the association agreement in order to achieve an illegitimate aim, and “there is no possibility of control” by the city authorities

According to the very same Romanian jurists, this type of association may be not only a legal loophole for many religious organizations, but also hiding place for many “terrorist groups which could invoke the so-called legitimacy of religious groups about which nobody knows anything, nobody controls anything, no one checks anything.”²¹

Under the current Law on Religious Affairs, not only religious organizations, associations, and groups have the right to initiate and foster ecumenical relations at national and international level, but also “any person.”²²

Law 489/2006 prohibits the processing of personal data related to religious beliefs or for the membership within any type of denominations, except for the case of a national census approved by law or if the data subject has given expressly his/her consent to do this, as it is forbidden to compel an individual to declare their religion in any relationship with public authorities or private legal persons.

²¹ N. V. DURĂ: *Despre libertatea religioasă și regimul general al Cultelor...*, p. 23.

²² *Ibidem*, p. 35.

In the first chapter of the discussed law (no. 489/2006), the religious freedom is defined and regulated in the ways established by the texts of international conventions and treaties regarding the fundamental rights of the human being.

There were in sight, in particular, the provisions of Art. 9, 10, 11 of the European Convention on Human Rights; Art. 18, 19, 20 and 26 of the Universal Declaration of Human Rights; Art. 13 of the International Covenant on Economic, Social and Cultural Rights; Art. 18 of the International Covenant on Civil and Political Rights; the UN General Assembly Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

Amongst religious freedoms, the right to free association has a broad content and it encompasses the state protecting both religious groups, whose members do not consider it necessary to exercise their freedom within a framework structure with a legal status as well as religious structures with legal status, namely religious organizations and religious associations.

The regulatory system chosen for the religious life in the draft law is derived from the existing realities, and now, with two levels of recognition of these denominations, each of the two legal regimes corresponds to certain rights and obligations. The difference between the two regimes derives from the public utility that the state grants to religious denominations over other religious groups, according to criteria of sustainability and stability. This two-step regulatory system is characteristic of the majority of the EU countries (there occur the following delimitations: between denominations that have agreements with the state and those that have not, between state Churches and regular denominations, between religious associations regulated by private law and public law religious organizations etc.).

The second chapter of the law, called “The Religious Organizations” covers: (a) relations between the state and religious organizations, (b) acquiring the capacity to operate as a religious organization, (c) personnel, (d) patrimony, and (e) education organized by religious organizations.

The Romanian state recognizes the important role of the Romanian Orthodox Church and other Churches and religious organizations recognized in the national history of Romania and in the contemporary Romanian society. At the same time, it recognizes the spiritual, educational, social, charitable, cultural, and social role as well as religious partners and their status as factors of social peace.

The fundamental relations between the Romanian state and religious organizations are their mutual autonomy, neutrality, equidistance,

and non-discrimination of state towards them as well as the cooperation of the state and religious organizations in the areas of common interest.

The religious organizations' quality, in the light of the law, shall be acquired under a government decision on a proposal from the Ministry of Culture and Religious Affairs, by the religious associations which through their activities and number of members, offered guarantees of durability and stability, and in terms of personnel, recognizing the specificity of relations between the clergy and religious organizations as a legal person, as being internal affairs of religious organizations, and subject to their own jurisdiction.

The third chapter of the law, entitled "The Religious Associations," establishes a new legal entity, the religious association, that is, a legal person consisting of at least 300 members being Romanian citizens who reside within the territory of Romania and who are associated to manifest a religious belief.

This two-stage system concerning the governing of the legal regime of religious organizations with legal personality of religious organization and religious association is specific to most states in the European Union.

In the final chapter, "The Final Transitory Provisions," it is established that those 18 denominations which are already recognized and operate in the Romanian state are not required to undergo a new procedure to be recognized.

According to the law, "the central public authorities may enter into partnerships with the recognized religious organizations in the areas of common interest and agreements for the regulation of particular issues specific for the tradition of denominations, which shall be approved by law."

In Romania, there is no state religion, the state is neutral towards any religious or non-religious ideology, thus preserving the right of every person to freely choose their religion or belief, without restrictions or discrimination.

In conclusion, we can therefore say that by Law 489/2006 Romania has actually created a legal regime that corresponds to "all international standards set on international level guaranteeing the exercise of religious freedom, individually or collectively. For this reason, any challenge to this law on grounds of incompatibility with European values on which Romania must comply cannot be made only by ignoring the legal and religious realities"²³ which provides a practical and effective legal protection in the exercise of the right to religion, and, consequently, the right to religious freedom of every person.

²³ See <https://grupareaproape.wordpress.com/2007/01/09/legea-cultelor-salutata-de-institutul-inter-cluj-bucuresti-chisinau/> (accessed 15.05.2015).

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Religious Freedom in Romania

Summary

The right to religious freedom in Romania was provided in the texts of the Constitution published during the communist regime, in 1948, 1952, and 1965 (with subsequent amendments), but in practice it has not been respected. After the popular revolution of 1989, through Constitutions of 1991 and 2003, and particularly through the Organic Law 489/2006, in Romania this right was provided and maintained in full compliance with the provisions of European and international Law.

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La liberté religieuse en Roumanie

Résumé

Le droit à la liberté religieuse en Roumanie a été garanti par le texte des Constitutions publiées à l'époque du régime communiste en 1948, 1952 et 1965 (avec des modifications ultérieures), mais en pratique il n'était pas garanti.

Après la révolution de 1989, en vertu de la constitution de 1991 et de 2003, et en particulier conformément à la loi sur la liberté religieuse (489/2006), ce droit a été garanti en Roumanie et maintenu en plein accord avec les réglementations européennes ainsi qu'avec le droit international.

Mots clés : organisations religieuses, libertés fondamentales, législation roumaine

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La libertà religiosa in Romania

Sommario

Il diritto alla libertà religiosa in Romania fu garantito dal testo delle Costituzioni pubblicate nel periodo del regime comunista, negli anni 1948, 1952 e 1965 (con emendamenti successivi), ma in pratica non era garantito.

Dopo la rivoluzione del 1989, in virtù delle costituzioni del 1991 e del 2003, ed in particolare mediante la Legge Organica 489/2006, in Romania tale diritto è stato garantito e mantenuto in piena conformità con le norme europee e il diritto internazionale.

Parole chiave: organizzazioni religiose, libertà fondamentali, legislazione romena