ОРГАНИЗАЦИЯ ОБЪЕДИНЕННЫХ НАЦИЙ **E**

ЭКОНОМИЧЕСКИЙ И СОЦИАЛЬНЫЙ СОВЕТ

Distr.
GENERAL

E/CN.4/2004/63/Add.2
16 December 2003

RUSSIAN
Original: FRENCH

КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА
Шестидесятая сессия
Пункт 11 e) предварительной повестки дня

ГРАЖДАНСКИЕ И ПОЛИТИЧЕСКИЕ ПРАВА, ВКЛЮЧАЯ ВОПРОС О РЕЛИГИОЗНОЙ НЕТЕРПИМОСТИ

Доклад, представленный Специальным докладчиком по вопросу о свободе религии и убеждений г-ном Абдельфаттахом Амором

Добавление

Посещение Румынии*

* Резюме настоящего доклада о результатах миссии распространяется на всех официальных языках. Сам доклад воспроизводится в приложении и распространяется на языке оригинала и на английском языке.

GE.03-17114 (R) 261203 130104

Резюме

Специальный докладчик по вопросу о свободе религии и убеждений представляет Комиссии по правам человека настоящий доклад о результатах посещения им Румынии 7-13 сентября 2003 года в соответствии с его мандатом, по его просьбе и по приглашению правительства страны.

В ходе посещения и при подготовке настоящего доклада Специальный докладчик обращал свое внимание главным образом на статус и значимость Православной церкви Румынии, на положение неправославных религиозных меньшинств и на политику правительства в области свободы религии и убеждений. Специальный докладчик также интересовался вопросом реституции собственности, принадлежавшей религиозным общинам и конфискованной во время коммунистического режима, и в частности проблемой реституции имущества греко-католических церквей.

В ходе посещения Специальный докладчик встречался с рядом представителей румынского правительства и законодательных и судебных властей, а также с представителями большинства религиозных меньшинств, проживающих в Румынии. Он также имел беседы с представителями различных неправительственных организаций.

В своих выводах Специальный докладчик подчеркивает, что принцип свободы религии и убеждений в том виде, в каком он признается международным правом, плохо согласуется с различием между признанными и непризнанными религиями, и в частности рекомендует румынскому правительству отменить эту дифференциацию. В отношении вопроса о реституции собственности Специальный докладчик считает, что правительство не может оставаться в стороне от процесса разрешения споров, и рекомендует ему принять позитивные меры в тех случаях, когда отсутствие реституции может представлять собой нарушение свободы религии и убеждений. Специальный докладчик также высказывает беспокойство по поводу запугивания некоторых религиозных общин по той причине, что они обращались в суды с требованием реституции собственности, и просит правительство незамедлительно обеспечить исполнение судебных решений, касающихся реституции собственности религиозных общин.

Annex

Report by the Special Rapporteur on freedom of religion or belief, Mr. Abdelfattah Amor, on his visit to Romania (7-13 September 2003)

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Introduction

1. Within the framework of his mandate, the Special Rapporteur on freedom of religion or belief made a visit to Romania, at his own request and at the invitation of the Romanian Government.

2. The Special Rapporteur carried out most of his work in the capital, Bucharest, where many of the country's religious activities take place and where most of the religious communities are based. On 9 September 2003 he made a trip to Cluj, in Transylvania.

3. During his visit, the Special Rapporteur held talks with the following officials: the Minister of State and other representatives of the Ministry of Foreign Affairs, the Minister of State for Religious Affairs, the Minister of Defence, the Minister of Justice, representatives of the Ministry of the Interior and the Inspector-General of Police, representatives of the Ministry of Education, the President of the Constitutional Court, the President of the Supreme Court, the President and members of the National Council against Discrimination, the President and members of the Senate Commission on Human Rights and Minorities, and the President of the Senate Cultural Commission.

4. The Special Rapporteur also held talks with representatives of religious communities, including His Beatitude Teoctist, Patriarch of the Romanian Orthodox Church, the Orthodox Bishop of Cluj, representatives of the Greek Catholic Church, the Roman Catholic Church, the Protestant Church, the Unitarian Church, the Armenian Apostolic Church, the Baptist Church, the Seventh-Day Adventist Church and the Pentecostal Church, representatives of the Jewish community, a representative of the Muslim community, representatives of the Baha'i community and some Jehovah's Witnesses.

5. The Special Rapporteur also met with representatives of the Romanian Human Rights Institute, a representative of the Ecumenical Association of Churches in Romania, a non-governmental organization, and representatives of non-governmental human rights organizations, including the Association for the Defence of Human Rights in Romania - the Helsinki Committee.

6. The Special Rapporteur would like to thank the Romanian authorities for their invitation and cooperation. He is also very grateful to the excellent non-governmental representatives to whom he spoke. Lastly, the Special Rapporteur would like to thank the staff of the United Nations Development Programme (UNDP) in Bucharest, who helped him during his mission.

7. During his visit and in this report, the Special Rapporteur focused mainly on the status and importance of the Romanian Orthodox Church, the situation of religious minorities and the question of the return of religious property.

I. HISTORICAL AND POLITICAL CONTEXT

8. Romania covers an area of 237,500 square kilometres and, according to the 2002 census, has a population of 21,698,181 inhabitants, of whom 89.5 per cent are Romanian, 7.1 per cent Hungarian, 1.8 per cent Roma, 0.5 per cent German and 0.3 per cent Ukrainian (the remaining 0.8 per cent are of other nationalities).

9. At the end of the Second World War, Romania was ruled by a communist Government. King Michael I was forced to abdicate in December 1947 and the country became a republic. Romania then entered a long period of communist rule. Nicolae Ceausescu became Secretary-General of the Communist Party in 1965 and head of State in 1967.

10. In December 1989, large popular demonstrations broke out in Timisoara and Bucharest and were brutally suppressed by the police. Following Nicolae Ceausescu's flight, the Provisional Council of the National Salvation Front took power and the "traditional" political parties reappeared. Ion Iliescu was elected President on 20 May 1990.

11. The new Constitution entered into force on 8 December 1991 after it had been submitted to a national referendum, and Romania became a constitutional democracy with a two-chamber parliamentary system. The Prime Minister is head of Government and the president is head of State.

12. As far as international law is concerned, Romania is a party to the six core international human rights instruments (the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women).

13. In fulfilment of its treaty obligations, Romania submitted its fourth periodic report (CCPR/C/95/Add.7) to the Human Rights Committee at its sixty-sixth session in July 1999. Among the main concerns of the Committee were discrimination against the Roma, violence against women, interference by the executive in judicial matters, and the right to conscientious objection.

II. RELIGIOUS DEMOGRAPHICS

14. To determine the religious demographics of Romania, the Special Rapporteur has relied largely on the results of the 2002 census. However, he would like to point out that many of the people he spoke to expressed doubts about the accuracy of the census in relation to religious affiliation, alleging that it was marred by a number of irregularities and ploys, deliberate or otherwise, including the tendency of census officials to assume that interviewees were of the Orthodox religion. The authorities say there is no proof of fraud. Partly because of the fall in the birth rate, the results have not changed much since the 1992 census.

15. The Special Rapporteur would like to stress that the reliability of a census in religious matters is relative, given that, on the one hand, questions of religion or belief are a deeply personal matter and, on the other, cumbersome sociological procedures are not necessarily the best way to ensure that the information provided on the subject is accurate.

16. As far as religious denominations are concerned, a very large majority of the Romanian population (86.7 per cent – 18,806,428 people from all over the country) claims to belong to the Romanian Orthodox Church. The Orthodox population includes several tens of thousands of Serbs and Ukrainians.

17. The Roman Catholic Church is the second-largest religion in the country today, with 1,028,401 members (4.7 per cent). The Greek Catholic community, which had over one-and-a-half million members before 1948 and was the second-largest religion in the country at the time, had only 195,481 members (0.9 per cent) according to the 2002 census. Greek Catholics themselves estimate their numbers at 800,000. Most Greek Catholics live in Transylvania.

18. The Protestant Church is the largest of the other Christian communities, with 698,550 members (3.2 per cent). It is mostly based in Transylvania.

19. The other Christian communities are scattered around Romania, with memberships ranging in size from 2,000 to 300,000. They are: the Christian Church of the Ancient Rite (39,485 members), the Christian Evangelical Church (18,758 members), the Evangelical Augustinian Church (11,203 members), the Evangelical Lutheran Church (26,194 members), the Church of Gospel Christians (46,029 members), the Unitarian Church (66,846 members), the Baptist Church (129,937 members), the Pentecostal Church (330,486 members – 1.5 per cent of the population), the Seventh-Day Adventist Church (97,041 members) and the Armenian Church (775 members).

20. There is also a small Jewish community of 6,179 members and there are about 67,000 Muslims, most of whom are of Turkish-Tartar origin and live mainly in the south-east of the country near the Black Sea.

21. According to the 2002 census, there were also 9,271 declared atheists, 13,834 persons who had no religious affiliation (about 10,000 less than in 1992) and 18,492 who did not give any religious affiliation.

22. According to information made available to the Special Rapporteur, there are also several small religious or faith-based communities in Romania (87,225 persons in total), including the Baha'i, Jehovah's Witnesses, Presbyterian, Falun Gong and Hare Krishna communities.

III. LEGAL STATUS OF FREEDOM OF RELIGION OR BELIEF

A. Constitutional level

23. The Romanian Constitution, which is currently under revision, sets out the principle of equality of citizens regardless of their religious beliefs and prohibits any discrimination on these grounds (art. 4, para. 2, and art. 16). The principle of freedom of religion is enshrined in article 29, which, in the absence of a special law on religions (see below), is the current benchmark in matters of freedom of religion or belief:

> "(1) Freedom of thought, opinion and religious belief may not be restricted in any way. No one may be compelled to embrace an opinion or religion contrary to their beliefs.
>
> (2) Freedom of conscience shall be guaranteed, and should be reflected in a spirit of tolerance and mutual respect.
>
> (3) Religious denominations shall be free and organized in accordance with their own statutes, in compliance with the law.
>
> (4) All forms, means, acts or actions of religious discord are prohibited in relations between denominations.
>
> (5) Religious denominations shall be independent of the State and shall enjoy its support, including in the facilities established to provide religious support in the army, hospitals, prisons, nursing homes and orphanages.

(6) Parents or guardians have the right to ensure that the education of the children for whom they are responsible is in accordance with their own beliefs."

24. Article 49 of the Constitution sets out the restrictions that may be applied to the rights recognized by the Constitution, as follows:

"(1) The exercise of certain rights or certain freedoms may be restricted only by law and only where necessary in particular cases to defend national security, public order, public health or morals, or the rights and freedoms of citizens, to allow a criminal investigation to be carried out or to avoid the consequences of a natural calamity or extremely serious disaster.

(2) Any restriction must be proportional to the situation requiring it and may not infringe upon the existence of the right or freedom."

25. It should also be noted that article 30, paragraph 7, in accordance with article 20 of the International Covenant on Civil and Political Rights, prohibits, among other things, incitement to hatred or discrimination, including religious hatred or discrimination.

26. Lastly, the Romanian Constitution deals with more specific aspects of religion, including religious instruction. Thus, article 32, paragraph 7, stipulates that:

"The State shall guarantee freedom of religious instruction, in accordance with the specific needs of each denomination. In State schools, religious instruction shall be organized and guaranteed by law."

B. Legislative level

27. Apart from the constitutional provisions, Decree No. 177/1948, which was adopted during the communist era, is theoretically the text that lays down the legal rules governing religions, but it is no longer used in practice because of its incompatibility with several provisions of the new Constitution. However, this legislation should be formally repealed with the forthcoming adoption of a law on the general rules governing religions and the exercise of religious freedom, which is further discussed below.

28. Under Romanian law, a distinction is made between religions that are recognized and those that are not recognized. The authorities told the Special Rapporteur that the distinction was one between the religions recognized by the State and other religious or faith-based communities. In order to be recognized as a religion, religious communities must be registered with the office

of the Minister of State for Religious Denominations. The Government registers them after they have submitted various documents on their statutes and internal organization and after reviewing the teachings of the religious community.

29. However, the authorities stressed that the above-mentioned distinction did not result in any restrictions on the freedom of religion or belief of members of the religious or faith-based communities that are not recognized.

30. During the Special Rapporteur's visit, the authorities sent him somewhat contradictory information on the number of religions that were recognized. However, it seems that the Government currently recognizes 17 "denominations", which are those described by some as the "traditional" religions. In Decree No. 177, the Government recognized 15 religions, namely, the Romanian Orthodox Church, the Roman Catholic Church, the Christian Church of the Ancient Rite, the Protestant Church, the Christian Evangelical Church, the Evangelical Augustinian Church, the Evangelical Lutheran Church, the Church of Gospel Christians, the Unitarian Church, the Baptist Church, the Pentecostal Church, the Seventh-Day Adventist Church), the Armenian Church, Judaism and Islam. In another decree dating from 1948 (No. 358/1948, see below), the Government had closed down the Greek Catholic Church and forced it to become part of the Orthodox Church, but in 1989 the Government restored, by decree, the status of the Greek Catholic Church as a recognized religion. In addition, following a decision by the Supreme Court, the Government recently had to recognize the community of Jehovah's Witnesses as a religion (Order No. 2657 of 22 May 2003). With this exception, the authorities have not recognized any religion since 1990. Thus, some religions that are not considered to be traditional are not recognized as religions.

31. Under this system of recognition, religions enjoy a number of privileges to help them to function, including a financial contribution from the State related to the size of their membership, exemption from military service for their clergy, exemption from tax, and the right to set up schools and to teach religion in State schools.

32. Alongside the recognized religions, over 750 religious associations and foundations were registered between 1989 and 1999 under Act No. 21/1924, which gives them legal status and exemption from import duties. During the year 2000, the Government adopted a new decree (No. 26/2000) which repeals Act No. 21/1924 and considerably simplifies the registration procedure for these associations and foundations. Under these new regulations, 295 associations and 207 foundations whose statutes provide for activities of a religious nature have been registered.

33. The principle of making a legal distinction between recognized and non-recognized religions was criticized by a number of people who spoke to the Special Rapporteur. Although it does not appear to infringe on freedom of religion or belief as such, it may lead to at least indirect discrimination in that recognized religions benefit from privileges and rights that non-recognized religions do not enjoy, which restricts the latter's religious activities. Moreover, some speakers stressed that not all the religious or faith-based communities that are not recognized have the capacity of the Jehovah's Witnesses to seek recognition through the courts.

C. Other legislation

34. Romanian legislation contains an array of regulations dealing with various specific aspects of religious denominations:

Act No. 103/1992 (as amended by Act No. 2/2001) on the exclusive right of religious denominations to produce and market religious objects and garments and to publish the religious literature necessary for the purposes of worship;

Act No. 84/1995 on education;

Act No. 142/1999 on State support for clerical salaries;

Ordinance No. 82/2001 on the provision of certain forms of financial support for recognized religions;

Act No. 195/2000 on the composition and organization of the military chaplaincy;

Decision No. 742 of 3 July 2003 on the organization and functioning of the Ministry of Culture and Religion.

D. Anti-discrimination legislation

35. In Ordinance No. 137/2000, as ratified by Act No. 48/2002, the Romanian Government introduced legislation to combat discrimination based on religion. Thus, under article 2, paragraph 1, of Ordinance No. 77/2003 (amending Ordinance No. 137/2000), discrimination is defined as:

> "Any distinction, exclusion, restriction or preference based on [among other things] religion … the aim or effect of which is to restrict or prevent the recognition, enjoyment

> or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social and cultural areas or in any other area of public life."

36. The same provision also defines certain kinds of indirect discrimination:

> "Any active or passive behaviour which has the effect of putting a person, a group of persons or community, in an unjustifiable manner, at an advantage or disadvantage or which subjects them to discriminatory or degrading treatment in comparison with other persons, groups of persons or communities shall be punishable by a fine, if not by punishment under criminal law."

37. These different forms of discrimination can be committed by natural or legal, public or private persons, and the alleged victims of such discrimination can take their case to the judicial authorities without having to pay stamp duty.

38. Under Ordinance No. 1194/2001, the Government set up the National Council against Discrimination, which has been in operation since August 2002 and which is responsible for, among other things:

> Preparing proposals on special, legislative or other actions or measures intended to protect disadvantaged individuals and groups;
>
> Cooperating with the competent authorities with a view to bringing domestic legislation into line with international standards on non-discrimination;
>
> Monitoring the implementation of the rules on the prevention, punishment and elimination of all forms of discrimination and compliance with them by the authorities and by legal and natural persons;
>
> Applying the fines provided for in Ordinance No. 137/2000;
>
> Cooperating with similar bodies and with human rights non-governmental organizations; and
>
> Receiving complaints on violations of the rules concerning the principle of equality and non-discrimination.

39. Under its complaints mechanism, the National Council against Discrimination may impose administrative sanctions directly, but gives priority to mediation.

40. With regard to discrimination based on religion, members of the Council told the Special Rapporteur of the problems they had maintaining contact with religious minorities, whom they found quite secretive. For example, they had received no replies to questionnaires they had sent to several religious minorities. In 2003, of the 323 complaints received by the Council, 5 were directly related to discrimination based on religious affiliation and 8 to discrimination based on belief. So far, the Council has taken a decision on seven of these complaints.

E. Bill on the general rules governing religions and the exercise of religious freedom

41. The idea of drafting a new law on the general rules governing religions and the exercise of religious freedom has been on the table since the fall of the communist regime. Some insist that a new law is needed because without one the legislation from 1948 is theoretically still in force even though some of its provisions are clearly unconstitutional. Others have supported the idea of a special law because there is so much arbitrariness in this area.

42. However, although the Romanian authorities had been considering adopting a new law since 1990, it was only in September 1999 that a bill agreed upon by the Government was submitted to Parliament. Then, in February 2000 the Government withdrew the bill because of the flood of criticisms levelled at it by religious minorities, non-governmental organizations and the international community.

43. According to some observers, the September 1999 version of the bill was unacceptable mainly because it attached disproportionate importance and gave overly dominant status to the Orthodox Church and established excessively close links between the Church and the State. The bill also laid down conditions for recognition of a religion that would have been difficult to meet, such as the requirement that it should represent at least 0.5 per cent of the population, as well as unacceptable conditions for the registration of religious associations.

44. A revised bill should be submitted for comments to the religions recognized in Romania and to some international organizations. The Special Rapporteur also learned about some alternative draft bills prepared by non-governmental organizations, such as the one prepared by the Association for the Defence of Human Rights in Romania - the Helsinki Committee.

IV. THE ORTHODOX CHURCH

45. The Orthodox Church has a great influence on various aspects of society in Romania. It owes this influence not only to the high percentage of Romanians who describe themselves as members of it but also to the high proportion of these members who regularly practise their religion. In this connection, the church authorities drew attention to the growing number of young people who go to church. Moreover, Orthodox priests have sufficient status to be able to influence the policy of local authorities.

46. The Orthodox Church, several of whose members told the Special Rapporteur that it should be officially made "a State religion" or "a religion of the State", sees its role as being to protect the morals of Romanian society, a task it does not believe the State can accomplish. It is therefore calling on the State to show a spirit of cooperation and mutual respect in which each partner performs its own role. Orthodox officials explained to the Special Rapporteur that there would never be a complete separation of Church and State, but they did not see this as a danger.

47. In contrast, other observers who spoke to the Special Rapporteur stressed the perverse nature of the cooperation between the State and the Church, given their common interests. These observers believe that the Orthodox Church influences government policy in areas which go well beyond purely religious matters and that the authorities in turn use their assistance to the Church for their own ends.

48. Regarding the Orthodox Church's relations with religious minorities, the Special Rapporteur was told that the Church saw other religious movements as competitors, in the belief that Romania should be populated by Romanians and that Romanians must belong to the Orthodox Church. In this light, religious minorities are often considered to represent foreign interests. Thus, some representatives of the Orthodox Church explained that the Church had been right to oppose recognition of Jehovah's Witnesses. Serious doubts were also expressed about allowing Jehovah's Witnesses to give religious lessons in State schools. In this connection, the Orthodox Church strongly criticized proselytizing by some religious minorities, with some of its members feeling that such activities were an attack on the Church itself.

49. It therefore seems that, with a few exceptions, the inter-faith dialogue between the Orthodox Church and religious minorities in general is struggling to get under way. More specifically, the inter-faith dialogue between the Orthodox Church and the Greek Catholic Church has been thoroughly poisoned by the issue of restitution (see below).

V. SITUATION OF RELIGIOUS MINORITIES

50. During his visit, the Special Rapporteur met with many representatives of the religious minorities in Romania. Generally speaking, he found no serious violations of freedom of religion or belief or serious acts of religious intolerance or violence. Most religious minorities considered that they had good relationships with the central Government, including with the office of the Minister of State for Religious Affairs. However, they have some problems with the local authorities, who, according to them, are much more under the influence of the Orthodox Church. It is particularly, though not exclusively, non-recognized religions that experience the most problems, as a number of them are considered as "sects" by the Orthodox clergy.

A. Violence and other acts of religious intolerance

51. Some minorities from both recognized and non-recognized religions complained about being described in the media in erroneous and slanderous terms. In an article by a journalist from Cluj, for example, the Baha'i community, which is often described as a sect, was linked with the Unification Church (followers of the Rev. Sun Myung Moon) or the Church of Scientology. Jehovah's Witnesses, Baptists and Seventh-Day Adventists have found themselves in similar situations. Some religious minorities also denounced certain publications that incite racial or religious hatred, such as the *România Mare* magazine. Such behaviour is rarely prosecuted effectively by the Romanian authorities.

52. The Special Rapporteur was also told about certain acts of violence against religious minorities. In September 2001, for example, members of the Baha'i community who were organizing an exhibition in a park were attacked by a group of individuals who threw tomatoes and eggs at them. Despite the community's efforts to find the attackers and initiate judicial proceedings, the authorities took no action. Seventh-Day Adventists have also been intimidated on a number of occasions but the authorities have not prosecuted anyone, despite the complaints lodged.

B. Construction of places of worship

53. Under Romanian legislation, non-recognized religions may not build places of worship as such. At best, they can construct buildings that are not intended to be places of worship.

54. There is a special commission that grants recognized religions permission to build places of worship. The commission takes decisions on the appropriateness and other aspects of such buildings. Only the Orthodox Church is represented among the members of the commission. Most of the representatives of religious minorities reported relatively long delays in obtaining

building permits. Muslims were denied permission to build a second mosque in Bucharest, on the pretext that there is one there already. They also complained about the lack of a Muslim cemetery in Bucharest, which means they have to send the bodies of their deceased brethren back to their place of birth.

C. Education

55. In principle, the provision of religious education in all kinds of educational establishments is guaranteed by the Constitution but, despite some efforts by the authorities, a number of religious minorities are finding it difficult to provide religious education in State schools, particularly when only a small number of pupils belong to their community. Moreover, only recognized religions are allowed to provide such education.

56. In addition, pupils with non-Orthodox beliefs are in theory entitled to opt out of courses on the Orthodox religion but the religious intolerance towards non-Orthodox minorities in some schools means they dare not exercise this option. The Special Rapporteur was told that some pupils in a school in the department of Timis who are members of the Baha'i community were told by their religious teacher that they would be put in a lower class if they continued to follow lessons on the Baha'i religion.

D. Religious traditions and practices

57. Several religious minorities described to the Special Rapporteur the problems they had encountered because of their religious traditions or practices. Seventh-Day Adventists explained how they had been faced with a situation in which children from their community had been told they had to sit school exams on a Saturday, which is their day of prayer. The Supreme Court finally found in their favour in 1999 and they had had no such problems since then. Members of the Muslim community, meanwhile, explained to the Special Rapporteur that although there were no official rules concerning their day of prayer, many of them managed to come to some kind of arrangement on a case-by-case basis.

VI. THE QUESTION OF THE RETURN OF RELIGIOUS PROPERTY CONFISCATED UNDER THE COMMUNIST REGIME

58. A large amount of real estate belonging to religious communities established in Romania was confiscated by the State under the communist regime between 1948 and 1989. Most of the churches and other places of worship confiscated were handed over to the Orthodox Church, while the remaining real estate was used by the State for various purposes. Since 1989, the

Romanian authorities have adhered to the principle that these properties should be returned to the religious communities who owned them before 1948, at least on certain conditions.

A. Legal framework

59. The general legal regulations governing the return of property that belonged to religious denominations are contained in Emergency Government Ordinance No. 94/2000, but this legislation initially allowed the return of only a limited number of properties.

60. Under Act No. 10/2001 on the regime governing certain properties wrongfully confiscated between 6 March 1945 and 22 December 1989, the legal regime governing buildings that had belonged to religious denominations or to communities from national minorities and that had been taken over by the State or by other legal persons was to be regulated by special laws and their transfer or change of use was prohibited until such laws were passed.

61. Subsequently, Emergency Government Ordinance No. 94/2000 was quite substantially amended by Act No. 501/2002. The amendments included:

An increase in the number of properties returned to the religious denominations to which they belonged;

The possibility of returning properties that had been used for activities of public interest;

The possibility of returning certain movables intended for use in religious services, if these had been seized at the same time as the real estate and still physically existed at the time of restitution;

The establishment of special commissions on restitution, with fewer members in order to facilitate the process;

The introduction of much shorter deadlines for analysing and taking a decision on restitution (60 days from the date of registration of the application for restitution and supporting documents).

62. Under article 2 of Emergency Government Ordinance No. 94/2000, Government Decision No. 967/2000 set up a special commission on restitution consisting of representatives of various ministries; Government Decision No. 1139/2000 set out the regulations on the organization and functioning of this commission; and Government Decision No. 1164/2002 set out the means for

implementing Emergency Government Ordinance No. 94/2000, as well as other organizational and operational procedures of the special commission on restitution.

63. When the deadline for submission by the religious communities concerned of applications for restitution expired, on 4 March 2003, a total of 7,568 applications had been submitted, including 770 by the Orthodox Church, 992 by the Roman Catholic Church, 2,207 by the Greek Catholic Church, 899 by the Reformed Church, 1,509 by the Jewish community, 690 by the Evangelical Church and 201 by other denominations.

64. In response to these applications, the commission on restitution began by requesting local authorities to check on the current legal status of the property concerned. In cases where the necessary documentation was complete and the legal status had been checked, decisions were taken from 1 July 2003 onwards. So far, according to the information supplied by the authorities, 70 per cent of the applications have been considered and the return of 60 properties has already been approved.

65. The authorities also told the Special Rapporteur that a large number of properties that had belonged to the Jewish community (synagogues, cemeteries, schools, etc.) and other Romanian minority communities had been returned in accordance with the special regulations (Emergency Government Ordinance No. 21/1997 on the return of certain properties to the Jewish community and Emergency Government Ordinance No. 183/1999 on the return of certain properties to other national minorities).

66. In practice, representatives of most of the religious minorities who met with the Special Rapporteur during his visit complained about the slowness and relative inefficiency of the process of restitution, despite the promises made to them. These religious minorities believe that most of the property confiscated from them has yet to be returned to them.

B. Farmland and forests

67. After 1948, as well as other real estate, a large area of farmland and forests was also confiscated from different religious communities in Romania. After the revolution, the authorities had to arrange to have the various communities' property rights restored or established, as the land handed over in this process did not necessarily correspond to the land that had been confiscated.

68. Under article 22 of Act No. 18/1991, rural religious communities may be granted ownership of up to 5 hectares, and monasteries up to 10 hectares, of arable land when they were the former owners of farmland handed over by the communist regime to farm cooperatives and

when, in addition, they no longer owned such land. The Act also stipulates that the religious communities concerned can apply for the restoration of ownership of land with an area of more than 5 hectares, or 10 hectares in the case of monasteries, so that the area matches the area owned in the past, up to a maximum of 10 hectares for parishes and 50 hectares for convents and monasteries.

69. In this context, it should be noted that Romanian legislation also provides for the possibility that newly established religious communities can acquire farmland, within certain limits.

70. Romanian legislation stipulates that ownership of forests can also be returned to religious communities of any kind, up to a limit corresponding to the area they owned previously but not more than the maximum of 30 hectares.

71. The comments on religious property in chapter V, section A, also apply to farmland and forests.

C. The case of the Greek Catholic Church

72. The Greek Catholic Church was founded in Transylvania at the end of the seventeenth century with the union of Romanian Orthodox Christians and the Roman Catholic Church. For the sake of this union, Greek Catholics accepted the four principles required for union with Rome but continued to observe a number of Orthodox traditions. Just before the beginning of the communist era, the Greek Catholic Church had 1.5 million members (10 per cent of the population) and was the second-largest religion in the country.

73. In 1948 the Greek Catholic Church was banned by Decree No. 358/1948 and some members of its clergy were arrested. However, the Church carried on its activities in secret. The Greek Catholic churches and other parish buildings were confiscated and handed over to the Orthodox Church. Other properties belonging to Greek Catholic communities were also confiscated and became the property of the State. After the 1989 revolution, Decree No. 358/1948 was repealed and the Greek Catholic Church was again recognized. According to Decree-Law No. 9 of 31 December 1989:

> "With the aim of immediately eliminating from our country's legislation certain laws and regulations in force during the preceding dictatorial regime which by their discriminatory and unjust nature caused significant material and spiritual harm to the Romanian people, and desiring to re-establish the legitimate interests of all citizens and to

normalize relations with the State, the National Council of the National Salvation Front decrees the following:

Sole article. All of the following are repealed:

[…]

(20) Decree No. 358/1948 defining the legal status of the former Greek Catholic religion."

1. Legal framework and the attitude of the authorities

74. With regard to the confiscated real estate, the Government adopted Decree-Law No. 126/1990 laying down the legal provisions and procedure for the return of property that had belonged to the Greek Catholic Church. With regard to the property in the possession of the State, article 2 of Decree-Law No. 126/1990 stipulates that:

> "The property seized by the State pursuant to Decree No. 358/1948 and currently in the possession of the State shall, with the exception of agricultural lands, be returned in their present state to the Romanian Greek Catholic Church United with Rome. For the sole purpose of establishing identification procedures, a commission shall be set up consisting of representatives of the State and the Romanian Greek Catholic Church United with Rome appointed by the Government to draw up the inventories and procedures necessary for restitution."

75. With regard to the religious property confiscated from the Greek Catholic Church and handed over to the Orthodox Church, which is the most complex issue in the whole question of restitution, article 3 of the same decree-law stipulates that:

> "[With regard to] the legal status of the religious property and parishes that once belonged to the Romanian Greek Catholic Church United with Rome and that was subsequently taken over by the Romanian Orthodox Church, a joint commission shall be set up consisting of representatives of the two religions, taking into account also the wishes of the members of these communities."

76. In this respect, the authorities informed the Special Rapporteur that their basic policy was not to become involved in proceedings concerning the use and restitution of places of worship that are the subject of a dispute between the two religious communities. They insisted that the various problems could only be resolved through dialogue between the two parties concerned.

77. This attitude appears all the more justified given that, following the prohibition of the Greek Catholic Church in 1948, many members of this religious community joined the Orthodox Church, a move that was facilitated by the similarities in the services of the two churches and, especially, by the fact that these individuals could continue to practice their faith in the same places of worship (once Greek Catholic, now Orthodox) to which they used to go. A number of them did not subsequently consider returning to the Greek Catholic Church. This is why the number of Greek Catholics is today significantly lower in many places than it was before 1948.

78. Many Orthodox believers claim, then, that the situation after the revolution was no longer the same and that full restitution would therefore be an injustice similar to the one committed under the communist regime.

79. The problem is even more complicated in places where there is only one church - which once belonged to the Greek Catholic community - and where members of this community would be a very small minority in comparison with the Orthodox community. In such cases, returning the church to the Greek Catholics would, according to the authorities, leave the far larger Orthodox population with no place of worship. The authorities told the Special Rapporteur that they had made several proposals to fund the construction of wooden churches for communities with no place of worship, but without much success.

80. Whatever the case may be, it appears that the joint commission has only been meeting since 1998, and, even then, rarely more than once a year. According to several sources, the authorities have taken no steps to implement the decree that set up the commission and the Orthodox Church has continually hindered it in its work. Consequently, only half a dozen churches have been returned as a result of the commission's work.

2. Court cases

81. In the meantime, because of the inefficiency of the joint commission, representatives of the Greek Catholic community have taken a number of cases to the Romanian courts. Although many of these courts have declared that they have no jurisdiction in this type of dispute because Decree-Law No. 126 establishes a special mechanism to resolve such cases, some courts have found in favour of the Greek Catholic Church.

82. Following a wave of such court cases, the Patriarch of the Romanian Orthodox Church sent a letter to the Minister of Justice on 10 February 2002 denouncing the "illegal" and "unjustified" court decisions to return some religious properties to the Greek Catholic Church and stressing that restitution could only be granted by decision of the joint commission. The

Minister of Justice sent a copy of this letter to all the appeal courts, which was seen by many observers as a serious violation of the principle of the independence of the judiciary.

83. On the issue of the return of religious property, Orthodox Church leaders explained to the Special Rapporteur that a fundamental distinction needed to be made between sacred property, such as churches, and other property. To the Orthodox way of thinking, sacred property belongs to the community of believers. The Orthodox Church leaders point out that this is not the way the Roman Catholic Church sees it. Consequently, before an Orthodox church can be handed over to someone else, the entire community must give its consent. Given this requirement, a settlement through the courts is inconceivable to Orthodox leaders, since, according to them, "human justice cannot replace divine justice".

3. Results of action by Greek Catholics

84. In the meantime, only 150 of the 2,600 churches claimed have actually been returned to Greek Catholics. Of these, 50 have been returned thanks to the personal commitment of Nicholae Corneanu, the Orthodox Bishop of Banat, who has been strongly criticized by the Orthodox hierarchy for promoting restitution. The other churches have been returned following court decisions or as a result of the reconversion of entire communities of Greek Catholics to their original faith.

85. In this context, members of the Greek Catholic community in Romania spoke to the Special Rapporteur of their deep despair and strongly criticized the attitude of the Romanian authorities for failing to intervene in cases of restitution.

86. The Special Rapporteur was also informed that a number of Greek Catholic churches had been illegally destroyed by Orthodox communities. This is allegedly the case of the Greek Catholic churches in Vadu Izei, Baisora, Smig, Tritenii de Jos and Craiova. Moreover, other churches were still threatened with destruction at the time of the Special Rapporteur's visit.

87. With regard to other property confiscated from the Greek Catholic Church for the use of the State, the commission set up pursuant to the above-cited article 2 of Decree-Law No. 126/1990 has ceased to function and only 10 per cent of the property has been returned. Some of this property has even been sold to third parties as part of the process of privatization.

88. Finally, less than 20 per cent of the farmland and forests that belonged to the Greek Catholic Church have actually been returned to it, and some of them have reportedly been handed over illegally to the Orthodox Church.

4. The case of Ocna Mures

89. The events that took place in the parish of Ocna Mures, Transylvania, at the beginning of 2002 offer a remarkable illustration of the situation in which the Greek Catholic Church finds itself, even in cases where restitution has actually been granted by the courts.

90. The church in this parish, which had been Greek Catholic since the beginning of the nineteenth century, was confiscated in 1948 and ownership granted to the Orthodox community. After the revolution, in the absence of a negotiated settlement between the two churches, the Greek Catholic community went to court to claim its rights and was awarded ownership of the church by final decision of the appeal court in Alba Iulia in 1999. Two years later, the Greek Catholic community was granted actual possession of the church by another court decision and on 7 February 2002 members of the Greek Catholic Church in this parish returned to their church, some 54 years after it had been confiscated.

91. During the night of 15 to 16 March 2002, while the Greek Catholics were gathered in the church for a prayer vigil, a group of individuals armed with iron bars and led by three Orthodox priests burst into the church to force the congregation to leave. According to various sources, law-enforcement officers led by the chief of the local police took an active part in evacuating the church.

92. Following these events, and despite the complaints lodged by the Greek Catholic community, the authorities reportedly took none of the necessary steps to identify the perpetrators of these acts and, where necessary, to charge them for the offences committed. The authorities merely stressed that disputes over the restitution of religious property could be resolved only through dialogue with the Orthodox Church.

93. According to information received by the Special Rapporteur, similar situations have occurred elsewhere in the country.

VII. RECOMMENDATIONS

94. **With regard to the distinction between recognized religions and non-recognized religions or religious or faith-based communities, the Special Rapporteur notes the authorities' assertion that this distinction has no effect on the exercise of the right to freedom of religion or belief of individuals whose religion is not recognized. However, the Special Rapporteur considers that the principle of freedom of religion or belief, as enshrined in international human rights law, is difficult to reconcile with a formal or legal**

distinction between different kinds of religious or faith-based communities insofar as such a distinction in their status must imply a difference in rights or treatment, which may, in some cases, constitute discrimination that is incompatible with the exercise of human rights.

95. **The Special Rapporteur notes that this distinction between two kinds of religious or faith-based communities means that the financial contributions made to recognized religions are not available to non-recognized religions, that non-recognized religions, unlike recognized religions, are not entitled to build places of worship and that non-recognized religions cannot provide religious instruction in State schools in the same way as recognized religions. The problem is not just that such discrimination may be contrary to international human rights law, particularly since it is not certain that the criteria used by the authorities to decide whether a religion should be recognized are objective from the viewpoint of international law, but that such discrimination amounts to restrictions that may, in certain circumstances, constitute a violation of the right to freedom of religion or belief.**

96. **In the light of this, the Special Rapporteur would like to encourage the Romanian Government to abolish the distinction between recognized and non-recognized religions, possibly when it adopts the new law on religions, which it is hoping to do in the near future. In any case, the Government should ensure that this distinction does not lead to discrimination that is incompatible with international human rights law or to restrictions that might curtail the right to freedom of religion or belief, in violation of international law.**

97. **More generally, with regard to the bill on religions and the question of whether or not such a bill is absolutely necessary, the Special Rapporteur believes there is no blanket rule in this area. While there are situations in which special laws of this kind lay down the legal rules and the various rights of the religious or faith-based communities in a country and thereby guarantee the principle of freedom of religion, there are also other situations in which such laws, far from guaranteeing freedom of religion or belief, are used to restrict various aspects of the exercise of this freedom, sometimes in a manner that is incompatible with international law. In this connection, the Special Rapporteur would like to stress that a State has international obligations in respect of freedom of religion or belief regardless of whether or not it has a special law of this kind.**

98. **The Special Rapporteur also believes that a special law could act as a catalyst in the implementation of international obligations relating to freedom of religion or belief, particularly in a country where a religion followed by a very large majority has acquired**

such importance that the consequences of its actions or positions go beyond the limits of purely religious matters.

99. **Consequently, as part of the process of drafting and adopting this law and in the light of the above comments, the Special Rapporteur specifically recommends that the Government should consult, as it already has done, with all religious minorities about the new draft that it intends to submit to Parliament for approval and to take into account alternative drafts prepared by non-governmental organizations, with the aim of producing a law that is perfectly in keeping with Romania's international obligations in this area.**

100. **With regard to the issue of returning religious property, the Special Rapporteur believes that this concerns situations that do not necessarily violate the right to freedom of religion or belief. The Special Rapporteur makes a distinction between, on the one hand, the actual places of worship and the religious items used in acts of worship and, on the other, other property that belonged to religious communities. The Special Rapporteur notes that most of the confiscated property in the latter category was in one way or another in the possession of the State, whereas the places of worship and associated items had mostly been handed over to the Orthodox Church.**

101. **The Special Rapporteur notes that it has taken a very long time to return the religious property that was confiscated during communist rule and then entered the possession of the State - this concerns most of the religions in Romania - and that most of the property in this category had not yet been returned at the time of the Special Rapporteur's visit. Consequently, while stressing that the failure to return property or the length of time taken to return it is not, at least for property in this category, necessarily a violation of the right to freedom of religion or belief of the members of the communities concerned, the Special Rapporteur requests the authorities to significantly speed up the process of returning property and to complete it as soon as possible.**

102. **With regard to the places of worship and the items used in acts of worship that were handed over to the Orthodox Church, the Special Rapporteur notes that this mainly concerns churches that had previously belonged to the Greek Catholic Church. The authorities expressly told the Special Rapporteur that they did not wish to become involved in the process of dispute settlement in these cases and that they preferred solutions to be found through dialogue between the two churches concerned. The regulations that have been adopted in this respect reflect the authorities' position.**

103. **In this connection, the Special Rapporteur takes note in particular of the comments by representatives of the Orthodox Church to the effect that, in the Orthodox tradition,**

churches are places of worship that belong to the community of believers who use them, not to the Church authorities. This form of ownership demonstrates how the link between the actual places of worship and the right to freedom of religion or belief is far closer than the link between this right and other types of property belonging to religious communities. The Special Rapporteur is of the opinion that, in certain circumstances, the closeness of this link shows how the deprivation of the right to attend a place of worship may constitute a violation of the right to freedom of religion or belief.

104. **International obligations in respect of freedom of religion or belief are primarily obligations incumbent upon the State, not upon religious communities of any kind. Consequently, in cases where members of the community are prevented from using a place of worship that belongs to them, this thereby constituting a violation of their right to freedom of religion or belief, the State cannot abdicate its responsibilities in favour of a process involving an amicable settlement between the two parties concerned. International law requires it to take positive steps to put an end to any situation in which the freedom of religion or belief is violated.**

105. **From this viewpoint, the Special Rapporteur requests the Romanian Government to end its policy of refusing to become involved in the complex process of returning religious property to the Greek Catholic Church and encourages it to take practical steps to rectify situations that constitute violations of the right to freedom of religion or belief. In this respect, he stresses that the sooner the questions of restitution are settled, the sooner the inter-faith dialogue, which has suffered greatly because of them, can be resumed between the Orthodox Church and the Greek Catholic Church.**

106. **As for the court cases brought by the Greek Catholic community, the Special Rapporteur is concerned by the attempts to dissuade this community from resorting to this procedure for settling disputes over real estate and by the position of certain authorities that reject court cases in such disputes. The Special Rapporteur believes that an appeal to an independent judiciary is, in a democratic State, the principal means of seeking a remedy for a human rights violation, particularly within the meaning of article 2, paragraph 3, of the International Covenant on Civil and Political Rights.**

107. **The Special Rapporteur is particularly concerned by reports that final decisions of the courts to grant restitution could not be implemented because of obstacles raised by the Orthodox Church, sometimes with the cooperation of the local authorities. Such actions are flagrant obstacles to the normal exercise of justice and to the independence of the judiciary and may amount to a serious failure by the Government to comply with its international obligation to provide effective remedies for the victims of human rights**

violations. The Special Rapporteur requests the Government to take appropriate measures to ensure the implementation of the final decisions of the courts in such matters, as well as future decisions on questions of restitution.

108. **The Special Rapporteur also points out that international human rights law in matters of freedom of religion or belief, and particularly article 18 of the International Covenant on Civil and Political Rights, implies that the State has positive obligations, in cases where religious minorities are the victims of acts of intolerance or religious violence, including when these acts are perpetrated by non-State individuals or groups, to take the necessary steps to ensure that religious minorities can exercise their right to freedom of religion or belief in complete safety.**

109. **Finally, with regard to speeches and other means of communication conveying messages of religious intolerance and, sometimes, hatred in the press, in politics and in schools, where the Orthodox religion is very influential, the Special Rapporteur notes that, for various reasons, incidents of this kind are often not reported to the authorities and therefore go unpunished. The Special Rapporteur encourages the authorities to be more proactive in identifying incidents of this kind, including through the National Centre against Discrimination, and to take appropriate steps to punish such behaviour and ultimately to put a stop to it. The Special Rapporteur also points out that one of the main tools for combating intolerance in the long term is education. In this respect, he refers the Romanian authorities to the final document adopted by the International Consultative Conference on School Education in relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination, held in Madrid from 23 to 25 November 2001, and encourages them to implement all the recommendations contained in it.**

110. **More specifically, with regard to the role of the media, the Special Rapporteur draws attention to the ease with which religious intolerance can be propagated and the subsequent dangers posed by ignorance and prejudices on all sides, including in relation to religious or faith-based minorities. He also points out that, under article 20, paragraph 2, of the International Covenant on Civil and Political Rights, the authorities are under an obligation to combat and prosecute any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.**
