

**INTERNATIONAL MECHANISMS FOR THE PROTECTION OF
HUMAN RIGHTS IN THE CONTEXT OF PUBLIC ORDER AND
SECURITY (PART 1)**

Abstract:	<i>Public order and security of any state become the field that transposes the obligations of the status, or, namely in the process of their maintaining, ensuring, and restoring, the entire spectrum of competencies and activities that interfere with human rights is reflected.</i> <i>At the same time, the protection of human rights and freedoms in the context of public order and safety has always been and continues to be a permanent concern of the international community, an aspect that should not be neglected by positioning the interest of the state as a priority over the interests of the individual or of the community.</i>
Keywords:	International mechanisms; public order and security; human rights and freedoms; protection and respect; police
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Introduction

The mechanisms for the protection and respect for human rights are divided, in contemporary society, into international and internal (national) mechanisms. In turn, they presuppose a political-legal complex of international guarantees that includes the system of international pacts and conventions related to human rights and freedoms and the system of specialized international institutions, intended to ensure their application and realization.

Under international law “the State has the primary duty to promote and protect human rights, which includes guaranteeing “everyone the right,

individually and in association with others [...]”¹. These duties are both positive and negative.

The concept of human rights is accepted by human communities and by each of their members as a natural institution that allows:

a) a more complete and accurate understanding of the status of the human being in its various poses;

b) knowledge of the political, legal, social, and economic means necessary for the regulation of this status;

c) guaranteeing the maintenance of this status through appropriate measures to punish those guilty of violating the rights and freedoms inherent to all the people. Human rights came to be analyzed as a primordial condition in the maintenance of international peace and security and to be on the basis of contemporary international law².

In order to achieve this desideratum, internal public order and security of any state becomes the field that transposes the obligations of the status, or, namely, in the process maintaining, ensuring, and restoring public order and security, the whole spectrum of competencies and activities that interfere with human rights is reflected.

At the same time, the protection of human rights and freedoms in the context of public order and security has always been and continues to be a permanent concern of the international community, an aspect that should not be neglected by positioning the interest of the state as a priority over the interests of the individual or of the community.

At present, it is unanimously recognized that the rights and freedoms of the person are privileges conferred by law. Pursuant to them, the holder of the right, i.e. any person, can do certain conduct and ask others to behave in accordance with his right in order to capitalize on a personal, legitimate, and legally protected interest, in accordance with the general interest and the rules of coexistence.

For instance, according to article 15 of the Constitution of the Republic of Moldova, citizens benefit from the rights and freedoms established by the supreme law and by other laws³. This constitutional norm directs the activity of the state authorities toward ensuring the protection and respect for the rights of each person. The citizen also has constitutional levers aimed at ensuring him/her active behavior in relation to public authorities⁴.

¹ International Legal Framework Committee, *The International Legal Framework Applicable to Threats Against Human Rights Defenders: A review of the relevant Jurisprudence in international law*, 2019, Washington D.C., p.71, <https://cejil.org/wp-content/uploads/2021/10/Protocolo-Esperanza-FINAL-051021.pdf>, (01.08.2022)

² Nicolae Osmochescu, *Constituția Republicii Moldova: Comentariu*, Arc, Chișinău, 2012, p. 33

³ *Constituția Republicii Moldova, nr. 1 din 29.07.1994*, Monitorul Oficial al Republicii Moldova, nr. 78 din 29.03.2016

⁴ Anatolie Munteanu, Svetlana Rusu, Olga Vacarciuc, *Manualul funcționarului public în domeniul drepturilor omului*, Arc, Chișinău, 2015, p. 104

The aspects related to the protection of public order and security are regulated by the norms of international law, and, over time, the international community aims to achieve certain objectives, such as to realize recommendations and to develop standards regarding the activity of police bodies from different states, so that public order and security is ensured, maintained or, as the case may be, restored, primarily by protecting and ensuring human rights.

“In humanitarian law, the terms *public order* or *law and order* describe the general conditions that must exist so that individuals can enjoy their rights and freedoms. States are responsible for defending public safety. However, in all circumstances, even when taking measures to defend the public order, governments must always respect certain fundamental human rights. [...] The government has the duty to maintain or re-establish law and order through legitimate means. The obligation to respect these “legitimate means” denotes the fact that, even during efforts to restore public order in situations of unrest or conflict, the State must protect the fundamental guarantees to which individuals are entitled under international human rights instruments [...]”¹.

“Human rights norms and standards are derived from two principal types of international source, “customary international law” and “treaty law”. **Customary international law** (or simply “custom”) is international law that develops through the general and consistent practice of States and is followed because of a sense of legal obligation. In other words, if States perform in a certain way over a period of time because they all believe that they are required to do so, that behavior comes to be recognized as a principle of international law, binding on States, even if it is not laid down in a particular agreement. Thus, while the Universal Declaration of Human Rights is not in itself a binding treaty, provisions of the Declaration have been identified as having the character of customary international law, and States are therefore bound to respect them. **Treaty law** includes the law of human rights as set out in the many international agreements (treaties, covenants, conventions) that have been collectively (either bilaterally or multilaterally) developed, signed, and ratified by States”².

The author Corneliu Popescu considers it important to mention that human rights are not conferred, or granted by the international legal norms in the field, but they are only recognized and affirmed by them. Human rights are essential for the human being and they derive directly from the existence of human beings, from human dignity, independently of their international legal formalization.

¹ *The Practical Guide to Humanitarian Law*, <https://guide-humanitarian-law.org/content/article/3/public-order/>, (07.10.2021)

² Office of the United Nations High Commissioner for Human Rights Professional Training, *Human Rights and Law Enforcement a Trainer’s Guide on Human Rights for the Police*, Series 5/Add.2, United Nations, New York, Geneva, 2002, p. 13

International norms only enshrine and guarantee human rights, inseparable from them¹.

This is why the mechanism for the protection of human rights is implemented in stages, consistently and dedicatedly, thus, initially, the international community is the one that accepts and formalizes human rights. Subsequently, it is at the latitude of the states to determine the incorporation and adjudication of the given provisions in the national legal system. At the same time, their guarantee at the state level needs to be not only declarative but assumed and responsible.

International context

We support the idea, that the global order in the twenty years of the 21st century is an order that encompasses the entire planet, an order that brings states, societies, and people into contact, but at the same time creates and maintains fissures. In this global order, human rights and governance issues transcend national borders. At the same time, the current configuration of democracy, human rights, and governance indicates a global consensus on how they are analyzed and perceived. These are legitimized by such values as human individuality, freedom, human rights, equality before the law, the rule of law, etc.².

Even if a certain period of time has passed, since the international community reached a common agreement, human rights and their protection are also current, being attested by more and more voices expressing the need to re-evaluate the existing system, to determine and reformulate the new rights that appear, especially in the context of existing risks and challenges, for example, in the context of hybrid threats, the right not to be misinformed or the right to compensation for damages caused as a result of armed conflicts.

The given fact, one of major importance, first puts pressure on the international community, which has the obligation, but also the commitment to come up with a reaction, to find an answer to the social, economic, and political transformations that are taking place permanently, in the context of the cadence with which the processes and phenomena with a direct impact on human rights and freedoms change and is ever greater, and the response must be immediate.

If we look in retrospect, respect for human rights and fundamental freedoms became the subject of global regulations in the 20th century, in particular, in the second half³.

¹ Corneliu Popescu, *Protecția internațională a drepturilor omului – surse, instituții, proceduri. Note de curs*, All Beck, București, 2000, p. 7

² Rodica Ciobanu, *Perspective ale unei abordări de tip integrat în tratarea guvernării și a drepturilor omului, Contextul multidimensional actual al guvernării și drepturilor omului în Republica Moldova*, Artpoligraf, Chișinău, 2021, p. 17

³ Victoria Arhiliuc, *Aspectul juridic universal al drepturilor omului*, Artpoligraf, Chișinău, 2020, p. 19

Thus, after the Second World War, accompanied by serious violations of human rights, they went beyond the limits of an internal problem, becoming the object of special attention of the international community. The recognition of the Universal Declaration of Human Rights and the Covenants on civil, political, economic, social, and cultural rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and other international legal acts contributed enormously to the development of civilization and culture of the 20th century¹.

Human security, or more precisely “security of person”, has always been in the attention of international public opinion, being a priority, starting with the **Universal Declaration of Human Rights**² adopted by the United Nations General Assembly in 1948.

Thus, the modern vision of human rights really began with the adoption of the Declaration, and later, based on it, the international and regional communities adopted other conventions by which they completed the list of rights that a person must have within the collective. By its nature, the Declaration is a political document and, accordingly, has no binding power, expressing only an ideal. The Declaration does not involve legal consequences, it is a complementary, interpretive act that prepared the ground for the codification of fundamental human rights and freedoms³.

In this sense, at the European level, an important number of legal instruments have been developed and negotiated, which establish means of protection and guarantee human rights, and the main document is the **European Convention on Human Rights**, signed in 1950⁴. It was amended by numerous protocols and includes, above all, provisions related to civil and political rights, respectively, the right to life, freedom, and security of the person, the inviolability of the person and home, of correspondence, the right to freedom of conscience, to the association, etc.⁵

As we can see, a stage of deepening and development of human rights was carried out specifically in the second half of the 20th century. At the same time, the dynamics of the movement for human rights, during this period, have been and continue to be marked both by the activity of certain international organizations, as

¹ Ștefan Belecciu, Albert Antoci, *Protecția juridică a drepturilor omului în activitatea Poliției, suport de curs*, Cartea Militară, Chișinău, 2019, p. 10

² *Universal Declaration of Human Rights. Adopted by the United Nations General Assembly in 1948*, https://www.un.org/en/about-us/universal-declaration-of-human-rights_ (04.10.2021)

³ Nicolae Osmochescu, *Constituția Republicii Moldova: Comentariu*, Arc, Chișinău, 2012, p. 34

⁴ *European Convention on Human Rights. Concil of Europe, Rome, 1950*, https://www.echr.coe.int/documents/convention_eng.pdf_ (20.10.2021)

⁵ Mihai Neag, Daniela Coman, *Drepturile omului și perspectiva securității individuale*, http://www.arduph.ro/domenii/protecție-persoane-si-bunuri/drepturile-omului-la-pace/drepturile-omului-si-perspectiva-securitatii-individuale_ (04.10.2021)

well as by certain ideologies. While ideologies provided the basis and legitimacy of human rights, international organizations played a key role in codifying the norms of international law as well as monitoring the implementation of human rights by member states¹.

In order to develop the described system, a series of international mechanisms for the promotion and protection of human rights was established, with an increasing influence on the laws and practices of the states. Their jurisprudence and recommendations have led, in many European countries, to legal and institutional reforms, including police reforms².

Following the analysis of the provisions of the Declaration, we conclude that it includes rules regulating fundamental human rights and freedoms in the field of public order protection, as well as the possibilities of restricting rights and freedoms at the level of national legislation. And art. 28 of the Declaration characterizes public (social) order as an integral part of the law, ensuring that all rights and freedoms are fully realized³.

The interest shown by the inscription of human rights in international documents is due not only to a real concern for the need to promote and guarantee the rights and freedoms inherent to the human being – an essential element of ensuring progress, well-being, and civilization in any society, democracy and the rule of law – but also as a result of the fact that many times, through the neglect and flagrant violation of these rights and freedoms, conflict situations have been created that endanger the climate of peace, stability, and security⁴.

This climate concerns mostly the internal order of the state, when the national mechanism, based on the international one, does not exceed the borders of the state, but it can break out on a much larger scale, for example, at the regional level in the case of armed conflicts.

The European Convention on Human Rights constitutes one of the most important and effective international instruments for the protection of human rights in the world, and this is for two main reasons⁵:

a) the profound influence it exerts on the legislation and jurisprudence of the states that have ratified the Convention; and

b) the fact that, unlike other international instruments of this kind, the Convention also includes a supranational jurisdictional mechanism whose

¹ Anatolie Munteanu, Svetlana Rusu, Olga Vacarciuc, *Manualul funcționarului public în domeniul drepturilor omului*, Arc, Chișinău, 2015, p. 11

² Agenția pentru Drepturi Fundamentale a Uniunii Europene, Oficiul pentru Publicații al Uniunii Europene, *Manual pentru formatorii polițiștilor „Formare pentru polițiști din perspectiva drepturilor fundamentale*, Luxemburg, 2018, p.35

³ Ion Guceac, Pavel Voicu, *Experiența statelor europene în asigurarea ordinii publice și respectarea drepturilor omului*, Administrarea Publică, nr. 3, 2018, p. 32

⁴ Nicolae Nicolae-Anghel, *Garantarea libertății persoanei*, Universitatea Titu Maiorescu, București, 2002, p.11

⁵ Vasile Pătulea, *Proces echitabil. Jurisprudența comentată a Curții Europene a Drepturilor Omului*, I.R.D.O., București, 2007, p. 189

solutions are imposed on the contracting states, thus effectively guaranteeing respect for the human rights proclaimed in its text.

The provisions of the Convention were designed in such a way as to create a European public order in the matter of fundamental rights and freedoms. At the same time, the provisions of the Convention do not impose an absolute uniformity of national norms, the states maintain their right to implement the provisions by taking into account the principle of sovereignty. We support the idea that the European Convention on Human Rights enshrines the general core of civil and political rights. For its part, the Romanian Constitution has a wider sphere of protection and includes social, economic, and cultural rights. An even wider sphere of protection is provided by the Charter of Fundamental Rights signed within the European Union¹. The Republic of Moldova, as a member state of the Council of Europe, and, at the same time, as a state that seeks to achieve the aspiration of integration into the European Union, ratified the European Convention on Human Rights through Parliament Decision no. 1298 of 24.07.1997².

From a structural point of view, the European Convention consists of three sections, as follows: "Rights and freedoms" (Section I); "European Court of Human Rights" (Section II); "Miscellaneous provisions" (Section III).

A legal instrument of wide resonance, the European Convention constitutes a fundamental document in the field of the protection and guarantee of human rights and fundamental freedoms, both through the procedure it has established and through the wide spectrum of rights and freedoms to which recognition and guarantee are dedicated. In this context, Section I of the Convention, as well as its additional Protocols, establishing new rights and freedoms, constitute the material law protected by the Convention. All the rules of the Convention, which regulate the procedure for setting up the European Court, its competence and organization, the procedure for examining applications and the execution of the Court's decisions form the procedural law of the European Convention on Human Rights³.

We will not refer to all the provisions of the Convention, but only to those that establish rights and freedoms. Thus, in Section I, the following fundamental rights of the person are proclaimed: right to life (art. 2); prohibition of torture (art. 3); prohibition of torture and forced labor (art. 4); right to liberty and security (art. 5); right to a fair trial (art. 6); no punishment without law (art. 7); right to respect for private and family life (art. 8); freedom of thought, conscience, and religion

¹ APADOR-CH, *Manualul Drepturilor Omului, Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki*, București, 2008, p. 4

² Hotărârea Parlamentului Republicii Moldova Nr. 1298 din 24.07.1997 privind ratificarea Convenției pentru apărarea drepturilor omului și a libertăților fundamentale, precum și a unor protocoale adiționale la această, in: Monitorul Oficial al Republicii Moldova, No. 54-55 din 21.08.1997

³ Oleg Balan, Diana Sârcu, *Aplicarea directă a reglementărilor internaționale în materia drepturilor omului, mecanisme naționale și internaționale de protecție a drepturilor omului*, Academia de Administrare Publică, Chișinău, 2014, pp. 19–20

(art. 9); freedom of expression (art. 10); freedom of assembly and association (art. 11); right to marry (art. 12); right to an effective remedy (art. 13); prohibition of discrimination (art. 14).

The implicit requirements of the European Convention derive, in particular, from the right to life, according to art. 2, and from the prohibition of torture, inhuman or degrading punishments or treatments, provided by art. 3 (which are important for certain matters, such as the use of force in a law enforcement action, the investigation of alleged crimes, and the conduct of interrogation); the right to respect for private and family life, residence, and correspondence – art. 8 (which establishes not only important limits to the investigation of crimes and the accumulation of evidence but is also relevant for the evaluation of the restrictions applicable to persons detained and pre-arrested, including some aspects of the public character of the criminal procedure¹).

At the same time, in order to evaluate the relevance of the given Convention for public order and security, the rights and freedoms it guarantees, in particular, those regarding freedom of assembly and association, freedom of expression, protection of private life, freedom of religion, provided by articles 8-11, but also the prohibition of retroactive application of the criminal law, according to article 7 must not be ignored.

According to the opinion of the academician Ion Guceac the mentioned international act has indisputable importance through the fact that it establishes in its content the right to public order and determines the way to realize this right by recognizing and strengthening the man's obligations in relation to the society².

In many countries, including the Republic of Moldova, the Convention has been integrated into national law, in the sense that any individual can file a complaint or appeal to a national court or another authority based directly on its provisions. However, even if a country has not integrated the Convention into its domestic law, the latter must not be in conflict with the content of the Convention. Or, the Convention is not defined to replace national human rights protection systems, but to represent an international guarantee that joins the right of appeal within each state³.

Thus, the regulations provided by the European Convention, as well as the judgments issued by the European Court have a legal force superior to the internal norms that represent the national legal systems. The judgments of the European Court do not only have the authority of a *res judicata*, but also the authority of an interpreted matter, an authority that exceeds the limits of concrete cases resolved

¹ Jeremy McBride, *Drepturile omului și procedura penală, Jurisprudența Curții Europene a Drepturilor Omului*, Second Edition, Consiliul Europei, 2018, p. 6

² Ion Guceac, Pavel Voicu, *Experiența statelor europene în asigurarea ordinii publice și respectarea drepturilor omului*, Administrarea Publică, nr. 3, 2018, p. 33

³ Oleg Balan, Diana Sârcu, *Aplicarea directă a reglementărilor internaționale în materia drepturilor omului, mecanisme naționale și internaționale de protecție a drepturilor omului*, Academia de Administrare Publică, Chișinău, 2014, p. 18

by the Court.

We agree with the opinion of the authors Ștefan Belecciu and Albert Antoci, who claim that the very idea that beyond the borders of the state there is someone who watches over the respect for human and citizen rights, who can, in the end, do justice is really mobilizing, aiming, in essence, at arming the individual with the power to persevere in the fight for the defence of his fundamental rights¹.

At the same time, in the context of exercising its contentious jurisdiction, the European Court, in order to guarantee fundamental rights and freedoms, formulated several obligations towards the signatory states. According to the content and character of the regulations, obligations can be both material (substantial) and formal (procedural). The material category refers to the obligations resulting from the interpretation of substantive rights, and the formal category refers to the obligations resulting from the interpretation of procedural rights.

For its part, the state, depending on the actions/inactions it must perform/refrain from, has both negative and positive obligations. The positive obligations can be divided into two categories: the condition that the legal system provides protection against attacks by other individuals and not only by state agents, and the procedural obligations to proceed to a thorough and effective official investigation, in order to identify and punish individuals responsible for maltreatment.

Thus, the state is obliged to present a plausible explanation about the origin of the bodily injuries in the event that the person in the custody of the authorities – a penitentiary institution, police subdivision, psychoneurological hospital, or any place where the person or could be deprived of liberty - will invoke application of torture or ill-treatment². In the order of ideas set out above, states are considered to have a dual responsibility to respect and protect human rights. Respectively, “respect” represents the negative obligation to refrain from any action that would restrict human rights, and “protect” refers to the positive obligation to act in order to ensure the exercise of human rights³.

As we can deduce, two categories of basic obligations are imposed on all state powers, including those that are part of the field of public order and security:

1. The obligation to respect is reflected in the fact that the state must refrain from illegal and disproportionate actions, and unjustified interferences in human rights constitute violations of these rights;

2. The obligation to protect is manifested by the fact that the state is obliged

¹ Ștefan, Belecciu, Albert Antoci, *Protecția juridică a drepturilor omului în activitatea Poliției*, Cartea Militară, Chișinău, 2019, pp. 26-28

² Anatolie, Munteanu, Svetlana Rusu, Olga Vacarciuc, *Manualul funcționarului public în domeniul drepturilor omului*, Arc, Chișinău, 2015, pp. 44–45

³ Agenția pentru Drepturi Fundamentale a Uniunii Europene, Oficiul pentru Publicații al Uniunii Europene, *Manual pentru formatorii polițiștilor. Formare pentru polițiști din perspectiva drepturilor fundamentale*, Luxemburg, 2018, p. 23

to take administrative, legislative, and/or judicial actions to protect human rights, so as to ensure that people can fully exercise their rights, and failure to take appropriate measures is a violation of human rights.

Jean-François Akandji-Kombe comes up with a more extensive approach, in the sense that in order to define “the latitude of the force of the states' commitments, different control bodies have manifested their commitment in different ways. One of the most interesting is the consideration of the fact that each right can involve three kinds of obligations: *the obligation to respect*, which imposes on state bodies and officials, first of all, that they do not commit violations; *the obligation to protect*, which requires the state to protect rights holders against infringements from third parties and to punish the authors; the *obligation to put into action*, finally, to demand the adoption of positive measures to materialize and give full effect to this right”¹.

As we can see, a third element related to the implementation of human rights concerns the applicative part of the competencies of public authorities passed through the most important international and national provisions and mechanisms fixed in this regard.

The police, a state-appointed authority, has both the obligation to respect and protect human rights. As for the obligation to respect human rights, it assumes that police officers must not violate the rights of various people arbitrarily or without justification. At the same time, police officers also have the obligation to defend/protect human rights, which requires them to take concrete measures at the organizational and operational level to guarantee the exercise of human rights².

Conclusions

We can mention that the international mechanism for the protection of human rights in the context of public order and security requires a complex political-legal system of international guarantees that includes the system of international pacts and conventions related to human rights and freedoms and the system of specialized international institutions.

International regulations, in this sense, determine the primary duty of states to promote and protect human rights and fundamental freedoms. In turn, internal public order and security of any state become the area that transposes the obligations of the status, or, namely, in the process of their maintaining, ensuring, and restoring, the entire spectrum of competencies and activities that interfere with human rights is reflected.

¹ Jean-François, Akandji-Kombe, *Obligațiunile pozitive în virtutea Convenției europene a Drepturilor Omului, Ghid pentru punerea în aplicare a Convenției europene a Drepturilor Omului*, Strasbourg, 2006, p. 5

² Agenția pentru Drepturi Fundamentale a Uniunii Europene, Oficiul pentru Publicații al Uniunii Europene, *Manual pentru formatorii polițiștilor. Formare pentru polițiști din perspectiva drepturilor fundamentale*, Luxemburg, 2018, pp. 31–32

The aspects related to the protection of public order and security are provided for by the norms of international law, and the international community continues to have as objective the realization of certain recommendations and the elaboration of standards regarding the activity of police bodies in different states so that public order and security be ensured, maintained or, as the case may be, restored, primarily protecting and ensuring human rights.

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