HUMAN RIGHTS AND FREEDOMS IN THE CONTEXT OF AI, GLOBALISATION AND THE IDEOLOGY OF TRANSHUMANIS

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Abstract

Artificial intelligence, globalisation and the ideology of transhumanism are contemporary realities that propose a new conception of man, his social status, likely to affect the fundamental rights and freedoms enshrined in constitutions and laws.

In this study we will present the content, definitions and meanings of globalisation, AI and the ideology of transhumanism, whereby the social status of man, his existence are subordinated to technology. In this context, we will insist on the risks and vulnerabilities that the new contemporary realities present for humans. We will refer to the legal means of guaranteeing human rights and to normative regulations regarding the use of AI in the context of world globalisation and the proliferation of the ideology of transhumanism.

Keywords: *human rights, AI, transhumanism, era of postmodernism.*

1. Introduction

The consecration in modern democratic constitutions and in international legal instruments of some human rights and freedoms is the result of a long historical process that includes philosophical, legal and political conceptions, theories, doctrines, but also different forms of recognition, normative consecration of them. The normative affirmation of human rights is the legal recognition of the human being in his existential individuality, man becomes a person in legal relations, the holder of rights and freedoms that he can oppose to the state and demand their guarantee and respect.

The scientific research of fundamental rights and freedoms must be carried out on three levels: legal, philosophical, sociological.

The constitutional evolution of human rights was characterised by the existence of two large categories of regulations: internal, of each state, and international. In constitutional law, the question of their correlation was raised and two principles were affirmed: 1. The application of conventions related to human rights must be done taking into account the need to harmonise international cooperation with the principle of state sovereignty and 2. International documents are the main means for their application, the assumption in good faith by the states parties of their obligations according to their normative content.

The fundamental rights and freedoms of man and citizen are a constitutional reality, with deep implications in the existence of each person, in his relations with the state. It also represents an existential reality of each person, of society as a whole and a dimension of democracy. Modern constitutionalism is based on the affirmation, recognition and guarantee of fundamental rights and freedoms, against which the notions of state, law, civil society, democratic regime, sovereign power would be inconceivable. Therefore, this institution has an important philosophical dimension, which characterises the existence of every human being, but also one of constitutional law and international law, expressing both conceptually and normatively the complex relations between man and the state.

The scientific research of fundamental rights and freedoms must be carried out on several levels: conceptual, philosophical, political and last but not least, legal, being at the same time a reality for contemporary constitutionalism.

Given the undeniable social and legal importance of enshrining human rights, one can speak of a new „religion" of fundamental rights enshrined by law. Is this concept justified? what are the theological,

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philosophical and legal meanings of human rights? To what extent are human rights constitutionally guaranteed in the context of globalisation, in the AI era and transhumanist ideologies? What are the risks and vulnerabilities that contemporary social realities represent for man and his rights?

2. Contents

What does *the contemporary globalisation process* mean and how useful or harmful is it for Romania and Romanians to participate in this process with an integrative purpose whose main exponent in Europe is the European Union? They are topical questions that can be answered with historical and contemporary realities.

History shows that social and state realities such as globalisation and integration have existed since the state organisation of society. All the empires of the world from antiquity to the present are the expression of the imposition of the dominance of a powerful state over other states or forms of social organisation and their integration into the political, legal, economic or cultural and religious order of the state that thus constitutes its empire. The empires of the world, as many as there have been in history, are forms of globalisation and integration.

Contemporary political ideas and theories materialised in political actions with the aim of achieving social and state universalism, in essence do not differ from the universalism of empires of another time. There is, however, a fundamental difference: the empires of the world that have existed in past historical epochs were, without exception, created by acts of armed conquest, by force. Globalisation and contemporary social and state integration are much more subtle social realities, built on the principles of democracy, the rule of law in order to achieve a declared noble goal, social and economic progress, collaboration, assistance, the affirmation and guarantee of human rights.

There are also forms of spiritual, religious globalisation present in contemporary postmodernism. The best example is the universalism imposed by Catholicism. The proclaimed principle is that of compelling Christians to come under the authority of the Pope. Many times in history, Catholicism was imposed on peoples by force, not by persuasion, which had tragic consequences for many. This form of spiritual globalisation is contrary and alien to the true Orthodox faith.

Contemporary globalisation is no longer based on armed force (at least not directly), but on the free adherence of states and societies to a supra-state institutional, political and legal system.

Ancient empires integrated the conquered states into the political, economic, and legal order of the conquering state. The social and political status of those integrated into the empire is always inferior to the state and society of the conquering state. In contrast, the contemporary forms of globalisation and integration are not related, at least declaratively and procedurally, to the political and social order of a dominant state, but organisational structures with a political and legal supra-state character, without them having their own social basis, so as the states have.

The methods and procedures of contemporary state and social integration, specific to postmodern society, are different from the past and, as we said, much more subtle, but all of them are forms of domination by those powerful, from an economic, military and political point of view, over the integrated ones . As examples, we refer to the economic, social but also political integration achieved by large companies and economic trusts, to the monopolisation of production and trade, to IT integration, to the emphasis placed in development programs on consumerism, on having and not on being, utilitarianism and moral pragmatism with the exclusion of the values of Christianity and especially of the right Orthodox faith, the exclusive belief in the power of capital and technologies, the construction of a rationalised and impersonal humanism, the abolition of the national, cultural, religious particularities of those who freely adhere to globalisation and the examples could keep going.

With all these differences, we affirm that the historical empires of the world, as well as the modern forms of globalisation and integration, have the same essence and existential purpose: the dominance of the politically, economically and socially powerful over integrated states and societies.

The European Union, a supranational organisation, has all the characteristics that we have briefly listed. It is obvious that the member states are not equal politically, economically and socially. The states, the powerful political and economic forces within this organisation are dominant, they create the political, economic and legal order that they impose on the other states under the guise of interstate equality, collaboration and assistance.

The political, economic and legal order of the European Union is not created by this organisation, as it apparently, declaratively and theoretically appears, but by the states, the political forces that dominate. The political and social pragmatism is clear. Through this apparent equality and aid provided, the states that dominate this organisation have easy access to cheap labor, the natural resources of the dominated states, and above all, they control the entire state, economic and social activity of the dominated.

The national sovereignty attributes of the dominated states are restricted, and their own existential features: economic, state, political, cultural, and faith are affected by the abstract state order created and imposed by those who dominate the EU. The EU is not a charity organisation but a supranational institutional instrument of domination.

Globalisation in all its variants characterises society in the era of postmodernism. Is this the last stage in the evolution of humanity?

Legal postmodernism can be characterised by formalism and positivism, but also by the dominance of supranational systems and organisations and supranational law over the domestic legal order. This reality leads to the drastic limitation of national sovereignty and the supremacy of the Constitution and the entire domestic legal order. The CJEU has shown unequivocally in several recent decisions that the EU legal order is superior and applies as a priority to the internal legal order, including the Constitution[1].

EU legislation is mandatory for Romania, a fact that has not happened in our history. The legislation of the empires that dominated the Romanian countries was never imposed on their territory. The more important normative acts to be adopted by the Parliament must now first be approved by the EU bodies. Romania's political independence is limited because Romania's internal and external policy is carried out in relation to the political decisions of this supranational organisation.

Here are some historic moments of our freedom. Through the Constitution of 1864, ruler Ioan Cuza conquered Romania's legislative freedom from the neighboring empires. In 1877 Romania became an independent and sovereign state from a political point of view, and in 1918 a unitary national and free state.

AI is the intelligence of intelligent machines, robots, that perceive their environment and take actions that maximise the chance of successfully achieving their goals. It is defined as „the ability of a system to correctly interpret external data, to learn from such data, and to use what it has learned to achieve specific goals and tasks through flexible adaptation" (Kaplan Andreas). The existential risk posed by strong artificial (or general) intelligence is the assumption that substantial progress in artificial (or general; abbreviated AGI) could one day lead to human extinction or some other unrecoverable global catastrophe.

In the era of postmodernism, within this ideology, there are already discussions about the superiority of artificial intelligence over human intelligence, about the competition between man and machine, about the need for legal regulation of social relations that have AI as their object, even about a unitary legal regulation of natural intelligence of man and AI, considering them to be phenomenologically equivalent.

The ethical aspects involved in computer systems, their use, storage and use of information are also topical. Many scientists, lawyers, people of culture, but also politicians are concerned about the risks for humans and society, the vulnerabilities and the elements of progress of artificial intelligence. We can talk about the ideology or philosophy of AI because it is a component part of postmodernist thinking and realities and the implications of artificial intelligence are profound for man, society, for the meaning and purpose of existence.

We do not intend in this study to analyse all these aspects of AI. In the following, we briefly present our opinion:

Definition of the notion of „intelligence":

- natural intelligence (there are authors, scientists who speak of an intelligence of matter);
- human intelligence. The concept is mainly studied by psychology as an applied science. Philosophy and theology rarely use this concept. Human intelligence is understood by psychology either as a function of the neural activity of the brain or as a behavioral aptitude as stated by behaviorist theories. In popular parlance intelligence is an aptitude of the resourceful enterprising man who adapts easily.

Human intelligence, both at the level of common sense and in philosophical or theological theories, is not assimilated to human reason or the cognitive capacity of man. The latter are attributes of man as a spiritual being, endowed with an immortal soul, rational, affective, cognitive and volitional capacity.

Research in the field of neural biology has demonstrated that neither rational capacities nor human intelligence can be fully explained by human neural functions alone. This is an objective limit of human knowledge, not a subjective one. In other words, human intelligence and reason are more and something else than the set of biological functions. At the same time, life is not the set of biological functions that support it. No scientific theory or hypothesis explains the origin of life or what life is, much less substantiates the possibility of artificial creation of life. We consider that psychologism should not be absolutized because its explanations regarding man's reason, intelligence and conduct are either incomplete or do not take into account much deeper realities than the phenomenality of psychological theories.

[1] For development see S. Usherwood, J. Pinder*, Uniunea Europeană*, Litera Publishing House, Bucharest, 2020.

The concept of „AI" must be defined, which in our opinion is much older than the time it was proposed. Thus the ancient civilizations of Egypt, Sumer or the Mayan civilisation, used tools and calculation techniques with the help of which they could create (see the pyramids), or they could make long-term calendrical and astronomical predictions.

The notion of „artificial" corresponds philosophically to the idea of inauthentic, a reality devoid of existential hypostasis.[2]

Undeniably, AI, in the form of computer systems, robotics, digitization, etc., in our opinion, is nothing more than a technology, just like so many others, created by man, in the service of man and obviously of great utility in achieving goals, cognitive rational and even volitional of man, excluding the affective ones. We believe that this aspect should also be emphasised.

Comparisons cannot be made between human intelligence and AI. The two realities have a different nature. Aristotle in „Organon - Definitions", says that only realities that have the same existential nature can be compared, a truth found today in all sciences. Man's intelligence is an existential attribute of him, while AI is a technology, of indisputable utility for man, but in no case is it of the same nature as man's intelligence. It is the absolute difference and separation between the creator and the created. In this case man is the creator of AI.

It is true that the AI expansion today has led to the strengthening of atheism and the refusal of faith (not always of religion). This phenomenon has its beginning not now but in the 18th century when man thought he could replace God with his reasoning. Since then, new „religions" have appeared, such as the „religion of human rights or the religion of artificial intelligence". It is a drama of contemporary man. We believe that this aspect should be approached critically. Notions of religion or theology are not confused with faith. Man relates to God through faith, not through religion or theology, much less through technology in the conditions in which it is considered sufficient by itself.

It is also good to discuss the AI limits. No system considered to be an artificially intelligent system can subrogate man's creative reason, his affective and volitional faculties. Any AI form must remain for man only a tool, a means and not a purpose. Kant says that man must always be considered as a purpose and never as a means.

Moreover, philosophy and science have highlighted objective limits of human reasoning considered by its cognitive capacity. We do not go into details, but we have in mind Heisenberg's uncertainty principle, Plank's constant or the theory of the incomplete or contradictory character of any axiomatic system, formalised by the mathematician Goodel.

We do not agree with politicians' statements that the future will mean the digitization of education, democracy, and decisions. Such a reality would be a great tragedy for man.

The risks of AI for humans and their rights should be better specified and domestic and international legal instruments should be adopted to guarantee, in this context in particular, the constitutional rights and freedoms of humans.

In our opinion, they are particularly aimed at trying to compare and replace human intelligence with AI, man could become a mere means and not a purpose, weakening and even distorting social and legal humanism. Einstein pointed out very well that technology has taken the place of humanism.

That is why it is not AI that is bad or harmful, but how people understand how to use it.[3]

Transhumanism is an international intellectual and cultural movement that supports the use of new science and technology to improve people's mental and physical skills and abilities and to ameliorate what it sees as undesirable and unnecessary aspects of the human condition, such as stupidity, suffering, disease , ageing and involuntary death. Transhumanist thinkers study the possibilities and consequences of developing and using human enhancement techniques and other emerging technologies for these purposes. The dangers and possible benefits of powerful new technologies that might radically change the conditions of human life are also concerns of the transhumanist movement.

Although the first known use of the term „transhumanism" dates back to 1957, the contemporary meaning is a product of the 1980s, when a group of scientists, artists and futurists based in the United States began organising what has since grown at the level of the transhumanist movement. Transhumanist thinkers postulate that human beings will sooner or later be transformed into beings with abilities so greatly expanded as to merit the label „posthuman". Transhumanist predictions of a profoundly transformed future humanity have attracted many supporters and critics from a wide range of perspectives. Transhumanism has been described by an opponent as „the most dangerous idea in the world", while a supporter counters that it is „the movement that

[2] See Plato, Aristotle, Kant, Hegel, but also contemporary rationalist and existentialist philosophy.

[3] See M. Andreescu, *Postmodernismul, Studii, eseuri și cugetări*, Paideia Publishing House, Bucharest, 2023 and A. Smibert, *Inteligența artificială,* Paralela 45 Publishing House, Pitești, 2020.

essentialises the most daring, courageous, imaginative and idealistic aspirations of humanity". Some authors believe that humanity is already transhuman because medical progress in recent centuries has significantly altered our species. However, it would not be in a conscious and therefore transhumanist way.[4]

In transhumanism, the main idea is that the technical manipulation of human nature can free us from the burden of our physical existence and make us immortal. It is a secularised eschatology that aspires to the total absence of constraints imposed by nature or society (which is the natural system resulting from human nature through the interaction of individuals in large groups). Liberation from the bonds of nature is part of the self-actualization concept of transhumanism, but the creed also contains the idea of social emancipation through technology. This view is completely broken from any realistic perspective on anthropology.

In the era of transhumanism, within this ideology there is already talk of the superiority of artificial intelligence over human intelligence, of the competition between man and machine, of the need for legal regulation of social relations that have as their object artificial intelligence, even of a unitary legal regulation of natural intelligence of man and artificial intelligence, considering them to be phenomenologically equivalent.

As we have shown above, transhumanism has been described by an opponent as „the most dangerous idea in the world", while a supporter counters that it is „the movement that essentializes the most daring, courageous, imaginative and idealistic aspirations of humanity". Some authors believe that humanity is already transhuman because medical progress in recent centuries has significantly altered our species. The philosophical component of this ideology examines the ethical implications of extending subjectivities beyond the human species, namely the machine to be considered a person.

These ideas about human transformation are realities of the present time and require, with caution, legal protection, including at the constitutional level, against technologies that can really endanger the very way of being human, that „human dignity" that Immanuel Kant talked about and proclaimed in contemporary constitutions, dignity based on the autonomy of the will guided by reason. Of course, Christianity has a much higher view of human dignity, but in the present study we will not analyse this topic in detail.[5]

One of the essential concerns of man, society and the contemporary state, in the context of the social and political realities we referred to above, is the consecration and guarantee of the essential values of the rule of law and a democratic society, an aspect that also includes the affirmation, the consecration and guarantee of fundamental human rights.

The issue of fundamental rights and freedoms and their constitutional regulation is a consequence of the evolution of the state and its functions, and on the other hand, it is the result of the social, economic and political demands of society. It is noticeable the constant legal concern for the consecration and especially the guarantee of fundamental rights, an aspect that also generates a variety of legal solutions with implications also in terms of public international law.

On the world level, concerns for the promotion of human rights have materialised in several documents of real value, among which we mention: the Universal Declaration of Human Rights - December 10, 1948; The International Covenant on Economic and Social Rights, the International Covenant on Civil and Political Rights, adopted by the UN in 1966; European Convention on Fundamental Human Rights and Freedoms - Rome, 1950; Final Act of the Conference for Peace, Security and Cooperation in Europe - Helsinki, 1975; Final Document of the Vienna Meeting, 1989; The final document of the Copenhagen Meeting - 1984 and the Paris Charter of 1990 and of course the European Union Charter of Human Rights entered into force in 2009.

There are also a number of regional international documents, such as the African Charter of 1981 or the Inter-American Convention of 1969.

The international control mechanism intervenes only in case of failure of the national guarantee regarding the respect of fundamental rights and freedoms.

In this sense, art. 20 of the Romanian Constitution establishes that: the constitutional provisions regarding the rights and freedoms of citizens will be interpreted and applied in accordance with the Universal Declaration of Human Rights.

According to the provisions of art. 20 para. (2) of the Romanian Constitution, if there is inconsistency between the pacts and treaties regarding fundamental human rights, to which Romania is a party, and the internal laws, the international regulations have priority.

This stipulation does not represent a violation of the principle of national sovereignty, because the constitutional priority concerns only the treaties and pacts ratified by Romania and which, through this procedure, are part of the internal law.

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[4] For developments see J. Boboc, *Transumanismul decriptat - Metamorfoza navei lui Tezeu*, Doxologia Publishing House, Bucharest, 2021.

[5] See also A. Mărchidan*, Ce mai rămâne uman în transumanism*, *https://www.art-emis.ro/analize/ce-mai-ramane-uman-in-transumanism*, last consulted on 18.03.2024.

In the sense of compliance, these are also the provisions of art. 35 of Protocol no. 11 to the European Convention from 1950, which stipulates the following: „The European Court of Human Rights can only be referred to after the exhaustion of domestic appeals, as established, according to the generally recognized principles of international law and within a period of 6 months, starting with the date of the final internal decision".

In the legal literature it is specified that international control procedures have a limited and derogatory nature. At the same time, the moral force of international regulations is noted, the fact that they can be imposed and accepted by domestic law, if they defend human values understood even from the point of view of the theory of natural law.

Consecrating and guaranteeing human rights through domestic and international regulations does not exclude the possibility of limiting them. Moreover, the existence of unconditional rights, theoretically, cannot be admitted in a democratic constitutional system. The absence of limits and conditions of exercise, provided by law, constitutions or international legal instruments, can lead to arbitrariness or abuse of law, because it would not allow the differentiation of legal behavior from illegal behavior. This idea is expressed by art. 4 of the French Declaration of the Rights of Man and Citizen: „the exercise of the natural rights of each person has no other limits than those that ensure the other members of society the possibility of exercising these rights." Also, the legal doctrine held that in the relations between the rights holders „the freedom of one stops where the other begins, because the condition inherent to the person is his relationship with others".[6]

Social order and stability presuppose tolerance and mutual respect between subjects participating in social relations. The exercise of fundamental rights and freedoms must not contradict the existing order in social life: the coexistence of freedoms and social protection are the two commandments that underlie the limits dictated by positive law." The difficulty lies in finding the most appropriate solutions that harmonise individual interests and the public interest and at the same time guarantee fundamental rights and freedoms in situations where their exercise could be limited or restricted.

In the relationship between rights and freedoms, on the one hand, and society on the other, two extreme attitudes have emerged: the sacrifice of rights and freedoms in the interest of social order, or the pre-emission of rights and freedoms, even if in this way the interests and social order are sacrificed.[7] None of these solutions is justified by the imperatives of an authentic democracy and the requirement to achieve social balance and harmony. The constitutional regulations, to be effective, must achieve a balance between citizens and public authorities, then between public authorities and, of course, citizens. The individual must also be protected against arbitrary state interference in the exercise of his rights and freedoms.[8] That is why the limits imposed on fundamental rights and freedoms must be appropriate to a legitimate purpose, which could be: the protection of society, the social, economic and political order, the rule of law, or for the protection of the rights of others. The limits must not deprive the rights themselves of content, but guarantee their exercise in such situations.

The existence of limits for the exercise of fundamental rights is justified by the constitutional protection or the protection by international legal instruments of an important human or state values. However, it is not admissible that in the name of these values, the state authorities limit the discretionary and abusive exercise of the rights which in turn are constitutionally guaranteed. In this case, it could lead to the destruction of democracy under the pretext of its defense.

The principle of proportionality, understood as an appropriate relationship between the measures that limit the exercise of human rights and freedoms, the factual situation and the legitimate goal pursued, represents a criterion for determining these limits, avoiding excess power, but also a guarantee of constitutionally enshrined rights.[9]

In doctrine, legal instruments and jurisprudence, the limits of fundamental rights and freedoms have been differentiated according to several criteria. A first distinction is that between the limit and the limitation of fundamental rights.[10] Thus, the limit is an element of the content of the right and is necessary for its exercise. In contrast, the limitation (restriction) restricts the exercise of a right through measures ordered by the competent state authorities for a legitimate purpose. Another author[11] considers that there are limits imposed on fundamental rights and freedoms in order to facilitate their realisation, and on the other hand, limits that aim at „the protection of society, its socio-economic and political order, as well as the rule of law".[12] The limits deriving

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[6] I. Deleanu, *Instituţii şi proceduri constituţionale,* Servo-Sat Publishing House, Arad, 1998 vol. I, pp. 269-270.

[7] I. Deleanu, *op. cit*. vol. I, p. 205.

[8] I. Muraru, *Protecţia constituţională a libertăţilor de opinie*, Lumina Lex Publishing House, Bucharest*,* 1999, pp. 16-17.

[9] For developments see M. Andreescu, *Principiul proporţionalităţii în dreptul constituţional*, C.H. Beck Publishing House, Bucharest, 2007 and M. Andreescu, A. Puran, *Drept constituţional. Teoria generală şi instituţii constituţionale. Jurisprudență constituțională*, 4th ed., C.H. Beck Publishing House, Bucharest, 2020, pp. 132-137.

[10] D. Micu, *Garantarea drepturilor omului,* All Beck Publishing House, Bucharest, 1998, p. 141.

[11] I. Deleanu, *op. cit*., vol. I, p. 205.

[12] *Ibidem*.

from such a purpose can be absolute, imposed by the exigencies of social life, in all situations for the protection of the essential values of the state and society, and on the other hand relative, those that are not applied in a general and permanent manner, but only to some of the rights and freedoms, or only in a certain time or in a certain situation, or only to certain subjects.[13]

In our opinion, we can distinguish: a) *conditions* for the exercise of rights and freedoms that can be found in the very legal content and in their constitutional definition; b) *restrictions, derogations, suspensions, loss of the right,* which have an exceptional and temporary character, being measures ordered by the state authorities in order to protect or achieve a legitimate purpose. State interference in the exercise of fundamental rights and freedoms can be achieved in principle by restricting and suspending the exercise of certain rights or through derogations. These methods are regulated in constitutions and international legal instruments. Avoiding any abuse of state authorities and guaranteeing fundamental rights and freedoms in such situations requires the constitutional regulation, but also in international legal instruments, of the conditions that justify the application of such measures.

There are differences between restrictions, and on the other hand, exemptions that can target the exercise of fundamental rights and freedoms. Restrictions are measures considered necessary in a democratic society, applied in order to achieve a public interest or to protect the rights and freedoms of others. In this sense, the provisions of art. 18 of the Convention show that: „restrictions ... can only be applied for the purpose for which they were provided".

There are also absolutely guaranteed rights (absolute rights) in the sense that no restrictions or derogations are allowed. Obviously, we are referring to the right to life; the right not to be subjected to torture, any kind of punishment or inhuman or degrading treatment. The principle of proportionality represents a guarantee in all situations where the exercise of a right or a fundamental freedom is subject to a condition, restrictions, suspensions or derogations. The principle of proportionality, applied in this matter, also aims to achieve a fair balance between individual interests and the public interest or between the various private interests that correspond to fundamental subjective rights, enshrined and constitutionally guaranteed.

The Romanian Constitution uses a simple and effective procedure to regulate the restriction of the exercise of certain rights and freedoms (common circumstances), through the provisions of a single article. The provisions of art. 53 allow the restriction of the exercise of some fundamental rights and freedoms, but only conditionally.[14] The issue of interpretation and application of the provisions of art. 53 presents a particular complexity because the restrictions may concern the exercise of any right or fundamental freedom enshrined and guaranteed by the Constitution, except for those considered as absolute. The complexity is also due to the diversity of concrete situations that justify restricting the exercise of certain rights.

The rules established by the provisions of art. 53 have the value of a constitutional principle, because they are applicable to all the fundamental rights and freedoms of citizens. In the case of a comparative analysis between the Romanian constitutional provisions and those included in some international legal instruments, which regulate the conditions for restricting the exercise of certain rights and freedoms, some differences can be found. It is of interest to our study the fact that the provisions of art. 53 para. (2) of the Constitution expressly enshrine proportionality as a condition that must be respected in the case of restricting the exercise of certain rights, while in most international legal instruments this condition results implicitly from the content of the regulations and is deduced, by way of interpretation, by the jurisprudence of international courts.

Artificial intelligence is increasingly used in the private and public sectors, affecting everyday life. Some see AI as the end of human control over machines. Others believe that this is the technology that will help humanity meet some of the most pressing challenges it faces. While neither picture may be correct, concerns about AI's impact on fundamental rights are clearly growing and its use deserves to be analysed by human rights actors.

Currently, there are no clear legal regulations at the international level regarding the use of artificial intelligence, its risks and vulnerabilities for humans, society and civilization, as well as the risks of the ideologies that promote it, one of the most important being the ideology of transhumanism.

However, within the EU there are important concerns for the adoption of legislation in this field. Thus, on April 21, 2021, the following form of the document entitled „*PROPOSAL FOR REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, whose object is the ESTABLISHMENT OF HARMONISED RULES REGARDING ARTIFICIAL INTELLIGENCE (AI ACT) AND THE AMENDMENT OF CERTAIN LEGISLATIVE ACTS OF THE UNION*".[15]

The preamble of this draft Regulation states: „The proposed regulation on artificial intelligence (AI) aims to harmonise the rules for products and services that use or are provided as AI systems in the EU, to ensure the

[13] *Idem*, pp. 205.

[14] I. Muraru, E.S. Tănăsescu, *Drept constituţional şi instituţii politice*, vol. I, All Beck Publishing House, Bucharest, 2003, pp. 174-176; M. Andreescu, A. Puran, *op. cit*., pp. 254-268.

[15] European Commision, Bruxelles, 21.04.2021, *https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52021PC0206*.

functioning of the internal market and respect for fundamental rights. The proposal sets out mandatory requirements for the design and development of certain AI systems and how they are supervised after they are placed on the market. The proposal also includes specific rules on the protection of personal data, in particular on the use of AI systems for remote biometric identification. The proposal is based on art. 114 and art. 16 of the TFEU. ”

The main objectives of the Regulation are: To ensure the ethical and responsible development and use of AI in the EU; To protect fundamental rights and European values; To promote innovation and European competitiveness in the field of AI; To help build a single European market for AI.

The proposal is based on the following basic principles:

- Respect for fundamental rights: AI must be developed and used in accordance with the Charter of Fundamental Rights of the European Union;

- Non-discrimination: AI must not be used to discriminate on the basis of race, ethnicity, religion, sex, sexual orientation, gender identity, disability or other personal characteristics;

- Accuracy: AI must be accurate and correct;

- Transparency: Users must be informed when they are interacting with an AI system;

- Liability: Natural or legal persons who develop or use AI systems must be responsible for their actions.

The principles of subsidiarity and proportionality are invoked. According to the principle of subsidiarity, the action of the European Union must be limited to what cannot be effectively achieved by the member states. In the case of artificial intelligence (AI), the European Commission believes that action at European level is necessary to avoid fragmentation of the single market and to protect the fundamental rights and safety of European citizens.

The European Commission considers its proposal to be proportionate and necessary to achieve its objectives. It follows a risk-based approach and imposes regulatory burdens only when an AI system is likely to present high risks to the fundamental rights and safety of the individual.

An important chapter of the draft Regulation refers to prohibited practices for artificial intelligence (Title II).

The regulation follows a risk-based approach, differentiating between uses of AI that create (i) an unacceptable risk, (ii) a high risk, and (iii) a low or minimal risk.

The list of prohibited practices in Title II includes all those artificial intelligence systems the use of which is considered unacceptable as a violation of Union values, for example by violating fundamental rights. The prohibitions cover practices that have a significant potential to manipulate people through subliminal techniques beyond their awareness or to exploit the vulnerabilities of specific vulnerable groups, such as children or the disabled, in order to materially distort their behavior in a way which is likely to cause them or others physical or psychological harm.

Other manipulative or exploitative practices affecting adults that could be facilitated by artificial intelligence systems could be covered by existing data protection, consumer protection and digital services legislation that ensures that individuals are properly informed and have the freedom not to be subject to profiling or other practices that could affect their behavior. The proposal also bans general purpose AI-based social scoring by public authorities. Finally, the use of „real-time” remote biometric identification systems in publicly accessible premises for law enforcement purposes is also prohibited, unless certain limited exceptions apply.

In Romania, a recent document entitled, *National Strategy for Artificial Intelligence* [16] was adopted, which was developed in the wider context provided by the project „Strategic framework for the adoption and use of innovative technologies in the public administration 2021-2027 - solutions for the efficiency of the activity”[17]. The general objective of the project consisted in the correlation of international strategies, regarding the use of innovative technologies in public administration, with the national context and the elaboration of strategic directions for the period 2021-2027. These strategic directions have as their main purpose the efficiency of public institutional activity in the relationship with citizens and a better development and coordination of these national institutions[18].

[16] *https://www.mcid.gov.ro/wp-content/uploads/2024/01/Strategie-Inteligenta-Artificiala-22012024.pdf*.

[17] See *https://www.adr.gov.ro/cadru-strategic-pentru-adoptarea-si-utilizarea-de-tehnologii-inovative-in-administratia-publica-2021-2027-solutii-pentru-eficientizarea-activitatii-cod-mysmis2014/*.

[18] For developments see R. Duminică, D.M. Ilie, *Ethical and legal aspects of the development and use of robotics and artificial intelligence. Protection of human rights in the era of globalization and digitisation*, Journal of Law and Administrative Sciences no. 19/2023, pp. 42-42, *https://jolas.ro/wp-content/uploads/2023/06/jolas19a3.pdf*, last consulted on 18.03.2024.

3. Conclusions

The constitutional evolution of human rights was characterised by the existence of two large categories of regulations: internal, of each state, and international. In constitutional law, the question of their correlation was raised and two principles were affirmed: the application of conventions relative to human rights must be done taking into account the need to harmonise international cooperation with the principle of state sovereignty; international documents have as the main means for their execution the assumption by the party states of the fundamental obligation provided in their content.

Summarising, it can be stated that, dominant in the set of theoretical, legislative and practical concerns regarding human rights, is the idea that their effective proclamation and guarantee rests with internal legal regulations, as an expression of the recognition of the sovereignty of states and their quality of membership equals of the international community. Only from this perspective should the correlation with the international regulations in the matter be understood.

Recently, the EU adopted a new worldwide legislation that regulates artificial intelligence. The „AI Law" was adopted, following intense negotiations. The text was unanimously approved, although some member states, such as France and Germany, expressed concerns, which were taken into account in the final version of the act, reports the France Presse agency, quoted by Agerpres. This „AI Law" is a fundamental step, which establishes the first rules on the planet on artificial intelligence, to make it safer and respectful of human rights**"**, announced the Belgian presidency of the European Union[19].

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[19] For developments, see *https://www.euractiv.ro/infosociety/legea-ue-privind-ai-un-reper-global-pentru-reglementarea-inteligentei-artificiale-64818*.