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The Romanian Orthodox Church during Communism. Decree no. 410/1959 – a Case Study

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Abstract

The aim of the article is to analyse Decree no. 410/1959, in the context of the oppression of the Romanian Orthodox Church during the communist regime and its intent to stifle religious bodies and manifestations. We approach the issue from multiple perspectives: historical (exposing some of the steps taken by the regime seeking to impose its premises), juridical (outlining the main laws and rules issued up to the decree in question so as to provide a juridical context) and theological, revealing the effects of Decree no. 410/1959 on monastic life. The author also revealed a series of actions that the Church and Patriarch Justinian Marina undertook in order to allow the Romanian monastic life to survive. A particular point that the author sets out to make regards the principle of non-retroactivity in the context of the issuing of Decree No. 410 of 28 October 1959.

Keywords

monasticism, communism, state and church legislation

I. Preliminary considerations: the context

The communists took over the power with the help of the Soviet army of occupation, which is why, after its withdrawal, the Romanian Communist Party had to consolidate its position in order to succeed in establishing the

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totalitarian regime, using all the available means to neutralize any type of opponents and opposition. As the historian Eugen Denize asserted, 1948-1953 remained in the history of Romania one of the darkest periods of the Romanian communism, because, in order to reach their goal, the communists used two of the most dreadful means: “repression - which sought to crush the Romanians’ physical resistance to the new regime”¹ and “persuasion - which took the disguise of propaganda and stirring, aiming to destroy moral and spiritual resistance”². All the brutal interventions in the Romanian society aimed at creating the so-called “new man”³ that “broke up with the traditions and history of his people, being anchored in the Marxist-Leninist philosophy and ideology, submissively enforcing the party politics and, especially, the orders of those who ruled the party”⁴.

Propaganda also meant the involvement of ideologues. Thus, one of the most active ideologues, Mihail Roller uses the phrase “cultural revolution” in an article entitled “On the Road to Our Cultural Revolution”⁵, where he underlines three essential elements of the Romanian “socialist culture”, namely:

- “1. critical exploitation of the cultural heritage of the past based on the most advanced science – *the Marxist-Leninist science*;
2. socialist organization of public education seeking to create, with the support of the new education, new teachers, new intelligentsia;

¹ Eugen DENIZE, *Propaganda comunistă în România: 1948-1953* (The Communist Propaganda in Romania: 1948-1953), Cetatea de Scaun Publishing House, Târgoviște, 2011, p. 307.

² Eugen DENIZE, *Propaganda comunistă în România: 1948-1953*, p. 307.

³ For example, the magazine “Contemporanul”, May 28, 1948, publishes the cultural objectives characterizing the “new man” in the process of “building socialism”: “a) Spreading the teaching of Marx, Engels, Lenin and Stalin, its application in discussing current Romanian and foreign phenomena of all fields; b) combating the imperialist ideology in all its forms of manifestation; c) revealing and combating the remnants of the bourgeois reaction in all their manifestations in our country; d) popularizing all the aspects of the development of the socialist society in the Soviet Union, publishing and processing Soviet materials and applying them in all aspects of social life; e) to reconsider, in the Marxist-Leninist spirit, the events, works and representative figures of the past, which meant rewriting history, the history of literature, painting, sculpture, architecture, music and so on”, *apud* Eugen DENIZE, *Propaganda comunistă în România: 1948-1953*, p. 25.

⁴ Eugen DENIZE, *Propaganda comunistă în România: 1948-1953*, p. 307.

⁵ Mihail ROLLER, “Pe drumul revoluției noastre culturale (Towards our cultural revolution)”, in: *Lupta de clasă*, series V, no. 2, October-December 1948, pp. 97-110, *apud* Eugen DENIZE, *Propaganda comunistă în România: 1948-1953*, p. 25.

3. communist education of the working masses, cultivating a new attitude towards work, the goods of the people, the state apparatus etc., thus removing along the capitalist remnants from people's consciousness and raising the cultural level of the people⁷⁶.

In this context, the Romanian society was utterly changed in its very foundations. Thus, from a cultural point of view, education followed the Soviet model, the books being censored and editors only publishing authors that were close to the communist regime. In fact, education underwent substantial changes through Decree no. 175/1948 for the reform of education, the 3rd August, 1948, that regulated the new organization of the education in Romania that was openly an antireligious one⁷⁷. At the same time, the previous right of religious denominations to have general education schools was abolished while those for the servicing staff were under state control (cf. Decision of the Ministry of Denominations No. 42898/1948)⁷⁸. Moreover, by Decree no. 176/1948 for the transfer to state property the assets of the churches, congregations, communities or individuals that served for the functioning and maintenance of the general, technical or vocational, educational institutions, the state took over all possessions as stipulated in the annex of the decree⁷⁹.

From an *economic* point of view, the government led by Dr. Petru Groza carried out the agrarian reform of 1945, introduced as a "national, economic and social necessity"⁸⁰, following collectivization, starting in 1949 and ending in 1962, its implementation process being phased in. In this respect, Decision no. 96/ 2nd January 1948, art. 1 stated that "the clergy of all denominations throughout the country are invited to collaborate in the works of the agricultural census and of the population, fulfilling the function of recensers in the place where he serves, where required by the county, municipal or press census committees"⁸¹.

⁶ Eugen DENIZE, *Propaganda comunistă în România: 1948-1953*, p. 26.

⁷ Cf. *Monitorul Oficial (The Official Journal)*, part I A, no. 177, 3rd August 1948, pp. 6322-6324.

⁸ Cf. *Monitorul Oficial (The Official Journal)*, part I A, no. 266, 15th November 1948, pp. 9175-9178.

⁹ Cf. *Monitorul Oficial (The Official Journal)*, part I A, no. 177, 3rd August 1948, pp. 6324-6325. The table (Annex) of private and confessional schools is published on pages 6325-6355.

¹⁰ Art. 1 Law nr. 187, 23rd March 1945 for the agrarian reform.

¹¹ *Monitorul Oficial (The Official Journal)*, part I A, no 5, 7th January 1948, p. 92.

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If the Decree-Law on the implementation of the agrarian reform on the 23rd March 1945 granted exceptions to expropriations and the goods belonging to the monasteries, metropolitan churches, deaneries, churches, parishes and church settlements, the goods of the Crown Domains, of the tax offices, of the health settlements, as well as those of the Romanian Academy, the Schools House and the other cultural settlements ... etc. remained the properties of its owners, the Decision no. 202 of the 31st January 1948, based on the Law no. 248, for the establishment of the Ministerial Commission for Economic Recovery and Monetary Stabilization, published in the “Official Monitor”, no. 159, on the 15th July 1947, rules that the assets of any kind belong to the following institutions: the Tax Office of the Civil Hospitals, Brâncoveanu Settlements and the St. Spiridon Epitropy in Iași pass into state patrimony with the publication of this decision and will be given for use to various departments or public institutions in the Ministry of Health places such as hospitals, asylums, baths and mineral waters, churches and hermitages at the Ministry of Denominations¹². Furthermore, the Decision of the Ministry of Denominations, no. 17.302 of April 28, 1948, art. 1, stipulated that “the parish priests of all the parishes on the whole territory of the People’s Republic of Romania, of all denominations, are called administrators, being in charge of the preservation of the movable and immovable public goods in their preservation”¹³.

It is easy to understand that, without subsidies from the government, the denominations could not materially survive given the process of nationalization, but granting them was conditioned by the support of communist power, the law explicitly specifying that the subsidy could be withdrawn in case of “anti-democratic attitudes”.

From a *social* point of view, other laws were issued so as to strengthen the totalitarian regime, aiming at various categories. For example, Decree no. 102 of June, 1948, by which many categories of pensioners lost their right to retirement through a special mechanism commissioned by the Ministry of Finance, namely the Pension Review Committee¹⁴. We also

¹² Cf. *Monitorul Oficial (The Official Journal)*, part I A, no. 27, 3rd February 1948, p. 860.

¹³ *Monitorul Oficial (The Official Journal)*, part I A, no. 112, 17th May 1948, p. 4374.

¹⁴ Cf. Dorin-Liviu BÎTFOI, *Așa s-a născut omul nou - în România anilor '50 (This is how the new man was born in 1950s Romania)*, Compania Publishing House, Bucharest, 2012, p. 35. The same author asserts: “Thus, the enemies of the working class and the RPR, the former landowners and the capitalists that were expropriated by the confiscation and nationalization laws, those from the background of industrial or com-

mention here Law no. 64 of March 9, 1948, on the basis of which “the Minister of Justice may appoint, call in function, move, distribute, transfer to inferior positions or dismiss judicial officers, as well as officials from the central administration of the Ministry of Justice and exterior services without the approval of the respective commissions, without exposing reasons and without considering such measure a disciplinary one”¹⁵.

Decree no. 318 of July 17, 1958 for the amendment of the Penal Code and the Penal Procedure Code, enhances the regime of punishments stipulated in the Penal Code, that reached, in aggravating cases, the death penalty. For example, art. 209¹, paragraph 2 of Decree no. 318 refers to “the undermining of the national economy”, whereas “in cases the deeds had or could lead to particularly serious consequences, the punishment is death and confiscation of possessions”; art. 207 of the same decree no. 318 states that “the acts of terror, committed individually or in groups by any means, as well as the spread of microbes or poisonous substances which result in death or serious injury of bodily integrity, as well as the formation of terrorist or sabotage groups are punished by death and confiscation of possessions”. Article 207 was very often invoked, on the one hand, since anyone’s deeds could be covered through this article, and on the other hand, with the very clear purpose of punishing political opponents.

Moreover, by Decree no. 89 of February 17, 1958, working colonies were set up for persons who, through their “deeds or manifestations, threaten or try to jeopardize the order in the state, if they are not crimes”, as well as for the convicts who, after carrying out their sentences were not considered reeducated were sent to such labour colonies to never return.

To further underline the radical changes that occurred in this period, we also mention Law no. 5/1950 for the administrative-economic division of the territory of the People’s Republic of Romania that became effective on the 8th September 1950, that divided the territory of Romania into

mercial enterprises if they used paid work for these, the owners of agricultural lands under the same condition, the owners of real estates that were rented or leased with an income of over 18,000 (old) lei per year, former civil servants who used to hold in the old state apparatus «positions of repression, oppression and stacking», former senior officials in leading positions particularly in nationalized enterprises and many others - practically all the former world - were left without a pension who, since 1950, when they suddenly find themselves without a means of securing the necessities of life when reaching old age” (*Așa s-a născut omul nou...*, p. 35).

¹⁵ *Monitorul Oficial (The Official Journal)*, part I A, no. 59, 11th March 1948, p. 2134.

regions, cities, districts and district villages, far exceeding the territorial-administrative organization carried out till then¹⁶.

II. The Romanian Orthodox Church and the monastic life during communism

All the changes that occurred in society, at the political, social, cultural and economic level, also had repercussions on church life. Since church legislation has a dynamic character and is permanently anchored in history, we are compelled to constantly reflect to church law that becomes a source of law, despite the avatars of contemporaneity¹⁷.

After the fall of the communism in 1989, in the light of the temptation of modern times, civil society calls on the Romanian Orthodox Church to provide pertinent responses on different, more or less spiritual, issues, including those concerning church and monastic life in the communist period.

Romanian monasticism plays an important role in the spiritual, religious and cultural life of the Romanian society. Although this role has been libratory, or even blamed by a part of the laity or by some personalities of the clergy and hierarchy, one cannot deny the spiritual and cultural role that it has had over time amid the Romanian people.

Romanian monasticism can be equally analyzed in *static* terms, as regulated by canons, statutes, regulations, decisions of the Holy Synod, and in *legal and dynamic* terms, as reflected in the implementation and application of state and church legislation by the competent bodies. One such instance is *Decree no. 410/1959*, by which, following its implementation, the communist-totalitarian state, wished to close down and abolish as many monasteries as possible and to turn monks into laity and make them part of the workforce.

Thus, on the one hand, the security informer regarding the Orthodox denomination, with the code name “Viator” (Dudu Velicu¹⁸) does not make

¹⁶ The last administrative division was that of 1925-1926, followed by the territorial-administrative restructuring of 1938-1940.

¹⁷ Cf. Constantin RUS, “Introduction”, in: Constantin Dron, *Valoarea actuală a canoanelor (The Contemporary Value of the Canons)*, Doxologia, Iași, 2016, p.10.

¹⁸ He graduated from the “Metropolitan Niphon” Seminar in Bucharest. For a brief biography, see the documentary “Dudu Velicu - the Church Chronicler”, in: *Ziarul Lu-*

a flattering presentation, we would say, of the monastic life as he highlights the criticisms of the interwar period, namely that life within monasteries was inconsistent with Christian morality and canonical discipline as they failed to be “centers of morality and culture”¹⁹. With such description, the consequences could not be favorable to the Church. On the other hand, the radiography of monasticism accomplished by patriarch Justinian Marina, on his enthronement, must be highlighted as he asserted that “... all the monastic clergy must attend the same school as the parish clergy, go through the same cleansing fire that melts all the slag of the sins of the past, that still linger in the holy monasteries, so as to return to the Romanian Orthodox Church a new and enlightened monasticism that blends spiritual and social and cultural life”²⁰; on the occasion of the inauguration, he announced “a programme that set out to make the monasteries spiritual centers and work for society”²¹. This programme materialized in the church legislation based on art. 27 of the Constitution of the People’s Republic of Romania, stipulating that “the freedom of conscience and religious freedom are guaranteed by the State. Religious denominations are free to organize themselves and function freely if their ritual and practice are not contrary to Constitution, public security or good morals. [...] The Romanian Orthodox Church is autocephalous and unitary in its organization. The way of organizing and functioning of religious denominations will be regulated by law”²². We find the constitutional provisions of art. 27 and Decree no.

mina, February 13, 2011 (accessed in 17.04.2019). Under the aegis of the National Archives of Romania his daily notes on the Romanian Orthodox Church in the communist regime were published in two volumes, namely *Biserica Ortodoxă în perioada sovietizării României. Însemnări zilnice, vol. I: 1945-1947 (The Orthodox Church during the Soviet Period of Romania. Daily Notes, Vol. I: 1945-1947*, Bucharest, 2004, 327 p. (edited by Alina Tudor-Pavelescu) and *Biserica Ortodoxă în anii regimului comunist. Însemnări zilnice, vol. II: 1948-1959 (The Orthodox Church during the Communist Regime. Daily notes, vol. II: 1948-1959*, Bucharest, 2005, 295 p. (edited by Alina Tudor-Pavelescu and Șerban Marin).

¹⁹ Cristina PĂIUȘAN, Radu CIUCEANU, *Biserica Ortodoxă Română sub regimul comunist*, vol. 1, 1945-1958, Institutul Național pentru Studiul Totalitarismului, București, 2001, p. 42.

²⁰ Gheorghe I. MOISESCU, “Înmânarea cârjei patriarhale (Handing over the Patriarchal Cane)”, in: *Biserica Ortodoxă Română*, LXVI (1948) 5-6, pp. 235-236.

²¹ Gheorghe I. MOISESCU, “Înmânarea cârjei patriarhale”, pp. 235-236.

²² Ioan MURARU, Gheorghe IANCU (eds.), *Constituțiile române. Texte. Note. Prezentare comparativă (Romanian Constitutions. Texts. Notes. Comparative Presentation)*, 4th ed, Actami Publishing House, Bucharest, 2000, pp. 126-127.

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177/1948 on the general regime of religious denominations in art. 1, (1): “The State guarantees the freedom of conscience and religious freedom throughout the entire territory of the People’s Republic Romania”, art. 6: “Religious denominations are free to organize and function freely if their practices and rituals are not contrary to the Constitution, security or public order and good morals”, and in Art. 15: “The Romanian Orthodox Church is autocephalous and united in its organization”.

Under the state law on denominations and in the new socio-political context, the Romanian Orthodox Church has elaborated its own legislation, namely *The Statute for the organization and functioning of the Romanian Orthodox Church*, drafted by His eminence Patriarch Justinian, approved and voted by the Holy Synod in the meetings of the 19th – 20th October 1948 and *The Regulation for the Organization of Monastic Life and the Administrative and Discipline Functioning of the Monasteries* (1953), which regulated the monastic settlements (the monastery, hermitage and monastic metochions), their purpose and reception in the monastic life with all its stages, starting with the necessary acts and continuing with the canonical temptation and trimming in monasticism, the administration of the monastery (the diocesan bishop) and the persons who enact the bishop’s leading role (the abbot, the monk in charge of a metochion), etc.

Among the directions that had to integrate monasticism into the new socialist reality, a priority was the reorganization of monasticism. The communist power took advantage of Patriarch Justinian’s intention to reorganize monastic life while the communists, “very versatile, presented themselves as supporters of the ‘renewal’ of the Church, using its ‘purification’ to undermine it and, gradually, destroy it”²³. Fortunately, despite all the pressures and interferences of the new communist power in the monastic life, the endeavours to control it completely were doomed to fail.

Interested in monastic life, the Communist regime began to supervise the monasteries²⁴, through the Department of Denominations and the repressive body of the Security which compiled tables containing the following information: the current number, the monk’s name and surname,

²³ George ENACHE, Adrian Nicolae PETCU, *Monahismul ortodox și puterea comunistă (Orthodox Monasticism and Communist Power)*, Editura “Partener”, Galați, 2009, p. 15.

²⁴ For example, for the monasteries in the region of Iași, see ACNSAS, document archive, file 72, ff. 1-317.

his place and date of birth, the names of the parents, the date he entered monasticism, when he became a monk, his position, social origin, studies, past profession, his name as monk, political affiliation, which dated back to 1949 while the brutal interference with monastic occurred after 1958.

In spite of the popular democracy and democratic state law on denominations relying, at least at the declarative level, on freedom of conscience and religious freedom, three things made the Communist regime interfere in the activity of the denominations, namely the counter-revolutionary actions carried out in monasteries, the mystical propaganda of the monks and nuns and the economic capacity of the monasteries²⁵. In these circumstances, the interference of the political regime in church life was only a matter of time. Thus, in the meeting of the Holy Synod of the Romanian Orthodox Church on December 15, 1958, the General Secretary of the Department of Denominations, Dogaru Dumitru, emphasized in the report of the state authority “the transgression of some provisions of the regulation for the organization and functioning of the monasteries as well as the current state of affairs in the monasteries that posed a threat to the public order and the security of our state”²⁶, proposing amendments to *The regulation on the organization and functioning of monasteries* and measures to restore the canonical and legal order²⁷. Enlarging on the proposed amendments to church legislation on monastic life, the communist government decided to reduce the number of monks and nuns by removing them from monasteries, namely “the minors, those who did not attend a minimum of 7 elementary classes; people who broke monastic rules; those who had been convicted, counter-revolutionary elements, as well as those

²⁵ Cf. ACNSAS, document archive, file 71, f. 492.

²⁶ ACNSAS, document archive, f. 482.

²⁷ “a) “All those who have suffered condemnations, arrests or who cannot honour the Church through their past should be excluded from monasticism; b) All those who by their behaviour break the monastic vows past should be excluded; c) All those who do not have 7 elementary classes and whose presence in the monastery is contrary to the regulation should be excluded; d) A maximum limit of monks, that cannot be exceeded, depending on their accommodation capacity, should be set for each monastery; e) All monasteries and hermitages found unsuitable for monasticism should be closed, their guard being ensured by the Church or, where possible, they should be given a parochial purpose. The department of cults requests from our bodies support in the application and fulfillment of these measures” (ACNSAS, document archive, ff. 482-483).

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known to have hostile manifestations against the regime etc.”²⁸, by having the Department of Denominations compile tables with the monks to be banished from monasteries. These tables were also brought to the attention of the Bishops and Metropolitans by the inspectors of the Department of Denominations and, subsequently, on the basis of the new *Regulation for the organization and functioning of monasteries*, they started to expel from the monasteries the ones in the tables, over 3000 of monks and nuns, so that many monasteries and hermitages were abolished, and the buildings were used for other purposes by local bodies²⁹.

Providentially, Patriarch Justinian managed to find solutions to counteract the interference of the communist regime in the monastic life, both at the legislative level, by amending *The regulation for the organization and functioning of the monasteries*, as well as at the practical economic level for the survival of the monasteries and the well-being of the life monastic.

Patriarch Justinian, together with the members of the Synod, softened the conditions for being admitted to monasticism in the new *Regulation for the organization of the monastic life*, approved by the Department of Denominations of the Council of Ministers, by Decision no. 11.525 / 1959 and published in the official “Romanian Orthodox Church”, no. 1-2 / 1960, pp. 171-183.

Thus, if art. 15 of *The Regulation for the Organization and Functioning of the Monasteries* (1953) provides that:

“The brothers and sisters who have not completed the second elementary cycle of education cannot become rasophore or wear the monastic coat, except in the following circumstances: 1. The graduates of the first elementary cycle at the age of 30 if they have at least 5 years of obeying in a monastery or a hermitage. 2. The graduates of literacy classes at the age of 40, if they have at least 10 years of obeying and prove they regularly attended the missionary courses of strengthening the faith held in the monastery or in the hermitage”³⁰,

²⁸ ACNSAS, document archive, f. 478.

²⁹ Cf. Report 341/27 March 1959 - *Propuneri pentru aplicarea hotărârii de reducerea numărului de monahi și mănăstiri din RPR (Proposals for applying the decision to reduce the number of monks and monasteries in RPR)*: ACNSAS, document archive, ff. 478-479.

³⁰ “Regulation for the organization of the monastic life and the administrative and disciplinary functioning of the monasteries”, in: *Legiuirile Bisericii Ortodoxe Române*,

in the new *Regulation for the organization of monastic life* (1960), these conditions are no longer stipulated whereas “the reception in a monastery or hermitage of those who wish to enter monasticism is done only with the approval of the hierarch of the place”³¹, with the provision of a file that must include:

“a written request forwarded to the hierarch, together with the following papers: birth certificate; health certificate; a certificate of graduation from at least an elementary school, certified by the institutions in charge to prove the petitioner’s correct civil attitude, a civil status certificate to prove that he / she has no family obligations as stipulated by the Family Code in force; a certificate regarding his possessions and the accomplishment of his tax duties; the recommendation of the respective parish priest”³²;

then, after the investigation of the documents, the hierarch of the place was to decide if the candidate fulfilled the conditions for being admitted into the monastery, the candidate being given a one-year period of meditation, during which he was under the supervision of the parish priest, in the parish where he belongs. At the end of the term, according to art. 19 of the Rules of Procedure, “the one that proved to be steadfast in his decision shall submit a new written request of admission into the monastery to the hierarch of the place, men having to prove that they accomplished their military service”, while following the other stages stipulated in art. 20-39 of the Regulation.

As far as the economic and administration part for the survival of the monasteries and the well-being of the monastic life are concerned, beside the work in the agricultural sector and in monastery workshops, in 1958, in the 120 monasteries of nuns and in a few monk monasteries, there were some collective production places where folk artefacts were made “(carpets, embroideries, fabrics, artistic stitches, tailoring, knitwear, braids, ruffles, cane, toys, ceramics, musical instruments etc.)”³³. All the means

The Publishing House of the Biblical Institute and Orthodox Mission, Bucharest, 1953, p. 390.

³¹ Art. 16 from “Regulation for the organization of the monastic life”, in: *Biserica Ortodoxă Română*, VIII (1960), 1-2, p. 172.

³² Art. 17 “Regulation for the organization of the monastic life”, pp. 172-173.

³³ Rev. G., “Viața monahală în ultimii zece ani (The Monastic Life in the Last Ten Years)”, in: *Biserica Ortodoxă Română*, LXXVI (1958) 5-6, p. 521. For example, the

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of material support for monasteries and hermitages will be maintained until the fall of communism in 1989, though not in an organized form, but due to the personal endeavour of those living in the monastery, together with the incomes obtained from tourism (in particular, in the case of the painted monasteries in Bucovina) and the donations of the Christian worshippers. The act of removing the monks and nuns from monasteries was devised to the smallest detail, as we can see from Report 341 / 27th March 1959, which had as *Object: proposals for the application of the decision to reduce the number of monks and monasteries in RPR*. Thus, the act of removing monks and nuns from the monastic life began in April 1959, having been planned to occur in several stages. From “Note on how the action to remove the inappropriate elements from monasticism is to be carried out”, 26th June 1959, the Department of Denominations asked the dioceses to remove 1,250 “elements” (180 minors, 243 “hostile elements”, 220 “immoral elements”, 607 “elements who entered monastic life in an unlawful manner”) and 105 monks as proposed by eparchies, the total number being 1,355 during the first stage³⁴. However, according to the established schedule, only 657 monks were removed. Patriarch Justinian who, while trying to minimize these abusive measures of the state authorities, did not respect the tables issued by the Department, considering them only informative and not mandatory³⁵, as the notes of the Third Direction of the Security reveal, was made responsible for the faulty implementation of the decision. Dissatisfied with the outcome, the communist regime modified the state law on denominations. In this context, Decree no. 410/1959 was issued.

III. Decree No. 410 of 28 October 1959 and the principle of non-retroactivity

The much-debated *Decree No. 410 of 28 October 1959* comprises, in fact, only one article, amending Decree no. 177 of August 4, 1948, for the general regime of religious denominations, being introduced after article 7, the text of article 7¹, which completes the decree of 1948.

carpets were exported abroad through the Romanian-Export Society, “spreading to the outskirts of the world the fame of the Romanian art and the hard work of our nuns”.

³⁴ Cf. ACNSAS, Document archive, file 71, ff. 464-465.

³⁵ Cf. ACNSAS, Document archive, f. 466.

In this respect, the Presidium of the Grand National Assembly of the Romanian People's Republic decreed this unique article that stipulated the following

“Art. 7¹. - Monasticism can only function in authorized monasteries of legally acknowledged denominations. The authorization is provided by the Department of Denominations. Graduates from clergy education schools can enter monasticism at any age if they have done their military service. Other people may be accepted into monasticism as long as they are 55 years old in the case of men and 50 years old in the case of women, if they renounce the salary or pension from the state, if they are not married and have no obligations established on the basis of the Family Code. In cases in which worship demands it, the Department of Denominations may authorise some monks to have church functions and receive the due salary. The above provisions apply to existing monasteries and monks as well”³⁶.

The Decree is signed by the President of the Grand National Assembly, Ion Gheorghe Maurer, and the Secretary of the Presidium of the Grand National Assembly, Gheorghe Stoica.

The general theory of law states as a general principle, that is known, that a law is enforced in the period between its entry into force and its repeal. A new procedural law arises quite often during trial, and then there is the conflict between the two laws, namely the old and the new ones.

By reference to constitutional values, art. 15 par. (2) of the 2003 Constitution of Romania states that: “The law provides only for the future, with the exception of the more favorable criminal or contravention law”, the principle of non-retroactivity being thus a constitutional principle, so it follows that not even the legislator can issue laws that violate it. Professor Viorel Mihai Ciobanu highlighted that “we witness an imperative rule that cannot be derogated from in civil matters, whether material or procedural laws”³⁷; moreover, the author concludes, “even if the legislator would

³⁶ Published in *Buletinul Oficial (The Official Gazette)*, part I, no. 28, 19 Nov. 1959, p. 236. See also Lect. Dr. Daniel DANIELESCU, Emilian ROMAN, *Izvoare privitoare la istoria monahismului românesc sec. XVI-XXI (Sources regarding the History of the Romanian Monasticism in the 16th – 17th Centuries)*, Doxologia, 2011, Iași, p. 300.

³⁷ Viorel Mihai CIOBANU, *Tratat teoretic și practic de procedură civilă (Theoretical and*

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justifiably want to remove or mitigate some unjust circumstances, he cannot do so by means of a retroactive law, but must seek the appropriate means that do not contradict this constitutional principle”³⁸.

In civil matters, we find the principle of non-retroactivity in art. 1 of the Civil Code: “The law provides only for the future; it does not have retroactive power”, so that, not being a constitutional principle before the 1991 Constitution, professor Viorel Mihai Ciobanu reiterates that “doctrine and jurisprudence have consistently ruled that it was a mandatory interpretation rule for the judge, but did not oblige the lawmaker, who could rule otherwise”³⁹.

The paragraph according to which “the above provisions apply to existing monasteries and monks as well”, in the given circumstances, cannot support this principle of the non-retroactivity of the law, provided as such in the 1991 Constitution. Uplifting this principle “to the rank of constitutional principle is due to the fact that it provides in better circumstances the legal security and the citizens’ confidence in the legal system as well as to the fact that it prevents the disregard for the separation between the legislative power on the one hand and the judiciary or the executive, on the other, contributing in this way to the consolidation of the rule of the law state”⁴⁰.

IV. Conclusions

The freedom of conscience and, implicitly, religious freedom as perceived during the communist era, one of the fundamental rights of the citizens, existed only at the declarative level, being nowadays “one of the most important fundamental liberties: both premise and matrix of the other fundamental rights and liberties”⁴¹, as Professor Marius Bălan highlights.

Practical Guide of Civil Procedure), vol. 1 (General Theory), Național Publishing House, p. 177.

³⁸ Viorel Mihai CIOBANU, *Tratat teoretic și practic de procedură civilă*, p. 177.

³⁹ Viorel Mihai CIOBANU, *Tratat teoretic și practic de procedură civilă*, p. 177. In this regard, the author recalls that there were also retroactive laws, both in material law and procedural law, providing as an example Decree no. 52 of January 31, 1969, to which retroactive effect was granted from January 1, 1969.

⁴⁰ Viorel Mihai CIOBANU, *Tratat teoretic și practic de procedură civilă*, p. 177.

⁴¹ Marius BĂLAN, *Drept constituțional și instituții politice*, vol. 1 (Teoria generală a statului și a constituției. Constituția română în context european) - *Constitutional Law and Political Institutions*, vol. 1 (General Theory of the State and of the Constitution.

Thus, art. 84 of the 1952 Constitution provides and guarantees to all citizens the freedom of conscience:

“1. The freedom of conscience is guaranteed to all citizens of the People’s Republic of Romania. 2. Religious denominations are free to organize and may function freely. The freedom of religious denominations is guaranteed to all citizens of the People’s Republic of Romania. 3. School is separated from the church. No religion, congregation or religious community can set up or maintain general education institutions, but only special schools for training the denomination staff. 4. The way of organizing and functioning of religious denominations is governed by law”⁴².

The first paragraph of Article 84 regulates the freedom of conscience, in general, while paragraph 2 mentions one of the forms of conscience - religion and, implicitly, denominations with religious rituals and religious associations. According to Professor Ioan Deleanu, “religious conscience, as a form of conscience in general, represents an assembly of conceptions, representations and feelings that reflect reality in a distorted and fantastic way, on the basis of the belief that the existence of the universe, the appearance and development of man and, in general, of all natural and social phenomena is due to the action of a (or some) supernatural force(s)”⁴³. Moreover, the legislator viewed education as a mechanism for the promotion of science that was superior to any religious belief, which emerged on the background of a backward phase of development, which is why it is stipulated that “school is separated from church”.

The goal of the socialist state was to “free man from the darkness of religion through the cultural-educational function for raising the general level of knowledge and for the materialistic-scientific education of the people”⁴⁴.

The Romanian Constitution in the European Context), Hamangiu Publishing House, Bucharest, 2015, p. 388.

⁴² *Constituțiile române... (Romanian Constitutions...)*, p. 160.

⁴³ Ioan DELEANU, *Drept Constituțional (Constitutional Law)*, The Didactic and Pedagogical Publishing House, Bucharest, 1980, p. 288.

⁴⁴ Ioan DELEANU, *Drept Constituțional*, p. 288.

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The last paragraph of Art. 84 of the 1952 Constitution guarantees the freedom of religious denominations, but stipulates that their organization and functioning are governed by law; yet “the denomination that endangers the security of the state, the rule of law, socialist and personal property, life, corporal integrity, citizen freedom, socialist morals is firmly forbidden”⁴⁵.

From the *dynamic* perspective, reflected in the acts of implementation and application of state and church legislation by the competent bodies, we can outline the devastating effects for the monastic life, namely the monasteries remained almost deserted as a consequence of the removal of the monks and nuns mentioned in the tables while a considerable number of hermitages and monasteries were to be abolished, either having a small number of people living there or being empty. From a financial and economic point of view, the budget of the Church was drastically limited, many positions in the monastic settlements being deliberately dismantled. From a legal point of view, the most eloquent effect is the fact that the owners of the monastic settlements became mere administrators. Further, the premises of the abolished monasteries were used for other purposes by local authorities.

Since its appearance, monasticism has been a pillar of support for Christian spirituality, both in the Church and in society. The Communist period was no exception, even if monasticism was dramatically affected by the 410/1959 Decree, the monasteries continued to be places of intense spiritual living and preservation of traditional faith, while the faithful did not recant, but remained attached to the monasteries by participating in the feast days and the most important celebrations, pilgrimages and by maintaining spiritual connections with the great confessors such as father Cleopa Ilie, father Paisie Olaru etc. or simply entering monasteries, as brothers.

⁴⁵ Ioan DELEANU, *Drept Constituțional*, p. 289.