

HUMAN RIGHTS AND WAYS OF THEIR PROTECTION.

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With the exception of countries with continental legal systems, European countries in different historical periods of their development have enshrined a list of rights and freedoms that are considered so important that they are placed above other rights, duties and values. The priority of these rights over other values and interests of the state is reflected in their formal expression, namely in a consolidated list of these rights and freedoms in a document of higher legal force. This document is usually the constitution of the state. The main difference between the fundamental rights contained in national constitutional documents and the fundamental rights enshrined in international instruments is the question of origin. National constitutional interpretations of human rights may be based on the idea of their natural origin, but international law does not view human rights through their natural origin. Likewise, both national constitutional instruments emphasise the granting of fundamental rights and freedoms, while international human rights instruments contain dispositive provisions, i.e. the possibility of derogation has been excluded. National catalogues of human rights are similar to international catalogues in that they contain a list of rights, and thus a minimum of a number of fundamental rights, and in that their permanence, their inviolability, is subject to higher requirements. In modern democracies, the fundamental values of a state governed by the rule of law are vested in constitutional courts or their equivalent judicial bodies. If these bodies are to be recognised not only for the abstract control of constitutionality, but also for the a posteriori protection of rights and freedoms, they must ask where human rights and freedoms come from and what is the normative expression of this source. International human rights instruments, mainly in the form of treaties, have influenced, conditioned and determined the decisions of constitutional courts on human rights for decades. However, their approach to the use of international human rights instruments has not been uniform, as it has been subject to the internal mechanism of perception of international sources of law.

Thus, there are three main ways to apply the above approach. 1) recognition of international human rights instruments as sub-standard catalogues that can be applied if domestic catalogues prove insufficient in terms of the degree of protection or protection of rights and freedoms. 2) balance between national and international catalogues, which can be replaced, moved and combined into a monistic system, which, although not hierarchical, does not have inherent contradictions. 3) the prior use of international documents that take precedence over national human rights catalogues due to the transfer of part of state sovereignty to an international body with its own legal system or because the national catalogue is in a lower hierarchy than the international document. It is important that the rights and freedoms studied are important, i.e. common to most international and national catalogues. While it would be interesting to look at specific human rights (usually of the third generation), not all member states can report at the same level or use a large collection of catalogues.