Euro-Atlantic Perspectives, the Same Pursuit:

The Protection of Human Rights

DOINA MICU

HUMAN RIGHTS are conceived and perceived today in the world, in a multidisciplinary approach: politically,[1] socially and legally. Our perspective is a legal one, in which fundamental rights of the individuals are provided, protected and guaranteed, at the international, regional and the federal level in the states, as they are component parts of an international entity who is itself a subject of international law (Council of Europe and U.S.A.). The modern meaning of a human right is conceived as a complex notion formed by substantive rights and active obligations incumbent to the parties of the fundamental legal relationship: the people and the government.[2] They both have correlative rights and obligations in the public order established by the constitution, as the fundamental law. Globally, these rights are known to be protected as human rights. The entities involved in the national or international level have legal personality. They act as equal subjects of law. There is no supraordination or subordination of any party toward the other one. Equality before the law has the meaning of equal rights and obligations of the individuals in their public relationship with every body of the government. Human rights are protected by the constitutions and international treaties, which effectively establish the remedies for the violation: the petition of an individual lodged with the E.Ct.H.R. Or the writ of certiorari granted by the U.S.S.C.

In a global society the multilevel governing paradigm, rules upon the power relationship which exists between the layers of governance according to the constitutional standard, or according to the legal conformity existing on the hierarchy of the laws with the priority of the law on the top of the legal chain (known also as the law of the land). In Europe that law is the E.C.H.R. and in the U.S.A. is the U.S. Constitution's Bill of Rights (B.R.). The institutions which interpret and implement those legal provisions are the E.Ct.H.R[3] and the U.S.S.C.[4] acting when protecting individual rights as constitutional courts.[5] They establish the priority of those legal standards[6] which are in accordance with the E.C.H.R., or with the U.S. Constitution. They also create the jurisprudence[7] which will be followed by the subjects of law in similar cases. When deciding upon civil rights established by legal acts in the relationship between the people

and the state or government, a public order relationship is ruled upon.[8] It means that the E.C.H.R.[9] and the B.R. set up a public order which make the branches of the government accountable[10] to the courts which have been created as legal instruments which standardize constitutionalism as a governing paradigm.

Analyzing from the legal perspective the subjects involved in the human rights protection, universally and domestically, we stress out the fact that the general principles of law shape the legal existence of these entities and their competence in individual rights' protection. These principles are: legality, justice, legitimacy, democracy, rule of law, constitutionality, checks and balances. The protection of human rights is, according to the U.N. Charter, art.1, par.3, a means to achieve peace and international security. Human rights protection is regulated upon by different international norms and national ones. The assessment of the democratic degree of the government's activity and its legitimacy resides in the methods used and remedies which are meant to protect human rights. Those remedies have to be provided by the constitution of a state and externally in some regional or universal conventions to which the state is a party to. Accepting those treaties into the internal legal system the state becomes accountable to the international community.[11] The international institution capable to enforce the international remedies when a violation of an individual right occurred, is the E.Ct.H.R. The legal provisions to achieve human rights protection have been established by the E.C.H.R. adopted by the Council of Europe in 1950, in force from 1953, as a convention concluded between the member states, with the aim "to achieve a greater unity using as a method the maintenance and further realization of human rights and fundamental freedoms, through collective enforcement" (preamble of the E.C.H.R., 1950). All the Contracting Parties have agreed (art.1, E.C.H.R.) to secure to everyone in their jurisdiction, the fundamental rights and freedoms. The legal notion of securing has the meaning to legally provide and guarantee the application or compulsory enforcement of the human rights. That international obligation is incumbent to the state as a subject of law, who willingly and freely assumes the duty to protect nationally, the fundamental rights and to be accountable when breaching them, at the international level. The national protection is fulfilled by enacting legislation which specifically and effectively protects individual rights and provides constitutional guarantees in accordance with the E.C.H.R. These guarantees are the constitutional principles of the rule of law and checks and balances. They configure the relationships between the bodies of the government and their accountability in such a way that legality and transparency alongside with the rule of law, will prevail over any kind of abuse of a constitutional right or inconsistency with the constitutional or conventional standard.

The E.Ct.H.R. is competent to settle disputes between the state and its citizens. It solves the petitions in which the citizens of the party states allege a violation of a right provided in the convention. Dealing with alleged violations of human rights, the court's jurisdiction "to ensure the observance of the engagements undertaken by the Contracting Parties" (art.19, E.C.H.R.) is exercised when individual or inter-state applications are lodged, according to art.33, art.34, of the E.C.H.R. The principles which regulate the individual petitions' are: the domestic jurisdiction should not bar the international concern and consideration of internal human rights situation; the exhaustion of domes-

tic or local remedies; the priority of absolute rights from which no derogation can be made by the state, because these rights are considered part of *jus cogens*.[12]

The E.C.H.R. is a regional convention, complementary to the universal treaties which protect human rights, like the U.N. Charter, International Convention on Civil and Political Rights or specific area conventions like the Child Rights Convention. In the same time the E.C.H.R. is subsidiary to the national constitutions. The complementarity reconciles on a functional basis the minimum standards set up by the universal treaties in human rights area, with the specificity of regional standards which protect further more and adequately the human rights established on common interests, cultural foundation and a similar responsibility. The benefit of such regional conventions is not only the better suited protection of rights, but also the choice which is given to the individuals who can select the remedies and international bodies which protect them in the most appropriate manner.

Why are the rights of the E.C.H.R. compulsory for a sovereign state that rules its own legal order? The convention establishes a public order for the party states. This public order is willingly accepted by the states who agreed with the international obligation to respect and secure all the rights provided by the convention. This duty makes the states responsible to the international community, when individuals' rights had been violated. The individual has international legal statute in front of the court, limited to that international procedure in front of the E.Ct.H.R, due to the will of the state who ratified the convention. The citizens of the party states are subjects of the convention along with the individuals who are on the territory of a contracting party. The territorial application of the E.C.H.R. extends "to all or any of the territories for whose international relations the party state is responsible" (art. 56, par. 1, E.C.H.R.).

The application of the convention is different in the case of extra-territoriality. It means that the E.C.H.R. is applied on the territory of a non-contracting state. It is an exception to the rule of territoriality and is justified in two situations: a) when the party state's agents have the effective control and responsibility upon the non-party state's territory; b) when the party state is present on the non-party state's territory with the consent or the permission of the non party state. The presence of the controlling state requires the protection of the human rights of the civilian population on the occupied territory by those who have the authority or the control and responsibility. The main reason for the extraterritorial application of the convention is the safety of civilians and the maintenance of the public order in the occupied territory. Although this is the purpose it isn't always performed as it should. The cases of human rights violation in non-party state territories are dealt with by the E.Ct.H.R. It is important for an international body to have the competence to do it, to assure justice, transparency and the rule of law.

The case of Al Skeini and others v. United Kingdom [U.K.] (application nr. 55721/2007; decided by Grand Chamber in 2011[13] will emphasize the characteristics and specificity of this principle. An individual petition has been lodged with the E.Ct.H.R. In 2007 by Al Skeini and other relatives of the deceased victims of the British armed forces in Iraq, during the occupation of 2003. The coalition of armed forces invaded Iraq and captured Basrah and Baghdad. After 1 May 2003 the reconstruction effort started. An

environment in which the Iraqi people may freely determine their own political future, needed to be created by the Coalition partners. The U.N. had a vital role in providing humanitarian relief in supporting the reconstruction of Iraq and helping in the formation of an interim authority. During this time, a Coalition Provisional Authority (C.P.A.) had been established to exercise the powers of the government, in order to provide effective administration, restore conditions of security and stability, national and local institutions, and establish economic recovery, sustainable reconstruction and development. The C.P.A. was invested with all executive, legislative and judicial authority necessary to achieve these objectives. The C.P.A. administration was divided into regional areas, the South being placed under U.K. responsibility and control. The Resolution 1483/2003 of the U.N. Security Council reaffirms the sovereignty and territorial integrity of Iraq, who promulgated on 8 March 2004 the Law of Administration for the Transitional Period. This law established an interim Iraqi government.' In 28 June 2004 full authority was transferred from C.P.A. to the interim government and the C.P.A. ceased to exist. The multinational force, including British forces remained in Iraq pursuant to the request by the Iraqi government and with the U.N. Security Council's authorization. The coalition forces consisted of six divisions who had particular area responsibility. U.K. was given the command of multi-national division in South-East, in particular Al-Basrah and Maysan provinces. Their task included patrols, arrests, and anti-terrorist operations, policing of civil demonstrations, protection of essential utilities and infrastructures and protecting police stations. The second main function of the British troops was to support the civilian administration in Iraq in a variety of ways to rebuild the infrastructure. In that complex situation the only agent of law and order, was the British Army and the Coalition Forces. The use of force by the British Army is ruled upon by the Rules of Engagement which allow the use of lethal force if absolutely necessary.

On 21 June 2003, Brigadier Moore issued a formal policy on the investigation of shooting incidents, which had to be reported to the Divisional Provost Marshall. This non-commissioned officer evaluates the incident and decided if will come within the Rules of Engagement. If not, and involved death or serious injuries, the investigation was to be handed to the Royal Military Police, at the earliest opportunity. Brigadier Moore decided that this policy should be revised in the sense that such incidents should be reported immediately by the soldier to the Multinational Division, by a report of serious incident, without including a full forensic examination.

The applicants are relatives of the dead civilians involved in the incident between the British patrol and people attending a funeral, where the tribe's custom was to discharge guns at the ceremony. The British patrol killed Hasim Al Skeini, without giving any verbal warning before the gunfire. Brigadier Moore considered the incident under the Rules of Engagement and did not order any further investigation. The first applicant is Al Skeini father. The second one is the widow of her husband shot dead during Ramadan, when the British soldiers raided the house. The third applicant is the widower of his wife fatally wounded when the family had dinner around 8 p.m. at the Institute of Education, and it was gunfire from outside the building. The fourth applicant is the brother of a dead person who was shot dead about 8.30 p.m. when retiring home from work. He was in a minibus which entered a "barrage of bullets" and was mortal-

ly wounded. The fifth applicant is the father of a 15 year old boy who has been arrested in the square and forced into the waters of Shatt Al-Arab, where his body was discovered after 2 days. This application was settled without going to hearing, by payment of 115,000 GBP, in December 2008.The sixth applicant is the father of a 26 year old son, who was in the custody of the British Army and died after three days of arrest. There were other claimants (7) who petitioned for judicial review and these six applications, at the Divisional Court, invoking the breach of art. 2 and art. 3, E.C.H.R. for the violation of the right to life and non-investigation the deaths, not conducting independent investigation and inquires. In all these cases the U.K. authorities were proceeding on the basis that the E.C.H.R. did not apply.

The Court of Appeal considered the Human Rights Act of 1998, had no extra-territorial application and effect, therefore the claims were not enforceable in the British national courts, "even if art 1, E.C.H.R. is to be applied to an Iraqi who is in the custody of a British soldiers in a military detention centre in Iraq." The Court of Appeal concluded that U.K. did not have jurisdiction under art. 1, E.C.H.R., save for the death of the six applicant's son which fell within the "state agent authority" exception.

The House of Lords was appealed by the four applicants; their judgment of June 2007 held that the "general purpose of Human Rights Act of 1998 was to provide a remedial structure in the domestic law for the rights guaranteed by the E.C.H.R., and should be interpreted as applying wherever U.K. had jurisdiction under art 1, E.C.H.R." In relation to the first four applicants' complains the majority found that "U.K. did not have jurisdiction over death."

These have been the national judgments given by the British courts, who applied the Human Rights Act and the convention to which U.K. is a party state.

The E.Ct.H.R. concluded on its competence and on the admissibility of the claims, considering that serious questions of fact and law of such complexity are involved that their determination should depend on an examination on the merits.

The Government sustained that art. 56, E.C.H.R. is not to be applied only for the "effective control" in the territory of a non-party state and rejected the link between U.K. and the legal authority in the occupied area. It also invoked the jurisprudence of the Court in Bancovic and others v. Belgium (application52207/99, judgment in 2001)[14] sustaining that being affected by the action of a government who is a party state is not sufficient to be in the jurisdiction of a party state.

The applicants sustained the fact that art.1, E.C.H.R. has to be applied because the U.K. had the effective control of the area and according to the jurisprudence of the Court in Cyprus v. Turkey (application 6780/1974 and application 6950/1975, decided in 2001),[15] Loizidou v. Turkey (application 15318/1989, decided in 1996),[16] and the Commission Report of 10 July 1976, the extra-territoriality principle is to be applied by the E.Ct.H.R.

In conclusion, the Court declares the application admissible and finds a violation of the procedural duty under Article 2 of the Convention in respect of the first, second, third, fourth and fifth applicants; that there has been a breach of the procedural obligation under Article 2 of the Convention to carry out an adequate and effective investigation into the deaths of the relatives of the first, second, third, fourth and fifth appli-

cants and dismisses the Government's preliminary objection as regards the victim status of the fifth applicant. The respondent State is to pay non-pecuniary damage, plus a tax in respect of costs and expenses.

Analyzing the holding of the court we underline the fact that it has been a consistency with its own jurisprudence when interpreting and applying the convention; it covered the jurisdiction of the court over the party states territories based on the rule of territoriality and the exception of extra-territoriality on a non-party state territory in exceptional circumstances.

The domestic procedures have been performed according to the legal norms, even if the exhaustion of the domestic remedies' condition hasn't been fulfilled, due to the circumstances of the case. The court considered the E.C.H.R. to be applied to the case, U.K. being a party state to the convention. As a contracting state it failed to perform the necessary investigation of the deaths of civilians in the occupied territories, where it had the "effective control and responsibility." As the responsible authority and a party state, it had to enforce all the laws of the land, Human Rights Act included as well as the E.C.H.R. The assessment of the court was based on the convention's international duties assumed by U.K. and on the harmony existing between the domestic legislation (Human Rights Act of 1998) and the convention. This activity of the court is in fact a control of constitutionality or a judicial review of the domestic implementation of the convention in accordance with the European standard.[17] Not only the judicial policy of the court has been reiterated but the correspondence and harmony of different level standards of human rights have been implemented. The standards established by the E.Ct.H.R. takes precedent over the national jurisprudence and the international norms take precedence over the domestic one. This practice is a characteristic of constitutionalism as a governing paradigm which rule upon human rights protection.

The conformity is in fact the result of the superiority of the convention, its priority to be applied and the standard value of the convention's norms.[18] It is the paradigm of governing the protection of human rights, as established by the European public order. The entire practice of the E.Ct.H.R is based on the assumption of the necessary harmony which has to exist among the regional standards that protect human rights. They help create and enforce a more integrated vision on the general accepted values of the basic relationship expressed by the principle of constitutionalism. Protection of human rights as a universal value of mankind responds to the outcomes expected by the states, individuals and society in its entirety when it is pursued, protected and guaranteed by legal standards. Constitutionalism as a global paradigm to rule upon, implemented at the European level, has a world wide application with distinctive characteristics in U.S.A.

On the other side of the Atlantic, constitutionalism is also one of the main principles of the legal system.[19] It means that all the laws have to be in accordance with the constitution. The distinctive feature of the constitutional law is the judicial review, which tests the legislative enactments and other actions of the government, by the constitutional standards.[20] Providing a judicial protection to the basic values, judicial review offers a control of the constitutionality of the final judgments of state courts, when these are against the validity of a treaty, statute or repugnant to the constitution, or against a right, privilege, title, commission. The competent forum to deal with such problems is the

U.S.S.C. who will act according to its power of decision making policy. Interpreting the U.S. Constitution and forging the next to come rules of behavior, as precedents, standardized in the union, rests in the power of the U.S.S.C. when exercising the authority of judicial reviewing over the alleged inconsistencies with the fundamental law. The Court secures a protection to the fundamental rights from the oppression of the government. It acts as a final arbiter[21]of constitutional disputes. The judicial review is granted by the U.S.S.C. and decided by affirming or reversing the decisions, according to theirs constitutionality or unconstitutionality. This power of the U.S.S.C. to establish precedents in the process of judicial review is provided by the Judiciary Act of 1789 and developed through the practice of the court or by its jurisprudence. The precedents are judicial interpretations of the constitution and they are legally binding on the other branches of the government.[22] It acts as a safeguard[23] and represents an opportunity for the Justices of the U.S.S.C., to interpret and set former or new precedents according to the desired and preferred outcomes in the society.[24] The judicial making power is based on the doctrine of stare decisis[25] which has the aim to limit or restrain that authority, to respect decisions once made.[26] Facing prior decisions, the U.S.S.C. will provide reassurance of the rule of law[27] and modern constitutional order adapted to the mentality of the people.

Downes v. Bidwell 182 U.S. 244 (1901)[28] is a case which addresses the extra-territoriality principle applied in a different manner, by the U.S.S.C. In the American courts the question raised was: does the constitution follow the flag? Decided in 1901, the case is about the possibility to apply the constitutional provisions in the newly annexed territories, as Puerto Rico was.

The plaintiff, Samuel Downes is the owner of a company that had imported oranges from Puerto Rico into the port of New York. He had to pay import duties on them because Puerto Rico was considered a foreign territory. Downes claimed the provision of art.1, Section 8, U.S. Constitution which provides the commerce clause "uniform throughout the U.S." There were no duties on oranges in the territories of the U.S. so he argued that it should not exist for Puerto Rico, the new territory of the U.S. The decision of the U.S.S.C. was not in his favor because the Justices considered that constitution did not apply necessarily to the territories which are not an integral part of the U.S. or they have not been yet (1901) incorporated. According to them, these territories do not benefit of the constitutional provisions, but the citizens of the U.S. and subjects to the jurisdiction thereof, enjoy life, liberty and property under the equal protection clause. The interpretation of the constitution was done in the sense that the U.S. Congress could create law within territories in certain circumstances as revenue matters. In the dissenting opinion, Justice J. Marshall Harlan held that U.S. Congress had jurisdiction to enact laws within the jurisdiction of the constitution. If the constitution does not apply to the territories, U.S. Congress had no authority to enact.

We consider the decision to have a mixed motivation: territory to apply the law and the beneficiaries of the fundamental rights. The Court considered the rights of the government to impose duties, to preempt the rights of the individuals to be treated equally in front of the law. Puerto Rico was treated as a non-incorporated part of the U.S. Extra-territoriality was not addressed on the foreign land where the fundamental rights of the citizens are not under U.S. protection.

The limitation or the restriction of individual rights is justified by a compelling interest of the government. The principles of the rule of law and the checks and balances[29] act as guarantees among these opposite interests. The U.S.S.C. applying the constitutional standards evaluates the compelling interest by the strict scrutiny, intermediate scrutiny or rationale basis scrutiny standard, when decides to limit the exercise of a particular individual right in the benefit of everybody. We present these scrutiny standards applied to cases and let the reader to decide if the decisions protected the fundamental rights.

In the case Korematsu v. U.S. 323 U.S. 214 (1944)[30] the Court's opinion remains significant for being the first instance of the Supreme Court applying the strict scrutiny standard[31] to racial discrimination by the government and for being one in which the Court held that the government met that standard.

Fred Korematsu is an American born in the U.S.A. from Japanese ancestry. The American President Franklin Roosevelt adopted the Executive Order 9066 in 1942, which ordered American Japanese internment in camps during World War II. Bases on it, The Commanding General of Western Command, U.S. Army adopted the Civilian Exclusion Order No. 34 which provided the exclusion of all persons of Japanese ancestry from the military area, near San Leandro, California. Korematsu considered being equally protected as any other American by the XIV Amendment, and refused to leave the military area deemed critical to national defense and potentially vulnerable to espionage. He was convicted by a federal court as a suspect, even if Korematsu's loyalty towards the U.S.A. never has been questioned. The U.S.S.C. granted certiorari, and decided that the restriction orders have been constitutionally adopted, being justified by the public interest of national defense. It was considered that citizenship has responsibilities that in time of war are commensurable with the danger that threatens the nation. There had been three dissenting opinions according to which a military order should be enacted to avoid racism and unconstitutionality. The orders might be considered legal if everybody in the area would have the same treatment, not only the American Japanese.

In this case the Court, when judicial reviewing the constitutionality of the restrictions enacted upon the individual rights, applied the strict scrutiny on the activity of the government. The general interest preempted any other interests or fundamental rights. In our opinion, only if the order would exclude everybody from the military area it should be considered constitutionally.

An important case in which the intermediate scrutiny doctrine[32] was applied by the U.S.S.C. is U.S. v. Virginia 518 U.S.515 (1996).[33] The Virginia Military Institute was the last male only public school in the U.S.A. before the decision which established the unconstitutionality of the admission policy. A parallel school for women was considered inappropriate because it would provide a different military training, facilities, courses, financial opportunities, reputation and connections. The important governmental interest was intermediately scrutinized by the court who decided that the sex based classification is unconstitutional. As a result the Virginia Military Institute's law was amended. This way the equal protection clause is respected by the subsequent legal provisions and the constitutional standards prevail over.

In the case Planned Parenthood v. Casey 505 U.S.833 (1992),[34] the U.S.S.C. challenged the constitutionality of several Pennsylvania state regulations regarding abor-

tion provided by the Pennsylvania Abortion Control Act of 1982. The plaintiffs were five abortion clinics and a class action of physicians who provide abortion services, in addition to one physician representing himself independently. They filed suit to enjoin the state from enforcing the five provisions and have them declared facially unconstitutional. Among the new provisions, the law required informed consent and a 24 hour waiting period prior to the procedure. A minor seeking an abortion required the consent of one parent (the law allows for a judicial bypass procedure). A married woman seeking an abortion had to indicate that she notified her husband of her intention to abort the fetus. The Court upheld the constitutional right to have an abortion and altered the standards for analyzing restrictions of that right with the undue burden standard or the rationale basis.[35] A legal restriction posing an undue burden was defined as one having "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." The fetus might be considered viable at 22 or 23 weeks, the spousal notice requirement was struck down, stating that it gave too much power to husbands over their wives and would worsen situations of spousal abuse. The U.S.S.C. mentioned the concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions and upheld the State's 24-hour waiting period, informed consent, and parental consent requirements, holding that none constituted an undue burden. Any mention of any right to privacy coming from the Constitution was made, but the use of "privacy" has been done in the context of a paraphrase from Roe v. Wade 410U.S. 113(1973)[36] or other previous cases.

These standards applied by the court have the aim to protect the rights of the individuals through the constitutionalism doctrine. They are legal guarantees for the democratic protection of the basic relationships existing in the society.

❑

Notes

1. Tony Evans, *The Politics of Human Rights. A Global Perspective* (London, Virginia: Pluto Press, 2001), 14.
2. Doina Micu, *Garantarea drepturilor omului, [Human Rights Guarantees]*, (Bucuresti: ALL Beck,1998), 2.
3. Nico Krish, "The Open Architecture of European Human Rights Law," *The Modern Law Review* 71 (2008): 198; John Alder, *General Principles of Constitutional and Administrative Law* (Bristol, New York: Palgrave Macmillan, 2002), 363.
4. Daniel E. Brannen, *Checks and Balances-The three Branches of the American Government* (Detroit, Thomson Gale, 1968), 463.
5. Ernst-Ulrich Petersmann, "Human Rights, International Economic Law and Constitutional Justice," *The European Journal of International Law*, 19–4 (2008): 773; John Hart Ely, *On Constitutional Ground* (Princeton, New Jersey: Princeton University Press, 1996), 340.
6. David L. Richards and K. Chad Clay, "An Umbrella with Holes: Respect for Non Derogable Human Rights During Declared States of Emergency," *Human Rights Review,* 13–4 (2012): 449.
7. Titus Corlăţean, "The Authority of the European Convention on Human Rights and the European Court's Jurisprudence: The Case of Romania," in *Transylvanian Review* 20, 4 (2011), 57.

8. Steven Greer, "Constitutionalizing Adjudication under the European Convention on Human Rights," *Oxford Journal of Legal Studies,* 23-3 (2003): 409; Mihai Alexandrescu, David Mitrany: "From Federalism to Functionalism," *Transylvanian Review* 16, 1 (2007), 24
9. Ralf Alexander Lorz, "The Emergence of European Constitutional Law," in *Recent Trends in German and European Constitutional Law,* eds. Eibe Riedel and Rudiger Wolfrum (Springer, 2006), 55–56.
10. Michael J. Perry, *Towards a Theory of Human Rights. Religion, Law, Courts* (Oxford, New York: Cambridge University Press, 2007), 87; Alistair R. Mowbray, *The Development of Positive Obligations Under the European Convention on Human Rights by the European Court of Human Rights* (Oxford, Portland Oregon: Hart Publishing, 2004), 19.
11. Vasile Puscas, "EU Accession Negotiations: The Case of Roumania," *Transylvanian Review* 16, 1 (2007): 41; Micu, *Garantarea*, 263–68.
12. Malcom N. Shaw, *International Law* (Cambridge, Cambridge University Press, 2008), 272–73.
13. Al Skeini and others v. United Kingdom (application nr. 55721/2007; decided by Grand Chamber in 2011).
14. Bancovic and others v. Belgium (application52207/99, judgment in 2001).
15. Cyprus v. Turkey (application 6780/1974 and application 6950/1975, decided in 2001).
16. Loizidou v. Turkey (application 15318/1989, decided in 1996).
17. Le Sueur, *Principles of Public Law* (London, Sydney, Cavendish Publishing Limited, 1999), 225.
18. Micu, *Garantarea,* 245.
19. Ken I. Kersch, *Constructing Civil Liberties-Discontinuities in the Development of American Constitutional Law* Cambridge, Cambridge University Press, 2004), 8, 16; Daniel Farber and Suzanna Sherry, *Judgment Calls-Principle and Politics in Constitutional Law* (Oxford, New York, Oxford University Press, 2009), 12.
20. Le Sueur, *Principles,* 234.
21. Farber and Sherry, *Judgment Calls,* 74.
22. Daniel Halberstam, "Federal Powers and the Principle of Subsidiarity", *Global Perspective on Constitutional Law,* Eds, Vicram David Amar and Mark V. Tushnet (Oxford, New York: Oxford University Press, 2009), 43.
23. Farber and Sherry, *Judgment Calls,* 64.
24. Farber and Sherry, *Judgment Calls,* 84.
25. Farber and Sherry, *Judgment Calls,* 81.
26. Farber and Sherry, *Judgment Calls,* 78.
27. Margaret Allars, "Of Cocoons and Small "c" constitutionalism: The Principle of Legality," *The Unity of Public Law,* ed. David Dyzenhaus (Oxford: Hart Publishing, 2004), 307.
28. Downes v. Bidwell 182 U.S. 244 (1901).
29. Gianluigi Palombella, "The Rule of Law as an Institutional Ideal," in *Rule of Law and Democracy-Inquiries into Internal and External Issues,* Eds, Leonardo Morlina and Gianluigi Palombella (Leiden, Boston: Brill, 2010), 10.
30. Korematsu v. U.S. 323 U.S. 214 (1944).
31. E. Thomas Sullivan and Richard S. Frase, *Proportionality Principles in American Law* (Oxford, New York: Oxford University Press, 2009), 53.
32. Sullivan and Frase, *Proportionality Principles,* 57.
33. U.S. v. Virginia 518 U.S.515 (1996).
34. Planned Parenthood v. Casey 505 U.S.833 (1992).
35. Sullivan and Frase, *Proportionality Principles,* 62.
36. Roe v. Wade 410U.S. 113 (1973).

Abstract

Euro-Atlantic Perspectives, the Same Pursuit: The Protection of Human Rights

Our material presents the general principles of law applied by the constitutional courts who decide the judicial policy over the fundamental rights of the individuals and the characteristics of the protection of human rights in Europe and the U.S.A. The European Convention on Human Rights (E.C.H.R.) and The Bill of Rights in force, are binding upon the party States at the treaty and upon all the American States and territories under the jurisdiction of the U.S.A. The European Court of Human Rights (E.Ct.H.R.) and the U.S.A. Supreme Court (U.S.S.C.) decide over cases they are competent to refer to, acting as constitutional courts. Constitutionalism as a principle of law is applied in these cases as a doctrine and a guarantee, part of the democracy; it is a paradigm to govern and enforce the checks and balance between the branches of the Government, between the State and the entity the state is a part of, with the aim of being legally and judicially integrated in the process of harmonization.

Keywords

human right, legal harmony, judicial review, constitutionalism, paradigm.