

Summary

This Doctorate Thesis suggests a coherent synthesis, based on text arguments, approaching echidistantly and equilibratedly the attitude of the Islam towards the fundamental human rights and liberties.

The difficulty of the theme consists in the fact that the discourse and the theological approaching differ from the factual reality, from the real situation in the islamic countries, where the conjuctural elements may create decieving apparences. For a scientific researcher, acknowledged and impartial, the theoretical message but also the pragmatic approaching constitutes a unitary whole, being excluded, under the conditions of scientific honesty, the setting forth of any wrong conclusions or influenced by certain ideological orientations in vogue in the in the nowadays mediatic fields.

In the majority of the papers consulted I identified the effort to demonstrate the effective compatibility of the the human rights general theory with the structure of the Islam fundamental percepts. Unfortunately, sometimes, the scientific credibility of some documentary sources is prejudiced by the apologetic characer of the language they use, that is why I avoided using them in the content of this paper.

Rejecting from the beginning the discourse and the demonstrations of some contemporary authors adherents of the fixist conservatorism, we have selected from the vast literature on this theme only those sources which, in the spirit of the scientific truth. support the point that there is gap between Islamic tradition and the human fundamental rights, but this gaping is surmounted by a palpable legislative effort, by the actions of the democratic forces from some Islamic states and by conscious changing of the conservative vision of paseist type, in an objective an equilibrated manner of renewing the human rights philosophy in Islamic pattern.

It is self understood that the changing of the Islamic Law – the essence and the dominant reason of the contemporary Islam can be done only gradually, by adjusting measures not at the lvel of religious percepts, rather in the field of Positive Law predominantly in the legislation related to the Civil Law, Penal Law, Family law and Personal Status.

The events of the latest years, especially the Arabic World mass revolts placed on the first plan of the national and international agenda the problem of the human rights.

In no case the laicizing or the secularizing of the Islamic Law is not a productive way, it is neither accepted and consequently neither possible. The Conflict between the Islam and Democracy is not of a political nature, but it is rather of juridical nature and of civic culture.

Of course, in the Islamic vision concerning morality the liberty of the sexual orientations , the use of a certain vestiment, of Islamic traditional inspiration, and the the western

vision there will always be a great precipice, but this impediment will not disturb the evolution and the changing of Islamic mentality concerning the woman and her role in the family and society.

At the same time, the discourse of patriarchal type, perceived as pure Islamic discourse coexist with a radicalized language of the young muslims and the choir of these voices covers from place to place, unfortunately, the dialogue between muslims and the militants for the human rights.

This tension between the two poles of the Islamic society existence – a pole represented by the Muslim communities from the western world, reforming and opened to renewing and the other pole, conservative cantoned on ideological and religious “patterns”- will generate social instability and mutual suspicions and of existential uncertainty.

Consequently, we consider that only the muslims themselves will decide the way which they have to follow on the condition that the different governmental policies should lead to the prevailing of the human right principles and to their institutionalization.

We came to the conclusion that the main reason of the misunderstanding between Islam and Christianity is one of cognitive matter, but not religious. In other words the lack of knowledge as to the specificity of the Islamic type society, with its own religion, culture and mentality, may lead to conflicts. That is why, for settling or removing these focuses of misunderstanding, knowing each other is the only plausible and feasible method. This principle gives also voice to the present Doctorate Thesis.

We also rejected, as not being defining for the contemporary Islam, those radical positions, based on the strict theological foundations, but not on traditions and different practices, on a historical inheritance turned to good in law texts.

As it has been delineated in the speciality literature, the approaching of the fundamental paradigm of the human rights from conservative Islamic perspective may be a jumping-off place by means of which some partisan political attitudes are promoted, or an unaccepted breach in the universal character of the human rights is opened.¹

We revealed the fact that the states which solely affirmed their Islamic identity, in constitutional documents, cannot be ignored, neither deconsidered, they constituting a compact geostrategic block, both under the aspect of the numeric gravity of the population, of the territory surface and of the raw material resources value, but also a source of potential conflict.

Consequently, not the sterile criticism of the Islamic concepts, based on theological or ideological arguments is the way to follow but, in the vision of the acknowledged researchers and analysts, to whom I join, the foreseen solution is the one of democratizing of the political regimes of these countries.

The changing and democratizing process of the Islamic society, although represents the essential priority, is disturbed by the existence of some worrying

¹ *Droits de l'homme a la carte, Tribune de Geneve, 25 November 1998*

phenomena, such as: the keeping in power of some dictatorial, militarized regimes, the convulsions of some totalitarian regimes, being in crises of legitimacy, the conservatism of some anachronistic monarchies, with roots in the feudal epoch, the tendency to annihilate any form of internal opposition, under the imperative of keeping the monolithic unity around the absolute leader, the self-entitled savior of the independence and sovereignty of the state, cases which are more and more frequent of corruption and spoiling of the resources already impoverished of some Islamic states by a greedy class following with obstinacy its own interests and defended by a precarious legislation.

As a consequence of the pressure made by their own peoples, many of these regimes, confronted with waves of revolts and popular discontent during the latest years, initiated legislative reforms in the domain of the human rights.

In the content of this Doctorate Thesis I have analyzed the way in which the political actors as well as within the present legislative frame from the main Islamic states reflect this global tendency of positioning the rights and the liberties of the citizens on the first plan and if this orientation comes into collision with the doctrine principles and the religious practice from these states.

Before approaching the problems of this Doctorate Thesis, I evoked the two trends of thinking, which mark the polemic of the two ideologies which are in an apparent conflict: the democracy of western type and the Islam. On one hand, there is a number of politologists and sociologists, who consider that Muslim dogma is fundamentally an obstacle against secularizing and laicizing², but on the other hand the fundamentalist Muslims, who have a position "in mirror" and corroborate reciprocally in their vision about Islam, which they share simply reversing the signs.

On a neutral position the representatives of the *cultural relativism* are situated a skeptical contemporary orientation, who consider the human rights a construction of the West, with a limited applicability, which gives expression to a global utopic order, in which the concept of the human rights is nothing else but an illusion.?

Anyway, we consider that the ideas of the *cultural relativism* are reconciled with the universal character of the human rights, as, in every day life, the cultural, economic and social rights, political or civil rights are considered interdependent, on one hand but on the other side the emergency of the globalization brings again under discussion the necessity of the human rights universalizing.

I have also revealed the fact that the modern logos related to the human rights is predominantly a discourse in the terms of the international law. The groups of interests, nongovernmental organizations, major international organizations as well as the states accept, almost unanimously, that the global regime of the human rights is a legal construction. From this reason, the Doctorate Thesis concerning the Islam and the human rights also adopted a predominant juridical approach, alike the majority of the specialty papers, as well as the *curriculum* of the human rights at university level.

² *Religia in democratie . O dilema a modernitatii coord. Camil Ungureanu, Polirom, 2011, cap. 7, Islam si democratie, p. 240 si urm.*

In this context of the globalization, some authors accredit the idea of law hegemony in their discourse related to the human rights, the only way that assures a dominant set of values, on which a legitimate international action may be initiated.

In this way of approaching the subject, we proposed to ourselves to reveal an equidistant, realist objective, impartial and equilibrated vision, far ahead from the distorting and simple manner with which the controversial subjects of the evoked theme are approached, suggesting a substantial analysis of the dichotomic or even antagonic ratios that manifest themselves in the process of transformation and reconfiguration of the contemporary Islam.

In an universe closed to knowledge, which was defined until yesterday as a stone-still project, concentrated on intangible values, characteristic to the Islamic ethos, the essential point is represented by the solutions that can be offered in present by the Islamic legislators on the way of an irreversible evolution to democracy. Depending on this juridical answer the *viability* or the *anachronism* of the Islamic Shari'a will be judged. /

The main analysis reference points of our scientific approach has been focused on the following 5 research subjects: the ratios between *Shari'a Al Islamaya* (The Islamic Law) and the positive law, the juridical protection of the human rights in the Islamic countries, the liberty of expression, the religious liberty and the statute of the woman.

In order to focus the area of the scientific research to a more restricted domain, respectively the way in which the problem of the human rights in Islam is treated in present, our approach considered in a concrete way the relationship between *The Religion and the Juridical System of the Islamic Countries* especially the implementing of the moral-religious percepts in the constitutional texts and juridical documents respectively in the positive law of the Islamic countries.

This Doctorate Thesis is not an eulogistic paper on the situation of the human rights in the Islamic world but is also not of polemic nature, an engaged one.

As other authors have shown the changes which have taken place inside the Islamic world represent normal stages in the evolution of this society and in no way possible threatenings for the international peace and security.³

The convulsions and the apparently chaotic phenomena, which manifest in the life of some Islamic countries are in fact defence reactions towards modernity, the modernizing phenomenon being viewed by the traditionalist muslims as a protection of the political-economic hegemonism of the West.⁴

Before approaching the subjects evoked above I specified that a clear distinction must be done between *The Islamic Religion*, properly, and *The Political Islam*.

The Islam, as a religion, is the supreme embodiment of the respect to God, and whose notable aspiration is the creating of a community (*ummah*) led according to the percepts of the Qur'an.

³Marcela Sageata, *Lumea islamica – o retea dinamica de sisteme*, Editura Top form, Bucuresti, 2006, p.8

⁴Ibidem p.8

*The Political Islam*⁵.

Represents a syntagm used by the contemporary politologists, designating a mixture of orientations and extremely different political movements, whose ideology is to a great extent divergent, although all of them claim their origin in the Islamic religion. *The Islamic Fundamentalism, the Islamism or the Islamic religious radicalism* represent only a part of the political and social phenomenon from the countries where the Islamic religion prevails and which has no capacity to determine and influence the physionomy of the Islamic society.

Eliminating the excesses and the missinterpreted percepts of the genuine Islam, we consider that the Islam, in its defining guide lines, authentic ones, has sufficient arguments to exceed its own existential dilemma (to adapt itself to our daily defiances or to canton itself in the mentality and in the view existing during Mahommed Prophet (pbuh) has at its disposal numerous ideological resources and of theological order, by means of which a reform of the modern Muslim state can be accomplished.

The solutions of an Islamist radicalism (which evoke and invoke an expiatory) Jihad or the fixisms of a puritan Islamic conservatorism, will not bring the desired change but, in the spirit of Jaques Derrida's ideas, only *the reciprocal hospitality*, whose germ is to be found in the three monotheist rules, by cultural dialogue and interconfessional one reaches at the *deconstruction* of the reciprocal antipathies and suspicions and at the *reconstruction* of the trust in the values of democracy and in the aptitude of the Islam to change itself.

Taking into account the reference points presented in the specialty literature dedicated to the human rights in the Islamic world, we suggest in this paper to present realistically which are the sore subjects of the Islam-Democracy issue and to what extent they are grounded on realities and truths, finally answering a capital question: if the Islam is capable to adapt itself to democracy, or if democracy may set up itself in an Islamic state.

Consequently the conclusions we already anticipate in these lines have a logical basis: there are two principles which govern the whole existence of the Islam, and these ones find more than ever their applicability and prove their validity: a) to *know* and *recognize* the other (the other is also a human being, creation of God) it is a duty which the probationer of the Muslim religion finds out even from the first days of his existence on the Earth; *to live together (vivre ensemble)* is the second order of God, revealed by holy Qur'an.

The research method. Taking into account the complexity and the difficulty of this themes, which analyzes a domain being at the confluence of some sciences, namely: The Theology, the Polithology, the Islamistic, the Constitutional Law. We attached our research on *a holistic method*, considering the irreducibility of the whole to

⁵The Political Islam is a set of ideologies which consider that the Islam is not only a religion, but also a political system. From the point of view of the meaning it is rather similar to Islamism, a term invented by Voltaire but, in the acceptance of the contemporary politologists, it is synonymous with the radical version, the extremist one, of the Political Islam

the sum of all its parts.

Consequently, we dissected in detail the component elements of the human rights universe in the Islamic world, which we have analyzed, in mirror, in relationship with the Islamofobe ⁶ theses which contest the substance and reality of the present changes in the main countries that strongly affirm their Islamic identity.

In the juridical plan, we have presented the upto-day evolution of the present trends in the approached domain revealing the political steps concerning the consolidation and the modernization of the legislative set related to the human rights in the Islamic world.

In the territorial plan, although the majority of the subjects referred to the human rights problems in the Arabic⁷) world, hot area, contorted as a consequence of a breaking out, from the depth of the history, of some contradictions, conflicts and social, economic, political problems still unsolved, our research also approached the situation of some European countries, where significant Muslim communities live.

We have situated ourselves, in other words, in the domain of pure scientific research, beyond polemics and reciprocal accusations, ignoring or criticizing, where it was necessary, those papers which abound in hurried, confused, obviously partial conclusions.

In Chapt. I dedicated to the Islamic Religion, we have shown that, in order to understand the Islamic Religion, accepted as a defining expression of the Islamic mentality, we have to integrate it in the context of the Muslim civilization with its specific peculiarities.

We have demonstrated that we can approach this knowledge, starting from the patterns imposed by passions and politics, superposed over the paradigms of the modern human being, living in the III millennium, and attracted by the so called integrating scientist scheme.

The Islam is an irreducible ordained fact, which hardly reveals itself to the analyses and comparisons. Revealed religion, the Islam dominates all the human being's activities, its spiritual and moral life as well as its social and political attitude. It does not claim only an adherence to certain truths, but also imposes an assembly of prescriptions, which regulates the worldly organizing of the Believers. The Muslim life is based on this spiritual ordained fact; the Islamic world and its civilization has been organized around this ordained fact since the old epoch.

Afterwards we revealed the personality of the Prophet Mahommed (pbuh), His biography and His role in the enlightening of the Islamic society of classic type.

In this context I have quoted a defining text, of a Romanian author, by means of

⁶ Among the adherents of the Islamofobia we mention: Samuel P Huntington, *The Clash of the Civilizations and the Remaking of World Order*, Touchstone Books, New York, 1996; Bernard Lewis, *What Went Wrong? Western Impact and the Middle East Response*, Oxford University Press, New York, 2002; Roy Oliver, *Globalized Islam. The Search for a New Ummah*, Columbia University Press, New York, 2004; Gilles Kepel, *The War for Muslim Minds: Islam and the West*, Mass Cambridge 2004 a. o.

⁷ Among the most authorized voices in the domain of the *Human Rights in Islam* we remind: Mawlana Mawdudi, *Human Rights in Islam*, The Islamic Foundation, Leicester 1976, John L. Esposito, *Islam and Democracy*, Oxford University Press, New York 1966; Tariq Ramadan, *Western Muslims and the Future of Islam*, Oxford University Press 2004

which this one stated the essence of the role Mahommed had (pbuh): “ *As long as a religious community is forced to engage with agencies of statal nature, it is also at the same time a Church and a public authority, in the power of which falls both the executing of the civil laws and the matters of spiritual order. The Prophet was the man who knew how to make a successful joint of these two tasks, becoming also a religious and a political leader for his adherents*”.⁸

In this thesis we have revealed a prevailing juridical deed related to the vision concerning the Rights of the Human Being: we refer to a document dating back to that period,⁹ in the form of a protocol, the content of which is considered *the first constitution of an Islamic state*.

This fundamental deed institutes a set of norms, inclusively rights and obligations, for the Muslim, Christian, Jewish community, but also for the tribes which had not converted themselves to any of the monotheist religions from Medina, having the final purpose the constituting of a Muslim community: “*ummah*”.

This genuine Constitution enumerates principles which were to be obeyed by the inhabitants: on an internal plan, the reminded deed stipulated the assurance of the public order, of the religious liberties, the instituting of a special regime for Medina town where the starting of the violences, carrying guns were forbidden, and also its proclaiming as a “*sacred place*”.

The Constitution stated the necessity of a judgement system instituting and issuing of norms concerning the the solving of the litigations, especially in the domain of “*talion law*”, as well as to the taxing of the persons, in case of armed conflict.

On the external plan, the deed specified the norms of the relationships with the neighbour tribes, the conditions related to the concluding of external alliances, etc.

Among its inovating stipulations, we remindthe instituting of the clemency principle towards the foreign guests, the defending and the reciprocal helping. From the moment of signing this proto, all the old conflicts, including the unsolved ones,were to be ceased. Another basic rulewas the one related to the fact that all believers became, “*by force of of law*”, brothers.and the nonbelievers were considered enemies.

By virtue of this Constitution, “ *all the old solidarity laws concerning fortune, honestyand life were disturbed*”¹⁰, the criterion which accomplished the unity and established the identity of a community was “*religion*”, “*belief*” in Allah. By this change of mentality the role and the importance of tribe chief, in his quality as a supreme chief is cancelled, the Prophet becoming nor only a spiritual leader but also a leader on a social plan and judgement instance, whose decisions will become law letter.

Also, this Constitution instituted regulations concerning the “*protection*” of the family and the role of the woman in the society.

Further on, we have approached the problems of the human being's right, as they

⁸Gheorghe G. Stanescu, *Mahomed si Profetul*, Editura Dacia, Cluj Napoca, 1998, p. 115

⁹The document is known under the denomination of *Constitutia orasului Medina sau Sahifat Medina*

¹⁰Gheorghe G. Stanescu quated work, p.117

are presented in the sacred text of the Qur'an.

The ideological basis, from which the construction of the concept of human rights begins, is the notion of “ummah”

As an inovating religion, placing in its center the absolutr monotheism (Allah is the only God, uncreated, and Muhmmad is the last Prophet), thr Islam contributed not only to the obeying of the pagan Arabic tribes, but also to the unifying of the whole Arabia.

The living, indestructibile link accomplished by means of the religious belief, prevailing to the the blood link inside the tribe communities, having ancestral roots, will be an inedited and efficient instrument in the action of unifying the Arabic nation. Having the denomination of “ummah, this one becomes a quite new social concept which places on the first plan the joining of interests and ideals, irrespetive of the language, religion, ethinic or social origin of the society members.

This concept will be raised to the rank of supreme doctrine of the Muslem religion and state.

Consequently, the religious essence of the Islamic state has determined us to evoke some aspects of the Islamic religion. In its esence, thr Islamic religion stresses upon the following defining elements: Qur'an, Sunna and Hadiths.

The Qur'an is made up of 6342 verses ('ayat), of which only one part refers to law matters, the other verses approaching religious norms, obligations of the believers, the prescribing of some moral behaviours, of some varied percepts related to the family, education, in general, spurs related to behaviour, feeding, clothing, etc.

Their assembly is devided into 114 chapters (sura), of unequal lengths.

Sunna” is the life of the Prophet Mahommad (pbuh), which explains and completes the Qur'an.

From the point of view of the sacrality, *Sunna* is situated, related to the Qur'an, in the very next plan. From a doctrinarian point of view “*Sunna*” was systematized in its final form in the IX -th century.a. c.

Sunna” comes from Arabic root “*Sanna*” signifying “*to lrgislate, to institute*”. By this term we should understand everything that is attributed by tradition as being said or done by the Prophet.¹¹

“*Hadiths*” relate eveything “*the Prophet said or did during his life*”. These are oral forms, which record the whole behaviour of the Prophet, as it was reconstructed from the stories of the followers, behaviour conveyed from generation to generation.

Immediately after the Prophet's death, a great number +- “*hadiths*” appeared, for which one can establish the authenticity, especially by identifying of all those who contributed to their conveying, advancing to the initial source, namely the persons who used to accompany the Prophet, “*Sahaba*”

A chapter of the paper is dedicated to the nowadays situation of the Islam. We have shown tha the Islam suffered during the history a slow process of transformation,

¹¹*Sunna si Hadiths are considered sources of first rank of the Islamic Law (Shari'a Al-Islamya*

of modernizing on varied plans. This situation is also continuing during our days, only one question being asked: up to what point is this change going to continue?

According to the theory system convergence, concept launched in the last quarter of the previous century, the bringing nearer is inevitable, at least at the theoretical level, of the two civilizations; the Christian and the Islamic ones.

The unifying element could be, beyond the common religious basis, (Christianity and Islam are monotheist religions, appeared in the same geographical region of the world: Middle East)the democratizing process.

As to the term of *Islamic democracy*, crucial concept of the contemporary politology, we have shown that there are two different approaches, from a conceptual point of view, of this term.

Some west researchers consider “the Islamic democracy”as being a veritable nonsense

*“ The adherents of the culturalist theories fom West support the idea that the Muslim countries had not any kind of democratic tradition and tha this fact would be due to, in agreat extent, the applying of the Islamic norms in society, norms which maintain in a way the medieval status or the premodern one, in a motionlessness of poverty, illiteracy and obedience to the authoritative regimes”*¹²

Tis theory, according to which modernizing would be incompatible with the tradition, is contradicted by the realities of the XXI-th century, especially in the Gulf countries, great producers of oil, which created a modern infrastructure, inclusively a performing educational system, but articulated on the background of a conservatorism of social and religious order.

On the other side, in a “ *in mirror*” approach many Muslim theorists answer the allegations with a denigrating tendency, vehemently,sustaining that “ *democracy is an artificial import, incompatible with the Islamic norms and values,a form of ideological neoclonization of the West and of distroying a tradition under the impact of the globalization* ”.¹³

During the latest period the nowadays order of the global policy is strongly marked by the confruntation of two tendencies: *The Islam* and *the Democracy*.

After the fall of the comunism, the nonconservative circles designate the Islam, totally, as a strong adversary. These ones considr the Islam as being at the antipode of the democracy, representing an enemy of the West. In this block of “*casandre*”??? the researcher Norman Podhoretz, for example, is situated, who anounces extremely threatening the imminence of a “*fourth world war between the Islam and the West*”¹⁴

In this context we have also analyzed the theme of “Islamophobia”. According to some studies dedicated to the”*Islamophobia*”¹⁵ it has been notoced that the main critics

¹²Mihaela Matei, *Islamul politic si democratia. Intre reforma, interpretare si Jihad*,Editura RAO, Bucuresti, 2011, p.18

¹³ibidem, p. 18

¹⁴N.Podhoretz, *World War I: The Long Struggle against Islamofascism*, Doubalay, 2007.

¹⁵*Islamophobia:A Challenge for Us All*,Runnymede Trust,1977,p.1quotation in Muzammil Quraishi,*Muslims and Crime:a comparative study*,Hans Aldershot,England,p.60

brought to the contemporary Islam are based on the following ideas: a) The Islam is considered a monolithic block, static and incapable of change. b) The Islamic culture does not share the same common values with other cultures and it is not influenced by any factor that could be beneficial. It is “*something else*”, it is an irreducible “*alteration*”. Consequently, the Islam is considered inferior to the West, especially as to the treatment to the women. From this point of view, the Islam is classified as being a barbarous existence way, irrational and primitive. c) The Islam is “*a political ideology*”, being useful only to some political and military interests, a symbol of the terrorism.

Unfortunately, the hostility to the Islam is a screen that justifies the discriminating practices in relation with the Muslims from the European countries, of their exclusion from society.

Having in view the above stated ideas, one may consider “*Islamophobia*” represents a negative pattern of intolerance, unacceptable from the point of view of the mentalities which should prevail in the modern contemporary society.

As a matter of fact, in 2001 at “*The International Forum for Combating the Intolerance*”, from Stockholm, “*Islamophobia*” was appreciated, officially, as being a form of *intolerance*, together with “*xenophobia*” and “*antisemitism*”. Sometimes “*Islamophobia*” is considered form of racism.

This notion was criticized by some European leaders of opinion, showing that it is not the Islam and its principles which are the target of the hostility, but rather the Muslims, that is why the term should be replaced with that of “*anti-Muslimism*”. Many discourses with Islamophobic tendency are usually based on negative stereotypes related to the Islam, which, usually, is transformed in attacks against the persons of Islamic origin.¹⁶

An important aspect of this study is the one referring to the status of the Muslim believers being on the European continent. The XX-th century modified, in a definitive way this status. In the general context of globalization, and in the extent in which, after the dismemberment of the Ottoman Empire, the borders “*Dar Al-Islam*” (*The House of the Islam*) did not extend anymore, the new reality was indisputable: important populations of Muslims emigrated from the former colonies to Europe, they live in territories for which Shari'a Al-Islamiya does not represent an imminent danger neither in the political plan, nor in the religious plan.

Consequently, the populations of Islamic religion (with a status of minorities) should learn to live together with the Christian population from Europe, and the Islamic ideology should accommodate itself to a new geo-political reality. The European Union being in a redefining process, unhomogeneous from the economic-social point of view, with an extremely fragile identifying consciousness, with an uncristalized cultural physiognomy, finally, with an Europe incapable to offer a categorical answer for the problems of the new “*partners on the way*”

¹⁶ Alan Aldridridge, *Religion in contemporary World: A sociological Introduction*, Polity Press, February 1, 2000, p.168.

The Islamic militants desire to make from Quar'na"point of reference¹⁷ for the disregarded social segments of an individualist society, consumist ones and marked by the spirit of competition for prosperity at any price"¹⁸

This hate for the muslims threatens not only the basis of the democracy of society, "*The Demonizing of the Islam*" is a process of image, by means of which the extremists exploited panic with ability, the despair which overwhelmed the inhabitants of the continent, affected by the keen economic crisis, but also worried by the perspective of losing their own identity and by the globalization. At the other pole the temptation of a *multiculturalism of the reconciliation* between Democracy and Islam is situated. On one side, the Islam – as a religion of universal – is confronted with a cultural dialectics which oscillates between modernizing and the coming back to its authentic forms, producing a synthesis, which is criticable only to the extent in which it gives birth to a much more radical new antithesis,

Within political frame, the Islam is perceived as being an instrument for this antithesis from the positions of which the western countries are accused of impiety and materialism. The democracy, on the other side, becomes a good governing criterion, inherent complexities and complications specific and dependent on a certain historic context. The two trends, apparently hostile, are not by all means irreconcilable. However these give birth to unexpected effects when they become congruent.

On a cognitive plan there are two important meta-socio-political theories: *the knocking of the conflict of civilizations* promoted by thinkers such as Bernard Lewis¹⁹ S Huntington²⁰ and *the theory of globalization*, having as a solution *the convergency of the systems*.²¹

In both theories the effects will change totally the life pattern of the people. Within this frame, we have further approached the issue of the globalization, analyzing in this context the problem of the human rights in Islam.

In accomplishing this project with world vocations what has to be achieved is *the universalizing of the good*" but *the rational agents*" of this "*new order*" could not be anybody else but the representatives of the western civilization, considered "*superior*" to the others.

The first step to this convergency of the values of "*good*" related to those of the "*evil*" has been done by what we observe nowadays: the accomplishment of a single political "*discourse*", the one of the "*human rights*". This concept is the symbol of the "*new global consciousness*" disseminated all over the world by means of world "*informational revolution*": Internet, mobile telephony, satellite telecommunication, etc..

¹⁷This desideratum is known under the denomination *Ragbat Al-Islam*, namely *The Wish of the Islam*

¹⁸Dumitru Chican, *Jihad sau drumul spre Janna*, Bucuresti, Corint, 2011 p.154-155.

¹⁹Bernard Lewis, *The Roots of the Muslim Rage*, in the *Atlantic Monthly*, September 1990)

²⁰Essentially, according to the theory of the American thinker, after the end of the *cold war* the humankind will orientate itself to a conflict between different religious confessions, in fact to a collision of the civilizations.

²¹We already witness a series of convergencies of system: of accountancy order (unique standards of accountancy) financial (unique currency), in the domain of mobile telephone communication, of the Internet, in the domain of emergency calls(112) in the domain of teaching and in the domain of *the rights of the human being*

In theoretical plan, the question that is asked is the one if the events of the latest two years.”*The Arabic Spring*” are the effect of the manifestations of one or the other of the two theories, enumerated above.

On the other side the revolutionary wave which comprised some Arabic states, at the beginning of 2011, demonstrates the way the televisions, the Internet, the effects of the globalization of the information, have contributed to the releasing of the movements which led to the falling of the regimes from the respective states.

In some states, at the beginning of the demonstrations the claiming was not of religious nature²² the manifestators requeste free elections, the liberty of expression, of meeting, the falling of the dictatoship, the elimination of the corruption from the society, etc...

What happened during the “*Arabic Spring*” was not the result of the implication of Islamic movements, but after thse events the Islamic parties, organizations and groups which came to power transformed themselves into legal movements becoming political forces with constitutional role.

In spite of the differences between the two religions and cultures, the recent attacks of some extremists from the Islamic fundamentalist organizations against some Christian dwellings from certain Arabic statesdoes not prove the outbreaking of a conflict betweenIslam and Cristianitybut rather “*a lack of dialogue*” , a crisis of the dialogue.

The dialogue between civilizations and religions represent a way to breaking the deadlock characterizing the whole world, but the instruments by means of which one can accomplish the normalization of this tense situation are ,among others, the ones related to the perfecting of the legislative frame, first of all in the domain of the civil rights and liberties.In section II of the Doctorate Thesis we have analyzed the theme of the Koran Law known under the denomination of “*Shari'a Al;-Islamya*”, In the conception of the Arabic authors”*Shari'a Al-Islamya*”represents the supreme law sacred and infallible of all muslims, comprising all the juridical and religious dispositionsrecorded in the Koran and in Sunna.

Shari'a Al-Islamya”contains the fundamental prnciples of the Islamic Law the main general norms of law.

The Arabic jurists consider that “Shari'a Al-Islamya presents juridical solutions for all branches of law, either explicitly or implicitly.

“*The Corporalitate of the divine willis embodied in the Islamic Law(Shari'a), considered as a Codex of principles and norms which governs the totality of the aspects of individual and communitary life, from thr universe of the familyto the problems of social and political behaviour, so that this compendium of canons becomes a compulsory guide for everything that is related to the terrestrial life of the individual*

²²In Bahrein there were conflicts between the representatives of two Islamic rites (the *shiits*, which are the majority, and the *sunnis*, the minority but the claimig of the street were of social, economic order and were related to the **enthroningof democracy**. Nowhere at the beginning of thse manifestations there were inter-religious or inter-ethnic colisions

*and of the community in which the human being is born and lives”*²³

On a methodological plan *Shari'a Al-Islamya* comprises the classifications, the juridical categories, the principles, the sources, the forms of organization, the methods of study etc...with which the other law systems operate.

The conciliation among the retrograde and fixist dogmas and the imperatives of the present juridical circuit, of the modern life, has been done gradually and in a difficult way.

Maintaining predominant Islamic substance, the reforms, sometimes sporadic and fragmentary, some other times energetic and courageous they managed to brush up certain stipulations which came into contradiction with the requirements of the contemporary life.

The Objectives of the Islamic Law. The Islamic theologians stressed upon the following four essential objectives of the “*Shari'a Al Islamaya*”. To observe that the majority of these objectives are meant to assure and protect the fundamental Rights and liberties of the human being.

1. The dispositions of the *Islamic law* should defend the legitimate interests of the human person;

2. In the second place, *Shari'a Al- Islamya* should assure the protection of the five vital values which, in the Islamic vision, are: *religion, life, prosperity, goods, nation*.

3. Any deviation or disobedience related to the dispositions comprised in the Islamic law leads to corruption, disorder, and destroying of the life.

4. Finally, *Shari'a Al-Islamya* establishes the strict necessary elements for the defending of the vital values, as well as the adequate ways for repressing all the disturbing factors.

Without knowing, the theoreticians of the Islamic Law broke the new ground in the domain of the law and the fundamental liberties when they set forth the list of the objectives of the Islamic Law.

Consequently, one of the one of the research directions of the present Doctorate Thesis constituted the identification of those stipulations of the Islamic Law,²⁴ which approached, directly or indirectly, explicitly or not, the matter of the human rights. The conclusions to which we have come confirm an obvious truth, namely the one that, over one thousand years ago, The Islamic Law was the first juridical system from the history of the humanit, which assured the protection of some personal rights and liberties, known presently under the name “*The Fundamental rights of the human being*”

In the following examples we will reveal those stipulations of the *Islamic Shari'a* which is constituted in a consequent, coherent system and of an obvious juridical logic prefiguring “*avant la lettre*” a domain which has become nowadays the border stone of

²³Dumitru Chican, *Jihad of the way to Djanna*, Bucuresti, Corint, 2011, p.29

²⁴Bernard G. Weiss, *The Spirit of the Islamic Law*, Athens, Georgia, 1998, University of Georgia Press, p.17

any national legislation: *the defending of the human being rights*.

We have stressed upon in the course of this paper those norms stipulations and juridical concepts specific to the Islamic Law, having as source the Koran, the Islamic tradition, which assured, many hundreds of years ago, the requests of the people to be respected, defended and to have their fundamental personal right guaranteed.

An important chapter, on which presently vivid disputes are being done referring to the respecting of the human rights in the Islamic society, is the one of the traditional family relationships.

Marriage. The Islamic Law regulates “*in extenso*” the institution of the marriage, inclusively the family relationships. This is accomplished both by means of the Islamic Sharya and by the ordinary judgement instances which are called to apply the stipulations of the “*Personal Status*”.

The Koran Grants a primary importance of the woman's status in society, her relationships with the husband, the children, the members of the family, the members of the society. The sacred book of the Islam approaches these problems in its most important texts, among which, Chapter 2 “*Al-Bakara*”, the longest of the Koran sources.

Like the majority of the Koran sources from the Medina period, the text deals with important legislative aspects related to the family law (*marriage, divorce, nursing, the waiting period for the widow, interdiction to marry idolatry women*).²⁵

Chapter 4, considered also one of the most ample Koran texts bears the name “*An-Nisa*,”²⁶ containing the rights of the women and of the orphans being under wardship, advising the Muslim believers to grant women an equitable treatment, to acknowledge their inheritance right, to have a “dowry” (“*mahr*”) and others.

Referring to the interdictions related to marriage Chapter 4 enumerates the situations in which marriage is forbidden, and also the obligations of the husbands (of the husband towards wife, and of the wife towards husband), the text enumerates the behaviour the husband should have in the conjugal life, the way in which the problems or misunderstandings in the family must be solved. To mention the wise approaching which the husband has to manifest to his wife, being necessary to grant her attention and understanding.

Juridical aspects of the life of the Islamic family²⁷ are also dealt in equal measure in the content of Chapter 33 “*Al-Zab*” containing 73 verses.

This deals with matters linked to the public or private life of the Muslims, but especially aspects of the family life.

These incentives, with a recommendation character, will subsequently become

²⁵ In Arabic the term *politeist* is rendered by the word *musrik* with the meaning *unfaithful or person who believes in more divinities*), *unfaithful*), other prescriptions referring to the family life.

²⁶ Shura 4 is also known under the name *The Great Shura of the Women*, unlike S.65 *At-Talak*, *The Shura of the Divorce*, also named *The Small Shura of the Women*

²⁷ Barbare Freyer Stowasser, *Women in the Qur'an's Tradition and Interpretation*, New York, Oxford University Press, 1994; Amina Walus, *Qur'an and women-Reading Sacred Text from a Woman's Perspective*, New York, Oxford University Press, 1998.

juridical norms of Islamic Law. They approach the problem of women clothing, the divorce, the adoption, the inheritance, marriage to the divorced woman of the adopted son, the marriage of the Prophet with more women, as well as a series of incentives and moral principles or of behaviour in society.

The Islamic Law regulates *The Personal Status*, a distinct attention being given to marriage. There is, however, in the issue of the Family Law important distinctions among the different solutions offered by the Islamic law schools. The disparity among the solutions is explained by the variety of the interpretation methods of the Koran texts, but also by the difference existing between the circumstances of time and place, specific to each doctrine.

The Condition of the woman in Islam

The presence of the woman in the content of the Koran verses attest the attention that is given to her, and the recommendations, ²⁸ prescriptions or interdictions, where they are, referring to woman, in her three hypostases : wife, mother or daughter demonstrate the important role she plays in the society.

The situation of the woman should be analyzed in comparison with the following aspects, according to the moral-religious prescriptions of the Koran: the traditional clothing of the woman, the rights of the woman during the marriage, the dissolving of the marriage and the attack ways the woman has in case of a divorce trial, the successional devolution (inheritance), the right to education of the woman, the domestic violence, the familial planning, the access of the woman to the public life and her implication in politics.

The Vestment with Islamic specific. As to the vestment distinct problem is the wearing of “*hijab*”.

All the theoretical discussion related to the necessity of the veil wearing is focused on the content of Chapter 24 “*An Nur*”, verse 31 which states: *Tell the believers: to look downwards, to guard their shame, not to reveal their beauty except the one that appears, to put veils on the breasts, not to reveal their beauty, but only to their husbands ²⁹ or fathers, or fathers of their husbands, of sons of their husbands, or to their brothers or to sons of their brothers or sons of their sisters or to their servants, and to the ones mastered by their right or to the servants having lack of desire, or to men who haven't known yet the nakedness of the women*”. For the ones who would object that these prescriptions are addressed exclusively to women, it is better to know that the text of this surah is to read

²⁸the Qur'an contains recommendations and it does not impose restrictions or interdictions as to the daily life of the woman. That is why, the Islamic theologians require all those who approach this matter to analyze only sources of the Koran, in Arabic language, the proper Sunna and the Hadiths and interpret them according to the original meaning without injunctions or distortions which would pervert their signification.

²⁹These categories of people are the ones known under the name mahram, respectively men with whom the woman is not (from a legal point of view) permitted to marry. That is why, in front of them, she is not obliged to cover her face and breast. Also in S 33 Ahzab, v.55 it is stated explicitly that the married woman can discuss with her father, brothers, nephews, women, her slaves without wearing a veil.

together with the text of the previous shura, Chapter 23, "Mu'minum", which is addressed to men, urging them to look downwards and guard their modesty. The two texts advise to behave in order to attain purity and chastity in the relationships among sexes, the man having the obligation not to look at the charms of the women, but also the correlative obligation of the woman not to show it:

"Happy may be the believers, who in their prayers are humbly, avoid the careless words, which give mercy, who guard their shame, and go only to their wives.....but the ones who look for more than that, these are the ones who break the laws".

The role of the woman as wife. A second important subject, which has to do with the previous considerations, is linked to the rights given to the Muslim woman resulting from the wife status.

The following rights are acknowledged and respected to the woman, according to the Islamic Shari'a:

- a) payment by the husband of all marriage expenses;
- b) "benevolent and equitable" treatment which the husband owes to the wife.
- c) the right to be supported by the husband, this one having the obligation to assure a proper house to his wife, "material and financial help".³⁰ ("quiwama")

According to Verse 34 Chapter 4 "An-Nisa" the husbands should have a benevolent behaviour to their wives "not to look for quarrel if they are dutiful".

It is also the husband who has the exclusive and unstipulated obligation to dispose of the conjugal home, according to Chapter 65 "Al-Talaq": 6 (*Let these women live there where you also live according to your will*). In this situation, the purchased or disposed house by the husband, with his own financial resources, becomes his personal property, because the wife has received the due *Dowry*, before the marriage, without contributing to the purchasing and disposing of the conjugal home. In other words, the wife has only the *right of inhabitancy*, but not one of *property* in common for the conjugal dwelling. Considering the above mentioned we observe the distinction between the Islamic legislation³¹ and, for example the Romanian legislation, where, according to the *Code of the Family*, the goods acquired during the marriage are common goods.³²

The right of the woman for material support during the marriage. This obligation is due to the husband and consists in offering food, clothing. Looking after, medical treatment, right to home, up to the extent of the husband's possibilities, nevertheless what

³⁰ Asociatia Surori Musulmane, *Femeia in Islam*, Editura Femeia Musulmana Bucuresti 2013, p.29 si urm; Sawzan Fahd Al Hawwal, *Femeia in Islam Dar Al-Oulum Al-Arabia*, Ed. I-a, Beirut, 2006; Jamal Ahmed Badawi, *Statutul Femeii in Islam Vol.III No. 2* USA, Sept. 1971

³¹ This solution is recommended by the Hanefi, Hanbali and Shafi'i law schools, becoming a valuable legal stipulation in Egypt

³² Codul Familiei, Art.30 We state that, since 2011, in the Romanian legislation, the *Code of the Family* has become a distinct chapter, included in the New Civil Code: "The goods acquired during the marriage, by any of the spouses, are, since the date of their obtaining, common goods of the spouses. Any contrary convention is null and void. The quality of common good must not be proved."

the religion of the wife is, ³³ Even under the circumstance of the divorce, the husbands are obliged to offer help to the mothers who are nursing, “*food and clothing, properly*” ³⁴

The work of the Muslim woman outside the house. One of the objections raised nowadays in the West concerning the situation of the woman from the Muslim countries refers to their possibility to work freely outside the conjugal residence.

“The majority of the western studies try to explain the status of the Muslim women using statistical analyses and comparing the results with their own cultural areas, showing the low level of feminine literacy, of teaching or of social integration of the women in the Islamic societies”³⁵

That is why, in order to have a clearer image concerning the situation and the position of the woman in the Muslim world³⁶, it is necessary to understand “the Islamic vision” concerning this subject, according to “Sharya Al-Islamaya”³⁷.

In principle, the woman is permitted, according to the precepts of the Islamic Law to work outside the house, provided that she accomplishes the following conditions:

1. The work should be permitted by the norms of the Islamic Law so that it does not come into contradiction with the interest of the community or with her inward nature.

2. Between spouses should exist a concordance of ideas, a consensus related to the limits of this work, not to endanger the interests of the family.

3. The interests of the minors must be situated on a superior plane as to their education and bringing up.

4. One must take into account the moral regulations, local customs and family traditions.

The Domestic Violence. Another domain in which the Islamic legislation improved the situation of the woman is that of interdicting the use of the violence in the relationships between man and woman as to the *domestic violence*, an indicator that shows how the principles and the legislation are applied related to the human rights as a protection factor of the life and of the human being integrity in general, but especially of the life and integrity of the woman, especially the Qur'an institutes *the principle of the cordiality of the relations between man and woman*.³⁸ Conveyed by the Prophet, the texts of the Qur'an, Sunna as a whole, show mercy and compassion towards the poor and the unhelped (to see the institution of the “*zaka*”) understanding and respect for women, widows, orphans, slaves.

³³This stipulation which obviates the discrimination on religious criteria represents the progressist Islamic vision as to the respecting the rights of the human being. As long as the marriage is valid from the point of view of the civil right, no exception can be made on religious criteria as to the status of the woman, considered wife and mother.

³⁴Sura 2, v. 233.

³⁵Hideko Iwai, *Societatea Islamica si Femeia in Islam*, Institutul de studii din Orientul Mijlociu, Universitatea Internationala a Japoniei, Tokio, 1985, p. 6-8

³⁶Ajid Khaduri, *Marriage in Islamic Law: The Modernist View Points*, in *American Journal of Comparative Law*, vol. 26 No. 2, p. 213-218

³⁷Jamal J. Nair, *Statutul Femeii conform Legii Islamice*, Graham and Trotman, London 1990, p. 6

³⁸S. 9 At Tawba, Sura, v. 71 Credinciosii si credincioase sunt prietenii altora.

The Qur'an statuted the principle of the people's equality irrespective of race, ethnicity, sex or social class, and of the differentiation only by zeal, loyalty to belief and the wish to be useful to the nation.

The revolutionary idea which the Islam supports and promotes is the one according to which the woman is a human being, equal in rights with the man³⁹, unlike the previous period, when the woman was not even considered a social being.

A severe critic that has been brought to the Islam, but especially to the condition of the woman in the traditional Islamic society, refers to the body punishments applied in the case in which *adulterous facts* are proved. As we have already shown in the content of this thesis, the reading by omission of the Qur'an text lead to the false idea of an inferior treatment of the adulterous women as compared with the man. Thus, the ones who commiserate or condemn the punishing of the adulterous women in the Islamic traditionalist communities, ignore the fact that the punishment of the 100 whip slashes is in equal measure valuable both for the women and for the men who are accused of "overdebauchery"⁴⁰. According to the same text the men accused of "slandering" of the honest women, without being able to bring as a proof the deposition of at least four witnesses were punished with 80 whip slashes. Under these circumstances, we ask ourselves the legitimate question: In what does the discriminatory treatment applied to the women consist, in case of immorality knowing that the punishment is valuable both for women and for men?

Chapter 4 "*An Nisa*" verse 34 aroused hot discussions, especially concerning the so called inequity between sexes: "The men are above the women, because God gave priority against them and because they spend fortunes for them". Traditionally, although to the Qur'an the woman is equal to the man in front of God, each of them accomplishing a specific role in a matrimonial relationship. Thus, the husband has to assume the leading of the house.⁴¹ This thing does not mean an abusive, dictatorial behaviour. In fact, the woman is correlatively incumbent on the obligation to be "obedient to the man", it does not mean by this that she lacks any right to act or to decide. In fact, in the Holy Christian Scripture the woman is advised like this: "*Wives, be obedient to your men just like to God: as the man is the head of the wife, as Christ is the head of the Church, He, the Liberator of the body. And as the Church is obedient to Christ, in the same way the wives should be obedient to their men in all things*". (Efeseni 5.22-24).

The most controversial content of Chapter 4 "*An Nisa*", verse 34, is the one which, in translation, sounds like this: ".....the honest women are faithful, keeping in secret what God keeps. Quarrel the ones of whose disobedience you are afraid of! Leave them in the bed clothes! Hit them! But do not look for quarrelling if they obey afterwards....."

The incentive *to hit the wives* cannot be taken into consideration, from very many reasons. The Prophet never used the physical violence against any woman, on the

³⁹To see Sura 4, "*An-Nisa*" Sura femeilor, v.1

⁴⁰Cf. S.24, "*An Nur*", Lumina, v.1; "*Biciu este-i pe desfrinatsi pe desfrinata cu 100 de bice*"

⁴¹This role of leader is also given to the man by the sacred Christian texts: 1 Corinteni 11,3, Efeseni 5.23

contrary, numerous passages from the Qur'an prescribe a full of respect behaviour towards women, mothers, daughters or widows, etc..The wrong translation of the Arabic word "*daraba*" by the verb "*a bate*" led to a wrong interpretation of the meaning of the whole verse.

The Qur'an uses 17 times the ethimon "*daraba*" but in the majority of the situations

it has the meaning: *to separate, to outdistance, to leave, to abandon, etc.*⁴². In other words, this verse recommends the spouses, if it is the case, a gradual behaviour, quarrell, phisycal parting and afterwards the divorce.

The Emancipation of the woman in the urban medium, the existing conditions assured, to a greater extent, a maximum of life security. For this reason, some Muslim authors accepted some compromises concerning the status of the woman, especially the *henefts*, whose school was founded at Bagdad, admitted more rights for the woman.

The generalization of the teaching and the entering with courage of the women in the social life, produced movements at the level of the social consciousness.

The involving of the woman in the social life, her contibution to the increasing of the family budget, is about to contribute to the removing of a secular justice. This fact led to the situation that the woman may have the same prerogatives as the man.

The access of the woman in the political life. There is a certain preconceived idea, according to which the woman might have a formal interdiction to have access to functions of political dignity in society. However, the text of the Qur'an brings proofs of treatment equality between man and woman, in the domain of "*political rights*", especially the right of the woman to participate at the public activities. From this point of view the discussions of the Prophet are eloquent on the attributes the women should have to be appreciated in the society: ⁴³to be faithful, honest, virtuous and obedient.

As to the fulfilling of the obligations towards "*ummah*", *the Qur'an does not make any distiction between men and women, in other words thse are equal in rights and the appreciation of their activity will in a equitable way.*⁴⁴

The history of the prophet's life is full of facts and actions made by women, who dedicated tehmselves totally to the fulfilling of the percepts stated by this, some even leaving their homes, following the Prophet or even loosing their lives.⁴⁵

Means by which women are involved in the social life. The active implication of the women in the political activity of that period of the beginning of Islam was made by means of the folowing specific forms of the Islamic ideology: *Bay'a*, *Shura* and *Djuma*. *Bay'a* is an important political institution, by which the legitimacy of the political system and loyalty to its leader is assured and guaranted. It is *a colective contract*, made up with

⁴²Abdulhsimid Ahmad Abu Sulayman, *Discordia conjugal: recapatarea intregului spirit islamic al demnitatii umane*, Londra, Institutul International de Gandire Islamica, 2006, p.87

⁴³Sura 60, v.12

⁴⁴ *I do not admit any good deed to be lost, of any of you, man or woman.....* Cf. Qur'an, S. 4, Femeile, v. 195:

⁴⁵*Sumaia*, the mother of Omer ibn Yassir, the champion of the Prophet, is known as being the first martir woman from the history of the Islam

with a tripartite participation : *the leader*, who has to receive the oath of loyalty, and by this is acknowledged by the community;⁴⁶ “*ummah*” or the nation, which has to offer his loyalty and faith; *Shari'a*, the Islamic legislation, prescribing norms that have to be respected, both by the leader of a nation and by the nation itself.

Shura (Mutual Consultation) is the instrument by means of which the nation comes to fulfill the purposes of *Shari'a*. To these democratic forms, institutionalized by the Prophet, also participate the women, in equal way with men, according to the competences of each of them.

Juma or *the confessional meeting on Fridays* had initially a general political character, where the participants were men and women. These were called to participate at debates and discuss important problems for the life of the community. Afterwards the women obtained derogation concerning the participation at such meetings, but it is preferable to be present at the prayers uttered in the mosques. On the other hand for men there exists the obligation to be present at these religious meetings on Fridays, as a reminiscence of the period in which the Prophet was perceived in his double quality: spiritual leader and political leader of the Islamic nation.

The emancipation of the woman and the stabilizing of the family are the objectives of the law reforms in the Arabic and Muslim countries, meant to counteract the precariousness and the fragility of the marriage.

This is also the reason for which polygamy was abolished in the modern legislation of the Arabic and Muslim states, but political constitutional and economic rights are acknowledged for the woman, which place her on an equal rank with the man.

A. Schools of Islamic Practice

During the next period after the death of the Prophet, respectively between 632-700 a. d., namely during the Omeiad and Abbasid dynasties, the specialists in the Islamic Law, known under the name of “*fuqaha*”, grouped themselves in some important law schools, named “*madhhab*”.

During the first years of the existence of Muslim Law the presence of some illustrious jurists is recorded; among the most celebrated ones being: Omar Ibn Al-khattab, Aly Ibn Abou Taleb, Abd Allah Ibn Massud, Zayed Ibn Thabet, Abd Allah Ibn Omar, Mohammad Ibn Mussa Al-Ma'moun Ibn Abbas, etc.

However, a great number of authors of juridical papers⁴⁷, named *Hanafi*, *Maliki*, *Shaafi*, *Hanbali*, and *Jaafari*, are considered the founders of the law schools which will bear afterwards their names.

The most important juridical works will be created during the preclassic period (cent. II-III hg.). The existence of the traditional law schools will be continued by proliferation and diversification, during the classic epoch, cent. IV-VI hg.

⁴⁶A famous *hadith* states : Prophet said: The one who listens to me, listens to Allah and the one who does not listen to me, does not listen to Allah. The one who obeys a Muslim leader, obeys me and the one who does not obey a Muslim leader, does not obey me..... Cf. Bukhari, p. 605.

⁴⁷In the II century fundamental compilations appear, belonging to the adherents of the most important law schools: “Scola Malekita” si “Scola Hanefita”.

The main characteristics of this school are defined according to their attitude to the preexisting Muslim structures.⁴⁸

"The Hanefit School". It was founded by Abou Hanifa (m.767) juristconsult original from Kufa, Irak becoming later the best jurist at the Omeiad court, where he was often offered even the function of "cadi", but, which he refused.

He is the founder of *a rational school* which basing on Qur'an texts, by the *logical-inductive method*, estblishedsolutions for diverse speciesto be found in the juridical practice.

this ignores, partially, *"Sunna"*, considering it a source of law only if :

1. *"Sunna"*, proceeding from the Prophet, is conveyed from the origin to the present by a succession of juristconsults, whose authority is unanimously acknowledged.

2. *"Sunna"* was acknowledged by the majority of the jurists from the main juridical centers:

3. *"Sinna"* is, in all the cases compatible with the Qur'an

The Malekit School. Besides *"shafi'it"* and *"hambalit"* schools, *"The Malekit School"* is a traditionalist.

The founder of the school was Malik Ibn Innas (715-795) contemporary with Abou Hanifa. The residence of the school was in Medina town. Most of the Prophet's contemporaries used to live there. And it is also there where there were the most authorized law sources, what gave, even from the beginning, a traditional character to this school.

The representatives of this school refuse the the rationalist method in finding juridical solutions, considring the opinions of the "Ulema" are undiscussible.

The School Shafi'it. It was founded by *Al-Shafi'* (767-820) o.e., disciple of Malik and pupile of the imam Abou Mohammad Hanbal⁴⁹.

Although a school, flourishing at the beginning of III hg. Century, however it has the merit to have accomplished an epistemology of the Islamic Law.

"The Shafi'it School" was divided into two orientations: apart represents the old shafi'it doctrine or *the shafi'it doctrine from Bagdad*, and the other orientatin represents *the new shafi'it doctrine* or *the shafi'it doctrine from Egipt*

"Ths Hanbalit School" was founded by Ibn Hanbal (781-855), *"the most stiff of the four immas"*. Its creator was a disciple of Al Shafi' and he was a *"muhaddith"*, the one who dedicates himself to the science of "Hadith".

"The Hanbalit School" is an eclectic traditionalist school. This school is predominant in Saudi Arabia. The basic idea of this traditionalist juristconsult, adherent of the puritanism of conservative type, was the necessity to preserve the unitary character of the Islamic law as well as the obligation that is incumbent to all the believers

⁴⁸Thus, in Hidjaz, Siria, and Egipt the traditional jurists were predominant, while in Irak, especially in Kufa town, the rationalist juristconsults were predominant, their preoccupation being the enriching and diversifying of the juridical percepts by means of the inductive method, but in the spirit of the Qur'an law.

⁴⁹"The Shafi'it School" is predominantly in Yemen, Egipt, Somalia and East of Asia.

to obey unconditionally to this one. He militated in favour of combating of the effects considered noxious of the religious sects in the Muslim world, as well as against the spreading of the ideas of the antique philosophy In the Muslim thinking.

Other Schools. During cent.IV-VI hg., because of reasons which were more political than of religious order, the Muslim doctrine is witness of the appearing of some dissidences, such as *shiism*⁵⁰, - *kharidjism*, *zahirism*, etc. which coexisted besides the *sunism*

“*The Zahirit School*”, founded by Dawd Ibn Khalaf, is a school, influenced by *hanbalit* and *kharidjit* percepts.

“*The kharidjit School*” has adherents who entitle themselves “*azraqits*” in Basra and “*najdits*” in Central Arabia;

as a disident branch, it proliferated especially during the postclassic epoch. Afterwards, the delimitation among these schools disappeared. The study of the works of the founders of these schools has especially a theoretical importance, of historical and didactic order.

In Chapter III we have analyzed aspects related to the European legislation of the human being rights; *The Universal Declaration of the Human Rights*, *The European Convention of the Human Rights* - CEDO – (1950), *The Charter of the Fundamental Right*; The classification of the human rights in the European legislation; The juridical nature of the human rights, according to some contemporary theories; The State of Law and the rights of the human being, following that, in chapter 4 to approach the problem of the human being rights according to the Islamic law. In this chapter I have presented the vision of the Qur'an concerning the subject of the human being rights, but also of the Muslim countries, the will of which is represented by the following juridical documents of international law, named Islamic treaties and conventions, concerning the rights of the human being; *The Universal Islamic Declaration of the Human being Rights* proclaimed in 1981 at UNESCO⁵¹, followed by *The Declaration from Cairo concerning the Human Rights in Islam*, adopted in August 1990 by the Islamic Conference of the Foreign Trade Affairs Ministers, representing the 45 member states of the *Organization the Islamic Conference*. In its turn, in 1994 the Arabic League adopted *The Arabic Charter of the human rights*, from the content of which a series of stipulations are remarked which are in concordance with the general tendency of the majority of member states of ONU to assure an efficient protection to the human rights.

Further on, we have approached the issue of the human rights legislation in different Islamic countries, enumerating the four great categories of rights the problem of the Constitutions of Islamic states and the rights of the human being.

Correlated with this subject we have dealt with the issue of the *reforming of the*

⁵⁰The most important shiit law school is the *Jaafari'it School*, which is spread in Iran, Liban, and south of Irak.

⁵¹*The Universal Islamic Declaration of the Human Rights* was presented at the Organization of the United Nations for Education, Science and Culture (UNESCO) from Paris, the event at which participated leaders such as: Ahmad Ben Bella from Algeria, Mukhtar Ould Daddah from Mauritania, the prince Muhammad al Faissal from Saudi Arabia and the counsler of the Pakistan president, Zia al-Haq.

constitutional principles from the Islamic countries having in view the implementing of the new legislation of the Human Rights, afterwards I presented the situation of the Muslim communities, being on the territory of some member countries of the European Union, how is the juridical protection of the Islamic minority communities from European countries assured, what the constitution of these states stipulate, and, finally, we have presented projects of the new constitutions.

One of the chapters of the paper approached the problems of the European legislation, concerning the protection of the religious minorities, namely, the Muslim one. IN chapter V we have presented the nowadays situation of the human rights in the Islamic world, evolutions and perspectives, as well as institutions of the civil society from the Islamic countries, defenders of the human rights a. *The Institute of studies for the Human Rights from Cairo, The Centre of studies for the Rights of the Human Being from Amman, The Centre for Democracy and the Rights of the Human Being from Saudi Arabia having its headquarters in USA, The Palestinian Institute for Studying of the Democracy – MWATIN- The Center for the Study of the Islam and Democracy – CSID.*

At the end of this paper we have presented the conclusions of this Doctorate Thesis, a selective biography, a short dictionary of Islamic terms used in this paper, as well as the text of some Islamic documents referring to the rights of the human being.

Analyzing the essence of the theoretical concepts of the Islam, we can observe a series of similitudes with the percepts of the Democracy, as they are accepted by the western politologists.

First of all, in both of the systems there exist the liberty of the people to choose the desired leader. Also, the people have the possibility, in a form or another, to participate at the decision making process, inclusively, they may resort to overthrowing from the leadership of the leaders who do not accomplish their promises made before being accepted as leaders.

In connection with this aspect is the preoccupation of both systems to grant a special attention to the problems of the human rights and, as we have already demonstrated before, the legislation of the Islamic countries is under the sign of substantial changes. There is an extremely important difference between Islam and Democracy: In Islam the supreme authority belongs to God, but not to the people, so that a leader considers that his power was given to him not by those who elected him, but by God. That is why both the leader and the people are subordinate to a force considered as being above all, so that both of them are subordinated to some divine leading laws.

From here there results that in the legislative system of the Islamic countries there is an hierarchy of juridical power, unchangeable, in which, above all the norms that have to be respected there is a law of divine inspiration, after which the other normative acts follow.⁵²

A second difference lies in the fact in Democracy the political system is of secular type, while in Islam the state and its institutions are not separated from the

⁵²This has not to contravene to the supreme law (the Qur'an or the Prophetic Tradition).

religion.

“*The Universal Declaration of the Human Rights in Islam*”“as well as the “*The Declaration from Cairo*” use a conceptual language totally different from the one used in the documents of International Law dedicated to the rights of the human being. The documents which establish the general frame of the approach of the rights of the human being problems are the result of Islamic cultural matrix, the specific philosophy of this universe of understanding and explaining of the world.

Viewed from a psychological perspective, the content of these fundamental acts express, directly or indirectly, but in precise terms, the theme related with the possibility of losing the religious identity, in front of contemporary provocations, considered serious perils and threatenings to Islam; the reticence to modernity⁵³, standardizing, leveling and by this of annihilation of the essential characteristics of the Islamic mentalities and traditions, the fear as to the effects sometimes noxious of the westernizing, by simple imitation and assimilation of some institutions without background and historical tradition, justify the use of a language with hermetic nuances, emanating the spirit from the spirit and the essence of the defining concepts of the classic Islam, such as: *Al-Shari'a Al Islamya, umma, hadith*, etc.

On the other side, during the latest period of time an interesting phenomenon of legislative ingenuity, sui generis, is observed: it is about the intercepting of juridical precepts and of the political democratic concepts and their use in the interest of the supporters of Islamic legislation. This step is being developed presently in the country with the most numerous population of Islamic religion from the world: Indonesia.

At the end of this paper we stress upon the main conclusion of this Doctorate Thesis: The rights of the human being are to be found again in the Islamic world both in the theoretical sphere, being present in the text of the Qur'an, in the exegesis related to the Islamic Law, and also in the present day positive law of the Islamic countries.

The adherence of the Muslim states to the conventions and the international package concerning the human being rights attest the fact that these are capable to respect the principles which govern this vast legislative domain, they even do work of renewing in the domain, by their own vision concerning the rights of the human being, materialized in specific documents, with a major impact on the constitutions of these countries as well as on the internal legislation.

As a conclusion, the Islamic Law is capable to intercept the modern precepts which dominate the nowadays world, respectively the norms which guarantee and safeguard the supreme values of the humanity: the personal life and the liberty.

⁵³The declarations referring to the rights of the human being in Islam are a corpus of juridical principles and values defined canonically, considered as shield in comparison with the innovation -bid'a- and the servile imitation -taqlad -, considered as being *sins*. *Bid'a* is understood as discord, a form of opposition to *Sunna*.

