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## Rules of national and international law prohibiting all forms of discrimination based on religion or religious belief

Regarding the act of limiting religious freedom, the jurisprudence of the European Court in Strasbourg underlined that it must take into account the “principle of proportionality,” stated in Article 9 of the European Convention on Human Rights,<sup>1</sup> which requires that a Court decision should be “proportionate to the legitimate aim pursued,” i.e. “the protection of the rights and freedoms of others.”<sup>2</sup>

About the principle of proportionality, set out in Article 9 of the European Convention, it was said that it “[...] may be infringed not only where national authorities adopt restrictive measures, but also where they unreasonably refuse to recognize a cult or a church, thereby limiting the freedom of religion.”<sup>3</sup>

Guarantor of the right to the freedom of religion,<sup>4</sup> the principle of the freedom of religion “is an essential criterion in order to limit the discretionary power of public authorities and to eliminate abuses by unduly restricting the exercise of a right protected

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<sup>1</sup> See, C. Mititelu, *The European Convention on Human Rights*, [in:] *10<sup>th</sup> Edition of International Conference „The European Integration – Realities and Perspectives” Proceedings*, Galati 2015, p. 243-252.

<sup>2</sup> M. Andreescu, *Principii și valori constituționale* (Constitutional Principles and Values), Bucharest 2016, p. 307.

<sup>3</sup> M. Andreescu, *Principii și valori constituționale*, op. cit., p. 307, 308.

<sup>4</sup> See, N. V. Dură, *About the „Religious” Politics of Some Member States of the European Union*, „Dionysiana” 3 (2009) no. 1, p. 463-489; N. V. Dură, C. Mititelu, *The right to Freedom of Religion in the Jurisprudence of the European Court*, „Journal of Danubius Studies and Research” 4 (2014) no. 1, p. 141-152; C. Mititelu, *The Right to Religious Education. The Romanian Legislation and Religious Education*, [in:] *Educația religioasă în context European* (Religious education in the European context), Bucharest 2014, p. 180-188.

by the Convention.”<sup>5</sup> As such, “[...] an administrative procedure can not be used to impose rigid and even prohibitive conditions to the exercise of certain cults [...]”<sup>6</sup>

The interpretation of legal rules, which is performed by national and international jurisdictions, must, therefore, be in line with the principle of proportionality and, *ipso facto*, with the necessity of protecting the lives and dignity of the human being, which entails the prohibition and elimination of all forms of manifestation of discrimination, including those based on religion or belief.

The discrimination based on “religion” or “religious belief” includes any distinction, exclusion, restriction or preference on the grounds of a person’s affiliation to a particular religion or religious belief, aiming at or resulting in the suppression, reduction, elimination of the recognition to enjoy or exercise, “on an equal footing, the human rights and fundamental freedoms or rights recognized by law [...]”<sup>7</sup>

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief<sup>8</sup> – proclaimed by the United Nations General Assembly, by Resolution 36/55 of 25 November 1981, – stated that “religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed” (Preamble).

The same Declaration recommended the United Nations to “promote understanding, tolerance and respect in matters relating to freedom of religion or belief [...]” (Preamble).

According to the definition of the United Nations Assembly, by Resolution 36/55 of 25 November 1981, the phrase “intolerance and discrimination based on religion or belief” means “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”<sup>9</sup>

5 M. Andreescu, *Principii și valori constituționale*, op. cit., p. 309.

6 M. Andreescu, *Principii și valori constituționale*, op. cit., p. 301.

7 Article 2, paragraph 1 of Law 324/2006 on preventing and sanctioning all forms of discrimination (“Official Gazette” part 1 no. 126 of 20.07.2006).

8 Retrieved from: <http://altera.adatbank.transindex.ro/pdf/4/009Declaratia%20cu%20privire%20la%20eliminarea.pdf>

9 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Article 2, <http://altera.adatbank.transindex.ro/pdf/4/009Declaratia%20cu%20privire%20la%20eliminarea.pdf>

By discrimination – no matter its manifestation forms – there are violated not only the principle of equal treatment between persons and the non-discrimination principle, but also the basic human rights, including the right to freedom of religion – which is the matrix of fundamental freedoms – damaging *Dignitatis humana* (human dignity). Therefore, discrimination should not be seen as an “exclusion, restriction, distinction or preference,” but rather as a “violation of human dignity and equal rights of those against whom they are applied,” because it indeed “aims at prohibiting or denying the equal rights and their protection; it implies banning the principle of equality and it is an affront to human dignity,”<sup>10</sup> which makes express reference to the Treaty establishing a Constitution for Europe (see Article 6).

The right of every human being to have and to publicly profess a religious belief, to belong to a religion, and, *ipso facto*, to have a religious identity, was provided not only by *jus divinum* and *jus naturale*,<sup>11</sup> but also by *jus scriptum* or *jus positivum*, even since the times of Emperor Cyrus of Persia<sup>12</sup> (c. 600 BC-530 BC).

Indeed, the right to assert and guarantee the religious identity had been provided since antiquity. Eloquent testimonies in this regard remain Cyrus’s Edict (c. 600 BC-530 BC), the decisions of Emperors Alexander the Great (336 BC-323 BC) and of his “Diadochus,” the Edict of Emperors Constantine the Great and Licinius, in 313 (Milano)<sup>13</sup> etc.

However, after the Edict of Milan and until today’s EU legislation, there were published Edicts and Treaties providing not only for the assertion of every human being’s right to profess a religious belief, *ipso facto* a religious identity, but also the obligation of non-discrimination of persons on grounds of religion or belief and also the outright affirmation on their equal treatment. For example, in 1555

<sup>10</sup> *Prevention and fight against all forms of discrimination* (<https://andreivocila.wordpress.com/2011/01/21/prevenirea-si-combaterea-tuturor-formelor-de-discriminare/>).

<sup>11</sup> See, N. V. Dură, *Despre „jus naturale.” Contribuții filosofico-juridice* (About *jus naturale*. Philosophical and Legal Contributions), “Revista de Teologie Sfântul Apostol Andrei (St. Andrew Journal of Theology)” 18 (2014) no. 1, p. 39-52.

<sup>12</sup> See, M. R. Pahlavi, *The white Revolution of Iran*, Teheran, 1967, p. 3sq.

<sup>13</sup> For more information, see N. V. Dură, *Edictul de la Milan (313) și impactul lui asupra relațiilor dintre Stat și Biserică. Câteva considerații istorice, juridice și ecleziologice* (The Edict from Milan [313] and its Impact on the Relationships between state and Church. Some Historical, Legal and Ecclesiological Considerations), “Mitropolia Olteniei (The Metropolitan Church of Oltenia)” 2012 no. 5-8, p. 28-43; N. V. Dură, C. Mititelu, *The State and the Church in IV-VI centuries. The Roman Emperor and the Christian Religion*, [in:] *SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism, Proceedings* vol. 1, Bulgaria, 2014, p. 923-930.

it was published the Treaty of Augsburg and in 1598 the Edict of Nantes; in 1648, it was signed the Peace Treaty of Westphalia; in 1878, it was published the Treaty of Berlin etc. It is noteworthy that all these international Treaties also underlined the principle of religious freedom and equality, which was accepted as part of the “European public law.”<sup>14</sup>

But, as a Romanian constitutionalist remarked, although, along centuries, “the principle of religious freedom and equality” was reconfirmed, and “[...] it was included in other Treaties, concluded later.” Yet, we can state that “it existed only on paper. Especially in the Ottoman and Austro-Hungarian multinational empires, the conflicts arising from religious differences have continued.”<sup>15</sup>

Among other things, the UN Charter<sup>16</sup> of 26 June 1945 – which set out the principle of non-discrimination – stipulated that one of the main UN purposes is to promote and encourage “human rights and fundamental freedoms for all without distinction as to race, sex, language or religion” (Article 1, paragraph 3).

This principle – which was reiterated in the text of two other articles of this Charter, namely Article 13, paragraph b and Article 55, paragraph c – is also expressly stated in the text of the main international and European instruments on human rights such as, for example, the UN Charter, the Universal Declaration of Human Rights, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the elimination of all forms of racial discrimination, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities etc. All these international and European instruments really make express reference to the prohibition of discrimination based on the difference of religion or religious beliefs.

According to Article 14 of the European Convention (Rome, 1950), human rights and freedoms – provided for and guaranteed by it – cannot be exercised unless all forms of discrimination (racial, religious, ideological, political, linguistic, sexual etc.) are eliminated.

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<sup>14</sup> B. Selejan-Guțan, *Comentariu la Articolul 6 din Constituția României* (Comments on Article 6 from the Constitution of Romania), [in:] *Constituția României, Comentariu pe articole* (The Constitution of Romania, Comments on Articles), Bucharest, 2008, p. 61.

<sup>15</sup> B. Selejan-Guțan, *Comentariu la Articolul 6 din Constituția României*, op. cit.

<sup>16</sup> The UN Charter was published in the “Official Gazette” of 26.06.1945, ([www.dri.gov.ro/documents/carta%20ONU.pdf](http://www.dri.gov.ro/documents/carta%20ONU.pdf)).

In terms of education, the “discrimination” based on “religion” means any “distinction, exclusion, limitation or preference” which has the purpose or effect of “nullifying or impairing the equality of treatment in education [...]”<sup>17</sup>

The Preamble to the UNESCO Convention against Discrimination in Education – adopted by the UN on 14 December 1960 and entered into force on 22 May 1962 – also reminded that the “Universal Declaration of Human Rights asserts the principle of non-discrimination [...]” and that “discrimination in education is a violation of the rights set forth in this Declaration” (Preamble).

The same UNESCO Convention against Discrimination in Education stated that “education” should also aim at “[...] the consolidation of human rights and fundamental freedoms [...] and at promoting understanding, tolerance and friendship among all nations and racial or religious groups [...]” (Article 5).

The UNESCO Convention against Discrimination in Education – adopted in Paris, on 14 December 1960 – held to specify the fact that the educational institutions created “for religious reasons [...], which offer an education corresponding to the choice of the students’ parents or legal guardians [...]” cannot be considered “discrimination” in education (Article 2, paragraph b).

The countries-party to this convention agreed “on the need to respect the liberty of parents and, where applicable, of legal guardians: firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions” (Article 5, 1a and b).

The UNESCO Convention of 1960 thus recognized the parents’ right to ensure their children a “religious and moral education,” in accordance with their own religious beliefs, *recte* with the teachings of their own religion or religious beliefs. However, under the provisions of this Convention, there was also recognized the parents’ right to establish “educational institutions” where the subjects of public education are taught in the spirit of the teachings of their religion, without considering this as an act of discrimination in education.

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<sup>17</sup> *The UNESCO Convention on the fight against discrimination in education*, Article 1 ([http://www.irdo.ro/file.php?fisiere\\_id=87&inline=](http://www.irdo.ro/file.php?fisiere_id=87&inline=)).

The International Convention on the Elimination of All Forms of Racial Discrimination – adopted by the United Nations General Assembly, by Resolution 2106 (XX) of 21 December 1965 and entered into force on 4 January 1969<sup>18</sup> – provided expressly that “[...] the UN Charter is based on the principles of dignity and equality inherent of all human beings [...],” and that one of the main “purposes of the United Nations” is “to promote and encourage the universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion” (Preamble).

Therefore, this International Convention confirms that, for the UN Member States, religion is a constitutive and determinant factor regarding the provision and observance of human rights. Thus, we can not talk about the affirmation and legal protection of these rights if the last basic criterion, namely, “irrespective of religion,” is not respected.

By the American Convention on Human Rights – adopted at the Inter-American Conference specialized in Human Rights, in San José, Costa Rica, on 22 November 1969 – the signatory States undertook “to respect the rights and freedoms recognized herein,” and also “to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition” (Article 1, paragraph 1).

Article 16 of the American Convention on Human Rights (San José / Costa Rica, 22 November 1969) provides for the “right” of “[...] everyone to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes” (Article 16, paragraph 1)<sup>19</sup>.

The exercise of this right, including that of any person to associate “for religious purposes” can be subject only “to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others” (Article 16, paragraph 2).

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<sup>18</sup> Romania signed this Convention on 14 July 1970 by Decree no. 345, published in the “Official Journal of Romania” part 1, no. 92 of 28.07.1970.

<sup>19</sup> *American Convention on Human Rights* (<http://www.cidh.org/basicos/english/Basic3.American%20Convention.htm>).

Among other things, the States Parties to the International Covenant on Civil and Political Rights<sup>20</sup> – signed by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976 – undertook “[...] to guarantee that the rights enunciated in its text will be exercised without discrimination based on race, color, sex, language, religion, public opinion or other opinion, national or social origin, property, birth or other status” (Article 2, paragraph 2).

According to the International Covenant on Civil and Political Rights (1966), measures derogating from the respect and guarantee of the rights provided for therein may be taken by States Parties only “in time of public emergency which threatens the life of the nation and the existence of the officially of which is proclaimed [...]” (Article 4, paragraph 1).

Nevertheless, the same Covenant provided for the requirement that the derogating measures “are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin” (Article 4, paragraph 1).

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief – proclaimed by the United Nations General Assembly in November 1981 – provides expressly that “discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations”. As such, it “shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights [...]” (Article 3).

This kind of discrimination, i.e. on grounds of religion or belief, is actually an affront to human dignity and a disavowal of the principles of the UN Charter, hence the mandatory prohibition and elimination of all forms of intolerance and discrimination based on religion or belief.

Resolution 36/55 of 25 November 1981 – which proclaimed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief – the United Nations asked all States to “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief [...]”

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<sup>20</sup> Romania ratified the Covenant on 31.10.1974 by Decree no. 212, published in the “Official Journal of Romania” part 1, no. 146 of 20.11.1974. About this International Covenant, see, C. Mititelu, M. Mitra Radu, *International Covenant on Civil and Political Rights*, “Journal of Danubius Studies and Research” 3 (2013) no. 2, p. 47-57.

in all fields of civil, economic, political, social and cultural life,” without which “the human rights and fundamental freedoms” cannot be recognized, exercised and practiced (Article 4, paragraph 1).<sup>21</sup>

On the same occasion, all States were requested to “make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter” (Article 4, paragraph 2).

Under the provisions of Article 5 of the UN Declaration eliminating All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed in 1981, “the parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up” (Article 5, paragraph 1).

Therefore, according to the provisions of this Declaration, the parents and the legal guardians have the full right to grow up the children’s according to their religion or religious belief, and, ipso facto, to give them a moral education based on the moral-values of their religion.

In the same article, the UN Declaration states that “every child shall enjoy the right to have access to education in the field of religion or belief, in line with the wishes of his/her parents or, where applicable, legal guardians, and will not be forced to receive teachings of some religions and beliefs contrary to the wishes of his/her parents or legal guardians, the child’s interest being paramount” (Article 5, paragraph 2).

So, above all, the religious education has to be in the children’s interest. In the same time, in the educational religious processes, the children have not to be forced to receive teachings of a religion and religious belief contrary to the wishes of their parents or legal guardians. Otherwise, we can’t speak about the freedom of religious and the right to religious freedom,<sup>22</sup> but only about another form of a disguised proselytism.<sup>23</sup>

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<sup>21</sup> Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 4, paragraph 1 apud, <http://altera.adatbank.transindex.ro/pdf/4/009Declaratia%20ocu%20privire%20la%20eliminarea.pdf>

<sup>22</sup> See, N. V. Dură, C. Mititelu, *The Freedom of Religion and the Right to Religious Freedom*, [in:] *SGEM Conference on Political Sciences, Law, Finance, Economics & Tourism, Proceedings*, op. cit., p. 831–838.

<sup>23</sup> See, N. V. Dură, *Proselytism and the Right to Change Religion: The Romanian Debate*, [in:] *Law and Religion in the 21<sup>st</sup> Century. Relations between States and Religious Communities*, ed. S. Ferrari, R. Cristofori, Farnham, Surrey, England, 2010, p. 279–290.



Therefore, in order to be protected from any kind of proselytism and from “[...] any discrimination on grounds of religion or belief,” every child should be brought up “in a spirit of [...] respect for freedom of religion or belief of others [...]” (Article 5, paragraph 3).

Also, this Declaration states that “the practice of a religion or of a (religious) belief, wherewith the child is brought up, must not be harmful to his/her health and to his/her entire physical and mental development [...]” (Article 5, paragraph 5).

The “principle of legality” is situated among the principles of the Universal Declaration of Human Rights. This is expressly acknowledged by Article 8 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,<sup>24</sup> adopted by the United Nations General Assembly, on 18 December 1992.

In the same Article 8 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,<sup>25</sup> adopted by the United Nations General Assembly, on 18 December 1992, provides for the obligation of the countries of the world to respect the “principle of equality” between people, which requires equal treatment without discrimination or privileges, also in relation to those who profess a religious belief, whether they belong to religious minorities.

By promoting and protecting the rights of persons belonging to a majority or to a national minority to profess and practice their religious belief – in private or in public – and, *ipso facto*, to participate effectively in the religious life of their religious Cult, it reaffirms, in fact, “[...] the belief itself in the fundamental human rights, in the dignity and value of the human person [...]”<sup>26</sup>

At its Summit from Vienna, on 9 October 1993, the Council of Europe established a Commission against Racism and Intolerance (ECRI), whose primary goal – from the perspective of human rights – is to take measures to combat violence, discrimination and prejudices faced by persons or groups of persons, which based on religion.

Among other things, at the Summit from Vienna, on 9 October 1993, the Council of Europe asked the EU member States “[...] to create the conditions necessary for the persons belonging to national minorities to develop their culture, while

<sup>24</sup> Apud [http://www.sogorcseba.eu/docs/Declaratia%20oprivind%20drepturile%20persoanelor%20care%20fac%20parte%20din%20minoritati%20nationale%20sau%20etnice\\_ro.doc](http://www.sogorcseba.eu/docs/Declaratia%20oprivind%20drepturile%20persoanelor%20care%20fac%20parte%20din%20minoritati%20nationale%20sau%20etnice_ro.doc)

<sup>25</sup> Apud <http://www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf>

<sup>26</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992). Preamble.

preserving their religion, traditions and customs,”<sup>27</sup> because, “[...] for centuries, the diversity of traditions and cultures is one of Europe’s riches;” moreover, “[...] the principle of tolerance is the guarantee of the maintenance in Europe of an open society [...],”<sup>28</sup> involving, therefore, the right of every human being and of every group of people to keep and profess their religion.

At this Summit, the Council of Europe firmly condemned “[...] and all forms of religious discrimination” and also launched “an urgent appeal to peoples, groups, Europeans and especially young people to engage resolutely in the fight against all forms of intolerance and to actively participate in building a democratic, tolerant and joint European society, based on shared values.”<sup>29</sup> Those European “common values” are no other than the Judeo-Christian ones, which formed its religious and cultural heritage of humanist origin.<sup>30</sup>

On the same occasion, the Council of Europe<sup>31</sup> asked the EU States “[...] to strengthen safeguards against all forms of discrimination based on race, national or ethnic origin or religion [...],”<sup>32</sup> In the same time, those States were urged to act towards “the development of education in human rights [...]” and to achieve programs aimed at “eliminating prejudices by teaching history, by emphasizing positive mutual influences between different countries, religions and ideas during the historical development of Europe.”<sup>33</sup>

The EU Council Directive of 27 November 2000 – which established a general framework for equal treatment in employment and occupation – prohibited categorically any kind of direct or indirect discrimination based on religion or religious

<sup>27</sup> *The Declaration from Vienna*. Annex II, [in:] *Manualul Consiliului Europei* (EC Manual), Bucharest 2006, p. 588–589.

<sup>28</sup> *The Declaration from Vienna*. Annex III, [in:] *Manualul Consiliului Europei* (EC Manual), Bucharest 2006, p. 589.

<sup>29</sup> *The Declaration from Vienna*, Annex III, op. cit., p. 590.

<sup>30</sup> See, N. V. Dură, *Valorile religioase creștine și „moștenirea culturală, religioasă și umanistă a Europei”. „Laicitate” și „libertate religioasă”* (The Religious-Christian Values and the Cultural, Religious and Humanist Heritage of Europe. Secularism and Religious Freedom), [in:] *Simpozionul „Modernitate, postmodernitate și religie”* (Symposium on “Modernity, Post-modernity and Religion”), Iași 2005, p. 19–35.

<sup>31</sup> About the Council of Europe, and its Declarations regarding the fundamental rights and liberties, see N. V. Dură, C. Mititelu, *The human fundamental rights and liberties in the Text of some Declarations of the Council of Europe*, [in:] *International Conference „Exploration, Education and Progress in the Third Millennium”*, Proceedings, vol. 1, no. 5, Bucharest 2015, p. 7–22.

<sup>32</sup> *The Declaration from Vienna*, op. cit., p. 591.

<sup>33</sup> *The Declaration from Vienna*, op. cit., p. 592.

beliefs. Indeed, the EU Council Directive 2000/78 of 27 November 2000 states that “indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief [...] at a particular disadvantage compared with other persons [...]” (Article 2, paragraph b).<sup>34</sup>

The same Directive of the Council of Europe stated, however, that any kind of discrimination, including discrimination based on religion, constitute an obstacle to achieving the objectives of this Treaty.

In the document published in 2009 by the Office for Democratic Institutions and Human Rights of OSCE, entitled “Law on hate offences: A Practical Guide” states *expressis verbis* that the offences motivated by the intolerance directed towards certain social groups – including on religious grounds – are described as offences triggered by “hatred.”<sup>35</sup> And yet, in some EU countries, religious discrimination – triggered by religious affiliation or beliefs – is still “on the agenda in the practice of employers, at the workplace.”<sup>36</sup>

An example in this regard remains the case of a medical practitioner from Exeter (UK), who – after 30 years of work – was forced to accept a transfer from the position he occupied in the hospital from that city because he was wearing a “necklace with cross.”<sup>37</sup>

Article 1 of Law no. 121 / 25.05.2012<sup>38</sup> – entered into force on 1.01.2013 – notes that this law aims at “[...] preventing and combating discrimination and ensuring equality for all persons in the Republic of Moldova, in the political, economic, social, cultural spheres and in other spheres of life, irrespective of race, color, nationality, ethnic origin, language, religion or belief” (Article 1). And yet, the Council

<sup>34</sup> Directive 2000/78 CE of 27.11.2000, in the „Official Journal of the European Union”, L303/16 (<http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32000L0078>).

<sup>35</sup> Apud Legi privind infracțiunile de ură: Ghid practic, trad. în lb. română de Ministerul Justiției și Libertăților Cetățenești (Laws on hatred offences: Practical guide, translated in Romanian by the Ministry of Justice and Freedoms) (<http://www.osce.org/ro/odihr/36428?download=true>).

<sup>36</sup> See C. Ardelean, *Discriminarea religioasă rămâne la ordinea de zi în practica angajatorilor la locul de muncă. Un nou caz a fost făcut public în Exter* (Religious discrimination is on the agenda in the practice of employers, at the workplace. A new case was made public in Exter), Marea Britanie (UK) ([http://www.radiomaria.ro/news\\_129\\_ro.php](http://www.radiomaria.ro/news_129_ro.php)).

<sup>37</sup> C. Ardelean, *Discriminarea religioasă rămâne la ordinea de zi în practica angajatorilor la locul de muncă. Un nou caz a fost făcut public în Exter*, op. cit.

<sup>38</sup> Published on 29.05.2012, in the “Official Gazette” no. 103 ([http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_334480.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_334480.pdf)).

on preventing and eliminating discrimination and providing equality, from Chisinau, received a complaint concerning discrimination on grounds of religious belief and sexual orientation. More specifically, it is petitioner Frolov's complaint no. 145 of 2.24.2014 (case no. 064/2014 (FD2) against Mr. Ghenadie Văluță, President of the Pro Orthodox Organization. The latter came in a TV show (Fabrika, 11 February 2014) "with a plastic bottle filled with liquid, which then was poured into a glass and placed on Mr. Vlahuță's table, with a basil bunch." During the commercial break, after receiving the moderators' consent, he splashed the studio with this water, "which he called «holy water» [...]"<sup>39</sup>

The Decision of 19.05.2014, issued at Chisinau, by the Commission of the Council for preventing and eliminating discrimination and ensuring equality, reveals that, in order to substantiate it, its members made reference both to the international law and to the national law of the Moldavian Republic.

A. In terms of international law, there were cited texts from: a) the Universal Declaration of Human Rights<sup>40</sup> (Article 2); b) the International Covenant on Civil and Political Rights of the United Nations<sup>41</sup> (Articles 19 and 20); c) the European Convention on Human Rights<sup>42</sup> (Article 10); d) the EU Charter of Fundamental Rights<sup>43</sup> (Article 21); e) Protocol no. 12 to the European Convention on Human Rights (Article 1).

B. In terms of national law, reference was made to texts from: a) the Constitution of the Moldavian Republic (Articles 16, 31, 32 and 54); b) Law no. 121 of 25.05.2012 on Equality (Article 1); c) Law no. 125 of 11.05.2007 on freedom of conscience, thought and religion (Article 4); d) Law no. 64 of 23.04.2010 on freedom of expression (Articles 2 and 3).

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<sup>39</sup> Decision of 19.05.2014 in case no. 064/14 issued for Mrs. Angela Frolov's complaint concerning discrimination on grounds of religious belief and sexual orientation ([http://egalitate.md/media/files/files/decizie\\_cauza\\_064\\_14\\_6276731.pdf](http://egalitate.md/media/files/files/decizie_cauza_064_14_6276731.pdf)), p. 1-6.

<sup>40</sup> See, N. V. Dură, *The Universal Declaration of Human Rights*, [in:] 10<sup>th</sup> Edition of International Conference "The European Integration – Realities and Perspectives" Proceedings, op. cit., p. 235-242.

<sup>41</sup> N. V. Dură, C. Mititelu, *International Covenant on Economic, Social and Cultural Rights*, [in:] 8<sup>th</sup> Edition of International Conference "The European Integration – Realities and Perspectives" Proceedings, Galati 2013, p. 130-136.

<sup>42</sup> C. Mititelu, *The European Convention on Human Rights*, op. cit., p. 243-252.

<sup>43</sup> N. V. Dură, C. Mititelu, *The Treaty of Nice, European Union Charter of Fundamental Rights*, [in:] 8<sup>th</sup> Edition of International Conference "The European Integration – Realities and Perspectives" Proceedings, op. cit., p. 123-129.

In their conclusions, the Commission members wanted to clarify that “Freedom of expression and freedom of manifestation of religion are not absolute rights and may be subject to restrictions, including those prescribed by law and necessary to protect public safety, order, public health or morals or the fundamental rights and freedoms of others.”<sup>44</sup> Or, under the Right to Freedom of Religion – provided by the rules of international law – “no person” can be “subject to coercion, which would impair his/her freedom to profess a religion or a belief of his/her own choice.”<sup>45</sup>

Therefore, the Freedom of religion can be subject to “limitations” or “restrictions” that “can be determined only by law,”<sup>46</sup> and not by any Commission, although set up for the control or elimination of discrimination based on religion. However, the unanimous decision taken by the four members of that Commission stated that “the plaintiff” should bring “public apology to the petitioner.”<sup>47</sup>

Since the Commission’s expression gave way to inaccuracies and to *pro domo* interpretations, we thus emphasize that the freedom to express our religion “[...] may not be subject to other restrictions than to those prescribed by law, aimed at protecting public safety, order, health and morals or the fundamental rights and freedoms of others.”<sup>48</sup>

As it is well-known, in some countries of the world, there are still manifestations of intolerance and discrimination based on religion and beliefs, hence the obvious need and urgency to notice, prosecute and eliminate all forms of intolerance and discrimination of this kind, which affect the principle of equality between people. Incidentally, both in the national and in the international law, the non-discrimination principle is associated to the principle of equality. Therefore, as a constitutional principle, the principle of equality should manifest itself either “as a general principle of rights” or as “a fundamental right.”<sup>49</sup>

Article 4, paragraph 2 of the Romanian Constitution provides for “the equality of citizens” of the Romanian State, and also precludes any discrimination based

44 *Decision of 19.05.2014 in case no. 064/14 issued for Mrs. Angela Frolov’s...*, op. cit., p. 5.

45 *United Nation’s Declaration on Religious Intolerance*, New York 1981, Article 1, paragraph 2 (<http://altera.adatbank.transindex.ro/pdf/4/009Declaratia%20ocu%20oprivire%20la%20eliminarea.pdf>).

46 *UN Declaration on Human Rights*, 1789, Article 4.

47 *Decision of 19.05.2014 in case no. 064/14 issued for Mrs. Angela Frolov’s...*, op. cit., p. 6.

48 *United Nation’s Declaration on Religious Intolerance*, op. cit., Article 1, paragraph 3.

49 El. S. Tănăsescu, *Comentariu la Articolul 4 din Constituția României* (Comments on Article 4 from the Constitution of Romania), [in:] *Constituția României. Comentariu pe articole* (The Constitution of Romania. Comments on articles), Bucharest 2008, p. 45.

on “the distinction of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin.”

Referring to the text of this constitutional article, a prestigious Romanian constitutionalist acknowledged that it “is less frequent in constitutional jurisprudence, because its intervention is actually necessary only when the constitutional judge wants to set the standards of strict equality, understood as non-discrimination, in which case it is included as part of the normative content of the principle of equality.”<sup>50</sup>

Therefore, “the principle of equality can take two forms: either as non-discrimination, sometimes called strict equality, or as relative equality.”<sup>51</sup>

According to the Romanian constitutional text, “the protective measures” that the State takes for “the preservation, development and expression of national minorities,” i.e. of “their ethnic, cultural, linguistic and religious identity,” must be “consistent with the principles of equality and non-discrimination in relation to other Romanian citizens” (Article 6).

The Article 16 of the Romanian Constitution foresees that “Romanian citizens are equal before the law and public authorities, without privileges and without discrimination” (Article 16, paragraph 1). So, it is obvious that the constitutional text emphasizes the principle of equality among citizens and prohibits any form of privilege and discrimination.

The assertion of this principle of equality of all citizens – which is one of the basic principles of the entire system of rights and fundamental freedoms – implies, first of all, the abolition of any regime based on privilege and discrimination, including in terms of religion.

Since the assertion of the principle of equality of citizens is hardly materialized in practice, in its jurisprudence, the Constitutional Court of Romania rather talks about a “right to difference as an expression of the citizens’ equality before the law [...]”<sup>52</sup> than about their equal rights. The latter are also a natural consequence of the affirmation of the principle of equality between all human beings, whose human dignity requires the unconditional respect of this principle.

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50 S. Tănăsescu, *Comentariu la Articolul 4...*, op. cit., p. 47.

51 S. Tănăsescu, *Comentariu la Articolul 4...*, op. cit., p. 46.

52 I. Muraru, *Comentariu la Articolul 16 din Constituția României* (Comments on Article 16 from the Constitution of Romania), [in:] *Constituția României. Comentariu pe articole* (The Constitution of Romania. Comments on articles), op. cit., p. 151.

This “right to difference, as an expression of the equality other citizens before the law,” has not however to be perceived as a right which leads to a differentiation of the citizens of a State from social point of view, or to a social hierarchy, since, in this case, can no longer talk about a real “equality of rights of the citizens of the Romanian state,” either political or social, cultural, religious etc., hence therefore necessity to use this syntagme with prudence and only for the adequate cases.

According to Law 324/2006 “on preventing and sanctioning all forms of discrimination,”<sup>53</sup> “discrimination is any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social status, beliefs, sex, sexual orientation, age, disability, non-contagious disease, HIV infection, belonging to a disadvantaged group and any other criterion that has the purpose or effect of restricting, removing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms or rights recognized by law in the political, economic, social, cultural or any other field of public life” (Article 2, paragraph 1).

Therefore, discrimination is also “any distinction, exclusion, restriction or preference based on religion.”

According to the provisions of the Law 324/2006, “discriminatory” are “the apparently neutral provisions, criteria or practices which disadvantage certain people [...] from other people,” based on religion. The law stipulates, however, that these apparently neutral provisions, criteria or practices that disadvantage certain people are not discriminatory if they are “objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” (Article 2, paragraph 3).

Under this Law, any “behavior” based on “grounds of religion” is considered as “harassment” and is sanctioned by “contravention,” because it “could create an intimidating, hostile, degrading or offensive environment” (Article 2, paragraph 5).

The same law provides that the “discrimination” based on a person’s affiliation to a “religion” is “an offense” (Article 6).

Under the same Law no. 324/2006 amending and supplementing Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, published in the “Official Gazette of Romania” part 1, no. 626 of 20 July 2006, both “the principle of equality among citizens” and the “exclusion of privileges and

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<sup>53</sup> Law no. 324/2006, which, in fact, amends and completes Ordinance no. 137 of 31.08.2000, was published in the “Official Gazette of Romania” part 1, no. 626 of 20.06.2006.

discrimination” are “guaranteed [...]” by exercising “the right to freedom of thought, conscience and religion” (Article 1, paragraph 2 [VII]).<sup>54</sup>

The principle of equality among citizens, involving *ex sesse* the exclusion of privileges and discrimination, is therefore expressly affirmed by the Romanian State in the exercise of the right to freedom of religion.

We must also emphasize the fact that, in the text of our work, we used the concept of “law” and not “legislation,” because, for the acts considered as offenses – as any form of discrimination based on religion or belief is considered – the European Convention on Human Rights (Rome, 1950) does not use the concept of “law” in the sense of rules, but that of “law” in the sense of a system of rules, regulations and principles (Article 7, paragraph 1); the latter includes both the rules of law “of legislative origin” and the “jurisprudence,” conditioned by the fulfillment of “qualitative conditions, namely affordability and predictability.”<sup>55</sup>

In conclusion, we can therefore say that discrimination or incitement to discrimination – based on religion or belief – violates not only the right to the exercise of some fundamental human rights, namely the right to religious freedom, freedom of expression, the right to respect for human dignity<sup>56</sup> etc., but it also entails a flagrant violation of one of the main principles of international law, namely, the principle of tolerance and equality of all human beings. These principles imply equal respect for human dignity, hence the obligation of world States to prohibit and eliminate all forms of intolerance and discrimination based on religion or religious belief.

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54 Apud <http://lege5.ro/Gratuit/ha3tgoby/legea-nr-324-2006-pentru-modificarea-si-completarea-ordonantei-guvernului-nr-137-2000-privind-prevenirea-si-sanctionarea-tuturor-formelor-de-discriminare>.

55 C. Birsan, *Convenția europeană a drepturilor omului. Comentariu pe articole* (European Convention of Human Rights. Comments on articles), vol. 1, Bucharest 2005, p. 579.

56 See, N. V. Dură, *Drepturile și libertățile omului în gândirea juridică europeană. De la “Justiniani Institutiones” la “Tratatul instituind o Constituție pentru Europa”/ The human rights and freedoms in the juridical European thinking. From the “Justinian Institutiones” to the “Treaty establishing a Constitution for Europe”*, “Analele Universității Ovidius. Seria: Drept și Științe Administrative” 2006 no. 1, p. 129–151; N. V. Dură, *Les droits fondamentaux de l’homme et leur protection juridique*, „Analele Universității Dunărea de Jos Galați”, Fascicula 22: Drept și Administrație Publică, 2008 no. 2, p. 19–23; C. Mititelu, *The Human Rights and the Social Protection of Vulnerable Individuals*, „Journal of Danubius Studies and Research” 2 (2012) no. 1, p. 70–77; N. V. Dură, C. Mititelu, *Human rights and their universality. From the rights of the “individual” and of the “citizen” to “human” rights*, [in:] *International Conference “Exploration, Education and Progress in the third Millennium”*, vol. 1, no. 4, Galați 2012, p. 103–127.



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**SUMMARY**

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**Rules of national and international law prohibiting all forms of discrimination based on religion or religious belief**

Over the centuries, mankind has seen many manifestations of intolerance and discrimination based on religion or religious belief, and, for this reason, the legislator of those times had to provide legal rules expressly prohibiting and eliminating them, while setting out concrete measures of legal protection against those who violated actually one of the main fundamental human rights, i.e. the right to freedom of religion or religious belief, and, ipso facto, the right to respect for human dignity.

The ignorance of this fundamental human right also led to the flagrant violation of one of the main principles of international law, namely the principle of tolerance and equality of all human beings. Therefore, in our study, we examined both the text of international instruments, with the legal force of "jus cogens," and the national legislation, in order to reveal how the manifestations of the discrimination based on religion or religious beliefs were banned and removed from the human society, at national and international level.

Keywords: fundamental human rights, freedom of religion, international instruments, international law, religion, human dignity

**Zasady prawa krajowego i międzynarodowego zakazujące wszelkich form dyskryminacji ze względu na religię lub przekonania religijne**

Przez wieki ludzkość była świadkiem zjawiska nietolerancji i dyskryminacji zbudowanej na religii lub poglądach religijnych. Z tego powodu prawodawcy stanowili prawa, które miały eliminować te zjawiska. Ochrona prawna przez przedmiotowymi zjawiskami jest obecnie jednym z najważniejszych fundamentów jednego z najważniejszych praw człowieka – prawa do wolności religijnej. Prawo to swoje ostateczne źródło ma w godności człowieka.

Nieznajomość tego fundamentalnego prawa prowadzi także do pogwałcenia niektórych zasad prawa międzynarodowego, a szczególnie: zasady tolerancji i równości wszystkich ludzi. W niniejszym artykule przeanalizowano zarówno instrumenty prawa międzynarodowego, prawną moc „jus cogens”, i krajowe ustawodawstwo Rumunii w celu pokazania, jak okazywanie nietolerancji i dyskryminacji w sprawach religijnych może być zakazane i zwalczane na poziomie międzynarodowym i krajowym.

Słowa kluczowe: podstawowe prawa człowieka, wolność religijna, międzynarodowe prawo, religia, godność człowieka

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