

PROTECTION OF RELIGIOUS FREEDOM IN THE CRIMINAL LAW OF ROMANIA AND OF THE REPUBLIC OF MOLDOVA

Associate professor Aurel Octavian PASAT¹

Abstract

This scientific article is devoted to the reconceptualization of the legal-criminal protection of religious freedom in the criminal law of Romania and of the Republic of Moldova. The purpose of this scientific message consists in the meticulous identification and analysis of the special legal object of the criminal offenses referred to in paragraph (2) art. 381 Romanian Criminal Code and art. 185 of the Criminal Code of the Republic of Moldova. On this occasion they were subjected to a thorough analysis: the European legislation in the field of religious freedom, the criminal and extra-legal legislation in the field of religious freedom in Romania and the Republic of Moldova, as well as the contemporary doctrine of recent years. Following the study carried out, certain legislative gaps were identified that can be easily removed by reviewing the incriminating framework of the criminal acts that affect the religious freedom of the person. The conclusions of the broad law and the recommendations de lege ferenda created under the empire of the latest legislative tendencies at European level can be taken into account in the legislative process.

Keywords: religious freedom; religious belief; the right to religious belief; religious worship; esoteric worship; spiritual worship; attacks on religious freedom.

JEL Classification: K10, K14

1. Introductory considerations

According to paragraph (2) art. 381 Romanian Criminal Code (Impeding of the exercise of religious freedom), obliging a person, by constraint, to participate in the religious services of a cult or to perform a religious act related to the exercise of a cult is a fact criminal. At the same time, we find a similar legal-criminal norm in art.185 of the Criminal Code of the Republic of Moldova (Attention to the person and to the rights of citizens in the form of preaching religious beliefs and performing religious rites) incriminated by the following legislative formula: "The organization, management or active participation in a group whose activity, carried out in the form of preaching religious beliefs and carrying out religious rites, is accompanied either by causing damage to the health of the citizens, or by other attacks on the person or its rights, or by instigating citizens to refuse to fulfill their citizens' obligations".

The main legal object of the facts listed above is the freedom of religion the inadmissibility of abusive proselytizing, as well as the physical and mental security of the person subjected to such abusive actions or inactions.

Religious pluralism involves establishing the principles that must govern the coexistence of representatives of different religions, denominations or cults. According to the Romanian author E. Dumea, pluralism means the coexistence, within the same society, of intellectual, cultural and ideological positions so different and opposed, that they contradict each other in a way that leaves no room for a possibility of dialogue and unity². The state must be neutral and impartial in exercising its right to regulate this area and in its relations with the various religions, cults and beliefs (assuring religious pluralism), and must ensure equal protection before the law of all persons, being a fundamental guarantor. against any form of discrimination. According to the Constitutional Court of the Republic of Moldova, secularism does not imply the state's indifference to religions, but rather the state guarantees the protection of religious freedom in a regime of

¹ Aurel Octavian Pasat - "Bogdan Petriceicu Haşdeu" State University, Faculty of Law; Republic of Moldova, "Dunarea de Jos" University, Cross-border Faculty, Galaţi, Romania, octavian_passat@yahoo.com.

² Dumea E. *Cultura și religia în Europa: materiale suplimentare*. http://www.cse.uaic.ro/_fisiere/Documentare/Suporturi_curs/II_Cultura_si_religie_in_europa.pdf, consulted on 1.10.2019.

confessional and cultural pluralism³. Secularism presupposes the existence of pluralism in the value system, the equal protection of religious and non-religious persons and calls for a neutral attitude on the part of the state towards both categories. Religious pluralism refers to groups that share certain common beliefs, regardless of whether it is a religious, esoteric or spiritual cult.

The legal framework should provide defining elements regarding the interactions between cults, condemning proselytizing, religious prejudice or other illegal practices⁴.

2. Research of religious freedom in the criminal law of Romania and of the Republic of Moldova

Spiritual, religious and philosophical beliefs are part of any person's private life and they also imply their right to manifest them. But, as the Romanian author A. Jeflea correctly states, "this freedom is restricted by legal-criminal norms that sanction proselytism and undermine the state order ... the members of the cults must respect each other, respect the laws of the country, cultivate good relations for the advancement. their faith and the attainment of religious-moral, cultural, etc. objectives, in such a way as to avoid the aggressive proselytizing practiced by the members of the extremist and fundamentalist type cults"⁵. The quoted author has managed to address the sensitive aspect of determining the boundaries of a person's religious freedom and overcoming them by others through proselytizing behavior⁶.

In the opinion of the scientist A. Jeflea, abusive proselytizing involves any action to change the religious beliefs of a person or a group of people by physical or mental constraint, by aggressive methods of persuasion, by promising and offering money for the purpose of attracting followers, including by the religious aggression of the people in conditions of subordination; any pursuit of persons in public places (on the street, on the gates, on the doors, on the service, on the telephone, etc.)⁷. Religious xenophobia and a psychology of violence appear in proselytes. In most cases his followers are isolated, first of all by family, friends and then by society. The quoted author finds a refining of the methods of sectarian proselytism: "The abusive proselytism has become a fundamental condition in the development of extremism and religious terrorism Pure spiritual teachings do not constitute proselytism even if they will be revealed and shown the errors of other religions, as well as in the case of enticing potential disciples on her part, who abandon their original religions according to their own will, because the spiritual teaching is actually carried out freely and without obstacles"⁸.

From the above, we can see that the right to have a conviction is, first and foremost, the freedom of each person to have or adopt a belief or a religion of their own choosing, but without implying the freedom to refuse the validity of certain provisions. legislative imperatives, basing their actions on certain religious beliefs.

This right refers to the freedom not to have a religious belief or belief. Therefore, according to paragraph (1) of Article 9 of the European Convention on Human Rights⁹, any person has the right to freedom of thought, conscience and religion; this right includes the freedom to change their

³ Decision of the Constitutional Court of the Republic of Moldova on the exception of unconstitutionality of article 1 paragraph. (2) letter c) of Law no. 121 of May 25, 2012 on ensuring equality (Notification no. 28g/2016). In: Official Gazette of the Republic of Moldova, 2016, no. 60.

⁴ Pestroiu D., *Suport de curs la disciplina: Misiologie și ecumenism*, University of Bucharest, Faculty of Orthodox Theology. Year III, Semester II, Bucharest, http://www.ftoub.ro/index.php?option=com_docman&task=doc_download&gid=263, consulted on 1.10.2019.

⁵ Jeflea A., *Libertatea religioasă ca valoare ocrotită de legea penală în jurisprudența CEDO*, „Revista Națională de Drept”, 2017, no.1, p.47-54, p.47.

⁶ Jeflea A., *Vulnerabilități și amenințări de natură religioasă în mediul de securitate publică: aspecte criminologice*, „Revista Națională de Drept”, 2017, no. 2(196), p.46-52, p. 51.

⁷ Jeflea A., *Constatări de lege lata privind prozeletismul abuziv și extremismul religios în legislația extrapenală a Republicii Moldova*, „Studia Universitatis Moldaviae”, 2016, no.8 (98), p.178-184, p. 183.

⁸ Jeflea A., *Sinteza reperelor conceptuale privind devianța religioasă în accepțiunea criminoteologiei moderne*, „Studia Universitatis Moldaviae”, Seria „Științe Sociale”, 2018, no. 3 (113), p. 137-144, p. 138.

⁹ European Convention on Human Rights (Rome, 4.XI.1950) amended by Protocols no. 11 and 14, together with the Additional Protocol and Protocols no. 4, 6, 7, 12 and 13, http://www.echr.coe.int/documents/convention_ron.pdf, consulted on 1.10.2019.

religion or belief, as well as the freedom to express their religion or belief individually or collectively, in public or in particular, through worship, education, practices and performing rituals. According to paragraph (2) of article 9 of the cited normative act, the freedom to express one's religion or beliefs cannot be subject to other restrictions than those which, provided by law, constitute necessary measures, in a democratic society, for public safety, the protection of public order, health or morals or the protection of the rights and freedoms of others.

In Recommendation 1720 (2005) on education and religion, it was noted that "the religion of each, including the option of having no religion, is a strictly personal matter"¹⁰. Freedom of expression should be exercised only within the limits of the law, with respect for the rights and freedoms of citizens, religious beliefs and feelings regardless of whether they are related to Islamic, Christian, Jewish or other religions.

Religious beliefs represent that complex of ideas, principles and teachings of faith or dogmas of religious character in which a person believes, which he willingly accepts, confesses and then conducts in life.

Such beliefs are an integral and important part of each person's identity. Man's beliefs about life and its role in this life are the foundation of this identity¹¹. The inner forum of a person, that is, thinking, consciousness and religion, creates the individuality and differentiates it as an individual¹².

The private life of the human being, as well as its inner forum, must be protected by international documents. "Personal beliefs", unlike opinions, satisfy the following two criteria: they must reach a certain degree of argumentative strength, seriousness, cohesion and importance; they must be compatible with respect for human dignity¹³. It should be noted that beliefs that support assisted suicide or language preferences or the elimination of human remains after death are not included in the definition of the concept of convictions used under Article 9 of the European Convention on Human Rights¹⁴. However, under no circumstances can a person be placed *ab initio* in the situation of defending or protecting the freedom of conscience, because such an approach would contravene the negative obligation of the state, which, by virtue of this obligation, cannot impose the study of religion¹⁵.

The fundamental right of the unrestrained practice of religion is contained in the very notion of freedom of conscience and religious beliefs. This notion encompasses, regardless of whether it is a religious belief or concepts of life removed from or lacking in religion, not just the inner freedom to believe or not to believe, that is, to share, to silence a religious faith, to dispose of it and to move towards another faith, but also the freedom of action within the cult, of its promotion and preaching. In this sense, the unwavering practice of religion is only a constituent part of freedom of conscience and religious beliefs, to which both the individual and a religious association or shared conceptions of life and the world are entitled¹⁶.

The right to freedom of thought, conscience, religion or belief implies, among other things,

¹⁰ Recommendation 1720 (2005) Education and religion. Assembly debate on 4 October 2005 (27th Sitting). <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17373&lang=en>, consulted on 1.10.2019.

¹¹ Coltofeanu A.-Iu., Ghigheci Cr. *Conținutul art. 9 din Convenția Europeană a Drepturilor Omului. Precizări generale. Domeniul de aplicabilitate*, <http://abcjuridic.ro/libertatea-de-gandire-de-constiinta-si-de-religie-in-jurisprudenta-cedo-partea-i/>, consulted on 1.10.2019.

¹² *Idem*.

¹³ *Protection of the right to freedom of conscience and religion based on the European Convention on Human Rights*: Council of Europe Guide on Human Rights Council of Europe, Strasbourg 2012, http://www.coe.int/t/dgi/hr-natimplement/Source/documentation/hb9_rightfreedom_romanian.pdf, consulted on 1.10.2019.

¹⁴ European Convention on Human Rights (Rome, 4.XI.1950) amended by Protocols no. 11 and 14, together with the Additional Protocol and Protocols no. 4, 6, 7, 12 and 13, http://www.echr.coe.int/documents/convention_ron.pdf, consulted on 1.10.2019.

¹⁵ Decision no. 669 of November 12, 2014 regarding the exception of unconstitutionality of the provisions of art. 9 paragraph (1) and (2) of the Education Law no. 84/1995, art.18 para. (1) and (2) of the National Education Law no. 1/2011, as well as the provisions of art. 61 paragraph (3) of Law no. 47/1992 regarding the organization and functioning of the Constitutional Court Published in the Official Gazette no. 59 of 23.01.2015.

¹⁶ Jürgen Schwabe, Thorsten Geissler. *Selecție de decizii ale curții Constituționale federale a Germaniei*. (scientific reviewer – professor Tudorel Toader), C.H. Beck (Konrad Adenauer Foundation, South East Europe Rule of Law Program), Bucharest, 2013, 264 p., p.201.

the following freedoms: 1) freedom to practice a cult and to hold meetings, associations related to a religion or belief and to establish and maintain temples for these purposes; 2) the freedom to found and maintain adequate charitable or humanitarian institutions; 3) freedom to make, acquire and use, in appropriate quantities, the objects and material required by the rites or traditions of a religion or belief; 4) the freedom to write, print and disseminate publications on these topics; 5) the freedom to learn a religion or belief in places suitable for this purpose; 6) the freedom to request and receive voluntary, financial and other contributions from individuals and institutions; 7) the freedom to train, to appoint, to choose or to signify by succession the appropriate leaders, according to the needs and norms of any religion or belief; 8) the freedom to respect the days of rest and to celebrate the holidays and ceremonies in accordance with his religion or belief; 9) freedom to establish and maintain communications with individuals or communities in matters of religion or belief at national and international level¹⁷.

What would the term "*religion*" mean? How does this term explain contemporary science? Therefore, analyzing the works of A. Jeflea¹⁸, A. Gh. Paul¹⁹, M.-Ș. Dinu²⁰, C. Burahna²¹, G.-P. Știrbu²² note that, from the etymological point of view, the term "*religion*" can be viewed from two perspectives:

- The term derived from the verb "*relegere*" (to pick up the new, to gather the new, to go through the new, to go through the thought, to review)²³ memory of a past, permanent updating of it.

- The term derived from the verb "*religion*" and has the meaning of "to bind", "to fix", as in many regions of the world: religion unites and builds social cohesion. As the author correctly mentions A. Gh. Paul, religion implies a common culture, patterns and norms of unitary behavior²⁴.

In this sense, the Romanian author A. Jeflea affirms that religion is the relation of man with what he perceives as a transcendental reality and which involves his whole life and underlines the difficulty of formulating a relevant definition of religion, which in its historical evolution has different meanings, after the significant events in the life of the society²⁵. The term religion, in the acceptance of several authors²⁶, is used in two related, but distinct meanings: 1) the first refers to religious institutions, social groups and movements whose purpose is to express themselves in the problems regarding religion; 2) the second is the spiritual one (religion offers models of social and individual behavior).

A non-contradictory definition that belongs to C. Burahna defines religion as a set of ideas, feelings and actions shared by a group and which gives its members an object of veneration, a code of conduct, a frame of reference to enter into relationship with the group or the universe²⁷.

Finally, in his criminological work, the author A. Jeflea refers to theological literature and manages to define religion through three indispensable elements:

1) *dogma* that implies the adhesion to a higher truth, the orientation towards a transcendental reality or towards a higher force;

¹⁷ Străisteanu D.-I., Zaharia V., Cernomorîț T., *Ghidul drepturilor omului pentru para-juriști*. This Guide refers to the provisions of the legislation in force on 01.05.2013. (247 p.), p. 66-67, <https://soros.md/files/publications/documents/Ghidul%20DO%20pentru%20PJ.pdf>, consulted on 1.10.2019.

¹⁸ Jeflea A. *Unele considerente privind fenomenul religios în știința criminologică română*, „Studia Universitatis Moldaviae”, 2017, no. 8(108), p. 177-187, p. 178.

¹⁹ Paul A. Gh. *Fenomenul actual al secularizării și posibilă lui depășire*, „Studia Universitatis Septentrionis”, Theologia Orthodoxa, 2009, year I, no. 2, July-December, Baia Mare, p. 5-20, p. 6.

²⁰ Dinu M.-Ș. *Componenta etnico-religioasă a conflictelor*, Publishing House of the National Defense University "Carol I", Bucharest, 2005, 32 p., p.17.

²¹ Burahna C., *Rolul religiei – conflicte religioase*, <https://ru.scribd.com/doc/102923981/ROLUL-RELIGIEI-Conflicte-Religioase>, consulted on 1.10.2019.

²² Știrbu G.-P., *Limitele libertății religioase în contextul asigurării securității naționale*. Summary of the doctoral thesis. Domain - Public order and national security, "Alexandru Ioan Cuza" Police Academy, Bucharest, 2018, 38 p., p.26. http://www.academia.depolitie.ro/root/studii/iosud/rezumat_teze/2018/stirbugp/rezumat_teza.pdf, consulted on 1.10.2019.

²³ Jeflea A., *op. cit.* (*Unele considerente privind fenomenul religios în știința criminologică română*), p. 178.

²⁴ Paul A. Gh. *op. cit.*, 2009, p. 6.

²⁵ Jeflea A., *op. cit.* (*Unele considerente privind fenomenul religios în știința criminologică română*), p. 178.

²⁶ Dinu M.-Ș., *op. cit.*, 2005, 32 p., p. 17.

²⁷ Burahna C., *op. cit.* (*Rolul religiei – conflicte religioase*).

- 2) *the rite* that emphasizes the need to participate in certain religious practices;
- 3) *a certain morality* that implies a certain number of prohibitions and obligations²⁸.

The cited doctrinal approach is conceptually within the spirit of Article 9 of the European Convention on Human Rights²⁹, which refers to the manifestation of religion through the following forms: 1) *worship* (religious services, whatever they may be, regardless of the number of believers who have joined them); 2) *education* (religious education, trying to convince the neighbors of the validity of ideas of religious origin); 3) *practices and performing rituals* (participation in offices, processions or other such aspects). The thinkers of different times considered that the crime should be punished, because the crime committed should be punished in order to serve as an example for others. So far the crime is regarded as a mistake, and as a result of sin³⁰.

Freedom of religion or belief protects the right of any human being to believe or have an atheistic or non-theistic belief and to change their religion or belief. To have or not to have a religion or belief is an absolute right and cannot be limited in any circumstances. The right to have a belief is a general right and it has the role of protecting the inner forum of the person, that is, the field of personal beliefs and religious beliefs.

From the perspective of the attitude towards religion, freedom of thought, conscience and religion implies the right to identity not only of the believers and their conception of life; this freedom is enjoyed by atheists, agnostics, skeptics or even those who are indifferent to religion³¹. This right provides the possibility for the person to express in particular or in public a certain conception of the surrounding world, whether or not he has a religious faith, whether or not he belongs to a religious cult or an organization of any kind, recognized by the order. constitutional existing at that time, without suffering any constraint or prejudice.

Both believers and atheists alike must be protected and not be subjected to discriminatory treatment. This right is not susceptible to limitations because it is impossible for the state to impose on a person a certain type of thinking. At the same time, two types of obligations are imposed on the states: *negative obligations* - according to them, states must refrain from infringing any rights guaranteed by the provisions of the article in question; *positive obligations* - according to them, states must take all necessary and useful measures so that the persons under their jurisdiction can exercise the rights provided for in Article 9 of the European Convention on Human Rights.

According to paragraph (1) art.1 of Law no. 489/2006 regarding the religious freedom and the general regime of the cults³², the Romanian State respects and guarantees the fundamental right to freedom of thought, conscience and religion of any person from the territory of Romania, according to the Constitution and the international treaties to which Romania is a party. In paragraph (2) art.1 states that no one can be prevented or compelled to adopt an opinion or to adhere to a religious belief, contrary to his beliefs, nor can he be subjected to any discrimination, pursued or put in a inferiority situation for his faith, belonging or non-belonging to a group, religious association or a cult or for exercising, under the conditions provided by law, religious freedom.

Religious freedom, in accordance with Romanian law, encompasses the right of any person to have or adopt a religion, to manifest it individually or collectively, in public or in particular, through cult-specific practices and rituals, including through education. religious, as well as the freedom to maintain or change their religious faith. Freedom to express one's religious faith can be subject to other restrictions than those provided by law and are necessary measures in a democratic society for public security, protection of public order, health or morals or for the protection of rights and freedoms. human fundamentals.

²⁸ Jeflea A., *op. cit.* (*Unele considerente privind fenomenul religios în știința criminologică română*), p. 178-179; Paul A. Gh., *op. cit.*, 2009, p. 6.

²⁹ European Convention on Human Rights (Rome, 4.XI.1950) amended by Protocols no. 11 and 14, together with the Additional Protocol and Protocols no. 4, 6, 7, 12 and 13, http://www.echr.coe.int/documents/convention_ron.pdf, consulted on 1.10.2019.

³⁰ Negrier-Dormont L., *Literatura Patristică: gânditorii Evului Mediu și ai Renașterii despre criminalitate*, „Revista Electronică a Ministerului Public, Parchetul de pe lângă Înalță Curte de Casație și Justiție a României”, www.mpublic.ro, consulted on 1.10.2019.

³¹ Coltofeanu A.-Iu., Ghigheci Cr., *op. cit.* (*Conținutul art. 9 din Convenția Europeană a Drepturilor Omului. Precizări generale. Domeniul de aplicabilitate*).

³² The Official Monitor of Romania. Part I, no. 11/08.01.2007.

In the Republic of Moldova the protection of the private life of the believers is ensured by the following normative acts: paragraph (8) art.15 of the Law on freedom of conscience, thought and religion, no. 125 of 11.06.2007 - any requirement of indication in the acts official membership of a religious cult is illegitimate; art. 3 of the Law of the Republic of Moldova on the protection of personal data, no. 133 from 08.07.2011, the data that reveals the religious or philosophical beliefs of the person, constitute special categories of personal data.

In this context, the Law of the Republic of Moldova on the rights of the child, no. 338 of 15.2.1994 in art.8 declares the right to freedom of thought and conscience. Thus, in accordance with paragraph (1) of Article 8, the child's right to freedom of thought, opinion and confession cannot be violated in any form. According to the provisions of paragraph (2) of article 8 of this normative act, the State guarantees to the child, able to formulate his opinions, the right to freely express his opinions on any problem that concerns him. The opinion of the child who has reached the age of 10 will be taken into account, if this is not in conflict with his interests. In accordance with paragraph (5) of article 8 of the Law on the rights of the child, parents or legal subrogators have the right to educate the child according to their own beliefs.

A similar provision is also found in paragraph (1) art.3 of the Law of Romania no. 489/2006 regarding the religious freedom and the general regime of the cults³³ which provides that parents or guardians have the exclusive right to opt for the religious education of the minor children, according to their own convictions. For this purpose, according to paragraph (2) art.3 the religion of the child who has reached the age of 14 years cannot be changed without his consent; the child who is 16 years old has the right to choose his religion alone.

Religious beliefs are a complex of ideas, principles and teachings of faith or dogmas of religious character in which a person believes, which he willingly accepts, confesses and then leads to life (art.3) of the Law of the Republic of Moldova on freedom of conscience, thought and religion, no. 125 of 11.06.2007³⁴). At the same time, as a believer, the Law recognizes a person who believes in certain religious truths and who is a benevolent part of a religious community with whose members share the same beliefs, the same faith, participate in committing the same religious activities and practices, being subject to a freely elected religious authorities.

Although religious freedom belongs to the inner forum of the person, it also implies the right of manifestation of religion, because religious acts and words are related to the existence of religious belief. Freedom of expression of religion is not only exercised collectively, in public and in the circle of those who share the same faith, it can also exist in an individual and private setting. In addition, manifesting one religion involves trying to convince another.

The right of a person to manifest his religious freedom includes his possibility of being part of a certain religious organization that corresponds to his conceptions. At European level in the sphere of regulation of traditional religions and sects, the Parliamentary Assembly adopted two documents: Recommendation no. 1178/1992 of the Parliamentary Assembly (Session 43, final version), regarding the sects and the new religious movements³⁵; Recommendation no. 1412/1999 of the Parliamentary Assembly (Session 18 of June 22, 1999) on the illegal activity of the sects³⁶.

By Recommendation No. 1412/1999 (Session 18 of June 22, 1999) on the illegal activity of the sects, religious pluralism was recognized as a natural and natural consequence of freedom of religion. Religious pluralism presupposes the neutral position of the State and equal protection before the law of all persons, being a fundamental guarantor against any form of discrimination. Therefore, state neutrality and equal protection before the law was proclaimed, and it urged all state and regional bodies to refrain from taking measures based on religious beliefs. At the same time, by Recommendation No. 1178/1992 of the Parliamentary Assembly (Session 43, final version), regarding the sects and the new religious movements, it was insisted on granting the legal status to

³³ Official Monitor of Romania, Part I, no. 11/08.01.2007.

³⁴ Official Monitor of the Republic of Moldova, 2007, no. 127-130.

³⁵ Recommendation 1178 (1992) of Assembly Session 1991, 43rd Session, third part. Final version *Sects and new religious movements*. <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=15212&lang=en>. consulted on 1.10.2019.

³⁶ Recommendation 1412 (1999) of Parliamentary Assembly, Assembly debate on 22 June 1999, (18th sitting). *Illegal activities of sects*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16713&lang=en>, consulted on 1.10.2019.

all the new religious sects and movements that were to be registered.

At European level, it was concluded that the notion of sect should be impetuously, as well as whether any religion is present within a sect or not. In this respect, it will be taken into account that some sects represent groups that share certain common beliefs, regardless of whether it is a religious, esoteric or spiritual sect, and this circumstance must be taken into account. In contemporary doctrine and legislation it is claimed that labeling a religious organization as a "sect" could have a negative impact on the organization³⁷, and giving priority to one of these expressions would lead to a serious impairment of the person's freedom of religion and conscience, discriminating against some and granting the superiority of other people (adherents of the "traditional" and dominant religions) according to the criterion of religion, which would contravene the national and international law³⁸.

The notion of "practicing religion" does not just mean religious actions and practices, observance of religious customs, such as divine service, church collections, prayers, sharing of church mysteries, processions, display of church flags, the beating of bells, but also religious education, non-religious and atheist holidays, as well as other expressions of religious life or conceptions of life³⁹.

Although the right to freedom of faith is a fundamental one, it cannot be unlimited, endangering the life and health of the believer. Confirmation will serve as a case that consisted of the question of the effect of the extension (with irradiation sense) of the fundamental right of the freedom of faith on the sanction of the offense of leaving without help (*BVerfGE 32, 98, Gesundheitsbetriebe/Healing by prayer*)⁴⁰. Chambers of October 19, 1971-1 BvR 387/65 - The applicant is a member of the religious association of the Evangelical Brotherhood, his wife was also a member of this community, suffering from acute anemia following the birth of the fourth child, the wife refused to follow the doctor's recommendation to undergo treatment in the hospital, in particular to undergo a blood transfusion. The husband failed to use his influence on the wife for the purpose of medical recommendations. - and to the last moment full conscience, he died⁴¹. By the judgment of January 14, 1965, the Ulm Court convicted the applicant for committing the offense of leaving without aid at a fine of DM 200 or ten days deprived of liberty.

In fact, the Court held the following: "... the doctor found that his life was in danger and proposed to the applicant and his wife the hospitalization, in order to be able to carry out a blood transfusion; the doctor pointed out that without such treatment, his wife could die. The complainant then explained to the doctor that the wife would also recover without treatment in the hospital, if they would seek help from God, and their faith is strong; both would be faithful people, trained to believe in the word of the Lord and to trust in it. Personally, for these reasons the applicant would be against a hospital treatment. He then addressed his wife, explaining to her that the decision belongs to her, if she wishes, she may go to the hospital; However, the assembly would preach another way, since in Scripture it is said: "If a sick man falls, let the elders of the village call to him (pray for him, and prayer will relieve the sick)". The plaintiff's wife then declared that he refused treatment in hospital and requesting the presence of a brother from the religious community to pray with them; this happened. Shortly after, his wife died"⁴².

In examining this case, it was found that in a state, where human dignity is the supreme value and in which the value of forming the community is recognized for self-determination, the freedom of faith provides the individual with a legal space free from the interference of the state, in which the individual can to give his life the form that corresponds to his beliefs (the emphasis is ours - author's note).

The court's arguments regarding the fundamental right limits to the freedom of faith were invoked the following: "Freedom of faith exceeds religious tolerance, that is, simple toleration of

³⁷ Jeflea A., *op. cit.* (*Sinteza reperelor conceptuale privind devianța religioasă în accepțiunea criminoteologiei moderne*), p. 138.

³⁸ *Ibid.*

³⁹ Jürgen Schwabe, Thorsten Geissler. *op. cit.*, 2013, p. 202.

⁴⁰ *Ibid.*

⁴¹ *Idem.*, p. 198-199.

⁴² *Ibid.*

religious confessions or non-religious beliefs. It therefore includes not only the (inner) freedom to believe or not to believe, but also the external freedom to manifest, confess and spread the faith. Here is also the individual's right to orient his entire behavior according to the teachings of his faith and to act in accordance with the inner conviction of his faith. In this respect, freedom of faith is not only protected by the beliefs that spring from the imperative precepts. It also encompasses those religious beliefs, which in a concrete life situation not only force an exclusively religious reaction (the emphasis belongs to us - author's note), but considers that this reaction is the best and appropriate means of resolving the situation in virtue of the attitude imposed by faith. Otherwise, the fundamental right of freedom of faith could not be manifested in its fullness, and freedom of faith is not guaranteed unlimitedly⁴³. It has been mentioned that these reasons exclude the activities and behaviors that arise from a certain attitude of faith to be automatically subject to sanctions, which the state provides for such behavior - regardless of its motivations of faith. The effect of extending the fundamental right is materialized in the sense that it can influence the way and size of state sanctions. For criminal law this means: Whoever is left in a concrete situation by his beliefs of faith in the direction of an action to do or not to do, may conflict with the moral conceptions prevalent in the society and with the legal duties that result from them⁴⁴.

In another order of ideas it is worth mentioning that religious activity within the meaning of the Law of the Republic of Moldova on freedom of conscience, thought and religion, no. 125 of 11.06.2007⁴⁵, constitutes an activity oriented towards satisfying the spiritual needs of the believers (spreading the teaching) of faith, religious education, officiating of religious services, conducting actions of blessing and preaching, training and perfecting the worshipers of religious cults, as well as other activity oriented to the organizational and material assurance of religious practices (editing, dissemination and dissemination of literature with religious content, the production, distribution and dissemination of cult objects, the making of cult clothing, etc.). A distinction must be made between an activity essential to expressing a religion or belief and one that is only inspired or even encouraged by it⁴⁶.

According to the provisions of art. 3 of the Law of the Republic of Moldova on freedom of conscience, thought and religion, no. 125 of 11.06.2007, religious worship represents a religious structure, with the status of a legal person, which carries out its activity in the territory of the Republic of Moldova, according to the doctrinal, canonical, moral, disciplinary norms and their own historical and religious traditions, which do not contravene the legislation in force, being, constituted by persons' subject to the jurisdiction of the Republic of Moldova, who jointly manifest their religious beliefs, respecting the established traditions, rites and ceremonial. Religious freedom can also be exercised within religious associations, which are legal persons made up of at least 300 persons, Romanian citizens or residents in Romania, who associate in order to manifest a religious belief [paragraph (1) art. 40 of the Law no. 489/2006 on religious freedom and the general regime of the cults]. The local units of the cults can have and maintain, alone or in association with other cults, confessional cemeteries for their believers [paragraph (1) art. 28 of Law no. 489/2006 on religious freedom and the general regime of the cults]. The confessional cemeteries are administered according to the regulations of the cult of the owner. The confessional identity of historical cemeteries is protected by law. The text of the law stipulates that in the localities where there are no public cemeteries and where some cults do not have their own cemeteries, the deceased persons belonging to the respective cults may be buried according to their own rite, in the existing cemeteries in operation (with the exception of cemeteries belonging to the Mosaic and Muslim cults).

At the same time, the Law of Romania no. 489/2006 regarding the religious freedom and the general regime of the cults⁴⁷ in letter n) paragraph (1) art.3 proclaims that the principles governing

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ Official Monitor of the Republic of Moldova, 2007, no. 127-130.

⁴⁶ Jeflea A. *Prevenirea criminalității religioase în legislația penală și extrapenală a României*, „Studia Universitatis Moldaviae”, 2017, no. 3 (103), p. 153-160, p. 154.

⁴⁷ The Official Monitor of Romania, Part I, no. 11/08.01.2007.

pre-university and higher education, as well as the lifelong learning in Romania are: the principle of freedom of thought and of independence from ideologies, religious dogmas and political doctrines. Law no. 489/2006 on religious freedom and the general regime of cults regulates a series of principles defined in the international conventions on religious freedom at the individual and collective level, establishing the necessary framework for its affirmation. This normative act guarantees the equality of the cults in front of the law and of the public authorities. I noticed that at the moment, in Romania, there is no law against proselytizing and no clear mention of the activities that are considered acts of proselytizing.

Unlike the legislation of the Republic of Moldova in the field of religious cults, in paragraph (5) art. 5 of the Law of Romania no. 489/2006 regarding the religious freedom and the general regime of the cults⁴⁸, it is expressly specified that the processing of personal data related to religious beliefs or belonging to cults is forbidden, except for carrying out the national census works approved by law or in the case in which the person concerned expressly consented to this.

Therefore, we highlight two categories of personal information:

- 1) data related to religious beliefs;
- 2) data related to worship membership.

Each of the two legal regimes has specific rights and obligations, the difference being the public utility that the state recognizes to the cults to other religious groups.

A considerable advantage of this law is the provision indicated in paragraph (6) art.5 of the Law of Romania no. 489/2006 regarding the religious freedom and the general regime of the cults, according to which it is forbidden to oblige the persons to mention their religion, in any relation with the public authorities or with the legal persons of private law.

Recommendation 1804 (2007) of the Parliamentary Assembly of the Council of Europe on the state, religion, secularism and human rights⁴⁹, mentions that religious cults as such are an integral part of society and therefore must be considered institutions set up by and by involving citizens and who also have the right to freedom of religion, as these are organizations that are part of civil society able to provide indicators on ethical and civic issues that have an important role within the national community, whether religious or secular.

Religious groups are groups of people who share the same faith, but are not exempt from taxes and do not benefit from state support [paragraph (1) art. 6 of the Romanian Law no. 489/2006 on religious freedom and the general regime of cults].

The religious associations are legal persons, who do not receive funds from the government, they must be registered as such and only benefit from limited tax exemptions [paragraph (2) art. 6 of the Law of Romania no. 489/2006 on religious freedom and the general regime of cults].

In Romania, the quality of worship recognized by the state is acquired by Government decision, at the proposal of the Ministry of Culture and Religious Affairs, by the religious associations which, by their activity and number of members, offer guarantees of sustainability, stability and public interest [paragraph (1) art.17 of the Law no. 489/2006 on religious freedom and the general regime of the cults].

As objects of worship, objects used in religious services are recognized, such as liturgical vessels, metal and lithographic icons, crosses, crucifixes, church furniture, crosses and medallions with religious images specific to the respective religious cult, religious objects and religious objects. others like that. Religious calendars are also assimilated to cult objects; postcards; leaflets; church art albums; the movies; labels with the image of places of worship or of church art objects, except those belonging to the national cultural heritage; products needed for worship, such as incense and candles, including decorative ones for weddings and baptisms; the specific fabrics and embroidery used in the making of the worship vestments and other objects necessary for the practice of the respective cult, and religious services represent the totality of the religious actions resulting from the religious teachings of the respective religious cult.

⁴⁸ The Official Monitor of Romania. Part I, no. 11/08.01.2007.

⁴⁹ Recommendation 1804 (2007) State, religion, secularity and human rights. Assembly debate on 29 June 2007 (27th Sitting) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17568&lang=en>, consulted on 1.10.2019.

Although most European states provide for the respective legislative restrictions, the sanctioning of individual members of unregistered religious cults, for practicing religion through prayers or other methods, is not compatible with the European Convention on Human Rights⁵⁰. Otherwise, this would lead to the exclusion of religious minorities that are not formally registered and to the fact that the state can dictate to a person who needs to believe.

3. Conclusions

In general, the legislation of both states (Romania and the Republic of Moldova) respected religious freedom. The cults are equal before the law and the public authorities. Moreover, in both states there are express prohibitions according to which the state will not promote or favor the granting of privileges or the creation of discrimination against any cult.

Analyzing with great attention religious freedom as an object of legal-criminal protection in the criminal law of the Republic of Moldova and Romania, we note the need to extend the legal protection of this fundamental social value. In these circumstances, according to *de lege ferenda*, it is necessary to introduce the changes in paragraph (2) art. 381 of the Romanian Criminal Code which would expressly provide for criminal liability not only for "forcing a person, by constraint, to participate in the religious services of a cult. or to perform a religious act related to the exercise of a cult", but to expressly provide the legislative provision that would prohibit "the violation of the person's rights in the form of preaching the religious, esoteric or spiritual worship". An analogous modification would also be proposed in the provision of art. 185 of the Criminal Code of the Republic of Moldova (the attack to the person and to the rights of citizens in the form of preaching religious beliefs and performing religious rites).

By the proposed modification we aim to extend the legal-criminal protection of the social values that suffer from the harmful activity of a religious cult (both recognized and unrecognized), to an esoteric or spiritual cult that endangers life, health, physical or mental integrity and other rights. of the person.

Such a procedure of the legislative technique would be strictly in line with the position of the Constitutional Court of the Republic of Moldova expressed in the Decision regarding the exception of unconstitutionality of article 1 paragraph. (2) letter c) of Law no. 121 of May 25, 2012 on ensuring equality (Notification no. 28g/2016), according to which the state guarantees the protection of religious freedom in a regime of religious pluralism which refers to groups that share certain common beliefs, regardless of whether it is a religious, esoteric or spiritual worship. At the same time, at European level by Recommendation no. 1178/1992 of the Parliamentary Assembly, regarding the sects and the new religious movements, it was insisted on granting the legal status to all the new religious sects and movements that were to be registered, it was shown that some sectors will be taken into account. they represent groups that share certain common beliefs, regardless of whether it is a religious, esoteric or spiritual sect.

Bibliography

1. Burahna C., *Rolul religiei – conflicte religioase*, <https://ru.scribd.com/doc/102923981/ROLUL-RELIGIEI-Conflicte-Religioase>, consulted on 1.10.2019.
2. Coltofeanu A.-Iu., Ghigheci Cr. *Conținutul art. 9 din Convenția Europeană a Drepturilor Omului. Precizări generale. Domeniul de aplicabilitate*, <http://abcjuridic.ro/libertatea-de-gandire-de-constiinta-si-de-religie-in-jurisprudenta-cedo-partea-i/>, consulted on 1.10.2019.
3. Dinu M.-Ș. *Componenta etnico-religioasă a conflictelor*, Publishing House of the National Defense University "Carol I", Bucharest, 2005, 32 p.
4. Dumea E., *Cultura și religia în Europa: materiale suplimentare*. http://www.cse.uaic.ro/_fisiere/Documentare/Supporturi_curs/II_Cultura_si_religie_in_europa.pdf, consulted on 1.10.2019.

⁵⁰ European Convention on Human Rights (Rome, 4.XI.1950) amended by Protocols no. 11 and 14, together with the Additional Protocol and Protocols no. 4, 6, 7, 12 and 13, http://www.echr.coe.int/documents/convention_ron.pdf, consulted on 1.10.2019.

5. Jeflea A. *Prevenirea criminalității religioase în legislația penală și extrapenală a României*, „Studia Universitatis Moldaviae”, 2017, no. 3 (103), p. 153-160.
6. Jeflea A. *Sinteza reperelor conceptuale privind devianța religioasă în accepțiunea criminoteologiei moderne*, „Studia Universitatis Moldaviae”, The series "Social Sciences", 2018, no. 3 (113), p.137-144.
7. Jeflea A. *Unele considerente privind fenomenul religios în știința criminologică română*, „Studia Universitatis Moldaviae”, 2017, no. 8(108), p. 177-187.
8. Jeflea A., *Constatări de lege lata privind prozeletismul abuziv și extremismul religios în legislația extrapenală a Republicii Moldova*, „Studia Universitatis Moldaviae”, 2016, no. 8 (98), p. 178-184.
9. Jeflea A., *Libertatea religioasă ca valoare ocrotită de legea penală în jurisprudența CEDO*, „Revista Națională de Drept”, 2017, no.1, p.47-54.
10. Jeflea A., *Vulnerabilități și amenințări de natură religioasă în mediul de securitate publică: aspecte criminologice*, „Revista Națională de Drept”, 2017, no. 2(196), p. 46-52.
11. Jürgen Schwabe, Thorsten Geissler. *Selecție de decizii ale curții Constituționale federale a Germaniei*. (scientific reviewer – professor Tudorel Toader), C.H. Beck (Konrad Adenauer Foundation, South East Europe Rule of Law Program), Bucharest, 2013, 264 p.
12. Negrier-Dormont L., *Literatura Patristică: gânditorii Evului Mediu și ai Renașterii despre criminalitate*, „Revista Electronică a Ministerului Public, Parchetul de pe lângă Înalta Curte de Casație și Justiție a României”, www.mpublic.ro, consulted on 1.10.2019.
13. Paul A. Gh. *Fenomenul actual al secularizării și posibilă lui depășire*, „Studia Universitatis Septentrionis”, Theologia Orthodoxa, 2009, year I, no. 2, July-December, Baia Mare, p. 5-20.
14. Pestroiu D., *Suport de curs la disciplina: Misiologie și ecumenism*, University of Bucharest, Faculty of Orthodox Theology. Year III, Semester II, Bucharest, http://www.ftoub.ro/index.php?option=com_docman&task=doc_download&gid=263, consulted on 1.10.2019.
15. Străisteanu D.-I., Zaharia V., Cernomorîț T.. *Ghidul drepturilor omului pentru para-juriști*. This Guide refers to the provisions of the legislation in force on 01.05.2013. (247 p.), p. 66-67, <https://soros.md/files/publications/documents/Ghidul%20DO%20pentru%20PJ.pdf>, consulted on 1.10.2019.
16. Știrbu G.-P., *Limitele libertății religioase în contextul asigurării securității naționale*. Summary of the doctoral thesis. Domain - Public order and national security, "Alexandru Ioan Cuza" Police Academy, Bucharest, 2018, 38 p., p.26. http://www.academia.depolitie.ro/root/studii/iosud/rezumat_teze/2018/stirbugp/rezumat_teza.pdf, consulted on 1.10.2019.

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