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The Law of Discrimination in European and Romanian State Legislation and Its (Un)Applicability in the Orthodox Worship

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Abstract

In Romania, religious cults are recognized by the state authority in accordance with *Law no. 489/2006 on the general regime of religious cults*. Based on this law, the current *Statute for the organization and functioning of the Romanian Orthodox Church* was issued in 2008, which was published in *Monitorul Oficial al României*, as a condition for the recognition of the Orthodox cult by the state, being named “*Constitution of the Church*”, as in 1923 and 1948. The provisions of this law, the *Statute*, the *Church Regulations* and the *Synodal Decisions* issued in accordance with the “*Constitution of the Church*” contain certain provisions which, although based on Holy Scripture and the Holy Canons, could contradict the law of discrimination. However, analyzing them in the context of domestic and international legislation in the field, these provisions are exceptions to the applicability of general laws because they fall within the scope of special rules that derogate from the general ones, as so well specified in art. 3, paragraph 2 of *Council Directive 2000/78 / EC of 27 November 2000*. We will analyze some aspects that over time have been cases in the field, some of them ending with actions in the courts, the solutions given being challenged by the wrongful party including the European Court of Human Rights (ECHR).

Keywords:

discrimination, general laws, special laws, worship, Romanian Orthodox Church

I. Introduction

In art. 2, al. 1 *Romanian Government Ordinance no. 137/2000*¹ defines discrimination as being

“Any difference, exclusion, restriction or preference based on the criteria set out in the legislation in force, namely: race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-communicable disease, HIV infection, membership of a disadvantaged group, and any other criterion having as its object or effect the restriction, removal of the recognition, use or exercise, on equal terms, of human rights and fundamental freedoms or of rights recognized by law in the political, economic, social and cultural field, development or in any other field of public life”.

II. Rules on the prohibition of discrimination in international law

International law provides for rules prohibiting discrimination, thus protecting equality between persons.

II.1. *Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950)*², in art. 9 entitled “Freedom of thought, conscience and religion”, provides to any person through paragraph:

“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 worship, teaching, practice and observance”;

and paragraph 2 specifies how these freedoms may be subject to restrictions in certain special cases:

¹ “O. G. 137/2000 on the prevention and sanctioning of all forms of discrimination”, published in: *Monitorul Oficial al României* no. 183/2013, republished in: *Monitorul Oficial al României*, Partea I, nr. 166 din 7 martie 2014.

² https://www.cncd.ro/wp-content/uploads/2021/02/CEDO-convention_ron.pdf.

“Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”.

Also, art. 6, paragraph 1 refers to the right of every person to a fair trial:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.

In the same respect, art. 14 expressly prohibits discrimination as follows:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

Protocol no. 12 of the same Convention entitled “General prohibition of discrimination” sets out in paragraph 1:

“The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or

other status”. Also, “No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1” (paragraph 2).

II.2. *European Social Charter (Revised)*³ adopted in Strasbourg on 3 May 1996, in Part V, art. E entitled “Non-discrimination” specifies the following:

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status”.

II.3. *Charter of Fundamental Rights of the European Union (2010 / C 83/02)*⁴, in Title III, when it refers to ‘Equality before the law’, provides in Article 20 that

“Everyone is equal before the law”. and by art. 21, when it deals exclusively with “Non-discrimination”, the Charter states that “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited” (par. 1).

Article 23 of the Charter, referring to “Equality between women and men”, also states that it

“must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex”.

³ “The Charter of Fundamental Rights of the European Union” was ratified by the Romanian Parliament by Law no. 74/1999, published in: *Monitorul Oficial al României*, Partea I, nr. 193/4 mai 1999.

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF>

II.4. Council Directive 2000/78 / EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁵, lays down certain criteria applicable in this matter in accordance with the principle of non-discrimination. However, by art. 4, paragraph (2) shall be allowed, by way of exception, as

“Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organizations the ethos of which is based on religion or belief, a difference of treatment based on a person’s religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organization ethos. This difference of treatment shall be implemented taking account of Member States’ constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground [...]”.

II.5. Consolidated version of the Treaty on the Functioning of the European Union⁶ provides in art. 8 (for example: Article 3 (2) TEC) that

“In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women”. Article 10 also complements the following with the text: “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

⁵ https://www.cncd.ro/wp-content/uploads/2021/02/Directiva_Consiliului_2000_78_CE_RO.pdf

⁶ <https://www.cncd.ro/wp-content/uploads/2021/02/Tratatul-privind-functionarea-Uniunii-Europene.pdf>

III. Romanian legislation on non-discrimination

Similar norms are found in the national legislation, the *Constitution* being the main legislative act in this matter, the other normative acts deriving from it.

III.1 *The fundamental law of Romania*⁷ prohibits discrimination in several of its articles. So,

“Citizens are equal before the law and public authorities, without privileges and without discrimination” (art. 16, par. 1); “Defamation of the country and the nation, incitement to war of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, as well as obscene manifestations contrary to morals are prohibited by law” (Article 30, par. 7).

However, art. 53, par. (1) - (2) provides that

“The exercise of certain rights or freedoms may be restricted only by law and only if required, as the case may be, for: the defense of national security, order, public health or morals, the rights and freedoms of citizens; conducting criminal investigation; prevention of the consequences of a natural calamity, of a disaster or of a particularly serious disaster”. “Restriction can only be ordered if it is necessary in a democratic society. The measure must be proportionate to the situation which gave rise to it, be applied in a non-discriminatory manner and without prejudice to the existence of a right or freedom”.

III. 2 *Law no. 489 of 28 December 2006 on religious freedom and the general regime of cults (or the Law of Cults)*⁸, by art. 1, al. (2) provides that

⁷ “Constitution of Romania”, published in: *Monitorul Oficial al României*, Partea I, nr. 233 din 21 noiembrie 1991 and republished in: *Monitorul Oficial al României*, Partea I, nr. 758 din 29 octombrie 2003.

⁸ Published in: *Monitorul Oficial al României*, Partea I, nr. 11 din 8 ianuarie 2007; republished in: *Monitorul Oficial al României* nr. 201 din 21 martie 2014.

“No person shall be prevented or compelled to adopt an opinion or adhere to a religious belief contrary to his or her beliefs, nor shall he or she be discriminated against, persecuted or placed in a position of inferiority for his or her faith, membership or non-membership in a group, religious association or a cult or for the exercise, under the conditions provided by law, of religious freedom”. Also, “Cults are equal before the law and public authorities. The state, through its authorities, will not promote or favor the granting of privileges or the creation of discrimination against any cult” (art. 9, par. 2).

III.3. *Civil Code of 2009*⁹ confers equality before the civil law through art. 30.

“Race, color, nationality, ethnic origin, language, religion, age, sex or sexual orientation, opinion, personal beliefs, political affiliation, trade union, to a social category or to a disadvantaged category, wealth, social origin, degree of culture, as well as any other similar situation have no influence on civilian capacity”.

III.4. *The Criminal Code of 2009*¹⁰ criminalizes torture through art. 282, al. (1)

“The act of the civil servant who performs a function involving the exercise of state authority or another person acting at the instigation or with his express or tacit consent to cause a strong person physical or mental suffering: d) on a ground based on any form of discrimination, shall be punished by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights. Incitement to hatred or discrimination”.

Also, “Inciting the public, by any means, to hate or discriminate against a category of persons is punishable by imprisonment from 6 months to 3 years or a fine” (art. 369).

⁹ Effective from October 1, 2011; republished in: *Monitorul Oficial al României*, Partea I nr. 505 din 15 iulie 2011 with modifications and a rectification.

¹⁰ Effective from February 1, 2014 published in: *Monitorul Oficial al României*, Partea I nr. 510 din 24 iulie 2009.

III.5 *Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination*¹¹ guarantees in particular by art. 1, al. (2)

“The principle of equality between citizens, of the exclusion of privileges and of discrimination by the following d) civil rights, in particular: (vii) the right to freedom of thought, conscience and religion; (ii) the right to form and join trade unions. All these forms of discrimination are under the authority of the CNCD, being sanctioned as the case may be”.

IV. Jurisprudence on (non)discrimination

IV.1. After the 1990s, with great effort, religion became a compulsory-optional subject in the primary, secondary and high school cycles, part of the common core. However, about 10 years ago there was a dispute over the withdrawal of religious insignia from public institutions. In this sense, a petition was submitted to the National Council for Combating Discrimination having as subsidiary object the withdrawal of religious symbols from public education institutions in Romania on the grounds that they constitute discrimination against atheists, agnostics, indifferent or of other denominations than those to whom they belong the religious symbols. Specifically, the Orthodox icons displayed in the classrooms of schools (which are public institutions of the Romanian state) would contradict the regime of these institutions by which the Romanian state, according to law, must be neutral to all religious denominations in Romania. However, the courts (taking into account the legislation in the field and the national cultic tradition of the Romanian people) established that no discriminatory situation can be retained in this matter by the two decisions of the High Court of Cassation and Justice (no. 2393 / 11.06. 2008 and respectively No. 2794 / 22.05.2009).

From a legal point of view, the secular minority in Romania or heterodox people (belonging to other Christian denominations) can be considered

¹¹ “O. G. 137/2000 on the prevention and sanctioning of all forms of discrimination”, published in: *Monitorul Oficial al României*, Partea I. nr. 183/2013, republished in: *Monitorul Oficial al României*, Partea I, nr. 166 din 7 martie 2014

discriminated against by Orthodox majorities because minorities do not receive the same treatment, therefore it is a different treatment, based on reasons related to religious affiliation, applied to certain persons (parents and / or students in similar situations). The final solutions appealed by the courts did not see any breach of the principle of discrimination.

IV.2. The referendum to amend the *Romanian Constitution* (October 6-7, 2018) was based on an initiative initiated by the Coalition for the Family and was actively supported by the Orthodox Church and the Roman Catholic Church. The approach aimed at replacing the phrase “between spouses” in art. 48, par. (1) of the *Constitution* with a more restrictive one, “between a man and a woman”. According to the explanatory memorandum in the draft law, it aims to remove any ambiguity that the use of the term “spouses” (...) could bring in shaping the notion of “family”, the relationship between “family” and the fundamental right of men and women to marry and to found a family, although Article 259 (1) defines marriage as “the freely consented union of a man and a woman” and Article 277 of the same Code prohibits other equivalent forms of cohabitation such as same-sex marriage and civil partnerships. The referendum aimed at a constitutional ban on same-sex marriage, but sexual minority organizations saw this initiative as a restriction and discrimination of their rights. The referendum failed; and the constitutional article remained unchanged, still applying the provisions of the 2011 *Civil Code*.

IV.3. Regarding the right to association, art. 123, al. (8) of the same Statute prohibits priests, deacons and monks “from establishing, being members or participating in associations, foundations and organizations of any kind without the blessing of the local hierarch”. So he could be part of these groups, but only with the consent of the titular bishop. Therefore, if the consent of the titular bishop were not obtained, these rules would be discriminatory for clergy compared to those who may be constituted in such organizations in accordance with the legislation in force.

Subject to the same internal provisions, the rights of clerical staff are also limited in terms of their organization into collective structures established in accordance with the provisions of common law. However, according to the provisions of art. 123, (par. 2) of the *BOR Statute*, with the blessing (written approval of) the local diocese, priests, deacons and monks are allowed to establish, be members or participate in associations, foundations and organizations of any kind (can. 39 ap.), with the

specification contained in art.123, par. (3) that: “Clergy and monks are forbidden to establish or join trade unions” (can. 31 ap., Can. 10 Carthage, can. 13 I-II Constantinople). The latter statutory provision was approved in the meeting of the Holy Synod of the Romanian Orthodox Church by decision no. 4275/2008, as a consequence of the establishment - by court - of the priestly union “Păstorul cel Bun” from Craiova (which initially numbered 35 people).

Thus, the members of the Synod of the Metropolitan Church of Oltenia in the meeting of May 29, 2008 found that the established priestly union contradicts the Holy Canons and the provisions of the B.O.R. *Statute*, deciding, in accordance with art.111, par. 3) of the *Statute* that “will appeal to the court decision on the establishment of this so-called union [...] because the union-type actions are far from the communion of the Church, tending to distort the priestly mission from its purpose”¹².

Through a press release, the Romanian Patriarchate showed at the time that:

“The establishment of priestly unions is non-canonical, unnatural and illegal, and according to the *Law on Trade Unions* no. 54/2003, the management staff cannot be organized in trade unions. As such, priests being leaders of parishes cannot organize in unions”¹³.

Following the appeal declared by the Metropolitan Church of Oltenia against the establishment of the respective union on its territory, the Dolj Tribunal admitted the appeal and the pronounced decision was irrevocable¹⁴.

Addressing the European Court of Human Rights (ECHR), the appeal of the trade unionists was admitted.

At this decision, the Press Office of the Romanian Patriarchate made certain clarifications on February 2, 2012, showing that the sentence is the

¹² <http://theologia.wordpress.com/2008/05/29/comunicatul-sinodului-mitropolitan-al-olteniei-privitor-la-sindicatul-preotilor-pastorul-cel-bun-din-craiova/>

¹³ “Communication of the Press Office of the Romanian Patriarchate on the Problem of Establishing Priests’ Unions within the Romanian Orthodox Church”, in: <http://theologia.wordpress.com/2008/05/23/problema-infintarii-de-sindicat-preotesti-in-sanul-bisericii-ortodoxe-romane/>

¹⁴ <http://theologia.wordpress.com/2008/07/14/sindicatul-preotilor-din-craiova-primeste-din-partea-tribunalului-dolj-decizia-irevocabila-de-a-nu-functiona/>

result of the ECHR's insufficient knowledge of the specifics of relations between state and cults in Romania and ignoring the provisions of the *Romanian Constitution* (art. 8) and of the *Statute of the Romanian Orthodox Church* which clearly states the autonomy of the cults towards the State, confusing the vocational specificity of the priesthood... (art. 123, par. 7 of the Statute) and employment relationships specific to civilian employees. The totally erroneous statement in the ECHR decision that the statute of the so-called union would not contradict in any way the *B.O.R. Statute, the Law of Cults and Canons* are contradicted by the objectives of the union, being incompatible with the priestly service:

- a. "Organization of rallies, demonstrations and strikes" (point 3.2 letter j of the *Statute of the trade union*), contradicts the status recognized to the cults by the Romanian state of "factors of social peace" (art. 7 paragraph 1 of Law no. 489/2006 on *religious freedom and the general regime of religions*);
- b. "Observance of the legal provisions regarding holidays and public holidays" (point 3.2 letter c of the *Statute of the trade union*) in the case of clergy, which means that Saturdays and Sundays, as well as other legal holidays that coincide with religious holidays would be days free for the clergy members of the union;
- c. "Ensuring the presence and representation of the union at all levels and in all church decision-making bodies" (art. 3, pt. 2, lit. and the Statute of the trade union), including the work of the Holy Synod (art. 3, point 2, letter ș), which would be a flagrant violation of the autonomy of the Church and an attempt by the Union to become a pressure group and to evade the statutory ways of consulting clergy in diocesan assemblies, or in the Permanencies of the Diocesan Councils, including in the National Church Council and the National Church Assembly of the Romanian Orthodox Church¹⁵.

Moreover, according to the Holy Canons and the *B.O.R. Statute*, priests - like magistrates and the military - are not allowed to participate in forms of association, including trade unions, to be impartial and fully committed to the common good of the people. (...)"¹⁶.

¹⁵ Cf. <https://theologia.wordpress.com/2012/02/02/cedo-recunoaste-juridic-sindicatul-preotilor-pastorul-cel-bun-din-mitropolia-olteniei/>

¹⁶ "Inadequate decision at the ECHR - The priestly vocation was assimilated with the

On the same topic, another statement from March 8, 2012 stated that:

“The decision in the first instance of the ECHR against the Romanian State is unfair because it indirectly accuses the Romanian State for respecting the autonomy of religions, guaranteed by the *Romanian Constitution* (art. 29). The appeal that the Romanian State has the right to make regarding the decision in the first instance of the ECHR aims first of all to defend its quality of State of law that respects the autonomy of religious cults guaranteed by the *Romanian Constitution and the Romanian Cults Law* no. 489/2006, as well as international law. According to the Romanian *Law of Cults*, cults are autonomous in relation to the State and are organized according to their own statutes or canonical codes (art. 8, 1)”¹⁷.

Finally, on July 9, 2013, the Grand Chamber of the ECHR in Strasbourg communicated the final decision in the case of the “Păstorul cel Bun” Union against Romania and decided that the Romanian State did not violate the right to freedom of association when it rejected the registration of a trade union of priests in 2008.

In motivating the decision, the ECHR considered that the Romanian state respected the principle of autonomy of religious communities in Romania and the obligation of religious neutrality enunciated by Article 9 of the European Convention on Human Rights when it did not admit the registration of a trade union of priests. It considered as reasonable the decision of the Dolj Court which considered that the establishment of a union of priests represents a real risk of violation of the principle of Church autonomy, stipulated in the *Romanian Constitution* (art. 29) and the *Law of Cults* (art. 8), and the decision of the Romanian State not to register the priests’ union was grounded, the vocation of the priesthood

union action”, in: http://www.basilica.ro/stiri/hotarare_inadecvata_la_cedo_vocatia_sacerdotala_a_fost_asimilata_cu_actiunea_sindicala__9697.html, reported by the Press Office of the Romanian Patriarchate.

¹⁷ http://www.basilica.ro/stiri/brecurs_pentru_demnitatea_statului_de_drept_care_respecta_autonomia_bisericiib_4565.html; <http://www.stiri.lacasuriortodoxe.ro/uncategorized/nicio-biserica-ortodoxa-din-lume-nu-accepta-un-sindicat-al-preotilor-ca-structura-canonica.html>.

not being compatible with the union action¹⁸. Therefore, recognizing their specific identity and contribution, the Union prohibits “any discrimination based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion or belief” (Title II, Art. II-14, paragraph 3). of the European Treaty), but at the same time respecting the “cultural, religious and linguistic diversity” (Title III, Articles II-22 of the European Treaty) of each.

IV.4. Lately, starting with March 2019, we have witnessed the way in which Christian people, mainly Orthodox ones, would be prevented from manifesting their freedom of expression and religion publicly through the health measures taken by the authorities regarding the spread of certain diseases in the event of a pandemic. The access of the faithful to the divine services in the places of worship was significantly restricted, preventing even the unfolding of the traditional processions of the Palm Sunday, of Easter, but also of the pilgrimages to the relics of the patron saints of Iasi and Bucharest. From an internal-ecclesiastical point of view, we could consider this measure discriminatory for the traditional majority, even if it falls within the civil legal norms issued by the state power. But, although there were pros and cons, we must not forget that art. 2, para. 2 of the *Law on Cults* allows that “Freedom to manifest one’s religion or beliefs may not be subject to restrictions other than those provided by law which, in a democratic society, constitute necessary measures for public safety, protection of order, health, public morals, the rights and freedoms of others”, provisions found in art. 9, paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 4, 1950)

V. Church domestic legislation on (non) discrimination

From a legislative-ecclesiastical point of view, there are certain specific provisions regarding the organization and functioning of the Romanian Orthodox Church, which, apparently, would constitute elements of discrimination against other persons.

¹⁸ Cf. http://www.basilica.ro/stiri/ibcurtea-european-ia-drepturilor-omului-cedo-consider-ntemeiat-decizia-autoritilor-romne-de-a-nu-nregistra-un-sindicat-al-preoilorb_8449.html.

V.1. Article 123, para. (4) of the Statute for the organization and functioning of the Romanian Orthodox Church requires for the appointment of candidates for the positions of priest and deacon the fulfillment of “canonical, statutory and church regulatory conditions”. Thus, the recipients of the Holy Mystery of Ordination can only be male Christians who have been validly baptized and who meet certain conditions, established over time by the Church, i.e.: to be male, women not being admitted to ordination, but not excluded from ordination. The same female persons may be part of the governing structures of the Church (art. 59, paragraph 3 of the B.O.R Statute), but may not become individual holders in the leadership of the Church at any level (deacon, priest or bishop); those rules run counter to equal opportunities for women and, implicitly, to discrimination against men.

Also, those who are prepared to receive the sacrament of ordination must not be blind, lame, or have other visible physical defects (can. 78 and 79 apostolic), removing them in favor of the physically healthy; also including the age of ordination would be a matter likely to discriminate against young people to the detriment of older people.

V.2. *Regulation of cemeteries in the Romanian Orthodox Church*¹⁹ contains some provisions that would constitute grounds for discrimination for some persons of other denominations. For example, “if one of the concessionaires of a burial place has renounced the quality of member of the Romanian Orthodox Church, he can no longer be buried among Orthodox deceased and loses his right of concession on that burial place” (art. 48, para. 1); or burial in separate plots would again be discriminatory for them to the detriment of the Orthodox majority (art. 47 para. 2). Also, the same post-mortem rights do not apply to cremated persons as to persons receiving the full funeral service. Therefore, “to those who have nevertheless been cremated or will be cremated of their own free will, to be denied any religious service, both at the funeral and at the memorial service for the dead”²⁰.

V.3. *The rules of procedure of the disciplinary and judicial courts of the Romanian Orthodox Church* have applicability on the clergy - in

¹⁹ *Regulamentul cimitirelor din Biserica Ortodoxă Română*, Editura Institutului Biblic și de Misiune Ortodoxă, București, 2020.

²⁰ “Decision no. 4529 of 5 July 2012 of the Holy Synod on the non-Christian practice of cremation of the dead”, in: [http://patriarhia.ro/hotarari-ale-sfantului-sinod-ince-cronologic--323/\(...\)-328/](http://patriarhia.ro/hotarari-ale-sfantului-sinod-ince-cronologic--323/(...)-328/) (10 mai 2021).

particular - and on the other persons who carry out their activity within the Orthodox Church. These categories would be discriminated against other persons - citizens of the same Romanian state who submit from a judicial point of view only to the secular / civil courts of secular power. But, "By virtue of the autonomy of the cults, provided by law, and of their specific competences, the ecclesiastical courts solve problems of internal discipline, and the decisions of the ecclesiastical courts at all levels are not appealable before the civil courts" (art. 158, para. 4). However, the staff mentioned at the time of employment in order to function within the Orthodox cult implicitly also administers these forms of internal church judgment, not being discriminated against the other persons "from outside".

V.4. Not taking into account the statutory provisions of the church, some clerics, as employees of the parishes where they worked, wanting to benefit from the rights conferred by the provisions of the *Labor Code*²¹ in order not to be discriminated in salaries and legal rest, they notified the *Ministry of Labor, Family and Equal Opportunities - Labor Inspectorate*, regarding the non-granting of benefits arising from this code. In this sense, the respective Ministry, through the address no. 739 / MB / 22.08.2007, is of the opinion that there are some discrepancies between the provisions of the *Labor Code* and the status of clerical staff, namely:

"Non-compliance with the legal provisions regarding the establishment of the minimum wage negotiated in the collective labor contract concluded at national level; exceeding the maximum legal working time (48 hours per week, including overtime); non-compliance with the provisions of the *Labor Code* regarding the granting of weekly rest, in the sense that there are situations in which priests do not benefit from two consecutive days of weekly rest; non-compliance with the legal provisions of the *Labor Code* governing the granting of the allowance due during the rest leave at least 5 working days before going on leave; the non-conclusion in written form of the individual employment contracts, between the priests and the Romanian Orthodox Church".

²¹ "Labor Code", published in: *Monitorul Oficial al României*, Partea I, nr.72 din 05 februarie 2003; in force with subsequent amendments and completions.

At all these notifications, “the Labor Inspectorate concluded that the relations between the priests and the cults to which they belong (the Romanian Orthodox Church) are not subject to legal employment relationships”. The Labor Inspectorate considers that the provisions of *Law no. 53/2003 - The Labor Code*, of the collective labor contract concluded at national level, as well as those of other normative acts applicable to the legal labor relations between employers and employees, are not applicable to the relations between clergy and the cults to which they belong. The argumentation of this conclusion can be found in art. 23 al. (1) of Law no. 489/2006, according to which “cults choose, appoint, hire or revoke their staff according to their own statutes, canonical codes or regulations”. These regulations cannot be supplemented with the provisions of the Labor Code, respectively of the collective labor contracts, and the verification of the way in which the relations between the clergy and the cults to which they belong are carried out is not within the competence of the Labor Inspectorate.

This view coincides with that of the *State Secretariat for Religions*²², and the Romanian Patriarchate made some clarifications²³ in this matter:

“between the Romanian Orthodox Church and its clerical staff one cannot speak of labor relations, but of specific statutory-canonical relations, deriving from the canonical mission of the priest. The whole life of the servants of the cults has certain particularities, which belong to the very doctrine and tradition of the Church, particularities which do not find a correspondent in the state regulations on labor law”.

As it results from art.1, para. 2 of the *Labor Code*, the provisions of this normative act do not apply in situations where there are special laws that have derogating provisions. Moreover, the clerical staff does not carry out their activity on the basis of an individual employment contract, but on the basis of the power of attorney given by the Diocesan Bishop. The

²² *Address no. 7002 / 30.08.2007 of the State Secretariat for Cults*, communicated to the Archdioceses through the address of the Diocese of Arad no. 2925-B / 29 October 2007.

²³ *Address no. 3766 / 04.09.2007 of the Romanian Patriarchate*, communicated to the Archdioceses through the address of the Diocese of Arad no. 2925-B / 29 October 2007.

provisions of the *Labor Code* and of the collective labor agreements are not applicable to these relations.

VI. Conclusion

Although at first glance certain aspects of church legislation seem to contradict national and international legal norms on discrimination, they do not fall into this category. The specifics of the church organization through internal norms are protected by the international and national legislation of the Romanian state in the field of religious freedom and the organization of each recognized legal cult.

In this sense, art. 73, al. (3), lit. s) of the *Romanian Constitution* provides that “by organic law the general regime of cults is regulated”. Therefore, the organic law is a special law, which derogates from the general law. Thus, in the field of religious cults and implicitly of the organization of the Romanian Orthodox Church, the norms of law derogate from the provisions of ordinary laws, because they are special laws. Also, the *Statute for the organization and functioning of the Romanian Orthodox Church* issued based on the *Law of Cults* no. 489/2006, as well as the other regulations derived from the *Statute* have the same special regime in applicability. These exceptions are allowed, as derogations, including by some international norms in the mentioned scope.