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**Safeguarding the Personal Freedom and Safety: the ECHR and  
*Reasonable Suspicion***

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**Abstract:** In the first half of the twentieth century, the European continent was devastated by two wars and the human rights have been trampled to an unprecedented degree. The Convention for the Protection of Human Rights and Fundamental Freedoms is directly inspired by the Universal Declaration of Human Rights (1948). It safeguards a list of rights and freedoms that the Western European governments in the postwar period accepted without hesitation, being fundamental to such an extent that it deserves international recognition. The Convention ensures, among other things, the right to judicial protection, freedom of expression, assembly and association and freedom of thought, conscience and religion. Additional protocols include property rights, the right to education, to free elections and the abolition of the death penalty, and others.

**Keywords:** convention; legislation; reasonable suspicion; suspect, liberty; security of the person

## **1. Introduction**

In the first half of the 20th century, Europe was devastated by two wars that marked the humanity historically, and most of the rights were overlooked to an unprecedented extent. Nowadays, almost half of a century after the inauguration of the Council of Europe, about 800 million Europeans have a right to appeal violations of human rights in an international court based in Strasbourg. Being initiated under the aegis of the Council of Europe, the European Court of Human Rights is responsible for the application of the Convention for the Protection of Human Rights on a vast territory ranging from the Atlantic to the Pacific, from Greenland to Cyprus and Russia, with an expansion of not less than 17 time zones.

In order to achieve the above-mentioned goal, various methods of scientific research have been applied: analysis, synthesis, comparison and logical reasoning. The paper is based on the analysis of a series of scientific papers, national and international regulations were also addressed.

The purpose of this article is to conceptually address reasonable suspicion in the light of the provisions of the European Convention on Human Rights, with an emphasis to the rights to personal freedom and security. We aim the objective to deepen the study of the various features of the legal nature of reasonable suspicion, which nowadays conveys new connotations.

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## 2. The Court and the System of Rights and Freedoms

The Convention, was directly inspired by the Universal Declaration of Human Rights (1948), safeguards rights and freedoms. The post-war Western European governments have adopted the provisions of the Convention without hesitation, understanding that those are fundamental to the extent that to deserve wide promotion in an international perspective. The main purpose of the European Court of Human Rights is to prevent the repetition of the horrors and abominations committed in the '30s and '40s of the past century. Starting with the most fundamental right - the right to life, it struggles against torture and inhuman or degrading treatment, as well as such punishments as forced labor and arbitrary detention. It guarantees *inter alia*, amongst other things, the right to a fair trial, freedom of speech, the right to assembly, association and the right to freedom of thought, conscience and religion. Additional protocols include property rights, the right to education, the right to free elections and the abolition of the death penalty (ECtHR, 2015).

Individual appeals may be submitted directly to the Court in Strasbourg if the applicants can prove that they were victims of a violation of one of the rights enshrined in the Convention. The Court may also receive appeals submitted by the States which have signed the Convention against other signatory countries. The individuals do not necessarily have to be of the nationality of the country in question but that they have been under its jurisdiction during the event and also to prove they have exhausted all internal remedies in the country where the alleged violation has been committed.

Appeals submitted to the Court may refer usually to a wide range of violations, from the authorities' refusal to register their parents' surnames for their child, until the most serious cases of torture and inhuman treatment committed by the police itself or by the security agents and authorities of the state. These appeals relate to problems such as the status of unmarried mothers and children born out of civil marriage, criminal legislation against homosexuals, secret surveillance of correspondence and wiretapping, problems caused by the existence of a potential pollution risk, extradition to countries where there is a risk of serious violation of human rights, the duration and objectivity of judicial proceedings, the right to become a member of a labor union, the right of newspapers to criticize politicians, prohibition of books, representations or video recordings obscenities, the dissolution of political parties (ECtHR, 2015), non-admission to the election, freedom of speech, defamation and other limitations of rights and freedoms.

The list is long and continues to grow proportional to the increase in the number of complainants addressed to the Court in Strasbourg, sometimes with personal problems and pains, sometimes with truly tragic and dramatic stories. When it comes to numbers, there were periods of time when the Court received even 650 addresses (complaints) per day. During the '80s and especially in the '90s, the number of appeals submitted in accordance with the Convention for the Protection of Human Rights increased significantly. One of the basic reasons was certainly the increase in the number of states allied to the Convention, which, after the fall of the Berlin Wall includes almost all the countries of Central and Eastern Europe. The growth has been conditioned not only by the increase in the number of appeals but also by the possibility of highlighting new problems that arise in extremely sensitive situations, as well as the living character of the convention, that the Court himself affirmed.

Later, the whole system has been reformed, giving birth to a new Court, a permanent institution with a fully legal and public procedure and that is currently active. The new Court began its work on 1 November 1998, its judges having their permanent seat in Strasbourg and being elected by the Parliamentary Assembly of the Council of Europe for a term of six years (three years for half the number of judges at the first term). The task is daunting, not only do they face a steady increase in the number

of cases, which are becoming even more complex, but they also have to speed up the procedures, which in fact was the basic cause of the reform. In the old system, it was a common thing for a case to be resolved, starting with the appeal and to conclude in a decision that could last five years and longer. However, currently, the Court's work is focused on the efficient organization of its procedures, as well as on the full implementation of informational technologies.

When the court takes a decision finding an infringement, despite its ability to offer a reward (remedy) or reimbursement of expenses incurred by the applicant, it can't order the government concerned to adopt certain and specific measures, that could be amending the law, that was found to be contrary to the requirements and that caused the appeal. However, this is the responsibility of the executive body of the Council of Europe, namely the Committee of Ministers. The states that are concerned are obliged to comply and to respect the decisions of the Court. That also includes the duty to provide compliance reports to the Committee of Ministers on adopted measures to reach the Court decisions. In the future, as it was in the past, the duty to respect the decisions will be a critical factor that will condition the effectiveness of the Convention.

Judgments adopted by the Court have contributed to a number of changes in national legislation, including the prohibition of corporal punishment in schools in the United Kingdom, adopting new rules on wiretapping, adopting new regulations on the detention of people with mental disabilities in the Netherlands, homosexual discrimination in Northern Ireland and Ireland, amending the Austrian Radio Broadcasting Act, a new law on improving prison conditions and access rules in Finland, as well as changes in procedural and civil trial in many countries (ECtHR, 2015). The Republic of Moldova is not an exception because over the last years, the entire legislation of our country has been amended, aiming at ensuring the compliance of domestic legislation with international standards and requirements.

On the one hand, the inauguration of a new Court has been ratified by all member states, that represented a strong vote of confidence underlining the recognition of the Court's role in supporting rule of law and protection of human rights, having mandatory jurisdiction and a permanent status. However, the problems that the Court is facing are enormous, because the vertiginous increase in the number of applications, and challenges that are brought on some of the core decision is a real thing that can undermine the efforts and credibility of the system of the Convention. There can be no doubt that the political commitment of the member states of the Council of Europe will have to be maintained, because the Court needs a permanent support in the years to come (ECtHR, 2015).

The Convention was the first collective effort to enforce and uphold the rights enshrined in the Universal Declaration. In the Republic of Moldova, the European Convention on Human Rights was signed, ratified and entered into force with the name: Convention no. 1950 of 04.11.1950, for the defense of human rights and fundamental freedoms. It was published on 01.01.1998 in International Treaties no. 1, art. 342, with the enforcement date as of 01.02.1998 (Law on Convention, 1998). The European Court of Human Rights (ECtHR) has its origins in the 1950 European Convention on Human Rights, that was signed in Rome on 4 November and enforced in September, 1953.

The Convention lays down the following rights and freedoms (Curtea Europeană, 2015): the right to life; prohibiting torture; banning of slavery and forced labor; the right to liberty and security; the right to a fair trial; no punishment without law; the right to respect for private and family life; freedom of thought, conscience and religion; freedom of speech; freedom of assembly and association; the right to marriage; the right to an effective remedy; prohibition of discrimination; emergency exemption; restrictions on the political activity of foreigners; prohibiting abuse of rights; limitation of the use of the rights restraint.

### 3. The Convention and the Individual Rights

The right to individual freedom and personal safety is one of the most sensitive and complex value of the human being, which, amongst other fundamental rights, has a primordial role in a democratic society. Following the transformations that took place most of eastern European countries, including in the society of the Republic of Moldova after 1991, with the abolition of the totalitarian regime, freedom and individual security were subjects of increasingly clear and detailed constitutional regulations, in order to avoid arbitrary interpretations and misuse by the authorities. Thus, art. 25 par. (1) of the Constitution establishes expressly and unconditionally: “Individual freedom and the safety of the individual are inviolable” (Constitution, 1994).

Also, as a result of the economic and social development and the triggering of the process of harmonization of the national legislation with the European provisions, international documents on human rights and not only those, gained increasing importance. In this context, the European Convention on Human Rights is currently the main instrument for the protection of human rights and fundamental freedoms in Europe. With reference to its provisions and to ECtHR jurisprudence, special attention is given to individual freedom, precisely because of the essential nature of this right for the human being, otherwise the failure to observe it has important consequences both for the physical, mental and social wellbeing.

The guarantees of the freedom of the person have been one of the continuous concerns of the legislators, and this is why the internal provisions on the protection of the right to liberty and individual security, enshrined in the Constitution, namely article 25, and article 11 of the Criminal Procedure Code, seek to meet the requirements of the ECHR, which has become legally binding in national law since ratification. Similar to constitutional provisions, article 5 of the Convention guarantees in precise terms the right to liberty and security of any person. In addition, those provisions expressly and restrictively establish the cases and conditions under which the limitations of the freedom of the person (Article 5 § 1, a)-f)) may take place, and the guarantees that are granted to persons deprived of liberty (Article 5 § 2-5) (Comentariu, 2005)

Recalling the roots, the freedom of the person is one of the oldest essential rights, being inscribed in medieval texts, for example in the Magna Charta Libertatum, where it was held that no free man “shall be arrested or imprisoned [...] or declared out of law [except] through legal proceedings ... or in accordance with the law of the country” (Negru & others, 2012). At the same time, deprivation of an individual’s freedom through imprisonment is one of the most widespread methods used by the state to counter crime and maintain internal security. The first paragraph of the article invokes the inviolability of the person's freedom. At first glance, there is a conflict, at least linguistically, between the absolute nature of the term inviolability and the ability of the state to limit this right through coercion, such as the arrest or imprisonment. The absolute nature of the term inviolability can generate the idea that detention is forbidden, which is obviously not true. The text of the article explains that the freedom of the person may be restricted by the state, although only certain cases established by the law. So, some forms of deprivation of liberty are allowed, and others - not (Negru & others, 2012).

Article 25 prohibits precisely the arbitrary and illegal deprivation of the person’s liberty. The provisions of article 25 mirrors a set of international provisions such as article 3 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, but also it was said before in other words - article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The text of the Convention is of particular importance due to the specific competence of the European Court of Human Rights, which has the role of observer and may examine

the cases in which the violation of article 5 is raised against the Republic of Moldova. Besides the fact that article 5 safeguards the right to individual freedom, it also has the purpose to “(b) define the circle of situations in which this right can be limited by the exercise of the coercive power of the state, and (c) to elaborate the essential conditions to be observed for the exercise of the coercive power of the State in order to fall within the limits of the law” (Negru & others, 2012).

#### **4. Freedom and Security of Individuals**

By the article 25 par. (1), the Constitution has aligned and balanced the right to freedom of the person and the right to safety of the person as equal. It is clear that the above-mentioned international acts were the source for the national legislator when defining article 25 - all acts have this formula. However, a natural question arises: how should these terms be interpreted: simultaneously, independently of each other, as one of the other? The term person's safety originates in art. 8 of the French Constitution of 1793, (Negru & others, 2012) whereby citizens have obtained the right to be protected against interference at a horizontal level in inter-ethnic relations. At the time of the preparatory work for the Universal Declaration of Human Rights, Mrs. Roosevelt gave the following explanations: “The term person's safety was deliberately chosen ... because it was more general than any other expression. The French representative specifically noted that the term also included the notion of physical integrity” (Negru & others, 2012). It has been observed that both the Commission and the Court for Human Rights in Strasbourg have not considered the term person's safety as having an independent meaning, helping the notion of freedom of the person. The same author also noted that this term, this time under the International Covenant on Civil and Political Rights, however, shows the possibility of complaints against interference by private individuals (Negru & others, 2012).

The provisions of par. (2) to (6) of article 25 of the Constitution lists the essential conditions to be observed in the criminal prosecution proceedings. In comparison with article 5 of the ECHR, the provisions of para. (2) - (6) indicates the need for a critical review of the article 25, in order to be fully compliant with the provisions of the Convention. As mentioned above, the legality of detention is examined in the light of all procedural requirements relating to arrest, detention, accusation, and release. Article 25 contains the basic elements for determining the legality of the act depriving the individual of his freedom. Limitation of the freedom of the person is done according to the law - art. 25 par. (1) - on the basis of a mandate (warrant) issued by a judge - art. 25 par. (4). The opposite would result in an admission of the restriction of freedom by anyone. The law serves as a normative basis to limit individual freedom and is accessible to all persons under the jurisdiction of the Republic of Moldova. Considering the serious character of the decision on the limitation of individual freedom, the legislator provided a mechanism for challenging its legality, which can be immediate - art. 25 par. (4) - in the higher hierarchical court. The Higher Court must be independent and examine the lower court's decision in objective legal terms (Negru & others, 2012).

The Constitutional Court of the Republic of Moldova explained in more detail the nature of the independence of the judicial court, noting that any pressure has to be excluded from the judges that deal with criminal cases under the current legislation. This means that the court is not obliged to consider the arguments of the participants to the proceedings [...], and that they freely appreciate the evidence and judge independently of any influence (CCD, 1997).

## 5. Custody and Arrest

Regarding the communication of arrest (lawful initial apprehension) reasons, the expression at article 25 par. (5) is doubtless: “to the apprehended or arrested [...] are brought [...] the reasonings of the detention”. The State, through its representatives, is required to notify anyone of the reasons for the arrest or detention. This will happen irrespective of whether or not the person arrested or detained has or not requested that. The Commission and the European Court of Human Rights have interpreted the terms of the allegation and the grounds of the accusation, emphasizing the importance of the substantive content and not of the formal one. The Court explained the term accusation as any notification by an authority to the individual that the person has committed an offense.

Article 25 (5) of the Constitution stipulates that the state must immediately inform (notify) the person of the reasons for detention or arrest. In the linguistic sense, the term immediately means “without delay, immediately, now,” (Dictionary, 2015). The legislator's intention was to exclude the circumstances in which a detained or arrested person is unaware of the reasons for the limitation of his or her liberty.

The Criminal Procedure Code at article 165 par. 1 and article 167 par. 1 establishes the maximum duration of lawful initial apprehension (not more than 72 hours) and determines the maximum duration of 3 hours from the moment of the *de facto* detention in which the person must be informed of the reasons for the detention (CPC, 2003)

## 6. Conclusion

The Convention is one of the most important instruments to safeguard human rights and freedom. An important and separate role plays in the system of the convention the right to freedom and personal security, and the concept of reasonable suspicion. An essential requirement for the enforcement of deprivation of liberty measures is the existence of a reasonable suspicion that an offense has been committed and that it was committed by the suspect. As author V. Rotaru considers, though the reasonable suspicion is a logical and obvious requirement, and that nevertheless it is expressly formulated, sometimes (when it is “very necessary”), some representatives of the law enforcement bodies seem to forget that such a requirement exists (Rotaru, 2012), and that could be the cause why ECtHR's finds violations, and that is the case not only of the Republic of Moldova. Despite those cases, the reasonable suspicion may be also characterized through a complicated nature in terms of understanding and quantification features.

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