"RIGHT TO FREEDOM OF RELIGION" (IUS LIBERTATIS RELIGIONIS) – DIMENSIONS OF A HUMAN RIGHT IN A PLURALIST SOCIETY

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ABSTRACT: "Right to freedom of religion" (ius libertatis religionis) – dimensions of a human right in a pluralist society.

The right to freedom of religion is a fundamental principle that guarantees individuals the right to freely choose, practice, and express their own religious beliefs or convictions. This right is internationally recognized as a cornerstone of human rights and is protected by the civil and constitutional laws of many countries. The right to freedom of religion entails both the right to believe in a particular religion or no religion at all, as well as the right to manifest one's belief in public or in private, without fear of discrimination or reprisal. The article explores the dimensions of *ius libertatis religionis* (right to freedom of religion).

Keywords: religious freedom, religion, Turda Edict, European Court of Human Rights, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights.

Religion, whatever its identity, is a reality within society, within which people live their lives. But religion, like any other social structure, has a history, a rhythm in which various religious expressions materialize according to the conditions in which they take place and according to how they are received by those who take them on in their daily experience in the form of spirituality. For some, religion is a source of existential meaning, for others a source of moral, artistic and ethical culture and a defining identity.

Thus, the experience of the sacred, translated into the everyday, clothed in a set of rules of faith and projected in worship defines religion. The distinguishing marks between religious versions are given by these accessories

(doctrine, cult, institutional framework). People, as bearers and exponents of the religious fact, are "obliged" today, in the global dynamic, to relate.¹ They give meaning and purpose to this relationship because they are the subjects of religious experience and expression. It is not religions that meet, but the people who take them on. Above all, man is a social subject who lives in the horizon of inter-relation. The intensification of economic, cultural, social and personal relationships opens up new challenges for man as a dialogical being. And one of these challenges is religious freedom, a theme that is intensively addressed in current research, but inexhaustible, given that the social and political conditions in which it is applied are constantly changing.

1. Religious freedom - hermeneutics of a complex conceptual framework: libertas religionis, ius libertatis, ius libertatis religionis

In its simplest sense, the right to freedom of religion consists in the freedom of individuals and groups to form their own religious beliefs and to act in accordance with them peacefully² and without civil or criminal consequences. In a broad interpretation, freedom of religion includes several fundamental principles of individual religious freedom - such as freedom of conscience, practice, expression, association, worship, as well as freedom from religious discrimination, coercion or unequal treatment, and freedom to receive religious and moral education, to travel for religious purposes, and to associate with co-religionists in other countries. It also means several fundamental principles of corporate religious freedom - such as the freedom of religious groups to set up their own governance structure, to own and use corporate property, to establish their own beliefs, religious practices, faith communities and codes of conduct, to establish religious, educational, charitable and outreach institutions, and to set standards of admission, participation and discipline for their members and leaders. These are the standard terms of religious freedom in modern international human rights documents and numerous national constitutions.³

¹ Ioan Dura, "Beyond the Boundaries of Identity: Interpreting Religious Boundaries in Local-Global Dynamics", in *Hermeneia*, No. 27 (2021), pp. 69-78

² Cristian-Vasile Petcu, "Pacea și dreptatea după cărțile profeților mari", in *Annales Universitatis Valachiae* (Târgoviște: Facultatea de Teologie, 2005), pp. 448-458.

³ John Witte, Jr., "The right to freedom of religion: An historical perspective from the West", in Routledge Handbook of Freedom of Religion or Belief, edited by Silvio Ferrari,

The Western legal tradition arrived at this more detailed understanding of the "right to freedom of religion" only after many centuries of conflicting experiences of particularizing its meaning. The expression "freedom of religion" (libertas religionis) appeared at the beginning of the third century; the expression "right to freedom" (ius libertatis) became known in the twelfth century. It took another five centuries, however, for "right to religious freedom" (ius libertatis religionis) to become a common term in religious and legal circles, and for restrictions on this right to lead to legal action rather than avoidance or revolt. Although guarantees of religious freedom became more common in treaties and constitutions after the seventeenth century, they continued to be often violated by religious leaders and secular institutions alike. And while the twentieth century brought strong new guarantees of religious freedom in national and international human rights documents, religious persecution remains a reality in modern life around the world today, including in many Western states.⁴

Religious freedom has varied meanings in Western and Eastern contexts, differing in social, political and religious order. A Westerner, based on the Judeo-Christian tradition, understands religious freedom in a certain sense unlike a Hindu or Buddhist. In this regard, Arvind Sharma makes a number of adjacent clarifications about the concept of *religious freedom* by developing an argument that emphasizes that *religious freedom* has different meanings depending on the different meanings of the definition of *religion* in the West and the East. He puts forward two major theses: (1) the concept of *religious freedom* cannot be separated from the concept of *religion*, and (2) the different meanings of the concept of *religion* in the West and in the Asian space generate somewhat different concepts of religious freedom.⁵

The Western concept of *religion* generates a particular perspective of religious freedom, a concept that implies *exclusive* religious identity, representing the perspective of proselytizing religions (Christianity, Islam, Judaism). In contrast, the Asian concept generates a different perspective of *religious freedom* through the possibility of multiple religious identities,

Mark Hill QC, Arif A. Jamal, and Rossella Bottoni (London and New York: Routledge, 2021), p. 11.

⁴ D. Philpott, T. Shaw, *Under Caesar's Sword: How Christians Respond to Persecution* (Cambridge: Cambridge University Press, 2018).

⁵ Arvind Sharma, Problematizing Religious Freedom (Springer, 2011), p. 255.

representing the perspective of non-prozepzoelitist religions (Buddhism, Hinduism, Taoism, etc.). Thus, in world history we can identify a diverse, shifting and multiform field of lived religious practice, but it is difficult to establish a common identity and common background of *religion* in all cultures. This domain shows radical and immeasurable variations of time and place, because there is no transhistorical and transcultural essence of religion.

To understand the particularities of religious freedom in the two cultures, it is therefore necessary to answer the question what is religion? Different answers have been formulated which attempt to frame definitions as comprehensively as possible. For Leonard Swidler, religion is "an explanation of the ultimate meaning of life and how to live accordingly, based on some notion and experience of the transcendent." Every religion has four Cs: creed ("refers to the cognitive aspect of a religion; it is all that goes into the explanation of the supreme meaning of life"); code (of behavior or ethics, includes all rules and habits of action that derive from one aspect or another of the creed); cult (all ritual activities that link the believer to one aspect or another of the transcendent, either directly - prayer or indirectly - priests); community (the relationships among believers; this can vary widely, from egalitarian to monarchical).

Religion is much more than simply an intellectual explanation of the ultimate meaning of life; it is also the way that describes how to live according to that explanation. It is a way of life. So religions are not just belief systems that postulate the existence of an otherworldly order, a transcendent power. Religion frames a cult, a worship, and sets moral standards for the believer's behavior and way of life. In fact, most religious systems include codes of morality, which can cause difficulties for the believer if following them violates secular law, raising questions about the legitimacy of conscience constraint.

Religion is the interpretation of the meaning of the Ultimate Reality (God) and how this transcendent Reality relates to the finite reality, humans, and at the same time it is the configuration of man's relationship to the Ultimate Reality projected in worship and spiritual experience.

Charles Taylor explains religion in terms of "belief in an agency or power that transcends the immanent order". For Taylor, religion refers to

⁶ Leonard Swidler, Dialogue for Interreligious Understanding. Strategies for the Transformation of Culture-Shaping Institutions (Palgrave Macmillan, 2014), p. 7.

the "beyond," to an order of things that define transcendence. He outlines three specific dimensions of *religion*: (1) First, religion affirms that there is a supreme good or ultimate purpose beyond the ordinary human order. (2) Second, it includes the possibility of personal transformation in order for the ultimate good to be attained. It implies the existence of a transforming and transcendent power. (3) Third, the religious perspective on our possible transformation implies a sense of human life that extends beyond "this life." The political organization of pre-modern societies was linked to, based on, or guaranteed by some kind of adherence to religion. But the evolution of historical contexts from religion-based political and social structures to the modern secular Western state has relocated religiosity largely to a private sphere, but that does not mean that it is forbidden or obligatory.

Coming back to Arvind Sharma, religious freedom in the Western and Eastern patern, is defined differently on the premise of the meaning of the concept of religion in the two cultural traditions - East and West. The two interpretations converge in some respects and diverge in others. They converge in that they maintain the common ground of the individual's freedom to choose and manifest his or her own religion but diverge in that the right to manifest one's own religion confers the right to proselytize or not. In the act of conversion, a distinction must be drawn between two vectors: (a) my right to change my religion and (b) someone else's right to ask me to change my religion. These two directives are not symmetrical. My right to change my religion is virtually unconditional, but someone else's right to ask me to change my religion involves a "clash" of two rights: my right to non-interference in assuming and following my own religion and the other person's right to manifest his or her religion in a way that involves asking or requesting me to change my religion. The second right of conversion cannot be considered as free as the first.8

This distinction is crucial in delineating the difference between the two types of religious freedom, both of which accept the first view of conversion, if it is accepted that my right to change my religion equally implies my right to keep my religion and not to change it. The Asian concept of

⁷ Charles Taylor, A Secular Age (Cambridge: The Belknap Press of Havard University Press, 2007), pp. 10-11.

⁸ A. Sharma, Problematizing Religious Freedom, p. 255.

religious freedom prefers the word "to choose" to "to change" because it accepts the possibility of multiple religious identities. The second view of conversion raises a problematization commensurate with the complexity of the term. Resolving the difference in meanings between West and East lies in recognizing that proselytizing and non-prozepzoelizing religions cannot be treated on the same level of equality, since the Western concept of religious freedom places non-prozepzoelizing religions at a disadvantage in relation to proselytizing religions. Therefore, adherents of a religion are justified in imposing restrictions on proselytizing activities in order to prevent the violation of the principle of non-interference in one's own religious assumption. 10 For proselytizing religions such freedom implies freedom to convert, for non-prozepzoelitist religions such freedom implies freedom from conversion. Non-prozelitic religions maintain their own boundaries unlike proselytizing religions which have the peculiarity of universalizing, seeking to extend their doctrinal and institutional jurisdiction beyond their own boundaries.

2. Religious freedom in international normative acts

The normative core of the right to *religious freedom* involves a complexity of values, some articulated by different historical and cultural contexts. Freedom of religion or belief, in its current historical form, is a universal human right applicable and codified in international human rights instruments, treaties, constitutions, declarations, as we have noted. At the normative level, this right has been articulated as a fundamental right in a coherent manner since the beginning of the modern era.

It is notable to note the first laws and legal guarantees for religious freedom. In 1558, the *Turda Edict* of the Hungarian Diet declared the free practice of both Catholicism and Lutheranism. However, Calvinism was banned. Calvinism was included among the accepted religions in 1564. Ten years after the first law, in 1568, the same Diet, under the presidency of the King of Hungary and Prince of Transylvania, John Sigismund Zápolya (John II), following the teaching of Ferenc Dávid, the founder of

⁹ See Ioan Dura, Dialog, toleranță, libertate. Configurații ale religiei în tranziția de la secularizare la pluralizare (Cluj-Napoca: Presa Universitară Clujeană, 2022), p. 131-135. 10 Henri Gooren, Religious Conversion and Disaffiliation. Tracing Patterns of Change in Faith Practices (Palgrave Macmillian, 2010).

the Unitarian Church of Transylvania, extended freedom to all religions, declaring that "It is not permitted to anyone to intimidate anyone with captivity or expulsion for his religion." However, it was more than religious toleration; it declared the equality of religions, prohibiting any acts by the authorities or the common people that might harm other groups or individuals because of their religious beliefs. Social hierarchy did not depend on a person's religion, so Transylvania also had Catholic and Protestant monarchs, all of whom respected the Edict of Turda. The lack of a state religion was unique in Europe for centuries. The Edict of Turda is therefore regarded as the first legal guarantee of religious freedom in Christian Europe.

"Act of religious toleration and freedom of conscience: His Majesty, our lord, in the manner in which - together with his kingdom - he legislated in matters of religion in the former diets, in the same matters now in this diet, reaffirms that in every place preachers preach and explain the Gospel, each according to his own understanding, and if the congregation likes it, well and good. If not, no one will compel them, for their souls would not be satisfied, but they will be allowed to keep a preacher whose teaching they approve. Therefore, none of the superintendents or others shall abuse preachers, none shall be insulted by any one for his religion, according to the foregoing statutes, and it is not lawful for anyone to threaten any one with imprisonment or removal from his station for his teaching. For faith is the gift of God, and this comes by hearing, which is by the word of God." 12

Four versions of Christian religion (Catholicism, Lutheranism, Calvinism, Unitarianism) were named as accepted religions (religorecepta), having representatives in the Transylvanian Diet, while other religions, such as Orthodox, Sabbatarians and Anabaptists were tolerated churches (religio tolerata), which meant that they had no power in law-making and no veto in the Diet, but were not persecuted in any way. Thanks to the Edict of Turda, from the last decades of the 16th century, Transylvania was the only place in Europe where so many religions could live together in harmony without persecution. But this religious freedom came to an end for some of Transylvania's religions in 1638. After this year, the Sabbatarians began to be persecuted and forced to convert to one of the accepted Christian religions in Transylvania. Orthodox Christians are not mentioned.

¹¹ History of Transylvania. Volume I. From the Beginnings to 1606, Hungarian Research Institute of Canada and A Research Ancillary of the University of Toronto, 2016.

¹² Unitarian Universalist Partner Church Council, "Edict of Torda", 13 July 2008.

The modern concept of *religious freedom*, which we have seen develop in the Christian world over the last 250 years, is the favourable consequence of the promotion of this freedom as a fundamental human right.

The European Court of Human Rights has recognized that religious freedom is "one of the foundations of a democratic society": "(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance. (2) The freedom to manifest religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, public health or morals, or for the protection of the rights and freedoms of others."¹³

The *Universal Declaration of Human Rights* (UDHR)¹⁴ also advocates the same right: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." ¹⁵

International Covenant on Civil and Political Rights, Art. 18: "(1) Everyone has the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. (2) No person shall be subjected to any coercion which would affect his freedom to have or adopt a religion or belief of his choice. (3) Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. (4) The States Parties to the present Covenant undertake

¹³ European Convention on Human Rights. Article 9: Freedom of thought, conscience and religion (European Court of Human Rights. Council of Europe, 11).

¹⁴ Ioan-Gheorghe Rotaru, "The Transylvanian Diet: A Precedent to Human Rights and Religious Freedom - 400 Years Prior to the Universal Declaration of Human Rights", in Shaping a World of Freedoms: 75 Years of Legacy and Impact of the Universal Declaration of Human Rights, Nelu Burcea and Liberato C. Bautista (eds.) (New York, United Nations Plaza: UNEQUAL World Research Center, 2023), pp. 205-221.

¹⁵ Universal Declaration of Human Rights. Article 18 (United Nations, 2015, p. 38).

to respect the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

3. Dimensions of the right to religious freedom

It is important to emphasize the normative core of the *human right to free-dom of religion* or belief. What constitutes the normative core of the human right to freedom of religion or belief? The issues involved arise in a multitude of different historical and cultural contexts, and the institutional arrangements in any particular society will inevitably vary in many ways. But there are certain core values that will be protected and characteristics that a regime will exhibit if freedom of religion or belief is respected. These constitute a set of minimum standards. Many systems go further in supporting genuine cultures of inter- and intra-religious tolerance and mutual respect through tolerance.

The human right to freedom of religion or belief, as codified in international human rights instruments, applies to every human being everywhere in the world, without exception. Human beings are the main holders and beneficiaries of this right to freedom. States - ideally, subject to continuous critical scrutiny by informed citizens in each country and monitored and assisted by international bodies, foreign governments and transnational human rights networks - are the main recipients burdened by correlative obligations. This is true for the legal obligations and political duties of governments, but it also implies, vertically, the moral duties of individuals and institutions that do not occupy governmental positions.

The normative core of the human right to freedom of religion or belief, as defined in international human rights instruments, can be condensed into eight components, as Tore Lindholm, Cole Durham Jr. and Bahia Tahzib-Lie point out: internal freedom, external freedom, non-coercion, non-discrimination, parental and guardians' rights, corporate freedom and legal status, limits to permissible restrictions on external freedom, non-derogability. ¹⁶ The eight-point presentation of the normative core of the human right to freedom of religion or belief is an attempt to synthesize the formula set

¹⁶ Tore Lindholm, W. Cole Durham Jr., Bahia G. Tahzib-Lie, Elizabeth A. Sewell, Lena Larsen, Nazila Ghanea, "Introduction", in *Facilitating Freedom of Religion or Belief: A Deskbook* (Springer, 2004), pp. xxxvii-ix.

out in international human rights instruments. These components can be identified in the complex body of mutually supportive human rights norms codified at the international level. When applied in particular contexts and for practical purposes, these norms may require further interpretation and elaboration. The 8 components are:

- 1. *Internal Freedom*: Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom of everyone to have, adopt, maintain or change religion or belief.
- 2. External freedom: Everyone has the freedom, either in a singular sense or in community with others, in public or private, to manifest his religion or belief in practice, worship and custom.
- 3. *Non-constraint*: No one shall be subjected to any coercion that would impair his freedom to have or to adopt a religion or belief of his own free choice.
- 4. Nondiscrimination: states are obliged to respect and ensure to all individuals within their territory and under their jurisdiction the right to freedom of religion without distinction of any kind, such as race, color, sex, language, religion or belief, political or other orientation, national or other origin, property, birth or other status.
- 5. Rights of parents and legal guardians: States are obliged to respect the freedom of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions, subject to the protection of the rights of every child to freedom of religion or belief in accordance with the evolving capacities of the child.
- 6. Corporate freedom and legal status: a vital aspect of freedom of religion or belief, particularly in contemporary environments, is that all religious communities have permanent and institutional rights to represent their rights and interests as communities. Religious communities have religious freedom, including the right to autonomy in their own activities.
- 7. Limits on permissible restrictions on external freedom: the freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights of others.
- 8. *Non-derogability*: states may not derogate from the right to freedom of religion, even in times of public emergency.

The human right to religious freedom is not limited solely to providing legal protection for the eight essential components mentioned. Religious freedom has a dual dimension: *personal*, in the sense that the individual is the exponent of religious freedom on the basis of the democratic principles of a state's governance, and *communal*, in the sense that at the intersection of religious within the same society, religious freedom guarantees the right of a religious community¹⁷, majority or minority, to freely and publicly express its set of beliefs, worship, organization.

In the following table are listed the directions of the 8 components of religious freedom¹⁸:

(Facilitating)	(What Freedom)	(Freedom of)
1. Internal freedom	The freedom to have, choose, change or leave a	Freedom to Adopt, Change, or Renounce a
2. External freedom	religion or belief	Religion or Belief
3. Noncoercion	Freedom to manifest a religion or belief	The Right to Manifest One's
4. Nondiscrimination	Protection from coercion	Religion or Belief
5. Rights of parents and Guardians	Protection from discrimi- nation	Freedom from Coercion
6. Corporate freedom and legal status	Parents rights, children's rights	Discrimination Vulnerable Groups (Wom-
7. Limits of permissible restrictions on external freedom	The right to conscientious objection	en; Persons Deprived of Their Liberty; Refugees, Asylum Seekers, and Internally Displaced Per-
8. Nonderogability	Employers and employees	sons; Children; Minorities; Migrant Workers)

¹⁷ Ioan-Gheorghe Rotaru, "Religious Freedom and the Spirit in Which it Should Be Defended", in *Liberty Today – Trends & Attitudes*, Bern, Switzerland, 1-2 (2014-2015), pp. 61-63.

¹⁸ Göran Gunner, "Religious Freedom as a Human Right", in *Freedom of Religion and Religious Pluralis*, MD Jahid Hossain Bhuiyan and Carla M. Zoethout (eds.) (Boston: Brill, 2023), p. 88.

Conclusions

Religious freedom¹⁹, also known as freedom of religion or freedom of belief, is a fundamental human right that encompasses the ability of individuals and communities to practice, observe, and change their religion or belief system without interference from the government, state authorities, or other individuals or groups. It is a cornerstone of a democratic society, essential for promoting peace, diversity, and tolerance among different religious and non-religious communities.

The concept of religious freedom has deep historical roots and has evolved over centuries through various legal, philosophical, and ethical frameworks. It is enshrined in numerous international documents, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and regional human rights treaties. Many constitutions around the world also guarantee religious freedom as a fundamental right of their citizens.

At its core, religious freedom includes the freedom to choose, practice, and change one's religion or belief system, as well as the freedom to manifest one's beliefs in worship, observance, practice, and teaching. It also entails the freedom to establish and maintain places of worship, religious institutions, and organizations, as well as the freedom to engage in religious rituals, ceremonies, and traditions.

Furthermore, religious freedom encompasses not only individual rights but also collective rights of religious communities to operate and govern themselves according to their beliefs and practices. This includes the autonomy to establish internal structures, select leaders, and manage their affairs without external interference.

However, despite significant progress in recognizing and protecting religious freedom globally, challenges and violations persist. Discrimination, persecution, and restrictions on religious practices continue to occur in various parts of the world, affecting religious minorities, dissenting believers, and non-believers alike. Issues such as blasphemy laws, apostasy laws, anti-conversion laws, and limitations on religious expression pose significant threats to religious freedom and human rights.

¹⁹ Ioan-Gheorghe Rotaru, "Freedom of Religion, Always a Hot Issue", in *Jurnalul Libertății de Conștiință*, vol.5, 2017, no.1, pp. 545-550.

Efforts to promote religious freedom and tolerance²⁰ require a multi-faceted approach involving legal protections, education, dialogue, and interfaith cooperation.²¹ Governments, civil society organizations, religious leaders, and individuals all have a role to play in fostering a culture of respect for diverse religious beliefs and practices.

In conclusion, religious freedom²² is a fundamental human right that must be upheld and protected to ensure a peaceful and inclusive society. It is essential for promoting social cohesion, diversity, and individual autonomy while respecting the rights and dignity of all individuals, regardless of their religious or non-religious beliefs.

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²⁰ Cristian Vasile Petcu, "Cadrul juridic al dialogului ecumenic creștin" ("The legal framework of Christian ecumenical dialogue"), in Internațional Symposium "Itinerario e il contenuto del formare ecumenico-studi ecumenici - Venetia", Instituto di studi ecumenici S. Bernardino (Veneția: 2008), pp. 422 – 450.

²¹ Cristian-Vasile Petcu, *Importanța legislației canonice în realizarea dialogului inter-confesional creștin,* in International Symposium "Itinerario e il contenuto del formare ecumenico-studi ecumenici – Veneția: Instituto di studi ecumenici S. Bernardino, 2008), pp. 371 – 390.

²² Ioan-Gheorghe Rotaru, "Libertatea religioasă – temelie a demnității umane", in Daniela Ioana Bordeianu, Erika Androne, Nelu Burcea, *Manual pentru liderul Departamentului de Libertate religioasă* (București: Casa de editură "Viață și Sănătate", 2013), pp. 210-215.

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