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## Human Rights from a Central and Eastern European Perspective: Romania's Country Report

- **ABSTRACT:** *This study explores the structure and effectiveness of Romania's national human rights system within the broader context of Central and Eastern Europe. The study examines the constitutional foundations of human rights, the role of key institutions such as the Constitutional Court, the People's Advocate, and the Romanian Institute for Human Rights (IRDO), and their impact on fundamental rights adjudication. While Romania has made significant progress in aligning its legal framework with international human rights standards, challenges remain in the enforcement and practical implementation of these rights. The absence of an individual constitutional complaint mechanism, political influences on national human rights institutions, and inefficiencies in law enforcement mechanisms continue to hinder the full realisation of human rights protections. To this end, enhancing institutional autonomy, improving judicial enforcement, and strengthening the integration of international human rights obligations are imperative for the advancement of human rights protection in Romania.*
- **KEYWORDS:** *human rights, Romania, constitutional law, national human rights institutions, fundamental rights adjudication*

### 1. Introduction

Human rights represent the foundation of any democratic society and an essential pillar of the rule of law. Within the Romanian constitutional framework and in international treaties to which the state is a party, these rights are enshrined, reflecting a firm commitment to protecting and promoting human dignity, freedom, equality, justice, solidarity, the rule of law, and respect for human life,

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as well as physical and moral integrity. The fundamental rights and freedoms of individuals are set out in Title II of Romania's Constitution,<sup>1</sup> providing a solid legal framework for the protection of essential values, such as the right to life, liberty, freedom of expression, and a fair trial. This constitutional enshrinement delineates the limits and obligations of the State, as well as the guarantees to ensure effective respect for fundamental rights.

The perception of human rights in Romania is shaped by historical developments and the dynamics of the post-communist transition to a democratic state. Social and legal transformations since 1989 have emphasised the importance of respecting fundamental rights and civil liberties. However, public perceptions of human rights are also influenced by factors such as the level of legal education, economic and cultural challenges, and the manner in which state institutions handle complaints about violations. While progress has been made, challenges persist regarding discrimination, access to justice, and equal opportunities.

National human rights institutions (NHRIs) play a key role in promoting and enforcing human rights. Both the People's Advocate Institution (Instituția Avocatul Poporului) and the Romanian Institute for Human Rights (Institutul Român pentru Drepturile Omului, IRDO) have mandates in the general field of human rights, but their competences differ. The People's Advocate, an ombudsman-type institution, possesses extensive powers to investigate cases of violations of fundamental rights and make recommendations to remedy such situations, whereas the IRDO contributes to the dissemination of information and human rights education, promoting a culture of respect for human dignity. Collectively, these institutions, together with other governmental and non-governmental organisations, establish a comprehensive mechanism for monitoring and protecting fundamental rights in Romania.

The Romanian Constitutional Court (Curtea Constituțională a României), as the guarantor of the supremacy of the Constitution, plays a pivotal role in protecting fundamental rights. Through its duties, the Court contributes to the correct interpretation and application of constitutional provisions on fundamental rights and freedoms. In this capacity, it analyses the constitutionality of laws and other normative acts, preventing the application of provisions that might violate rights guaranteed by the Constitution. The Court's decisions have a direct impact on the protection of fundamental rights, setting standards of interpretation that are binding on all public authorities and courts. Furthermore, the Constitutional Court plays an active role in aligning domestic legislation with international human rights standards by applying the provisions of Art. 20 of the Constitution, which provide that international treaties on fundamental rights prevail in the

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1 The Constitution of Romania (republished in 2003), published in the Official Gazette, Part I No. 767 of October 31, 2003 [Online]. Available at: <https://www.cdep.ro/pls/dic/site.page?id=339> (Accessed: 15 January 2025).

event of conflict with domestic law. The Court has repeatedly emphasised the significance of Romania's international obligations and has advocated interpretations that align with international norms, thereby contributing to the harmonisation of domestic legislation with European and international standards.

This analysis aims to examine how human rights are reflected and protected in Romania, commencing with constitutional provisions and concluding with the role of institutions dedicated to this field. The discussion focuses on the Constitutional Court's role in ensuring the supremacy of fundamental rights within a dynamic national and international legal framework. It concludes with an assessment of the progress achieved and the obstacles that remain in fully implementing human rights standards in Romanian society.

## **2. The Protection of Fundamental Rights in the Constitution of Romania**

In the context of Romanian law, the terms 'human rights', 'fundamental rights', and 'constitutional rights' may possess distinct meanings, despite referring to interconnected concepts. Without delving into the intricate historical progression of these concepts, it is imperative to delineate their fundamental meanings.

Human rights are understood as a limited set of prerogatives belonging to individuals by virtue of their status as human beings. These rights, both moral and legal in nature, are based on human dignity and primarily aim to protect individuals against state abuses while ensuring freedom of participation in social and political life. The extant literature asserts that the scope of human rights is narrower than the totality of rights recognised to individuals, implying that not every subjective right qualifies as a human right. These rights are characterised by a dual nature, being both moral and subjective, and are founded on recognition of the inherent dignity of every person, who merits treatment befitting their human condition.<sup>2</sup>

In Romanian law and legal doctrine, the term 'human rights' is frequently employed to denote public freedoms, a concept that encompasses both freedoms and human rights. It is also pertinent to note that human rights are intricately interwoven with public law. Expressions such as 'human rights' and 'fundamental rights' appear frequently in legal doctrine.<sup>3</sup> The Constitution employs the term 'fundamental rights' when discussing essential human rights – such as the right to life, the right to defense, and the right to vote<sup>4</sup> – and 'fundamental freedoms'

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2 Varga, 2019, p. 183.

3 Iancu, 2003, p. 3; Muraru and Iancu, 1992, pp. 5–6.

4 Spătaru-Negură, 2024, p. 6.

when regulating individual liberty, freedom of conscience, freedom of expression, and similar rights.<sup>5</sup>

A question arises as to whether there is a legal distinction between the concepts of rights and freedoms. The prevailing opinion, in accordance with Hans Kelsen's legal theory, asserts the absence of any legal distinction between the two terms, positing that they collectively denote a singular legal category, namely rights.<sup>6</sup> In contrast, an alternative viewpoint asserts substantial differences between rights and freedoms. Rights pertain to negative obligations imposed on individuals to refrain from actions that might impede their exercise, whereas freedoms encompass both negative and positive obligations, including correlative actions by other individuals or the state. The content of a right is clearly regulated by law, defining the prerogatives of the holder and the corresponding obligations, whereas freedom is more open-ended and less delimited. Freedom is considered prior to law, being a natural condition, while law serves as a form of limitation and regulation of freedom. While rights are subject to legal limitations, absolute freedoms – such as freedom of thought and conscience – cannot be restricted.<sup>7</sup>

From a terminological perspective, a distinction must be made between human rights and citizens' rights. Human rights refer to universal prerogatives inherent to all human beings, while citizens' rights indicate that an individual, within a national legal system, becomes part of a political community. This status entails integration into a structured framework of legal principles and public institutions designed to protect and facilitate the exercise of these rights.<sup>8</sup> It is also important to distinguish between citizens' rights and fundamental human rights. While fundamental rights are recognised for all individuals within a state's territory, irrespective of nationality, citizens' rights pertain primarily to political and participatory rights available exclusively to citizens of that state.<sup>9</sup>

The term 'constitutional rights' refers to the set of fundamental rights and freedoms enshrined and guaranteed by the Constitution. In legal literature, it is also used as a synonym for fundamental rights, though it represents a broader concept. Constitutional rights include all subjective rights based on the Constitution, including those that do not fall under fundamental human rights.<sup>10</sup> They may therefore encompass both fundamental rights and other rights specific to the domestic constitutional order. Constitutional rights have a binding nature and enjoy the highest form of legal protection. They are defended through domestic constitutional mechanisms, particularly through the Constitutional Court,

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5 Iancu, 2003, p. 2.

6 Muraru and Tănăsescu, 2002, p. 162; Iancu, 2003, p. 2; Bîrsan, 2005, p. 13; Safta, 2023, p. 227.

7 Dabu and Gusanu, 2013, pp. 288–290.

8 Safta, 2023, p. 226.

9 Halmai and Tóth, 2003, p. 29.

10 Varga, 2019, p. 184.

which ensures that legislation and normative acts comply with constitutional principles and provisions.

The Romanian Constitution dedicates a separate title to the fundamental rights, freedoms, and duties of citizens. Chapters within Title II of the Constitution, in addition to enumerating these rights, freedoms, and duties, also delineate the underlying principles that govern their exercise and guarantee, along with the mechanisms to ensure their respect. The Constitutional Court has ruled that Arts. 21–52 of the Constitution enumerate fundamental rights and freedoms exclusively, without implying that these rights and freedoms are confined to this catalogue. These rights and freedoms are defined as fundamental, i.e., those explicitly enumerated or nominated. Consequently, when a constitutional text encompasses a supreme value of a constitutional nature, which is itself a guiding principle and/or a fundamental right or freedom, as defined by the Constitutional Court, the catalogue stipulated in Title II of the Constitution is correspondingly shaped.<sup>11</sup> This Title also defines the limits and conditions under which these rights may be restricted, in accordance with Art. 53, which regulates the limitation of the exercise of certain rights or freedoms. The concluding chapter of this Title delineates the role, powers, and mechanisms through which the People's Advocate contributes to the protection of citizens' fundamental rights and freedoms.

The relationship between international and domestic law is established by two constitutional provisions. Art. 11 of the Constitution stipulates that the Romanian state is bound by the terms of treaties to which it is a party, and that such treaties, once ratified by Parliament in accordance with the law, become an integral component of domestic law. Moreover, the Constitution stipulates that if a treaty to which Romania is to become a party contains provisions contrary to the Constitution, it can be ratified only after the Constitution has been revised. Another constitutional text, Art. 20, on international human rights treaties, states that citizens' rights and freedoms must be interpreted and applied in accordance with the Universal Declaration of Human Rights and the international covenants and treaties to which Romania is a party. In instances where discrepancies arise between these international covenants and treaties on fundamental human rights and domestic legislation, the international provisions take precedence, unless the Constitution or domestic legislation provides more favourable provisions.<sup>12</sup> With regard to Romania's ratification of the European Convention on Human Rights, the Constitutional Court, in a decision fully consistent with Art. 20,

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11 Decision No. 464 of July 18, 2019, published in the Official Monitor of Romania, Part I, No 646 of July 18, 2019.

12 Constitution of Romania (republished in 2003), published in the Official Journal of Romania, Part I, No. 767 of October 31, 2003, Arts. 11 and 20.

established that this Convention is part of domestic law, so references to any of its texts are subject to the same regime as the provisions of the Basic Law.<sup>13</sup>

In accordance with Art. 58 of the Constitution, the function of the People's Advocate is to ensure the protection of the rights and freedoms of individuals against any form of abuse by public authorities.<sup>14</sup> Notably, the constitutional text is not limited to the protection of Romanian citizens' rights and freedoms; it extends this protection to all natural persons, including foreign citizens and stateless persons residing in Romania.<sup>15</sup> The Constitution primarily reflects a vertical conception of the functioning of fundamental rights, protecting individuals in their relations with the State. The normative, institutional, and jurisdictional guarantees provided by the State ensure the protection of these rights in the event of abuses by authorities or other public agents. Concurrently, the Basic Law permits a horizontal approach, whereby the State functions as an impartial arbiter between individual subjects of law. This function is primarily executed through the courts, which oversee disputes arising between holders of fundamental rights. As documented in the relevant literature, conflicts between fundamental rights, whether vertical or horizontal, require resolution, given that all these rights possess equivalent legal value.<sup>16</sup>

The Constitution of Romania guarantees fundamental rights and freedoms to all persons within its territory, regardless of citizenship, nationality, gender, religion, ethnic origin, or political orientation. This comprehensive protection is enshrined in provisions such as the principle of equality before the law and public authorities without privilege or discrimination (Art. 16 para. (1)), and the right of foreign citizens and stateless persons to benefit from the general protection of persons and property (Art. 18 para. (1)).

In addition to this general protection, the Constitution explicitly mentions certain groups that benefit from special protection. Children and young people are particularly protected, with rights to education, social assistance, and conditions enabling their physical and moral development (Art. 49). Persons with disabilities

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13 Decision No. 146 of July 14, 2000, published in the Official Journal of Romania, Part I, No. 566 of November 15, 2000.

14 According to the Constitution, the People's Advocate is not the only institution specifically entrusted with the protection of fundamental rights and freedoms. There are direct constitutional provisions in this respect, as is the case of the Public Prosecutor's Office (Art. 131), but also indirect ones, deriving from specific powers to ensure compliance with the Constitution (e.g., the President of Romania, Art. 80 para. (2), and the Constitutional Court, Art. 142 para. (1)).

15 Niculescu, 2023, p. 54.

16 Muraru and Tănăsescu, 2008, p. 563. Two other constitutional provisions are essential for protecting fundamental rights and freedoms. The first is Article 115 para. (6) which prohibits the government from adopting emergency ordinances affecting the rights, freedoms, and duties set out in the Constitution. The second is contained in Art. 152 para. (2), which states that 'No revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof.'

are to be protected by special measures designed to guarantee their social and professional integration. The State is obligated to implement a national policy of equal opportunities, prevention, and treatment of disability, with a view to the effective participation of persons with disabilities in community life. This policy must respect the rights and duties of parents and guardians (Art. 50). In a ruling by the Constitutional Court, this special protection is required to be adequate, real, effective, and concrete, not theoretical or illusory.<sup>17</sup>

The Constitution also stipulates measures of social protection for employees while establishing special protection measures for women, young people, and persons with disabilities (Art. 41 para. (2)). These specific measures are further delineated in the Labor Code and various special laws. National minorities are also beneficiaries of special protection measures, with the right to preserve, develop, and express their cultural, linguistic, and religious identity recognised (Art. 6).

The status of the individual in the state is defined by a set of constitutional principles governing the fundamental rights, freedoms, and duties of citizens. The Constitution places significant emphasis on human dignity as a paramount value, as articulated in Art. 1 para. (3), which stipulates that Romania is a democratic and social State governed by the rule of law, founded on respect for human dignity, fundamental rights, and freedoms. This value constitutes the foundation of the legal protection afforded to the individual and underpins the system of fundamental rights.<sup>18</sup> In a 2010 ruling, the Constitutional Court determined that the free development of human personality and human dignity, values enshrined in Art. 1 para. (3), cannot be conceived without respect for and protection of privacy.<sup>19</sup>

Art. 15 para. (1) of the Constitution stipulates that citizens are entitled to the rights and freedoms set out therein and in other laws, along with the corresponding obligations. This constitutional provision expresses the principle of the universality of rights and freedoms, which also implies the universality of duties. Legal scholarship has emphasised that Art. 15 underscores the inextricable linkage between rights, freedoms, and duties, highlighting their interdependence. The concept of duties as guarantees of rights underscores the necessity of exertion, creation, and participation to fully enjoy the rights enshrined in the Constitution.<sup>20</sup>

Another constitutional principle relating to fundamental rights, freedoms, and duties is the principle of non-retroactivity of the law, enshrined in Art. 15 para. (2). In its judicial practice, the Constitutional Court has held that this principle has

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17 Decision No. 906 of December 16, 2020, published in the Official Monitor of Romania, Part I, No. 79 of January 25, 2021.

18 Muraru and Tănăsescu, 2008, p. 17.

19 Decision No. 415 of April 14, 2010, published in the Official Monitor of Romania, Part I, No. 294 of May 5, 2010.

20 Muraru and Tănăsescu, 2008, pp. 137–138.

particularly important implications, which is why it is rarely found in other constitutions. Its elevation to the status of a constitutional principle is fully justified, as it contributes significantly to ensuring legal certainty and enhancing citizens' confidence in the legal system. The principle of non-retroactivity also prevents violations of the separation of powers by prohibiting interference between legislative, judicial, and executive functions, thereby strengthening the rule of law.<sup>21</sup> It is important to note that this principle applies not only to the Constitution but also to substantive and procedural law.<sup>22</sup>

In accordance with the principle of equal rights, as enshrined in Art. 16 paras. (1)–(2), all citizens are entitled to equal treatment before the law and public authorities, and any privilege or discrimination is prohibited. The principle also underscores the notion that no individual is above the law. The Constitutional Court has established that a violation of the principle of equality and non-discrimination occurs when differential treatment is applied to equal cases without an objective and reasonable justification or when there is a disproportion between the aim pursued by the unequal treatment and the means used to achieve it.<sup>23</sup>

Art. 21 of the Constitution establishes the principle of free access to justice. Every individual has the right to seek recourse to justice for the protection of their rights, freedoms, and legitimate interests, without restriction by any law. Furthermore, the right to a fair trial, including the right to have cases decided within a reasonable timeframe, is recognised. This principle is reinforced by international regulations guaranteeing free access to justice, as evidenced in the literature. Following the 2003 revision of the Constitution, new guarantees were introduced in line with international standards, including Art. 6 of the European Convention on Human Rights, which enshrines the right to a fair trial and to have cases decided within a reasonable time.

The Constitutional Court has held that free access to justice is not only a constitutional principle but also a right inherent in every individual.<sup>24</sup> In a decision on the exception of unconstitutionality of a provision of the Code of Civil Procedure, the Court determined that free access to justice implies access to the procedural means by which justice is done. In addressing the compatibility of special procedures or procedural particularities for exercising the parties' procedural rights with the principle of free access to justice, the Court held that the establishment of rules governing the conduct of proceedings before the courts is an exclusive prerogative of the legislature.<sup>25</sup>

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21 Decision No. 9 of March 7, 1994, published in the Official Journal of Romania, Part I, No. 326 of November 25, 1994.

22 Toader and Safta, 2013, p. 4.

23 Decision No. 107 of November 1, 1995, published in the Official Journal of Romania, Part I, No. 27 of March 12, 1996.

24 Safta, 2023, pp. 256–257.

25 Decision No. 1 of February 8, 1994, published in the Official Journal of Romania, Part I, No. 69 of March 16, 1994.

In a separate, pertinent ruling, the Court determined that the right to access justice, as enshrined in Art. 21 of the Constitution, ensures that every individual may approach the courts when they believe that their rights, freedoms, or legitimate interests have been violated. However, this principle does not imply unconditional access to justice; the legislature retains the prerogative to establish the regulations governing the conduct of proceedings before the courts.<sup>26</sup>

It is also imperative to emphasise the fundamental principle that limitations on the exercise of specific rights or liberties may only be imposed in exceptional circumstances. The Constitution explicitly and comprehensively delineates the circumstances that justify such restrictions. As articulated in Art. 53, restrictions are permissible solely through legislative means and exclusively when necessary to safeguard national security, maintain public order, promote public health or morals, protect citizens' rights and liberties, conduct criminal investigations, or mitigate the consequences of natural calamities, disasters, or particularly grave events.

Such restrictions are permissible only if deemed indispensable, and the measures imposed must be proportionate to the situation that necessitated them, applied in a non-discriminatory manner, and without prejudice to the existence of the right or freedom itself. The Constitutional Court has established that, according to the principle of proportionality, any measure must be: appropriate – objectively capable of leading achieving its aim; necessary – indispensable for accomplishing the aim; and proportionate – designed to balance competing interests in relation to the goal. The Court emphasised that each element must be examined in sequence; if a measure does not satisfy any of the three requirements, it is deemed unconstitutional, and further examination of the remaining elements becomes unnecessary. Consequently, the proportionality test must commence by ascertaining whether the legislature's objective is legitimate, as the test only applies to legitimate aims.<sup>27</sup>

The legal reasoning employed by the Constitutional Court for the proportionality test aligns with the case law of numerous European constitutional courts, with the Federal Constitutional Court of Germany serving as a prevailing benchmark. In 2020, in the context of the pandemic, the Constitutional Court ruled in several decisions that impairment or restriction of fundamental rights and freedoms may only be effected by law, formally adopted by Parliament, within

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26 Decision No. 573 of September 20, 2018, published in the Official Monitor of Romania, Part I, No. 959 of November 13, 2018.

27 Decision No. 266 of May 21, 2013, published in the Official Monitor of Romania, Part I, No. 443 of July 19, 2013.

reasonable limits, and that the principle of proportionality must be analysed on a case-by-case basis.<sup>28</sup>

As previously stated, the Romanian Constitution dedicates a separate title to the fundamental rights, freedoms, and duties of citizens. A thorough examination of the constitutional provisions reveals a catalogue of fundamental rights and freedoms enjoyed by Romanian citizens. This catalogue includes the right to life and to physical and mental integrity (Art. 22), individual freedom (Art. 23), the right to defense (Art. 24), the right to freedom of movement (Art. 25), the right to protection of family and private life (Art. 26), inviolability of the home (Art. 27), the right to education (Art. 32), access to culture (Art. 33), the right to healthcare (Art. 34), the right to a healthy environment (Art. 35), the right to work and to social protection of work (Arts. 41–42), the right to strike (Art. 43), the right to property (Art. 44), the right to inheritance (Art. 46), economic freedom (Art. 45), the right to a decent standard of living (Art. 47), the right to marry (Art. 48), the right of children and young people to protection and assistance (Art. 49), the right of persons with disabilities to special protection (Art. 50), the right to vote (Art. 36), the right to be elected (Art. 37), freedom of conscience (Art. 29), freedom of expression (Art. 30), the right to information (Art. 31), freedom of assembly (Art. 39), the right of association (Art. 40), freedom of correspondence (Art. 28), the right to petition (Art. 51), the right of persons injured by a public authority (Art. 52).

In Romanian legal doctrine, these fundamental rights and freedoms are categorised according to their content as follows: inviolability rights (right to life, right to physical or mental integrity, individual liberty, etc.); social-economic and cultural rights and freedoms (right to education, right to private property, economic freedom, etc.), exclusively political rights (right to vote, right to be elected); socio-political rights and freedoms (freedom of conscience, freedom of expression, right to information); and guarantee rights (right to petition, right of an individual aggrieved by a public authority).<sup>29</sup>

The establishment of a clear hierarchy among fundamental rights and freedoms is arduous, if not wholly impossible, due to their inherent interdependence and the significance of each in maintaining democratic balance. Nevertheless, certain rights can be regarded as pivotal to the rule of law, particularly because of their impact on the functioning of the state, the safeguarding of human dignity, and the preservation of social cohesion. The right to vote, for instance, is intrinsic to sustaining a functional democratic system, empowering citizens to engage actively in decision-making and to contribute to the legitimacy of public authorities. Likewise, the right to private property serves as a cornerstone of economic

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28 Decision No. 152 of May 6, 2020, published in the Official Monitor of Romania, Part I, No. 387 of May 13, 2020. Decision No. 157 of May 13, 2020, published in the Official Monitor of Romania, Part I, No. 397 of May 15, 2020.

29 Safta, 2023, pp. 240–242; Bădescu, 2023, pp. 202–203; Iancu, 2003, pp. 52–53; Muraru and Tănăsescu, 2001, pp. 178–180; Duculescu, 2008, pp. 175–179.

stability, ensuring the protection of private initiative and underpinning economic freedom. Education is recognised as a vital component of social progress, preparing citizens to participate fully in the democratic and economic life of the state. Similarly, the right to health protection contributes directly to the general well-being of society, serving as an indicator of the state's capacity to ensure adequate living conditions for all citizens.

These rights illustrate the manner in which fundamental rights interrelate to underpin the political, social, and economic stability of the state. However, it should be noted that this is not an exhaustive list of fundamental rights and freedoms. Each right performs a distinct function within the legal system, contributing to the strengthening of the rule of law and the protection of its foundational values.

Subjective rights are inextricably intertwined with legal obligations, as both elements constitute the substance of any legal relationship. Fundamental duties are closely linked to fundamental rights and freedoms, reflecting the principle that no individual may invoke rights without also assuming corresponding duties. These duties contribute to the realisation of rights and the achievement of societal aims and are thus essential to social life. They are regarded as fundamental due to their unique significance and are formally recognised in numerous legal instruments, including constitutions. Consequently, fundamental duties are deemed crucial obligations for citizens, the fulfilment of which may be facilitated through both persuasive and coercive measures by the state.<sup>30</sup>

The fundamental duties of citizens are delineated in Chapter 3 of Title II of the Constitution, which stipulates the following: the duty of loyalty to the country (Art. 54), the duty to defend the country (Art. 55), the duty to contribute to public expenses (Art. 56), and the duty to exercise rights and freedoms in good faith (Art. 57). It is imperative that all Romanian citizens, without exception, adhere to these fundamental duties. Additionally, a particular obligation is imposed on both Romanian citizens and foreign nationals residing in the country: the duty set out in Art. 1 para. (5), which stipulates the obligation to respect the Constitution, its supremacy, and the laws.

The regulation of fundamental rights and freedoms in the Romanian Constitution establishes a robust framework that aligns with international standards and is generally sufficient to address contemporary challenges. The Constitution is notable for articulating fundamental principles such as human dignity, equality, access to justice, and the protection of social and economic rights. These principles reflect universal values and correspond to the essential needs of a democratic society. However, in the contemporary context, characterised by digitalisation and global crises, the efficacy of these principles necessitates adaptable interpretations and implementations. While the constitutional framework remains adequate,

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30 Bădescu, 2023, p. 191.

its effectiveness is ultimately contingent on the rapid adaptation of legislation and its practical application to emerging realities.

### 3. Fundamental Rights Adjudication in Romania

The adjudication of fundamental rights in Romania, as well as their defense and guarantee through jurisdictional means, is an essential element of the constitutional and legal framework. Jurisdictional guarantees fall within the category of organised or institutional guarantees, which are designed to protect the fundamental rights and freedoms of citizens.<sup>31</sup> The Constitutional Court of Romania plays a pivotal role in this process by ensuring the supremacy of the Constitution and adjudicating on the constitutionality of laws and ordinances. This contributes directly to the protection of the fundamental rights enshrined in the fundamental law. The constitutionality of laws is reviewed in accordance with Arts. 146-147 of the Constitution and Law No. 47/1992 on the Organisation and Functioning of the Constitutional Court.<sup>32</sup> According to this law, the Constitutional Court is the sole authority in Romania with jurisdiction over constitutional matters. It is autonomous from any public authority and is bound only by the Constitution and the law governing its organisation and functioning.<sup>33</sup>

Concurrently, the ordinary courts are responsible for adjudicating concrete cases involving violations of fundamental rights and freedoms. These courts oversee the interpretation and application of national and international law, with particular emphasis on ensuring that the principles of a fair trial, freedom of expression, property rights, and other fundamental rights are upheld. The High Court of Cassation and Justice plays a pivotal role in this system, as enshrined in Law No. 304/2022 on Judicial Organisation. The Court's primary responsibility is to provide a unifying interpretation and application of the law for all other courts, thereby ensuring that legal principles are uniformly upheld. The High Court's role encompasses the protection of rights through its case law, including appeals in the interest of the law and preliminary rulings.

The ordinary courts – namely, the courts of first instance, tribunals, and courts of appeal – are responsible for protecting fundamental rights by resolving disputes between different parties, including those involving public

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31 Iancu, 2003, p. 341.

32 Law No. 47/1992 on the Organisation and Functioning of the Constitutional Court (republished), published in the Official Gazette of Romania, Part I, No. 807 of 3 December 2010.

33 After the 1989 revolution and before the adoption of the 1991 Constitution, which brought the Constitutional Court into the Romanian institutional landscape, the Plenum of the Supreme Court of Justice had the power to review the constitutionality of laws. Following the 2003 revision of the Constitution, the name of the supreme court was changed to the High Court of Cassation and Justice. Puskás and Benke, 2014, pp. 8–9.

administration. These courts, through their administrative litigation divisions, adjudicate complaints against administrative acts.

The Constitution also provides for the establishment of the institution of the People's Advocate, as outlined in Arts. 58–60. The People's Advocate was one of the new institutional structures created by the 1991 Constitution, alongside the Constitutional Court. According to Art. 59 of the Constitution, the People's Advocate exercises their powers *ex officio* or at the request of persons whose rights and freedoms have been infringed, within the limits established by law. The institution operates on the basis of Law No. 35/1997 on the Organisation and Functioning of the People's Advocate.<sup>34</sup>

The People's Advocate functions as a guarantor of the fundamental rights and freedoms of individuals, with the primary objective of protecting them in their relations with public authorities. The institution draws inspiration from the tradition and experience of the classical Western European Ombudsman model, while adapting it to the national legal and social context. Its primary functions, as delineated in its legal framework, encompass: adjudication of petitions lodged by individuals whose rights or freedoms have been violated by public administration authorities; formulation of perspectives at the behest of the Constitutional Court; submission of requests for summons to court or criminal complaints; referral to the Constitutional Court regarding the unconstitutionality of laws prior to their promulgation; and direct referral to the Constitutional Court of exceptions of unconstitutionality of laws and ordinances.

In order to comprehend the function of the Constitutional Court in ensuring the supremacy of the Constitution, it is necessary to examine the tasks assigned to the institution by Art. 146 of the Constitution. In the field of specialised literature, the Court's powers are classified into two broad categories according to their content. The first category comprises powers to review the constitutionality of certain legislative acts, such as laws and government ordinances. The second category comprises powers relating to the constitutionality of certain activities (legal conflicts of a constitutional nature between public authorities), procedures (presidential elections, referendums), and behaviours or attitudes (the relationship of the President of Romania with the fundamental law).<sup>35</sup>

According to Art. 146 of the Constitution, the Constitutional Court has the following attributions: (a) to rule on the constitutionality of laws before their promulgation, at the request of the President of Romania, one of the Presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the People's Advocate, at the request of at least 50 deputies or at least 25 senators,

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34 Law No. 35/1997 (republished) on the organisation and functioning of the People's Advocate Institution, published in the Official Gazette of Romania, Part I, no 181 of 21 February 2018 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/11200> (Accessed: 15 January 2025).

35 Safta, 2023, p. 133; Varga, 2019, pp. 124–125; Toader and Safta, 2020, p. 75.

and *ex officio* on initiatives to revise the Constitution; (b) to rule on the constitutionality of treaties or other international agreements, at the request of one of the Presidents of the two Chambers of at least 50 deputies or at least 25 senators; (c) to rule on the constitutionality of Parliament's Rules of Procedure, at the request of one of the Presidents of the two Chambers, a parliamentary group, or at least 50 deputies or at least 25 senators; (d) to rule on objections of unconstitutionality concerning laws and ordinances raised before the courts of law or commercial arbitration; exceptions of unconstitutionality may also be raised directly by the People's Advocate;

(e) to resolve legal conflicts of a constitutional nature between public authorities, upon request by the President of Romania, one of the Presidents of the two Chambers, the Prime Minister, or the President of the Superior Council of the Magistracy; (f) to ensure that the procedure for the election of the President of Romania is observed and to confirm the results of the vote; (g) to ascertain the existence of circumstances justifying the interim exercise of the office of President of Romania and to communicate its findings to Parliament and the Government; (h) to issue an advisory opinion on the proposal to suspend the President of Romania from office; (i) to ensure compliance with the procedure for organising and holding referendums and to confirm their results; (j) to verify the fulfilment of the conditions for the exercise of legislative initiative by citizens; (k) to render rulings on appeals concerning the constitutionality of a political party.

The constitutional amendment of 2003, stipulated in Art. 146 l (l), introduced the possibility for the organic law – i.e. Law No. 47/1992 on the Organisation and Functioning of the Constitutional Court – to establish other attributions for the Constitutional Court, in addition to those expressly provided for in the constitutional text. This measure was conceived as a more flexible solution for adjusting the regulations to the continuously changing social reality, allowing the Court's powers to be adapted by amending its organic law, without the need for a new revision of the Constitution.<sup>36</sup>

To illustrate this point, the Constitutional Court's powers were expanded through an amendment to Law No. 47/1992 in 2010, which subjected all decisions issued by the Parliament, including those of the plenary of the Senate, the Chamber of Deputies, and the joint chambers, to constitutional review. Under the previous regulation, the Court only ruled on the constitutionality of Parliament's regulations under Art. 146 of the Constitution. This legislative amendment has been the subject of considerable controversy and has sparked widespread debate among legal specialists.

In 2012, an amendment was made to Law No. 47/1992 by the legislator, with the intention of removing the Court's authority to adjudge the constitutionality of Parliament's decisions. In its subsequent ruling on the unconstitutionality of

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<sup>36</sup> Bădescu, 2023, p. 66; Muraru and Tănăsescu, 2008, pp. 1417–1418.

the aforementioned amendment, the Court determined that the exclusion of all Parliament's decisions from constitutional scrutiny was not founded upon the principles of the rule of law. Instead, it was potentially predicated upon considerations of expediency – a principle that, by its very nature, engenders subjectivity, interpretation, and arbitrariness. The Court further established that interpreting Art. 146 (l) of the Basic Law to mean that the legislature has the possibility of limiting, eliminating, or reducing the powers of the Court, to the detriment of other fundamental provisions, would amount to emptying it of its content – diverting it from the aim of perfecting constitutional democracy, which was pursued by the constituent legislature itself when it revised the Constitution in 2003 – an outcome deemed absolutely unacceptable. Consequently, no amendment to the powers of the Constitutional Court under Art. 146 para. (l) of the Constitution may be made if it has the effect of abolishing, in any circumstances and in breach of fundamental rules, one of those powers.<sup>37</sup>

The Constitutional Court has been known to exercise powers that are not explicitly provided for in formal sources of law; rather, these powers have developed in practice. To illustrate this point, the Court has established a doctrine of 'inadmissibility cases', which precludes it from adjudicating on the merits of certain cases. This doctrine has evolved over time and reflects the Court's interpretation of its own jurisdiction, making a clear distinction between its jurisdiction and that of the legislature or other courts. Furthermore, the Court has established its own limitations in the exercise of constitutional review, including the review of the constitutionality of laws and ordinances as interpreted by the High Court of Cassation and Justice, despite the absence of explicit conferment of this power. This practice has given rise to situations in which the Court itself analyses the constitutionality of legal rules interpreted by the High Court of Cassation and Justice, thus raising questions about the limits of its own jurisdiction.<sup>38</sup>

These two examples demonstrate how the Court has shaped its powers through case law, effectively creating a 'law in action' that goes beyond the strict framework of formal sources of law.

One of the most significant tasks of the Constitutional Court is to guarantee the supremacy of the Constitution by reviewing the constitutionality of normative acts. This fundamental activity of the Court is instrumental in protecting the fundamental rights and freedoms of citizens, maintaining the balance between the powers of the State, and ensuring respect for the principles of the rule of law. The constitutionality of laws may be reviewed in two ways: *a priori*, carried out before the enactment of the legislative act, and *a posteriori*, carried out after it has entered into force, as part of a mechanism for *ex post* verification of compliance

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37 Decision No.727 of July 9, 2012, published in the Official Monitor of Romania, Part I, No. 477 of July 12, 2012.

38 Safta, 2022a, pp. 103–106.

with constitutional provisions (exception of unconstitutionality). The normative acts that fall within the competence of the Constitutional Court under Art. 146 (a)–(d) and (j) are: laws adopted by Parliament, international treaties or agreements, Parliament's regulations, legislative initiatives to revise the Constitution, ordinances issued by the Government, and citizens' legislative initiatives.

The *a priori* review of constitutionality is an abstract and direct review, the purpose of which is to verify normative acts that have been adopted by the legislature but not yet promulgated. Law No. 47/1992 on the organisation and functioning of the Constitutional Court, Art. 2 para. (3), provides that the Constitutional Court shall rule exclusively on the constitutionality of the acts referred to it, without the power to amend or supplement the provisions under review. The Constitution stipulates that the President of Romania, the Presidents of the two Chambers of Parliament, the Government, the President of the High Court of Cassation and Justice, the People's Advocate, or a group comprising at least 50 deputies or 25 senators may initiate *a priori* review of the constitutionality of laws. The Court exercises its jurisdiction *ex officio* on initiatives to amend the Constitution.

The jurisdictional procedure for reviewing the constitutionality of laws prior to their promulgation is governed by Arts. 15-18 of Law No. 47/1992. In order to exercise the right to refer a matter to the Court, five days before it is sent for promulgation, the law is communicated to the Government, the High Court of Cassation and Justice, and the People's Advocate, and is deposited with the Secretary General of the Chamber of Deputies and the Secretary General of the Senate. In instances where the law has been adopted through the emergency procedure, the aforementioned deadline is reduced to two days. Once a law has been lodged with the Secretaries-General of the Chambers of Parliament, it is brought to the attention of the plenary of each Chamber within 24 hours, provided that the Chambers of Parliament are in plenary session.

Upon receipt of the notification, the President of the Constitutional Court is required to appoint the judge-rapporteur and the assistant magistrate by means of a resolution, and to set the date on which the debates are to take place. Until the date of the debates, the Presidents of the Chambers, the Government, and the People's Advocate may submit their views in writing, and the Government's views must be submitted under the signature of the Prime Minister. The debate is conducted in the plenary session of the Constitutional Court, with the participation of the Court's judges, and is based on the referral, the relevant documents, and the views received. The analysis focuses not only on the provisions explicitly challenged in the complaint but also on those which are necessarily and obviously indissolubly linked to them. The Court's decision is determined by a majority vote of the judges and communicated to the President of Romania. In the event that the law is deemed unconstitutional, the judgement is conveyed to the Presidents of the two Chambers and the Prime Minister. In instances where the constitutionality of laws is contested prior to their promulgation, the Parliament is obligated to

re-examine the provisions in question, ensuring their alignment with the Constitutional Court's decision.

Following the revision of the Constitution in 2003, the Court, in accordance with Art. 146 (b), was granted the authority to assess the constitutional legitimacy of treaties or other international agreements. Prior to this revision, the Court's capacity to oversee the ratification of international treaties or agreements was constrained by the two forms of constitutional control, namely preventive and subsequent.<sup>39</sup> This is an *a priori* abstract constitutionality review, and referral to the Court is reserved for the Presidents of the two Chambers of Parliament or for at least 50 deputies or 25 senators. Art. In the event that a treaty or international agreement is deemed unconstitutional, it may not be ratified. Furthermore, if its constitutionality has been confirmed, it may not be the subject of an objection of unconstitutionality. This provision establishes the relationship between international treaties and the Constitution, thereby guaranteeing the supremacy of the Constitution. In this context, the constitutionality review is intended either to prevent the ratification of a treaty that contravenes constitutional provisions or to initiate the procedure for revising the Constitution to bring the treaty into line with the fundamental law.

The *a posteriori* review of normative acts, or the resolution of the exception of unconstitutionality, is regulated by Art. 146 (d) of the Constitution and Arts. 29–33 of Law No. 47/1992. Under this type of review, the Constitutional Court adjudicates on objections of unconstitutionality relating to laws, ordinances, or their provisions in force, which are brought before courts of law or commercial arbitration. Additionally, the Court addresses exceptions of unconstitutionality lodged directly by the People's Advocate in the exercise of their constitutional prerogatives.

It is important to note that an objection of unconstitutionality may be raised indirectly by the parties to a dispute before the court, *ex officio* by the court of law or commercial arbitration, by the public prosecutor in cases in which they are a party, and directly before the Constitutional Court by the People's Advocate. It is therefore evident that the Constitutional Court can only be approached in instances where the objection of unconstitutionality has been raised by the court or commercial arbitration tribunal before which it was lodged, or by the People's Advocate. The case may be brought before the Court by a judgement of the court or commercial arbitration tribunal, or by a reasoned address by the People's Advocate.

Legal provisions previously declared unconstitutional by the Constitutional Court in a prior decision may not be subject to an objection of unconstitutionality. Furthermore, decisions handed down within the framework of constitutional review that reject an objection of unconstitutionality do not prevent its repetition

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39 Safta, 2022b, p. 391.

by other parties on grounds different from those previously examined. In such cases, the new objection does not fall within the scope of the earlier rejection. Consequently, a potential decision to uphold the objection would not contradict the earlier judgement but would instead reflect the evolution of the constitutional framework of society over time.<sup>40</sup>

Should the objection be deemed inadmissible, the court is required to reject the request to refer the matter to the Constitutional Court by means of a reasoned judgement. The judgement may be appealed only to the immediately higher court within 48 hours of its delivery, and the appeal must be heard within three days.

In a recent decision, the Court analysed the exception of unconstitutionality of the provisions of Art. 29 para. (5) of Law No. 47/1992 on the Organisation and Functioning of the Constitutional Court. It determined that the provisions in question

are procedural rules which the court before which the objection of unconstitutionality has been raised is obliged to apply in order to select only those objections of unconstitutionality which, according to the law, may be subject to constitutional review by the Constitutional Court, the sole authority of constitutional jurisdiction. This procedural mechanism serves to ensure that adjudication on the application to the Constitutional Court is confined to the specific circumstances in which it has been initiated, thereby fulfilling the court's role as a filter for the objection of unconstitutionality raised by the parties.<sup>41</sup>

By this decision, the Court reaffirmed the role of the courts as a procedural filter in matters concerning exceptions of unconstitutionality, emphasising that the provisions of Law No. 47/1992 are purely procedural. The courts are obliged to apply these rules to select only those exceptions that meet the legal conditions for constitutional review. This procedural step does not affect the exclusive competence of the Constitutional Court to exercise constitutional review; rather, it ensures the efficient sorting of raised exceptions and prevents misuse of this legal mechanism.

The objection of unconstitutionality must demonstrate a direct connection with the case under consideration by the court, thereby distinguishing it from abstract review and bestowing upon it the characteristics of a concrete review of the rules.<sup>42</sup> Following the referral, the President of the Constitutional Court is responsible for appointing the Judge-Rapporteur and notifying the Presidents of

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40 Muraru and Vlădoiu, 2019, p. 170.

41 Decision No. 201 of April 20, 2023, published in the Official Monitor of Romania, Part I, No. 725 of August 7, 2023.

42 Varga, 2019, p. 127.

the two Chambers of Parliament, the Government, and the People's Advocate of the date by which they may submit their views. The Judge-Rapporteur must take the necessary measures for the taking of evidence by the date of the trial, which takes place within the time limit set, based on the documents in the case file. The attendance of the public prosecutor at the trial is mandatory, and the parties may be represented by lawyers. If an objection is upheld, the Court is obligated to deliver a ruling on the constitutionality of other provisions of the contested act that cannot be dissociated from those referenced in the application.

Decisions rejecting an objection of unconstitutionality are to be notified either to the court that referred the matter to the Constitutional Court or to the People's Advocate, as applicable. Conversely, decisions by which the Constitutional Court declares a law, ordinance, or provision already in force to be unconstitutional shall be communicated to the two Houses of Parliament, to the Government, and to the referring court. In instances where the case is pending before another judicial authority at the time of communication, the court to which the case is referred must transmit the decision to the relevant judicial body. The decision must also be notified to the public authorities concerned to ensure compliance of the rules with constitutional provisions.

The Court's decision is final, irrevocable, and binding. In accordance with Art. 147 para. (1) of the Constitution, the provisions of laws and ordinances deemed unconstitutional shall cease to have legal effect 45 days following the publication of the Constitutional Court's decision, unless Parliament or the Government, as applicable, brings the unconstitutional provisions into alignment with the Constitution within this period. During this period, the provisions found unconstitutional shall be suspended *by operation of law*. The judgements of the Constitutional Court delivered in the *a posteriori* review of the rules do not merely impact the parties involved in the proceedings; they possess *erga omnes* effect and are binding on all.

In the context of the protection of fundamental rights at the individual level, it is important to note that in Romania, the individual constitutional complaint does not exist in the form enshrined in other legal systems. For example, in the German or Spanish legal systems, an individual has the ability to challenge a violation of their fundamental rights directly before the Constitutional Court, as a result of an administrative act or a court judgement.

An indirect mechanism by which an individual can obtain constitutional review of a rule applicable in a lawsuit is the procedure of the exception of unconstitutionality. This procedure is distinct from an individual constitutional complaint in that it does not permit the direct challenge of a judgement, but rather the legal rule underpinning the resolution of a particular case. It is imperative to note that the objection of unconstitutionality must be raised before a court of law, which possesses the authority to determine whether it is necessary to refer the matter to the Constitutional Court.

An analysis of the statistical situation of the acts of the Constitutional Court, pronounced in the exercise of its powers under Art. 146 (a)–(d) and (j) of the Constitution, from its establishment until 31 December 2024, reveals a significant increase in the Court's jurisdictional activity over time. This consolidation of the Court's role as a guarantor of the supremacy of the Constitution and the protection of fundamental rights is of particular significance.

During the period under review, the Constitutional Court delivered a total of 24,163 decisions, judgements, and opinions, the majority of which concerned the constitutionality of laws and ordinances (22,926 decisions corresponding to *a posteriori* review). *A posteriori* review (exercised after the promulgation of laws) resulted in 595 decisions, while the constitutionality of parliamentary regulations led to 52 decisions. Furthermore, the Court resolved 46 legal conflicts of a constitutional nature between public authorities and analysed nine citizens' legislative initiatives.

A salient trend is the gradual escalation in the number of decisions rendered, particularly after 2007, when the Court's activity reached its zenith, maintaining a consistent level of over 1,000 acts adopted annually. The most prolific period was observed in 2009, with a total of 1,751 decisions, reflecting an intense phase of constitutional review.

With regard to the type of solutions, the Court admitted 1,033 exceptions of unconstitutionality, of which 638 were reviewed *a posteriori* and 314 *a priori*. Concurrently, 23 parliamentary regulations were validated and 21 legal conflicts between public authorities were resolved. A meticulous statistical analysis of the Court's acts thus reveals a marked increase in its role in protecting the constitutional order, with a major focus on the *a posteriori* review of laws and ordinances.<sup>43</sup> The substantial number of decisions recognising the unconstitutionality of normative acts is indicative of the Court's proactive intervention in rectifying legislative dysfunction, thereby contributing to the consolidation of the rule of law and the protection of fundamental rights in Romania.

The President of the Constitutional Court performs an indispensable function within the framework of the Court's organisation and operations. The President's duties encompass the coordination, representation, and administration of jurisdictional activities. Despite his distinct status within the Court, the President of the Constitutional Court does not wield direct influence over the decisions adopted. Instead, they operate on the principle of *primus inter pares*, working in conjunction with the other eight judges. The duties of the President of the Court are set out in Art. 9 of Law No. 47/1992 on the organisation and functioning of the Constitutional Court.

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43 Judicial activity of the Constitutional Court [Online]. Available at: <https://www.ccr.ro/statistica-activitate-jurisdictionala/> (Accessed: 15 January 2025).

A fundamental responsibility of the President is to coordinate the work of the Constitutional Court, thereby ensuring that the decision-making process functions efficaciously and that the legal framework within which the Court exercises its powers is respected. The President is furthermore charged with the responsibility of convening and chairing the Court's sittings, moderating debates, and maintaining procedural balance during deliberations. With regard to jurisdictional powers, the President is tasked with appointing the Judge-Rapporteur<sup>44</sup> in cases as stipulated by law and determining the timeframe for the hearing of cases.

In addition to the administrative and jurisdictional functions outlined above, the President serves as the primary representative of the Constitutional Court in its dealings with public authorities and various organisations, both nationally and internationally. In the event of the termination of a judge's term of office, the President is empowered to ascertain the situation and to refer the matter to the competent public authority with a view to filling the vacancy. In the performance of their duties, the President also carries out other responsibilities laid down by law or by the Rules of Organisation and Functioning of the Constitutional Court, thus ensuring respect for constitutional principles and the proper functioning of the constitutionality review mechanism.

Given that the number of judges of the Constitutional Court is odd (nine) and that abstention from voting is not allowed under Art. 64 (c) of Law No. 47/1992, a situation of an equal vote cannot arise. This particular institutional configuration serves to eliminate the necessity for a decisive vote by the President of the Court, as any deliberation will invariably result in the formation of a majority.

In the following discussion, we aim to provide a concise synopsis of the intricate relationship between the courts and the Constitutional Court of Romania. This relationship has been characterised by a dynamic interplay between cooperation and institutional tension. As emphasised in the relevant literature,

As the Constitutional Court is not part of the judiciary, but an independent authority with a political-jurisdictional character, there have often been tendencies for it to delimit its competence in an authoritarian manner, excluding the courts from any involvement in the activity of constitutionality control, which is not entirely in line with the letter and spirit of the Constitution.<sup>45</sup>

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44 An important role in the decision-making process of the Constitutional Court is played by the Judge-Rapporteur, who is appointed by the President of the Court and is responsible for analysing the case and preparing a written report on it. The Judge-Rapporteur may seek expert advice from individuals or institutions with the prior approval of the President of the Constitutional Court.

45 Selejan-Gutan, 2015, p. 168.

As previously mentioned, the courts have an essential role to play in triggering constitutionality review, as they have the possibility to raise *ex officio* a plea of unconstitutionality of a law or ordinance, or to verify the admissibility of such a plea and refer the matter to the Constitutional Court (filtering role).<sup>46</sup> Nevertheless, the primary source of discord between the courts and the Constitutional Court pertains to the implementation of the Constitutional Court's rulings. While the *erga omnes* effects of the Court's decisions are clarified in case law,<sup>47</sup> the courts have been reluctant to apply them directly, invoking the need for further legislative amendments to implement the Court's rulings.

They argue that the courts are obliged to apply the law, not the Constitution directly, as the legislator is the only one obliged to comply with the constitutional provisions. This approach has been the subject of numerous condemnations of Romania at the ECHR for violations of fundamental rights, as the courts did not directly apply the Constitution and the case law of the Court. There was a gradual improvement in the situation after 2000, particularly following the revision of the Constitution in 2003, when Art. 147 clarified the binding nature of the Court's decisions. In 2012, the introduction of disciplinary liability for judges in the event of non-compliance with these decisions marked a significant development. Nevertheless, there have been, and continue to be, instances of conflict at the jurisprudential level between the Constitutional Court and the courts, most notably the High Court of Cassation and Justice.<sup>48</sup> It is evident that a delicate balance exists between constitutional and ordinary jurisdiction, whereby the courts are obliged to respect and apply the Court's decisions while retaining their own independence in interpreting and applying legal rules.

#### **4. Human Rights Institutions in Romania (NHRI)**

In the following discussion, a concise overview of the institutions in Romania that play an essential role in the protection and promotion of human rights will be provided. The ensuing analysis will focus on three institutions that fall into the category of NHRIs, two of which have initiated accreditation procedures within the Global Alliance of National Human Rights Institutions (GANHRI) as national institutions for the protection and promotion of human rights.

In Romania, the main human rights institutions are the People's Advocate and the Romanian Institute for Human Rights (Institutul Român pentru Drepturile Omului, IRDO). Among the specialised bodies of the central public administration, the National Council for Combating Discrimination (Consiliul Național

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46 Puskás and Benke, 2014, p. 12.

47 Safta, 2023, p. 135.

48 Selejan-Gutan, 2015, pp. 168–178.

pentru Combaterea Discriminării, CNCD) is worthy of mention, as it is the body responsible for promoting equality. It is important to note that Romania does not yet have an accredited NHRI that complies with the UN Paris Principles.

In accordance with Art. 58 of the Constitution, the role of the People's Advocate is to protect the rights and freedoms of individuals against abuses by public authorities. The constitutional provisions concerning this institution (Arts. 58-60) are detailed in Law No. 35/1997 on the Organisation and Functioning of the People's Advocate Institution. According to Art. (2) of the Law, the People's Advocate Institution is defined as a national institution for the promotion and protection of human rights, within the meaning established by United Nations General Assembly Resolution No. 48/134 of 20 December 1993, which adopted the Paris Principles.<sup>49</sup> Furthermore, as outlined in Art. 2 of Law No. 35/1997, the institution is defined as an autonomous public authority operating independently from any other public authority, within the parameters established by law.

In exercising its functions, the People's Advocate does not take the place of public authorities, cannot be subject to any mandatory or representative mandate, and no one may compel it to comply with any instructions or provisions. The institution has its own budget, which forms an integral component of the state budget. The draft budget is subject to approval by the People's Advocate, who provides an advisory opinion on the matter based on the advice of the Ministry of Public Finance. The People's Advocate's draft budget is then submitted to the Government for inclusion in the draft state budget. It is submitted that this mode of financing is dependent on political decisions, which may affect the independence of the institution.

The People's Advocate is a judicial office held by an individual appointed by Parliament in a joint session of the Chamber of Deputies and the Senate for a five-year term. The purpose of this office is to defend the rights and freedoms of individuals. The position of People's Advocate is open to any Romanian citizen who meets the criteria for appointment as a judge at the Constitutional Court. These criteria include holding a higher legal education, demonstrating high professional competence, and a minimum of 18 years' experience in legal practice or higher legal education. The Advocate's deputies are specialised by field of activity. It is important to note that the Advocate and his deputies are not legally responsible for any opinions they express or actions they perform in compliance with the law during the execution of their duties. Neither the Constitution nor Law No. 35/1997 stipulates any diversity criteria in the composition of the staff or in the appointment of the People's Advocate. The People's Advocate is selected by Parliament, albeit not through a process open to civil society.

The People's Advocate's accountability is limited to Parliament, as evidenced by the obligation to submit annual reports. However, these reports are

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<sup>49</sup> Niculescu, 2023, pp. 40–41.

not subject to proper debate, thereby diminishing the institution's influence on public policy. The People's Advocate is empowered to propose amendments to legislation or other measures designed to protect the rights and freedoms of individuals. In accordance with Art. 24 of Law No. 35/1997, through recommendations, the People's Advocate notifies public administration authorities of the illegality of administrative acts or facts, which must take all necessary measures to remove the identified illegalities, repair the damage, and eliminated the causes that generated or favoured the violation of the rights of injured persons.

In cases involving illegal administrative acts or deeds by the central public administration or prefects, the People's Advocate is empowered to refer the matter to the Government. If the Government fails to adopt the necessary measures to remedy the reported illegal acts or deeds within 20 days, the situation is reported to Parliament. It is imperative to emphasise that the People's Advocate possesses the prerogative to refer matters directly to the Constitutional Court in instances where laws are found to contravene fundamental rights.

Petitions addressed to the People's Advocate are exempt from stamp duty and thus incur no fee. The institution is headquartered in Bucharest but operates a network of 15 territorial offices, each exercising jurisdiction over two or three counties. The institution also maintains an official website through which it disseminates information about its activities, publishes reports, recommendations, and decisions, and provides guidance on how to submit petitions.

The Romanian Institute for Human Rights (Institutul Român pentru Drepturile Omului, IRDO) is an independent organisation with legal personality, established by Law No. 9/1991 on the establishment of the Romanian Institute for Human Rights.<sup>50</sup> It is the first national institution dedicated to human rights created in Romania after 1989. The IRDO is an associate member of the European Network of National Human Rights Institutions (ENNRHI). The Institute's stated objectives are the promotion and protection of human rights in Romania. According to the founding legislation, the IRDO undertakes a range of activities intended to contribute to the promotion and protection of fundamental rights at both the national and international levels.

The organisation's primary areas of activity include the promotion of a more profound understanding of human rights issues, achieved through meticulous analysis of the manner in which human rights are guaranteed within the member states of the UN, OSCE, Council of Europe, and the European Union. Furthermore, it plays a role in disseminating information to international institutions regarding the practical ways in which Romania promotes and respects human rights. In support of the legislative process, the IRDO is able to formulate points of view on human rights issues at the request of parliamentary committees,

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50 Law No. 9/1991 on the establishment of the Romanian Institute for Human Rights, published in the Official Journal of Romania, Part I, No. 24 of January 30, 1991.

thereby contributing to the strengthening of the regulatory framework in this area. Research activity constitutes an essential component, encompassing studies on emerging rights, the right to happiness, recent human rights violations, and key issues related to human rights protection and respect, both domestically and internationally. In accordance with Law No. 9/1991, the Institute is responsible for the organisation and implementation of training and educational programmes in the field of human rights, with a focus on the exploration of innovative methodologies that contribute to raising awareness and improving training processes. Furthermore, the Institute provides support and promotion for initiatives launched by the UN and other international or regional organisations, including those concerning the relationship between business and human rights.

In addition to the aforementioned activities, the IRDO provides advisory services and publishes recent human rights regulations, documents, studies, and research at both international and national levels. With regard to academic and institutional cooperation, the Institute organises conferences, workshops, and symposia in collaboration with parliamentary committees and universities, thus contributing to relevant debates and the exchange of best practices in the field of human rights. The IRDO's stated aim is to diversify its work by creating a Documentation Center, with the intention of strengthening it as an essential resource for researchers, practitioners, and the public interested in fundamental rights issues.

Notwithstanding the fact that Law No. 9/1991 grants the IRDO the status of an autonomous institution, certain issues enumerated below give rise to questions regarding the extent of its actual autonomy. The procedure for the appointment of leadership is not clearly delineated and does not provide for transparent selection or consultation with civil society. Art. 5 of the Law stipulates that the IRDO is to be governed by a General Council, comprising representatives of parliamentary groups, members of the Senate's Committee on Human and Citizens' Rights and the Chamber of Deputies' Committee on Human Rights, Religious Cults, and National Minorities' Affairs, as well as scholars and representatives of human rights non-governmental organisations, appointed by the permanent offices of the two chambers of Parliament and validated by them. The General Council then appoints a Steering Committee from among its members, composed of seven individuals: parliamentarians, scientists, representatives of non-governmental organisations, and the Executive Director, who represents the Institute. The Executive Director is selected by the General Council through a competitive selection process. Furthermore, the IRDO is not in a position to investigate individual complaints or issue binding recommendations, which limits its impact on the effective protection of human rights. Additionally, the financial independence of the IRDO is contingent upon its funding, which is derived from the Parliament's budget. Consequently, its operational independence may be subject to the influence of political decisions.

As with the People's Advocate Institution, there are no explicit criteria to ensure diversity in the staff or management structure of the IRDO. The absence of mechanisms within the founding law, as well as the Rules of Procedure, hinders the capacity to ensure balanced representation of diverse social groups, which may consequently limit the institution's perspective on human rights issues. Additionally, the absence of an open selection process and formal mechanisms for ongoing consultation with civil society may impede the degree of pluralism within the institution. The IRDO engages in collaborative endeavours with non-governmental organisations, academic institutions, and international bodies, participating in joint projects and initiatives. However, it cannot be claimed that the institution plays an active role in monitoring human rights or acts as a central actor in institutional dialogue with the Government or Parliament. In contradistinction to analogous institutions in other countries, the IRDO is not endowed with the capacity to evaluate the implementation of fundamental rights legislation, to intervene directly in situations of human rights violations, or to issue binding recommendations to public authorities.

The IRDO offers free access to its publications and online resources. However, its work is concentrated in Bucharest, with no regional offices to facilitate direct access for citizens in other parts of the country. Furthermore, there is a paucity of information regarding the availability of materials in formats accessible to people with disabilities or in multiple languages for ethnic minorities. Consequently, the institution's accessibility remains geographically and digitally constrained.

In March 2024, the People's Advocate Institution and the Romanian Institute for Human Rights, in consideration of Art. 6 para. (3) (i) of the Rules of Procedure of the GANHRI Accreditation Subcommittee, concluded a protocol of cooperation with a view to ensuring the unified and coherent representation of Romania in international forums. The protocol stipulates the accreditation of both institutions and their subsequent assessment. The GANHRI Sub-Committee on Accreditation has provisionally included in its timetable the examination of the accreditation of both the IRDO and the People's Advocate. The Sub-Committee communicated to the two institutions that their invitation to submit an application for accreditation would be made only upon the fulfillment of all the requirements set out in Art. 6 para. (3) of the Rules of Procedure of the GANHRI Sub-Committee on Accreditation.

The UN Committee on Economic, Social and Cultural Rights concluded that the introduction of additional legislation would be a prerequisite for the two institutions to meet the accreditation criteria. In its report, the Committee recommended that Romania adopt legislative measures, in particular with regard to Law No. 9/1991 on the Establishment and Functioning of the Romanian Institute for Human Rights, to bring the Institute into full compliance with the Paris Principles, including by further strengthening its independence and providing it

with adequate financial and human resources to fulfil its mandate effectively and independently.

Following its country visit to Romania, the ENNHRI expressed concern about the lack of a conducive environment for the functioning of the IRDO and recommended that urgent steps be taken to remedy this situation. The ENNHRI expressed particular concern regarding the financial challenges faced by the IRDO, which have been attributed to inadequate state funding. These challenges have resulted in a vacancy rate of 60%, thereby impacting the capacity of specialised staff. Furthermore, the ENNHRI highlighted the institution's weak legal framework, asserting that it has a detrimental effect on the institution's functionality and its capacity to adhere to the UN Paris Principles.<sup>51</sup>

The third institution presented is the National Council for Combating Discrimination (Consiliul Național pentru Combaterea Discriminării, CNCD), a national authority responsible for the implementation of non-discrimination policies in Romania. The CNCD functions as a specialised body of the central public administration, with legal personality, according to Government Ordinance No. 137/2000<sup>52</sup> and Government Decision No. 1194/2001.<sup>53</sup> The Council exercises its powers in the following areas: (a) prevention of acts of discrimination by carrying out information campaigns, raising awareness on human rights, the effects of discrimination, and the principle of equality, and by conducting training courses, information sessions, projects, and programmes at the local, regional, and national levels, as well as studies and reports; (b) mediation of the parties involved in cases of discrimination, in the presence of representatives of the CNCD; (c) investigation, ascertainment, and sanctioning of acts of discrimination; (d) monitoring of cases of discrimination through subsequent supervision of the parties involved; (e) provision of specialised assistance to victims of discrimination by explaining relevant legislation through CNCD legal advisors and by offering guided assistance in the filing of petitions and in obtaining additional information arising from this procedure.

In accordance with the prevailing normative acts, the independence of the CNCD is legally guaranteed. The institution functions independently from other public authorities, without the Government exerting any influence on its operations. Nevertheless, the CNCD remains subject to the Government, a circumstance that may give rise to questions regarding the extent of its genuine autonomy. With regard to the appointment of the management, the CNCD's Board of Directors

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51 European Commission, 2024, pp. 32–33.

52 Ordinance No. 137/2000 on the prevention and sanctioning of all forms of discrimination, published in the Official Journal of Romania, Part I, No. 166 of March 7, 2000 [Online]. Available at: <https://legislatie.just.ro/public/detaliidocument/24129> (Accessed: 23 January 2025).

53 Decision No. 1194/2001 on the organisation and functioning of the National Council for Combating Discrimination, published in the Official Journal of Romania, Part I, No. 792 of 12 December 2001.

is appointed by decision of the Prime Minister, a process that may raise concerns regarding political dependence and its impact on the objectivity of decisions made. Furthermore, the President of the CNCD, who holds the rank of State Secretary, is also appointed and dismissed by the Prime Minister.

The CNCD's Board of Directors is composed exclusively of Romanian citizens who meet specific criteria. These criteria include being domiciled in Romania, holding a law degree, having no criminal record, being of good repute, and being proficient in Romanian. Furthermore, the appointment of members representing national minorities or disadvantaged groups is to be encouraged. It is important to note that, upon appointment, these individuals no longer represent the public authorities that nominated them.

The CNCD, in accordance with Art. 2 of Government Decision No. 1194/2001, cooperates with public institutions, non-governmental organisations, and international partners to prevent and combat discrimination. The CNCD is furthermore responsible for harmonising domestic legislation with international standards, endorsing draft legislation, and collaborating with public authorities to eliminate all forms of discrimination. At the international level, the CNCD has established partnerships with analogous bodies in other countries and with international organisations for the exchange of experience and best practices. The Council provides an accessible mechanism for filing petitions and complaints and offers assistance to victims of discrimination. It also maintains an official website through which it disseminates information regarding its activities, adopted decisions, and complaint procedures. However, the CNCD's presence is limited to two territorial offices, which may constrain individuals' access to anti-discrimination counsel and protective services.

In 2020, the Senate approved a draft law proposing the merger of the IRDO with the CNCD. The draft law's proponents emphasised in the explanatory memorandum that the absorption of the IRDO by the CNCD was opportune, given that the IRDO's tasks most closely overlap with those of the CNCD among all entities in a situation of institutional parallelism. It was acknowledged that this integration would enhance the institutional capacity of the CNCD, thereby enabling it to fulfil its assigned tasks. These tasks encompass conducting studies and research, promoting and public communicating in the field of combating discrimination, and affirming human rights. The integration was further expected to be accompanied by an increase in the number of specialists and financial resources. Ultimately, the draft law on the merger by absorption of the IRDO by the CNCD was not adopted, resulting in the two institutions maintaining their respective identities.

## 5. Conclusion

Romania's human rights framework is robust yet in a state of flux, with constitutional provisions and institutional mechanisms designed to ensure the protection of fundamental rights. Nevertheless, challenges persist in the practical implementation of these rights due to institutional conflicts, political influences, and inefficiencies in law enforcement mechanisms.

A significant shortcoming in Romania's human rights adjudication system is the absence of an individual constitutional complaint mechanism, which prevents citizens from directly challenging fundamental rights violations before the Constitutional Court. Instead, the sole available recourse is the exception of unconstitutionality, which must be raised before an ordinary court. This indirect approach not only hinders access to constitutional justice but also significantly slows the resolution of human rights violations.

Furthermore, Romania has integrated international human rights obligations into its legal system, with treaties taking precedence over domestic laws in cases of conflict. However, implementation gaps persist, as evidenced by delays or resistance in executing European Court of Human Rights (ECtHR) rulings, particularly in cases requiring legislative amendments. Despite these shortcomings, Romania has made progress in consolidating its human rights system, particularly through the increased activity of the Constitutional Court in reviewing laws and the strengthening of anti-discrimination policies.

Nevertheless, achieving full compliance with international human rights standards depends on several factors, including greater independence of NHRIs, stronger mechanisms for addressing fundamental rights violations, the introduction of an individual constitutional complaint, and improved implementation of international human rights rulings.

In conclusion, while Romania's legal framework for human rights protection rests on a stable foundation, institutional conflicts, political interference, and procedural barriers hinder its full effectiveness. Enhancing judicial independence, facilitating institutional collaboration, and ensuring the practical enforcement of human rights protections are pivotal steps towards consolidating a genuinely effective human rights system.

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