

Romania: COVID-19 Response in an Electoral Year

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Overview of Legal and Political Response and Adaptation to COVID-19

The year 2020 was a difficult one for Romania, as for the whole world, because of the Covid-19 crisis which overlapped with other local crises of political, legal and social natures. The country's response to the Covid-19 challenges was rendered even more difficult and incoherent by these crises. In February-March 2020, the government and the President were looking for a solution in order to initiate the procedure for early elections and at the very first moments of the pandemic the country had an interim government after a motion of censure had passed. Therefore, the first response to the sanitary crisis was given in an atmosphere of confusion and political uncertainty, on a background marked by the lack of elementary materials and knowledge about the extent and actual danger of the pandemic.

The first major decision taken after the declaration of the pandemic was the institution of the state of emergency by presidential decree (analysed [here](#)). The state of emergency is one of the exceptional states provided by the Constitution (alongside the state of war and the state of siege) and is decided by the President of Romania and then submitted to the approval of Parliament. The decree on the state of emergency provides the measures that are permitted by the framework law (Emergency Government Ordinance no. 1/1999 approved by a law in 2005) on the matter, according to the circumstances. In this case, the measures were either directly applicable or taken by "military ordinances" issued by the Minister of Internal Affairs with the approval of the Prime-Minister and included the closing of all education institutions, of certain businesses, economic and social measures to support companies and individuals affected by the restrictions, the obligation of quarantining all persons coming from risk zones, the institution of local quarantine in certain areas etc. During the state of emergency, the Parliament was not suspended. Certain measures regarding the forthcoming elections were taken – i.e. the postponement of local elections that were due to take place in June. The state of emergency lasted for two months: 16 March-15 May 2020.

The stricter measures taken under the state of emergency were replaced by a less strict "state of alert", which was the object of constitutional, legal and political controversies (see [here](#)). The outcome of these controversies was the adoption by the Parliament of a new law on the state of alert (Law no. 55/2020) which replaced the old regulation that had been declared partially unconstitutional by the Constitutional Court. The new law was adopted one day before the end of the state of emergency, but entered into force a few days later, which means that at the

beginning, the state of alert was covered by the old regulations with less strict rules in this transition period. Since 18 May 2020, the day of entering into force of the new law, the state of alert was declared and further extended until the present day.

However, the state of alert was a framework in which measures were taken and applied with a variable geometry: after a “relaxation” period during the summer, the central authorities were not willing to be directly involved in imposing restrictions, for electoral reasons: local elections were set to take place on 27 September and general elections on 6 December. Therefore, most of the burden of deciding restrictions was placed on local authorities, which generated a weak, insufficient response and, therefore, the aggravation of the epidemiological situation.

Overall, the measures taken from March to December 2020 gradually decreased in strictness, from the national state of emergency with a wide and rather coordinate scope to the national state of alert with national measures and, finally, to national state of alert with rather uncoordinated local measures.

The Executive and Use of Powers in Response to Emergency

In the first part of the crisis (March-May), the response measures were taken in the framework of the state of emergency, provided by the Constitution and by a law, and decided by the executive (President, Government) with the approval of Parliament. Following certain unconstitutionality claims and the decisions of the Constitutional Court, it was made clear that the law on the state of emergency did not allow the President to exceed his constitutional powers in taking restrictive measures by decree.

In the second part of the crisis, the framework exceptional state – state of alert – was provided by a law and the response measures were taken by subsequent acts of the Government, Ministries and local authorities: successive extensions of the state of alert, local quarantine, measures regarding the reopening of schools, measures regarding the reopening or closing of businesses. Most of the businesses remained open, except for the restaurants, bars, clubs a.s.o., which were closed or opened only to a certain extent, depending on the local infection rate. The decisions taken in this respect by the local authorities led in many cases to the decrease of the infection rate. However, measures on national level have also been decided: on 26 October, due to the high infection rate at national level, the Government decided to close all schools and universities for an undetermined period.

The Effectiveness of Judicial and Legislative Scrutiny and Oversight

From the outset, the judicial and legislative scrutiny was exercised on the measures taken by the executive.

As regards the legislative review, it was exercised in two ways: First, by the Parliament called to approve the state of emergency decree of the President (twice, in March and April 2020); and second, by Parliament reviewing and adopting new legislation on the state of alert.

As regards the judicial review, one of the most active institutions was the Constitutional Court, which has been addressed several times by the Ombudsman but also by other constitutional actors. The first decisions are mentioned [here](#). One of the most controversial decisions that followed the state of emergency was Decision no. 458/2020 (25 June 2020) in which the Court declared unconstitutional certain dispositions on the institution of quarantine and on the obligation to hospitalize the Covid-19 patients. More specifically, the fact that these measures could be decided by order of the minister of health was considered unconstitutional, as, according to Article 53 of the Constitution, restrictions of rights can only be decided “by law”. However, as judge Elena-Simina T#n#sescu pointed out in her [dissenting opinion](#), the said restrictions were expressly provided by the law and the order of the minister of health can only detail upon the specific transmissible diseases to which these measures can be applicable, therefore the impugned article could not be considered unconstitutional. Based on the decision of the Constitutional Court, many Covid-19 patients were released from hospitals and from quarantine, until the adoption of new legal provisions by the Parliament. This led to an [increase of the infection rate](#) during the following weeks.

The ordinary courts were also called to decide upon the lawfulness of certain restrictive measures. For example, the obligation to wear masks in all indoor and outdoor public spaces was challenged before the courts. In the first instance, in December 2020, the Court of Appeals admitted the claim and declared that this obligation was illegal, but on 5 January 2021, the High Court of Cassation and Justice ruled by final decision that the measure was lawful. Other pending cases regarded the measures of closing schools and restaurants, but their final outcome is not yet decided.

Local Response and Coordination

The local authorities have been especially and primarily involved in the decision-making on the restrictive measures since August 2020. Thus, the responsibility to decide the opening of schools was placed upon the local authorities rather than assuming a decision at national level. This approach was justified by the different epidemiological context of the various counties, but it was clearly driven by electoral reasons: the Government was preparing for the general elections in December and was not willing to assume the whole of unpopular restrictive measures. In this context, it is worth mentioning that, although there were no massive protests against the anti-Covid measures, a small part of the population was against them, especially against the [mandatory mask wearing](#), closing of schools and restaurants. A small part of the civil society and [some leaders of the Orthodox Church](#) were the main opponents to anti-Covid 19 measures: wearing of masks, prohibition of public gatherings and pilgrimages. However, the lack of testing capacity and the poor capacity of the medical system would have justified a more coordinate course of

action at the national level. After 6 weeks from the opening of schools, the infection rate was so high that harsher measures were inevitable and national authorities had to step in: closing of all schools, closing of restaurants, theatres and cinemas and other public indoor spaces, national curfew between 11 p.m. and 6 a.m. etc. At the local level, some major cities and metropolitan areas were quarantined in November and December, but the lack of coordination persisted (at similar infection rates, the quarantine was not imposed in other cities). No special measures for the winter holidays were envisaged.

Human Rights and Civil Liberties Considerations

Most of the measures that were imposed throughout the year were human rights restrictions. Most of them were justified by the legitimate aim of protecting public health and the rights of others. Among the most affected rights were: freedom of assembly, freedom of movement, economic freedom, freedom of religion, right of education. The right to vote was also seriously affected because of the absence of the possibility to vote by mail or electronically. Some of the rights restrictions were reviewed by the Constitutional Court (see [here](#)) but in some cases the Court seemed not to make the difference between restrictions of rights (which can be justified according to [Article 53 of the Constitution](#)) and violations of rights. Thus, the fact that a law (in the narrow sense, of act of Parliament) provided the general framework of such restrictions but the actual measures were taken by ministerial order was considered a violation of rights by the Constitutional Court (e.g. Decision 457/2020). The proportionality of the measures was sometimes called into question (e.g. the first legislation on quarantine, which was declared unconstitutional by the Constitutional Court including on grounds of lack of proportionality), but the few legal actions against the measures, although some have been admitted in first instance, were unsuccessful at the higher courts.

During the state of emergency, the Government notified the Secretary General of the Council of Europe that Romania applies the derogation in case of state of emergency clause of the European Convention on Human Rights.

2021 Outlook: Recommendations for Governance, Democracy, Human Rights, and the Rule of Law

The year 2021 brings new challenges to the response to the Covid-19 crisis. Far from being over, the crisis develops new dimensions worldwide: the growth of the number of cases, the public discontent towards more restrictive measures, the difficulties of the vaccination process. In Romania, these challenges are already present. The vaccination campaign commenced in the last week of December 2020 and is three-tiered: first comes medical staff and other health employees (pharmacists, psychologists etc.), second the population at risk and employees of essential fields (education, police etc.) and third, the general population. However, a stronger coordination and a better information campaign of the public would be necessary, especially as regards the personal data concerns and the scientific

information on the vaccine. Fake news and anti-restrictions propaganda, which has been particularly active during 2020, are also a challenge that has to be overcome in this context.

Because of the increase of the number of cases globally, new restrictions are conceivable in the first months of 2021, including of the freedom of movement and on the hospitality sector. It remains to be seen how these measures will be lifted insofar as the vaccination will reach its goals throughout the year.

Concerning the recommendations for the authorities regarding democracy, human rights and rule of law, I would plead for a better coordination at the European level regarding especially the freedom of movement and a better explanation of the reasons leading to certain measures (e.g. closing of schools). A stronger response to fake news should also be necessary, through information campaigns organised by the authorities.

