

CORRELATION BETWEEN INTERNATIONAL REGULATIONS AND DOMESTIC REGULATIONS IN THE FIELD OF HUMAN RIGHTS AND FREEDOMS

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Abstract: The correlation between international regulations and domestic regulations in the field of human rights and freedoms" analyses the relationship and mutual impact between international human rights norms and standards and the domestic legislation of the States. The paper investigates the importance and ways in which international regulations influence and are implemented in the domestic legislation of States to ensure the protection and observance of human rights. First of all, States have to pass appropriate domestic legislation to implement and give practical effect to international human rights norms and standards. This means that domestic regulations must be consistent with States' international obligations and ensure the protection and respect of human rights at a national level. Secondly, international human rights regulations can serve as instruments for interpreting and applying domestic law. States can use international standards as references for interpreting and applying their domestic laws, thereby ensuring that human rights are duly observed and protected.

Keywords: correlation; legislation; law; freedom; jurisprudence.

1. Introduction

Recognizing the historical significance of the evolution of human rights and fundamental freedoms, we stress that this remains a critical issue in today's world. The notion of human rights is based on inherent principles that embody the essence of freedom and serve as fundamental requirements for human existence in any given society. Such values are irreplaceable and must be maintained at all costs. As humanity progressed, it constantly sought to discover the perfect mechanisms for imposing human rights requirements.

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The promotion and protection of civil rights and liberties have expanded beyond traditional borders as humanity strives to end exploitation, violence, racism, national discrimination, and inequality among individuals.

International human rights regulations include internationally adopted treaties, conventions, and declarations, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, among others. These international instruments establish minimum standards for the protection of human rights and impose on States obligations to respect and implement them.

Domestic regulations, on the other hand, are laws and policies adopted by individual States to comply with international obligations and ensure the protection of human rights within their territory. Internal regulations may be constitutions, special laws, criminal and civil codes, as well as public policies and administrative measures.

In this regard, we intend to make the following points: I. Corroboration of Article 53 of the Romanian Constitution with Article 29 para. 2 provided for in the Universal Declaration of Human Rights; II. Inter-conditioning between the norms of the European Convention on Human Rights and the freedoms recognized by domestic legislation or treaties; III. The constitutional force and jurisprudence of the European Court of Human Rights in Romanian law; IV. The jurisprudence of the Constitutional Court regarding the position of ECHR jurisprudence in Romanian law; V. International jurisprudence as a source of public international law; VI. The particularity of international human rights law in terms of the major role of jurisprudential sources.

2. Corroboration of Article 53 of the Romanian Constitution with Article 29 paragraph 2 provided for in the Universal Declaration of Human Rights

Article 29 of the Universal Declaration of Human Rights stipulates that, in exercising individual rights and freedoms, each individual is subject only to limitations established by law. These limitations shall be established solely to ensure recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order, and the general welfare in a democratic society. That article also states that individual rights and freedoms may under no circumstances be exercised contrary to the objectives and principles established by the United Nations. The legal framework supporting fundamental rights and freedoms must continuously evolve to align with the changing realities of social, economic, and cultural life.

Article 53 of the Constitution presents a legal remedy to adapt this framework. It enables public authorities to carry out their duties even in exceptional circumstances

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without compromising the protection of human rights. This is achieved through conditional and limited restrictions on certain civil rights and liberties.

Based on the text, it is stated that limitations can only be imposed by legal means. Even under the law, restrictions may be applied only with regard to the enforcement of a right, without changing the fundamental principles of its normative content. The law may mandate only the protection of national security, public order, public health or morals, citizens' rights and freedoms, criminal prosecution, prevention of natural disasters or serious accidents.

In other words, the Constitution imposes constraints on when the restraining law can be implemented. These constraints are clearly defined, exhaustively listed, and relate only to situations of undeniable importance. The situations specified in Article 53 concern the protection of social and human values which, because of their functions and meaning, may justify measures of the same nature as those mentioned.

Article 53 of the revised Constitution included a new requirement for restrictions to be considered justifiable: they must be necessary in a democratic society, starting from the principles outlined in international agreements on this issue. The criterion of necessity, in the context of a democratic society, will serve as a crucial benchmark in the examination of each unique circumstance, either by members of the Parliament when implementing these measures or by the constitutional court when it is charged with assessing the constitutionality of such measures.

Before the constitutional amendment of Article 53, it contained only the requirement of proportionality between the case and the taken measure. However, following the amendment, the additional requirement of non-discriminatory application was introduced. It is clear that any measure restricting the exercise of rights or freedoms cannot affect their very existence but must be limited only to the circumstances of their implementation in practice [1].

3. Inter-conditioning between the norms of the European Convention on Human Rights and the freedoms recognized by national legislation or treaties

The inter-conditioning between the norms of the European Convention on Human Rights (ECHR) and the freedoms recognized by national law or treaty represents a close relationship and interdependence between these two sources of law. The ECHR is an international treaty signed by the Council of Europe Member States and sets minimum standards for the protection of human rights in Europe. On the other hand, a State's domestic or treaty law generally recognizes and protects the fundamental rights and freedoms of individuals at the national level.

The inter-conditionality between the ECHR and national or treaty law is reflected in several aspects.

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First, the ECHR has a significant influence on the interpretation and application of domestic law. National courts are obliged to interpret and apply laws in accordance with the rules and principles of the ECHR, thus ensuring that human rights and freedoms are respected within their jurisdiction. Thus, the ECHR serves as an important tool for promoting coherence and consistency in the interpretation of domestic law with regard to the protection of human rights.

Secondly, the ECHR provides an additional protection mechanism for individuals, who can lodge direct complaints with the European Court of Human Rights (ECHR) in case of violation of their fundamental rights. This means that ECHR rules and case law can complement and complement the protection granted at a national level. ECHR decisions can influence states' international practices and laws, obliging them to comply with European human rights standards.

Also, domestic or treaty law may provide a higher level of protection of human rights than the ECHR. Some states may have laws and constitutions that recognize and protect individual rights and freedoms to a broader or more specific extent than the ECHR. In such cases, national or treaty law may extend and supplement the framework of protection established by the ECHR.

In order to establish a link between the norms of the Romanian Constitution and those of the European Convention, reference can be made to the fundamental texts of both interrelated terms.

Article 1 of the Convention establishes the principle that the Contracting Parties undertake responsibility for the recognition of the freedoms and rights outlined in the Convention for all persons under their direction.

According to Article 20 of the Romanian Constitution, if there are differences between the treaties and agreements on fundamental human rights ratified by Romania and its domestic laws, international regulations replace the latter.

The approach to the issue of the relationship between the regulations of the Convention and the Romanian Constitution cannot be separated from the fact that the second paragraph of Article 20 of the Constitution refers to all agreements and pacts on fundamental human rights that Romania has concluded as a participating party.

To a certain extent, it can be said that the European Convention embodies a qualitative amalgamation of international standards relating to the issue at hand. Its informing origins were the Universal Declaration of Human Rights, as well as international human rights conventions.

While the Convention was inspired by previous regulations, it is also true that there is not always complete agreement between the two sets of regulations, with positive discrepancies in some cases and negative discrepancies in others.

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Given the current circumstances, we believe that any strategy aimed at prioritizing the application of international standards must first involve an assessment of all relevant norms in the field, which is properly carried out by the Romanian state. This process will allow us to identify the most appropriate norm for the situation in question.

In light of these circumstances, we consider that any effort aimed at achieving the dominant implementation of international standards must begin by evaluating all the international norms relevant to the case in question, which have been adopted by the Romanian State to determine the most appropriate norm for the situation at hand. To ensure the protection of rights and freedoms [2], it becomes necessary to choose a norm that satisfies both political and legal purposes, especially when there are several international norms governing the same subject matter. The principle of *lex posteriori derogate priori*, which derives from the succession of international regulations, cannot be applied without certain limitations, i.e. it cannot be applied *sine modeo*.

The second paragraph of Article 20 of the Constitution does not impose any pre-requirements for prioritizing international norms other than the requirement that they do not contradict domestic laws. Thus, it can be inferred that international regulations take precedence over domestic laws in cases of discrepancy, regardless of the nature or effectiveness of those domestic laws [3].

We firmly believe that there is no need for further interpretation of Article 20, paragraph 2 of the Constitution. It provides that, in certain situations, domestic regulations may take precedence over international ones, especially where there are discrepancies between the two. It is worth noting that, while the rights of the second generation to work and rest are important, the rights of the third generation, including a decent standard of living, free movement, and access to information, can only be fully realized through international cooperation.

The objectives of the Convention are aligned with the progress of the development of society. Therefore, the explanation of its provisions should be made with a teleological and evolutionary approach. However, this alone is insufficient. When the Convention contains imprecise, uncertain, or unfinished concepts, it is not only acceptable but imperative to use teleological and extensive interpretations. However, when the Convention sets limits through the exercise of certain rights or freedoms, these limits must be understood in a restrictive manner. To summarize, according to doctrinaires, it is important to evaluate the terms of the Convention on the basis of their original and intended meaning, rather than a classical, traditional, or literal interpretation.

The provisions of the Convention offer a transactional solution that strikes a compromise between two opposing trends in the preparatory work: one to simply list

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rights and freedoms, and the other to define them more precisely. The Convention and its additional protocols provide assurance exclusively for civil and political rights, without any guarantee for economic, social, and cultural rights.

In terms of legal and practical circumstances, there is an argument in support of giving priority to domestic and national laws over international laws, including the Convention, as permitted by Article 20, paragraph 2 of the Romanian Constitution. This argument is based on the provisions of Article 60 of the Convention, which states that none of the provisions of the Convention shall be interpreted in such a way as to diminish or restrict human rights and fundamental freedoms which may be recognized by the laws of any person. Contracting Party or any other convention to which that Contracting Party is a signatory [4].

One issue that continues to be debated is whether the Constitutional Court of Romania may resort to an a priori or a posteriori review to sanction an internal norm for deviating from an international norm that Romania has adopted by accession, according to the provisions of Article 20 of the Romanian Constitution, which gives priority to international norms over "domestic laws" [5].

Given that the pre-eminence of international norms has been established as a 'constitutional principle', it is safe to say that the answer should be positive.

As far as the majority opinion of Romanian lawyers is concerned, they consider that the answer must be negative, reasoning that:

a) The general consensus among Romanian lawyers is that the answer should be no because they base their reasoning on the following: The main objective of the Constitutional Court is to uphold the "supremacy of the Constitution", most of its responsibilities being centered around this purpose, rather than giving priority to international norms over domestic ones.

b) According to Article 20, paragraph 1 of the Constitution, any conventions or treaties to which Romania has become a signatory are incorporated into domestic law. It is therefore the responsibility of the joint judge to apply the relevant law to the given legal situation and to determine the legal norm on which to base the ruling. If, in this process, the judge discovers a conflict between an international norm and an internal norm, it is his obligation to prioritize the former.

c) *The objection or exception of unconstitutionality* – which implies an *a priori* or *a posteriori* review – is not intended to establish the superiority of international norms by the Constitutional Court, according to its definition.

Where there is a conflict between national rules and Community rules in a vertically structured situation, priority of application shall be given to Community rules. It is important to note, however, that this approach cannot be applied to legal situations

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that existed prior to Romania's accession to treaties or conventions containing Community rules, such as the Convention.

The effectiveness and pre-eminence of Community norms shall be established only after their acceptance by the Romanian State as a party to the Convention, due to time constraints. A noteworthy exception may be recognized in cases where the legal consequences of situations that existed prior to accession to the Convention persist after accession.

To sum up, we demonstrate that, while Article 20 of the Basic Law reflects adherence to global regulations and openness to foreseeable change, the subject at hand requires extensive legal cooperation between nations, which can only be achieved through international treaties.

4. The constitutional force of the jurisprudence of the European Court of Human Rights in Romanian law

The case law of the European Court of Human Rights has a constitutional force in Romanian law, according to the principle of primacy of Community law over domestic law. Romania is a member state of the Council of Europe and, as a party to the European Convention on Human Rights, is obliged to respect and implement ECHR decisions and jurisprudence.

The ECHR is the supranational court that interprets and applies the provisions of the European Convention on Human Rights. ECHR decisions are binding and *erga omnes* in nature, i.e. binding on all signatory States to the Convention. This means that when the ECHR issues a decision concerning Romania, the Romanian State is obliged to implement it and remedy the violations of fundamental rights found by the Court.

In Romanian law, ECHR case law is of particular importance. The Constitutional Court of Romania has recognized that ECHR case law has binding legal force in Romania and must be respected by national authorities and courts. Thus, when a person alleges a violation of his fundamental rights guaranteed by the European Convention on Human Rights, national courts are obliged to take account of ECHR case law and apply it in deciding cases.

Moreover, Romania has the obligation to implement ECHR decisions and adopt legislative, administrative, or judicial measures to remedy the violations found. If the Romanian state does not take adequate measures to implement ECHR decisions, there is a risk of financial and reputational sanctions at the international level.

The Romanian Constitution, especially Articles 11 and 20, provides insight into the relationship between Romanian law and international law. From these provisions, it can be inferred that only explicit and unmistakable principles are applicable in the

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context of international treaties, which are considered conventional sources of international law.

However, this principle does not apply to the Universal Declaration of Human Rights, which is considered a soft law source of international law and is integrated into the *constitutional bloc* under Article 20, paragraph 2.

The concept of international law aimed to establish methods of recognizing an evolution in the interpretation of directly receptive law and secondary law in national systems, However, we believe that the proposed solutions have not been fully implemented. For example, a potential solution involves the formation of *conventional blocks*. These blocks would include not only the actual text of the treaty but also secondary law or the recognition of secondary law as customary law, which could serve as a legitimate source of law.

Radu Chirita expresses his opinion on a certain aspect, highlighting the difficulties in identifying or building a personalized and complicated system like a *block*. Moreover, there is a problem with the publication of these *rules*. Since no European legal system recognizes the legitimacy of a source of law or rule unless it is published in official journals, the aspiration to receive it directly as a derivative seems impractical. Coming back, we affirm that the system of human rights protection established by the Council of Europe through the European Convention on Human Rights is a combination of sources, seen from a mixed system perspective.

In this respect, we point out that the merger between the continental system based on written law and the Anglo-Saxon system based on precedent is evident in the ECHR system of jurisprudence.

For the correct interpretation and application of the European Convention on Human Rights and its Protocols, it is essential to refer to the case law of international jurisdiction that ranks this treaty.

The conventionality block is a legally binding integration of the European Convention on Human Rights, including its Protocols, as well as ECHR jurisprudence.

The European Convention on Human Rights has a significant impact on Romanian domestic law, as it is intertwined with the interpretation provided by ECHR jurisprudence.

Consequently, in Romanian law, ECHR jurisprudence occupies an equal position with the corresponding conventional provisions. Romanian domestic law shares the same attributes as the Convention, as it possesses direct applicability, constitutional status, and supra-legislative force.

Article 11 of the Romanian Constitution reflects a dualistic conception and outlines the general provisions regulating the relationship between domestic and international

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law. The derogatory nature of Article 20 is evident in two ways: it applies only to human rights, and the interpretation and application of relevant international treaties are subject to different rules. This is just one example; the recreated sentence may vary depending on the style and context of the writing.

Therefore, the General Principles that apply to the transformation of international treaties into domestic law also apply to human rights treaties [6].

Article 20 of the Romanian Constitution establishes specific rules governing the relationship between national and international legislation in the field of human rights. It is important to note that international regulations take precedence only if domestic laws or the Constitution do not have more favorable provisions for the protection of human rights.

In Romanian domestic law, it is important to mention that the entire ECHR jurisprudence takes precedence, regardless of whether decisions or judgments were taken in cases related to Romania or any other cases, before or after Romania's ratification of the European Convention on Human Rights.

5. The jurisprudence of the Constitutional Court regarding the position of ECHR practice in Romanian legislation

In recent years, the Constitutional Court has adopted the position of the ECHR by incorporating numerous judgments presenting the same legal resolutions as those taken by the Strasbourg court [7].

The position of the Constitutional Court on this issue remains firm, dealing with judgments of the Strasbourg Court on complaints against the Romanian state, as well as judgments in cases in which it was not involved, equally and without discrimination, whether delivered before or after. The text of the European Convention, with its unique characteristics, anticipates the direct effects of certain provisions of domestic law, and the crucial role it plays in safeguarding fundamental rights within the European system has led to the recognition of the indirect effects deriving from the Court's legislation.

In accordance with Article 46 of the Convention, participating States are obliged to accede to judgments handed down by the Court in any legal disputes in which they have been involved. Following this context, academic discourse established two distinct forms of direct results, resulting from the Court's judgments, namely: *binding force* and *res judicata*.

It is important to note that, with regard to binding force, the Strasbourg court does not have the capacity to annul administrative acts or court decisions, nor can it render certain legal norms ineffective. Instead, its jurisdiction is limited to providing material or non-material compensation to victims of violations of the Convention under Article 41.

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It is important to note that the consequences of not fulfilling the assumed responsibility are political in nature. This is apparent from the report published by the Council of Ministers on breaches of the Convention, which could lead to exclusion from the Council of Europe. Here, by way of example, we could recall a decision against Romania, by which the Court chose a way of interpreting Article 41 of the Convention, according to which the Court will award compensation to the extent that domestic law does not allow a *restitutio in integrum* [8].

Due to the impact of international treaty provisions on human rights incorporated into domestic law, the Romanian legislator revised the protection of certain fundamental freedoms in the Romanian Constitution to align with international standards, influenced by the interpretation of constitutional provisions.

The principle of equality, as highlighted in Article 4, paragraph 2, and linked to Article 16 of the Romanian Constitution, has acquired a new significance in Romanian law. This is due to the impact of the Strasbourg legal rulings on Article 14 of the European Convention on Human Rights.

As regards the second effect of judgments of the Court, it should be noted that, whereas in domestic law the *res judicata* of a judgment terminates similar claims with the same parties, subject matter, and cause by establishing the truth, the same dual effect of positive and negative *res judicata* applies under conventional law.

The numerous indirect effects of the Court's case law, which include *res interpretata*, preventive authority, and the existence of review procedures, are considered to be the cornerstone of the realization of the European system guaranteeing fundamental freedoms. According to prevailing doctrine, the impact of a judgment of the Court on the case law and national legislation of the Member States is considered an indirect effect, and I agree with this view [9].

In order to understand how the Constitutional Court assimilates the position of the ECHR to case law with regard to absorption, it is important to note that, while the Fundamental Law outlines a 'catalog of protected fundamental rights', it is often left to the national court – be it an ordinary court or a constitutional court – to interpret the practical application of the same rights and freedoms.

It is imperative to approach the analysis of the correlation between European and national law with a different perspective. Instead of adopting a confrontational perspective, it is essential to consider the concept of assimilation and the mutual impact that these two entities have on each other.

In most European countries, it has become common practice for the Constitutional Court to use ECtHR case law to identify either the substance of conventional rules or equivalent provisions of national law in these circumstances.

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The use of ECtHR case law has been used to improve national legislation by providing stronger safeguards for the protection of certain fundamental rights that have already been addressed at the national level, to extend the range of protected interests by incorporating new rights into the existing catalog, and to eliminate the application of domestic law that clearly contradicts the Court's interpretation.

As evidence, we can cite Decision No. 534 of July 18, M. Of. No. 842 of 3 October 2018, by which, in the application of the constitutional rules of Article 148, the Constitutional Tribunal made its first reference for a preliminary ruling to the Court of Justice of the European Union.

The decision of the Constitutional Court found that the provisions of Article 277 paragraphs (2) and (4) of the Civil Code are constitutional insofar as they allow granting the right of residence on the territory of the Romanian state, according to European law, to spouses - citizens of Member States of the European Union and/or citizens of third countries - from marriages between persons of the same sex, concluded or contracted in a Member State of the European Union.

Thus, with this decision, the Constitutional Court demonstrated its commitment to respecting and enforcing fundamental rights, including the rights of persons of the same sex and European requirements and norms in this field. It stated that this relationship must enjoy the protection of the fundamental right to private and family life, in accordance with the applicable rules and legal instruments.

The Constitutional Court underlined that the fundamental rights to private and family life are guaranteed by various legal instruments, such as the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Romanian Constitution. Thus, same-sex couples should enjoy the same rights and protection as heterosexual couples with regard to private and family life.

Romania's Constitutional Court has revised its legal precedent to uphold the principle of equality for all individuals, extending beyond its citizens alone and aligning itself with Article 14 of the Convention, which protects all persons within its remit without discrimination.

The Romanian Constitutional Court has also upheld the constitutionality of Romanian citizens seeking protection of human rights in international jurisdictions, which includes the binding nature of decisions taken by these jurisdictions in matters that go beyond national standards.

6. International jurisprudence as a source of public international law

The qualification of jurisprudence as a source of positive law is a complex and contested issue in various states, especially those following Roman law. However,

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this problem is relatively simple in public international law, with a clear and definitive solution.

According to Art. 38 para. 1 of the Statute of the Court of Justice, a crucial component of the Charter of the United Nations, the caliber of international jurisprudence is delimited as the jurisprudence of global judicial and arbitration entities, derived from the source of public international law. This jurisdiction uses court decisions as an additional method of identifying legal principles.

Article 38 of the Statute of the International Court of Justice is considered the rightful heir to the analogous text found in the Statute of the Permanent Court of International Justice, its predecessor.

International legal norms are expressed through various means, including international treaties, jurisprudence, and, in particular, international customs, which are considered an important source of international law.

While jurisdictions of judicial and international arbitration rely on international jurisprudence, it is shaped by the laws of individual jurisdiction as well as by other international legal systems.

The doctrine of public international law serves as an additional method of establishing legal regulations and is, in fact, considered the source of public international law. This also applies to qualified international case law, which is recognized as another source of public international law.

The foundation of public international law is rooted in the legal decisions of all international courts and tribunals, whether arbitral or judicial. It is important to differentiate between *ratione materiae* and *ratione loci* of international judicial and arbitral bodies.

The correct interpretation and application of the provisions of the Convention and its additional protocols require reference to the case law of the Court, as we have demonstrated.

More precisely, the Romanian legal system recognizes the direct applicability and constitutional supremacy of the jurisprudence of the European Court, granting it a supra-legislative status [10].

The presented opinions suggest that the Romanian state authorities will be obliged to consider and implement the jurisprudential solutions of the Convention bodies, even if they were formulated in the case involving other States Parties to the Convention when faced with the application of the Convention and its completion.

The interpretation of Article 26 of the Fundamental Law is under discussion in relation to Article 8 of the Convention, given that the Constitutional Court of Romania highlights the fact that the interpretation of the European Court takes

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precedence over the constitutional court, in accordance with the principle of subsidiarity.

Our conclusion is that the principle of subsidiarity requires strengthening the jurisprudence of the European Court, as stated by the Constitutional Court, and this should be extended to all Romanian public authorities, including the courts, up to the High Court of Cassation and Justice.

7. The particularity of international human rights law in terms of the major role of jurisprudential sources

International jurisprudence is affirmed by various sources and its classification as a primary or auxiliary source does not diminish its importance.

Under classical public international law, it is worth noting that international courts have optional rather than compulsory jurisdiction.

According to Professor Corneliu Liviu-Popescu, there is a general lack of inclination toward justice in public international law, as States and other subjects prefer alternative methods of dispute resolution such as seeking justice or arbitration.

European Community law presents a unique scenario in which international courts operate under compulsory jurisdiction and have established extensive case law, resulting in extensive and varied case law.

International human rights law, as a large system of public international law, is unique from this point of view, ensuring a very important place in justice, especially at the European regional level.

International protection of human rights is achieved not only through international judicial institutions but above all through international courts specialising in dealing with human rights issues. They are intended to protect human rights and sanction countries that violate these rights.

There are currently two courts dealing with human rights issues. The first of these is the European Court of Human Rights, which operates within the Council of Europe and is established based on the European Convention on Human Rights, with amendments made by Protocol 11. The second court is the International Court of Human Rights, which is a judicial body within the Organization of American States and is established based on the American Convention on Human Rights. In addition, we can mention the CJEC in Luxembourg if we are discussing the judgments of the German Constitutional Court, particularly about the Solange I and Solange II cases. It can be noted that international specialized human rights tribunals are present only at the regional level, not at the universal international level. This is because the proximity of states' positions at the regional level allows acceptance of these institutions, which is currently impossible to do globally.

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The existence of specialized international bodies protecting human rights of a judicial nature plays an important role in the international protection of human rights, and in addition to conventional rules, jurisprudential sources are also of significant importance.

The application and understanding of the provisions outlined in international human rights treaties is conditioned by the jurisprudence established by international human rights organizations. Without this foundation, the correct interpretation and application of the Treaties cannot be ensured, conventional rules are interpreted and, if necessary, supplemented by their case law. Through this process, a solid "block of conventionality" is formed, in which essential international jurisprudential standards are incorporated with legally binding force. The main source of international human rights jurisprudence is the specialized international tribunals dealing with such matters.

It is important to note that some international courts that focus primarily on human rights, such as the International Court of Justice, the Court of Justice of the European Communities, or ad hoc International Criminal Tribunals, also address human rights concerns in their case law. The case law of non-specialized international jurisdictions clearly contributes to the development of international human rights law.

8. Conclusions

Given the current developments and transformations in the contemporary space, the issue of fundamental rights and freedoms occupies a significant position within the institutional framework of Romania's young constitutional democracy.

Instruments of protection are considered necessary because of the many facets of contemporary society that require legal regulation, resulting in extensive, subservient, and comprehensive legislation.

The root cause of this problem was initially uncertain, with significant events such as wars making it impossible for legislators to exercise their privileges. In today's times, however, the need for constitutional regulation is more obvious than ever. It is imperative to justify such regulations not only on the basis of legal concerns but also on social and economic considerations.

Looking at historical developments, the concept of human rights seems relatively new, if we consider a Constitution after the 1989 revolution; However, it has been recognized in the past, even without explicit regulations. The normative environment in recent years in this field has successfully initiated beneficial discussions both at doctrinal and jurisprudential level.

Articles 11 and 20 of the Constitution confirm that treaties ratified by Parliament are considered part of national law. In addition, if there are disparities between the

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international treaties on fundamental human rights to which Romania is a signatory and the domestic laws, the international agreements have priority.

These Treaty provisions therefore have exceptional status, occupying a position in the hierarchy of norms equivalent to that of the Fundamental Law, and replacing internal regulations. The revised constitution provides that domestic laws may not include provisions more favorable than those found in international agreements.

As regards the position of the jurisprudence of the European Court of Human Rights in Romanian law, the Constitutional Court of Romania has recognized and confirmed the importance of this jurisprudence in the interpretation and application of domestic law.

According to the CCR case law, domestic law must be interpreted and applied in accordance with the provisions of the European Convention on Human Rights and ECHR decisions. Thus, the CCR considers that domestic law must be interpreted in the light of the standards and principles set by the ECHR on fundamental rights.

The CCR underlined that Romania is bound by ECHR case law and ECHR decisions must be considered by national courts when deciding cases. National courts are obliged to ensure the protection of fundamental rights guaranteed by the ECHR and to apply ECHR case law in so far as it is relevant to the case at hand.

In addition, the CCR underlined the importance that national courts must attach to ECHR case law in cases where there is a conflict between national law and ECHR judgments. They are obliged to apply ECHR case law and waive any national law that is not in line with fundamental rights guaranteed by the ECHR. Thus, ECtHR case law has a higher normative force than domestic legislation in the field of fundamental rights.

The case law of the European Court of Human Rights (ECHR) has constitutional force in Romanian law, according to the principle of primacy of Community law over domestic law. Romania is a member state of the Council of Europe and, as a party to the European Convention on Human Rights, is obliged to respect and implement ECHR decisions and jurisprudence.

The ECHR is the supranational court that interprets and applies the provisions of the European Convention on Human Rights. ECHR decisions are binding and *erga omnes* in nature, i.e. binding on all signatory States to the Convention. This means that when the ECHR issues a decision concerning Romania, the Romanian State is obliged to implement it and remedy the violations of fundamental rights found by the Court.

Moreover, Romania has the obligation to implement ECHR decisions and adopt legislative, administrative, or judicial measures to remedy the violations found. If the Romanian state does not take adequate measures to implement ECHR decisions, there is a risk of financial and reputational sanctions at the international level.

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The particularity of international human rights law lies in the major role played by jurisprudential sources in the development and interpretation of this area of law.

Within the framework of international human rights law, case law plays a key role in setting standards and interpreting fundamental rights. There are several specialized international human rights courts and mechanisms, such as the European Court of Human Rights, the UN Human Rights Committee, and the International Court of Justice, which issue advisory decisions and opinions on human rights violations.

The main source of jurisprudence in international human rights law is the decisions of international courts such as the European Court of Human Rights and the UN Human Rights Committee. These courts deal with individual cases or complaints relating to alleged human rights violations and issue decisions that serve as a guide for the interpretation and application of international human rights norms.

Case law in international human rights law also includes advisory opinions issued by international courts, such as the International Court of Justice. These advisory opinions are requested by international organizations or states and provide interpretations and clarifications on international human rights norms and standards. Case law in international human rights law is of particular importance as it strengthens and develops the normative framework of human rights. It contributes to clarifying and interpreting fundamental rights in detail and adapting them to social and technological developments. International human rights jurisprudence also influences states' practice and guides their actions in ensuring respect for human rights.

In conclusion, the Constitutional Court of Romania recognizes and supports the position of ECHR jurisprudence in Romanian law, stating that it has a superior normative force and must be respected by national courts and authorities in the interpretation and application of domestic law.

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6. ***Constituția României și legislație conexă (The Constitution of Romania and related legislation), Bucharest, Ed. Pro law, March 2023.

Notes:

- [1] M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *Constituția României revizuită - comentarii și explicații (The revised Constitution of Romania - comments and explanations)* -Bucharest, Ed. ALL BECK, 2004, pp.108-109.
- [2] N.Voiculescu, M. Berna, *Tratat de drepturile omului (Treatise on Human Rights)*, Bucharest, Universul Juridic, 2023, p. 112.
- [3] T. Toader, M. Safta, , *Constituția României. Ediția a 4-a: decizii ale Curții Constituționale, hotărâri C.E.D.O., hotărâri C.J.U.E., legislație conexă (The Constitution of Romania. 4th edition: decisions of the Constitutional Court, ECHR decisions, EUCJ decisions, related legislation*, Bucharest, Hamangiu Publishing House, 2021, p. 158.
- [4] See *Constituția României. Convenția Europeană a Drepturilor Omului. Carta Drepturilor Fundamentale a Uniunii Europene*, ed. a 17-a, București (Romanian Constitution. European Convention on Human Rights. Charter of Fundamental Rights of the European Union), 17th ed., Bucharest, Ed. Rosetti, updated on 16 October 2022, p. 47.
- [5] See *Constituția României și legislație conexă (The Romanian Constitution and related legislation)*, Bucharest, Ed. Pro Law, March 2023, p. 28.
- [6] In this respect, we mention the parliamentary ratification procedure, verification of the constitutionality of laws, ratification of treaties with certain objections, etc. International regulations must be relevant in order to take precedence over domestic ones.
- [7] The Constitutional Court considers these resolutions to be binding.

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[8] ECHR ruling *Brumărescu v. Romania*, 28 October 1999,

[9] *Ibid.*

[10] *Ibid.*