



Respect for freedom of (religious) conscience in the context of diversity – legal foundations and sociopolitical dilemmas

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Abstract

Between 2020-2022, the Sociological Research Center LARICS – ISPRI has managed an already extensive project of sociological investigation of religiosity, and attitudes and opinions related to or based on religion, specific to the Romanian public. All this has triggered a consistent scientific and public debate. The article below is an attempt to respond to a number of elements of this debate. After all, there is a methodological problem at stake, which is significant since the design of the data collection tool in the case of such a theme. Axiological neutrality is hard to define when we study religious beliefs, as long as being religious and refusing religiosity are both value options, and both sociologically legitimate today. The following pages represent a conceptual navigation, from legal to sociological, among the nuances of complex terms, which you can find in the list of key concepts presented immediately below.

Keywords: *religiosity, tolerance, pluralism, secularization, public space.*

In the period 2020-2022, the Sociological Research Center LARICS – ISPRI has managed an already extensive project of sociological investigation of religiosity, attitudes and opinions related to or based on religion, specific to the Romanian public (Dungaciu, Cristea 2020; 2021; 2022a). One of these works was also an exercise in measuring religious tolerance (Dungaciu, Cristea 2022b). All this has triggered a consistent scientific and public debate. The article below is an attempt to respond to a number of elements of this debate. After all, there is a methodological problem at stake, which is significant since the design of the data collection tool in the case of such a theme. Axiological neutrality is hard to define in the case of studies of religion, as long as being religious and refusing religiosity are both value options, and both sociologically legitimate today. The following pages represent a conceptual navigation, from legal to sociological, among the nuances of

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complex terms, which you may find in the list of key concepts presented immediately below.

1. Legal foundations of respect for freedom of conscience

The regulations of the domestic and international normative acts on freedom of conscience and religion set up the content of these rights and the general framework of the ways of exercising such rights in social conduct or in a private manner. Together with the legal norms of international and constitutional regulations (which are rules-principles), internal normative acts (containing rules-means) regulate in detail and accompany with sanctions the rules on freedom of conscience and religion.

"In a broad sense, freedom of conscience is the possibility for the citizen to have and publicly express a conception of himself/herself about the world around him/her" (Muraru, Tănăsescu 2003: p.209).

The rationale of the legal regulations on the freedom of conscience integrates this right into a natural succession, that confers content and external forms of its manifestation in the social conduct of the individual, the international normative acts that represent the basis of the internal regulations using the phrase *freedom of thought, conscience and religion*, thus stressing that there is a whole in the protection and actual exercise of freedom of conscience, which begins with freedom of thought, then configuring itself into systems of values and principles of conscience, which can be exercised within a legal, regulated framework of freedom of religion, as a form of external manifestation of freedom of conscience.

Article 18 of the Universal Declaration of Human Rights clearly regulates the foundation of freedom of thought, conscience and religion:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (United Nations, Universal Declaration of Human Rights of December 10, 1948, published in the Brochure of December 10, 1948, Article 18).

At the level of European regulations, the provisions of the Universal Declaration of Human Rights on freedom of thought, conscience and religion are taken over, expressly stating the right to conscientious objection.

The Charter of Fundamental Rights of the European Union, in Article 10, entitled Freedom of thought, conscience and religion, provides:

"1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right" (The Charter of Fundamental Rights of the European Union, binding upon the entry into force of the Treaty of Lisbon on 1 December 2009, Article 10).

In domestic law, the constitutional foundations of freedom of conscience are established by the regulations of Article 29 of the Romanian Constitution, entitled "Freedom of conscience", which provides:

- the guarantee of the freedom of thought and opinion, as well as freedom of religious beliefs;

- the prohibition on restricting these freedoms in any form;
- the prohibition of coercing any person to adopt an opinion or to adhere to a religious belief, contrary to his/her convictions;
- the imperative of manifesting the freedom of conscience in a spirit of tolerance and mutual respect;
- the freedom of religious cults to manifest and organize according to their own statutes, according to the law;
- the prohibition, in the relations between cults, of any forms, means, acts or actions of religious enmity;
- the autonomy of religious cults towards the government;
- the support provided to religious cults by the government, including by facilitating religious assistance in the army, hospitals, penitentiaries, asylums and orphanages;
- the guarantee of the right of parents or guardians to ensure, according to their own convictions, the education of minor children whose responsibility lies with them (*Constitution of Romania*, Article 29, para. 1-6).

The complexity of religiosity, as a form of exercise in the social conduct of the freedom of conscience, must be viewed at least through the prism of the essential components, related to belonging (identity), faith (spiritual conviction), participation (adoption of liturgical conduct) (Cristea 2022), preventing the exercise of any such component that configures religiosity as a whole and it is actually a violation of the freedom of conscience.

Law No 489 of 2006 on freedom of religion and the general rules governing religious denominations, in Article 1(2), states that "no one may be prevented or compelled from adopting an opinion or from adhering to a religious belief contrary to his/her convictions, nor may he/she be subject to any discrimination, pursuit or a situation of inferiority for his/her belief, belonging or non-belonging to a grouping, religious association or cult, or for the exercise of religious freedom under the conditions laid down by law" (Law no. 489/2006 on the freedom of religion and the general regime of cults, art. 1, para 2). The text establishes the legal protection of the three essential elements mentioned above (faith, belonging, participation in liturgical acts, by virtue of freedom of religion), and it also establishes the obligation to protect and respect equally, indiscriminately, the belonging or non-belonging to a grouping, religious association or cult, thus equally protecting the right to have or not to have a religious belief or conviction.

The concept of freedom of conscience is also based on the legal protection and free exercise of other essential rights: freedom of thought, freedom to have and express opinions, freedom to have and externalize religious beliefs, freedom of religious cults, freedom of religious education.

"Religious freedom, as part of freedom of conscience, is the most delicate and difficult component for societies and states to manage. The explanation lies in the specifics and complexity of its expression, in the light of the relevant and extensive social legal effects it contains, having major consequences for the social order, social control and societal specificity. While the freedom of thought or the freedom to support religious opinions (as forms of freedom of conscience) are predominantly theoretical components of freedom of conscience, the exercise of religious freedom is the practical, applied component of freedom of conscience, which generates social relations and legal relations with profound implications in the history of states. The eventuation and exercise of the

dogmatic and liturgical specificity of religious beliefs, the alignment and discipline of social conduct and lifestyle by reference to religious norms, the social legal organization of religious cults, their involvement in the educational process, in social assistance and religious assistance, are fundamental landmarks in the specificity of the society of a state, regarding the social order, social control, crime rate, and social economic development" (Firțală 2020: p. 88).

Article 2 of the Law No 489/2006 on the freedom of religion and the general regime of religious denominations, details the ways of exercising freedom of religion and mentions the exceptional context in which such right could be affected by certain restrictions, the situations being exceptional, expressly regulated by law, and the exceptions being of strict interpretation and implementation.

"1. Freedom of religion includes the right of any person to have or adopt a religion, to manifest it individually or collectively, in public or in private, through practices and rituals specific to religious denomination, including through religious education, and the freedom to maintain or change his/her religious belief.

2. Freedom to manifest one's religious belief shall not be subject to restrictions other than those which are ruled by law and are necessary measures in a democratic society for the purposes of public security, the protection of public order, health or morals, or the protection of human rights and fundamental freedoms." (*Law No 489/2006 on the freedom of religion and the general regime of religious denominations*, Article 2).

It is worth noting that both international regulations and domestic normative acts emphasize the equality of the protection of freedom of conscience and religion, both at the level of thought and concepts on which the formation of value systems is based, as well as on the ways of expressing these conceptions in social conduct, and at the institutional level, through activities in various fields. Not only different ways of exercising freedom of conscience and religion, but the very attitudes of *having* or *not having* a religion, regardless of the social cultural or historical context of a society at any given time, are legally and non-discriminatorily protected.

Together with all the domestic and international normative acts regulating the freedom of thought, conscience and religion, the case-law of the domestic and international courts in the field of protection of human rights is relevant in this respect, due to it also serves as a rich source of interpretation and implementation of the rules on the international protection of human rights. "In many cases, the correct interpretation and implementation of the conventional rules are only possible in the light of the case-law developed on the basis of them. In this way, the role of international jurisprudence as a formal source of the international protection of human rights is increasingly important" (Popescu 2000: p.30).

2. From legal to social

If at the legal level things seem quite clear, social practice is much more complicated. Furthermore, the purpose of this article is precisely to draw attention to less discussed issues and to summarize the points at which the reporting of today's society to religious tolerance is somehow problematic. Why, because even sociological investigation and the measurement of phenomena such as religiosity can no longer be done in the absence of these conceptual clarifications.

We will list and discuss them further:

1. Intolerance, tolerance, inclusion, pluralism

Although in the specialized literature and in the one dedicated to public policies in the field, the concept of *tolerance* is commonly used when discussing religious issues, it should be noted that the way in which Western civilization has evolved (North America, Western European Union) has overcome the need for a discussion on religious tolerance and has reached a point where the main topic of analysis tends to be *religious pluralism*, which cannot be thought of outside of a serious discussion on *secularisation* (Norris, Inglehart 2004; Bruce 2011).

The main point of this discussion is not about religiosity as an individual phenomenon, for, ultimately, the freedom of conscience and belief also refers to religiosity and its absence, but to the fact that religion is not, most of the time, a private matter. As a major cultural phenomenon, religions and a number of its elements require a community, public presence.

The space is sacred by religious institutions (and not only by the physical presence of places of worship), through a series of public manifestations related to holidays, religious symbolism (beyond the one individually worn), etc. In this context, as democratic societies tend to become increasingly poly-religious/confessional, religious pluralism must solve the problem of the joint management of the public space, including its sharing with the public without religious interests (which, in turn, could be defined by a whole scale of attitudes in this regard: from disinterest in the presence of religion in the public space, to the acceptance of religious pluralism and from the refusal of the presence of religion in the public space to the rather refusal of the presence of the dominant religion/or which was traditionally numerically dominant in a given space).

2. Tolerance of minority religions / tolerance of majority religion

Here also, there is a little paradox. While, traditionally, majority religions oppressed minority religions, as Western societies secularize, majority religions lose community support and public sympathy, minority religions being less affected by this trend. Even the newly introduced, exotic religions, or elements thereof, are accepted as a sign of multiculturalism.

3. Tolerance for secularism / tolerance for religiosity

Historically speaking, religious institutions have not exactly been friendly to the minority religions / denominations with which they shared the same territory. Nor with those who showed no interest in embracing religious identity. The other side of the coin is also valid. When modernity and secularization intersected with political power, it was not infrequently that those who identified themselves religiously became victims.

Many of today's Western societies have experienced, in recent decades, an accelerated process of secularization, primarily in terms of traditionally majority denominations (Catholic and, respectively, Protestant). The trend is also beginning to appear in orthodox (and declared more religious) countries of Eastern Europe. However, a new problem also arises from this point of view – people declared non-religious, otherwise attached to the idea of civil liberties, promote an anti-religious discourse. Of course, there is also a value opposition here: often, religious discourse is directed against certain kinds of civil liberties that today's secular societies consider normal. At the same time, the opposition against religion is linked to the religious institution rather than religion, the way it is financed, etc. But the blame often extends to the believers (e.g. in the case of Romania: they are called "relic kissers", "repentants" if we refer to other denominations, etc.).

After all, the problem here is focused on the presence of religious institution, symbols and manifestations of faith in the public space. And on the support from the state budget of religions / denominations recognized as being legitimate cults in a particular country.

4. Religiosity and religious institutions

One of the main challenges addressed to classical religions/denominations in the Euro-Atlantic world is the level at which religiosity manifests itself. At least at that level of the citizens who are dissatisfied with religion, most criticism is directed against the institutions that manage religiosity (the Churches), as organizations and bureaucrats.

One theory is that the viability of a religion lies in practicing it among the public, not in an institution funded by the state budget or managed as a corporation. Especially since wealth is not a virtue in almost any religion. Much less so in Christian denominations. Is a religion less institutionalized, less public and less represented organizationally more authentic? Is it desirable to give up the formal support of religious organisations that belong to the cultural tradition of European states and to see the cults as a market where the institution survives if it has parishioners willing to attend it and possibly contribute?

5. Public vs. Private

Logic can go on. If authentic religion is assumed, private/familial and non-institutionalized, what will be its public status? Does it have its place in public? What if it bothers those of another denomination/religion, or those who do not believe and possibly even dislike the idea of religion?

The problem is much more serious, because religion, through the church institutions that are often criticized even by parishioners, through the calendar and holidays, through the transformation of the public space on (Amos 2016) such occasions, all these are landmarks of the community of believers (its members having, of course, varying degrees of religiosity - Saroglou et al. 2020). Religion is like a language, somehow. You can't do and you can't express a language or religion on your own. The essence of both is communal, of course, beyond the transcendental charge. The banishment of religion from the community and from the daily public space is problematic because the public presence of signs and symbols, community, holidays and religious expressions is a matter of the freedom of expression of the religious faith. Of course, religion disputes the same public space with other religions and with those who refuse religion, but tolerance implies accepting diversity, not labelling it as disturbing. The fact that religions, in turn, are not necessarily tolerant of other religions or of those who define themselves as atheists has no relevance from this point of view.

6. Missionary work

Last but not least, almost all religions also have an apostolic/missionary dimension. If premodern Western ethics associated religion with the single truth and the obligation to take it to others (including violently), the modern Western state and religious cult accepts cohabitation more fully, in certain terms, with minority religions. A reasonable dose of secularism has also contributed to this, modernizing not only Western societies, but also religiosity. Of course, it is to be discussed what reasonable means, but also how religiosity has passed from a daily presence, to being isolated in symbols, holidays and rituals, so that, subsequently, its entire public status and its entire public presence be challenged.

Attracting followers is considered a relatively aggressive act in current secular societies. Except in the case of "exotic", minority cults, which are probably accepted also because they do not present the risk of too much "market share".

Paradoxically, salvation also comes from the soft form of secularization: each of the cults accepted in a society/state is free to exercise its missionary function in the community it shepherds, trying to stimulate the religiosity and participation of those who formally belong to it but show no interest in this belonging (for example, the concept of "non-practicing Christian" is almost a *brand* of European culture).

Conclusions

It is a fact that today's Euro-Atlantic world is more secularised than in the past (Inglehart 2021). But, even in recent decades, religiosity has had rebounds, even unexpected we might say, in many places on the planet. The linearity of modernization/secularization pertains to a more subtle relationship. The concept of secularization itself carries a number of nuances, from the decline in importance of religion to its sectorization, from indifference to religious phenomenon to its refusal. But again, even if this tendency were to eventually lead to the disappearance of religion, the journey would be long, and respect for freedom of conscience, with all the above scenarios, will remain for a long time a democratic component of the idea of freedom.

Respect for freedom of conscience (in the essential components of the manifestation of religiosity through belonging, faith, participation) represents a social legal value, protected by fundamental normative acts on the international protection of human rights, both at international level and by normative acts of domestic law. It is indiscriminately protected the choice to have or not to have a religion (as an opinion or as an attitude), as well as the socio-institutional manifestation of the doctrinal and liturgical peculiarities of all legally recognized religions / denominations. The harmonious and equidistant construction of all the legal regulations on the observance of the freedom of conscience is implemented in a much more varied and complicated compound at the level of social norms and conduct, in the context of modern societal specificity. The communal essence of the religious phenomenon raises great challenges in any society, by reference to its reaction to the manifestation of religiosity in the public space. The social legal history of the interaction of society with the religious phenomenon highlights the main attitudinal forms: intolerance, tolerance, inclusion, and pluralism. With the integration and social legal assimilation of the religious phenomenon, the administrative institutional organization of the religious life determines new perspectives of debates and attitudes. The manner of organization and administrative functioning is not always agreed by the whole community, the mechanisms of institutional support and funding sometimes determine polemics, the dialogue between the political-state bodies and religious institutions being also a subject that has provoked intense debates over time. In the context of secularization (which transforms the mission of living a spiritual ideal into a design accessory of modern social conduct), the *brand*-concept of "non-practicing Christian" determines new analyses and evaluations regarding the identity and religious belonging, increasingly limited to the private space, given that the religious phenomenon has also essentially a form of community manifestation. The increasing diminution of the communitarian religious manifestation, specific to the culture of the societies of the "non-practicing believers" or indifferent brings, somehow paradoxically, an increased importance of the existence of religious institutions, as a way of maintaining religious identity in modern society.

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