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The Universal Protection of Human Rights and Central Europe: Romania

■ **ABSTRACT:** *The protection of fundamental human rights and freedoms is one of the areas where the interaction between national and international standards is most evident. Therefore, international human rights treaties, conventions and covenants have a special place in the Romanian constitutional system. As such, the UN human rights treaties (conventions and covenants) have become part of the Romanian 'constitutional bloc'. In terms of ratification, these conventions and covenants can essentially be divided into two main groups: those ratified during the years of the Soviet-type dictatorship, and those ratified after the regime change. During the post-regime change period, Romania has taken significant steps to comply with international human rights standards. The vast majority of fundamental human rights protected at international level, including those contained in the UN human rights conventions and covenants under review, are constitutionally protected. Moreover, these fundamental rights permeate the entire legal system, thus they are also protected by a number of other pieces of legislation. In addition to legislation, significant institutional guarantees have been put in place. Despite these efforts, the implementation of human rights protection still raises questions in some areas, such as the inclusion of the Roma minority, or the equality of treatment of women and men. Romania is trying to introduce reforms and make some progress in these areas. The purpose of this contribution is to present some aspects of human rights protection in Romania in the light of the above-mentioned perspectives, and to assess the relationship between Romania and the UN from a human rights perspective.*

■ **KEYWORDS:** *human rights protection in Romania, precedence of international human rights provisions, principle of loyal cooperation, ratification of UN treaties, constitutional protection of human rights*

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1. The historical development of human rights protection in Romania

The historical development of the protection of fundamental human rights in Romania has largely been shaped by changing political ideologies. These political views were primarily reflected in the constitutions.¹ Title II of the Romanian Constitution of 1866 (hereinafter referred to as the '1866 Constitution') has already provided for a number of fundamental human rights, such as freedom of the press and freedom of association. Moreover, the Constitution outlawed the death penalty, with some exceptions for the military (Article 18).

However, in addition to guaranteeing fundamental human rights – which were relatively broad by the standards of the time – the Constitution also contained a significant discriminatory restriction: only Christians could become Romanian citizens (Article 7). This restriction was essentially aimed at excluding Jewish and Turkish minorities from citizenship and the fundamental rights that it entails.² This provision proved problematic when the independence of Romania was internationally recognised in 1878, and the Constitution had to be amended. Although the process of constitutional amendment was relatively slow (mainly due to concerns about granting political rights to Moldavian Jews in addition to their pivotal economic role³), the discriminatory provision of the 1866 Constitution was finally abolished by Decree No. 2186 of 12 October 1879, and all persons, irrespective of their denomination, were granted civil and political rights.⁴

After the union of Transylvania⁵ (1 December 1918), Bessarabia (27 March 1918) and Bukovina (27 October 1918) with the Romanian Old Kingdom, a large number of minorities (Hungarians, Germans, Ruthenians, Serbs) and churches of major denominations (Greek Catholics, Protestants) appeared in the country.⁶ These social changes made it necessary to adopt a new constitution, which came to pass in 1923 (hereinafter referred to as the '1923 Constitution'). In this way, the most salient human rights issues in the 1923 Constitution relate to the rights of minorities. An appraisal of the provisions of the Constitution reveals that although it protected general civil rights, it did not recognise collective rights for national

1 At the same time, from a historical point of view, it is salient to mention the so-called *Hrisovul lui Leon Tomşa*, issued in 1631, which established an agreement between the Ruler of Wallachia (Leon Tomşa) and the boyars on certain privileges. For details see Ionescu, 2019, p. 889.

2 Focşeneanu, 1998, pp. 30–31.

3 For details, see Focşeneanu, 1998, pp. 35–39.

4 Focşeneanu, 1998, pp. 34–40.

5 In this contribution, the author refers to Transylvania in a broader sense, with the result that in addition to the historical Transylvania, it also includes the Banat, the Crişana and Maramureş as well.

6 Focşeneanu, 1998, p. 57.

minorities, nor did it recognise the concept of minority rights.⁷ Furthermore, the 1924 Citizenship Law made Romanian citizenship conditional on residence, ignoring the principles of the Paris Minority Treaties. Therefore, once again, many persons belonging to minorities were left out of the citizenship register.⁸

The next turning point in the constitutional history of Romania took place in 1938, when King Carol II promulgated a new Constitution of Romania by royal decree (hereinafter referred to as the '1938 Constitution'). Although the 1938 Constitution adopted many of the provisions of the previous Constitution concerning the guarantee of fundamental human rights, it also introduced a significant number of restrictions.⁹ In this climate, there were few opportunities to ensure the adequate protection of fundamental human rights. The situation further deteriorated during the years of the military dictatorship of General Ion Antonescu, especially during the first period when he led the country together with the Iron Guard (*Garda de Fier*) (also known as the Legionary Movement). It is also crucial to point out that the dictatorship had already revoked the citizenship of the Jewish minority as early as August 1940, before Romania entered the World War Two. In the same month, strict anti-Jewish laws were passed.¹⁰ These laws, among other restrictions, forbade Jews from 'holding public office, holding leading positions in the economy, participating in sports clubs, owning agricultural land, using radios'.¹¹ Confiscation of property and deportation of the Jewish population was also present in Romania during this period.¹²

The constitutions of the years of the Soviet-type dictatorship (the 1948 Constitution of Romania, the 1952 Constitution of Romania, and the 1965 Constitution of Romania) also contained rules on the protection of fundamental human rights. However, these provisions were not respected in practice, as 'violations committed in the interests of or on the behalf of the regime were not sanctioned'.¹³ Legal literature cites as an example the fact that the 1965 Constitution, whilst providing for freedom of speech and of the press, also prescribed that these freedoms 'shall not be exercised in a manner contrary to the political establishment and the interests of the workers'.¹⁴ During these years economic and social rights were given priority, yet society did not enjoy the guarantee of these rights because they were not adequately protected.¹⁵

7 Fegyveresi, 2020, p. 475.

8 Fegyveresi, 2020, p. 476.

9 Focșeneanu, 1998, p. 76.

10 Arendt, 1964, p. 90.

11 Fábíán, 2018, p. 183.

12 For details, see Comisia Internațională pentru Studiarea Holocaustului în România, 2004, pp. 107–206.

13 Veress, 2020a, p. 505.

14 Ibid.

15 Ionescu, 2019, p. 891.

All these particularities of constitutional history have influenced the system of fundamental rights established by the 1991 Constitution. It can be observed, for example, that the specificity of the years of Soviet-type dictatorship – the fact that although the Constitution contained provisions for the protection of human rights, in practice these were emptied out and remained at a purely declaratory level – prompted the *pouvoir constituant* to create an institutional framework for the protection of human rights alongside the legislative framework.

Moreover, in the period after the change of political system, (and even more so after the adoption of the 1991 Constitution) Romania's attention turned towards its integration into the international community. As a consequence, it also sought to bring the protection of fundamental human rights into line with international standards. At the same time – in addition to the legislative provisions – special institutions for the protection of fundamental human rights were created, such as the Advocate of the People or the National Council for Combating Discrimination. Moreover, international human rights conventions have played a specific role in Romanian's constitutional system. The following subchapter will highlight the central role of international provisions.

2. The relationship between Romania and the UN from a human rights perspective

Before examining the relationship between Romania and the United Nations (hereinafter: UN) from a human rights perspective, I consider it important to look at the constitutional provisions concerning international human rights documents. This analysis becomes more important when considering that the relationship between Romania and the UN from a human rights perspective is basically analysed and interpreted in the legal literature through the relationship between domestic law and UN conventions and covenants.

■ 2.1. The constitutional relationship between domestic law provisions and UN human rights conventions and covenants

Among the East-Central European states under scrutiny, the Constitution of Romania – in addition to the general provisions concerning international law – contains an *expressis verbis* stipulation on the precedence of international human rights conventions and covenants.¹⁶

Title II of the Constitution in force provides for fundamental rights, freedoms, and duties. Among its general principles, this Title involves the provisions of Article 20 on international treaties on human rights. From these provisions it

¹⁶ For details on the relationship between international and national law in East-Central European states see: Lukács, 2022, pp. 266–268.

is clear that the Constitution of Romania basically uses two constitutional techniques to determine the relationship between these treaties and domestic law: an ‘*interpretation clause*’ is established in paragraph (1), whilst a ‘*precedence clause*’ is included in paragraph (2).¹⁷

Thus, pursuant to paragraph (1), the provisions of the Constitution on fundamental human rights must be interpreted in accordance with international human rights treaties (conventions and covenants¹⁸). It is interesting to note that, although the Universal Declaration on Human Rights is not an international treaty (as was accepted by the United Nations General Assembly by Resolution No. 217), it is binding in the Romanian *pouvoir constituant* understanding, ‘having the same binding force as, and even symbolic primacy over, international treaties’.¹⁹

Paragraph (2) of Article 20 refers to the impact of the international human rights convention on domestic legal norms. Prior to the constitutional amendment of 2003, the precedence of international human rights treaties was unconditional, i.e. they always took precedence over conflicting domestic law provisions, and there was no need to compare the level of protection of domestic and international standards. In view of the dynamic development of the protection of human rights, the derived constituent power amended the regulation to give precedence to international standards unless domestic law contains more favourable provisions.²⁰ This exception to the precedence of international human rights conventions, according to some scholars, essentially stems from the interrelationship between the principle of precedence of international law and the principle of subsidiarity in relation to domestic norms.²¹

Furthermore, it follows from the provision of paragraph (2) that ‘international human rights treaties to which Romania is a party have constitutional interpretative value and prevail over domestic rules, unless the Constitution or national laws contain more favourable provisions’.²² With this provision, the *pouvoir constituant* essentially incorporated the principle of *pacta sunt servanda* into the Constitution.²³ Thus, by virtue of this provision,

17 Gâlea, 2019, p. 178.

18 According to some scholars ‘[t]he use of the term covenants was probably due to the intention to refer to the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights.’ Corlăţean, 2014, p. 101.

19 Balan, 2015, p. 362. For a similar opinion see Andreescu and Puran, 2020, p. 274.

20 Muraru and Tănăsescu, 2008, p. 173; Andreescu and Puran, 2020, p. 27.

21 Corlăţean, 2012, p. 237.

22 Stanciu and Safta, 2021, p. 2.

23 This conclusion has been reached by the Constitutional Court in several decisions. In the view of the Constitutional Court, the principle of *pacta sunt servanda* is one of the fundamental principles of mutual trust between States in their international relations. See, for example Decision No. 195 of 2015 of the Constitutional Court. Published in Official Gazette No. 396 of 5 June 2015.

the Constituent Assembly implicitly imposed a level of constitutional protection regarding fundamental rights and freedoms at least at the level provided for in international acts; as a result, the guarantees of a certain complex constitutional right included in ratified international acts can be constitutionalised through the Constitutional Court's case law.²⁴

The basis of the constitutional declaration of this principle is that international treaties are binding because the Member States voluntarily agree to be bound by the provisions of such treaties.²⁵ Nevertheless, the provisions of this Article apply only if the relevant international treaty (a) relates to fundamental human rights and freedoms, and (b) has been ratified by Romania.²⁶ The Constitutional Court also pointed out in its case law that the provisions of Article 20 of the Constitution (in addition to the Universal Declaration on Human Rights, which has been incorporated into the very text of the Constitution) apply only to international instruments that have the status of human rights conventions or covenants.²⁷ On the basis of these findings, it can be concluded that – through the provisions of Article 20 – the UN human rights treaties (conventions and covenants) have become an integral part of what is known as the '*constitutional bloc*'²⁸, and thus serve as a point of reference in constitutional justice.²⁹

The case law of the Constitutional Court of Romania reveals that petitioners often base their arguments on possible violations of international human rights

24 Benke, 2022, p. 323.

25 Florea, 2023, p. 177.

26 The need for the simultaneous fulfillment of these two conditions is also evident from the case law of the Constitutional Court of Romania. For example, in Decision No. 499 of 2019 (published in Official Gazette No. 931 of 19 November 2019), the Constitutional Court held that Article 20 of the Constitution was not violated in the case at hand, since the Convention on the Organisation for Economic Co-operation and Development is not a human rights convention and, moreover, it has not been ratified by Parliament. For details, see Safta, 2019.

27 See for example Decision No. 139 of 1994 of the Constitutional Court of Romania. Published in Official Gazette No. 353 of 21 December 1994. Furthermore, a question has arisen before the Constitutional Court as to whether the provisions of Article 20 of the Constitution also apply to the interpretation of legislation issued before the adoption of the 1991 Constitution. In relation to this problem, the Constitutional Court pointed out in its Decision No. 78 of 1996 that the interpretation of laws in accordance with Article 20 is applicable only as regards the review of the constitutionality of laws subject to the current constitutional regime. Moreover, in the context of the given case, the Constitutional Court highlighted that 'the Universal Declaration of Human Rights was incorporated into domestic law only by virtue of Article 20 of the Constitution of 1991.' Decision No. 78 of 1996 of the Constitutional Court of Romania. Published in Official Gazette No. 172 of 1 August 1996. For an analysis of the Decision, see: Muraru and Vlădoiu, 2019, p. 353.

28 The term '*constitutional bloc*' refers to all the legal acts that can be invoked before the Constitutional Court in the course of a review of constitutionality.

29 Toader and Safta, 2020, pp. 438, 442.

conventions. Although these references are most often made in regards to regional human rights conventions (in particular petitioners refer to the European Convention on Human Rights),³⁰ it is not uncommon for the petitioners to invoke violations of UN instruments as well. Moreover, it is also observed that the Constitutional Court refers to these UN human rights conventions in justifying its decisions.³¹

In light of the above, it can be concluded that the provision of Article 20 – on the basis of the principle of *pacta sunt servanda* – contributes to the international convergence of the protection of fundamental human rights and freedoms. By expressly providing that international human rights standards prevail over contrary domestic provisions, the Constitution in essence contributes to the international standardisation of the protection of human rights.

■ 2.2. *The relationship between Romania and the UN in practice*

Concerning the relationship between Romania and the UN, it is pivotal to underline that Romania declared its wish to become a member of the UN as early as 1946, but its accession was blocked in the early years.³² Finally, the accession of Romania, together with fifteen other countries, was admitted by the General Assembly on 14 October 1955.³³ Since joining the UN, Romania has been a non-permanent member of the Security Council on several occasions (in 1962, 1976-1977, 1990-1991, and 2004-2005), moreover, it even held the presidency of the General Assembly on one occasion (during the 22th session in 1967).

From a human rights perspective, the relationship between Romania and the UN is fundamentally defined by the reporting cycles of various human rights conventions and covenants, as these represent the main instrument through which the State and the UN enter a direct communication. The main reporting cycles concerning Romania are summarised in the table below.

30 Toader and Safta, 2020, p. 438.

31 For example Decision No. 114 of 1994 of the Constitutional Court of Romania (containing references to the International Covenant on Economic, Social and Cultural Rights), published in Official Gazette No. 354 of 21 December 1994; Decision No. 139 of 1994 of the Constitutional Court of Romania (containing references to the Universal Declaration of Human Rights), published in Official Gazette No. 353 of 21 December 1994; Decision No. 820 of 2010 of the Constitutional Court of Romania (containing references to the International Covenant on Civil and Political Rights), published in Official Gazette No. 420 of 23 June 2010; Decision No. 368 of 2022 of the Constitutional Court of Romania (containing references to the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights) published in Official Gazette No. 1146 of 29 November 2022.

32 See for example Resolution S/RES/29(1947).

33 Resolution A/RES/995 (X).

Table 1: Reporting cycles concerning Romania

Convention/Covenant	Reporting Cycles
International Covenant on Civil and Political Rights	5 (last report in 2017)
International Covenant on Economic, Social and Cultural Rights	6 (last report in 2024)
Convention on the Elimination of All Forms of Discrimination against Women	9 (last report in 2023)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	3 (last report in 2023)
Convention on the Rights of the Child	7 (last report in 2023)
Convention on the Rights of Persons with Disabilities	No reporting cycle yet

During all these reporting cycles, a number of shortcomings have been brought to the attention of the State by the different UN human rights monitoring bodies. A recurring finding in these reports is that discrimination against the Roma minority persists, for example in education, health care and employment.³⁴ Moreover, the negative image of the Roma minority in Romanian society is widespread and characterised by mistrust and rejection.³⁵ According to the Committee on Economic, Social and Cultural Rights ‘Roma continue to experience social exclusion, poverty and widespread discrimination’.³⁶ In addition, high maternal and infant mortality rates continue to be recorded among this ethnic minority.³⁷ Roma children represent a particularly vulnerable category, often facing discrimination in access to education, health care, or decent living conditions³⁸ (a considerable part of the Roma minority lives in informal housing without public utilities amenable to them³⁹). Furthermore, the Committee against Torture highlighted in its latest report that police violence and attacks on Roma continue to be prevalent. These cases of police violence are not properly investigated by the authorities.⁴⁰

The lack of equal opportunities between women and men may also be of concern. The under-representation of women in decision-making and in political life, the persistence of the gender pay gap, and the ‘concentration of women in low-paid employment’ remains.⁴¹ The Committee on Economic, Social and Cultural Rights observed that this pays gap stems from stereotypes about the

³⁴ United Nations Human Rights Committee, 2017, point 11.

³⁵ Albu, 2021, pp. 74–75.

³⁶ United Nations Committee on Economic, Social and Cultural Rights, 2024, point 18.

³⁷ United Nations Human Rights Committee, 2017, point 26.

³⁸ United Nations Committee on the Rights of the Child, 2017, point 16.

³⁹ Albu, 2021, pp. 75–79.

⁴⁰ United Nations Committee against Torture, 2023, point 15.

⁴¹ United Nations Human Rights Committee, 2017, point 21–22; United Nations Committee on the Elimination of Discrimination Against Women, 2017, points 27–28; United Nations Committee on Economic, Social and Cultural Rights, 2024, point 22.

roles of women and men.⁴² In all these respects, women in rural areas are even more disadvantaged.⁴³ Meanwhile, the phenomenon of domestic violence against women and children continues to be of great concern to UN bodies,⁴⁴ as well as the trafficking and sexual exploitation of women.⁴⁵ Besides, ‘girls continue to be subject to multiple gender-based discrimination’.⁴⁶

UN bodies have also pointed out the occurrence of incidents of hate speech against national and religious minorities, as well as ‘allegations of unequal treatment of national minorities and obstacles to exercise their religious freedom’⁴⁷ in their reports. The Committee on Economic, Social and Cultural Rights underlined that students belonging to national minorities have ‘limited availability of education in the languages of national minorities in practice, due to the inadequate budget allocation’.⁴⁸ Moreover, UN bodies have highlighted the problems identified in the social welfare system,⁴⁹ the treatment of people with disabilities, or the shortcomings of detention centres, among other things, in their reports. UN bodies were also concerned about the high number of occupational injuries and the use of physical punishment against children.⁵⁰

Throughout these above presented reporting cycles, the State and the different UN human rights monitoring bodies are engaged in active dialogue. As a general commitment, Romania has declared that it will support the report procedures and will ‘intensify its efforts to submit its periodic reports’.⁵¹ In order to achieve this, the State has been actively involved in reporting cycles. For example, during the last reporting cycle of the International Covenant on Economic, Social and Cultural Rights, in 2024, the State provided a sizeable amount of relevant data and information. For instance, Annexe 12 includes all the relevant programmes and projects that were implemented by the Ministry of Labour and Social Security (e.g., home-based community services for dependent elderly people, and the implementation of a system for developing social inclusion public policies).⁵²

42 United Nations Committee on Economic, Social and Cultural Rights, 2024, point 22.

43 United Nations Committee on the Elimination of Discrimination Against Women, 2017, point 34.

44 United Nations Committee on the Elimination of Discrimination Against Women, 2017, point 18, United Nations Human Rights Committee, 2017, point 24.

45 United Nations Committee on the Elimination of Discrimination Against Women, 2017, point 20.

46 United Nations Committee on the Rights of the Child, 2017, point 16.

47 Human Rights Committee, 2017, point 43.

48 United Nations Committee on Economic, Social and Cultural Rights, 2024, point 48.

49 The shortcomings and abuses of the social welfare system were brought to public attention in the summer of 2023 when information came to light about the poor conditions, starvation and abuse of elderly people and patients in several nursing homes and health centres. The investigations resulted in shutting down several institutions and a number of prosecutions have been instigated.

50 United Nations Committee on Economic, Social and Cultural Rights, 2024, points 28, 32.

51 United Nations General Assembly, 2011, point 18.

52 United Nations Committee on Economic, Social and Cultural Rights, 2024, Annexe 12.

In addition, the State is trying to provide a substantive response to the concerns raised, and to list the steps it has taken to address each of the questioned areas. For example, in order to tackle all the concerns relating to the Roma minority, the State indicated that it has adopted several strategies. In 2022, the Government passed the Strategy for the Inclusion of Romanian Citizens Belonging to the Roma Minority for the Period 2022–2027. This Strategy sets out policies in the fields of health, education, housing, and employment, among others.⁵³ All these recent strategies are reported to have produced a number of notable results, such as the ‘*the enrolment of 88,595 self-identified Roma students*’.⁵⁴ Additionally, in 2021 Parliament adopted a Law on Certain Measures for Preventing and Combating Anti-Gypsyism, which – in addition to defining the term ‘*anti-gypsyism*’ – criminalises the dissemination of anti-gypsy doctrines; the spreading of anti-gypsy news or information; the production, distribution or possession of anti-gypsy symbols; or the formation, and membership or support of an anti-gypsy criminal organisations.⁵⁵

The State also highlighted that during these report cycles it adopted several strategies to promote equality between women and men, such as the National Strategy on Promoting Equal Opportunities and Treatment Between Women and Men and Preventing and Combating Domestic Violence for the Period 2022–2027, which sets as a priority the elimination of all forms of violence against women.⁵⁶ Furthermore, there have been significant recent legislative amendments on these issues, such as the 2018 amendment to Law No 202 of 2002 on Equal Opportunities and Equal Treatment between Women and Men.

Besides this dialogue between the State and UN human rights monitoring bodies during reporting cycles, it is not uncommon for the actors of the civil society (for non-governmental organisations or NGOs) to prepare and submit so-called ‘*shadow reports*’ alongside state reports. For example, for the above mentioned 2024 reporting cycle of the International Covenant on Economic, Social and Cultural Rights, six such submissions were made, most of which were put forward jointly by several NGOs. Examples of such NGOs are the Common Front for Housing Rights, Quantic Association, Social Housing NOW!, RomaJust The Association of Roma Lawyers, or the Border Violence Monitoring Networks. As one can notice, these NGOs represent different areas of social life, so we can conclude that, in general a reporting cycle also activates Romanian NGOs working in the field of human rights protection in general. These shadow reports point out that, for example, Romania

53 Decision No. 560 of 2022 of the Government on the Strategy for the Inclusions of Romanian Citizens Belonging to the Roma Minority for the Period 2022–2027.

54 United Nations Human Rights Council, 2023, point 79.

55 Law No. 2 of 2021 on Certain Measures for Preventing and Combating Anti-Gypsyism. Published in Official Gazette No. 8 of 5 January 2021.

56 Decision No. 1547 of 2022 of the Government on the National Strategy on Promoting Equal Opportunities and Treatment Between Women and Men and Preventing and Combating Domestic Violence for the Period 2022–2027.

violates certain provisions of the International Covenant on Economic, Social and Cultural Rights with regard to migrants and refugees,⁵⁷ that housing rights are not adequately protected in case of disadvantaged and vulnerable minorities,⁵⁸ or that there exists social discrimination on the basis of HIV/AIDS.⁵⁹

Precisely for these reasons (i.e., the openness of the State and the active participation of NGOs), it is surprising that – although a number of laws were adopted that address the comments made in the reporting cycles – UN conventions and covenants are rarely referred to in the explanatory memoranda or preambles of statutory laws.

It is salient to underline that, in addition to periodical reporting cycles, special *rapporteurs* have also issued some statements concerning Romania. These special procedures also influence the relationship between Romania and the UN. For example, in 2015 Philip Alston – as a special rapporteur on extreme poverty and human rights – stated that ‘Romanian society today is strongly divided, not only in terms of the urban/rural divide to which many have referred, but even more importantly, the divide between the more than 40% of people who continue to be at risk of poverty’.⁶⁰ The detailed statement also shows that the special rapporteur met with the representatives of several ministries, public institutions and NGOs, and had the opportunity to visit the living conditions of people affected by extreme poverty.⁶¹ Similarly, several other special rapporteurs of the Human Rights Council visited Romania and issued statements, the most important of which are listed in the table below.

57 Joint Submission of Border Violence Monitoring Network, Are You Syrious, Josoor, Rigardu, No Name Kitchen, Centre For Peace Studies, Mobile Info Team, Fresh Response, [RE:]ports Sarajevo, Info Kolpa, Collective Ais, Mare Liberum, plus unnamed anonymous partners [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FROU%2F46493&Lang=en (Accessed: 10 October 2024).

58 Joint Submission of Blocul pentru Locuire (BPL), Common Front for Housing Rights, Quantic Association, Desire Foundation, Căși sociale ACUM!/Social Housing NOW!, RomaJust The Association of Roma Lawyers, E-Romanja Association, Right to the City of Timisoara [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FROU%2F46493&Lang=en (Accessed: 10 October 2024).

59 Joint Submission of ECPI-Euroregional Center for Public Initiatives [Online]. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FROU%2F46582&Lang=en (Accessed: 10 October 2024).

60 Alston, 2015.

61 Ibid.

Table 2: Special procedures of the Human Rights Council
concerning Romania

Special rapporteur	Year
Special rapporteur on the independence of judges and lawyers	2011
Special rapporteur on slavery	2010
Special rapporteur on migrants	2009
Special rapporteur on health	2004
Special rapporteur on sale of children	2004
Special rapporteur on freedom of religion	2003
Special rapporteur on housing	2002
Special rapporteur on racism	1999
Special rapporteur on torture	1999

In the relationship under scrutiny, one can also point out that several programmes were implemented jointly by the UN and Romania. For example, in cooperation with the Office of the United Nations High Commissioner for Refugees and the International Organisation for Migration, Romania developed a special programme on refugee protection.⁶² Based on this an Emergency Transit Centre was established in Timișoara in 2008. Another example is the implementation of the National Action Plan of the so-called European Child Guarantee, which was carried out by the State with the help of the UNICEF and based on which 52 measures were developed to help children at risk of poverty or social exclusion in Romania.⁶³

In the Romanian legal literature, an essential argument in favor of the UN human rights protection mechanisms is that they are under the auspice of a single organisation, thus take into account the standards of only one organisation (e.g., during reporting cycles or special procedures), which is a significant advantage compared to the regional level of protection, where several different mechanisms may exist (e.g., in Europe the protecting mechanism of the European Union and that of the Council of Europe).⁶⁴ The universality of the UN human rights protection system, the diversity of its legal, monitoring and control mechanisms are, according to some Romanian scholars, its prominent values.⁶⁵

On the basis of all these observations, one can conclude that the State is open to engaging with the UN in the field of human rights protection and intends

⁶² United Nations General Assembly, 2011, point 3.

⁶³ UNICEF, 2024.

⁶⁴ Voiculescu and Berna, 2023, p. 183.

⁶⁵ Ibid.

to act on the basis of the principle of loyal cooperation in each reporting cycle or special procedure. Moreover, the principle of *pacta sunt servanda* permeates the relationship between Romania and the UN, as can be seen from the above. However, the implementation of the UN recommendations needs further legislative efforts, because – as the reports of the UN human rights monitoring bodies reflect – in some areas the level of protection is not yet adequate.

3. The ratification of UN human rights conventions and covenants by Romania

■ 3.1. UN human rights conventions and covenants ratified by Romania

With regards to the UN human rights conventions and covenants, in the almost seventy years since its accession, Romania has signed and ratified almost all of them. However, the ratification process as a whole reveals a number of interesting aspects. The signature and ratification of the nine UN human rights conventions and covenants under scrutiny in this contribution are summarised in the following table.

Table 3: Romanian ratification of the UN human rights conventions and covenants

Convention/Covenant	Year of Signature/ Accession	Ratification
The 1951 Convention relating to the Status of Refugees	1991	Law No. 46 of 1991
The 1966 International Covenant on Civil and Political Rights	1968	Decree No. 212 of 1974
The 1966 International Covenant on Economic, Social and Cultural Rights	1968	Decree No. 212 of 1974
The 1965 International Convention on the Elimination of All Forms of Racial Discrimination	1970	Decree No. 345 of 1970
The 1979 Convention on the Elimination of All Forms of Discrimination against Women	1980	Decree No. 342 of 1981
The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1990	Law No. 19 of 1990
The 1989 Convention on the Rights of the Child	1990	Law No. 18 of 1990
The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	No signing	No ratification
The 2006 Convention on the Rights of Persons with Disabilities	2007	Law No. 221 of 2010

As one can observe, Romania has ratified eight out of the nine UN human rights conventions studied. The only exception is the 1990 International Convention on

the Protection of the Rights of All Migrant Workers and Members of Their Families. Another special case concerns the ratification of the 1951 Convention relating to the Status of Refugees, which only took place in 1991, exactly forty years after its adoption. The ratification of the other seven human rights conventions took an average of four years and ten months.

In addition, it should be emphasised that Romania accepted only three individual complaints procedures: the Optional Protocol to the International Covenant on Civil and Political Rights on 20 July 1993, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 25 August 2003, and the individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination on 21 March 2003.

■ 3.2. *The ratification of UN human rights conventions and covenants under scrutiny*

If one looks at the ratification of each convention or covenant separately, the following observations can be made. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were ratified jointly by Decree No. 212 of 1974. The ratification of the two covenants reflects that in the 1970s – after Nicolae Ceaușescu's opposition to the suppression of the Czechoslovak revolution – Romania became very active on the international scene.⁶⁶ This is also highlighted by the preamble of the Decree, which states that

[t]he human rights covenants contain important principles and provisions for the progressive development of contemporary international law, such as the right of peoples to decide their own destiny, by virtue of which they freely determine their political status and ensure their economic, social and political development, the right to dispose of their natural resources, and the prohibition of war propaganda. They also reaffirm democratic principles for the protection and promotion of human rights.⁶⁷

One can also underline that during the Soviet-type dictatorship, the ratification was carried out by decrees. The main reason for ratification by decree was the gradual marginalisation of the role of Parliament during these years, thus legislation was mainly passed through decrees adopted by the Presidium of the Great National Assembly and later by the State Council. These decrees had binding legal force and

⁶⁶ Fábíán, 2018, p. 190.

⁶⁷ Preamble to Decree No. 212 of 1974.

were implemented by decisions of the Council of Ministers.⁶⁸ According to some scholars, this legislative mechanism enabled party decisions to be ‘transposed into the legal system quickly and without difficulty’.⁶⁹ Thus, the ratification of the two Covenant took place rapidly with the adoption of Decree No. 212 of 1974, without any further steps.

In the context of the ratification of the International Covenant on Economic, Social and Cultural Rights it has to be noted that upon ratification, Romania made a number of reservations. For example, the State Council considered that Article 26 (1) of the Convention was inconsistent with the principle based on which accession to international treaties must be open to universal participation.

The International Convention on the Elimination of All Forms of Racial Discrimination was ratified by Decree No. 345 of 1970 which was adopted also by the State Council. The Decree contained a number of reservations, concerning Articles 17, 18, and 22 of the Convention. Furthermore, it is interesting to note that the Decree explicitly listed all states operating under Soviet-type dictatorship regime that had already ratified the Convention by the time the decree was issued. The preamble of the Decree contains another rather curious paragraph, which states that

[b]earing in mind that Romanian legislation prohibits all forms of discrimination, including discrimination on the grounds of race or nationality, and that, in accordance with the principles of the foreign policy of the Socialist Republic of Romania, in order to promote peace, cooperation and progress in the world, has firmly stood and stands for the elimination of all forms of racial discrimination at the international level, the decree appended hereto has been issued on the accession of the Socialist Republic of Romania to the International Convention on the Elimination of All Forms of Racial Discrimination.⁷⁰

The last Convention ratified during the Soviet-type dictatorship was the Convention on the Elimination of All Forms of Discrimination against Women. The ratification of this Convention was made by issuing Decree No. 342 of 1981, which entered into force on 3rd September 1981. The Decree essentially completed ratification by a verbatim translation of the Convention.

After the regime change the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were ratified by two successive laws (Law No. 18 of 1990 and Law

68 Veress, 2020a, pp. 504–505.

69 Veress, 2020a, p. 505.

70 Preamble to Decree No. 345 of 1970.

No. 19 of 1990). Both laws were adopted by the lower chamber of Parliament on 25th September 1990. Interestingly, the Senate adopted Law No. 18 of 1990 on 26th September 1990, whilst Law No. 19 of 1990 was adopted by it on 11th September 1990. Both laws contain only one article declaring Romania's accession to the respective convention.

The Convention relating to the Status of Refugees was ratified by Law 46 of 1991, which was adopted by the lower chamber of the Parliament on 27th May 1991 and by the Senate on 2nd July 1991. One can notice that in the first years after the regime change, Romania ratified several conventions in an attempt to comply with international human rights standards. This period can be considered the second major wave of ratification (the first taking place in the 1970s).⁷¹

As the last of the conventions and covenants examined, Romania ratified the Convention on the Rights of Persons with Disabilities by Law No. 221 of 2010 on 11th November 2010. The law on ratification essentially contains two articles, the first stating the action of ratification, while the second confers on the National Authority for Persons with Disabilities the power to implement the convention.

It should be also noted that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is not ratified by Romania.

The scrutinised ratification processes can be broadly divided into two main categories: ratification during the years of the Soviet-type dictatorship, and ratification following the regime change. A key difference between the two periods is related to the form of ratification. During the Soviet-type dictatorship, the ratification process was carried out by decrees, whilst after the regime change ratification was done by law. The constitutional basis for ratification was also different under the Soviet-type dictatorship than it is today.

One can observe that during the years of the Soviet-type dictatorship, preambles and the justification for ratification played a pivotal role. Nonetheless, these preambles were somewhat imbued with the political ideology of the time. They also often contained the reservations of Romania to the ratified convention. After the regime change, the legislator no longer attached such symbolic importance to preambles.

The methods of ratification, the preambles and the reasonings all reflect the fact that ratifications before 1989 were heavily influenced by the political ideology of the era. Accession to international human rights conventions was merely a means to an end, with the actual protection of human rights and freedoms taking a back seat. The post-regime change period has brought a change in this respect. For

71 Some scholars have also noted that, after the regime change, Romania acceded to all relevant international conventions and covenants to which it was not yet a party and withdrew its reservations to those that has already been ratified. Ionescu, 2019, p. 891.

this reason, it is worth considering how human rights protection is implemented in practice in Romania today.

4. How are human rights protection obligations deriving from the abovementioned UN conventions and covenants reflected in the Constitution and other major acts in Romania?

As mentioned above, the provisions on the protection of fundamental human rights and freedoms are firstly set out in Title II of the Constitution of Romania. The first Chapter of this Title lays down general provisions and principles on the protection of human rights (e.g. universality, equality of rights), whilst Chapter II contains provisions related to specific fundamental rights. According to some scholars, fundamental human rights regulated by the Constitution include rights derived by the legislator from international treaties and conventions.⁷² One can observe that the human rights protected by the Constitution of Romania are to a large extent identical to those enshrined in what is termed as the International Bill of Human Rights.⁷³ In addition to the provisions of the Constitution, a number of other pieces of legislation provide for the protection of fundamental human rights.

■ 4.1. *The Convention relating to the Status of Refugees*

Under Article 18 (2) of the Constitution of Romania '[t]he right to asylum shall be granted and withdrawn under the provisions of the law, in compliance with the international treaties and conventions Romania is a party to'.⁷⁴ As a result, the right to asylum in Romania must be regulated in accordance with the Convention relating to the Status of Refugees. These detailed regulations are contained in Law No. 15 of 1996 on the Status and Regime of Refugees in Romania.

■ 4.2. *The International Covenant on Civil and Political Rights*

The fundamental human rights enshrined in the International Covenant on Civil and Political Rights are mainly contained in the Constitution of Romania. Accordingly, Article 16 provides for the equality of rights, including the guarantee of equal opportunities for men and women, Article 22 provides for the right to life, to physical and mental integrity, Article 23 provides for individual freedoms including detailed norms on detention, arrest and preventive custody, Article

⁷² Varga, 2019, p. 197.

⁷³ The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁷⁴ Article 18 (2) of the Constitution of Romania. Available in English at: <https://www.presidency.ro/en/the-constitution-of-romania> (Accessed: 26 August 2024).

25 provides for the freedom of movement within the territory of Romania and abroad, Article 26 provides for personal and family privacy, Article 30 provides for the freedom of expression of thoughts, opinions, or beliefs, and for the freedom of any creation, Article 39 provides for the freedom of public meetings, processions, demonstrations or assemblies, whilst the right to vote and to be elected are enshrined in Articles 36 and 37. Moreover, in addition to the Constitution, a number of other laws also concern fundamental rights enshrined in the Convention, such as Law No. 304 of 2022 on the Organisation of Justice. Article 8 of this Law states that free access to justice cannot be restricted. In addition, Chapter II of Title II of the Civil Code provides for several personality rights such as the right to life, health and physical integrity (Article 61), freedom of expression (Article 70), the right to privacy (Article 71) or the right to human dignity (Article 72).⁷⁵ One can remark that while the right to human dignity is not explicitly mentioned in the text of the Constitution (which does not mean, of course, that human dignity permeate the catalogue of fundamental rights of the Constitution, as – under Article 1 (3) – it is one of the supreme values of the Romanian state), it is expressly provided for in the Civil Code.

■ 4.3. *The International Covenant on Economic, Social and Cultural Rights*

The fundamental rights provided for by the Covenant on Economic, Social and Cultural Rights are also enshrined in the text of the Constitution and are thus constitutionally protected. The Fundamental Law provides details on labour and the social protection of labour (Article 41), the right to education (Article 32), access to culture (Article 33), the right to protection of health (Article 34), economic freedom (Article 45) or economic standards (Article 47). This latter provision includes the explicit obligation of the State ‘to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens’.⁷⁶ At the same time, some statutory laws also contain detailed provisions concerning these fundamental human rights, such as the right to work and social protection in the Labour Code (Law No. 53 of 2003) or the right to education in Law No. 1 of 2011 on National Education. It is also salient to underline that, according to Article 73 of the Constitution, the general organisation of education and the general rules governing labour relations and social protection shall be regulated by organic law. Thus, it is clear that the Romanian *pouvoir constituant* considered these areas to be of the utmost importance, mainly because of their close connection with fundamental human rights.

⁷⁵ Sztranyicki and Kokoly, 2021, pp. 39–60.

⁷⁶ Article 47 (1) of the Constitution of Romania.

■ 4.4. *The International Convention on the Elimination of All Forms of Racial Discrimination*

According to Article 4 (2) of the Constitution ‘Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin’.⁷⁷ On this basis, the prohibition of racial discrimination is a fundamental priority in Romanian. Moreover, under Article 30 of the Constitution, freedom of expression may be restricted, among other reasons precisely to avoid and prevent racial discrimination. In this context one should mention Ordinance No. 137 of 2000 as well, which provides for the prevention and sanctioning of all forms of discrimination. Furthermore, Article 369 of the Criminal Code criminalises incitement to public hatred or discrimination against a particular community (thus also criminalising racial incitement), whilst Article 77, point h) considers it an aggravating circumstance if an offence is committed on racial grounds.

■ 4.5. *The Convention on the Elimination of All Forms of Discrimination against Women*

On the one hand, Article 16 of the Constitution in its paragraph (3) declares that the State shall guarantee equal opportunities for men and women to occupy public, civil, or military positions or dignities. On the other hand, according to Article 41 (4) ‘[o]n equal work with men, women shall get equal wages’.⁷⁸ Based on these provisions, one can note that the Constitution protects equality between men and women essentially in relation to the right to work. However, equality between men and women in other areas is provided for in Law No. 202 of 2002 on Equal Opportunities and Equal Treatment of Women and Men. In this context one should also mention a relevant decision of the Constitutional Court, according to which, in the given social context, the legislature considered that the imposition of a uniform legal treatment in connection to the retirement age between women and men was not yet adapted to social realities, but that the current regulations should not exclude the possibility of a woman requesting the continuation of the performance of the individual employment contract, under identical conditions as a man, namely until she would reach the age of 65.⁷⁹

⁷⁷ Article 4 (2) of the Constitution of Romania.

⁷⁸ Article 41 (4) of the Constitution of Romania.

⁷⁹ Decision No. 387 of 2018 of the Constitutional Court. Published in Official Gazette No. 642 of 24 July 2018.

■ 4.6. *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Article 22 (2) of the Constitution expressly prescribes that ‘[n]o one may be subject to torture or to any kind of inhuman or degrading punishment or treatment’.⁸⁰ Moreover, Article 281 of the Criminal Code criminalises submission to ill-treatment, while Article 282 the use of torture. It is interesting to note that Law No. 20 of 1990 on Supplementing and Amending the Criminal Code⁸¹ – by which the Romanian legislature first criminalised the use of torture – was adopted as a result of Romania’s accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸²

■ 4.7. *The Convention on the Rights of the Child*

The Constitution contains several provisions on the rights of the child. The most important is Article 49 on the protection of children and young people, which provides, among other things, special protection and assistance to children, the obligation of the State to grant allowances for children, and the prohibition of the exploitation of minors. Moreover, according to Article 48 (1) parents have the right and the duty ‘to ensure the upbringing, education and instruction of their children’.⁸³ The Constitution also stipulates equality between children born in or out of wedlock (Article 48 (3)). Further detailed regulation is contained in the Civil Code (Articles 487–512 on parental rights and duties) and Law No. 272 of 2004 on the Protection and Promotion of the Rights of the Child. Moreover, the Civil Code states in Article 263 (1) that any measures concerning the child must be taken by respecting the best interests of the child.

■ 4.8. *The Convention on the Rights of Persons with Disabilities*

According to Article 50 of the Constitution

[d]isabled persons shall enjoy special protection. The State shall provide the accomplishment of a national policy of equal opportunities, disability prevention and treatment, so that disabled persons can effectively participate in community life, while observing the rights and duties of their parents or legal guardians.⁸⁴

These detailed regulations are prescribed by Law No. 448 of 2006 on the Protection and Promotion of the Rights of Persons with Disabilities.

⁸⁰ Article 22 (4) of the Constitution of Romania.

⁸¹ Published in Official Gazette No. 112 of 10 October 1990.

⁸² Corsei and Ștefănoaia, 2022, p. 77.

⁸³ Article 48 (1) of the Constitution of Romania.

⁸⁴ Article 50 of the Constitution of Romania.

■ 4.9. *Institutional guarantees of fundamental human rights protection*

In addition to this legislative framework, one can notice that institutional guarantees are also regulated. The Constitutional Court itself is one of the most salient institutions in human rights protection, as it can review the constitutionality of certain provisions to determine whether they comply with constitutional provisions on fundamental human rights. Another key institutional guarantee is the Advocate of the People, whose main task is to investigate complaints made by citizens against public authorities (nonetheless, it is important to stress that the Advocate of the People does not issue binding decisions, but only recommendations and suggestions). The National Council for Combating Discrimination also plays a crucial role in the protection of fundamental human rights and has the competence to prevent or, where appropriate, investigate and sanction discrimination.⁸⁵ The Romanian Institute for Human Rights – which is responsible for promoting the protection of fundamental human rights – was established by Law No. 9 of 1991. The Institute participates in national and international programmes, conducts training courses, prepares studies and reports, organises the Annual Human Rights Conference and hosts competitions. In addition, Romania has specialised institutions in certain fields, such as the National Agency for Roma, the National Agency for Equal Opportunities between Women and Men, or the Department for Interethnic Relations.

5. Legislative processes in Romania initiated by the UN conventions

As already mentioned above, relatively few national laws are justified on the grounds of the need to comply with UN human rights conventions and covenants. One reason for this is that in the case of the conventions or covenants ratified during the years of the Soviet-type dictatorship, the authorities of the time considered – as one can observe in the preambles presented above – that Romania was already fully in line with the relevant international standards, and thus no further legislative amendments were needed. On the other hand, even after the regime change, the incorporation of certain conventions and covenants into Romanian law was done in such a way that, upon ratification, the full text of the convention or covenant became an integral part of domestic law (essentially as an annex to the law on ratification).

Therefore, the number of laws or even provisions that can be explicitly known to have been adopted by Romania along the lines of the UN human rights documents is limited. Nevertheless, a few examples – where these conventions and covenants influenced the legislator – can be presented.

85 Nagy, 2022, p. 170.

In connection with the Convention relating to the Status of Refugees it has to be noted that Law No. 15 of 1996 on the Status and Regime of Refugees in Romania makes direct reference to the Convention as a regulation affecting asylum applications by foreign nationals in Romania.⁸⁶ Thus, the provisions of the Convention were taken into consideration by the legislator when it drafted national law on the status and regime of refugees.

As mentioned above, fundamental human rights regulated by the Constitution include rights derived by the legislator from international treaties and conventions.⁸⁷ Of the conventions and covenants examined in this study the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights stand out in terms of their impact on constitutional provisions. These covenants therefore shaped domestic law primarily in the context of the drafting of the 1991 Constitution.

The legislator expressly provided, in Ordinance No. 137 of 2000, that the National Council for Combating Discrimination is responsible for the implementation of the prohibition of discrimination in accordance with domestic legislation and international treaties.⁸⁸ Thus, the concrete implementation of the International Convention on the Elimination of All Forms of Racial Discrimination is an obligation of the Council. Moreover, it is clear from this provision that the establishment of the institution was, in a way, influenced by the implementation of international provisions.

The provisions of the Convention on the Rights of the Child influenced even certain stipulations of the Civil Code. Whilst the explanatory memorandum of the Civil Code lists all the UN conventions and covenants that were taken into account in drafting the code,⁸⁹ the actual reasoning refers only to Convention on the Rights of the Child on the basis of which the best interest of the child was regulated in Article 263.⁹⁰ The Convention influenced also the provisions of Law No. 272 of 2004 on the Protection and Promotion of the Rights of the Child, which stipulates that ‘public authorities, private service providers, natural and legal persons responsible for child protection are obliged to respect, promote and guarantee the rights of the child [...] in accordance with the UN Convention on the Rights of the Child’.⁹¹

86 Article 1 (2) of Law No. 15 of 1996 on the Status and Regime of Refugees in Romania.

87 Varga, 2019, p. 197.

88 Article 16 of Ordinance No. 137 of 2000 on Preventing and Sanctioning All Forms of Discrimination.

89 Namely: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

90 Explanatory memorandum – Law on the Civil Code. [Online]. Available at: <https://www.cdep.ro/proiecte/2009/300/00/5/em305.pdf> (Accessed: 10 October 2024).

91 Article 1 (2) of Law No. 272 of 2004 on the Protection and Promotion of the Rights of the Child.

Regarding the legislative processes connected to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, one has to take into account that, as already mentioned, the criminalisation of the use of torture – by Law No 20 of 1990 on Supplementing and Amending the Criminal Code – was carried out precisely in order to comply with the Convention. At the same time, the explanatory memorandum of the current Criminal Code does not mention any UN human rights convention or covenant that has had an impact on the legislation. In contrast, a high number of European Union regulations and directives have shaped the provisions of the Code according to this memorandum.⁹²

As a direct consequence of the Convention on the Elimination of All Forms of Discrimination against Women, during the 2015 amendment of Law No 202 of 2002 on Equal Opportunities and Equal Treatment of Women and Men, the idea that equal opportunity should be defined in accordance with international standards was incorporated into the text of the Law. The initiators of the amendment (members of the Parliament) in their explanatory memorandum reflected directly on the Convention and highlighted its influence on the amendment. However, the amendment was also influenced by relevant regional regulations.⁹³

The Convention on the Rights of Persons with Disabilities appears in the relevant Romanian domestic law in such a way that Law No. 448 of 2006 on the Protection and Promotion of the Rights of Persons with Disabilities explicitly provides that the rights of persons with disabilities must also be guaranteed in accordance with international conventions.⁹⁴ At the same time, the fact the Law directly mentions the European Social Charter highlights that the implementation of regional treaties or charters has a much more important impact on legislation than UN conventions or covenants (it is true that Romania had not yet ratified the Convention at the time of the adoption of the law, but even after ratification this provision was not amended).

Nonetheless, one has to mention that the Constitutional Court in 2020 found that the provisions of the Civil Code on the adjudication of incapacity are unconstitutional as they do not take into account that there might be varying degrees of mental disability.⁹⁵ In the given Decision the Constitutional Court

92 Explanatory memorandum – Law on the implementation of the Criminal Code and amending and supplementing certain normative acts containing criminal provisions [Online]. Available at: <https://www.cdep.ro/proiecte/2011/100/00/0/em100.pdf> (Accessed: 10 October 2024).

93 Explanatory memorandum – Law on amending and supplementing Law No. 202 of 2002 on Equal Opportunities and Equal Treatment of Women and Men [Online]. Available at: <https://www.cdep.ro/proiecte/2013/400/00/5/em705.pdf> (Accessed: 13 October 2024).

94 Article 4 of Law No. 448 of 2006 on the Protection and Promotion of the Rights of Persons with Disabilities.

95 Decision No 601 of 2020 of the Constitutional Court of Romania. Published in Official Gazette No 88 of 27 January 2021.

referred explicitly to the Convention on the Rights of Persons with Disabilities. Moreover, whilst correspondingly amending the Civil Code, the legislator also took into account Article 12 of the Convention.⁹⁶ Thus, through the decision of the Constitutional Court, the Convention influenced the provisions of the Civil Code, but this only took place more than ten years after the ratification.

From this brief presentation one can conclude that in Romania – except for a few general cases – there are no major legislative initiatives or processes that rely to a significant extent on UN human rights conventions or covenants. One reason for this lies in the practical shortcomings of the enforceability of UN human rights conventions and covenants. Although specific UN bodies were established to monitor the implementation of certain convention, their soft-law acts are not enforceable, and thus, as practice shows, they are rarely invoked by the Romanian legislator. Perhaps that is why, when a comprehensive volume on the impact of the UN human rights treaties on domestic level was compiled a few years ago, although Romania was originally included among the East-central European states to be reported on, it was ultimately replaced by Poland.⁹⁷ In general, it can also be stated that in contrast to these UN human rights conventions and covenants, the Romanian legislator prefers to refer to and mirror the human rights instruments of the Council of Europe (e.g., the European Convention on Human Rights) or to those regulations and directives issued by the European Union, that also relate to fundamental human rights.

6. Romanian cases before the monitoring bodies of the UN conventions and covenants

Due to the fact that so far only one monitoring body of the UN has dealt with cases concerning Romania (three in number), in the following only these cases discussed by the UN Human Rights Committee (hereinafter: HRC) will be discussed.

The main task of the HRC is to monitor the implementation of the provisions of the International Covenant on Civil and Political Rights by the States Parties. The HRC can adopt State-specific and general comments, the latter referring to certain provisions of the Covenant. Additionally, there is also an optional inter-State complaints procedure, under which the HRC is trying to find amicable solutions. The First Optional Protocol to the International Covenant on Civil and Political Rights has created the possibility of individual complaints.⁹⁸ Romania acceded to this First Optional Protocol in 1993. Subsequently, the State appeared

⁹⁶ See the preamble of Law No 140 of 2022 on Some Measures for the Protection of Persons with Intellectual and Psychosocial Disabilities and Amending and Supplementing Certain Normative Acts.

⁹⁷ Viljoen and Murray, 2021, p. 6.

⁹⁸ Selejan-Guțan, 2011, pp. 10–11.

as a party before the HRC on three occasions. One can find a summary of these cases as follows.

■ 6.1. *Blaga and Blaga v. Romania*⁹⁹

Aurel and Lucia Blaga, two Romanian citizens, bought an apartment in Bucharest in 1979. Nine years later, in 1988, they left the country and, as they did not return after their visas expired, the municipality expropriated their property under Decree No. 223 of 1974. In 1992, the authors (Aurel and Lucia Blaga) applied to the district court of Bucharest to set aside the expropriation decision and return their property by restitution. Although their application was dismissed at first instance and also on appeal, the Bucharest Court of Appeal ruled in the third instance that the expropriation of the apartment was contrary to Article 13 of the Universal Declaration of Human Rights (on freedom of movement) and that the municipality should return the property to them. Moreover, in May 1995, the authors sold the apartment to a third party.¹⁰⁰

In 1995, the Supreme Court (the current High Court of Cassation and Justice) issued a decision ruling that domestic courts did not have the jurisdiction to hear actions for the restitution of expropriated properties. On the basis of this decision, the General Prosecutor appealed in the interest of the law in several cases, including the case of the authors. In May 1996, the Supreme Court ruled that the Court of Appeal of Bucharest had exceeded its jurisdiction and violated the principle of separation of powers when it returned the apartment to the authors.¹⁰¹

Against this factual background, the authors considered that the decision of the Supreme Court violated Article 12 (freedom of movement) and Article 26 (equality before the law) of the International Covenant on Civil and Political Rights, as the expropriation of their property was carried out in order to punish them for leaving the country. The authors also invoked a violation of Article 14 (right to justice), pointing out that prior to 2003, the General Prosecutor had the possibility to lodge an exceptional appeal against an irrevocable decision. According to the authors, this power of the General Prosecutor violated legal certainty and the equality of arms between the parties in the proceedings. The authors also pointed out that when their case came before the courts in 1992, the domestic courts had jurisdiction to rule in such cases, so the decision of the Supreme Court also infringed their right to free access to justice.¹⁰²

The State argued – both on admissibility and factual grounds – that the provisions of the International Covenant on Civil and Political Rights had not been violated. Among other things, the State raised as an argument that the authors

99 Case of *Blaga and Blaga v. Romania*, Communication No. 1158/2003.

100 Case of *Blaga and Blaga v. Romania*, Communication No. 1158/2003, points 2.1, 2.2.

101 Case of *Blaga and Blaga v. Romania*, Communication No. 1158/2003, point 2.3.

102 Case of *Blaga and Blaga v. Romania*, Communication No. 1158/2003, point 3.1–3.4.

alleged the violation of Articles 12 and 26 on the basis of events that occurred prior to 1989, that is, before the entry into force of the Optional Protocol (*ratio temporis* objection). As a factual argument, the State highlighted that the authors had real remedies available to them and that their free access to justice was respected.¹⁰³

In relation to the *ratio temporis* objection, the HRC observed that the contested decision of the Supreme Court was handed down in 1996 and had the effect of upholding the expropriation of the authors' apartment. Therefore, the present case fell within the competence of the HRC.¹⁰⁴

On the other hand, concerning the consideration of the merits, the HRC declared as a matter of principle that:

[t]he Committee considers that the principle of equality before the law entails that judgments, once they have become final, can no longer be appealed or reviewed, except in special circumstances when the interests of justice so require, and on a non-discriminatory basis.¹⁰⁵

In the opinion of the HRC in the present case, no legitimate argument had been put forward to justify the annulment of the decision. Moreover, in 2003, the State itself abolished the right of the General Prosecutor to use extraordinary appeals, thus essentially acknowledging that this practice violated the principle of legal certainty. On this basis, the HRC found that the State had violated Article 26 of the International Covenant on Civil and Political Rights.¹⁰⁶

In light of the above, the HRC concluded that 'the State party is under an obligation to provide the authors with an effective remedy, including prompt restitution of their property or compensation therefor'.¹⁰⁷

These findings have been somewhat anticipated by the Romanian legislator, which has already taken some steps to remedy the shortcomings identified (e.g. abolished the right of the General Prosecutor to use extraordinary appeals). However, the general situation regarding restitution of real estate still needs to be improved.¹⁰⁸

■ 6.2. *Mohammad Munaf v. Romania*¹⁰⁹

Mr. Mohammad Munaf, the author of the communication, is an Iraqi-American dual national who lived in Romania with his Romanian wife and children.

103 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 8.1–8.3.

104 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 6.4.

105 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 10.2.

106 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003.

107 Case of Blaga and Blaga v. Romania, Communication No. 1158/2003, point 12.

108 See for example Veress, 2020b, pp. 373–375.

109 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006.

In March 2005, the author accompanied three Romanian journalists to Iraq to assist them in their work as a translator and guide. The visitors, however, were kidnapped and held hostage for 55 days. After their release, they were taken to the Romanian Embassy in Iraq. There, according to the author, he was handed over to the US military.¹¹⁰ The author was later transferred to the detention centre known as 'Camp Cropper', where, according to his claims, he was tortured and threatened by Romanian and American officials.¹¹¹

In October 2006, the author – along with five co-defendants – was brought before the Central Criminal Court of Iraq for his involvement in the kidnapping. He claims that during the trial, the presumption of innocence was violated in his regard, he was not given adequate time to prepare his defence, and was not allowed to contact his counsel from the US or call witnesses.¹¹² Moreover, since he was accused of kidnapping Romanian citizens, the Iraqi court could only prosecute him on the basis of a complaint submitted by the Romanian government. During the trial, a US Lieutenant filed a complaint against the author, stating that Romania had authorised him to file such a complaint and to seek the death penalty against the author. On this basis, he was sentenced to death.¹¹³ The author highlighted that, although Romania admitted that it had not authorised any US official to represent it during the proceedings, the State took no official steps to clarify the situation of the author. On 2 November 2006, the Ministry of Justice of Romania issued a press release in this sense, but no further steps were taken.¹¹⁴

Based on the above, the author considered that Romania violated the provision of Article 6 (on the right to life), Article 7 (on the prohibition of torture and inhuman or degrading treatment), Article 9 (on the right to liberty), Article 10 (on the treatment of persons deprived of their liberty) and Article 14 (on equality before the courts and tribunals) of the International Covenant on Civil and Political Rights.¹¹⁵

In its response, the State contested the admissibility and the substance of the application. First, Romania underlined that after the kidnapping, the victims were released under the command of the MNF-I (Multinational Force) troops. Subsequently, the three journalists were handed over by the MNF-I to the Romanian Embassy, while the author remained under the MNF-I's authority. He was later transferred to 'Camp Proper' detention centre. The State stressed that there were no Romanian officials at 'Camp Proper'.¹¹⁶ The Romanian prosecutor's office also opened criminal proceedings against the author on charges of terrorism, linked to

110 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.1.

111 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.2.

112 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.3.

113 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.4.

114 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 2.6.

115 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 3.1.–3.3.

116 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.2.

the kidnapping. Romanian public prosecutors were present in Baghdad at several stages of the investigation, and the author was interrogated by them multiple times. During these interrogations, the author was in a good condition and never complained of torture or degrading treatment.¹¹⁷

In addition, the State pointed out that the Romanian public prosecutors were mandated solely to interrogate the author and that they were not authorised to seize the Iraqi authorities. Romania also underlined that it had not authorised any US official to represent the State's interests during the proceedings in Iraq. Moreover, the Romanian Embassy did not know about the proceedings, nor the alleged authorisation.¹¹⁸ The State also emphasised that the author had not been under Romanian authority since he arrived in Iraq. The victims of the kidnapping were released by the MNF-I, so the fact that the author was at the Romanian Embassy was not relevant, as he was still in the custody of the MNF-I.¹¹⁹ Furthermore, Romania considered that the author could not prove that he had been a victim of torture, nor that his right to a fair trial had been violated.¹²⁰

It is salient to note that during the pending case before the HRC, the Iraqi Supreme Court set aside the judgement of the Central Criminal Court of Iraq concerning the author and remanded the case before a specialised court in order to conduct further investigations.¹²¹

On 2 April 2008, the HRC ruled on the admissibility of the author's communication and invited Romania to provide further details on the author's alleged criminal conduct.¹²² In its response, the State reiterated its objections to the admissibility of the communication and mentioned that in the meantime the Court of Appeal of Bucharest had sentenced the author to ten years of imprisonment for acts related to terrorism.¹²³ In addition, Romania pointed out that the author himself had requested to go from the Romanian Embassy to the US Embassy, and at that moment neither the author nor the Romanian Embassy knew that he would later be interned by the MFI-I Tribunal and prosecuted by the Iraqi authorities.¹²⁴ The State reiterated that the Romanian public prosecutors found the author in good condition, and also his wife confirmed that the author was '*doing pretty well*'.¹²⁵ Referring to the rules of criminal proceedings in Iraq, Romania also considered that the author's claim concerning the violation of his right to a fair trial was not well-founded.¹²⁶

117 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.3.–4.4.

118 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.5.–4.6.

119 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.10. – 4.11.

120 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 4.15.

121 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 6.2.

122 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 8.

123 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.1.–9.8.

124 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.9.

125 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.10.

126 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 9.13.

In considering the merits of the case, the HRC first highlighted that ‘a State party may be responsible for extra-territorial violations of the Covenant, if it is a link in the casual chain that would make possible violations in another jurisdiction’.¹²⁷ However, in view of the factual circumstances of this case, the HRC did not consider, on the basis of the information available to it, that ‘the State party would or should have known, at the time of the author’s departure, that criminal proceedings would subsequently be initiated against him in Iraq’.¹²⁸ Besides,

‘[t]he Committee notes that at the time of his departure from the embassy, the State party was of the view that the author would merely take part in a de-briefing procedure and had no reason to deny his specific request to go to the US embassy, in particular given his status as a dual national’.¹²⁹

On the basis of all these findings, the HRC concluded that Romania had not committed any act that would have exposed the author to a genuine risk of violation of his rights recognised by the International Covenant on Civil and Political Rights.¹³⁰

■ 6.3. *G.A.P. v Romania*¹³¹

The author of the communication was a Romanian businessman, in his capacity as Vice-Chair of the Board of Directors of an international company. In August 2000 the company signed an agreement with the University of Agronomic Sciences and Veterinary Medicine for the use of more than 200 hectares of land. The company later changed its name and the University obtained 49.88% of its shares. In addition, the University transferred to the company the right to use 175 hectares of land at Baneasa Farm. In 2005, another well-known Romanian businessman filed a complaint against the author and the rector of the University, but the General Prosecutor refused to investigate the case. Nevertheless, in 2009 the National Anti-Corruption Directorate opened a criminal prosecution against the author for complicity in abuse of power.¹³² The author was sentenced to nine years of imprisonment by the Court of Appeal of Bucharest for complicity in abuse of power and active bribery. The author filed an appeal against the decision, but this was dismissed by the High Court of Cassation and Justice.¹³³

127 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.2.

128 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.4.

129 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.5.

130 Case of Mohammad Munaf v. Romania, Communication No. 1539/2006, point 14.6.

131 Case of G.A.P v Romania, Communication No. 3662/2019.

132 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.1.–2.3.

133 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.9.

The author highlighted that according to Decision No. 51 of 2016 of the Constitutional Court of Romania ‘it was unconstitutional to rely on covert surveillance evidence secured with the assistance of the Romanian Intelligence Service’. He further claimed that he had been targeted by and fallen victim to a ‘parallel State formed by intelligence services, public prosecutors and some politicians’.¹³⁴ In addition, the author highlighted that a secret protocol existed between the Intelligence Service, the General Prosecutor’s Office, and the High Court of Cassation and Justice on cooperation between these bodies in the investigation of certain crimes.¹³⁵ On the basis of the above, the author considered that due to covert surveillance his right to privacy and the private nature of his correspondence, which are protected under Article 17 of the International Covenant on Civil and Political Rights, had been violated.¹³⁶ Moreover, the author stressed that the secret protocol did not meet the criteria of accessibility, clarity, precision and predictability and it did not provide any safeguards.¹³⁷

To all these arguments, the State responded both on the admissibility of the communication and the merits. Romania pointed out that the author’s objections concerning the use and effect of the secret protocol were too vague. Besides, interceptions authorised by courts are legally permissible and in the case of the author it was a proportionate, necessary and time-bound measure.¹³⁸ The State also pointed out that the author had not put forward any evidence to support that his surveillance was extensive or excessive.¹³⁹

On the basis of the facts and arguments presented, the HRC concluded that the author’s objections essentially concerned the illegality of the application of the secret protocol, the evaluation of the evidence and the enforcement of domestic law. However, the HRC underlined

‘that it is not a final instance entity competent to re-evaluate findings of fact or the application of domestic legislation. [...] On the basis of the information before it, the Committee cannot conclude that the author sufficiently substantiated his assertion’.¹⁴⁰

On these grounds, the HRC declared the author’s claims inadmissible.¹⁴¹

Although the HRC had declared the author’s claims inadmissible, one can notice that the case addressed an important issue, i.e. protocol existed between the Intelligence Service, the General Prosecutor’s Office, and the High Court of

134 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.8.

135 Case of G.A.P v Romania, Communication No. 3662/2019, point 2.14.

136 Case of G.A.P v Romania, Communication No. 3662/2019, point 3.1.

137 Case of G.A.P v Romania, Communication No. 3662/2019, point 3.2.

138 Case of G.A.P v Romania, Communication No. 3662/2019, point 6.6.–6.7.

139 Case of G.A.P v Romania, Communication No. 3662/2019, point 6.11.

140 Case of G.A.P v Romania, Communication No. 3662/2019, point 8.5.

141 Case of G.A.P v Romania, Communication No. 3662/2019, point 9.

Cassation and Justice on the cooperation between these bodies in the investigation of certain crimes. The Constitutional Court of Romania, in solving a legal dispute of a constitutional nature between the Public Ministry – Public Prosecutor’s Office attached to the High Court of Cassation and Justice-, Parliament of Romania, the High Court of Cassation and Justice and other courts found that ‘the collecting of evidence by bodies other than the judicial ones violates the material competence of the criminal prosecution bodies, which entails the application of the sanction provided for in Article 281 (1) b). of the Code of Criminal Procedure’.¹⁴² On this basis, the Constitutional Court highlighted that evidence collected not in accordance with the law cannot be used in criminal proceedings.¹⁴³ Following this, and another Decision¹⁴⁴ of the Constitutional Court, the provisions of the Code of Criminal Procedure were amended in 2023, introducing new safeguards for the collection of evidence.¹⁴⁵

7. Concluding thoughts

The protection of fundamental human rights has undergone significant changes during Romania’s history. In the post-regime change period, compliance with international human rights standards has become a priority. The specific role of the UN human rights conventions and covenants is ensured by Article 20 of the Constitution, which incorporates international human rights documents ratified by Romania into what is known as the ‘*constitutional bloc*’. At the same time, the relationship between the UN and Romania, from a human rights perspective, is also defined by the reporting cycles, during which an active dialogue is conducted between the parties. Given all this, one can say that from a human rights perspective, the relationship between Romania and the UN is based on two principles: the principle of *pacta sunt servanda* and the principle of loyal cooperation.

Nonetheless, it is worth pointing out that there were only a few legislative processes initiated by compliance to UN conventions or covenants. Domestic norms that specifically address human rights are much more likely to refer to regional human rights standards than to UN conventions or covenants. Regardless of this, however, most of the human rights enshrined in UN documents examined

¹⁴² Decision No. 26 of 2019 of the Constitutional Court. Published in Official Gazette No. 193 of 12 March 2019, Reasoning 208.

¹⁴³ Decision No. 26 of 2019 of the Constitutional Court. Published in Official Gazette No. 193 of 12 March 2019, Reasoning 206.

¹⁴⁴ Decision No. 55 of 2020 of the Constitutional Court. Published in Official Gazette No. 517 of 15 June 2020.

¹⁴⁵ Law No. 201 of 2023 on amending and supplementing Law No 135 of 2010 on the Code of Criminal Procedure and amending other normative acts. Published in Official Gazette No. 618 of 6 July 2023.

in this study are constitutionally protected in Romania and are also provided for in detail in other organic or ordinary laws.

Romania has also taken some practical steps to comply with international human rights standards. Despite these efforts made by the State, there still are some shortcomings. These have also been observed by some UN bodies. Certain social groups, such as the Roma minority or members of national minorities, often face discrimination. A major problem for the Roma minority in particular is free access to education, health care, or employment. Visible inequalities between women and men are also apparent, exacerbated by the high number of domestic violence cases against women. Moreover, it is also worth taking into account the proceedings concerning Romania before certain UN bodies, such as the HRC, as these cases may also reveal certain specificities. For example, the weaknesses in the protection of property rights and the judiciary that could be observed in the first years after the regime change are outlined in the case of *Blaga and Blaga v. Romania*.

All this shows that Romania is committed to complying with international human rights standards. It has made considerable efforts to do so, but further progress is needed to ensure more comprehensive protection. In all these processes, UN bodies have a key role to play by providing further guidance through their comments and recommendations.

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