Revista INOVAȚIA SOCIALĂ
ICCV Institutul de Cercetare a Calitatii Vietii Academia Romana

# *EUROPEAN RULES AND THEIR IMPACT ON HUMAN RIGHTS IN THE ROMANIAN LEGAL SYSTEM CASE STUDY.*

Petre Lăzăroiu[1]

Judge, Constitutional Court of Romania www.ccr.ro
Associate Professor, PhD candidate Law Faculty, Christian University „Dimitrie Cantemir" www.ucdc.ro

**Sursa**: Revista Inovaţia Socială nr. 2/2010 (iulie-decembrie) pp. ...
**URL stabil**: http://inovatiasociala.ro/index.php/jurnal/article/view/81
**Publicată de**: Institutul de Cercetare a Calităţii Vieţii




1 lazaroiu@yahoo.com

# *EUROPEAN RULES AND THEIR IMPACT ON HUMAN RIGHTS IN THE ROMANIAN LEGAL SYSTEM CASE STUDY.*

Petre Lăzăroiu

***Rezumat***:

*Prin lucrarea de faţă ne-am propus să analizăm dacă şi în ce măsură, România, ca stat semnatar al Convenţiei pentru Apărarea Drepturilor Omului şi a libertăţilor fundamentale a îndeplinit cele două cerinţe fireşti decurgând din calitatea sa de stat contractant şi anume :*

*a)dacă a implementat în legislaţia sa naţională normele europene în materia drepturilor omului şi ;*

*b)dacă asigură respectarea efectivă de acestora în cadrul activităţii judiciare a statului.*

*Raportat la prima cerinţă, se observă că România şi-a aliniat legislaţia sa privind drepturile omului atât prin înscrierea acestora în Constituţie cât şi prin adoptarea de legi cu caracter general sau special în această materie.*

*De altfel, Curtea Europeană a Drepturilor Omului nu a condamnat în mod efectiv România pentru lipsa legislaţiei în materie, ci, mai ales, pentru încălcarea drepturilor omului şi libertăţilor fundamentale în procesul de aplicare a legii.*

*În ce priveşte cel de-al doilea aspect, din analiza efectuată asupra câtorva cauze soluţionate de Curtea Europeană a Drepturilor Omului, prin raportare şi la analiza de constituţionalitate efectuată de Curtea Constituţională a României, rezultă că în practica judiciară încă se mai constată încălcări a normelor privind drepturile omului şi a libertăţilor fundamentale.*

**Cuvinte cheie**: Drepturile omului; libertăţi fundamentale; Convenţie; State contractante; Constituţia şi legislaţia naţională; Curtea Europeană a Drepturilor Omului; jurisprudenţa Curţii Europene a Drepturilor Omului.

***Abstract***:

*Through this work we aimed to analyze whether and to what extent, Romania, as a state signatory to the Convention for the Protection of Human Rights and Fundamental Freedoms has fulfilled the two natural requirements arising from is capacity of contracting state, namely:*

*a) if it implemented in its national legislation the European rules on human rights and;*

*b) if it ensures their effective observance within the judicial work of the State.*

*Concerning the first requirement, we can notice that Romania has aligned its legislation on human rights both by their inclusion in its Constitution and by enactment of general or special laws in this area.*

*However, the European Court of Human Rights hasn't effectively condemned Romania for lack of legislation, but especially for infringement of human rights and fundamental freedoms in the enforcement process.*

*With respect to the second issue, as from the analysis on several cases decided by the European Court of Human Rights, with reference to the constitutional review carried out by the Constitutional Court of Romania, it results that in the judicial practice we can still find violations of rules on human rights and fundamental freedoms.*

**keywords**: Human rights; fundamental freedoms; Convention; Contracting States; the Constitution and the domestic laws; the European Court of Human Rights; the case-law of the European Court of Human Rights

## I. General reflections

(1) The Convention for the Protection of Human Rights signed in Rome on 4 November 1950 by the Council's Member States, following the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948 represents a veritable Charter of human rights and fundamental freedoms.

The signatory states, in the preamble itself to this document, acknowledged that human rights and fundamental freedoms are "*the foundation of justice and peace in the world*", and observance thereof can only be ensured in a democratic political regime based on a common understanding and mutual respect to these rights and freedoms.

Observance of human rights and fundamental freedoms is ensured, in legal terms, by the provisions of Article 1 of the Convention, in accordance with which *"the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention"*. Also, Romania, as Convention[2] Signatory Country, and later, as Member State of the European Union is committed without reservation that it will take all steps to make sure that the provisions of the Convention are met effectively, even stipulating in the Constitution (Article 20 paragraph 2 ) that where "*inconsistency exists between the covenants and treaties on fundamental human rights to which Romania is a party, and national law, the international regulations shall prevail except where the Constitution or domestic laws comprise more favourable provisions*"

The first condition naturally arising from signing this Convention requires transposition into national law of certain legal rules appropriate and sufficient to effectively ensure human rights and fundamental freedoms.

It is worth pointing out that human rights and fundamental freedoms must have, first of all, constitutional support, and subsequently legal support, by developing *in extenso* the constitutional rules and general principles of law.

This paper does not intend to be a comprehensive research on legal rules governing human rights, which is why we will not enumerate all relevant regulations, but we will focus on certain normative acts highly relevant before the European Court of Human Rights in Strasbourg.

Regarding constitutional support I want to point out that in the Romanian Constitution, revised in 2003, we can find all human rights and fundamental freedoms that are stipulated by Title I of the Convention.

Thus, in Chapter II of the Constitution entitled "Fundamental rights and freedoms", respectively Articles 22 to 52, we find expressed in terms of principles, the right to life and physical integrity (Article 22), personal liberty (Article 23), right to defence (Article 24), freedom of movement (Article 25), the right to personal, family and private life (Article 26), inviolability of the home (Article 27), secrecy of correspondence (Article 28), freedom of conscience (Article 29), freedom of expression (Article 30), right to information (Article 31), right to education (Article 32), access to culture (Article 33), freedom of association (Article 40), prohibition of forced labour (Article 42), right to private property (Article 44), equal rights (Article 16 of Chapter I of the same Title II, which gives expression to Article 14 of the Convention - prohibition of discrimination) and other fundamental rights and freedoms that round and

2 Romania ratified the Convention by Law no. 30/1999, published in Romanian Official Gazette no. 135 of May 31, 1994

ensure observance of fundamental rights and freedoms enshrined in the European Convention.

(2) In basis of the constitutional provisions, the ordinary legislature adopted a series of laws that give effective expression to these provisions.

Please note that the Romanian legislation comprises both general rules that give expression to fundamental rights and freedoms enshrined in the Constitution, such as, for example, the Civil Code, the Criminal Code, the Tax Code, the Forestry Code, the Family Code etc; the Code of Civil Procedure, the Code of Criminal Procedure, the Code of Fiscal Procedure, etc., and regulatory acts specially enacted with the purpose to regulate certain matters such as property law, aliens regime, fair competition, consumer protection, freedom of movement, party system, the right of association, organisation of strikes, ensuring the secrecy of correspondence and telephone conversations, etc.

In time, part of the general regulations have been restated, for the purposes of improving them or following the declaration as unconstitutional of certain provisions therein, or after conviction of Romania by the European Court of Human Rights, in particular cases, especially those concerning property, access to justice, protection of aliens, the right to an effective remedy or assurance of the secrecy of correspondence and telephone conversations.

II. Cases examined by the European Court of Human Rights versus the Romanian legislation. The position of the Constitutional Court of Romania in this matter

(1) With reference to the provisions of Article 26 of the Constitution of Romania, which acknowledge the right to personal, family and private life and which correspond to the provisions of Article 8 of the Convention - Right to respect for private and family life - it should be noted that in 2006 Romania was condemned by the ECHR in two cases - Case of Lupşa v. Romania and Case of Kaia v. Romania, in terms of breach of Article 8 of the Convention and in particular of Article 1 of Protocol No.7 to the Convention, on “Procedural safeguards relating to expulsion of aliens”.

We mention that on several occasions, the signatory countries have taken further steps to ensure the collective enforcement of certain rights and freedoms, specifically when they found that the original provisions of the Convention were not stated clearly enough or were insufficiently stated.

As a result, the original Convention was supplemented by several Protocols, including the Additional Protocol signed in Paris on March 20, 1952.

In this context, Protocols no. 4, 6, 7, 12 and 13 expanded the scope of the fundamental rights and freedoms.

Thus, applying Article 8 of the Convention, by Article 1 of Protocol No.7 to the Convention, the Signatory States stated that personal, family and private life requires procedural safeguards in case of expulsion of aliens.

It should also be mentioned that the Romanian State regulated the regime of aliens in Romania by Government Emergency Ordinance no. 194/2002, republished in the Official Gazette no. 491 of June 5, 2008, and the procedure of declaring the alien as undesirable is governed by Articles 81 to 85 of the said Ordinance.

While adjudicating on the two cases, the European Court held (and it was recorded as such in the two decisions) that Bucharest Court of Appeal limited itself to a formal examination of the Prosecution’s decision. In this regard, it noted that the Prosecution had not provided the Court of Appeal with indication of the imputations against the applicant and that the court had not gone beyond the Prosecution’s assertions to check whether the applicant really represented a threat to national security or to order public, and the applicants did not enjoy the

minimum degree of protection against arbitrariness on the part of the authorities, neither before the administrative authorities nor before the Court of Appeal.

Therefore, the European Court concluded that the interference in their private lives was not provided by a "law" compliant with the requirements of the Convention and, accordingly, it declared the breach of Article 8 of the Convention.

Later, the Constitutional Court of Romania was referred with the objection of unconstitutionality of the provisions of Article 83 paragraph (3), Article 84 paragraph (2) and Article 85 paragraph (1) final sentence of Government Emergency Ordinance no.194/2002 related to the Regime of Aliens in Romania.

The objection of unconstitutionality was raised by A.O.M. in Case no. 1568/2/2006, before Bucharest Court of Appeal, which had to settle a challenge against an order issued by the Prosecution Office attached to Bucharest Court of Appeal, by which the applicant was declared undesirable person on the territory of Romania for a period of 15 years .

Analysing the objection of unconstitutionality raised, the Court held that, unlike the supreme court, it does not carry out a substantive examination of the facts that generated that case and, accordingly, it will examine the case only in terms of inconsistency of the legal texts with those of the Constitution, not being able to extract the unconstitutionality in light of two ECHR decisions.

Moreover, one can easily see that the two decisions of the European Court are grounded precisely on the failure to observe the legal provisions [Article 83 paragraph (3)], according to which "*the Prosecutor shall decide by reasoned order*" and only when the alien is declared undesirable based on national security reasons, the grounds for this decision will not be mentioned.

But this restriction does not operate also in court, which must be notified on these reasons, with the necessary precautions, as established by law.

That being so, the breach by the courts of certain legal provisions can not constitute the legal basis for those provisions to be declared unconstitutional.

Therefore, analysing also the other challenges, the Constitutional Court rejected the plea of unconstitutionality raised, noting that the provisions of Article 83 paragraph (3), Article 84 paragraph (2) and Article 85 paragraph (1) final sentence of Government Emergency Ordinance no.194/2002 related to the Regime of Aliens in Romania are constitutional.

(2) Also with regard to the right to respect for private and family life embedded as such in Article 8 of the Convention, Romania's Constitutional Court had to settle the objection of unconstitutionality of the provisions of Articles 911 to 915 of the Code of Criminal Procedure, provisions allowing the prosecutor to record certain telephone conversations that can serve as evidence (the exact title of these provisions is Title III, Chapter II, Section $V^1$ of the Code of Criminal Procedure "*audio or video recordings*". The Court was referred by the Court of Appeal through the Interlocutory Order of October 11, 1999 following the objection raised by defendants Gh.T.I., I.S., C.T., C.M., G.N., V.V. and others, in Case no.20/1999 before the Military Court of Appeal.

As grounds for the unconstitutionality of these provisions, the applicants invoked the case-law of the European Court of Human Rights – the case of "Malone v. the United Kingdom", settled by European Court in 1985.

However, the case-law of the European Court of Human Rights highlights several cases solved, including the case of "Klass and others v. Germany" -1978, the case of "Huvig v. France" – 1990, the case of "Kruslin v. France" - 1990, all

with reference to the possibility of secret surveillance of mail and telephone communications.

Thus, in the case of "Klass and others v. Germany" settled in 1978, the European Court of Human Rights ruled that "***powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions***". Likewise, the Court held that the law must have a legitimate purpose, viewed from the perspective of the Convention, namely "***to safeguard national security and/or to prevent disorder or crime***".

The European Court of Human Rights also emphasized that "***democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction. The Court has therefore to accept that the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications is, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime.***"

Similarly, in the cases of "Kruslin v. France" - 1990 and "Huvig v. France" - 1990, it held that the law allowing interference by the public authorities with a person's private and family life, home and correspondence, respectively restriction on the exercise of certain fundamental rights and freedoms must be "***clear enough to give the individual adequate protection from arbitrary interference***" and "***accessible to the person concerned, who must moreover be able to foresee its consequences for him***".

In examining the constitutionality of the allegedly unconstitutional legal texts, the Constitutional Court took into account both the provisions of the Convention (Article 6, Article 8, Article 18 and Article 60) and the constitutional provisions (Article 20 - International Treaties on Human Rights, Article 11 – International Law and Domestic Law, Article 26 - Personal, family and private life, Article 28 - Secrecy of correspondence, but also Article 53 - Restriction on the exercise of certain rights or freedom).

On that occasion, the Court held that observance of all democratic values involves, in some cases and under strictly regulated circumstances, even the restriction on the exercise of certain fundamental rights and freedoms.

The Court stated also that the interception and recording of conversations or recording without the consent of the person concerned is, indeed, a limitation on the exercise of the right to respect by public authorities of personal, family and private life, as well as on the exercise of the right to inviolability of the secrecy of telephone conversations and other legal means of communication, fundamental rights recognized as such by the provisions of Article 26 paragraph (1) and Article 28.

On the other hand, the Court held that the Constitution itself provides under Article 53 that the exercise of certain fundamental rights may be restricted in cases exhaustively and precisely determined. In this regard, compliance with the conditions set by the Constitution with respect to the restriction on the exercise of the rights enshrined in Article 26 paragraph (1) and Article 28, as well as ensuring safeguards against improper restrictions on the exercise of such rights, results from the analysis of the criticized texts' wording.

Thus, Article 91 paragraph (1) of the Code of Criminal Procedure provides, as a requirement for the authorization of telephone conversations recording, "***existence of substantiated indications or data regarding the***

***preparation or perpetration of crimes for which prosecution is carried out ex officio, and that the recording is useful in finding the truth***."

Noting that the requirements established by law as concerns the restriction on the exercise of certain rights (such restriction must be ordered solely by law for the protection of certain fundamental values and it must be proportionate to the importance of the defended values) enshrined by Article 26 paragraph (1) and Article 28, as well as assurance of safeguards against abusive measures for exercise of that right, have been complied with, the Court rejected the plea of unconstitutionality raised.

(3) On another occasion, analysing the objection of unconstitutionality of the provisions of Law no.298/2008[3] on retention of data generated or processed by providers of publicly available electronic communications services or public communications networks and amending the Law no.506/2004 on the processing of personal data and privacy protection in the electronic communications sector, objection raised by the Civil Society Commissariat in the File no.2.971/3/2009 of the Bucharest County Court – Trade Division, the Constitutional Court[4] reiterated some selected entries from other decisions in the meaning that the right to respect for family and private life enjoys unanimous recognition and international protection, as reflected in Article 12 of the ***Universal Declaration of Human Rights***, in Article 17 of the ***International Covenant on Civil and Political Rights***, in Article 8 of the ***Convention for the Protection of Human Rights and Fundamental Freedoms*** and in Article 26 of the ***Constitution of Romania***.

The right to respect for private life necessarily involves also the secrecy of correspondence, whether this component is expressly stated within the same text of Article 8 of the ***Convention***, or it is regulated separately, as in Article 28 of the ***Constitution***. The correspondence expresses the routes which a person may establish in various ways of communication with other members of the society, so that it includes both the phone calls and the electronic communications.

These rights, including freedom of expression explicitly enshrined by Article 30 of the ***Constitution*** and Article 10 of the ***Convention for the Protection of Human Rights and Fundamental Freedoms***, although inextricably linked to human existence, any person being entitled to exercise them unhindered, are not however, absolute rights, they are conditional.

Neither the provisions under the ***Convention for the Protection of Human Rights and Fundamental Freedoms*** nor the Romanian Constitution prohibit the legislative enshrining of State authorities' interference in the exercise of those rights, but State intervention must comply with strict rules, expressly mentioned in Article 8 of the ***Convention*** and, respectively in Article 53 of the Basic Law.

Thus, the legislative measures likely to affect the exercise of fundamental rights and freedoms must have a legitimate aim, consisting of protecting national security, public safety, defense, public order, prevention of crimes and protecting the rights and interests of other persons; the same must be necessary in a democratic society, proportionate to the situation that determined them, to be applied without discrimination and without prejudice to the existence of such right or freedom.

3 Published in the Official Gazette of Romania, Part I, no.780 of 21 November 2008

4 See the Constitutional Court Decision no.1258 of 8 October 2009, published in the Official Gazette of Romania, Part I, no.798 of 23 November 2009

In this regard, Law no.298/2008, by Article 1 paragraph (2) includes in the category of traffic and location data of individuals and legal entities also "*related data needed to identify the subscriber or registered user*", without specifically defining what is meant by "*related data*" needed to identify the subscriber or registered user.

The Constitutional Court considers that the absence of clear legal rules that would determine the exact scope of those data needed to identify the user - individuals or legal entities, leaves room for abuse in the work of retention, processing and use of data stored by providers of publicly available electronic communications services or of public communications networks. The restriction on the exercise of the right to private life, secrecy of correspondence and freedom of expression, must also occur in a clear, predictable and unequivocal manner as to remove, if possible, the occurrence of arbitrariness or abuse of authorities in this area. The recipients of this legal rule are, in this case, all natural and legal persons in their capacity as users of publicly available electronic communications services or of public communications networks, therefore a broad, comprehensive scope of subjects of law, members of civil society. However, they must have a clear representation of the applicable legal rules in order to regulate their conduct and foresee the consequences resulting from non-observance thereof. Also the European Court of Human Rights ruled in the manner in its case-law, for example, in the case of *Rotaru v. Romania*, *2000*, held that "a rule is «foreseeable» if it is formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct", and in the case of *Sunday Times v. United Kingdom, 1979,* ruled that "[...] the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case and he must be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." In short, the law should be both accessible and foreseeable. The Constitutional Court has the same jurisprudential practice, relevant in this regard being the Decision no.189 of 2 March 2006, published in the Official Gazette of Romania, Part I, no.307 of April 5, 2006.

Likewise, the Constitutional Court notes the same ambiguous wording, not compliant with the rules of legislative technique, also as concerns the provisions of Article 20 of Law no.298/2008, reading as follows *„In order to prevent and counteract threats to national security, State bodies with responsibilities in this area, in the terms set forth by the laws governing the activity of protection of national security, can have access to data held by service providers and public electronic communications networks."* The legislature does not define what is meant by '*threats to national security*" so that in the absence of precise criteria of delimitation, various actions, information, or normal activities, of routine, of natural and legal persons can be considered, arbitrarily and abusively, as having the nature of such threats. Recipients of the law may be included in the category of suspects without knowing it and without being able to prevent, by their conduct, the consequences that their actions may entail. Also, the use of the expression "*can have*" leads to the idea that the data covered by the Law no.298/2008 are not retained solely for the use thereof only by State bodies with specific powers to protect national security and public order but also by other persons or entities, since they "can have", and not just "have", access to such data, according to the law.

Compliance with the rules of legislative technique, within the complexity of rules specific to the law-making process, is a key factor when implementing the will of the legislature, so that the adopted legislative act must comply also by way of drafting with all the requirements demanded by the need to observe fundamental human rights. Without posing as a positive legislator, the Constitutional Court notes that accurate regulation of the scope of Law no.298/2008 is even more necessary in view, in particular, of the complex nature of the rights subject to limitation, as well as of the consequences that a possible abuse of the public authorities would have on its recipients' private life as it is subjectively perceived by each individual.

Beyond that, the Constitutional Court finds that Law no.298/2008 as a whole, establishes a rule regarding the processing of personal data, namely that of their retention continuously for a period of 6 months as from the time of their interception. The obligation of providers of publicly available electronic communications or public communications network has a continuous character. Or, in the matter of personal rights such as the right to personal life and the freedom of expression, as well as of processing of personal data, the widely recognized rule is to ensure and guarantee their observance, respectively of confidentiality, the State having, in this respect, mostly negative obligations, of abstention, by which should be avoided, insofar possible, its interference in the exercise of such right or freedom. In this respect were adopted Directive 2002/58/EC concerning the processing of personal data and privacy protection in electronic communications sector, Law no.677/2001 for the protection of individuals with regard to the processing of personal data and free movement of such data, and Law no.506/2004 on processing of personal data and protection of privacy in electronic communications sector. The exceptions are restrictively allowed, in the terms expressly provided by the Constitution and the applicable international legal instruments in the field. Law no.298/2008 represents such an exception, as it results from the title itself.

The obligation to retain data covered by the Law no.298/2008 as an exception or derogation from the principle of protecting personal data and confidentiality thereof, by its nature, extent and scope, deprives of content that principle, as it was guaranteed by Law no.677/2001 and Law no.506/2004. Or, it is widely recognized in the case-law of the European Court of Human Rights, for example in the case of *Prince Hans-Adam II of Liechtenstein v. Germany, 2001*, that the Contracting States under the Convention on Human Rights and Fundamental Freedoms have assumed such obligations to ensure that the rights guaranteed by the Convention are practical and effective not theoretical and illusory, the legislative measures adopted following the effective protection of rights. But the legal obligation that requires the continuous retention of personal data makes the exception to the principle of effective protection of the right to personal life and freedom of expression, absolute as a rule. The right appears to be regulated in a negative fashion, its positive side losing its predominant character.

In this context, the Court declared that the provisions of Article $91^1$ of the Code of Criminal Procedure observe the exception of the interception and audio or video recordings, which are allowed under certain strict conditions, from the moment in which is obtained the reasoned authorization of the judge, for a limited time and they cannot exceed, in total, for the same person and the same offense, 120 days. Instead, Law no.298/2008 which establishes as a rule what the Code of Criminal Procedure governs as a strict exception and requires retention of data on an ongoing basis, for a period of 6 months from the time of their interception, which can be used, on the basis of a reasoned authorization issued by the court, for a time in the past, and not for the future, which will follow. Therefore, the regulation of a positive obligation on a continual limiting on the exercise of the right to a private life and secrecy of correspondence cancels the very essence of the right by removing the guarantees on its exercise. Natural and legal persons, mass users of publicly available electronic communications services or of public communications networks are continually subject to the interference in the exercise of their personal rights to private correspondence and free expression, without any possibility of a free, uncensored manifestation, only under the form of direct communication, to the exclusion of the main means of communication currently used.

In a natural logic of this analysis is required also the examination in this case of the principle of proportionality, another mandatory requirement needed to be respected in cases of limitation on the exercise of the rights and freedoms strictly provided for by Article 53 paragraph (2 ) of the Constitution. This principle states that the extent of restriction must be in line with the

situation that led to its implementation and also that it must cease once that cause determining it disappeared.

For example, the provisions of Article $91^1$ of the Criminal Procedure Code fully respect the requirements of the principle of proportionality, both as concerns the scope of the restriction and in terms of its immediate cessation once the determinant circumstances have disappeared. Instead, Law no.298/2008 requires retention of data continuously from the time of entry into force, respectively of its application (i.e. January 20, 2009, respectively March 15, 2009 as concerns traffic data of location corresponding to the services of access to Internet, email and Internet telephony), without considering the need to terminate the restriction once the cause that has led to this measure has disappeared. Interference on the free exercise of the right takes place continually and independent of the occurrence of a certain justifying act, of a determinant cause and only with the purpose of prevention of crime or detection – after occurrence – of serious crime.

The solution offered by Romania's Constitutional Court, by Decision no.1258 of October 8, 2009 is in agreement with both the Romanian Constitution and the interpretation given by the European Courts with respect to the restriction of these rights.

Our solution is strengthened also by Decision no.256/08 of March 2, 2010 pronounced by the First Senate of the Constitutional Court of the Federal Republic of Germany, which took as such the reasoning of the Constitutional Court of Romania, considering it the most appropriate for nowadays realities, and declaring the unconstitutionality of the similar German Act.

***Furthermore, the Constitutional Court of the Federal Republic of Germany ordered, on that occasion, the destruction of all interceptions made by that date, given the legal and constitutional powers in this respect.***