ASSESSMENTS REGARDING THE WAY IN WHICH THE NORMS OF ROMANIA'S NATIONAL LAW HAVE INCLUDED IN THEM THE REQUIREMENTS OF THE INTERNATIONAL LEGAL INSTRUMENTS

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Abstract

The observance of the human rights is a concern for almost every state in the world. The European continent is characterized by more advanced human rights regulations. Nevertheless, we must admit that for some groups of the population this problem continues to remain an unknown, abstract, theoretical or partially understood subject, the significance of these rights for the evolution of the state, as well as for the citizens' life, not being sufficiently acknowledged.

Romania is a party in both international treaties specialized in human rights and to other international treaties related to the field of human rights. Furthermore, our country is a party in all international treaties with universal vocation and general value.

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Our country is a party to both international treaties specialized in human rights, as well as to other international treaties related to the field of human rights.

It is worth pointing out that Romania is a party to all international treaties with universal vocation and general value, such as: the International Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on civil and political rights, aiming at the abolition of the death penalty, the Optional Protocol regarding the International Covenant on civil and political rights; specialized international universal treaties, such as: the Convention on slavery, the Convention on the prevention and repression of genocide crime, the Convention on women's political rights, the Convention against torture and other cruel, inhuman or degrading treatment or punishment; specialized regional international treaties, for example: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities, etc.; international treaties related to the field of human rights to which Romania is a party: the Charter of the United Nations and the Statute of the International Court of Justice, the Constitution of the International Labour Organization, the Convention of the United Nations for Education, Science and Culture, the Statute of the Council of Europe; international treaties specialized in human rights that Romania has signed but has not ratified: the European Social Charter, the European Charter for Regional or Minority Languages (signed on July 17, 1995), the Convention for the protection of people against processing automated personal data (signed on March 18, 1997), etc.

Article 4 of Law no. 4/1991 regarding the conclusion and ratification of the treaties (Published in the Official Gazette of Romania, Part I, no. 346 of July 22, 1999) regulates the problems of the legal form, of the competent body and of the act by which Romania expresses its consent to be legally bound by international treaties on human rights.

Regarding the matter of human rights, it does not belong, according to the constitutional norms, to the field reserved to the organic law, the general rule being that the international treaties on human rights are ratified by ordinary law. If the international treaty on human rights also contains provisions concerning the fields reserved to organic law, then it

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is necessary to ratify it by organic law. In practice, international human rights treaties have been ratified by ordinary law (Popescu, 2000).

According to article 11 paragraph 2 of the Constitution of Romania, the international treaties ratified by the Parliament, according to the law, are part of the national law. The constitutional norm does not refer exclusively to the international treaties on human rights, but concerns all international treaties ratified by the Parliament.

According to the Romanian national law, even at constitutional level, the directly applicable character, in the internal legal order, of the international human rights treaties, ratified by the Parliament, which are part of the internal law, are acts of internal law (Popescu, 2000).

According to paragraph 1 in article 20 of the Constitution, the interpretation and application of the constitutional provisions regarding human rights in the light of international treaties in this field is established. Reference is made to the Universal Declaration of Human Rights and to the two International Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In article 20 paragraph 2 of the Constitution, it is mentioned that if there are inconsistencies between the pacts and the treaties regarding the fundamental human rights, to which Romania is a party, and the internal laws, the international regulations have priority.

There are two situations (Popescu, 2000): the situation in which the international norms are more favourable and the situation in which the international norms are more restrictive compared to the national law. Thus, due to the principle of subsidiarity of international human rights protection, in case of conflict between international and domestic regulations, international ones will prevail to the extent that they are more favourable. The more favourable internal norms, which ensure an increased internal protection of human rights, will not be removed from the application of the more restrictive international norms, which provide a minimum level of protection.

In the event of a possible conflict between an internal norm of human rights protection and one provided by the Convention or between two international norms, the judge, internally, will consider the more favourable disposition invoked by the interested party. In the situation of international conflict, it may appear between the provisions of the Convention and the provisions of the International O.N.U. Pact since 1966 regarding the civil and political rights, insofar as they would discuss the rights and freedoms guaranteed by both treaties, the state concerned is a party to both, although the conflict is apparent: the Court can only apply the provisions of the Convention (Bîrsan, 2006).

Any action that would have as purpose and result the pre-eminent application of the international norms will have to involve a prior valorising operation of all the international norms in the matter, approved by the Romanian state, in order to identify the preferable norm to the circumstances of the case in question.

Regarding the jurisprudential sources of international human rights protection, the jurisprudence of the European Court of Human Rights is of particular importance for our country. In Romanian domestic law, the jurisprudence of the European Court of Human Rights is “directly applicable and has constitutional and super-legislative force” (Popescu, 2000).

As regards the European Convention on Human Rights, it has pre-eminence, not only by virtue of the principle of the primacy of international law, but also because it is enshrined in a constitutional norm (article 11 paragraph 2 and article 20 of the Constitution). This ensures effective and concrete guarantees for the application of the Convention’s rules in national law, both in terms of the quality of national law and in its interpretation and application, the jurisprudence of the European Court of Human Rights having an important directing role (Voicu, 2001).

The European Convention on Human Rights, considered to be the most complex and advanced international legal instrument on the protection of fundamental rights and freedoms, also has the role of standard in the interpretation of constitutional texts on the field of human rights, a role that the Constitutional Court has increasingly confirmed in more and more of its decisions (Tudorică, 2003).

The situation of the European Convention on Human Rights in the national law of the states implies a great diversity. Thus, in countries such as Ireland, these norms are not part of the domestic law, because international norms are considered to have legal value only in terms of interstate relations (Sudre, 2006).

In other member states of the Council of Europe (Malta, Finland, Sweden, Norway, Denmark, and the United Kingdom), the provisions of the Convention have been applied indirectly, after the transposition into the internal order by a special law. Furthermore, in countries such as Germany, Bulgaria, Spain, France, the Netherlands, Portugal, Belgium, the European Convention is incorporated directly, automatically into the domestic legal order through the effect of national constitutional provisions (Sudre, 2006).

Regarding the rank of the European Convention in relation to the Romanian legislation, it results from the corroboration of the provisions of article 11 and article 20 with those of article 1 paragraph (5) of the Romanian Constitution, the latter consecrating the supremacy of the fundamental law over all other laws. Therefore, in terms of legal force, the provisions of the European Convention cannot be located above the provisions of the Romanian Constitution; however, it would have the character of a law that is located immediately after the fundamental law and before the other categories of normative acts (Muraru, 2007).

The causes for which the dynamics of the process of incorporation into the national law of fundamental rights and freedoms have been slow, especially at the level of ordinary courts, are different in nature. First of all, the difficulty of applying the Convention arose due to the lack of any official information system on the Court's jurisprudence, the judges confining thus themselves sometimes to asserting the conformity of the acts of national law with the text of the Convention. Secondly, there was a strong reluctance of the judges towards a court and a supranational legal text. The phenomenon is not unique, manifesting at different intensities in other member states of the Council of Europe (Chiriță, 2008).

The European Convention has had and continues to have a great influence on the Criminal Code, the Criminal Procedure Code, the special laws with criminal content, as well as on the content of the organic and ordinary laws. This influence is clearly observed in the New Codes (Criminal and Procedure Codes), as well as the changes made by the jurisprudence of the European Court of Human Rights.

The universal declaration of human rights acquires binding legal force in the Romanian domestic law pursuant to article 20 paragraph 1 of the Constitution and is integrated into the block of constitutionality, having the same legal force as the international human rights treaties to which Romania is a party.

Human rights remain a problem of the national competence of each state, being more and more the object of international cooperation (Diaconu, 2001).

Conclusions

The applicability of the international legal instruments in the domestic law has been an intensely debated issue in the literature. The vast majority of these debates were based on article 20 paragraph 2 of the Constitution, where it is mentioned that if there are inconsistencies between the pacts and treaties regarding the fundamental human rights, to which Romania is a party, and the internal laws, the international regulations have priority.

In order to identify the preferable norm to the circumstances of the case in question, it a prior operation should be performed, valorising all the international norms in the matter, approved by the Romanian state.

With regard to the European Convention on Human Rights, it has priority, not only by virtue of the principle of the primacy of international law, but also because it is enshrined in a constitutional norm (Article 11 paragraph 2 and Article 20 of the Constitution).

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