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**FACULTY OF LAW**

**Legal developments on the rights of the child to freedom of thought, conscience and religion and non-discrimination in Romania**

**PhD Thesis**

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## PhD Thesis Summary

Does the child have the right to freedom of thought, conscience and religion? Is this right regulated (and therefore recognized) internationally? Is this child's right guaranteed and respected in Romania? Does the state - through its institutions and authorities, including the courts - provide adequate protection for children on international standards? Are these standards applied in Romania?

In an attempt to answer these questions, the Thesis “Legal developments on the rights of the child to freedom of thought, conscience and religion and non-discrimination in Romania” is designed and structured to follow the legal evolution on guaranteeing and respecting of the two rights enunciated in the title, from 1990 - the year in which religious education as a confessional matter, was introduced in public schools in Romania - until now. The three parts of the paper (to which I added an intermediate chapter) followed clearly outlined stages.

The first part of the Thesis analyzes the evolution of the regulation of the right to freedom of thought, conscience and religion from the perspective of international human rights law, with particular reference to the child's right to religious freedom. I presented the international instruments on children's rights, the stages and debates in their development and adoption and the mechanisms for their implementation and monitoring.

This part, entitled *The Right of the Child to Religious Freedom*, is structured in 5 chapters: The Rights of the Child, International Documents on the Right to Freedom of Thought, Conscience and Religion, UN Committee on the Rights of the Child, The Right of the Child to Religious Freedom.

Declarations, recommendations, general comments and principles adopted and recognized at international level contribute to the understanding, implementation and development of international law.

Compared to the first international act on children, the *Declaration of the Rights of the Child* - or the *Geneva Declaration* - adopted by the League of Nations in 1924, which contained a series of proclamations, expressed in the 5 points of the document, as guidelines and not binding on states that may or may not accede to these declarations, the *UN Convention on the Rights of the Child* - the main document I referred to in the Thesis - recognizes and protects the child as a subject of law in the cultural, social, economic, political and civil law and regulates the exercise of rights in a manner consistent with the child's evolving capacities.

Specifically, the first part of the Thesis investigates the child's right to freedom of religion and conscience: is the child the subject of this right? Is this right enshrined, *i.e.*, protected? Can the child exercise this right, and if so, at what age?

If the exercise of this right is limited by the religious community or by the child's parents, does the state have the right/obligation to intervene? A special theme - on which the Thesis focuses, especially in the third part (referring to Romania) - is the extent to which compulsory education ensures the rights of the child to freedom of conscience and religion and to non-discrimination (in connection with the first right mentioned). Through the examples offered and by presenting the situation regarding the religious education in the public educational units in Romania, the Thesis starts, in the first part, from this topic and resumes it extensively in the 3rd part.

Trying to answer these questions, I analyzed international acts, with reference to the child's right to religious and freedom of conscience, and the child's right to non-discrimination on grounds of religion and conscience. I used the documents of the UN Committee on Human Rights and the *UN Committee on the Rights of the Child*.

International instruments on human rights, prior to the *UN Convention on the Rights of the Child* which were the *International Covenant on Civil and Political Rights*, *International Covenant on Civil, Economic and Social Rights*, *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, *Additional Protocol to the European Convention on Human Rights*, *UNESCO Convention on Combating Discrimination in Education*, *Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights* - enshrines the right of parents to educate and teach their children in conformity with their own beliefs.

Traditionally, the attention of international law was focused on the obligation of the state to respect the religious and philosophical beliefs of parents in the education of their children (art. 18, pt. 4 of *the International Covenant on Civil and Political Rights*, art. 13, pt. 3 of *the International Covenant on Civil, Economic and Social Rights*, Article 5 of the *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, Article 2 of *the Additional Protocol to the European Convention on Human Rights*, Article 5, para. (1) (b) of the *UNESCO Convention on Combating Discrimination in Education*, Article 13 (4) of *the Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights*).

*The Convention on the Rights of the Child* – "the most widely ratified human rights treaty in history" - recognizes the child as a subject of law and introduces principles such as "the best interests of the child", or "the child's evolving capacities". The power of parents to educate and guide their children according to their own religious or philosophical beliefs decreases with the increase of the child's own comprehension abilities. The emphasis of the *Convention* shifts to the rights of the child, to the pursuit of the best interests of the child, which is considered paramount. Such an interpretation is given by the very text of the *Convention* by art. 3, 5, 12 and 14.

The obligation of States Parties to respect the right of the parents to guide the child is determined by two preconditions: the guidance must take into account the child's evolving capacities and the guidance must not be so overwhelming as to lead to coercion. (which, in connection with the right to religious freedom, is prohibited by *the International Covenant on Civil and Political Rights*).

Based on the previous international provisions, which protect the right of parents to educate and teach their children according to their own convictions, *the Convention* brings the child in the plan of recognition and protection of rights, regulating the exercise of rights individually, gradually, as they age, not to put the child in opposition to his parents, but in order to acquire individual autonomy, as the best interest of the child. According to the standards of *the Convention*, parents guide their children in exercising their rights, in their best interests, in a way that responds to their evolving capacities. In case of non-respect of children's rights by parents, the state has the obligation to intervene for the good of the child, in order to ensure the best interests of the former.

The child has the right to religious freedom, separate from the idea of autonomy, thus children do not necessarily have the power to exercise this right. On the other hand, when they reach a certain age - during childhood - they can exercise this right on their own.

Thus, the child has primarily negative rights against the state, which has the obligation not to interfere in the relationship between children, parents and the religious community, but also in the child's decision to leave the religious community. In addition, the state should not adversely affect the child's attributes, such as religious identity, food, or certain rituals related to language or customs.

Second, the child has positive rights against the state: the protection of his right to religious freedom (the right to be protected against unwanted interventions, *e.g.*, from the

parents or from the religious community). The child also has procedural rights, which are especially relevant with regard to judicial and administrative proceedings. The child is also entitled to material benefits from the state, especially in connection with education.

The second part of the thesis, entitled *European Protection of the Right of the Child to Religious Freedom*, examines European instruments on the protection of human rights while trying to highlight the possibility of exercising these rights in the case of children, where children's rights are not enshrined or explicit taken into account in European acts, namely in the case law of the European Court of Human Rights (ECtHR), with particular reference to the rights of the child to freedom of thought, conscience and religion and to non-discrimination.

This part consists of 6 chapters: Recognition and protection of human rights in Europe, General aspects of the jurisprudence of the ECtHR that are incidental to the thesis, Recognition of children's participatory rights, Jurisprudence of the ECtHR on religious indoctrination under the umbrella of the state, Jurisprudence with reference to the wearing of religious clothing or the display of religious symbols, in public schools, Enrollment in the study of Religion.

Human rights are guaranteed in Europe by the Council of Europe's system of legal protection - the *European Convention on Fundamental Rights and Freedoms (European Convention)*, adopted on 04.11.1950 - and by the European Union (*Charter of Fundamental Rights of the European Union*, which entered into force by the *Treaty of Lisbon* on December 1, 2009). The fact that all Member States of the European Union and the Council of Europe have ratified *the UN Convention on the Rights of the Child* gives this international instrument an important position at European level.

The first human rights treaty, ratified - with and without reservations - by all 10 member states of the Council of Europe on that date, *the European Convention on Human Rights* - promoted as a "constitutional instrument of European public policy" - contains a list of civil and political rights (provided for in the *Universal Declaration of Human Rights*) and an international mechanism for monitoring if these rights are followed, represented by the European Court of Human Rights. *The European Convention* was supplemented by the 16 Additional Protocols and evolved through the interpretations offered in the case law of the ECtHR. In addition to judgments, the Strasbourg Court may also issue advisory opinions at the request of the supreme courts of the States Parties (Article 1 of *Additional Protocol No. 16 to the European Convention*, 2013). The judgment of the Court of Justice shall be enforced by the Committee of Ministers of the Council of Europe.

*The European Convention* explicitly refers to children in art. 5, paragraph (1) point d. and in art. 6, but both references concern legal proceedings. Also, in art. 2 of *Protocol no. 1 of the Convention*, provides the right to education and the obligation of the state to respect the right of parents to ensure the education and teaching of children according to their religious and philosophical beliefs. Also relevant for children are articles 3 and 8 of the *European Convention*, which prohibits torture, inhuman or degrading treatment and punishment, and guarantees the right to respect for private and family life.

*The European Social Charter* contains a number of specific references to children: Part I, point 7 (children's right to special protection against physical and moral dangers), Part II, art. 7 (the right of children and young people to protection, regarding working and employment conditions), art. 8 and 17 (which refer to the social economic measures, direct or indirect, necessary for the protection of the child).

Starting from the premise that one of the main tools for transforming social values and influencing children's behaviors are the courts, I analyzed the jurisprudence of the ECtHR on children's rights, an analysis all the more important as in some states of the Council of Europe, the legislation did not support (does not support) the fundamental social norms underlying children's rights.

Among the ways to exploit the potential of the *European Convention on the Human Rights* to protect children is to combine the almost universally accepted standards of children's rights set out in the UN Convention on the Rights of the Child with the European system of individual petitions.

Although it does not provide a uniform interpretation of the application of the provisions on the rights of the child, in its analysis of the applications with which it has been invested, on a case-by-case basis, the ECtHR has strengthened a jurisprudence dealing with children's rights, including frequent referrals to *UN Convention on the Rights of the Child*.

The chapter on the participatory rights of children presents the jurisprudence of the ECtHR with reference, *inter alia*, to the right of children to freedom of conscience and religion (art. 9 of the *European Convention*) - sometimes in connection with the right to non-discrimination (art. 14) - education (Article 2, first sentence, of *Additional Protocol No 1*) and the right of parents to provide education for their children according to their own values (second sentence of the same article), in cases such as: *Dahlab v. Switzerland*, *Kurtulmuş v. Turkey*, *C.J., J.J. and E.J. v. Poland*, *A.R. and L.R. v. Switzerland*, *Mansur Yalçın and others v. Turkey*,

*Philip Williamson and others v. United Kingdom, Zenon Bernard v. Luxembourg, Dogru v. France, Esma-Nur Kervanci v. France, Folgerø and others v. Norway, Grzelak v. Poland, Hasan and Eylem Zengin v. Turkey, Kjeldsen, Busk Madsen and Pedersen v. Denmark, Lautsi v. Italy, Papageorgiou and others v. Greece, Angeleni v. Sweden, Alexandridis v. Greece.*

The jurisprudence analyzed shows that in the system of the *European Convention* two levels of protection of children's rights were used in the education process.

The first level refers to the prohibition of religious indoctrination of children in public schools, contrary to the religious or philosophical beliefs of their parents (Article 9 of the *European Convention*, interpreted in the light of Article 2 of *Additional Protocol No. 1*), in cases such as: *Angeleni v. Sweden, Hasan and Eylem Zengin v. Turkey, Lautsi v. Italy, CJ, JJ and E.J. v. Poland.*

The second level of protection concerns the relationship between children and parents in cases of conflicts of rights between these two categories of legal subjects, cases in which the ECtHR has used, as a principle of interpretation, the best interests of the child in cases such as: *Philip Williamson and others v. United Kingdom, Zenon Bernard v. Luxembourg.*

It also distinguishes between limiting religious manifestations in public schools in order to provide children - even against the wishes of their parents - their own conditions necessary for the development of personality and mental abilities, but also for physical development and health (in cases such as: *Dogru v. France* and *Kervanci v. France, Kjeldsen, Busk Madsen and Pedersen v. Denmark*), respectively in order to protect the other beneficiaries of the educational process (*Dahlab v. Switzerland, Leyla Şahin v. Turkey*).

From the jurisprudence of the ECtHR (in the few cases analyzed) we have drawn some conclusions regarding the Court's reporting on the rights of the child.

First, the Court declared admissible and examined on the merits cases in which the applicants were (also) children. Moreover, in the *Grzelak v. Poland* case, the Court declared the complaint admissible only for the child - aged 11 at the time of the referral to the Court - and not for his parents.

In cases where the child's opinion was heard in the domestic forum by administrative bodies and/or judges, in the States against which the request was made, the Court emphasized the importance of hearing the child's opinion. The Court sometimes allowed the child's application in opposition to his or her parents, or to one of the parents.

The cases examined, concerning the observance of the child's right to freedom of conscience and religion, lead to three subsequent conclusions: in some cases the Court preferred to examine the application from the perspective of parents' right to educate and teach their children according to their own convictions, as in the case *Lautsi v. Italy* (in both Chambers), or in *Hasan and Eylem Zengin v. Turkey*, in others it considered the child's right to non-discrimination (in relation to the right to freedom of conscience and religion) - *Grzelak v. Poland* -, or rejected the applicant's (teacher's) request, arguing that the impact that wearing an Islamic veil may have on the freedom of conscience and religion of very young children may have the effect of proselytizing, as in the *Dahlab v. Switzerland* (argument also upheld in the First Chamber but rejected in the Grand Chamber in the *Lautsi* case), and in others it rejected the parents' request for the right to freedom of conscience and religion and the right to educate and instruct their children according to their own religious values, as decided in *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, in favor of the right of children to sex education.

In none of the cases analyzed did the ECtHR invoke, in defending the rights of the child, the provisions of the *UN Convention on the Rights of the Child*, with regard to the child's right to freedom of conscience and religion - a right which one acquires as evolving capacities, up to the age of 18 - although he used this tool in support of other children's rights, in other cases.

As a general principle, the ECtHR has stated that the standards that all states must meet in the realization of children's rights are set out in the *UN Convention on the Rights of the Child*.

Instead, the analyzed cases confirm the fact that the provisions of Article 9 of the *European Convention on Human Rights* also applies to children. However, in the case of *Lautsi v. Italy*, the Grand Chamber not only did not analyze the request also from the perspective of the rights of the two appellant children with reference to the provisions of art. 9 (the right to freedom of conscience and religion) - in the opinion of the Grand Chamber "there is no separate issue regarding art. 9"-, but did not even lean on their right to education, mentioned in the first sentence of art. 2 of *Protocol no. 1* (article which the Court examined only with reference to the right of parents to educate their children according to their own values, a right which it considered the *lex specialis* in question).

By the interpretation I support during the Thesis, the new regulation given by paragraph (2) of art. 14 of the UN Convention on the Rights of the Child is a *lex specialis* compared to the provisions of art. 2 of the *Additional Protocol* and previous international provisions (Article 18 of the *International Covenant on Civil and Political Rights*, Article 13 of the *International*



*Covenant on Economic, Social and Cultural Rights*, Article 5 of the *Declaration on the Elimination of All Forms of Intolerance based on Religion and Beliefs*).

It remains that in cases that the Court will have to judge in the future, the application of Article 9 of the *European Convention*, together with Article 14 of the UN Convention on the Rights of the Child, will complete the initial interpretation of art. 2 of *the Additional Protocol to the Convention*, if the right to religious freedom of the child - consistently recognized by the application of the principle of the child's evolving capacities - conflicts with the right of parents to educate children according to their own convictions, and the best interests of the child should prevail.

If, as it is clear from the jurisprudence of the ECtHR on other children's rights, the state has an obligation to defend their rights against third parties (including parents), why should it not also have this obligation with regard to the protection child's right to freedom of conscience and religion (according to his or her evolving capacities) against religious communities or their own parents? The hypothesis is all the more justified as this right, on the one hand, is recognized by the *UN Convention on the Rights of the Child* - ratified by all member states of the Council of Europe - and on the other hand, with regard to education, it is recognized, by the same instrument in a new, specific way of interpretation.

*The International Covenant on Civil and Political Rights* (and the other international instruments cited before) refers to "the freedom of parents to ensure the religious and moral education of their children in accordance with their own convictions" while the *Convention*, a recent international instrument, specially developed to guarantee the rights of the child, it mentions "the rights and duties of the parents to provide guidance to the child in exercising his/her right to freedom of thought, conscience and religion in a manner consistent with the child's evolving capacities".

Through researching the jurisprudence of the ECtHR, I also sought to identify a model of interpretation that could be used in the analysis of children's rights to freedom of thought, conscience and religion and non-discrimination. Such a theoretical model, offered in the literature in the comments on *Lautsi v. Italy* (tried by the Grand Chamber of the ECtHR), was used in Part III of the Thesis, in discussing children's rights in Romania.

After presenting and discussing the cases of the jurisprudence of the ECtHR, with reference to the rights of the child, I analyzed some of the cases judged by the Supreme Court of the United States of America, with reference to children's right to freedom of thought,

conscience and religion. I have thus watched how different states have developed their own child protection systems and how national legislation and jurisprudence (of the United States of America`s courts) meets the values of *the UN Convention on the Rights of the Child*. The American system is all the more relevant as the United States has not ratified *the UN Convention on the Rights of the Child*.

In the third part, *The right of the child to religious freedom in Romania*, I started from the observation that the main partners in education are children and from the fact that the rights of the child to freedom of thought, conscience and religion and non-discrimination are often neglected in the national system of education. I have, for the most part, synthesized investigations on the exercise of the rights of children enrolled in this system and sought if it respects the rights of children in public schools, of their parents, of older students and teachers, to freedom of thought, conscience and religion and equal treatment before the law.

As in the first two parts of the Thesis, the main instrument used is *the UN Convention on the Rights of the Child*, with reference in particular to articles governing non-discrimination, the best interests of the child, the child's right to freedom of thought, conscience and religion, the child right to education, respectively the purposes of education.

Taking as a reference the international regulations on children's rights and the standards established in the jurisprudence of the ECtHR in application of the European Convention on Human Rights, I analyzed the way in which children's rights to freedom of conscience and religion and non-discrimination are respected in Romania. since 1990. The analysis, conducted on two levels, *de jure* and *de facto*, aimed not only at regulating the stated rights, but also at how public authorities, courts, the Romanian Constitutional Court and civic actors respected or have protected/promoted these rights. The civic approaches and the confrontation of ideas that accompanied them, led to a legal evolution of interpretations and even led to new regulations - at ministry and legislative level - regarding the application of the two rights.

In the investigation described in detail in this part I looked at whether or not the standards set by the Strasbourg Court are respected in Romania, on the two levels of protection of children's rights in education, used in the system of the *European Convention on Human Rights*: banning indoctrination religious rights of children in public schools, *i.e.* the protection offered in the event of conflicts between the rights of children and parents – *e.g.*, the right of children to education, including sex education, as opposed to the right of parents to educate and teach their children according to their own religious beliefs --, a situation where the principle

of the best interests of the child, which is of paramount importance, is invoked in accordance with the requirements of the *UN Convention on the Rights of the Child*.

Do the state authorities, in Romania, respect the rights of children to equal treatment and to freedom of conscience and religion? In the 5 chapters of the third part - *Regulation of religious education in public schools in Romania, Registration of children for the study of Religion, Adoption and application of Decision no. 669/2014 of the Constitutional Court, Officiant of religious services in public schools, Discrimination of children by grading the discipline of Religion and The presence of religious symbols in public schools in Romania* -, I analyzed each of the topics that generated legal developments on children rights to freedom of thought, conscience and religion and non-discrimination in Romania after 1990. The analysis includes the presentation of civic actors regarding the promotion and respect of the two rights of children and the reaction of state authorities, religious denominations and religious organizations.

In the analysis carried out in this part, with reference to the religious manifestations in the public educational units, I considered the three directions from the test outlined by the Grand Chamber of the ECtHR in *Lautsi v. Italy*, whose fulfillment ensures the state a considerable margin of appreciation to determine whether the presence of religious symbols in public schools is permitted: whether the religious symbol is associated with the compulsory teaching of (Christian) religion and, in particular, whether it "encourages the [development] of proselytizing teaching practices"; whether the school environment is "open ... to other religions", so that schools host a variety of religious practices, if parents "fully retain" the right "to instruct and advise" their children, to perform their "natural functions" educator "and to" guide [children] according to "their philosophical beliefs." Thus, the Grand Chamber argues that if provided these conditions are met, states enjoy a considerable margin of appreciation in determining whether the presence of religious symbols in public schools is permitted.

Are the three conditions, set by the Grand Chamber of *the* ECtHR, met in (public schools in) Romania? In order to answer this question, in the chapters of the third part I presented the evolution of approaches and regulations regarding children's rights to freedom of conscience and religion - and, in the alternative, of parents to educate and teach their children according to their own values - and non-discrimination in public schools in Romania.

To what extent do the state authorities in Romania respect the rights of children to equal treatment and to freedom of conscience and religion? If it is notified and ordered to remedy the

situations in which these rights have been violated, does the state exercise a positive obligation to create rules or to take the necessary protection measures? For example, does the state respect the child's right to be protected against practices harmful to the child's life or health? Does Romania comply with the provisions of *the UN Convention on the Rights of the Child*, in the field chosen for research? Does Romania have a coherent and viable system for the State-Church relationship (inclusive) in this aspect, of respecting children's rights and their best interests? And if so, is this system working?

In order to be able to answer these questions, we first outlined the directions of analysis. The teaching of (confessional) religious education in public schools in Romania has raised problems on several levels: the adoption of normative or administrative acts which introduced the discipline of Religion, the acceptance/imposition of religious proselytism in public schools (manifested by displaying religious symbols in classrooms during the teaching of compulsory subjects, but also in chancelleries or school halls, the construction of chapels or churches inside schools, the officiating of services or other religious services at the beginning and during (or at the end of) the school year), enrolling children *ex officio* for the study of Religion, respectively the obligation to enroll them for more than one school year, contrary to legal and constitutional provisions, non-compliance with constitutional and legal provisions regarding enrollment of children for the study of religion, calculating the general average taking into account grades one obtained to Religion.

During 5 chapters - *Regulation of religious education in public schools in Romania, Adoption and application of Decision no. 669/2014 of the Constitutional Court, Officiating religious services in public schools, Discrimination against children by grading the discipline of Religion and The presence of religious symbols in public schools in Romania* -, I analyzed each of these topics.

The first chapter, *Regulation of religious education in public schools in Romania*, is designed to apply the principle developed by the ECtHR in its jurisprudence, that of weighing interests, to create a balance between the competing interests of children, parents and public order. In assessing the margin granted to States, the best interests of the child must be a primary consideration, which may prevail over that of the parents, in the circumstances specific to the cause.

In Romania, the introduction of the study of religion, as part of school education, has not been regulated as a result of the request of children or parents in the exercise of their rights

to freedom of conscience and religion. The Church, especially the Romanian Orthodox Church (ROC), directly, or through representatives employed in the central public authorities, managed to determine the Ministry of Education (ME), or the Parliament, to issue or adopt administrative or normative acts for the benefit of the Church and (in most cases) to the detriment of the best interests of the child, contrary to the provisions of the *UN Convention on the Rights of the Child*. The interest that mattered to ME was that of the Church, to the detriment of children's rights.

Given that the Romanian Parliament and (especially) the Ministry of Education have regulated the introduction of this discipline and the methodology of organizing and teaching it for the benefit of ROC (at the latter's request), the main role in respecting the rights of children and their parents to freedom of conscience and religion and to non-discrimination, it was held by civil society. The steps initiated and carried out by non-governmental organizations, often involving courts, or the Constitutional Court, led the ME to change, or apply administrative or legal regulations, in accordance with the principles set out in international instruments on children's rights and the provisions of *the Romanian Constitution*.

On the one hand, at the proposal of ROC, the central public authorities (Parliament and the Ministry of Education) regulated the introduction and teaching of the discipline Religion according to the requests of ROC, in its interest. On the other hand, the courts and the Romanian Constitutional Court have ruled that the regulations are illegal and unconstitutional, respectively. The administrative and normative acts and the decisions of the RCC, regarding the enrollment of children for the study of Religion, had as subject of law the parents of the children. In their efforts, non-governmental organizations have invoked the rights of children and their best interests. The Buzău District Court, in its 3 judgments, also took into account this subject of law.

Chapter *Enrolling Children for the Study of Religion. Adoption and application of Decision no. 669/2014 of the Constitutional Court* -- structured in two subchapters, depending on the periods pursued -- investigates the influence of some social actors on the process of application of Decision no. 669/2014 of the Romanian Constitutional Court which changed the methodology for enrolling students for the study of religion in the public education system in Romania.

I presented, over a period of several years - November 2014 - January 2020 - how, on the one hand, the right to equality before the law in relation to children's rights to freedom of conscience and religion and education are negotiated, prejudicing their superior interest, by the

ROC and the fundamentalist religious organizations with the Ministry of Education. On the other hand, the efforts of non-governmental organizations campaigning for the separation of church and state are highlighted as an essential principle in promoting children's rights in public schools. Following the thread of pressures exerted in favor of ROC and to the detriment of the best interests of children in public schools, the chapter investigates how several social actors were involved in the implementation of *Decision no. 669 of the Romanian Constitutional Court*, or to prevent the *de facto* transposition of the provisions of this decision, between November 2014 and September 2020.

The first subchapter covers the period November 2014 (when the Constitutional Court Decision was adopted) - March 2015 (when the period, granted by the ME for submitting applications for the study of Religion, following the provisions of the Constitutional Court Decision, ended). During this period, the ROC, the Minister of Education and some officials from the ME, prepared the ground for the battle they had anticipated. It is the period in which ROC established the Association of Parents for the Religion Class (APRC), and the Minister of Education postponed, contrary to the provisions of *the Romanian Constitution*, the application of Decision no. 669/2014 - whose provisions were generally binding from the date of publication in the Official Monitor of Romania - until APRC, with the support of ROC, managed to set up branches in all counties of Romania.

The second subchapter presents the actions of religious denominations, non-governmental organizations and public institutions/authorities in the field of education, after the expiration of the first period granted by the ME for enrolling students wishing to study Religion. Non-governmental organizations promoting children's rights to freedom of thought, conscience and religion and equal treatment before the law are in opposition to the Romanian Orthodox Church, the Association of Parents for the Religion Class, other fundamentalist religious organizations, the ME and school inspectorates, which support the interests of the ROC to the detriment of the best interests of the children and to the detriment of their rights.

The confrontation of the mentioned actors, much older than the period covered by the study, marks the path of the regulations and the jurisprudence of the courts and of the court of constitutional contentious. In the matter of the separation between the state and the Church, the emphasis in this case falls on religious education in public educational units.

A role in the evolution of events was played by organizations dedicated to respecting children's rights and their best interests, which faced opposition from actors such as the

Romanian Orthodox Church, fundamentalist religious organizations, officials and dignitaries of the Ministry of Education - from the Minister of Education and senior civil servants, up to school inspectors (general or specialized), principals, teachers - who acted against the exercise of the mentioned rights, of children and their parents.

In the school years 2015/2016, 2016/2017, 2017/2018, 2018/2019, 2019/2020, 2020/2021, students from public schools in Romania were enrolled for the study of Religion without them or their parents explicitly requesting this, contrary to legal provisions, violating their fundamental rights to education, freedom of conscience and religion and non-discrimination.

The chapter *Providing religious services in public schools* follows the evolution of efforts to ensure children's rights to freedom of conscience and religion and equal treatment in connection with religious proselytism manifested by the support for the religious services in public schools in Romania.

The first part presents some of the cases in which the negative effects of religious manifestations in public schools in Romania were reported by the children's parents.

The following subchapters dedicate civic efforts to respect children's rights to freedom of religion and non-discrimination and the responses of public authorities and institutions (central or county), respectively the decisions of the National Council for Combating Discrimination (NCCD) and the courts.

The presentation of the steps, supported every year, since 2004, reveals a path full of obstacles and negative (illegal) responses of dignitaries, senior officials or civil servants from the ME and the pressure that the ROC exerts directly, continuously, on dignitaries and officials from the ME, school inspectors and directors of public educational units and indirectly on teachers.

The actions, directed against the public institutions and authorities that allowed the violation of children's rights, but also against an actor with power in influencing the adoption of public decisions - the Romanian Orthodox Church - generated reactions from public institutions and authorities and other actors involved.

I have classified these reactions in two categories: on the one hand, obstacles, pressures, abuse of power (ROC case), rejection of requests or approaches (some of the schools, school inspectorates and the ME), on the other hand, support, recognition rights, involvement (in the

case of some of the recognized cults, of some of the public schools, or of the Ombudsman for Children Rights), the admission of applications for recognition of situations of discrimination and the recommendation of measures to eliminate them (the case of NCCD, Minister of Education from 01.11.2016).

All these reactions have made visible in the public consciousness the specific issue of children's rights. Also important for this evolutionary process were the reactions of children, parents and non-governmental organizations that supported, directly or indirectly, efforts to respect and promote children's rights and their best interests.

The chapter *Discrimination of children by grading the discipline of Religion. The NCCD decision in the best interest of children*, highlights the discrimination of students who did not choose to study Religion, by the way in which some regulations - or lack of specific regulations - on the study of this subject directly or indirectly affect them, such as: placing the discipline in the schedule within the program so that those who did not choose to study it are forced, during Religion class, to sit in the hallways or in schoolyards, at the school library, often improperly treated or unsupervised, to leave the premises of the school during the Religion class, if the parents can come to pick them up and bring them back, or to stay in class, at the Religion class, as auditors, contrary to their real wish or that of the parents; obtaining a lower overall average than those who would have the same average, but to which is added the average to the discipline Religion; the mention in the catalogs and in the transcript of the fact that they did not opt for the study of Religion.

The chapter captures this last aspect: discrimination of students - from public schools in Romania - who have not chosen Religion as a subject, with reference to the situation in which their general environments may disadvantage them compared to children who have chosen to study this discipline.

It is analyzed the case of a child from Topolog locality, Tulcea county -- 7th grade in the 2016/2017 school year at a public school in the locality --, who was not awarded the first prize because he did not follow the discipline Religion, his mother's notification, addressed NCCD and the approach of the Solidarity Association for Freedom of Conscience, with the same object. The responses of the public authorities/institutions to the notifications of the mother of the child and of the association are evaluated, with emphasis on the NCCD decisions no. 632/2017 and no. 212/2018. By the two decisions, the discriminatory character of the students' grading at the Religion class was recognized, when it increases the general average,



in the conditions in which no other optional subjects are offered. The two decisions of the NCCD set a new direction in the public education system, in Romania, with reference to freedom of conscience and religion and non-discriminatory treatment.

The research relates to the principles of the UN Convention on the Rights of the Child, underlined, inter alia, by the UN Committee on the Rights of the Child in the evaluation of reports on respect by some states for children's rights (Lesotho, Poland, Italy, South Korea). In the application of tge Art. 14, paragraph (3) of *the Convention on the Rights of the Child*, the Committee on the Rights of the Child criticized the fact that, in practice, few schools in Poland offer alternative courses to religious education, and children must obtain parental consent to choose these alternatives. It called on Italy and South Korea to take steps to provide alternative discipline to students who do not attend religious classes in school.

The NCCD judgments presented and analyzed in this chapter - together with the steps that contributed to the adoption of these judgments - complete the series of judgments, of the same public administrative authority (with jurisdictional attributions), or of the Romanian courts or of the Constitutional Court, which have contributed to the evolution and improvement of jurisprudence and to the interpretation of legal concepts regulated in acts on the rights of the child, in the sense of promoting its best interests - right and principle in the Convention on the Rights of the Child.

The chapter highlights the convergence between actions to promote and respect the rights of children and the efforts of those who suffer injustice as a result of legitimate choices, or because of their membership in a minority group, on the one hand, in the face of the actions of private actors pursuing their own interests, supported by the state authorities, against the best interests of the children, on the other hand.

Chapter *The presence of religious symbols in public schools in Romania. Approaches, judgments and interpretations* follow the evolution of legal approaches and interpretations regarding the superior interest and respect for children's rights, with reference to the use and acceptance of religious proselytizing elements in public pre-university education units in Romania (the chapter analyzes the presence of religious symbols in public schools, but without neglecting the context created by the presence of the other elements of religious proselytism presented in the other chapters of the third part).

The chapter presents aspects from the approaches addressed to public institutions and authorities (including courts) -- as well as from their answers or judgments/decisions -- for

respecting the best interests of children, respectively for protecting their rights (to education, non-discrimination and freedom of conscience and religion). It has taken into account official interpretations expressed in administrative acts or decisions of public authorities, such as the Ministry of Education, the National Council for Combating Discrimination, the courts (national or international) and the Romanian Constitutional Court.

Based on the facts, approaches, answers and official interpretations, the chapter pursued the extent to which compulsory education ensures respect for the fundamental rights of the child, following the issue of discrimination on the grounds of conscience and religion, emphasizing the best interests of the child, on both levels of legal interest: the legal situation and the factual situation.

I have focused on the important distinction made by the adoption of *the UN Convention on the Rights of the Child* to previous international documents governing the right or freedom of parents to ensure the education of children according to their own beliefs: the child has the right to freedom of conscience and religion and the parents rights are related to the guidance of the child, according to his/her training abilities (art. 14 (1), respectively (2) of the Convention). The distinction is important in both aspects characteristic of the legal norm that give it priority over the international norms with which it might conflict: the specialized character, being an international act with reference to the rights of the child and the temporal aspect, being a recent act (also, as an international act, *the Convention on the Rights of the Child* takes precedence, in the event of a conflict of rules, over a regional act, eg *the European Convention on Human Rights*).

The situation exposed, regarding the display of religious symbols in public schools in Romania -- given that religious proselytism is explicitly prohibited in Romania in public schools, by the education law and by the regulation of organization and functioning of public educational units -- and regarding the way the public institutions/authorities and the courts reported on this issue when they were notified, proves the non-respect of the best interests of children and their rights to education, freedom of conscience and religion and equal treatment before the law, in favor of the religious community to which most of their parents belong, more precisely in favor of the majority Church in Romania.

## Conclusions

The history of the presented approaches led to the issuance of two conclusions.

First, the fact that the Ministry of Education and subordinate public institutions did not take into account the best interests of the child, although it was transposed into mandatory regulation in Romania -- by *Law 272/2004 on children's rights* -- from the beginning of the period to which the Thesis it relates. The central public authority in the field of education and subordinate public institutions not only did not pursue the best interests of the child, contrary to the legal provisions that required the consideration of this principle as paramount, but did not do so even after they were repeatedly and insistently notified, and not when authorities such as the National Council for Combating Discrimination, the Ombudsman for Children Rights, or the Bucharest Court of Appeal have decided that they are obliged to do so. Instead, they executed and complied with the requests of the ROC, in its interest and to the detriment of the best interests of the children given by the observance of their fundamental rights.

A second conclusion concerns the attitude of the public authorities and institutions involved (or more precisely their non-acting) to children's right to freedom of conscience and religion.

The analysis of the documents issued by public bodies and the statements of their representatives, both those rejecting the steps and those in favor of them, show that the rights considered by public authorities and institutions are the rights of parents and adult students, not (also ) children's rights as individuals.

The basis of *the UN Convention on the Rights of the Child* is structured around two covering principles, interconnected, that accompany the exercise of all rights in the Convention: the best interests of the child and his or her evolving capacities.

The primacy of the best interests of the child is enshrined in Article 3 of the Convention, which states that in all actions concerning children, taken (*inter alia*) by the courts, administrative authorities or legislative bodies, the best interests of the child shall prevail. Law 272/2004 transposes the imperative of the prevalence of this principle in Article 2, adding that "any regulation adopted in the field of respect and promotion of children's rights and any legal act issued or concluded in this field is subject to the principle of the best interests of the child."

The question "Who decides on decision-making, the child, the family, or the state?", is answered in Articles 5, 18 and 21 of the *Convention*: respect for the responsibilities, rights and duties of parents „to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention” (art. 5), the best interests of the child are used as a guiding principle for

parents regarding the growth and development of the child (art. 18), respectively it must be ensured that the best interests of the child will be the ultimate consideration (art. 21). The guidance given by parents does not derive from their authority, but consists on their rights and responsibilities. The state must ensure that parents exercise them in accordance with the rights of the child, in the best interests of the child.

Through the concept of "evolving capacities of the child", stated in art. 5 of the Convention, it is recognized that as children develop and mature, their ability to exercise choice and control over their own lives also increases, which gradually allows them to have responsibilities in different areas of life.

Article 14 of the *UN Convention on the Rights of the Child* enshrines the fundamental right of the child to freedom of thought, conscience and religion (first paragraph), an absolute right granted to "every person" by the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and through regional conventions. The second paragraph, which reiterates the principle enshrined in Article 5 of the Convention, states that the role of parents in respecting the "guidance" of the child "in a manner appropriate to the child's evolving capacities" shall be respected. *The International Covenant on Civil and Political Rights* calls for respect for the freedom of parents to ensure the education of their children, in accordance with their own convictions, but in the *Convention on the Rights of the Child* the emphasis is on the religious freedom of the child, with guidance from parents to take into account the child's evolving capacities. The Convention on the Rights of the Child focuses on the best interests of the child (the child becomes the main subject of law).

The right to religious education is closely linked to freedom of choice (a component of religious freedom). In Romania, parents are the ones who choose for their children to be enrolled for the study of religion, or to be exempted after being enrolled, or to be enrolled for an alternative discipline (which in Romania, for now, does not exist, although NCCD has yet ruled from 2017 in the sense of offering such a discipline in public schools). From a certain age, the state must protect the right of children to make these choices on their own, even against the wishes of their parents or the religious community to which they belong, and this category of rights can be defended by the state through procedural measures (*e.g.*, explicitly regulating age from which a child can make such options).

Having as a benchmark the obligations assumed by Romania by signing and ratifying international acts on children's rights, it can be concluded that the state, contrary to these

assumed obligations, neglects children's rights (even against decisions of public authorities or courts, or CCR), following the interest of some private actors - in the analyzed case, of the Romanian Orthodox Church - and not the superior interest of the child.

Avoiding the presentation of this subject in the official periodic reports of the Romanian Government, addressed to the Committee on the Rights of the Child, proves that the issue of non-respect of children's rights is accompanied by its concealment, which raises the issue of lack of this issue in alternative reports.

In documenting the research for the elaboration of the Thesis I have used the following types of sources: books, courses and specialized magazines; international, regional and national acts concerning human rights in general, of children in particular; Reports, Comments, General Conclusions, Observations of International Bodies, *e.g.*, UN Committee on Human Rights, UN Committee on the Rights of the Child; the case law of the European Court of Human Rights; the case law of the Supreme Court of the United States of America; the jurisprudence of the Romanian Constitutional Court; the jurisprudence of the Romanian courts, on all levels of competence: courts, tribunals, courts of appeal, High Court of Cassation and Justice; resolutions of the Romanian prosecutor's offices; the jurisprudence of the National Council for Combating Discrimination; reports of the Government of Romania, addressed to the UN Committee on the Rights of the Child, on the implementation and application of *the UN Convention on the Rights of the Child*; reports of the NGO Save the Children, addressed to the UN Committee on the Rights of the Child, on the implementation and enforcement of *the UN Convention on the Rights of the Child*; official documents of States transmitted in the framework of procedures for the adoption of international acts; doctoral dissertations; religion textbooks; school curricula for the discipline of Religion, developed by the Ministry of Education, for all classes in primary, secondary, high school and vocational pre-university education; articles from newspapers, radio and television stations in Romania, or from other countries.

Keywords:

the best interests of the child, the rights of the child, the right of the child to freedom of thought, conscience and religion, the right of the child to non-discrimination, the UN Convention on the Rights of the Child, religious education, compulsory/optional study of religion, religious proselytism, religious services in schools, Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Committee on the Rights of the Child, the European Court of Human Rights, the Constitutional Court of Romania, the National Council for Combating Discrimination, the Ministry of Education, the Romanian Orthodox Church, the Association of Parents for Religion Class.

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