

# THE ADMINISTRATIVE MEASURE OF ESCORTING TO THE POLICE STATION, ANALYZED IN THE RECENT JURISPRUDENCE OF THE CONSTITUTIONAL COURT REGARDING THE INDIVIDUAL FREEDOM

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## Abstract

*Of natural origin, individual freedom is part of the category of inviolability, an essential component of first-generation civil rights, currently guaranteed by art. 23 of the Romanian Constitution and international legal acts in the field of human rights, as art. 3 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights, art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6 of the Charter of Fundamental Rights of the European Union. The actual importance of the constitutional and legal protection mechanisms for ensuring the necessary guarantees for the observance of individual freedom also results from the cases in which the Constitutional Court, in terms of domestic legal reality, or the supranational courts, in international terms, were called to rule on possible violations of this freedom. Hence, the freedom is protected from any possible violations.*

*The present study proposes an analysis of the recent jurisprudential aspects, highlighted in the practice of the Romanian Constitutional Court, developed as a result of the referral made by the Romanian Ombudsman regarding the violation of the provisions of art. 23 of the Constitution that establishes the inviolability of individual freedom and personal safety. The main regulations in the matter will be presented in this way, including from a historical perspective, being highlighted the legal norms, by which the measure escorting to the police station is regulated in the current legal system. The study emphasizes the effectiveness of the functioning of the fundamental institutions of state governed by the rule of law, in which the rights and freedoms of citizens represent supreme values and are concretely and effectively guaranteed.*

**Keywords:** *escorting to the police station, individual freedom, constitutional and legal mechanism of human rights protection, Ombudsman, CCR.*

## 1. Introduction

Guaranteed by the Romanian Constitution adopted in 1991 and revised in 2023, individual freedom and personal safety is one of the fundamental rights with complex values in direct connection with the natural possibility of any person to move and behave freely, correlatively benefiting from a system of legal guarantees intended to ensure compliance with this right in the situations when public authorities take certain measures that concern the freedom of the person<sup>1</sup>. From the perspective of the jurisprudence of the Constitutional Court, „The notion of individual freedom, used in the content of art. 23 of the Romanian Constitution, designates the physical possibility of the person to express himself within his natural limits, without being subject to other restrictions or stops than those established by the legal order”<sup>2</sup>.

In the framework organized at the state level, individual freedom is not and cannot be absolute, the limits being drawn in relation to a series of fundamental values and principles, among which the observance of laws, the protection of the rights and freedoms of all citizens or the exercise of rights and freedoms with good faith. Conceived in this way, the constitutional norms aim to ensure a balance between individual rights, freedoms and interests and those of the society organized in the democratic state, concerned with the well-being of all its citizens. Therefore, from the perspective of the state authorities, no one can be deprived of his freedom, not even for a short period of time, „except in the cases and with the procedure provided by law”<sup>3</sup>.

This constitutional conception is reflected in the legislative plan, so that whenever the legislator intervenes to regulate some measures that interfere with the individual freedom, it is obliged to comply with the

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<sup>1</sup> See I. Muraru, E.S. Tănăsescu, *Constitutional Law and Political Institutions*, 15 ed., vol. I, C.H. Beck Publishing House, p. 166.

<sup>2</sup> See CCR dec. no. 132/18.04.2002, published in the Official Gazette of Romania, Part I, no. 305/09.05.2002.

<sup>3</sup> See art. 23 para. (2) of the Romanian Constitution.

constitutional requirements and, consequently, to show increased attention regarding the establishment cases and conditions in which individual freedom is limited. One of the measures with an impact on individual freedom is the escorting to the police station, whose legal regulation was recently at the attention of the Ombudsman and it was the subject of an exception of unconstitutionality raised directly before the Constitutional Court.

Integrated with the permanent concerns highlighted by specialized literature in the matter of the protection of fundamental rights and freedoms, the present study proposes the analysis of some aspects of the recent jurisprudence of the Constitutional Court, which found the unconstitutionality of certain legal provisions that concerned the measure of escorting to the police station, in order to highlight the effectiveness of the constitutional control mechanism exercised by the Constitutional Court upon referral to the Ombudsman for the defence of human rights and freedoms. The example selected for analysis within the stage reveals both the essential character of individual freedom, the actuality of the imperative of its protection, both from the perspective of the citizens, as well as of the legislator and the public authorities who have the obligation to enforce the law, in the conditions where „the state has an obligation positive to protect civil liberties and to refrain from any action that would embarrass their exercise.”<sup>4</sup>

## 2. Content

The measure of escorting to the police station benefits from regulation in the Romanian legislative system, having the legal nature of an administrative measure<sup>5</sup>. Currently, the Basic Law does not include rules by which this administrative measure is regulated, thus it does not have constitutional status. Regarding the constitutionalising of this measure, it is worth mentioning the proposal to revise the Constitution, formulated in 2014 by few members of Parliament. Thus, the proposed law of Constitution revision included, among other, the amendment of art. 23 regarding individual freedom, in the sense of the express introduction into the body of the Fundamental Law the measure of escorting to the police station, distinct from that of detention and arrest. In the wording proposed, art. 23 para. (8) of the Constitution had the following content: „*The person who is administratively escorted to the police station, detained or arrested shall immediately be informed, in the language he understands, of the reasons for the escorting to the police station, detention or arrest, and the accusation, as soon as possible; the accusation is made known only in the presence of a lawyer, elected or appointed ex officio*”.

Analyzing this proposal on the occasion of the *a priori* constitutionality review<sup>6</sup>, the Constitutional Court found that the measure of escorting to the police station does not represent a suppression of individual freedom or any guarantee thereof; on the contrary, it constitutes a genuine guarantee of individual freedom, to the extent that it regulates the conditions for escorting to the police station and the rights available to the person subject to this measure; thus, the police officer - in the exercise of his legal duties - can only take this measure under the conditions established by law.

Therefore, the Court specified that the measure of escorting to the police station must be clearly delimited from the preventive measures that can be ordered during the criminal process, and in relation to its possible normative consecration in the very text of the Constitution, the Court emphasized that it must be presented as a true guarantee of individual freedom.

Consequently, the Court recommended to the Parliament the reformulation of the proposed amendment regarding art. 23 para. (8) of the Constitution. Regarding the legislative course of the law proposal to revise the Constitution, it is noted that it was closed in 2016<sup>7</sup>.

On a legislative, *infra* constitutional level, the administrative measure of escorting to the police station is regulated by a series of normative acts with primary legislative force, which establish the cases and conditions under which this measure operates. We recall here the GEO no. 104/2001 regarding the organization and

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<sup>4</sup> See C. Ionescu, C.A. Dumitrescu (coord.), *The Constitution of Romania, Comments and explanations*, C.H. Beck Publishing House, Bucharest, 2017, p. 320.

<sup>5</sup> With regard to the legal nature of the measure of escorting to the police station and the similarities between the administrative measure and preventive measures depriving of liberty, of a criminal nature (as, for instance the detaining or arrest), see F. Ciopec, A. Fanu-Moca, *Driving at the police headquarters. A new measure depriving freedom?*, Universul Juridic Premium, 2022, available on <https://www.universuljuridic.ro/conducerea-la-sediul-politiei-a-noua-deprivare-de-libertate-mesura/>, last time consulted on 24.04.2023.

<sup>6</sup> See CCR dec. no. 80/16.02.2014, published in the Official Gazette of Romania, Part I, no. 246/07.04.2014.

<sup>7</sup> According to the information available on the official website of the Romanian Senate, at the address: <https://www.senat.ro/legis/list.aspx#ListaDocumente>, last time consulted on 24.04.2023.

operation of the Romanian Border Police<sup>8</sup> (e.g., art. 27 para. 1 letter b), art. 27<sup>4</sup>-27<sup>8</sup>), Law no. 218/2002 regarding the organization and operation of the Romanian Police,<sup>9</sup> (e.g., art. 31 para. 1 letter b), art. 36-40), Law no. 550/2004 regarding the organization and functioning of the Romanian Gendarmerie,<sup>10</sup> (see art. 35), Local Police Law no. 155/2010<sup>11</sup>, (see art. 20 para. 1 letter h). In terms of the duration of the measure, it is noted that, currently, the legal norms in the matter provide for a maximum duration of 12 hours (Law no. 218/2002, amended by Law no. 122/2022), and Law no. 155/2010.

Also, art. 2, point 36 of Law no. 61/1991 for the sanctioning of acts of violation of norms of social coexistence, public order and peace<sup>12</sup> regulates the sanctions of contravention nature in case of preventing, in any form, the bodies charged with maintaining public order from fulfilling their service obligations regarding the identification or escorting to the police station or another state body or to take the necessary measures to maintain or restore public order.

The measure of escorting to the police station is regulated, by normative acts, also in other member states of the European Union. *The statement of reasons* for Law no. 192/2019, which amended Law no. 218/2002<sup>13</sup> details, with examples, the normative solutions, which enshrine this measure under different names, for example, „taking into custody”, „detention”, „arrest without a warrant”, „administrative arrest”. From the perspective of the duration of the measure, the examples presented in the *statement of reasons*, in the case of Greece and Finland, are significant. Thus, it is shown that, in Greece, "persons escorted to the police station stay at its headquarters only for the time absolutely necessary for the purpose for which they have been brought", according to Presidential Decree no. 141/1991. In Finland, the policeman is obliged to release the person as soon as he has obtained information about the name, ID series or date of birth, nationality or residence, but not later than 24 hours, according to Police Act 872/2011.

Recently, the legal regulation of escorting to the police station contained in art. 36 para. (4) and (5) from Law no. 218/2002<sup>14</sup>, was subjected to the *a posteriori* constitutionality control exercised by the Constitutional Court as a result of the referral to the Ombudsman, by way of an exception of unconstitutionality raised directly<sup>15</sup>. Invoking the violation of the provisions of the Constitution contained in art. 1 para. (5) regarding the obligation to respect the Constitution, its supremacy and the laws and art. 23 para. (1) regarding individual freedom and the safety of the person, the Ombudsman reported a series of unconstitutionality defects generated, in essence, by the absence of establishing a maximum duration of this measure. The purpose of the approach is limited to the constitutional role of the Ombudsman and aims to „protect citizens from the arbitrariness and discretionary nature of the measure of administrative escorting to the police station, favoured by the omission of the regulation of a deadline for this measure.”<sup>16</sup> The criticisms made by the Ombudsman were not directed against the rule of substantive law, contained in art. 31 para. (1) lit. b) from Law no. 218/2002, which regulates the measure of escorting to the police station, but against the conditions regarding the disposition of this measure, established by art. 36 para. (4) and (5) from the Law no. 218/2002. The Ombudsman noticed that the situations provided by the law, in which the policeman is entitled to escort a person to the police station, were those when: his/her identity could not be established or there are plausible reasons to suspect that the declared identity is not real or the documents presented are not true; due to the behaviour, the place, the moment, the circumstances or the assets found on him, there are credible reasons to suspect that he/she is preparing or has committed an illegal act; through his/her actions, the targeted person endangers his/her or another person's life, health or bodily integrity, or public order; taking legal action on the spot could create a danger to this person or to public order. According to art. 36 para. (4) and (5) from Law no. 218/2002, the

<sup>8</sup> Published in the Official Gazette of Romania, Part I, no. 351/29.06.2001, as amended and supplemented by Law no. 192/2019 for the amendment and completion of some normative acts in the field of public order and safety, published in the Official Gazette of Romania, Part I, no. 269/28.10.2019.

<sup>9</sup> Republished in the Official Gazette of Romania, Part I, no. 170/02.03.2020, amended by Law no. 122/2022.

<sup>10</sup> Published in the Official Gazette of Romania, Part I, no. 1175/13.12.2004.

<sup>11</sup> Published in the Official Gazette of Romania, Part I, no. 339/08.05.2014.

<sup>12</sup> Republished in the Official Gazette of Romania, Part I, no. 125/18.02.2020.

<sup>13</sup> Available at <https://www.cdep.ro/proiecte/2019/200/50/4/em346.pdf>.

<sup>14</sup> Republished in the Official Gazette of Romania, Part I, no. 170/02.03.2020.

<sup>15</sup> The legal provisions under control had the following content: „(4) *The verification of the factual situation and, as the case may be, the taking of legal measures against the person escorted to the police station shall be carried out immediately.*

(5) *The policeman has the obligation to allow the person to leave the police headquarters immediately after completing the activities according to paragraph (4) or of the legal measures that are imposed.*”

<sup>16</sup> See the Report of activity of the Romanian Ombudsman institution for the year 2020, submitted to Parliament, available at [https://avp.ro/wp-content/uploads/2021/01/raport\\_2020\\_avp.pdf](https://avp.ro/wp-content/uploads/2021/01/raport_2020_avp.pdf).

verification of the factual situation and, as the case may be, the taking of legal measures against the person escorted to the police station is carried out „*immediately*“, and leaving the police headquarters after the completion of the mentioned activities or the legal measures that are imposed takes place „*immediately*“.

Thus, in justifying the unconstitutionality, the Ombudsman argued, in essence, that the criticized legal provisions violate art. 23 para. (1) and art. 1 para. (5) of the Constitution, as a maximum duration of the administrative measure consisting in escorting to the police station is not provided by the law. In relation to the provisions of art. 23 of the Constitution, the actions of the authorities to restore the rule of law must be strictly delimited and conditioned, so that individual freedom is respected and no innocent person is unjustly deprived of their freedom.

The Ombudsman emphasized that, unlike the previous regulation, which established, in the case of escorting to the police station, the verification activities and the taking of legal measures „*within 24 hours at the most*“, the legislative solution, established as a result of the amendment of the Law no. 218/2002, by Law no. 192/2019, no longer provides for a maximum duration of this measure.

In the Ombudsman opinion, the measure of escorting to the police station, although it has the legal nature of an administrative measure, ordered by the policeman, can be characterized, in the terms of art. 23 of the Constitution, as a detention - included in the category of custodial measures, also representing a custodial measure, which falls under art. 4 para. (2) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (which defines deprivation of liberty as „any form of detention or imprisonment or placing a person in a public or private place of detention on who cannot leave him at will, by order of any judicial, administrative or other authority“).

Under these conditions, the regulation of the measure of escorting to the police station does not ensure a fair balance between the public and the individual interest. Hence, such a measure must be limited in time.

In support of the criticisms of unconstitutionality, the Ombudsman invoked a constitutional precedent (CCR dec. no. 132/18.04.2002), as well as the provisions of art. 5 ECHR which affirms the right of every person to freedom and security and determines at the same time the cases and conditions in which it is permissible to derogate from this principle, especially in order to ensure public order, and aspects from the ECtHR jurisprudence (for example: ECtHR Judgment, 17.07.2012, Case *Munjaz v. the United Kingdom*; ECtHR Judgment, 04.04.2000, Case *Witold Litwa v. Poland*, para. 78; ECtHR Judgment, 19.05.2016, Case *J.N. v. the United Kingdom*, para. 77).

The Ombudsman also claimed the violation of art. 1 para. (5) of the Constitution which enshrines the principle of legality, because the criticized legal provisions, due to the lack of a clear and precise term regarding the maximum duration of the administrative measure of escorting to the police station, are unclear and imprecise. The lack of a temporal delimitation of the measure leads to the unpredictability of the criticized legal text, as the measure can be decided arbitrarily, creating the premise of its application as a result of arbitrary interpretations or assessments by the police, contrary to the principle of legal security that constitutes a fundamental dimension of the rule of law.

Also, the omission of establishing a maximum length of time during which the measure of escorting to the police station can take place leaves room for arbitrariness and leaves it up to the discretion of the authority to decide on the moment of termination of the measure. Moreover, according to the Romanian Constitution, the duration of detention, a preventive measure, of a criminal nature, is 24 hours. It follows that, being similar, the measure of escorting to the police station must not exceed this term.

Consequently, the Ombudsman emphasized that the disposition of the measure of administrative management escorting to the police station must be carried out in a clear, precise and predictable normative framework, both for the person subject to this measure and for the police bodies. The constitutional standard for the protection of individual freedom requires that its limitation be carried out in a normative framework that expressly establishes the maximum duration of the limitation of this constitutional value, and, on the other hand, provides in a clear, precise and predictable way the duration this measure.

By dec. no. 215/07.04.2022<sup>17</sup>, CCR decided on the exception of unconstitutionality raised by the Ombudsman and found that the legislative solution contained in art. 36 para. (5) from Law no. 218/2002, which does not limit the duration of the measure of escorting to the police station, is unconstitutional. At the same time, the Court decided to reject, as unfounded, the exception of unconstitutionality of the provisions of art. 36

<sup>17</sup> Published in the Official Gazette of Romania, Part I, no. 603/21.06.2022.

para. (4) from Law no. 218/2002 stating that these norms are constitutional in relation to the criticisms formulated<sup>18</sup>.

By the considerations contained in dec. no. 215/07.04.2022, above mentioned, CCR carried out an analysis of the legislative evolution in the matter and, at the same time, retained relevant aspects contained in its jurisprudence and that of the ECtHR.

Thus, the Court highlighted the fact that, under a substantial aspect, the measure of escorting to the police station is regulated by art. 31 para. (1) letter b) from Law no. 218/2002, which establishes the right of the police officer to escort a person to the police station, as an administrative measure, under the law.

Regarding the conditions established by law regarding this measure, the Court considered relevant the provisions of art. 36-40 of Law no. 218/2002, which establish the cases in which the policeman is entitled to escort a person to the police station, the rights of the person escorted to the police station, as well as the obligations of the policeman.

The Court also observed that the provisions of art. 40 para. (1) from Law no. 218/2002 establish the obligation of the police officer to draw up a report in which he records, among other things, the time of the initiation of the movement to the police station and the completion of the verification of the person's situation and the taking of legal measures. Consequently, the Court retained the temporal limits of the measure of escorting to the police station, which begins at the time of the initiation of the movement to the police station and ends at the time of completion of the verification of the person's situation and the taking of legal measures, when the policeman has the obligation to allow the person to leave, immediately, the police station. Within these limits, the measure involves a series of activities undertaken by the police officer, for example, identity verification, taking statements, requesting the signing of documents or other measures taken on this occasion. Under the aspect of the conditions regulated in the case of the measure of escorting to the police station, the Court observed that the provisions of art. 36 para. (4) and (5) from Law no. 218/2002, uses the phrase „immediately” regarding the verification of the factual situation and, as the case may be, taking legal measures against the person escorted to the police station, as well as regarding the possibility to leave the police station after completing the activities or measures laws that are imposed. However, a maximum duration of the measure is not regulated by the law.

From the perspective of the evolution of the legislative framework in the matter of the measure of escorting to the police station, regarding its duration, the Court observed that this measure was before regulated by Law no. 218/2002<sup>19</sup>, according to which: „the verification of the situation of these categories of persons and the taking of legal measures, as the case may be, shall be carried out in no more than 24 hours, as an administrative measure”. The Court observed that this regulation established a maximum duration of the administrative measure of escorting a person to the police headquarters, established by law through the phrase „in no more than 24 hours”.

Prior to this regulation, the provisions of art. 16 letter b) of Law no. 26/1994 regarding the organization and operation of the Romanian Police<sup>20</sup>, also established a maximum duration of 24 hours for carrying out police activities within the measure of escorting to the police station.

The legal provisions subject of the constitutional control had the criticized content since 2019<sup>21</sup>.

From the perspective of its jurisprudence in the matter, the Court held that, previously, in its dec. no. 132/18.04.2002<sup>22</sup>, it examined the constitutionality of the provisions of the law regarding the measure of escorting to the police station. The Court held that „Article 31 para. (1) letter b) from Law no. 218/2002 establishes a complex of activities specific to the police bodies, namely the escorting to the police station. Although the content of the text does not provide for the express taking of the detention measure against the persons subject to verification, it is beyond doubt that the verification activity carried out by the police - an activity defined as an „administrative measure” - involves the restriction of the exercise of individual freedom and can be characterized, in the terms of art. 23 of the Constitution, as a restraint”.

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<sup>18</sup> For arguments related to the unconstitutionality of art. 36 para. (4) of Law no. 218/2002, see the separate opinion, formulated by one of the CCR judges, opinion published together with dec. no. 215/07.04.2022.

<sup>19</sup> Published in the Official Gazette of Romania, Part I, no. 305/09.05.2002.

<sup>20</sup> Published in the Official Gazette of Romania, Part I, no. 123/18.05.1994, currently repealed, according to art. 52 of Law no. 218/2002.

<sup>21</sup> See art. II point 5 of Law no. 192/2019 for the modification and completion of some normative acts in the field of public order and safety, published in the Official Gazette of Romania, Part I, no. 868/28.10.2019.

<sup>22</sup> Published in the Official Gazette of Romania, Part I, no. 305/09.05.2002.

The constitutionality solution, pronounced by the CCR dec. no. 132/18.04.2002 was based, mainly, on the fact that the administrative measure of escorting to the police station, as it was regulated at that time, was limited to at most 24 hours, the time limits provided for in art. 23 para. (3) being respected from the Constitution, according to which „detention cannot exceed 24 hours”.

From the perspective of the ECtHR jurisprudence in the matter of art. 5 para. 1 ECHR, regarding the right to freedom and the safety of the person, the Constitutional Court held that the European Court analyzed the incidence of the notion of „deprivation of liberty” by referring to the measure of escorting and the presence of the person in police station, in which sense it invoked, for example, Judgment of 31.01.2017, Case *Rozhkov v. Russia*, para. 79, or the Judgment of 06.12.2016, Case *Ioan Pop and others v. Romania*, para. 81 and 83. According to the European Court, to determine whether someone was „deprived of liberty” in the sense of art. 5 ECHR, the starting point must be its concrete situation and a whole range of criteria must be taken into account such as the type, duration, effects and way of implementing the measure, bearing in mind that art. 5 para. 1 can also apply to very short-term deprivations of liberty (see, for example, Judgment of 23.02.2012, Case *Creangă v. Romania*, para. 93, Judgment of 21.06.2011, Case *Shimovolos v. Russia*, para. 48-50, or Judgment of 07.05.2015, Case *Emin Huseynov v. Azerbaijan*, para. 82). In a similar sense, see ECtHR Judgment of 26.05.2020, Case *Aftanache v. Romania*, para. 78-80.

Starting from the considerations retained in the jurisprudence above mentioned, Constitutional Court held that „the administrative measure of escorting to the police station represents an interference with individual freedom, whose regulation, in order to comply with the provisions of art. 23 of the Constitution, must comply with a system of effective legal guarantees, which would protect the person in the situation where the public authorities, in the application of the law, take certain measures that concern individual freedom”. The provisions of art. 36 para. (4) from Law no. 218/2002 impose such guarantees, establishing that, within the measure of escorting to the police station, the activity of verifying the factual situation and, as the case may be, taking legal measures against the person escorted to the police station is carried out „immediately”. The Court found, therefore, that the provisions of art. 36 para. (4) from Law no. 218/2002 respects the requirements of clarity, precision and predictability that must characterize the legal norms, according to art. 1 para. (5) of the Constitution, and ensures, at the same time, the guarantees of individual freedom, enshrined in art. 23 of the Constitution.

At the same time, however, the Court reached a contrary conclusion regarding the constitutional validity of the provisions of art. 36 para. (5) from Law no. 218/2002. The Court held that the criticized text of law marks the end of the measure of driving the person to the police headquarters, establishing that at the moment of completion of the verification of the person's situation and the taking of the legal measures taken on this occasion, the person has the right to leave the police headquarters immediately. And in this case, the use of the phrase „immediately” represents a „guarantee of individual freedom, which, although necessary, is not sufficient”. Thus, Court held that regarding the measure of escorting to the police station, „the legislative solution contained in the provisions of art. 36 para. (5) from Law no. 218/2002, as benchmark *ad quem* of the measure, does not limit its duration”. The same conclusion, in the sense of the non-existence of a legal regulation regarding the maximum duration of the measure, also results from the analysis of the legal provisions criticized in the whole normative framework in the matter. Under these conditions, the Court held that, from the perspective of art. 23 para. (1) of the Constitution, the guarantees provided by art. 36 para. (5) from Law no. 218/2002 are not sufficient. Hence, in order to comply with the Constitution, it is mandatory to consolidate them. Thus, the Court ruled that, in order to comply with the constitutional requirements regarding individual freedom, the administrative measure of escorting to the police station cannot exceed the maximum duration of detention, respectively „cannot exceed 24 hours”.

Consequently, the Court found that in this case a positive obligation of the state whose object is the regulation, within the domestic legislation, of a limited duration of the measure of escorting to the police station, which allows the removal of any possible arbitrary action and of the possible violation of individual freedom. Undoubtedly, the establishing the maximum duration of the administrative measure of escorting to the police station is within the margin of appreciation of the legislator, who has the role of issuing appropriate, accessible rules, clear and predictable, to ensure effective protection of individuals against any illegal interference in the exercise of individual freedom.

Shortly after the pronouncement of the CCR dec. no. 215/07.04.2022, Law no. 122/2022 for the amendment and completion of art. 36 of Law no. 218/2002 entered into force on May 6, 2022<sup>23</sup>. It is to mention here the positive action of the Parliament that regulated a time limit of the measure of escorting a person to the police station. Thus, regarding the verification of the factual situation and, as the case may be, the taking of legal measures against the person escorted to the police station, the law establishes a term of 8 hours „from the moment of the initiation of the movement”, which can be extended up to 12 hours „from the moment of the initiation of the movement”.

Therefore, the current legislative solution contained in Law no. 218/2002, with further amendments, in accordance with the decision of the Constitutional Court, expressly establishes a maximum duration of the measure of escorting the person to the police station, which cannot exceed 12 hours.

### 3. Conclusions

Starting from a concrete example in which a rule of legal is subject to constitutionality review, in order to establish its validity in relation to the constitutional provisions characterized by supremacy, the study highlights the effectiveness of the control mechanism, through the efficient contribution of all institutional actors.

The Ombudsman triggered the constitutional review, thus acting, based on its fundamental role of defender of citizens' rights and freedoms, as a genuine „watchdog” within the democratic state<sup>24</sup>.

Referred to by way of the exception of unconstitutionality, the Constitutional Court ensured, through the constitutional review, the guarantee of the supremacy of the Constitution, in its component regarding the guarantee of individual freedom and the safety of the person. At the same time, the legislator (Parliament) intervened in order to adopt a normative solution compatible with the constitutional requirements of individual freedom, so that, at present, the measure of escorting to the police, cannot exceed 12 hours.

Of course, it is the legislator's role to intervene, in order to harmonize all the legislative solutions contained in the normative acts that regulate the same measure (e.g., GEO no. 104/2001).

Being an example of good practice, the selected case positively highlights how the action of state institutions and authorities, within the limits and according to their constitutional powers, is integrated with the loyal constitutional behaviour<sup>25</sup>, to ensure, for the benefit of the individual, the fundamental goal of defending citizens' rights and freedoms, supreme values of the rule of law and democracy. This is how the dictum „*hominum causa omne ius constitutum est*” is and must remain, without any time limit, current.

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<sup>23</sup> Official Gazette of Romania, Part I, no. 431/03.05.2022.

<sup>24</sup> The phrase is already enshrined in the ECtHR jurisprudence, which uses it to designate the role of mass media in the state, for example, Judgment of 06.10.2022, Case *Khural and Zeynalov v. Azerbaijan*, para. 38.

<sup>25</sup> The principle is developed in the CCR jurisprudence, for example, dec. no. 1257/07.10.2009, published in the Official Gazette of Romania, Part I, no. 758/06.11.2009, dec. no. 1431/03.11.2010, published in the Official Gazette of Romania, Part I, no. 758/12.11.2010, dec. no. 51/25.01.2012, published in the Official Gazette of Romania, Part I, no. 90/03.02.2012, dec. no. 727/09.07.2012, published in the Official Gazette of Romania, Part I, no. 477/12.07.2012, dec. no. 924/01.11.2012, published in the Official Gazette of Romania, Part I, no. 787/22.11.2012, dec. no. 260/08.04.2015, published in the Official Gazette of Romania, Part I, no. 318/11.05.2015, dec. no. 611/03.10.2017, published in the Official Gazette of Romania, Part I, no. 877/07.11.2017, or dec. no. 609/14.09.2020, published in the Official Gazette of Romania, Part I, no. 980/23.10.2020.

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