Law and Morals. Prolegomena (I)

Nicolae V. DURĂ[1]

Abstract: In the pages of this study we have emphasized the relation between Law and Morals, between what is just and in just, talking thus not only about the nature of the Law and of the Morals, but also about the relation between the juridical norms and the moral principles. An evaluation of the historical process of the emergence of Law and Morals – be it brief – has enabled us to notice that the Law has evolved step by step from the Moral norms and from the customs of a moral nature, hence the conclusion that the positive juridical norms should also express, in their content, values of a moral nature. In fact, from an ontological point of view, between Law and Morals could not be a divorce, since the notions of "righteousness" and of "justice" themselves are categories of Morals. That is why the theory of juridical positivism, according to which the rule of Law can exist in the absence of Morals since the state is the only source of Law, has no credibility both from a historical and philosophical and from a juridical point of view. Finally, the increasingly higher interest of the philosophers and jurists of our time to perceive and express the content of the nature of Law adequately and, ipso facto, the relation between this one and Morals, was also determined by the international and European legislation regarding the human fundamental rights and liberties.

Keywords: juridical norms; moral principles; human rights

A work entitled „Testamentum Domini" – written in the III-rd to IV-th centuries – recommends to us that we be well-initiated in „science" (γνῶσις) and in „knowledge", as only the ones who shall pursue „the justice" (δικαιοσύνη) shall acquire „wisdom" (σοφία)[2]. Therefore, „wisdom" is conditioned by „justice", which – in its turn – is not possible without „gnosis" (science) and „knowledge". In this sense, in the case of Law, too, these „gnosis" and "knowledge" can only be gained by a painstaking study of this field, and, ipso facto, of the juridical Sciences that the human spirit has created from the antiquity up to our days.

[1]Professor, PhD, Vice-rector of the "Ovidius" University of Constanta, Romania, 1 University Alley (Campus, Building A), telephone: +40241-551773, +40241-511000/326. Corresponding author: nicolaedidimos@yahoo.com.

[2]*Le Testament en Galilée de Notre – Seigneur Jesus Chris/The testament in our Galilee*, 1982, p. 149.

During the antiquity numerous law systems have emerged (the Babilonian, the Egyptian, the Jewish, the Chinese one etc.), but none of them had succeeded in creating a unitary system of concepts that would have enabled the expression of a juridical thinking and language different from the common language. Consequently, *„the juridical thinking of the peoples of the antiquity did not create their own juridical concepts and it was not able to approach the systematic and precise elaborations of the Roman Law, moreover, it could not exert any influence on the general evolution of the juridical ideas and institutions. In regard to all the systems of law in the antiquity, the Roman Law can be distinguished by the fact that it has created the basic elements of the juridical alphabet, by means of which the norms of law acquire an identity different from that of other social norms".* (Molcuț, 2002, p. 11)

However, the juridical thinking and expression owes to the Roman Law not only its own identity in relation to other social-humanistic sciences, but also the genesis of some present juridical concepts (for example, the concept of contractual obligation, of delictual obligation, the contract etc.), by means of which the juridical thinking of the society of our days can be expressed and due to which we can talk about a distinction between „sein" (what exists) and „sollen" (what should be). In this sense, we must see if, as regards the meaning of the two realities, „sein" and „sollen", we are only dealing with an indicative or with an imperative of a preeminently juridical nature, devoid of any religious-moral content.

„Taking a look at the historical process of the emergence of law, we shall notice that law has evolved step by step from the moral norms and customs. In this sense – a distinguished theoretician of law specified – the morals precede the law" (Popa, 1998, p. 142). The same theoretician evinced the fact that the relation between law and morals *„raises the problem of establishing the criteria on the basis of which a certain relation passes from the moral regulation to a juridical one"* (Popa, 1998, p. 142). How this passage is done and what consequences or effects this has was not yet specified to us – in an explicit manner – by the specialized literature, given the fact that some theoreticians, who are usually enslaved to their own ideological orientation, do not usually have a right image of the content of moral norms, which are always conditioned by the relation between the Divinity and the Man. At last, we should say that any image that distorts the relation between Law and Morals leads to the fact that both the fundaments of the moral legitimacy of the positive juridical regulations and the criterion regarding the manner in which the human

behavior is regulated shall be regarded in a different manner by the two realities, „sein" and „sollen".

As the human behavior is regulated by the juridical norm, the human acts are themselves subject to the criterion of the juridical norm, so that we can say that the legislator is the one who decides on the attitude of the subject of law with regard to the three possibilities: the order, the prohibition or the persuasion. In turn, as the Ethics is concerned, the basis of the entire social order consists in the relation that is established between the man and the Divinity, which makes „justice" „a requirement of ethics" (Kelsen, 1962, p. 86), hence the necessity that law be a social norm with a moral value.

Ontologically talking, we could not separate the law from morals as the very notion of „law", of „justice", is a category of ethics. That is why we can say that the theory of juridical positivism, according to which the rule of law can exist in the absence of ethics given that the state is „the only fundament of law" (Popa, 2002, p. 131), is actually uncovered.

Montesquieu also noticed that „people are governed by different categories of laws: the natural law, the divine law, which is the law of religion; the church law, also called canon law, …,; the law of the people, that can be considered the world`s civil law, in the sense that every people is a citizen of the world; the general political law, the object of which is human wisdom, a basis of all societies; the particular political law, which refers to each and every society; …; the civil law of every society, … etc." (Montesquieu, 1970, p. 203). In this sense, as it is well-known, in our country, under the impact of some party-minded ideological orientations, some jurists have excluded from the categories the natural law, the divine law, the canon law etc.. Moreover, these Subjects were also eliminated from the syllabus of academic education and the respective Handbooks, books and specialized treaties were banned. Registered in special Inventory-Registers, they were afterwards also registered in the Catalogues of the secret fond. In this regard, we should also mention the fate of the Course of PhD Professor Jacob Lazăr, entitled „Church Law at the Faculties of Law", which was published at Bucovina Publishing House of Bucharest in the year 1934. Banned by the authorities of the communist regime[1], the printed course was registered in the Special Inventory and

[1]Among the books banned by the Ministry of Culture in the year 1964 (kept at "Special fund 1967"), we can also find the book of the canonist Iacob Lazăr. For details, see (Caravia & Albu et al., 2000, p. 562).

then in the Catalogues of the Secret fund. And since in Romania of the respective age the „justice" was to reach its climax people have experienced and lived „… the religious prosecutions, the political decay, the induction of the duplicitous thinking at the level of the entire society and the pervertion of the social relations", which have represented „the main components of the communist genocide in Romania". (Boldur Lăţescu & Iorga, 2003, p. 3)

With regard to the divine and human laws, the same Montesquieu wrote that they „differ by virtue of their origin, purpose and nature" (Montesquieu, 1970, p. 204). As their nature is concerned, the famous (French) „political writer" – as he himself used to call himself – said that „the nature of human laws is to be subject to all circumstances… that could appear and to change as the will of the people changes; on the contrary, it`s in the nature of religious laws to never change. The human laws decree with regard to good, the religion decrees with regard to the supreme good. The good can have a different purpose anytime, as there are several types of good; whereas the supreme Good is unique, this means it cannot change. Of course, laws can be changed, if they are not considered to be good; but the laws of religion – Montesquieu noticed – are always assumed to be the best…. In this sense, this remark was made by the one who has written about the spirit of laws, that is Montesquieu, still mentioned, in an erroneous manner, as a tutoring spirit of the divorce suit between "the sacred" and "the profane" by the theoreticians and jurists who have remained tributary to the anti-Christian spirit, generated and fueled by the Marxist-Leninist ideology propagated by the atheistic-communist political regimes.

Evincing the perennial character of divine laws, in contrast to the ephemeral character of human laws, Montesquieu wrote that „in order to exist, the society needs something stable; and this stable thing is nothing but religion". The same theoretician of law talked about „the force of religion", which, – in his opinion – „first of all is based on the fact that people believe in it; the force of human laws – Montesquieu added – is based on the fact that people are afraid of them. The age of religion comes to its support, as we often believe the more in the truth of things the more distant they are in time because we don`t bear in our minds, as these things are concerned, ideas peculiar to those distant ages that could contradict them. On the contrary, the human laws benefit from their novelty, which shows a special and real attention on behalf of the legislator to make them respected" (Montesquieu, 1970, pp. 204-205).

Of course, on the basis of these statements, too, we can both realize the way in which Montesquieu has understood the idea of law, law in its reason of being and the role that religious law has played in the life of the human society. Of course, divine laws should not replace the human laws; they can only humanize them through their religious-moral character. In this regard, the law of the Decalogue remains the most vivid example!

Talking about the idea of law and of justice at the Romanians, the historians of the old Romanian law have noticed that, before being examined in the nomocanons, royal charters, deeds, court orders etc., it must be searched for in „the treasure of the Romanian folklore: the folk tales, sayings, poems as they better reflect the life of the people." (Peretz, 1915, p. 38)

The same historians noticed that, at the Romanians, the word „law" is not used „as a noun, but only with an adjectival or adverbial meaning, referring to what is equitable. In this sense, this use also confirms the fact that the Romanians of the previous ages have perceived the Law as "Equitable Law", in which "the Law" and "the justice" meet (Aristotle). That this was the reality is also confirmed by the fact that they have only used the noun „justice", which actually corresponds to the Roman concept of safe and steady will to give everyone his due.

"… This noun (justice, our mark) - Ion Peretz specified - has the remarkable particularity that it never expresses, apart from its usual meaning, the meaning of law, too" (Peretz, 1915, p. 39). Actually, „at the Romanians, the word justness appeared although the word justice did not exist, being derived from an adjective with the meaning of rigid, equal, according to the rule: the adjective „just" (Peretz, 1915, p. 40).

They have stated that „... the origin of the modern Romanian concept of law must be looked for in France", a country from where the Romanians would have also „lent the laws. This idea - I. Peretz wrote – can be summed up in a single sentence: law must be separated from ethics" (Peretz, 1915, p. 50). Anyhow, up to the age of Cuza – when this lent took place – we cannot talk of such a separation between Law and Ethics. On the contrary, both within the customary and in the nomocanonical law, law is related to moral values that the Roman jurists have explicitly referred to – in their definitions – namely to "Good" and "Equity". For example, through "ars boni et aequi" (art of the good and of equity), Celsus defined the law in categories of Ethics, as the good and the equity are two moral principles. In this sense, Ulpianus referred to the same moral principles when he conditioned

the functioning of the (distributive) justice to the obligation “to live honestly and to harm nobody” (honeste vivere, neminem laedere), and “to give everyone his due” (suum cuique tribuere).

In a Christian writing from the II-nd century, we can read that „justice" has to be „the beginning and the end of the judgment"[1]. This idea of „justice" – of a Christian origin – can also be found in the old Romanian law. In this sense, up to „the idea of modern law", Romanians have guided themselves according to "the justice", which had its ontological basis and meaning in the divine justice, which is „the end and the beginning of judgment".

In the Nomocanon of Matei Basarab[2], „justice" is defined as follows: „Direptatea iaste un lucru mai adeverit de toate carea dă fieşi-cui direptate” („Justice is something more obvious than anything that distributes the justice to everyone") (Ch.2). This definition – taken over from the handbook of Manuel Malaxas, who had also taken it over from the Syntagma (Collection) of Matei Vlastares, - also goes back to the definition of Ulpianus, namely to that „suum cuique tribuere” (to give everyone his due).

The fact that, in the Great Nomocanon, the notion of justice also expressed the meaning of the word „just" led to the conclusion that „... in the Romanian language, at the time when the Nomocanon has been written, there was only the noun justice, but not the noun just ..." (Peretz, 1915, p. 45). But this is not relevant for drawing the conclusion that, by 1652 – the Romanians did not use the word „just”, but only the word „justice”. Actually, in the Romanian literary sources from the second half of the XVII-th century, the word just is frequently used[3], which confirms the fact that this noun had already enjoyed a large circulation in the old Romanian texts from the XVI-th century, when we can also talk about the „overcoming” of the Romanian writing (cf. P. P. Panaitescu).

Consequently, we must stress and keep into our minds the fact that the Romanian noun "justice" did not come from the Latin word "justitia/ae” – as Ioan Peretz already mentioned – but from the adjective „justus”, which did not send to a conformity with something which is rectilineal, but to values with a preeminently

[1]Lettre de Barnabe (1991), I, 6, in *Les Pères Apostoliques*, p. 268.
[2]About “Pravila lui Matei Basarab”(„The Nomocanon of Matei Basarab”), see (Drăguşin, 2001, no. 1-6, p. 255-368; no. 7-12, pp. 253-321)
[3]See, in this regard, the monument of the Romanian language, namely *The Bible of Şerban Cantacuzino*, published in the year 1688.

moral and religious content, namely to "Truth", to "Beauty" and to "Law". That this was the perception of Romanians concerning the "justice" is also confirmed by the Nomocanon of Târgovişte, printed and published in Târgovişte in the year 1652, which stated that "the acknowledgement of justice is that somebody live in a moral and just manner in order not to accuse anybody", and "the wisdom of justice is to discern the godly and human things, that is justice and injustice"[1].

Therefore, according to the Great Nomocanon ("Pravila cea Mare"), "justice" implies, above all, that everyone among us live "in a good and just manner", because this is the only way we could distinguish "justice from injustice", that is the Good from the Evil.

In the Calimach Code we only encounter the word „drit" (law), defined as a human faculty recognised by the law. In this sense, through the word „drit", the Calimach Code has both expressed „just", and „justice" (Peretz, 1915, p. 49), namely that "jus aequi" (equitable law), about which Aristotle had once talked.

The historians of Romanian law have also noticed that „in its juridical relations, the Romanian people were not preoccupied to settle the concept of law as a recognised faculty of a person to do certain things ... . To this people, the whole issue comes to the simpler and more concrete notion of power ... . And in order to appreciate this power, there is, on the one hand, justice, which indicates them if this power is just or injust; there is, on the other hand, the law, in the general sense of juridical rule, which decides what they are allowed and not allowed to do" (Peretz, 1915, pp. 42-43). Hence their conclusion that, at the Romanians, the abstract notion of „just" can either be mistaken „for the just power or for the legal power". That is why the Romanians were content to using „the word law in order to express the legal power and the word justice to express the just power" (Peretz, 1915, p. 43), which finds its sense and basis in the moral Law.

Initially, the word "lex" was used to express the written law and, at the same time, the act of reading and interpreting the will of the Divinity as in the old age, at the Romans, all the divine and human laws were considered to have been settled through the will of the Divinity, hence the usual phrase in those times: "fas est", namely something which is allowed (by the gods) and, ipso facto, allowed by the law. After the publishing (the etching on brass tables) of "leges XII tabularum" (of the laws of the XII Tables), we can observe a certain distinction between what is

[1]Îndreptarea Legii, 1652 (2002), Glava a II-a. The amendment of the Law, 1652, ch. II. Published by the hyerodeacon Gheorghe Băbuş, p. 97.

allowed or tolerated by the gods and what is not allowed by the law (per lege non licet), although any act of submission to the will of the Roman legislator actually meant a submission to the will of the Divinity.

Referring to the emergence and historical development of law, some theoreticians of law stated that, in the age of the primitive commune, the human society has been governed according to certain rules of behaviour that have been "… strongly imbued with the mystical, religious aspect. The observance of these rules was assured both on the basis of the internal mystical moral and religious motivations and of the punitive measures taken by the collectivity and by its leaders – the heads of families, the leaders of the peoples and tribes." (Gheorghiu, 2004, p. 9)

Apart from the regrettable fact that for some of the theoreticians of law – educated in the Romania of the years 1947-1989 – the notion "mystical" still has a derogatory meaning, we can notice both the lack of a holistic knowledge of the historical reality of those times and of the philosophical-religious reality, knowledge which would have allowed the respective theoreticians to assess the moral-religious aspect of those rules of behaviour in a trully scientific spirit. But, unfortunately, we encounter the same way of thinking and expression – still tributary to the School of the age of the communist regime[1]– by some contemporary historians of the Romanian law, who talk about "the magic and religious prescriptions" (tabu), which they include among the norms of conduct with a customary character" (Bitoleanu, 2003, p. 10).

Based on the information left by the Latin historian Iordanes, some historians of Romanian Law stated that, during the age of Burebista a system of laws in a written form (conscriptores) was also established, which included the legal orders and moral and religious prescriptions. Some of these had been transmitted orally and they were part of the old customary Law.

The information of Iordanes – regarding the Geto-Dacians – has been regarded by some historians of Romanian law "with skepticism", hence their conclusion that at the Dacians, "the existence of written laws" is "doubtful". However, they admit the fact that, „as in the times of the the dawn of Rome, their conservation and dissemination was made through the mnemotechnical procedure noticed by

[1]About the thinking and the methods of this school, see the volume „*Gândirea interzisă. Scrieri cenzurate/Prohibited thinking. Censored writings…*"; (Stănescu, 2003).

Aristotle at the la Agathyrsi from Transilvania: versified and sung in order not to be forgotten" (Bitoleanu, 2003, p. 11).

Some historians of "the Roman Dacia" have written that Dacia was conquered by the Romans not only by means of their weapons, but also through the capacity of „cultural illumination" of Rome (cf. P. Grimal), as Dacia "was conquered through the western, Latin forms of the Greek-Roman culture" (Bărbulescu, 2001, p. 226). Therefore, in their opinion, "… nothing of what was typical of the natives (for example, the Zalmoxian religion or the sacred architecture) was ever perpetuated". (Bărbulescu, 2001, p. 226).

Thus, in the opinion of these historians, everything that was aboriginal has disappeared "little by little", so that the Dacians found themselves caught in spirituality and a culture – a juridical culture inclusively – of an exclusively Roman nature. Of course, such opinions are not only uncovered in the context of the historical reality, they are also wrong through the lack of a logical judgment given that the spirit of promoting everything that was Roman was often shaped both "according to the requirements of the provincial social life (the so-called "vulgar law")" (Hanga, 2001, p. 222) and to the customs of the Dacians.

Regarding the implementation of the Roman juridical system in Traian's Dacia, although we "do not have sufficient data (except for the waxed tables)", anyhow, "from the way that the imperial provinces were organized and based on the juridical texts regarding these ones, we can recompose, by and large, the implementation of the Roman law in the new province" (Hanga, 2001, p. 219). In the implementation process of the Roman law, they took into account these very local customs or that old customary law of the Thraco-Geto-Dacians and of the Daco-Romans, upon which that "jus valachicum" or that "lex Terrae" (law of the Land) is based. This "law of the country" or of "the land" was not only applied in the absence of "jus scriptum" (written law), which was to circulate in the geographical space of the Romanian Principalities since the age of the Roman rule and in the Middle Ages in the form of nomocanonical law, but in a parallel way to that „jus scriptum". That this was the reality is also certified by the text of the Great Nomocanon (Târgovişte, 1652), which specifies in an "expressis verbis" manner that "where there is no written law, that`s where we have to follow the

customs of the place. And if there are no customs of the place, then the old people should decide how they could rule" (the 4-th Ch.)[1].

In the same Nomocanon they state, in an apodeictic manner, that "… the ancient customs shall be considered laws"[2]. Indeed, in the absence of the Roman or Byzantine "imperial laws", at the Romanians only the "old customs" of the country were followed. But also after the taking over of the Roman law and of the Byzantine law afterwards, these customs have not seldom continued to be prevalent or preeminent to „the imperial law", often regarded and considered by the Romanians as being alien to the spirit of the country or of the land.

If the Romans, by „lex", only understood the written law, which had to be observed and enforced by the human collectivity after its proclamation, in turn, at the Geto-Dacians „the law" has initially had the meaning of unwritten norm, being however perceived as an emanation of the divine will, too. The law bound its subjects through an act of faith and conscience, which made Constantin Noica state that, at the Romanians, the word law does not come from „lex", which is derived from the verb "lego/legere" (= to read), but from the Latin re-ligio = to bind on the inside (Noica, 1970, p. 174), in faith and conscience, hence its sacred character.

At the Romanians, this sacred link was expressed through the Latin word mos - moris = custom, which also went back to the law acquired through faith. The fact that, at the Romanians, the law was related from the beginning to a religious faith is also certified by the fact that „during the Middle Ages in Romania", this one had the meaning of Christian Orthodox religious faith. When a Romanian answered to Hungarian or to a Turk that he is of „Romanian law", he meant that he was a Romanian of Orthodox faith. Therefore, „the Romanian law" defined both his ethnical and his religious identity, which explains, in an evinced manner, the osmotic process of the genesis and evolution of the Romanian people in the spirit of its Orthodox, apostolic faith brought to Scythia Minor (Dobrudja) by the first one called to apostleship..., the Saint Apostle Andrew. The Pontical Dacia was indeed „caught in an organic manner in the process of evangelisation since the age of the Saint Apostle Andrew and of his disciples …. In the space between the

[1] Îndreptarea Legii/The amendment of the Law, p. 99.

[2] The Great Nomocanon, published in Târgoviște in the year 1652, has taken over a text from "the Hexabiblos" of Constantine Armenopol, which was used in the Romanian Principalities after the Greek text from the printed editions. Actually, the Great Nomocanon mentions that: "Armenopol says that the old custom is taken into account and observed instead of the law" (ch. 4) (Apud *Îndreptarea Legii/The amendment of the Law*, p. 99).

Lower Danube and the Black Sea – the regretted historian Adrian Rădulescu wrote – the elementary traces of the Christian practices are present everywhere, here is where the Romanian ethnogenesis has integrated the Christian teachings in an organic manner " (Rădulescu, 2001, p. 371).

The Romanians have kept the conscience that the law is an emanation of the divine will up to the modern age. In the XVII-th century, for example, for the Romanians the Nomocanons of the Country (Longinescu, 1912) were „The amendment of the law with God", „the Nomocanon with God"[1], namely laws enforced under a divine authority.

For the nomocanonical law, „justice" expressed a moral-Christian value, hence the phrase "amendment of the law" that we encounter in the Nomocanons from the XVII-the century. Anyhow, the notion of "amendment" had the meaning of judgment not only according to „the law", but also according „to the justice", which finally finds its fundament in the divine justice and juridical law.

According to the definition of the jurisconsult Celsus – kept in the first book of the Institutions of Ulpianus (jurisconsult and master of the classical juridical definition) - „Jus est ars boni et aequi" (Law is the art of good and of equity) (Dig.I,1). In this sense, according to the teachings of Justinian, the judge must give a verdict „ex bono et aequo", that is according to the good and equity (Institutions, the IV-th book, cap. VI, 20).

Therefore, the word „ars" (art), which has to be understood in the sense of „craft/science", consisted in „distinguishing what is the good and what is the equity, ..., as regards the evaluation of the man`s deeds and the regulation of the relations between people" (Stan, 1943, p. 92).

As regards the notion of „aequitas/tis" (equity), we must specify that it is not tantamount to equality, given that two human beings are not equal by virtue of their physical and mental identity, of their genetic heritage. Actually, the legislator or the judge does not distribute the equality, but only the equity, as the Roman jurisprudence once stated.

At the Romans, „the written law" (scriptum ius) was made up of „lex" (law), „plebiscita" (plebiscite), „senatusconsulta" (senatus – consulte), „constitutiones" (imperial constitutions) and „responsa prudentium" (the sentences of the

[1] *Îndreptarea legii, 1652/The amendment of the Law, 1652*, 1962.

jurisconsults) (Institutiones, liber primus, II. 3), and „the unwritten law" (non scriptum ius) consisted „in what the custom has legalized (quod usus comprobavit).

The Institutions of Justinian specified that „the customs" settled since ancient times, „approved by the ones who follow them, have the power of a law (legem)" (liber primus, II, 9).

But what is the law (lex)?! How was it defined by the Romans?! According to the definition of Trebonian and Theophilus, professors at the School of Law of Constantinople and to professor Dorotheu from the famous School of Law of Beirut – to whom Emperor Justinian has enthrusted the task of editing the juridical handbook entitled „Institutiones" (Institutions) – „lex est quod populus Romanus senatorio magistratu interrogante, veluti consule, constituebat" (the law is what the Roman people decided at the proposal of a senatorial magistrate, as, for example, a consul) (Institutiones, liber primus I, 4).

But what is "justice" (justitia)?! In what terms was it defined by the Romans?! Justice (justitia) was understood by the Romans in the terms of a „constans et perpetua voluntas ius suum cuique tribuens"[1] (a constant and steady will to give everybody what they deserve), and „juris prudentia" (jurisprudentia) was considered to be „divinarum atque humanarum rerum notitia, iusti atque iniusti scientia" (Bitoleanu, p. 39) (the knowledge of the divine and human things, the science of what is just and injust). In this sense, in order to distinguish between what is just and what is injust, a moral law, a moral criterion was always necessary.

In the opinion of some historians of Romanian law, „the origin" of the princely judgement in the Romanian Principalities „must be looked for in the principle of the Roman law, ars aequi et boni, which expresses the bound between the public good and equity (impartiality); in other words, the norms of law must be interpreted and applied according to the principles of equity. In fact, the persistence of the good and old people as a jurisdictional organ – they say – is the proof of the recognition of the authority of an institution which perfectly expressed the concordance between Law and Justice" (Bitoleanu, p. 39).

That we do not only refer to „the principles of equity" - in the sense of „impartiality" - is confirmed by the very definition of Celsus, based on which we

[1] *Institutiones* (2002). The Ist book, ch. I, transl. by Vl. Hanga, Bucharest.

can notice that „jus" (the law) is also defined in relation to the moral values, the first of which is the good. Indeed, for Celsus (the II-nd century A.D.), „jus", as an „ars boni et aequi" (the art of the good and of the equity) is defined by relating it to the values with a high ethical (moral) content, given that both the good and the equity are entities of Ethics. Anyhow, we should not forget that, in those times (in illo tempore), the law had not yet „freed" itself from the tutelage of Ethics „and its purpose was the fulfillment of the moral good" (Popa, 1998, p. 93).

The fact that „law" is „in a last analysis a moral entity, a species of the supreme moral value of good" (Stan, 1943, p. 93), is certified by the very notion of „law". In fact, as an adjective, the word "just" is only associated in the case of considerations of a moral nature (e.g., a just man, a just action, a just punishment etc.), hence the necessity of the moral integrity of the person appointed to administer „the justice".

Aware of this reality, some practicians of law write that „the training and specialization for the position of magistrate, …, must prove the fact that the respective person has developed, during the period of evolution and professional development, an irreproachable civic and moral conduct" (Susanu, 2004, p. 6). At the same time, the judge should be „not only a person with an irreproachable civic and moral conduct, with a high professional level and adequate specialization in his field, with a confirmed experience. He must be able to reestablish the lawfulness in the law case that he is judging" (Susanu, 2004, p. 6). In this sense, the re-establishment of the state of lawfulness can only be made by the one who is free, including of passions, vices and immoral acts.

Among the requirements for the judges from „the European Court on Human Rights", the Convention for the defense of human Rights and of the fundamental Liberties – that was adopted in Rome on November the 4-th, 1950 and entered into force between September 1-st and 3-rd, 1953 – also provided the obligation that these judges „shall be of high moral character…" (art. 21 al.1) (Susanu, 2004, p. 6).

Of course, the same requirement has to be valid for the national judge, who has to be „… a vital element as the juridical protection of human rights is concerned", with a high professional level and a high moral conscience of his responsibility „… as regards the uniform us enforcement of the Convention in the internal judiciary system, accomplishing, in an efficient and constitutionalist manner – professor Marin Voicu, former judge at the European Court of Human Rights wrote, – a

synthesis between the exigencies of the Convention and the constraints, inhibitory to certain extents and in certain periods, related to the quality of the law, to the national procedural rules and even to the dominant jurisprudence" (Voicu, 2001, p. 23).

Finally, this condition, according to which the national judge also has to be „of high moral character", is also imposed by the fact that „the direct enforcement of the Convention and its priority within the national internal law is a central element of the protection of human rights, …" (Voicu, 2001, p. 28).

As it is well-known, in the period from 1948 to 1989, as the Courses of the Faculty of Law are concerned, they laid the stress „… on the materialist-dialectic and Marxist explanation of the political and juridical phenomena", and they „emphasized the role of the material factors in the determination, in the last resort, of the institutions of law and of the state institutions, …" (Popa, 1998, p. 20). As an immediate consequence, the spiritual and moral-religious values – including the academic subjects carrier of these values – have not only been ignored and left aside, but eliminated from the Halls and the Lecture Rooms of Universities, so that even daring to talk about these things was considered an infringement of law and reprimanded accordingly.

Actually, for the „new man" – who was created commensurate with the apostles of the atheist and communist ideology (Marx, Engels and Lenin) – there should only be a single „law" to defend the so-called „conquests of the proletariate" and to punish in an exemplary manner the ones who merely had the intention to talk about these values, actually typical of the Romanian people since its genesis, hence the criminal actions committed by the ones who have even demolished some churches that were historical monuments, founded by the ones who have enacted the „law", the customs and the country.

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