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THE HUMAN RIGHTS PROTECTION SYSTEM IN EUROPE

Abstract:	*This dual system of protection of human rights and fundamental freedoms established at the European Union level — the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights — ensures uniform and unhindered protection, specific to modern democracies, to all citizens of the Union area. The paper aims to identify the elements of interference in the application and observance of the content provided by the two supranational acts by identifying the legal nature of each individual and by recognizing the legal, social, economic, and political factors that may represent threats in the implementation of human rights and fundamental freedoms.* *The projection of risks and threats to the system of protection of human rights and fundamental freedoms within the European Union leads to the possibility of forming elements of protection at both doctrinal and case-law levels. To achieve the security of the protection system established at the Union level, it is necessary to work together on several issues: the European Court of Human Rights, the Court of Justice, the institutions of the European Union, the States, and the national courts through its case-law.*
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Introductory considerations on the European system for the protection of human rights and the European Union system for the protection of human rights

Human rights have been recognized internationally, with the adoption by the United Nations of the following documents:

- International Charter of Human Rights[1];
- The Universal Declaration of Human Rights[2];
- International Covenant on Civil and Political Rights and
- International Covenant on Economic, Social and Cultural Rights[3].

All these documents form the universal protection system the aim of the UN is „to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"[4].

The urgent need, because of globalization, to enshrine and enforce human rights globally has led to the emergence of legal instruments regionals capable of ensuring the protection of human rights, as follows[5]:

- Inter-American human rights protection system;
- African human rights system and
- European human rights protection system, developed in the contents of this work.

Thus, states are no longer the only international subjects to be tasked with exclusive human rights competencies. As we can see, the supranational organization has progressed, leading to the emergence of universal or regional organizations to guarantee human rights in the century called the „age of human rights", because of the need to protect the human being from challenges[6].

Signed in Rome in November 1950, the European Convention of Human Rights, came into force on 3 September 1953 and created both a human rights legal mechanism and a human rights protection system[7].

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[1] By ratifying the Charter, states renounced exclusive domestic jurisdiction, which favored the ability of the United Nations to develop a common system of protection of rights

[2] The Declaration was adopted on 10 December 1948 and proclaims civil and political rights and economic, social, and cultural rights

[3] The two International Covenants were adopted in 1966 and entered into force 10 years later

[4] Charter of the United Nations, https://treaties.un.org/doc/publication/ctc/uncharter.pdf, (10.09.2022)

[5] Viorel Vel̦iș̦cu, *The development of regional systems for the protection of human rights*, in "Public Security Studies", Vol. II, No. 3 (7), 2013, p. 256

[6] Ion Dragoman, David Ungureanu, *Sisteme regionale de protecție a drepturilor omului*, in "Pro Patria Lex", Vol. 12, No. 2, 2013, pp. 39-40

[7] Bianca Selejan-Guțan, *Protecția europeană a drepturilor omului*, Edition 4, C. H. Beck, București, 2011, p. 28

The system of protection of human rights established at European Union level needs a parallel analysis with the European system of protection of human rights, both in terms of the content of the two documents proclaiming human rights and their sources of inspiration, namely the laws of the member states of the Union and of the States signatories to the Convention and international human rights legislation[1].

In 1993, the European Council expressly mentioned the need for respect for human rights, since, until the Maastricht Treaty, there was no mechanism of its own to protect human rights, although they were a fundamental element of the integration process.

At the European level, citizens enjoy the protection of their rights and fundamental freedoms within the two systems, namely:

- established within the framework of the Council of Europe and guaranteeing the protection of human rights and fundamental freedoms through the European Convention and the case law of the European Court of Human Rights, referred to as the conventional[2] system and

- established within the European Union, manifested both by the Charter of fundamental rights of the European Union, as well as the case law of the Court of Justice of the European Union[3].

Doctrine[4] identified the normative convergences of the two systems of protection of human rights in Europe – the conventional system and the European Union system – materialized in the form of guiding principles:

- The principle of priority is the priority application of European Union law over the national law of the member states; in the situation of human rights, European Union law is applied as a matter of priority;

- The principle of direct application finds its origin in translating into national legislation the provisions of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union;

- The principle of subsidiarity ensures a higher level of protection for human rights through the intervention of the Convention in the event of failure to implement it by the member states[5].

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[1] Alina Gentimir, *Drepturile omului în Uniunea Europeană*, Universul Juridic, București, 2021, p. 180

[2] Jean-François Renucci, *Traité de Droit Européen des droits de l'homme,* Librairie Générale de Droit et de Jurisprudence Publishing House, Paris, 2007, p. 25; Ovidiu Predescu, *Unele observații referitoare la importanța edificării unui sistem coerent de protecție a drepturilor omului în Europa,* in "Dreptul", No. 7, 2020, p. 10

[3] Ovidiu Predescu, *Unele observații referitoare la importanța edificării unui sistem coerent de protecție a drepturilor omului în Europa,* in "Dreptul", No. 7, 2020, p. 10

[4] Alina Gentimir, *Op. cit*., pp. 180-182

[5] Marta-Claudia Cliza, Laura-Cristiana Spătaru-Negură, *Despre intrarea în vigoare a protocoalelor nr. 15 la Convenția pentru apărarea Drepturilor Omului și a Libertăților Fundamentale*, in "Dreptul", No. 10, 2021, p. 132

Whereas all member states of the European Union have ratified the Convention of European Human Rights, it is necessary for the European Union to accede to the conventional system, both to improve the effectiveness of the protection of human rights and to fit into a system of control of compliance with the relevant norms, guaranteed by the Council of Europe[1]. Although they are represented by two distinct institutions, the two systems – conventional and European Union – continue to form a vast legal literature[2]. In this respect, the Treaty of Lisbon introduced the obligation for the Union to accede to the Convention, since "the Charter is drafted more in the style of declarations of rights than in that of a legal instrument ready to be used. It is applied through the whole of European Union law, including the Convention as an integral part of it[3]". In support of the theory of the formation of a single European system across the continent, the literature[4] identifies several benefits, including strengthening the level of protection by unifying judicial practice, cooperation between the two jurisdictions, in which the Court from Luxembourg has jurisdiction to ensure compliance with European Union law.

Nature of the characteristics conferred by doctrine[5] to the European system protection through the diversity of regulatory provisions, the guarantee of a varied catalog of rights and freedoms, and the existence of two protection mechanisms (the Strasbourg Court and the Luxembourg Court) put the European rights protection system at the forefront of the other regional protection systems.

Council of Europe. Convention for the Protection of Human Rights and Fundamental Freedoms. European Court of Human Rights

Created by the signing of the Treaty of London on 5 May 1949 by ten states[6], the Council of Europe currently consists of 46 member states, including all the member states of the European Union.

Because of the purpose of the Council and its principles, the central task of the Council of Europe is the protection of human rights.

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[1] Ovidiu Predescu, *Op. cit*., p. 12

[2] Jean-Paul Jacqué, *The Accession of the European Union to the European Convention on Human Rights and Fundamental Freedoms,* in "CML Rev", 2011, p. 995, Maria-Luce Paris, *Curtea Europeană a Drepturilor Omului și dreptul Uniunii Europene, în special Carta drepturilor fundamentale: o gestiune subtilă între ajustări sistemice și îmbogățiri reciproce,* in "Revista Română de Drept European", No. 2, 2013, p. 151

[3] Gheorghe Bocșan, *Un punct de vedere cu privire la interpretarea corelată a dispozițiilor art. 53 din Convenția (Europeană) pentru apărarea Drepturilor Omului și a libertăților fundamentale și art. 53 din Carta drepturilor fundamentale a Uniunii Europene în contextul aderării Uniunii la această Convenție*, in "Dreptul", No. 9, 2017, p. 130

[4] Ovidiu Predescu, *Op. cit*., p. 22

[5] *Ibidem*, pp. 11-12

[6] The European signatory states of the London Treaty are Belgium, Denmark, France, Ireland, Italy, Luxembourg, Norway, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and Sweden

By virtue of its vocation, the Council is a cooperative organization[1], the framework for which documents of particular importance may not be adopted unilaterally and acts of constraint on the member states cannot be exercised. The fundamental act of the Council of Europe is the Convention for the Defense of the European Union.

Human Rights and Fundamental Freedoms an international conventional instrument. The Convention has been ratified by all the member states of the Council and contains 16 protocols[2]. The Convention entered into force in September 1953, with the task of it proclaiming some of the rights listed in the Universal Declaration of Human Rights. To ensure compliance with the provisions of the Convention by the contracting states, the Council operated three institutions designed to exercise the control function, as follows:

- The European Commission on Human Rights;
- European Court of Human Rights and
- Committee of Ministers of the Council of Europe.

The Convention has undergone numerous additions and modifications by the additional and modifying protocols, enhancing the essential role of a fundamental mechanism for the protection of human rights in Europe. Thus, Protocol No 2 conferred on the Court the power to issue advisory opinions, while Protocol No 11 made changes both to the control mechanism and to the rationale of the Court's role by replacing the other two institutions with a supervisory role[3].

The European Court of Human Rights is an international institution with a judicial role, referred to by the contracting states, natural persons, groups of individuals, or non-governmental organizations of the contracting states for the purpose of resolving disputes concerning the violation of the rights and freedoms recognized by the Convention[4].

Of the many reforms to which the Court has been subjected, we mention the introduced by Protocol No 14, which entered into force on 1of June 2010, which was due to the very high number of applications submitted to the Court and which, together with the cases pending before it, blocked the activity of the judicial institution. The doctrine identified novel elements introduced by Protocol No 14, as follows: "Treatment of applications for admissibility by a single judge, the introduction of a new admissibility criterion – substantial damage suffered by the applicant, changing the term of office of judges and the procedure for the

[1] Ovidiu Predescu, *Op. cit*., p. 13

[2] The Protocols are of two kinds: additional and modifiers. While the additional do not entail amendments to the Convention, the modifiers Protocols amend the procedural provisions of the Convention

[3] Andy Constantin Leoveanu, *Analiza sistemică a sistemului institutional european de protecție a drepturilor omului,* in "Revista Română de Drept European" suppl., 2013, p. 216

[4] Laura-Cristiana Spătaru-Negură, *Protecția internațională a drepturilor omului. Note de curs,* Hamangiu, București, 2018, p. 81; Marta-Claudia Cliza, Laura-Cristiana Spătaru-Negură, *Op. cit*., p. 129

appointment of ad hoc judges, mentioning the possibility of concluding the procedure by amicable rules at any time of the procedure, determining the possibility of accession of the European Union to the Convention[1]".

Among many reforms, Protocol No 15 to the Convention introduced a new condition regarding the age of the judges of the Court, namely that they must be at the latest 65 years of age at the time of submission of the list of candidates[2].

In relation to the European Union, the Strasbourg Court ranks higher than European Union law when referring to the interpretation of the principles and rights set out in the Charter, since they are interpreted in conjunction with the interpretation of the rights of the Strasbourg Court, but they form part of EU law and are guaranteed by the European Court[3].

However, pending the unification of the human rights protection system, The European Court of Human Rights maintains a unified relationship with the Court of Justice, having jurisdiction to resolve existential disputes concerning human rights and fundamental freedoms.

European Union Charter of Fundamental Rights of the European Union. The Court of Justice of the European Union

European Union is an intergovernmental organization, such as sui generis, successor to the European Communities, responsible for achieving economic and political objectives[4]; however, the European Union relies on one of the basic principles of Union law – the protection of human rights and fundamental freedoms – by forming, together with the conventional system of protection established by the European Convention, the mechanism by which the rights and freedoms of citizens of the member states are respected.

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[1] Marta-Claudia Cliza, Laura-Cristiana Spătaru-Negură, *Op. cit.*, p. 130

[2] The wording of Article 21 – Conditions for the performance of duties under the Convention is as follows:

"1. Judges must enjoy the highest moral reputation and meet the requirements of high judicial office or be jurisconsults of recognized competence.

2. Candidates must be less than 65 years old by the date by which the list of three candidates is to be submitted to the Parliamentary Assembly pursuant to Rule 22.

3. Judges shall exercise their mandate on an individual basis.

4. During their term of office, judges may not engage in any activity incompatible with the requirements of independence, impartiality, or availability imposed by an activity of a permanent nature; any problem raised in the application of this paragraph shall be resolved by the Court", https://www.echr.coe.int/documents/convention_ron.pdf, (10.09.2022)

[3] Maria-Luce Paris, *Curtea Europeană a Drepturilor Omului și dreptul Uniunii Europene, în special Carta drepturilor fundamentale: o gestiune subtilă între ajustări sistemice și îmbogățiri reciproce,* in "Revista Română de Drept European", No. 2, 2013, p. 151

[4] Gabriel-Liviu Ispas, *Uniunea Europeană. Evoluție. Instituții. Mecanisme,* Universul Juridic, București, 2011, p. 23; Alina Gentimir, *Op. cit*., p. 15

The Treaty on European Union[1] sets out the values on which it is based the European Union: human dignity, freedom, democracy, equality, the rule of law, as well as „respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men".

The legal nature of the European Union has been formulated with lots of opinions. From being considered a federation or cooperative organization to the opinion we share, that of a sui generis organization with the power to adopt unilateral acts binding on all member states and with a legal order included in the legal order of the member states[2].

Some of the institutions of the Union listed in Article 13 of the Treaty on the European Union[3] play a role in ensuring the protection of human rights in the Union:

- The European Council reaffirms the role of promoting universal values, and the conclusions on the Union Action Plan on Human Rights and Democracy 2020-2024 are not optimistic; The Council considers that, in the context of the COVID-19 pandemic, "its socio-economic consequences have had an increasingly negative impact on all human rights, democracy and the rule of law, deepening pre-existing inequalities and increasing pressure on people in vulnerable situations[4]".

- The European Parliament, in which the Commission operates for civil Liberties, Justice, and Home Affairs, and the Subcommittee on Human Rights. Parliament also adopts legislation in the field of human rights alongside other institutions;

- The European Commission is responsible for checking the compatibility of the proposal's legislation with fundamental rights;

- The Council of the European Union organizes annual debates with the aim of promoting citizens' rights and strengthening the rule of law.

The Lisbon Treaty enshrines respect for human rights both in the legislative and procedural plan, through the existence of the catalog of rights and freedoms, entitled Charter of Fundamental Rights of the European Union, but also by recognizing the role of the European Convention on Human Rights and the

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[1] Preamble and art. 2 TUE, published in JO UE C 326/13, https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_1&format=PDF, (10.09.2022)

[2] Ovidiu Predescu, *Op. cit*., p. 15

[3] Art. 13 TUE, *Tratatul privind Uniunea Europeană (versiune consolidată)*, https:// eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_1&format=PDF, (9.11.2022)

[4]https://www.consilium.europa.eu/ro/press/press-releases/2020/11/19/council-approves-conclusions-on-the-eu-action-plan-on-human-rights-and-democracy-2020-2024/, (10.09.2022)

national jurisdictions of the member states. Procedurally, the Union has started the process of accession to the Convention to unify the two human rights protection systems in Europe[1].

As part of the Lisbon Treaty, the Charter of Fundamental Rights the European Union is characterized by universality, indivisibility, and liability[2]. At the time of its proclamation in 2000, the Charter was not legally binding, but since 1 December 2009 it has become legally binding and thanks to its comprehensive catalog of rights and freedoms illustrates a Union that is more than an internal market[3].

Grouped into seven chapters, the Charter is part of the EU primary law[4] it represents, together with the European Convention on Human Rights and the general principles of law, the legal instrument for the protection of human rights. It contains elements of supranationalism by recognizing the right to vote and to be elected to the European Parliament for every citizen of the Union.

The Court of Justice of the European Union shall ensure the interpretation and application uniformity of Union law in all member states.

The subjects that may be referred to the Luxembourg Court are people physical, undertakings or organizations, and institutions of the member states and of the Union. The Court is called upon to deal with the following types of cases:

- interpretation of legislation;
- compliance with legislation;
- annul legal acts of the European Union;
- guaranteeing action on the part of the Union and – penalizing the EU institutions.

In support of the two courts – the Court of Justice and the Court – the general lawyers are active, and disputes are assessed in two stages:

- written stage and
- oral stage (public hearing).

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[1] Alina Gentimir, *Op. cit*., p. 17

[2] Victor Duculescu, *Protecția juridică a drepturilor omului,* Lumina Lex, București, 2008, p. 143, Andy Constantin Leoveanu, *Op. cit*., p. 216

[3] Koen Lenaerts, *The Role of the EU Charter in the Member States,* in Michal Bobek, J. Adams-Prassl, *The EU Chartes of Fundamental Rights in the Member States (EU Law in the Member States)*, Hart Publishing, 2020, p. 68; Ruxandra Sava, *Carta drepturilor fundamentale a Uniunii Europene: effect direct orizontal, aplciare extrateritorială și o aplicare surprinzătoare în cauza Privacy International*, in ”Revista Română de Drept European”, No. 1, 2021, p. 88

[4] Giacomo Di Federico, *The EU Charter of Fundamental Rights. From Declaration to Binding Instrument*, Springer, 2011, p. 3, Ruxandra Sava, *Carta drepturilor fundamentale a Uniunii Europene: effect direct orizontal, aplciare extrateritorială și o aplicare surprinzătoare în cauza Privacy International*, in ”Revista Română de Drept European”, No. 1, 2021, p. 89

Violations of human rights and fundamental freedoms in light of the case law of the European Court of Human Rights

Case law of the Strasbourg Court records numerous violations of the European Convention on Human Rights, in the field of civil and political rights. To highlight the Court's judgment in cases that pose threats to guarantee respect for human rights, we summarize a selection of cases.

Article 5 – Right to liberty and security (Case Mirgadirov v. Azerbaijan and Turkey[1]). "As a result of the expulsion from Turkey to Azerbaijan, the complainant was arrested in Azerbaijan and convicted of high treason for committing acts of espionage. He was detained during the trial. The investigator decided to restrict the applicant's rights to use the phone, to correspond and to meet other people besides his lawyers, as well as to receive and subscribe to socio-political magazines and newspapers. These measures were temporarily imposed during the preliminary investigation without a precise time limit. The complainant challenged the measures without success." The Court unanimously held that there had been an infringement of Article 5(1) on account of any reasonable suspicion that the applicant had committed an offense because of his detention in the absence of a court order.

Article 7 – No punishment without law (Parmak and Bakir Case v. Turkey[2]).

"In 2006, the applicants were convicted of belonging to a terrorist organization, because they had meetings with each other and shared leaflets in 2002, as well as illegal periodicals and a manifesto. They were convicted in accordance with the original provisions of the Terrorism Prevention Act, according to which terrorism was any act committed by pressure, force and violence, terror, intimidation, oppression, or threat, pursuing one or more of the established political or ideological purposes, while an organization was defined as any type of association between two or more persons pursuing a common purpose. National courts also considered legislative changes that narrowed the definition of "terrorism" and "terrorist organization" by including force and violence, as well as other cumulative conditions, namely: intention to commit criminal acts; additional methods of pressure, terror, intimidation, oppression, or threat; for one of the ideological or political reasons established. The national courts held that the expression 'force and violence should be interpreted broadly, including situations in which violence, although not used in the usual physical sense, was nevertheless intended as an objective of an organization, as in the case of applicants. Therefore, the legal requirement of "force and violence" was upheld in the case of the applicants since the demonstration and publications they shared were unacceptable in nature". In the present case, the Court held that Article 8 of the Convention was

[1]https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22RUM%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22violation%22:[%225-1%22],%22itemid%22:[%22001-205091%22]}, (10.09.2022)

[2] *Idem*

infringed by reason of the prohibition of travel for the second applicant residing in another country and for the long duration of the maintenance of that measure.

Case law of the Court of Justice of the European Union on interference with the provisions of the Charter of Fundamental Rights of the European Union

Like the case law of the European Court of Justice, the Luxembourg Court is rich in judgments concerning the interpretation of Union law and the identification of interferences in the catalog of rights of the European Union. Request for a preliminary ruling in Case C-650/13 formulated under Article 267 of the Treaty on the Functioning of the European Union, the Grand Chamber of the Court held that "Article 39(2) and the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, from excluding persons who, like the applicant, have been convicted of a serious crime from being entitled to vote in elections to the European Parliament"[1].

Request for a preliminary ruling in Case C-673/20 under Article 267 of the Treaty on the Functioning of the European Union, the Court declares that "Articles 9 and 50 of the Treaty on European Union and Articles 20 to 22 of the Treaty on the Functioning of the European Union, read in conjunction with the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, adopted on 17 October 2019 and entered into force on 1 February 2020, must be interpreted as meaning that, since the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union on 1 February 2020, nationals of that State who have exercised their right of residence in a Member State before the end of the transition period shall no longer enjoy the status of citizen of the Union or, in particular, under Article 20(2)(b) and Article 22 of the Treaty on the Functioning of the European Union, the right to vote and to stand as a candidate in municipal elections in the Member State of residence, including where they are deprived, under the law of the State of which they are nationals, and of the right to vote in elections held by that State"[2].

Conclusions

Considering the findings, we can say that the last few decades have positioned the area of human rights and freedoms at the highest level of research. At both European and global levels, there have been intense concerns about the development of tools and mechanisms to protect the most important modern human desideratum – rights and freedoms. With the rise of research and discovery,

[1]https://curia.europa.eu/juris/document/document.jsf?text=Dreptul%2Bde%2Ba%2Balege%2B%25C8%2599i%2Bde%2Ba%2Bfi%2Bales%2B%25C3%25AEn%2BParlamentul%2BEuropean%2B&docid=169189&pageIndex=0&doclang=RO&mode=req&dir=&occ=first&part=1&cid=32442#ctx1, (10.09.2022)

[2] *Idem*

the world has changed, and today challenges, threats, and risks are difficult weapons to defeat without a guarantee of respect for human rights and freedoms. It is precisely for this reason that we agree with the following opinion on the evolution of this phenomenon, namely that "such intensity and scope for most, if not for all peoples, that it is possible for the world to witness the emergence of a transnational religious force whose impact is as significant for humanity as the ancient universal religions"[1].

Unification of the human rights protection system in Europe, as a result of the accession of the Union to the Convention, it is a crucial step towards the legitimacy of the Convention, but, in view of the historical, substantial legal aspects which entail the need to guarantee a standard of protection at national and Union level, as well as a legitimate application of the Convention, taking into account European Union law, I consider that such a balance between the two mechanisms is possible only after the adoption by the Luxembourg Court of an Opinion capable of establishing the legal order following the unification of the European system of protection of human rights.

We can therefore say that the legal, social, political, and economics of the two human rights protection mechanisms in Europe have been guaranteed over several decades challenging due to doctrinal and case-law progress in international organizations and jurisdiction systems.

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[1] Gheorghe Uglean, *Mari sisteme de protecție juridică și promovare a drepturilor omului*, Editura Duran's, Oradea, 2011; Andy Constantin Leoveanu, *Op. cit*., p. 218

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