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Juridical Status of Religious Education in Romanian and International Legislation

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Abstract

The value of education increases in a world marked by significant changes, in a society of multiple individual and social options, in which a series of influences, of different natures, make themselves felt. Today, more than ever, education is called to answer the challenges of a world of the societies and individuals in confusion, a world in which milestones and frames of reference are lost, and ethical systems are in crisis. Education needs to build new roads for hope, by training educators as flexible as possible, skills and behaviours able to deal with the permanent change and make the pupil adapt to uncertainty and complexity. School has the role to decisively contribute to spiritual reconstruction, to the redefinition of new frames of values. In this context, religious education is a means of promoting human rights, based on the values and attitudes it proposes. The international legislation acknowledges the cults' right to provide religious education to children and young people. All the international documents are a frame of reference for the national policies in the domain of religious training. No uniform solutions are imposed for the religious education from the education systems, on the contrary, is left to the free choice of every nation, according to its specific, to realize this so necessary education. The aim of this paper is to present the most important normative aspects concerning religious education, according to the international legislation, European Community or European Union legislation, and the internal legislation of Romania.

Keywords

Religious education, legislation, Religious freedom, Fundamental rights, Law

I. Introduction

The fundamental rights and obligations of man are guaranteed by international law, legislation, normative acts and constitutions. They are essential for the freedom, dignity and life of people, and for the free development of the human personality. This is the reason why man's rights derive from the inherent dignity and value of the human being, who should be the main beneficiary and active participant to fulfilling them¹.

The internationalization of the issue regarding the protection of the rights of man has brought about the first juridical norms of the international law in the matter of man's freedoms. The Universal Declaration of Human Rights adopted by the United Nations in 1948, followed by the European Convention on Human Rights and Fundamental Freedoms, concluded in Rome in 1950, the decisions made by the European Court of the Rights of Man in Strasbourg, established in 1959, sought not only to ensure the integrity of the fundamental rights and freedoms of man², but also to protect them, in accordance with the principles and norms set by the main international instruments. The Convention postulates that the fundamental rights and freedoms represent the very foundation of justice and peace, while maintaining them is based on a genuine political regime.

The European Union has undertaken the normative paradigm and created institutions intended to ensure protection of rights and identity of the cultural and religious minorities. The motto of the European Union – united in diversity – is edifying for the philosophy approached by this superstate body, by the emergence of a common identity, consciously and timely accepted and politically motivated by all constituent parties toward taking on the European identity accepted.

The rights of man are ethical and moral ideals which should be converted into human realities. This would make their effectiveness become the most attractive theory in the field of human rights and the biggest challenge of their practice. In respect of morality, ethics, law and rights, the realities are clearer in relation to religion: many rules and law principles are undeniably borrowed from morality, which may lead the idea

¹ Ion CRAIOVAN, *Introducere în filosofia dreptului*, Editura All Beck, București, 1998, p. 202.

² Marin VOICU, *Protecția europeană a drepturilor omului. Teorie și jurisprudență*, Editura Lumina Lex, București, 2001, p. 7.

that the right is nothing more than the morality conveyed and sanctioned by the social group; the relations are mutual which means that one may also consider that through the influence of morals and religion the right may rely on moral principles³. The essential difference between the right and the religion in the democratic societies, which represents in itself a clear “expression of the spiritualization of the right, has paradoxically led to separation of spirituality from the right, encouraging the opinion that the spirituality inalienably falls under the scope of religion. While intimately connected to religion, spirituality has a much wider scope. This influences the right by its holistic metadimensionality”⁴, which ensures unity of the moral, political and juridical values. The implications of the interaction between the right and the spirituality may serve as a vehicle to release the law and the juridical systems from the claws of the positivism and juridical reductionism.

II. Religious freedom in international and community legislation

In reference to the relation between right and freedom, the law theoreticians and philosophers affirm that this is not a mere relation, but it expresses a defining note of the right⁵. In a mature and advanced juridical approach, all rights and obligations in terms of both public and private law may only be established on the idea of freedom of men⁶.

The human rights, this civic religion which reunites all suffrages and inspires all good wills⁷, are stipulated both by natural law and moral-religion law as well as the international and national juridical norms. Among all these human rights, there is also in high esteem the right to individually or collectively have and manifest a religious belief through a religious cult.

The guarantees for the freedom of religion and the respect for conscience and faith are inevitably set forth in the constitutions of the liberal-

³ François TERRÉ, *Introduction générale au droit*, Éditeur Dalooz, Paris, 2009, p. 17.

⁴ Rafael DOMINGO, “Why Spirituality Matters for Law: An Explanation”, in: *Oxford Journal of Law and Religion*, (2019) 8, p. 348.

⁵ Ion CRAIOVAN, *Introducere în filosofia dreptului*, p. 274.

⁶ Mircea DJUVARA, *Teoria generală a dreptului (enciclopedia juridică); Drept rațional, izvoare și drept pozitiv*, Editura All, București, 1995, p. 83.

⁷ Alain FINKIELKRAUT, *Autour des droits de l’homme. Malaise dans la civilisation. L’extrême droit*, Campagne première, Paris, 2001, p. 65.

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democratic societies and the international and regional instruments regarding human rights. Article 18 of the Universal Declaration of Human Rights of 1948 states that:

“everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”⁸.

Furthermore, article 18 of the International Covenant on Civil and Political Rights points out that:

“(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. (3) Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”⁹.

The UNESCO Convention against Discrimination in Education, adopted in 1960, article 5 letter b), stipulates that it is essential to respect the liberty of parents and, where applicable, of legal guardians:

“1. to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities; 2. to ensure in a manner consistent

⁸ “Universal Declaration of Human Rights – 1948”, in: <https://www.un.org/en/universal-declaration-human-rights/>, 28 ianuarie 2020.

⁹ “International Covenant on Civil and Political Rights – 1966”, in: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, 28th of January 2020.

with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions”¹⁰.

Article 22 of the Charter of Fundamental Rights of the European Union sets forth that “the Union shall respect cultural, religious and linguistic diversity and shall not prejudice the status under national law of churches and religious associations and communities in the Member States” (Treaty on the Functioning of the European Union: article 17).

Article 10 in the Charter of Fundamental Rights of the European Union states:

“(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance. (2) The right to conscientious objection is recognized, in accordance with the national laws governing the exercise of this right”¹¹.

In the European Convention of Human Rights, article 19, it is stipulated:

“(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance. (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. Freedom to manifest his religion or beliefs

¹⁰ “Convention against Discrimination in Education – 1960”, in: http://portal.unesco.org/en/ev.phpURL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html, 28th of January 2020.

¹¹ “Charter of Fundamental Rights of the European Union – 2009”, in: https://www.europarl.europa.eu/charter/pdf/text_en.pdf, 28th of January 2020.

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may be subject only to such limitations as are prescribed by law and are, in a democratic society, necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”¹².

Both articles enunciated above form integral part of the European legislation and shed light on the matter of the collective right, as they define and recognize the freedom to publicly manifest one’s religion and belief as such, and all that it implies (observance, public gatherings, rituals, ceremonies, establishment of one’s own religious education etc.), manifestation which, correlated with the freedom to associate as stated in article 12 of the Chart, respectively article 11 of the Convention, becomes the corollary of the right to religious freedom and in particular the religious education organized in establishments of public learning.

The freedom of expression is the fundamental right of man to hold opinions. It is a natural right, which relates to the essence of the human being, similar to the right to life and the right to dignity, and is probably the most important right for a free and democratic society to function. This is a condition for every person to develop, achieve and remain respectable (CFR: article 10).

“Every person has the right to freedom of expression, and this right includes freedom of hold opinions and to receive or impart information and ideas without the interference by public authorities” (CFR: art. 11).

The religious freedom is a component which goes beyond the private domain; it is also a collective right which involves freedom of manifestation, expression or worship, and mostly establishment of religious education, by conveyance of information in public or private institutions, in line with one’s religious convictions. The limits of conducting religious education are set in the provisions of article 21 of the Chart and article 14 of the Convention, by which any discrimination of any nature shall be prohibited; the exercise of the rights and freedoms recognized shall be ensured irrespective of sex, color, language, religion or beliefs, ethnic or social origin, political opinions, membership of a national minority, property, disability, age or sexual orientation, including any discrimination on grounds of citizenship.

¹² “European Convention of Human Rights – 1950”, in: https://www.echr.coe.int/Documents/Convention_ENG.pdf, 28th of January 2020.

There is a relation of convergence and interdependence among the freedom of expression, freedom to hold opinions and religious freedom. Each determines the other two and entails freedom of thought and conscience.

By explicitly recognizing the freedom of thought and conscience, the Signatory States to the Convention have accepted the interdiction of indoctrination, in the sense of practicing among the population and, in particular, the young representatives, an education of ideological nature.¹³ These provisions have also been undertaken by the Member States of the European Union by treaties signed, ensuring therefore that “the freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right” (CFR: article 14, par 3).

Consequently, the state guarantees the freedom to manifest one’s religion and conviction, individually or collectively, in public or in private, by worship, education, observance as well as freedom to change religion,¹⁴ an inviolable right guaranteed by each Member State of the European Union.

III. Normative and juridical framework of the religious education in Romania

In most European countries, the religious education forms part of the school curriculum, in one form or another. The details on the methods to approach and perform religious education are different from one country to another, and highlight the fact that one may not speak of a unique European model to carry out this education in schools. In 75% of the EU states, religion is taught as teachings of the traditional religion, whereas in 25% as history of religions¹⁵.

¹³ Corneliu BÎRSAN, *Convenția europeană a drepturilor omului. Comentariu pe articole. Drepturi și libertăți*, Editura All Beck, București, 2005, p. 706.

¹⁴ Cosmin SANTI, “Libertatea religioasă în Dreptul Uniunii Europene”, in: *Studia Universitatis Babeș-Bolyai, Iurisprudentia*, 64 (2019) 1, p. 102.

¹⁵ Cosmin SANTI, Elena-Ancuța SANTI, *Elemente de educație religioasă în grădiniță. Teorie și aplicații practice*, Editura Basilica, București, 2014, p. 15.

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The education meets both social request and individual needs and aspirations. It implies the release of inner energies and overcoming, by harmonious and creating achievement, insecurity, inferiority and dependence that the human being may feel in a rapidly changing society¹⁶.

Romania sees nowadays an attempt to redefine the social role of education, in the context of partnership for education, an open, lucid, responsible dialogue among all educational factors (family, Church, school, local community, Association of Parents for the Religion Class). The school opens toward the community environment and proposals are made toward achieving the osmosis school - community (school in community and community in school), from the perspective of understanding school as a cultural and civic center, a complex center of learning within the reach of both young and adults.

The active cooperation between the school and the other educational factors enunciated has to lead to reliable partnerships, of nature to enable a positive approach of the various issues faced up by young students. The school has to find the best forms through which the persons involved in this process of education may manage human resources, possess psychology and pedagogy knowledge, rapidly adapt to the management of changes in the current society. In an ideal world, there should be a strong triangular affiliation, which should set a responsible commitment¹⁷, among all education partners: family, Church and school.

In our analysis of the issues relating to teaching religion in the Romanian public education, we firstly take into consideration the fundamental law of the rule of law, Constitution of Romania, which, in article 32 (7), states: “The state ensures freedom of religious education, according to requirements specific to each cult. In the public state schools, the religious education is organized and guaranteed by the law”. Article 29 (1) of the same fundamental law emphasizes that:

“Under no circumstances may the freedom of thought and to hold opinions, as well as the freedom of religious beliefs, be

¹⁶ Cosmin SANȚI, “Triada Chiesa - Scuola - Famiglia partenariato nel raggiungere l’istruzione religiosa fondamentale”, in: *Misiune, spiritualitate, cultură: Lucrarea pastoral-misionară a Bisericii și impactul social și comunitar al acesteia - istorie, actualitate, perspective*, Editura Valahia University Press, Târgoviște, 2016, p. 482.

¹⁷ Flourish Itulua ABUMERE, “The Significance of Religious Education in Local Primary Schools (Specific Reference to Christianity)”, in: *IOSR Journal Of Humanities And Social Science*, (2013) 6, p. 79.

enclosed. No one may be forced to adopt an opinion or adhere to a religious belief, contrary to their convictions. The freedom of expression or the freedom to learn one's own religion may not be limited, the access to religious education has to exist in all institutions of public education"¹⁸.

Law no. 489/2006 regarding religious freedom and general regime of cults reiterates in the first articles the ideas encompassed in the international law on religious freedom the fundamental right to convince and express one's own convictions, as follows:

Article 1, (1) "the Romanian state respects and guarantees the fundamental right to freedom of thought, conscience and religion of every person on the territory of Romania, according to the Constitution and the international treaties to which Romania is a signatory. (2) No one may be prevented or constrained to adopt or adhere to a religious belief contrary to their convictions and may not be subjected to discrimination, persecuted or placed in a situation of inferiority due to their belief, affiliation or not affiliation to a group, religious association or cult or for exercising their religious freedom, in accordance with the legal provisions in force. Article 2 (1) The religious freedom includes the right of every person to have or adopt a religion, to manifest such religion individually or collectively, in public or in private, by specific practice and observance, including by religious freedom and freedom to maintain or change religion. (2) The freedom to manifest one's religion may not be the subject matter of any other restraints except the ones stated in the law and represents necessary measures in a democratic society intended to protect public safety, order, health, or morals or the fundamental rights and freedoms of others"¹⁹.

¹⁸ "Constitution of Romania – 2003", in: <http://www.cdep.ro/pls/dic/site.page?id=339>, 28th of January 2020.

¹⁹ "Legea nr. 489/2006 privind libertatea religioasă și regimul general al cultelor din România (regarding religious freedom and general regime of cults from Romania) – 2006", in: <http://patriarhia.ro/legea-nr-489-2006-privind-libertatea-religioasa-si-regimul-general-al-cultelor-539.html>, 28th of January 2020.

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A short introspection into the history of the Romanian education shows us that the religious education has been throughout time a constant value in the formation of the young generations; therefore, the Organic regulations in Walachia (1833) and Moldova (1834), considered to be the first documents of educational policy on the Romanian territory, exploited the role of the Christian morals and ensured the religious education an important role in the school curriculum, up to the Decree of the atheist-communistic regime in 1948 regarding reform of education which excluded the religious education from public schools in Romania.

After the year 1989, following regaining of religious freedom by introduction of Religion in the public education, things went back to normal as justice was served and a historical abuse was repaired.

At present, the Law on National Education no. 1/2011 from Romania ensures the framework to exercise under the authority of the Romanian state, “(1) the fundamental right to lifelong learning, the framework, functions, organization and functioning of the national system of state, private and confessional education”²⁰. According to article 7 of the same law, it is forbidden to conduct activities of proselytism in education establishments, in all education institutions and spaces intended for education and professional formation. “Religious proselytism is forbidden in Romania, alongside any other forms, means, acts or actions of denigration and religious enmity as well as public offense brought to religious symbols” (Law 489/2006: Article 13 (2); Constitution of Romania: article 29 (4)).

The action of proselytism also implies the aspect of religious indoctrination, which means initiating, leading, forcing somebody to study, assimilate a teaching beyond the will of a person trained. Therefore, the religious education has nothing to do with the phenomenon of indoctrination, which is extremist, fundamentalist, outside spirituality and Christian teaching. On the contrary, the religious education targets only the harmonious modeling and formation of the child, in a holistic manner, education intended not only for the body but also for the soul, toward achieving a better, more balanced society, a society deprived of extremist phenomena, discrimination and intolerance of any kind.

²⁰ “Legea Educației Naționale (Law on National Education) no 1/2011”, in: https://www.edu.ro/sites/default/files/legea-educatiei_actualizata%20august%202018.pdf, 28th of January 2020.

The religious education in the Romanian learning system explicitly fosters spiritual, moral and cultural development of students, and prepares them for the responsibilities and exigencies of the adulthood, in line with Christian values.

In the public education system in Romania, the framework plans for the primary, secondary, post-secondary and vocational levels include religion as a school discipline, part of the common core. The students under state-recognized religious groups, irrespective of their number, are ensured the constitutional right to attend the religion class, according to their confession (Law no. 1/2011: article 18 (1)) and religious convictions. The cults elaborate their curricula and syllabi for the pre-university theological education and curricula for teaching religion in public state schools and in confessional schools. They are endorsed by the Ministry of Culture and approved by the Ministry of National Education (Law 1/2011: article 34 (1)). Decision no. 669/2014 of the Constitutional Court of Romania regarding the admissibility of the exception of unconstitutionality of article 18 (2) of Law 1/2011 stipulated: Upon written request of the student above 18, respectively the parents or legal guardian of the student below 18, the student may decide not to attend the religion classes. In this case, the school results will be averaged without this discipline, i.e. Religion. The same applies for the student who, due to objective reasons, was not ensured the conditions for attending the classes of this discipline. This entailed the amendment of the article concerned by the legislator, according to the decision and the relating reasoning by the Constitutional Court, with regard to how the student is registered for the religion class. The student is currently registered to attend the classes of religion based on a written request of the student above 18, respectively the parents or legal guardian of the student below 18. This option is changed also by written request of the student above 18, respectively the parents or legal guardian of the student below 18. In the event that the student does not attend the classes of religion, the school results will be averaged without the discipline Religion. The same applies for the student who, due to objective reasons, was not ensured the conditions for attending the classes of this discipline.

The methodology to organize teaching of the discipline Religion in the pre-university education was later approved by Order of the Minister of Education and Scientific Research no. 5.232/2015, published in the Official Gazette of Romania, Part I, no. 720 of 24 September 2015, which

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introduces the method used to conduct religious education in the state education in Romania. If initially article 3 (5) stated that the registration application shall be submitted annually, by the month of December, for the following school year, by Order no. 3218 of 16 February 2018, published in the Official Gazette on 12 March 2018, the article concerned is amended in accordance with the provisions of the constitution and sets forth the following: The application submitted in accordance with par (1) is valid throughout the entire schooling period in the pre-university education or by the time the option is changed in accordance with par (3) in the Methodology.

With regard to the teaching staff who may teach religious education in the Romanian education system, article 18 (3) of Law on National Education lays down that the discipline religion may be taught by skilled teaching staff only, in accordance with provisions of the present law, and habilitated (i.e. with the endorsement of the respective religious group), based on the protocols concluded between the Ministry of Education, Research, Youth and Sport and cults officially recognized by the state. Such a protocol was concluded between the Ministry of National Education, Romanian Patriarchy and the State Secretariat for Cults in 2014, regarding religious education of the orthodox cult. This regulates the organizational framework for carrying out orthodox religious education in Romania both at pre-university and university level.

IV. Conclusions

The religious education is vital and necessary more than ever in an increasingly diverse and complex society and it needs a clear and unequivocal juridical status in order to be conducted in harmony with the international legislation and the specificity of every nation and local culture.

The education religion is an ample action, oriented in various directions. Nonetheless, its purpose and role are well defined, namely to provide the trainable a special appearance and structure, by acquisition of Christian virtues and values. The essence of religious education lies in generating and maintaining an inner spiritual state by which the human being transcends the real and relates to the absolute.

The main direction of the religious education consists in forming the good Christian. Its reverberations extend throughout time, they are passed from generation to generation, and once the religious values are interiorized, they attract new values, are developed and generate profound hopes and pursuits.

The abilities, the understanding and the knowledge acquired through religious education in public schools are vital for our society, as the religious education supports the students in growing mature and shaping a positive attitude to life, belief and values, as well as observance of the convictions of the others, without any discrimination whatsoever.

Consequently, in a world which is more and more diverse in terms of ethnicities and religions, the religious education proposes knowledge of one's own identity as well as the beliefs and convictions of the others. It favors social inclusions and contributes to overcoming prejudices and any other forms of discrimination.²¹

In accordance with internal and external policies of the European Union in the matter of fundamental issues, one highlights the idea according to which the wisest attitude of democracy is the one which gives absolute freedom to every person in terms of religion. It is the duty of the authorities to give every person the freedom in relation to moral fundamental,²² and religious conceptions.

The Christianity substantiates the rights of man and his dignity in relation to God and not only in relation to the fact that all human beings have the same nature, or the socio-cultural context in which man lives. The dignity of the Creator confers man privileges, rights and obligations, in accordance with the divine right, natural right and positive right.

²¹ Gheorghe HOLBEA, Dorin OPRÎȘ, Monica OPRÎȘ, George JAMBORE, *Apostolat educațional. Ora de religie - cunoaștere și devenire spirituală*, Editura Basilica, București, 2010, p. 25.

²² Mircea DJUVARA, *Teoria generală a dreptului...*, p. 60.