The European Juridical Thinking, Concerning the Human Rights, Expressed along the Centuries

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Abstract: The man was ideologically and juridically conceived as a servant of the city and his rights and liberties were also included in the sphere of a thinking of a preeminently ideological, of a party-minded nature, with negative consequences also within the human relationships, at the basis of which the very reason of these rights and liberties lacked, namely the „communion", the only carrier of the effects of interior freedom, namely of conscience, of faith and religion. Human rights are usually classified as civil, political, social, economic and cultural rights or as individual and collective rights. They also talk about „the international juridical status of the individual", which „comprises the ensemble of rights that the individual should have in order to maximize his abilities both at a personal and collective level." Among the fundamental human rights and liberties, „religious liberties" take a special place.

Keywords: juridical thinking; human rights; morals; religious liberties

The word „law" is the translation of the word „jus", which, in its turn, comes from the Sanskrit „jaos". In Sanskrit, „jaos" means something which is required or allowed according to a moral-social rule. The word was also taken over with this sense in the Latin language, hence the expression „righteous", in the sense of „holy", „good" etc. In fact, the word „jus" (law) was also taken over, with the same moral value, of a metaphysical nature, in the Romanian language but, later on, its original sense was replaced, so that the word justice acquired the meaning of conformity with the legal provisions, also referring to an amount of norms which regulate the social relationships between individuals.

Initially, by the word „justitia / ae", the Romans have also expressed a value of a moral nature, assessing, in fact, what is „justi atquae injusti" (just and unjust) (Ulpianus). With time, this moral principle was also acompanied by a principle of a

juridical nature, so that the word „justitia / ae" came to enclose both a moral and a juridical principle. By the enforcement of this moral and juridical principle, the Romans aimed „to give everybody what they deserved" (*suum cuique tribuere*), thus, respecting every person`s rights by the enforcemenrt of an „aequitas / tis" (equity), and not of an absolute „justice".

By Romanians, the ontic relation between law and morals, between what is „righteous" and „good", between law and religion (Dură, 2003, pp. 15-23) was also emphasized by the fact that the distribution of justice itself was made in the name of „the holy law", implicitly considered a direct emanation of the divine will. Therefore, it`s not surprising that for the Romanian legislator – from the age before the secularization of sacred law, that is, in the time of Voivode Cuza, – „direptatea" (justice) was perceived and defined as „a thing which is holier that everything" (the Nomocanon of Târgovişte, 1652).

By „human rights", we can understand everything which is required and allowed by a man according to some moral norms, with a social or juridical character, hence the different nature of these rights, which are both based on „*jus naturale*" and on „*jus gentium*", and on the rules of moral conduct admitted and practised in a democratic society, where the humanistic values are asserted and promoted. The rights that the law recognizes to individuals in the context of social life are defined as liberties, hence their diversity (e.g. freedom of opinion, religious liberty etc.). Anyhow, these human rights and liberties have changed with every age because of the ideological concepts about the world and life, hence the different perception – in the European juridical thinking – regarding the implementation method of the human rights` juridical protection.

Etymologically, the word „*protection*" comes from the Latin word „*protectio-onis*" and it means „defence", „protection", „preservation". By the juridical protection of human rights we refer to the totality of juridical norms and concrete measures taken by the world`s states in order to defend the human being and, ipso facto, for the fulfillment of the man`s spiritual and material life. The Romanian Law – up to the Revolution of December 1989 – didn`t refer to human rights, but to the rights of „citizens" (Drăganu, 1972, p. 209) (Muraru, 1973, pp. 35-108) (Prisca, 1974, pp. 207-274), emphasizing, this way, the dependence of the Romanian juridical thinking on the French one, the genesis of which goes back to the age of the Revolution of 1789. At that time, in the year 1789, the European, religious „man" (either Catholic or Protestant), was replaced by the citizen, the man of a city where

„liberty, equality and fraternity" among „individuals" or „citizens" with the same political and social status had to rule. Of course, through such a political and juridical thinking, the human beings, the men, have been not only depersonalized, but also brought to a state of equalitarianism.

This social concept, which aimed at the leveling, the equalization of consumption and of the lifestyle of the members of the French society, has also imposed a secularization, pushed up to a trial to desecrate the French society, which actually ended up in the spreading of an atheistical ideology, in which agnosticism and the fight against the religious-moral faiths and values, - especially against the Roman-Catholic Church, the institution which, for the Revolution of 1789, embodied the Medieval, oppressive spirit – found devout promoters and supporters among the followers of the Marxist-Leninist ideology.

As a conclusion, the man was ideologically and juridically conceived as a servant of the city and his rights and liberties were also included in the sphere of a thinking of a preeminently ideological, of a party-minded nature, with negative consequences also within the human relationships, at the basis of which the very reason of these rights and liberties lacked, namely the „communion", the only carrier of the effects of interior freedom, namely of conscience, of faith and religion.

Among the historical ideologies, which left aside the interior freedom of man, there was also „the communist ideology, which tends to immerse the human person in the anonymous mass of nature and to talk about equality and collective rights...". In this sense, „... neither equality, nor liberty are important, but the communion or the personal relationships between people", because „the man was neither created for the collectivist equality, nor for the individualistic freedom, but for his communion with God within the Holy Trinity". (Popescu, 2004, pp. 18-19)

Mircea Eliade wrote – in the year 1964 – that „... the secular is nothing but a new manifestation of the same constitutive structure of man (de l'homme), which, earlier, has manifested itself through sacred expressions (par des expressions sacrées)". (Eliade, 1965, p. 13) „... The religious man (l'homme religieux) – the same historian of religions said – can only live in a sacred world, because only such a world can participate to the being, can exist in reality. This religious neccesity expresses an unquenchable ontological thirst. The religious man is craving for existence .... For the religious man, the secular space represents the absolute non-being ... . The profound nostalgia of the religious man is that of living

in a „divine world, ..., as it has been depicted in temples and sanctuaries later on. As a conclusion, this religious nostalgia expresses the wish to live in a pure and holy Cosmos, as it was in the beginning, when it came out of the Creator`s hands" (Eliade, 1965, pp. 61-62). The same historian of religions wrote that „... the experience of the sacred is that which creates the world, and the most elementary religion is, above all, an ontology", hence the justified observation that „any existential crisis is, to a great extent, „religious", because, at the archaic levels of culture, the being mixes with the sacred" (Eliade, 1965, p. 178). In the end, Mircea Eliade concluded that only religion is the one which ensures „the integrity" of „an existence which creates the values". (Eliade, 1965, p. 180)

That this thing is real is also certified by the demiurgic work of Constantin Brâncuşi. A pioneering work in modern art, it cannot be understood in its entirety and complexity without a direct reference to Christian symbolism, to that sacred metaphysics expressed by certain names that the sculptor of Hobiţa himself has chosen for his works: The Beginning of the World, The Red Sea Crossing, Adam and Eve, The Prodigal Son, The Last Supper, the Table of Silence etc. In fact, his work itself – as, for example, The Masterly Bird or Bird in Space, – „... strives for, craves for the transcendent. At Brâncuşi – a great exegete of his work noticed – everything is „elevation", „sublimation", „overcoming one`s limits", thirst of freedom and redemption. Even in the making-up of the Sculptural Ensemble of Târgu-Jiu, the unrivalled masterpiece of the Brancusian art, competent researchers have decoded Christian-Evangelical intuitions and meanings, ..." (Cârlugea, 2006, p. 32), indeed „The Table of Silence" also has an „apostolic conotation"; „The Column of Endless Memory"..., as the artist himself once used to call it, ..., suggests „the .. sacrificial veneration ..." and „Stairway to Heaven", which reminds us of „the one of John the Climax from the frescos of Sucevița Monastery, of the Tree of Life and the centre of the world, of the bond between earth and heaven, between the man and God, ..." (Cârlugea, 2006, p. 32)

For he who has a religious faith, the Nature „is always filled with a religious value" and the „world remains imbued with sacrality" (Eliade, 1965, p. 101). In this sense, in the name of that sacrality of the world and of the respective religious value of „Nature", of „the Cosmos", „homo religiosus" is also a promoter and defender of the man`s right to religion. Such a „homo religiosus" was also the „great" Brâncuşi, who also proved to be a sacerdot of human rights.

Intolerance and ignorance in matters of religion, displayed both by the ones who are hostile to the right to religious freedom and by the ones who kill in the name of God, are vectors leading to „... a war of peoples` mentalities and cultures”[1] (Dură, 2003, p. 23). Hence, the obligation of the human society to avoid any kind of existential crisis, of a religious nature and to ensure the „integrity” of a human pluralistic existence, „one which creates the values” (spiritual, religious, intellectual, cultural, economic etc.), imbued with sacrality, as this is the only one able to eliminate any kind of „war” of religions or civilizations.

The internationalization of human rights was made through „The Universal Declaration of Human Rights”, adopted and proclaimed by the United Nations General Assembly, through the Resolution 217 A (III) of December 10, 1948. As one can notice from the very title of this international, fundamental document – using the word „universal” instead of the word „international” – the rights included in this Declaration „do not belong to the citizens, but to individuals, as human beings” (Predescu, 2006, p. 34). Indeed, only the man is created for the universality, not the citizen that the French Revolution refered to. The exegetes of this international document noticed that its text „starts from the necessity of recognising a minimal standard of human rights, to be universally respected and of establishing a common conception regarding the human rights and liberties” (Predescu, 2006, p. 34).

The obligation to respect and put into practice the provisions stated by the text of the Universal Declaration on Human Rights was explicitly restated by the United Nations` Conference of 1968, which solemnly proclaimed that the respective Declaration „represents an obligation for the members of the international community”.(O.N.U., 1995, p. 14)

In Romania of the years 1947-1989, as regards the enumeration and classification of human rights – both by the Constitution and by the respective laws, and by the juridical handbooks and treaties, also conditioned by the party-minded ideology of those times – the model offered by the European legislation was followed in a „grosso modo” manner. That is why they also mentioned „rights” which could not be observed in the Romania of that age. For example, they mentioned „the citizens` right to personal property”, „social-political rights and liberties” (e.g. voting rights, the right of association etc.), „the freedom of the press, of gatherings, of demonstrations and meetings”, „rights referring to inviolabilities” (the inviolability

[1] Interview taken by Mrs. Irina Budeanu to prof. N. V. Dură.

of the person, the inviolability of the home, the secret of the correspondence), „the right of the person who was damaged in one of his rights by an illegal act of a state organ to require to the competent organs the cancelation of the respective act and the compensation of the prejudice" etc. Not to mention the religious liberty, also provided by the texts of the Constitutions of 1948, 1952 and 1965, but which, in fact, was censored and, sometimes, even abrogated.

In the handbooks and treaties of constitutional law –published after December 1989 – they also talk about „the rights and liberties of citizens" or of those of „Romanian citizens" (Muraru, 1995, p. 186), and not of human rights. In fact, their authors define „the fundamental rights" established by the juridical norms as „subjective rights belonging to citizens, established by the Constitution and by laws". (Muraru, 1995, p. 189)

Anyhow, the same Romanian constitutionalists tell us that „the expressions human rights and citizen rights" are „expressions in a tight correlation, which refer to the same field and which, though, nevertheless, cannot be mistaken to one another, in a rigorous juridical terminology. The expression *human rights* refers to the rights of the human being, whose natural rights are recognised, as indefeasible and imprescriptible rights … His natural rights are proclaimed and granted by the Constitution of the state whose citizen he is, getting thus life and juridical efficiency, under the name of civil rights (liberties)" (Muraru, 1995, pp. 190-191). For the respective constitutionalists, the phrase „human rights" evokes, therefore, the „rights of the human being", and, more precisely, his natural rights, which are indefeasible and imprescriptible rights. But, by their enactment and their enforcement through the constitutional law, these natural rights become civil rights.

„If citizens, in principle, benefit from all the rights provided by the Constitution, foreigners and stateless persons – a constitutionalist wrote – only benefit from some of them …" (Muraru, 1995, p. 191). So, the foreigners and stateless persons do not benefit from the same rights provided by the law as the citizens of a State. In this sense, by the limitation of these rights – in case of foreigners and stateless persons – the principle of the human persons` equality before law, provided by the regulations of the European Union (acc. to Art. 20, The Treaty of Nissa, 2000) is no longer respected. Finally, the same constitutionalists tell us that „… from a juridical point of view, the right is a liberty and the liberty a right", and, consequently, from a juridical point of view, there are no „differences between right and liberty." (Muraru, 1995, p. 190)

For the European jurists, human rights are „an amount of rights which condition, at the same time, the man`s freedom, his dignity and the development of his personality, soaring to an unsatisfied ideal"(Pouille & Roche, 2002, p. 6). In its turn, „liberty" is defined as „a value, an ideal that humans try to appropriate"(Pontier, 2001, p. 9). The jurists ask themselves if „the liberties are necessarily *rights* too". In the opinion of some people, they are „objective exigencies, that do not lack juridical extensions, but that cannot be qualified by subjective rights, that is, by the power to impose, to ask or to forbid … The departing point of any reflection on the relations between freedom and law (or rights) seems to us to be ... – a French jurist wrote – in the natural law, that is, in some kind of idealism" (Madiot, 1991, p. 17). So, in the opinion of some jurists, „liberties" are not „subjective rights", and, as such, any reflection on the relation between liberty and law finds a refuge in the natural law. However, the respective jurists do not mention the fact that both the man`s rights and his liberties have their origin and juridical basis in this „jus naturale" itself, which, above all, provides the right to life and the right to liberty and safety of every human being.

Once the natural liberty became political liberty, the individual`s will shall be determined by the social order. By this political freedom – as a liberty within the social order – we point to „the individual`s self-determination through his participation in the creation of the social order. Political liberty - Hans Kelsen wrote - is liberty and liberty is autonomy. (Kelsen, 1997, p. 334)

Human rights are usually classified as civil, political, social, economic and cultural rights or as individual and collective rights (Rouget, 2000, p. 61). They also talk about „the international juridical status of the individual", which „comprises the ensemble of rights that the individual should have in order to maximize his abilities both at a personal and collective level." (Tousard, 2000, p. 393). Among the fundamental human rights and liberties, „religious liberties" take a special place (Diaconu, 1998, p. 101). According to Article 4 of the „*International Covenant on Civil and Political Rights"* – adopted by the United Nations General Assembly on December 16, 1966, coming into force on March 23, 1976, - the States can`t waive the religious rights and liberties even "in case that an extraordinary public danger threathens the nation`s existence…".

For some jurists, „… the protection of religious identity appears as a component part of the protection of the identity of the persons belonging to minorities and of minorities on the whole" (Diaconu, 1998, p. 108). Indeed, this protection of

religious identity, also tells upon the persons belonging to national (or ethnical) minorities, hence the necessity of some juridical regulations – international and national – regarding the religious rights and liberties, but it cannot be limited only to the persons who belong to national minorities, as this protection of religious identity is necessary for all the members of the human society who share and express a religious faith, irrespective of their ethnical origin and of their majority or minority status.

The European Court of Human Rights has also emphasized the fact that religious liberty „is crucial for a democratic society, and that the religious dimension is an essential element for pluralistic society" (Diaconu, 1998, p. 113). The same Court has cancelled many decisions of condemnation for proselytism pronounced by the jurisdictions of some countries – such as Greece, for example - in the case of some Jehovists, invoking the respect owed to the freedom of thought, of conscience and of religion of other people, provided by the Article 9 of the Convention for the Defense of Human Rights. (Berger, 1998, pp. 419-425)

Taking these obvious realities into account, we have therefore one more reason to believe that, in the future, these religious rights and liberties – provided by the text of the international and national legislation and documentation – shall also become the main subject of hermeneutical study and analysis in the Romanian Law Schools.

By signing the Convention for the Protection of Human Rights and Fundamental Liberties on October 7, 1993, in the very day of its joining the Council of Europe, „Romania turned the page of totalitarianism and made its entrance in the club of European democracies. By ratifying the respective Convention on June 20 1994, Romania recognized – a French jurist wrote – to any person belonging to its jurisdiction the rights and liberties defined in this instrument and, at the same time, by accepting the right to individual last appeal to the European Commission of Human Rights, it subscribed - Vincent Berger concluded – to an international and even supranational control system. This way, it accepted the obligations that follow from this and the *discipline* resulting from this". (Berger, 1998, p. IX)

Beyond doubt, the country`s Constitution will be the one that shall prove us - first of all – if Romania has recognised or not recognised the rights and liberties defined in the Universal Declaration on Human Rights and in the Convention for the Protection of Human Rights and Fundamental Liberties to any person belonging to its jurisdiction. Therefore, the text of the Romanian Constitution shall be subject to

a careful examination, so that we could realize, this way, the extent to which it does or does not defend the human rights provided in the international documents and norms. The Romanian constitutionalists write that „… not only the provisions of international pacts and conventions that Romania is party to can substantiate the constitutionality or, if the case, the non-constitutionality of a legal provision, but also the recommendations, with the sole difference that the latter, being uncompulsory, exclusively have – just as the doctrine, for example, - the value represented by the force of the ideas they comprise. The recommendation, by itself, cannot justify or nullify the constitutionality of a law text, but it can contribute to the clarification of the meaning of a constitutional provision upon which the establishment of the constitutional legitimacy of that text depends". (Muraru & Constantinescu, 1995, p. 206)

Thus, we shall keep in mind that both the international Pacts and Conventions and the Recommendations can substantiate the constitutionality or non-constitutionality of a legal provision. As such, these normative, international acts (Treaties, Pacts and Conventions), including the Recommendations, can also substantiate the constitutionality or non-constitutionality of a legal provision regarding the human rights and liberties in Romania.

The European politologists and jurists talk about „a politics" of human rights, which the European Union has to implement in a constant and coherent manner. In their opinion, „... a European politics of human rights is not only compatible with the principle of subsidiarity, but it is, to a certain extent, a necessity resulting from this principle" (Ph. & Weiler, 2001, p. 28). About „the principle of subsidiarity", mentioned in the European Convention on Human Rights, signed on November 4, 1950, in Rome, - it was said that this „implies the recognition of national autonomy…; the national authorities remain free to choose the measures they consider to be the most appropriate for putting their conventional obligations into practice". (Sudre, 1990, p. 38)

The principle of subsidiarity, which also implies the observance of the national sovereignity of every member state of the European Union, also finds the expression of its complete assertion in the provisions of international regulations regarding human rights. For example, the Charter of the European Union provides that „the Union contributes to the preservation and development of common values (human dignity, liberty, equality and solidarity etc. n.n.), observing the diversity of cultures and traditions of the peoples of Europe, as well as of the national identity

(de l'identité nationale) of the member states and concerning the organization of their public powers at a national (au niveau national), regional and local level."

In the opinion of some European jurists, „law, which was based on the protection of the individual against *the power,* has become a simple instrument of action, an instrument at the states`s disposal. From this point of view – they specify – the crisis of the state is real and profound" (Madiot, 1991, p. 3). But, we can say that this crisis was overcome just by the joining of the European Union to the European Convention on Human Rights, which, indeed, has to be seen as „a starting point towards the Union`s future". (Schutter, 2002, p. 205)

Beyond doubt, the legitimacy of the European Union States can be claimed and justified, first of all, by the protection of human rights. That is why, not accidentally, the „Status of the Charter of Human Rights"[1] (Rochère, 2002, p. 23) was among the main issues examined in the year 2004 by the fora of the European Union. Among the objectives pursued by the Union is also the one to „strenghten the protection of the member States` rights and interests by the establishment of a citizenship of the Union …" (Art. B)[2]. Article F, par. 2, of the Treaty of Maastricht (February 7, 1992), explicitely provides that „the Union respects the fundamental rights, as they are ensured by the European Convention on the human fundamental rights and liberties which was signed in Rome, on November 4, 1950 and as they result from the common constitutional traditions of the Member States, as general principles of community law".

Therefore, the general principles of community law – provided by the European Convention – can also be found in the constitutional traditions of the European Union`s member States. Therefore, not by chance, the protection of individual rights – provided by this Convention - is associated with the protection of the state`s interests. In fact, the jurists have noticed that „the originary control system of the European Convention" consists in the fact that, „although it opened a breach in the fortress of the states` sovereignity, it strives though, at the same time, to protect the individual rights and to spare the states` interests". (Sudre, 1990, p. 9)

In the jurisprudence of the International Court of Justice, the human rights have been the object of examination and protection since the year 1945 (Singh, 1986, pp.

[1] The four issues are: a) the delimitation of competencies; b) the Status of the Charter of Human Rights; c) the simplification of the treaties; d) the role of national parliaments in the European architecture.
[2] The Treaty of Maastricht, 1992, Art. B.

26-38). However, the human rights were mentioned for the first time at the International Court „in an individual opinion" of a judge in the year 1947. (Goy, 2002, p. 12)

According to Hans Kelsen, „the sources of the law, which have a binding force, are the juridical norms; these are the only *law*" (Kelsen, 1997, p. 206). In this sense, in the case of the European legislation, the Conventions, Treaties, Acts and Documents resulting from the meetings of the bodies of the European Community and of the European Union bodies also have binding force. Some jurists consider that the appeal to the general principles of community law is not absolutely necessary in order to ensure the protection of fundamental rights, given that they are ensured and protected by the constitutional norms of every member state of the European Union. Of course, in this case, we could say that the norms resulting from the Europeam Convention on Human Rights - as they are interpreted by the Strasbourg Court – the community norms and the general principles of community law „are only a category of norms likely to ensure the protection of fundamental rights; …". (Favoreu, 2000, p. 79)

The Declaration of Human Rights – promulgated by the General Assembly on August 26, 1789 - „… is neither a code, nor a programme, but a symbol, a revealing token of the relation between the Power and the Person, which is the primary political relation" (Marx, 1989, p. 50). This Declaration, which, after three years, was also explicitely mentioned in the Constitution of September 3, 1791, remains indeed a symbol of the fight for the citizen`s emancipation from the yoke of State power, but not a proper "Charter" of human fundamental rights and liberties and, the less so, a main reference in this field, as some politologists, jurists, sociologists, philosophers etc still erroneously state.

They said that „the State`s existence is linked to the existence of individuals, subjects to a juridical order and not to the existence of citizens. If the nature of citizenship is that of being the condition of an ensemble of rights and obligations, we have to stress that these are in no way essential for the juridical system which we call State …. only the democratic countries, for example, grant political rights to their citizens" (Kelsen, 1997, p. 291). Hence, H. Kelsen`s conclusion that citizenship is no necessary institution.

At the beginning of the XIV-th century, Guillaume d'Ocham inaugurated the individualistic tradition in philosophy and law (Villey, 1983, p. 119), foreshadowing this way „the individual`s Copernican revolution" (Laurent, 1983,

pp. 2-3). Consequently, the ancient vision of the world, of the Cosmos, that encompassed all the creatures, subduing them to the order established by the Creator, was replaced by the doctrine of individualism. For Ocham only the individuals have a real existence, that is the human beings that can be designated by a name, hence the doctrine known under the name of nominalism. Presented in a new lecture of the Bible, the individualism asserted by nominalism will go hand in hand with the subjectivism so attached to rationalism and to the philosophy of the "Illuminism".

The Reformation and the Renaissance will turn the individual into an autonomous subject, practicing the free examination of the Holy Scripts and being responsible for himself for achieving his redemption and not by the intercession of the Church.

The vision about the man had also to change in the juridical field, where „the law appears, according to the precepts of the Decalogue, as an order of an authority, as the expression of a subjective will and not as a principle that we have to discover by observing the surrounding world; the law is conceived… as a subjective law". (Lochak, 2002, pp. 11-12)

By the representation of law as an expression of the divine will, they also confered a first status of universality to the human rights, the assertion, assurance and protection of which were explicitely provided by the divine law itself, hence the contribution of religious law to the defense of human „dignity" (dignitatis) since Antiquity.

For those who are following the rules of natural law, „human rights are *natural* and they are being imposed on a *universal* scale. The man knows these rights through the exercise of his natural reason. (Bruyer, 1984, pp. 24-25)

In the VI-th century, A.D., the authors of a juridical manual – drafted by order of Emperor Justinian (527-565) – wrote that „jus naturale" (natural law) is „vetustius jus" (the older law), that nature has created once with the humanity (*quod cum ipso genere humano rerum natura prodidit*), whereas the civil law came into being once with the establishment of the cities, with the election of the magistrates and with the enactment of the laws *(civilia enim iura tunc coeperunt esse, cum et civitates condi et magistratus creari et leges scribi coeperunt*).

Natural law was created once with „mankind", hence its ancienty and preeminency over the civil law, which shall appear once with the emergence of cities. Gradually, though, the natural and civil law will harmonize their provisions, as it is the case

today with the international, European law and with the national law, especially concerning the assertion, assurance and juridical protection of human rights.

For the distinguished scholars of the juridical studies from the age of the Emperor Justinian (527-565) – who talked of „the moral elevation of our times" (*dignum temporum nostrorum*) (Just. Just., lb. I, XXII) – the word „man", refers to „the whole mankind (*homines appellaremur*) (Just. Just., lb. I, V, 1). Of course, in this case, we ask ourselves who is that „*alterum*" (other), to whom we have to give what he deserves „*secundum naturam*" (according to the very nature of things), namely, according to „jus naturale"?! Beyond doubt, nobody else than „the man", our fellow man, who – according to the Judeo-Christian law – is the creature and the image of God.

For the „*jus gentium*" (the law of the gentiles) – the ancestor of present-day international law – there were „*tria genera hominum*" (three categories of people), namely: a) „liberi" (the free people); b) „servi" (the slaves) and c) „libertini" (the liberated people) (Jus. Inst. Lib. I, V, 1). Therefore, this classification or division of people in social categories is a creation of the „law of the gentiles" (*juris gentium*) and not of natural law, according to which all people are born equal.

Pointing out the fact that „... it is to the state`s (rei publicae) advantage" that the individual does not abuse of his right (*ne quis re sua male utatur*) (Just. Inst., lb. I, VII, 2), the Roman jurisconsults also wanted to add the specification that „*civilis ratio civilia quidem iura corrumpere potest, naturalia vero non utique*" (the civil law can nullify/abrogate the civil rights, but not the ones pertaining to natural law) (Just. Inst., lb. I, XV, 3).

So, the political, the civil rights etc. cannot abrogate the rights enacted by the natural law, to which also the right to religious freedom belongs.

The same jurisconsults of Emperor Justinian wrote that „... *libertas inestimabilis est*" (liberty is a priceless good). That is why the Roman jurisprudence considered that a person could introduce an action „as a representative, tutor or trustee" and „pro libertate" (for the defense of liberty) (Just. Inst., lb. IV, X).

Based on the same „naturali ratione" (natural reason), this jurisprudence decided that a master could „*libertatem in testamento dare servo suo*" (grant the freedom to his slave) as soon as he reached „*septimum et decimum annum*" (seventeen years of age), and not at „viginti annis" (twenty years), as the „ancient" (antiquitas) Roman law provided (Just. Inst., lb. I, VI, 7).

According to the Roman jurisconsults, this „natural law" (jus naturale) „is not peculiar to mankind" (non humani generis proprium est). Consequently, they defined it as being the law „*quod natura omnia animalia docuit*" (that all beings have acquired from the nature).

The same brilliant Roman jurisconsults stated that the fundamental juridical institutions themselves, as, for example, marriage, have their institutional basis in the natural law. From this „jus naturale"– they say – „*maris atque feminae coniugatio*" (the man`s unification with the woman), „*quam nos matrimonium appellamus*" (which we call marrige), and „*liberorum procreatio et educatio*" (the procreation of children and their education) follow (Just. Inst., lb. I, II).

The educational process also finds its legal basis in this „jus naturale", about which the jurisconsults of Emperor Justinian (527-565) said that „*omnes gentes peraeque servantur*" (it is equally respected by all peoples).

The same Roman jurisconsults – led by the famous Tribonian – wanted to specify that this „jus naturale", „divina quadam providentia constituta, semper firma atque immutabilia permanent: *ea vero quae ipsa sibi quaeque civitas constituit, saepe mutari solent vel tacito consensu populi vel alia postea lege lata*" (being established by a divine providence, remains firm and unchanged, whereas the laws that every city has established for itself can be changed either by the unspoken consent of the people or by another law).

According to the Roman „jurisprudence", the „persons`" (*personarum*) rights and liberties also have their source, their origin, in this „jus naturale". As such, the respective rights and liberties of the human person must be respected and granted for eternity, as they cannot be changed or abrogated by a another law.

But, how was „the freedom" (*libertas*) understood and defined in the texts of the classical jurists which, along the centuries, have been a main source of inspiration and reference for the theoreticians and practicians of law?! For the Roman jurisconsults, „libertas quidem est, *ex qua etiam liberi vocantur, naturalis facultas eius quod cuique facere libet, nisi quid aut vi aut iure prohibetur*" (freedom, on the basis of which (people) call themselves free, is the man`s natural capacity to do what he wants, unless being stopped by force or by the law) (Just. Inst., lb. I, III, 1).

Based on the precepts of the same „jus naturale", the Roman jurisprudence considered that „servitus" (the servitude) is „contra naturam" (against nature), as,

according to „*iure naturali omnes liberi nascerentur*" (natural law, all people are born free). The same jurisconsults added the mention that „servitus" (servitude) was introduced „*posteaquam iure gentium*" (after the emergence of the law of the gentiles) (Just. Inst. lb. I, V, 1), namely of that law that has regulated the relations between gentiles, between the social groups of the gentilic society.

Ever since the Antiquity, the juridical thinking has also expressed itself by „*prudentium responsis*" (the jurists` answers), by which were created those „pronouncements" about the nature and the finality of the law, that the Romans have defined by the notion of „juris prudentia" (jurisprudence). This one has been understood both as an act of knowledge of „*divinarum atque humanarum rerum*" (of the divine and human things), and as „*iusti atque iniusti scientia*" (the science of what is just and unjust) (Justiniani Institutiones, liber primus, I, 1).

By the Romans – where „*jus naturale*" was understood and considered a law that all the beings, including the man, have acquired from the nature, – „jus" (the law) and „justitia" (the justice) have been perceived in an existential relation, of an osmotic, organic and intrinsical nature. Consequently, the Roman jurisconsults have defined „*justitia*" (justice) as a „constans et perpetua voluntas ius suum cuique tribuens" (constant and firm will to give everybody what they are entitled to get) (Just. Inst., lb. I). Therefore, it is of no surprise that, according to „*juris praecepta*" (the rules of law), the man must „*honeste vivere*" (live honestly), „*alterum non laedere*" (not harm another man) and „*suum cuique tribuere*" (give everybody what they deserve) (Just. Inst., lb. I, I, 3).

Based on that „*jurisprudentia*", the Roman judge was empowered to judge the cases of the litigants and to pronounce the sentence „*ex bono et aequo*" (according to the value of good and to that of equity) (Just. Inst., lb. IV, VI, 20). Therefore, the constant and firm will to give everybody what they deserved was not expressed in the name of a value with a preeminently juridical content, as we are dealing, in fact, with a value with a moral content, that is, with the value of good and with another one, of a juridical nature, namely the equity. Therefore, only through the assertion and common turning to good account of these two values could we administer „the justice", which, for the Byzantine legislator is „a thing holier that all other" (The Nomocanon of Târgovişte, 1652).

The fact that the law also has a „metaphysical sense" is, in fact, also confirmed by the idea that the Roman jurisconsult Scaevola stated through the centurion`s words: „*fiat justitia pereat mundus*" (the world would better disappear than the justice). In

this respect, this „metaphysical sense" of law and, ipso facto, of justice lies in the very values it pursues, namely, the materialization of the social good and the administration of justice, as a natural basis for the enforcement of both „*jus naturale*" and of „*jus civile*".

At the end of the XVI-th century and at the beginning of the XVII-th one, the School of Law at the Pontifical University of Salamanca was represented by a group of famous theologians, canonists and jurists, who were to play a major part both in the development of international law, and of the doctrine about the human rights. (Lochak, 2002, pp. 12-13)

According to Vittoria (1480-1546) – one of the leaders of this School of Salamanca, promoter of the ideas of natural Law, – the human reason replaces/substitutes the objective observation of the Cosmos as a source of natural law, and the principles of law imposed by the human reason are universal and cannot be abrogated. Asking the States to respect the free circulation of people, of wares, the liberty to preach one`s own religious faith etc., Vittoria has turn the individuals into „a subiect of international law" (Lochak, 2002, p. 50). In other words, the human rights have been internationalised, and, ipso facto, the ground was prepared for the emergence and the strengthening of the international law of human rights.

In his turn, Suarez – another great representative of the respective School of natural law – in his work, "*De legibus ac Deo legislatore*", published in the year 1612, stated that the natural law is made up of natural laws which emanate from the will of God, but which can only be known by means of the reason instilled by the Creator in the man, and not by means of Revelation.

For these oustanding leaders of the School of Salamanca, all people – irrespective of their faith and race – are entitled to the same rights as Christians. Regarding this reality, in his *Lessons about the Indians* (1539), Suarez stated that the Indians, for example, irrespective of their Paganism, have all the rights and preserve the dignity of the human person. Beyond doubt, through such statements, Suarez actually defended not only the natural rights of Indians, which had been oppressed by the Spanish colonists in the name of the Christian, Catholic, European civilization, but the human rights, too, which have also been enforced on a universal scale by the contribution of the main representatives of the Schools of natural Law.

Referring to the contribution of Vittoria and Suarez (competent theologians, canonists and jurists), Danièle Lochak – expert in the philosophy of law –

observed, with good reason, that „the idea of a universal community based not on faith, but on the affiliation to the same nature and to the same human dignity – which could seem like a return to the sources of the Gospel but which, in the context of the age, is a fundamental theological mutation – gives to the human rights their authentical universality"[1] (Agi & Cassin). In this sense, the great religions of the world themselves – as, for example, the three monotehistic religions (Mosaic, Christian and the religion of Islam) – were the ones that pointed out that common human nature, this Adamic belonging to a common Father, Aavraam, created and chosen by Jahve to be "the Father of all peoples", hence the different ethnical and linguistic character, but, at the same time, the universal character of the human race, to which the „Holy Books" of the three monotheistic religions explicitely refer.

The modern school of natural law – represented by Grotius (1583-1645) and Pufendorf (1642-1694) - has separated the natural law from its religious basis, only attaching it to the servitute of human reason. But, through such a conception they did not only contribute to the speeding up of the law`s secularization process, but of the separation of „jus sacrum" from „jus civile", which was to give expression to the will of the city`s ruling class, ideologically expressed also by the texts of the state legislation.

Hobbes (Leviathan, 1651) and Locke (The second Treatise on Civil Government, 1690) find the reference of this natural law in the originary (primary) natural state. But, they were to observe that, in this primary natural state, people enjoyed a weak exercise of their rights, as they were not governed by precise and clear laws, hence the necessity that people join, out of their own will, in an act of social contract, which consisted in their exclusive submission to the legislative power established with one consent and to the laws it emanated. Under the impact of this conception, in the year 1762, J.J. Rousseau was to revive to idea of the social contract, which he imposed as a "norma normans" of the human society.

In the age of Iluminism, Montesquieu also grants full trust to the human reason, yet exalting the religious liberty and tolerance.

For Voltaire, to be free means to know your rights and to defend them; that is why, for him, the liberty of thought and of expression remains the first of human liberties. But, the same Voltaire was one of those who circulated the idea according

[1] Annexe 3, p. 13.

to which the religious war can only be prevented "by the multiplication of sects", and, ipso facto, tirany in mankind`s way towards civilisation (Voltaire, 1957, p. 258). In fact, these ideas have been taken over, in a tale-quale manner, not only by the exaggerated rationalism of the XIX-th and XX-th centuries, but also by the followers of the Marxist-Leninist ideology, who saw religion as an obstacle on the path towards knowledge.

The fact that religion is by itself, first of all, a source of knowledge is certified even by the text of the Genesis (the Creation), which makes a special reference to the "knowledge" in the phrase „the three of knowledge of good and evil" (Gen. 2, 17). Anyhow, this knowledge also has its opposite, which is „ignorance", which took up a „luciferic" (Dură, 2006, p. 35) character since the moment when the Protoparents of mankind, Adam and Eve, no longer wanted to obey the divine order. In this sense, we could say that the ones who have disrespected or disrespect the human rights and liberties have also fallen into some kind of „luciferic ignorance".

The Bible tells us that to talk and to rule means to know. The same Holy Book - as the great personalities of mankind`s culture call it (Dostoievski, Goethe, Eminescu etc.) – tells us that God Himself adviced Adam, the mankind`s ancestor, to name His Creation (Fac. 2, 19). In this sense, by advicing Adam to name His Creation, God actually urged him to the act of knowledge, for the simple reason that the entities of nature, the entities of creation, respectively, could not be named without being correctly defined by a process of knowledge increasingly profound and more comprehensive... . Knowledge cannot be limited – a poet-teologian wrote – since the man was meant to always give new names to the new entities defined by the continuous improvement of instruments and investigation methods". (Damian, 2006, p. 11)

The XX-th century – rightfully named „a century of extremes" (Hobsbawm, 1999)– has not only spread an ideative, anti-human culture, that ended up in the justification of the atrocities of Auschwitz, but also a metaphysical one (Marrou, 1978, p. 70), as it had been emphasized by the great European humanists. In this sense, this metaphisical culture itself can be both a revigorating source and a resurrectional impulse for the man of our days, which could culminate with the restoration of human dignity, both spiritual and earthly.

In the opinion of some philosophers of law, of a Marxist orientation, natural Law must not be claimed as a basis for human rights, as „a natural law based on a complete deduction of the man`s unitary and unchangeable nature does not

correspond to the realities, in opposition to the historical and geographical relativism of Montesquieu" (Oppetit, 1999, p. 113). They consider, in fact, that the basis of human rights lies in the principle of the autonomy of conscience. Based on this principle, asserted by Kant, in matters of morals, every person is at the same time a legislator and a subject of law. Therefore, it is of no surprise that this individualism, principialised by Kant, was to be imposed by Western people even in some Protestant and Roman-Catholic churches.

The State cannot intervene in matters of conscience. This reality was already expressed by Romans in the well-known phrase, "*de internis non judicat praetor*", by which the separation principle of the two fields: the earthly and the religious one and, ipso facto, the autonomy of cults, was emphasized. That is why „… the legitimate violence that the State exerts stops before entering the threshold of the autonomy space" (Frydman & Haarscher, 1998, p. 105), as the State is not authorized to enter the field of conscience, including that of the religious life. In fact, the human rights – formulated at the end of the XVIII-th century by the American and French Revolutions and, then, revived and systematized in the *European Convention on Human Rights* (1950) – embody the very „guarantee of the principle of autonomy", as a fundamental principle of the relations between the State and the Church. (Frydman & Haarscher, 1998, p. 105)

In England, the *Petition of Right* - of 1628 – has forbidden the arbitrary arrests and laid the basis for the *Habeas corpus* Act of 1679. In its first article, *The Universal Declaration of Human Rights* – adopted by the Institute of international law, in its session of New York (Oct. 12, 1929) – also provided that „it is the duty of every state to recognise to any individual the right to life, to liberty, to property and to grant to all the inhabitants of its territory the full and complete protection of this right, irrespective of their nationality, sex, race, language or religion" (Agi & Cassin, 1998, p. 331). Article 2 of the same Declaration provided that că „it is the duty of every state to recognise to any of its individuals the right to the free exercise, both at a public and at a private level, of any faith, religion or religious conviction, the practice of which is not incompatible with the public order and with good manners". Finally, Article 4 of the Declaration mentioned that the affiliation to a religion „does not authorize the States to refuse, to any of their citizens, their private and public rights, especially the admission to public education institutions and the practice of different economic activities, professions and occupations".

At the Congress of Dijon of July, 1939, the *League of Human Rights* has brought an addendum to the Declaration of 1929, restating and specifying that „the human rights are universal, irrespective of a person`s sex, race, nation, religion or opinion. These rights, indefeasible and imprescriptible, are attached to the human being; they must be observed at any time and everywhere and assured against all forms of political and social oppression. The international protection of human rights must be universally organised and guaranteed, so that no state could refuse the exercise of these rights to a single human being living on its territory" (Art.1) (Agi & Cassin, 1998, p. 333).

In the year 1934, „*The National Conncil for Civil Liberties*" (Lilly, 1984, pp. 1-19) was established in London, as an action directed against the violation of these liberties by the fascist regimes of that epoch.

In the addendum to the Declaration of Human Rights of 1929 (New York), the League of Human Rights – gathered at the Congress of Dijon of July 1936 - specified that „the freedom of opinion requires that the press and all the other means for the expression of thinking be set free from the domination of the masters of the banks" (Agi & Cassin, 1998, p. 334)[1]. In addition, human rights must aim at the common good of all individuals and nations, which is of the whole mankind. In this explicite manner expressed itself the Congress of the League of Human Rights, convened in Dijon in July, 1936, for which „any nation has rights and duties towards the other nations together with which it makes up the Mankind. Organised in liberty, universal democracy must be the supreme aim of all nations" (Art. 9) On the same occasion, they specified that these human rights „only authorize a brotherly collaboration that would pursue the common good of Mankind, with a view to the respect of human dignity and of all civilisations" (Art. 10).

In the year 1942, Jacques Maritain elaborated a Declaration on the Human Rights and the Natural Law, in which he presents „the rights of the human person" and „the rights of the civical person". On the basis of his Declaration lie the principles of the Judeo-Christian teachings, of a Biblical origin, according to which the man – "who knows good and evil since the creation" (Gn. 3, 5) – is the man`s „brother" (Gn. 9, 5). This „fellow man" of the man has – through the act of his creation – both rights (Gn. 1, 26, 30) and obligations (Gn. 3, 3).

[1] Art. 7, Annexe 2. Déclaration des droits de l'homme elaboré par la Ligue des droits de l'homme (Congrès de Dijon, juillet 1939).

The religion of Jacques Maritain – namely the religion of the Old and of the New Testament – being a „historical religion, is based on the Revelation made by God, to certain people, in certain places and circumstances, ..."[1]. Therefore, it is of no surprise that, among „*the human person`s rights*", Maritain mentioned also: „the right to pursue the eternal life after the path that the conscience has recognised as being traced by God"; „the right of the Church and of other religious communities to the free exercise of their spiritual activity"; „the right to pursue a religious vocation; the liberty of the religious orders and associations" etc.

According to the philosopher Jacques Maritain, „the person`s value, her liberty, her rights, depend on the order of sacred things, bearing the hallmark of the Father of all beings … . The person has an absolute dignity, as she herself is in a direct relation with the Absolute, where she herself can find her complete fulfillment". (Riquet, 1981, p. 63)

So, for Maritain, any man is a "person" – not a ... "individual" – whose human „dignitas" (dignity) is absolute, as she is in a direct relation to her Creator, named by the philosopher „Absolute". Moreover, according to the statement of the French philosopher, the human person can only find his „complete" „fulfillment" in her direct relationship with the „Absolute", which the Judeans, Christians and Muslims call God (Jahve or Alah).

As regards this „human dignity", *The Treaty establishing a Constitution for Europe* provides that it „is inviolable", and that „it must be respected and protected" (II-nd part, title I, Art. II-61). Establishing the right to „human dignity", the fundamental law of the European Union`s States actually restated „one of the principles included in the Preamble of the Universal Declaration of Human Rights", which was, in fact, also restated in the text of the European Convention on Human Rights, although this right „is not explicitly regulated in any of its articles". (Gâlea, Dumitraşcu, & Morariu, 2005, p. 111)

Reasserting the principle of secularity, The *Declaration of the Rights and obligations of Man and of the Citizen*, adopted in London by „France Libre" on August 14, 1943, provided that „all people are equaly free to practice the cult they have chosen or to practice none. The law shall establish no difference between the cults" (Art. 15). Secularity was thus understood in the terms of juridical assurance and protection of the man`s liberty to have and to practice a religious cult or not,

[1] *La Bible de Jésusalem*, translated under the directive of Biblical School of Jésusalem (1998).

and, at the same time, to grant, as the basis of the legal regime of cults, the principle of the equality of cults and not a separation between the State and the Cults or an elimination of the spiritual and religious values from the city, as some politicians and jurists have understood the status of secularity and as they still understand it.

In a text, drafted and presented in London, on January 31, 1944, under the title *The natural rights of the human being*, they mentioned, first of all in the preamble itself, that „the human rights are based on the human nature, they cannot be confiscated or restrained" (Agi & Cassin, 1998, p. 343)[1]. In this sense, the right to have and to practice a religious cult in a free manner is also part of the human nature and therefore, this right too cannot be abrogated or restrained by somebody, but in case that the teachings and practices of the respective cult infringe on the Country`s Constitution, on the political order or on the good manners or prejudice the rights and liberties of others.

The right to *the Liberty of religious cults* was also taken into consideration by the Declaration of London, of January 31, 1940, as a natural right of the human being (Art. 8). (Agi & Cassin, 1998, p. 344)

The Project of the *Universal Declaration of Human Rights* – presented by the U.N.O., on June 16, 1947, by Professor René Cassin, the representative of France in the „ Editorial Board of the United Nations Human Rights Commission - provided that „the individual freedom of conscience, of faith and of thought is a sacred and absolute right. The public or private practice of a cult and the manifestations of religious convinctions can only be subject to the restrictions imposed with a view to public order, to morals or to another man`s rights and liberties" (Art. 20)[2]. (Agi & Cassin, 1998, p. 362)

The same project of the *Universal Declaration of Human Rights* – published in May 1947 by the General Secretariate of the United Nations - mentioned „the freedom of conscience, of faith and of public cult" (Art. 14)[3]. So, it made a clear distinction between the freedom of conscience, the freedom of faith and the freedom of public cult. In this sense, since that year, namely 1947, in the Countries falling under the domination of proletarian dictatorship – among them in Romania – this distinction was not made anymore. In fact, in România, the Constitutions of

[1] Annexe 5.
[2] Annexe 9, Document II.
[3] Annexe 8.

1948, 1952 and 1965 explicitly referred only to the freedom of conscience, in the scope of which they included both the freedom of faith and the freedom of function of of the religious cults (cf. Art. 30). Unfortunately, we find a similar statement in the texts of the Constitution of 1991 and of the one coming into force on October 29, 2003, where – under the generic term "freedom of conscience" – the following are included: „the freedom of thinking and opinion", „the freedom of religious faiths", „the freedom of conscience" and „the freedom of religious cults" (Art. 29).

Beyond doubt, these notional ambiguities and imprecisions are due to the fact that the so-called „father", (sic) or, better said, „fathers" of these Constitutions, of 1991 and 2003, are still dependent upon the juridical doctrine of a Soviet origin, in the spirit of which they have been schooled and in the name of which they have practised law in our country for almost half of a century.

Manifesting a vividly hostile attitude towards any reference both to the natural and religious law, and to the international norms, regarding the obligation to observe and to juridically protect human rights, the respective jurists, in Romania of the timespan 1947 to 1989, have also encroached upon the right to religious freedom, which is one of the sacred rights of the man, included in the text of international Documents, with legal binding force, among the fundamental human rights and liberties.

The Declaration of Human Rights, adopted by the French Consultative Commission on its session of April 10, 1948, also provided that „the personal freedom of thought and of conscience, the freedom to profess a faith or to change it represent some absolute and sacred rights" (Art. 15) (Agi & Cassin, 1998, p. 368). The same document, of 1948, provided that „one of the objectives of the United Nations is to accomplish international cooperation, developing and encouraging the observance of the human fundamental rights and liberties for everybody, irrespective of their race, sex, language or religion; …" (Préambule).

In principle, the *Universal Declaration of Human Rights* – adopted on December 9, 1948, at Chaillot Palace, - was not meant to be dependent upon any confession of faith. Its aim was, indeed, to respect all the faiths and ideologies of the world. Nonetheless, the competent exegets of this Declaration found out that its inspirer, René Cassin (1887-1976), considered the very „Father of the Universal Declaration of Human Rights"(Agi & Cassin, 1998, pp. 11-13), would have been „too attached to the values of his ancestral Judaism, which was actually rediscovered by the Christianity of his many friends and of his wife …, hence the conclusion that *the*

sources of the Declaration are no other than those of *Judeo-Christianity*". (Riquet, 1983, p. 63)

We should not be surprised that the principles and values of the religious, Judeo-Christian spirituality, lie – outspokenly or tacitly – at the basis of the Declarations regarding the assertion and the protection of human rights, since these represent the very sources of the European thinking and culture, of a humanistic origin, which have, in fact, also generated and strengthened the outlooks on life and on the man typical from the epoch of the Renaissance, of the Illuminism, of the French Revolution (1789) etc., reaching their apex with the *Universal Declaration of Human Rights* of 1948, and with the *Convention for the Defense of Human Rights* of 1950. Finally, the fact that this „religious and humanistic heritage of Europe" is explicitly mentioned in the text „of the Treaty establishing a Constitution for Europe", adopted in June 2004, is shown by its very Preamble, which states, in an „expressis verbis" manner, that, indeed, from this Judeo-Christian „heritage", of a humanistic origin, „developed the universal values, being represented by the inviolable and inalienable rights of man, of the democracy, as well as by the equality, the liberty and the state of law" (Preamble).

In their comments to the text of this Preamble of the European „Constitution", the Romanian competent constitutionalists have also rightfully observed that this text too, emphasizes both „the interest of citizens and of the civil society" for „the problem of religion", and its reference to „the heritage of Christian values", recognising, ipso facto „an obvious historical fact, the contribution of Christianity to the European civilization etc." (Gâlea, Dumitrașcu, & Morariu, 2005, p. 13). That is why we consider that the opinions of those who required „the elimination of the reference to the Christian values" – or, more precisely, to the religious Judeo-Christian values, which have laid the basis of the European humanistic identity, spirituality and culture and shaped them – „for the reason of the necessity of eliminating any possible interpretation in the sense of the discrimination of the persons of a Muslim or atheistic religion" (Gâlea, Dumitrașcu, & Morariu, 2005, p. 13), do not only lack objectivity, but any historical basis, too.

Any conaisseur of the doctrine of the Islamic religion knows that this Judeo-Christian spiritual and religious „heritage", is expressed – in a form or another – both in the text of the Koran and in the liturgical practice of the Muslim cult. That is why, in our opinion, an explicite reference – in the text of the Preamble of the European Constitution – also to the values of the Islamic religion would bring no

prejudice to the recognition of the immesurable contribution of the Mosaic and of the Christian religion to the European humanistic values, but, on the contrary, would better emphasize the constructive and efficient contribution of the three monotheistic religions to the shaping of the European identity, from a spiritual, religious and cultural point of view, in the name of some principles the content of which is marked by some ideas of a preeminently humanistic nature.

As regards a so-called interpretation in the sense of discriminating the „atheistical" persons, we must say that these ones too cannot elude a historical, irefutable reality, namely this „cultural, religious and humanistic heritage of Europe", of a Judeo-Christian origin, as they were also born and raised in its spirit even then when they subjugate their faith to their own human reason.

People are usually enfeoffed and indebted to the mentality they belong to. They can only escape this captive thinking by appealing both to the sacred and to the secular, hence the two manifestations of the human thinking and feeling: religiosity or non-religiosity. Hence, in order to give Caesar what belongs to Caesar and to God what belongs to God, we think that the insertion of an addendum in the text of the future European Constitution is necessary, that would explicitly specify that, along the centuries, atheists have also brought their contribution, in their own way, to this „cultural and humanistic heritage of Europe". This way – in our opinion – we could avoid some disputes triggered by sterile opinions, with no relation to the historical truth, which are only enfeoffed to some views of an ideological and party-minded or religious nature.

As regards globalization – a product of the technological age – they said that „... it lacks its spiritual and vertical dimension, remaining a simple horizontal phenomenon, with a purely economical content" (Popescu, 2004, p. 35), and that it has „no relation to the most disturbing questions: the afterlife, the the transcendence, the redemption", so that the metaphysicists have called it „a civic atheism, ..." (Popescu, 2004, p. 34). Of course, this statement is exaggerated, as there are many supporters of this globalization process who admit to having a religious faith (Judaic, Christian, Buddhist, Muslim etc.) or who are also creators of spiritual-religious values.

An Indian philosopher, Daya Krishan, wrote that „The Universal Declaration of Human Rights, as well as the largest part of the documents created by the United Nations, need a fundamental revision. The Declaration – he stated – is not only the product of a *provincial* point of view on this matter – namely of the Western point

of view – but, following from the World War II, it also incarnates the vision of the world typical of the *winners*, a vision it mainly tries to inoculate to their own profit" (Krishna, 1998, p. 151). The same philosopher concluded that the respective „path chosen by the Western countries is not necessarily the only one that the mankind can follow to make these rights respected …. It is high time - D. Krishna writes – that the institution the United Nations stopped being only an appendix of the West and really became representative to mankind". (Krishna, 1998, p. 154)

The fact that this "Universal Declaration of Human Rights" does not prove the appropriation and expression of a ecumenical, that is of a universal vision on human rights, is an.undoubtable truth. Indeed, we are far from finding, in its text, the wisdom of the Indian or Asian religious thinking or discourse. Its thinking only lies within the limits of natural law and of the cult of reason, imposed by the Century of Light and by the Revolution of 1789.

However, by the assertion of this cult of reason, they neglected the religious (life) dimension of the present-day man and implicitly, that of God, who is „the last ubiquitous mistery" (Rybak, 1981, p. 70). In this sense, this excessive cult of the power of reason also made this "last ubiquitous mistery" remain unmentioned in the text of the Universal Declaration of Human Rights.

The European Convention on Human Rights (Rome, 1950) was the „first international treaty" which transformed the principles stated by the Universal Declaration of Human Rights (New York, 1948) „in a treaty which binds the contracting states" (Lepretch, 1992, pp. 28-29). Already in the Preamble of this Convention they mentioned that the respective signatory Governments, members of the Council of Europe, were indeed decided to take "... the first measures meant to ensure the collective granting of certain rights stated in the Universal Declaration, ..." (Preamble). In fact, on the occasion of a State`s joining the Council of Europe, this one commits itself – among other – that „apart from other duties it takes, to observe the human rights defended by the European Convention on the matteri, namely to ensure, on a national scale, the observance of these rights and to contribute, on a European scale, to the fulfillment of their collective granting, established by the Convention". (Bîrsan, 2005, p. 113)

The same Convention provided, in its very first article, the obligation „of the high contracting parties" (des Hautes Parties contractantes) to recognise the rights and liberties defined in the I-st title of the present Convention „to any person (à toute personne) who is under their jurisdiction" (Art. 1).

The competent commentators tell us that the provisions of Article I of the Convention establish „... an international liability of the contracting states regarding the obligation to respect – under the control of the Court and of the Committee of Ministers as regards the enforcement.of its resolutions – the rights and liberties granted by the Convention". (Bîrsan, 2005, p. 123)

The Additional Protocol to the European Convention (Rome, 1950), signed up in Strasbourg on May 6, 1963, stated that by the establisment of the „European Court of Human Rights", that „Court" was given the possibility „to offer „juridical consultancy regarding the problems pertaining to the interpretation of the Convention and of the Additional Protocols" (Protocol no. 2, art. 1, 1). This specification was subsequently restated in the text of Protocol no. 11, the provisions of which came into force on November 1, 1998.

Therefore, any public or private institution, in the countries of the European Union and any European citizen can ask this „Court" to offer them doctrinary explanations, clarifications and specifications regarding the correct interpretation of the text of the European Convention on Human Rights and of its Additional Protocols.

„The action of control" of the Council of Europe for the „prevention of the encroachment on human rights" is „more necessary than ever" (Drzemczewski, 2000, pp. 385-428), and, as such, with the purpose of putting the fundamental rights` protection into practice a cooperation between „the Community Court", „the national Jurisdictions" and „the European Court of Human Rights" (Pescatore, 2003, pp. 151-159) is necessary.

Among others, the Protocol to the General Agreement on the Immunities of the Council of Europe – drafted and signed in Strassbourg, on November 6, 1952 - stated that "... the priviledges, immunities and facilities are granted to the representative members not for their personal use, but with the purpose to safeguard the independent exercise of their functions within the Council of Europe" (Art. 5).

Not long ago, „the rule regarding parliamentary immunity" was put into discussion, which interpellates some of the members of the Parliaments in the countries of the European Union in the light of the provisions of the European Convention on Human Rights. Indeed, the priviledged status that the members of the Legislative Assembly enjoy in some E.U. countries (the Chamber of Deputies or the Senate),

making it impossible for them to be chased or arrested without the prior approval of the parliamentary body they belong to, made some of them think they could even allow themselves to encroach upon the human rights (Krenc, 2003, pp. 813-821) by virtue of this parliamentary immunity, hence, therefore, the obligation of the States of the European Union to take the necessary measures – also according to the provisions of the European Convention on Human Rights – for the elimination of the possible infringements on or limitations to the content of these rights, in their effective exercise, made by these very representatives of the peoples in the Parliaments of the respective countries.

On April 27, 1977, the European Assembly, Council and Commission adopted a common declaration, in which they underlined „the very great importance they put on the observance of the fundamental rights, as they mainly follow from the Constitutions of the Member States and from the European Convention for the Safeguarding of Human Rights and of Fundamental Liberties" (Art. 1). (Schutter et al., 2002, p. 443)

In May 1989, the European Parliament adopted a „Declaration of the fundamental rights and liberties" (Schutter et al., 2002, pp. 433-441), by which it expressed „its strong desire to establish a basical instrument of the Community, having a binding juridical character and which to guarantee the fundamental rights". (Schutter et al., 2002, p. 434)

The Preamble of the Declaration states that „… it is indispensable for Europe to assert the existence of a law community based on the respect of the human dignity and of the fundamental rights …" The Preamble also states that „… these rights follow, at the same time, from the treaties for the establishment of the European Communities, from the common constitutional traditions of the member States, from the European Convention for the Safeguarding of Human rights and of the Fundamental Liberties and from the international instruments in force and are developed by the jurisprudence of the Court of Justice of the European Communities". (Schutter et al., 2002, p. 435)

The first Article of this Declaration provides that „human dignity is inviolable", and Article 3 that „any discrimination based especially on race, colour, sex, language, religion …is forbidden". Finally, Article 16 states that „the parents` right to ensure the education (of their children) according to their religious and philosophical convictions".

The basic provisions stated by the European Convention of Human Rights were, thus, restated, in the wholeness of their content, also by the Declaration of the European Parliament in the month of May of the year 1989. To the civil and political rights – granted by the European Convention of Human Rights – they also added a "palette" of fundamental rights, pertaining to the economic and social field, regulated by the European Social Charter.

The European Social Charter (Grevisse, 2001, pp. 3-9), also called the *Turin Charter*, that was signed in 1961 by the Member States of the Council of Europe, came into force in 1965. Its text, updated in 1996, came into force in the year 1999. As regards this social Charter – that Romania signed in Strasbourg, in May 1997, they said it „must be seen as a proof of understanding the request according to which the observance of human rights cannot co-exist with poverty, with discrimination in society and at the place of work, with the lack of housing, of social security and of medical assistance" (Zlătescu & Stoica, 1998, p. 4). Among the rights granted and protected by the social Charter are also the ones regarding „the migrant workers and their families" (cf. Art 18 şi 19), any form of social discrimination being forbidden (Vandamme, 2001, pp. 12-43), a thing which, of course, also refers to the prohibition of discrimination on reasons of religion or religious conviction. But, unfortunately, there is no clear provision in this sense, which shows that, indeed, „the social Europe is still to be built" (Pancracio, 2001, p. 194). In fact, in their comments on these articles, the Romanian experts in "Community Social law" (Ţinca, 2005, p. 11) do not make the slightest allusion to the right of the immigrant workers and of their families on matters of faith, religion or religious cult.

In November 1968, the United Nations General Assembly ratified the Convention on the Imprescriptibilility of Crimes of War and of Against the Humanity.

In December 1973, the same General Assembly adopted the Resolution 3074 (XXVIII) referring to "The principles of international cooperation as regards the detection, the arresting, the extradition and the punishment of the individuals guilty of war crimes and of the crimes against the humanity". On the basis of this U.N.O. Resolution, the persons who are guilty of these crimes must be chased, arrested, judged and punished. The Resolution also provided the States` obligation to „cooperate, with the purpose of identifying, arresting and judging the ones who have committed such crimes", and to take „no legislative masure or of another kind that could prejudice the international obligations taken on as regards the

identification, arrest, handing over and punishment of the persons guilty of war crimes and of crimes against the humanity etc." (Predescu, 2006, p. 135).

This Resolution took into account the crime of genocide committed by the German Nazis not only against some ethnical or racial groups, but also against some religious groups. In fact, according to the provisions of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, approved and subject to ratification by the Resolution 260 A (III) of December 9, 1948 of the U.N. General Assembly, which came into force on January 12, 1951, genocide also means the action undertaken with the intention to destroy, partially or totally, a religious group (Predescu, 2006, p. 136), not only a national, ethnical or racial one.

This reality is also provided by the Romanian Penal Code, which, in the category of the crime of genocide, also includes the action undertaken „with the purpose to destroy, totally or partially ... a religious group..." (Art. 357). According to the Romanian Penal code, the crimes of genocide are punished, „by imprisonement" and by „the interdiction of some rights" (Art. 357).

On January 25, 1974, the Member States of the Council of Europe signed, in Strassbourg „The European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes". The Preamble of this Convention stated that, for the signatory States, the respective „crimes against mankind are the most severe transgressions of the law" and that „the practices of war are a serious prejudice to human dignity". At the same time, the respective Convention explicitly referred to „The Convention on the Prevention and Punishment of the Crime of Genocide", adopted by the United Nations General Assembly on December 9, 1948 (cf. Art. 1, 1), to „The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field", signed in Geneve, in the year 1949, to „The Convention Relative to the Treatment of Prisoners of War", also signed in Geneve, in the year 1949, and to „The Convention Relative to the Protection of Civilian Persons in Time of War", signed in the same year and in the same place, namely Geneve, in the year 1949 (cf. Art. 1, par. 2 a).

In the solving of several cases, both the International Court of Justice (of Hague) and the European Court of Justice explicitly referred to Article 7 of the European Convention on Human Rights, which established „two fundamental principles of any modern penal legislation: the principle of legal incrimination and its corollary – the principle of non-retroactivity of penal law – from this one being, however,

provided an exception in the second paragraph, namely, in the case of punishing some crimes which, at the moment when they were committed, irrespective of the existing national legal provisions of that time, were – a Romanian magistrate mentioned – „crimes, according to the general principles of law acknowledged by the civilised nations" (Bîrsan, 2005, p. 572).

For the Europan Court, the word „law", used in the 1st Paragraph of Article 7, is the semantic equivalent of the notion of „law", that can also be found in other provisions of the Convention, the interpretation and enforcement of which „depend on the practice of jurisdictional authorities". That is why the jurists, the practicioners, wanted to specify that this term „comprises both the legal norms „of a legislative nature", and the jurisprudential ones ..." (Bîrsan, 2005, p. 579), that is, those pertaining to the juridical interpretation.

The imprescriptibility of the crimes against humanity was declared by the statute of the Nuremberg Trials, appended to the inter-allied agreement of August 8, 1945. In this regard, the European Court of Justice declared that the purpose of the provisions contained in Article 7, paragraph 2 of the European Convention on Human Rights, was just to specify that its text does not affect the laws adopted with regard to the crimes against humanity. (Bîrsan, 2005, p. 590)

On July 17, 1998, the representatives of 159 States participating in the Conference of the United Nations, for the creation of an international penal court, adopted the statute of this jurisdiction in Rome. Among the actions which involve the penal international responsibility, the crimes against humanity are also mentioned.

As regards Article 7 of the European Convention on Human Rights, referring to the possibility of judging and punishing the person found guilty of committing some acts considered to be crimes against the humanity, the Romanian penalists, the competent ones, said that this one does not „contradict the principle of non-retroactivity", and that „the provision of the European Convention mentioned aims to prevent the commiting of some abominable crimes in the future, which prejudice the interests of the international community" (Predescu, 2006, p. 134).

So, these crimes against humanity - which involve the penal international responsibility, - are the ones against peace, against the humanity, war crimes, the crime of genocide and the crimes against human rights. (Cloşcă & Suceavă, 1995, p. 231)

In the doctrine of international law, these crimes – and, especially, war crimes and the crimes against humanity – are declared imprescriptible. As such, their perpetrators can be chased and judged at any time, „irrespective of the time that passed since they committed these crimes". (Predescu, 2006, p. 135)

Convened in Cologne, in June (3-4) 1999, the European Council decided on the drafting of a „*Charter of Fundamental Rights of the European Union*". In its resolution, the European Council declared that „the observance of the fundamental rights is one of the founding principles of the European Union and the indispensable condition for its legitimacy". It also stated that „in its jurisprudence, the European Court of Justice has confirmed and defined the Union`s obligation to respect the fundamental rights". (Braibant, 2001, p. 277)

At the meeting of Tampere (Oct. 15-16, 1999), the European Council established the componence of the working team for the drafting of "the Charter" (the heads of state and government of the 15 member Countries, representatives of the European Commission, of the European Parliament, of the national Parliaments and observers from the part of the two Courts of Justice).

In the opening discourse of the Convention`s works (December 17, 1999), its President, Roman Herzog, declared that „it is a catalogue of fundamental rights, meant for the bodies of the European Union" (Braibant, 2001, p. 287).

"The Charter", which was presented to the Council of Europe on the session of Biarritz (Oct. 14, 2000), when in also came into effect, is also considered „an effective contribution to the constitutionalization of European Union`s law" (Dumont & van Drooghenbroeck, 2002, pp. 61-96). Therefore, the Charter is also considered – just as the Convention on Human Rights – a constitutional instrument.

They said that the entry into force of the "Charter"of fundamental rights was followed by the strengthening of „the human rights protection in the European Union", and that it "shall establish new relations between the Union and the States and will call for a tight cooperation between the Court of Justice of the European Communities and the European Court of Human Rights". (Rigaux, 2002, pp. 261-262)

According to the mention in the "Charter`s" Preamble, the European Council had really drafted a „Charter of Fundamental Rights of the European Union", by which it aimed at the recognition „of the rights, liberties and principles" which state these rights and „… to strenghten the protection of the fundamental rights in the light of

the society`s evolution, of social progress and of the scientifical and technological developments" (Preamble).

The Preamble of the same "*Charter*" states that „the peoples of Europe, establishing an increasingly tighter bond between them, decided to share a pacifist future, based on common values". (Braibant, 2001)

Which are these common values? The Preamble of the "*Charter*" refers to „the spiritual and moral heritage" of the European Union, but mentions that this one is based „on the indivizible and universal values of human dignity, of freedom, equality and solidarity; …" Then, in order to specify, it adds that this Union „is based on the principle of democracy and on the principle of the law state". That is why it „places the person at the heart of its action when it establishes the Union`s citizenship (la citoyennité de l'Union) and creates a space of freedom, security and justice". At the same time, it mentions that the European Union „… grants the free movement of persons and the free circulation of goods, of services and of capitals, as well as the liberty to choose one`s domicile".

From the same Preamble we find out that „the present Charter restates, taking into account the competences and the duties of the Community and of the Union, as well as of the principle of subsidiarity, the rights which mainly follow from the constitutional traditions and from the common international obligations of the member States, of the Treaty on European Union and of the community treaties, of the European Convention on the Protection of Human Rights and of the Fundamental Freedoms, of the social Charters adopted by the Community and by the Council of Europe, as well as by the jurisprudence of the Court of Justice of the European communities and of the European Court of Human Rights" (Preamble). (Braibant, 2001, pp. 71-72)

The *cultural and juridical* construction of Europe has been and still is heavily influenced both by the Convention on human rights and by the "Charter of Fundamental Rights of the European Union. However, the text of the Convention remains the main reference text, for the defense of human rights, in the Countries of the European Union.

The renowned European constitutionalists noticed that, in some Countries of the European Union, „human rights most frequently have a supra-legislative status, as, for example, in France, in Belgium or in Spain, or only a legislative one, like in Germany, Italy or in the northern countries. Sometimes, these rights do not have

any internal status and, therefore, as a rule, they cannot be invoked before the internal judge as the Convention, although having been ratified, was not incorporated in the internal law. This is the case of Iceland, while the United Kingdom is finally on the point of adopting the texts that are necessary for its integration". (Grewe & Oberdoff, 1999, p. 21)

The same experts noticed that, in some countries of the European Union there isn`t a unique constitutional document. Hence, sometimes, the *„formal"* constitutional law and the *„material"* constitutional law overlap a little... On the contrary, for other countries, (Austria, Finland, Sweden), the constitution is made up of a plurality of documents, among which of some provisions which, even though are attached to the idea of material constitutional law, would, nonetheless, in other countries of continental Europe rather depend on some internal regulations, even on legislative provisions". (Grewe & Oberdoff, 1999, p. 7)

The same jurists noticed that „… today it is impossible to understand the internal law of the European Union`s member States without referring to community law or to the law of the European Convention on Human Rights", and that „… the ratification of the Treaty of Maastricht – the European constitutionalists write – allowed us to become acquainted with the importance of the national juridical systems, in particular, with that of the Constitutions" (Grewe & Oberdoff, 1999, p. 7). In this sense, based on the text of these Constitutions of the member States of the European Union, we can also notice the extent to which the provisions of the Convention on Human Rights have been recepted and applied, including the ones regarding their juridical protection.

The text of the project of the European Constitution, which was elaborated within a „Convention" of 105 membres, representing the bodies of the European Union, was examined and approved by the European Council convened in Thessaloniki (June 2003). First of all, on the meeting of Thessaloniky (June 2003), the European Council adopted the 59 articles of the project of the European Constitution and then examined the „Charter" of fundamental rights, adopted in December 2000 on the meeting of Nissa. The 105 members of the Convention – representing the bodies of the European Union – decided that the „Charter`s" text be revised in July 2003, in order to enforce it. Afterwards, the text was re-examined and adopted in the autumn of the same year „by representatives of the Governments of the member States, reunited in an intergovernamental Conference in order to adopt a final text" (Grewe & Oberdoff, 1999, p. 7). The respective text, which, in fact, was

meant to be „The Charter of Fundamental Rights of the European Union", was inserted entirely in the Second Part of the European Constitution.

The respective text - revised by the 25 member States of the European Union on October 15, 2003, during an intergovernmental Conference - was adopted in June 2004 under the title „The treaty establishing a Constitution for Europe". By this title, they tried the surpassing and the conciliation of some contradictory positions and the acceptance of an equitable solution. The main actors involved in the promotion „of the differences of position", which were, on the one side, France and Germany and, on the other side, Spain and Poland, were in fact the ones who determied the non-adoption of the project for a Constitutional Treaty in December 2003.

From a formal point of view, the European Constitution „can be considered a treaty", but, „from a substantial point of view, it represents a fundamental law indeed, – in the sense of the classical theory of constitutional law – an act regulating the ways how the power is exercised... " (Gâlea, Dumitraşcu, & Morariu, 2005). Therefore, in this case, we are dealing with a constitutional act, bestowing individuality and coherence upon the European system of juridical order.

On October 29, 2004, as a State participant in the Intergovernamental Commission, Romania also signed – through its representatives – the final Act of this Commission, which adopted the constitutional Treaty. Hence, our Country`s obligation to harmonize the text of its Constitution to that of the E.U. Constitution, a fact that – with certainty – will surely happen following Romania`s joining the European Union, in January 2007.

„The Treaty establishing a Constitution for Europe" provides that the European Union „is a space of freedom, security and justice, where the human fundamental rights are observed, where they take into account the diversity of the member states` traditions and juridical systems" (Art. III - 257 al. 1).

Consequently, they also respect the diversity of member States` traditions and juridical systems in matters of justice. However, the denunciation of the Constitution`s infringement can be made by any of the member States. They can „refer that matter to the Court of Justice of the European Union, in case they consider that another member state did not fulfill one of the obligations which are incumbent upon it based on the Constitution" (Art. III - 361).

The same constitutional Treaty provides that „if the Court of Justice notices that a member state did not fulfill one of the obligations which are incumbent upon it based on the Constitution, this state must take all the necessary measures for the enforcement of the Court`s resolution" (Art. III - 362).

By „The European Convention for the Defense of Human Rights" (Rome, 1950), „The *Charter of Fundamental Rights of the European Union"* (Cologne, 1999) and „The Treaty establishing a Constitution for Europe", they brought a definite and efficient contribution to the constitutionalization of the law of the European Union and, ipso facto, of the human fundamental rights and liberties, which were perceived and formulated by the European juridical thinking in the spirit of the content of the great humanistic principles, of social liberty and justice, stated since the Antiquity by various philosophical, religious, political and juridical systems.

By the instrumentalization and constitutionalization of these human fundamental rights and liberties, the European juridical thinking has proven its humanistic propensity and has shown the extent to which it can adapt itself to the requirements our times.

Reaching a real apex of its efforts, made for centuries, that is, to endow the human being, id est the human person, with the necessary instruments for the assertion and defense of its fundamental rights and liberties, this European juridical thinking also remains, beyond doubt, a first-hand source and reference for the juridical thinking elaborated in the Schools of Law of the member States of the European Union. In fact, not accidentally, a member State of the European Union is sued for the non-observance of the obligation of reception and assertion of the principles of a European frame-law (Gâlea, Dumitraşcu, & Morariu, 2005, p. 342) in the text of a national law. In this sense, such a law – as, for example, the European Constitution, - refers mainly to the promotion and defense of the human fundamental rights and liberties.

From the lines above, one can infer that the human rights and liberties have been a subject of thinking and reflection both for philosophers, theologians and jurists and for historians and politicians, hence the inter- and pluridisciplinary manner in which these problems, which have concerned the mankind since Antiquity, are approached.

Is this regard, both the old religious and juridical texts and the European juridical handbooks, studies and treaties of our days, shall remain telling testimonies which, in fact, emphasize the European judirical thinking regarding the human rights and

liberties, expressed in its quintessence in the text of the Convention of Rome (of the year 1950), of „The *Charter of Fundamental Rights of the European Union"* (Nissa, 2000) and of the European Constitution (also adopted in Rome in the year 2004). The fact that, in the context of the European thinking on the human rights and liberties, we are dealing with an evolutive process both with regard to its elaboration and expression by using an adequate juridical terminology and to its appropriation, dissemination and understanding among a large public – of different ideological, philosophical and religious orientations – is testified by the multiple approaches, observations and reflections left by the jurists of different Schools of Law, starting with the old ones of Athens, Rome, Beirut and Constantinople and ending up with the ones of our days, of Paris, Rome, Berlin, Bruxelles or London.

From the „classical" handbook of law „*Institutiones Justiniani*", – owed to the famous Schools of Roman Law of Beirut, Rome and Constantinople – to „The Treaty establishing a Constitution for Europe" (Rome, 2004), the European juridical thinking has also gone a long and often hard way, as regards the defining and defense of the human fundamental rights and liberties.

If the European juridical thinking has really undergone an evolutive process, this is mainly due to the Schools of Law in the Countries of the European Union, the contribution of which is also turned to good account by the ones in our Country, which, since January 1, 2007, is among the countries which have made the human rights and liberties their major preoccupation, hence our obligation to harmonize the Romanian legislation to the principles of the European Union`s legislation as soon as possible, so that, this way, the Romanian law could break forever with its past of the period 1948-1989 and enter, this way, the authentical space of the European juridical thinking, for which the man is the measure of all things.

Bibliography

Agi, M.; Cassin, René (1998). *Prix Nobel de la Paix (1887-1976). Père de la Déclaration universelle des droits de l'homme,* Paris: Perrin.

Alston, Ph.; Weiler, J. H. H. (2001). Vers une politique des droits de l'homme authentique et cohérente pour l'Union Européenne, in vol. *L'Union Européenne et les Droits de l'homme* (under the direction of Ph. Alston), Bruxelles.

Berger, V. (1998). Jurisprudența Curții Europene a Drepturilor Omului / The jurisprudence of the European Court of Human Rights, transl. by I. Olteanu and C. Atanasiu. Bucharest.

Bîrsan, C. (2005). *Convenţia Europeană a Drepturilor Omului. Comentariu pe articole / The European Convention of Human Rights. Comments on articles. vol. I.* Bucharest: All Beck.

Braibant, G. (2001). *La Charte des droits fondamentaux de l'Union Européenne*. Paris: Du Seuil.

Bruyer, R. (1984). *Les sciences humaines et les droits de l'homme.* Bruxelles.

Cârlugea, Z. (2006). *Brâncuşi – reverberaţii liturgice/Brâncuşi – Liturgical reverberations. Lumină Lină / Gracious Light, XI (2006), no. 3.*

Cloşcă, I., & Suceavă, I. *(1995). Tratat de drepturile omului/Treaty on human rights.* Bucharest: Europa Nova.

Damian, T. (2006). *Pustia ca eliberare/The desert as liberation. Lumină Lină / Gracious Light, XI, New York, no. 3.*

Diaconu, I. (1998). *Minorităţile. Identitate. Egalitate/The minorities. Identity. Equality.* Bucharest.

Drăganu, T. (1972). *Drept constituţional/Constitutional Law.* Bucharest.

Drzemczewski, A. (2000). *La prévention des violations des droits de l'homme: les mécanismes de suivi du Conseilde l'Europe. Revue trimestrielle des droits de l'homme, XI, no. 43, 385-428.*

Dumont, H.; Drooghenbroeck, van S. (2002). La contribution de la Charte à la constitutionnalisation du droit de l'Union Européenne, in the vol. *La Charte des droits fondamentaux de l'Union Européenne* (sous la direction de J. Yv. Charlier et Ol. De Schutter), Bruxelles.

Dură, L. V. (2006). *Muntele credinţei (The apex of faith).* Râmnicu-Vâlcea: Logos.

Dură, N. (2003). *Lumea se află într-o stare de compromis / The world is in a state of compromise. Luceafărul / The Morning Star, no. 43, November 29.*

Dură, N. V. (2003). Dreptul şi religia. Normele juridice şi normele religios-morale / Law and religion. The juridical norms and the religious-moral norms. „Ovidius" University Annals, Series: *Law and Administrative Sciences, vol. 1.*

Dură, N. V. (2003). Dreptul şi religia. Normele juridice şi normele religios-morale / Law and religion. The juridical norms and the religious-moral norms, in *Ovidius University Annals*, Series: *Law and Administrative Sciences, vol. 1.*

Eliade, M. (1965). *Le sacré et le profane.* Paris: Gallimard.

Favoreu, L. (2000). La Constitution française et le droit communantaire, in *Droits nationaux, droit communantaire: influences croisées* (édit. J. Bourrinét), Paris.

Frydman, B., & Haarscher, G. (1998). *Philosophie du droit.* Paris: Dalloz.

Gâlea, I., Dumitraşcu, M. A., & Morariu, C. (2005). *Tratatul instituind o Constituţie pentru Europa / The Treaty establishing a Constitution for Europe.* Bucharest: All Beck.

Goy, R. (2002). *La Cour internationale de justice et les droits de l'homme*. Bruxelles.

Grevisse, S. (2001). La Charte sociale: Rapport Interductif. en La Charte sociale européenne (Éd. J. Fr., A. K. Kombé et St. Leclercq) (pg. 3-9). Bruxelles.

Grewe, C.; Oberdoff, H. (1999). Introduction, en vol. *Les Constitutions des États de l'Union Européenne*, Paris: Éd. La Documentation

Hobsbawm, E. (1999). *Secolul extremelor / The century of extremes.* Bucharest.

Kelsen, H. (1997). *Théorie générale du droit et de l'état, trad. de l'anglais par B. Laroche.* Bruxelles: Bruylant.

Krenc, F. (2003). La Règle de l'immunitè parlamentaire à l'épreuve de la Convention européenne des droits de l'homme. *Revue trimestrielle des droits de l'homme, XV, no. 55.*

Krishna, D. (1998). Pour une révision radicale des droits de l'homme: de la nécesité d'adopter une perspective universelle, in the vol. *Agir pour les droits de l'homme au XXI^{ème}*. Unesco Publishing House.

Lepretch, P. (1992). La Convention européenne des droits de l'homme. Les droits et les libertés garanties par la Convention européenne des droits de l'homme, en vol. *Droits de l'homme et service social dans l'espace européen de 1992*, Paris.

Laurent, A. (1983). *Histoire de l'individualisme.* Paris.

Lilly, M. (1984). *The National Council for Civil Liberties.* London.

Lochak, D. (2002). *Les droits de l'homme.* Paris: La Découverte.

Madiot, Y. (1991). *Droits de l'homme, 2-e édition.* Paris.

Marrou, H. I. (1978). *Crise de notre temps et réflexion chrétienne (de 1930 à 1975).* Paris.

Marx, J. (1989). *Resistances à la déclaration des droits de l'homme et du citoyen de 1789*, în vol. Laicité et droits de l'homme. Deux siècles de conquetes, Éd. de l'Université de Bruxelles.

Muraru, I. (1973). *Drept constituţional / Constitutional Law.* Bucharest.

Muraru, I. (1995). *Drept constituţional şi instituţii politice / Constitutional Law and Political Institutons, VI-th edition.* Bucharest.

Muraru, I., & Constantinescu, M. (1995). *Studii constituţionale / Constitutional studies. Bucharest.*

Oppetit, B. (1999). *Philosophie du droit.* Paris: Dalloz.

Pescatore, P. (2003). La coopération entre la Cour communautaire, les juridictions nationales et la cour européenne des droits de l'homme dans la protection des droits fondamentaux. *Revue du Marché Commun et l'Union européenne, no. 466.*

Ph., A., & Weiler, J. (2001). *L'Union Européenne et les Droits de l'homme, en. Européenne, L'Union Européenne et les Droits de l'homme. Bruxelles.*

Pontier, J. M. (2001). *Droits fondamentaux et libertés publiques.* Paris: Hachette.

Popescu, D. (2004). *Misiunea Bisericii într-o lume secularizată / The mission of the Church in a secularized world.* Bucharest: The Publishing House of the Archbishopric of Bucharest.

Pouille, A., & Roche, J. (2002). *Libertés publiques et droits de l'homme.* Paris: Dalloz.

Predescu, O. (2006). *Convenţia Europeană a Drepturilor Omului şi dreptul penal român / The European Convention of Human Rights and the Romanian Penal Law.* Bucharest: Lumina Lex.

Prisca, N. (1974). *Drept constituţional / Constitutional Law*. Bucharest.

Pancracio, Jean-Paul (2001). Charte sociale et Droit international public, en vol. *La Charte sociale européenne*. Bruxelles.

Rigaux, Fr. (2002). Conclusions, in the vol. *La Charte des droits fondamentaux de l'Union Européenne* (sous la direction de J. Yv. Charlier et Ol. De Schutter), Bruxelles.

Riquet, R. P. (1981). Les sources judéo-chrétiennes de la Déclaration des droits de l'homme, in the vol. *Actualité de la pensée de René Cassin*, Paris: Éditions du Centre National de la Recherche Sciéntifique.

Rybak, B. (1981). La philosophie au présent des droits de l'homme, in the vol. *Actualité de la Pensée de René Cassin*, Paris.

Rochère, J. D. (2002). *Introduction au droit de L'Union Européenne.* Paris: Hachette.

Rouget, D. (2000). *Le guide de la protection internationale de droits de l'homme.* Dijon: La Pensée sauvage.

Singh, N. (1986). *Enforcement of Human Rights.* Nyhoff.

Schutter, Ol. De (2002). L'Adhésion européenne à la Convention européenne des droits de l'homme comme élément du débat sur l'avenir de l'Union, en *L'Avenir du système juridictionnel de l'Union Européenne*, edited by M. Dony et Emm. Brihosia, Bruxelles.

Sudre, F. (1990). *La Convention Européenne des Droits de l'Homme*. Paris: P.U.F.

Ţinca, O. (2005). *Dreptul social comunitar / Community social law.* Bucharest: Lumina Lex.

Tousard, H. (2000). *L'Internationalisation des constitutions nationales.* Paris.

Vandamme, F. (2001). Les droits protegés par la Charte sociale, contenu et portée, *en La Charte sociale européenne* (Éd. J. Fr., A. K. Kombé et St. Leclercq). Bruxelles.

Villey, M. (1983). *Le Droit et les droits de l'homme.* Paris.

Voltaire. (1957). *Opere alese / Selected works.* Bucharest.

Zlătescu, I. M., & Stoica, I. *Drepturile omului în pragul mileniului III. Carta socială europeană / Human rights at the beginning of the third millenium. The European Social Charter.* Bucharest: I.R.D.O.

*** O.N.U. (1995). *Drepturile omului. Întrebări şi răspunsuri* / *Human rights*. *Questions and answers*. L.A.D.O.