



Religion at Work in Romania – between Silence and Tolerance

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Religious expression is very controversial in Europe today, as there are substantial national differences in matters of legal and public policy towards religion and its different forms of expression in (or outside) the workplace¹. As labour scholars have shown, such national policies are strictly linked to and fundamentally reflect ‘the role of religious expression and religion as a whole within the state’s own conception of itself.’² Each nation has a unique culture of religion, influencing the laws and policies governing the domains where state and religion intersect.³

This is an important conclusion for Romania, in the sense that, on the one hand, the country is one of the most religious countries in the European Union. On the other hand, Romania is a secular state, officially neutral in matters of religion, supporting neither religion nor irreligion. As a result, despite of the fact that the state acknowledges and even financially supports the officially recognized religious denominations, there are not too many employees’ rights based on religion or belief nor a specific reasonable accommodation obligation for the employer in the field of religious discrimination.

The topic of religious expression at work is very delicate, as ‘religion matters to people’⁴. On the one hand, it matters to those who consider themselves to be religious observers and wish to be free from discrimination. They believe that the law should protect them from harassment and discrimination, including when they express themselves. On the other hand, religion is important also to those who do not ascribe to any religion. In this case, they want to be assured that religion ‘is not encroaching

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¹ Kenneth D. WALD: Religion and the Workplace: a Social Science Perspective. *Comparative Labor Law & Policy Journal*, vol. 30. (2009) 475.

² Mark FREEDLAND – Lucy VICKERS: Religious Expression in the Workplace in the United Kingdom. *Comparative Labor Law & Policy Journal*, vol. 30. (2009) 597., 599.

³ WALD op. cit., 476.

⁴ Nantiya RUAN: Accommodating Respectful Religious Expression in the Workplace. *Marquette Law Review*, vol. 92., no. 1. (2008) 2–3.

on their right to a religious-neutral government and to live a life free from unwanted harassment or bias⁵.

One of the problematic issues is that, unlike other grounds of discrimination, religion and/or belief is a fundamental right in many EU countries⁶, covering many aspects, such as the right to hold and to change religious belief⁷; however, according to the European Court of Human Rights, the freedom to manifest one's religion or belief (e.g. through worship, practice in public etc.) is not unqualified, as it may impact on others.⁸ The complexity of protection of the freedom of religion or belief lies in the fact that it is perceived, on the one hand, from a negative perspective (prohibition of discrimination) and, on the other hand, as a positive aspect (as a guarantee for the exercise of a freedom)⁹. These perspectives often collide: expressing one's religion at work might impact on another's freedom not to hold a religion or to hold a different religion.

The freedom of religion and belief and – more generally – the freedom of consciousness is a constitutional right in Romania, as well as in many other EU member states. However, there is a certain silence in Romania on religion and religious expression; there were only a few cases heard by the courts on this issue and most of them are not related to the issue of religion at work.

The silence is generated by the relatively high degree of tolerance: those who believe accept more easily other's belief. In addition, the relative religious homogeneity contributes to this 'silence'. It is accepted that demands for religious accommodation in the workplace are more likely to occur when there are significant religious communities outside the dominant religious tradition. Religion in the workplace arose as a prominent topic in Europe only because of the growth of new religions into hitherto Christian societies¹⁰. This is also the case in Romania; but as the growth of 'new religions' is rather limited, in a majority sharing the Orthodox religion and in a society dominated by Christianity, religion in the workplace is (still) not an important issue in Romania.

From this perspective, a brief analysis of the context (1) and of the legal framework, recognizing the right to identity and the freedom of consciousness (2) appears to be important. An overview of religious expression in the public sphere and at the workplace (3) will show the limited existing debate in Romania for the moment being. However, despite of the numerous accepted and legally recognised religious denominations, Romania is culturally and religiously a Christian society and – in the context

⁵ Ibidem.

⁶ Many EU member states, such as Germany, France, Denmark, Switzerland, Italy and The Netherlands have constitutional guarantee of protection for religious freedom. Lucy WICKERS: Themes in Religious Discrimination Protection in Europe. In : Elisabeth Lambert ABDELGAWAD – Thierry RAMBAUD (eds): *Analyse compare des discriminations religieuses en Europe*. Paris, Société de Législation Comparée, 2011. 197.

⁷ Right which, under Article 9(1) ECHR is absolute and no interference with it can be justified.

⁸ This is the reason why this right is qualified in Article 9(2) ECHR so that it may be limited if such limitation is "necessary in a democratic society" including "for the protection of the rights and freedoms of others".

⁹ Gwénaële CALVÈS: Les discriminations fondées sur la religion: quelques remarques sceptiques. In: ABDELGAWAD–RAMBAUD (eds.) op. cit. 10.

¹⁰ WALD op. cit. 480.

of growing immigration -- balancing religious belief with workplace demands might become an important challenge in the future.

1. The context: religion and belief in Romania

As mentioned above, Romania is one of the most religious countries in the European Union and the overwhelming majority of citizens is Christian. Only a small minority of the population declared as not being adherents of a religious denomination on the occasion of the last census.¹¹ Despite (or maybe as a result) of the fact that the communist regime promoted atheism and have banned religion, Romanians still believe and (eventually) practice their religion. The first census after the fall of communism revealed an insignificant percentage of the population who declared to be atheist or without religion (0.17% according to the 1992 census). As a paradox, if we take in consideration the fact that the communist regime in Romania was extremely oppressive, the 2011 census – simultaneously run in the states of the European Union – revealed that the percentage of atheists or persons without religion in Romania continued to be very low, of 0.19% (the lowest compared to the Czech Republic where the percentage was 34.2%, to Hungary with 23% and to Bulgaria with 11.8%).¹²

According to several surveys conducted during the recent years, Romanians still believe in God (96.5%) and saints, in heaven, in hell and in the afterlife (around 50% of Romanian)¹³. A large percentage of Romanians (83%) observe Sundays and religious holidays and more than a half of the population worship when they pass by a church, pray regularly, sanctify their belongings¹⁴ and donate regularly to the church. Over three quarters of Romanians consider themselves to be religious¹⁵. In 2008, 19% of Romanians placed 'Faith' as one of the most important values in relation the idea of happiness (the third highest number, after Cyprus – 27% and Malta – 26%, at the same level as Turkey – 19%, while only 9% of Europeans associate belief with happiness).¹⁶ Regardless of their religious belief, 80% of the population considers that religion is very important in their lives and Church is a respectful institution.¹⁷

¹¹ The figures vary, but it is accepted that a large majority, ranging from 93.5% to 98.4% of the population declared themselves as being adherents of a religious denomination.

¹² Sorin NEGRUȚI: The Evolution of the Religious Structure in Romania Since 1859 to the Present Day. *Revista Română de Statistică*, Supliment no. 6. (2014) 45.

¹³ According to a survey conducted for Digi24 in 28 July 2015

¹⁴ This is a very popular practice in Romania.

¹⁵ Rodica POPESCU: *Atitudini religioase la români: religia și biserica sunt în continuare foarte importante; cu toate acestea, românii au un model religios valoric mai critic și mai tolerant*. Fundația Soros. available at: https://www.researchgate.net/publication/301295677_Atitudini_religioase_la_romani.

¹⁶ European Commission, *Eurobarometer 69, Values of Europeans*, November 2008, available at: http://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb69/eb69_en.htm.

¹⁷ POPESCU op. cit. 1. Among the respondents, Muslims and Neoprotestants consider religion to be very important in their lives.

In this context, the Romanian state officially recognizes 18 religions and denominations¹⁸, however 86.45 % of the country's stable population¹⁹ share the beliefs of the Eastern Orthodox Church, according to the 2011 census (meaning that there were 16.307.004 adepts of Orthodox religion), 4.62 % share the Roman Catholic religion (870.774 adepts²⁰) and 3.19% belong to the Reformed Church (600.932 adepts). Despite of the religious diversity, there is no genuine cultural identity collision in Romania, as the great majority of religions shared by the population are Christian. And even if Romanians believe in religious dogmas and in the church itself, they show tolerance towards those who do not fully comply with the divine word and religious rules, towards other religions or even towards some scientific truths.²¹

2. The legal framework

As a component of the right to identity, Article 6 of the Romanian Constitution recognizes and guarantees the national minorities the right to ethnical, cultural, linguistic and religious identity. In Romania, religion is considered to be one of the most important factors in defining the identity of a nation, alongside with ethnic origin.²²

In the second chapter of the Constitution, entitled „Fundamental Rights and Freedoms”, Article 29 guarantees the freedom of consciousness. According to the text, the freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. On the other hand, no one shall be compelled to embrace an opinion or religion contrary to his own convictions. The freedom of consciousness is guaranteed, but it must be manifested in a spirit of tolerance and mutual respect.

Article 29 guarantees that all religious denominations are free and may organize in accordance with their own statutes, under the terms laid down by law. The high degree of independence of the religious denominations can be highlighted by quoting the *Sindicatul Păstorul cel Bun case*, where the European Court of Human Rights has held that in refusing to register the priests' trade union,

¹⁸ The 18 recognised religions and denominations are, according to the 2011 census: Orthodox (86.45%); Roman-Catholic (4.62%); Protestant (3.19%); Pentecostal (1.92%); Greek-Catholic (0.80%); Baptist (0.60%); 7th Day Adventists (0.43%); Muslim (0.34%, with 64337 adepts); Unitarian (0.31%); Jehovah's Witnesses (0.26%); Evangelicals (0.23%); Old Rite Christians (0.17%); Old Calendar Orthodox Church (0.14%); Evangelic Lutheran (Synod Presbyterian) (0.11%); Serbian Orthodox (0.08%); Romanian Evangelic (0.08%); Evangelical Augustan (0.03%); Mosaic (0.02%); Armenian (0.002%, with only 393 adepts).

¹⁹ The 2011 census numbers were based on a stable population of 20,121,641 people, excluding about 6% of the population due to unavailable data - Institutul Național De Statistică, Populația stabilă după religie – județe, municipii orașe, comune, available at: <http://www.recensamantromania.ro/rezultate-2/>

²⁰ There are also 150.593 adepts who share the Greek-Catholic religion (0.80%). The Greek Catholic Church (officially Romanian Church United with Rome, Greek-Catholic) uses the Byzantine liturgical rite in the Romanian language).

²¹ POPESCU op. cit. 2.

²² Institutul Național De Statistică România: Ce ne spune recensământul din 2011 despre religie?, October 2013, 8.

the State was only „declining to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing its duty of neutrality under Article 9 of the Convention”.²³

However, the unanimous interpretation of Article 29 of the Constitution is in the sense that any forms, means, acts or actions of religious enmity are prohibited in the relationships among the cults. Religious denominations are autonomous in relationship with the State and enjoy state support, including the facilitation of religious assistance in the army, in hospitals, prisons and orphanages.

The last paragraph of Article 29 expressly establishes the right of parents or legal tutors to ensure, in accordance with their own convictions, the religious education of the minor children whose responsibility devolves on them. Similarly, the European Union Charter of Fundamental Rights lays down parents’ right to “ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions [...] in accordance with the national laws governing the exercise of such [...] right”.²⁴

In addition, both Article 5 of the Romanian Labour Code and Article 2 of the Government’s Ordinance no 137/2000, republished, regarding the prevention and sanction of all forms of discrimination prohibit direct and indirect discrimination on religious grounds.

Romania is a secular state, meaning that it purports to be officially neutral in matters of religion, supporting neither religion nor irreligion. There is no state religion or equivalent. Cults or religious denominations which are not recognized are not prohibited, but all the recognized religions or religious denominations are funded from public subsidies, to which taxpayers of all faiths contribute²⁵.

Religious denominations and religious associations are regulated by Law no 489/2006 on the religious freedom and the general regime of religious denominations, chronologically the third law regulating in Romania these issues, after two previous ones, adopted in 1928 and 1948. Law no 489/2006 has adopted the model of cooperation between the state and religious denominations and Romania recognizes religion as a part of public life. The law guarantees both the individual and the collective dimensions of the freedom of religion and affirms the state’s neutrality towards all the eighteen recognized religious denominations, offering guarantees for their autonomy towards the state. The law acknowledges the role of the religious denominations as social services providers and guarantees their equality in front of the law and the public authorities.

In order to be recognized by the state as a religion or a religious denomination several conditions have to be fulfilled. Religious associations are recognized as religious denomination (as an ‘official religion’) by governmental decision, on the proposal of the Ministry of Culture and National Identity. To this end, religious associations have to meet the criteria of durability, stability and public interest.

²³ European Court of Human Rights, Grand Chamber, case of *Sindicatul “Păstorul Cel Bun” v. Romania*, Application no. 2330/09, judgment of 9 July 2013.

²⁴ Article 14 § 3.

²⁵ Granting public subsidies in order to finance the officially recognized religions is not contrary to the European Convention on Human Rights – ECHR, *Darby v. Sweden*, request no 11581/85, 23 October 1990.

Religious associations must be legally constituted, to have functioned on the Romanian territory for at least 12 years and its adepts, Romanian citizens, to represent at least 0,1% of the Romanian population according to the last census. In order to be legally constituted (by registering the association in the Religious Associations Registry, held by the courts), a religious association must have as adepts at least 300 persons (0.000014% of the Romanian population), a patrimony and a statute regulating its own rules of functioning.

3. Religious expression: public sphere and workplace

The issue of religion in business is less debated in Romania, first of all because of the overwhelming majority of Christians. Second of all, despite of the orthodox majority, there is a high level of religious tolerance on behalf of the majority towards the adepts of other recognised and even unrecognised religious denominations. Last but not least, even if an important percentage of Romanians (83%) observe Sundays and religious holidays, in practice it means that they refrain from work at home, but not that they ask for special rights as employees.

A much more important debate is related to the financing of religious denominations through public subsidies. Besides the tax facilities granted by the Tax Code to the legally recognized religious denominations, the Romanian state gives financial support, on demand and based on the number of adepts (according to the last census) and on ‘the real needs’ for survival of a certain legally recognized religious denominations, for the payment of salaries of the clerical and ‘civil’ personnel, for the building of new churches and the restoration of the old ones. From this perspective, religious minorities have often alleged discrimination compared to the Orthodox Church, considering that they receive less money, but in fact, taking into consideration the number of adepts, higher public subsidies for wage payment of church restoration are granted for religious denominations with less adepts²⁶.

Besides tax facilities and public subsidies for churches, the Romanian citizens may opt for the financing of a certain religious denomination, enjoying tax exemptions.

3.1. Religious expression in the public sphere

We have to state from the very beginning, that there is no general ban of religion or religious expression in the public sphere. On the contrary, Law no 489/2006 on the religious freedom and the general regime of religious denominations recognizes religion as a part of public life. However, the constitutional principle guarantees the freedom of consciousness only if manifested in a spirit of tolerance and mutual respect; religious enmity is prohibited. The expressions of the freedom of consciousness may

²⁶ APADOR – CH: *Stat și religii în România – o relație transparentă?* București, 2008. 14.

be limited by law, including “for the protection of the rights and freedoms of others”. The fundamental right includes also a negative aspect, as no one may be compelled to embrace an opinion or religion contrary to his own convictions

There is, however, a restriction of religious expression in schools and, as a result, a certain obligation of neutrality. Confessional education is allowed by the law; each religion may organise and create schools, but the national procedures and standards in education have to be respected by such schools. In addition, religion is taught in public schools, according to the religious belief of the students, as they are entitled to confessional education according to their religious belief. After a decision of the Romanian Constitutional Court it is unanimously accepted that religious education is a right, not an obligation.

Teaching religion in schools has occasioned one of the most famous decisions of the Constitutional Court.²⁷ According to the Romanian legislation, religion is taught in schools with respect to the religious beliefs of the students, but participating at the lectures on religion is optional. However, until the ruling of the Constitutional Court, the parents had to demand in written their children to be exempted, for those who did not want to attend the classes on religion. The Constitutional Court has stated that this legal provision is unconstitutional. Given the optional attendance of the classes on religion, as well as the constitutionally guaranteed freedom of religion and belief, attendance (and not the exemption) of such classes should have been made based on a written demand of the parent, as the child’s representative. As a result, a national court had held a school to be liable for the fact that, when imposing the parents the obligation to address a written demand for their children to be exempted from attending the classes on religion, they were obliged to reveal the religion of the child²⁸.

Another case concerned a school teacher who considered that she was discriminated because the school management has often invited Orthodox priests to different activities of the school and to ‘bless’ school teachers before the beginning of the activities in the school and the academic year.²⁹ The school teacher has considered that there was a breach of her freedom of religion as, obviously, she did not share the Orthodox religion. Indeed, according to Article 29 of the Romanian Constitution, no one may be compelled to embrace an opinion or religion contrary to his or her own convictions. She filed a complaint in front of the National Council for Combatting Discrimination (CNCD)³⁰, an autonomous

²⁷ Decision of the Constitutional Court n° 669/2014 related to teaching religion in schools, available at: <http://www.monitoruljuridic.ro/act/decizie-nr-669-din-12-noiembrie-2014-referitoare-la-excep-ia-de-neconstitu-ionalitate-a-dispozi-iilor-art-9-alin-1-i-2-din-legea-nv-m-ntului-nr-84-1995-art-18-164914.html>

²⁸ Judecătoria Buzău, Decision of 10 November 2014.

²⁹ National Council for combatting discrimination (CNCD), decision no 101/23.03.2011.

³⁰ The National Council for Combating Discrimination is an autonomous state authority, under parliamentary control, which performs its activity in the field of discrimination. The Council was established pursuant to the adoption of Government Ordinance no. 137/2000 (transposing the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation) and Government Decision no. 1194/2001 on organization and function of the Council. It is generally competent in the field of non-discrimination, having a vast sphere of action, including sanctioning. Access to law courts is not prevented, regardless if there is filed or not a complaint in front of the Council. All the information about CNCD and the relevant case law are available at: <http://cncd.org.ro/home>

authority with general competence in the field of non-discrimination. The authority checks where there is direct or indirect discrimination in a certain case and might inflict administrative sanctions. In this case, the plaintiff has decided to withdraw her complaint, so there was no official solution.

There was another case in which the CNCD has ruled that there was a discrimination on ground of religion, because in an association the elections were always organized on a day when one of the candidates could not participate because of his religious beliefs³¹.

3.2. Religious expression in the workplace

According to the Labour Code, workplace regulation (similar to the French *règlement intérieur*)³² must comprise rules aiming to ensure that the principle of non-discrimination is respected and any form of discrimination is discarded. The general interpretation is in the sense that workplace regulation must contain specific rules and sanctions in order to guarantee a full-compliance with the principle of non-discrimination.

In addition, workplace regulation must contain the rights and obligations of the employees and of the employer. Of course, this part of the workplace regulation is not supposed to rewrite the Labour Code, but rather to regulate specific workplace rights and obligations, such as religious expression in the workplace. However, the issue of religion is often not regulated in practice and, as a general rule, unlike in Belgium³³, there is no obligation for the employer to “give the worker the time necessary to fulfil his/her religious duties”, nor to allow the employee the expression of his/her religion at work. For the moment being, the issue of workplace religious expression is treated exclusively from the perspective of discrimination. But, as the overwhelming majority of employees are Christians and the labour law system is built taking into consideration the Christian rule of Sunday rest, there are not too many claims of workplace religious discrimination.

Dress codes are allowed, but in order to be binding they have to be established by workplace regulation, adopted with the advisory opinion of the trade union. Due to the prohibition of discrimination on religious grounds, dress codes have to be stated in a general way and the employer’s policy cannot be directed against a particular religion. The employer’s policy has to be justified by a legitimate aim and it has to ‘pass’ the proportionality test, the means used in order to achieve that aim having to be appropriate and necessary.

³¹ National Council for combatting discrimination (CNCD), decision no 478/21.10.2015.

³² The unilateral company status has to take in Romania the specific form of workplace regulation, adopted with the advisory opinion of the trade union. Otherwise, it could not create obligations for the employees: except for the employer, nobody can be obliged to respect it.

³³ See Fabienne KÉFER: Religion at Work. The Belgian Experience, this issue.

Charters, codes of conduct etc. may be adopted and they may regulate the issue of religion, but they only have a declarative value; they establish mainly principles, not rights and duties, unless adopted following the procedure of the workplace regulation. Workplace regulation is a unilateral act, adopted by the employer, but only after the advisory opinion of the trade union was given. In order to be binding for the employees, workplace regulation has to be published by the employer (at the workplace or on the website). Workplace regulation may only deviate in melius from the Labour Code and other applicable laws and has a different scope than collective agreements. Workplace regulation gives expression to the employer's managerial prerogative and, according to the Labour Code, has to contain rules on workplace hygiene, health and safety; the safeguard of the non-discrimination principle and the elimination of any form of breach of dignity; the rights and obligations of the employer and employees; the procedure to settle the individual requests or claims of the employees; the rules regarding labour discipline in the company; misbehaviour and applicable sanctions; the disciplinary proceedings; the methods to apply other specific legal or contractual provisions; the criteria and the procedures for professional evaluation of the employees. Workplace regulation is a mandatory source of law, the employer is legally obliged to adopt such a regulation.

Charters and codes of conduct are not very common in Romania and they are adopted mainly by multinational enterprises.

3.2.1. Wearing religious symbols

So far, wearing religious symbols like the Islamic veil or kippah in companies was not an issue of social or legal debate, due to the very small number of Muslims and Jewish persons living in Romania. According to the official census of 1992, there were 29,533 Turks and 24,649 Tartars registered, meaning that the Turks as well as the Tartars represent each an approximate percentage of 0.1% of Romania's 22,760,449 inhabitants. According to the 2011 census, there were about 64,000 people declaring to belong to the Muslim minority (about 0.3% of the Romanian population)³⁴.

The Muslim population (which is Sunni, Hanafitic rite) traditionally lives in an area called Dobrudja, a territory bordered to the east by the Black Sea, to the west and north by the Danube River and to the south by the Romanian-Bulgarian border (80% of the Muslims live in Constanta county and 12% in Tulcea county). The Muslim community from Dobrudja is composed of two major ethnic groups:

³⁴ In 1930 there were 185.486 Muslims in Romania (1.03% of the population). Their number has dramatically fallen by 1949, to 28.782 (0.18% of the population). Ever since, the number of Muslims in Romania was constantly growing, to a top of 67.257 (0.31% of the population) in 2002 - Institutul Național De Statistică Româna: Ce ne spune recensământul din 2011 despre religie? October 2013, 9.

the Tartars and the Turks³⁵ and enjoys a 700-year tradition in Romania, as the region of Northern Dobrudja was part of the Ottoman Empire for almost five centuries.

There is no relevant case law concerning the wear of the Islamic veil or kippah in these regions, where the Muslim community is mainly located, even if there is only one municipality having Muslim majority. The explanation for the lack of claims consists also in the fact that, in these areas, Muslim community is integrated into local communities, given the long-time existence on the Romanian territory.

The number of Muslim immigrants, as well as Muslim students, is slowly rising, but as Romania is not an economically attractive destination, Muslim immigration, as well as immigration in Romania in general is not, for the moment being, an issue of social debate.³⁶

If the Muslim community is slowly rising, things are completely different for the Hebrew community. According to the 2011 census data, there are approximately 3,500 Jews in Romania. Before the First World War the Hebrew community represented the most important religious minority in the historical provinces of Romania (Moldova and Țara Românească), with a percentage of 4.5 % (the second Hebrew community, as weight, in Europe, after the one in Austria – 4.6%)³⁷. According to the 1930 census, after the unification of the historical provinces (1859) and the creation of the Romanian state (1918), the structure of the Romanian nation has changed considerably, both ethnically and religiously. Those sharing the Orthodox religion remained clearly majoritarian and the Hebrew community represented 4.19% of the total population (756 930 people sharing the Mosaic religion, out of a total population of 18 057 028).

However, the dramatic events during the World War II and the policy of the communist regime led to a significant decrease in number of the Mosaic population³⁸ and the decreasing trend continues (9670 persons, representing 0.04% of the Romanian population in 1992, 6057 persons, representing 0.03% of the Romanian population in 2002 and 3519 persons, representing 0.02 % of the Romanian population in 2011).

So far, there has not been any case brought to the attention of the public related to the prohibition on behalf the employer or, on the contrary, to the desire of the employees to wear the Islamic veil or kippah. When checking the databases, there has been only one case when a Muslim person filed a complaint before the CNCD, considering that he is discriminated on ground of his religion because, when crossing the security check point at the airport, he was asked to take his turban off. His claim

³⁵ George GRIGORE: Muslims in Romania. *International Institute for the Study of Islam in the Modern World (ISIM) Newsletter*, 1999/3. 34.

³⁶ According to the Standard Eurobarometer 89, only 4% of the Romanian respondents consider immigration an important issue in our country (European Commission: *Standard Eurobarometer 89*, available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2180>).

³⁷ NEGRUȚI op. cit. 40–41.: according to the official data, there were 134 168 people belonging to the Mosaic community in 1859 (3.03% of the Romanian population), 266 652 people in 1899 (4.48 % of the Romanian population) and 241 088 people in 1912 (3.33 % of the Romanian population) living back than in the historical Provinces of the country called later Romania.

³⁸ NEGRUȚI op. cit. 45.

was rejected, as, after a rather superficial analysis of the facts, the CNCD considered that there is a uniform treatment (all the persons crossing the security check point at the airport have to have their head uncovered), justified by overriding reasons of public interest.

3.2.2. The impact of European case-law

The debate on religious discrimination was revived in Europe by the two decisions of March 2017 of the Court of Justice of the European Union (CJEU): the *Achbita* case³⁹ and the *Bouagnaoui* case⁴⁰. One of the general remarks related to these cases is that the CJEU has made one step forward and two steps back in the field of workplace religious diversity. On the one hand, the CJEU has created some consistency with the case law of the European Court of Human Rights on the freedom of religion or belief in employment. On the other hand, the CJEU has failed to develop EU law on religious discrimination that would have served both the equality aims, and the European integration⁴¹.

In Romania, the debate on the judgments of the two above-mentioned cases was less animated because the majority of workers share Christian religions and, as a general rule, the only religious symbol that they eventually wear is a small cross. The European Court of Human Rights' judgment in the *Eweida and others* case⁴² led to more animated debates, because of the Romanians' habit to wear a cross around the neck, (usually hidden under the clothes). Even if wearing a cross is not a religious requirement, it has become a form of 'popular religiosity' in the sense of what ordinary folk mean and do in their daily encounter with the sacred.⁴³

The judgments of March 2017 of the CJEU were presented and analysed in **antagonist** ways by the labour scholars and by the media. Some authors have seen them as allowing employers to discriminate, i.e. to prohibit the wear of religious symbols⁴⁴, some others as prohibiting any form of unjustified difference of treatment on religious ground.⁴⁵ But for the majority of labour scholars, the judgments had actually the effect of loosening the rules on workplace equality. Before these

³⁹ C-157/15, Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV, judgment of the court (Grand Chamber) [ECLI:EU:C:2017:203].

⁴⁰ C-88/15, Asma Bouagnaoui, Association de défense des droits de l'homme (ADDH) v Micropole SA, judgment of the court (Grand Chamber) [ECLI:EU:C:2017:204].

⁴¹ Lucy VICKERS: Achbita and Bouagnaoui: One Step Forward and Two Steps Back for Religious Diversity in the Workplace. *European Labour Law Journal*, vol. 8., no. 3. (2017) 232.

⁴² ECHR, *Eweida and Others v. The United Kingdom*, 15 January 2013, application numbers: 48420/10, 59842/10, 51671/10 and 36516/10.

⁴³ WALD op. cit. 477

⁴⁴ Simona VOICULESCU: Angajatorii pot să interzică salariiților să poarte însemne religioase ori politice la birou. Available at: https://www.avocatnet.ro/articol_45101/CJUE-Angajatorii-pot-s%C4%83-interzic%C4%83-salaria%C8%9Bilor-s%C4%83-poarte-insemne-religioase-ori-politice-la-birou.html; Florentin LEHACI: Decizie europeană: Simbolurile religioase, sub interdicție. Available at: <https://semneletimpului.ro/religie/libertate-religioasa/decizie-europeana-simbolurile-religioase-sub-interdicție.html>

⁴⁵ Mihaela MAZILU-BABEL: C-157/15 Achbita: Freedom of Religion in the Workplace: Private Sector: Neutral Policy towards Customers: Indirect Discrimination: Article 16 of the Charter. *Pandectele Române*, (2017) 151.

CJEU judgments, the rules on non-discrimination (including on religious grounds) were more strictly interpreted in Romania, as the employer was not deemed to be able to prohibit the wear of religious signs unless there was an overriding reason of public interest justifying such a measure (such as public health). It is still doubtful if the case law would consider that the employer's desire for neutrality would constitute *per se* a legitimate aim, given the context of religious tolerance.

As a result of the European case law, the general rule is that the employer is entitled to prohibit religious symbols both in public and private companies, but only if the equality rules are respected and the measure follows a legitimate aim, is adequate and proportionate to that aim. However, in certain public services, law imposes a certain uniform (policemen, firemen) and/or requires a neutral attitude, including from a religious point of view (e.g. teachers). In this case, for the moment being, neutrality is interpreted only as giving substance to the negative aspect of the freedom of religion and religious beliefs: employees in public services cannot impose their religious beliefs on others. There was not any case related to the wear of religious symbols in public services in Romania.

3.2.3. Religion at work beyond religious symbols

As a general rule, there are not any special requests of the workers based on religious convictions. Most often, there are requests of the 7th Day Adventists (80,944 adepts, according to the 2011 census) not to work on Saturday.

There was also the case of a judge at Vâlcea Trial Court, who filed a complaint before the CNCD because the competition for promotion (for moving to a higher level court, the Court of Appeal) was held on a Saturday. The competition is organized at national level, by the Superior Council of Magistracy. The judge asked for a reschedule of the written test of the competition, to be organized on a day other than Saturday, allowing the adepts of the Seventh-day Adventist Church, the religious cult of the petitioner, to participate at the written test.

The Superior Council of Magistracy answered the request of the CNCD that it had declined the petitioner's request because of the rules on organising the exam, established by law. That is, changing the date of the written exam would have led to the postponing of the contest with almost 60 days as, according to the law, any aspect related to organising the competition has to be published 60 days prior to the beginning of the competition.

The Superior Council of Magistracy has also specified that the petitioner was the only person who requested the written contest to be held on a different day, and that fact would have led to the identification of the petitioner's paper work. It has also highlighted that the written exam was held on a non-working day in order not to disturb the activity of the Court. According to the Superior Council

of Magistracy, there was a uniform treatment justified by a legitimate aim that could not be considered as a situation of discrimination or a disadvantage addressed to the petitioner.

The CNCD has decided, however, that the facts represent a discriminatory treatment, in accordance with article 2 paragraph (1) of the Government's Ordinance no 137/2000, republished, regarding the prevention and sanction of all forms of discrimination. Therefore, the CNCD recommended the Superior Council of Magistracy to organize such exams by taking into consideration the right to freedom of thought, conscience and religion of the candidates.⁴⁶

Many other cases concern dismissal on religious grounds (dismissals on discriminatory grounds are void according to the Romanian Labour Code). However, there is no relevant decision in the field, as it is difficult to prove the elements leading to religious discrimination and the courts often check if the general dismissal procedure was respected or not. If it was not respected, the courts do not go further in analysing the ground for dismissal, as dismissal is void for the lack of formal elements.

There was a specific case of an imam dismissed by the religious denomination he belonged to, because a newspaper published a paper according to which he has bought an apartment with public subsidies granted to families with low incomes that he has fraudulently obtained. The religious denomination has followed the internal disciplinary procedure and found the imam guilty of the facts described in the newspaper, so it decided to exclude the imam from the religious organisation he belonged to. As a result, his employment contract has ceased and he made a complaint at the court, alleging that the dismissal was void. The court rejected his claim, as it considered that the disciplinary procedure was fully respected and the religious denomination is free to exclude, on disciplinary grounds, its members⁴⁷, especially those taking part in the determination of the ethos of the church contributing to its mission.

There is not any reasonable accommodation obligation for the employer in the field of religious discrimination. The Romanian legislation establishes such an obligation only in case of persons with disabilities. As a general rule, employers are not authorised to discretionally forbid religious expression, but they do not have any positive obligation in order to allow or facilitate workplace religious expression.

Prayer rooms are neither forbidden nor authorised. It is up to the employer to organise such rooms, but without discrimination. In practice, it would mean organising prayer rooms for every religion shared by the employees, as the employer has to ensure equal treatment for all employees, regardless of their religion. There is no time-off for praying either, nor the obligation of the employer to allow employees to pray. Even if they declare themselves religious, Romanians do not absolutize their beliefs

⁴⁶ CNCD database, available at: <http://nediscriminare.ro/> and [National Council for Combating Discrimination – brochure](#), available at: <http://cncd.org.ro/eu-workers-rights>

⁴⁷ Constanta Court of Appeal, decision no 235/04.07.2017, www.jurisprudenta.org

and do not strictly observe the religious rule, thus, usually there are no prayer rooms at workplaces. The issue has never been a topic of social or legal debate.

The only cases that have raised limited public attention were linked to the chapels and religious service in hospitals. Both chapels and religious service are organised or given on a voluntary basis and usually do not respect the religious variety (there is not one chapel for each religion in the hospital, often due to the lack of space). In addition, as the religious service is given on a voluntary basis, patients do not always have access to religious service according to their religion.

However, the attention raised by this topic was limited, as Romanians do not practice a radical form of religion and generally enter churches of all Christian religious denominations. A study conducted shows that around 80% of those who share the Orthodox, Roman-Catholic, Greek-Catholic and Protestant (Calvinist) religion consider that every religion is right in its own way and even that those who do not go to church are still religious and should not be punished. Romanians believe in religious dogmas and the church, but at the same time they show tolerance towards those who do not fully comply with the divine word and towards other religions.⁴⁸

There is not a practice to request to reorganise work and working time during the Ramadan, due to the small number of adepts and their integration in the Romanian society, after several centuries of living on the Romanian territory. As a general rule there is not any legal obligation for the employer to reorganise work or working time during religious events. There is an important exception to this rule, related to the public holidays, some of them being linked to religious events, such as Easter or Christmas. There is a simple explanation for the lack of requests to reorganise working time during religious events, as the State has organised the calendar of public holidays on the basis of Christian holidays. There are no requests for time off on religious holidays, 'because such religious events are, perforce, legal holidays'.⁴⁹

The same reasoning can be used in relation to weekly rest. On the 6th of March 1897 Romania has established Sunday as the weekly rest day and 14 other public holidays. Initially Sunday rest was not necessarily granted on religious grounds, but – according to the Prime Minister at the time – the law was adopted because the employees were not getting to see their children, as they were going to work early in the morning and coming home late at night.

However, the weekly rest day granted by law was the same with the religiously established rest day, for the great majority of the population. During the communist regime public holidays were strictly limited (to only 4 days per year), without any connection with days of particular religious importance.

After the fall of the communist regime, weekly rest is granted by the Labour Code for 48 consecutive hours, usually on Saturdays and Sundays. On the other hand, some of the public holidays are granted by the law on days with a particular religious importance (Christmas, Easter, Pentecost),

⁴⁸ POPESCU op. cit. 3.

⁴⁹ WALD op. cit. 480.

sometimes according to the Orthodox religion (15 August, Saint Mary; 30 November, Saint Andrew). For Christmas, Easter and Pentecost, public holidays are granted according to the worker's religious beliefs, each worker is entitled to these days-off when he or she celebrates according to his/her religion. There was a debate concerning those who do not share any religion of belief; according to the case law, the atheist⁵⁰ may benefit of the days-off granted by the law for Christmas, Easter and Pentecost whenever they want, but they have to inform the employer in reasonable time about their decision.

As a general rule, there is no right to refuse to perform tasks because of the worker's religious conviction. A worker may refuse to perform a task because of his/her religious convictions only if she/he has previously concluded a 'consciousness clause' with the employer. The clause has to specify the tasks the worker is entitled to refuse, otherwise is void. A 'consciousness clause' is not limited to religious convictions, but it may also be concluded in order to protect the employee's freedom of thought, opinion or beliefs.

4. Religion at Work in Romania – Silence or Tolerance?

An overview of the situation in Romania has shown that there is no real debate around the topic of religious expression in the workplace. There are various explanations for this situation. Is it a question of silence or a sign of tolerance? Both answers are correct.

On the one hand, silence is explained by the fact that labour law was enacted taking into consideration the Romanian culture and traditions. As a result, the State has organised the calendar of public holidays on the basis of Christian holidays and Sunday rest. In addition, the great majority of religions shared by the population are Christian and, for the moment being there is no genuine cultural and religious collision in the Romanian society. The influence of the communist regime is still important, as it has led to the separation of work and religious expression and practices: going to work on a religious holiday is accepted, even if a large percentage of Romanians (83%) observe Sundays and religious holidays.

On the other hand, moving holidays are a sign of tolerance, as well as the constitutional recognition of the freedom of thought, opinion, and religious beliefs. The constitutional freedom cannot be used to compel someone to embrace an opinion or religion contrary to his own convictions: the freedom of consciousness is guaranteed, but it must be manifested in a spirit of tolerance and mutual respect. In addition, as the growth of 'new religions' is rather limited, in a society dominated by Christianity, religion in the workplace is (still) not an important issue in Romania. For the moment being, tolerance is also given by faith: those who believe accept easier others' beliefs.

⁵⁰ As mentioned above, the percentage of atheists or persons without religion in Romania was very low in 2011, of 0.19% of the Romanian population.