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ARTICLE



## Legal provisions, courts, and the status of religious communities: a socio-legal analysis of inter-religious relations in Romania

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### ABSTRACT

In this analysis, we discuss the recent dynamics of inter-religious relations in Romania with a focus on the influence of legislative provisions and court decisions. While previous analyses have focused on the domination of the Romanian Orthodox Church in the national religious field, and particularly on its relations with minority denominations, recent dynamics point to partial re-configurations in power relations. We analyse in depth several conflicts between representatives of religious majority and minority denominations (enjoying a higher legal status), on the one hand, and representatives of heterodox religious groups that have recently broken away or represent different religious traditions (with a lower legal status), on the other. We argue that new religious freedom dynamics arise at the intersection of conflicting interests of such communities with higher and, respectively, lower legal recognition. We analyse these dynamics in connection to national legislative provisions, domestic court decisions and the European Court of Human Rights.

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## Introduction

The literature on religion–state relations in Romania has been dominated by a strong focus on the relations between the Romanian Orthodox Church (hereafter ROC) and the state (e.g. Mungiu-Pippidi 1998; Ramet 2006; Stan and Turcescu 2007; Romocea 2011; Spina 2016). Limitations on religious freedom after the fall of communism have been interpreted as arising from the central conflict between the majority ROC and religious minorities (Stan and Turcescu 2007, 2008; Andreescu 2008; Ramet 2014). In this analysis, we follow two interconnected lines of argumentation. First, we argue that older tensions in the religious field, resulting in limitations to religious freedom, specifically the traditional antagonism between the majority church and religious minorities, have abated. Conflicts between religious communities enjoying a higher and, respectively, lower legal status have replaced the historical conflict between the ROC and religious minorities in general as an important source of restrictions on freedom to practise. Second, we explore the ways in which the

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2006 Law on Religious Freedom and Religious Denominations (and the legal regime it formalised) have been used by high-status denominations to prevent splintering and to constrain the free practice of recently established communities. We argue that, under these changing configurations of the religious field, the conflict model of ‘dominant majority–dominated minorities’ must be complemented with (if not already overcome by) a ‘high–low legal status’ perspective. In relation to this analytical perspective, Romanian courts, as well as the European Court of Human Rights (hereafter ‘ECtHR’ or ‘the Court’), are important to consider since they have played and may very well continue to play an important role in inter-religious conflicts related to legal status provisions in Romania.

The focus of the empirical research on which we draw in this contribution is on two main questions. First, in what ways are formal status issues important to the emerging relationships between various religious communities, and between the latter and the state? Second, has the ECtHR influenced religious freedom via legal status issues? We provide answers to the questions above by drawing on data gathered from multiple sources: interviews conducted between April 2015 and March 2017 with representatives of national-level religious minority organisations<sup>1</sup>; interviews conducted in the same period with local-level religious actors affected by limitations to religious freedom; textual sources, including case file archives, court decisions and mass media reports.<sup>2</sup> We documented several cases in greater depth using interviews and textual sources.

In the next section, we outline the wider context of legal status-related conflicts. We show why it makes sense to look beyond the ROC’s role in shaping inter-religious relations and conflicts to the role played by recognised *minority* denominations and to *intra-faith* conflicts. The following two sections turn to empirical cases of the latter type. Intra-faith conflicts have emerged particularly in relation to defrocked priests who continued to serve local parishes, engaging varied interpretations of Law 489/2006 on Religious Freedom and Religious Denominations (hereafter simply ‘Law on Religious Freedom’ or ‘the Law’) and stoking their communities’ break with the church. Another set of conflicts have emerged between Muslim religious leaders, this time involving the clash of interests between already independent communities. We show that, in both sets of conflicts, the religious communities’ ability to claim the upper hand correlates with their legal status. A basic vulnerability is shared by all communities that, under the Law on Religious Freedom, formally qualify as low status ‘religious groups’.

### **Religious majority–minority relations in historical perspective: old conflicts and new alliances**

In this section, we provide a brief overview of the evolving religious majority–minority relations in Romania since the 1990s. We explain why most studies have focused on the ROC’s actions, describe the current Law on Religious Freedom and its role in our context, and assess the attenuation of older tensions and the emergence of inter-denominational cooperation.

#### ***Post-communist religious revival and the ROC’s fight against ‘proselytisation’***

The 1990s in Romania were marked by the ROC’s vigorous action in social and political life. The church made great efforts to be recognised, both formally (by law) and

informally, as the 'national church' (Romocea 2011). Forging a closer relationship with post-communist governments was central to this strategy, in part by ensuring the state's support in the church's conflicts with religious minorities. Among these disputes, that with the Greek Catholic Church attracted domestic and international attention in political and scholarly arenas alike (see, e.g. Mahieu 2004; Zerilli 2005; Stan and Turcescu 2008). At issue was the restitution of churches and cemeteries that had been given to the ROC by the communist state after the Greek Catholic Church was banned in 1948. The post-communist state initially relinquished its responsibility to resolve the emerging conflicts (Stan and Turcescu 2007, 111). However, after several cases lost at the ECtHR, the state allowed the Greek Catholic claims to be heard by civil courts (a significant number of claims are still pending before the courts).

Other minority communities faced different conflicts with the majority church in the early-to-late 1990s. These involved acts of obstruction or aggression against Jehovah's Witnesses, Baptists, Adventists and others (Andreescu 2003, 37–8). These attacks were sometimes incited by Orthodox priests, with the backing of ROC hierarchs. In a period of economic precariousness and nationalist revival, these minority communities' links to foreign resources were often painted as presenting a threat to national (Orthodox) identity (e.g. Antim 1996, 113–14). In this broader context, a series of administrative limitations on minorities' religious freedoms also ensued.

For instance, in 1996 Orthodox Patriarch Teoctist issued a public call to halt the meeting of the Jehovah's Witnesses' Congress in Bucharest, claiming that it represented 'a defiance of the Orthodox faith and of the Romanian nation, Christianised at its birth 2000 years ago' and 'an evident action of proselytism, meant to tear apart the moral and spiritual unity of our people' (APADOR-CH 1996). The Congress was relocated (Andreescu n.d.), but the event was among the catalysts of administrative limitations to the community's religious freedom. These limitations, in turn, triggered legal mobilisations that resulted in a favourable ruling on the community's official recognition by the Supreme Court (in 2001), and subsequent complaints at the ECtHR which were finally resolved through a friendly settlement (Langlaude 2007, 235).

Perhaps the most notorious event highlighting the tensions between the ROC and minority communities took place in 1997 in the rural locality Ruginoasa, where a group of Orthodox believers physically assaulted a small group of Baptists. In an address to the Chamber of Deputies on 8 April 1997, parliamentarian Petru Dugulescu (a Baptist) denounced these 'acts of religious barbarity' that had been instigated by Orthodox priests. A representative of the Orthodox Metropolitan of Moldavia and Bucovina was reported to have approved of the acts as 'defending the [Orthodox] faith'.<sup>3</sup>

This phase of religious life in post-communist Romania can be seen as having been overwhelmingly determined by the ROC's organisational strategy to 'fight proselytisation'. In the early post-communist years, the ROC mounted a sustained effort against what it regarded as encroachments by 'outside' minority religious communities on its 'traditional' territorial monopoly. 'Proselytisation' was a strong weapon for the ROC hierarchy, which drew on theological academic studies (Mureşan 2008) and on a long historical tradition (Leuştean 2009, 34; Arhire 2014; Pintilescu and Fătu-Tutoveanu 2011). Throughout the 1990s, the term 'proselytisation' was deployed broadly to describe most activities undertaken by many non-Orthodox religious communities (including those, like the Evangelical churches, that had been officially recognised by the state in both

communist and post-communist times). It was leveraged in parliamentary debates (Stan and Turcescu 2007, 51), and even used in some drafts – e.g. ‘aggressive proselytising’ was named a crime (Romocea 2011, 33) – of what eventually became the current Law on Religious Freedom. The support provided by the state to the ROC in the campaign against proselytisation (Iancu 2007) explains, among other factors, why the majority–minority distinction remained most significant for over two decades in understanding the dynamics of religious pluralism.

In the section below we turn our attention to the provisions of the Law on Religious Freedom. While we do not go into the history of the Law’s adoption, it should be noted that the presentation of the legal text fits under the heading of ‘majority–minority relations’ because the Law was the result of a long process of negotiation between state representatives, religious minorities and the majority church. Headed by none other than the current Orthodox Patriarch Daniel (then Metropolitan of Moldavia and Bucovina), the ROC’s official delegation claimed the upper hand in influencing the final wording of the Law, whose adoption triggered strong criticism from religious minority leaders, civil society activists and international observers (see Andreescu 2008; Lordache 2013, for detailed accounts).

### **The Law on Religious Freedom (Law 489/2006)<sup>4</sup>**

In this section, we present the Law’s most important aspects from the viewpoint of our argument. We outline the categories of recognition granted to religious communities, the requirements necessary to gain higher recognition and the provisions relevant for the conflicts we document. Finally, we take a cursory look at how the Law on Religious Freedom influences the relation between state institutions and religious communities.

In brief, Law 489/2006 distinguishes between ‘religious denominations’ (Rom. *culțe*), ‘religious associations’ (Rom. *asociații religioase*) and ‘religious groups’ (Rom. *grupuri religioase*). In principle, all three categories should enjoy the basic right to freedom of religion. They differ in terms of the formal status they enjoy under the Law, the organisational prerequisites the latter implies, and the benefits they receive. ‘Religious groups’ have no obligation to register with state authorities (to gather and practise), but are excluded from the privileges concerning taxation that are accorded to ‘associations’ and ‘denominations’. A religious community that registers as a ‘religious association’ is exempt from property tax on the buildings it uses for worship and on the corresponding land. Furthermore, a ‘religious association’ can become a ‘religious denomination’ if it can prove 12 years of uninterrupted functioning in Romania (including time before the adoption of the Law) and a membership of at least 0.1% of the country’s population. ‘Religious denominations’ additionally enjoy state subsidies in direct proportion with their membership (as counted in the national census), state support for teaching religion in public schools and also the explicit recognition of their important role in public life (including being recognised as potential providers of state-funded public services). Denominations hence hold a privileged position as dialogue partners for state institutions.

The Law defines ‘religious denominations’ and ‘religious associations’ as ‘religious structures with juridical personality’, whereas ‘religious groups’ are defined as religious structures without juridical personality (Article 5(2)). As we shall see, representatives of

'religious groups' may opt to establish a non-governmental organisation (NGO) in order to take part in financial transactions and manage assets. However, under the Law this does not mean that the religious community as a whole acquires 'juridical personality'. More importantly for our analysis, the Law also stipulates that 'exercising the function of priest or any other function that presupposes the exercising of a priest's attributions without the authorisation or the express approval given by religious structures, with or without juridical personality, is sanctioned according to penal law' (Article 23(4)). As will be shown below, it is this legal provision that enables recognised denominations to restrict the religious freedom of splintering (breakaway) groups.

The process through which a religious community can move from the legal status of 'religious group' to 'religious association' is also relevant to our empirical cases. As pointed out to us during an interview with a state administrator, a 'religious association' is a type of NGO distinguished by tax exemption benefits and the ability to obtain 'denomination' status. Indeed, as illustrated by the requirements for registration, religious groups aiming to obtain the status of 'religious association' must follow the same steps as any other NGO to register with the state: reserve a name, write a statute, gather members, provide proof of residence, demonstrate the availability of nominal financial assets (a small starter fund) and have an initial leadership structure. But in contrast to 'regular' NGOs, 'religious associations' must have 300 founding members (as opposed to three) who must formally declare their religious belonging and endorse an explicit profession of faith. Moreover, before they apply to a court of law for registration, 'religious associations' must obtain an advisory opinion from the governmental agency in charge of such matters, the State Secretariat for Religious Affairs (hereafter SSRA).<sup>5</sup>

The legal provisions regarding the recognition of religious communities under the type of 'religious associations' are problematic on several fronts. While the representatives of already registered religious associations whom we interviewed did not complain of restrictions to their religious freedom, some did raise the issue of the cumbersome bureaucratic procedure. To illustrate this point, the National Spiritual Assembly of the Baha'i community in Romania is considered under the terms of state law an organisational administrative board and any changes (which in this community take place yearly) have to be formally registered with the state authorities. A similar dissatisfaction was expressed by a representative of the Church of Jesus Christ of Latter-day Saints. This community retains the 'religious group' status because the hierarchical structure of the 'religious association', which would be imposed on the community by state law (with local leadership and a general assembly consisting of 300 voting members), contradicts its hierarchical structure as provided by its canon law. Also, the great leverage given to the SSRA through its advisory opinion in the registration of a new religious association was criticised by our interviewees involved in the cases of defrocked Orthodox priests which we present in greater detail below. Finally, several interviewees pointed out that the legal requirement for the founding members of the association to officially declare their religious belonging contradicts the very provisions of Law 489/2006, which stipulate that 'it is prohibited to oblige persons to mention their religion, in any relations with public authorities' (Article 5(6)).

A partial solution for those who do not wish to embark in the process of registering a 'religious association' is to establish a 'regular' NGO, namely under the framework provided by the Governmental Ordinance 26/2000 regarding associations and

foundations. This formalisation procedure is not legally required for the free practice of religion, but provides a juridical basis for the management of assets and funds that may be involved in religious practice. For instance, the Church of Jesus Christ of Latter-day Saints mentioned above manages its assets and funds through an NGO. This formal solution (used by religious communities also before Law 489/2006 instituted the special category of 'religious associations') was adopted by the representatives of several other minority religious communities, including those we discuss below. But while the NGO type of organisation provides some legal standing in relation to state authorities (e.g. fiscal authorities), it does not do so under the terms of the Law on Religious Freedom. Religious communities still remain 'religious groups', even if their leaders run an NGO and even if some members of the community are also members of that NGO. This can result in limitations on religious freedom, as we will document empirically.

Space limitations prevent us from discussing in detail the influence of the Law on the relations between religious communities and state authorities. But, based on our interviews with representatives of minority denominations, we can confidently say that even if the adoption of the Law did not change the administrative practices – (e.g. minority denominations were not always invited when relevant laws were discussed, the Parliament and Presidential Administration did not invite all religious minorities to take part in public events of national significance) – the representatives of minority denominations have been able to draw on their improved formalised legal status to claim rights in relation to state authorities. The fact that the 18 denominations already recognised at the time of the Law's adoption were, for the first time, mentioned individually by name in a post-communist law (in the Annex), may also have further buttressed their legal status in the eyes of local and central authorities.

In contrast to the 18 'religious denominations' recognised when the Law was adopted, the new law did not prove as advantageous for 'religious associations' and 'religious groups'. No religious association has attained the status of 'religious denomination' in the decade since the Law's entry into force, thus proving that the system of official recognition is restrictive (to our knowledge, no additional community has until now reached the required membership threshold of 0.1% of the population). As we will document later, 'religious groups' are particularly vulnerable under the current legal regime. Before we proceed to the conflicts between 'denominations' and 'groups', we turn, in the sub-section below, to the new alliances formed between the recognised denominations, in part also influenced by the legislative framework.

### **Emergent patterns of inter-religious cooperation in the face of novel challenges**

Two sets of dynamics should, in our view, be considered in order to understand the recently reduced level of conflict and the increased level of cooperation between the majority ROC and minority religious communities. One is internal to the field of religious organisations, taking place against the background set by the Law on Religious Freedom. The other is a set of external counter/secularist dynamics that have posed new challenges to the interests of religious communities and organisations. We start with a brief overview of the former.

We should make clear from the outset that the patterns of cooperation that we present here do not imply that inter-religious conflicts between members of religious communities, recognised as ‘denominations’, are absent in Romania. That local-level conflicts persist in the country is visible, for instance, in the 2016 US State Department’s Report on Religious Freedom.<sup>6</sup> What we want to emphasise is that these local conflicts between members of the majority and the minority denominations no longer correspond to high-level tensions in the same way as they did in the early post-communist period. This change in organisational strategies can be seen as having been influenced also by the adoption of the Law on Religious Freedom.

The adoption of the Law on Religious Freedom marked a turning point, in our view, not only in the relation between state authorities and religious denominations, but also in the positioning of the ROC towards minority denominations. The majority church now appears to accept the formal equality between denominations. This is illustrated, for instance, in the formation in 2011 of the Consultative Council of Religious Denominations. The Council was formed at the initiative of the Orthodox Patriarch Daniel and invitations were sent to all officially recognised denominations in Romania.<sup>7</sup> Some of the minority denominations eventually declined membership in this forum (e.g. Jehovah’s Witnesses, Seventh-day Adventists and Evangelical churches). If the ROC’s initial leadership of the Council may have discouraged some from joining, the explicitly stated goal of the Council to find solutions to inter-religious conflicts may have encouraged others. At present, the Council functions on the premise of equality between members with a yearly rotating presidency. Based on interview data, we view the participation of high clergy from the Greek Catholic Church in this forum, for example, as a sign that the conflict with the ROC’s high clergy is cooling down (though it is unlikely to fade away, and may even reignite, given that many property restitution cases are still open and that historical wounds have not healed).

If the Consultative Council of Religious Denominations was an initiative of the ROC, minority denominations also indicated in the recent years that a rapprochement with the majority church would not only be possible, but even desirable. In 2013, for instance, at an inter-religious event organised by the Association ‘Conscience and Liberty’ (ancillary to the Seventh-day Adventist Church and an energetic promoter of inter-religious dialogue), the rector of the Baptist Theological Institute pointed out that

the Evangelicals [...] must open themselves to an ecumenical dialogue with the majority church, if they have understood that there exists in Romanian society an acute need for Christians to speak and to act as a common voice (Mariş 2013, 117, our translation).

Space limitations prevent us from going into the details of the secularist and counter-secularist dynamics (Karpov 2010) that are responsible for the increased cooperation between the ROC and minority denominations (see Popa and Andreescu [under review](#), for a report on counter/secularist mobilisations concerning the place of religion in public education). But we do pause for a moment to discuss a set of counter-secularist mobilisations that support our argument of intensified inter-denominational cooperation. These are the mobilisations that in 2006 and 2015 aimed to change the definition of ‘marriage’ in the Romanian Constitution to explicitly indicate the ‘union between a man and a woman’.



In Romania, a referendum for constitutional change can be initiated through a 'citizen initiative'. Such an initiative presumes the gathering of at least 500,000 signatures of support taken from citizens in at least half of the country's 41 counties plus the capital Bucharest. In response to changing legislation regarding same-sex marriages in Western Europe (Bob 2012), a group of religious civil society activists (at first mainly Evangelical) attempted to mount a citizen initiative in 2006. They mobilised support from many denominations (including the ROC), but failed to satisfy the technical criteria. In 2015, in contrast, the same core of activists (see Popa and Andreescu [under review](#)) managed to mobilise many more participants and succeeded in gathering almost six times the number of required signatures. This initiative was validated by the Constitutional Court and the organisation of the constitutional referendum is pending; Parliament will make the final decision regarding its organisation. The composition of the committee behind the citizen initiative illustrates the novel dynamics of inter-denominational cooperation now at play. Alongside public figures, such as singers and actors, the committee includes a prominent Orthodox priest, high-ranking members of the Pentecostal and Baptist churches, and the national-level president of the General Association of Greek Catholic Believers (*Asociația Generală a Românilor Uniți, Greco-Catolici*).<sup>8</sup>

The mobilisation for constitutional change deserves a separate analysis altogether but for the purposes of this contribution it underscores the important recent changes in inter-denominational relations. To sum up, recent developments from both outside and inside the religious field have generated a reconfiguration of relations between religious communities in Romania. The traditional focus on the majority church versus minority religious communities has thus lost some of its power to explain, by itself, the dynamics of the religious field. At present, some majority–minority conflicts are weakening, while initiatives of cooperation are coming from both the majority and minority churches. Previous analyses have paid little attention to the interaction between denominations, whether majority or minority, on the one hand, and the internal formations contesting them (or which have been perceived by the denomination in question as doing so), on the other. Yet, such cases have increased in number lately and have led, among other developments, to interesting legal challenges domestically and internationally, as we show in the next section.

### **Intra-church conflicts, legal status and the vulnerability of splintering groups**

Intra-church conflicts have received comparatively less scholarly attention than inter-denominational conflicts. Our analysis aims to redress this situation. We begin this section by outlining the background against which our empirical cases involving defrocked priests show how the Law on Religious Freedom is involved in conflicts between 'religious denominations' and 'religious groups'. The cases presented below shed light on the mechanisms through which religious denominations, with the help of state authorities, can achieve the aim of limiting the religious freedom of splinter groups that break away from them. The next section will complete the picture of the current vulnerability of religious communities recognised simply as 'religious groups'.

Conflicts within the ROC have in recent years caught public attention. We mention here just briefly the ECtHR case of *Sindicatul 'Păstorul cel Bun' v. Romania* (hereafter simply *Sindicatul*) in which the Court was called to rule on whether the Romanian state had rightly refused the registration of a union formed by clergy and lay employees of the ROC. The case (see a preliminary analysis in Lordache 2013) ended in a Grand Chamber decision. The decision restated the right of religious communities to autonomy from state intervention, and dismissed the union's claim that the state had infringed Article 11 of the European Convention on Human Rights. But the conflict was an occasion for the public to have a glance into the conflicts between ROC priests and their superiors. As expressed by the trade union's founders, the organisation aimed to redress perceived abuses of the ROC hierarchs concerning personnel policy (salaries, transfers, nominations).

The finances of the ROC have recently received much more attention from the mass media than from scholars (but see Turcescu and Stan forthcoming).<sup>9</sup> In view of the recent mass media exposure of defrocking decisions in connection to the ROC's financial and personnel policies,<sup>10</sup> and in view of the past conflicts that led to the *Sindicatul* case (in which the founding priests were threatened by the ROC's Holy Synod with a collective defrocking<sup>11</sup>), one could expect the trend of intra-church conflict to persist and the number of cases involving defrocked Orthodox priests to grow.<sup>12</sup> Yet, it is not for this reason that we speak here of a 'pattern' of conflict. Irrespective of the conflict trends within the ROC, we observe the same pattern in cases of defrocking involving also other recognised denominations. Below we present two cases of defrocked Orthodox priests taken to court by the representatives of their former church on accusation of unlawfully practising the profession of priest. From one of these two cases a complaint to the ECtHR arose. We compare the cases of defrocking and legal prosecution involving the ROC with two others involving the Lutheran and Reformed (Calvinist) churches. Both latter cases, having already reached the ECtHR, have been communicated (formally notified) by the Court to the Romanian authorities and are currently pending (28617/2013 *Tothpal v. Romania* and 50919/2013 *Szabo v. Romania*). In all four cases, Article 23(4) of the Law 489/2006 was invoked by the representatives of religious denominations to deny the right of defrocked priests to continue serving their followers as breakaway 'religious groups'. As we will show, Romanian prosecutors and judges are prone to limit the right of these religious actors to provide religious service outside the boundaries of their former churches. This trend may continue or stop, with the ECtHR promising to play an important part therein, both directly and 'indirectly', as we explain below.

The first case that we present in more detail<sup>13</sup> concerns a defrocked Orthodox priest who lost his position in the church after conflicts with the ROC hierarchy, but continued to serve his community. As the priest shared with us during an interview, the conflicts with the bishopric to which he was affiliated started following an administrative audit. The bishopric's representatives asked the priest to bring improvements to his church and to restore its painted murals. A very large amount of money (for rural Romania) was needed for the works. 'At first, we tried to see how we could solve this situation in an amicable manner' said our interviewee, further noting:

Later, seeing that solving the situation was not desired, but simply the extraction of some sums of money that one could not honour [in a reasonable time frame], we started to look

into the legislation .... [and] we decided to organise ourselves autonomously, initially as an Orthodox religious group without juridical personality which would have no relations – either ecumenical, or of another nature – with the juridical person under private law, the Romanian Orthodox Church.

The juridical jargon used by our interviewee attested to the expertise he had acquired, as a non-expert, in the years of court trials that followed the formation of his independent religious community. Our interviewee knew about the *Sindicatul* case and was critical of the union's strategy (i.e. its attempt to reform the ROC from within). The priest and his parishioners separated completely from the ROC and founded an NGO in order to acquire legal personality. The strategy of founding an NGO following separation from the former church was the same as that adopted by the defrocked Lutheran pastor and his parishioners at the centre of the *Tothpal v. Romania* case.<sup>14</sup> But in neither of these two cases did the founding of an NGO help to gain legal leverage with the authorities. Just as in the *Tothpal* case, where the representatives of the Lutheran Church accused their former pastor of unlawfully practising the profession of priest after he had been defrocked, the representatives of the ROC accused their former priest of the same felony.

Our interviewee explained that he was sceptical about the possibility to register as a 'religious association'. He doubted that he would obtain a positive advisory opinion from the SSRA because the institution seemed to him to have taken the side of the ROC in the court proceedings. As evidence, he showed us official documents from his case file in which the SSRA answered questions that had been submitted separately by the ROC and by himself. The answer given to the ROC representatives supported their accusations, but did so by invoking official data whose very existence was explicitly denied in the reply to the priest's separate inquiry. According to our interviewee, the name of the religious association he would have liked to adopt contained the word 'Orthodox', which gave the SSRA also legal grounding to reject the application (Law 489/2006 stipulates in Article 41 (2-a) that a new religious association cannot have a similar name to that of a recognised denomination or to that of an already registered association).

Looking for an additional protection, the defrocked priest entered into dialogue with an Orthodox Church registered outside the country. Obtaining an official document from this church, stating that the priest was now their representative in Romania, did not help. The priest thought that his recognition as the foreign church's representative would suffice as an approval for him to continue his profession working as a priest (under Article 23(4) of the Law on Religious Freedom). But the priest's strategy was not sufficient; the SSRA responded to an inquiry by the ROC's representatives (which our interviewee showed us) that the foreign Orthodox Church was not among the 'religious denominations' or 'religious associations' that carried out their activity in conformity with the provisions of Law 489/2006. In the priest's view, this response implied that the foreign church was carrying out activities outside the law.

There are many elements that this first empirically documented case shares with the second one that we present below: the founding of an NGO following separation from the church, the joining of another officially unrecognised hierarchy that could issue a formal approval for performing Orthodox religious service and the content of the communication between the party that brought the legal charges and the SSRA. The main difference between the two cases is the solution given by the judicial authorities regarding the charge of the unlawful exercise of the profession of priest. In the first case,

the prosecutor invoked ECtHR case law and decided to close the investigation into the accusation; in the second case, the defrocked priest was sentenced with prison time for his religious service. In our view, the important aspect that distinguishes the two cases is the capacity of the former priest to draw on relevant ECtHR case law.

In the first case, a Romanian translation of the ECtHR decision in the *Metropolitan Church of Bessarabia and Others v. Moldova* (which granted the ROC religious freedom in the Republic of Moldova) was submitted to the case file by the accused priest. In the prosecutor's resolution of the case, which we were able to consult, several relevant ECtHR cases are referenced: the *Metropolitan Church of Bessarabia and Others v. Moldova*, *Serif v. Greece*, and *Hasan and Chaush v. Bulgaria*. In Romania, prosecutors are regularly trained in ECtHR case law, but not in case law concerning religious freedom. This was pointed out to us by an interviewee from the National Institute of Magistracy in Bucharest. Given this insight, and given that the decisions *Serif v. Greece* and *Hasan and Chaush v. Bulgaria* are both referenced in the *Metropolitan Church of Bessarabia and Others v. Moldova* judgement, we can conclude with some confidence that the priest's submission of the decision was crucial in his defence. Yet, this has not been enough to forestall further accusations against the priest. A new investigation was opened against him during our fieldwork because he continued to serve a small group of parishioners, this time in a privately built church. Again, he was accused of unlawfully practising the profession of priest.

The occurrences reported above support Matthias Koenig's (2015) argument that the 'secularist' jurisprudence of the ECtHR has provided argumentative resources for religious minorities to defend themselves from state interference. Yet, as the next case further illustrates, the degree to which this jurisprudence will have 'indirect' or 'radiating' effects very much depends on the actors' capabilities (Galanter 1983). In the case below, neither the priest nor his lawyer were able to invoke the most relevant ECtHR jurisprudence. This may have brought about a different decision by the judge.

We documented a second case of a defrocked priest in greater depth. From interviews with actors involved in the litigation and case file documents, we found that this case shared many elements with the one above and with the other cases already mentioned: the separation of the local community of believers from the Church, the founding of an NGO, the joining of a religious hierarchy outside the country, the lack of legal protection outside the registration categories of 'denomination' and 'religious association'. As in the case of the defrocked Calvinist priest at the centre of the *Szabo v. Romania* case, in the case of the Orthodox priest we detail here, local believers mobilised strongly to support the priest after his defrocking. As a handwritten document in the case file attests, virtually all local parishioners endorsed a declaration of support towards their priest and in support of a breakaway of their parish from the authority of the ROC bishopric. In the words of this declaration,

Due to the intrusion of the [...] [ROC bishopric], which in an abusive way tried to impose this change of priest, although the parish was against this decision one hundred per cent, by appealing to gendarmerie officers and other means (petitions, criminal complaints), as well as through direct threats towards our priest, his family and even the believers, the Parish Assembly decides for the [...] [parish] to exit the subordination to the [ROC bishopric] [...] [Given that] the priest is the employee of the parish, which has legal personality, we

bring to the attention of the [ROC bishopric] that our parish will defend, if necessary, also before civil courts the rights and the person of our serving priest (our translation).

The above depicted determination of local believers to separate from the ROC waned over time. The ROC took control of the church building and assigned a new priest to the locality. Gradually, the followers of the defrocked priest shrunk to a handful of believers. He continued performing religious services for baptisms, marriages and commemorations of the dead, either at the homes of his followers or in his own home. For these actions, he was convicted to prison under the charge of having unlawfully practised the profession of priest.<sup>15</sup> As evident in the final judgement of this case, the local judge drew on the official note of the SSRA saying that the new religious hierarchy to which the priest had become affiliated enjoyed neither 'the legal status of a denomination, [...] [nor that of] a religious association, under Law No. 489/2006 [...]' After paraphrasing the SSRA document, the text of the judgement continued:

As a consequence, having regard to what was shown, the court has noted that the exercising of the profession of priest by the accused [...] took place in other conditions than the legal ones [...] and as a consequence the constitutive elements of the felony of 'unlawful exercise of a profession' as provided by art. 281 [...] [of the Penal Code] with reference to art. 23 para. 4 Law 489/2006 [...] are met [...] (our translation, Appellate Court decision, on file with the authors).

'Indirect' effects of the ECtHR case law on religious freedom were not visible in the resolution of this case, in which the actors involved failed to invoke relevant case law (at least based on what we could document from the written submissions in the case file). But 'direct' effects may arise from this case. During our fieldwork, one interviewee involved in the court proceedings supported the idea that the case be taken to the ECtHR. This person knew that the bishop involved in the *Metropolitan Church of Bessarabia and Others v. Moldova* had obtained a favourable result in Strasbourg (and thus hoped the Court's judgement would be favourable in this case too), but he was not familiar with the contents of the decision in the Moldovan case. We understand that a complaint arising from this case has been submitted to the Court.

As a result of this additional complaint, along with *Tothpal v. Romania* and *Szabo v. Romania*, ECtHR case law may come to have a direct impact on defrocking conflicts of the type that we presented in this section. Yet conflict cases fitting the 'high-low legal status' model are likely to persist in more and different ways. In the next section we further show how the legal vulnerabilities of 'religious groups' can be used by 'denominations' to (dis)solve intra-faith disputes.

## **Diversification and tensions between Muslim communities in Romania**

Splintering is not the only process of religious pluralisation that leads to conflicts fitting the 'high-low legal status' pattern. Using the example of the recent conflicts between Muslim leaders, we further underline that the distinction between higher and lower status religious communities plays a key role in the newly emerging inter-religious dynamics in Romania. As in the previously described conflicts, the cases presented below concern communities of the same faith. The Muslim communities, however, have developed in partial separation from each other; their differences are not so

much the result of splintering. Also, different from the previous cases is the fact that the 'shadow' of the ECtHR is less visible in this set of conflicts. But as in the previous examples, the parties in dispute have a different legal status. Moreover, the community enjoying the higher status attempts to use its privileged position in relation to state authorities to limit the freedoms of communities with a lower status. Here the relevant actors are, on the one hand, the representatives of the formally recognised Turkish-Tatar Muslim community working within the institution of the Muftiate and, on the other hand, the representatives of Islamic NGOs offering charitable, educational and religious services to other Muslim communities in Romania.

The 2011 national Census recorded a total of 64,337 Muslims living in Romania (0.32% of the total population). The great majority belong to the religious community officially represented by the Muftiate based in the city of Constanța in the Dobruja region (a part of the Ottoman Empire until 1878). Comparatively smaller communities have developed more recently around university and business centres such as Cluj-Napoca, Timișoara and Bucharest. Two associations of Romanian converts to Islam have been founded until now (Alak 2015a, 159).

A recent event that exposed tensions within the Muslim community was the news in 2015 that the government had allocated a plot of land in Bucharest for the building of a large mosque. Two broad images of Muslims emerged in the discourses which arose in response to this information: 'official', 'legitimate' or 'recognised', on the one hand, and 'unauthorised', 'fundamentalist' or 'terrorist', on the other. As one interviewee working for the Romanian government shared with us, the land had been allocated to the officially recognised Muslim community after bilateral talks between Romanian and Turkish state representatives. In time, these diplomatic proceedings had resulted in the allocation of land for a Muslim cemetery in Bucharest and in Istanbul for a Romanian Orthodox cemetery, as well as in granting to the ROC the right to use a church from the patrimony of the Orthodox Ecumenical Patriarchate in Istanbul. The Mufti's public declaration (eventually retracted) that this mosque would be the largest in a European capital may have played some role in stoking nationalist reactions. The ROC did not support them. To the contrary, the spokesperson for the Orthodox Archbishopric of Tomis said in the national media 'Calm down! Nobody will convert you to Islam by force', and pointed out that 'the Romanian state did not give the land to some terrorists, but to a religious denomination recognised by the state' (our translation).<sup>16</sup>

While critics warned that the mosque would attract Islamist extremists to Romania, according to the Mufti the project aimed at the opposite effect. The grand mosque was meant to bring together all the Muslim communities in the city under one roof. This was important, he explained, because some mosques were actually run without the Muftiate's approval. In the Mufti's words, the plan was

thus to eliminate the temptation of the youth to go to unauthorised mosques established by all sorts of foundations, where Muslim ideologues trained in fundamentalist institutions from other states are making propaganda. The Muslim youth will have the possibility to appropriate correctly the teachings of the Quran (our translation).<sup>17</sup>

This declaration contains, in a nutshell, important elements of a conflict that only became visible in 2015, but which had involved the Muftiate and other Muslim organisations for a longer time. These organisations were Islamic NGOs offering charity,

educational services, as well as religious services in newly built mosques. In contrast to the religious leaders of the communities presented in the previous section, to our knowledge the religious leaders working within these NGOs did not seek official recognition for their constituencies as separate religious communities. Rather, they wanted the Muftiate to represent also the interests of their believers, possibly under a new leadership. This strategy became visible in the summer of 2015, when the only competitor to the Mufti in office was an imam supported by an Islamic NGO (see Alak 2015b for a more detailed account). The incumbent was eventually reconfirmed.

According to one representative of an Islamic NGO running a mosque in Bucharest, 'the Muslim community has still not yet fully coalesced, like the other communities, so that one would speak for all and all for one'. He spoke to us of the fact that, for a long time, the Muslim community in Bucharest did not have its own cemetery. While the state eventually allocated a plot of land for the burial of Muslims in 2008,<sup>18</sup> it did so to the official organisations of the Turkish and Tatar minorities, whose representatives, according to our interviewee, did not want to allow Muslims of other ethnicities to bury their dead there. At the beginning of 2017, the problem of the latter's access was solved. Even so, as our interviewee pointed out, Muslims who do not belong to the Turkish or Tatar ethnic communities did not feel their rights were fully protected by the Muftiate, the only institution formally representing the interests of Muslims before the Romanian authorities.

In a recent analysis, Alina Isac Alak (2015b) focused on the ideological differences between what she characterises as the 'old' and the 'new' strands of Islam in Romania. In Alak's account, the 'old' Islam is connected with the Ottoman heritage, the Turkish and Tatar ethnic minorities and the Hanafi school of jurisprudence. Its weight in individuals' identity remains moderate, and it is favourable to inter-ethnic and inter-religious cooperation. In contrast, the 'new' Islam is connected to immigration for the purposes of study and business, with interpretations that place a much stronger emphasis on the role of religion in defining personal identity, and is less favourable to inter-religious cooperation. Alak sees the dynamics taking shape currently in Romania as being similar to those in other post-communist countries, such as Albania, Ukraine or Poland, where tensions between the 'internal' and 'external' traditions of Islam arise as a result not only of international migration, but also of the 'expansion of Saudi Arabia's financial domination over international Islamic charitable institutions' (2015b, 323, our translation).

Several conflicts that have taken place over roughly the past decade justify Alak's focus on differences of dogmatic interpretation among Muslim communities. In 2007, for instance, when the Muftiate was consulted by the Ministry of Education on the question of the recognition of study diplomas for 'Islamic theology' obtained abroad by Romanian citizens, the Mufti responded that these diplomas should not be granted official recognition and mentioned that 'in these Arab countries (Syria, Jordan, Egypt, Sudan, Saudi Arabia, etc.) a radical Islam is being propagated, and these young Romanian citizens are indoctrinated with the radical dogmas of the Islamic religion' (our translation).<sup>19</sup> Following a diplomatic scandal, whereby the Council of Arab Ambassadors criticised the Mufti's declarations and their implicit endorsement by the SSRA and the Ministry of Education, the Mufti declined further comment on the matter of the legal recognition of study diplomas obtained abroad.<sup>20</sup>

In 2015, two representatives of the Turkish and Tatar ethnic minorities in the Romanian Parliament drafted several changes to the Law on Religious Freedom. The two politicians were at the time standing members of the Muftiate's Synodal Council (*Şura-i Islam*) and this legislative initiative transposed closely the wishes expressed by the Mufti regarding the authorities' lack of control over new mosques.<sup>21</sup> The drafted paragraphs stated that worship places (not just mosques, but also churches) could only be built by the legally recognised 'denominations' and 'religious associations'. Moreover, in the new wording of the law, all religious service personnel would have to be approved formally by the SSRA and the Ministry of Internal Affairs.<sup>22</sup>

Several of our interlocutors, including two interviewees from the empirical cases presented in the previous section and a representative of the Church of Jesus Christ of Latter-day Saints, were concerned when they heard about the proposed changes and feared that the latter might render their own churches illegal. The draft law is, at the time of writing (October 2017), pending a final vote in the Chamber of Deputies. However, the Romanian government already indicated in a formal opinion<sup>23</sup> that the proposed changes would restrict the right to freedom of worship and infringe on the autonomy of religious communities.

In 2015, the SSRA initiated a series of meetings between the Muftiate and the different representatives of the NGOs providing religious services to Muslims living in Romania. In February 2016, a meeting was held between the representatives of the Muftiate, the SSRA and the representatives of several Islamic NGOs. According to the publicly available minutes of this meeting, it was agreed with a majority of votes that 'any person of Islamic religion living on the territory of Romania fulfilling all legal formalities of residence is an integral part of the Muslim community, having the same rights and obligations according to the legislation in force' (our translation).<sup>24</sup> The fact that the representatives of the NGOs that supported the candidate opposing the incumbent Mufti in the 2015 elections were not present at the meeting (although, to our knowledge, they had been invited by the organisers) suggests that this may not be a resolution destined to calm tensions between all Muslim leaders in Romania.

The case of the Muslim communities in Romania may raise additional issues compared to other religious communities in light of the importance of Islam in international politics. In our context, the interest in intra-faith fractures resides mainly in the interaction between officially recognised representatives of the Muslim 'denomination' and representatives of communities of Muslim believers which are considered 'religious groups' under the Law on Religious Freedom. As the examples above show, the former have attempted to capitalise on their higher legal status in order to propose legislation limiting the latter's right to provide religious services, a move which could potentially influence also the religious freedom of non-Muslim religious communities. Whether new legal challenges will appear for 'religious groups' remains to be seen. But these cases, together with those presented in the previous section, highlight that observers of religious freedom in Romania should pay attention to this category of religious communities and to their strategies of securing religious freedom. Overlooking the differences between high and low legal status religious communities risks missing important insights into the dynamics of Romania's religious field.



## Conclusions

In this analysis we have shed light on the role played by legal provisions, domestic courts and the ECtHR in shaping the recent dynamics of the religious field in Romania. We argued that a ‘high–low legal status’ perspective should complement the already prominent ‘dominant majority–dominated minorities’ frame in which inter-religious conflicts in this country have been analysed until now.

The recent rapprochement between the majority church and minority denominations points to the fact that the term ‘religious minority’ has lost, in present-day Romania, some of its former conceptual ability to clearly mark out the communities exposed – whether in fact or in principle – to limitations of religious freedom. As our analysis has shown, the distinctions made after 2006 by the Law on Religious Freedom between minorities themselves need to be given more attention. The shared status of recognised ‘denominations’ sets a meaningful background against which cooperation is possible between the majority church and minority denominations. As we have indicated, not only the law but also other social dynamics (such as recent counter/secularist social mobilisations) shape the terms of this cooperation. The low legal status of ‘religious groups’ leaves them vulnerable in conflicts with any of the officially recognised denominations. We suggested that more attention should be paid to this category of religious communities in order to grasp the evolving dynamics of the religious field that affect religious freedom in Romania.

The ECtHR has played a role in the emerging phenomena that we documented here and promises to have increased influence in the future. As we have shown elsewhere (Popa and Andreescu [under review](#)), the Court and its jurisprudence have ‘indirectly’ played a role in recent counter/secularist mobilisations that have also influenced some of the inter-religious dynamics analysed here. In terms of the cases empirically documented in this analysis, the case of the defrocked Orthodox priest who invoked ECtHR case law in his defence was an illustrative example of the Court’s ‘indirect effects’ (Fokas 2015; Koenig 2015). It can be reasonably expected that the Court will have a more ‘direct’ effect on the religious freedom dynamics that we have presented here, especially if the complaints that have already been submitted to the Court result in actual judgements.

## Notes

1. These included the following: Association Assemblies of God in Romania, Association of Baha’i Communities in Romania, Church of Jesus Christ of Latter-day Saints, Religious Organisation Jehovah’s Witnesses – Romania, Romanian Church United with Rome (Greek Catholic), Seventh-day Adventist Church from Romania, Union of Christian Baptist Churches, Union of Gospel Christian Churches.
2. The research underlying this analysis is part of the Grassrootsmobilise research programme (‘Directions in Religious Pluralism in Europe: Examining Grassroots Mobilisations in the Shadow of European Court of Human Rights Religious Freedom Jurisprudence’, [www.grassrootsmobilise.eu](http://www.grassrootsmobilise.eu)), funded by the European Research Council under Grant Agreement No. 338463.
3. Declaration available in Romanian at <http://www.cdep.ro/pls/steno/steno.stenograma?ids=907&idm=1,07&idl=1>, accessed 4 April 2017.
4. The text of the Law is available (in Romanian) at [http://www.cdep.ro/proiecte/2006/000/20/5/leg\\_pl025\\_06.pdf](http://www.cdep.ro/proiecte/2006/000/20/5/leg_pl025_06.pdf), accessed 22 October 2017.

5. The official data concerning the registration procedure for religious associations and the names of the already registered associations is available at [http://culte.gov.ro/?page\\_id=59](http://culte.gov.ro/?page_id=59), accessed 9 October 2017. As we could document from online resources, the great majority of the 30 already registered religious associations are Evangelical churches. In addition, communities that have separated from other churches in the more distant past now have 'religious association' status (e.g. the Reform Movement of the Seventh-day Adventist Church, the Old Calendar Orthodox Church from Romania). Moreover, religious faiths that did not acquire 'denomination' status at the time of the Law's passing also opted for 'religious association' status (e.g. the Baha'i).
6. Document available at <https://www.state.gov/documents/organization/269102.pdf>, accessed 11 October 2017.
7. See, for instance, the report (in Romanian) at <http://ziarulumina.ro/constituirea-consiliului-consultativ-al-cultelor-din-romania-12348.html>, accessed 12 October 2017.
8. See <http://coalitiapentrufamilie.ro/cine-a-initiat-revizuirea-constitutiei-romaniei/>, accessed 12 October 2017.
9. For instance, the daily news media outlet *Gândul* published a series of critical articles about the ROC under the general title 'Godporația', a term coined by joining 'God' and 'corporation' (Rom. *corporația*).
10. This was one of the important themes of a documentary aired in 2016 by the national television channel Antena 3. The video material is available (in Romanian) at <http://inpremiera.antena3.ro/reportaje/dom-dom-sa-naltam-349.html>, accessed 12 October 2017.
11. News material available (in Romanian) at <http://www.mediafax.ro/social/preotii-care-se-organizeaza-in-sindicate-vor-fi-caterisiti-2768320>, accessed 12 October 2017.
12. Take, for instance, the founding of an independent Orthodox Metropolitan gathering under its protection defrocked priests from the ROC. See <http://www.mediafax.ro/social/reportaj-mai-multi-preotii-caterisiti-si-au-facut-biserica-privata-devenita-mitropolia-moldovlahiei-foto-12241826>, accessed 12 October 2017. At the time of our fieldwork, this independent Orthodox Church had the legal status of a 'religious group'. One of its representatives intimated to us that they feel insecure about their future.
13. We sacrifice some of the richness of the social and legal cases that we analyse here both for the clarity of our argument and for protecting the identity of our interviewees, who spoke to us on the condition of anonymity. Suffice it to say that the accusations brought against the defrocked Orthodox priests by the representatives of the ROC after they continued to serve parishioners went beyond that of unlawfully practising the profession of priest. Nevertheless, we follow in each of the empirically documented cases the line of accusation invoking Article 281 of the Penal Code concerning the unlawful exercise of a profession and Article 23(4) of the Law on Religious Freedom concerning the right to practise the profession of priest. This was the most important accusation with respect both to the core of the case and the effects on the freedom to practise religion both in the Orthodox cases we present and in the Lutheran and Reformed (Calvinist) cases.
14. Case description available in the online database of the ECtHR at <https://hudoc.echr.coe.int>.
15. To protect anonymity we cannot provide details on the exact prison sentence.
16. News material available (in Romanian) at [http://adevarul.ro/locale/constantina/cea-mai-mare-moschee-europa-crestina-ridica-bucuresti-detaliile-unui-proiect-urias-propaganda-fundamentalista-1\\_5576fce9cfbe376e35196fc7/index.html](http://adevarul.ro/locale/constantina/cea-mai-mare-moschee-europa-crestina-ridica-bucuresti-detaliile-unui-proiect-urias-propaganda-fundamentalista-1_5576fce9cfbe376e35196fc7/index.html), accessed 11 August 2017.
17. News material available (in Romanian) at <http://www.gandul.info/stiri/dupa-catedrala-mantuirii-in-bucuresti-va-fi-construita-cea-mai-mare-moschee-din-europa-reactie-dura-a-istoricului-djuvara-14524578>, accessed 13 April 2017.
18. News material available (in Romanian) at [http://adevarul.ro/news/eveniment/musulmanii-capitala-putea-avea-sfarsit-cimitir-lor-1\\_50ad50887c42d5a66392d25c/index.html](http://adevarul.ro/news/eveniment/musulmanii-capitala-putea-avea-sfarsit-cimitir-lor-1_50ad50887c42d5a66392d25c/index.html), accessed 14 April 2017.
19. News material from the journal *Cotidianul* available (in Romanian) at <http://www.hotnews.ro/stiri-arhiva-1057690-conflictele-musulmanilor-din-romania-atrag-guvernul-intr-scandal-diplomatic.htm>, accessed 11 August 2017.

20. *Idem*.
21. Interview with the Mufti available (in Romanian) at <http://www.evz.ro/murat-iusuf-muftiu-al-cultului-musulman-din-romania-niciun-turc-sau-tatar-nu-vrea-sa-fi-e-aratat-cu-degetul-daca-se-va-intampla-ceva-in-romania-vremea-intrebarilor-cu-robert-turcescu-exclusiv-premium.html>, accessed 14 April 2017.
22. See proposal draft available (in Romanian) at <http://www.cdep.ro/proiecte/2016/200/50/2/se353.pdf>, accessed 15 October 2017.
23. See document available (in Romanian) at <http://www.cdep.ro/proiecte/2016/200/50/2/pvg353.pdf>, accessed 18 October 2017.
24. Available at <http://www.muftiyat.ro/2016/03/01/29-februarie-2016-centrul-cultural-islamic-al-taqua-din-municipiul-bucuresti-intrevederea-cu-reprezentantii-unor-asociatii-non-guvernamentale-care-isi-desfasoara-si-activitati-religioase-pe-teritor/>, accessed 13 April 2017.

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