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SOCIETY AND LAW DURING THE SARS-CoV-2 HEALTH CRISIS – LEGAL THINKING ISSUES AND NORMATIVE SYNTHESES

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Abstract: In this paper, we aim to observe, from a bird's eye view, the meaning for which law dictates behaviors molded on values naturally hierarchized. The right to life is the absolute value that maintains its central position in any axiological hierarchy. Of course, we refer to the typology of societies connected to democratic and liberal values (more or less accentuated). We propose an approach with philosophical accents while traveling through the sphere of international regulations that protect rights and freedoms. All these will be related to the SARS-CoV-2 pandemic context. We will pay attention to the Romanian political praxis and constitutional justice during the health crisis. Finally, we will explore some legal and social thinking landmarks about what it means to approach a health crisis when it comes to understand and value freedom within the human existence coordinated by law.

Keywords: the right to life; right to health; restrictions on rights; freedom limits; emergency law.

1. Living separately in one community

Legal relationships create and keep societies in order. Societies are organized socially natural by prioritizing the values that underlie their birth and existence. If there is no hierarchy of values, all rights would be equal in content, scope and possibilities, and if they are as such constructed, they would remain only abstract, impracticable and, ultimately, even become disruptive factors in the process of rationalization of social order through law. That is why rights are not all absolute. In other words, most rights and freedoms are not absolute, but all of them are based on a correlative obligation among individuals engaged in a rationalized social life through rules enforced further by law.

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The purpose of the law is to have and maintain mutual limits, so as not to invade the freedom of other individuals by practicing our own. In this relation, the society remains the whole that must be preserved, because if it disappears, the rights no longer exist. Specifically, a society is the collective right for existence, and its members, in their particularity and based on their individual and common interests, enjoy mutually socially and legally validated and limited rights. There is, therefore, a higher obligation in the human conscience that counterbalances selfish expectations.

Sometimes, the law can and must dictate actions/ inactions. The provided behavior must be related to preexisting social and other legal rules (not necessarily in the sense of positive or normative law) or principles. The implied reciprocity of actions/inactions between individuals highlights, as a prequel for social order, the existence of a binding right of the state to intervene as a basic resort for the society's coherence and its preservation by absolutizing, e.g., the right to life through the prism of responsible conduct not only individually but also collectively. A common interest can be satisfied only by joint contributions, and when facing common danger, collective defensive joints are needed, otherwise, the social chain is interrupted and falls. Collective responsibility is fundamental for the survival of society, as was tested and proved in the pandemic context generated by SARS-CoV-2.

Any legal relationship involves a horizontal or vertical confrontation of values, as (at least) two interests are confronted, and they do not always prove to be legitimate. At the same time, legal relationships involve obligations and, consequently, interests are most often in a ratio of subordination and dependence, as one cannot be objectified without the success or annulment of the other. Specifically, I cannot act without having the right and I cannot be passive if the law dictates reasoning for acting. For example, I cannot take the property of another without right and I cannot refuse to provide medical care (civic assistance) to the victim of an accident, because human values are rational as correlative common expectations. In this development of relatively abstract hypotheses, we discover the "supreme cause" that ranks expectations, interests and rights. Precisely for these reasons, partially lowered in philosophical discourse, fundamental rights - being provided by fundamental laws - are not placed horizontally, but vertically, even if, stricto sensu, "fundamentally" has no term of comparison. Fundamental rights understood as the most important rights for the human being and citizen, can and are organized in groups determined by their object and purpose.

2. The right to life, freedom of movement, privacy and to dispose of oneself

In the COVID-19 pandemic context, freedom of movement, the right to privacy and the person's right to dispose of oneself were, at least in the people's perception,

among the most affected rights. In the case of Romania, these rights were the first to be contemplated by individuals, especially as an effect of the reminiscences caused by the specifics of the communist period, in which the unwanted intervention of the state power was part of the day-by-day life. Thus, state intervention, at the psychological level, was not easily digested.

The right to life is paramount. Free movement, the right to privacy and the right to dispose of oneself are not paramount, as they bear limits, while the right to life cannot be restricted. But, in the end, all the rights mentioned are fundamental, as they contribute, along with other rights and freedoms, to the good life of the human being as part of an orderly society. All international declarations or documents that assume the purpose of promoting and protecting fundamental human rights place in their substantial quintessence the right to life. The motive has clear natural valences - in the absence of life, all other rights and freedoms are devoid of a subject.

The Universal Declaration of Human Rights [1] states that every human being has the right to life, liberty and security (article 3). The International Covenant on Civil and Political Rights (OHCHR) [2] enshrines that the right to life is inherent to all human beings (article 6 paragraph 1). The World Health Organization (WHO) Constitution [3], in accordance with the logic of the principles set out in its preamble, emphasizes that life (connected to health) is the core of individual, collective, national and global good. The WHO Constitution emphasizes that in the case of life and health, the particularity is facilitated by the good of the whole. As a result, in the case of preserving life and the healthy quality of life, cooperation is required not only at a state level, but especially at the level of a human individual who must work for the common good, beyond certain particular needs. Therefore, in the case of the right to life, active protective behavior is as important as the obligation to refrain from causing physical and mental harm.

> *The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest cooperation of individuals and States.*
>
> *The achievement of any State in the promotion and protection of health is of value to all.*
>
> *Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people [4].*

Finally, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) [5] places clear emphasis on legal primacy over the right to life. The value of life is also the hardcore of democratic and liberal fundamental laws. As an effect of the supremacy of the Constitution, the Romanian legislator, in the infra-constitutional regulations, i.e. The Civil Code (article 61) introduces the right to life in the spectrum of rights inherent in human beings, the core of which also derives

the sense of intangibility on the physical and mental integrity, as required, as a primary reference, by article 22 of the fundamental law.

With reference to the right to free circulation, art. 25 of the Romanian Constitution [6] recognizes a series of possibilities for the movement of the person (in the country, abroad and free establishment of domicile) based on OHCHR, article 12, which, in paragraph 3, provides a framework for restrictions. The Covenant expressly states that the freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized by the Covenant.

Regarding the right to life, the same Covenant (as well as other international human rights documents) provides no basis for restrictions. Article 4 (2) states unequivocally that no derogation can be admitted from articles 6 (right to life), 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18. This is not the case for other rights, which may be limited, as of paragraph 1 of the same article 4, in times of public emergency that threatens the life of the nation and the existence of which is officially proclaimed. The States may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

The right to privacy involves a complex content, configured by definitions developed by the cultural specifics of societies, as privacy is inextricably linked to family life [7], free development of human personality and human dignity. Therefore, the axiology of each society determines the level of expectations from the population regarding the intensity of state interventions. A conservative society or one facing a painful totalitarian past will tend to perpetuate the negative obligation of abstention from the state regarding the content of the right to privacy, intimacy and family life. But in the contemporary dynamics of society, there is also a clear need for an active corrective governmental policy regarding the protection of minorities that have the right to exercise the same rights as others.

Without developing rhetoric on these rights, we draw a quick and concise conclusion that the right to privacy, with all its dimensions, can only be exercised through limits, in order to give each individual the opportunity to develop a free human personality and live a dignified life. This logic, which was also emphasized in the preamble of our paper, is based on the Universal Convention of Human Rights, which in art. 29, paragraphs 1 and 2, states that *everyone has duties to the community in which alone the free and full development of his personality is possible and 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.

Article 35 of the European Charter of Fundamental Rights [8] states that everyone has the right to access preventive health measures. Even if the Charter text refers to the access to medical services within medical institutions, through their qualified staff, the logic of this article can be extrapolated to the obligation of the state to also take health measures for preventing disease propagation, and epidemic developments or other major health crises.

The right to dispose of oneself, as a component of the right to private, intimate and family life (article 26 of the Romanian fundamental law), transmits, through the construction of the name, the illusion of absolute freedom. Of course, such thinking is antisocial because it may disregard the safety of others.

Everyone is free to have any kind of thoughts, but not free to act freely on any thoughts. Nuda cogitatio, for example, does not attract responsibility in criminal law, but once a socially dangerous thought is objectified, responsibility is installed, because one cannot do anything he/she wants with the scope to satisfy personal needs or of others, even though he/she may engage strictly his/her body. These needs must be legitimate and not prejudicial to other members of society. Therefore, the law regulates conduct and restricts freedom in general, so that we can be free in safety. Law does not allow the individual to harm himself, as an expression of a certain freedom, e.g., to use drugs due to a wrongly exercised right "my body, my choice" and at the same time does not allow him to use his physical freedom if it affects the safety of the one nearby, e.g., driving under the influence of alcohol; or the proper functioning of the society.

It is true that at this point one can put into rhetoric the problem of euthanasia on-demand or the issue of abortion, but these subjects are far too complex to be addressed in this article. Regarding compulsory vaccination, however, we can draw attention to European jurisprudence, which admits limits on the theses of the right to dispose of one's own body/person, even if it is shown, in certain contexts, as a natural, intangible and inalienable right. State interventions are allowed to ensure the well-being and health of society [9], but without nullifying the essence or existence of rights. For example, mandatory vaccination among children does not violate the right to self-determination. This reason is also considered by the European Court of Human Rights (ECtHR), in the Vavřička case [10], April 2021. The ECtHR ruled that compulsory vaccination of children when they are admitted to daycare centers does not violate the right to private life. This logic can also be rightly extrapolated in the case of the Sars-Cov19 vaccine, adding, a fortiori, the vaccination of all, based on a respected right to information or rather to correct information. It is the duty of

the state to send clear messages, epistemologically appropriate to all the epistemic groups that make up the national society.

3. Are derogations to human rights legally possible?

In a discourse that does not consider factual situations, contexts, or preconditions, we can say that the state has the obligation to protect the right to life and health without restricting other rights and freedoms, such as the right to free movement or the right to freedom of expression, being - all - fundamental for the human being integrated in a democratic and constitutional legal order. These are found, indeed, under the general label of "human rights", as they are understood as fundamental attributes for the natural development of social beings. But, as we have seen, fundamental does not mean absolute, since rights and freedoms are reciprocal between people. Limits are needed and are the rational consequences of social freedom because one is free only when the right of one ends where the right of the other begins.

It is true that rights cannot be revoked, annulled, or violated, but there may be temporary derogations, under certain conditions, intended to protect the collective right to human existence based on collective responsibility, in which the interest of one cannot exist apart from the good of all or many, as is the case with public health, which is nothing but a collective benefit that satisfies the particular basic needs of each individual.

The key term imposed by the relevant international documents, to which the Romanian Constitution also refers, is "abstention from arbitrariness". The derogation from certain rights and freedoms can be made only in consideration of obtaining effective protection of society, in extraordinary, determined situations, having in respect legal conditions of validity.

As already noted, the International Covenant on Civil and Political Rights determines the contexts that give validity to derogations, as does article 15 of the ECHR, but with the need to inform the Council of Europe on the reasons for activating the derogation clause, respectively on the measures taken.

Similarly, the Charter of Fundamental Rights of the European Union emphasizes the logic of such a possibility of restricting certain rights and freedoms in the name of superior general interest or to protect the rights and freedoms of others (article 52), e.g., measures against minorities persecution by limiting the way some rights may be exercised.

Article 53 of the Romanian Constitution regulates the possibility of restricting rights and freedoms, under certain conditions, by way of exception. Among the conditions of validity, it is provided that the restrictions on rights can be conducted only by law. Theoretically, the meaning of law includes not only the regulatory act of the

Parliament, but also both Simple Ordinance (GO) - adopted by the Government, based on an enabling law from the Parliament), and Emergency Ordinance (EGO), which can be adopted by the Government precisely on the basis of exceptional situations that require urgent regulation. From the latter point of view, Emergency Ordinances may prove, at least in theory, to be the most effective way to respond to emergencies that imply restrictions on rights in order to protect more important rights, related to human existence, so to society as a whole.

After the 2003 constitutional revision, following the introduction of paragraph 6 of article 115, which establishes that emergency ordinances may not affect the freedoms and duties provided by the fundamental law, article 53 seems to give a more restrictive understanding of the term law. However, the nuances of this thesis need to be treated more carefully, as limiting the exercise of certain rights can enhance the protection of more important rights in extraordinary situations that claim protective governmental intervention. To such a logical extent, in our opinion, emergency ordinances should not be excluded from the legal possibilities recognized by Article 53 of the Constitution, as long as they express a clear aim of counterbalancing an imminent state of danger with necessary protective measures which may prove effective only by bringing restrictions on the exercise of other rights [11].

The exercise of certain rights or freedoms may be restricted only if the necessity is justified for the defense of national security, public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe. Such restrictions must be connected to democratic basic standards, in order not to fall into arbitrariness. The measures must be proportional to the situation having caused them, applied without discrimination, and without infringing on the existence of rights or freedoms. Measures can stay active only for a specified period or for as long as the objective cause persists, but with periodical (30 days) justification on the temporal extension.

4. Some cultural and political inconsistencies in the Romanian public health management

In Romania, as well as in the case of many other European countries, the health crisis caused by the SARS-CoV-2 began in March 2020, when the first concrete and urgent measures were taken to prevent the transmission of the virus, e.g. suspension of flights from certain countries. The first steps were taken by an interim government. Thus, a difficult dual situation was announced from the very beginning for Romania. On the one hand, in a political sense, and on the other hand, in a sanitary sense. These two situations could not be separated. They inevitably overlapped.

At a time when a deep health crisis had to be managed more than ever through coherent political channels and cooperation, the Romanian political actors struggled with its ultimate test, i.e., to counterbalance the interests of the party with the interests of the People.

The measures involved in a health crisis are unpopular but highly necessary. They may prove destructive of electoral capital. In such circumstances, the political class proves its cultural, political, and legal maturity. Unfortunately, in Romania, the political crisis ignited quite clearly and remained a red line during the management of SARS-CoV-2 infection waves. Furthermore, the political turmoil culminated in some constitutional incoherencies.

On March 12th, Florin Cîțu withdrew his candidacy for the position of prime minister. Soon after, President Klaus Johannis re-nominated Ludovic Orban (the outgoing Prime Minister who has taken the first steps to deal with the urgency generated by the new virus). The candidate received the vote of confidence on March 14th, but not on a true basis of political support, but rather based on a fragile compromise determined by the health crisis and political barter. This circumstance heralded, to some extent, a very difficult political mission, beyond that implied by the pandemic context.

On March 16th, the President declared a state of emergency (pursuant to Article 93 of the Constitution), and on March 18th the Council of Europe was notified through the Secretary-General regarding the activation of the emergency clause provided by ECHR (Article 15, paragraph 1). The state of emergency was lifted on May 20, 2020. Till that moment, it was reiterated once every 30 days, to substantiate the temporary nature of the restrictions on the exercise of certain rights, respectively to justify the measures taken, as provided by the Constitution and EGO 1/1999, approved with amendments and completions by Law no. 453/2004.

The decree stated the principles and the core measures for limiting the transmissibility of the virus, e.g., closing schools, isolation and quarantine, measures for social and economic support, and that further concrete emergency measures will be taken by military ordinances, issued by the Minister of Internal Affairs, with the approval of the Prime-Minister. During the emergency state, 12 military ordinances were adopted, which limited the exercise of some rights, e.g., freedom of movement. The People's Advocate, under parliamentary control [12], signed, by notifying the Constitutional Court (RCC), the first reaction against the Presidential Decree establishing the state of emergency, based on the incidental articles of EGO 1/1999, and on the EGO 34/2020, for the amendment and completion of the EGO no. 1/1999 on the state of siege and the state of emergency.

The Court's decision no. 152/2020 [13] covered the exception of unconstitutionality on the provisions of article 9, article 14 letter c1)-f) and Article 28 of the EGO no.

1/1999 on the state of siege and the state of emergency, and on the EGO no. 34/2020 for the amendment and completion of the EGO no. 1/1999 on the state of siege and the state of emergency, in its integrality.

Regarding the contested provisions of the EGO no. 1/1999, the People's Advocate considered that they were unconstitutional as they allowed the President of Romania to legislate in areas for which the Constitution requires the intervention of the primary legislator.

The Constitutional Court has correctly held the legal nature of the presidential decree (see, e.g., paragraph 86), i.e. normative administrative act, by reference to the provisions of the Law on administrative litigation no. 554/2004 and, at the same time, judiciously noted that the President acted under EGO 1/1999 when he established the content of the decree (see paragraph 88). Because GEO 1/1999 was adopted prior to the revision of the 2003 constitutional revision, by which paragraph (6) was introduced to article 115, the Court stated that the prerogatives of the president were constitutionally extended in the case of taking necessary measures leading to a restriction on the exercise of certain rights. Therefore, the Court concluded that the President is not limited to a simple formal declaration of a state of emergency. In paragraph 90, the Court emphasized that the measures to be taken, as well as the restrictions on the exercise of fundamental rights and freedoms, are not practically regulated by the President of Romania, but are provided by the EGO. As such, the President merely identifies those emergency measures, provided by law, but which are adapted to the specific situation which gave rise to the state of emergency, as well as those fundamental rights and freedoms of which the exercise is to be restricted during the state of emergency.

The Court righteously rejected the unconstitutionality raised by the People's Advocate on EGO 1/1999, related to the Presidential Decree, but not before taking an ex officio position on erroneous assessments and, as the case may be, ultra vires (see paragraph 100). Starting with paragraph 93, the Court removed from judicial control the presidential decree, which was established by the Court itself having an administrative legal nature, and erroneously introduced it in the Parliament ex officio control through the decision by which it approves or not the state of emergency. Furthermore, starting with paragraph 100, the Court expressed evaluations that exceeded its competence and surpassed the object of the referral. The constitutional judges Elena Simina Tănăsescu and Livia Stanciu formulated a dissented opinion, emphasizing in paragraph 4 the fact that the Court acted *obiter dictum and ultra vires.*

> *Thus, the idea according to which the Parliament could arbitrarily exceed its competencies that were expressly and limitingly assigned to it by art. 93 of the Constitution and could disregard the powers of the courts expressly and formally provided by art. 126 para. (6) of the Constitution, proceeding*

> *to carry out a thorough and legal control of the normative administrative act enacted by the President of Romania, is contrary to the explicit letter of the Constitution and, in addition, contravenes the principle of separation of powers in the state [art. 1 para. (4)] and the fundamental right of free access to justice (art. 21) of any person who could be considered harmed in his/her subjective rights by such administrative acts [14].*

Regarding EGO 34/2020, the Court found it in its entirety unconstitutional, due to non-compliance with the limits imposed by article 115 (6) of the Constitution. Again, the Court's argumentative position can be criticized, since, on the one hand, by admitting the unconstitutionality of the entire EGO, some useful and consequential measures for the common good were annulled, and, on the other hand, it escaped the need to build a unitary practice. As already considered by the Court in its jurisprudence, the fine is an act of administrative nature and can be regulated by EGO. It is true that the fines provided by the EGO 34/2020 were disproportionate in relation to the average salary of Romanians and lacked predictability in application, but that is not a reason to retain the unconstitutionality of the EGO in its entirety. As stated in the same dissented opinion by constitutional judges Tănăsescu and Stanciu, the EGO fails the test of proportionality related to article 53 of the fundamental law.

> *EGO no. 34/2020 is not unconstitutional in itself or in its entirety; the fact that sanctions for minor offenses were established by emergency ordinances is not in itself unconstitutional, as is clear from the rich jurisprudence previously cited by the Constitutional Court. However, the lack of elements to allow the individualization of established sanctions related to the consistent increase in the amount of the fines leads to the conclusion of non-compliance with the principle of proportionality between the sanction and the degree of social danger of the conducts that attract the sanction, which is equivalent to a non-compliance with article 53 of the Constitution, and not of article 115 para. (6) [15].*

The EGO fall under the shadow of unconstitutionality as it doesn't check the substantial attributes of the rule of law. Even if the arguments can be analyzed from different angles of intrinsically and extrinsically variable references, the admission of unconstitutionality should not have included the entire regulation, precisely because it triggered a complete setback in the teleology of establishing a state of emergency - the protection of public health. The revision of the unconstitutional parts (revision on the amount of the fines, i.e.) by the legislator would have been more coherent, expected, and effective for the (constitutional) public purpose for which the EGO was adopted, in the justified context of the state of emergency. The focus should have been on proportionality and predictability testing, as judges Tănăsescu and Stanciu underlined, in conjunction with other conditions of validity.

Decision no. 157 of May 13th, 2020 [16] - regarding the exception of unconstitutionality on the provisions of article 2 letter f) and of article 4 of the EGO no. 21/2004 on the National Emergency Management System - came following a new notification from the People's Advocate concerned by the state of alert that replaced the state of emergency. Because of this action, a temporal syncope was later triggered; in concreto, for several days, the health crisis was not practically managed through law. In the up-mentioned Decision, the Court noted that the EGO in question complied with the requirements of the law relating to clarity and predictability and that there were sufficient criteria to identify a state of alert, with an emphasis on preventing a state of emergency. The Court admitted the exception of unconstitutionality formulated by the People's Advocate on article 4 of the EGO, but only insofar as the actions and measures ordered during the state of alert aim at restricting the exercise of certain rights or fundamental freedoms. In other words, it established that the assessed Article 4 was constitutional, but with reservations and conditions.

In a separate opinion on the Decision, the same constitutional judges Tănăsescu and Stanciu pointed out that the EGO cannot be completely excluded from the possibility of restricting the exercise of certain rights as long as it is done for the higher purpose of protecting other more important rights [17]. At the same time, they judiciously emphasized the fact that the measures are not left to the discretion of the administrative authorities but are subject to the constitutional rigors of proportionality and the other conditions and limits established by article 53 of the Constitution, through the very provisions of article 4 considered by the Court as susceptible of unconstitutionality [18]. We also believe that restrictions brought through an OUG should not be automatically evaluated in a "negative sense". The provisions of article 4 of the EGO no. 21/2004 could as well provide better protection for the fundamental rights of citizens who may be affected by exceptional circumstances such as a state of alert, siege, or emergency.

The state of alert was declared based on EGO 21/2004 [19] by the National Committee for Special Emergency Situations. On May 18th came into force Law no. 55 of May 15th, 2020, on some measures to prevent and combat the effects of the COVID-19 pandemic. The Law was adopted by the Parliament in order to transpose the state of alert into law in its strict sense, breaking, at least theoretically-procedurally, the end of intrinsic and extrinsic contradictions regarding the possibilities and impossibilities of restricting certain rights under Article 53 on the ground of an EOG.

Other Court decisions followed on the management of the health crisis. The years 2020 [20] and 2021 [21] recorded a fairly high number of decisions on unconstitutionality complaints related to regulations and acts referred to the management of the SAR-CoV 19 pandemic.

Decision no. 458 of June 25th, 2020 [22], regarding the exception of unconstitutionality of the provisions of article 25 paragraph (2) of Law no. 95/2006 on health care reform and article 8 paragraph (1) of the EGO no. 11/2020 on emergency medical stocks, as well as some measures related to the establishment of quarantine, is another example full of controversy. The Court unnecessarily personalized the provisions on the institution of quarantine and on the obligation to hospitalize the Covid-19 patients by order of the Ministry of Health, stating that restrictions of rights can only be decided "by law". The last thesis is true, but the same it is for the fact that article 25 (2) of Law no. 95/2006 does not confer to the Minister of Health the power to establish by order restrictions on fundamental rights, these being already provided by law. The Minister only refers to them by order, as underlined in a dissented opinion by the constitutional judges Tănăsescu and Stanciu.
As already mentioned, the year 2020 coincided, in the case of Romania, with local (September 27th) and general (December 6th) elections. For these reasons of concern for preservation and acquirement of electoral capital, the central authorities have begun to transfer the responsibility for managing the epidemic to local authorities, which also had the care for electoral local results. Within this pendulum, the measures to protect the population in the name of public health have become less and less strict, and the effects have been observed in the post-election Covid waves of infections. Some political parties have even managed to secure the electoral threshold for access to Parliament due to a step-by-step campaign dedicated to freedom (fundamented on populism and radical nationalism).
It should not be ignored that the axiology of the Romanian society, immersed in religion, also contributed to the rejection of certain protection measures. Under such pressures resumed to the fact that for many Romanians religion is everything, gradual exceptions were admitted for the extension of the presence at religious services or for priests. For example, wearing a mask during religious services was not mandatory for priests, but compulsory for parishioners. This is unequivocally unconstitutional (differential treatment in a strictly similar situation), especially given that the exemption cannot be substantially justified, when all the other members of society had to wear masks not only indoors but also outdoors, at certain times. The Church has not visibly supported the essential measures needed to combat the health crisis. A state of neutrality was rather preferred. Some high-ranked priests even preached against certain measures, including vaccination.
Therefore, a discussion could be opened on the condition "the restriction should be non-discriminatory", provided by article 53 of the fundamental law. It can also be discussed in conjunction with article 31 of the fundamental law, the right to information, in the context of the issue of vaccination against SARS-Cov-19. By the general reference to "non-discriminatory restrictions" we understand that the

legislator cannot nominally determine persons, social and professional categories to selectively bear restrictions or obligations. Of course, in a pandemic context, during a health crisis, rules can be determined to find their application differentiated, resulting, in consequence, categories, but these should not be predetermined by the legislator, but by the effects of free conduct in the society in question. Furthermore, without developing a critical analysis in this article, we mention the joint Order of the Ministry of Education and the Ministry of Health no. 5.558 / 2.389 / 2021, which provided, from November 8th, 2021, the resumption of courses with physical presence for all pre-university education units in which a minimum percentage of 60% of the staff was vaccinated, respectively that, starting with November 8th, 2021, the resumption of online courses for all pre-university education units in which less than 60% of the staff was vaccinated. Not only was this order unpredictable, but it severely affected the right to education due to inconsistent and discriminatory criteria. A higher purpose in utility and consequentialism cannot be observed in the teleology of the Order. The purpose of promoting health care and access to education is practically non-traceable. The Order transformed a professional category into a culpable cause. The Order, we consider, was not constitutional, not even socially rational.

Are discriminatory liberty-restricting measures sometimes acceptable? One can discuss, de lege ferenda, the usefulness of a separate regulation on health crises, thus covering what is discriminatory when it comes to public health management.

Effectiveness, proportionality, necessity, the least restrictive path, and public information form the background on which state authorities can act for the good of the people, and seemingly good intentions should be balanced and tested with common good rationale. Under such a socio-legal thinking reference, we have seen how the indirect determination of teachers as guilty for the impossibility of physically resuming school hours does not fall under positive discriminatory measures.

It should be about individual responsibility encouraged to become collective responsibility so that health resources do not end up being consumed on a background of carelessness or indifference to the health of others. Therefore, in some contexts, the restriction of rights during a health crisis can be discriminatory, as measures are not only taken to protect people who are unable to protect themselves but to find justifiable conditions to give to everyone, from a medical point of view, what he/she needs when he/she needs it. Overloading would practically paralyze the right to medical care. Because the causes or risks were known, the state had an obligation to act directly on this issue, and the only way to do that was by restricting certain rights and strengthening other certain rights. In other words, in a medical crisis, restrictions on social life are preventive measures to ensure the right to receive medical care. By doing so, the right to life is also highlighted. The other side of the

coin may be the inability to correctly manage the treatment for other medical cases, qualified as non-urgent at a given time, but aggravated afterwards, by postponing them, to treat Covid-19 urgent cases.

Unequivocally, the state of emergency dictated by a health crisis has complex and unforeseen parameters in progress. The big challenge is that people are not only victims but also vectors of transmission, so mediated causes. On top of this, medical infrastructure and education are decisive. We may have perfect rules but are nothing if they remain a dead letter. The causes may be multiple, e.g., the medical system infrastructure and functionality; people's inability to understand and comply.

Starting on March 9th, 2022, Romania came out of the state of alert. All restrictions have been removed, as there is no longer a legal basis for their maintenance, e.g., wearing a mask in closed or crowded spaces is a simple medical recommendation. The force of law got replaced by the collective responsibility theoretically developed over the last two years.

5. Decisions must be made when there is considerable uncertainty. Conclusions

With no doubt, during a pandemic, decisions must be made, even though there is much uncertainty. It is not easy to identify the right solutions, especially in the conditions in which the medical domain does not have borders of knowledge; it is a world that proves to be very little explored, despite the great advances in the field. During medical crises, governments have the difficult task, together with the qualified scientific community, of identifying appropriate measures, which must then be coupled with the popular expectation of not affecting the normal social life or as little as possible. But without affecting the normal social life of individuals, the measures cannot be effective. Therefore, measures thought to counter a health hazard are necessary, even if they prove unpopular. Despite this fact, the state is obliged to intervene with the necessary measures. This obligation must not be transformed into a sort of a right of the State to encourage abuses of power. Therefore, the purpose of the measures must be sufficiently important to justify the limitation of certain rights and, in this ratio, the causality must be correctly determined.

Finally, the expectation to gain a balance between what is achieved and what is sacrificed is just. The great challenge lies in the balance between what seems to be necessary and reasonable and what seems to be exaggerated but with a high ratio of efficiency. Here is the typical paradox of health crises. The state has the absolute mission to protect the lives of the individuals that constitute the society, so its existence, but it cannot act in absolute notes, even though in extraordinary health situations, extensive liberty restrictions will achieve clearer, faster and greater benefits. So, rhetorically, it may be a balance point overelaborated in a looping hole.

Guarantees against abuses of power come from compliance with national and international conditions of validity. Beyond these legal barriers, correlated with the logic of the rule of law, the axiology of the society in question, education or, better said, legal culture, political culture, social culture and even economic culture are also highly relevant.

To sum up, the logic of all rights is … *to live honestly, not to hurt anyone and to give everyone what they deserve* (Ulpian).

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Notes:

[1] Adopted by the UN General Assembly on 10 December 1948, by Resolution 217 A (III); Romania signed the Declaration on December 14th, 1955, when by R 955 (X) of the UN General Assembly, it was admitted among the member states. https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[2] Adopted by the UN General Assembly resolution 2200A (XXI) on December 16, 1966; The pact was ratified by Romania in 1974, by Decree no. 212/31 October 1974, entered into force on March 23, 1976. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

[3] https://www.who.int/governance/eb/who_constitution_en.pdf; https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf.

[4] Ibidem.

[5] Rome, 4.XI.1950; https://www.echr.coe.int/documents/convention_eng.pdfRatified by Romania by Law no. 30/1994.

[6] https://www.ccr.ro/wp-content/uploads/2020/11/constitutie-engleza.pdf.

[7] See the referendum on the modification of the Romanian Constitution that took place on 6 and 7 October 2018. The referendum had its core in a citizens' initiative, promoted by the Coalition for Family at the end of 2015 and actively supported by the Orthodox Church and the Roman Catholic Church. The initiative aimed to revise the collocation "between spouses" in art. 48 (family), par. (1) of the Constitution with a conservative formula "The Family is founded on the freely consented marriage of a man and a woman". See also RCC Decision 580/2016 https://www.ccr.ro/wp-content/uploads/2020/10/Decizie_580_2016.pdf.

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[11] See on this problematic RCC Decision no. 396/2014.
[12] See art. 58 of the Constitution and Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, republished, Official Monitor No. 181/27 Feb. 2018.
[13] https://www.ccr.ro/wp-content/uploads/2021/11/Decizie_152_2020.pdf.
[14] Ibidem, p. 30.
[15] Ibidem, p. 33.
[16] https://www.ccr.ro/wp-content/uploads/2021/11/Decizie_157_2020.pdf.
[17] Ibidem, p. 28.
[18] Ibidem.
[19] https://www.mai.gov.ro/hotarare-nr-24-din-14-05-2020-privind-aprobarea-instituirii-starii-de-alerta-la-nivel-national-si-a-masurilor-de-prevenire-si-control-a-infectiilor-in-contextul-situatiei-epidemiologice-generate/.
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