

Annales Canonici 10 (2014) • S. 29-43

Nicolae V. Dură

OVIDIUS UNIVERSITY OF CONSTANTA, ROMANIA

The right to freedom of religion

The Charter of the United Nations – signed in San Francisco on 26 June, 1945 – provides that, amongst the basic objectives of the trusteeship system for the administration and supervision of the territories the United Nations should “encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Art. 76 paragraph c). Thus, the right to religion and religious freedom has expressly been provided in the very text of the first international juridical instrument, binding and in force for all the States of the world.

Among the rights and the freedoms proclaimed by the Universal Declaration of the Human Rights, adopted on 10 December 1948 by the General Assembly of the United Nations Organization, it is also mentioned “the right to freedom of religion,” i.e. the religious freedom. This right includes, “freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance” (Art. 18).

According to the provisions of the same Declaration, the respect for human rights and fundamental freedoms – amongst them the religious freedom too – must be promoted by all education forms (elementary, gymnasium, technical, professional, and higher education); the education must also promote “understanding, tolerance and friendship among all nations, racial or religious groups” (Art. 26 paragraph 2).

Another international juridical instrument enforced with binding power was the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16 December 1966 and entered into force on 3 January 1976. This international instrument has expressly provided that “in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all

members of the human family is the foundation of freedom, justice and peace in the world” (Preamble). Certainly, without the recognition of and respect for the “*dignitas humana*” (human dignity) – stipulated by Divine law, the Natural, and the Positive ones – we cannot speak about the Right of religious freedom. Although this International Covenant – as other international or European juridical instruments – does not expressly mention the religious freedom, nevertheless, the text provides that “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 2 paragraph 2). Thus, the discriminations of any kind were forbidden on reasons related to “religion.”

The text of the same International Covenant also mentions that the States Parties recognize that education “shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups” (Art. 13 paragraph 1). However, the desiderate regarding the promotion of understanding, tolerance and friendship among “all religious groups” has not yet been fulfilled on national levels, not speak about the international one. And, maintaining our analysis on educational field,¹ we should also remark that the educational process has many gaps on national and international levels as regards the religious education,² or at least the moral-religious one; there are few exceptions where the History of Religions or the Philosophy of Religions are taught in secondary and high schools. Besides, in certain state schools³ the religious-spiritual values and the religious-moral ones are scarcely mentioned. More, “the Darwinism” is an obligatory field

1 See, N. V. Dură, *Instruction and Education within the themes of some International Conferences. An evaluation of the subjects approached by these from the angle of some Reports, Recommendations and Decisions*, [in:] *International Conference. “Exploration, Education and Progress in the Third Millennium” Galați, 24th–25th of April 2009*, vol. 2, p. 203–217.

2 Idem, *The Theology of Conscience and the Philosophy of Conscience*, “Philosophical-Theological Reviewer,” Tbilisi, 2011, no. 1, p. 20–29.

3 Idem, *Statele Uniunii Europene și cultele religioase* (The Religious Cults in the EU Member States), “Ortodoxia” I, s.n. (2009) no. 2, p. 49–72; Idem, *Despre libertatea religioasă și regimul general al Cultelor religioase din România* (About the Religious Freedom and the General Condition of the Religious Cults in Romania), “Annals of Ovidius University Constanta – Series Theology” VII (2009) no. 1, p. 20–45; Idem, *Legea no. 489/2006 privind libertatea religioasă și regimul general al Cultelor religioase din România* (Legea no. 489/2006 Regarding the Religious Freedom and the General Condition of the Religious Cults in Romania), [in:] *Biserica Ortodoxă și Drepturile omului: Paradigme*,

of study in the high schools. As regards “the Creationist Doctrine” – which is appropriated by hundreds of million people belonging to the Three Monotheist Religions (Mosaic, Christian, and Muslim)⁴ – is either eluded – in the name of the so-called “Secularism”⁵ – or indistinctly and distortedly presented in the light of the Marxist-Leninist ideology, which has been the cradle where the most teachers of the former Soviet-Communist area of influence were educated.

We can therefore assert that the desiderate of the States Parties that have signed this Covenant has only remained a “pium desiderium” (pious desire), although the text of the Covenant stipulates that “The States Parties to the present Covenant undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions” (Art. 13 paragraph 3).

The General Assembly of the United Nations Organization has also adopted on December the 16, 1966, the International Covenant on Civil and Political Rights. About these two Covenants – also known as the Covenants on Human Rights – the former State Council or the Socialist Republic of Romania declared that some of their provisions were not “in accordance” (sic) with the principles mentioned in certain “International Treaties”⁶; however, the Council did not make any

fundamente, implicații (The Orthodox Church and the Human Rights: Paradigms, Fundaments, Implications), Bucharest 2010, p. 290–311.

4 About these Religions, see, N. V. Dură, *Ecumenismul interreligios. Dialogul teologic cu religiile necreștine (Iudaismul și Islamismul)* (Inter-Religious Ecumenism. The Theological Dialogue with the Non-Christian Religions (Judaism and Islamism), “Glasul Bisericii” XLIII (1984) no. 7–9, p. 611–621; Idem, “Forum-ul Mondial al celor trei Religii” și cea de-a 35-a Filială a sa din România – 10 septembrie 2004 și 17 februarie 2005 (“The Worldwide Forum of the Three Religions” and its 35th Branch in Romania – September the 10th, 2004 and February the 17th, 2005), “Biserica Ortodoxă Română” (The Romanian Orthodox Church) CXXIII (2005) no. 1–3, p. 353–364.

5 See, N. V. Dură, *Valorile religioase-creștine și “moștenirea culturală, religioasă și umanistă a Europei.” “Laicitate” și “libertate religioasă”* (Christian-Religious Values and “Europe’s Cultural, Religious, and Humanist Heritage”), [in:] *Proceedings of the Symposium “Modernity, Post-Modernity, and Religion,”* Constanta, May 2005, Ed. Vasiliana ‘98, Iași 2005, p. 19–35; Idem, *Bisericile creștine și aportul lor la construcția Europei* (Christian Churches and their Contribution to the Construction of Europe), “Ars aequi. Periodical of Social and Juridical Studies and Researches” 1 (2006) no. 4, p. 177–183.

6 The Decree n. 212 issued on October the 31st 1974 for the ratification of the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, “The Official Gazette” no. 146, issued on November the 20th, 1974 (http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?id=63815).

specification about the way the human rights and freedoms were respected and applied in that time in Romania. Yet, as it was well known in that period of time outside the borders of our country that the religious freedom was one of the rights and freedoms that were not practically respected.

The first European instrument with constitutional value, i.e. Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950 and entered into force on 3 September 1953, has not only reiterated the text of Article 18 of the Universal Declaration of the Human Rights, but also emphasized that “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others” (Art. 9 paragraph 2). In other words, in the exercise of this freedom, “everyone shall be subject only to such limitations as are determined by law solely for the purpose – as mentioned in the disposition of principle included in the text on the Universal Declaration of Human Rights – of securing due recognition and respect for the rights and freedoms of others – according to the conclusion presented in the text of the first international instrument enforced with universally binding juridical power – and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (Art. 29 paragraph 2).

The same Convention has “*expressis verbis*” provided that no State, group, or person was allowed to be engaged in any activity or perform any act aimed at the destruction of the rights and freedoms set forth in its text (cf. Art. 17). Yet, among such rights, one of the most important is the right to religious freedom (cf. Art. 9). Nonetheless, even the first additional Protocol to the Convention for Human Rights – adopted in Paris on 20 March, 1952 and entered into force on 18 May 1954 – mentions that “in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions” (Art. 2).⁷ As for this provision included in the text of the additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, we should underline that it cannot be yet respected and implemented in all the States of the world, not even in certain European States,

7 Additional Protocol to the Convention for the protection of human rights and fundamental freedoms, [in:] *The Handbook of the European Council*, Bucharest 2006, p. 406.

because, for the scarcity of the pecuniary resources, not all parents afford ensuring their children the proper education that fits with their religious convictions.⁸

One of the main European juridical instruments is the Charter of Fundamental Rights of the European Union, adopted in Nice in 2000 and solemnly proclaimed on 12 December 2007 by the European Parliament, the EU Council (that is, all Governments of the Member States) and the European Commission, which “works politically, because all EU institutions and Member States have this yard stick to go by when promulgating and applying civil law.”⁹

It has been told about the Charter – which according to Art. 6 paragraph 1 of the Treaty on European Union has the same juridical value as the EU Treaties – that it “also works in legal terms” and that it “is an important reference point and an interpretive aid for the European Court of Justice in its jurisprudence.”¹⁰

The European Jurists asserted that “one third of the text of the European Charter of Fundamental Rights” has been copied from the text of “The European Convention on Human Rights,” and the Charter “sets out safeguards for the individual against the power of the state.”¹¹ About the extensive influence of the European Convention on the text of the Charter, the Declaration of the Czech Republic on the European Union Charter on the Fundamental Human Rights stresses that “its provisions are addressed to the Member States only when they are implementing Union law, and not when they are adopting and implementing national law independently from Union law.”¹²

Consequently, the Charter confirms the fundamental human rights – amongst them the right to religious freedom – as guaranteed by the European Convention for Defending the Human Rights and Fundamental Freedoms, but it also recognizes and confirms the rights resulted from “the common constitutional traditions

8 A number of Romanian jurists referred to this reality and remarked that under Art. 4 paragraph 2 of *Legea 30/1994*, “Romania considers Art. 2 of the Additional Protocol to the Convention as non-binding in terms of supplementary financial obligations referring to the private education institutions, other than those established by the national legislation” (Additional Protocol to the Convention..., p. 406, n. 1).

9 Charter of Fundamental Rights of the European Union, ed. 2007, p. 9 (www.arc.eppgroup.eu/Activities/docs/charter_eu/ro.pdf).

10 Ibidem.

11 Ibidem.

12 The Declaration of the Czech Republic on the European Union Charter on the Fundamental Human Rights, Art. 1 (<http://eur-lex.europa.eu/ro/treaties/dat/12007L/htm/C2007306RO.01026704.htm>).

of Member States.” However, it only is about “the common constitutional traditions” of the States regarding the Fundamental Human Rights, not those where the term “human” has been replaced – following the example inherited from the French Revolution of 1789 – by the word “individual” or “citizen,” hence the complete elusion of the expression “*dignitas umana*” (human dignity), which “is not only a fundamental right in itself but constitutes the real basis of fundamental rights.”¹³ Besides, the Court of Justice issued the Decision on 9 October 2011 in the cause C-377/98, where it confirmed that the fundamental right to human dignity “is part of the substance of the rights laid down in this Charter, which “must therefore be respected, even where a right is restricted.”¹⁴ Thus, we should keep in mind that for the jurisprudence of the Court of Justice “a fundamental right to human dignity is part of (European) Union law.”¹⁵

Starting with its Preamble, the Charter underlined that the EU is “conscious of its spiritual and moral heritage”; however, the text does not mention the European religious-spiritual heritage, i.e. the Judaic-Christian one. As regards the “religious freedom,” the Charter reiterates word by word the text of the European Convention on Human Rights (cf. Art. 9). The sole addendum is included in the second paragraph of the following Article: “The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right” (Art. 10, al. 2). According to the competent jurists who have commented the text of the Charter, “the right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.”¹⁶ The Charter has also provided “the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions” in private education institutions (Art. 14 paragraph 3). The same explicit comments – initially formulated under the authority of the presidium that elaborated the Charter, later on updated under the authority of the presidium of the European Convention – mentioned that “regarding the right of parents” – stipulated in Article 14 paragraph 3 – “it must be

¹³ Explanations on the Charter of Fundamental Rights of the European Union (2007/C 303/02), “The Official Journal of The European Union” C303/35, issued on 14.12.2007, (explanations regarding Article 52) (www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303). Title 1 – Dignity.

¹⁴ Ibidem.

¹⁵ Ibidem.

¹⁶ Ibidem (C303/17).

interpreted in conjunction with the provisions of Article 24.¹⁷ But, among others, the Article also mentions the right of the children “to express their views freely” (Art. 24 paragraph 1); certainly, the parents should consider this Article as regards the education and school instruction of their children.

As mentioned in the texts of the juridical instruments taken into discussion by our analysis, the non-discrimination is in direct relationship with the right to religious freedom. At the same time, according to Art. 21 of the Charter, any discrimination is forbidden on ground of “citizenship,” “sex,” “race,” “colour,” “ethnic or social origin,” “genetic features,” “language,” “religion,” “political or any other opinion,” “membership of a national minority,” “property,” “birth,” “disability,” “age,” or “sexual orientation” (Art. 21 al. 1).¹⁸ Thus, not even the person that belongs to a religious community, regardless his or her status – as mentioned above – cannot be discriminated by the State where he or she permanently or temporarily lives, or by any EU authority.

The Treaty of Rome on the functioning of European Union, signed in Rome in 1957, mentions that “the (European) Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States” (Art. 17 paragraph 1). The Treaty also underlines that “recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches” (Art. 17 paragraph 3). Article 22 of the Charter of Fundamental Rights of the European Union provides also expressly that “The Union shall respect cultural, religious and linguistic diversity.” Beyond any doubt, this Article (22) of the Charter was inspired by the Declaration n. 11 of the Final Act of the Treaty of Amsterdam, signed on 2 October 1997 by the representatives of fifteen EU Member States.

Article 52 of the Charter – having the text written in direct relation with the issues of the right to religious freedom – provides that “any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms” (Art. 52 paragraph 1). Besides, the following Article mentions the prohibition of abuse of rights performed against “any of the rights and freedoms recognised in this Charter” (Art. 54). And,

¹⁷ Ibidem (C303/22).

¹⁸ The Paragraph 1 of Art. 21 is inspired by Art. 13 of the EU Treaty, which has been replaced by Art. 19 of the Treaty the Functioning of the European Union and Art. 14 of the European Charter of Human Rights (Cf. Explanations on the Charter on Human Rights..., Art. 21).

amongst these rights and freedoms recognized in this Charter – written in Nice in 2000 and adopted in Strasbourg on 12 December 2007 by the European Parliament, the Council of Europe, and the European Commission – there was also stipulated the right to religious freedom.

As we have remarked, “the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles.”¹⁹ Amongst such rights, freedoms and principles recognized in the area of the EU there were the ones linked to Religion and, *ipso facto*, the right of those persons who have a religious belief to freely confess and practice.

On the 1st of January, 2009 the Treaty on European Union signed in Lisbon on the 13th of December, 2007 entered into force. This Treaty modifies both the text of the first version (Rome, 2004), and the Treaty Establishing the European Community. At the same time, the Preamble of the Treaty of Lisbon mentions that the authors were drawing inspiration “from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.”²⁰ However, Europe’s religious “inheritance” – which is fundamentally humanist as substance and expression – has generated the European culture, including the juridical one, in the areal of which the right to religious freedom of the person has also developed as an inviolable and unalienable right.

One of the Declarations annexed in 2010th to the Final Act of the Intergovernmental Conference, which adopted the Treaty of Lisbon, signed of 13 December 2007 and entered into force on 1 December 2009, mentions that the Treaty “has legally binding force” and it only “confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.”²¹

¹⁹ Preamble to the Protocol n. 30 on the enforcement of the Charter of Fundamental Rights of the European Union in Poland and the United Kingdom, [in:] *The European Union. Consolidated Treaties*, Luxemburg 2010, p. 313.

²⁰ The Lisbon Treaty on the modification of the Treaty on the European Union and the Treaty Establishing the European Community, “The Official Journal of the European Union” C306, year 50, 17.12.2007, Romanian translation, Preamble 1 (a) (<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:ro:HTML>).

²¹ The Declaration on the Charter of Fundamental Rightst of the European Union, p. 337 (Publication Office of the European Union) (www.europa.eu/pol/pdf/qc320919oroc_002.pdf).

The European Union is based on two Treaties having “the same legal value,”²² i.e. the Treaty on European Union and the Treaty on the Functioning of the European Union. Amongst others, in the Treaty on European Union, the Contracting Parties declared that they have been inspired from “the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law” (Preamble).²³ Therefore, as regards the twelve signatory States as Contracting Parties of the Treaty, to which another fifteen States have been added later on, which “have since become members of the European Union”²⁴ that is until the 1st of December 2009, when the Treaty of Lisbon entered into force, with a number of inherent modifications, the inviolable and inalienable rights of the person, including the right to Religion, which is one of the most important rights, *ipso facto*, the religious freedom, represent “universal values” developed from “the religious inheritance of Europe,” meaning the religious heritage of the two monotheist religions (Judaic and Christian).

The Contracting Parties of the Treaty have also declared their determination to respect “their history, their culture and their traditions,”²⁵ i.e. of the peoples parts of the European Union. Yet, the culture and the traditions of the EU Member States have Christian-humanist origin and substance, rooted in the Biblical traditions and culture (both Old and New-Testaments). Besides, the express ensuring and acknowledgement of the Contracting Parties’ “attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law”²⁶ reveals that the mentioned principles were also part of the same “cultural, religious and humanist inheritance of Europe.”

The text of the Treaty on European Union reaffirmed that the European “Union is founded on the values of respect for human dignity, freedom [...] and respect for human rights [...]” (Art. 2). At the same time, it also expressly mentions that “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted

²² The Treaty on European Union, Art. 1, [in:] *The European Union. Consolidated Treaties*, op. cit., p. 16.

²³ *Ibidem*, p. 15.

²⁴ *Ibidem*, p. 15, note 1.

²⁵ *Ibidem*, Preamble, p. 15.

²⁶ *Ibidem*.

at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties” (Art. 6 paragraph 1), and “accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms” (Art. 6 paragraph 2). Thus, the European Union officially declared – through its organisms – that it was founded on the respect for the human rights and, *ipso facto*, the respect for the human dignity. Nevertheless, one of the main rights is the right to religious freedom, which has the power to be the best expression of the respect for the human dignity.

Numerous provisions and references (directly or indirectly expressed) about the human rights and freedoms can also be found in the Consolidated Version of the Treaty on the Functioning of the European Union, which has initially been signed by six EU Member States on 25 March 1957, in Rome. Later on, other States have ratified the Treaty and “have since become members of the European Union.”

Amongst others, the Treaty also provides that in case that the two Treaties, i.e. the Treaty on European Union and the Treaty on the Functioning of the European Union “confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts” (Art. 2 paragraph 1). However, as soon as we extrapolate this competence in the field of human rights, we afford the assertion that, in this field too, the EU is the only one that can legislate and adopt juridical binding documents, hence the undeniable conclusion that the norms and the legal principles mentioned in the text of the main juridical instruments of the EU on the human rights – including the right to freedom – have the value of “*jus cogens*” for all Member States. The Treaty also provided that “in defining and implementing its policies and activities, the Union shall aim to combat discrimination,” including the discrimination “based on religion” (Art. 10). At the same time, in order to materialize its policy, the EU can make decisions and take the “needed actions” – through the European Council – “in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, [...] to combat discrimination,” based on a number of reasons, including “religion” (Art. 19 paragraph 1). Nevertheless, “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination” (Art. 18).²⁷

²⁷ The Treaty on the Functioning of the European Union. Preamble, [in:] *European Union. Consolidated Treaties*, op. cit., p. 49.

The national Constitutions and Laws of Cults in every EU Member State recognize not only the autonomous status of the Religious Cults, but also expressly provide the right to Religion, implicitly the right to religious freedom.²⁸ The Treaty on Functioning of the European Union expressly provides that “The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States” (Art. 17 paragraph 1), and “recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches” (Art. 17 paragraph 3). Therefore, we notice that in the Members States of EU there are Churches, Religious Associations, and Religious Communities. However, this classification is not found in all EU Member States.

The same Treaty also provides that the EU “supports” and “completes” the action of the Member States in various fields, including “improvement of the knowledge and dissemination of the culture and history of the European peoples” and “conservation and safeguarding of cultural heritage of European significance” (Art. 167 paragraph 2). Yet, as it is well known, it was the Religion and generally the Religious Cults that brought important contribution to the culture and the history of the EU Member States, as well as to the common European heritage.²⁹ In this respect, we can mention that not few places belonging to such Religious Cults are included in the National Heritage of the Member States, and the Universal Heritage Sites (UNESCO).

²⁸ See, for example, N. V. Dură, *The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania*, “Dionysiana” II (2008) no. 1, p. 37–54; Idem, *Statele Uniunii Europene și cultele religioase* (The Religious Cults in the EU Member States), “Ortodoxia” I, s.n. (2009) no. 2, p. 49–72; Idem, *Relațiile Stat-Culte religioase în U.E. “Privilegii” și “discriminări” în politica “religioasă” a unor State membre ale Uniunii Europene* (Relationships between the State and the Religious Cults in the EU. “Privileges” and “Discrimination” in the “Religious” Policy of a Number of EU Member States), “Annals of Ovidius University, Series: Law and Administrative Sciences” 2007, n. 1, p. 20–34; Idem, *Despre libertatea religioasă...*, op. cit., p. 20–45; Idem, *About the “Religious” Politics of Some Member States of the European Union*, “Dionysiana” III (2009), no. 1, p. 463–489; Idem, *Legea nr. 489/2006 privind libertatea religioasă...*, op. cit., p. 290–311; C. Mititelu, *The Human Rights and the Social Protection of Vulnerable Individuals*, “Journal of Danubius Studies and Research” II (2012) no. 1, p. 70–77.

²⁹ See, N. V. Dură, *Valorile religioase-creștine și “moștenirea culturală, religioasă și umanistă a Europei.” “Laicitate” și “libertate religioasă”* (Christian-Religious Values and “Europe’s Cultural, Religious, and Humanist Heritage”), op. cit., p. 19–35; Idem, *Bisericile creștine și aportul lor la construcția Europei* (Christian Churches and their Contribution to the Construction of Europe)..., op. cit., p. 177–183.

The EU Member States have agreed “to associate with the Union the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom” and to “promote the economic and social development of these countries and territories” (Art. 198). Certainly, it is about territories and countries that have been in the times colonies of certain Member States or still are in their area of economical, political or cultural influence. Amongst the interests of the inhabitants living in these “countries” and “territories”³⁰ the religious-spiritual issues have always been and will still be in the future; therefore, such interests must be regulated according to the norms regarding the right to religious freedom, as expressly mentioned by the EU Law.

As some prominent European jurists already remarked, the European Union has become aware of the importance of Religion. Indeed, “in its Constitution for Europe the European Union promises to guarantee religious freedom and non discrimination, to respect religious diversity and to maintain a dialogue with churches and religions communities [...] At the same time the Union will respect – declared they – the status of these churches [...] under Member State’s law.”³¹ But, in order to know better this Member State’s law, it is absolutely necessary to take into consideration not only the civil ecclesiastical law, but also canon law, which for the Orthodoxies and the Romano-Catholics still remains a kind of the “norma-normans” regarding the relations between State and Church. In fact, as it can be proved by “the Law no. 489/2006 on Religious Freedom and General Regime of religious Cults in Romania,”³² the Romanian Religious Cults have not only the right to follow and respect their canonical legislation and their Statutes, but also to legislate in respect of all administrative matters, even to their internal structures.

³⁰ As example, we remind the territories “Outre-Mer” belonging to France (Guadeloupe, French Guyana, Martinique, Saint Bartholomew and Saint Martin, Azores, Madeira, and Canary Islands) (cf. Art. 349, 355, al. 1), the Commonwealth territories “which have special relations with the United Kingdom of the Great Britain and the Northern Ireland” (cf. Art. 355, al. 2 și al. 5c). Also see Annex II (Overseas Countries and Territories) of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related acts, 2 oct. 1997, “Official Journal of the European Union” C340, 10.11.1997 (<http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>).

³¹ *State and Church in the European Union*, ed. G. Robbers, Preface, Second Edition, Baden-Baden 2005, p. 5.

³² See, N. V. Dură, *The Law no. 489/2006 on Religious Freedom...*, op. cit., p. 37-54.

As conclusion, we afford the assertion that the brief presentation and analysis of the text of the main European juridical instruments, i.e. the Universal Declaration of Human rights, the two International Covenants adopted in 1996, the European Convention on Human Rights, the Charter of Nice (2000), and the two fundamental Treaties of EU, revealed that the right to freedom of Religion is a “jus cogens” of the present-day, initially founded both on “jus divinum” and “jus naturale.”

SUMMARY

The right to freedom of religion

The brief analysis of the text of the main International and European juridical instruments, i.e. the Universal Declaration of Human Rights, the two International Covenants adopted in 1996, the European Convention on Human Rights, the Charter of Nice (2000) and the two fundamental Treaties of EU revealed that the right to freedom of Religion is a “jus cogens” of the present-day, initially founded both on “jus divinum” and “jus naturale.”

Keywords: religious freedom, human dignity, juridical instrument, the Universal Declaration of Human Rights

BIBLIOGRAPHY

1. *Charter of Fundamental Rights of the European Union*, ed. 2007 (www.arc.ep-group.eu/Activities/docs/charter_eu/ro.pdf).
2. Dură N., *Ecumenismul interreligios. Dialogul teologic cu religiile necreștine (Iudaismul și Islamismul)* [*Inter-Religious Ecumenism. The Theological Dialogue with the Non-Christian Religions (Judaism and Islamism)*], “Glasul Bisericii” 43 (1984) no. 7–9, p. 611–621.
3. Dură N., *Instruction and Education within the themes of some International Conferences. An evaluation of the subjects approached by these from the angle of some Reports, Recommendations and Decisions*, [in:] *International Conference, “Exploration, Education and Progress in the third Millennium” Galați, 24th–25th of April 2009*, vol. 2, p. 203–217.

4. Dură N., *The Theology of Conscience and the Philosophy of Conscience*, “Philosophical-Theological Reviewer” Tibilisi 2011 no. 1, p. 20–29.
5. The Decree n. 212 issued on October 31, 1974 for the ratification of the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, “The Official Gazette” no. 146, issued on November 20, 1974 (http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?idt=63815).
6. The Lisbon Treaty on the modification of the Treaty on the European Union and the Treaty Establishing the European Community, “The Official Journal of the European Union” C306, year 50, 17.12.2007, Romanian translation, Preamble 1 (a) (<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:ro:HTML>).
7. *State and Church in the European Union*, ed. G. Robbers, Preface, Second Edition, Baden-Baden 2005.
8. Dură N., *Statele Uniunii Europene și cultele religioase* [*The Religious Cults in The EU Member States*], “Ortodoxia Review” 1 s.n. (2009) no. 2, pp. 49–72.
9. Dură N., *Despre libertatea religioasă și regimul general al Cultelor religioase din România* [*About the Religious Freedom and the General Condition of the Religious Cults in Romania*], “Annals of Ovidius University, Constanta. Series Theology” 7 (2009) no. 1, pp. 20–45.
10. Dură N., *Legea nr. 489/2006 privind libertatea religioasă și regimul general al Cultelor religioase din România* [*The Law n. 489/2006 Regarding the Religious Freedom and the General Condition of the Religious Cults in Romania*], [in:] *Biserica Ortodoxă și Drepturile omului: Paradigme, fundamente, implicații* [*The Orthodox Church and the Human Rights: Paradigms, Fundaments, Implications*], Bucharest, 2010, pp. 290–311.
11. Dură N., “Forum-ul Mondial al celor trei Religii” și cea de-a 35-a Filială a sa din România - 10 septembrie 2004 și 17 februarie 2005 (“*The Worldwide Forum of the Three Religions*” and its 35th Branch in Romania – September the 10th, 2004 and February the 17th, 2005), “Biserica Ortodoxă Română [The Romanian Orthodox Church Review]” 123 (2005) no. 1–3, pp. 353–364.
12. Dură N., *Valorile religios-creștine și “moștenirea culturală, religioasă și umanistă a Europei”. „Laicitate” și „libertate religioasă”* [*Christian-Religious Values and “Europe’s Cultural, Religious, and Humanist Heritage”*], [in:] *Proceedings of the Symposium “Modernity, Post-Modernity, and Religion,” Constanta, May 2005, Iași 2005*, pp. 19–35.

13. Dură N., *Bisericile creștine și aportul lor la construcția Europei* [*Christian Churches and their Contribution to the Construction of Europe*], "Ars aequi. Periodical of Social and Juridical Studies and Researches" 1 (2006) no. 4, pp. 177–183.
14. Dură N., *The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania*, "Dionysiana Review" 2 (2008) no. 1, pp. 37–54.
15. Dură N., *Relațiile Stat-Culte religioase în U.E. "Privilegii" și „discriminări” în politica “religioasă” a unor State membre ale Uniunii Europene* [*Relationships between the State and the Religious Cults in The EU. “Privileges” and “Discrimination” in the “Religious” Policy of a Number of EU Member States*], "Annals of Ovidius University. Series Law and Administrative Sciences" 2007 no. 1, pp. 20–34.
16. Dură N., *About the “Religious” Politics of Some Member States of the European Union*, "Dionysiana Review" 3 (2009) no. 1, pp. 463–489.
17. Mititelu C., *The Human Rights and the Social Protection of Vulnerable Individuals*, "Journal of Danubius Studies and Research" 2 (2012) no. 1, pp. 70–77.