



ROMANIA

Preliminary Report on the Legal Status of Religious Minorities in the Shadow of the European Court of Human Rights

Mihai Popa

v. 21 October 2016



Funded by European Research Council
7th Framework Programme

The Legal Status of Religious Minorities in Romania **Report on issues studied until present**

Introduction¹

In Romania, the fall of Communist rule in 1989 resulted in the reconfiguration of the official relations between the state and religious communities. For all religious communities, socialism's fall brought with it the freedom to freely exercise their faith. For some in particular, it also meant the lifting of the heavy burden of persecution: the Greek-Catholic Church obtained official recognition in 1989, after it had been banned and many of its parishes and properties were transferred to the dominant Romanian Orthodox Church in 1948; the Religious Organization of the Jehovah's Witnesses obtained in 2003 full official recognition as a religious denomination after its members had been persecuted under Communist rule. For those religious communities officially recognized also during socialism (funded by the state, but strongly controlled and expected to advance the regime's goals), the changes in 1989 presented the prospect of obtaining back nationalized property. For all recognized religious communities, the end of official state atheism brought with it the possibility of freely organizing and defining their social goals, among others, for instance, by offering religious education through the school system.

Overall, the end of Communist rule presented an array of promises for the burgeoning of a pluralistic religious life in Romania. When some such promises proved elusive, religious communities sought to redress the situation through negotiation with state authorities, pressures via the international community (especially in the nineties and early 2000s), or through litigation in courts of law. Up to this date, the most prominent issues related to the legal status of religious minorities analyzed within the Romanian case study of the GRASSROOTSMOBILISE research programme have been those of (1) property restitution (primarily, but not exclusively, places of worship), (2) religious education, (3) access to cemeteries, and (4) the official recognition of religious communities. The European Court of Human Rights (hereafter ECtHR, or 'the Court') has until now been a venue for pursuing claims related to some of these issues, as detailed in the sub-sections below. The ECtHR has been preferred by some religious communities but not by others, attesting to the fact that the Court's role in influencing the dynamics of religious pluralism has to be understood in relation to religious communities' strategies for pursuing their aims.

Property restitution

A report published in 2014 by the State Secretariat for Religious Affairs², the public agency responsible with religious affairs within the Ministry of Culture, shows that many of the requests

¹ I wish to thank my colleague Liviu Andreescu for valuable input and comments on an earlier draft of this report.

² Available in English at [http://www.culte.gov.ro/library/files/noutati/state_and_religions_in_romania_\(2015\).pdf](http://www.culte.gov.ro/library/files/noutati/state_and_religions_in_romania_(2015).pdf), Accessed April 07, 2016.

made by religious communities to obtain back properties confiscated by the state during socialism are still left unsolved. Out of a total of 9,214 requests filed by different religious organizations - among which the Romanian Orthodox Church, the Roman-Catholic Church, the Lutheran Church, the Jewish Faith (*Cultul Mozaic*), the Muslim Faith (*Cultul Musulman*), the Unitarian Church, the Reformed (Calvinist) Church, the Seventh-day Adventist Church, Baptist and Pentecostal Churches - 6,723 requests were filed solely by the Greek-Catholic Church. In the case of the Greek-Catholic Church, requests concerned a large number of communist-confiscated places of worship, whereas in the cases of the rest of the communities, other types of nationalized property (other buildings, land) were frequently involved. The large number of restitution requests by the Greek-Catholic Church attests both to the size of the property fund confiscated by the Romanian state from this particular church (before World War II, it was considered the second national church in Romania), and the energy invested by its representatives in obtaining back lost property (several requests could be filed for the same property object).

Representatives of the Greek-Catholic denomination pursued a variety of strategies for obtaining back churches, cemetery land, parish houses and other buildings³, including negotiation, international lobbying and court litigation. Litigation for obtaining back property confiscated during socialism by the state and given to the majority Romanian Orthodox Church was pursued until now by parishes of the Greek Catholic Church all the way to the ECtHR in 10 cases⁴. In several of these cases the Romanian state was convicted for legal provisions that precluded the Greek-Catholics from presenting their restitution claims in front of domestic courts. This was so because the law regulating the transfer of property back from the Romanian Orthodox Church to the Greek-Catholic Church stipulated that in charge of the process were mixed commissions of dialogue formed by members of the two churches (Decree-Law 126/1990).

In the years 2004 and 2005 legal provisions were introduced so that property claims not solved in the inter-denominational commissions (in many of which the representatives of

³ Through Decree No. 358 from 1948, the buildings and lands of the officially dissolved Greek-Catholic Church were transformed into state property. The properties owned by local parishes (churches, parish houses, cemeteries) were transferred to the Romanian Orthodox Church. As Verdery (1999: Chapter 2) commented, the forced merger of the Greek-Catholic Church with the Romanian Orthodox Church was in part influenced by the desire of the Moscow authorities to unite all Orthodox churches in the region and to subject them to the Russian Patriarch, himself subordinated to Stalin.

⁴ The figure is based on the results returned by the HUDOC interface of the European Court of Human Rights following a search on Article 9 cases from Romania conducted in February 2015. Since more recent ECtHR complaints filed by Greek-Catholic parishes may have not yet been communicated by the Strasbourg Court (and since some requests may have been filed without claiming Article 9 infringements), the definitive number of cases is likely higher. The Greek-Catholic Church is not the only denomination that has until now pursued property restitution claims all the way to the ECtHR. As a recent report concerning the situation of restitution procedures for the Reformed (Calvinist), Roman Catholic, Unitarian and Evangelical Lutheran Churches in Transylvania indicates that these denominations also pursued their property restitution claims (not primarily regarding worship places but other types of buildings) to the ECtHR (Reformed Church – 12 applications, Roman Catholic Church – 6 applications, Evangelical Lutheran Church – 1 application, Unitarian Church – 1 application) with various degrees of success (see Ballai 2016: 46-77). I wish to thank Mr. Willy Fautré of Human Rights Without Frontiers for indicating this report to me.

the Orthodox Church refused to take part, thus delaying the process) could be settled in front of domestic courts of law. After these legislative changes were introduced, gradually more cases were lost by the Greek-Catholics at the ECtHR. On May 19th, 2015, the ECtHR issued a Chamber judgment in the case of *Lupeni Greek-Catholic Parish and others v. Romania* in which it dismissed a line of argumentation related to the unjust character of the Romanian restitution law towards the Greek-Catholic minority. The provision contained in the law that parish churches shall be restituted to the Greek-Catholic Church or remain in the property of the Romanian Orthodox Church based on the will of the majority of parishioners in local communities was considered by the Greek-Catholic representatives as a discriminating criterion, which strongly disfavored the numerically inferior Greek-Catholics. In the above mentioned judgment, the complaint related to the discriminatory character of the law was dismissed by the ECtHR (the case was referred to the Grand Chamber, which held hearings on March 2, 2016).

Religious education

The regime changes that took place in 1989 made it possible for religious communities to pursue their educational goals through the state schooling system, something unimaginable under the official atheist regime of the past. The Romanian Orthodox Church was a pioneer in the field of religious education, and throughout the last two decades it has promoted its agenda of entrenching religious education on a confessional basis in the public school curriculum. Minority religious organizations have also taken advantage of the possibility given to them to develop religious education textbooks and to teach 'Religion' (as the subject matter is officially called) to the children of their communities on a confessional basis. The religious organizations which have developed textbooks up to year 2015 (latest available data from the Ministry of Education) are the Evangelical Alliance (representing the Baptist, Pentecostal and Evangelical Christian Churches), the Seventh-day Adventist Church, the Evangelical Church of the Augsburg Confession, the Greek-Catholic Church, the Romanian Orthodox Church, the Old-Rite Orthodox Church, the Reformed (Calvinist) and Lutheran Churches, the Roman-Catholic Church, and the Unitarian Church. The religious education curriculum and textbooks are developed by representatives appointed by the churches in cooperation with the staff of the Institute for Educational Sciences, of the Romanian Ministry of Education.

Differently from the majority Romanian Orthodox Church though, some minority religious organizations gradually withdrew their focus from the public educational system and turned their focus either to the community as the proper locus of religious education or to confessional schooling. This gradual turn away of officially recognized religious denominations from the public educational field has to be understood in relation to the wider administrative context which, as pointed out by some interviewees until now, has fostered local tensions between educational and administrative personnel. Thus, until present, key administrative positions (e.g., county-level inspectors for the subject matter 'Religion' evaluating the educational act) have usually been held by representatives of the Romanian Orthodox Church; pupils belonging to minority faiths had to be educated in specially

organized classes gathering children from different schools (in order to meet the official criteria regarding the constitution of study groups); and the marks received by minority-faith children had to be transcribed in school records at the end of the study period based on protocols signed by the minority denominations with the Ministry of Education.

One minority religious community that maintained a strong interest in the public school system has been the Greek-Catholic denomination. Revealingly, the only case related to religious education that reached the ECtHR and was accepted by the Strasbourg Court on its agenda until the present time arose from within this religious community. Unlike prominent ECtHR religious teaching cases such as *Folgerø vs. Norway* or *Zengin vs. Turkey*, the case from Romania currently pending before the Court concerns not exemption from religious education classes, but the obligation of the state to offer them. The applicant complained to the ECtHR that his children did not benefit from Greek-Catholic religious education because in their school there were not enough children (i.e., 7) to constitute a study group (a criterion considered by the applicant discriminatory for Greek-Catholics more generally). Additionally, the applicant complained to the Court that his children had the choice of either sitting in the religious education classes of the Orthodox majority or leaving the classroom, thus no longer being in the care of the school. The fact that this case arose from among members of the Greek-Catholic denomination can be taken as an indication of the development of a preference among members of this religious community for litigation all the way to the ECtHR.

The issue of exemption from religious education classes did not stir litigation among representatives of minority religious communities. Even if dissatisfaction was expressed during interviews by representatives of minority religious communities about the fact that children did not have alternatives to the 'Religion' class organized by the Orthodox majority and had to sit in class also during these hours, the issue was not tackled through litigation. It was from the human rights/secularist camp of civil society that a litigant arose to challenge the 'opt-out' system of enrollment in religious education in place since the 1990s. Litigating in his own name, as the father of a high-school student who was obliged to make a request so that his daughter would not attend religious education classes, a philosophy teacher managed to bring his case to the Constitutional Court. In November 2014, the Constitutional Court decided that the provisions for the opt-out system of religious education from the Law on National Education were against the Constitution. Gained by an atheist, the change of the system of registration in religious education classes (an 'opt-in' system at present) pleased also representatives of religious minorities, as was graspable in some of the interviews conducted thus far.

Access to cemeteries

Less present in public debates than the issue of religious education, the issue of access to cemeteries for members of religious minorities arose several times within the interviews carried out thus far, and has been a problem of concern for members of religious minorities up to this day. The great majority of the cemeteries in Romania are administered by religious

denominations (predominantly by the Romanian Orthodox Church) and only a small minority are administered by local state authorities. Conflicts regarding access to cemeteries administered by religious denominations arose in different localities even after a special law on access to cemeteries was adopted in 2014, but few have reached courts of justice. At present, such conflicts still episodically arise, but they were presented by some of the representatives of religious minority denominations we interviewed as influenced by individual local-level actors and not by flaws in the law⁵.

One of the two cases that reached the ECtHR until now and dealt with the issue of access to a cemetery was promoted by members of a Greek-Catholic parish. Another case was promoted by a parish of the Romanian Evangelical Church. The latter case was struck out of the list after the representative of the parish in the Strasbourg Court proceedings passed away in 2014, and nobody answered to the inquiries of the Court after that moment (suggesting a lack of organizational backing in this case). The decision in the first case was issued by the ECtHR in April 2015, the complaint being judged inadmissible. An observation of the emergence and denouement of these two ECtHR cases brings to the fore two important dimensions to take into account when analyzing legal mobilization that reaches the ECtHR: the organizational dimension of mobilization, and the individual dimension. As visible for instance in the case of the Greek-Catholic Church, it is important to take into consideration the fact that for some religious organizations litigation is a strategy for pursuing rights, and the ECtHR a likely venue for cases not solved in the domestic courts. The path to the ECtHR has been taken until present also by the Religious Organization Jehovah's Witnesses from Romania, litigation being a strategy of pursuing rights for this religious organization beyond the Romanian context (see, e.g., Côté and Richardson 2001). In contrast, a religious organization such as the Seventh-day Adventist Church from Romania appears to place more emphasis on local-level negotiation and conflict resolution than on court litigation⁶. Organizational strategies are important to take into account in order to understand mobilization that leads to the ECtHR in part because organizations are holders of

⁵ Law 489 from 2006, which regulates religious freedom in Romania, prescribed the obligation of local authorities to ensure that public cemeteries are established where none existed, and indicated that the deceased of one religious denomination "can be" buried in the cemetery administered by another religious denomination. Adopted in 2014, with the consultation of representatives of the recognized religious denominations (whose representatives insisted on monitoring the project law and on participating in the debates before its passing), Law 102/2014 concerning the organization of cemeteries stipulates that the deceased of one religious denomination "will be" buried in the cemetery administered by another religious denomination where no available public cemetery exists.

⁶ This observation regarding the Seventh-day Adventist Church must be placed in a wider historical perspective, as well as in the context of the significance of the issue at hand for the relevant religious group. It should not be taken to mean that some religious organizations never go to court. For instance, the Seventh-day Adventist Church litigated all the way up to the High Court of Cassation and Justice against the Ministry of Education in 1999, when national-level exams were introduced and held on Saturdays (one interviewee from within this church pointed out that the ECtHR would have probably been the venue of choice, had the conflict not been solved domestically). While school contests (and other public events, such as exams for posts in the public administration or referenda) are still held on Saturdays, the Seventh-day Adventist Church is attempting to solve the situations presently through negotiation with the state authorities (Ministry of Education, other relevant bodies).

resources useful for such actions: money, jurists, lawyers, organizational networks. But organizational strategies do not account for all litigation that reaches the ECtHR. Individuals, their resources (money, knowledge, networks) and strategies are also important, as pointed out also below, in the last section of this report.

The official recognition of religious communities

Law 489 from 2006 provides currently the legal framework within which members of 'religious denominations' (*culțe*), 'religious associations' (*asociații religioase*) and 'religious groups' (*grupuri religioase*) can enjoy the right to religious freedom in Romania. At the time of its adoption, the law was criticized by representatives of the human rights segment of Romanian civil society, international observers, and representatives of religious minorities alike (for more detailed accounts see Andreescu 2008, Iordache 2013). The conditions set for obtaining recognition as a 'religious denomination' (*cult*) and as 'religious association' (*asociație religioasă*) were among the main reasons for criticizing the law: any new officially recognized religious denomination has to demonstrate continued functioning as a recognized religious association for at least 12 years, and a membership at least equal to 0.1 percent of the population of Romania; religious associations have to submit a membership list of at least 300 members.

In line with the strongly limiting criteria set in the law for the recognition of new religious communities, no new religious denomination has been recognized in Romania since the passing of Law 489/2006. At present there are 18 religious organizations officially representing the interests of adherents to denominations officially recognized in Romania: the Romanian Orthodox Church, the Serbian Orthodox Bishopric of Timisoara, the Roman Catholic Church, the Romanian Church United with Rome/ Greek-Catholic, the Archbishopric of the Armenian Apostolic Church, the Russian Orthodox Old-Rite Church from Romania, the Reformed Church from Romania, the Evangelical Church of the Augsburg Confession from Romania, the Evangelical Lutheran Church from Romania, the Unitarian Church of Transylvania, the Union of Baptist Christian Churches from Romania, the Union of Christian Churches of the Gospel from Romania, the Romanian Evangelical Church, the Apostolic Church of God from Romania (the Pentecostal Christian Faith), the Seventh-day Adventist Church, the Federation of Jewish Communities from Romania, the (representatives of the) Muslim Faith, the Religious Organization „Jehovah's Witnesses”. Also attesting to the difficulty of obtaining official status, the number of religious associations registered at present in the country is of no more than 23⁷.

If primarily criticized were the restrictive provisions of Law 489/2006 concerning the registration of new religious denominations and of religious associations, the general framework of the law itself was also received with criticism. The president of the Union of Baptist Churches, for instance, pointed out at the time of the law's passing that “[churches

⁷ According to the data provided by the State Secretariat for Religious affairs, <http://www.culte.gov.ro/asociaatii-religioase>, accessed April 7, 2016.

are] treated like [institutions] of the state, whose organizing statute and principles of faith have to be approved by the state" (my translation)⁸. Representatives of the Baptist, Pentecostal and Christian Evangelical denominations protested in the street in the city of Timișoara against the passing of the law in January 2007.

But Law 489/2006 came to be gradually accepted by the representatives of recognized religious minorities. The law simply formalized the landscape of recognized denominations that had developed before its adoption (in the nearly two decades after the fall of Communist rule) and its provisions concerning the role of the state in approving denominational statutes proved less problematic in practice, since the determination was made by the courts and other agencies based on procedural rather than substantive criteria. In the course of an interview in the summer of 2015, one representative of a minority religious community designated it as the "best law we had in centuries". Such an evaluation was not ironic, and is likely related to the fact that the recognized *culte* benefited from the law's adoption. To counterweight the obligations that the law stipulated (most importantly, that prior to recognition religious denominations should submit their statutes for governmental control and approval) were the provisions that formalized a framework for cooperation between state institutions and religious denominations. The state was to finance the activities of recognized denominations (just like in the socialist past) and also to guarantee the teaching of religion in public schools (which had already developed before 2006), and to grant the right to participate in legislative proceedings to representatives of religious denominations whenever legislative changes impacting on religious life were discussed (very much unlike in the socialist past). Also, additional symbolic recognition was granted through the law to minority denominations. Interviews conducted in 2015 with different representatives of recognized minority denominations indicated that there is a persistent mismatch between what the law stipulates and what the representatives of the state do. Thus, the consultation of religious denominations on the occasion of legislative changes having an impact on religious life is not yet a taken-for-granted standard procedure, and minority religious actors have to compensate the lack of official notification by appealing to informal channels of communication (word-of-mouth notices about parliamentary proceedings coming from sympathetic politicians and bureaucrats). But when minority religious actors find out about relevant legislative changes, they can draw on the symbolic resources granted by the Law on religious freedom to claim their right to take part in the legislative process. This marks a significant difference from the advantages granted by the Law on religious freedom to religious associations. Towards the latter, state authorities assumed no obligation to involve them in the legislative process. Additionally, religious associations were granted no rights to develop educational programs within public schools and were granted no financing, just tax exemptions.

As already noted at the beginning of this section, Law 489/2006 does not distinguish only between religious denominations and religious associations. It also stipulates the recognition of the right to religious freedom for members of 'religious groups' (*grupuri religioase*). The latter are not granted any privileges in relation to state authorities, but are

⁸ From an interview available in Romanian at http://publicatia.voxdeibaptist.org/stiri14_mar07.htm, Accessed May 04, 2016.

putatively free to practice religion without being obliged to register as juridical persons. It is among representatives of this category of religious communities that we recently identified the existence of considerable interest in the European Court of Human Rights and its jurisprudence. This interest is very likely related to the lack of protection enjoyed in practice by members of communities falling in this last legal category, arguably despite the spirit of Law 489.

According to the data gathered thus far, at present it is especially the leaders of 'religious groups' who separated from recognized *culte* that encounter most difficulties in manifesting their religious beliefs. Accused by their former employers of illegally practicing the profession of a priest (because these persons continued performing rituals in agreement with the canons of the churches by which they had been defrocked), these religious leaders have in some occasions been also given prison sentences by domestic courts of law.

Two cases of defrocked priests (one by the Reformed (Calvinist) Church, the other by the Lutheran Church) who were convicted for illegally practicing the profession of priest by domestic courts already reached the ECtHR in year 2013. At the end of 2015, one former priest of the Romanian Orthodox Church was sentenced to one year in prison, and is currently serving his sentence. One of his supporters announced publicly that the ECtHR will be addressed. In a case I documented more closely, another former priest of the Romanian Orthodox Church managed to avoid a criminal sentence after submitting to the case prosecutor the ECtHR judgment in the case of the *Metropolitan Church of Bessarabia and Others v. Romania*. He also used quotations from this ECtHR judgment to instill in his parishioners the confidence that justice is on their side.

A perusal of some of these domestic court decisions indicates that these persons catering to the religious needs of the members of unregistered religious groups (former parishes) are at a clear disadvantage: judges repeatedly brought against them the argument of the official character of the churches that defrocked them and the unofficial (read 'illegal') character of their current practices. Until now, a brief comparison between the defrocked priest of the Romanian Orthodox Church who was convicted and the one who avoided criminal conviction suggests that the capabilities of these two actors and the differential access to legal advice shaped both their engagement with the jurisprudence of the ECtHR and their success in domestic litigation. Further inquiry (interviews and analysis of court files) should indicate under which conditions the ECtHR became the relevant avenue to pursue in search of religious freedom for more religious actors of this type⁹.

⁹ As our research is unfolding, more religious actors will be included in our sample in order to understand the legal dimensions of religious practice among members of what the current Law on religious freedom denotes as 'religious groups'. It will be interesting to see what kinds of engagements with the law on religious freedom and with the jurisprudence of the ECtHR are illustrated by, for instance, the experiences of representatives of as diverse religious groups as, for instance, the Church of Scientology, Muslims (residents and migrants alike) participating in the activities of newly established NGOs (sometimes closely watched by state authorities due to concerns of Islamist radicalization), and Chinese migrants attending the services of a Buddhist temple in Bucharest.

References:

Andreescu, Liviu. 2008. "Romania's New Law on Religious Freedom and Religious Denominations". *Religion, State and Society* 36 (2): 139-161.

Ballai, Zoltán, ed. 2016. *White Book on Church Property Restitution in Romania: With Special Regard to Reformed, Roman-Catholic, Unitarian and Evangelical Lutheran Churches*. Kolozsvár/Cluj-Napoca: Transylvanian Reformed Church District.

Côté, Pauline and James T. Richardson. 2001. "Disciplined Litigation, Vigilant Litigation, and Deformation: Dramatic Organization Change in Jehovah's Witnesses". *Journal for the Scientific Study of Religion* 40 (1): 11-25.

Iordache, Romanița Elena. 2013. "Registration of Religious Entities and Religious Autonomy in Romania – Old Limitations and New Challenges". *Religion and Human Rights* 8: 77-91.

Verdery, Katherine. 1999. *The Political Lives of Dead Bodies: Reburial and Postsocialist Change*. New York: Columbia University Press.