RABBINICAL CHANCERY IN ROMANIA-AN ALTERNATIVE TO THE STATE ORGANIZED COURTS IN SOLVING FAMILY MATTERS?

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Abstract

On August 27, 2008, by Government Decree no. 999, the Romanian Government recognized the Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult. According to Article 41 of the statute, the Rabbinical Chancery is a body of the Federation entrusted with the fulfillment of the religious needs of the members of the Federation, observing "the rules of the Mosaic law, halaha [i.e. halakhah] and the Mosaic tradition". Article 41 enumerating the competences of the Rabbinical Chancery, provides under letter h that the Chancery has jurisdiction over "the religious disputes inside Communities". But in Judaism, because Torah is the blueprint of the entire universe, every aspect of human life is a religious one. As a proof of this fact we can invoke the extraordinarily rich content of the Talmud (the Mishnah with its six orders and Gemarah, 517 chapters in total). The third order of the Talmud deals mainly with laws concerning marriage, the relationship between spouses and divorce. So, disputes concerning marriages concluded between members of the Federation (whether from the same Community or not) are religious disputes, that should be solved by the Rabbinical Chancery.

My paper discusses the legal status in Romania of decisions and writs (especially the kind of writs named get) delivered or drawn up by the Rabbinical Chancery in solving the matrimonial disputes of the members of the Federation of Jewish Communities of Romania-The Mosaic Cult. On the one hand, these documents could be recognized as having binding effect on the Romanian authorities on the grounds of Articles 7, 8, 9 and 26 of Law no.489 of 2006 on the Freedom of Religion and the General Status of Denominations. On the other hand, there is no hard evidence that Romanian Government intended to allow religious courts to rule in litigation concerning such sensible areas as Family Law or Civil Law. On the contrary, Article 5 of Law no.489 of 2006 emphasizes that all religious cults have to observe the Constitution and the others Romanian laws. Or neither Article 124 and 126 of the Constitution nor Articles 3 or 38 of the Romanian Family Code recognize the jurisdiction of a religious authority in concluding or dissolving a matrimonial liaison. Moreover, only the Mosaic Cult and the Catholic Church have in their statutes provisions that enables a religious

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body to have jurisdiction over laity (while the statutes of the Orthodox Church or the Muslim cult don't contain such provisions). Article 9 of Law no.489 of 2006 provides for the equality of all religious cults before the Romanian authorities. Or Article 41 of Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult infringes upon this equality, allowing Jews of Romanian nationality to solve their matrimonial causes before a religious court with the observance of other rules than those provided for by the Romanian Family Law.

The status of the Rabbinical Chancery as a court of justice with jurisdiction in family matters is not sound enough according to the present Romanian Law. Romanian authorities have to confirm it or to explicitly reject it (by demanding the modification of Article 41 of the Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult).

Keywords:

Rabbinical Chancery; Romanian Family Code; Recognition of the Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult.

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A Short History of the Romanian Jews

Romania appeared as state in 1862, by the complete unification of the *Principality of Walachia* (established in 1330) with the *Principality of Moldavia* (established in 1364). These two principalities, dwelt by speakers of the same Neo-Latin language, were since January,1859 parts of a personal (then real) union of states, denominated the *United Principalities of Moldavia and Walachia* (in the terms of the *Paris Convention of 1858*). On the 9th of May, 1877, Romania proclaimed her independence from the Ottoman Empire, independence that was internationally recognized by the *Treaty of Berlin of July 13, 1878*. In December 1918, after the collapse of the Austro-Hungarian Empire as well as of the Russian Empire, Romania incorporated all the lands dwelt by the Romanian Nation (Transylvania, Bessarabia and Bukovina). Unfortunately, the outburst of the Second World War brought the loss of the northern part of Transylvania (granted to Hungary by the *Second Vienna Award of 1940)* as well as of Bessarabia and the northern part of Bukovina (regions occupied by the Soviet Union in 1940, as a result of a secret protocol to the *Ribbentrop-Molotov Pact of August 23, 1939*). Being defeated in the Second World War and partially conquered by the Red Army, Romania was forced to accept the loss of Bessarabia and North Bukovina by the *Peace Treaty of Paris of 1947,* in exchange for the northern part of Transylvania. Romania became a part of the Communist block until December 1989.

The first Jews arrived on the territory of present day Romania with the Roman legions, after the victory of Emperor Ulpius Nerva Trajan in the two wars with the Dacians (101-102 and 105-106 CE). The proximity of the Black Sea and of Constantinople, Sofia or Salonika, important geographical and historical landmarks for the Jewish Diaspora of the time[1] assured the presence of Jews on the Romanian territory in the early Middle Ages. In the 13th century, Jewish merchants frequently crossed the Romanian lands towards Poland, Russia and the Byzantine Empire. In the 14th century, the Romanian Principalities of Moldavia and Walachia became a haven for the Jews expelled from the Hungarian Kingdom, during the reign of King Louis the Great. In the 15th century and in the 16th century, there were important Jewish Communities in Iasi (important city of Moldavia and capital city of this principality between 1564 and 1861) and in Bucharest (the capital city of Walachia then of Romania since 1465)[2]. In the 17th and the 18th centuries, the communities of Sephardim

[1]Melvin J. Konner, *Jewish Diaspora in Europe and the Americas* in *Encyclopedia of Diasporas,* Part I, Springer US, 2005, p.164 (available at: http://www.springerlink.com/content/p1237v4145u13322/fulltext.pdf)(accessed March 19, 2009).

[2]For the Jewish tombstones of 1467, found in Iasi, see Silvia Craus, *Pietrele vorbitoare* (Storyteller Stones) in *Ieşeanul* (available at: http://old.ieseanul.ro/articol/ziar/iasi/pietrele-vorbitoare/9202/) (accessed on March 24, 2009).

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(in Walachia) and Ashkenazim (in Moldavia) played a major economic role integrating the two Romanian Principalities on the European market and supplying the internal markets with various goods. These communities enjoyed religious freedom and a large legal autonomy. At that time, the Jews were precluded by the Moldavian and Walachian laws from acquiring agricultural lands and to testify against a Christian. In Transylvania, there were both Sephardim Jews (established there in the 16th century) and Ashkenazi Jews from Poland and Central Europe. While the Hassidic population that dwelt in the North of Transylvania was very attached to the traditional Jewish way of life, the Jews in the South of Transylvania followed the cosmopolitan life of the Jewry of Central Europe. In 1859, there were 147 000 Jews in Moldavia and Walachia and 50 000 in Transylvania. In the 19th century, the misfortunes of the Romanian Jewry started. By the *Constitutional Regulations* of Walachia and Moldavia (enforced in 1831, respectively 1832, under Russian occupation), the Jews were precluded from any political and civil rights. By the provisions of Article 7 of the Romanian *Constitution of 1866*, the Jews were precluded from acquiring Romanian citizenship. These discriminatory provisions were abrogated when the Romanian Government had to comply with the provisions of Articles XLIII and XLIV of the *Treaty of Berlin of July 13, 1878, between Great Britain, Austria-Hungary, France, Germany, Italy, Russia and Turkey* (but the diplomatic pressure induced by these great powers had also an undesired effect, consolidating antisemitism in Romania[1]). The *Constitution of 1923* (the Constitution of the Great Romania) gave Romanian citizenship to all the stateless Jews who dwelt on Romanian territory[2]. In 1930, there were 756 930 Jews in Romania, representing 13,6 % of the urban population and 4,2 % of the total population[3]. The integration of such a diverse Jewish population (with cultural roots in Austria, Hungary and Russia) was extremely difficult. The international diplomatic pressure for granting Romanian citizenship to the Jews of the newly united territories as well as the struggle for economical power added obstacles to this process and fueled the antisemitism of Romanian political parties of the time[4]. During the Second World War, Romania, as an ally of the Third Reich, promoted and supported (at least until October 1942), the destruction of the majority of the Jews from Bessarabia, Bukovina, Transnistria (a territory conquered by Romania during the unfolding of the "Barbarossa

[1]*The Final Report of the International Commission for Studying the Holocaust in Romania,* pp.14-17 (available at: http://www.presidency.ro/static/ordine/ICHR-2004.pdf) (accessed on March 25, 2009).

[2]For a short history of Jews in Romania see the site *Jewish.ro*: http://www.jewish.ro/html/____www_jewish_ro____evreii_in.html (last visited on July 7, 2009)

[3]*The Final Report of the International Commission for Studying the Holocaust in Romania,* p.12 (available at: http://www.presidency.ro/static/ordine/ICHR-2004.pdf (accessed on March 25, 2009)

[4]Ibidem, pp. 20-21 .

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Operation"). The deportation of the Jews from Transylvania to Auschwitz was undertaken by Hungary (which controlled at the time the northern part of Transylvania, as a result of the *Second Vienna Award of 1940*)[1]. The International Commission for Studying the Holocaust in Romania concluded that Romania is responsible for the killing of 280 000-380 000 Jews (Romanian and Ukrainian) while Hungary is responsible for the death of 135 000 Jews (former Romanian citizens) in Transylvania[2] . After the Second World War, the Romanian Jewish Community diminished especially through the emigration of its members to Israel. The Communist regime suspected the Jews of Zionist convictions, of espionage and of promoting a cosmopolitan way of life. As a result since March 2, 1949, the Romanian Communist regime took repressive measures against members of the Jewish minority (mock trials, political detention, forced labor, social exclusion). We should mention here the infamous trade with human beings, during Ceauşescu's era (1965-1989), when each Jew was allowed to emigrate for a price between 3000-9000 US dollars[3]. In 2002, according to the results of the census conducted by the Romanian Government, there were only 5870 Jews in Romania[4].

Article 41 of the Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult (*recognized by* Government Decree no. 999 *of August 27,2008)*

In Official Gazette Part I, no. 670 of September 29, 2008 was published Government Decree no. 999 of August 27,2008 on the Recognition of the Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult alongside with the aforesaid statute published in an appendix. According to Article 1 of the Government decree, the Romanian Government (complying with Articles 29 and 108 of the Constitution and Article 49 of Law no.489 of 2006 on the Freedom of Religion and the General Status of Denominations) recognizes the Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult, statute provided for in the appendix which is an integral part of the decree. Article 2 of the decree provides for the abrogation of Decree no. 589 of 1949 on the Recognition of the Statute of The Mosaic Cult on the day when Government Decree no. 999 of August 27, 2008 came into force (on September 29, 2008[5]).

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[1]Ibidem, pp.341-345.

[2]Ibidem, pp.341.

[3]*Istoria evreilor în România* (the Jews'History in Romania) http://ro.wikipedia.org/wiki/Istoria_evreilor_%C3%AEn_Rom%C3%A2nia (last visited on July 7,2009).

[4]http://www.recensamant.ro/datepr/tbl4.html (last visited on July 7, 2009).

[5]According to Article 78 of the *Constitution of Romania* (revised and republished by *Law no. 429 of 2003*), an act published in the Official Gazette enters into force on the day provided in the legal

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The *Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult* defines in Article 1 the role and the composition of the Federation of Jewish Communities of Romania-The Mosaic Cult and of the Jewish Communities. Paragraph 1 of Article 1 provides that the Federation is the organization, which freely reunites the Jewish Communities -The Mosaic Cult of Romania. This organization is recognized by the Romanian Government and has to comply with the provisions of the *Constitution*, of *Law no. 489 of 2006 on the Freedom of Religion and the General Status of Denominations,* of the legislation on national minorities and with the international conventions concluded by Romania. The roles of the Federation are described in paragraph 2. It has to play, for the Romanian Jews, six roles among which the most important are: the spiritual, educational, cultural and social partnership roles. Paragraphs 3 and 4 of Article 1 define the Jewish Communities. They are old organizational structures of the Romanian citizens of Mosaic (Judaic) religion, who have common interests and who behave according to the rules, traditions and customs of the Judaic identity. The main function of these communities is the fulfillment of the religious needs of the believers of Judaic (Mosaic) religion.

According to paragraph 1 of Article 41 of the statute, the Rabbinical Chancery is a body of the Federation entrusted with the fulfillment of the religious needs of the members of the Federation, observing "the rules of the Mosaic law, halaha [i.e. halakhah] and the Mosaic tradition". Article 41 enumerating, in paragraph 2, the competences of the Rabbinical Chancery, provides under letter h that the Chancery has jurisdiction over "the religious disputes inside Communities".

The marital disputes between Jewish spouses – part of the "religious disputes" concept in Judaism

The concept of "religious disputes", used in Article 41 paragraph 2 letter h of the *Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult*, proves to be a Trojan horse for the secular Romanian legal order. This because in Judaism, *Torah* (The *Written Law* or the *Tanakh*[1]) is considered to be the blueprint of the world. A Talmudic sage urged his disciples to turn again and

text or after three days from the publication day. This provision concerns only the acts adopted by the Parliament or the ordinances of the Government, emitted on the ground of an act of delegation, adopted by the Parliament. The emergency ordinances of the Government or the decrees of the government or the minister's orders enter in force on the day of the publication in the Official Gazette. For details see:
http://www.avocatnet.ro/content/articles/id_258/Intrarea/in/vigoare/a/actelor/normative/potrivit/Constitutiei/revizuite.html (accessed on April 2, 2009).

[1]*Tanakh* is an acrostic which describes the content of the *Written Law*: *Torah* (The Law), *Nevi'im* (The Prophets) and *Ketuvim* (The Writings). See details at *Judaism 101* http://www.jewfaq.org/torah.htm (last visited on July 7, 2009)

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again the Torah because "everything is contained in the Torah" and therefore there is "no greater virtue" than the study of the Torah[1]. In the *Zohar*, in Volume 4, *Toldot,* it is written: "Come and behold: when the Holy One, blessed be He, wished to create the world, He did so according to the Torah. And every act that the Holy One, blessed be He, used to create the world was done according to the Torah." In the same volume, Hashem[2] said to the newly created world: "World, world, you and your nature are based solely upon the Torah, and for that reason I created man in you, to be occupied with the study of the Torah"[3]. Also, in *Bereshit Rabba* (an exegetic text on the *Book of Genesis*, text assigned by tradition to Oshaya, a scholar who lived in the 3rd century CE) it is written: "The Torah was to God, when he created the world, what the plan is to an architect when he erects a building" and "There is a limit to everything except to the greatness and depth of the Torah"[4]. So, in Judaism, *every aspect of human life (as well as every aspect of the world) is a religious one*. As a proof of this fact we can invoke the extraordinarily rich content of the *Talmud*. This summary of *Oral Law* (which completes and explains the *Written Law*) is composed of the *Oral Law*, named *Mishnah,* with its six orders, 63 tractates and 517 chapters, in total and the *Commentary on the Mishna*, named *Gemarah*, which covers 37 or 39 of the tractates of the Mishnah, insomuch as we refer to the Jerusalem Talmud or to the Babylonian Talmud[5]. The third order of the Mishna deals mainly with laws concerning marriage, the relationships between spouses and divorce. So, litigation concerning marriages concluded between members of the Federation of Jewish Communities of Romania (whether from the same Community or not) is religious dispute, that should be solved by the Rabbinical Chancery.

Has the Rabbinical Chancery jurisdiction over matrimonial causes in Romania? Should its writs have binding effect in Romania?

The jurisdiction of a rabbinical court (*Beit Din*) composed of three rabbis (dayans) over the matrimonial causes of the Jews (especially on divorce) was established by Talmud, considering the implications and the multitude of

[1]Adin Steinsaltz, *The Essential Talmud,* pp.5 and 95 (Translated from Hebrew by Chaya Galay, Basic Books. A Division of HarperCollins Publishers, United States, 1976).

[2]One of the names of God in Judaism, name which can be used in a daily conversation.

[3]These excerpts from the *Zohar* (The Book of Splendor) can be found at *The Zohar. The Most Powerful Spiritual Tool* https://www.kabbalah.com/k/index.php/p=zohar/zohar&vol=8 (accessed on March 29, 2009).

[4] *The Midrash: The Bereshith or Genesis Rabba*, pp.42 and 48, available at : http://www.sacred-texts.com/jud/mhl/mhl05.htm (accessed on April 1, 2009).

[5]Abraham Cohen, *Talmudul* (Everyman's Talmud), pp.28 (where the author mentions 524 chapters of Mishna) and 36 (Editura Hasefer, Bucureşti, 2005), and Adin Steinsaltz, *op.cit.*, pp.91 (where the author talks about 517 chapters of Mishna) and 92.

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essential and formal requirements of the *get* (bill of divorcement with 12 lines, written in Aramaic, by a scribe on white paper with a special ink)[1]. This jurisdiction was preserved during the Middle Ages. In the Modern Era, when the Jewish communities of Diaspora have lost their legal autonomy and the jurisdiction of the civil (lay) courts over matrimonial causes has been introduced in the Christian states, the Beit Din has continued to be considered by the Orthodox Jews as the sole authority able to solve the spouses' disputes or to unbind the matrimonial liaison. Thus, civil divorce has not been recognized by many Jewish religious authorities[2], while the secular authorities of the Christian states have not recognized the Jewish religious divorce. In Israel, according to the *Rabbinical Court Jurisdiction (Marriage and Divorce) Law (1953)*, the Rabbinical Courts have exclusive jurisdiction over matters concerning marriage and divorce[3].

It seems that according to Article 41 paragraph 2 letter h of the *Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult* (statute recognized by *Government Decree no. 999 of August 27, 2008),* the Rabbinical Chancery of the Federation has acquired jurisdiction over the matrimonial proceedings of the Romanian Jews. Because the legal provision of Article 41 paragraph 2 letter h of the statute is obscure enough, in the following pages we shall try to discover if the Romanian Government, when approving the statute, really had the intention to confer to the Rabbinical Chancery jurisdiction over the matrimonial matters of the Romanian citizens of Mosaic religion. The answer to this question is decisive for the legal binding force of decisions and other writs (especially for the legal power of *gets*) delivered or drawn up by the Rabbinical Chancery in solving the matrimonial causes of the members of the Federation of Jewish Communities of Romania-The Mosaic Cult.

First, we shall examine the pros of the jurisdiction of the Rabbinical Chancery over the matrimonial causes of the Romanian Jews. The provisions of *Decree no. 999 of August 27,2008 on the Recognition of the Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult* are quite clear and laconic. Article 1 of the decree recognizes the new statute, while by Article 2, the old decree with the old statute is abolished. Because the Romanian Government did not express any reservation on the interpretation of Article 41 paragraph 2 letter h of the statute and because this decree was countersigned by the Minister of Culture and Cults, we can strongly assume that the Romanian Government was aware at the time of the enactment of the broad sphere of the "religious disputes" concept in Judaism and intended to give the Rabbinical Chancery complete

[1]Adin Steinsaltz, *op.cit.*, p. 134 and Iulia Andreea Moldovan, *Divorţul în tradiţia evreiască* (Divorce in Jewish Tradition), pp.28-29 and 71 (Editura Lumen, Iasi, 2008).

[2]In Romania, too, First Rabbi Shlomo Sorin Rosen considers that the civil divorce has nothing to do with the religious divorce. See: http://dvartora.jewish.ro/raspunsuri-21.php (last visited on July 9, 2009).

[3]Iulia Andreea Moldovan, *op.cit.*, pp.44-53.

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jurisdiction in the matrimonial affairs of Romanian Jews. Now, we have to examine if the judicial competence of a religious court (in our case, the Rabbinical Chancery) is consistent with the Romanian legislation concerning the religious liberty and the general regime of cults (legislation invoked in the preamble even by *Decree no. 999 of August 27,2008*). Article 29 of the *Constitution of Romania* (as amended and completed by *Law no. 429* of *2003*) provides for the freedom of conscience as follows:

"(1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions.

- Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
- All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.
- Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults.
- Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.
- Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them[1]."

In accordance with paragraphs 3 and 5 of Article 29 of the Constitution, the Romanian State should allow and recognize the jurisdiction of religious courts, if this jurisdiction is provided by the statutes of a certain denomination and if these statutes comply with the special laws on the religious cults. Moreover, if the Romanian state is called by paragraph 5 of Article 29 to support the recognized denominations in providing religious assistance for believers in distress (believers in the army, in hospitals, prisons, asylums or orphanages), it should allow too the jurisdictional activity of these cults for believers seeking to solve their family disputes according to the rules of their religion. Believers do need religious assistance not only when they are ill, or in the army or when in a prison or orphanage, but also when their marriage is broken down. Paragraph 1 of Article 29 of the Constitution forbids any coercion against a Romanian citizen to embrace an opinion "contrary to his own convictions". This paragraph implies the prohibition for the Romanian State to compel two believers of a recognized denomination to seek remedy for their marital disputes before a lay court, according to the secular Family Law, when they consider that only a religious court should settle such cases according to

[1]The English translation of Article 29 of the Constitution of Romania can be found at: http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0a29 (accessed on April 8, 2009).

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the religious rules. The judicial activity of the recognized denominations in solving Family Law matters between believers constitutes an integral part of the autonomy of these cults from the State, feature proclaimed by paragraph 5 of Article 29 of the Constitution. By recognizing the jurisdiction of the religious courts over Family Law cases between believers, the Romanian State would prove its tolerance and respect for all the recognized denominations, enforcing paragraph 2 of article 29 of the Constitution. Now, we have to examine the provisions of *Law no.489 of December 28, 2006 on the Freedom of Religion and the General Status of Denominations*[1], to see if this act allows the judicial competence of the religious courts. Article 26 of *Law no. 489 of 2006* provides:

- "(1) Denominations may have their own religious courts for matters of internal discipline, according to their bylaws and internal regulations.
- (2) Internal discipline matters are subject to bylaws and canonic regulations
- exclusively.
- (3) The existence of a denomination's religious courts does not preclude applicability of Romanian law on infractions and criminal violations".

This article is included in Section III (*Employees of the denominations)* of Chapter II (*Denominations*) of *Law no. 489 of 2006*. According to Article 23, paragraph 1 of the same law, denominations elect, appoint, hire or terminate staff according to their own bylaws, canonic codes or regulations. In accordance with paragraph 2 of Article 23, the employees of denominations can be disciplined for violating the denomination's doctrine principles or moral principles, based on the denomination's bylaws, canonic codes or regulations. So, the Rabbinical Chancery is allowed by the Romanian secular state to have jurisdiction at least over the employees of the *Federation of Jewish Communities of Romania-The Mosaic Cult,* employees who violates the rules of the *Torah* and of the *Talmud*. Article 8 of *Law no. 489 of 2006* provides:

- "(1) Recognized denominations are public-utility legal entities. They shall be
- organized and shall operate under the Constitution and under this Law, autonomously, according to their own bylaws or canonic codes.
- (2) The components of denominations are also legal entities, as they are
- established in the denominations' bylaws or canonic codes, if they meet the conditions set in the latter.
- (3) Denominations shall operate in observance of the laws and of their own bylaws and canonic codes, whose provisions are only applicable to their followers.

[1]The English translation of this law can be downloaded from the web page of the Romanian Ministry of Culture, Cults and National Heritage : www.culte.ro/DocumenteDownload.aspx?id=730 (accessed on April 8, 2009)

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- (4) The name of a denomination cannot be identical to that of another recognized denomination in Romania."

So, the Rabbinical Chancery is considered a legal entity and all the operations of the *Federation of Jewish Communities of Romania-The Mosaic Cult* as well as all the actions of the Romanian Jews have to observe the *Torah* and the *Talmud*. Corroborating the provisions of Article 8 paragraphs 2 and 3, Article 23 paragraph 2 and Article 26 of *Law no.489 of 2006*, we can conclude that the Romanian secular state recognizes the jurisdiction of the Rabbinical Chancery in the marital litigation of the employees of the *Federation of Jewish Communities of Romania-The Mosaic Cult* (because they are compelled by the legal provisions to observe the rules of the *Torah* and *Talmud* on marriage and divorce). What about the other Romanian Jews' marital litigation ? The jurisdiction of the Rabbinical Chancery over the Romanian Jews' matrimonial causes can be supported on the provisions of Article 7 paragraph 1 and Article 9 paragraphs 3 and 5 of *Law no. 489 of 2006*. In accordance with Article 7 paragraph 1, the Romanian State recognizes the denominations' spiritual, educational, social-charitable, cultural and social partnership role, as well as their status as factors of social peace. The status of "factor of social peace" implies for the *Federation of Jewish Communities of Romania-The Mosaic Cult* the possibility to solve conflicts and disputes at law among its followers according to the provisions of the *Torah* and *Talmud*. Paragraphs 3 and 5 of Article 9 provide for the cooperation of the Romanian public authorities with the denominations "in matters of common interest" and for the partnerships or agreements signed by the Romanian central public authorities with the recognized denominations "in domains of common interests" and "for regulating certain aspects specific to the tradition of denominations". Both the partnerships and agreements shall be submitted to approval by law. So, the Romanian secular authorities could cooperate with the *Federation of Jewish Communities of Romania-The Mosaic Cult* and could sign a partnership (which has to be approved by an act of Parliament) by which they recognize the jurisdiction of the Rabbinical Chancery over the Romanian Jews' matrimonial causes (or over all the Romanian Jews' Family Law matters).

Conclusively, Article 29 of the Romanian *Constitution*, Articles 7 (paragraph 1), 8, 9 (paragraphs 3 and 5), 23 (paragraphs 1 and 2) and 26 of *Law no.489 of 2006*, as well as Article 1 of *Decree no. 999 of August 27,2008* support the jurisdiction of the Rabbinical Chancery over the Romanian Jews' matrimonial causes (though the jurisdiction of the Rabbinical Chancery in the marital litigation of other Jews than the employees of the *Federation of Jewish Communities of Romania-The Mosaic Cult* should be specified in an agreement approved by an act of the Romanian Parliament*).*

It's time to examine the cons of the jurisdiction of the Rabbinical Chancery over the matrimonial causes of the Romanian Jews. According to Article 5 paragraph 4 of *Law no. 489 of 2006 on the Freedom of Religion and the General Status of Denominations,* in their activities, the denominations, religious

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associations and religious groups are "under an obligation to observe the *Constitution of Romania* and laws, to not threaten public safety, order, health, morality and the fundamental human rights and liberties". That means that the *Federation of Jewish Communities of Romania-The Mosaic Cult* must comply with the constitutional and legal provisions on the Romanian judicial system, with the provisions of the *Family Code of 1954* on the conclusion and the dissolution of marriage as well as with the provisions of the *Code of Civil Procedure of 1865* (as it has been amended) regarding the divorce procedure. Article 124 of the *Constitution of Romania of 1991* (as amended and completed by *Law no. 429 of 2003 on the Revision of the Constitution of Romania*) provides:

- "(1) Justice shall be rendered in the name of the law.
- (2) Justice shall be one, impartial, and equal for all.
- Judges shall be independent and subject only to the law."

It is obvious that paragraph 2 of Article 124 of the *Constitution* prohibits the existence of religious courts, as jurisdictional entities, outside the state court system, because in this event, in Romania, justice would not be unique and equal for all citizens (considering the differences between the rules that govern the followers of different denominations- for example the rules of the *Torah* and *Talmud*- and the lay rules which have to settle the social conduct of all the Romanian citizens). Also, a religious court could hardly comply with paragraphs 1 and 3 of Article 124 of the *Constitution*. For instance, though the judges of the Rabbinical Chancery enjoy independence in relation with the administrative bodies of the Federation, according to Articles 26, 24 paragraph 1, 23 letter e and 22 paragraph 2 of the *Statutes*, they are not subject only to the law provided in Article 124 of the *Constitution* (that is the legal rules created by the Romanian secular state). They are bound, too, by the provisions of the *Torah* and *Talmud* (and this bond is recognized and imposed even by Article 8 paragraph 3 and Article 23 paragraph 2 of *Law no. 489 of 2006*[1]). Also, they would provide justice not in the name of the lay law but in the name of the divine law. Article 126 of the Constitution provides :

- "(1) Justice shall be administered by the High Court of Cassation and Justice, and the other courts of law set up by the law.
- (2) The jurisdiction of the courts of law and the judging procedure shall only be stipulated by law.
- (3) The High Court of Cassation and Justice shall provide a unitary interpretation and implementation of the law by the other courts of law, according to its competence.

[1]Though, someone could argue an incorporation of the religious laws into the state laws, by the provisions of Article 8 paragraph 3 and Article 23 paragraph 2 of *Law no.489 of 2006*. Thus, in applying the rules of halakhah, the Rabbinical Chancery would comply in fact with Articles 8 and 23 of Law no.489 of 2006.

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- (4) The composition of the High Court of Cassation and Justice, and the regulation for its functioning shall be set up in an organic law.
- (5) It is prohibited to establish extraordinary courts of law. By means of an organic law, courts of law specialized in certain matters may be set up, allowing the participation, as the case may be, of persons outside the magistracy.
- (6) …..."

According to these constitutional provisions, the Romanian court system is composed of courts set up by organic law[1], courts which are presided over by the High Court of Cassation and Justice. This court system could be extended with specialized courts, established also by an organic law. These provisions are detailed in *Law no. 304 of 2004 on Judicial Organization (*republished on September 13, 2005 and amended) . Article 2 of this law provides in paragraph 2 that, in Romania, the courts are: the High Court of Cassation and Justice, the courts of appeal, the tribunals, the specialized tribunals and the country courts. Article 37 provides for the specialized tribunals. These courts, without legal personality, could be established in each county, in order to judge cases in the fields provided by Article 36 paragraph 3 (i.e. civil causes, criminal causes, family and minors causes, trade causes, contentious business, labour causes etc.). From Article 41 paragraph 1 of the same law (interpreted by analogy), we infer that these specialized tribunals could be established by means of a decree of the Superior Council of Magistracy. Article 7 paragraph 2 provides that justice shall be equal for all, without discrimination on account of religion. All these articles of the *Constitution* and *Law no. 304 of 2004* (republished in 2005 and amended) prove that religious courts are not part of the Romanian judicial system (from the Romanian legislator's point of view). This opinion is supported, too, by Articles 3 and 38 of the *Family Code*. Article 3 provides that only a marriage concluded before the mayor (a lay public authority) generates the rights and duties regulated by the Code, while Article 38 regulates that the dissolution of the marital bond can be performed only by a court (a part of the judicial system provided by the *Constitution* and *Law no. 304 of 2004*). Article 607 of the *Code of Civil Procedure* designates country courts (that means lay courts) as the courts which have jurisdiction over divorce in Romania. The position of the Romanian lay authorities on the subject of the jurisdiction of the religious courts has become a puzzling one since the fall of 2008, when the Romanian Government recognized, by *Decree no. 999 of August 27,2008* and *Decree no. 1218 of October 1, 2008*, the jurisdiction of the Rabbinical Chancery and of the courts provided by the *Code of Canon Law of the Roman-Catholic Church* over religious matters that could be defined as matrimonial (Family Law) causes.

[1] An act of the Parliament regarding a field specified in Article 73 paragraph 3 of the *Constitution*, act which is passed with the majority vote of the members of each Chamber (according to Article 76 paragraph 1 of the *Constitution*).

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These provisions recognized by the two decrees of the Government have less legal power than the constitutional and legal articles cited above that deny any jurisdiction to the religious courts. It could be asserted that the provisions of the two decrees are special provisions that could override the general provisions on the judicial system. But, however specific the provisions of the two religious statutes might be, they cannot contradict Articles 124 and 126 of the *Constitution of Romania* (in accordance with Article 1 paragraph 5 *of the Constitution*). Article 9 paragraph 2 of *Law no.489 of 2006* provides for the equality of all denominations before the Romanian authorities. Because the statutes of other Romanian denominations (such as the Orthodox Church or the Muslim Cult) do not allow a religious court to have jurisdiction over laity, Article 41 paragraph 2 letter h of the *Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult* and the provisions of the *Roman-Catholic Code of Canon Law* on the jurisdiction of the religious courts infringe upon this equality. The Jews or Catholic believers of Romanian nationality would be allowed to solve their matrimonial causes before a religious court with the observance of other rules than those provided for by the Romanian Family Law. Summarizing all the constitutional and legal provisions mentioned above, we can conclude that, at the moment, the Romanian secular state rejects the jurisdiction of the religious courts over laity in such a sensible area as Family Law and expects the *Federation of Jewish Communities of Romania-The Mosaic Cult* to recognize the exclusive jurisdiction of the lay courts in marital litigation between Romanian Jews. But, according to Shlomo Sorin Rosen (First Rabbi of the *Federation of Jewish Communities of Romania-The Mosaic Cult),* "The laws of the religious Judaic divorce are many and intricate. The first of them is that this divorce has nothing to do with the civil divorce granted by a state court"[1]. It seems that, in Romania, too, there is a stalemate in the matter of the court able to solve the matrimonial causes of the Jewish population. On the one hand, the Jewish religious authorities refuse to recognize the jurisdiction of the secular courts on these matters, while on the other hand the Romanian lay authorities do not recognize the jurisdiction of the religious courts over Family Law matters. The usual remedy for this stalemate, discovered and practiced in Western societies, especially for divorce, is to establish a link between the civil jurisdiction and the religious jurisdiction of the Beit Din, by which the decision of the civil court is a prerequisite for the jurisdiction of the Beit Din over a specific marital litigation[2]. This remedy is quite cumbersome and redundant, entailing for the Jewish spouses the loss of a lot of time, energy and money to appear before two courts and present their claims and statements of

[1]Shlomo Sorin Rosen, *DvarTora.jewish.ro*, Answer in Romanian to Question 21, available at: http://dvartora.jewish.ro/raspunsuri-21.php (last visited on July 7, 2009).

[2]Adrienne Barnett, *Getting a 'Get'-The Limits of Law's Authority? N. v. N. (Jurisdiction:Pre-Nuptial Agreement)[1999]2 F.L.R.745* in *Feminist Legal Studies,* Volume 8, Number 2, May, 2000, p.242 (available at: http://www.springerlink.com/content/x61qh25471752770/fulltext.pdf) (accessed on March 19, 2009).

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defense. Also, this remedy reduces the efficiency of the Romanian judicial system, the state courts investing precious time in solving cases which will be presented anyway before a religious court.

Comparing the pros and the cons of the jurisdiction of the Rabbinical Chancery over matrimonial causes of the Romanian Jews, it is obvious that the status of the Rabbinical Chancery as a court of justice with jurisdiction in Family Law matters is not sound enough according to the present Romanian Law. This status needs to be confirmed and specified by the Romanian lay authorities by means of an organic law in the sense of Article 126 of the *Constitution* (i.e. for the establishment of a specialized court) or needs to be explicitly rejected by demanding the modification of Article 41 letter h of the *Statute of the Federation of Jewish Communities of Romania-The Mosaic Cult.* If the Romanian lay authorities will recognize the jurisdiction of the Rabbinical Chancery, they will have to settle, by the same organic law, some remedies against the infamous status of *agunah (*chained woman) which infringes upon the constitutional principle of sex equality. These remedies against the *agunah* status have to be regulated by the Romanian lay authorities only with the advice of famous and respected rabbis [1]. By the same organic law, the Romanian lay authorities will have to regulate the legal force of the writs issued by the Rabbinical Chancery.

There is also a third possibility to reconcile the jurisdiction of the state courts with the jurisdiction of the Rabbinical Chancery (Beit Din) over the matrimonial causes of the Romanian Jews. According to Article 1 of *Law no. 192 of May 16,2006 on Mediation and on the Settlement of the Mediator Profession,* mediation represents an optional possibility of conflict resolution by the guidance of a qualified person, trusted to have the ability to facilitate the parties' negotiation in order to achieve an efficient, durable and mutual convenient solution. In accordance with Articles 2 paragraph 1 and Article 64, family disputes can be solved by mediation. The Rabbinical Chancery (Beit Din) could be considered by the Romanian secular state as a special mediator in the marital disputes of the Romanian Jews. The role of mediator suits perfectly the Beit Din. The rabbis are trusted by the parties with the ability to guide the spouses to a mutual convenient solution, by negotiation. These negotiations are almost inherent in marital disputes brought before the Beit Din. Even contemporary Jewish divorce can only take place by mutual agreement of the parties (with certain exceptions). If one of the spouses refuses to agree to the *get*, the Beit Din has no power to order or grant a *get* to the other. Its powers are limited to oral persuasion[2].

[1]A Jewish wife becomes an *agunah* when her husband refuses or is not able to grant her a *get* or when her husband has disappeared but he is still considered alive .About the agunah status and its possible remedies see Iulia Andreea Moldovan, *op.cit.*, pp.85-97.
[2]Adrienne Barnett, *op. cit.*, p.242 and Iulia Andreea Moldovan, *op.cit.*, p.74.

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The mediator status for the Rabbinical Chancery should confer superior legal status to its writs (even for the gittim[1]). For the moment, the writs of the Rabbinical Chancery have no binding force on the Romanian lay authorities, because the Rabbinical Chancery is not part of the Romanian judicial system provided for in the *Constitution* and in *Law no.304 of 2004*. If the Rabbinical Chancery is considered as a special type of mediator for the marital disputes of the Romanian Jews, its writs will be able to acquire legal binding force either by being incorporated into a decision delivered by the state court invested with the judgment of the litigation (Articles 63 and 64 paragraph 2 of *Law no. 192 of May 16,2006)* or by being legalized by a public notary (Article 59 of *Law no. 192 of May 16,2006).*

In order to assimilate the Rabbinical Chancery with a specialized mediator, the Romanian Parliament will have to pass a special law. This law should also settle the relations between the members of the Rabbinical Chancery and the Council of Mediation[2] and the ways in which the members of the Beit Din should comply with the provisions of *Law no. 192 of May 16,2006* regarding the requirements for becoming a qualified mediator.

In conclusion, the Romanian secular state has an ambivalent attitude towards the Rabbinical Chancery of the *Federation of Jewish Communities of Romania-The Mosaic Cult.* On the one hand, it recognizes the jurisdiction of this body over the religious disputes of the Romanian Jews (a concept which includes marital disputes) and on the other hand, by the provisions of *Constitution* and *Law no. 304 of 2004*, it denies the Rabbinical Chancery any jurisdiction over laity. The public secular authority has to decide, by a special law, the exact status and jurisdiction of the Rabbinical Chancery over laity. A possible solution, which would reconcile the constitutional and legal provisions on the present Romanian judicial system with the jurisdiction of the Rabbinical Chancery over the matrimonial causes of the Romanian Jews, would be to consider the Rabbinical Chancery as a special mediator in the terms of *Law* no. *192 of May 16,2006*.

[1]*Gittim* or *gittin* is the plural form of *get.*

[2]In accordance with Article 17 of *Law no. 192 of May 16,2006,* the Counsel of Mediation is the autonomous body which organizes the mediation in Romania.

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Tanakh is an acrostic which describes the content of the *Written Law*: *Torah* (The Law), *Nevi'im* (The Prophets) and *Ketuvim* (The Writings). See details at *Judaism 101* http://www.jewfaq.org/torah.htm (last visited on July 7, 2009)

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and Adin Steinsaltz, *op.cit.*, pp.91 (where the author talks about 517 chapters of Mishna) and 92.

Adin Steinsaltz, *op.cit.*, p. 134 and Iulia Andreea Moldovan, *Divorţul în tradiţia evreiască* (Divorce in Jewish Tradition), pp.28-29 and 71 (Editura Lumen, Iasi, 2008).

In Romania, too, First Rabbi Shlomo Sorin Rosen considers that the civil divorce has nothing to do with the religious divorce. See: http://dvartora.jewish.ro/raspunsuri-21.php (last visited on July 9, 2009).

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