

THE RIGHT TO FREEDOM OF CONSCIENCE IN POST-1989 ROMANIAN LAW: BREAK OR CONTINUITY?

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ABSTRACT: The Right to Freedom of Conscience in Post-1989 Romanian Law: Break or Continuity?

Freedom of conscience, enshrined in Article 29 of the 1991 Romanian Constitution and reaffirmed in the 2003 revision, is a central element of the rule of law and pluralistic democracy. This article analyzes the evolution of the legal regime of freedom of conscience in post-communist Romania, focusing on the question of whether this right has been reconfigured through a genuine break with the totalitarian past or whether certain structural and cultural continuities have been perpetuated.

During the communist period, the right to freedom of conscience was severely restricted, being controlled by the state through instruments such as Decree No. 177/1948. Although communist constitutions formally guaranteed this right, in practice it was conditional on conformity with the socialist order. After 1989, the new constitutional order introduced a framework conducive to religious pluralism and freedom of thought. However, the practical application of these principles has been influenced by cultural and political factors.

Controversies over the teaching of religion in public schools and the presence of religious symbols in educational spaces reflect tensions between individual rights and the influence of the religious majority. Decisions such as CCR No. 669/2014 or the 2008 ICCJ ruling reveal the complexity of implementing this right.

The article also examines the influence of international pressure, such as the elimination of Article 200 of the Criminal Code under the influence of the EU, as a sign of alignment with European standards. The conclusion is that, although the normative rupture is evident, cultural and institutional continuities persist that limit the full exercise of freedom of conscience in post-communist Romania.

Keywords: *freedom of conscience, constitutional law, post-communist Romania, religious neutrality, religious influence, human rights.*

Introduction

Throughout history, freedom of conscience has been one of the most delicate and disputed aspects of the relationship between the individual and the state. It essentially reflects the degree of openness of a political and legal system to pluralism of values, beliefs, and convictions¹. The idea of freedom has been debated since the beginning of history and analyzed at least from a philosophical, legal, historical and religious perspective². In the context of post-communist Romania, freedom of conscience takes on special significance, both from the perspective of democratic reconstruction and the return to the principles of the rule of law.

Recent human rights studies emphasize that freedom of conscience is not only an individual freedom, but also a foundation of social peace³. In the modern sense, it includes freedom of thought, opinion, and refusal of ideological conformity⁴.

Romania, as a state in transition from totalitarianism to democracy, offers a relevant case study for analyzing the tension between normative rupture and substantive continuities. The communist regime shaped a deeply intrusive pattern of relationship between the state and conscience, in which individual autonomy was drastically limited. The post-1989 period brought, at least at the constitutional and legislative level, a clear affirmation of the values of freedom, but the application of these values has frequently encountered institutional, cultural, and political obstacles⁵.

1 Ioan Muraru & Simina Tănăsescu, *Constitutional Law and Political Institutions*, vol. I, C.H. Beck Publishing House, Bucharest, 2008, pp. 51–53.

2 Marilena Marin, *Human Dignity Between the Acceptances of Roman Law and the Perception of the Romanian Legislator Nowadays*, *Journal for Freedom of Conscience*, vol. 7, no. 1, 2019, p. 432

3 Philippe De Schutter, "Freedom of Conscience and Human Rights in Europe," in *European Human Rights Law Review*, 2020, pp. 12–14.

4 Muraru & Tănăsescu, *Revista de Drept Constitutional (Constitutional Law Journal)* op. cit., p. 68.

5 Bădescu, I. (2019). „Conștiința națională și libertatea de gândire în spațiul românesc post-totalitar”, in *Revista de Științe Politice*, nr. 64, pp. 22–23.

The purpose of this article is to assess, from a historical, legal, and political perspective, the extent to which freedom of conscience has been effectively rebuilt in Romania after 1989. The analysis will take into account both the legal texts and the decisions of the constitutional courts, as well as the social and ideological context that influenced the application of these norms.

At the same time, the article aims to identify elements of continuity that can be considered obstacles to the consolidation of a culture of pluralism and genuine respect for individual conscience.

The evolution of freedom of conscience regulation in post-communist Romania

Following the collapse of the communist regime, Romania entered into a comprehensive process of institutional and constitutional reconstruction, in which the protection of fundamental rights and freedoms became a priority. Among these, freedom of conscience took on particular importance, reflecting the desire to break with the previous authoritarian model and align the legal order with European and international standards.

This right was enshrined in Article 29 of the 1991 Romanian Constitution, which guarantees freedom of thought, opinion, and religious belief, prohibiting any form of coercion regarding their expression⁶. The wording of the article is broad and provides a general framework conducive to ideological, spiritual, and moral pluralism. The 2003 revision of the Constitution left this article unchanged, reinforcing its fundamental nature.

Law No. 489/2006 on religious freedom and the general regime of religious denominations further details the constitutional principles. It reaffirms freedom of thought, conscience, and religion as fundamental rights and establishes the state's obligation to respect religious neutrality and guarantee non-discrimination between beliefs⁷. The law thus aligns itself with the European regulatory framework, in particular Article 9 of the European Convention on Human Rights.

However, in the post-communist period, the effective implementation of these norms has been uneven and influenced by the political context

6 Romanian Constitution, Art. 29, paragraphs (1)–(6), in commentary by Muraru & Tănăsescu, pp. 50–51.

7 Law No. 489/2006 on Religious Freedom, Art. 1 and Art. 3.

and collective mentalities formed during the dictatorship. Several international reports have highlighted difficulties in the consistent application of the principle of state neutrality and full respect for freedom of conscience in practice. This type of case law reflects efforts to interpret constitutional norms coherently in relation to European law⁸.

Furthermore, the lack of effective civic and legal education mechanisms has made it difficult for the general population and even local authorities to understand this right.

Another relevant element is the correlation of this right with other fundamental freedoms, such as freedom of expression and freedom of association. In the Romanian context, debates on the pluralism of values and the protection of minority opinions have often been tense, and the application of the right to freedom of conscience has reflected the structural imbalances of the democratic transition. The problems of application do not generally stem from the lack of a legal framework, but rather from the insufficient internalization of constitutional values by institutions and citizens⁹.

Thus, even though Romania has made substantial progress at the normative level, the practical application of freedom of conscience remains partial, affected by a series of cultural and institutional continuities inherited from the authoritarian period.

Institutional realities and obstacles to the application of freedom of conscience in democratic Romania

Although post-communist Romania has enshrined freedom of conscience in its constitution, the institutional reality has reflected a persistent gap between the norm and practice. Administrative, judicial, and educational mechanisms have often functioned in a formalistic manner, maintaining a superficial approach to this fundamental right¹⁰.

A first obstacle is the inconsistent application of the law by local public administrations. For example, in many documented cases, local au-

8 U.S. Department of State. *Report on International Religious Freedom: Romania*, p. 3, 2022. athensjournals.gr

9 Gabriel Andreescu & Puran S., "Attributes of the Romanian State. Special View on the Rule of Law," *Athens Journal of Law*, October 2024, pp. 99–104. athensjournals.gr

10 Bărbulescu, R. (2021). «*Secular Ethics and Freedom of Conscience in Post-Communist Romania*,» *Studia Politica*, no. 3, p. 112.

thorities have ignored the obligation of neutrality provided for by Law No. 489/2006, perpetuating preferential relationships with certain religious groups¹¹. This practice has been sanctioned in several international reports that draw attention to the lack of balance in the treatment of different religious or philosophical beliefs.

Religion has played an important role in establishing the idea of truth, righteousness and justice throughout the ages. This has influenced the legal norms, in different ways, depending on the historical epoch, the geographical location, but also in relation to the relations between the different social categories¹².

In addition, the organizational culture of the administration is rarely oriented towards active respect for fundamental rights. In the absence of in-depth legal training, civil servants often treat freedom of conscience as an abstract concept with no practical application¹³. This situation is exacerbated by the absence of clear instruments for monitoring and institutional sanctioning violations of constitutional rights.

In terms of case law, although the Constitutional Court has enshrined the right to freedom of conscience in several decisions, these rulings have not always had a consistent effect on the practice of lower courts or the work of the legislature. In the absence of mechanisms for consistent implementation and widespread legal education, freedom of conscience often remains a theoretical guarantee.

At the same time, although the Ombudsman has legal powers to defend rights and freedoms, it has not developed a consistent practice of protecting freedom of conscience. An analysis of the institution's annual reports shows that this right is rarely mentioned explicitly, reflecting a relative institutional marginalization of the issue.

Another significant obstacle is the absence of consistent constitutional education in pre-university education. Civic education textbooks only mention the concept of freedom of conscience superficially, without

11 Andreescu, M. (2019). Conscience and pluralism. Legal protection of fundamental freedoms, *Universul Juridic*, pp. 94–95.

12 Marilena Marin, *Human Dignity Between the Acceptances of Roman Law and the Perception of the Romanian Legislator Nowadays*, *Journal For Freedom of Conscience*, vol. 7, nr. 1, 2019, p. 432.

13 Preda, C. "Legal education and constitutional democracy: between dogma and reform," *Journal of Political Science and Law*, no. 2, 2022, p. 28.

providing concrete examples or application scenarios. The lack of critical training contributes to a poor understanding of the significance of this right in democratic life¹⁴.

In conclusion, Romanian state institutions have not developed a coherent, effective, and visible mechanism for protecting freedom of conscience. This situation indicates that, beyond the existence of favorable constitutional and legislative regulations¹⁵, the effective implementation of freedom of conscience is affected by numerous administrative, educational, and cultural dysfunctions.

Freedom of conscience and constitutional culture in contemporary Romania

Conceptual confusion: religious freedom vs. freedom of conscience. Recently, the Freedom of Thought Report: Romania (2023) indicated that between 70-75% of the population does not distinguish between freedom of conscience and religious freedom¹⁶. This perception restricts the meanings of the right, excluding important contexts such as conscientious objection in health, employment, and education. The dominant cultural model is reinforced by demographic data: the 2022 Romanian census shows that 86% of the population identify as Orthodox, which perpetuates the confusion¹⁷.

Legally, Article 29 of the Constitution is ambiguous regarding the distinction between conscience and religion. Fodorean's study (2023) shows that Romanian courts still opt for narrow interpretations of this right, reserving it predominantly for the confessional context.

Constitutional educational deficit and absence of critical thinking. The Civic Space Review: Romania report (OECD, 2023) emphasizes that the pre-university education system offers a formal and abstract approach to constitutional values¹⁸. There are no case studies on freedom of conscience,

14 Bujan, I. „Cultura constituțională și limitele efectivității drepturilor fundamentale în România”, *Pandectele Române*, nr. 4, 2021, pp. 12–14.

15 Mihaela Postolache, *History of the State and Department - Course Notes*, Zigotto Publishing House, Galati, 2023, p. 81.

16 Ombudsman, Annual Report 2021, section “Human Rights,” p. 38.

17 Report on International Religious Freedom: Romania, section: „Government favoritism”, 2023 p. 9.

18 OECD, Civic Space Review of Romania, 2023, civic education section, pp. 23-24.

and the curriculum does not stimulate critical thinking; textbooks treat rights as “formal lessons” without relevant practical context.

In Romanian universities, constitutional law courses have a dogmatic orientation. Preda’s analysis (2022) shows that students are not encouraged to discern between established rights and their value interpretation, which weakens the practical implementation of freedom of conscience in professional life¹⁹.

Marginalization in public and media discourse. The Romanian media treats freedom of conscience as a marginal topic, present only in scandals or cultural crises. Investigations in the Bratislava Law Review (2021) state that recent jurisprudential approaches, such as CCR Decision No. 907/2020 (related to the LGBTQ curriculum), do not develop stable doctrine but emphasize ideological balance²⁰. For the public, freedom of conscience remains a rare and superficial discourse.

Furthermore, reports from independent media organizations indicate pressure on journalists, inducing self-censorship and reducing the press’s ability to generate critical debate on fundamental issues.

Institutional gaps and comparative examples. The Report on International Religious Freedom: Romania (2023) points out that Romanian authorities give preferential treatment to the Orthodox Church, which erodes the principle of state neutrality²¹. In contrast, in a country like Poland, constitutional courts have developed clear interpretations of the right to conscientious objection in military service or education.

Comparative studies show that in the Czech Republic and Estonia, the educational and legal systems integrate the values of pluralism and protection of conscience into teaching and legislation. Romania has not yet managed to align these practices at the institutional level.

Recent case law and regulatory gaps. The analysis Connecting Gender Identity and Freedom of Conscience in Recent Romanian Constitutional Case-Law (2021) shows that recent CCR decisions, such as the one from 2020, avoid building a doctrine of freedom of conscience; they

19 *Ibidem*, pp. 23–24.

20 *Connecting Gender Identity and Freedom of Conscience in Recent Romanian Constitutional Case-Law*, Bratislava Law Review 5(2):43-60 (2021), p. 50–55, <https://jurnal.constiintasilibertate.ro/index.php/freedom/article/view/931>

21 2023 Report on International Religious Freedom: Romania, secțiunea „Government favoritism”, p. 9.

often limit themselves to opportunistic and general statements, without any value basis.

There are doctrinal proposals (in academic works) to extend Article 29 to civil and professional areas (sex education, refusal of military service, public employment), but these have not yet been enshrined in legislation or case law.

Civil society response and secular activism. Organizations such as ASUR (Secular-Humanist Association of Romania) conduct visible public awareness campaigns on secular education, separation of church and state, and non-religious rights²². The Rationalists' Conference, aligned with the international conferences of the European Humanist Federation, promotes themes related to freedom of conscience, but its public impact remains limited compared to the influence of the religious majority.

Conclusions and proposals

An analysis of the evolution of freedom of conscience in post-communist Romania highlights a major discrepancy between the regulatory framework and the institutional and social reality. Although constitutional and legislative regulations—in particular Article 29 of the Romanian Constitution and Law No. 489/2006—provide clear guarantees regarding freedom of conscience, the application of these principles faces significant systemic and cultural obstacles. The persistence of an institutional mindset that privileges a dominant religious actor, to the detriment of state neutrality, undermines the effective protection of this right. The US State Department's 2023 report on religious freedom in Romania highlights preferential treatment given to the Romanian Orthodox Church in the areas of education, funding, and public representation, despite the constitutional obligation of religious neutrality.

This situation deeply reflects an insufficiently mature constitutional culture. Dominated by legal and educational formalism, Romania continues to approach fundamental rights—including freedom of conscience—as abstract statements, without anchoring them in solid democratic practices. The widespread confusion between religious freedom and freedom of conscience, attested to by several recent studies, affects the public perception of this right, reducing its applicability in areas such as health, edu-

22 Wikipedia, Romanian Secular-Humanist Association (ASUR)

cation, and public service. In the absence of an effort to clarify the doctrine and pedagogy, freedom of conscience risks remaining a “window dressing” right, ineffective in the face of the real challenges of value pluralism.

Another aggravating factor is the poor reflection of this right in public and media discourse. Freedom of conscience most often appears in ideological disputes with a moralizing tone—such as those related to sex education, gender identity, or religious symbols. Thus, instead of being treated as a fundamental constitutional value, it is instrumentalized according to circumstantial interests. Research published in constitutional law journals in Central Europe shows that Romania does not have a coherent jurisprudence that outlines a core of this right, as is the case in other post-communist states, such as Poland or the Czech Republic.

In addition, civic and constitutional education plays a minor role in the development of a culture of critical consciousness. Currently, the Romanian pre-university education system treats fundamental rights in an overly formal manner, without case studies, practical exercises, or thematic debates. At the university level, constitutional law courses do not stimulate critical reflection on democratic values, but rather favor the mechanical reconstruction of legal norms. This approach contributes to weakening citizens’ ability to recognize and exercise their rights consciously and responsibly.

In terms of case law, an analysis of the Constitutional Court’s decisions shows a tendency to invoke freedom of conscience in isolation, without developing a coherent doctrine. For example, Decision No. 907/2020, concerning the prohibition of gender identity education, refers to freedom of conscience only tangentially, without establishing criteria for interpretation applicable in similar contexts²³. The absence of stable guidance from the courts encourages the arbitrary application of this right and discourages its invocation before public authorities.

The response of civil society, although visible in recent years through the actions of NGOs such as the Secular-Humanist Association of Romania (ASUR), remains fragmented and has little influence on public policy. Although these organizations promote secular education, the separation of church and state, and pluralism of values, they do not benefit from con-

23 Constanța Ambruș, “The Impact of Civic Education on Constitutional Culture in Romania,” *Journal of Political Science and Public Policy*, no. 1/2022, pp. 112–115.

sistent institutional support, and their access to the public sphere is limited by the symbolic monopoly exercised by religious actors.

In light of these findings, a series of measures are needed to strengthen the effective application of freedom of conscience in contemporary Romania. Firstly, a curriculum reform is needed to integrate constitutional and civic education in an applied form, based on case studies, debate simulations, and civic ethics topics. This reform should be accompanied by ongoing training for teachers and civil servants on the interpretation and application of freedom of conscience.

It is also essential to develop clearer and more nuanced constitutional jurisprudence on conscience through institutional collaboration between the Constitutional Court, the courts of law, and academia. In this regard, an evolutionary interpretation of Article 29 of the Constitution, inspired by ECHR case law and European best practices in this area, may be useful.

Last but not least, the state should ensure equal conditions of participation for all voices of civil society through equitable public funding, sustainable partnerships with relevant NGOs, and support for educational and awareness-raising projects. Only through a systemic and integrated approach can freedom of conscience become a living reality of Romanian democracy and an effective guarantor of pluralism in a constantly changing society.

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