

HOW TO COPE WITH COUNTER-PERFORMANCE IN PUBLIC ADMINISTRATION. THE CASE OF FREEDOM OF RELIGION OR BELIEF DURING THE PANDEMIC

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Abstract

The Covid-19 pandemic crisis serves as a genuine natural experiment for societies worldwide, as the health-related crisis allowed governments to implement extreme measures that impacted people's rights and freedoms, challenging the boundaries of democracy and rule of law. In the context of religious life, Romania was pointed by the OSCE as being one of the countries that have opted for the harshest measures to restrict religious life since the beginning of the pandemic.

In this paper we present a case study of Romania's restrictions imposed on religious life during the Covid-19 crisis, using secondary data analysis stemming from the UN, the OSCE, the Court of Appeal of Bucharest etc., as a framework to objectively analyze how the government should act regarding religious life, by enforcing the principles enshrined by the International Covenant on Civil and Political Rights, Art. no. 18.

Our main findings suggest that, in Romania, during the pandemic, the restrictions imposed on religious life were politically bargained by the government rather than being mediated through national law and international standards and commitments on Freedom of Religion or Belief and based on the democratic principles of the rule of law.

Keywords: freedom of religion or belief (FoRB), democracy, pandemic restrictions, church and state, human rights, government.

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1. Introduction

In the past decades, Freedom of Religion or Belief (FoRB onwards), as a fundamental and universal right, has gained a new motivation (Ferrari, 2016). Our world is going through a profound process of transformation, of rewriting the principles of operation and relationships while considering major security risks, individual preferences and choices, often divergent, which must adapt to the structure of a diverse society in an accelerated process of globalization. The Universal Declaration of Human Rights established by the United Nations General Assembly on September 10, 1948 guarantees that ‘everyone has the right to freedom of peaceful assembly and association’ (UN, 1948, Art. 20). Moreover, Art. 9 of the European Convention of Human Rights (ECHR) ensures to all persons, freedom of thought, conscience and religion, as well as the freedom to express, practice and live according to those principles (ECHR, 1950). These fundamental freedoms along with the others form the basis of a democratic regime, therefore being a necessity to guarantee the manifestation of any religious beliefs (Fodorean, 2012, p. 77; Babie, Rochow and Scharffs, 2020, p. 50).

Romania is one of the most religious countries of Europe and the majoritarian faith, the Romanian Orthodox Church (ROC), is seen as one of the crucial pillars of the nation’s founding since the 19th century (Conovici, 2012), which explains why the Romanian state feels culturally connected to Orthodoxy. The position of the ROC as the ‘default Church of the nation’ (Barbu, 2016, p. 65), pre-existing and accompanying the development of the nation during modernity has created a different church and state relation in Romania then in the West, where the church acts as a cultural and moral guardian of the political body, while the state is not interested in drafting public policies in the field of religious life. As we suggest in our previous research, in Romania the approach of the state towards faith and religious communities is not framed by the European and international practice and policies of FoRB (Raiu and Mina-Raiu, 2019), but as in other realms of government is rather tributary to ‘a legal mimetic relationship’ (Negoiță, 2015) only in terms of legislation with the Western democracy.

2. Methodology

This paper does not discuss the nature or the opportunity of health measures during the Covid-19 pandemic, but the way they were upheld and communicated to the general public. Therefore, our main analysis is focused on the way the pandemic restrictions in the field of religious life were taken by the three branches of government — legislative, executive and judicial — and, moreover, on the way the Court of Appeal of Bucharest has overturned the decisions of the executive branch by the end of 2020. We performed a cross-reading of the restrictions imposed by the Romanian authorities and of international standards and commitments on FoRB, together with the ruling of the Court of Appeal of Bucharest from December 14th, 2020. Our analysis is politically contextualized and we constantly make use of the international legislation and guidelines of the Organisation for

Security and Co-operation in Europe (OSCE) on FoRB as points of reference, as well as the general framework of human rights in a democratic regime.

In this paper we deal with all three branches of government: legislative, executive and judicial, their approach towards the pandemic rules and the mandate of the state to guarantee the exercise of FoRB during a pandemic. Firstly, we describe the political context of Romania from the start of the pandemic (February–March 2020) and until the political crisis has mostly ended by November 2021. Afterwards, we draw attention to the restrictions imposed by the national authorities and explain from a democratic point of view the nature of each of the principles enshrined in the International Covenant on Civil and Political Rights (ICCPR), Art. 18, the main judicial and legislative tool used to lawfully restrict FoRB during any pandemic.

The paper is a qualitative case study on FoRB in Romania, during pandemic times, which focuses on the way restrictions regarding the conduct of religious life were implemented and communicated to the general public, having as reference the OSCE report (2020) that signaled Romania among the countries that imposed the most drastic measures impacting FoRB. The data collection technique employed for this case study is mainly based on documents analysis. We used in this respect several categories of documents, such as national legislation (Military Ordinances, 2020; Constitution of Romania, 2003; Law no. 55/2020; Law no. 489/2006), international guidelines (OSCE guidelines, UN, WHO, 2020), newspaper articles (Şelaru, 2000; Dancu, 2020; etc.), documents of international organizations (OSCE reports; U.S. Department of State, 2020; ECHR, 1950; etc.), national official documents (SSC, 2020; RPL, 2011; etc.). Moreover, we used a comparative approach in order to benchmark Romania against other democratic states, especially the United Kingdom, Germany, France, USA, which represent a source of good practices on the way religious life was restricted during the pandemic and the way dialogue was conducted.

In order to provide a comprehensive picture of the Romanian experience with FoRB in turbulent pandemic times we developed a policy analysis, following the timeline of the major events: early stage restrictions of religious life, pilgrimages, decision of the Bucharest Court of Appeal, etc.

The constant benchmarking of the Romanian context against the provisions of international standards and commitments on FoRB, together with the judicial ruling, eventually enabled us to draft a set of policy recommendations for a more democratic approach towards FoRB.

The theoretical framework consists of the recent work of different political scientists and human rights experts whose research have shown a clear-cut interlink between the quality of democracy and the guarantee of human rights, FoRB included (Ferrari, 2016; Petito, 2020; Bielefeldt, Ghanea and Wiener, 2016) and the relation between the rule of law and human rights (ven Dicey, 1885; Morlino, 2010; Barbu, 2016). Nevertheless, we have performed a second level of analysis benchmarking the national practices against the official international documents described above. This level of analysis on empirical literature is used as a Weberian ideal-type, as the cited documents are internationally recognized

as being the result of the democratic practice in the field of FoRB since the end of the Second World War.

3. Analysis of the FoRB during the pandemic in Romania

3.1. Political context: over-regulation of religious activities

The onset of the Covid-19 global pandemic surprised Romania with a minority government which was lacking Parliament confidence and was planning an electoral strategy aimed at triggering early elections, counting on the popular support at the time the government was in office, as well as on the President of the republic. The pandemic rendered worthless the plans to initiate the early election procedure in March-April 2020, according to a timetable set at the end of 2019, while the insistence of the President to maintain the same political party in power meant that, in a full-blown pandemic, the country was facing a change of government under the same prime minister. A power-eroded governing National Liberal Party (lack of medical infrastructure, restrictions on human rights, press scandals targeting corruption) came in second in the November 2020 parliamentary elections. Under the leadership of Florin Cîțu, a coalition government was formed which subsequently received a vote of no-confidence in Parliament less than a year later, on October 5th, 2021. Afterwards, the President of the republic asked several candidates to form a new cabinet and by the end of November 2021, Nicolae Ciucă, a former military general lacking political experience, has gained a vote of confidence in Parliament for his cabinet.

This type of governmental instability has been an underlying issue of the political environment over the past six years, during which the Government of Romania was led by twelve different prime ministers, including four interim prime ministers. Apart for the interims caused by other factors outside the scope of this study, a simple statistical analysis shows that in Romania between November 5th, 2015 –November 25th, 2021 (Government of Romania, 2021a), the average term for holding office is 309 days, resulting in great political instability (Profiroiu and Negoită, 2022, p. 121).

3.2. Restrictions on religious life during the pandemic

In July 2020, Romania was listed by the OSCE as one of the countries that have taken the toughest measures to restrict FoRB since the early stages of the pandemic. The OSCE report focuses only on the nature, not the manner in which the restrictions were imposed. According to the OSCE and international media, in Romania during the state of emergency (March 16th–May 15th, 2020), the government has imposed ‘very high-level restrictions, effectively banning private prayers in public places of worship, as well as public religious gatherings’ (OSCE, 2020). This report is the culmination of ODIHR (2020) efforts to respond to human rights challenges caused by the Covid-19 pandemic throughout the OSCE area. However, up to this point, the Romanian Government never issued a statement regarding this document despite public pressure from civil society.

The OSCE has also reminded what international standards on FoRB are to be considered when public health is threatened. According to international standards (UN, OSCE,

EU, Office of International Religious Freedom within the US State Department, etc.), states cannot suspend FoRB neither in a state of war, nor in a state of emergency. However, religious freedom in its external dimension (*forum externum*) may be restricted in order to restore public order and security (du Plessis, 2021) or in pandemic situations as an exceptional measure and provided that the following conditions are met: to be provided by law; to serve the purposes of the political body as a whole (protection of security, public order, health, etc.); to be non-discriminatory in language and applicability; to serve strictly the intended purpose and timeframe (Bielefeldt, 2020).

Apart from these minimal principles, the intrusion of the state into religious organizations' life is anti-democratic and has the potential to create long-term both dangerous precedents and gestures of hatred towards members of religious communities (Burlacu *et al.*, 2021). Beyond the fidelity to the letter of the law, an absolute obligation of any democratic regime, there is also a need to mention the legal-political principles that set, in fact, the requirements of the law:

i. The limitations should be 'prescribed by law', i.e. 'provided (already) by national law' (UN, 1984, par. 15–18). The law must precede the formulation of restrictions chronologically, be clear and concise, accessible to all, non-discriminatory in intent and application, and restrictions must not be arbitrary and provide sufficient safeguards against illegal and abusive application. Thus, to be predictable, the restrictions must be based on a law already in force, not on a set of discretionary regulations. It is what differentiates a rule of law in the democratic sense of the term from a 'rule by law' (Raiu, 2021) in the autocratic sense. In the case of Romania, the outbreak of the pandemic surprised the authorities without a legislative framework authorizing the government to restrict FoRB in a predictable and consensual way. Moreover, it should be noted that during 2020–2022, the Government did not propose such a bill to the Parliament, although it was required by the democratic standards.

ii. To be absolutely necessary in limiting the effects of the pandemic

It is the state that must prove the need to impose legitimate restrictions not on the basis of subjective assessments, but on the basis of objective and measurable considerations (e.g. number of infections and others). Heiner Bielefeldt (2020), the UN Special Rapporteur on Freedom of Religion or Belief (2010-2016), also draws attention to the state's obligation to produce arguments and empirical evidence to justify limiting religious freedom. In other words, the restriction of FoRB is an exceptional political decision (UN, 1984, par. 39) that the state can reach only after it has exhausted all the administrative means at its disposal to reduce the effects of the pandemic.

iii. To be proportionate to the aim pursued

The restrictions must be not only absolutely necessary, but also proportionate to the danger. Is it necessary for the Police to interrupt a religious event, such as the Liturgy held inside the place of worship in order to give fines for those without a mask? Or could the policemen intervene preventively and pedagogically before or after the Mass? Likewise, in the jurisprudence of the ECHR (Corduneanu, 2017), necessity and proportionality are

terms very often invoked precisely because states cannot request a derogation from the guarantee of religious freedom as a whole even during the state of emergency or in a pandemic context.

iv. Limitations must be non-discriminatory in language and applicability

The state cannot use liturgical terms specific to certain religious beliefs (Eucharist, icons, relics, etc.) because it would mean that it puts a magnifying glass on a certain religious belief and considers some religious communities being *a priori* more suspicious of the spread of the virus. Equally, the restriction of religious manifestations must be applied in a non-discriminatory manner to other similar segments or social areas, religious or secular (Raiu, 2020a). In doing so, the state is bound to remain religiously neutral and not to become an anti-religious state.

v. General applicability of restrictions

The principles of non-discrimination and state neutrality are also direct consequences of the obligation of the state to intervene in the field of religious life in a manner similar to non-religious social life. In the case of Romania, the state paid disproportionate attention to the field of religious life by adding extra rules in the case of pilgrimages from Iași and Bucharest (October 2020) to the general restrictions in force at that time in society (Eurotopics, 2020). According to the same principle, if the policemen intervene in the liturgical space because they have reasonable suspicions that the rules of physical distance or mask wearing are not fully observed, they must operate with the same measure as in the case of other private meetings of similar size and dynamics.

3.3. Restrictions imposed on religious life in Romania (2020–2021)

In Romania, the state decided through the completions brought to the Military Ordinance no. 1 of March 18th, 2020, by the Military Ordinance no. 2 of March 21st, 2020 that the places of worship be accessible at liturgical events only to clergymen, regardless of the number. This decision was not explained to the public, but welcomed by the ROC and uncontested by the other religious denominations. Moreover, precisely to show that the restrictions do not apply to the clergy, Military Ordinance no. 2, despite it stating restrictions and limitations of rights, adds the fact that ‘church/religious ministers (the term does not exist in legislation, thus not corresponding to the 4th criterion described in the chapter above) can provide holy sacraments to sick believers in hospitals or at home’ (Military Ordinance no. 2, 2020). In addition, the use of the expression ‘communion for believers’ which is not practiced by all religious denominations indicates that restrictions imposed were aimed at cornering the ROC and even expressing a sense of blame on account of the infection rates increase.

The authors behind the content of these military ordinances seem to replace the Church itself, stating how they believe the Church should behave during the pandemic and overstepping the political role of regulating various social realities with the most faithful attention to democracy and human rights, even in a state of emergency. Under more thorough scrutiny, the expression ‘church/religious ministers’ not only does not coincide

with the groups, but it is probably targeting, i.e. ‘religious staff’ (non-discriminatory legal term included in Law no. 489/2006 for religious freedom), targeting those particular religious faiths that organize the worship under sacramental priesthood (Orthodox, Catholic, Protestant, etc.) and excluding the Evangelical churches, as well as the Jews, Muslims and others, where the liturgical gestures of clerical staff can be conducted, in certain situations, by some non-consecrated elders of the community.

The outbreak of the pandemic generated restrictions impacting the entire Romanian society, quite similar to those in other European countries (Dascalu *et al.*, 2021a). Although epidemiologically correct (WHO, 2020), the restrictions applied between March and May 2020 by military ordinances and publicly communicated by persons within the militarized structures of the state (Office for Home Affairs) were imposed without taking into account, on the one side, the international standards and commitments on human rights, and on the other side, the vulnerable groups in society suddenly disconnected from essential social services (access to medical services, food and especially jobs). In this context, restrictions applied to religious life included the total closure of cemeteries, cutting off public access to religious services and banning the use of a single communion spoon, which is a brutal state intervention in the worship services of the Eastern Churches (ROC, Greek Catholic Church, Russian, Serbian and Armenian), as well as other measures related to the practice of religious worship (Roşu, 2020).

Even though the measures were largely similar to other states with a democratic political regime, their social consequence had a much profound impact in Romania, one of the most religious European countries, very attached to the memory of the dead and the memorial calendar. In this respect, the government has not explained the epidemiological reasons behind many religious bans and has not developed guidelines for their application, as recommended by the OSCE (2020, p. 119), as was the case in the United Kingdom (Government of UK, 2021; Hill, 2020). On the one hand, the government’s approach towards the religious field has created a lot of frustration, especially among people for whom the exercise of religious life in the community is very important; on the other hand, the leadership of the ROC, the majoritarian church based on the affiliation of the population (86.45%) (RPL, 2011) has implicitly accepted both the restrictions and their application. The two different positions of the faithful and priests, and the church leadership respectively, created ideological and religious tensions not only in the public space, but also and more prominently in the digital space. For the first time since 1989-1991, when the democratic regime was (re)established in Romania, a far-right political party born during the pandemic and fed ideologically with challenging restrictions and conspiracy theories on the origin and nature of Covid-19, has succeeded to enter the Parliament with an impressive 9%, after only a few months of campaign overlapping the pandemic (Chamber of Deputies, 2020; Senate of Romania, 2020).

3.4. The circumstances of the judicial ruling

A Romanian citizen sued the Romanian Government — the National Committee for Emergency Situations (CNSU from here on)¹, with the intention to overrule Art. 2 of the Decision no. 47/05.10.2020 of the Committee. According to Art. 2 of CNSU Decision no. 47/2020, ‘the organization of religious celebrations is allowed only with the participation of persons having their domicile or residence in the locality where the activity takes place, without the participation of persons or pilgrims from other cities’ (Șelaru, 2020). In this instance, this meant that the person in question was not allowed to participate with family members in the organization of any religious service that took place in Iași, while her family could not participate in any religious service organized in Bucharest. In essence, through Art. 2 of Decision no. 47/05.10.2020, she was denied the right to participate in any other religious holiday organized outside Bucharest, which prevented her to take part, as in previous years, along with family members in a religious event organized at a church in Iași. At the same time, the plaintiff indicates that Art. 2 of this administrative act was issued with excess of power and violates many pieces of legislation, such as the Convention for the Protection of Human Rights, the Constitution of Romania, as well as legislation passed during the pandemic.

Art. 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by reference to Art. 20 of the Constitution: ‘1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change their religion or belief, and freedom, either alone or in community with others and in public or private, to manifest their religion or belief in worship and practice of the religious rituals. 2. Freedom to manifest one’s religion or belief may not be the subject of any restrictions other than those which, by law, constitute necessary measures in a democratic society for public safety, the protection of public order, health or morals or the protection of human rights and the freedoms of others’ (UN, 1948) and the Constitution of Romania: ‘Freedom of thought and opinion, as well as freedom of religious beliefs cannot be restricted in any form’ (Art. 29), ‘Citizens are equal before the law and public authorities, without privileges and without discrimination’ (Art. 16), and ‘1. The exercise of certain rights or freedoms may be restricted only by law and only if required, as the case may be, for: the defense of national security, order, public health or morals, the rights and freedoms of citizens; conducting criminal investigation; prevention of the consequences of a natural calamity, of a disaster or of a particularly serious disaster. 2. Restriction can only be ordered if it is necessary in a democratic society. The measure must be proportionate to the situation which determined it, be applied in a non-discriminatory manner and without prejudice to the existence of a right or freedom’ (Art. 53) (Constitution of Romania, 2003).

1 National Council for Especially Urgency Situations (Consiliul pentru Situații de Urgență – CNSU) is an ad-hoc organisation meant to deal with the pandemic in terms of infrastructure, legislation proposals and the empowerment of the medical system to face the high number of Covid-19 infections and the medical treatment, [online] <https://www.cnsu.ro>

As for the legislation passed during the pandemic, Art. 45 of Law no. 55/2020 on measures to prevent and combat the effects of the Covid-19 pandemic: 1. During the state of alert, the activity of religious cults is exercised freely, in compliance with the established health protection rules, at the proposal of CNSU and with the approval of the State Secretariat for Cults, by joint order of the Ministry of Health and the Ministry of Internal Affairs. 2. The rules provided in par. (1) shall include as measures regarding access to the places of worship, the minimum safety distance. Art. 3 par. 3 letter a) of Law no.55/2020 provides, among the measures to reduce the risk impact, ‘restricting or prohibiting the organization and conduct of rallies, demonstrations, processions, concerts or other types of meetings, in open spaces, as well as cultural, scientific, artistic, religious, sports or entertainment activities in open spaces.’

The plaintiff requested the court to find that the conditions of Art. 5 para. 3 and Art. 3 and Art. 2 para. 1 letter m) of Law no. 554/2004 regarding the excess of power are met — the exercise of the right of appreciation belonging to the public administration authorities, by violating the fundamental rights and freedoms of the citizens provided by the Constitution or by law. Based on Art. 2 of the Decision no. 47/05.10.2020 of the CNSU, a maximum number of people allowed to participate in a religious holiday was not established, however the right to participate was only granted to certain Romanian citizens while to others it was denied.

Also, the plaintiff asked the court to find if the measure adopted by Art. 2 of the CNSU Decision no. 47/2020 is illegal, discriminatory and disproportionate. The Government allows some people to exercise a constitutional right and not others, without an objective justification, especially since there is the possibility of quarantining certain cities. Furthermore, the Court adds that no one questions the right and obligation of the authorities to take measures to protect the right to health of all Romanian citizens, but when measures are adopted that restrict/prohibit fundamental rights of some citizens, the interference must be legal, necessary, proportionate and non-discriminatory in a democratic society. The Court found that none of the legal provisions mentioned in the preamble to the contested judgment, even if they refer to measures restricting or prohibiting the organization and conduct of religious activities, do not provide restrictions in the exercise of fundamental rights and freedoms of citizens, particularly FoRB in the form of participation in religious services in certain cities.

However, the Court indicates that the way through which Art. 2 of CNSU Decision no. 47/2020 was redacted creates the premises for a discretionary application and adoption of measures to restrict the exercise of rights and freedoms, an aspect likely to contradict both the principle of legal security and the principle of legality in restricting the exercise of rights and freedoms, especially the right of religious freedom in the form of attending religious services in any location in the country except that of residence.

Therefore, the Bucharest Court of Appeal by its Decision of December 14, 2020 (Şelaru, 2020) annulled the article from a CNSU decision that had forbidden the participation in pilgrimages of persons from localities other than those where the religious events took place. In its motivation, the Court of Appeal invokes the international standards

(Dancu, 2020) applicable in a pandemic situation for the restriction of freedom of religion and uses the legal arguments of Romania's representative in the panel of experts on FoRB at the OSCE, as they were publicly presented in national media (Raiu, 2020b). The Court explains that the presence of such a provision in a decision of a legal nature of a CNSU resolution is illegal. On the other hand, the Court considers that the provision leaves room for potential abuse.

The Court of Appeal also notes that disproportionate attention is paid to the field of religious life by including additional rules in the case of pilgrimages, compared to the general restrictions in force at the level of other segments of social life, such as for example, weekend trips for recreation or winter sports in certain mountain areas. It is also important to mention the official position of the state secretary for religious affairs, Victor Opaschi, as stated on the November 2nd, 2020, claiming that FoRB had not been violated in Romania during the pandemic: 'No measure prohibits religious practices, rituals or services' (Opaschi, 2020) is his response to a parliamentary interpellation.

To sum up, the decision of the court explained that the government does not have the power to prohibit the exercise of fundamental rights that it considers as less important, through discriminatory administrative acts, no matter how popular such a measure might be. By the decision of an inter-ministerial body, composed of appointed members, without direct democratic legitimacy, the plaintiff was forbidden to exercise a fundamental right, outside the limits provided by the Romanian Constitution. Citizens' safety is important, but it can be defended through constitutional laws and legal administrative acts, while the current setback in the upholding of fundamental rights and freedoms is inexplicable.

3.5. The theo-political approach

The decision from December 2020 of the Bucharest Court of Appeal, according to which the government's restrictions on religious pilgrimages were illegal, had reminded the government that religious life during the pandemic can be restricted only by complying with international standards on FoRB, as presented by the United Nations (2020). During the same day, long before the first anti-Covid-19 vaccine shot was administered in Romania, the government decided to convene a consultation session with religious leaders and issue a press release stating:

'vaccination against Covid-19 to combat the spread of the virus, being a mass action, representatives of religious denominations play a crucial role in encouraging believers to be vaccinated. Also, in order to successfully carry out the vaccination campaign, a constant dialogue must be ensured between the leaders of religious denominations and the representatives of the state' (Government of Romania, 2020).

Since then, the vaccination campaign was not based on the support of religious communities, but on the commitment of church leadership to distribute among the clergymen, but not among the faithful, an explanatory material in digital format provided by the Ministry of Health and already widely circulated to the public via mass-media. The

government believed that this utterly bureaucratic approach would put pressure on religious leaders to informally communicate pro-vaccination messages and that the social legitimacy gained by associating religious leaders with the vaccination campaign, especially Patriarch Daniel, the head of the ROC (Dascalu *et al.*, 2021b), would be a decisive impetus in increasing the vaccination rate at national level (Raiu, 2021). The consistently low vaccination rate by May 2022 led to an increased pressure on religious leaders, especially given a lack of strong pro-vaccination messages, further fueling skepticism around vaccination in more conservative communities, or those with poor access to information.

Moreover, during the pandemic the attention of political parties was directed mainly towards politics in terms of political struggle (formation of government coalition, calling for early elections, political campaigns) and not towards public policies in general. The political system was not well-equipped in democratic and infrastructural terms to deal with a general health crisis such as a pandemic. In Romania, the pandemic task-force (CNSU) was not chaired by a senior politician (prime minister, president or minister), nor by an epidemiologist, but by a junior minister with high knowledge in emergency medicine, but with little expertise in epidemiology. From time to time, different restrictions were announced either by the head of the task-force or by military staff, while the decisions were not explained to the general public through guidelines, social media or public statements, as in the UK.

Being part of a highly religious country, with influential priests in rural areas and in social media, lots of Romanians have turned their eyes towards extremist voices and even conspiracy influencers, thus becoming supporters of a new far right parliamentary political party with aggressive anti-pandemic rhetoric and a Conservative religious approach built against the restrictive measures undertaken by the government during 2020. Following the elections and the formation of the new coalition government, there was no mention of religion/FoRB in the government program (Government of Romania, 2021b), which reveals the lack of concern of the government towards the accommodation of FoRB with the pandemic context.

More than a year afterwards, neither press releases, nor other public statements have yet managed to generate a clear-cut pro-vaccination message from any important religious leaders. On the contrary, the fact that the government has publicly announced that religious organizations will have supported the vaccination campaign before a proper internal debate within the religious organizations, has created a high degree of non-confidence among believers both towards politicians and their religious leaders. Therefore, at this moment, the religious communities are still very reluctant to get vaccinated mostly in response to the 2020 illegal and disproportionate measures taken for religious life.

Following this unique judicial ruling of the Romanian court during the pandemic and the principles set out, we can conclude that the Romanian state, as any other democratic state, would have had to keep its commitments also on the national constitutional and legal provisions such as:

i. The principle of state neutrality against any religious faith, defined explicitly in Law no. 489/2006 on religious freedom and the general regime of religious organiza-

tions, Art. 9(1), states ‘There is no state religion in Romania; the state is neutral against any religious belief or atheistic ideology’. The religious neutrality of the state (Schmitt, 2008) is one of the principles of political liberalism and is shared by most European democratic states meaning, among other things, that the state does not have the right to use any theological reference in public policies, nor it has the right to regulate rules of worship and/or liturgical behavior (Bielefeldt, Ghana and Wiener, 2016). The use of the teaspoon for communion, specific to the cult of the Orthodox Churches and the Greek Catholic Church, is a liturgical act whose materialization depends strictly on the private responsibility of priests and believers, its censorship not being the attribute of the state.

ii. The principle of the rule of law implies that, when formulating regulations on religious life, the states governed by the principle of the rule of law in a democratic sense (meaning rule of law, not rule by law) (ven Dicey, 1885; Morlino, 2010) must use concepts with legal force, recorded and defined as such by national and European legislative practice. Regulations must be legally uniform and applicable to the whole spectrum of religious life, not random and targeted at certain religious communities. ‘Church/religious ministers’ or ‘blessing’ as used by the Government of Romania are not only non-legal terms with which the rule of law does not fall into operation, but they can lead to incitement. Moreover, the Romanian state has enacted liturgical recommendations during the pandemic, from avoidance of the Eucharist to non-touching of the saint relics and others, being one of the few states that has trespassed the Church and state separation wall.

4. Conclusion and recommendations

After performing an analysis of the restrictions imposed on religious life during the pandemic in Romania, using the OSCE and UN international standards and commitments framework, our main finding suggests that, during the pandemic, the Romanian state has not acted in accordance with most of the international standards on FoRB, has applied regulations beyond the legal provisions and has not created a proper space for dialogue between all stakeholders of religious life. Therefore, our main recommendation is to develop a public policy, in accordance with the European practice, regarding the establishment of an institutionalized platform for dialogue between the state and religious organizations, in order to further avoid overruling of decisions by the courts of justice.

This public policy should consider three main principles which ensure that in times of crisis, when governments tend to exert more power than usual, governmental action remains transparent, in order to build trust and make sure that abuses do not happen (Ștefan and Grama, 2020), as follows: the dialogue should be institutionalized, based on the participation of all relevant stakeholders, and un-politicized.

4.1. Institutionalized dialogue

The examples of good practice from the United Kingdom or other countries, along with OSCE recommendations, show us that dialogue must be conducted in the form of an institutionalized permanent platform, with a clear list of participants, institutional mem-

ory, procedures and public validation. Democracy is based on the bureaucratic routine of the rule of law, precisely because the legitimacy of decisions is given by their compliance with the law and human rights. The institutionalization of dialogue also implies that there is only one legal-political goal: everything starts from the supremacy of FoRB, not from secondary issues such as electoral emergencies or allocation of funds. The framework of the discussion must be national and international legislation on FoRB, which, moreover, is extremely precise on the democratic way and the legitimate steps in which religious freedom can be restricted in the event of a pandemic (Temperman, 2019). Additional support may be provided by court rulings or constitutionality filters applied in other democratic countries on this case (see recent decisions in the US, Germany, France, etc.).

4.2. *Who participates?*

The dialogue between the state and religious organizations cannot be reduced to a sectoral agreement between some dignitaries (who may have very pronounced pro- or anti-Church personal interests or affinities) and some representatives of religious organizations (Dascalu *et al.*, 2021). Thus, the dialogue must bring together in one place: representatives of all religious organizations, representatives of the ministries and agencies that have direct involvement in the management of FoRB, epidemiologists — to put decisions in a framework consistent with the urgency and the need to stop the pandemic. Yet, precisely because it is very possible that some decision-makers, accidentally in various public positions, may not be able to internalize the demands of democracy or are not professionally able to understand the logical structure of FoRB, it is necessary to co-opt academically validated experts, sociologists and human rights specialists as the British Government did (Government of UK, 2021). The dialogue should also include human rights lawyers — to reflect upon the legality of the restrictions considering the need to keep the state neutral towards any religion or faith, and representatives of the press because the press is the transmission belt between the state and society; if decisions do not reach the corners hardest to access in the society and remain at the level of ad-hoc bargaining, a state of social tension is maintained.

4.3. *Un-politicized dialogue*

If the dialogue between state and religious organizations is not depoliticized (Rouban, 2012) by its very format, it can be easily hijacked for electoral purposes. Precisely in order to not overlap with electoral stakes or episodes of Church funding, either the dialogue is led by the task force model of a non-political public figure, or members of the parliamentary opposition are also co-opted. FoRB must be protected from politicization (Richardon, 2015). There should also be avoided dialogue through the press because it only makes it tense, gives the impression of a class struggle between the state and the Church, and its message gets distorted to the public in the form of superficial breaking news. Avoid triumphalism specific to Communist rhetoric such as ‘religious organizations have appreciated the fact that legislation adopted by central public authorities during the pandemic is in line with international standards and norms on religious freedom’ (SSC, 2020), which, on the

one hand, is illogical because the representatives of religious organizations do not hold a monopoly over the sanctioning of FoRB, just as trade union representatives do not hold a monopoly over the sanctioning of social rights and, on the other hand, this kind of rhetoric does not have cover in deeds since this assertion of the government was preceded and followed by escalating tensions and conflicting statements.

The topic of FoRB, generally understood in Eastern Europe as highly dispensable despite the recent experience of the Communist regime, is still under a lot of pressure due to the lack of public policies developed in this area by the government. For this particular reason we recommend social expertise, not political legitimacy, when the state engages with the religious organizations. As the UN and the OSCE suggest, the democratic approach that should have been used in order to get the full support of religious organizations for the vaccination campaign would have been to invite the religious leaders to identify those particular areas of concern that the vaccine would have potentially not reach (the poor, isolated, uninformed communities) and not to try to borrow the political legitimacy of the Orthodox Church and of the Patriarch. In terms of public policy, our recommendation is that religious organizations should be given the democratic role of policy facilitator, not the political role of imposing political regulations to people.

This paper advocates for a more democratic approach towards FoRB in accordance with the European and American good practices, for the usage of international standards, commitments, recommendations and guidelines; the joining of the Romanian Government to the International Alliance of Freedom of Religion or Belief launched by the U.S. Department of State (U.S. Department of State, 2022) and which already includes almost all post-Communist countries from Europe; the establishment of the Romanian national mandate of Special Envoy for the Promotion of Freedom of Religion or Belief ('The Ambassador at Large stressed the importance of religious freedom and began discussions for future cooperation, including establishing a religious freedom envoy in the country') (U.S. Department of State, 2020); the enhancing of collaboration with European institutions such as the Agency for Fundamental Rights of the European Commission and the Office for Democratic Institutions and Human Rights of OSCE which offers practical solutions for emergency situations, like the Covid-19 pandemic; the advancement of the culture of FoRB in the public administration sector, at least on the central level, starting from the minimal effort to religiously alphabetize the political decision makers.

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