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## The Autonomy of Religious Denominations in Romania

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Ecumeny and Law 4, 275-296

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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](http://bazhum.muzhp.pl), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

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## The Autonomy of Religious Denominations in Romania

**Keywords:** Church autonomy, religious communities, religious freedom

So far, in the European legal literature, the notion of “religious denominations” has not been perceived and defined yet in all its contents; hence the use of different legal categories in order to define the forms of religious institutional organization, such as religious group, religious association, and religious denomination, which are parties to an agreement with the state (concordat), etc.

From the perspective of human rights, such a categorization system is objectionable, since the state hierarchy leads to a system of “privileges” and, in fact, to discrimination.<sup>1</sup> Indeed, it creates a situation where religious communities and their members are denied their individual or collective rights based on the classifications and criteria imposed by the state.

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<sup>1</sup> See N. V. DURĂ: „Privilegii” și „discriminări” în politica religioasă a unor State ale Uniunii Europene (“Privileges” and “discrimination” in the religious policy of EU countries). “Biserica Ortodoxă Română” (The Romanian Orthodox Church), CXXIV, 1—3 (2006), pp. 491—510; IDEM: *Relațiile Stat-Culte religioase în U.E. „Privilegii” și „discriminări” în politica „religioasă” a unor State membre ale Uniunii Europene* (The State-Religious Denominations Relationships in the EU. “Privileges” and “discrimination” in the “religious” policy of several EU Member States). “Analele Universității Ovidius. Seria: Drept și Științe Administrative” (Ovidius University Annals. Series: Law and Administrative Sciences), 1 (2007), pp. 20—34; IDEM: *About the “Religious” Politics of Some Member States of the European Union*. “Dionysiana”, III, 1 (2009), pp. 463—489.

It should also be emphasized that, in the European Union, legally, there is still no common definition of the notion of religious denomination.<sup>2</sup> In some member states, for example, they may be “legal persons of public law” (Austria, Germany, Italy), and in others they have the status of “private legal persons” (France, England with the exception of the Anglican Church, and Estonia). Finally, in some countries, religious denomination have only the status of *sui generis* legal entities.

The religious denomination from Romania — including the Orthodox Church, which holds a prominent place and whose recorded history is confirmed not only by the nearly 2,000 years of existence on Romanian soil,<sup>3</sup> but also by the contribution that its members (clergy, laity, and monks)<sup>4</sup> brought into shaping and asserting the national existence and the nation’s moral-religious and cultural spirituality, which translates into the European identity, too — are organized and operate according to their own legislation, *recte* according to their canons, statutes, and regulations.

The three religious historical denominations, namely the Orthodox, the Roman Catholic and the Greek Catholic Churches, are structured and operate under their own canon laws, which laid the basis for their own statutes of organization and operation.

These statutes actually include the principle provisions enunciated by their canonical legislation, hence the need to express the canonical doctrine<sup>5</sup> of these Churches. Under these statutes of organization and func-

<sup>2</sup> IDEM: *Statele Uniunii Europene și cultele religioase* (EU states and religious denominations). “Ortodoxia” (The Orthodoxy), I, 2 (2009), pp. 49—72.

<sup>3</sup> Regarding the history of Christianity in the Danubian—Pontic area, see IDEM: „*Scythia Mynor*” (*Dobrogea și Biserica ei apostolică. Scaunul arhiepiscopal și mitropolitan al Tomisului* (sec. IV—XIV) (“Scythia Mynor” (Dobrogea) and its apostolic Church. The Archbishop and Metropolitan See of Tomis (Sec. IV—XIV)). Bucharest 2006.

<sup>4</sup> IDEM: *Monahii, al treilea element constitutiv al Bisericii* (Monastics, the third constituent element of the Church). “Biserica Ortodoxă Română” (The Romanian Orthodox Church), CXXI, 7—12 (2003), pp. 469—483.

<sup>5</sup> The canonical doctrine includes the sum of the fundamental canonical principles defining the form of organization and management of these Churches, and which are under their canonical ecumenical legislation from the first millennium. In this regards, see IDEM: *Le Régime de la synodalité selon la législation canonique, conciliaire, oecuménique, du I<sup>er</sup> millénaire*. Bucharest 1999, pp. 287—382; IDEM: *Colecția canonică etiopiană (Corpus Juris Canonici Aethiopici)* (Ethiopian canonical Collection). “Studii Teologice” (Theological Studies), XXVI, 9—10 (1974), pp. 725—738; IDEM: *Principiile canonice, fundamentale, de organizare și funcționare a Bisericii Ortodoxe și reflectarea lor în legislația Bisericii Ortodoxe Române* (Canonical fundamental principles from the organization and functioning of the Orthodox Church and their impact on Romanian Orthodox Church legislation). “Revista de Teologie Sfântul Apostol Andrei” (St. Andrew Review of Theology), V, 9 (2001), pp. 129—140; IDEM: *Codul de drept canonic (latin). Principiile ecleziologico-canonice enunțate de Constituția apostolică Sacrae disciplinae leges* (The Code of Canon Law (Latin). Ecclesiological principles enunciated by the Apostolic Constitu-

tioning, these Romanian Churches (Orthodox, Roman Catholic, and Greek Catholic) have also drawn a number of regulations.<sup>6</sup>

Under the basic law, that is, the Constitution of Romania, the religious denominations are structured “according to their own statutes” (Art. 29). Regarding the Romanian Orthodox Church — the first religious denomination recognized by the Romanian state — we are talking about its new statute of organization and operation approved by Government Decision no. 53/2008, which repealed the Decree no. 233/1949, which, in turn, had never been actually published in the *Official Gazette*.

If under the provisions of Law no. 489/2006 the religious denominations are “legal persons of public interest” (Art. 8 par. 1), however, in the statute of the Romanian Orthodox Church — approved by Government Decision no. 53/2008 — these are “private legal persons of public interest” (Art. 41 par. 1), and not public legal persons, as provided by the Decree no. 177/1948, Art. 28, and by the ROC Statute of 1949, Art. 186. But, regarding this statutory provision on “private legal persons” it was said that “it does not correspond to the definition given by the law” and that “no other law defines this category of legal persons mentioned in the Statute.”<sup>7</sup>

To the administrative-territorial units of the Ecumenical Orthodox Church (parish, diocese, episcopacy, metropolitan church, exarchate, and patriarchate) were recognized the status of legal entity since the 4th—5th centuries, as confirmed both by the Roman-Byzantine legislation<sup>8</sup> and by the Byzantine<sup>9</sup> law. This legal status of these administrative-territorial basic establishments of the Orthodox Church was reaffirmed and developed

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tion — *Sacrae disciplinae leges*). “Anuarul Facultății de Teologie Ortodoxă. Universitatea București” (The Yearbook of the Faculty of Orthodox Theology. University of Bucharest), 2001, pp. 517—537.

<sup>6</sup> Among the Romanian Orthodox Church Regulations, we mention, for example, “Rules of Procedure of the disciplinary and judicial courts of the Romanian Orthodox Church”; “Rules for organizing the monastic life and the disciplinary and administrative operation of the monasteries”; “Rules for the organization and functioning of parish and monasteries’ cemeteries within the eparchies of the Romanian Orthodox Church,” etc. (See *Legiuirile Bisericii Ortodoxe Române* (The Rules of the Romanian Orthodox Church). Bucharest 2003, pp. 57—148).

<sup>7</sup> V. GRECEANU COCOȘ: *Contabilitatea în partidă simplă și legislația utilă unităților de cult religioasă (filii, parohii, mănăstiri, catedrale, paraclise, schituri)* (The simple bookkeeping and the legislation useful to religious establishments (branches, parishes, monasteries, cathedrals, chapels, convents)). Bucharest 2010, p. 5.

<sup>8</sup> See Codex Theodosianus (438 AD) ([http://droitromain.upmf-grenoble.fr/Constitutions/CTh01\\_mommsen.htm](http://droitromain.upmf-grenoble.fr/Constitutions/CTh01_mommsen.htm)) (accessed 30.06.2014).

<sup>9</sup> See Codex Justinianus (529 AD, 533 AD) (<http://droitromain.upmf-grenoble.fr/Corpus/codjust.htm>) (accessed 3.02.2015).

under the canonical<sup>10</sup> and nomocanonical<sup>11</sup> legislation, which was also circulated and applied within the Danubian-Pontic-Carpathian space,<sup>12</sup> where there was a Church of apostolic origins, with a metropolitan organization, from the era of the First Ecumenical Council (Nicaea, 325 AD). This is the Apostolic Church of Scythia Minor (Dobrogea/Romania), which adapted its metropolitan form of organization immediately according to the principle directive taken by the Fathers of the First Ecumenical Council.

The Church of “Scythia Minor”<sup>13</sup> — which adapted its metropolitan form of organization according to the principle directive taken by the Fathers of the First Ecumenical Council — remained with this autocephalous metropolitan form of organization until its dissolution, triggered by the transfer of the archiepiscopal and metropolitan See of Tomis — (in the 12th—13th centuries<sup>14</sup>) — within the Carpathian Arc, where the capi-

<sup>10</sup> See N. V. DURĂ: *Le Régime de la synodalité...*, pp. 287—382; N. V. DURĂ: *Colecții canonice, apusene, din primul mileniu* (Western canonical Collections, from the first millennium). “Analele Universității Ovidius. Seria: Drept și Științe Administrative” (Ovidius University Annals. Series: Law and Administrative Sciences), 1 (2003), pp. 19—33; IDEM: *Legislația canonică a Sinodului II ecumenic și importanța sa pentru organizarea și disciplina Bisericii* (The canonical legislation of the Second Ecumenical Council and its importance to the organization and discipline of the Church). “Glasul Bisericii” (The Church’s Voice), XL, 6—8 (1981), pp. 630—671.

<sup>11</sup> See IDEM: *350 de ani de la tipărirea Pravilei de la Govora. Contribuții privind identificarea izvoarelor sale* (350 years since the printing of the Code of Laws from Govora. Contributions to the identification of its sources). “Altarul Banatului” (The shrine of Banat), I, 3—4 (1990), pp. 58—79; N. V. DURĂ, C. MITITELU: *Istoria Dreptului românesc* (The history of the Romanian Law). Bucharest 2014, pp. 101—206; C. MITITELU: *Pravilele românești, tipărite, din secolul al XVII-lea. Infrațiuni și pedepse* (The Romanian Nomocanons, printed, from the XVIIth century. Infractions and punishments). Bucharest 2012; IDEM: *Începuturile Dreptului scris la români* (The beginnings of the Romanian written law). “Dionysiana”, 1 (2009), pp. 417—426; IDEM: *Elements of Penal Law in the Romanian Nomocanons printed in the XVIIth century*. “Dionysiana”, 1 (2010), pp. 419—430; IDEM: *Vechi instituții europene prevăzute de legislația nomocanonică din secolul al XVII—lea (Pravila de la Iași și Pravila de la Târgoviște)* (Old European institutions under the Nomocanon legislation from the seventeenth century (The Codes of Laws from Iasi and Targoviste)). Bucharest 2014; IDEM: *The Nomocanons (Pravilele) Printed in the Romanian Countries, in the Seventeenth Century, and Their Provisions of Criminal Law*. “Religion”, 3 (2014), pp. 41—57.

<sup>12</sup> See N. V. DURĂ: *Les relations canoniques de l’Église roumaine nord-danubienne avec les principaux Sièges épiscopaux du Sud du Danube*. “Revue Roumaine d’Histoire”, XL—XLI (2001—2002), pp. 5—20.

<sup>13</sup> IDEM: „*Scythia Mynor*” (Dobrogea) și Biserica ei apostolică..., 2006.

<sup>14</sup> IDEM: *Forme și stări de manifestare ale autocefaliei Bisericii Ortodoxe Române. Mărturii istorice, ecleziologice și canonice* (Forms and conditions for the manifestation of the Romanian Orthodox Church autocephaly. Historical, ecclesiological and canonical evidence). In: *Autocefalia, libertate și demnitate (Autocephaly, freedom and dignity)*, Bucharest 2010, pp. 113—155.

tal of the principality (Campulung and then Curtea de Arges) was established.

This administrative-territorial unit, that is, the Metropolitan See of Tomis, enjoyed the status of legal entity like other similar establishments from the Byzantine Empire, although at that time Byzantine law did not use the phrase “legal personality.”

In Romania, the establishments of religious denominations were recognized as legal entities by the Law no. 54/1928, which was repealed by the Decree-Law no. 177/1948. In contrast, by Law no. 489/2006<sup>15</sup> the religious denominations were treated as “legal persons of public utility” (Art. 8 par. 1). The status of religious worship establishments was also recognized as the one of non-profit legal persons. However, this status “should have obliged them to the double-entry bookkeeping at all organizational levels, according to Annex no. 1 of Order no. 1969/2007 of the Minister of Finance.”<sup>16</sup>

The term “private legal persons of public utility,” that is, *ad utilitatem publicum*, mentioned in the statute of the Romanian Orthodox Church, is the result of combining the text taken from the two laws, namely the Law no. 21/1924 and the Law no. 489/2006. The Law no. 21/1924 made express reference to “non-profit or non-patrimonial foundations and associations, established or organized by individuals” who, in accordance with that law, were considered “private legal persons” (Law no. 21/1924, Art. 1). By Government Order no. 26/2000, associations and foundations were again defined as “non-patrimonial (i.e. non-profit, under Art. 1 par. 2) private legal persons” but the religious denominations were excluded from this category (Art. 1, par. 3).

According to an expert economist, the exclusion of religious denominations from the category of “non-patrimonial private legal persons” would have been done, “probably, so as not to require the fulfillment of the conditions laid down in Chapter IV” entitled “Associations and Foundations of public utility” (Art. 38—45).<sup>17</sup>

The Law no. 489 of 2006, in turn, defines religious denominations only as “legal persons of public utility” (Art. 8 par. 1). Thus, as can be seen, the Statute of the Romanian Orthodox Church took these words directly from Law 489/2006, to which it added the term “private law,” taken from Government Ordinance no. 26/2000, which, in turn, had taken it from Law no. 21/1924. The difference lies only in the fact that both in

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<sup>15</sup> C. MITITELU: *Legea nr. 489/2006 și relațiile dintre Stat și Biserică* (Law no. 489/2006 and the relationship between State and Church). In: RO-RUS-NIPPONICA, I, Craiova, 2010, pp. 36—43.

<sup>16</sup> V. GRECEANU COCOȘ: *Contabilitatea...*, p. 5.

<sup>17</sup> *Ibidem*, p. 41.

the Law no. 21/1924 and in the Ordinance no. 26/2000, the term “private legal persons” referred only to associations and foundations, while the Statute of the Romanian Orthodox Church refers to the religious worship establishments of the Church, although this statute does not specify what “private legal person” and “public utility” mean. So, it is clear that, legally, for the authors of the Statute of the Romanian Orthodox Church, the religious worship establishments are treated as associations, foundations, and establishments of social-charitable nature.

Therefore, we find that the religious worship establishments — seen by the statute of the Romanian Orthodox Church as “private legal persons” — still remain without a legal basis for their operation. However, by analogy, a legal basis for the establishments of the religious organizations could be found, because — under Law no. 286/2006 — they are seen as bodies providing social services of public utility (Art. 1 (2), let. g, pt. 4 and 5). Nevertheless, in local and county government, this kind of bodies are “private legal persons of public utility.”

Regarding the establishments of the Romanian Orthodox Diaspora, it should be noted and remembered that these are not private legal persons, but “public legal” ones.<sup>18</sup>

In assessing the type of the relationships between the Church and the state, the jurists (canonists) commonly made reference to how the principle of external autonomy was asserted and applied. This is one of the fundamental canonical principles<sup>19</sup> of the Eastern Church, set by the Founder of the Church Jesus Christ, asserted by the Holy Apostles and provided by the Fathers of the ecumenical Church in the text of the canonical legislation of the first millennium.<sup>20</sup> Nevertheless, these fundamental canonical principles are not included only “in the universal constitutional charter of the Church, which consists of the Holy Canons Collection,” but also “in the long and constant practice of Church life, which becomes a custom of canon law.”<sup>21</sup>

“The principle of external autonomy” — which expresses the relationships between the state and the Church, and, in fact, between the state and the religious organizations — is classified by the Orthodox canonists among the “fundamental principles of dogmatic content or foundation.”<sup>22</sup>

<sup>18</sup> Ibidem, p. 47.

<sup>19</sup> See L. STAN: *Despre principiile canonice fundamentale ale Ortodoxiei* (About fundamental canonical principles of the Orthodoxy). In: *Autocefalie, libertate și demnitate* (Autocephaly, freedom and dignity). Bucharest 2010, pp. 18–26; N. V. DURĂ: *Principiile canonice, fundamentale...*, pp. 129–140.

<sup>20</sup> N. V. DURĂ: *Le Régime de la synodalité...*, pp. 210 ff.

<sup>21</sup> L. STAN: *Despre principiile canonice...*, p. 18.

<sup>22</sup> Ibidem, pp. 18–19.

These principles are otherwise seen by the jurists (canonists) of the Orthodox Church as “legal and canonical expressions of dogmatic truths, fundamental teachings of the Church, which apply to the organization of Christian life.”<sup>23</sup>

Over time, the nature of the relations between the state and the Church was not always assessed based on the canonical doctrine regarding “the principle of external autonomy,” but, usually, based on the geopolitical context and on the mentality of each era. However, such an approach also entailed some disparities, and, therefore, the Eastern Church has always appealed both to its tradition and to the canonical legislation of the first millennium, on the one hand, and to the Byzantine one, in the 6th—15th centuries, when the relations between the state and the Church remained, in many ways, paradigmatic for the Churches and the states in South-East Europe,<sup>24</sup> including Romania.

The Romanian constitutions of 1991 and 2003 (the latter being currently in force) define the relationship between the state and the Church, or, more precisely, the relationship between the state and the religious organizations (Art. 29), in the following terms: “All religious Denominations are free to organize themselves according to their own statutes, under the law”; “All religious Denominations are autonomous from the state and enjoy its support, including the facilitation of religious assistance in the army, hospitals, prisons, homes, and orphanages.”<sup>25</sup>

However, Law no. 489 of 28 December 2006 on religious freedom and the general governance of religious organizations<sup>26</sup> provides that the Romanian state recognizes the role of religious organizations as “social partners” (Art. 7 par. 1). The protocol of “social partnership” between the Romanian Church and the Romanian government also testifies the recognition of the role played by the religious organizations in Roma-

<sup>23</sup> Ibidem, p. 19.

<sup>24</sup> See L. STAN, L. TURCESCU: *Religie și Politică în România postcomunistă* (Religion and Politics in Post-Communist Romania). Bucharest 2010, pp. 55—57; N. V. DURĂ: *Political-Judicial and Religious Status of the Romanian Countries and the Balkan People during the 14th-19th Centuries*. “Revue des Études Sud-Est Européennes”, XXVII, 1—2 (1989), pp. 159—170.

<sup>25</sup> Constitution of Romania published in the *Official Gazette* no.767/31.10.2003, Art. 29, par. 3 and 5.

<sup>26</sup> See N. V. DURĂ: *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 Cults in Romania). In: *Biserica Ortodoxă și Drepturile omului: Paradigme, fundamente, implicații* (The Orthodox Church and Human Rights: Paradigms, fundamentals, implications). Bucharest 2010, pp. 290—311; C. MITITELU: *Legea nr. 489/2006 și relațiile dintre Stat și Biserică...*, pp. 36—43.



nia.<sup>27</sup> The tradition of Church autonomy and the state support granted to the Church was kept in a very low and minimal form, even during the communist regime, since both the Constitution of the Romanian People's Republic (from 1948 and 1952) and of the Socialist Republic of Romania (1965) did not expressly provide for the separation between the state and the Church<sup>28</sup> and the state awarded a minimal financial support for the priests' salaries, be it only formally.

The religious autonomy during the communist regime was restricted, and the state's control was quite oppressive, generated, of course, by the fact that the communist atheistic ideology was the official ideology of the Romanian state; moreover, it was fervently and skillfully propagated and applied by its mercenaries. In addition, recent studies show that, in the period 1947—1989, the Church was never fully autonomous from the state,<sup>29</sup> and that it had to accept, *nolens volens*, the state's control, which was done by its repression bodies. Moreover, the Law on Religious Affairs of 4 August 1948 actually granted the “Ministry of Religious Affairs total control over the religious life.”<sup>30</sup>

A first repressive measure, taken by the political regime of the time, consisted in the seizure of the Church's tangible assets through the act of forced nationalization of Church property. Naturally, not having a sufficiently consistent and stable financial situation, the Church had to resort to the support of the Romanian state,<sup>31</sup> and, in fact, it became subservient to the political interests of its leaders.

Article 32 of the Law on Religious Affairs of 1948 stated that “the priests with anti-communist attitudes could be temporarily or permanently deprived of their wages.” Or, as some scholars have noted, this article was written in order to punish “the Orthodox priests who openly expressed their anti-communist positions.”<sup>32</sup>

Under the same Law, in order to freely organize themselves and operate, the religious denominations had to be officially recognized by the state, which, by law, could always revoke the recognition without substantiating the respective act (Art. 13).

<sup>27</sup> C. MITITELU: *The Cooperation Protocol on Social Inclusion, Concluded between the Government of Romania and the Romanian Patriarchate. Juridical and Canonical Considerations*. “Teologia” (Theology), XVIII, 2 (59), 2014, pp. 58—70.

<sup>28</sup> A. LEMENI, F. FRUNZĂ, Ș. IONIȚĂ: *Viața religioasă în România* (Religious life in Romania). 2nd edition. Bucharest 2005, pp. 10—11.

<sup>29</sup> L. STAN, L. TURCESCU: *Religie și Politică...*, pp. 60—67.

<sup>30</sup> *Ibidem*, p. 61.

<sup>31</sup> G. ENACHE: *Ortodoxie și putere politică în România contemporană* (Orthodoxy and political power in contemporary Romania). Bucharest 2005, p. 50 and pp. 68—90.

<sup>32</sup> L. STAN, L. TURCESCU: *Religie și Politică...*, p. 61.

Also in the year 1948 the Romanian communist state denounced the Concordat with the Roman Catholic Church and abolished the Greek Catholic Church. Only 14 religious denominations were officially recognized, “but no other group was recorded until 1989,”<sup>33</sup> that is, up to the events of December 1989, which led to the overthrowing of Ceaușescu’s communist dictatorship.

The researchers who specialize in the communist Romanian era (1947—1989) claim that “by 1965, the state had made considerable efforts to establish the role of the Church in society and to bring the church hierarchy under its control, by depriving it, by law, of its status as national Church and of the right to carry out charitable and educational activities.”<sup>34</sup> Of course, “by canceling the Church’s autonomy, the state has made known to church-goers that religiosity is not compatible with the communist spirit.”<sup>35</sup>

Finally, the same researchers further reveal that “in 1979, religious persecution intensified [...] and Ceaușescu’s regime continued its anti-religious policy without interruption, until December 1989,”<sup>36</sup> that is, until the removal of the communist dictatorship in Romania. It is no wonder that “Romania was the last country in the region which adopted a new law on religious affairs, precisely in 2006, in order to replace the communist law of 1948.”<sup>37</sup>

The fact that the state support granted to religious organizations was expressly stipulated in the two Romanian constitutions after 1989, and in the Law on Religious Affairs (no. 489/2006), was due not only to the Byzantine tradition regarding the relations between the state and the Church — clearly provided for in the old Romanian nomocanons<sup>38</sup> — but also due to the current, concrete sociopolitical and economic realities, and, of course, to the European and international legislation on the right to free-

<sup>33</sup> Ibidem, p. 62.

<sup>34</sup> Ibidem, p. 63.

<sup>35</sup> Ibidem, p. 62.

<sup>36</sup> Ibidem, p. 66.

<sup>37</sup> Ibidem, p. 67.

<sup>38</sup> L. STAN: *Tradiția pravilnică a Bisericii. Însemnătatea și folosul cunoașterii legilor după care se conduce Biserica* (The Nomocanonical Tradition of the Church. The importance and the benefit of knowing the laws that govern the Church). “Studii Teologice” (Theological Studies), XIII, 5—6 (1960), pp. 17—39; L. STAN: *Importanța canonică și juridică a Pravilei de la Târgoviște* (The canonical and legal importance of the “Pravila” (Nomocanon) from Targoviste). “Studii Teologice” (Theological Studies), V, 9—10 (1952), pp. 47—73; 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; N. V. DURĂ: *350 de ani de la tipărirea Pravilei de la Govora...*, pp. 58—79.

dom of religion,<sup>39</sup> the frame of reference and a basis for all human rights and their legal protection.<sup>40</sup>

The religious denominations recognized by law are legal persons of public utility. They are organized and operate under the law and under the constitution, autonomously, according to their own statutes and canonical codes.<sup>41</sup> The component units of religious organizations are also legal persons, as specified in their own statutes or canon codes, if they meet their requirements.

Taking into account the important role played by religious denominations in social life, apart from subsidizing their activities, the Romanian state supports religious worship establishments by providing tax incentives, under the law. Also, the state promotes the citizens' material support of religious organizations through deductions from the income tax and encourages the sponsorship of religious organizations.

By the financial support granted to religious organizations, the EU member states — including Romania — actually promote their policy towards them, which is manifested in the right to financially control of religious worship establishments. However, the exercise of this right entails serious damage both to the principle of religious freedom — set by the main legally binding instruments of the European Union, such as the European Convention on Human Rights and the Treaty establishing a Constitution for Europe — and to the autonomous status of religious

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<sup>39</sup> See 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; IDEM: *The Treaty of Nice, European Union Charter of Fundamental Rights*. In: *8th Edition of International Conference The European Integration — Realities and Perspectives* Proceedings. Galati 2013, pp. 123—129; IDEM: *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.

<sup>40</sup> IDEM: *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; IDEM: *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; 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 European Convention on Human Rights*. In: *10th Edition of International Conference The European Integration — Realities and Perspectives*. Galati 2015, pp. 243—252.

<sup>41</sup> In Art. 8, par. 1, the Law on religious Cults (no. 489/2006), regarding the religious freedom and the general regime of religious Cults, published in the *Official Gazette* no. 11/08.01.2007, refers only to the Canonical Codes of the Roman-Catholic Church and of the Greek Catholic Church, not to the canonical, ecumenical legislation of the first millennium, which is actually the constitutional "Charter" of the Orthodox Church (see N. V. DURĂ: *Le Régime de la synodalité...*, pp. 287—382).

organizations, provided both by the constitutions of those member states and by the Law on Religious Affairs.

Since there is no strict control by the state as far as it concerns the identification and record of the number of church-goers of a religious denomination, every one of them may require the remuneration of its church staff because this staff is the one that serves in its religious worship establishments, although, sometimes, not each and every “religious group” or “religious association” has the required number of believers to give them the right to remuneration from the state. Therefore, “the criteria regarding the number of believers should be applied in all parts of a religious organization, at all levels, and they should also be controlled by the designated state authorities.”<sup>42</sup>

The Ordinance of the Minister of Finance no. 1969/2007, on the approval of accounting regulations for non-profit legal persons, established not only the basic principles and rules, the form and content of the annual financial statements of the accounting within religious worship establishments, but also the right of state bodies to exert financial and accounting control. Or, if this control does not take into account the principle of external autonomy<sup>43</sup> — which defines the legal status of Church autonomy, in its relationships with the state — we are dealing with restriction or even with serious harm to Church autonomy, and, in general, to any religious organizations officially recognized by the Romanian state.

Due to such harm or violation of this autonomy — provided for not only in the canonical and nomocanonical Byzantine legislation, but also in the constitutional text<sup>44</sup> and by the Law on Religious Affairs<sup>45</sup> in our country — the legal governance of the religious organizations in Romania<sup>46</sup> is not respected and applied in accordance with the principles enunciated by the EU legislation (treaties, conventions, pacts, declarations, etc.) to which Romania is a party.

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<sup>42</sup> I. V. DURĂ: *Reflecții pe marginea textului final al proiectului legii privind libertatea religioasă și regimul cultelor în România* (Reflections on the final text of draft law regarding the freedom of religion and the religious Cults in Romania). “Analele Universității Ovidius. Seria Drept și Științe Administrative” (Ovidius University Annals. Series: Law and Administrative Sciences), 1 (2005), p. 83.

<sup>43</sup> See N. V. DURĂ: *Principiile canonice, fundamentale...*, pp. 129—140.

<sup>44</sup> See Art. 29 from the Constitution of Romania.

<sup>45</sup> See Law no. 489/2006.

<sup>46</sup> See N. V. DURĂ: *Despre libertatea religioasă și regimul general al Cultelor religioase din România* (About religious freedom and the general regime of religious denominations in Romania). “Analele Universității Ovidius Constanța / Seria Teologie” (Ovidius University Annals / Theology Series), VII, 1 (2009), pp. 20—45.

Therefore, we believe that the Romanian legislator should be acquainted both with the canonical and the nomocanoical legislation<sup>47</sup> of the Church and with its specificity, so as not to violate or harm its autonomy in the relationships with the state; this autonomy was stated by its founder Jesus Christ, and provided for, in fact, in its own legislation, until Prince Cuza (1859—1866) was part of the same *Corpus Juris* of the nation, which still exists in countries such as the UK.<sup>48</sup>

Regarding the relationship between the state and the religious organizations, provided by Law no. 489/2006, some jurists, academics and practitioners state that “the very title of the law reveals the state’s disguised intention to decide on the rules concerning the (individual and collective) faith. In fact — judge Anton Paraipan of the Bucharest Tribunal wrote — the state should recognize, proclaim, guarantee and protect the freedom of religion and not make assertions about it. Therefore, the state is fundamentally wrong even when it recognizes the religious organizations. Indeed, the religious organizations, as group organizations, should not be recognized, but only inventoried because their recognition entails the tacit enslaving of the one which is recognized to the one which recognizes it. The recognition is made by the one that is superior to the one which is recognized. However, the state has no right to approve or disapprove. The state’s prerogative is only to inventorize an independent body, like all the other “organizations” (parties, NGOs, foundations). The one which authorizes is superior to the one which required the authorization and the religious organization should not be inferior to the state. The religious activity — a former Romanian magistrate remarked — is completely different than the state’s activity. They are on totally different plains.”<sup>49</sup>

<sup>47</sup> In the Eastern Church, the most representative Nomocanon remains “The Nomocanon in XIV Titles”, assigned to Patriarch Fotie (9th century). Regarding its content, see N. MILAȘ: *Canoanele Bisericii Ortodoxe însoțite de comentarii* (The canons of the Orthodox Church with comments). Trans U. KOVINCICI, N. POPOVICI. Arad 1930, I, pt. I, pp. 158—176. Regarding the canonical Collections of the first millennium, see N. V. DURĂ: *Colecții canonice, apusene...*, pp. 19—33; IDEM: *The Byzantine Nomocanons, fundamental sources of old Romanian Law*. In: “*Exploration, Education and Progress in the third Millennium*”, I, 3, Galați, 2011, pp. 25—48.

<sup>48</sup> N. V. DURĂ: *Statele Uniunii Europene și cultele religioase...*, pp. 49—72; N. V. DURĂ: *Dreptul canonic, disciplină de studiu în Facultățile de Drept din prestigioase Universități europene* (Canon law, subject of study in the Faculties of Law of prestigious European Universities). “*Analele Universității Ovidius. Seria: Drept și Științe Administrative*” (Ovidius University Annals. Series: Law and Administrative Sciences), 1 (2007), pp. 328—332.

<sup>49</sup> A. PARAIPAN: *Câteva considerații asupra Legii nr. 489/ 2006 (privind libertatea religioasă și regimul general al cultelor)* (Several considerations on Law no. 489/2006 (on freedom of religion and the general regime of religious denominations)). “*Analele Universității Ovidius Constanța / Seria Teologie*” (Ovidius University Annals / Theology Series), 1 (2007), pp. 247—248.

However, not only the jurists, but also the canonists, the theologians and the Church historians have noted some shortcomings of Law no. 489/2006, even since its project phase. In his reflections on the final draft of the Law — which is, *grosso modo*, in the current text — one of these theologians of historical training remarked that the text of the constitution currently in force “does not mention,” “the religious freedom” but “the freedom of religious faith” (Art. 29). By contrast, the very constitution provides for other freedoms, namely the freedom of conscience (Art. 29), the freedom of expression (Art. 30), the individual freedom (Art. 23), the freedom of assembly (Art. 36), and the freedom of the press (Art. 30). But, even the 1948 Constitution provided for the freedom of religion (sic!), although it is well-known what this so-called religious freedom provided for in that constitution, being an emanation of the communist regime, meant.

In Art. 28, the constitution of 1965, promulgated in the *Official Gazette* no. 65 of 29 October 1986, stated that “the Citizens of the Socialist Republic of Romania are guaranteed the freedom of speech, the freedom of the press, the freedom of assembly, of meetings and of demonstrations.” Therefore, Nicolae Ceaușescu was proud of his constitution and found no need to bring any change even in November 1989, a few days before Congress XIV, as remembered by the then head of the dictator’s chancery, Silviu Curticeanu, in his book published in 2000. On the above mentioned issues, he writes: “[...] imagine my surprise when, before Congress XIV, Ceaușescu asked me for a copy of the Constitution, telling me that he wants to read it quietly, to see if changes are needed; I gave it to him and it remained on his desk for a long time without anything happening; finally, he returned it to me, mentioning that although he read and reread it many times, he found nothing that would justify modifying it, neither regarding the citizens’ rights and freedoms nor the democratic nature of the state. [...] No comment is necessary here!”<sup>50</sup>

Law no. 489/2006 provides that “in Romania there is no state religion; the state is neutral towards any religious or non-religious ideology. Religious denominations are equal before the law and public authorities. The state through its authorities shall not promote or favour the granting of privileges or the discrimination against any religious organization” (Art. 9 par. 1—2).

As it can be seen, the Romanian legislator has transferred the reality from the banks of the Seine onto the banks of the Dambovita, enacting thus the neutrality of the Romanian state in its relations with religious organizations.

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<sup>50</sup> Apud I. V. DURĂ: *Reflecții pe marginea...*, p. 87.

But, the term “neutral” attributed to the state in Art. 9 par. 1, is entirely unsuitable. In fact, what does really mean this *syntagme*, that is, the state is neutral towards “any religious faith”?! Certainly, in Romania, where almost all citizens manifest a religious belief, the state cannot be absolutely “neutral” towards the Christian religion of the overwhelming majority of its citizens. Moreover, in everyday practice, it can be seen that not only in Romania, but also in other European countries — even in secular France, upon the death of Pope John Paul II — the state cannot remain totally “neutral” towards its majority religious denominations.

Moreover, how could the state be “neutral” when Art. 32 par. 3 of the revised constitution states that “the state must preserve spiritual identity, support national culture, foster the arts, protect and preserve the cultural heritage, develop contemporary creativity, promote Romanian cultural and artistic values in the world.” But, how to preserve these things if not by collaborating with religious organizations? In fact, the Romanian state cannot remain neutral neither when anti-Christian ideas and atheistic ideologies are promoted in the media. Of course not, because the religious belief of the vast majority of its citizens and their fundamental rights and freedoms, including freedom of religion, are violated.<sup>51</sup>

We should not ignore or hide the fact that the very “concept of human rights is incompatible with the existence of the absolutist, despotic, totalitarian, authoritarian etc. state, where individual or collective *status libertatis* (‘the freedom status’) is cancelled or restricted. Therefore, in such states, constitutional laws do not provide an effective guarantee of the freedom of religion even if, theoretically, they also proclaimed its effective exercise *expressis verbis*. Or, as we know, such infamous reality was also reflected by the situation in our country, because the articles of the Romanian constitution from 1948—1989 stated that freedom, but, in practice, it was restricted and, in some cases, even abolished.”<sup>52</sup>

The Statute for the organization and functioning of the Romanian Orthodox Church is actually the fundamental law of this Church. This *lex fundamentalis* gives evident expression to the ways in which the basic canonical principles, set by the canonical ecumenical legislation from the first millennium,<sup>53</sup> are stated. However, one of these basic canonical prin-

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<sup>51</sup> N. V. DURĂ: *Drepturile și libertățile fundamentale ale omului și protecția lor juridică. Dreptul la religie și libertatea religioasă* (Fundamental human rights and freedoms and their legal protection. The Right to religion and religious freedom). “Ortodoxia” (Orthodoxy), LVI, 3—4 (2005), pp. 7—55.

<sup>52</sup> IDEM: *Drepturile și libertățile fundamentale ale omului...*, p. 14.

<sup>53</sup> With regard to its “collecting” stages, and its contents, see N. V. DURĂ: *Le Régime de la synodalité...*, pp. 287—382.

ciples is the external autonomy, that is, the autonomy towards the state,<sup>54</sup> under which the Romanian Orthodox Church organizes and manages its own managerial, economic, and financial activities.<sup>55</sup>

The current statute of the organization and functioning of the Romanian Orthodox Church was approved by the Holy Synod by Decision no. 4768/2007 of 28 November 2007, and recognized — under Law no. 489/2006 — by Government Decision no. 53 of 16 January 2008, published in the *Official Gazette* of Romania, Part I, no. 50/22 January 2008.

In the preface to the statute of the organization and functioning of the Romanian Orthodox Church, the Primate of our Church noted that, “in recent years” there was carried out “a systematic and coordinated action in order to correlate the church legislation with the state legislation, according the Holy Canons of Orthodox Tradition.”<sup>56</sup> Nevertheless, His Beatitude, Patriarch Daniel, had the main merit in this action conducted in order to correlate the two types of legislation, Church and state. In fact, it was the first time (since the interbellum) when such action took place within the Romanian society.

The current statute for the organization and functioning of the Romanian Orthodox Church<sup>57</sup> states that “the Patriarchate, the Metropolitan Church, the Archbishopric, the Bishopric, the vicariate, the deanery, the monastery and the parish are legal persons of private law and public utility” (Art. 41 par. 1). The same statute says that “these legal persons are entitled to two unique tax registration codes, both for non-profit and for economic activities” (Art. 41 par. 1—2).

According to its statute,<sup>58</sup> the Romanian Orthodox Church “is administered independently through their representative bodies, composed of clergy and laity, according to the Holy Canons, the provisions of this

<sup>54</sup> IDEM: *Principiile canonice, fundamentale...*, pp. 129—140.

<sup>55</sup> IDEM: *Organismele executive centrale și locale ale Bisericii Ortodoxe Române și activitatea lor managerială* (Central and local executive bodies of the Romanian Orthodox Church and their managerial activity). In: *Contribuții la conturarea unui model românesc de management* (Contributions to the outline of a Romanian management model), coord. I. PETRESCU. Bucharest, II, 2014, pp. 413—447; C. MITITELU: *Regulations Regarding the Organisation and the Governance of the Accounting by the Legal Persons without Patrimonial Purposes*. “Ovidius University Annals, Economic Sciences Series”, XI, 2 (2011), pp. 815—820.

<sup>56</sup> See Patriarhia Română (Romanian Patriarchate), *Statutul pentru organizarea și funcționarea Bisericii Ortodoxe Române* (Statutes for the organization and functioning of the Romanian Orthodox Church). Text approved by the Holy Synod, by Resolution no. 1768/2007 of 28 November 2007 and recognized by Government Decision no. 53 of 16 January 2008, published in the *Official Gazette*, Pt. I, no. 50/22 January 2008, Art. 3 par. 2, Bucharest 2008, p. 6.

<sup>57</sup> Ibidem, pp. 36—37.

<sup>58</sup> Ibidem.



statute and other provisions of the competent ecclesiastical authority”<sup>59</sup> (Art. 3, 2).

The same statute says *expressis verbis* that “the Romanian Orthodox Church is autonomous from the state and from other institutions” and, as such, it “establishes relationships of dialogue and cooperation with the state and with its various institutions, in order to accomplish its pastoral, spiritual-cultural, educational, social and philanthropic missions.”<sup>60</sup>

Instead of conclusions we could say that the present or future Romanian state should take into account — in its relationships with the Church — its status of autonomy, asserted *ab antiquo* (since antiquity), that is, since the epoch of Emperor Constantine the Great (305—337), who — by the Edict of Milan, in 313 — actually put the bases of the autonomy of religious denominations in their relationships with the state.

In Romania, both the Law 489/2006 and the constitution in force expressly reaffirmed the autonomous status of religious denominations. This status was made explicitly evident by the canonical ecumenical legislation, in the first millennium, and by the nomocanonical (Byzantine) legislation. Certainly, it remains to be seen if the Romanian state will apply the canonical principle of external autonomy, which was expressly stated by the canonical ecumenical legislation of the first millennium (cf. the Apostolic canon 30; 4 ecumenical Council I; 4 the Seventh Ecumenical Council), which categorically prohibited any state interference in the life of the religious denominations, including in the elections “of presbyters or deacons” (Canon 3, the Seventh Ecumenical Council).

<sup>59</sup> Ibidem, p. 13.

<sup>60</sup> Ibidem, Art. 4.

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CĂTĂLINA MITITELU

## The Autonomy of Religious Denominations in Romania

### Summary

Over the centuries, the manifestations of Church autonomy, in its relationships with the state, and, in fact, the materialization of the support granted to the Church by the state differed from one ruler or prince to another, and from one era to another. In Romania, the Church autonomy and the state's support followed the Byzantine tradition, stipulated by the ancient juridical principle of the *συνωνία*, expressed in terms of reciprocal consent for the collaboration and the benefice of the two basic institutions of the human society, the state, and the Church. Both the constitution currently in force and Law 489/2006 demonstrate the autonomous status of the religious denominations in Romania, although some jurists continue to perceive it in terms of the language used by the Law of 1905 in France, whereby the two areas, that is, the spiritual-religious and the secular ones, were separated; hence the improper assertion that the state is "neutral" to any religious faith (Art. 9 of Law 489/2006).

CĂTĂLINA MITITELU

## L'autonomie de religions en Roumanie

### Résumé

Durant des siècles, les manifestations de l'autonomie de l'Église dans ses relations avec l'État et, par là, la matérialisation du soutien attribué à l'Église par l'État variaient en fonction du souverain et de l'époque.

En Roumanie, l'autonomie de l'Église et le soutien de la part de l'État résultaient de la tradition byzantine, c'est-à-dire de la coexistence symbiotique et de la coopération des deux institutions de la société humaine : État et Église.

Aussi bien la Constitution étant en vigueur que la loi 489/2006 déterminent le statut autonome des organisations religieuses en Roumanie bien que certains juristes continuent à le considérer dans les catégories de la langue employée dans la loi de 1905 en France, où deux domaines (religieux et laïc) ont été séparés ; d'où la fausse constatation que l'État est « neutre » à l'égard d'une religion quelconque (art. 9 de la loi 489/2006).

**Mots clés :** autonomie de l'Église, communautés religieuses, liberté religieuse

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CĂTĂLINA MITITELU

## L'autonomia delle fedi religiose in Romania

### Sommario

Per secoli le manifestazioni dell'autonomia della Chiesa nei suoi rapporti con lo stato, e nel contempo la materializzazione del sostegno concesso alla Chiesa da parte dello stato, si differenziarono a seconda del governante o dell'epoca.

In Romania l'autonomia della Chiesa e il sostegno dello stato risultavano dalla tradizione bizantina ossia dalla coesistenza simbiotica e dalla collaborazione di due istituzioni fondamentali della società umana: lo stato e la Chiesa.

Sia la Costituzione vigente, sia la legge 489/2006 definiscono lo status autonomo delle organizzazioni religiose in Romania, anche se alcuni giuristi continuano a percepirlo nelle categorie del linguaggio usato nella legge del 1905 in Francia, in cui le due aree, ossia quella spirituale-religiosa e quella laica, furono divise; da ciò risulta l'affermazione errata secondo cui lo stato è "neutrale" rispetto a qualsiasi fede religiosa (art. 9 della Legge 489/2006).

**Parole chiave:** autonomia della Chiesa, società religiose, libertà religiosa