THE RESPECT FOR FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS DURING THE PANDEMIC

Popescu, Alina[1]

Abstract:

2020 was a challenge for the entire society, which is facing an unprecedented sanitary crisis. This affected all the sectors of social life, including the law-making process. All the states had to adapt their legislative framework to the new social realities, and legislative acts were adopted on a national level that would regulate this unprecedented situation and establish proper social conduct.

Against this background, the social reality, the sanitary crisis and the response of authorities resulted in legislative changes or in the adoption of new legal regulations that generated controversies not only in the legal environment, but in the entire society.

This study aims at analysing how the constitutional principles were observed within the procedures for adopting legislative acts and how were the citizens' fundamental rights and freedoms affected, since the restriction of such rights and freedoms must be an exception and it should not affect law itself.

Keywords: *fundamental rights and freedoms, state of emergency, constitutional principles*

JEL Classification: ***K10***

1. Introduction

In the first quarter of 2020, mankind had to face an unprecedented medical emergency. On January 30, 2020, the World Health Organization[2] decided to declare that the outbreak of the novel coronavirus in China, 2019, was a Public Health Emergency of International Concern[3]. Initially, the opinions of WHO specialists were divergent regarding the seriousness of the outbreak; thereafter, given the significant increase in the number of cases and the number of additional countries reporting confirmed cases, it was decided that it would be considered a PHEIC. (https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))

On March 11, 2020, WHO declared the COVID-19 outbreak a "pandemic", as 118,000 cases were reached, along with more than 4,000 deaths, in 110 countries, all across the world, except for Antarctica.

(https://edition.cnn.com/2020/03/11/health/coronavirus-pandemic-world-health-organization/index.html)

According to WHO, "a pandemic is the worldwide spread of a new disease".

(https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/)

The first decisions of the Technical and Scientific Support Task Force for the management of highly contagious diseases on the Romanian territory were issued at the beginning of March 2020, on a national scale[4]. Based on the attributions awarded by Government Emergency Ordinance no. 21/2004 (on the National Management System for Emergency Situations), the Task Force proposed that the National Committee for Emergency Situations should take some first action to manage the evolution of the spread of COVID-19

---

[1] Senior Lecturer, PhD ALINA V. POPESCU – "Constantin Brancoveanu" University of Pitesti, Faculty of Law, Administration and Communication Sciences - Pitesti, avpalina_16@yahoo.com

[2]The World Health Organization (WHO) was established on April 7, 1948 (a date celebrated as the World Health Day) and currently has 150 member states. The headquarters of the organization are in Geneva and its role is to promote health all across the world, to keep the world safe and to serve vulnerable persons. https://www.who.int/about/what-we-do, https://www.who.int/about/who-we-are

[3] Public Health Emergency of International Concern (PHEIC).

[4] Hereinafter referred to as the "Support Task Force".

infections all across Romania. By means of Decision no. 8/09.03.2020 of the Support Task Force, the first measure to be proposed was "to declare a state of alert".

As of that date, the text of G.E.O. no. 21/2004 defined the state of alert as follows: "state of alert – to be declared based on this emergency ordinance, referring to the immediate enforcement of plans of action and measures to prevent and warn the population, to remove and do away with the consequences of the emergency situation;"

It can be appreciated that, in practice, this definition failed to include all the elements required for an efficient management of the situation, which resulted in an avalanche of legislative changes, that attempted at ensuring an alignment of the legislative acts to the social situation.

Furthermore, seeing the succession of the issued legislative acts, we can notice that, from a legal point of view, Romania was not ready to face such a medical emergency.

The Order of the Minister of Health no. 414/2020 on the establishment of quarantine for persons in an international public health emergency determined by the infection with COVID-19 and the establishment of measures to prevent and limit the effects of the outbreak was published in the Official Gazette of Romania on March 12, 2020. The Order was subsequently amended, but it is relevant when it was adopted, since this was the first legal act establishing certain restrictions of fundamental rights and freedoms.

Until the deep analysis of these legislative acts in the Romanian legal area, adopted and repeatedly amended in the last months, we should stipulate the benchmarks lying at the basis of this study.

On December 10, 1948, the United Nations General Assembly adopted and proclaimed the *Universal Declaration of Human Rights (UDHR)*. Art. 29 point 2 of the UDHR stipulates that "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

Art. 52 of the *Charter of Fundamental Rights of the European Union* – Scope and interpretation of rights and principles mentions that: "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others."

Article 53 of the Romanian Constitution - The restricted exercise of certain rights or freedoms, also stipulates that: "The exercise of rights and freedoms can only be restricted according to the law and only if required, as the case may be, in order to: protect national security, order, health or public morals, the citizens' rights and freedoms; perform criminal instruction; prevent the consequences of a natural disaster, of an act of God or of a highly serious event. The restriction can only be decided if required in a democratic society. The measure should be directly proportional to the situation generating it, it should be enforced without discrimination and without affecting the existence of the right or the freedom."

The analysis of these legislative provisions shows that, irrespective of the actual situation, measures to restrict fundamental rights and freedoms can only be adopted based on a law, and the notion of law must be interpreted in a strict sense, i.e. As a legislative act issued by the Parliament – "the supreme representative body of the Romanian people and the only law-making authority of the country" (art. 61 par. 1 of the Romanian Constitution).

As shown, the medical situation on an international level was becoming more and more concerning, and a decision was made to establish the state of emergency all across the country. According to the constitutional provisions (art. 93), the President of Romania established the state of emergency all across the country and asked that the Parliament should

approve the adopted measure. To this purpose, the Decree no. 195 of March 16, 2020 was issued regarding the establishment of the state of emergency all across Romania, and the Decision of the Romanian Parliament no. 3/2020 approved the state of emergency all across Romania, for 30 days, starting March 16, 2020, as an exceptional measure adopted by the President of Romania, Mr Klaus-Werner Iohannis, by means of Decree no. 195/2020.

Based on art. 1 of the Decree of the President of Romania no. 240/2020, starting April 15, 2020, the state of emergency was extended by 30 days all across Romania, as established by means of Decree no. 195/2020. By means of its Decision of April 16, 2020, the Romanian Parliament approved the extension of the state of emergency all across Romania for 30 days, as established by the President of Romania by means of Decree no. 240/2020 on the extension of the state of emergency all across Romania. Now, the Decision of the Parliament explicitly stipulates that: "For the duration of the state of emergency, the restriction of rights or freedoms shall only be imposed by means of legislative acts with the force of law". Furthermore, the restricted exercise of rights or freedoms "must be exclusively determined by the prevention and combating of the COVID-19 outbreak, thoroughly motivated and in strict compliance with the requirements of art. 53 par. (2) of the Romanian Constitution, as republished" and "the duration of the restricted exercise of rights and freedoms cannot exceed the duration of the state of emergency" (art. 2 of the Decision).

At the same time, the Parliament decided that: "Amending, supplementing or repealing, as the case may be, provisions stipulated in legislative acts with the force of law, motivated by the prevention and combating of the COVID-19 outbreak, shall only be decided by means of legislative acts with the force of law".

We can see that the lawmaker focused on the compliance with the balance and proportionality of the measures to restrict the exercise of rights and freedoms, as well as the explicit mention that the restriction shall only take place by means of *legislative acts with the force of law.*

2. Analysis of the Solutions Pronounced by the Constitutional Court Regarding the Legislation Adopted During the Pandemic

As shown, the Constitution provides the President with the prerogative of establishing the state of emergency, by means of decrees subsequently subjected to Parliament control. The Constitution does not provide for any means to censor the presidential decree for establishing the emergency state; the only way to correct the content of the latter is the Parliament's Decision for approval.

Both Decree no. 195/2020 and Decree no. 240/2020 include provisions that are genuine restrictions of rights and freedoms. The Constitutional Court held that "the Presidential Decree is nothing but a legislative administrative act, hence a secondary regulatory act, which enforces a primary regulatory act" (https://www.ccr.ro/comunicat-de-presa-6-mai-2020/); hence, the exercise of rights and freedoms shall not be restricted by means of a Presidential Decree, during the state of emergency, but by means of an organic law (based on the provisions of art. 75 par. 3g of the Romanian Constitution). The fact that the two decrees were approved by means of Parliament Decisions does not cover the major flaw of not having adopted a legislative act with the force of law.

Moreover, in order to enforce the two presidential decrees, the Romanian Government issued emergency ordinances that also imposed the restriction of rights or freedoms. The Romanian Constitution concretely establishes the boundaries of legislative delegation, art. 115 par. (6), explicitly stipulating that emergency ordinances cannot be adopted: "in the field of constitutional laws, and they cannot affect the status of the fundamental institutions of the states, the rights, freedoms and duties set out in the Constitution, electoral laws, and cannot refer to measures for the forced transfer of goods to public property".

Based on the competences awarded by art. 146d of the Constitution, the People's Advocate notified the Constitutional Court with exceptions of non-constitutionality regarding several legislative acts issued by the Romanian Government. Furthermore, Parliament members and the Romanian Government filed notifications regarding the non-constitutionality of some legislative acts. We shall analyse some of these exceptions and how they were settled.

I. The Decision of the Constitutional Court no. 150 of March 12, 2020 regarding the exception of non-constitutionality of the provisions of the Government Emergency Ordinance no. 26/2020 on the amendment and supplementation of legislative acts for elections for the Senate and the Chamber of Deputies, as well as measures for the proper organization and development of anticipated parliament elections, published in: the Official Gazette issue 215 of March 17, 2020.

Although the Government Emergency Ordinance no. 26/2020 was adopted prior to the sanitary crisis, the decision pronounced by the Constitutional Court (which admitted the notice and decided that the emergency ordinance as a whole was non-constitutional) is of interest regarding the criticisms of non-constitutionality, which were invoked subsequently, as a foundation for the analysis of other exceptions of non-constitutionality.

Thus, the Court held that "the constitutional norm establishes genuine limitations of the competence assigned to the Government". The Court referred to its case law, by means of which it established that "it can be deduced that the prohibition to adopt emergency ordinances is total and unconditional when it mentions that 'they cannot be adopted within the scope of constitutional laws' and 'cannot refer to measures for the forced transfer of goods to public property'. In the other fields stipulated by the text, the emergency ordinances cannot be adopted if they 'affect', if they have negative consequences, but, instead, they can be adopted if, due to the regulations they include, they have positive consequences in the relevant fields". In the following the Court showed that "the verb 'affect' can be subject to various interpretations, as shown by some dictionaries. From the Court's viewpoint, they shall only hold the legal meaning of the concept, from various points of view, such as: 'to suppress', 'to harm', 'to damage', 'to prejudice', 'to entail negative consequences'".

The Court held that any harm to electoral rights by means of the applicable legal provisions affects the electoral procedure and the outcome of elections and found that the legislative act of the delegated lawmaker affects the citizens' electoral rights and the Parliament's constitutional system.

Consequently, the Court decided that G.E.O. 26/2020 as a whole was non-constitutional.

II. *The Decision of the Constitutional Court no. 152 of May 6, 2020* regarding the exception of non-constitutionality of the provisions of art. 9, art. 14 c^1)-f) and art. 28 of Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency and of the emergency ordinance as a whole, as well as of the Government Emergency Ordinance no. 34/2020 on the amendment and supplementation of the Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency, as a whole, published in: the Official Gazette issue 387 of May 13, 2020.

The People's Advocate notified the Constitutional Court regarding the exception of non-constitutionality of the above-mentioned provisions and filed criticisms regarding extrinsic non-constitutionality and intrinsic non-constitutionality.

Analysing the filed criticisms, the Court held that "starting from the assumptions set out in Decision no. 150 of March 12, 2020", "regarding this legislative act (G.E.O. no. 1/1999 – our note), its very assumption of incidence – crisis situations requiring exceptional measures to be established in cases generated by the appearance of serious dangers regarding the defence of the country and national security, of constitutional democracy or to prevent,

restrict or do away with the consequences of disasters – aims at restricting the exercise of rights or fundamental freedoms. The purpose of the legislative act is to create the legal framework of the exceptional measures required by the management of the crisis situation, which, by themselves, affect rights and freedoms of the citizens. In other words, the very reason of law is to establish the legal basis for the restricted exercise of fundamental rights or freedoms, in agreement with the constitutional prerequisite set out in art. 53 par. 1. Regulating on the legal status of the state of siege and the state of emergency, the Government Emergency Ordinance no. 1/1999 is the primary regulatory act deciding on the restricted exercise of fundamental rights or freedoms, based on which the public authorities with competences to manage the crisis situation (the President of Romania, the Romanian Parliament, the Ministry of Administration and Internal Affairs, military authorities and public authorities, as set out in the decree establishing the state of siege or emergency) issue administrative acts of a legislative nature (the President's decree to establish the state of siege or emergency, military ordinances and orders of other public authorities) enforcing the primary rule, identifying, depending on the specificities of the crisis situation, the fundamental rights and freedoms whose exercise is to be restricted".

"As for the Government Emergency Ordinance no. 34/2020 on the amendment and supplementation of Government Emergency Ordinance no. 1/1999, the Court holds that it was adopted with the infringement of art. 115 par. 6 of the Constitution" and considers it is obvious that: "deciding that the legal guidelines regarding decision-making transparency and social dialogue are unenforceable, actually suspending them during the state of emergency or state of siege, affects the fundamental rights for whose consideration these laws were adopted, as well as the status of a fundamental institution of the state, so that the emergency ordinance resulting in such suspension is contrary to the prohibition set out in art. 115 par. 6 of the Constitution".

Furthermore, the Court held that art. 28 par. 1 of the Government Emergency Ordinance no. 1/1999 is "confused, unclear and unpredictable" (recital 126). At the same time, the Court held that "the determination of facts whose performance is an offence is arbitrarily left at the discretion of the determiner, as the lawmaker has not set out the required criteria and conditions for establishing and sanctioning offences. Furthermore, in the absence of a clear representation of the elements of the offence, the judge himself does not have the required benchmarks to enforce and interpret the law, so as to settle the complaint against the protocol determining and sanctioning the offence." (recital 130)

Thus, the Court admitted some exceptions of non-constitutionality and found that "the provisions of art. 28 of Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency and of the emergency ordinance are non-constitutional" and that "the Government Emergency Ordinance no. 34/2020 on the amendment and supplementation of the Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency is non-constitutional as a whole".

III. *The Decision of the Constitutional Court no. 157 of May 13, 2020* regarding the exception of non-constitutionality for the provisions of art. 2 f) and art. 4 of the Government Emergency Ordinance no. 21/2004 on the National System for the Management of Emergency Situations, published in: the Official Gazette issue 397 of May 15, 2020.

"The People's Advocate files criticisms of non-constitutionality regarding the provisions of Government Emergency Ordinance no. 21/2004 in relation to art. 1 par. (4) and (5), art. 53 and art. 61 par. (1) of the Constitution, as they allow to establish measures for the restricted exercise of fundamental rights by means of administrative acts (regulations, plans, programmes or operative documents approved by decisions or orders), issued by primarily administrative bodies (the National Committee for Emergency Situations, county committees for emergency situations). They show that the legislative act regulates the National System for

the Management of Emergency Situations, more accurately the establishment of structures with attributions in terms of managing emergency situations, i.e. to coordinate, plan and support decisions. Moreover, the delegated lawmaker regulates the state of alert. This new 'state' is established when there is an emergency situation and it implies taking actions."

"Starting from the assumptions set out in Decision no. 150 of March 12, 2020 and taking act of the regulatory purpose of Government Emergency Ordinance no. 21/2004, the Court holds that this legislative act regulates, in terms of managing the prevention and management of emergency situations, a partially coherent institutional system, which becomes active as emergency situations arise and which operates on a temporary basis, for their duration. The purpose of the legislative act is to create the legal framework of the exceptional measures required by the management of the emergency situation, with a view to quickly restoring the state of normality. Regulating on the legal status of the state of alert, the Government Emergency Ordinance no. 21/2004 is the primary regulatory act deciding on the actions and measures required to manage emergency situations, based on which the entities with competences in the management of emergency situations issue administrative acts of a normative or individual nature enforcing the primary rule" (recital 78)

Since art. 4 of G.E.O. no. 21/2004 stipulated, on that date, that "a decision to evict from the affected or partially affected area" may be made (par. 1 c) and that "the decision to declare the state of alert includes (...) the obligations of citizens and business operators regarding participation in activities to the benefit of local communities" (par. 5 d), the main criticisms referred to the fact that such provisions may affect the inviolability of the residence or of the ownership right (par. 1 c), respectively of the right to work (par. 5 d).

In this situation, the Court decided to "admit the non-constitutionality exception (...) and finds that the provisions of art. 4 of the Government Emergency Ordinance no. 21/2004 on the National System for the Management of Emergency Situations are constitutional provided that the actions and measures decided during the state of alert do not aim at restricting the exercise of fundamental rights or freedoms".

After the Decision of the Court, G.E.O. no. 68/2020 was adopted on the amendment and supplementation of normative acts with an incidence on the management of emergency situations and civil protection, whereby par. 5 of art. 4 of G.E.O. no. 21/2004 was repealed.

IV. *The Decision of the Constitutional Court no. 457 of June 25, 2020* regarding the exception of non-constitutionality of the provisions of art. 4 par. (3) and (4), as well as art. 65 s) and ș), art. 66 a), b) and c) regarding the references to art. 65 s), ș) and t) and art. 67 par. 2 b) regarding the references to art. 65 s), ș) and t) of Law no. 55/2020 on certain measures for preventing and combating the effects of the COVID-19 pandemic, published in: the Official Gazette issue 578 of July 1, 2020.

The People's Advocate notified the Constitutional Court regarding the exception of non-constitutionality of the provisions of art. 4 par. (3) and (4) of Law no. 55/2020, which they claim to infringe the principle of separation of powers, the constitutional status of Government decisions, the constitutional guidelines setting out the relation between the Parliament and the Government, those regarding the judicial control of the administrative acts of public authorities by means of administrative disputes and, by this, the free access to justice of the persons whose rights were affected, by means of Government decisions.

The lawmaker stipulated (our note: in the criticized article) that the measure established through Government decision has to be subjected to Parliament approval, and the latter can approve of it in full or with changes, which implies the Parliament's intervention on the Government's decision to establish the state of alert. (recital 45)

The institution of the state of alert is an exclusive creation of the lawmaker; therefore, in the absence of a derogatory constitutional status for the Government's decisions establishing the state of alert, such a status cannot be awarded as an exception, by means of infra-

constitutional acts (our note: parliament control). Therefore, the Government's decision establishing the state of alert can be only a legislative administrative act, hence a secondary regulatory act enforcing a primary regulatory act. (recitals 48 and 49) By approving/amending the measures adopted through Government decisions, the Parliament cumulates the legislative and executive functions, which is incompatible with the principle of the separation and balance of powers in a state, as set out in art. 1 par. 4 of the Constitution. (recital 50)

The Court found that the regulation regarding the Parliament's "'approval' or 'change' of the measures adopted by the Parliament by means of the decision lacks any constitutional basis and distorts the legal status of Government decisions, as acts enforcing the law".

Furthermore, the Court held that "a Government decision amended and supplemented by a decision of the Parliament, (our note: is) a hybrid act with no constitutional basis, only created by means of a confusion of attributions regarding the Parliament and the Government and by ignoring the principles governing the relations between these public authorities, with an uncertain legal status in terms of the provisions of art. 126 par. (6) of the Constitution".

Therefore, the Court held that the provisions of art. 4 par. 3 and 4 of Law no. 55/2020 are non-constitutional.

Furthermore, the People's Advocate notified the Constitutional Court on the exception of non-constitutionality of the provisions of art. 65 s) and ș), of art. 66 a), b) and c) and art. 67 par. (2) b) of Law no. 55/2020, which they claim are unclear, imprecise and unpredictable, going against constitutional provisions.

A serious negligence of the lawmaker is seen here, since the text of the law refers to art. 5 par. 4, which does not exist, as art. 5 only has three paragraphs. At the same time, since art. 65 has no letter t), the provisions of art. 66 c) and art. 67 par. (2) b), referring to the non-existing letter t) of art. 65 are practically devoid of scope, which is classified by the Court as an imprecision of the lawmaker. (recital 63) At the same time, the Court establishes the non-constitutionality of the criticized articles since they fail to meet all the requirements regarding the quality of the guideline: accessibility, clarity, precision and predictability.

V. *The Decision of the Constitutional Court no. 240 of June 3, 2020* regarding the objection of non-constitutionality of the Law approving the Government Emergency Ordinance no. 44/2020 on the extension of the mandates of local public administration authorities for 2016-2020, certain measures for the organization of local elections in 2020, as well as amending the Government Emergency Ordinance no. 57/2019 on the Administrative Code and the Government Emergency Ordinance no. 44/2020, published in: the Official Gazette issue 504 of June 12, 2020.

The objection of non-constitutionality was filed by 73 deputies and by the Romanian Government, who assessed that the draft law approving the Government Emergency Ordinance no. 44/2020 was adopted infringing the bi-chamber principle and that the legislative solution is opposed to the purpose envisaged by the delegated lawmaker as the emergency ordinance was adopted.

Analysing whether the mandates of local public administration authorities can be extended by means of an emergency ordinance by the delegated lawmaker, the Court found that "since a legislative action to extend the mandates of local public administration authorities is required, the Parliament, exercising national sovereignty as a supreme representative body of the Romanian people and as the only law-making authority of the country, is the sole public authority able to establish whether a derogation is required from the natural legislative framework to ensure elections are held on a regular basis, resulting in the extension of local election mandates, the conditions for such derogation and its content". At the same time, the Court held that "the Government only maintains its purely administrative competences, i.e. to organise the enforcement of laws and does not have the functional competence to extend the normal duration of the mandates of local elected officers and,

hence, to derogate from the existing legislative framework. The Government could, instead, initiate a draft law to this purpose, that would be subjected to Parliament approval.

Therefore, since the scope of reference could not be regulated by means of an emergency ordinance, as it affects the right to vote and the right to be elected, the Parliament should have adopted a law to reject G.E.O. no. 44/2020.

The Court decided that both the Law to approve G.E.O. no. 44/2020 and G.E.O. no. 44/2020 as a whole are non-constitutional.

3. Conclusions

We can conclude that no public authority was prepared for the actual enforcement of a situation of an unprecedented seriousness, that legislative acts were adopted exceeding the prerogatives of the issuer, as well as acts infringing fundamental principles of the Constitution, such as the principle of separation of powers or the principle of judicial control.

Furthermore, the legal actions taken in such special situations were subjected to the analysis of law theoreticians and practitioners (https://www.conseil-constitutionnel.fr/node/1989/pdf, http://www.droit-union-europeenne.be/427772766, file:///C:/Users/home/Downloads/red-les-droits-humains-a-lepreuve-du-covid-19.pdf, https://www.asfcanada.ca/medias/nouvelles/asfcanada-declaration-covid19-droits-humains-crise/, https://www.maxicours.com/se/cours/l-usage-des-libertes-et-les-exigences-sociales/, https://www.defenseurdesdroits.fr/fr/covid-19-et-urgence-sanitaire-le-role-du-defenseur-des-droits), as well as international organizations focused on protecting human rights and fundamental freedoms during the sanitary crisis.

With the opportunity of the Third Committee (October 14, 2020), the United Nations High Commissioner for Human Rights (https://www.un.org/press/en/2020/gashc4294.doc.htm) assessed that "the COVID-19 pandemic has also caused 'profound, multi-faceted blows' to fundamental freedoms worldwide". Michelle Bachelet outlined the "profound, multi-faceted blows" faced by fundamental freedoms all across the world and emphasized the importance of freedom of expression and the media, as well as the fact that "human rights-based policy is profoundly useful", since restrictions were required regarding political and civil rights, as a consequence of the sanitary crisis.

In an interim report, the Venice Commission [1] (https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)018-e#) analysed the measures taken in the EU member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights and concluded that the member states were acting within the boundaries of legal provisions when restricting certain rights or freedoms.

The previous report, (https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)003-e#) analysed the restricted exercise of fundamental rights, assessing that "experience has shown that the gravest violations of human rights tend to occur in the context of states of emergency". However, the report considers that international documents on human rights contain a derogation clause with regard to emergencies. Thus, for instance, the European Convention of Human Rights and Fundamental Freedoms (ECHR) stipulates, under art. 15 – Derogation in time of emergency, that: "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law." (https://www.echr.coe.int/documents/convention_eng.pdf)

On a national level, despite all the protests laid out in the public area (against fundamental public institutions – the Constitutional Court, the People's Advocate...)

[1] European Commission for Democracy through Law (Venice Commission)

(https://stirileprotv.ro/stiri/actualitate/raed-arafat-zavocatul-poporului-o-sa-intre-in-istoria-pandemiilor.html), it seems that the institutions with attributions to manage the state as a whole and the pandemic in particular have finally understood by means of which democratic mechanisms could the exercise of certain fundamental rights or freedoms be restricted.

The final conclusion can only be that any restriction of the exercise of fundamental rights or freedoms can only take place by means of a law, as a formal act of the Parliament and that, in any state claiming to be democratic, legislative acts should be subjected to independent control, so as to guarantee their legality and avoid any abuse in the context of emergency situations.

BIBLIOGRAPHY:

1. **Gervier, Pauline** – "*La limitation des droits fondamentaux constitutionnels par l'ordre public*", https://www.conseil-constitutionnel.fr/node/1989/pdf

2. **Jacqué, Jean Paul –** "*Les limitations aux droits fondamentaux dans la Charte des droits fondamentaux de l'Union européenne*", http://www.droit-union-europeenne.be/427772766.

3. **Riese, Kai-Uwe** – "*Les limitations à l'exercice des droits fondamentaux dans la pratique constitutionnelle allemande",*

4. http://www.concourt.am/armenian/almanakh/almanac2003/papers/24.doc

5. **Spadaro, Alessandra** – "*Les droits humains à l'épreuve du Covid-19*", în Le Grand Continent, June 29, 2020, file:///C:/Users/home/Downloads/red-les-droits-humains-a-lepreuve-du-covid-19.pdf

6. https://www.senat.fr/lc/lc264/lc264.pdf

7. Direction de l'Initiative Parlementaire et des Délégations – "*Législation comparée – Le régime de l'état d'urgence: Allemagne – Belgique – Espagne – Italie – Portugal – Royaume-Uni*", cette note a été réalisée à la demande de M. Philippe BAS, Sénateur de la Manche, Mars 2016, https://www.senat.fr/lc/lc264/lc264.pdf

8. La Commission des droits de la personne et des droits de la jeunesse - *"Charte des droits et libertés de la personne simplifiée"* - http://www.cdpdj.qc.ca/Publications/Charte_simplifiee.pdf

9. European Commission for Democracy through Law (Venice Commission) – "INTERIM REPORT ON THE MEASURES TAKEN IN THE EU MEMBER STATES AS A RESULT OF THE COVID-19 CRISIS AND THEIR IMPACT ON DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS", adopted by the Venice Commission

10. at its 124th online Plenary Session (8-9 October 2020), https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)018-e#

11. European Commission for Democracy through Law (Venice Commission) – *"Compilation of Venice Commission Opinions and Reports on States of Emergency*", Strasbourg, April 9, 2020, https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)003-e

12. European Convention on Human Rights – https://www.echr.coe.int/documents/convention_eng.pdf

13. Charter of Fundamental Rights of the European Union (2010/C 83/02), published in Official Journal of the European Union C 83/389 of 30.3.2010

14. The Decision of the Constitutional Court no. 150 of March 12, 2020 regarding the exception of non-constitutionality of the provisions of the Government Emergency Ordinance no. 26/2020 on the amendment and supplementation of legislative acts for elections for the Senate and the Chamber of Deputies, as well as measures for the proper organization and development of anticipated parliament elections, published in: the Official Gazette issue 215 of March 17, 2020

15. The Decision of the Constitutional Court no. 152 of May 6, 2020 regarding the exception of non-constitutionality of the provisions of art. 9, art. 14 c^1)-f) and art. 28 of Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency and of the emergency ordinance as a whole, as well as of the Government Emergency Ordinance no. 34/2020 on the amendment and supplementation of the Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency, as a whole, published in: the Official Gazette issue 387 of May 13, 2020

16. The Decision of the Constitutional Court no. 157 of May 13, 2020 regarding the exception of non-constitutionality for the provisions of art. 2 f) and art. 4 of the Government Emergency Ordinance no. 21/2004 on the National System for the Management of Emergency Situations, published in: the Official Gazette issue 397 of May 15, 2020

17. The Decision of the Constitutional Court no. 240 of June 3, 2020 regarding the objection of non-constitutionality of the Law approving the Government Emergency Ordinance no. 44/2020 on the extension of the mandates of local public administration authorities for 2016-2020, certain measures for the organization of local elections in 2020, as well as amending the Government Emergency Ordinance no. 57/2019 on the Administrative Code and the Government Emergency Ordinance no. 44/2020, published in: the Official Gazette issue 504 of June 12, 2020.

18. The Decision of the Constitutional Court no. 457 of June 25, 2020 regarding the exception of non-constitutionality of the provisions of art. 4 par. (3) and (4), as well as art. 65 s) and ș), art. 66 a), b) and c) regarding the references to art. 65 s), ș) and t) and art. 67 par. 2 b) regarding the references to art. 65 s), ș) and t) of Law no. 55/2020 on certain measures for preventing and combating the effects of the COVID-19 pandemic, published in: the Official Gazette issue 578 of July 1, 2020

19. Law no. 55 of May 15, 2020 on some measures for preventing and combating the effects of the COVID-19 pandemic, published in the Official Gazette of Romania, Part I, issue 396 of May 15, 2020

20. Emergency Ordinance no. 1 of January 21, 1999 on the state of siege and the state of emergency, published in the Official Gazette of Romania, Part I, issue 22 of January 21, 1999

21. Government Emergency Ordinance no. 21/2004 on the National System for the Management of Emergency Situations, published in: the Official Gazette issue 397 of May 15, 2020

22. Emergency Ordinance no. 34 of March 26, 2020 amending and supplementing the Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency, published in: the Official Gazette issue 268 of March 31, 2020

23. Emergency Ordinance no. 44 of April 6, 2020 on the extension of the mandates of local public administration authorities for 2016-2020, certain measures for the organization of local elections in 2020, as well as amending the Government Emergency Ordinance no. 57/2019 on the Administrative Code

24. Emergency Ordinance no. 68/2020 amending and supplementing legislative acts with an incidence on the management of emergency situations and civil protection, published in: the Official Gazette issue 391 of May 14, 2020

25. PL-x no. 243/2020 – Draft Law approving the Government Emergency Ordinance no. 44/2020 on the extension of the mandates of local public administration authorities for 2016-2020, certain measures for the organization of local elections in 2020, as well as amending the Government Emergency Ordinance no. 57/2019 on the Administrative Code, http://www.cdep.ro/pls/proiecte/docs/2020/pr243_20.pdf

26. https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)

27. https://www.un.org/press/en/2020/gashc4294.doc.htm
28. https://www.echr.coe.int/Documents/Pub_coe_Teaching_resources_FRA.pdf
29. https://theconversation.com/la-sauvegarde-des-libertes-en-temps-de-guerre-contre-le-coronavirus-134913
30. https://www.asfcanada.ca/medias/nouvelles/asfcanada-declaration-covid19-droits-humains-crise/
31. https://www.lelivrescolaire.fr/page/7089793
32. https://www.maxicours.com/se/cours/l-usage-des-libertes-et-les-exigences-sociales/
33. https://www.defenseurdesdroits.fr/fr/covid-19-et-urgence-sanitaire-le-role-du-defenseur-des-droits
34. https://www.lemonde.fr/idees/article/2020/03/20/les-libertes-publiques-a-l-epreuve-du-covid-19_6033764_3232.html
35. https://stirileprotv.ro/stiri/actualitate/raed-arafat-zavocatul-poporului-o-sa-intre-in-istoria-pandemiilor.html
36. https://www.ccr.ro/comunicat-de-presa-6-mai-2020/
37. https://www.ccr.ro/comunicat-de-presa-13-mai-2020/
38. https://www.ccr.ro/comunicat-de-presa-3-iunie-2020/
39. https://www.ccr.ro/wp-content/uploads/2020/06/Comunicat-de-presa-25-iunie-2020.pdf