

## Emanuel P. Tăvală State and Church in Romania

### *I. Social Facts*

According to its 2003 constitution, Romania is a republic. Romania is located in South-Eastern Europe and covers 238,392 square kilometres. Since 1 January 2007 Romania has been one of the 27 member states of the European Union. The country has a total population of 21.7 million, but many have migrated to other EU countries (like Spain or Italy) and work there. The majority of inhabitants are Romanian (89.5%), 6.6% are Hungarian, 2.5% are Roma and 0.3% are German. Regarding their religious denomination, 86.7% are Orthodox Christians, 4.7% of inhabitants are Roman-Catholic, 3.3% belong to Protestant Churches and 0.9% are members of the Greek Catholic Church. Romania is subdivided into 41 administrative districts and the capital Bucharest, which forms its own administrative district.

It is important to stress that the social facts of South Eastern European countries are hard to grasp. People think and feel differently there. They have a different identity than the West and that identity influences society.<sup>1</sup> If the societal debate in Romania wants to remain authentic, it has to take this into consideration, instead of simply imposing alien “Western”, mainly Anglo-American, forms of identity on the population.<sup>2</sup> Religion and religious denomination, history and a sense of home (*Heimat*) shape the people much stronger in Romania than in the West. For over 800 years, Germans in Transylvania proudly cultivated and preserved their German identity, which

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1 *Jürgen Henkel*, Kirche – Staat – Gesellschaft in Rumänien nach 1989. Aufbruch und Widersprüche auf dem Weg in die EU (Engl.: Church – State – Society in Romania after 1989. Onset and antagonisms on the way into the EU), in *Holger Dix/Jürgen Henkel* (eds.), Die Europadebatte in den Kirchen Rumäniens (Engl.: The Debate about Europe within Romania’s churches), Sibiu/Hermannstadt, Bonn 2011, p. 106.

2 For the general context of the problems surrounding identity in seminal analytical force see: *Holger Bergmann*, Die Störung im Selbstbild (Engl.: The disturbance in self-perception), self-published 2002, cited after: *Jürgen Henkel*, supra note 1.

was closely connected to the church. People's identity in South Eastern Europe is defined primarily by ethnicity and religion, and less by the economic success of individuals.<sup>3</sup> The founding of nations themselves is oftentimes closely connected to religious denomination and the founding of churches. This is not a unique result or a late consequence of the Orthodox, or rather Byzantine symphonia between throne and altar, because the Protestant Transylvanian Saxons became a nation through their religious denomination as well. Especially during the Ottoman oppression, churches formed the brace of identity holding the respective ethnic groups together and were a refuge in times of oppression. This feeling persevered into communist times. That is the reason why the young revolutionaries of 1989, who were raised in an atheist manner, faced communist security forces in Temesvar and other revolutionary cities with candles, crosses and prayers.

50 years of communism in Romania did not manage to make everybody the same or level ethnic and denominational identities. There were always many party members in Romania, but not that many "die-hard" communists. Romanians remained Orthodox Romanians, Hungarians remained Catholic or Reformed Hungarians, and Germans remained either Protestant Transylvanian Saxons or Catholic Swabians of the Banat.

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3 Fundamental are the essays in: *Hans-Dieter Döpmann* (ed.), *Religion und Gesellschaft in Südosteuropa* (Engl.: *Religion and society in South Eastern Europe*), Munich 1997, especially: *Ernst C. Suttner*, *Das religiöse Moment in seiner Bedeutung für Gesellschaft, Nationsbildung und Kultur Südosteuropas* (Engl.: *The religious aspect in its importance for society, nation-building and culture in South Eastern Europe*), pp. 25-36, as well as for Romania specifically: *Alexandru Dușu*, *Religion und Gesellschaft in Rumänien* (Engl.: *Religion and society in Romania*), pp. 201-212 and *Anneli Ute Gabanyi*, *Rumänien nach 1989: Aspekte religiösen Wandels – Chancen und Probleme der Liberalisierung* (Engl.: *Romania after 1989: Aspects of religious change – opportunities and problems of liberalization*), pp. 213-217.

*Demography in Romania according to ethnic groups (excerpt)<sup>4</sup>*

Total Population	100% (21,698,181)
Romanians	89.5% (19,409,400)
Hungarians	6.6% (1,434,377)
Roma	2.5% (535,250)
Germans	0.3% (60,088)
Ukrainians	0.3% (61,091)
Turks	0.2% (32,596)

The decidedly religious-denominationally defined identity of the respective ethnic groups is exemplified in the West Romanian Banat as well as Transylvania. There, ethnicity and denomination remain practically identical even through today.<sup>5</sup> The Transylvanian Saxons for example have been Protestant since the Reformation. The Romanians (89.5% of the population) are almost invariably Orthodox (86.7% of the total population). With its 19 million believers in Romania alone (excluding the diaspora), the Romanian Orthodox Church (ROC) is the second largest Orthodox Church in the world behind the Russian Orthodox Church. The Hungarians traditionally belong to the Roman-Catholic Church (especially in the dioceses of Charlesburg/Alba Iulia, Temesvar/Timişoara, and Sathmar/Satu Mare) or branches of Protestantism.

People in Romania are thoroughly shaped by religion. This has a longstanding tradition. Christianity can be traced to its earliest beginnings in the area of what is today Romania.

In the 2002 census, of the 21.7 million inhabitants only 8,524 declared themselves to be atheists; that is less than 0.1%. Already in the 1991 census only 11,339 people declared that they were atheists. Considering the anti-religious and anti-church education in school as well as the Communist propaganda that lasted over 50 years, the

4 Internet excerpt from the table of results for the 2002 census by the Romanian Office for Statistics, <http://www.insse.ro/cms/files/RPL2002INS/vol1/tabele/t40.pdf>, last visited on 03 March 2011. Compare to the 1992 data: 22,810,035 people lived in Romania in 1992. Of them, 89.5% were Romanian, 7.1% Hungarian, 1.8% Roma, and 0.5% German.

5 *Jürgen Henkel*, supra note 1.

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replacement of religion by Communist ideology and the pseudo-religious, grotesque personal cult surrounding Ceaușescu, those numbers are astonishing. They show that the overwhelming majority of the Romanian population has remained religious.

*Changes in the population's denomination  
between 1992 and 2002*

	1992	2002	Change
Orthodox Church	86.81	86.79	-0.02
Roman-Catholic Church	5.09	4.73	-0.36
Reformed Christian Church	3.52	3.23	-0.29
Greek Catholic Church	0.98	0.88	-0.1
Pentecostal Churches	0.97	1.49	+0.52
Baptist Churches	0.48	0.58	+0.1
Church of Seventh Day Adventists	0.34	0.43	+0.9
United Churches	0.34	0.31	-0.03
Lutheran Churches	0.17	0.04	-0.13
Muslims	0.25	0.31	+0.06
Other religions	0.25	0.41	+0.16
Atheists	0.05	0.01	-0.04
Without denomination	0.11	0.06	-0.05
No response	0.03	0.05	+0.02

The overwhelming role of Orthodox faith in Romania is of decisive historical importance. This aspect is also relevant because the Orthodox Church in Romania has been assigned a messianic role: The salvation of the Romanian people will (and has to) take place through this church (“biserica noastră”, “biserica strămoșească”, Romanian for: “our Church, “the Church of our forefathers”).<sup>6</sup>

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<sup>6</sup> *Monica Vlad*, Das Verhältnis zwischen Kirche und Staat. Aktuelle Aspekte aus Rumänien (Engl.: The relations between church and state. Current aspects from Romania), in: *Zeitschrift für evangelisches Kirchenrecht* (Engl.: *Journal for Protestant Church Law*), Vol. 52 (2007), p. 544.

## II. *Historical Background*

The area of what is now Romania was inhabited as early as the Bronze Age by the polytheistic Geto-Dacians. The Roman emperor Traian conquered it with his troops in 106 AD. The troops settled down in the area between the Carpathian Mountains, Danube and the Black Sea, which led to the Geto-Dacians' acceptance of the Latin language (Romanization) and the Christian faith (Christianization). This process happened slowly over several centuries from "human being to human being" and is the result of direct contact with the enunciators of the new faith by indigenous people and Roman colonists. Latin language and Christian faith can be seen as key factors in "contributing to the consolidation and merger of indigenous people and those who had come to Dacia from different places with different faiths."<sup>7</sup> The new province was called "Dacia Traiana" around that time.

The oldest diocese in today's Romania is the diocese of Tomis (today: Constanța), which was first mentioned in official records in 369 AD. In the beginning of the 6<sup>th</sup> century, there were an additional 14 dioceses mentioned in Scythia Minor. Two important figures for Christianity came from this region. One is Saint John Cassian<sup>8</sup> who is the author of the West's first monastic rules. The other is Dionysius Exiguus<sup>9</sup> who translated important writings by Church fathers into Latin and laid the foundation for the Anno Domini dating system, by calculating Christ's birth year.

The next major phase in the development of the Romanian people was the Slavic invasion of the Byzantine Empire between the 6<sup>th</sup> and the 9<sup>th</sup> centuries. The influx of Slavs in the Daco-Romans' area loosened the bond between the inhabitants north of the Danube and those south of it. However, because Romanization and Christianization had already happened, the new Slavic population was assimilated by the Daco-Romans. One can describe the relationship between the two peoples as a "long coexistence", which came close to an intense and long lasting Slavic-Roman symbiosis. The influences were reciprocal: While the settlers became Christians, the strictly Roman language of the Daco-Romans was changed by the Slavic language, e.g.

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7 *Mircea Pacurariu*, *Geschichte der Rumänischen Orthodoxen Kirche* (Engl.: History of the Romanian Orthodox Church), *Oikonomia* Vol. 33, Erlangen 1994, pp. 70 et seq.

8 *Constantin Voicu, Nicu Dumitrascu*, *Patrologie* (Engl. Patrology), Bucharest 2004, p. 244.

9 *Ibid*, p. 255.

by way of introducing Slavic words into the liturgy or by switching to the Cyrillic alphabet.

When, in the 14<sup>th</sup> century, the principalities of Wallachia and Moldavia were founded south and east of the Carpathian Mountains, ecclesiastic organization followed soon thereafter. In Wallachia, a metropolitan was installed in Curtea de Arges in 1359, and a second one in Severin in 1370. The first metropolitan in Moldavia was founded in 1386 in Suceava. As princely donations, they were important cultural centres and the erected monasteries and church buildings are world-renowned even today, mainly for their architecture and frescoes. There are records of further dioceses founded in the 15<sup>th</sup> and 16<sup>th</sup> century.

During the later rule of the Ottomans (at the beginning of the 18<sup>th</sup> century), the Sublime Porte introduced Phanariote rule in Moldavia and Wallachia which inhibited or rather delayed those two principalities' processes of national liberation. These Greek princes from Constantinople ruled the two principalities from 1711 and 1715 until 1821 on behalf of Turkey. Their main task was to keep the Romanian lands under Ottoman rule and to incorporate them as closely as possible into Turkish economic life. Both principalities suffered from this. The immigration of Greeks led to an increasing adaptation of Greek practices in Romanian society, causing problems, and they were also economically exploited. The exploitation especially frustrated the development of their own trade systems and an independent economy. However, internal autonomy was ensured because the principalities were not occupied territory in the classical sense, but rather vassal states that owed tribute to the Ottoman Empire.

To a certain extent, the religious system profited from that situation because clerics were declared speakers for the population and fulfilled various other functions during the Turkish rule. Besides ensuring the believers' loyalty they were also responsible for taxation. During the middle of the 18<sup>th</sup> century an increasingly nationalistic consciousness emerged, but only the War of Liberation of 1877/78 led to the actual break from Ottoman rule and a re-establishment of independence. This paved the way for creating a nation state as well as a Romanian national church.

While still under Ottoman rule, the principalities of Moldavia and Wallachia were finally incorporated into one nation state, today's Romania, by the ruler Alexandru Ioan Cuza (1859-1866). This also led to ecclesiastical changes. In the first step, both metropolitan churches were unified as one national Orthodox Church. In the second step, the Metropolitan of Bucharest received the title "Primate"

of Romania. In 1872, the Holy Synod was established as the central administrative organ. Yet, Romania remained canonically dependent on the “Mother Church of Constantinople”. This dependency was only terminated in 1885, when the Romanian Orthodox Church received autocephaly. This marked the ultimate independence from Constantinople.

On 01 December 1918, the provinces of Bukovina, Bessarabia and Transylvania united with the Kingdom of Romania to form one Romanian State. The establishment of an independent patriarchy in 1925, with Miron Cristea as first Patriarch of Romania, can be seen as “the result of national unity, but it can also be seen as the natural illustration of the role that the church has played in the history of the Romanian people.”<sup>10</sup> The fact that a Transylvanian was elected Metropolitan Primate was a symbol of national and ecclesiastical unity in Romania.<sup>11</sup>

Legislation for Greater Romania on rights and duties of cult communities became of utmost importance in the new reality after the reunification of 1918. On 31 March 1928 parliament passed a *Law on Cults*. Article 1 of the law held as a core principle: “*The State grants all Churches the same freedom and protection, insofar as their practice of religion does not violate the public order, moral law or the system of government.*” Article 2 prohibited interference with the free practice of cults and obligated the churches not to violate other religious confessions, especially during activities outdoors. Article 21 names the cult communities which could claim the freedoms of Article 1. Besides the Romanian Orthodox Church, the law listed eight communities<sup>12</sup>: the Romanian Orthodox Church, the Catholic Church (with Latin, Ukrainian and Armenian Rite), the Reformed Church, the Lutheran Church, Unitarian Church, the Armenian Church, the Jewish cult community and Islam. For other communities, movements, sects etc., Article 22 contained the possibility for recognition “*if their articles of faith and their moral-religious principles do not conflict with the public order, moral law and law of the State and when their system of organization, leadership and administration is in accordance with this Law.*”<sup>13</sup>

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10 Gunther Barth, Laura Dobrescu, Alina Pătru, *Die Rumänisch-Orthodoxe Kirche* (Engl.: *The Romanian Orthodox Church*), Hanover 2004, p. 11.

11 Mircea Păcurariu, supra note 8, p. 54.

12 In fact, it is only seven cult communities. Because of the special constitutional law status of the Romanian United Church, Catholics received two numbers in the Law.

13 Iorgu Ivan, *Organizarea și administrarea BOR în ultimii 50 de ani (1925-1975)* (Engl.: *Organization and administration of the Romanian Orthodox Church during the last 50 years*), in: BOR 92 (1975), p. 1409.

The recognized cult communities were bound to the Romanian State by various regulations. Because of the historical situation, problems between denominations could have political implications. Therefore Article 6 decreed: *“It is prohibited to form political organizations based on a religious confession as well as to deliberate on daily political matters in bodies and institutions of a church.”* Article 7 prohibited dependency of a cult community admitted to Romania on a foreign church authority as far as this was not in the nature of the respective church *“by dogma and ecclesiastical law principles”*. It further stipulated that this only referred to the Catholic Church and that therefore the relationship between state and Catholic Church *“can be regulated in a special agreement which has to be submitted to the legislative bodies for ratification”*.

Preparations for the Concordat between the Holy See and the Kingdom of Romania had been started by Romanian politicians in the hope of acquiring territory north of the Carpathian Mountains right after the war (1920).<sup>14</sup> M. Theodorian Carada, who had collaborated in drafting a concordat, described the incidents surrounding the concordat in the first chapter of the brochure *Actiunea Sf. Scaun in Romania* (Engl.: *The actions of the Holy See in Romania*). Negotiations began shortly after the end of the war. In the summer of 1921, a treaty text was initialled, which greatly outraged Orthodox circles in old Romania. After a change in government, the new, liberal government postponed the matter stating that a new constitution had to be devised first. Renewed negotiations ended with the signing of a draft treaty on 10 May 1927. However, ratification was significantly delayed because of continued strict opposition by the Orthodox side and the concordat only became effective on 07 July 1929, long after the Law on Cults had been promulgated. Only a few years later, in April of 1932, 28 deputies introduced a bill to the Chamber of Deputies to cancel the concordat. Despite the bill failing, polemics continued. Carada summarized that one thing was for certain: *„those Catholic Hungarians, for whom irredentism was more important than faith and those Romanians, who put their religious fervour above the interests of the Romanian State, were constantly agitating against the concordat”*.

The Act of 23 August 1944 brought deep social, political and economic changes. After that date, the majority of political forces in the country tried to return to the path of democratic development, but

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<sup>14</sup> Ernst C. Suttner, *Beiträge zur Kirchengeschichte der Rumänen* (Engl.: *Contributions to church history in Romania*), Vienna/Munich, 1978, p. 40.

“games” of other powers marked Romanian history for the next 50 years. Through the installation of the so called “democratic government” in Romania on 06 March 1945 “*the communist-atheist regime was inaugurated in our country*”<sup>15</sup>.

It was normal for political changes to be reflected in the life of the Church. The Church became a “tolerated institution”, which could only find its place on the borders of society. This new reality forced the Church to adapt to the new age. The Church’s administration had two options: Either to fulfil its full mission (i.e. also insist on social services, which would have led to a conflict with the new government) or to accept the state’s interference in its administrative life, but thereby retain the possibility of fulfilling its ecclesiastical mission. *The ROC chose the second option because it was aware of the Russian-Orthodox Church’s experiences. It had chosen the first option which in turn had provoked politicians and had brought them one step away from being abolished. The second option mentioned above allowed the Church to retain the possibility of being active among the faithful.*<sup>16</sup> Avoiding conflict with the government meant that the Church stopped giving differing opinions or publicly commenting on what happened in the country or its prisons.

After the communist takeover, communist policies were carried out. However, the 45 years of communism do not form a uniform era in Romania’s history.<sup>17</sup> Initially, from 1948 until 1963, Romania was Sovietized. 1963 through 1978/1982 saw a time that led to a “mutt”: national communism. From then until December 1989, a cult surrounding the leader in the form of a Romanian Stalinism developed.<sup>18</sup>

The Church was politically suppressed in the first phase of Sovietization. The second phase narrowed the playing field regarding its social activities. The last phase aimed at breaking the Church from Romania’s intellectual life and physically destroying it. The Church was forced to live in a “liturgical ghetto”. The Church’s organization

15 *Alexandru Moraru*, Biserica românească sub dictatura comunistă (Engl.: The Romanian Church under the communist dictatorship), in: *Studia Universitatis Babes-Bolyai-Theologia Orthodoxa*, No. 1-2/2001, pp. 31-40.

16 *Dorin Oancea*, Biserica Ortodoxă Română în raport cu regimul comunist din România (Engl.: The Romanian Orthodox Church against the communist regime in Romania), in: *Revista Teologică*, No. 4/1997, Sibiu, p. 43.

17 *Alexandru Dușu*, Kirche und Staat im heutigen Rumänien (Engl.: Church and state in today’s Romania), in: *Johannes Chr. Papalekas* (ed.), *Institutionen und institutioneller Wandel in Südosteuropa* (Engl.: Institutions and institutional change in South Eastern Europe), Munich 1994, p. 123-130.

18 *Ioan Vasile Leb*, Die Rumänische Orthodoxe Kirche im Wandel der Zeiten (Engl.: The Romanian Orthodox Church in the change of times), Cluj 1998, p. 99.

was put under the strictest state control and the Church thus subjugated. First, “cleansings” happened by which Church leaders and reactionary clerics were put into prison or silenced. On 22 July 1947 the Moldavian Metropolitan Irineu Mihălcescu was forced to abdicate. In 1947 a law was passed that forced all priests over 70 years of age to retire. Anyone who went against the government in any way was severely punished. On 28 February, the old Patriarch Nicodim as well as the Metropolitan Irineu Mihălcescu and the bishop Grigorie Leu died under mysterious circumstances. This created the opportunity to elect a person to the Patriarchal See, who understood the “new times”. This man was Justinian Marina, who was first elected Metropolitan of Iași (1947), and then, on 24 May 1948, became Patriarch.

It was clear to the new patriarch that he had to find a way to save the Church. The words of the Romanian Labour Party’s general secretary Gheorghe Gheorghiu Dej were still ringing in his ears. In November 1946 Dej had told the Bucharest assembly of clerics: *“Our stance toward the Church is derived from reality, because she (the Church) is a spiritual force in the life of the people that has to be supported so that she can fulfill her high purposes. It would be a falsehood to claim that the communist party had rejected her material conception of life. But this conception does not hinder us from orienting ourselves to concrete realities and taking them into account...”*<sup>19</sup> Prime Minister Petru Groza made similar statements, and had told Patriarch Nicodim earlier: *“The Church is an institution of enduring benefit for the life of the people. She is a part of the State and as such tries to keep up with the spirit of the times. The Orthodox Church, who always understood this, will surely understand now, what this is about.”*<sup>20</sup>

As with other constitutions of communist countries, the Romanian Constitution pretended to be democratic and follow the rule of law through linguistic artistry.

In 1989, the wave of anti-communist revolutions in Eastern and South Eastern Europe overthrew the dictator Nicolae Ceaușescu and his regime. There are disputes among historians today about this revolution. It is called the “stolen revolution” or “unfinished revolu-

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<sup>19</sup> Ibid, p. 101.

<sup>20</sup> *Dionisie Ghermani*, Kirche und Glauben im kommunistischen Rumänien (Engl.: Church and faith in communist Romania), in: *Hubertus Janas* (ed.), Rumänien: Die Situation der katholischen Kirche im Kontext von Geschichte und aktueller Politik (Engl.: Romania: The Catholic Church’s situation in the context of history and current politics), Eichstätt 1991, p. 42.

tion”, or a “coup d’état” or still an “exchange of leading personnel”. There is probably some truth in each of these descriptions. But, from a political science point of view, it was indeed a revolution: People were killed, citizens participated in the streets and there was systematic change caused by force. Nobody seriously disputes these facts nowadays.

After such a brutal era, it was unclear whether the Church would be able to retain its credibility in society. One can be surprised however, how close the faithful were attached to their Church. The Romanian census of 1992 proved this: of over 22 million inhabitants, 90% were Romanian and of those, 87% were members of the Romanian Orthodox Church. The newly gained freedom demanded a fresh start, and one could feel a profound change in the prelates’ attitudes. The *metanoia* was and is still necessary.<sup>21</sup>

The Church had to change its relations with the state. Therefore, the members of the Permanent Synod of the Romanian Orthodox Church met with President Ion Iliescu, a former communist, on 10 June 1990. The bishops demanded “full Church autonomy” and “assurance of a statutory framework for the free development of its duties”. It also demanded “significant participation” in the drafting of the new constitution, which was at the time being prepared, as well as participation in formulating the laws regarding the Church.

The reintroduction of religious education in Romania was seen as a gift from God<sup>22</sup> or as an “achievement of the revolution”<sup>23</sup>. Religious education in public schools meant a special ecclesiastical proclamation in the public for the ROC, in an area where for 50 years the Church had had no permission to fulfil its duties.<sup>24</sup> The reintroduction of religious education as a subject in Romania’s public schools was not seen as a novelty, but as a return to the normalcy before 1948.

In the new democracy it was possible to restore some dioceses that had been destroyed by the communists after 1948 as well as erect some new dioceses. At the same time, new bishops were appointed

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21 *Dionisie Ghermani*, supra note 21, p. 57.

22 *Vasile Gordon*, *Evaluarea predării religiei în școală. Rezultate, Probleme, Perspective* (Engl.: Religious education in school. Results, problems, perspectives), in: *Vasile Gordon*, *Biserica și școala* (Engl.: Church and school), Bucharest 2001, p. 12.

23 *Jürgen Henkel*, *Staat und Kirchen in heutigen Rumänien* (Engl.: State and churches in today’s Romania), in: *Herder Korrespondenz, Monatshefte für Gesellschaft und Religion*, No. 8/2008, p. 12.

24 Art. 30 of the Romanian Constitution (20. August 1965): „School and church are separate. No confession, congregation or religious community may found or sustain educational establishments.”

in the years following the revolution that had studied abroad or had gathered rich experiences in the Romanian Church. In order to meet the actual need of the Church, theological priest seminaries and university education were reorganized. Also, the number of Orthodox theological schools climbed from 6 to 38. The number of theological faculties rose from 2 to 15.<sup>25</sup>

It was also during that time that hermitages and monasteries, which had been destroyed by the communists, were reopened; new monasteries were founded and erected; hundreds of churches were built all over the country, many of which have already been finished and consecrated. One also has to take note of the ROC's activities in some areas of social life, in which the Church was not allowed to be active in for 50 years: in hospitals, old people's homes, orphanages, in the military, prisons, etc. At the same time the relations and theological dialogue between the ROC and the Old Oriental Church, the Roman-Catholic Church, the Old Catholic Church, the Anglican Church, the Protestant Church and other international ecumenical organizations was continued, the final goal being the unity of Christian Churches. The ROC's participation in the ecumenical movement does not only show on a national level (through the local ecumenical relations) but also on the international stage, where it participates in most ecumenical dialogues and was host to many ecumenical events. A reference to the Third Ecumenical Assembly of European Churches, which was held in Sibiu/Hermannstadt in September 2007, shall suffice.

On the socio-political level, Romanian history has been shaped by barbarian migration and foreign rule. The area was a battlefield of peoples and therefore the separating line between cultures. Religiously, Romania can be seen as a bridge between Latin and Greek Christianity. After the Greeks, the Romanian people are the oldest Christian people in Eastern Europe and the only people of Roman descent and at the same time Orthodox faith. It is therefore closely linked to Rome regarding language, but Constantinople regarding faith.

Romania's religious variety is, as previously mentioned, mainly shaped by Orthodoxy. The percentage of Orthodox believers has stayed the highest for centuries. Yet, the great religious diversity should not be overlooked. Beside the ROC there are also other Chris-

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25 The numbers are taken from *Alexandru Moraru, Biserica Ortodoxa Romana intre ani 1990-2000* (Engl.: *The Romanian Orthodox Church between 1990-2000*), in: *Studia Universitatis Babeş-Bolyai-Theologia Orthodoxa*, No. 1-2/2002, p. 43.

tian Churches, Catholic and Protestant, as well as several smaller religious communities.

An important religious minority in Romania is the Greek Catholic Church, the so called United Church<sup>26</sup>, which follows Eastern rite, but acknowledges the jurisdictional primacy of the pope. Its faith and moral teaching are therefore connected to the Catholic Church, but it has its own canon law (collected in the *Codex Canonum ecclesiarum Orientalium*) and its own rite. The conversion was far from voluntary. After the Ottoman Turks were defeated before the gates of Vienna in 1683, the Habsburgs gained more and more influence in the principality of Transylvania. In 1691, the Austrian Emperor Leopold I decreed the so called “Leopoldian Diploma”, in which he recognized four religions: the Catholic, the Reformed, the Lutheran, and the Unitarian religion. The Orthodox were not granted any rights and were seen as schismatic and heretical. The Catholic Habsburg Empire tried to raise the number of Catholics in the population not least in order to gain more political influence. Therefore, a conversion of the resident Orthodox was suggested in order to lead to a formal unification with Catholics, which indeed happened. Ethnically, the United are Romanians and mostly live in Transylvania.

In the course of the Christianization in the 11<sup>th</sup> and 12<sup>th</sup> centuries, Catholics of Hungarian and German origin settled in Romania and retained their minority status throughout the centuries. They see themselves as a dual minority – religious and ethnic.

Besides them, there is a number of Romanian-speaking Catholics who follow the Latin rite. Their relationship to the Orthodox Church is also tense, because they fear for their identity since the Orthodox side often equates Romanian identity with Orthodox faith. These faithful however see themselves strongly as Romanian citizens and as a “Catholic part of the Romanian people”.<sup>27</sup>

The Protestants as well are a minority in Romania. They mostly live in Transylvania and are ethnically either Hungarian or German. The Hungarians subdivide into Reformed, Calvinists, Presbyterians and Unitarians.

There is no reference to a “National Church” in either constitution or the Law on Religious Freedom or the general norms on religious

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26 The Union was formed around 1700 in the course of the Habsburg counter-reformation, when parts of the Transylvanian Orthodox Romanians converted to Catholicism under the leadership of their priests. See also: *Ferencz Agoston*, *Der Dienst der Versöhnung als Aufgabe der Pastoral in Rumänien* (Engl.: *The service of reconciliation as a pastoral duty in Romania*), Dettelbach 1992, p. 107.

27 *Ferencz Agoston*, *supra* note 27, p. 112.

communities. But all recognized churches have the same rights and obligations towards the state. It has to be noted that the primacy of the Orthodox Church, which was contained in the 1963 constitution, no longer exists. In 1923, Article 22 stipulated: *The Christian Orthodox Church and the Greek Catholic Church are the Romanian Churches. Because the Romanian Orthodox Church is the religion of the predominant majority of Romanians, it is the dominating Church in the Romanian State; while the Greek Catholic Church takes precedence in comparison with the other cults.* These old norms of the 1923 Constitution have not been retained in current legislation. Still, the Orthodox Church fought long to be recognized as a national church, even though it publicly claims that it does not want to be privileged over the minority churches.

### *III. Legal Sources*

The most important Romanian legal source is the constitution. Romania's current constitution was passed by the Constitutional Assembly of 21 November 1991 and entered into force after the referendum of 08 December 1991 had approved it. It was amended by Act No. 429/2003 to revise the Constitution, which was approved by a referendum on 18/19 October 2003 and entered into force after publication in the Official Gazette of Romania on 29 October 2003.

**Article 29** guarantees freedom of conscience by the following wording<sup>28</sup>:

- (1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions.
- (2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
- (3) All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.
- (4) Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults.

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<sup>28</sup> Official translation on the website of the Romanian Chamber of Deputies, <http://www.cdep.ro/pls/dic/site.page?id=371>, last accessed 23 May 2012.

(5) Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.

(6) Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them.

Freedom of conscience means citizens having the possibility to express their own opinions. Freedom of conscience is one of the primary human rights, because religious freedom, as a part of the extensive right to freedom of conscience, has its own history, which has been characterized by intolerance, death sentences, excommunications, much suffering and pain.

An analysis of Article 29 shows that freedom of conscience is to guarantee the possibility of having one's own opinion about the world and, particularly, the possibility of expressing it publicly. This includes being free to be a member of a church and to participate in religious services and rituals of that church.

Article 29(1) shows that religious freedom is not regulated separately in Romania, but rather forms part of the (much wider) field of freedom of opinion and conscience, and even freedom of thought. The following regulation in Article 29(1) is of particular importance because of the country's communist past: "*No one shall be compelled to embrace an opinion or religion contrary to his own convictions.*"

The right to be part of a religion and the corresponding right to leave a religion is in accordance with European and international norms and rules in the field of individual and collective religious freedom.

The constitution mentions the separation of Church and State<sup>29</sup>, but at the same time guarantees the autonomy of religious organizations and forces the state to support religious organizations in their pastoral care in the military, hospitals, prisons or orphanages.

Guaranteeing freedom of conscience the constitution achieves equality between faithful and non-believers. The legislator thus aims to cultivate a climate of tolerance and mutual respect among citizens.

Freedom of conscience should also be understood as spiritual conti-

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29 There is no real separation between church and state in Romania, because the political system is based on the principle of delimitation and cooperation at the same time. The churches are entitled to receive financial aid from the treasury. An organization that guarantees "stability and public benefit" by her deeds and number of members has to additionally prove that it has functioned in Romania for an uninterrupted twelve years and that it represents the religious beliefs of at least 0.1% of the Romanian population. See also: *Monica Vlad*, Das Verhältnis zwischen Kirche und Staat (Engl.: The relations between church and state), in: *Zeitschrift für evangelisches Kirchenrecht* (Engl.: Journal for Protestant Ecclesiastical Law), 52 (2007), p. 555.

nunity in the family. Parents have the right, but also the obligation, to ensure their children's education. This education naturally takes place within the family and in accordance with the parents' ideas and opinions. The relationship between parents and children is a natural relationship and parents have the moral, social, and often legal responsibility for their minor children's acts and demeanour. The same is true when children's education rests with a legal guardian. The constitution stipulates in Article 29 that parents/legal guardians have the right to decide on their children's education in accordance with their own faith.

**Article 32** guarantees the right to education<sup>30</sup>:

- (1) The right to education is provided for by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and post-graduate refresher courses.
- (2) Education of all grades shall be in Romanian. Education may also be conducted in a foreign language of international use, under the terms laid down by law.
- (3) The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.
- (4) Public education shall be free, according to the law.
- (5) Educational establishments, including private institutions shall be set up and conduct their activity according to the provisions of the law.
- (6) The autonomy of the Universities is guaranteed.
- (7) The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law.

The constitution ensures the right to education for every citizen in order to achieve a good intellectual development. Because of its content, its legal importance and the number of persons involved in the realization of it, the right to education is a social and cultural right. This freedom is combined with an obligation in Article 32. The right to education is at the same time an obligation which explains the obligatory character of some parts of the school system. There were numerous debates concerning religious education (see Chapter 3). The state allows for the establishment of a denominational school system in addition to state and private schools (Article 32(5)).

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<sup>30</sup> For translation, see supra note 29.

**Article 44** of the constitution is also important. It prohibits “nationalization or any other measures of forcible transfer of assets to public property based on the owners’ social, ethnic, religious, political, or other discriminatory features.”<sup>31</sup> It follows from these quoted norms that the relationship between Church and State is still understood as one of separation, but also cooperation, and the idea of churches as social partners of the state is also gaining ground in Romanian legislation.

Religious cults are regulated in accordance with the rules of the constitution. The cults are “free and organized in accordance with their own statutes, under the terms laid down by law.” Regarding the relations between cults, “any forms, means, acts or actions of religious enmity are prohibited.” These stipulations show that the special term “*ruling or leading religion*”<sup>32</sup> (as used for the Orthodox Church) no longer (unfortunately) exists in Romania. The Romanian State protects and guarantees the religious freedom of its citizens, no matter what confession they belong to.

The constitutional rights and freedoms of the human being are interpreted and applied in accordance with the Universal Declaration of Human Rights and those treaties and conventions that Romania has entered into. These take precedence over any contradicting national laws except in those cases where Romanian laws and the constitution contain more favourable regulations for the affected (Art. 20).

#### *IV. Basic System Categories*

Any democratic society needs a separation of state powers, specifically executive, legislature, and judiciary. The political power must also not intervene in the organization or work of NGOs and the media. Moreover, the State is not allowed, under any circumstances, to intervene in the churches’ usual work. Has there been an attempt despite this to directly politicize the relations between state institutions (no matter whether oriented to the left, right or centre) and the churches in post-communist Romania? Although the neutrality of

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31 For translation, see supra note 29.

32 See supra note 30; with reference to *Monica Vlad*, p. 553. As early as the 1990s there were several attempts at changing state-church law. Parliamentary bills were framed according to the political orientation of the respective government. In one bill, the Orthodox were given privileged status as majority church at the expense of minority churches. The Orthodox tried to regain their earlier status as national church in the sense of a state church, which they had held according to the Romanian constitutions of 1866 and 1923. They did not succeed however.

these relations should be strictly protected by the Romanian Constitution (as the basic law of the country; passed 1991, and amended in 2003), it seems like this has not been the case in every situation.

Faith communities and religious corporations can apply in full for adequate rights, freedoms and responsibilities. In situations where the state intervenes in religious life in unjust and uncontrolled ways, the churches' good reputation at home and abroad could be harmed, particularly the Romanian Orthodox Church which has the most members in Romania.<sup>33</sup> The state should no longer intervene in the ecumenical and inter-religious policies of the ROC or any other faith community in Romania without being asked. The Church is autonomous and always must be independent of state institutions, in accordance with the stipulations of the Romanian Constitution.

The politicized relations between State and Church (as practiced by virtually every administration after 1989, but especially between 1992-1996 as well as 2000-2004, obviously and intensely during election campaigns) can sometimes severely damage relations between churches and faith communities as well as the image of an autonomous church abroad. This is especially the case when looking at financial or material means or at advantages that overstep the cultic, pastoral and missionary needs of some places of cult or worship. This fact can be classified as impermissible in a country that has taken the path of freedom and democratization of international relations.

Yet another negative element in the relations between State and Church is how slowly some rules are drafted and approved, including the Act on Freedom of Faith and Religion. Unfortunately it has to be admitted that this situation has shaped relations between the different denominations in our country in a certain way. This has tarnished Romania's image in the eye of international forums (not only of the European Union and the United Nations) that are monitoring adherence to religion and conscience related rights and freedoms.

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33 *Gheorghe Anghelescu*, Die Beziehungen zwischen Kirche und Staat in Rumänien nach 1989 (Eine kurze sozial-historische und politische Studie zwischen Analyse und Kritik) (Engl.: The relations between church and state in Romania after 1989 [A short socio-historical and political study between analysis and critique]), in: *Holger Dix, Jürgen Henkel* (eds.), Die Europadebatte in den Kirchen Rumäniens (Engl.: The Europe Debate within Romania's churches), Sibiu/Hermannstadt, Bonn 2011, p. 212.

## V. *Legal Status of Religious Communities*

In Article 29, the Romanian Constitution speaks of religious communities and cults. The term “*cult*” has a double meaning in Romanian: It can stand for a church or a religious organization, but it can also mean church services or rituals. Both meanings encompass the proclamation of a religious faith to the outside world, either by becoming a member of a “*cult*” or participating in the rituals of that “*cult*” (like processions, religious meetings, etc.)<sup>34</sup>.

According to Article 29 of the constitution, religious communities can organize freely. They are to be guided by their own statutes. These statutes should be approved by the government, because the constitution states that the organization has to follow the terms laid down by law<sup>35</sup>. The approval of statutes shows the good level of cooperation between churches and the state, and is an extension of the Byzantine principle of *nomokanones*.

After 16 years of debate and discussion, and after two other bills that had been introduced in Parliament (which had not been deliberated), on 13 December 2006 the plenum of the Chamber of Deputies, the legislating chamber, approved the Bill on Religious Freedom and the General Status of Faith Communities with the overwhelming majority of 220 votes in favor, one abstention and one vote against. Romania’s president ratified the act by ordinance no. 1437/27.12.2006, which gave the act the no. 489/2006. It was published in the Law Gazette No. 11/8.01.2007. The bill had previously been implicitly approved by the Senate on 21 December 2005, in accordance with Article 27(2) of the Romanian Constitution. This is not an extraordinary procedure, but rather what happens when the chamber first concerned with a bill, in this case the Senate, does not form an opinion on a bill within the statutorily prescribed time limit of 60 days.<sup>36</sup>

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34 Berthold W. Köber, Das Recht der Religionsgemeinschaften in Rumänien (Engl.: The Law of Religious Communities in Romania), in: Wolfgang Lienemann, Hans-Richard Reuter (eds.), Das Recht der Religionsgemeinschaften in Mittel-, Ost- und Südosteuropa (Engl.: The Law of Religious Communities in Middle, Eastern, and South Eastern Europe), Baden-Baden 2005, p. 371.

35 Act 489/2006.

36 Florin Funza, Das Gesetz über die Religionsfreiheit und den allgemeinen Status der Glaubensgemeinschaften – eine unerlässliche/notwendige/unumgängliche Umorientierung der Beziehungen zwischen Kirche und Staat in Rumänien (Engl.: The Act on Religious Freedom and the General Status of Religious Communities – an indispensable/necessary/inevitable reorientation of the relations between church and state in Romania), in Holger Dix, Jürgen Henkel (eds.), Die Europadebatte in den Kirchen Rumäniens (Engl.: The Debate about Europe within Romania’s churches), Sibiu/Hermannstadt, Bonn 2011, p. 191.

In light of European integration, it was important that Romania pass a law that regulates religious communities corresponding to laws in other member states, while at the same time taking into account its specific internal conditions. It has to be noted though, that there are no relevant regulations by the European Commission in this field.

After a 6 year break, negotiations with representatives of the religious communities were re-opened in March 2005, and four rounds of talks with them were organized in April/May 2005. Representatives of 16 religious communities signed the bill's text together with representatives of the Ministry for Culture and Cults on 31 May 2005. The Greek-Catholic Church and the religious corporation of Jehova's Witnesses did not approve this draft for different reasons. The Greek-Catholic Church approved of the project but wanted to achieve a simultaneous solution for the patrimonial disputes; the Jehova's Witnesses did not accept the invitation to the talks. The bill was presented to the public from 1 June until 1 July 2005, in accordance with the Act on Transparency in Administrative Decision-making; many amendments were proposed at this stage, several of which were included in the final version of the bill.<sup>37</sup>

In order to raise awareness for the bill internally and internationally, the Ministry of Culture and Cults organized the international symposium "Religious Freedom in Romanian and European Context" on 12/13 September 2005, which was attended by representatives of international organizations like the European Commission for Democracy through Law (Venice Commission), the OSCE, as well as reputable specialists from Europe and the United States. A number of important Romanian organizations and institutions were also invited. Advisory opinions given by distinguished institutions like the ODIHR/OSCE and the European Commission for Democracy through Law (Venice Commission) were anticipated.

The Venice Commission deliberated on the text of the bill during the 64<sup>th</sup> plenary session of 21/22 October 2005, and formulated its approval as well as a number of suggestions for improvement. Although the bill had been sent to ODIHR/OSCE already in May 2005, it did not make a public statement, and only the Helsinki Commission presented several remarks on the bill.

During parliamentary debate, the responsible committees of both chambers and the government of Romania were presented with remarks, mostly taken from the Helsinki Commission's report, which expressed dissatisfaction with the percentage based and continuity

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<sup>37</sup> Ibidem.

related criteria for recognition of new faith communities contained in the bill. The authors pointed to the fact that this model was not specifically Romanian, but rather followed the broader European model of regulating relations between State and religious communities. The Eleventh Declaration of the Amsterdam Treaty, which was also incorporated into the Draft of the European Constitution, proclaims the freedom of EU member states, of which Romania had recently become one, to regulate the general rules for religious communities on the national level according to their own traditions.

#### VI. *The Meaning of Religious Community and the Right of Self-Determination*

Article 7(2) of the above mentioned Act stipulates that the importance of the “Orthodox Church and the importance of the cults recognized by the State in the national history of Romania and in the life of Romanian society is recognized.” Unfortunately, there is no longer a special “title” for the de facto existing national church of Romania (unlike in earlier times: Article 21 of the Constitution of 1866, which recognized the ROC as the “leading religion of the State” or the Constitution of 1923, which spoke of the ROC as the “leading Church in the Romanian State”). The Catholics had accepted the title, especially because it was a symbolic expression without special privileges. The Romanian State supports the activities of religious cults and must not give privileges to or discriminate against any of them. As a precaution, it is stipulated that cults must not have identical or similar names. Acts that could instigate religious enmity are prohibited (Art. 13(1)) and all cults have the right to develop their activities in accordance with the law. Any language which is capable of furthering dialogue between denominations is allowed (Art. 16(1)).<sup>38</sup>

In the cults’ public relations with state authorities, the official language must be used. Cults have the right to appoint or elect their administrative organs and personnel free and without infringement by the State. Priests and their congregations are allowed to use their mother tongue in church services, administration, theological instruction and publications. The Act’s rules governing the procedure for

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<sup>38</sup> See also *Florin Funza*, *ibidem*.

recognition of cults in Romania are more complicated. There were several alternatives and the Act is the result of the dialogue between the Ministry of Culture and the cults recognized by the state. The term “religious cult” was not *a priori* defined by statutory provisions, mainly because the Romanian State was confronted with numerous applications by numerous different communities of faith. The Act on Cults only provides that a government decision will determine which prerequisites have to be met in order to be recognized as a cult in Romania. A religious organization which guarantees through its activities and number of members “its stability and public usefulness”, has to prove that it has been legally active in Romania for 12 years without interruption and that it reflects the religious conviction of at least 0.1% of the Romanian population. The regulations in this Act affirm the claim of congruence between ethnicity and confession, which tries to justify the dominating position of State Churches in post-communist states.<sup>39</sup>

Within 60 days of registering the application of a cult, the Secretariat for Cults (a special organ of public administration) is to submit the documents and its advisory opinion to the government. If the application is denied, the procedure can only be repeated a year after the publication of the decision. The government can withdraw the above-mentioned organizations’ status as “recognized cult” if their activities endanger national security, public morals or the rights and freedoms of others.

The churches’ personnel are exempt from military service, which further affirms the desired separation between Church and State. Citizens who refuse military service for religious reasons are allowed to serve alternative military service. The situation of those who refuse military service *for other (non-religious) reasons* is not clarified in the Act. Pastoral care for those who serve in the military and belong to cults that are not recognized is also left unsettled.

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<sup>39</sup> As long as the ethnic affiliation is being equated with a certain denomination, cases like “Mitropolia Basarabiei v. Moldova” will have to be decided the European Court of Human Rights. In that case, the Republic Moldova was being sued, because it did not want to register and recognize the Orthodox cult “Mitropolia Basarabiei”. The Court found that Article 9 of the European Convention on Human Rights was violated and granted 20,000 euro in damages. See also *Monica Vlad*, supra note 30.

## VII. Churches and Culture

### 1. Religious Instruction in Schools

**Article 32** of the Romanian Constitution of 2003 guarantees the right to instruction. Article 32(7) is important for the role of religious instruction:

(7) The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law.

There were numerous debates about religious instruction in schools because the new constitution was the first since the changes in the year 1989 and since communism. There were many suggestions regarding this Article. Some (members of parliament) suggested introducing obligatory religious instruction for all levels of the education system with the following wording: *“Bible studies as well as studies on the thinking of Christianity and the history of the Christian faith should be an obligatory subject, also in universities.”*<sup>40</sup> This draft was not accepted. Instead, another suggestion was approved which fixed religious instruction in schools as a subject of choice. The constitution therefore *ensures the freedom of religious education* through section 7; in public schools religious education is organized and guaranteed by law.

The freedom of religious instruction is guaranteed according to the specific needs of each religious community. Additionally, parents and legal guardians have the right to *“determine the education of minors, for whom they are responsible, according to their own convictions.”*

Conflicts between parents' convictions and different forms of religious instruction should be avoided.

**The Education Act of 2011** is one of the most important laws enacted in Romania after 1990. According to this Act, education is a national priority in Romania. Universal compulsory education exists for the first eight years of school. Education offered by general

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40 M. Constantinescu, A. Iorgovan, I. Muraru, E. Simina Tănăsescu, *Constituția României revizuită. Comentarii și explicații* (Engl.: *The Revised Romanian Constitution. Comments and Explanations*), Ed. All Beck, Bucharest, 2004, p. 121 et seq.

schools is free of charge. The schools can levy fees for some activities according to conditions that have previously been specified by law.

According to Article 18(1) religious instruction is a subject in primary, secondary and grammar schools. The same article provides that pupils have the possibility of opting out of this subject. Pupils who do not want to attend religious instruction have to obtain their parents' or guardians' consent.

There is no substitute subject for those who opt out of religious education. Grades are not given to pupils who are members of other religious minorities not offering religious instruction in schools, or to those who have opted out of the instruction.

Article 18(3) of the Act states that religious instruction can only be taught by trained teachers in accordance with the agreements between the Ministry of Education and the recognized Churches.

## 2. *Theological Education*

The cult personnel's education takes place on different levels in state-run institutions and in institutions established and financed by the religious communities.

After the changes in 1989, faculties were initially reluctant to reintegrate into the state university system. The Orthodox faculties became part of state universities in the academic year 1991/1992. An agreement between the Romanian Ministry of Education and Science, the then Secretariat for Cults, and the Romanian Patriarchate was concluded in May 1991. The articles of the agreement's protocol state that these regulations are supposed to enable and support the Church's stronger involvement in advancing spirituality as well as culture and social life.<sup>41</sup> This protocol re-introduced state-run theological faculties in Bucharest, Sibiu and Iasi for the academic year 1991/1992. The new degree courses "Theology and Literary Science" for teachers and "Social Assistance" had already been introduced. The protocol determined that the patriarchate decides the number of priesthood students. The agreement between State and Church also contained a provision which made obligatory the participation of theology students in the liturgical program for theological faculties. It was determined by the Church to be an indispensable

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41 *Jürgen Henkel*, Rumänische orthodoxe Fakultäten im Aufwind (Engl.: Romanian Orthodox Faculties on the Rise), in: G2W, Nr. 11/2004, p. 19.

requirement for theological education.<sup>42</sup> The faculties' re-inclusion into state universities led to a return of the classic structures. The faculties are administered by a dean and a vice dean. The financing of faculties was finally taken into account in the universities' budgets.

Today, there are eleven Orthodox faculties in Romania: Bucharest, Sibiu, Iasi, Cluj-Napoca, Craiova, Alba Iulia, Oradea, Targoviste, Constanta, Arad, and Pitesti. Their relationship with the Church is very strong. This is evident in the fact that several bishops are or were (which shall be explored later) at the same time deans of the local theological faculty. Many bishops head chairs or are lecturers at these faculties.<sup>43</sup> The Western trend of separation between university theology and the Church or even a deliberate division between scientific theology and the "official Church" as an institution does not play a role in Romania. Four theological departments are associated with the universities in Caransebes, Timisoara, Baia Mare, and Galati, but do not rank as faculties. Theological faculties are teaching the same classical program as in the West. Liturgy, dogmatics, ecclesiastical history, patrology, spirituality, and canon law are the main focus of studies on the way to priesthood. This particular course of study is now officially called "Pastoral Theology". The faculties offer additional courses which usually cover eight semesters. The "Social Assistance" program offers Western standard courses in social education based on theology and pastoral care to prepare for practical work in that area. Alumni can work in pastoral and social institutions. Other courses of study exist for young people who want to become teachers for religious instruction or grammar school teachers. There are also courses in sacred music, church restoration, icon painting, and journalism.<sup>44</sup>

Romania's churches are in possession of many well-known historical monuments, like, e.g., the famous Orthodox monasteries in Northern Moldavia and the pre-reformation Protestant-Saxon church castles and churches in Transylvania as well as valuable treasures of art which are seen as a national cultural heritage. The law demands that churches keep a detailed register and ensure safe storage, maintenance, care, and proper use. The State Secretariat for Religious Communities guides, counsels and supports the churches in this task. The State Secretariat's duties comprise the organization and support of functions that are dedicated to getting to know religious art and

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42 *Berthold W. Köber*, supra note 35, p. 374.

43 *Berthold W. Köber*, supra note 35, p. 374.

44 *Jürgen Henkel*, supra note 42, p. 19.

culture.<sup>45</sup> Currently, there are over 180 museums and exhibitions of Christian objects of art and cult.

During the communist dictatorship, the churches were robbed of their most valuable objects under the pretext that they were unable to ensure their safe storage, even though these objects were in use for church services. These objects were brought to state museums, libraries, and exhibitions or to unknown places. Despite strong efforts, the churches still have not been able to regain these valuable objects.<sup>46</sup>

### 3. *Media*

The Romanian Orthodox Church established the “*Press Centre Basilica*” of the Romanian Patriarchate on 27 October 2007 in order to support all its pastoral, catechetical and missionary activities. The centre comprises the radio station *Trinitas*, the TV station *Trinitas*, the newspaper *Lumina* (The Light), the weekly newspapers *Lumina de duminică* (The Sunday Light) and *Vestitorul Ortodoxiei* (The Proclaimer of Orthodoxy), the news agency *Basilica* as well as the Press and Communications Office of the Romanian Patriarchate.

This press centre is of high missionary importance, because Orthodox church services as well as the most important events in the life of the Church are broadcast directly via radio and TV. At the same time, the various aspects of social, political, economic, and cultural life in the new European multi-religious, multi-ethnic and multi-cultural context can be reflected upon and interpreted from a Christian perspective.

## VIII. *Labour Law within the Churches*

Religious communities that are officially recognized receive monetary support from the State to subsidize parts of their personnel's salaries. This support follows two principles: the principle of equal treatment of all officially recognized religious organizations by the state and the principle of proportionality. State support is granted for each year and is based on recommendations by and needs of the reli-

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<sup>45</sup> See Government Decision No. 742/3.07.2003, Art. 6(2a-e).

<sup>46</sup> Berthold W. Köber, *supra* note 35, p. 375.

gious communities which they submit to the State Secretariat for Cults. It is through Act No. 142/27.07.1999, Article 1(1) that the state supports officially recognized religious communities by paying a share of the personnel's salaries (ordained clerics and non-clerics). Employees of the religious communities, and not those of the state, draw the biggest advantage from this provision.

The number of state-supported positions in officially recognized religious communities is determined annually by the State Secretariat for Cults based on the recommendations by the religious organizations. In doing so, the number of community members in each organization and the total sum that has been allocated are, among other criteria, taken into account.

Chair persons of officially recognized religious communities are treated like official dignitaries and receive a monthly salary in accordance with the Acts on State dignitaries' salaries. State financial support for religious organizations' personnel is subject to taxation. As previously mentioned, state support only covers a part of the clergy's salaries. The other part is raised by contributions of the faithful and members of the community.

The number of approved positions for clergy can be raised annually in accordance with state policies, as Act No. 132/04.07.2008, Article 2(2) stipulates. The sum of monthly financial support for clerics can be raised through other Acts on the improvement of State salaries. According to Article 2 of this act, clerics who serve in poor areas receive an additional 25% of financial support. However, only a maximum of 30% of clerics in each religious organization can profit from this rule.

Religious instruction is part of the general curriculum in Romanian public schools. There are 12,000 teachers to perform this instruction. The cost for those teachers' salaries amounts to 10,000,000 € per academic year and is borne by the state. Additional costs arise through the organization of the subject as well as hiring of teachers, recruiting students and school contests for pupils.

Romania also has theological grammar schools, so called seminaries, which have been accepted into the public school system after the signing of Protocol No. 9484/06.03.1993 between the Romanian Patriarchate and the Ministry of Education. The number of those schools rose from six (in 1989) to 37 today. All costs for these

schools are borne by the state, just like for every other public school.<sup>47</sup>

### *IX. Financing of Churches*

The money necessary for maintaining religious organizations and their activities is being raised and administered by the income of these organizations in accordance with their statutes (Art. 10(1) of Act No. 489/2006). According to Article 10(2), religious organizations can levy financial contributions by their members in order to maintain their activities. The Romanian State supports community members' and citizens' financial support for religious organizations by making it tax deductible (Article 10(3)). At the same time, the Act stipulates that no one can be forced to make contributions to religious organizations.

According to Act No. 142/1999, the Romanian State is especially interested in supporting the Romanian Orthodox Church abroad to preserve its cultural, lingual, and religious identity. By Act No. 114/27.4.2007 the Romanian monastery Prodromou on Holy Mount Athos receives 250,000 € annually (Article 2) for restoration, reconstruction and maintenance of buildings and its four churches (Article 4) as well as for advertising material and the upkeep of the resident monks' activities.

Article 15 lit. e of the Romanian Tax Code determines that only those religious communities are exempt from taxation which gain their income through economical activities and use those only for the upkeep of their charitable and social activities.<sup>48</sup> Religious communities have the exclusive right to produce, sell and trade liturgical products (Act No. 103/1992) and the production and marketing of products necessary for holy services is tax exempt. The same exemption exists for religious communities' income from letting real estate as long as that money is used for upkeep, construction or reconstruction of ecclesiastical buildings. Construction, consolidation, expansion, reconstruction, and restoration of ecclesiastical buildings or

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47 *Nicu Octavian*, Statutul invatamantulu teologic si religios in România (Engl.: The Situation of Theological Education and Religious Instruction in Romania), in: *Biserica Ortodoxa Romana CXX* (2002), p. 189-211.

48 *Ministerul Culturii si Cultelor*, *Viata religioasa din Romania* (Engl.: Religious Life in Romania), Ed.a III-a, Bucharest 2008, p. 156.

buildings used for other religious purposes are exempt from value added tax.

Churches are also exempt from taxation on buildings, areas on which buildings are being constructed, and all landholdings (fields, forests etc.) which are church property (Act No. 571/2003, Article 250(1) and Article 257 lit. b).<sup>49</sup>

In addition to tax exemption, Romanian tax payers have the possibility to donate 2% of their income tax to a non-profit organization or a religious community according to Article 57(4-6) and 84(2-4) Fiscal Code. This provision offers religious organizations additional income.

The Romanian State, through the State Secretariat for Cults, contributes to the construction of new churches and the restoration of old or historical monuments which belong to religious communities.

#### X. *Religious Assistance in Public Institutions*

The Romanian government has agreed to cooperate with the Patriarchate of the Romanian Orthodox Church and representatives of the Conference of Catholic Bishops of both rites in Romania.

In the social and pastoral area, the Church has understood that a special connection between *liturgy* and *philanthropy* is necessary. This follows the teachings of Saint Basilus the Great and John Chrysostomus. The separation of prayer and spirituality in social life leads to pietism, just like the separation of social work and spirituality leads to secularization.

The Romanian Orthodox Church believes that the *most credible discourse* about God's love for the world is *visible acts of love*. In accordance with this belief, the Church has developed a *well-organized system of social works* since 1990 which has experienced particular dynamics over the last years.<sup>50</sup> There are 345 social institutions within the Romanian Patriarchate, of which 109 are for children, 51 for the elderly, 106 are social canteens and bakeries, 23 medical assistance centres, two social pharmacies, 11 centres of diagnosis and treatment for people with disabilities, 33 counselling centres, two assistance centres for victims of human trafficking, and 19 assistance

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49 Ibid, p. 167.

50 Berthold W. Köber, supra note 35, p. 377.

centres for families in need. The Romanian Orthodox Church assists ca. 400,000 people through these social projects and services (poor families, children and old people in the social care facilities of the Church and the State, mentally and physically disabled, unemployed, etc.).<sup>51</sup> Several assistance and counselling centres have been established with the help of the EU Fund.

On 2 October 2007, the Treaty of Cooperation in the Area of Social Inclusion between the Romanian Patriarchate and the Romanian government has been signed, and a Treaty of Cooperation regarding the Partnership in the Fields of Medical and Mental Assistance between the Romanian Patriarchate and the Ministry of Health has been concluded on 24 July 2008. The Federation Filantropia of the Romanian Patriarchate in cooperation with several archdioceses and dioceses was created in 2007 to develop and further expand social works.

The Church wants to expand and strengthen its social works because the need is much greater, especially now that the economic crisis has caused more poverty and human suffering.

The tradition of church support is mirrored in Article 7(1) Act on Cults, which recognizes the churches' positive role in the life of the people. One distinctive feature of the law is the possibility of social partnerships between State and Churches or cults (Article 9(5)). These new regulations regarding the cooperation between State and Church in the social field cannot simply be explained by the people's trust in the Church. They also stem from a desire to solve several social problems: poverty, bad health, migration, unemployment, special needs of old people, children and disabled persons etc. These problems of Romanian society are not only problems of the state, but also pastoral problems of the Church. Phrased differently, the autonomy and equality of churches in relation to the state does not exclude cooperation and shared responsibility. Tradition must be understood as a dynamic process of creatively dealing with basic principles, not simply as a replica of past models. In the words of *Jürgen Henkels*: "*By adopting the new Act on Cults of 2006, which entered into force in time for the accession to the European Union in 2007, Romanian religious communities and politics have clearly opted for a model of cooperation framed after the pattern in Germany and Austria.*"<sup>52</sup>

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51 Taken from Patriarch *Daniel's* speech at the opening of the Conference on Diaconia, organized by the Ecumenical Council of the Church, 18-20 May 2009, accessible online at [www.basilica.ro/ro/documente/](http://www.basilica.ro/ro/documente/) [28.06.2011].

52 Jürgen Henkel, supra note 42.

### *XI. The Legal Position of Priests and the Members of Religious Orders*

The state's labour law applies to all employees of cults. Religious communities can employ persons only in accordance with all relevant state regulations and remuneration has to comply with state-set rates. Based on their income, employees pay the required taxes and contributions to unemployment and social insurance. Their pensions are determined by the relevant state regulations.

The state recognizes and protects the First and Second Day of Easter as well as Christmas Day as public holidays. Non-Christian religious communities are granted two other religious holidays instead, as determined by themselves.<sup>53</sup> Anyone who has to work in the medical field or in the field of grocery logistics on these particular days is entitled to other days off work. Employees that have to work on a public holiday in other fields are granted double payment for that time.<sup>54</sup>

### *XII. Matrimonial and Family Law*

The Romanian language knows three words to define the act of founding a family: matrimony, marriage and wedding. All these terms in their core define the same reality, but there is a difference that rests on the influence of historical relationships between Church and State.

Matrimony and wedding were distinguished in Byzantine times because the wedding, which took place in a church, was recognized as matrimony by the State.<sup>55</sup> The church was the registrar of married couples. This recognition was a reflection of the so called "Byzantine Symphony" of State and Church which existed in all Orthodox states with Byzantine influences. In Greece, for example, this tradition still continues.

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<sup>53</sup> *Berthold W. Köber*, supra note 35, p. 377.

<sup>54</sup> *Ibidem*.

<sup>55</sup> *Liviu Stan*, *Tradiția pravilnică a Bisericii. Insemnătatea și folosul cunoașterii legilor după care se conduce Biserica* (Engl. *The Church's nomocanon tradition...*), in: *Studii Teologice*, No. 5-6/1960, p. 37.

Romanians used to have the symphonic tradition between State and Church as well. It was ended by reforms during Alexandru Ioan Cuza's reign, when the separation between civil marriage and religious marriage was introduced under the influence of the French Revolution. Cuza's Civil Code of 1865 is, despite many amendments, still in force today and is mainly made up of Napoleon's Code Civil of 1807. This Civil Code withdrew the Church's right to contract a civilly binding marriage and transferred it to the state. Byzantine tradition ended in Romania with the introduction of separation between Church and State in this field. In Transylvania, this separation only took place after the establishment of Greater Romania in 1925.

This separation, which is not very praiseworthy from a religious standpoint, is still in force today, and makes a clear distinction between state marriage and church marriage necessary. One rule proscribes that a wedding in church can only be concluded after the state marriage. Article 48(2) of the Romanian Constitution of 2003 clearly establishes that "religious wedding may be celebrated only after the civil marriage". Apparently, sometimes the impression arises that the state is performing an intra-religious act, breaking church autonomy. In reality, this regulation protects family morals. According to the *nomocanon* principle, the rules were binding for church as well as state in the Romanian countries Moldavia and Wallachia. In Transylvania, the Orthodox Church followed local civil rules. With Cuza's reforms demanding a civil marriage before entering into a church marriage, the Church had to respect the minimum age applicable for civil marriage as well. Thus, today, the Romanian Orthodox Church accepts the statutory minimum age for marriage as laid down in the Romanian Family Law Code: a minimum age for men of 18 and 16 for women, with a possibility to derogate the rule for those of 15 years of age. The Church does no longer have to specifically verify the age requirement because it is always fulfilled, since the Church cannot contract a religious marriage prior to the civil marriage.

One could imagine that there is no maximum age for entering a marriage. However, the Church disagrees. It deems marriage at an advanced age as immoral. That is why Canon 24 of Saint Basilus the Great determines: "The widow, who has reached the age of 60 and wants to live with another man, must no longer receive communion" and Canon 88 specifies for men: "He, who has reached 70 years of age, shall not live with a woman in sin."

One of the most sensitive points regarding the Church's influence on Romanian social life is the *interference in ethical matters by representatives of ecclesiastical institutions*, which influences attitudes on life and community in general. After the fall of communism, *abortion was legalized* and millions of unborn children were killed. A true Christian cannot remain indifferent when confronted with such a relevant phenomenon; a phenomenon that in Romanian society is often being "justified" by the so called "woman's freedom to decide on matters of her own body" without taking into account the incontestable right to life of unborn children.<sup>56</sup> The fight of ideas against abortion and for a culture of life in Romania is being led by the Orthodox together with the Catholics of both rites, Protestants and Neo-Protestants. There are even ecumenical associations with this goal like, e.g., "Pro-Vita" (from Sibiu/Hermanstadt) or "Darul vietii" ("The Gift of Life") from Timișoara/Temeswar. So called life marches, prayers for unborn children and media campaigns are organized, and a counselling centre for women who are confronted with such a dramatic decision has been established. Unfortunately, there is no true political will to advance a new law in this direction. Over the last years, the Church had to react very assertively in another highly sensitive and debated area: the topic of *so called "homosexual couples"*. Although Romania does not have civil law rules for such couples, an ever increasing campaign is being waged by certain nongovernmental organizations despite obvious rejection by the vast majority of society and a lack of political support. The seemingly growing misconception between these "couples" and the institution of the family is real and can be understood from the experiences in other member states. Far from discriminating against a person, the Church is fighting for the protection of the idea of marriage in society, an idea that under no circumstance can be based on anything but the *"mutual agreement to a loving relationship between a man and a woman, before God and the civil authority, in the framework of the institution of marriage"*.<sup>57</sup>

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<sup>56</sup> Jürgen Henkel, supra note 1, p. 117.

<sup>57</sup> Ibidem.

### *XIII. Religion and Criminal Law*

Freedom of religion is first and foremost regulated and protected in Article 29 of the Romanian Constitution. The content of religious freedom is complex and the term contains several guarantees which also include the separation and cooperation between Church and State. It is further stipulated that the expression of freedom of conscience is only permissible “in the spirit of tolerance and mutual respect.” According to the Criminal Code (Article 247 and 318) it is punishable with imprisonment to discriminate against someone, inter alia because of religious affiliation, or restrict religious freedom by preventing or disturbing religious events, or by forcing someone to participate.

These aspects were also protected during communism. Article 318 of the Socialist Republic of Romania’s Criminal Code of 1960 names the possible sentence for a forced participation in religious expressions of faith. It reads: *Whosoever blockades or disturbs the freedom to exercise any cult that is organized and functioning according to the law, is being punished with imprisonment between one month and six months or with a fine. The same sentence applies, when a person is being led by force to participate in a religious service of any cult or to perform a religious act that is connected with any cult.*<sup>58</sup> These same provisions are contained in the current Criminal Code.

A person using the uniform of a statutorily recognized religious community’s clergy member without authorization can be punished with one to three months of imprisonment or a fine (Article 241).

### *XIV. Particular Questions of Civil Ecclesiastical Law*

The restitution of church property that was confiscated during the totalitarian regime is progressing slowly. But to what degree can the restitution of mobile and immobile assets of religious communities take place when no full stock of the inventory has been taken?<sup>59</sup> The end of the totalitarian (dictatorial) communist-atheist regime in Ro-

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<sup>58</sup> Berthold W. Köber, supra note 35, S. 378.

<sup>59</sup> Jürgen Henkel, supra note 57.

mania on 22 December 1989 and the transition to a democratic state enabled and obligated state institutions to adhere to and guarantee religious rights and freedoms. This is implied by the right of religious communities to private property in accordance with the Romanian Constitution of 2003. In that sense, based on the relevant existing legislation (e.g.: Act No. 18/1991, Act No. 169/1997, Act No. 10/2000 etc.), today's Romanian authorities must restate that mobile and immobile property which has been arbitrarily seized, particularly after 6 March 1945.<sup>60</sup> However, the current Romanian government has taken responsibility through programmatic political documents that were published in 2004. It states that representatives of central and local political-administrative powers have the obligation and responsibility to remedy this grievance.

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<sup>60</sup> *Gheorghe Anghelescu*, supra note 34.