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Religious Freedom in the Current Pandemic Context. A Case Study: the Pilgrimage to Iași

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Abstract

The study aims to provide a series of legal landmarks regarding pilgrimages and pilgrimages in the current context of the Covid-19 pandemic, with reference to the right freedom of thought, conscience and religion as stipulated in Article 9 of The European Convention on Human Rights or in Article 18 of The International Covenant on Civil and Political Rights while also approaching the issue of the state – Church relationship. We also analyse the set of measures taken by the National and County Committees for Emergency Situations in the context of the feast of the Holy Pious Parascheva in Iași, the patron saint of Moldova, which takes place every year, on October 14, and the pilgrimage to Iași.

Keywords

religious freedom, pilgrimage, civil and church legislation, human rights.

I. The significance of pilgrimages

For Christianity, the pilgrimage¹ is a form of religious experience and manifestation, having, as His Beatitude Daniel emphasizes, “multiple

¹ See for the West: Franciszek MRÓZ, “The Impact of COVID-19 on Pilgrimages and Religious Tourism in Europe During the First Six Months of the Pandemic”, in: *Journal of Religion and Health*, (2021) 60, pp. 625-645, retrieved from <https://doi.org/10.1007/s10943-021-01201-0>, on 05.04.2021.

motivations and deep spiritual meanings when intensely experienced and properly understood”², while “the pilgrims are people who wish to visit and worship biblical holy places, tombs of martyrs, relics of saints, miracle-working icons or places where great famous spiritual fathers live”³. His Beatitude Daniel lists five reasons for going on a pilgrimage, namely: deepening of faith and love for God; multiplication of prayer and the spiritual improvement of the pilgrim; thanksgiving to God for the blessings received from Him; confession of sins and prayers of forgiveness for the salvation of the soul and, last but not least, receiving God’s help to accomplish an important work or to be healed of a physical or mental illness⁴. In church tradition, the pilgrimage is defined as “a particular journey made with the destination of a holy place and the honour given to the spiritual centre of the place: tomb, relics, icon, etc.”⁵.

The pilgrimage has important meanings in other monotheistic religions as well. Thus, in Judaism, the pilgrimage was mandatory until the destruction of the temple in Jerusalem, which took place in 70 AD. Even if mandatory pilgrimages ended with the destruction of the Temple, voluntary pilgrimages continue to this day: the faithful come to Jerusalem to pray in the place where the Temple once stood⁶.

In Islam, the pilgrimage is also of great value. In fact, the pilgrimage to Mecca is one of the “five pillars”, obligations of the faithful, which imply the very membership to Umma (the matrix, unique community). Together with this mandatory pilgrimage (Hajj), which must be completed at a certain time of the year, the month of the pilgrimage, every year between the 8th and 12th of the month of dhū-l-ḥiġġa, the last month of the

² † DANIEL, Metropolitan of Moldova and Bucovina, “Călătorind cu Dumnezeu – înțelesul și folosul pelerinajului” (“Traveling with God - the meaning and use of the pilgrimage”), in: *Teologie și Viață*, New Series, LXXVI (2000) 7-12, p. 27.

³ † DANIEL, Mitropolitul Moldovei și Bucovinei, “Călătorind cu Dumnezeu – înțelesul și folosul pelerinajului” (“Traveling with God - the meaning and use of the pilgrimage”), p. 27.

⁴ † DANIEL, Mitropolitul Moldovei și Bucovinei, “Călătorind cu Dumnezeu – înțelesul și folosul pelerinajului” (“Traveling with God - the meaning and use of the pilgrimage”), p. 27.

⁵ Michel STAVROU, “O perspectivă teologică asupra pelerinajului” (“A theological perspective on pilgrimage”), in: *Teologie și Viață*, New Series, LXXVI (2000) 7-12, p. 40.

⁶ Maria Luisa LO GIACCO, “I pellegrinaggi vietati in tempo di pandemia da Covid-19”, retrieved from <https://diresomnet.files.wordpress.com/2020/05/lo-giacco-itapdf.pdf>, 14 Maggio 2020, p. 1, on 05.04.2021.

Islamic calendar, the Islamic religion also include voluntary pilgrimages to Mecca, called Umrah, which can take place any time. Among the rites that pilgrims must perform in Mecca is one closely related to disease: the faithful go to the *Zamzam* spring, whose water is considered therapeutic, to drink it and take some home. This is just one mention of the sacred places of Islam⁷.

In Romania, starting with the last decade of the twentieth century, we notice a major interest in religious tourism, as well as an increase in the number of pilgrims present at the processions with the Holy Relics. Even if during the communist period, pilgrimages could not take place in normal conditions, they were not abolished. Today, pilgrims are as many as tens of thousands, both in the country and abroad.

Pilgrimages are more intense “to the holy places where there are relics of saints, miracle-working icons, spiritual fathers known for the sanctity of their lives”⁸. Among the many Moldavian feast days and pilgrimages, we shall hereafter refer to the pilgrimage in Iași to the Holy Pious Parascheva, which dates from the middle of the 17th century, when the Holy Relics were brought and placed in the church of the Holy Three Hierarchs Monastery, within an impressive procession, that the Moldavian ruler of the time attended⁹.

II. A case study: the pilgrimage to Iași

Every year, on October 14, around the feast of the Holy Pious Parascheva in Iași, the patron saint of Moldova, the Archdiocese of Iași organizes both the feast day and the pilgrimage to the Holy Relics of the Pious Parascheva and other saints from the country or abroad. Thus, a well-determined period is necessary for the pilgrims to pass by the shrine with the Holy Relics to worship, pray and be silent. In this context, the Municipality of Iași becomes one of the most important pilgrimage centres in the country.

⁷ Maria Luisa LO GIACCO, “I pellegrinaggi vietati in tempo di pandemia da Covid-19”, retrieved from <https://diresomnet.files.wordpress.com/2020/05/lo-giacco-itapdf.pdf>, 14 Maggio 2020, p. 2, on 05.04.2021.

⁸ Nicolae DASCĂLU, “Itinerarii spirituale în Moldova” (“Spiritual itineraries in Moldova”), in: *Teologie și Viață*, New Series, LXXVI (2000) 7-12, p. 66.

⁹ Dan SANDU, “Pelerinajul – călătorie spre viața de sfințenie” (“The pilgrimage - journey to the life of holiness”), in: *Teologie și Viață*, New Series, LXXVI (2000) 7-12, p. 80.

The pilgrim is any faithful Christian who wishes to worship, pray and have a moment at the relics of Saint Pious Parascheva, the protector of Moldova. He lives in another area of the country and has to travel several hundred km to reach Iași, which, in the pandemic context of 2020, raised some issues. We mention the fact that at that time the Romanian Government extended the state of alert by Decision no. 782 of September 14 2020 on the extension of the alert status on the Romanian territory starting with September 15, 2020, as well as the establishment of measures to be applied during it to prevent and combat the effects of the COVID-19 pandemic, published in the Official Gazette no. 842 of September 14, 2020. The extension of the state of alert imposed a series of restrictions, among them - the one that concerns our topic, namely, restricting pilgrimages by Decision no. 47 on the 5th October 2020 on the approval of the list of countries / areas of epidemiological risk for which the quarantine measure is established for persons arriving in Romania and the establishment of measures in the field of public health, by the National Committee for Emergency Situations, which provides in art. 2 the following: “The organization of religious holidays is allowed only with the participation of persons who have the residence in the locality where the activity takes place, without the participation of persons / pilgrims from other localities”¹⁰. Moreover, the Iași County Committee for Emergency Situations, by Decision no. 35 on the 6th October 2020, in the annex no. 1, paragraph 1, orders the Archdiocese of Iași

“to establish a delineated perimeter, having as reference point the Metropolitan Ensemble in Iași, in order to carry out the religious holiday occasioned by the Feast of the Holy Pious Parascheva, perimeter in which access is allowed only for pilgrims who have their residence in Iași; the perimeter in question and the access points will be established by mutual agreement with the law enforcement bodies and with the City Hall of Iași, and the entry of persons in the area will be allowed based on the verification of identity documents”¹¹.

¹⁰ Comitetului Național pentru Situații de Urgență (National Committee for Emergency Situations), *Decision no. 47* on 05.10.2020, retrieved from <https://stirioficiale.ro/hotarari/hotarare-nr-47-din-05-10-2020-a-cnsu>, on 05.04.2021.

¹¹ Comitetul Județean pentru Situații de Urgență Iași (County Committee for Emergency Situations), *Decision no. 35* on 06.10.2020, retrieved from <http://www.primaria-iasi.ro/imagini-iasi/fisiere-iasi/1602075692-Hot%20CJSU%2035.pdf>, on 05.04.2021.

We can thus see that there may have been a number of obstacles to discourage or hinder pilgrimages. Among them, in this case, we mention the transport restrictions and the unjustified restriction of the pilgrims from the country on going on the pilgrimage, who, on arriving at the entrance to the Municipality of Iași, were notified that they could not go to worship and that they had to return. Therefore, the state laws can affect those who want to go on a pilgrimage.

III. Freedom of thought, conscience and religion - legislative landmarks

Freedom of thought, conscience and religion is a fundamental right, acknowledged both in the national legislation (art. 29 of the Romanian Constitution under the title Freedom of conscience), and in the European and international acts¹². Law no. 489/2006 on religious freedom and the general regime of denominations, art. 8, 1, stipulates that “they are organized and operate on the basis of the constitutional provisions and of this law, autonomously, according to their own statutes or canonical codes”. The interpretation of art. 8, 1 shows undoubtedly that the Romanian Orthodox Church, in this case, is organized and governed by its own Statute and Regulations, autonomously, through its own governing bodies, without affecting the constitutional provisions and Law no. 489/2006 on religious freedom and the general regime of denominations. Moreover, the same law acknowledges, in art. 9, the principle of state neutrality towards denominations and the principle of non-discrimination in relations among them¹³. *The statute for the organization and functioning of the Romanian Orthodox Church*, art. 4, (1), stipulates that: “The Romanian Orthodox Church is autonomous from the State and from other institutions”¹⁴. Thus, this article sets out the principle of autonomy.

¹² European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights, Freedom of thought, Conscience and religion*, p. 6, retrieved from https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf, on 05.04.2021.

¹³ Emilian-Iustinian ROMAN, “Legislative and Canonical Challenges during the Covid-19 Pandemic”, in: *Romanian Journal of Artistic Creativity*, 8 (2020) 4, p. 111.

¹⁴ *Statutul pentru organizarea și funcționarea Bisericii Ortodoxe Române (The Statute for the Organization and Functioning of the Romania Orthodox Church)*, in *Monitorul Oficial al României (Romania's Official Gazette)*, Partea I - Legi, Decrete, Hotărâri și alte acte, 188 (XXXII) 97, Monday, 10th February, 2020, p. 12.

Article 9 of The European Convention on Human Rights stipulates:

“1 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. 2. 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”¹⁵.

Art. 18 (3) of The International Covenant on Civil and Political Rights stipulates that “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”¹⁶. Therefore, according to art. 18 of the ICCPR, “this right includes freedom to have or to adopt a religion or belief of one’s choice, and freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching”¹⁷. Thus, “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”¹⁸.

Within the United Nations Organisation (UNO), the Human Rights Committee, which provides the Council with expertise and advice on

¹⁵ Corneliu BÎRSAN, *Convenția europeană a drepturilor omului. Comentariu pe articole. Vol. I. Drepturi și libertăți (The European Convention on Human Rights. Comment on articles. Vol. I. Rights and Freedoms)*, All Beck, Bucharest, 2005, p. 695.

¹⁶ *Pact internațional din 16 decembrie 1966 cu privire la drepturile civile și politice (International Covenant of 16 December 1966 on Civil and Political Rights)*, in *Buletinul Oficial*, no. 146 on 20th November 1974, retrieved from <http://legislatie.just.ro/Public/DetaliiDocumentAfis/82590>, on 05.04.2021.

¹⁷ European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights, Freedom of thought, Conscience and religion*, p. 7, retrieved from https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf, on 05.04.2021.

¹⁸ European Court of Human Rights, *Guide on Article 9 of the European Convention on Human Rights, Freedom of thought, Conscience and religion*, p. 7.

human rights issues, establishes in General Comment no. 22 on Article 18 (3) of the ICCPR that

“limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner”¹⁹.

Therefore, the limitation of the manifestation of religious freedom by invoking national security, because it is provided in art. 18 of the ICCPR as a reason for derogation²⁰.

Syracuse Principles on the Limitation and Derogation Provisions in the ICCPR (1984) places religious freedom among non-derogable rights:

“No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant’s guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable

¹⁹ General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 30/07/93. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments), retrieved from <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2022.pdf>, on 05.04.2021.

²⁰ Cătălin RAIU, “Cum se limitează libertatea religioasă în România în pandemie?” (“How is religious freedom limited in Romania in a pandemic?”), retrieved from <https://www.hotnews.ro/stiri-opinii-24400666-cum-limiteaza-libertatea-religioasa-romania-pandemie.htm>, on 05.04.2021.

under any conditions even for the asserted purpose of preserving the life of the nation”²¹;

as Cătălin Raiu, Romania’s representative to the OSCE panel of religious freedom experts, points out, “rights are not competitive (the right to a healthy life versus religious freedom) and cannot be ranked”²².

IV. Acknowledging the right to pilgrimage as part of the right to freedom of thought, conscience and religion

In difficult moments, in our case, during the COVID 19 epidemic, religiosity increases and the faithful manifest their faith through earnest prayers to God, through processions and pilgrimages, thus seeking consolation and healing.

Praying to a saint has always been considered a weapon of defence against all dangers, and the pilgrimage has always been an expression of the people’s religiosity, having a strong therapeutic meaning. Therefore, the COVID-19 pandemic and the preventive measures have faded in the face of the spiritual need of the faithful, which is why decision makers have used various means to discourage or prevent pilgrimages.

UN organizations have discussed the formal recognition in an international document of the right to make pilgrimages. The first to emphasize this aspect of the right to freedom of thought, conscience and religion was Arcot Krishnaswami, in his study on discrimination entitled: “Study of Discrimination in the Matter of Religious Rights and Practices”. Thus, he states that

“while some faiths consider it to be a duty of every follower to undertake pilgrimages to one or more sacred places associated with special events in their history, others favour such

²¹ American Association for the International Commission of Jurists, Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, retrieved from <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, on 05.05.2021.

²² Cătălin RAIU, “Cum se limitează libertatea religioasă în România în pandemie?” (“How is religious freedom limited in Romania in a pandemic?”), retrieved from <https://www.hotnews.ro/stiri-opinii-24400666-cum-limiteaza-libertatea-religioasa-romania-pandemie.htm>, on 05.04.2021.

pilgrimages without making them obligatory. Pilgrimages may be undertaken by individuals either singly or in groups Frequently they involve not only travel within a country, but also travel to a foreign country where the sacred places are located. Pilgrimages to foreign countries involve not only the possibility for the pilgrim to leave his own country, but also the possibility for him to enter the appropriate foreign country. [W]hen a pilgrimage is an essential part of a faith, any systematic prohibition or curtailment of the possibility for pilgrims ... to leave their own country or to enter a foreign country where the sacred place is located, would constitute a serious infringement of the right of the individual to manifest his religion or belief. Thus as a general rule the possibility for pilgrims to journey to sacred places as acts of devotion prescribed by their religion or belief-whether inside or outside their own country-should be assured”²³.

Acknowledging the right to pilgrimage as part of the right to freedom of thought, conscience and religion is the legal solution to counteract obstacles that may exist at the national level. The protection of human rights is also achieved through national legal systems, namely by imposing an obligation on states to incorporate this subsidiary right into their internal legal system. Thus, on the one hand, the efforts of the international community to educate states and individuals on the right to make pilgrimages will encourage citizens to assert their rights in case of violation, and on the other hand, the intervention of the international community on behalf of the nation will encourage states to respect the law. Furthermore, the state will be prohibited from limiting or denying the right by local or national law²⁴.

The interference of the Romanian authorities in the sphere of religious freedom took place both during the state of emergency, through the content of the Military Ordinances no. 1 (art. 2) and no. 2 (art. 9), which ordered

²³ Peter W. MASON, “Pilgrimage to Religious Shrines: An Essential Element in the Human Right to Freedom of Thought, Conscience, and Religion”, in: *Journal of International Law*, 25 (1993) 3, p. 639. retrieved from <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1621&context=jil>, on 05.04.2021.

²⁴ Cfr. Peter W. MASON, “Pilgrimage to Religious Shrines: An Essential Element in the Human Right to Freedom of Thought, Conscience, and Religion”, p. 642.

the suspension of all religious activities, performed indoors, giving only the possibility of celebrating liturgical rituals without public participation, while, in regard to liturgical / religious acts of a private nature (baptism, wreaths, funerals), a maximum of 8 people can participate, as well as during the state of alert. Thus, Ordinance no. 875/80/2020 for the approval of the rules regarding the access to the places of worship, the minimum safety distance and specific sanitary measures for the development of religious activities²⁵, measures regarding strictly the denominations, in this case the Romanian Orthodox Church, without leaving it free to organize and decide autonomously, in order to comply with the measures taken by the state authorities during the state of alert.

Article 9 of ECHR also guarantees religious manifestations of denominations outside places of worship, specifically, they can organize public gatherings, processions, pilgrimages, etc. In this regard, Corneliu Bîrsan notes that the former Commission decided that in the case of a pilgrimage, “freedom of religion is absorbed by the freedom to participate in peaceful meetings, so by the freedom of assembly, guaranteed by Article 11 of the Convention, so that a separate examination of the disputed situation is not required, based on the provisions of art. 9 of the Convention”²⁶. Moreover, the refusal of the authorities to authorize a pilgrimage requires examination both in terms of restricting the right to freedom of thought, conscience and religion, and in terms of respect for freedom of assembly, a situation in which the provisions of art. 11 must be interpreted in accordance with the provisions of Articles 9, 1 of the Convention²⁷.

The limitations and restrictions of religious freedom apply only to external manifestations (*forum externum*), because the inner manifestations of the person (*forum internum*) are not provisioned in the law. Thus, Decision no. 24 of 14th May 2020, on the approval of the establishment

²⁵ The text was published in the *Monitorul Oficial (The Official Gazette)*, Part I, no. 435 on 22nd May 2020. Ordinance no. 1070/826/2020 on measures to prevent contamination with the new coronavirus SARS-CoV-2 and to ensure the development of activity in places of worship during the alert period is repealed.

²⁶ Corneliu BÎRSAN, *Convenția europeană a drepturilor omului. Comentariu pe articole. Vol. I. Drepturi și libertăți (The European Convention on Human Rights. Comment on articles. Vol. I. Rights and Freedoms)*, All Beck, Bucharest, 2005, pp. 716-717.

²⁷ Corneliu BÎRSAN, *Convenția europeană a drepturilor omului...*, p. 717.

of the state alert at national level and of the measures for prevention and control of infections, in the context of the epidemiological situation generated by the SARS-CoV-2 virus, adopted by the National Committee for Emergencies, published in the Official Gazette no. 395 of May 15, 2020, according to Annex 1, point 5, para. (2), lit. "A", allowed the following: "the activities organized by the servants of religious denominations, with the participation of the public, which take place only outside the places of worship... Religious services held in public places, outside places of worship, are not considered public gatherings"²⁸.

In regard to the restriction of the freedom to manifest one's religion or beliefs, concretely in its external dimension, pilgrimages / processions, art. 9, 2 of the European Convention on Human Rights stipulates the following conditions: "to be stipulated by law, to constitute necessary measures, in a democratic society, for public safety, the protection of public order, health or morals or for the protection of the rights and freedoms of others"²⁹.

In other words, the limitations should be stipulated in a national law enacted before the imposition of restrictions, be absolutely necessary in limiting the effects of the pandemic, taking into account objective and quantifiable criteria, be proportionate to the aim pursued, proportionality being a principle often invoked in ECHR case law. Also, the principles of non-discrimination and state neutrality presuppose state intervention to the same extent as in the other areas of social life, so the limitations should not be discriminatory and incitement to hatred be excluded. Therefore, in the case of the pilgrimage from Iasi, the authorities issued additional

²⁸ Comitetul Național pentru situații de urgență, *Hotărârea nr. 24 din data de 14 mai 2020, privind aprobarea instituirii stării de alertă la nivel național și a măsurilor de prevenire și control al infecțiilor; în contextul situației epidemiologice generate de virusul SARS-CoV-2* (National Committee for Emergency Situations, *Decision no. 24 of 14 May 2020, on the approval of the establishment of the national alert status and of the measures for prevention and control of infections, in the context of the epidemiological situation generated by the SARS-CoV-2 virus*), retrieved <http://legislatie.just.ro/Public/DetaliiDocument/225602>, on 05.04.2021. For the guarantee and limitations of freedom of thought, conscience and religion, see INSTITUTUL ROMÂN PENTRU DREPTURILE OMULUI, *Studiul preliminar privind criza generată de pandemia COVID-19 și impactul acesteia asupra drepturilor omului* (The Romanian Institute for Human Rights, *Preliminary Study on the COVID-19 Pandemic Crisis and Its Impact on Human Rights*), retrieved from http://irido.ro/pdf/IRDO_Studiu%20preliminar%20privind%20criza%20generata%20de%20pandemia%20COVID%2019.pdf, on 05.04.2021.

²⁹ Corneliu BIRSAN, *Convenția europeană a drepturilor omului...*, p. 695.

measures that went beyond the legal framework, with negative social, legal and spiritual effects³⁰.

V. Conclusions

Nowadays, we notice that the pilgrimage is confused with religious tourism, ignoring the fact that the pilgrimage always has a religious motive, and the believer seeks a spiritual improvement, holiness. At the same time, compliance with state laws, in this case, the measures to prevent and combat the effects of the COVID-19 pandemic is a religious obligation, this obligation having a double connotation, on the one hand, to protect health and bodily life, and on the other part, to protect health and the spiritual life. Therefore, the pilgrimage must be recognized and protected as an essential part of the human right to freedom of thought, conscience and religion.

³⁰ Cfr. Cătălin RAIU, “Cum se limitează libertatea religioasă în România în pandemie?” (“How is religious freedom limited in Romania in a pandemic?”), retrieved from <https://www.hotnews.ro/stiri-opinii-24400666-cum-limiteaza-libertatea-religioasa-romania-pandemie.htm>, on 05.04.2021.