

RELIGIOUS FREEDOMS AT EUROPEAN UNION LEVEL AND THEIR PROTECTION BY THE PEOPLE'S ADVOCATE

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Abstract

This paper aims to contribute to change society's perception of the capacity of the People's Advocate to get involved in cases regarding religious freedoms. Human rights cannot be defended in a society where intolerance exists and the human rights institutions, such as the Ombudsman, are called upon to be more active in the public sphere, to take a stand when these rights are violated by the authorities. Freedom of conscience, which encompasses both freedom of thought, opinion and religion, is vital to human beings, and their absence means the death of a society. Will the People's Advocate be able to deal with the challenges of the new century, the turmoil and prejudices that have arisen in society with the migrant crisis and take legal action against the abuse of the authorities?

Keywords: *human rights, religious freedoms, People's Advocate, European Charter of Human Rights, European Convention on Human Rights*

Human rights are a desire of modern societies. Humanity has known throughout its history numerous syncope, in respect of these rights, and religious freedom has been, repeatedly, severely sanctioned. Many leaders used the weapon of religion to control and impose their geopolitical interests.

Religious freedom, represents together with freedom of conscience, freedom of association and fundamental political rights, the substance of human rights

In the Romanian and international law, certain fundamental features of religious freedom can be distinguished, namely the right to have certain religious or philosophical rights and beliefs, as well as the right to renounce to these beliefs, the freedom to exercise the respective cult, and the right to be able to educate children in the spirit of the tradition of their parents.

The first feature is respected by the vast majority of countries in the world, but the second is often subject to obstacles in certain states. The renouncing of a certain faith or religion is followed by the capital punishment

However, religious freedom also carries a public feature, which in turn develops some consequences. In recent years, a series of questions have arisen, at international level due to the demographic explosion, due to the migration to Europe, which has led to an increase of the pluralism of manifestations of religious origin, which question the legal frameworks – at national and at European level,

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the management of religious freedom and relations between states and religious communities¹.

Thus, the question arose whether there are certain limits to this freedom, as compared to freedom of conscience and public security.

At the level of European society, there are numerous voices from the religious sphere, such as cults, religious associations that are established based on certain convictions and beliefs and which have a word to say in the public sphere.

The involvement of churches, of religious communities, in the public sphere has throughout history been an important vector for the development of society, both from an educational, social, and healthcare point of view.

Religious communities were those that developed hospitals, schools, kindergartens, asylums, guilds, which contributed to the development of society.

However, lately we are witnessing a restriction of these rights, in the world and, at least, in a Europe founded on Judeo-Christian values.

With regard to religious freedom, a standard of human values, the Universal Declaration of Human Rights has, in the spirit of the UN Charter and of this organization, ruled primarily, a common conception, a common ideal to which the peoples and all nations must respect, the fundamental human rights, belief in the dignity and value of the human person².

Thus, according to the Declaration: "all human beings are born free and equal in dignity and rights and must behave towards one another in the spirit of brotherhood". The document leaves no room for any form of discrimination, of any kind, such as race, color, language, religion, national origin, racial or any other distinction.

Article 18 stipulates the right of every person to "freedom of thought, conscience and religion", specifying that this right "implies the freedom to change their religion or beliefs and the freedom to express their religion or beliefs, individually or in collectively, both in public and in private, through education, practices, worship and performing rituals".

The 1948 Declaration is superior to the French Declaration of Human Rights and Citizenship of 1789, in terms of terminology, because that did not include the notions of freedom of thought and conscience, but only that of religion.

In order to avoid any confusion, it was necessary to introduce the notions of freedom of conscience and religion, into that of freedom of thought. Freedom of thought is generous, including philosophical, moral, cultural, scientific, political, etc.

The famous René Cassin, one of the major protagonists of the Declaration, emphasized that freedom of thought is the foundation of other rights, and must be protected, even before it is expressed.

¹ V. Opaschi, *Freedom of conscience and religion and its social implications*, IARSIC Publishing House, France, 2016, p. 40, 41.

² V. Opaschi, *idem*, p. 41, 42

On the other hand, art. 18 of the International Covenant on Civil and Political Rights adds as a guarantee the prohibition of any constraint that could prejudice the freedom to have or adopt a religion or belief of choice, and the freedom of parents or guardians, as the case may be, to ensure the religious education of the children in accordance with their own beliefs³.

However, there are limits to the manifestation of beliefs and religion, those provided by law and necessary for the protection of security, order and public health or morals, or of the fundamental freedoms and rights of others. At the same time, art. 4 of the International Covenant on Civil and Political Rights, provides that states cannot derogate from religious rights and freedoms even when an exceptional public danger endangers the existence of the nation.

Then there are other provisions regarding the prohibition of any discrimination, based "in particular on race, color, sex, language, religion", or on any other distinction, contained in art. 26. and those in the following article, 27, which consecrate the right of persons belonging to ethnic, religious and linguistic minorities to have, "in common with the other members of their group, their cultural life, to profess and practice their own religion or to use their own language"⁴.

Forms of religious intolerance in Europe

Although modern Europe was founded on Judeo-Christian values, which led to the adoption of the Universal Declaration of Human Rights, the emergence of the European Convention on Human Rights, treaties, we are still witnessing, in the 21st century, multiple forms of religious intolerance.

In many countries of Europe, the state religion is more ceremonial, it is observed that there are differences of treatment between the state religion and that of minority groups. Not infrequently, the state religion has a privileged legal and fiscal status, from the state side. In order to set up religious groups, certain requirements, sometimes difficult to accomplish, need to be met.

For example, in Belarus, there are religious minorities who have been fined or detained for proselytizing. In Hungary, a law was adopted which led to the abolition of over 350 religious groups, which were already on the list of those already registered, due to the difficult conditions regarding their recognition. On the other hand, the number of anti-Semitic messages delivered by extremists also increased, which indicates that the government did not have a firm involvement in this phenomenon. The European Union Agency for Fundamental Rights (FRA) noted in a 2018 study that the anti-Semitic wave has intensified in the last 5 years

³ M.I. Zlătescu, *Human Rights, an evolving system*, IRDO Publishing House, Bucharest, 2007, p.128.

⁴ *Idem.*

in Europe. These manifestations of intolerance led many Jews to consider the emigration option.

In recent years we have witnessed actions of governments that are involved in the religious practices of minorities. Thus, there were protests, both in Germany and in Slovakia, regarding the interference of governments in religious rituals regarding circumcision at boys.

Regarding the Muslim habit of covering the head and body (burqa and niqab), in public buildings, there were restrictions who were registered in some cities in Catalonia, Spain. Other religious groups have been accused of proselytism and public preaching. Also, during 2011, the total coverage of the face by Muslim women in France was forbidden. Moreover, Bosnia and Herzegovina introduced a ban on the wearing of religious objects at work, in the case of those working in judicial institutions.

Religious intolerance is growing. If only a few cases were reported in 2007, in 2017 their number was increasing. Attacks against people with a minority religion also increased.

A well-known case is that of a merchant in the United Kingdom, a follower of the Ahmadiyyan religion, who was read by a Sunni Muslim, who motivated the disrespect of the Prophet Muhammad.

Ukraine is among the countries that have a religious intolerance. Several Orthodox separatists have imprisoned four Jehovah's Witnesses, who forced them under threat of death to recognize Orthodoxy as the only true faith.

Neither is Romania neutral in terms of religious intolerance.

Every year, the American Commission for Religious Freedom publishes a report on religious freedom in the world, and according to the one in 2017, there are religious organizations recognized by the state in Romania, which enjoy the possibility of providing religious assistance in the army, hospitals, asylums, old people, public schools, mass media, penitentiaries and children's homes⁵.

But there are still minorities who are considered harmed in their rights, due to the lack of government involvement⁶.

One such case is the problem of restitution of the confiscated properties of the Greek Catholic Church, by the communist regime, between 1947 and 1989. The same problem is registered at the level of the Jewish community.

Also, there are several reports about the majority church's refusal to allow non-Orthodox religious communities to bury their deaths in public cemeteries, one of the incidents mentioned in the report being that of Tiur village, where the Greek Catholic priest was prevented from burying his parishioner in the local cemetery.

The reports record abusive situations, in which the non-orthodox people were buried in places on the edge of the cemetery, or their families were forced to use the ritual of the majority cult.

⁵ <https://ro.usembassy.gov/2018-international-religious-freedom-romania/>

⁶ See Report on International Religious Freedom for 2018.

Other issues concerned the Jewish problem. In April 2017, 10 funerary stones were destroyed in a Jewish cemetery in Bucharest, on Holocaust Remembrance Day. Another case was reported in Cluj-Napoca, where anti-Semitic messages were found denying the Holocaust, even on the wall of a synagogue.

There were also complaints from members of the Jehovah's Witness organization regarding the threatening behavior of some members of the clergy, as well as the police, in their relationship with them.

According to the FRA (European Agency for Fundamental Rights), although there are numerous legal instruments that provide protection against racism and related forms of intolerance, racism, discrimination, verbal and physical violence and exclusion against ethnic and religious minorities in the EU continue to be registered.

The results of the survey applied by the European Union Agency for Fundamental Rights on anti-Semitism are not at all encouraging, so that: 85% of European Jews consider that anti-Semitism is the most serious social or political problem in their country of origin. Other figures, among others, show that anti-Semitism is omnipresent and that this phenomenon has an impact on the daily lives of European Jews in the EU:

The European Commission fights anti-Semitism through its actions, being the one that commissioned the FRA to conduct anti-Semitism surveys in Europe.

Last but not least, December 6, 2018, marked the adoption by all EU countries of a Declaration on "Combating Anti-Semitism and Developing a Common Security Approach to Better Protect Jewish Communities and Institutions in Europe", which it is an important signal that the EU and each of its member states are with the Jewish community to ensure its safety and well-being.

Involvement of the People's Advocate Institution in the protection of religious freedoms

The People's Advocate Institution was one of the new institutional structures created by the 1991 Constitution, together with the Constitutional Court, whose purpose is to defend the rights and freedoms of individuals in their relations with public administration authorities. The institution was established by Law no. 35/1997 on the organization and functioning of the People's Advocate Institution. It is organized and operates in accordance with the Paris Principles. The People's Advocate, in Romania, has the purpose of defending the rights and freedoms of the persons in their relation with the public authorities.

In the activity of the 22 years of the institution, several interesting cases have been reported, regarding the issue of respecting religious freedom.

"The petitions in the field referred to: the organization and functioning of the cults, the use of the money received from the local budget, as well as the respect of the destination of the goods received in property or use from the local or central

public authorities by the cults, the refusal of the cults to responds to the parishioners at their requests, the rights and obligations of the religious staff"⁷.

The People's Advocate Institution was notified ex officio, following a news release in the press, according to which "The teachers of Religion in Gorj County were sent by the County School Inspectorate to gather data on the situation of non-Protestant cults in school and to communicate the number of families of a different faith than the one Orthodox Christian from the schools in which they teach".

"At the same time, on the website of the Gorj County School Inspectorate was published the announcement regarding the obligation of religious teachers in schools, to process certain personal data regarding the religious beliefs of the people, other than those of Orthodox faith:" Religion. Please send me by 15 February the situation from the educational units where you teach with the following: - the situation of the non-Protestant cults in school, the number of non-Orthodox families in the respective locality and if they have a prayer house, - the name of the pastor - the type and frequency of activities proselytizing (where they exist), - involvement of the parish priest in the relationship with the school and in the activity of combating this phenomenon. I will send the situation received to the Metropolitan of Romania, so please respect the deadline and ask for seriousness". (The announcement was signed by the school religion inspector).

In the opinion of the People's Advocate Institution, the request of the representative of the Gorj County School Inspectorate, requesting the religion teachers to process certain personal data, related to the religious beliefs of the people who did not belong to the cult, represented a case of discrimination on the grounds of religious belonging. The information requested concerned only the non-Protestant cults. It was also found that the provisions of art. 29 of the Fundamental Law, regarding the freedom of conscience were not respected.

The next step was addressed to the Undersecretary of State - Pre-university Education within the Ministry of National Education, in order to examine the respective case and to communicate the measures taken.

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The People's Advocate Institution was informed that the religion inspector in question has assumed responsibility for the consequences of his actions, submitting his resignation.

The Ministry of National Education communicated that has not requested personal data to the subordinate inspectorates and through the educational policies it ensures equal opportunities and access to education for all children and teachers in Romania, without discrimination on the basis of ethnicity, religious or

⁷ See the Annual report of the People's Advocate Institution, 2015, p. 213.

social affiliation. In Gorj County, the request for personal data was the initiative of the specialized inspector from the school inspectorate⁸.

Conclusions:

The situations are not unique, but the People's Advocate, as a non-contentious mechanism for the protection of human rights is called to make a difference. The Ombudsman's prompt reactions can stop abuses and restore people's dignity.

Public institutions are still tributary to outdated thoughts, reminiscences of the old regime, for which, often, their reactions are cumbersome, uncertain and based on prejudice.

The Advocate of the People, through *ex officio* notifications, investigations, annual reports, special reports, means of intervention specific to the institution, can contribute, as a mediator, to the development and education of the society in which we live.

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⁸ See the Annual report of the People's Advocate Institution for 2014, p. 91.