

# THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND DOMESTIC LAW AS PERCEIVED BY CONSTITUTIONAL COURTS

**Petre LAZAROIU, PhD.**

Judge of the Constitutional Court of Romania

**Ionita COCHINTU, PhD.**

Assistant-Magistrate of the Constitutional Court of Romania

*ionitacochintu@yahoo.com*

## **Abstract:**

*In a country's evolution, there are different political, legal and economic stages and transformations. Also Romania has been subject to such transformations, one of these stages being represented by the dawn of a new constitutional order after the Revolution in 1989, which was followed by the establishment of a new constitutional framework by adopting, first of all, for the transition period, an act having the force of a "fundamental law" and, then, by adopting, in 1991, based on a referendum, the Romanian Constitution, which established the principles of the functioning of a State governed by the rule of law and the mechanisms for its functioning. The review of constitutionality, as part of this mechanism, was entrusted to the Constitutional Court as the guarantor for the supremacy of the Constitution and the only authority of constitutional jurisdiction in Romania.*

*That was a first step, followed by a new challenge, i.e. the Europe-Atlantic Integration, that is to say Romania's accession to the North Atlantic Treaty and Romania's Accession to the European Union, which necessitated a revision of the Constitution in order to establish both the constitutional framework for the pre-accession stage and to determine in practice the relationship between national law and international order, namely the obligations of Romania stemming from such memberships.*

*In this paper, we shall discuss some aspects relating to the Romanian Constitutional Court's case-law developments on priority or differences between national legal rules and international rules, the identical or divergent interpretation on points of law, the mutual reliance upon the case-law of such courts (ECHR, CJEU, CCR), presupposing a "judicial dialogue", especially since, for example, in March 2016, the Venice Commission adopted a Rule of Law Checklist which gives an overview of the extended scope of the rule of law which is based, inter alia, on the principle of legality, a principle with a broader scope, which also includes the relationship between international law and national law.*

*In this context, we have in view the Constitutional Court's case-law developments with regard to the reliance upon the judgments of the European Court of Human Rights and, implicitly, upon the Convention for the Protection of Human Rights and Fundamental Freedoms, as a benchmark in the review of constitutionality, upon the case-law of the Court of Justice of the European Union and the effects and the priority of international treaties to which Romania is a party and which were concluded before the aforementioned constitutional transformations, regarded in terms of the case-law of the Constitutional Court of Romania.*

**Keywords:** *relationship between international law and national law, judicial dialogue, extended scope of rule of law, Euro-Atlantic integration, Romania's accession to the North Atlantic Treaty, Romania's accession to the European Union, revision of the Constitution, the Treaty of accession of Romania and Bulgaria to the European Union, the Treaty on the Functioning of the European Union, constitutional identity*

## **I. Introduction**

Romania, on the one hand, has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms by Law no.30/1994, and the additional protocols thereto, and, on the other hand, in 2007 it joined the European Union. The Constitution of Romania establishes also the order of precedence of international legal rules in relation the national rules; the provisions of Articles 11, 20 and 148 of the Constitution establish the principle of priority of international human rights treaties and of European Union law.

The principle of primacy/priority of international human rights treaties and of EU law is provided as such in the Constitution of Romania at Article 11 - International law and domestic law, Article 20 - International human rights treaties and Article 148 - Integration into the European Union. Pursuant to Article 11 of the Constitution, with the marginal title - International law and domestic law – „(1) The Romanian State pledges to fulfil as such and in good faith any obligations as may derive from the treaties to which it has become a party. (2) Once ratified by Parliament, subject to the law, treaties shall be part of domestic law. (3) Where a treaty to which Romania is to become party comprises provisions contrary to the Constitution, ratification shall only be possible after a constitutional revision”. Furthermore, Article 20 of the Basic Law, with the marginal title - International human rights treaties - states that „(1) The constitutional provisions relative to the citizens' rights and freedoms shall be interpreted and applied in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party. (2) Where inconsistency exists between the covenants and treaties on fundamental human rights to which Romania is a party, and national law, the international regulations shall prevail except where the Constitution or domestic laws comprise more favourable provisions”. Thus, as regards the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950[1] , this one was ratified by Romania by Law No.30/1994[2] , on which occasion other protocols were ratified, for example, the first additional Protocol to the Convention[3] ; Protocol No. 4 recognizing certain rights and freedoms, other than those already included in the Convention and in the first additional Protocol to the Convention[4] ; Protocol No.6 concerning the abolition of the death penalty[5] ; Protocol No.7[6] ; Protocol No. 9 (concluded at Rome, 6 November 1990); Protocol No.10[7] . It should be noted that

both before and after the ratification of the Convention, Romania has ratified a number of Protocols to the Convention, for example Protocol No.11 on the restructuring of the control mechanism established by the Convention[8] , Protocol No.12 on the general forbiddance of discrimination, Protocol No.13, Protocol No.14, Protocol No.15 etc.

The provisions of Article 148 of the Constitution, which were introduced in the Basic Law by the revision of the Constitution in 2003, revision which aimed to preparing the constitutional framework for Romania's accession to the Euro-Atlantic structures, also stipulate that: „(1) Romania's accession to the founding Treaties of the European Union, for purposes of transferring certain powers into the hands of community institutions, as well as for exercising in common with the other Member States the competencies stipulated in such Treaties, shall be under a law adopted in a joint session of the Chamber of Deputies and the Senate, by a majority of two-thirds of the number of Deputies and Senators. (2) Following accession, provisions in the founding Treaties of the European Union, as well as other binding regulations under community law shall prevail over any contrary provisions of domestic law, while observing provisions in the accession instrument. (3) Provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to any instrument purporting a revision of the founding Treaties of the European Union. (4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that any obligations arising from the accession instrument and from provisions under paragraph (2) are put into effect. (5) The Government shall send the draft for any binding regulations to the Chambers of the Parliament prior to submitting such for approval to the European Union institutions.”

For example, by Decision No. 148 of 16 April 2003 on the constitutionality of the legislative proposal for the revision of the Romanian Constitution[9] , the Court noted that “the accession to the European Union, once completed, entails a number of consequences which could not take place without an appropriate regulation, at constitutional level. The first of these consequences required for the Community acquis to be incorporated into national law and also for the relation between regulatory acts and national law to be determined. The solution proposed by the authors of the initiative of revision envisages the implementation of Community law into the national area and the establishment of the rule of prior application of the Community law priority to any

conflicting provisions of the national laws, in compliance with the act of accession. The consequence of accession is based on the fact that the Member States of the European Union agreed to put the Community acquis - the founding Treaties of the European Union and the regulations derived from them - in an intermediate position between the Constitution and the other laws, when it comes to binding European legislation". The Constitutional Court found that this provision does not affect the constitutional provisions on the limits of revision or other provisions of the Basic Law, „being a specific application of the provisions of Article 11 (2) of the Constitution, under which the treaties ratified by Parliament, according to the law, form part of national law”.

Thus, constitutional provisions oblige the Romanian State to fulfil as such and in good faith its obligations from the Treaties to which it is a party, and the Treaties ratified by Parliament, according to the law, are part of national law[10] . The constitutional provisions on the citizens' rights and freedoms shall be interpreted and applied in compliance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party. Where there are inconsistencies between the covenants and treaties on fundamental human rights to which Romania is a party and national laws, the international rules shall take precedence, unless the Constitution or the national laws comprise more favourable provisions[11] 48. Following Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to Community institutions, and to exercise in common with the other Member States the powers laid down in the treaties, the provisions of the constituent treaties of the European Union, as well as the other binding Community regulations shall take precedence over any contrary provisions of the national laws, in compliance with the act of accession[12] .

## **II. Constitutional identity**

Moreover, the Court, in its case-law, has held that Article 2 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, part of the Treaty of Accession, ratified by Law No.157/2005[13] , provides that „From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the

European Central Bank before accession shall be binding on Bulgaria and Romania and shall apply in those States under the conditions laid down in those Treaties and in this Act". Therefore, adhering to the legal order of the European Union, Romania has also accepted that, in those areas where exclusive jurisdiction is conferred on the European Union, regardless of international treaties which it has concluded, in implementing its obligations arising from them, it is subject to the rules of the European Union. Otherwise, this would lead to the undesirable situation that, through bi or multilateral international obligations, the Member State could seriously affect the Union's competence and, in practice, to replace it in its fields of competence. Therefore, in the application of Article 11 (1) and Article 148 (2) and (4) of the Constitution, Romania applies in good faith the obligations resulting from the accession act, not interfering with the exclusive competence of the European Union and, as established in its case-law, by virtue of the compliance clause contained in the text of Article 148 of the Constitution, Romania cannot adopt a regulatory act contrary to the obligations undertaken by the Member State. All those already highlighted know of course a constitutional limit, expressed in which the Court has classified as „constitutional identity”[14] .

### **III. Constitutional Court and the Court of Justice of the European Union**

1. In what concerns the case-law of the Court of Justice of the European Union and the caselaw of the Constitutional Court, we would like to show, first, that, through Decision no.668 of 18 May 2011[15] , the Constitutional Court stated that “it is up to the Constitutional Court to apply, within the constitutional review, the judgments of the Court of Justice of the European Union or to address preliminary questions for establishing the content of the European norm. Such an attitude is a matter of cooperation between the national constitutional court and the European court, as well as of judicial dialogue between them, without referring to aspects related to the setting of a hierarchy between these courts”.

Moreover, within the constitutional review, for example Decision no.887 of 15 December 2015[16] the Constitutional Court made a reference to the case-law of the Court of Justice of the European Union noting that „In what concerns the field of competition, this is one where the Romanian State, just like any other Member State, has

relinquished its powers, as this field falls under the category of the exclusive competences of the European Union, according to Article 3 (1) (b) of the Treaty on the Functioning of the European Union (the establishing of the competition rules necessary for the functioning of the internal market). Of course, the matter of State aids is subordinated to the field of competition. Therefore, the Court notes that the provisions of Article 2 (1) of the Treaty become applicable in this field, according to which, - When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.” Or, “ascertaining the compatibility of State aids is the exclusive competence of the European Commission, and the verification of the compliance of the Commission’s act with the primary and secondary legislation of the European Union is carried out by the latter’s courts (the General Court and the Court of Justice of the European Union). To this purpose, according to Article 108 (2) of the Treaty on the Functioning of the European Union, the Commission ‘shall decide that the State concerned shall abolish or alter such aid’. Consequently, national courts do not have the competence to declare the compliance or non-compliance of a State aid with the European legislation[17] . In exchange, national courts have the competence to safeguard the rights of the persons impaired by an implementation, contrary to the fundamental treaties, of the State aid prior to the decision of the Commission and to enforce the decision of the Commission. Thus, in order to protect the interests of third parties, national courts have the competence to take ad interim measures and[18] , consequently, can transfer the amounts of the State aid to a blocked account.”

2. Moreover, there have been matters of law upon which both the Constitutional Court and the Court of Justice of the European Union have ruled, for example, Article XV of Government Emergency Ordinance no. 8/2014 amending and supplementing certain legislative acts and other fiscal and budgetary measures[19] , stating, mainly, that “The payment of the sums determined by judicial decision relating to the restitution of the tax on pollution for motor vehicles and the tax on polluting emissions from motor vehicles, the interest calculated until the date of full payment and legal costs, and all other sums as may be determined by the court, which became enforceable by 31 December 2015, shall be paid over a period of five calendar years by means of an annual payment of 20% of

the amount payable”. Thus, in relation to these legal provisions, through Decision no. 676 of 13 November 2014[20] , the Constitutional Court held that „the enforcement of a court ruling cannot be hindered, annulled or postponed for a long period of time. As concerns the modality of enforcement, the Court has stated that *uno iactu* enforcement is just another modality of enforcement, without this meaning that this is the one and only modality of enforcement possible that can be applied”. Thus, the legislator can establish certain measures, i.e. „the payment in instalments of certain amounts included in writs of execution, as also referred to in the provisions of Article XV of Government Emergency Ordinance no. 8/2014, by which the delegated legislator has introduced a measure intended to strengthen the purpose of the judiciary proceedings, in the sense that it represents a first important step taken by the debtor for the payment of the debt”. In this context, restating its reasoning in Decision no. 190 of 2 March 2010[21] , the Constitutional Court noted that „the mechanism of staggered payments, as a means of enforcement of a court ruling, can be deemed compliant to the principles enshrined by the caselaw of the Constitutional Court and of the European Court of Human Rights, if certain conditions are met: clearly determined intermediary payments, reasonable time for a full payment, compensation of a potential depreciation of the amount due”. Or, the provisions of Article XV of Government Emergency Ordinance no. 8/2014 establishing the instalments, adjusts this five-year payment on the basis of the consumer price index, thus meeting the requirements established in the case-law of the Constitutional Court. Moreover, the Court noted that „the Government does not refuse to implement court rulings but, on the contrary, it acknowledges them and firmly undertakes to enforce them according to the reasonable and objective criteria established in the impugned legislative act. Therefore, it is found that the emergency ordinance is not a measure prohibiting, not even temporarily, the enforcement of a court ruling and, consequently, it does not represent an interference of the legislative power in the achievement of justice.”

Also, the Constitutional Court has restated the fact that, as it „is not a positive legislator or a court of law competent to interpret and apply European law in disputes involving subjective rights of citizens, the use of a European norm within the constitutional review as a norm interposed with the norm of reference implies, under Article 148 (2) and (4) of the Romanian Constitution, aggregated conditions: on the one hand, that this norm

should be sufficiently clear, precise and unequivocal in itself or that its meaning should have been established in a clear, precise and unequivocal manner by the Court of Justice of the European Union and, on the other hand, that the norm must imply a certain level of constitutional relevance, so that its normative content should support the potential violation, by the national law, of the Constitution – the sole direct norm of reference for the constitutional review. In such a hypothesis, the approach of the Constitutional Court differs from the simple implementation and interpretation of the law, competence belonging to courts of law and administrative authorities, or from possible matters related to the legislative policy promoted by the Parliament or the Government, where appropriate”. Or, in what concerns the tax on pollution for motor vehicles and the tax on polluting emissions from motor vehicles, and the interest calculated until the date of adoption of Government Emergency Ordinance no.8/2014, the Court of Justice of the European Union has stated as follows: In Case C-402/09 Ioan Tatu v. Statul român prin Ministerul Finanțelor și Economiei, Direcția Generală a Finanțelor Publice Sibiu, Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu, Ministerul Mediului, following the reference for a preliminary ruling lodged by the Tribunalul Sibiu on 18 June 2009, the European court stated that „Article 110 TFEU must be interpreted as precluding a Member State from introducing a pollution tax levied on motor vehicles on their first registration in that Member State if that tax is arranged in such a way that it discourages the placing in circulation in that Member State of second-hand vehicles purchased in other Member States without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market”; In Case C-565/11 – Mariana Irimie v. Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu<sup>11</sup> it was held that „European Union law must be interpreted in the sense that, if a Member State collects a tax incompatible with the European Union law, i.e. Article 110 TFEU, the respective State must reimburse the amount of the tax concerned and pay the interest on that sum from the date of payment of that tax”.

Consequently, the Constitutional Court concluded that „in this case, although the meaning of the European norm has been clarified by the Court of Justice of the European

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<sup>11</sup> Preliminary question lodged by the Tribunalul Sibiu – Romania.

Union, the requirements resulting from this judgment have no constitutional relevance, being rather related to the legislator's obligation to issue norms compliant with the judgments of the Court of Justice of the European Union; otherwise, Article 148 (2) of the Romanian Constitution might be applicable. Therefore, the legislator has observed the judgment of the Court of Justice of the European Union precisely by issuing the legislative act, which the Constitutional Court deems compliant with the provisions of the Constitution".

Ruling on the same matters, through the judgment issued in Case C-200/14<sup>12</sup> the Luxembourg Court of Justice stated that „The principle of sincere cooperation must be interpreted as meaning that it precludes a Member State from adopting provisions making repayment of a tax held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law results from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those that would have applied, in their absence, to such a repayment; it is for the referring court to determine whether that principle has been complied with in the present case". Also, concerning the principle of equivalence, it held that it "must be interpreted as precluding a Member State from providing procedural rules which are less favourable for applications for the repayment of a tax based on an infringement of EU law than those applicable to similar actions based on an infringement of domestic law. It is for the referring court to make the necessary checks to ensure compliance with that principle so far as concerns the legislation applicable to the dispute pending before it". It also considered that „the principle of effectiveness must be interpreted as precluding a system of repayment with interest of taxes levied in breach of EU law, the amount of which was established by enforceable judicial decisions, such as the system at issue in the main proceedings, which provides for the repayment of such taxes by instalments over five years and which makes the execution of such decisions contingent on the availability of funds received in respect of another tax, without the individual having the right to compel public authorities to fulfil their

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<sup>12</sup> Reference for a preliminary ruling - Principle of sincere cooperation - Principles of equivalence and effectiveness - National legislation laying down the detailed rules for the repayment of taxes improperly levied with interest - Enforcement of judicial decisions relating to such rights to repayment stemming from the legal order of the Union - Refund payable over a period of five years - Repayment contingent on the existence of funds received from a tax - No possibility of enforcement.

obligations if they do not do so voluntarily. It is for the referring court to ascertain whether legislation such as that which would be applicable in the case at issue in the main proceedings in the absence of such a system of repayment meets the requirements of the principle of effectiveness.”

#### **IV. Constitutional Court and the European Court of Human Rights**

1. In its case-law the Court held that[22] , „if, while Romania has not been a member of the Council of Europe and has not acceded to the European Convention on Human Rights, the interpretation of Article 8 of the Convention, through the decisions of the European Court of Human Rights in Strasbourg, did not have any relevance for the Romanian legislation and case-law, after the entry of Romania in the Council of Europe and after the accession to the European Convention on Human Rights[23] the situation changed fundamentally. This change is also required by the Constitution of Romania itself, which in Article 20 (1) specifies that its provisions, on the citizens' rights and freedoms, shall be interpreted and applied in compliance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is part, or the European Convention on Human Rights, as from 31 May 1994, became such a treaty”.

2. As concerns the case-law of the European Court of Human Rights being invoked within the constitutional review, this matter has gradually evolved, as the constitutional court has started including more and more the case-law of the Court of Strasbourg in the rationale of its documents (decisions, rulings, opinions). Thus, for example, through Decision no.96 of 24 September 1996[24] , the Court held that, with regard to “the reason concerning the violation of the requirement referred to by Article 6 § 1 of the European Convention on Human Rights, to have a case settled within a reasonable time, it should be noted that both the European Commission and Court have constantly underlined in their practice that this requirement must not be examined in abstracto, but on a case-by-case basis, by taking into account the duration of the proceedings, the nature of the claims, the complexity of the trial, the behaviour of the authorities and parties, the difficulty of the debates, the caseload of the court, the legal remedies used etc.”, without, however, invoking a concrete case-law of the European Court of Human Rights. Later on, the Constitutional Court has included concrete references to the case-law of the European

Court of Human Rights, for example through Decision no.81 of 15 July 1994[25] , partially upholding the exception of unconstitutionality raised before it.

Thus, the Court stated that “in many countries, there is currently the idea that same-sex relationships between adults having consented to this represent a dimension of individuals’ private life and, therefore, they cannot be criminally sanctioned. Intense research has led to this idea. Thus, the European Court of Human Rights itself, in 1976, has dismissed the idea of general European morals, as the concept of good morals must be understood from the perspective of national legislations. However, later on, the Court turned back to this viewpoint[26] , considering that private same-sex relationships between consenting adults are not contrary to good morals and, therefore, they are not likely to violate Article 8 of the European Convention on Human Rights, which states that: “1. Everyone has the right to respect for his private and family life, his home and his correspondence.

3. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing 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”. Through these decisions, the European Court has suggested the amendment of the legislation of the Member States of the Council of Europe, in accordance with the new interpretation given to Article 8 of the Convention. The same idea can also be found in Amendment no. 8 of the Parliamentary Assembly of the Council of Europe to the Report on Romania’s Application for Membership of the Council of Europe, which states the hope that Romania would not take long to amend its legislation so that Article 200 of the Criminal Code should no longer consider as criminal offences same-sex relationships between consenting adults.

The Court held that „the expression good morals can acquire different meanings, depending on religions and ideologies. The law, as a social phenomenon, cannot ignore the trends in the evolution of the contemporary society, including of human relations, even if, at a certain point, the legislative and case-law solutions might seem contrary to the traditional moral precepts”. It has been noticed that there is such an inconsistency between Article 8 of the European Convention on Human Rights, as interpreted by the

European Court of Human Rights in Strasbourg and Article 200 (1) of the Romanian Criminal Code, which forces the Constitutional Court of Romania to issue the appropriate decision. Removing the conflict between the national criminal law and the text of the European Convention on Human Rights, as interpreted by the European Court of Human Rights leads to a partial upholding of the exception of unconstitutionality concerning Article 200 (1) of the Criminal Code. But, the upholding of the exception, in order to make the Romanian criminal law compliant with the international standard, is possible only by establishing a correlation between the interpretation of Article 8 of the European Convention on Human Rights and that of Article 26 of the Romanian Constitution, as, based on the principle of subsidiarity, the interpretation of the European court being binding for the national constitutional court as well. Based on these general guidelines, it must be accepted that the national constitutional court has not only the right, but also the obligation to interpret the Constitution, thus removing, through its solution, any inconsistency between the domestic text and the European one, so that the national law be applicable, by using legal terms as defined by the legislator.

It should also be noted that the interpretation of Article 8 of the European Convention on Human Rights given by the European Court of Human Rights in Strasbourg does not concern, *tae quale*, all same-sex relationships, just as stated in Amendment no. 8 of the Parliamentary Assembly of the Council of Europe as well, but only those relationships between adults that take place in private, not in public places, and therefore without causing public scandal and, obviously, if the respective persons have consented to such relationships. *Per a contrario*, all relationships with minors or between adults, but by force, or in public places or in private places but having led to public scandals, are no longer covered by Article 8 of the European Convention on Human Rights and, consequently by Article 26 of the Romanian Constitution either, as relations that should continue being subject to criminal sanctions. Consequently, the exception of unconstitutionality concerning Article 200 (1) of the Criminal Code has been partially upheld, only for the consented sexual relations between same-sex adults taking place in private, provided that they should not lead to a public scandal. Moreover, the current case-law of the Constitutional Court includes frequent references to the case-law of the European Court of Human Rights, for example, from the recently given decisions we

could mention Decision no.363 of 7 May 2015[27] , in which the Court held that, “according to the first sentence of Article 7 – No punishment without law – of the Convention for the Protection of Human Rights and Fundamental Freedoms, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. To this effect, through its Judgment of 22 June 2000, delivered in the case of Coëme and Others v. Belgium (paragraph 145), restating its previous case-law, the European Court of Human Rights shows that Article 7 of the Convention enshrines, among others, the principle that only the law can define a crime and prescribe a punishment (*nullum crimen, nulla poena sine lege*) and, moreover, the principle that criminal law must not be interpreted extensively and impair the accused. Consequently, all crimes and relevant punishments must be clearly defined by law, requirement met only if an individual can understand, from the content of the legal provision, which are the acts or omissions entailing his/her criminal liability.

4. For example, through Decision no. 1414 of 4 November 2009[28] , the Constitutional Court found that the entire Chapter IV of Law no. 329/2009 was constitutional insofar as it did not apply to the persons for which the duration of the mandate was expressly set in the Constitution. Moreover, it stated that no constitutional provision prevented the legislator from discarding the combination of pensions with salaries, provided that such a measure be applied equally to all citizens, and that potential differences of treatment have a lawful reason.

Later on, through the Decision of 20 March 2012, rendered by the European Court of Human Rights in the Case of Ionel Panfile v. Romania, it was shown that such a measure was referred to by law, that it pursued a legitimate aim, it observed the fair balance between the general interests of the community and the protection of the fundamental rights of individuals, as well as the fact that, in social matters, the State enjoyed a wide margin of appreciation, which led to the conclusion that the impugned measure was not contrary to Article 1 of the Additional Protocol to the Convention (paragraphs 17-25).

Furthermore, the European Court of Human Rights, in paragraph 21, states that “In its assessment of the public interest of the impugned measures, the Court takes

account of the Constitutional Court's reasoning, which confirmed that the Romanian legislature had imposed new rules in the field of public-sector salaries for the purpose of rationalising public expenditure, as dictated by the exceptional context of a global crisis on a financial and economic level (see paragraph 11 above). Having also regard to the fact that this is a matter that falls to be decided by the national authorities, who have direct democratic legitimation and are better placed than an international court to evaluate local needs and conditions, the Court sees no reason to depart from the Constitutional Court's finding that the contested measures pursued a legitimate aim in the public interest". Next, the European Court of Human Rights considered that „the criticised legal instrument did institute a difference in treatment between retired persons who were still active in the private sector and those who worked in the public sector, like the applicant; however, the two categories of persons can hardly be regarded as being in an analogous or relevantly similar situation within the meaning of Article 14, since the essential distinction, relevant to the context in which the impugned measures were taken, is that they draw their incomes from different sources, namely a private budget and the State budget respectively". Or "concerning the difference in treatment based on the personal monthly income level, the Court considers, in line also with the Romanian Constitutional Court's decision, that the level referred to was foreseeable and reasonable, and was established in relation to objective factors by the legislature, which acted within its discretionary power in the field of budgetary decisions, without transgressing the principle of proportionality" (see paragraph 28 to this effect).

## **V. Conclusion**

As outlined above, Romania, on the one hand, has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms by Law no.30/1994, and the additional protocols thereto, and, on the other hand, in 2007 it joined the European Union. The Constitution of Romania establishes also the order of precedence of international legal rules in relation the national rules; the provisions of Articles 11, 20 and 148 of the Constitution establish the principle of priority of international human rights treaties and of European Union law.

As regards the relationship between the Constitutional Court and other courts, for example, European courts, on points of law, in the light of the aforementioned constitutional provisions, it is established a „judicial dialogue”. This dialogue takes place, firstly, through the case-law to which the Constitutional Court refers when a matter of national law is brought into question, and such falls under the ambit of international law. Secondly, the case-law of the Constitutional Court can be directly mentioned, for example, in the case-law of the European Court of Human Rights, or indirectly when the same points of law are interpreted in a different way by the Constitutional Court, the European Court of Human Rights or, as the case may be, by the Court of Justice of the European Union.

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- [7] Concluded at Strasbourg, 22 November 1984.
- [8] Concluded at Strasbourg, 22 November 1984.
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- [11] Article 20 – International human rights treaties
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- [20] Published in the Official Gazette of Romania, Part I, no. 93 of 4 February 2015.
- [21] Published in the Official Gazette of Romania, Part I, no. 224 of 9 April 2010.
- [22] See, in this respect, Decision No.81 of 15 July 1994, published in the Official Gazette of Romania, Part I, No.14 of 25 January 1995.
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- [25] Published in the Official Gazette of Romania, Part I, no.14 of 25 January 1995.
- [26] Case of *Dudgeon* – 1981, Case of *Norris* – 1987, Case of *Modinas* – 1993.
- [27] Published in the Official Gazette no.495 of 6 July 2015.
- [28] Published in the Official Gazette of Romania, Part I, no.796 of 23 November 2009.