Acta Universitatis Danubius
JURIDICA

Romania and Human Rights According to European Regulations

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Abstract. Respect for human rights is for Romania, as well as for the European Union, a priority of foreign policy. According to the Romanian Constitution, Romania is a rule of law, democratic and social state, in which human dignity, citizens' rights and freedoms, free development of human personality, justice and political pluralism are supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the December 1989 Revolution and are guaranteed.

Keywords: respect, human rights, human dignity, freedom, the rule of law

JEL Classification: K10; K15; K19

1. General Information on Human Rights at National Level

The process of globalization of needs and the continuous development of interdependencies has joined the trend of universalization of aspirations for democracy on a global scale, especially after the collapse of the communist system in Europe. Under these conditions, the integration of values in coherently structured systems, based on democratic principles, is the only way to ensure the protection of the individual in a prosperous and free society (Stan, 1995, p. 28).

Such a structuring involves a reinterpretation of the concept of state sovereignty and, at the same time, a fundamental restructuring of the theory on the sources of Romanian law.

In the first aspect, the State has to give up some of its prerogatives in order to benefit from the advantages of its integration in systems such as the European Union, in the sense that it must adapt to the rule of delegation of sovereignty to the integrative structure, the European Union, supranational structure which has

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developed Community legal norms in the interest of integrating and more effectively promoting the interests of all its members in an increasingly "Community" international society.

The European Union does not diminish national identities, nor does it nullify the state's ability to manage its interests and assert its views at the international level. It is only the supranational expression of the consensus imposed by the globalization of the needs and the universalization of the aspirations of Europeans, who want to find, together, the most appropriate answer to the challenges of contemporaneity, challenges among which the most important are those of security and protection.

After the Second World War, society constantly evolved towards a human rights theory that makes the human individual the current point of social development, transferring concerns for its protection and free development internationally.

Respect for human rights is directly related to ensuring peace and international security[1]. This is why it is rightly stated that human rights issues are a matter of international concern and do not fall within the domestic jurisdiction of States, which legitimizes not only the right of intervention of international bodies but also its obligation to intervene whenever or human rights violations that characterize any human community are called into question.

At the same time, there is a direct relationship between international security and human rights, their observance being the basis of state security, so that, at present, reasons of state security to the detriment of the individual and his fundamental rights can no longer be invoked.

After 1989, our country enters a process of re-evaluating pro-European options and resettling society on the basis of Western-style democracies.

By Law no. 30 of May 18, 1994[2] Romania has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (C.E.D.O.), as well as additional protocols no. 1, 4, 6, 7, 9, 10.

In this way, our country has integrated into the supranational, obligatory legal order established by these international acts. At the same time, it accepted the international control mechanism provided by the C.E.D.O., including its initiation by individual appeal (art. 25), and the binding jurisdiction of the supranational courts in Strasbourg (art. 46). To these is added the Government Ordinance no. 94 of August 30, 1999 on Romania's participation in proceedings before the European Court of Human Rights and the Committee of Ministers of the Council of Europe and the state's recourse following amicable settlement decisions and

[1] UN Security Council Resolution no. 688 of April 5, 1991.
[2] Published in the Official Gazette no. 135 of 31 May 1994.

conventions[1]This Charter or European "Constitution" of human rights must be applied by the Romanian courts, regardless of the citizenship of the person who is placed under the shield of C.E.D.O., being sufficient that the right holder is "under the jurisdiction" of the Romanian state, within the meaning of art. 1 of the Convention[2]

Also, by way of derogation from the principle of reciprocity, characteristic of bilateral conventions, applicable, as a rule, also in international law, the holders of the rights recognized by the C.E.D.O. benefits from the protection granted by this international instrument, even in the absence of equal treatment by the state courts whose citizens claim the judicial protection of the Romanian state.

In this way, the C.E.D.O. it has become a mandatory and priority source of domestic law.

The influence of C.E.D.O. on the internal law of our country can be measured, on the one hand, in the legislative plan, and on the other hand, through the prism of the Romanian jurisprudence in the matter of the observance and promotion of human rights.

If, in the foreground, the influence of C.E.D.O. relates mainly to the determination or amendment of domestic law, in the background, we note the value of "source of law" not only of the C.E.D.O., as a "supranational law", but also of the jurisprudence of the European Court of Human Rights, whose force is extremely great, as it has the power to influence both the legislation and the jurisprudence of national courts.

Legislatively, the influence of the C.E.D.O. mainly concerns the Romanian Constitution, the organic and ordinary laws elaborated by the Romanian Parliament, but also other normative acts with a smaller force on the scale of the hierarchy of legal norms, such as Government Ordinances, Romanian Government Emergency Ordinances.

2. The Influence of the European Convention on Human Rights on the Constitution of Romania

The need to achieve a legal framework capable of ensuring the country's evolution towards democracy, freedom and human dignity, towards the construction of a rule of law, based on political pluralism, free elections and ensuring respect for human rights and freedoms led to the elaboration of a new Constitution in December 1991 (revised in 2003).

[1] Published in the Official Gazette no. 424 of 31 August 1999.
[2] Lidia Barac, op.cit., p. 82.

1. The first article of the Constitution states that "Romania is a state governed by the rule of law, democratic and social, in which human dignity, citizens' rights and freedoms, the free development of the human personality, justice and political pluralism are supreme values and are guaranteed."

Among the general principles enshrined in Title I, the provisions according to which:

• The national sovereignty belongs to the Romanian people, which exercises it through its representative bodies and through a referendum (art. 2 paragraph 1);

• Romania is the common and individual homeland of all its citizens, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin (art. 4 para. 2);

• The state recognizes and guarantees to persons belonging to national minorities the right to preserve, to develop and to express ethnic, cultural, linguistic and religious identities (art. 6 paragraph 1);

• Pluralism in Romanian society is a condition and a guarantee of constitutional democracy (art. 8 para. 1).

On the same level are the provisions on the role of political parties, called "to contribute to the definition and expression of the political will of citizens" (art. 8 para. 2), and trade unions called to "contribute to the defense of rights and the promotion of professional interests, economic and social development of employees "(art. 9).

The importance given by the Romanian constitutional legislator to human rights issues is highlighted by the fact that, after the first Title, which summarizes the principles governing the entire constitutional matter, Title II follows. having as substance the fundamental rights, freedoms and duties[1]

2. Chapter I of Title II, entitled 'common provisions', contains a number of very important rules, namely:

• citizens benefit from the rights and freedoms enshrined in the Constitution and other laws and at the same time they have the obligations provided by them (art. 15 para. 1);

• citizens are equal before the law and public authorities, without privileges and without discrimination (art. 16 para. 1);

[1] Fundamental rights mean those subjective rights, belonging to citizens, essential for their life, freedom and dignity, indispensable for the free development of the human personality, rights established by the Constitution and guaranteed by the Constitution and laws. See Ion Muraru, Constitutional Right and Political Institutions, Ecological University, Bucharest, 1990, p. 199.

• the exercise of rights and fulfillment of obligations must be carried out, under the conditions of the rule of law, on the basis of the law, no one being above the law (art. 16 para. 2);

• Romanian citizens abroad enjoy the protection of the Romanian state (art. 17);

• Romanian citizens and stateless persons living in Romania enjoy the general protection of persons, guaranteed by the Constitution and other laws (art. 18);

• Romanian citizens cannot be extradited or expelled from Romania (art. 18 para. 1); foreign nationals or stateless persons may be extradited only on the basis of an international convention or under conditions of reciprocity (art. 19 para. 2);

• the constitutional provisions regarding the rights and freedoms of citizens will be interpreted and applied in accordance with the Universal Declaration of Human Rights, the pacts and other treaties to which Romania is a party, and therefore the European Convention on Human Rights. If there is a discrepancy between the pacts and treaties on fundamental human rights, to which Romania is a party, and domestic laws, international regulations take precedence (art. 20). Through this article, Romania's opening to civilized Europe is, thus, constitutionally guaranteed[1]

The above-mentioned text (art. 20) contains two rules of great importance and topicality that refer to the implementation of the constitutional provisions on human rights and fundamental freedoms. The first rule is in the sense of interpreting and applying citizens' rights in accordance with the provisions of the international treaties to which Romania is a party; of these, the Convention occupies a primordial place, Romania being a member of the Council of Europe.

The second rule gives priority to international regulations in the field of human rights, to those contained in treaties ratified by Romania, in the event that certain inconsistencies would arise between them and domestic regulations. As Romania ratified the European Convention in 1994, it will have priority over domestic law, whenever there is a mismatch between the Convention and domestic law.

In relation to these rules, the legislator will always have to verify whether the draft laws he discusses and adopts are correlated with the treaties to which Romania is a party (hence also with the Convention).

Also, the competent public authorities to negotiate, conclude and ratify the international treaties will have the opportunity to notify the possible non-correlations between the provisions of the international act and the domestic law. Of great importance in this order of ideas are also the provisions of art. 51 of the Constitution which proclaims that observance of the Constitution, of its supremacy

[1] This is a modern solution that we find in the constitutions of European countries with democratic traditions, such as France and Spain. See Ion Muraru, "The provisions of the Romanian Constitution regarding the relationship between domestic and international regulations in the field of human rights", Revista Drepturilor Omului no. 1-4 / 1991, pp. 33

and of the laws is obligatory. Depending on these constitutional provisions, in conjunction with those of art. 11 and 20 of the fundamental law, the value of the source of law of the Convention for the Romanian domestic law also results.

The influence on the domestic law is also manifested by the transposition in the domestic law of its norms often by special laws. For example, following Romania's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly. on December 10, 1984, the Romanian Parliament adopted Law no. 20/1990 for the amendment and completion of the provisions of the Criminal Code and the Criminal Procedure Code[1] According to this law, at art. 117 A new, final paragraph was added to the Criminal Code, which criminalized acts of torture. Likewise, the provisions of art. 2 of the Convention on the use by the authorities of firearms that may cause death to the person have been reflected in Law no. 17/1996 on the regime of firearms and ammunition (published in the Official Gazette no. 74/11 April 1996) (Predescu, 1998, p. 36).

3. Chapter II of Title II of the Constitution also contains provisions that reflect the concern for respect for human rights. Thus, the mentioned chapter describes the fundamental rights of citizens. In this respect, the Constitution enshrines the equal rights of Romanian citizens, regardless of race, color, sex, language, religion, political opinion or other opinion, national or social origin, wealth, birth or based on any other circumstances.[2]

Also, the socio-economic and cultural rights are enshrined, ie those rights that ensure the cultural and material development of the person, allowing him to participate in social life. This category includes: the right to work and social protection of labor (art. 38); the right to education (art. 32); the right of children and young people to be provided with a regime of protection and assistance in achieving their legitimate aspirations (art. 45); the right to property (art. 41).

Another category of rights enshrined in the Constitution concerns the exclusively political rights which, through their content, ensure the participation of all citizens in the leadership of the state, in government, namely the electoral rights (art. 34 and 35); then the socio-political rights, ie those rights that can be exercised by the citizens, at their choice, both in order to ensure their material development and in order to participate in the state leadership, namely: freedom of conscience (art. 29) ; freedom of expression (art. 30); freedom of assembly (art. 36); the right of association (art. 37); the right to strike (art. 40); the secrecy of correspondence and telephone conversations (art. 28); the right to have access to any information of public interest.

[1] Published in the Official Gazette no. 112/10 October 1990.
[2] Ion Muraru, op. cit., p. 22.

We also record the inviolability, ie those fundamental rights that ensure the life, the possibility of movement of the individual, his physical existence, as well as his home. Among these are: the right to life and to his physical and mental integrity (art. 22); the right to individual liberty and security of person (art. 23); the right to defense (art. 24); inviolability of the domicile (art. 27); the right to free movement (art. 25); the right to start a family (art. 44); the individual's right to dispose of himself and the right to the protection of his private, family and private life (art. 26).

4. In Chapter IV of Title II, the Constitution enshrines, for the first time in the Romanian legal system, the institution of the People's Advocate, which has as its fundamental role the defense of citizens' rights and freedoms; To this end, ex officio or at the request of persons infringed by their rights, it shall find or verify infringements of fundamental rights and freedoms, notifying the competent authorities in order to restore legality and the damage caused. According to the provisions of art. 55 of the Constitution, the organization and functioning of the institution of the People's Advocate shall be established by an organic law. Parliament did not adopt such a law until 1997[1].

3. The Influence of the Convention on Organic and Ordinary Laws

After December 1989, the influence of the Convention manifested itself, on the one hand, in the abrogation of normative acts concerning some fundamental rights or freedoms, and on the other hand, in the modification, completion of normative acts, respectively in the elaboration of new normative acts. in accordance with the spirit of the Convention.

At the same time, the Romanian legislator was concerned with providing a legal framework that would allow a correct interpretation of legal norms, in the spirit of respecting and promoting human rights, creating the basis of a judicial system capable of functioning independently of the legislative or executive power.

Under the conditions of the rule of law, any interference from another power in the judicial activity is excluded. Thus, the prosecutor must be based in his activity only by law, respecting the principle of hierarchical subordination, and judges must be irremovable, in order to be safe from any influences and administrative measures. At the same time, according to art. 2 of the Law on the organization of the judiciary, the courts administer justice in order to defend and achieve the fundamental rights and freedoms of citizens.

In this way, the Romanian judiciary was aligned with the judiciary of European states with a democratic tradition.

[1] Law no. 35/1997 on the organization and functioning of the People's Advocate institution, published in the Official Gazette. no. 48 of March 20, 1997.

Lately, it is becoming more and more noticeable that our courts invoke, in the context of some court decisions, some provisions from some international human rights documents. For example, in the motivation of the civil decision no. 1539 of 10.10.1994 pronounced by the Tribunal of the Municipality of Bucharest, civil section IV in the file no. 7629/1994, art. 8 of the Universal Declaration of Human Rights, regarding the free access to justice, or in the civil Sentence no. 254 of 5 May 1997 pronounced by the same court in file no. 988/1996, art. 17 of the same document regarding the property right of the person.

Regarding the influence of the Convention in relation to the concrete content of the legislation, in terms of repealing, amending, supplementing or drafting new normative acts, we can see that among the first legislative measures taken after 1989 is the repeal of several normative acts that they violated the right to free movement inside and outside the country[1], as well as repealing provisions that prohibited or limited the right of establishment in large cities[2]. The new regulations, referring to the regime of passports and trips abroad (Decree Law no. 137 of 12 May 1990, published in the Official Gazette no. 75/21 May 1990) fully guarantee the right of Romanian citizens to leave their country when they want to return to the country, as well as the right to repatriate, regardless of the reasons for which they remained abroad, on an equal footing with citizens living in the country. These provisions are in accordance with the provisions of Protocol no. 4 to the European Convention, which enshrines the right to free movement and the right to choose one's residence.

A number of measures and pieces of legislation have also been adopted to form the necessary framework to ensure the right to life, human dignity, liberty and personal security.[3] The death penalty has been abolished and express provisions have been made to define and ban torture[4], inhuman or degrading treatment and punishment[5].

4. The Influence of the European Convention on Human Rights and the Jurisprudence of the European Court of Human Rights on the Romanian courts and on their Case Law

Position of national courts in relation to supranational courts in Strasbourg

In the field of application of C.E.D.O. it was appreciated that the national courts are in a "privileged" position in relation to the European court[6], a conclusion that was based on the fact that, according to art. 26 of the C.E.D.O., the European

[1] Decree Law no. 10 of January 8, 1990, published in M. Of. no. January 6/10, 1990.
[2] Government Decision no. 518/12 May 1990, published in M. Of. no. 70/15 May 1990.
[3] Law no. 32/16 November 1990, published in M. Of. no. 128/17 November 1990.
[4] Decree Law no. 6/7 January 1990, published in the Official Gazette, no. January 4/8, 1990.
[5] Law no. 20/9 October 1990, published in M. Of. no. 112/10 October 1990.
[6] Lidia Barac, op. cit., p. 89.

Commission of Human Rights was the only body entitled to refer to the European Court of Human Rights (art. 26 of the C.E.D.O.) and "only after the exhaustion of domestic remedies" and this "within 6 months, starting with the date of the final internal decision "(art. 26 C.E.D.O.).

The subsidiarity of the international control mechanism in relation to the national courts, although it can be affirmed in relation to the provisions of art. 26 of the Convention, today, cannot be vehemently supported, in relation to the amendment of the Convention and its protocols by the adoption of protocol no. 11, which entered into force on November 1, 1998, by virtue of which, based on art. 34 of the Convention, "The Court may be seised of an application by any natural person, any non-governmental organization or any group of individuals who claims to be the victim of a violation by one of the High Contracting Parties of the rights recognized in the Convention or the Protocols. its. The High Contracting Parties undertake not to impede in any way the effective exercise of this right. "

The conditions of admissibility of such individual requests are provided by art. 35 of the Convention, between which we observe that the requirement of exhaustion of domestic remedies is maintained, as well as the term of 6 months, to which we referred in connection with art. 26 of the Convention.

In this regard, we find that the national courts are the first to hear cases in which the applicants allege that their fundamental rights and freedoms recognized by the C.E.D.O. The Romanian courts have the jurisdiction to judge such cases on the basis of art. 21 of the Constitution, which, enshrining the principle of free access to justice, provides that "Any person may apply to the courts for the defense of his rights, freedoms and legitimate interests." This principle is reiterated by art. 2 of Law no. 92/1992 for the organization of the judiciary, when it establishes that "The courts administer justice in order to defend and realize the fundamental rights and freedoms of the citizens".

The national courts are in a "privileged" position vis-à-vis the Strasbourg supranational courts. Thus, they definitively cut the merits of the cases brought before their court, in the sense that the final decision pronounced by the competent internal court cannot be quashed or modified by the European Court of Human Rights. Indeed, contrary to popular opinion, the Strasbourg Court is not, in fact, a last resort in the field of human rights, but a supranational court, competent to award only "equitable redress".

This results unequivocally from art. 50 of the C.E.D.O., which provides that "If the judgment of the Court declares that a decision taken or a measure ordered by a judicial authority or any other authority of a Contracting Party is in whole or in part contrary to the obligations if the domestic law of that Party allows only an incomplete removal of the consequences of that decision or of that measure, the judgment of the Court shall, where appropriate, award the injured party fair

compensation.[1] Therefore, if the appeal filed by the holder of the infringed right proves to be well-founded, the court decision pronounced by the national court cannot be changed. The "equitable reparation" that can be granted consists, as a rule, in monetary compensations, to which the state whose authorities have violated the C.E.D.O. is obliged, as well as in awarding the court costs, established by assessment.

Regarding the power of the decision of the European courts, it is not enough to refer to the provisions of art. 50, as amended by Protocol 11, which became art. 41, but it is necessary to observe the norm contained in art. 46, as amended by the same Protocol, which provides for "binding force and enforcement of final judgments of the Court in disputes to which they are parties", and according to point 2 of the same article, "The final judgment of the Court shall be transmitted to the Committee of Ministers, which supervises its execution"

The influence of the jurisprudence of the European Court on the internal jurisprudence

The above considerations are one of the fundamental reasons behind the obligation of courts to observe the jurisprudence of the European Court and to resolve disputes with which they are invested in the spirit of this jurisprudence.

To these are added the provisions contained in the Government Ordinance no. 94 of 30 August 1999 on the right of recourse of the State (art. 12) against persons who, through their activity, with guilt, determined its obligation to pay the amounts established by the decision of the European Court or by the amicable settlement agreement.

Magistrates (art. 12 para. 3) are not missing from the sphere of such responsible persons, who can be brought to civil liability, under the conditions regulated by the Law on judicial organization, the Ordinance excepting from such liability only the judges of the Constitutional Court.

Another reason, equally pertinent, but more moral than legal, stems from the very quality of jurisdictional acts issued by an elite supranational judiciary, as well as from the fact that the concepts used by the C.E.D.O. have, within the normative system represented by the Convention, their own autonomy, with the consequence of their own meanings, often different in relation to the meanings given to the same concepts in the legislation, jurisprudence and doctrine of the member states.

Thus, the expressions "rights and obligations of a civil nature" and "accusations in criminal matters", used by art. 6 paragraph 1 of the C.E.D.O., which enshrines the right to a fair and impartial trial, have a much wider scope in the Court's conception than in domestic law, because "civil rights and obligations" means not only the rights and obligations in the field private, civil or commercial law, but also

[1] Article 41 of the Convention following the adoption of Protocol 11 of 1998.

other rights and obligations, such as the rights arising from expropriation or damage caused by public authorities, the rights of persons practicing the liberal professions (doctors, lawyers, etc.)[1] and the term "criminal charges" means not only acts which fall strictly within the scope of the Criminal Code and the Code of Criminal Procedure, but also measures of a similar, repressive nature, such as the withdrawal of a license to practice a profession or trade, the application of a conventional fines for violating traffic rules on public roads, etc.

Also, the phrase "measures necessary in a democratic society" must be understood as such by the Romanian courts, in order to ensure the application of the norms of the Convention in domestic law, in the spirit for which they were created.

Thus, art. 6, 8, 9, 10 and 11 of the C.E.D.O. provide that the rights recognized in these rules may be restricted when imposed by the interests of national security, safety, health, public order or morality, reputation or the rights of others, provided that such measures are "necessary in a democratic society". Such restrictive measures must be the consequence of "overriding social needs" or be justified by "relevant and sufficient grounds"[2].

As regards the extent to which national case-law can be influenced by the case-law of the European Court, we find that, in a number of areas, the European Court has left a 'margin of appreciation' to national courts.

Initiated by the Commission in Lawless v. Ireland, the theory of the 'margin of appreciation' was accepted by the Court for the first time in the Belgian language case (Judgment of 23 July 1968), when the Court held that it could not ignore the law and fact which characterizes the life of the company in the state in which, as a contracting party, it is responsible for the contested measure. In so doing, it may not be a substitute for the competent national authorities without losing sight of the subsidiary nature of the international collective guarantee mechanism established by the Convention".

Similarly, in the Handside case (Judgment of 7 December 1976), the Court stated: "The Convention entrusts each State with the task of ensuring the exercise of the rights and freedoms enshrined in it. The institutions created by it, in turn, contribute to this, but they do not come into play, except by litigation, after the exhaustion of domestic remedies ", emphasizing that" thanks to direct and constant contracts with the living forces of their country, state authorities they are, in principle, better placed than the international judge to rule on the precise content of these requirements, such as the need for a restriction or a sanction intended to deal with them".

[1] Judgment of the European Court of 16 July 1971 in the Ringeisen case.
[2] Judgment of the European Court of 28 March 1988 in the Oldsson case.

Subsequently, the jurisprudence of the Court also established the areas in which the courts enjoy such a margin of appreciation, including, as a rule, the areas that reveal state policies in the field of housing, renting, taxes, public morals, with direct reference to the law respect for privacy, etc., stating, in all cases, that such a margin of appreciation does not preclude the Court's right of review of how such policies are applied in the Member States.

That is why the Romanian courts must maintain a fair "balance" between the human rights recognized by the C.E.D.O. and the general interest of society, a framework in which one must not ignore the principle of proportionality between the means used by the authorities and the aim pursued by taking restrictive measures, with regard to fundamental human rights and freedoms[1].

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[1] Lidia Barac, op. cit., p. 93