

THE RECEPTION OF THE CONSTITUTIONAL RIGHT TO RELIGIOUS FREEDOM IN THE SPECIALIZED LITERATURE

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Abstract: *This paper proposes an exhaustive literature review that discusses how Romanian constitutional law literature can reflect the constitutional right to religious freedom. The authors of these academic resources have been recognized through this research as being the ones who shaped and developed the field of constitutional law, and as those who verified the applicability of the constitutional norms in some concrete cases of their juridical praxis. Another dimension of the interaction was with the thematic literature on religious freedom, a body of literature that results from interdisciplinary approaches. The authors of these books are jurists, theologians, historical sociologists, and others, specialists who have shown concern for this field of research. The methodology used in this paper involved a summary analysis of the specialized literature to identify relevant academic sources, as well as possible gaps in research on the right to religious freedom from a constitutional perspective. This paper aims to inspire current debates and future research in the field of constitutional religious freedom guarantee and protection.*

Key words: *religious freedom, constitutional law, legal literature, Romanian constitutionalism*

1. Introduction

The constitutional law is a branch of public law which, according to legal doctrine, "regulates the constitutional rules on the organization and functioning of the state, public authorities and the guarantee of fundamental human rights". The definitions relating to constitutional law include "the fundamental rights and freedoms of citizens, as well as the relations between state and citizens" as part of the subject matter of constitutional law. Thus, religious freedom is among the constitutionally guaranteed rights. From this perspective, the legal literature of constitutional law should also include in its content the analysis of freedom of conscience and religion. This research will highlight how the topic of religious freedom is reflected in constitutional law literature.

The concern for understanding, guaranteeing, and protecting the right to religious freedom can also be derived from specialized thematic literature, that is, books and articles written on this topic. This type of literature, in general, analyzes religious freedom from various perspectives, such as legal, theological, historical and sociological, or interdisciplinary approaches. In the research conducted, this represents a second category of literature that was examined. The authors of this type of literature are, in general, people directly interested in this field due to their profession and activity. The religious sphere, especially after an intense period of 40 years of communist-atheist propaganda in Romania, did not represent a major area of interest, except mainly for those directly involved in religious activity.

2. Religious freedom in constitutional law literature

Romania has a rich constitutional law literature that reflects, on the one hand, the continuous concern of constitutionalists in explaining and deepening the constitutional doctrine, and on the other hand, it reflects a constant and contextual evolution of the doctrine related to various social and political moments in the country's history.

2.1. Romanian constitutionalists: their writings and particularities

Professors with a rich and valuable activity, as well as reference authors in the field of constitutional law, are considered the following: Antonie Iorgovan (1948-2007), Ioan Muraru (1938-2021), Nicolae Popa (1939-2024), Tudor Drăganu (1912-2010) and Ioan Vida (1946-). Antonie Iorgovan is known as the main author of the 1991 Constitution, being given the title of "father of the 1991 Constitution". He worked as a law professor at the University of Bucharest, being the author of reference books in Romanian legal literature, such as "Treatise on constitutional law (vol. I-II)", a particularly appreciated book.

Professor Ioan Muraru has worked since 1960 as a professor at the Faculty of Law of the University of Bucharest, as well as a judge at the Constitutional Court of Romania (1992-2001) and People's Advocate (2001 – 2011). In the field of law, he is the author of textbooks, courses and monographs and over 100 studies on constitutional law, among which we can mention: "The Constitution of Romania - commented and annotated " (Muraru, 1992), „Romanian Parliamentary Law ” (Muraru, 1994)), "The Constitution of Romania. Commentary on Articles " (Muraru & Tănăsescu, 2024), " Constitutional Law and Political Institutions " (Muraru, 2003), "Liber Amicorum - On the Constitution and Constitutionalism "(Muraru, 2006).

Nicolae Popa was a university professor at the University of Bucharest, where he taught the courses: "General Theory of Law" and "Legal Sociology ". He worked as a judge at the Constitutional Court of Romania (1996-2004), and from 2004 to 2009, he was president of the High Court of Cassation and Justice. Among Professor Nicolae Popa's contributions to legal literature are: "The Constitution of Romania. Knowledge of the State and Law" (Popa, 1979), "Law and Rights " (Popa, 1991), "For a General Theory of the State and Law" (Popa, 2003), "The Jurisprudence of the Constitutional Court and the European Convention on Human Rights " (Popa, 2005), "General Theory of Law (Syntheses for Seminar - 2005)" (Popa, 2005).

Tudor Drăganu was a professor of constitutional law at Babeş-Bolyai University in Cluj-Napoca, being elected an honorary member of the Romanian Academy in 2003. His most important contributions to legal literature in Romania include: " Introduction to the theory and practice of the rule of law " (Drăganu, 1992), " Constitutional law and political institutions " (Drăganu 1995, 1998 edition).

Ioan Vida was a scientific researcher at the Institute of Political Sciences (1971-1977), a law professor at the National School of Political and Administrative Studies, and is currently a doctoral supervisor at the West University of Timișoara. Between 2001 and 2010, he worked as a judge and president at the Constitutional Court of Romania. Among his published books are: "General Theory of Law" (Vida, 2016), "The Constitutional Court of Romania. The Justice of Politics or the Politics of Justice ? Second Edition, Revised and Added " (Vida, 2020), and "Formal Legistic " (Vida, 2020).

Alongside these prominent professors and authors who have significantly marked the evolution of constitutional law in Romania, the specialized literature of the last 30 years has been enhanced by the works of a significant number of constitutionalists, some of whom I have mentioned in Table 1, as well as some of their papers.

Table 1. Romanian professors and constitutional law publications

No.	Name and surname	University	Specialization	Representative books
1.	Corneliu-Liviu Popescu	University of Bucharest	constitutional law and human rights	"Human rights in the jurisprudence of the Constitutional Court of Romania", Hamangiu, 2009.
2.	Elena-Simina Tănăsescu	University of Bucharest	constitutional law	co-author – "The Constitution of Romania. Commentary on Articles", C.H. Beck, 2022; co-author - "Constitutional Law and Political Institutions", 16th

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No.	Name and surname	University	Specialization	Representative books
				edition, Ed. C.H. Beck, 2024; "Constitutional Litigation", C.H. Beck, 2025
3.	Ștefan Deaconu	University of Bucharest	constitutional law	"The Constitution of Romania. Commentary on the Articles", C.H. Beck, 2008;"Constitutional Law", C.H. Beck, 2024.
4.	Verginia Vedinaș	University of Bucharest	administrative and constitutional law	"Dictionary of Public Law - Constitutional and Administrative Law", Universul Juridic, 2009.
5.	Ioan Stanomir	University of Bucharest	comparative constitutionalism	"Freedom, Law and Justice: A History of Romanian Constitutionalism", Polirom, 2005; "Constitutionalism and Postcommunism: A Commentary on the Constitution of Romania", University of Bucharest Publishing House in 2005 Co-author - "Inventing the Constitution", C.H. Beck, 2009
6.	Mihai Bădescu	Bucharest Academy of Economic Studies	constitutional law and general theory of law	"Constitutional Law and Political Institutions". 14th Edition, Ed. Hamangiu, 2021
7.	Marieta Safta	"Titu Maiorescu" University of Bucharest	constitutional law	"Constitutional Law and Political Institutions" Vol. I, 8th revised edition Hamangiu, 2023; Co-author – "Constitutional Litigation Course", Hamangiu, 2020; "Constitutional Justice in the European Union", Hamangiu, 2022; Co-author – "Constitution of Romania. 5th Edition. Updated July 20, 2023", Hamagiu 2023
8.	Marius Bălan	"Alexandru Ioan Cuza" University of Iași	constitutional law	"Constitutional Law and Political Institutions. Vol. 1. General Theory of the State and the Constitution. The Romanian Constitution in the European Context", Hamangiu, 2015
9.	Mircea Criste	West University of Timișoara	constitutional law	"Constitutional Law. A Citizen's Right", Universul Juridic, 2019. "Short Constitutional Itinerary", Universul Juridic Publishing House, 2024
10.	Dănișor, Dan Claudiu	University of Craiova	constitutional law	"Constitutional Law and Political Institutions: General Theory", C.H. Beck, 2007; "Constitution of Romania Commented. Title I. General Principles", Universul Juridic, 2009
11.	Marius Andreescu	University of Pitești	constitutional law	Co-author - "Constitutional Law. General Theory. Fundamental Rights, Freedoms and Duties", 4th edition, Sitech Craiova Publishing House, 2015

The reflection on the constitutional law literature attempted to identify the specific particularities of each specialist. Thus, Professor Corneliu-Liviu Popescu stood out through his contribution to the

theoretical understanding of the Constitution, the application of constitutional norms, and also through his commitment to the constitutional reform effort.

Professor Elena-Simina Tănăsescu has a balanced, interdisciplinary, and profound approach to Romanian and European constitutionalism, being a factor of influence in the debates concerning the rule of law, the revision of the Constitution, and the institutional balance between the powers of the state. The academic contribution of Professor Ștefan Deaconu was noted in the in-depth research on the Constitutional Court, the nature of constitutional control, and the fundamental institutions of the state. Professor Verginia Vedinaș is recognized for her contribution to a clearer and deeper understanding of the relations between the administration and the Constitution. Professor Ioan Stanomir brings the historical perspective and that of political philosophy to the approach to constitutional law.

The academic contribution of Professor Mihai Bădescu was particularly notable in the field of the general theory of constitutional law, arguing for constitutional law as an autonomous branch by affirming specific fundamental dogmas and principles. The experience and expertise in constitutional law of Professor Marieta Safta were reflected in the practical approach to constitutional law topics, with a special emphasis on constitutional control, the functioning of public institutions, as well as in the comparative approach with the constitutional justice of the European Union. Professor Dan Claudiu Dănișor brings to constitutional research and debate the philosophical approach to the general theory of law and the Constitution. The former Prosecutor General of Romania, Professor Mircea Criste, brings a change in constitutional thinking, from a focus on institutions to one focused on the citizen, on rights and values. This does not mean that Professor Criste gives up examining the constitutional norms regulating the organization and functioning of the state or public authorities, but the vision that constitutional law is a means of forming civic consciousness and not just a branch of legal sciences. Professor Marius Bălan's contribution to constitutional law consists in the comparative approach of Romanian constitutional regulations to the norms of the European legal system. Through this approach, Professor Bălan shows that understanding the constitutional norm is possible through a contextual approach. The main contributions of Professor Marius Andreescu concern constitutional jurisprudence, as well as the relationship between national law and international law.

2.2. Reception of the right of freedom of religion and conscience in the constitutional law literature

In the constitutional literature, we note a slightly imbalance regarding the analysis of the subjects that explore the regulatory object of constitutional law, such as the organization and competences of the public authorities and the relations between the public authorities, compare with texts which analyze the fundamental rights and freedoms of the citizens, and the relations between the state and the citizens.

So, one cannot speak of a total ignorance of the subject of religious freedom in the specialized literature, but only of a reduced research on this topic.

However, there are also a few books that refer explicitly, and in a more extensive study, to the constitutional right to religious freedom. Some of these academic works can be mentioned, such as: "Constitutional Law. A Citizen's Right" (Criste, 2019), „Constitutional Law. General Theory. Fundamental Rights and Freedoms" (Nicolau, 2022), „Freedom, Law and Justice: A History of Romanian Constitutionalism" (Stanomir, 2005), "Human Rights in the Jurisprudence of the Constitutional Court of Romania" (Popescu, 2009).

Mircea Criste's Professor's perception of constitutional law is simply reduced to a citizen's right. In this sense, he portrays constitutional law as a relational right as well as a substantial right. As for freedom of conscience, it is seen following the general idea of the book, namely as an integral part of the fundamental freedoms of any citizen, that is, part of what he calls "substantial right" (Criste, 2015). Ingrid Nicoulau treats religious freedom in the section in which she analyzes fundamental

rights based on the explanations of article 29 of the Constitution, not as an isolated right, but rather the relationship between religious freedom and other rights. Professor Ioan Stanomir critically analyzes what freedom means in the Romanian context, being an adherent of the principles of liberal society, and this perspective gives him a particular understanding of religious freedom, considering that it is central to liberal thinking and Western constitutional traditions (Stanomir, 2005). In other words, we can deduce that what Professor Stanomir is saying is that religious freedom is the heart of other freedoms. Stanomir is the one who has a critical approach towards constitutional formalism, that is, the discrepancy between the constitutional text and its application in political, legal, and social reality. Thus, during the communist period, religious freedom was just a formula devoid of content. In Professor Popescu, Corneliu-Liviu, we can notice some particularities regarding religious freedom, namely religious neutrality, mainly based on the jurisprudence of the European Court of Human Rights (Popescu, 2009), as well as the danger of state abuse towards religions, as was the case with the confiscation of church property.

This overview of the literature on constitutional law leads to the conclusion that we have in Romania a rich and diverse bibliography of constitutional law, but it is much more directed towards analyzing public authorities and the relationship between the citizen and the state, and less towards exploring the rights and freedoms of the citizen. A possible explanation for this would be the communist philosophy and the communist regime which, contrary to the claims and emphasis on the "working class", the state was central, and the will of the state leadership, and the common good, understood of course as what is good for the Communist Party and its leaders, was above the personal desires of the citizens. Individual freedoms were to be subordinated, even annihilated, to efforts to build a socialist society. It seems that the trend in legal scholarship, especially constitutional legal scholarship, is moving more and more towards giving greater weight in current analysis and debate to fundamental rights and freedoms, including religious freedom.

3. Thematic literature on religious freedom

Religious freedom has become a concern in Romania, in the post-communist period, not only for lawyers but also for experts in other fields. Some of these writings will be reviewed in this section.

Among the first Romanian authors to write about religious freedom, immediately after the December 1989 Revolution, was Ilie Fonta, former presidential advisor (1992-1995) and secretary of state for religions (1995-1996). In the book "Religious Freedom in the Contemporary World," published in 1994 by Stephanus Publishing House, Professor Fonta introduces the Romanian public to documents and specialized analyses on religious freedom. UN documents on religious freedom, provisions of the constitutions of some countries regarding freedom, religious legislation and normative acts from different states, and various topics regarding the manifestation of the right to religious freedom are presented. The basic thesis of this writing was to argue for the need for religious life in Romania to be regulated not only constitutionally, but also through a law on religions. The context of the appearance of this book must be taken into account, namely, the beginning of the debates between the representatives of the religions and the Secretariat for Religions regarding the elaboration of a new law on religions. A new work by the same author appeared in 1998 in Cluj-Napoca, the book "Religious Freedom in Romania". The book has a theoretical approach to religious freedom, but also a contextual one, making direct reference to the themes of the debates that took place in Romania at that time and the regulatory situation of religious life. Professor Fonta also refers to the writings of the sociologist Constantin Cuciuc, who in the early 1990s published books on the sociology of religions. Ilie Fonta also published the article "Religious Freedom and Orthodoxy" (Fonta, 1999)

At the beginning of the 2000s, one can note, among other publications, the book by Mihai Pătrășcanu, "Human Rights and Religious Freedom in Romania" published by ALL Publishing House, Bucharest, in 2001. Pătrășcanu is a Romanian jurist who has shown concern for human rights, especially for the right to religious freedom. In the book, he analyzes and compares national

regulations on human rights and religious freedom with international standards in the same field. Of course, within this analysis, the relationship between the state and religious cults is examined, noting both the progress achieved in the last ten years and the existing and potential challenges regarding religious freedom in a society undergoing democratization.

A book written from an interdisciplinary perspective, theology and law, is "Religious Freedom in Romania", published in 2006 by the Romanian Academy Publishing House by Professor Ioan Ică Jr., son of Professor Ioan Ică. In this book, religious freedom is approached from a historical, legal, and theological perspective, analyzing how it was perceived by Romanians in various historical periods. Of course, the author cannot fail to examine the relationship between the state and the church, as well as the legislative framework regarding religions in Romania. All this foray led to conclusions regarding the challenges existing up to that point in Romania, as well as the importance of interfaith dialogue and respect for human rights.

In 2003, Florin Buhuceanu published under the University of Bucharest, "The State and Religions in Romania", an academic study in which the relationship between the state and religious cults in the post-communist period is analyzed, emphasizing the need for an open dialogue between the state and the various religious and minority communities. Buhuceanu, a former theologian, president of the ACCEPT association, is a human rights activist, especially for the rights of sexual minorities. This work has been quite often maintained in specialized studies.

University professor Verginia Vedinaș, a specialist in public administration and constitutional law, published in 2003 at Lumina Lex Publishing House the book "Freedom of Religious Beliefs". The book addresses topics such as: the historical evolution of religious freedom in Romania; the constitutional and legal framework of freedom of conscience and religion; the relationship between the state and religious cults; and aspects regarding the rights of religious minorities. This interdisciplinary perspective on law, administration, and religious freedom is extremely valuable for an exhaustive understanding of the subject.

The article "Religious Freedom Between Pluralism and Secularism" by Mihai Maci, published in the magazine Dilema Veche in 2013, discusses the so-called "tensions" and "balances" between religious freedom, confessional pluralism, and the principle of secularism in a democratic society. For example, Maci investigates how the state could guarantee, without any privilege or discrimination of any cult, religious freedom, and at the same time maintain neutrality towards the religious beliefs of citizens. The author works as a university lecturer at the Department of International Relations and European Studies of the University of Oradea.

The book by Ben-Oni Ardelean, associate professor at the Baptist Theology Faculty of the University of Bucharest, entitled "Religious Freedom: A Normative Approach", which appeared in 2011 at the Didactic and Pedagogical Publishing House, is a complex academic investigation of the concept of religious freedom presented in a legal, political and theological perspective. The author advocates a normative approach, that is, one that not only investigates to what extent religious freedom is applied, but also how it should be guaranteed and respected in a pluralistic democratic framework. In this work, Ben-Oni Ardelean offers an important contribution to the field of Romanian specialized literature regarding religious freedom. He manages to combine both theoretical analysis with practical and applicative perspectives, as well as critical discourses or debates. His book is also addressed to theologians, jurists, political scientists, or those interested in the relationship between religion and state in a democratic society.

The article "Religious freedom and the right of religious freedom" by Nicolae Drăgușin was published on December 11, 2024, in the magazine Dilema veche. The text represents a review and theological reflection of the volume "Prayer, a political problem" by Jean Daniélou, which was translated into Romanian. The author demonstrates that the "earthly fortress" — the social and political space — must allow the exercise of religious freedom, not only as a formal right, but also as a living reality that allows faith to affirm its existence in public life.

The book " Religious Freedom Between Politics and Policies: A Political Analysis of International Standards, National Legislation and Government Practice in the Pandemic" by Cătălin Raiu was published in 2021 by Doxologia Publishing House. As the title suggests, the work provides a detailed analysis of the impact that religious freedom has suffered in the context of the COVID-19 pandemic, addressing international standards, national law, and government practices. In a sense, this book is about how well-established religious freedom is in being able to cope with difficult contexts. Cătălin Raiu is a lecturer at the Faculty of Administration and Business of the University of Bucharest.

Thus, what can be seen from the brief interaction with the Romanian post- communist literature on freedom of conscience and religion is that this has become a field that arouses an interdisciplinary concern that has brought together contributions from law, theology, sociology, and political science. Among the authors are Ilie Fonta, Mihai Pătrășcanu, Ioan Ică Jr., Verginia Vedinaș, and Ben- Oni Ardelean, who have analyzed both the provisions of national and international legislation, as well as the state-cult relationship and the challenges of democratization. Recent works, signed by Cătălin Raiu and Nicolae Drăgușin, mainly deal with freedom of conscience in crisis contexts and the pluralistic public space, expressing at the same time the need to preserve this fundamental right within a robust democratic framework.

The book " Freedom of Conscience and Freedom of Religion. The legal regime of religious organizations in Romania. Legal norms, case law, considerations and evaluations " by Dragoș Penca, published in 2024 by Editura Universitară, is a reference book in the field of Romanian religious law. The work is structured in six thematic chapters, preceded by a theoretical introduction that details the objective of the study: the analysis of how, from the perspective of Romanian law and jurisprudence, the fundamental rights related to freedom of religion and conscience are respected. Relations between the state and religious cults are discussed, including the autonomy of cults, material and fiscal support and constitutional implications. The book examines the process of official registration of religious denominations, the legal status of clerical staff, the regime of church property, religious education, including in denominational institutions

4. Conclusions

In practice, it is clear that the analysis of fundamental rights and freedoms from a constitutional perspective cannot be avoided as long as they exist in constitutions. The section on rights and freedoms effectively became part of the structure of constitutions at the end of the 18th and beginning of the 19th centuries, and the reason for such integration into constitutional texts seems to be the influence of the ideas of the Enlightenment regarding individual freedom, natural rights and the role of government. Of course, this period coincides with the emergence as part of the structure of constitutional law training programs, as well as constitutional law chairs, such as: 1789–1790 in America - the first constitutional law course taught by James Wilson; 1797 in Ferrara, Italy; 1834 in Paris, France; 1864 in Romania - the publication by Professor A. Codrescu.

Religious freedom is one of the fundamental human rights guaranteed constitutionally, but which remains insufficiently researched in the Romanian constitutional law literature. Although the Romanian legal doctrine is vast and varied, the analysis of civil rights and freedoms – especially freedom of conscience and religion – is treated secondary to the themes of state organization. Publications in interdisciplinary fields welcome a new approach regarding the importance of this right in a democratic and pluralistic context. This highlights the need for increased research and activity on religious freedom at the constitutional level, not only through the theoretical study of this right, but also through the analysis of its application in practice and in jurisprudence. Such a type of research is not only a key point for the formation of a balanced constitutional doctrine oriented towards the effective protection of citizens' fundamental rights, but is also indispensable

Religious freedom is one of the fundamental human rights guaranteed constitutionally, but it remains insufficiently researched in the Romanian constitutional law literature. Although the Romanian legal

doctrine is vast and varied, the analysis of civil rights and freedoms, especially the freedom of religion, it seems like a secondary theme in the concerns of researchers. In contrast, publications in interdisciplinary fields show a higher concern and appreciation towards this right and thereby reveal its importance in the achievement of a democratic and pluralistic society. This highlights the need for more study of religious freedom from a constitutional angle, but not only in theoretical analysis, but also in exploring its institutional effects and its jurisprudence. This type of research is necessary due to the need for doctrinal balance in constitutional law, but also because a better understanding of this right will lead to its more effective protection.

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