

BIOMETRIC PASSPORTS AS INFRINGEMENT OF HUMAN RIGHTS

Mădălina Virginia ANTONESCU¹

Rezumat. *La începutul sec. XXI, cetățenii UE sunt confrunțați cu noi tipuri de atacuri la adresa drepturilor fundamentale ale omului, situație care amenință să schimbe UE (dintr-o comunitate democratică de state fondată pe principii constituționale comune ale statelor membre dar și pe principiile consacrate în Carta ONU și în alte documente internaționale fundamentale) într-un tip totalitar de guvernare. Această situație va constitui, în opinia noastră, unul dintre marile câmpuri de confruntare cu privire la însăși ideea de Uniune Europeană pe care vrem să o construim. UE nu doar trebuie să respecte identitatea națională a statelor membre (care rămân entități suverane) dar ea trebuie să respecte și drepturile omului în ceea ce privește toate persoanele trăind pe teritoriul UE sau doar tranzitându-l. Din această perspectivă, instituțiile UE (Parlamentul European, Comisia Europeană, Consiliul UE) trebuie să implementeze în spiritul lor toate principiile referitoare la drepturile omului consacrate în documentele internaționale și transferate în ordinea juridică europeană. Aceste instituții nu trebuie să emită acte juridice prin care să oblige statele membre (și nici măcar să recomande acestora) să încalce drepturile omului, așa cum apreciem că s-a întâmplat în România, caz pe care îl analizăm succint în articolul de față.*

Abstract. *At the beginning of XXI century, EU citizens are confronted with new types of attacks to their basic human rights, **threatening to convert EU** (as democratic community of states founded on common democratic constitutional principles and on the legal principles of UN Charter and other fundamental international documents) **into a totalitarian kind of governance**. This will constitute, in our opinion, one of the major fields of confrontation about the very idea of European Union. Because EU must not only **respect the national identities of its members states** (remaining sovereign entities) but also, it must **respect human rights of all persons** living in the EU territories or simply transiting it. From this perspective, EU institutions (European Parliament, European Commission, EU Council) must **implement in their spirit all the principles about human rights** consecrated in international documents and transferred to the European legal level. These institutions must not emit legal acts involving obligations for the member states that are infringements of human rights, as it happens in the case of Romania, analyzed in this article.*

¹PhD in European Law, Faculty of Law, University of Bucharest (vam55ro@yahoo.com). Author of several books, including: "The European Union-a modern empire?" (2005), "European Union, ancient empires and medieval empires. Comparative Study" (2008), "The European Union and international organization. Comparative study of international law" (2009), "The EU institutions in the post-Nice era. A perspective of constitutional law" (2008). www.madalina-antonescu.eu.

1. Breach, through the provisions relating to biometric passports, of the internal laws of the Romanian state; non-compatibility between the internal legal acts in question and the spirit and letter of Art. 1, paragraph 3 of the Constitution of Romania

Before tackling this legal matter, it is necessary to point out the legal framework within which we move. Thus, as specified by the Constitution of Romania 1991, revised in 1993, **Romania is not a state of whatever kind but a democratic and social state governed by the rule of law, three foremost fundamental legal and political characters of the Romanian state**, according to Art. 1, paragraph 3 / Constitution. Next, we see that the same paragraph 3, of Art. 1 of the constitutional text states as clearly as possible that **Romania is a state in which "human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values" and shall be guaranteed**. So, anyone reading this legal text according to the principle of good faith cannot misinterpret it according to a different meaning than that clearly arising from the will of the legislature. The legislature does not allow the misinterpretation of this text in a restrictive sense, impeding the exercise of the rights derived from these supreme legal values affecting themselves or restricting or relativizing the obligation of the Romanian state to guarantee the supreme values mentioned in paragraph 3, Art. 1 of the Constitution. We remind those who tend to believe that they are simple words **that the entire legal and political basis of the Romanian state is entered into the Art. 1 of the constitutional text. Article 1 is the backbone of the entire Romanian Constitution, as a whole, is the support and foundation of the entire Constitution and of the Romanian state, as well**²In other words, we cannot conceive an idea of Romanian statehood, according to the spirit and letter of the Constitution, beyond the **supreme values** that are mentioned in the entire Art. 1 **also including values**, according to paragraph 3, such as **human dignity**,

²To this the **principle of priority of the standards on human rights** established by the covenants and treaties to which Romania is party, as compared to the internal laws (Art. 20/Constitution of Romania) is added. An exception to this principle is the case when the national law or the Constitution contain **provisions more favorable** than the international rules on human rights matters, in which case the **internal** legal protection applies. Art. 20 / Romanian Constitution also stipulates the obligation (for all Romanian public authorities and the Romanian courts) **to interpret and apply the constitutional provisions** (in this case, Art. 29 / Constitution on freedom of thought, opinion and religious belief) **in accordance with the UDHR and with covenants and other (international) treaties (on human rights) to which Romania is party**. So here we **have a clear obligation, both constitutional** (whereas the relevant provisions are in the Art. 20/Constitution) **and international** (by the binding reference to an interpretation and application in accordance **with documents of international law on human rights matters** to which Romania is party) that any Romanian state authority **should comply with**.

the citizens' rights and freedoms, the free development of human personality, as supreme values, guaranteed by the Romanian state. Therefore, any violation of such values, and any action likely to affect their supreme character, by any subject of internal law, whether natural or legal persons (including public authorities) infringes paragraph 3, Art. 1 of the constitutional text and also affects the characters of the Romanian state (as a democratic and social state governed by the rule of law.), based on these values, a state in which these values are considered supreme, so pre-eminent in relation to any type of state or individual action.

The spirit of the constitutional legislator and the letter of the analysed text are particularly clear and leave no room for interpretations or distortions. So, the Romanian state, through all its public authorities, including all authorities that are competent for issuing passports and travel documents to the Romanian citizens³ must take account primarily of paragraph 3, Art. 1 of the constitutional text, which **guarantees each Romanian citizen as a supreme value in the Romanian state and therefore as pre-eminent in relation to any legal interpretation and any**

²So it is an obligation (under the Constitution of Romania) to be observed **even in relation to an act of European law** (be it with a direct effect, with an immediate and direct application, such as the Council and Commission documents on the issuance of biometric passports), because, **in order to not be illegal, any act of European law itself must be consistent with the norms on human rights (*ius cogens*)**. Secondly, because **there is no priority established in the order of European law between the acts of the EU institutions and the rules of international law on human rights** (they cannot be violated by rules of European law or rules of national law of the Member States since it would violate the Art. 1a / TEU as amended by the Treaty of Lisbon, by which the Union bases on respect for the human rights). So, for the non-compliance with the Art. 20/Constitution, anyone who lives in Romania (as an EU Member State) shall have **the internal means to sue any state authority** which is discriminatory and violates his freedom in Art. 29/Constitution (which is **a standard on human rights**, thus falling in the scope of Art. 20/Constitution, as **benefiting from the principle of priority**). The Art. 20/Constitution cannot be interpreted in any way as relativizing the principle of priority of the international standards on human rights in relation to the Romanian rule of law, under the false argument that the Romanian rule of law would make the application of a document of European law, **because the Union itself must comply with the Art. 1 / TEU as amended by the Treaty of Lisbon, through which the EU is founded on respect for the human rights, democracy and dignity, freedom and the state governed by the rule of law**. So the priority of the document of the EU institution as compared to any Romanian national act **is not valid** if the Romanian legal act (applying an act of European law or implementing it in national measures) violates a rule on human rights.

³ All details of future digital documents are contained in a draft of legislative act of the **Ministry of Interior and Administrative Reform (MIRA)**, also regulating who will handle their issuance: **The Sole National Center for Customization of Electronic Passports**, which will work within the **General Directorate of Passports** of MIRA.

According to http://www.cotidianul.ro/pasapoartele_cu_cip_de_la_1_januarie_2009-59336.html. So this is the administrative authority that may be sued by any person in administrative litigation for abuse of power and violation of human fundamental freedoms through the acts issued.

action of any subject of internal law, the value of human dignity, the citizens' rights and freedoms, the free development of human personality. On the other hand, we notice that the issue of biometric passports does not take account just of **the supremacy and constitutional nature** of such values that the Romanian state not only relies upon but guarantees as well.

Therefore, **any action of any Romanian state authorities in violation of the express provisions of the Constitution, which is the fundamental text of the Romanian state, placed in top-level of the internal regulatory legal acts, is an illegal action** because the issue of biometric passports is not compatible in any way with the supreme values guaranteed by the state, of human dignity, the citizens' rights and freedoms or the free development of human personality, through the totalitarian essence and the totalitarian consequences that such passports and biometry as a whole implies.

The European citizen of the EU area needs to understand very clearly that **the European society of the XXI century must remain one where the EU institutions and the Member States observe and guarantee the human rights and fundamental freedoms** (which include freedom of religion, human dignity and freedom, freedom of movement, all seriously infringed by the issue of biometric passports) and that this society should not change its nature from a democratic society into a society of totalitarian type, where the use of biometrics obviously leads.

The European society must remain a democratic society, based on an improved European Charter of Fundamental Rights of the European citizen (by improving and expanding the role of national parliaments, the right of legislative initiative of the European citizens, by including into the Charter the right of free elections in the EU Member States and at European level, etc.).

This is essential for building a European Union of free peoples, **a truly democratic space** where the European citizens enjoy all the rights and freedoms guaranteed by their national constitutions and the EU Charter of Fundamental Rights-become binding through the entering into force of the Treaty of Lisbon-a space where **true civilization does not involve the use of biometrics and on the contrary, rejection of such method of enslavement and control of the human person** whose dignity, freedom are, in our opinion, blatantly violated by this.

2. Non-compatibility of internal legal acts on biometric passports with paragraph 1, Art. 1 of the Constitution of Romania

Even from the beginning of the constitutional text, in Art. 1, paragraph 1, we see the **flagrant violation by the Romanian state authorities, while abusively invoking regulations and decisions of EU institutions⁴, that they "rely" upon when imposing the Romanian citizens to receive passports of**

biometric type. Beyond the ridiculous excuses such as the passports concerned would be provided with more security features compared to the classic ones⁵, as if the only purpose of the entire European society of the XXI century is to find new ways of restricting the freedom of the human person and strengthening the security measures, something which is the clearest hint of emptying the contents of the EU's democratic character and hence the states constituting it and **the drift of the Union to a new form of totalitarianism** (which we call a totalitarianism of electronic type, different from the other historical forms of totalitarianism as forms of violation of human rights and fundamental freedoms), other issues should be noticed as well.

Thus, although the state authorities state that they will issue the passports of biometric type **on request**, in order to show that **there is not an obligation for citizens to have such type of passport**, while he can « *choose* » *between a classic one and a new one of biometric type*, all authorities come with a statement intended to show **what level of gravity lies upon the violation of human rights and fundamental freedoms** (in this case, freedom, human dignity, freedom of movement of persons and freedom of religion), when saying that old-style passports *will be issued only temporarily*⁶, namely for periods of *one year*, while the passports of biometric type, considered as safer by the state authorities will be issued for *a period of five years*. Of course, nothing prevents a citizen, even if initially opted for a biometric passport, from reversing its decision and choosing, on the expiry of five years, for a classic one, without biometric elements but **he is already taken in the biometric database and his personal data stored on such passport are already abusively placed there**, with guarantees from the state authorities that such data will be protected (authorities whose interest is actually,

⁴Council **Regulation** no. 2252 / 2004 *on standards for the security features and biometrics in passports and travel documents issued by Member States*, published in the EU Official Journal. L 385 of December 29, 2004, Commission **Decision** C (2005) 409 *establishing the technical specifications on the standards for security features and biometrics in passports and travel documents issued by Member States*

⁵Romania introduced from January 1, 2009, biometric passports. Such passports have 50 security features and **includes for the first time in the EU, both the facial identification element and that of fingerprints**. It is expected to bring significant improvements to the regulation, including the creation of a **uniform European system for verifying compatibility between biometric components and data stored in chip**. The Regulation provides **the general obligation to give fingerprints**, which are stored on a chip in the passport. European Parliament http://www.euractiv.ro/uniunea-europeana/articles|displayArticle/articleID_16055/Pasapoarte-biometrice-mai-sigure.html, January 15, 2009. All this makes us see how serious the totalitarian drift is, beginning to occur in the EU, threatening to empty the fundamental human rights guaranteed by the constitutions of the Member States, the Treaty of Lisbon, the ECHR, the EU Charter of Fundamental Rights and other international documents on the matter.

as history has recorded many times, to increase the control of the person against her freedom).

Biometrics offers countless problems with the freedom of the human person, including the aspect of the personal data protection as the control of the state authority on the human person, irrespectively of his capacity of citizen is dangerously increasing, through the personal data that are stored in databases which are not guaranteed a national protection and that can be accessed by anyone or by a privileged group in their own interest and against the individual concerned. **Here is the limit of resistance of democracy itself, of the state governed by the rule of law**, as there is, in our opinion, a conflict between the trend of the state authority of continuously increasing its control over the

⁶By this we believe that **there is not even a real choice between the two types of passports**, because **they do not have the same term of validity**, as the biometric passport is “more convenient” because it is **intentionally issued for a longer period of time**. At the same time, **discrimination between citizens is operated by a different fee charged for each type of passport**, as the one for the biometric passport is higher but is **paid less frequently** (every five years), while the citizen who does not want this type of passport **is forced to take out of his pocket each year a charge half the fee for biometric passports**, which leads eventually to a higher expense (hence a higher fee charged for the one who wants a classic passport (and more trouble every year, one must apply for classic passport). In this way **a discrimination between citizens is made, in breach of Art. 16 of the Constitution of Romania**, where citizens are equal before the law and before public authorities, **without privileges or discrimination**. However, we see how **the public authorities on the basis of domestic laws in full violation of the spirit and letter of the constitutional text and the international treaties ratified by Romania (on human rights matters) and which are part of the internal law and take precedence over the provisions of national law, violate Art. 16 through the discrimination operated between citizens, depending on the type of passport issued**. At the same time, we see that **it is a false option, in reality a measure intended to discourage citizens applying for the issuance of the classic passport** in favor of the biometric type issued for a longer period of time for which a single charge is paid once every five years. Secondly, the discrimination between the Romanian citizens, by which the letter and spirit of Art. 16 of the Constitution is violated, also concerns the **temporary nature of the classic passport**. If it were a real right of choice, the classic passport would have been issued for a fee equal to that charged for the other type of passport for an identical period of time and without having a temporary nature (namely one that indicates that it is provisional and will be replaced eventually, necessarily, with a biometric one). Basically, **the option of the citizen is a false one**, whereas the classic passport, apart from being intentionally more expensive, is the one to be renewed every year and in addition, is a temporary one, ie it is intended to be phased out at a time in favour of the biometric type. So finally, **the citizen has no right to choose because he will have, ultimately, to apply for a sole type of valid passport, namely the biometric one. This is a flagrant violation of the rule of law, the spirit and letter of the Constitution and the human rights and freedoms established by it and by the international treaties to which Romania is party and that is obliged to respect as supreme values and guarantee them to its citizens, in the spirit and letter of Art. 1, paragraph 3 of the Constitution**.

individual and the latter, who has the interest to be linked to state only through basic obligations and to keep his freedom, moreover, making the state, through all its authorities and actions to respect and to guarantee such freedom.

Biometric passports are illegal because, by using biometrics they violate the human fundamental freedoms (freedom of movement and freedom of religion) **but also the human dignity** (while the human is treated as a potential perpetrator because the biometric society cannot possibly be free and democratic but a coercive one, of institutionalized suspicion and totalitarian, of violating the human rights and fundamental freedoms). While it seems to be a trend of the Western societies in the so-called confrontation with international dangers such as international terrorism, **an excuse restricting each time the human freedoms and rights in favour of a pre-eminence of the reason of ensuring the public safety** (to be seen as **an exception**, as an exceptional measure, applicable in cases clearly provided by law and with a **temporary** nature), the Eastern European societies just emerging from the totalitarian experiences of communist type must be more circumspect and critical to the new forms of restricting the human rights and fundamental freedoms.

Moreover, we think that they should take, before the Western societies already affected by this disease of biometrics, **a role of guardian of the real spirit of democracy and democracy itself, that is that of guaranteeing the state governed by a rule of law and the human rights and fundamental freedoms**. The societies most likely to induce the Western type societies that are currently under the biometric inclination **to regain their state of confidence in the democratic orientation, and to not give in to the momentum to become some societies of widespread suspicion, that are of Big-Brother type** where the citizen becomes a potential suspect and where the state authority self-assumes powers that are specific to a police state, continuously narrowing the exercise of the human rights and fundamental freedoms, until leaving them without content, are represented by the Eastern European societies.

In Art. 1, paragraph 1 of the Romanian Constitution, the **national** character of the Romanian state is set out clearly and without any doubt. We are talking here **about Romania, a country with a specific national identity, namely the historical union of Orthodoxy with the Romanian national spirit on this millennial territory**⁷. Romania is not a state of whatever kind but a state belonging to a people that, even **from its origins, was a Christian one**: the birth of the Romanian people in its millennial Carpatho-Danubian-Pontic path, was

⁷ His Beatitude Patriarch Teoctist - *To the role of the Romanian Orthodox Church in the life of our people*, in the Foreword to the third ed. of the manual of *The Romanian Orthodox Church History*, Bucharest, 1987. See also Nicholas Dobrescu – *The role of Church in the Romanian history*, Bucharest, 1909.

firstly a Christian-Orthodox birth⁸. This is essential for **properly understanding the type of the Romanian national identity, essentially and inextricably seen as an Orthodox Christian one, as an unbreakable symbiosis between the idea of the nation and the idea of God**⁹. Any other people and any other state, as well as any integration alliance or organization or entity like the EU **must respect this historical and spiritual fact forming the Romanian national identity**. Romania is more than one state, is a *nation* and this *nation* is an Orthodox Christian one¹⁰, even if it appears to some postmodernists or globalists as something anachronistic and ridiculous. The national identity¹¹ and in case of the Romanians, the Orthodox Christian identity are not ridiculous at all and he who considers *the very essence of a people* to be ridiculous is actually a narrow-minded spirit, without the culture of the nation he comes from or speaks about and a ridiculous being through his very demanding foolishness to overlook the big ideas that substantiate any people as a spiritual being¹². Article 1, paragraph 1 of the Constitution is not a fool or outdated one at all because it affirms the national character of the Romanian state; by contrast, is an article **that indubitably recognizes such spiritual essence of the Romanian people**, from its birth in this area until nowadays.

⁸ Prof. Dr. Mircea Păcurariu - *History of the Romanian Orthodox Church*, Ed Bible and Mission Institute of the Romanian Orthodox Church, Bucharest, 2006, p. 17 to 22.

⁹Nicolae Iorga – *To the use of studying Romanian Church History*, reprinted after the preface to the *Romanian Church History*, vol I, ed. I Vălenii de Munte, 1908.

¹⁰ See, for example, *The teachings of Neagoe Basarab to his son Theodosius* (written between 1518-1521), a brilliant medieval work of instruction and religious and moral education, a compendium of Eastern ascetics and mystics, which shows the traditional concern of Christian sovereigns in that area to respect the Orthodox belief and to keep it unaltered, as an identity of this nation. See, to the concept of trans-historical and deified nation, different from the political or cultural one, Dan Puric-*Who are we*, Platytera, Bucharest, 2008 p. 72-82. Prof. Dumitru Staniloaie-*Spirituality and communion in the Orthodox liturgy*, Ed Bible and Mission Institute of the Romanian Orthodox Church, ed. II, Bucharest, 2004, p. 18-20 (about the concept of *person* in the Orthodox belief, as opposed to the number applied to being, which separates him from God and his salvation).

¹¹ **The EU obligation under Art. 3 / TEU as amended by the Treaty of Lisbon, is to respect the national identities of the Member States, inherent to their fundamental political and constitutional structures. For Romania, the EU can not overlook, like it does not exist, the Orthodox, historical identity, closely woven by the people political and consciousness identity of this nation.** If the EU respects the rights of the various minorities, then the more it is necessary that in a democracy (dominated by the rule of the will of the majority) **to respect the Orthodox identity of the majority of that country**. See Madalina Virginia Antonescu-*Biometrics, human freedom, human dignity, at the beginning of the XXI century*, in *Perspectives of security and defense in Europe*, Vol IV, Session of scientific communications with international participation, 19-20 November 2009, Bucharest, UNAP, Ed UNAP, Bucharest, 2009, p. 186 to 215.

¹² Dan Puric, interview "*We are a suffering nation that must learn to lift up to Christian dignity in the name of Christ*", interview by Stelian Gombos, journal *Geopolitics*, year VII, no. 31, special issue *Romania between empires*, p. 17-29.

Romanian people are a nation born Orthodox Christian, unlike other peoples who were either later Christened, or never Christened, and **it is specific of the Romanian people, not discussed but respected, including within the European Union as a community of democratic countries, based on a relationship of respect with the Member States**¹³.

The European Union can not issue any directive, decision or any other European legislation, by any of its institutions, **that is contrary to the national identity of any Member State**. When it comes to Romania, the European Union should be **the first to respect and to assure Romania of its unconditional and real respect** for the Orthodox Christian national identity of that Member State with full rights in the Union since 2007. Romania **cannot be treated as second-class Member State in the Union, falsely and tendentiously considered being a de-Christianized state, one in which there is no majority religion, and that should not be taken into account**. Romania is not a state born yesterday or today, that is, without a past; we see how, throughout the course of its troubled history, located at the turn of empires, threatened with permanent fragmentation, **Romania has defended its national values and its idea of Orthodox Christianity as part of its very national being**¹⁴.

Neither the European Union, **nor** other state or nation, or the EU institutions through their directives or decisions **have the right to question the Romanian identity, namely the identity where the orthodoxy is intertwined with of the national character**; it is an identity in which the Romanian nation is inextricably woven with orthodoxy, even from its birth as a nation in this area. The disappearance of the Orthodoxy of the nation leads to the disappearance of the nation itself, since its birth and forming, its development over the centuries and resistance in this area were all closely related to **the preservation of Orthodoxy, which is a religious identity**. So the European Union has no right to question the Romanian identity, a specific identity, simultaneously a national and religious one, by attempting to relativize or discredit it on grounds of not being "democratic".

The European Union must respect the identity of a Member State **as it formed over the centuries, and not seek to shape it according to its interests,**

¹³ Article 3 / TEU as amended by the Treaty of Lisbon, paragraph 3. The obligation of loyal cooperation that the member states have to the EU must not be interpreted under any circumstances as obliging the Member States to abandon their historical and national or religious identities for becoming within the EU some areas without a past, memory, history, spirituality and their millennial belief. Any construction that does not respect these traditions of the national being of a Member State is bound to fail.

¹⁴ Dan Puric-*Who we are*, op. cit .. See also Stelian Gombos-*Speaking about church and state - between course and discourse*, col. Geopolitics, Ed Top Form, Bucharest, 2009, p. 22-23.

as states may be artificial constructs but nations are organic-spiritual constructs, where the religious aspect (relationship between human and God) plays a key role. The Romanian identity is an Orthodox one, as Romania, remember, is a country with a **majority Orthodox population**¹⁵. In addition, it is not an identity formed yesterday or today, but **historical** one¹⁶, accompanied by a religious tradition, almost 2000 years old¹⁷. Therefore, the European Union must take into account **the majority and the religious identity of the majority of a country**, because this is the real spirit of democracy, if we choose to relate to democracy.

The European Union must respect (and here we speak of **an express legal obligation** imposed by the Treaty of Lisbon) the national identity of a member country, in this case, Romania, as a majority Christian Orthodox country. **Romanian Orthodoxy is perfectly compatible with democracy and the exercise by the citizens of the freedom of religion**, so that each citizen should be free to adhere or not to a religious or philosophic belief. **But this should not be used by the European Union as a way to ignore, to distort and violate through the legal acts of its institutions** (acts of European law with direct effect and general application, in some cases) **the identity of the people of Romania, which is a deeply Orthodox one**¹⁸. If the EU undertakes to respect through its institutions both the national identities of the component states and the freedom of religion, among the fundamental freedoms which it recognizes for the European citizens, then the EU should have clearly in mind, **when relating to the Romanian national identity, that it is an indissoluble, symbolic and spiritual whole, in which the nation has been intertwined with the orthodoxy**, not due to a whim or an isolated historical circumstance but for nearly 2000 years, even since the birth of the Romanian people in the Carpathian-Danubian-Pontic space.

¹⁵ In religious terms, **86.8% of people living in Romania are Orthodox Christian**, 5% Roman Catholic, 1% Greek Catholic, 6% Protestant and Evangelical, 10,000 people of Jewish faith. See Stelian Gombos-op. cit., p. 167, 174.

¹⁶ Among the defining characteristics of Romania, composing its national identity referred to in Art. 3a, paragraph 2/TEU as amended by the Treaty of Lisbon, we mention, for a better knowledge by the EU's decisional level: the historical continuity of public institutions, strong ethnic and religious homogeneity, strong Roman tradition, religious tolerance, robust anti-extremist mentality of the population, sometimes with moderate-conservative accents (**abolishing embarrassing labels like religious fanaticism for those who want to defend their freedom of religion and religious identity**), authentic European orientation in a democratic, pluralistic era of dialogue and tolerance between faiths and religions. See Stelian Gombos-op. cit., p. 167.

¹⁷ Prof. Dr. Mircea Păcurariu, op. cit., p.

¹⁸ Romania is **the only country in the world** to deliver a **model of electronic passport** comprising, right from the time of introduction, both identification features, namely facial image and digital impressions. <http://www.mediafax.ro/social>. We believe that **this is not only a willful ignorance but a real challenge to Romania's Orthodox Christian identity, as an EU member state, a community declaring to be democratic**.

So, Article 1, paragraph 1 of the Constitution of Romania, when asserting the **national** character of the Romanian state, we should keep in mind that this is **an implicit Christian Orthodox character**, because Orthodoxy has been and will be the majority religion of this people, which continues to define itself on the basis of it. So the issue of the freedom of religion in case of issuing biometric passports becomes even more acute in the case of Romania, whose national identity is simultaneously and deeply a majority Orthodox one¹⁹.

3. Non-compatibility of the internal legal acts on the biometric passports with the Art. 29 of the Constitution of Romania

Corroborated with Art. 1, paragraph 1 of the Constitution of Romania, the issue by the Romanian state authorities of the biometric passports on the basis of European regulations and decisions breaches Art. 29 of the Constitution, on **the freedom of conscience**, as well. This article is a framework one, in which, along with the freedom of thought and opinion, the freedom of the religious beliefs is included as well. According to this article, **the freedom of religion cannot be restricted in any way**, so the constitutional text requires an express prohibition against **any form of restriction** of such freedom.

Paragraph 1, Art. 29 of the Constitution is therefore **a constitutional guarantee** that all Romanian and European citizens may invoke for the protection of their fundamental rights and freedoms in a state governed by the rule of law as Romania (Article 1, Constitution) and in a community of democratic states, as the European Union wants to be (Art. 1 / TEU, amended by the Treaty of Lisbon). Therefore, **no state or EU authority may impose any Romanian citizen** (which belongs to a country that has not only a national and majority Orthodox identity but that is also a democratic and social state, governed by the rule of law,) **any restriction, discrimination or violation of his freedom of religion**. On the other hand, we see how precisely the freedom of religion is violated by the Romanian

¹⁹ **The Romanian Orthodox Church affirms the idea of Orthodox Christianity as a fundamental element of the Romanian soul**; as a result, in a national state by the constitution as Romania, the Romanian Orthodox Church is **regarded as the national church**. ROC is defined as a spiritual, not political factor, interested at the same time in keeping the specific values of the Romanian people. See Stelian Gombos-op. cit., p. 175, 22. **ROC identified throughout the history of this nation with the Romanian people**, fighting with him for the national cause, for its ideals, for its civilization, same as nowadays. In all the polls, **around 90% of the Romanians trust in ROC**, which shows that the Romanians feel they are limbs of this Church and view it as a unity factor, including in the civil society. **Church is formed by the very Orthodox Romanians**. See Stelian Gombos-op. cit., p. 23. **It is therefore inconceivable** for the EU or other organizations, judicial courts of European law or human rights, when involved in a dispute or judging a dispute where the human rights are violated by biometrics, **to disregard these facts**.

state authorities in the so-called «enforcement» of the European regulations and decisions (because **any EU decision, Regulation or any other legislation issued by any EU institution should be issued while respecting the fundamental rights and freedoms of the European citizens, in this case, freedom of opinion, thought and religion**), when they rush into issuing biometric passports regarded by the Orthodox Christians as contrary to their faith.

It's like one day, the EU institutions would impose the Muslim communities living on its territory and having European citizens of Islam belief as members (by the nationality of an EU Member State), to accept the issuance of an act that is in deep contradiction with Koran precepts, so likely to violate the freedom of religion of those European citizens of Islamic belief.

So, in any of its actions and in any of the normative documents issued by its institutions, having or not direct effect and general application, the EU must pay attention to respecting the freedom of religion, opinion and thought of individuals within its territory and immediately remove those measures or acts which cause such violations. Otherwise, the Union (having legal personality, just as the Romanian State) **may be sued by persons living in the EU, and by the Romanian state as well, in this case, in the European and the national law** (which is an entire jurisdictional ensemble according to the Treaty of Lisbon) for violating those fundamental freedoms.

The issuance of the biometric passports, infringing upon their essence the Orthodox faith and the free exercise thereof outside the European space²⁰ (as the Orthodox Christian sees his free movement restricted in the spaces of the Union's third countries, precisely because of his religious faith not allowing him to apply for a biometric passport) is an internal measure²¹ of the Romanian state starting from a European standard²² violating Art. 29 of the Constitution of Romania and also the international treaties on human rights to which Romania is party and Article 29 of the Constitution mentions very clearly and without the possibility of distortion, that **any restriction in any way, of the freedom of religion is not**

²⁰Several NGOs organized at the Patriarchal Palace in Bucharest, a protest by which they expressed their dissatisfaction with the mandatory introduction of chips within acts and also with the Law 298 of 2008. According to the opinion of the persons taking part in the protest, the **mandatory introduction** of biometric chips in all identity documents **is contrary to Article 23 of the Constitution** which provides that "the individual freedom and security of person are inviolable" and also Article 29 which states that "the freedom of thought, opinion, and religion can not be restricted in any way." From January 1, the state made mandatory the application on the identity documents of Romanians of a wireless identification device, a chip containing biometric personal details and other data, including digital fingerprints. "Without any public debate, the Romanians are marked as cattle, with a chip that will monitor their activity, placed, for the time being, on the so-called biometric passports and driving licenses, and in the near future including the ID cards", a press release of the organizers stated; 1 Feb. 2009, <http://www.mediafax.ro/social> . which are part of the internal law.

allowed. So the Orthodox Christian is protected at constitutional level, based on Art. 1, paragraph 1 and 3 and Art. 29 of the Constitution of his country, in the relation with the public authorities of the Romanian state and the EU institutions **that can neither relativize nor restrict a fundamental freedom which the Union binds to respect through the Treaty of Lisbon itself.**

Furthermore, Art. 29 of the Constitution **complete the express and total prohibition** against limitations **of any kind** of the freedom of religion by saying that « *nobody can be forced to adopt an opinion... contrary to his beliefs* ». This constitutional text comes to establish **a dual legal guarantee for the citizen**, namely that the Romanian state will respect his freedom of religion and will not force him, by any measure of its authorities, to adopt an opinion contrary to his beliefs. So, the issuance of the biometric passports that are deeply contrary to the Orthodox faith by their very essence is a measure by which **a state authority actually comes and requires the citizen to adopt its opinion on these passports** (an opinion which **favours them** but is **contrary to the religious beliefs of the citizen**). This blatantly violates, in its letter and spirit, the constitutional text of Art. 29, while the «**measure**» of the state authorities on issuing biometric passports in a majority Christian Orthodox country (in which the national identity is a specific one namely simultaneously a historical and a deeply orthodox one) **is an unconstitutional measure thus affected, in our opinion, by absolute invalidity** because we are dealing with **the infringement of a fundamental human freedom, which is a supreme value, guaranteed by the Romanian State** (Article 1 of the Constitution, paragraph 3).

4. Non-compatibility of internal legal acts on biometric passports with the religion law, as an organic law

The issuance of biometric passports in Romania, in total disregard of the fact that this country is a majority Orthodox one with an Orthodox national identity through its history and the birth of the Romanian people itself as an Orthodox people, **is in contradiction with the religion law, as well, which is an**

²¹ According to the Government Emergency Ordinance no. 94/2008 *for the establishment of measures on issuing electronic passports as well as producing other travel documents*, personalization of the **electronic passports** is done by the Sole National Center for Customization of Electronic Passports, which operates in the structure of General Directorate of Passports of MAI. Under the same **legislation**, the blank passports are produced by the National Printing House-National Company December 31. 2008 <http://www.mediafax.ro/social>

²² As of December 31, 2008, Romania, as an **EU member state**, issues electronic passports in accordance with Council Regulation no. 2.252/2004 *on standards for security features and biometrics in passports and travel documents issued by Member States* <http://www.mediafax.ro/social/pasapoartele-biometrice-avizate-de-comisia-de-aparare-din-camera-3891638>.

organic law, thus being the second as importance in the hierarchy of internal normative acts, immediately after the constitutional text. Therefore, the measure of the state authorities in Romania to issue biometric passports not only violates the above-mentioned articles of the Constitution of Romania but also an organic law, such as Law 489/2006 on the Freedom of religion and the general status of denominations²³.

Specifically, it violates Art. 1 that resumes and highlights the provisions of Art. 29 of the Constitution, namely that **the Romanian state should not only respect but also guarantees the fundamental right to freedom of thought, opinion and religion**. Therefore, **since this is a fundamental human right, not pertaining to the citizenship**, the Romanian state as a state governed by the rule of law, respects and guarantees it not only to the Romanian citizens but to **any person on the Romanian territory**, as well (apatrid, foreign citizen, bipatrid, European citizen or national of a third State of the Union). So, this comes to stress the fact that the freedom of religion should be respected and guaranteed by the Romanian state **as a democratic state governed by the rule of law, without taking into account whether the person concerned (on Romania's territory) is a Romanian citizen or a citizen of another EU Member State or a national of a third country (non EU member)**.

What matters here is **the capacity of human person, a legal capacity**, through which the Romanian state respects and guarantees to any person on the Romanian territory (whether he is permanently or temporarily residing here or if in transit or not) the freedom of thought, opinion and religion. So, moreover, we can say that there is no need to be a practitioner or follower of a religion or belief not allowing the use of the biometric passports and any biometric acts, because **it is sufficient to invoke, as a human person (and not as an EU citizen or not) the freedom of thought or the freedom of opinion or the freedom of religion for the Romanian state is obliged under these freedoms to issue a classic passport and not impose a biometric passport**. So even if you are atheist or Muslim or Jew, free thinker, not necessarily Orthodox, **you can invoke any of the three freedoms (of thought, conscience, religion), according to your beliefs, whereas the Romanian state is obliged to respect and guarantee them** under Art. 1, paragraph 1 of Law 489 / 2006, article that repeats and emphasizes the Art. 29 of the Constitution²⁴.

It is important to note that **no public authority in Romania can ignore these statutory provisions to require any human person in Romania (whether an EU citizen or not) biometric passports or any other biometric acts, contrary to that person's beliefs**.

²³ Published in Of. J., Part I, no. 11 / 8.01.2007.

It is sufficient for the person concerned **to say that he *does not agree with the issuance of such a passport*** under Art. 1, paragraph 1 of Law 489/2006 and Art. 29 of the Constitution, **so that the Romanian state is obliged to unconditionally issue a passport or a travel document that does not violate the freedom of thought and conscience of the person concerned.**

Similarly, it is sufficient for the person concerned to declare that, **out of religious reasons**, does not want a biometric passport to be issued, **so that, on the basis of its obligation to respect and guarantee the *freedom of religion*, the Romanian state, through any of its authorities has to issue a classic passport, namely one that does not harm, restrict or violate the freedom of religion of the person concerned.**

We remind you that these are obligations that only *a democratic state governed by the rule of law* assumes whereas a totalitarian state is not willing to respect the human rights and fundamental freedoms but rather to restrict their exercise as far as emptying their contents or banning them.

Further, according to Art. 1, paragraph 2 of the same **organic law** (thus having a legal force that is superior to any emergency or regular ordinance, any government decision, any Ministerial Order or detailed provisions adopted by the Romanian government) **an express prohibition, converted into an obligation of the Romanian state to abstain from bringing any damage or restrict the freedom of religion**, is included. “No one shall be prevented from **or coerced into adopting an opinion... contrary to his beliefs, and shall not be subject to any discrimination, or be harassed or placed in an inferior position** on account of their faith, membership or non-membership in a religious group, association or denomination, or for the exercise, within the law, of their freedom of religion”. So the Romanian state cannot put any human person (again, it is irrelevant whether he is an European citizen or not) in a situation of inferiority, cannot harass him and cannot subject him to any discrimination on account of their faith, membership or non-membership in a religious group, association or denomination or for the lawful exercise of his freedom of religion. However, **by issuing the biometric passports and by the differences in the legal regime existing between them and the classic passports²⁵ and also by introducing the temporary nature for the classic passport** (is a passport, which is intended to call in at a certain time, when generalizing or making the biometric passport compulsory) **the Romanian state breaches precisely such abstention obligations.**

²⁴ So, we consider that **the Romanian State authorities are not obliged to implement, execute or comply with any act of the EU institutions**, whether it has direct effect, direct and immediate applicability or not **if such act is contrary to a fundamental rule on human rights**, regardless of the legal order which is devoted to such rule (internal legal order, integration legal order such of that of the EU or international legal order).

Whereas the Romanian state put people who do not want a biometric passport to be issued, **in a situation of discrimination** against those who want such passports but also **in a situation of inferiority** on account of these people's faith (in this case, the majority Orthodox Christian), in relation to the persons who have applied for a biometric passport. This situation of inferiority of people applying for a classic passport is linked to **the fee charged** and **the temporary nature** of the classic passport and the **illegal introduction** itself, in contravention of the Constitution and the international treaties on human rights to which Romania is party, **of the biometric passports** (that, **regardless of the religious beliefs of a person**, constitutes a clear violation of his human freedom and dignity²⁶).

5. Non-compatibility between the internal normative acts on biometric passports and the provisions of the EU Charter of Fundamental Rights

The Charter of Fundamental Rights of the European Union becomes legally binding through its incorporation into the Treaty of Lisbon, by its entry into force. The Charter, officially signed and recognized by the Presidents of the EP, Council and Commission, on behalf of their institutions, on December 7, 2000

²⁵ The first 28 electronic passports were issued at the end of the last week, while the system will be implemented until June 30 throughout the country. The new passports contain 50 security features and the fingerprints of the holders and costs three times more than before. See Article *Biometric passports, three times more expensive than ordinary ones*, Ioana Sora, February 3, 2009. The price of the electronic passport was established by the National Printing House-SA National Company at 234 lei including VAT while the consular fee is 32 lei. For ordinary passports, passport cost is 64.2 lei and consular fee is the same. Biometric passport validity is five years and for children under the age of six years, the validity is three years. The travel document **issued before** had a validity of three years for children up to 14 years, five years for people between 14 and 25 years and ten years for those aged over 25 years.

http://www.financiarul.com/articol_21105/pasapoartele-biometrice-de-trei-ori-mai-scumpe-decat-cele-normale.htm

²⁶ The introduction of biometric passports in Romania led to discontent within the Church. Patriarchate **requested clarification on how the data is stored**, expressing concern that this would undermine the freedom and dignity of people.

http://www.financiarul.com/articol_21105/pasapoartele-biometrice-de-trei-ori-mai-scumpe-decat-cele-normale.html. On the other hand, we believe that the Patriarchate should require **more than just "clarifications"** from authorities that unconstitutionally, in a non-European way and abusively applied acts of European law in breach of the human rights and freedoms, without checking the compatibility of those provisions with constitutional rules on human rights and democratic character of the Romanian state, with the international treaties and the Treaty of Lisbon. **Romanian Patriarchate, in a majority Orthodox country, should strongly request cancellation of these anti-Christian documents**, because they are not compatible with the orthodox identity of the Romanian people and affect the essence of the freedom of religion of the Christian Orthodox people living in Romania regardless of their nationality.

in Nice, includes all civil, political, economic and social rights of the European citizens and all persons living in the EU, as well. The Charter, which groups rights in 6 chapters (Dignity, Freedom, Equality, Solidarity, Citizenship and Justice) is considering: the rights and freedoms **arising from the constitutional traditions of the Member States and the common international obligations of the Member States** (so, a mandatory relation to the Romanian Constitution and the obligations concerning human rights to which Romania, as a EU Member State, is party and that have priority in its national law); **the Treaty of Lisbon** with its dual basis (TEU and TFEU), **the European Convention on Human Rights** (its direct nomination envisages the obligation of the EU institutions to take account of this Convention, to not ignore it, even if now the EU is not party to the ECHR yet, for not putting the Member States into conflict concerning its obligations deriving from their status of parties to the ECHR and the EU law); the European Social Charter, of the Council of Europe; the Community Charter of Fundamental Social Rights of Workers and other international conventions to which the EU or the Member States join²⁷. From this perspective, it appears that the violation (by the Romanian state, in this case or by any EU institution) of the provisions of the Charter of Fundamental Rights leads to sanctions **under the national law (the Romanian law), because the Romanian Constitution guarantees respect in the Romanian state for these rights and the international treaties to which Romania is party. Sanctions may also be applied by the Court of Human Rights in Strasbourg, for the violation of the European Convention of Human Rights by the EU and / or the Romanian State. Similarly, we can not exclude the application of sanctions by the CJEU (concerning the violation of the law while applying and interpreting the Treaty of Lisbon and the Charter, by the EU institutions), in the EU judicial system.**

According to Art. 6/TUE, as amended by the Treaty of Lisbon, the Union recognizes the rights, freedoms and principles provided in the EU Charter of Fundamental Rights of December 7, 2000 (the one adopted on December 12, 2007, in Strasbourg). According to that Article 6, the fact that the Charter has the same legal value as the Treaties is clearly recognized, so it appears in the supreme position in the hierarchy of the European law. This is essential for our entire demonstration, whereas from this express provision it results that **no EU institution, by any of its legal acts and no Member State, while applying national measures or provisions of an act of European law, can ignore or violate the Charter.**

The Charter is considered by Art.6/TEU as amended by the Treaty of Lisbon, as having **the same legal force as the treaties** (TEU, TFEU), so is **placed on the highest position in the EU regulatory hierarchy.**

²⁷ Augustin Fuerea - *European Union law. General part*, Ed All Beck, 2003, p. 101.

Any violation of any rights or freedoms established by the Charter (in this case, the freedom of opinion, belief, and religion) **is a violation similar to that of a Union treaty**. Hence **the obligation of conformity of all documents issued by any EU institution²⁸ with the Charter** and also **the obligation of conformity of the documents of the Romanian state authorities with the Charter** (when they apply a document of European law or adopt internal measures to apply such documents).

According to Art. 10 of the Charter of Fundamental Rights of the European Union (which, we remind you, by the entry into force of the Treaty of Lisbon in which it was incorporated, receives binding force and has the same legal value as the Treaties), which establishes (in Title I, Dignity) **the freedom of thought, conscience and religion, these are fundamental freedoms of the human being, not only of the European citizen**. They are freedoms of which expression **is guaranteed by the EU and the Member States** which have signed and ratified the Treaty of Lisbon, both in public and in private, in education, work, and practice. In addition, Art. 10 recognize the right of every person within the EU to **the conscious caveat**, according to the national law governing the exercise of such right. So, based on paragraph 2, Art. 10 of the Charter, every Romanian, as a human person (a predominant legal capacity concerning the human rights as compared to the political capacity of a European citizen) **has the right to call in question the activity of issuing biometric passports as such** by the Romanian state authorities as an activity that violates the freedoms of thought, conscience and religion (in this case, the Orthodox, majority and historic religion in the Romanian state). In conjunction with **Art. 52 of the Charter**, any limitations on those freedoms established by the Charter (in particular the freedoms in Article 10) shall **relate to their exercise and not affect their substance**; in addition, this limitation must be **lawful**, according to Art. 52, must be made **only when necessary and really serve the objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others**. Another legal guarantee concerning the EU obligation to respect through the activity and the documents issued by its institutions, the freedoms established by the Charter (in particular, those in Article 10) is **Art. 54 of the Charter** (prohibition of the abuse of rights). According to that article, no provision of the Charter can be interpreted as implying any right to engage in an activity, to perform any act intended to abolish any rights or freedoms established by the Charter or **to their restriction to a greater extent** than provided in the Charter.

²⁸ Note that, for each act of derived law (namely an act issued by an EU institution), the EU Court of Justice **will review its actual legal nature, despite the name of the act** (directive, regulation, decision, etc.). The true nature of an act **does not depend on its name**, while CJUE uses to analyze the subject, content, applicability of an act for correctly qualifying it. See Augustin Fuerea - *General EU law* -, op. cit., p. 106.

Therefore, Art. 54 is the sanctioning legal basis for any activity of the EU institutions or the Romanian state authorities while applying or respecting such acts of European law through which abuses against the freedoms in Art. 10/Charter are committed, in the sense above.

According to Art. 51, Title VII / Charter, any institution, body, agency of the Union and also the Member States should take account of the provisions of the Charter when implementing the Union law. Here is another legal guarantee of the human person and his rights and freedoms, within the legal relationship with the EU institutions and EU Member States. **For violating the provisions of the Charter, which is a legal document of the same value as the Treaties,** the Member States (hence the Romanian State through the competent authorities which issued biometric passports, in implementing the EU law) and also the EU institutions (through the acts of integration that violated any of the fundamental rights and freedoms of the Charter) **can be brought to justice in the EU judicial system. Any natural person may bring an appeal²⁹ for annulment.**

Thus, not only a Romanian citizen (as a European citizen) but anyone³⁰ who lives in the EU (in this case, in Romania) has the potential to appeal to the EU Court of Justice against the binding acts **issued by the Council or the Commission** concerning to the issuance of biometric passports and obtain their abolition. This means of appeal is also a means of monitoring the conformity of

²⁹ In the EU law, the concept of *appeal* means an *action at first instance* and not a means of appeal, as in the national law. See Augustin Fuerea - **The European Union Institutions**, Ed. Universul Juridic, Bucharest, 2002, p. 136.

³⁰ The new paragraph 4 of Art. 230/TFEU as amended by the Lisbon Treaty says that "**any natural or legal person may**, under conditions of first and second paragraph, **start an action against acts of which recipient is or which concern him directly and individually**, as well as against the regulatory act **which directly concern him and which do not entail implementing measures**. Therefore, the following categories of acts of European law may be appealed: acts of the EU institutions whose destination is that person, acts of European law relating to him directly and individually, laws relating to him directly and not having to be implemented through internal measures (have direct applicability).

³¹ On the basis of paragraph 2, Art. 230/TFEU as amended by the Treaty of Lisbon (paragraph 2 of 230/former TEC remains in force, not cancelled). The action before CJEU of the Romanian state, under this paragraph, must be based on one of the reasons shown here: **abuse of power**, lack of competence, infringement of a substantial procedural requirement, **infringement of the Treaty** and any rule of law on its implementation. Here we should consider the term of "breach of the Treaty" in a broader sense (it is, in our opinion, the infringement of both TFEU and TEU and its rules on the obligation of conformity and compliance by the EU and its institutions, with the rules on human rights and the EU obligation to respect the national identity of a state). The two treaties (TEU and TFEU) are **organically related to each other**, as both contain provisions on **the same legal entity (the new EU)**, and both are, according to the Lisbon Treaty, a legal basis for this new entity. So the appeal for annulment brought by the Romanian state before CJEU may be for the breach of **any of the two treaties**, not only TFEU (formerly TEC).

the provisions of the EU law, is a legality control and its purpose is not to change but to obtain **its abolition as an unlawful act** (in this case, abolishing or relativising, by issuing biometric passports, the freedom of religion, opinion, thought of the person living on the EU's territory and who submitted the application to court). At the same time, **the Romanian State³¹ may sue the Commission or the Council³² as well** (with an appeal for annulment³³) for **the binding** documents relating to the issuance of biometric passports (believed to violate the EU's obligation to respect the national identities of the Member States—in the case of Romania, simultaneously an Orthodox and national identity, as well as the freedoms of thought, belief or religion of people living on the Romanian territory).

Moreover, given the importance of the fundamental freedoms in the Union's legal order (as they are general principles which the whole legal order, be it an integration order, of the EU, is based upon), freedoms established by a Charter that has an identical legal value as the treaties³⁴ (supreme as compared to any other act of European Law), the Court must consider **the supreme position** of the human rights and fundamental freedoms (which are the values that the Union is founded upon, according to Art. 1a/TEU as amended by the Treaty of Lisbon), a position clearly arising even from **the placement of the Article 1a at the beginning of the TEU**, as amended by the Treaty of Lisbon.

At the same time, the Romanian courts, referred by natural persons or by the Romanian government concerning the infringement through the biometric acts of such human fundamental freedoms may ask the EU Court of Justice, through **the mechanism for the preliminary issues³⁵** to rule on the interpretation of the Union law in this matter³⁶.

³² The legislative acts adopted by the Council and European Parliament, the acts of the Council, the Commission, the European Council and also the legality of the acts of bodies, offices or agencies of the Union intended to produce legal effects to third parties.

³³ It should be introduced within **2 months counted as appropriate, from the publication of the act, from its communication to the applicant or, failing that, from the date on which it came to the attention of the applicant** according to paragraph 6, Art. 230/TEC (now become TFEU as amended by the Treaty of Lisbon).

³⁴ These freedoms are established **by the Charter, that, having the same legal force as the treaties, has priority over any other act of European law**. Like the treaties, the Charter is found **in top-level of the European law**, which, **even if an integration law can not relativize, restrict, abolish, infringe or affect the essence of the freedoms listed in Art. 10 / Charter**, as this article, in relation to the Commission and Council directives and regulations on biometric passports (which are acts of derivative law) is placed on a higher judicial level. See Augustin Fuerea-*General EU law-*, op. cit., p. 56. Hence, the possibility of sanctioning by the Court, by means of appeal for annulment or appeal for interpretation (interlocutory matters) the non-compliance of the act of the EU institutions (Directive, Decision, Regulations) with the Treaties and the EU Charter of Fundamental Rights.

³⁵ According to Art. 234/TEC (now TFEU), CJEU shall have jurisdiction to decide as prejudicial: **on the interpretation of the Treaty, on the validity and interpretation of the acts adopted by the EU institutions**. When such a question is raised before a court of a Member State, that, if considers that, in order to decide, a decision is required on this issue, may ask CJEU to give a decision thereon (**possibility** of referral to CJEU by the national court, so not a requirement). When such a question is raised in a case pending before the Romanian court (as a national court of an EU Member State) whose decisions **cannot be subject of appeal under the national law**, this court is obliged to refer to CJEU (**obligation** of referral with appeal as prejudicial). So in both cases is assumed to be an open question before a national court (so it is not a dispute before CJEU at European level). See Augustin Fuerea - *The EU Institutions*, op. cit., p. 142.

³⁶ Only the national courts that have a dispute pending have an active procedural legitimacy in case of the appeal for interpretation (as prejudicial). Referral to CJUE is made by an application to these courts. The decision of the EU Court of Justice through which it decides in this type of appeal, on the validity of the document issued by an EU institution (in this case, the Council, the Commission) concerns only the parties interested (has a relative judged work authority) and does not suppress this act (here is different from the appeal for annulment).



Normal passport and biometric passport (the color is dark purple).
