RAPORT OF THE CONSTITUTIONAL COURT OF ROMANIA

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

JUDGE

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1. International catalogues of human rights (ECHR, UDHR and ICCPR)

1.1 ***In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights? ?***

For a clear understanding of the relationships between legal rules stemming from national and international law and the way these rules are harmonised, we would point out from the outset that **these relationships are clearly governed by the Constitution of Romania** in:

- Article 11 – *International law and national law*;

- Article 20 – *International treaties on human rights*;

- Article 148 – *Integration into the European Union*.

The following conclusions arise from those three texts:

- treaties ratified by Parliament are part of national law; their legal force and position in the hierarchy of national legislative acts is given by the ratification act, with the corresponding consequences; the term "international treaty" has a broad meaning, including international acts regardless of their denomination (treaty, convention, protocol, charter, memorandum, etc.);

- human rights treaties to which Romania is a party constitute a separate category: they form part of the "constitutional block", with constitutional interpretative value (meaning that the constitutional provisions must be interpreted and applied in accordance with the provisions of international human rights treaties to which Romania is a party), and priority for application in the event of inconsistency with national laws, unless the Constitution or national laws contain more favourable provisions;

- the founding Treaties of the European Union, including the Charter of Fundamental Rights of the European Union, as well as other binding European regulations, constitute as well a category of international acts with a distinct legal regime in the sense that they take precedence over conflicting provisions of domestic laws; they have a supra-legislative but infra-constitutional position.

Next, answering to the first question, we would point out that, according to Article 20 of the Constitution of Romania, with the marginal title ***International treaties on human rights***, *"(1)*

Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the convenants and other treaties Romania is a party to. (2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions." It therefore follows that international human rights treaties to which Romania is a party have constitutional interpretative value and priority over internal rules, unless the Constitution or national laws contain more favourable provisions.

1.2 What mechanism is used to invoke the international treaties in national court decision-making?

Article 11 of the Constitution of Romania, with the marginal title ***International law and national law*** provides in paragraph (2) that *"Treaties ratified by Parliament, according to the law, are part of national law."* As a result, an international act becomes an integral part of Romanian domestic law only after ratification by the Parliament, in accordance with the law.

1.3 Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

Article 20 of the Constitution, quoted above, provides the legal basis for the direct reliance on international human rights treaties both before the Constitutional Court and the ordinary courts. In this regard, with reference, for example, to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court of Romania has also relied on the case-law of the European Court of Human Rights (case Dumitru Popescu v. Romania, Judgment of 26 April 2007, case Vermeire v. Belgium, Judgment of 29 November 1991) in the sense that the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms form an integral part of the domestic legal order of the signatory States, this leading to an obligation for the national judge to ensure the full effect of its rules, ensuring that they take precedence over any other contrary provision of national law. The European Court has found that the status conferred on the Convention under national law allows national courts to disapply, of their own motion or at the request of the parties, provisions of national law which they consider to be incompatible with the Convention and its additional protocols (Decision No 724 of 1 June 2010, Official Gazette No 465 of 7 July 2010).

2. Supranational catalogues of human rights (the Charter)

2.1 Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by "radiating" through the national catalogues (a substantive point of reference in other states)?

Accession to the European Union has led to the rules of European Union law becoming a reference instrument for the review of constitutionality, in the application and with the distinctions

laid down in Article 148 of the Constitution — *Integration into the European Union*, in respect of which a rich case-law of the Constitutional Court has already been developed.

According to Article 148 of the Constitution of Romania, *"(1) Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out by means of a law adopted in the joint sitting of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.*

(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act.

(3) The provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.

(4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.

(5) The Government shall send to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval."

As regards the interpretation and application of that constitutional text, the following conclusions can be drawn, in essence, from the case-law developed by the Constitutional Court of Romania:

- the Constitution is the only direct reference rule in the context of the review of constitutionality;

- a rule of European law may be used within the review of constitutionality as a **rule interposed to the direct reference rule, which can only be the Constitution**, provided that certain conditions are complied with (an objective condition relating to the clarity of the rule, and a subjective one which falls within the discretion of the constitutional relevance of the rule of European law). In this respect, the Constitutional Court of Romania held that "the use of a rule of European law in the framework of constitutional review as an international rule interposed to the reference rule [A/N: Constitution of Romania] implies, on the basis of Article 148 (2) and (4) of the Constitution of Romania, a cumulative conditionality: on the one hand, this rule must be sufficiently clear, precise and unequivocal by itself or its meaning must have been established in a clear, precise and unambiguous manner by the Court of Justice of the European Union and, on the other hand, the rule must be subject to a certain level of constitutional relevance, so that its normative content would support a possible violation by the national law of the Constitution — the only direct rule of reference for the review of constitutionality. In such a case, the Constitutional Court's approach is distinct from the mere application and interpretation of the law, which lies with the courts and administrative authorities, or any legislative policy matters promoted by Parliament or the Government, as the case may be." The assessment of the constitutional relevance lies solely with the Constitutional Court of Romania;

- as regards the Charter of Fundamental Rights of the European Union, the Constitutional Court of Romania has held, distinctly, that it is, in principle, applicable within the review of

constitutionality "in so far as it ensures, guarantees and develops the constitutional provisions on fundamental rights, that is to say, insofar as their level of protection is at least at the level of the constitutional norms in the field of human rights." (for example, Decision No 871 of 25 June 2010, published in the Official Gazette of Romania, Part I, No 433of 28 June 2010)

2.2 Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogue in your country by general courts, or as a source for judicial law-making?

The Constitutional Court uses the case-law of the CJEU as guidance on the interpretation and application of fundamental rights enshrined in the Constitution of Romania, as we will illustrate below.

Thus, being seised with the exception of unconstitutionality of the provisions of Article 53 (1) of Law No 263/2010 on the uniform public pension system according to which "the standard retirement age is 65 years for men and 63 for women. *The attainment of this age is achieved by increasing the standard retirement ages, in accordance with the sequencing set out in Annex 5*", and observing that, in reality, the criticism of unconstitutionality concerned only those provisions setting out the different retirement age for women compared to men, in conjunction with the provisions of the Labour Code relating to termination as of right of the employment contract, the Constitutional Court of Romania considered that it is necessary to emphasise the distinction between the two issues (the retirement conditions and, respectively, the termination of the individual contract of employment).

Bearing in mind that the delineation of these issues does not result solely from the different pieces of national legislation — Law No 263/2010 concerning the retirement conditions, and Law No 53/2003 concerning the situations in which the individual employment contract is terminated — **but also from the different regulation of those concepts at European level, the Constitutional Court of Romania considered that it is relevant, in that respect, the distinction made by the Court of Justice of the European Union between the retirement conditions (allowing the fixing of different ages between men and women) and the conditions of termination of the employment contract**, which must be uniform for both men and women.

The Constitutional Court of Romania stated in the preamble to the decision that: «both in its Judgment of 26 February 1986 in Case M.H. Marshall v. Southampton and South-West Hampshire Area Health Authority (Teaching), paragraphs 32 and 36, and in its Judgment of 18 November 2010 in Case Pensionsversicherungsanstalt v. Christine Kleist, paragraph 24, the European Court pointed out that "the conditions for payment of a retirement pension and the conditions governing termination of employment are separate issues". In that regard, it made a clear division between the provisions of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, published in the Official Journal of the European Union, Series L, No 39 of 14 February 1976, provisions providing for the application of the principle of equal treatment in respect of working conditions, including those governing dismissal, which called for men and women to be guaranteed the same conditions, without discrimination on grounds

of sex [Article 5 (1) and Article 3 (1) (c) respectively] and the provisions of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, published in the Official Journal of the European Union, Series L, No 6 of 10 January 1979, legal provisions according to which national regulations relating to the fixing of the pensionable age for the purposes of granting retirement pensions could be excluded from the latter directive, so that Member States could establish different pensionable ages for women in relation to men [Article 7 (1) (a)]. In this respect, the European Court, in Case M.H. Marshall v. Muthampton and South-West Hampshire Area Health Authority (Teaching), paragraph 37, stressed that "whereas the exception contained in Article 7 of Directive No 79/7 concerns the consequences which pensionable age has for social security benefits, this case is concerned with dismissal within the meaning of Article 5 of Directive No 76/207." The same reasons were upheld also by the Order of 7 February 2018, pronounced by the Luxembourg Court in the joint cases Manuela Maturi, Laura Di Segni, Isabella Lo Balbo, Maria Badini, Loredana Barbanera v. Fondazione Teatro dell'Opera di Roma, and Fondazione Teatro dell'Opera di Roma v. Manuela Maturi, Laura Di Segni, Isabella Lo Balbo, Maria Badini, Loredana Barbanera, Luca Troiano, Mauro Murri (C-142/17), and Catia Passeri v. Fondazione Teatro dell'Opera di Roma (C-143/17), paragraphs 25 and 26, in relation to the current provisions of Article 14 (1) (c) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, published in the Official Journal of the European Union, Series L, No 204 of 26 July 2006, prohibiting any direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to "employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty", thereby replacing the repealed provisions of Directive 76/207 above mentioned».

In the light of those rulings of the European Court, the Constitutional Court considered that its previous case-law on the rules determining the different retirement ages for women than men does not apply also with regard to the legal provisions laying down the conditions for the termination of the individual employment contract, which requires a separate analysis. Looking therefore at the criticism of unconstitutionality, the Court has assessed that the termination of the employment relationship of women at a lower age than men can and must remain an option for women in the current social context. Turning this legal benefit into a consequence on the termination of the individual employment contract resulting *ope legis* acquires unconstitutional nuances, in so far as the willingness of women to be treated equally with men is ignored. The Court found that this interpretation is in line with the European regulations, as is apparent from the case-law of the Court of Justice of the European Union. Thus, the Court noted that, according to Article 14 (1) (c) of Directive 2006/54/EC, "there shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to: [...] (c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty." As noted above, similar rules had also been included in Directive 76/207/EEC. In Judgment of 26 February 1986 in Case M.H. Marshall v. Muthampton and South-West Hampshire Area Health Authority (Teaching), paragraph 38, Judgement of 7 February 2018 in Case Pensionsversicherungsanstalt v. Christine Kleist, and Order of 7 February 2018, pronounced by the Luxembourg Court in the joint cases Manuela Maturi, Laura Di Segni, Isabella Lo Balbo, Maria Badini, Loredana Barbanera v. Fondazione Teatro dell'Opera di Roma, and Fondazione Teatro

dell'Opera di Roma v. Manuela Maturi, Laura Di Segni, Isabella Lo Balbo, Maria Badini, Loredana Barbanera, Luca Troiano, Mauro Murri (C-142/17), and Catia Passeri v. Fondazione Teatro dell'Opera di Roma (C-143/17), paragraph 28, the European Court has held that a general policy concerning dismissal involving the dismissal of a woman solely because she has attained the qualifying age for a state pension, which age is different under national legislation for men and for women, constitutes discrimination on grounds of sex, contrary to the provisions of the above mentioned directive.

As a result, the Court upheld the exception of unconstitutionality of the provisions of Article 56 (1) (c) of Law No 53/2003 — the Labour Code and found that they were constitutional in so far as the phrase «standard age conditions» does not exclude the possibility for a woman to request the continuation of the individual employment contract, under exactly the same conditions as a man, i.e. until reaching the age of 65. It also rejected as unfounded the exception of unconstitutionality of the provisions of Article 53 (1), first sentence, of Law No 263/2010 on the harmonised public pension system, noting that they were constitutional in relation to the criticisms made. (Decision No 387 of 5 June 2018, published in the Official Gazette of Romania No 642 of 24 July 2018)

Similarly , in another case, the Constitutional Court referred to its case-law in the same area, as well as to the recitals of the Judgement of 8 April 2014 of the Court of Justice of the European Union in Joined Cases C-293/12 — *Digital Rights Ireland Ltd împotriva Minister for Communications, Marine and Natural Resources and Others*, and C-594/12 — *Kärntner Landesregierung and Others*, where it was held that data subject to Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, which are invalidated, lead to very precise conclusions concerning the privacy of persons whose data were retained, conclusions which may concern the habits of everyday life, permanent or temporary residence, daily movements or other travel, the activities carried out, the social relationships of those persons and the social media attended by them (paragraph 27), and that, in those circumstances, even though, in accordance with Article 1 (2) and Article 5 (2) of Directive 2006/24/EC, it is prohibited to retain the content of communications and information consulted by using an electronic communications network, the retention of the data in question may affect the use by subscribers or registered users of the means of communication provided for by that directive and, consequently, their freedom of expression, guaranteed by Article 11 of the Charter (paragraph 28). The Court has also held that, by the same judgement, the Court of Justice of the European Union has criticised the lack of authorisation or approval of the court with regard to requests for access to data retained with a view to their use for the purposes laid down by law, formulated by the designated authorities of the State in the field of cybersecurity, which was tantamount to the insufficiency of the procedural safeguards necessary for protecting the right to privacy and the other rights enshrined in Article 7 of the Charter of Fundamental Rights and Freedoms and the fundamental right to the protection of personal data enshrined in Article 8 of the Charter (paragraph 62). (Decision No 17 of 21 January 2015, Official Gazette No 79 of 30 January 2015)

As regards the courts in the light of Article 148 of the Constitution, the Constitutional Court of Romania ruled that they are competent to determine whether there is a contradiction between national law and European law. The court, in order to reach a correct and legal decision, may, of its own motion or at the request of the party, refer a question for a preliminary ruling within

the meaning of Article 267 of the Treaty on the Functioning of the European Union to the Court of Justice of the European Union. (Decision No 137 of 25 February 2010, published in Official Gazette of Romania, Part I, No 182 of 22 March 2010)

The Constitutional Court of Romania has also established in its case-law the obligation to interpret national law in conformity with EU law, given the latter's primacy, with the judge or public authority having an obligation, before any other, to interpret in accordance with the national rule - in the respective case - in line with the relevant directive. "In that regard, it must be borne in mind that the principle that national law must be interpreted in conformity with EU law also requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it in order to ensure that the directive in question is fully effective and to achieve an outcome consistent with the objective pursued by it" (see the Judgement of the Grand Chamber of 24 January 2012 in Case C-282/10, Maribel Dominguez v. Centre informatique du Centre Ouest Atlantique and Préfet de la Région Centre, paragraph 27). *(*Decision No 21 of 18 January 2018, Official Gazette No 175 of 23 February 2018)

The Court has also established that **the legislator has certain obligation in this regard**, stating, for example, in a case, that "although the meaning of the European rule has been established by the Court of Justice of the European Union, the requirements resulting from this judgement are not relevant from a constitutional stand, given that they are rather related to the obligation of the legislator to lay down rules in accordance with the judgements of the Court of Justice of the European Union, otherwise Article of the Constitution of Romania becomes applicable". (Decision No 668 of 18 May 2011, Official Gazette No 487 of 8 July 2011) In another case, the Constitutional Court held that "Failure to bring the provisions of Article 86 (6), first sentence, of Law No 85/2006 into accord with the binding acts of the European Union with constitutional relevance for as long as Law No 85/2006 is in force constitutes *eo ipso* an infringement of Article 148 (4) of the Constitution, since the legislator has allowed the legal relationships of employment to be governed by those national provisions, contrary to its constitutional obligation to ensure, at the legislative level, at least the same level of protection of the right to measures of social protection of labour as that laid down in the binding acts of the European Union, and to provide a permanent and continuous agreement of the national infraconstitutional legislation with the binding acts of the European Union." (Decision No 64 of 24 February 2015, published in Official Gazette of Romania, Part I, No 286 of 28 April 2015)

Moreover, Article 6 (1) of Law No 24/2000 on the legislative technical standards for the drawing up of legislative acts lays down obligations on the initiators of legislative acts, as follows: "*The draft legislative act must put in place necessary, sufficient and possible rules leading to the greatest possible degree of stability and legislative efficiency. The solutions contained in it must be soundly based, taking into account the social interest, the legislative policy of the Romanian State* ***and the requirements of correlation with all internal regulations and harmonisation of national legislation with Community law and international treaties to which Romania is a party, as well as with the case-law of the European Court of Human Rights****."*

2.3 Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is conditioned by making a request for preliminary ruling with the Court of Justice of the EU?

See above, points 2.1 and 2.2., where we have indicated that according to the case-law of the Constitutional Court of Romania, the Charter is applicable within the review of constitutionality "in so far as it ensures, guarantees and develops the constitutional provisions on fundamental rights, that is to say, insofar as their level of protection is at least at the level of the constitutional norms in the field of human rights." The court, in order to reach a correct and legal decision, may, of its own motion or at the request of the party, refer a question for a preliminary ruling within the meaning of Article 267 of the Treaty on the Functioning of the European Union to the Court of Justice of the European Union.

As regards courts, they are charged with giving priority to the application of binding European regulations, and therefore to the Charter, against the conflicting provisions of national infraconstitutional law, which is a matter of law enforcement, and not of a matter of constitutionality.

3. <u>National human rights catalogues</u>

3.1 Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?

The Romanian Constitution consists of VIII Titles, of which **Title II is called "Fundamental Rights, Freedoms and Duties"**. Chapter II of the above-mentioned Title, with the marginal name *Fundamental Rights and Freedoms*, regulates: the Right to Life, to Physical and Mental Integrity (Article 22); Personal Liberty (Article 23); the Right to Defence (Article 24); Freedom of Movement (Article 25); Personal, Family and Private Life (Article 26); Inviolability of the Home (Article 27); Secrecy of Correspondence (Article 28); Freedom of Conscience (Article 29); Freedom of Expression (Article 30); the Right to Information (Article 31); the Right to Education (Article 32); Access to Culture (Article 33); the Right to Health Protection (Article 34); the Right to a Healthy Environment (Article 35); the Right to Vote (Article 36); the Right to Be Elected (Article 37); the Right to Be Elected for the European Parliament (Article 38); Freedom of Assembly (Article 39); Freedom of Association (Article 40); Labour and Social Protection of Labour (Article 41); Prohibition of Forced Labour (Article 42); the Right to Strike (Article 43); the Right to Private Property (Article 44); Economic Freedom (Article 45); the Inheritance Right (Article 46); Standard of Living (Article 47); Family (Article 48); Protection of Children and Young Persons (Article 49); Protection of Disabled Persons (Article 50); the Right to Petition (Article 51); the Right of a Person Aggrieved by a Public Authority (Article 52); Restriction on the Exercise of Certain Rights or Freedoms (Article 53). Moreover, Chapter I of the same Title establishes a series of general principles applicable to fundamental rights and freedoms, namely *Universality* (Article 15), which

also includes the principle of non-retroactivity of the law, except for the more favourable criminal or contraventional law, *Equality of Rights* (Article 16) and *Free Access to the Courts* (Article 21).

3.2 What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?

The Revolution of 1989 led to the change of the political regime in Romania and to the repositioning of the State on democratic bases, reflected in the principles and standards of the new Constitution, adopted in 1991. During the debates that accompanied the adoption of the texts in Title II of the Constitution, dedicated to fundamental rights and freedoms, the idea of a permanent evolution of the institution of rights emerged, and, "out of the multitude of human rights, those that seem to be essential, as public law specialists put it, for the life, freedom and free development of the human personality were selected to be included in the Constitution; this selection was made by examining international declarations, covenants and conventions, Romania's democratic constitutions, similar provisions in the constitutions of States with an undeniable democratic tradition, current realities and especially domestic and international perspectives on human rights."[1] The focus fell on the thesis that "the human rights issue has long exceeded national borders, becoming a problem of the world, a common language of people everywhere, hence the need for a correlation between national law and international law."[2]

3.3 What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?

The catalogue of fundamental rights, as regulated by the Constitution of Romania adopted in 1991, was enriched following the latter's revision, in 2003, in the sense that new rights or safeguards were introduced, partly as a result of the reception of the case-law of the European Court of Human Rights as well.

To exemplify things, we note that, in the 1991 Constitution, Article 21 – *Free Access to the Courts* included two paragraphs, while after the revision of the Constitution, in 2003, the same article contains four paragraphs. By capitalising on Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which enshrines the right to a fair trial, the text of the Romanian Basic Law was enriched through the explicit indication of the right of the parties to a fair trial and to the settlement of their cases within a reasonable time. It was also established, through a separate paragraph, that special jurisdictions were optional and free of charge. Likewise, in the 1991 Constitution, Article 23 – *Personal Liberty* contained nine paragraphs, while after the revision of the Constitution, in 2003, the same article came to include 13 paragraphs and brought essential changes. Such changes concern, *inter alia*, the ordering of the arrest, which can be made by the judge and not by the "magistrate" (i.e. by the prosecutor as well), as in the previous version, the regulation

[1] A. Iorgovan, Odiseea elaborării Constituției, p. 182.

[2] Ibidem.

of the maximum duration for pre-trial detention, the rights of persons in police custody or subject to pre-trial detention. New rights, such as *Access to Culture* (Article 33) and the *Right to a Healthy Environment* (Article 35), have been regulated as fundamental rights.

The constitutional procedure for revising the Constitution is provided for by the provisions of Articles 150 to 152 of the Constitution, and involves the same steps regardless of the object of the revision. With regard to **fundamental rights and freedoms specifically**, they are **part of the so-called hard core of the Constitution**, in the sense that the Romanian Basic Law expressly establishes, in Article 152 (2), that "*no revision shall be possible if it leads to the suppression of any of the citizens' fundamental rights and freedoms, or their safeguards*".

4. The mutual relationship between different catalogues of human rights

4.1 Can you give examples from the case-law of your court related to the use of any of the international catalogues?

A famous example in which the Constitutional Court applied the provisions of the Charter of Fundamental Rights and of the Convention for the Protection of Human Rights and Fundamental Freedoms and, at the same time, in accordance with the constitutional standards of Article 148, made its first referral for a preliminary ruling to the Court of Justice of the European Union, is represented by the decision upholding the exception of unconstitutionality of the provisions of Article 277 (2) and (4) of the **Civil Code**, which it found constitutional insofar as they allowed the granting of the right of residence on the territory of the Romanian State, under the conditions stipulated by European law, to the spouses – citizens of the Member States of the European Union and/or citizens of third States – from same-sex marriages, concluded or contracted in a Member State of the European Union (Decision No 534 of 18 July 2018, published in the Official Gazette of Romania, Part I, No 842 of 3 October 2018).

In the aforementioned decision, by applying the interpretation of the European standards by the European court, in response to the preliminary questions, the Constitutional Court found that "the relation of a same-sex couple falls within the notion of 'private life' and within that of 'family life' in the same way as the relationship of a heterosexual couple in the same situation, which makes applicable the protection of the fundamental right to private and family life, safeguarded by Article 7 of the EU Charter of Fundamental Rights, by Article 8 of the European Convention on Human Rights and Fundamental Freedoms and by Article 26 of the Constitution of Romania. Enjoying the right to private and family life, same-sex persons, who form stable couples, have the right to express their personality within these relationship and to enjoy, in time and by the means prescribed by law, a legal and judicial recognition of their appropriate rights and duties (see also, to this effect, the Judgment of the Constitutional Court of Italy – Ordinanza n. 4/2011, published in the Gazzetta Ufficiale No 2 of 12 January 2012)." Therefore, the Court found that the provisions of Article 277 (2) of the Civil Code, according to which "Marriages between persons of the same sex entered into or contracted abroad by Romanian citizens or by foreigners shall not be recognised in Romania", could not represent the ground for the competent authorities of the Romanian State to refuse to grant the right of residence, on the territory of Romania, to the spouse – a citizen of a Member State of the European Union and/or of a third State, person of the same sex, who is bound by a marriage legally

concluded on the territory of a Member State of the European Union, with a Romanian citizen, domiciled or residing in Romania, or with a citizen of a Member State of the European Union, who has the right of residence in Romania, for the reason that the Romanian domestic law does not provide/recognize same-sex marriages. Thus, given that the provisions of Article 277 (4) of the Civil Code state that "The legal provisions on the freedom of movement on the Romanian territory of citizens of the Member States of the European Union and of the European Economic Area shall be applicable", the prohibition on the recognition of marriage does not apply in case the citizen of a Member State of the European Union or of a third State, a person of the same sex, married to a Romanian citizen or to a citizen of a Member State of the European Union, pursuant to Article 21 (1) TFEU and Article 7 (2) of Directive 2004/38, requests to be granted the right of residence, for a period of more than three months, on the territory of the Romanian State, in order to reunite the family.

As regards the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights, they are found in most decisions of the Constitutional Court adjudicating on fundamental rights and freedoms. Sometimes, their capitalisation has led to jurisprudential reversals or, as indicated in point 3.3, to the constitutional consecration of new safeguards for human rights and fundamental freedoms, upon the revision of the Constitution. Thus, for example, the Constitutional Court ruled that "the constitutional provisions of Article 15 (2), according to which '*The law shall only take effect for the future, except the more favorable criminal law*', must be interpreted, in the light of Article 20 (1) of the Constitution, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms. […] From the conventional perspective, the Constitutional Court notes that, in its case-law, the European Court of Human Rights has ruled that nothing prevented States from fulfilling their role as guardians of the public interest, by establishing or maintaining a distinction between different types of criminal offenses. In principle, the Convention does not oppose this 'decriminalization' trend that exists in the Member States of the Council of Europe. However, as stated in the Judgment of 21 February 1994, in the *Case of Öztürk v. Germany*, these facts fall under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. [...], the provisions of this article guarantee to any 'accused' the right to a fair trial, regardless of the classification of the facts in the national law." Based on this decision and, implicitly, on the case-law of the European Court of Human Rights which it incorporated, Article 15 received a new wording following the revision of the Constitution in 2003; it currently enshrines the principle of non-retroactivity of the law, except for the **more favorable criminal or contraventional law** (Decision No 318/2003, published in the Official Gazette of Romania No 697 of 6 October 2003).

At the XVIth Congress of the Conference of European Constitutional Courts in 2014, we presented a wide selection of case-law, highlighting the most relevant decisions in which an international catalogue was used[3]. The case-law developed after 2014 follows the same coordinates, in the sense of consistently using the case-law of the European Court of Human Rights in particular.

In this regard, we deem particularly relevant the recent decisions delivered on the initiatives to revise the Constitution and, therein, the significance that the Constitutional Court of Romania has given, from the perspective of international and supranational human rights catalogues, to human

[3] **https://www.vfgh.gv.at/cms/vfgh-kongress/downloads/landesberichte/LB-Roumanie-EN.pdf.**

dignity. Thus, the Court held that "The fundamental rights and freedoms of citizens and their safeguards cannot be considered a diffuse set of elements without any connection between them; on the contrary, they form a coherent and unitary system of values, based on human dignity. Besides the fact that the fundamental rights and freedoms, classified as such in the Constitution, are based on human dignity [Decision No **1109 of 8 September 2009**], this being a supreme value of the Romanian State, human dignity does not have only a proclamative value, being emptied of regulatory content, but, on the contrary, it has a regulatory value and can be classified as a fundamental right with a distinct content that questions the character and human condition of the individual. (…) Indeed, the European Court of Human Rights also ruled that the very essence of the Convention for the Protection of Human Rights and Fundamental Freedoms was the respect for human dignity and human freedom [Judgment of 29 April 2002, in the *Case of Pretty v. the United Kingdom*, paragraph 65]. Any harm to human dignity affects the essence of the Convention [Judgment of 2 July 2019, delivered in the *Case of R.S. v. Hungary*, paragraph 34]. *Obiter dictum*, the Court notes that the Court of Justice of the European Union also ruled that the legal order of the European Union undeniably strived to ensure respect for human dignity as a general principle of law [Judgment of 14 October 2004, delivered in Case C- 36/02, Omega Spielhallen-und Automatenaufstellungs-GmbH, paragraph 34]. To tolerate such a discrimination would equate, with respect to such a person, with the failure to respect the dignity and freedom to which (s)he is entitled and which the Court has a duty to protect [Judgment of 30 April 1996, in Case C-13/94, P v. S. and Cornwall County Council, paragraph 22]. The German Federal Constitutional Court, in its turn, established that human dignity, provided for in Article 1 (1) of Title I – *Fundamental rights* of the Basic Law, was a fundamental right (see, for example, the decisions of the BVerfGE 1, 332 (347); 12, 113 (123); 15, 283 (286); 28, 151 (163); 28, 243 (263); 61, 126 (137); or 109, 133 (151)]. Also, the French Constitutional Council, by Decision No 94-343/344 of 27 July 1994, established that human dignity was a principle with a constitutional value [see also decisions No 2010-25QPC of 16 September 2010 and No 2015-485QPC of 25 September 2015]. Taking into account, on the one hand, Article 1 (3) of the Constitution, which classifies human dignity as the supreme value of the Romanian State, and, on the other hand, the case-law of the European Court of Human Rights, read in conjunction with Article 20 (1) of the Constitution, included precisely inTitle II of the Constitution – *Fundamental Rights, Freedoms and Duties*, it follows that human dignity is the very source, basis and essence of fundamental rights and freedoms, so that Article 152 (2) of the Constitution, by reference to human dignity, can be analysed from two complementary perspectives: guiding principle with regard to fundamental rights and freedoms and distinct fundamental right, and its bivalent meaning is valued as a limit to the revision of the Constitution within the meaning of Article 152 (2) of the Constitution. Even if the case-law of the Court of Justice of the European Union referred to above is not valued within the framework of Article 20, but within that of Article 148 of the Constitution (see Decision No 64 of 24 February 2015, published in the Official Gazette of Romania, Part I, No 286 of 28 April 2015, paragraph 30), and also considering Article 52 (3) of the Charter of Fundamental Rights of the European Union, according to which, in so far as the Charter contains rights that correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights are the same as those laid down by the said Convention, without this preventing Union law from providing a more extensive protection [see also, *mutatis mutandis*, Decision No 216 of 9 April 2019, published in the Official Gazette of Romania, Part I, No 548 of 3 July 2019, paragraph 24], one can only reinforce the idea that human dignity is the essence of fundamental rights and freedoms and that it is, in itself, a limit

to the revision of the Constitution." (Decision No 464 of 18 July 2019, published in the Official Gazette of Romania, Part I, No 646 of 5 August 2019).

4.2 Has your court analysed the relationship/hierarchy/competition between the different catalogues of human rights in the light of the level of protection they provide?

Such an analysis is inherent in the application of the provisions of Article 20 of the Constitution, which **requires the highest level of protection of fundamental rights and freedoms to apply.** By way of example, we would point out that, in a case, the Court held that that "Distinctly from the requirements of the Convention for the protection of human rights and fundamental freedoms, the Constitution of Romania expressly stipulates at Article 47 (2) the right to pensions as fundamental right. The constitutional text does not qualify the right to pensions only in the light of a patrimonial interest of the person, but, expressly establishing the right to pensions as a fundamental right, it imposes on the State additional constitutional obligations, so as to assure a level of protection of this right superior to that stipulated by the Convention and its additional protocols. Under such circumstances, Article 60 of the Convention becomes applicable, according to which 'no provision of this convention will be interpreted as limiting or affecting the human rights and fundamental freedoms that could be recognized according to the laws of any contracting party or of any other convention to which this contracting party is a party'." (Decision No 872 of 25 June 2010, published in the Official Gazette of Romania, Part I, No 433 of 28 June 2010)

As regards the relations between the international/supranational/national catalogues, we take, as example, the decision by which the Constitutional Court rejected the exception of unconstitutionality of the provisions of Article 144 (2) of the Civil Procedure Code, which read as follows: *"(2) The decision on displacement is given without motivation and is final"*, finding that they are constitutional in relation to the critics made. On that occasion the Cuor held that "as for invoking the provisions of Article 47 on the right to an effective remedy and a fair trial from the Charter of fundamental rights of the European Union**,** the Cour found that in the case-law of the Court of Justice of the European Union, for instance, the Judgment of 22 December 2010, given in the Case C-279/09 - DEB Deutsche Energiehandels und Beratungsgesellschaft mbH against Bundesrepublik Deutschland**,** paragraoh 35, it was held that, according to Article 52 (3) of the Charter, in so far as it contains rights corresponding to those guarantees by the Convention for the protection of human rights and fundamental freedoms, their meaning and scope are the same as those provided by this convention. According to the explanation of this provision, the meaning and scope of the guaranteed rights are established not only by the text of the Convention**,** but also, especially, by the case-law of the European Court of Human Rights. Article 52 (3) second phrase of the harter provides that the first phrase of the same paragraph does not hinder the Union's right to confer a more extensive protection. Therefore, as concerns the content of the right to an effective remedy and a fair trial provided by Article 47 of the Charter, the Cour of Luxembourg has held that, by the Judgment of 26 February 2013, given in the Case C-311/11 - Stefano Melloni against Ministerio Fiscal, paragraph 50, it corresponds to the content which the case-law of the European Court of Human Rights recognizes to the rights guaranteed by Article 6 (1) and (3) of the freedoms (see the judgments of the European Court of Human Rights of 14 June 2001, 1 March 2006 and 24 April 2012, given in the cases Medenica vs. Switzerland, paragraphs 56-59, Sejdovic vs Italy, paragraphs 84, 86 and 98, and Haralampiev vs Bulgaria, paragraphs 32 and 33). Moreover, the Court held that

these are applicable, in principle, in the constitutional review as so fas as they assure, guarantee and develop the constitutional provisions on fundamental rights, in other words, in so far as their level of protection is at least at the level of the constitutional rules in the field of human rights (see to this effect Decisions No 872 and 874 of 25 June 2010**,** published in the Official Gazette of Romania, Part I, No 433 of 28 June 2010, and Decision No 4 of 18 January 2011, published in the Official Gazette of Romania, Part I, No 194 of 21 march 2011). Consequently, given thatn, pursuant to Article 21 (3) of the Constitution**, the national standard of protection in the field of displacement is superior to that offered by Article 6 of the** Convention for the protection of human rights and fundamental freedoms**, the Court, with reference to Article 47 of the** Charter**, notes that there are no reasons to reconsider its conclusions on the constitutionality of the provisions of Article 144 (2)** of the Civil Procedure." (Decision No 216 of 9 April 2019, published in the Official Gazette of Romania, Part I, No 548 of 3 July 2019).

4.3 Is there a procedure to establish the way in which a certain catalogue of human rights must be chosen if a particular right is protected by more than one catalogue? (Note: in the EU Member States, the Charter must apply – as provided by Article 51 (1), meaning that it is not left to them.)

The procedure is the one provided by Articles 20 and 148 of the Constitution, mentioned above, an exemplified, as concerns the way of application by the constitutional court and by the law courts, in the previous questions.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

JUDGE
Marian ENACHE
ASSISTANT-MAGISTRATE-IN-CHIEF
Claudia-Margareta KRUPENSCHI

II.I. Right to life

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 22 of the Romanian Constitution, entitled *Right to Life, to Physical and Mental Integrity*, states, in paragraphs (1) and (3): *"(1) The right to life, as well as the right to physical and mental integrity of a person are guaranteed. (...) (3) The death penalty is abolished*".

- **Is it possible to restrict the right? If so, how and under what conditions?**

No, it is not possible. [See Article 22 (3) of the Constitution, quoted in full above].

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied**.

Through Decision No 511 of 12 December 2013, published in the Official Gazette of Romania, Part I, No 75 of 30 January 2014, the Constitutional Court of Romania ruled: "the right to

life is an inalienable attribute of the individual and it represents the highest value in the hierarchy of human rights, considering that it is a right without which the exercise of the other rights and freedoms guaranteed by the Constitution and by international instruments for the protection of fundamental rights would be illusory, hence the axiological nature of this right, which includes both a subjective right and an objective function, i.e. of guiding principle for the activity of the State, the latter having the obligation to protect the fundamental right to life of individuals".

- **Is there a difference between the case-law of your court and the case-law of international courts with respect to the protection of this right?**

Under **Article 20 of the Constitution** (quoted in answer 1.1 in Part I of the Questionnaire), the analysis carried out by the Constitutional Court in the context of the constitutional review frequently includes both references to the case-law of the ECHR and the CJEU in this field, as well as elements of comparative law, with reference, in particular, to the case-law of the Member States of the European Union.

II.II. Freedom of expression

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 30 of the Constitution, entitled *Freedom of Expression*, states: *"(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, whether by spoken words, in writing, in pictures, by sounds or any other means of communication in public, is inviolable. (2) Any kind of censorship is prohibited. (3) Freedom of the press also involves the free founding of publications. (4) No publication may be suppressed. (5) The law may require that the mass media disclose their financing sources. (6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, nor to the right to one's own image. (7) Any defamation of the Country and Nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morals are prohibited by law. (8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, the radio or television station, subject to the law. Indictable offences of the press shall be established by law*".

- **Is it possible to restrict the right? If so, how and under what conditions?**

Article 53 of the Romanian Constitution expressly regulates the conditions that make it possible to restrict certain rights and freedoms, as follows: "(*1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be: to defend national security, public order, health, or morals, the citizens' rights and freedoms; to conduct a criminal investigation; to prevent the consequences of a natural calamity, disaster, or an extremely severe catastrophe. (2) Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without prejudice to the existence of such right or freedom*".

In compliance with these fundamental rules, the Constitutional Court has consistently invoked in its case-law the principle of proportionality, according to which any measure taken must be appropriate – objectively capable of attaining the purpose, necessary – does not go beyond what is necessary in order to attain the purpose, and proportionate – corresponds to the purpose pursued. For the correct application of the proportionality test, it is necessary to examine each of these three elements in their respective order. If the measure does not meet one of these three requirements, it is unconstitutional and it is no longer necessary to examine its compliance with the other requirements. Thus, in order to carry out the test, the Court must first establish the purpose pursued

by the legislator through the impugned measure and whether or not it is a legitimate one, since the proportionality test can only relate to a legitimate purpose (for example, Decision No 266/2013, published in the Official Gazette of Romania, Part I, No 443 of 19 July 2013).

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied**.

Yes. Here are a few brief examples: "Freedom of expression, as enshrined in the provisions of Article 30 of the Constitution, requires the observance of the requirement contained in paragraph (6) of the same article, namely that of not being prejudicial to the dignity, honour, private life of a person or to one's right to own image. Furthermore, this right allows citizens to participate in the social, political and cultural life of the State, by expressing their thoughts, opinions, beliefs, etc. But this freedom cannot be absolute and, as such, in order to defend values that represent the essence of a democratic society, it is subject to legal coordinates expressly provided by law. Therefore, within these coordinates meant to prevent abuse while exercising the freedom of expression, the legislator has criminalised slander. Also, the possibility of limiting the freedom of expression is also provided for in Article 10 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society [...] for the protection of the reputation or rights of others [...]'" (Decision No 139 of 10 March 2005, published in the Official Gazette of Romania, Part I, No 350 of 25 April 2005);

"The provisions of Article 30 of the Constitution enshrine the freedom of expression, which represents the possibility of an individual to express, through spoken words, in writing, in pictures, by sounds or other means of communication in public, thoughts, opinions, religious beliefs and creations of any kind. Freedom of expression has a complex content, including freedom of speech or freedom of the press". (Decision No 756 of 1st June 2010, published in the Official Gazette of Romania, Part I, No 468 of 7 July 2010);

"According to Article 30 (1) of the Constitution, freedom of expression is inviolable, but, according to Article 30 (6) and (7) of the Constitution, it cannot be prejudicial to the dignity, honour, private life of a person or to one's right to own image, any defamation of the Country and Nation, instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism or public violence, as well as any obscene conduct contrary to morals being forbidden by law. The limits of the freedom of expression fully comply with the notion of freedom, which is not and cannot be understood as an absolute right. The legal-philosophical conceptions promoted by democratic societies acknowledge that the freedom of one person ends where the freedom of another person begins. In this regard, Article 57 of the Constitution expressly provides for the obligation of Romanian citizens, aliens and stateless persons to exercise their constitutional rights in good faith, without encroaching on the rights and freedoms of others. An identical limitation is also provided for in Article 10 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which 'The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society [...] for the protection of the reputation or rights of others [...]', as well as in Article 19 (3) of the International Covenant on Civil and Political Rights, according to which the exercise of the freedom of expression carries with it special duties and responsibilities and it may be subject to certain restrictions that must be expressly provided for by law, while considering the rights or reputation of others. Being a restrictive norm, likely to delineate the framework within which the freedom of expression can be exercised, the listing in Article 30 (6) and (7) is a strict and limiting one" (Decision No 649 of 24 October 2018, published in the Official Gazette of Romania, Part I, No 1045 of 10 December 2018).

- **Is there a difference between the case-law of your court and the case-law of international courts with respect to the protection of this right?**

No, because under Article 20 of the Constitution, the analysis carried out by the Constitutional Court in the context of the constitutional review frequently includes both references to the case-law of the ECHR and the CJEU in this field, as well as elements of comparative law, with reference, in particular, to the case-law of the Member States of the European Union.

II.III. Right to privacy/right to respect for private life/right to private life

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 26 of the Romanian Constitution, with the marginal title *Personal, Family and Private Life*, states that: *"(1) The public authorities shall respect and protect personal, family and private life. (2) Any natural person has the right to freely dispose of herself/himself, unless (s)he thereby encroaches upon the rights and freedoms of others, on public order, or morals*".

- **Is it possible to restrict the right? If so, how and under what conditions?**

Yes, under the conditions expressly provided for by Article 53 of the Constitution (quoted above) and by applying the proportionality test, enshrined through the case-law of the Constitutional Court.

Specific case-law landmarks: "Personal, family and private life is protected by law insofar as it manifests itself within the legal order, and not outside it. As the right to dispose of one's own person is not an absolute right, it can be exercised only by observing the rights of other persons, of public order and morals. In this respect, the Convention for the Protection of Human Rights and Fundamental Freedoms establishes by Article 8 (2) that the right to respect for private life may be subject to restrictions only if such are provided by law and if they represent necessary measures in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (Decision No 1282 of 12 October 2010, published in the Official Gazette of Romania, Part I, No 738 of 4 November 2010);

"Neither the provisions of the Constitution nor the Convention for the Protection of Human Rights and Fundamental Freedoms prohibit the legal consecration of the interference of State authorities with the exercise of the right to personal, family and private life. Thus, in order to meet the requirements of Article 8 (2) of the Convention, such interference must be provided for by law, must pursue one of the legitimate purposes mentioned in the text, namely national security, public safety, economic well-being of the country, prevention of disorder and crime, protection of health or morals, or the protection of the rights and freedoms of others, and it must be necessary in a democratic society for attaining that respective purpose. Moreover, according to the case-law of the European Court of Human Rights in this field, the regulatory act that sets measures likely to interfere with the exercise of the right to private and family life must contain appropriate and sufficient safeguards to protect the respective person from any arbitrary behaviour of State authorities. Such is stated, for example, in the Judgment of 6 September 1978, delivered in the *Case of Klass and Others v. Germany*, paragraph 55, or in the Judgment of 26 April 2007, delivered in the *Case of Dumitru Popescu v. Romania*, paragraph 65" (Decision No 204 of 31 March 2015, published in the Official Gazette of Romania, Part I, No 430 of 16 June 2015).

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied**.

Yes. Here are a few brief examples: "The Constitution does not define the notion of personal, family and private life, but, according to the case-law of the European Court of Human Rights [*Case*

of Niemetz v. Germany (1992)], the protection of private life covers not only the intimate scope of personal relationships, but also 'the right of the individual to start and develop relationships with his/her peers', because, 'in this way, the limitation of the notion of private life to an inner circle in which the individual lives his/her personal life as (s)he thinks fit would be too restrictive.' Therefore, within the meaning of the case-law of the European court, the defining element of the right to personal, family and private life refers to the scope of interpersonal relationships" (Decision No 239 of 10 May 2005, published in the Official Gazette of Romania, Part I, No 540 of 24 June 2005);

"According to the case-law of the European Court of Human Rights, the notion of 'family life', within the meaning of Article 8 of the Convention, came to include also the relations between close relatives '*which could have a considerable role in this matter […], which implies, for the State, the obligation to act in such a way as to ensure the normal settlement of these relations*'. (quoted from the case of *Marckx v. Belgium*, 1979)" (Decision No 14 of 12 January 2010, published in the Official Gazette of Romania, Part I, No 79 of 5 February 2010);

"According to Article 26 (1) of the Constitution, public authorities must respect and protect personal, family and private life. At the same time, the free development of human personality and human dignity, values enshrined in Article 1 (3) of the Constitution, cannot be imagined without respecting and protecting private life. The right to the respect and protection of personal, family and private life is part of the category of fundamental rights and freedoms, being expressly provided for in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, a provision that requires, mainly, the negative obligation, on the part of State authorities, of refraining themselves from anything that could hinder the exercise of the right to private life" (Decision No 415 of 14 April 2010, published in the Official Gazette of Romania, Part I, No 294 of 5 May 2010);

"Every piece of information concerning the health of a person 'falls under the notion of private life, being therefore a way of achieving the protection of the rights provided for by Article 26 of the Constitution, enshrined equally in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms'. In relation to these aspects, the Judgment of 25 February 1997, issued by the European Court of Human Rights in the case of *Z. v. Finland*, was mentioned, in which it was shown that 'the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. [...] Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health and, in the case of transmissible diseases, that of the community. [...] The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 (1) of the Convention'. The extension of the obligation to maintain the confidentiality of the data regarding the health of a person, even in the case of deceased persons, also appears as a natural reflex of the fundamental rights mentioned above, if we consider that, although the capacity of a person to take legal action ceases upon his/her death, by virtue of the respect owed to the human individual, the memory of the deceased and the choices made during his/her life must be protected after death as well. The patient's right of option regarding the preservation of confidentiality as to his/her health status is not transferable *mortis causa*, the option expressed being thus preserved until the death of the holder of this right" (Decision No 1429 of 2 November 2010, published in the Official Gazette of Romania, Part I, No 16 of 7 January 2011);

- "in the field of the measures of technical supervision, which constitutes an interference with the private life of the persons subject to those measures, there must be *a posteriori* review of the approval and implementation of the technical supervision. Accordingly, the person

subject to the measures of technical supervision must be able to exercise this review in order to verify that the conditions laid down by law are met for taking the measure, as well as the procedures for implementing the mandate of technical supervision, procedure regulated by the provisions of Articles 142—144 of the Criminal Procedure Code. From this perspective, the *a posteriori* review must refer to the analysis of the lawfulness of the measure of technical supervision, irrespective of whether this verification is realized within independent from the criminal proceedings. The Court appreciates that the existence of the *a posteriori* review which has in view these aspects constitutes a guarantee of the right to privacy, which outlines and, ultimately, in addition to the other necessary elements recognized at constitutional and conventional level, determines the existence of proportionality between the ordered measure and the objective pursued, as well as the need for it in a democratic society. (...) With regard to the protection of the constitutional right to privacy, the legislator has the obligation to regulate an effective legal remedy, to allow the person subject to the measure of technical supervision to obtain a close repair of the consequences of the contested infringement" (Decision No 244/06.04.2017, Official Gazette No 529/06.07. 2017);

- "Based on what the Court of Justice of the European Union has stated, the Constitutional Court is to apply within the constitutional review which it performs concerning the provisions of Article 277 (2) and (4) of the Civil Code, the European law rules contained in Article 21 (1) TFEU and in Article 7 (2) of Directive 2004/38. Thus, according to its settled case-law regarding the non-compliance with certain acts of European law, by Decision No 668 of 18 May 2011, published in the Official Gazette of Romania, Part I, No 487 of 8 July 2011, and by Decision No 921 of 7 July 2011, published in the Official Gazette of Romania, Part I, No 673 of 21 September 2011, the Court stated that « the use of a rule of European law within the constitutional review, as a rule interposed to the reference rule, involves, pursuant to Article 148 (2) and (4) of the Constitution of Romania, a cumulative conditionality: on the one hand, this rule must be sufficiently clear, precise and unambiguous by itself or its meaning must have been clearly, precisely and unambiguously established by the Court of Justice of the European Union and, on the other hand, the rule must circumscribe to a certain level of constitutional relevance, so that its normative content can support the possible infringement of the Constitution by the national law – the only direct reference rule within the constitutional review. In such a hypothesis the approach of the Constitutional Court is different from the simple application and interpretation of the law, competence that belongs to law courts and to administrative authorities, or from the eventual matters related to the legislative policy promoted by the Parliament or the Government, as the case may be. » Given these principle considerations, the Court finds that the rules of European law contained in Article 21 (1) TFEU and in Article 7 (2) of Directive 2004/38, interposed within the constitutional review to the reference rule enshrined by Article 148 (4) of the Constitution, have a precise and unambiguous meaning, clearly established by the Court of Justice of the European Union, as well as constitutional relevance, since they concern a fundamental right, respectively the right to intimate, family and private life. In this light, applying what the European court has ordered in the interpretation of the European rules, the Constitutional Court finds that the ***relationship of a same-sex couple is covered by the concept of "private life", as well as by the concept of "family life", like the relationship of a heterosexual couple, which determines the impact of the protection of the fundamental right to private and family life***, guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union, by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and by Article 26 of the Constitution of Romania. Enjoying the right to private and family life, the same-sex persons, which form stable couples, are entitled to express their personality within these relationships and to benefit, over time and by the means laid down by law, from a legal and juridical recognition of the proper rights and duties (also see, in this regard, the decision of the Constitutional Court of Italy - *Ordinanza n. 4/2011*, published in the *Gazzetta Ufficiale n. 2* of 12

January 2012). Therefore, the Court finds that the provisions of Article 277 (2) of the Civil Code, according to which *"marriages between same-sex persons concluded or contracted abroad either by Romanian citizens or foreign citizens are not recognized in Romania"* cannot constitute the reason for the competent authorities of the Romanian State to refuse to grant the right of residence, on the territory of Romania, to the same-sex spouse – who is a national of an EU Member State and/or of a third State, bound by the marriage legally concluded on the territory of an EU Member State to a Romania citizen, with his/her domicile or residence in Romania, or to a citizen of an EU Member State, who has the right of residence in Romania, for the reason that the Romanian internal law does not provide/recognize the marriage between same-sex persons. Thus, given that Article 277 (4) of the Civil Code provides that *"The legal provisions on the free movement on the territory of Romania of the citizens of the EU Members States and of the Romanian European Economic Area remain applicable"*, ***the interdiction to recognize the marriage does not apply in the event a same-sex citizen of an EU Member State or of a third State, married to a Romanian citizen or of an EU Member State***, pursuant to Article 21 (1) TFEU and Article 7 (2) of Directive 2004/38, ***requires the grant of the right of residence, for more than three months, on the territory of the Romanian State, for the purpose of family reunification.*** The Court reiterates what the Court of Justice of the European Union has held, according to which, whenever, ***on the occasion of an effective residence of the EU citizen in another Member State*** (in this case, in the Kingdom of Belgium), other than the state of which citizen he/she is (in this case, Romania), in accordance and with the observance of the conditions laid down by Directive 2004/38, ***a family life has been founded and consolidated in this latter Member State, the useful effect of the rights of the respective EU citizen, provided for by Article 21 (1) TFUE, requires for his/her family life to be also continued at his/her return in the Member State of which national he/she is, by granting a derived right of residence to the member of the family, which is a national of a third State*** (United States of America)", (Decision No 534/18.07.2018, Official Gazette, No 186/ 09.10. 2018).

- **Are there differences between the court's case-law and the case-law of the international courts regarding the protection of this right?**

No, there aren't, because, examining Article 20 of the Constitution, the analysis performed by the Constitutional Court within the constitutional review frequently contains references to the case-law of the ECHR and of the CJEU, as well as elements of comparative law mainly referring to the case-law of the EU Member States.

II.IV. Freedom of religion

- **What is the original text referring to the protection of this right in your national catalogue?**

The freedom of religion is enshrined in **Article 29 of the Constitution –** *Freedom of conscience*, which stipulates: *"(1) Freedom of thought, opinion, and religious beliefs may not be restricted in any form whatsoever. No one may be compelled to embrace an opinion or religion contrary to his own convictions. (...) (3) All religions shall be free and organized in accordance with their own statutory rules, under the terms laid down by law. (4) Any form, means, act or action of of religious enmity shall be prohibited in the relations between cults. (5) Religious cults are autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, in prisons, homes and orphanages. (...)".*

- **Is it possible to restrict this right? If so, how and under which conditions?**

Yes, under the conditions expressly provided for by Article 53 of the Constitution (as set out above) and with the application of the proportionality test, enshrined by the case-law of the Constitutional Court.

- **Has your court examined this right or the way in which it was interpreted or enshrined in more details? If so, we kindly ask you to offer us practical details and the lists of applied human rights catalogues.**

Yes. Please find the excerpt as example: "Establishing the inalienable character of the goods legally entered into the property of the cults is a measure for guaranteeing the material stability of the worship units. The prohibition of claiming the goods which make the object of the contributions of any kind, as well as other goods legally entered into the patrimony of a cult has been established for guaranteeing the material stability of the worship units and, therefore, of the constitutional rights provided for by Article 29 of the Basic Law, as well as of those of the Universal Declaration of Human Rights, which define the human being by the prevalence of the spiritual life over the biological and material life" (Decision No 686/20.05.2010, Official Gazette No 429/25.07.2010);

- "With regard to the autonomy of the religious cults, the Court notes (...) that this concept was born due to the separation between the State and the church, each of these institutions having specific competencies which do not interfere. For instance, the European Court of Human Rights, by Decision of 3 November 2009, in Case *Lautsi v. Italy*, has reaffirmed the obligation of the State to be neutral in the exercise of the public authority, especially as concerns the education, by not displaying in the classrooms the religious symbols belonging to a particular cult. The Court notes that in the case of the religious cults the term autonomy refers to the capacity to legislate and to be led according to its own statutes. (...) In its case-law, the European Court of Human Rights has held that the autonomous existence of religious communities is essential in a democratic society and constitutes a serious problem in the protection of the freedom of religion guaranteed by the provisions of Article 9 of the Convention for the protection of human rights and fundamental freedoms (Decision of 26 October 2000, in Case *Hasan and Chaush v. Bulgaria*)" (Decision No 448/07.04.2011, Official Gazette No 424/17.06.2011);

- "A person may freely choose, practice or manifest his/her religion through the cult, teaching, practice and observance. As every religion involves a specific practice and observance, known by the concerned person at the entry into an accepted cult, it is natural for this one to obey the rules of the respective cult. The clerical staff is specifically trained, thus knowing the canonical statutes and rules which regulate both the disciplinary responsibility and the specific court procedure. The principles of autonomy and cult unity would not be observed anymore if the common law court exercised the control over the decisions taken by the disciplinary courts and church courts in the doctrinal, moral, canonical and disciplinary issues. For the purposes of the above the European Court of Human Rights has also ruled by Decision of 23 September 2008, in Case Ahtinen v. Finland, noting that « when accepting the ecclesiastical engagement in a parish, the priests are aware of the possibility of being later on transferred to another position. For this reason, the plaintiff, by the fact that he agreed to serve in a parish of the Church as a priest assumed his responsibility to observe the rules of that cult which are found in the Church Statute and in the Rules of Church Procedure »" (Decision No 448/07.04.2011, Official Gazette No 424/17.06.2011);

- "The freedom of the religious cults involves not only their autonomy towards the State, laid down by Article 29 (5) of the Constitution, but also the freedom of the religious cults provided for by paragraph (1) of the same Article. Whereas in the same local community there are Orthodox and Greek-Catholic believers, the social criterion of the option of most parishioners to determine the destination of the places of worship and of the parish houses corresponds to the democratic principle of the establishment of the religious use of this good, depending on the majority will of those who are the beneficiaries of this use. Otherwise it would mean that, in an unjustified way, most of the Orthodox believers would be hindered to be able to practice religion, if they do not pass to the Greek-Catholic cult, by a measure taken against their will. Or, such a point of view would be contrary to the provisions of Article 57 of the Constitution, according to which the citizens must exercise the

rights and freedoms in good faith, without infringing the rights and freedoms of the others. If, in the event of the restoration of property, the majority option would be ignored, it would mean the violation of good faith and of the respect for the rights of others, which have been raised to the level of constitutional principles. Such a measure would infringe Article 29 of the Constitution, which enshrines the freedom of the religious cults, with its both acceptations - cult as association, religious organization and that regarding the practiced ritual, as well as the constitutional provisions referring to the relations between religions, as they are regulated by paragraph (2) of Article 29, according to which *« Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect »* - and by paragraph (4) of the same Article - *« Any form, means, act or action of religious enmity shall be prohibited in the relations between cults »* -, so that it would be likely to impose on the majority the will of a minority" (Decision No 804/27.09.2012, Official Gazette No 805/29.11.2012);

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, since, in the light of Article 20 of the Constitution, the review carried out by the Constitutional Court in the context of the review of constitutionality frequently contains references to the ECHR and the CJEU case-law, as well as elements of comparative law with reference mainly to the case-law of the European Union Member States.

II.V. Prohibition of discrimination

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 4 of the Constitution, with the marginal name "*Unity of the people and equality among citizens"*, provides **in paragraph (2)** the criteria of discrimination, as follows: "*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*."

Article 16 of the Constitution, with its marginal title *Equality of rights*, provides in paragraph (1) and (2) that: *"(1) Citizens are equal before the law and public authorities, without any privilege or discrimination. (2) No one is above the law*."

- **Is it possible to restrict the right? If so, how and under what conditions?**

Reading Article 16 (1) in conjunction with Article 4 (2) of the Constitution, the Court has held, in essence, that the principle of equality and non-discrimination cannot be restricted, since it requires the same legal treatment to be applied to identical/similar/equal situations and that the difference in legal treatment must be justified on objective and reasonable grounds.

At the same time, the Court has held that, in the light of Article 20 of the Constitution, entitled *International treaties on human rights*, the criteria of discrimination listed in Article 4 (2) of the Constitution must be interpreted and applied in the light of the provisions of international legal instruments in the field of human rights (Decision No 6/25 February 1993, Official Gazette No 61/25 March 1993).

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Yes. Examples in extract:

- The principle of equality before the law presupposes that equal treatment is established for situations which, according to the aim pursued, are not different. Therefore, it does not exclude but, on the contrary, involves different solutions for different situations. To the same effect, the European

Court of Human Rights, in the application of the provisions of Article 14 of the Convention on the Protection of Human Rights and Fundamental Freedoms on the prohibition of discrimination, has a settled case-law, according to which any difference in treatment by the State between individuals in similar situations without any objective and reasonable justification constitutes an infringement of those provisions (for example, Judgment of 13 June 1979 in Case Marckx v. Belgium, and Judgement of 29 April 2008 in Case Burden v. the United Kingdom). At the same time, by the Judgment of 6 April 2000 in Case Thlimmenos v. Greece, the European Court of Human Rights held that the right not to be discriminated against, guaranteed by the Convention, is breached not only when States treat differently people in similar situations without any objective and reasonable justification (see, for example, Judgment of 28 October 1987 in Case Inze v. Austria), but also when States omit to treat differently, still without objective and reasonable justification, persons in different situations" (Decision No 545/28 April 2011, Official Gazette No 473/6 July 2011);

- "The principle of equality does not prohibit specific rules in the event of a difference in situations. Formal equality would lead to the same rule, despite the difference in situations. That is why real inequality, which results from this difference, may justify different rules, depending on the purpose of the law in which they are included. That is precisely why the principle of equality results in the existence of a *fundamental right, the right to difference* and, in so far as equality is not natural, to impose it would mean to discriminate against" (Decision No 107/01.11.1995, Official Gazette No 85/26 April 1996);
- "Where, due to some legal provisions, certain persons would find themselves in unfavourable situations, subjectively perceived, in the light of their own interests, as unfavourable, this does not constitute discrimination that would affect the constitutionality of those provisions (Decision No 44/24 April 1996, Official Gazette No 345/17 December 1996);
- "It is up to the legislator to remove certain shortcomings in a regulatory act resulting from the process of applying the law, without infringing citizens' equal rights. However, the legislator, in a situation of positive discrimination, cannot enact legislative measures which would lay down other positive forms of discrimination, but only legislative acts that would remedy a situation giving rise to positive discrimination" (Decision No 834/26 May 2009, Official Gazette No 501/21 July 2009);
- "Where the principle of equal rights is disregarded, the privilege or discrimination which, from a regulatory point of view, has led to the infringement of the principle of equal rights, shall be deemed unconstitutional. In this respect, the Court notes that, according to its case-law, discrimination is based on the notion of exclusion from the benefit of a right and the specific constitutional remedy, in the event that the respective discrimination is found unconstitutional, is the benefit or access to the right. Instead, the privilege is defined as an unjustified advantage or favour granted to a person/category of persons; in that case, the unconstitutionality of the privilege does not amount to the granting of that benefit to all persons/categories of persons, but to its removal, i.e. the removal of the unjustified privilege granted. The Court therefore finds that the words «without any privilege or discrimination» in Article 16 (1) of the Constitution relate to two separate normative assumptions and the impact of one or other of them necessarily entails different constitutional law sanctions as indicated above" (Decision No 755/16 December 2014, Official Gazette No 101/9 February 2015).
- "The principle of equality laid down in the Constitution for citizens cannot, by extension, extend to equality between citizens and public authorities. As is clear from the constitutional provisions of Article 16, citizens enjoy the rights laid down in the Constitution and the laws and they are equal before they and the public authorities, while the public authorities exercise the powers laid down by law, according to their competence, in carrying out the functions

for which they were established" (Decision No 454/20 September 2005, Official Gazette No 946/25 October 2005);

- "The legislator is free to establish conditions for employment to certain position or for practising certain professions. However, when the legislator introduces an exception to these conditions, without complying with the constitutional requirements, discrimination arises between those who, although they find themselves in identical objective situations, benefit from different legal treatment, which is contrary to the provisions of Article 16 (1) of the Basic Law (Decision No 117/6 March 2014, Official Gazette No 336/8 May 2014);

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, since, in the light of Article 20 of the Constitution, the review carried out by the Constitutional Court in the context of the review of constitutionality frequently contains references to the ECHR and the CJEU case-law, as well as elements of comparative law with reference mainly to the case-law of the Member States of the European Union.

II.VI Right to liberty

- **What is the original wording of the provision protecting this right in your national catalogue?**

The right to liberty is laid down in **Article 23 of the Constitution** — *Individual freedom*, as follows: "*(1) Individual freedom and security of a person are inviolable. (2) Search, detainment, or arrest of a person shall be permitted only in the cases and under the procedure provided by law. (3) Detention shall not exceed twenty-four hours. (4) Preventive custody shall be ordered by a judge and only in the course of criminal proceedings. (5) During the criminal proceedings, the preventive custody may only be ordered for 30 days at the most and extended for 30 days at the most each, without the overall length exceeding a reasonable term, and no longer than 180 days. (6) After the lawsuit has begun, the court is bound, according to the law, to check, on a regular basis and no later than 60 days, the lawfulness and grounds of the preventive custody, and to order at once the release of the defendant if the grounds for the preventive custody have ceased to exist or if the court finds there are no new grounds justifying the continuance of the custody. (7) The decisions by a court of law on preventive custody may be subject to the legal proceedings stipulated by the law. (8) Any person detained or arrested shall be promptly informed, in a language he understands, of the grounds for his detention or arrest, and notified of the charges against him, as soon as practicable; the notification of the charges shall be made only in the presence of a lawyer of his own choosing or appointed ex officio. (9) The release of a detained or arrested person shall be mandatory if the reasons for such steps have ceased to exist, as well as under other circumstances stipulated by the law. (10) A person under preventive custody shall have the right to apply for provisional release, under judicial control or on bail. (11) Any person shall be presumed innocent till found guilty by a final decision of the court. (12) Penalties shall be established or applied only in accordance with and on the grounds of the law. (13) The freedom deprivation sanction can only be based on criminal grounds*".

- **Is it possible to restrict the right? If so, how and under what conditions?**

Yes, under the express conditions laid down in Article 53 of the Constitution (as set out above) and with the application of the proportionality test enshrined in the case-law of the Constitutional Court.

Specific case-law: "The measure of provisional arrest ordered for surrender to a Member State of the European Union constitutes a measure involving temporary deprivation of liberty, in accordance with Article 23 (2) of the Constitution of Romania, which fully satisfies the constitutional requirements laid down in Article 21 and Article 24, the respective parties having at their disposal all the procedural guarantees specific to a fair trial, and can thus invoke one of the reasons for refusal of enforcement, have the right to be informed of the content of the European arrest warrant, to be heard and assisted by a lawyer of their choice or appointed ex officio, to be assisted by an interpreter if they do not understand or speak the Romanian language, as well as to lodge an avenue of appeal [currently, appeal] against the arrest order, etc." (Decision No 733/1 June 2010, Official Gazette No 481/14 July 2010);

"Under Article 23 (4) and (5) of the Basic Law, deprivation of liberty can be ordered only during criminal proceedings, involving both the prosecution and the trial phase, with the sole distinction that, during the first phase of the criminal trial, the pre-trial detention may be ordered for a maximum of 180 days" (Decision No 388/13 April 2010, Official Gazette No 317/14 May 2010).

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Yes. Examples in extract. "The provisions of Article 23 (6) of the Constitution not only lay down the court's obligation to verify the legality and merits of the pre-trial detention, but also lay down the court's duty, as a result of the examination carried out, to order that the defendant be released (the constitutional text expressly governs the situations in which the court is required to do so), the corresponding measure being to maintain the pre-trial detention measure in respect of the defendant (where there the situations required under the constitutional provisions are not applicable). The fact that Article 23 (6) of the Constitution does not expressly refer to the maintaining of the pre-trial detention measure does not mean that the constituent legislator did not take into account that concept, so that it cannot be argued that the constitutional provisions relied on would constitute basis solely for the release of the defendant" (Decision No 208/4 May 2004, Official Gazette No 485/31 May 2004);

- "Individual freedom relates to the individual's physical freedom, his right to behave and move freely, not to be held in slavery, arrested or detained except in the cases and the specific modalities provided for by the Constitution and laws" (Decision No 448/26 October 2004, Official Gazette No 50/14 January 2005);
- "The presumption of innocence is regulated in relation to the individual freedom as regards the arrest, detention and settlement of criminal proceedings, until the conviction has become final. Article 23 (11) of the Basic Law enshrines the presumption of innocence only with regard to criminal liability. That conclusion follows not only from the terms of the constitutional regulation, which makes explicit reference to "found guilty by a final decision of the court", but also from the general scheme of the rules, the provisions being laid down in the provisions relating to «individual freedom»". (Decision No 16/20 January 2005, Official Gazette 145/17 February 2005);
- "The presumption of innocence is specific to criminal proceedings, as it has no connection with civil, commercial, fiscal or administrative cases, as it is regulated in relation to individual freedom. However, detention and arrest can be called into question only in criminal proceedings, during which, until the conviction has become final, respect for the presumption of innocence is compulsory, in accordance with Article 23 (11) of the Constitution and Article 6 § 2 of Convention for the Protection of Human Rights and Fundamental Freedoms (Decision No 208/15 January 2011, Official Gazette No 218/30 March 2011);
- "Detention of a person constitutes a major interference with the freedom of the person concerned, with the result that the regulation of the maximum duration of detention, by a

constitutional rule, constitutes a genuine guarantee of individual freedom. The duration of detention is a matter of criminal law policy of the State, which must ensure a fair balance between the need to attain the general interests of society and the need to safeguard legal order, which is to identify and bring before the competent judicial authorities the persons in respect of whom there are reasonable grounds to suspect that they have committed a criminal offence or to believe that there is a need to prevent them from committing an offence or from absconding after committing it, on the one hand, and the common interest of defending individual rights without infringing upon the essence of the right to liberty of a person" (Decision No 799/17 June 2011, Official Gazette No 440/23 June 2011).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No, since, in the light of Article 20 of the Constitution, the review carried out by the Constitutional Court in the context of the review of constitutionality frequently contains references to the ECHR and the CJEU case-law, as well as elements of comparative law with reference mainly to the case-law of the Member States of the European Union.