



RESTRICTIONS OF THE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS DURING THE STATE OF EMERGENCY GENERATED BY THE COVID-19 PANDEMIC

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During the state of emergency declared for limiting the spread of the COVID-19 virus, the central and local governmental authorities imposed a series of restrictions on fundamental human rights and freedoms, of essentially temporary nature and, where appropriate, tailored to meet the expected or actual severity level of the epidemic, aimed at eliminating the risk factors and minimising the effects on the population. National and international public policies focused on threats to public health, these threats being seen as a global human security issue for which governmental authorities intervened through firm and prompt measures that took into account the public interest, even by affecting fundamental rights and freedoms at the individual level. The purpose of this article is to identify the legal framework at the national level regarding the adoption of restrictions in exceptional circumstances, the restrictive measures that were put in place during the emergency period declared in the context of the coronavirus pandemic while highlighting the role of the armed forces in implementing and monitoring compliance with these restrictions.

Keywords: fundamental rights; freedoms; restrictions; human security; pandemic;



INTRODUCTION

I started this research initiative on the premise that the pandemic generated by the COVID-19 virus has been a global challenge for all countries of the world, the state power being engaged in all its forms to combat it. The declaration of the state of emergency throughout Romania and the adoption of restrictions on fundamental human rights protected by the Romanian Constitution were exceptional measures meant to limit the spread of the virus.

In this respect, I have considered the hypothesis that the restrictive measures were necessary to prevent and remove the imminent threats to human security, being applied in a non-discriminatory manner, and without prejudice to the existence of other fundamental human rights. Within the article, I propose three research objectives. The first objective is to achieve a correlation between the coronavirus pandemic and the concept of *human security*. The second objective is aimed at highlighting the legislative instruments by which restrictions on fundamental human rights were imposed, strictly necessary for the prevention and removal of imminent threats to conventional, union and constitutional rights to life, physical integrity and health of individuals. The last objective is to identify how the armed forces acted to protect the right to life and the fundamental values of democracy, supporting the efforts of the civil authorities in managing and stopping the crisis generated by the CoVID-19 virus, as well as in implementing the restrictions put in place.

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THE COVID-19 PANDEMIC AND THE HUMAN SECURITY CONCEPT

In general terms, a *pandemic* is a situation present in several countries around the world at the same time, in which a disease has a significant and continuous spread from person to person. Following the declaration of the COVID-19 pandemic, also known as *coronavirus*, due to the spread of Severe Acute Respiratory Syndrome 2 (SARS-CoV-2),



Following the declaration of the COVID-19 pandemic, also known as coronavirus, due to the spread of Severe Acute Respiratory Syndrome 2 (SARS-CoV-2), in March 2020, the World Health Organisation asked states around the world to intensify their efforts to eliminate the risk factors and to adopt, as a matter of urgency, measures for activating and expanding the crisis response mechanisms for emergency situations.

in March 2020, the World Health Organisation asked states around the world to intensify their efforts to eliminate the risk factors and to adopt, as a matter of urgency, measures for activating and expanding the crisis response mechanisms for emergency situations. The global response to the coronavirus pandemic was interpreted differently by nations, as they adopted various strategies ranging from imposing the exceptional state of emergency to reduced measures that would affect their society as little as possible.

The general preparation of the society and the state, simultaneously with minimising the impact of the virus on the population, were the main objectives of the restrictions imposed by the governments. The exceptional situation determined the citizens to accept some limitations of their fundamental rights, imposed by political leaders. According to Ambassador Sorin Ducaru, one of the particular effects of the COVID-19 pandemic is *“the potential for direct, strong and personal impact on each of us. It is a black swan phenomenon that profoundly and immediately affects the lives of everyone, of communities, societies, the states in which we live and the humanity as a whole.”* (Ducaru, 2020, p. 37).

Thus, while some authors consider the pandemic as being a *black swan* event, others do not see it as surprisingly difficult to predict. According to them, *“the coronavirus pandemic hit the world with such unexpected power that some might consider it a black swan, although it was neither unknown nor unexpected. Almost all works on security and future risk published over the past decade have warned about the global pandemic threat. The problem was that social and economic restrictions were rarely taken into account in these scenarios.”* (Friis, 2020, p. 108).

The enforcement of exceptional states during the pandemic was seen as a security provision and a risk limitation tool. Today, the concept of *security* is not interpreted in a narrow sense, limited to territorial security against external aggression and the protection of national interests. The security of individuals is indivisible and universally applicable to any citizen without discrimination. *The Human Development Report* issued in 1994 by the United Nations Development Programme, highlights that *“human security is as important*

as territorial security” (UNDP, 1994) and identifies the seven categories of human security as follows:

- *economic security*, in the sense of having a secure income, but also ensuring net public security measures such as ensuring an income for those who cannot obtain one;
- *food security*, by ensuring adequate access to food, physically and economically;
- *health security*, by ensuring access to healthcare and protection against diseases;
- *personal security* addresses threats posed by physical violence;
- *community security* is the security that individuals receive within a group, the sense of belonging and identity rooted in common practices and values;
- *political security* requires the freedom to be governed in a way that respects human rights, protected by democratic institutions in which individuals are a voice;
- *environmental security* addresses environmental challenges arising from deforestation, damage to the ecosystem, desertification, including human conflict.

Security analyses focus on the protection of all vital aspects that are intended to strengthen human freedom and fulfilment. From this perspective, human security is interconnected with fundamental human rights. In its narrow sense, human security is a human right, edifying in this respect being the provisions of Article 3 of the Universal Declaration of Human Rights which provides that *“everyone has the right to life, liberty and personal security”* (UN, 1948). To protect human security, responsible political institutions must identify effective solutions for managing risks and limiting the causes of insecurity. Consequently, human security associates state sovereignty with the duty to protect its citizens under the state umbrella.

The global immediate response to the disease caused by the COVID-19 virus can thus be viewed from the perspective of securitisation. *“The term securitisation describes the process by which a subject becomes so hot that it is removed from the usual decision-making process and turned into an existential problem. As a result, extraordinary countermeasures are allowed in the name of security.”* (Friis, 2020, p. 110).



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The spread of the COVID-19 virus has shown us, once again, that our security is not just about being safe from the risk of external invasion, and that threats do not exist only outside our borders and do not always carry weapons. Thus, health security was prioritised at the expense of economic security and shaped the framework within which the State apparatus acted to restrict fundamental rights. The facts of the pandemic declared in 2020 define an exceptional context that could not be predicted, aimed at the general public interest and at protecting the lives of citizens through measures to support public health.

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DEMOCRATIC DEFENCE OF FUNDAMENTAL RIGHTS AND FREEDOMS

The Constitution of Romania enshrines in its 1st Article, 3rd paragraph, that “Romania is a state of law, democratic and social, in which human dignity, the rights and freedoms of citizens, the free development of human personality, the justice and the political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and are guaranteed”. (*Constituția României*, 2003). In this respect, citizens benefit from the rights and freedoms provided by the fundamental law, meanwhile having the obligations laid down therein.

According to the Constitution, the restriction of exercising some rights is permitted only by law for one of the following reasons: the protection of national security, the public order, health or ethics and the citizens’ rights; the conduct of the criminal investigation; the prevention of consequences of a natural disaster or a particularly serious disaster. The measure of restriction must be proportionate to the situation which generated it, it must be applied on a non-discriminatory basis and it must be without prejudice to the existence of the rights or freedom.

To limit the effects of the pandemic, the Romanian authorities had a prompt response by establishing a state of emergency, a measure of an exceptional nature provided for the situation of the existence of current or imminent serious dangers concerning national security or the functioning of constitutional democracy. In such situations, the provisions of *Emergency Ordinance No. 1/1999 on the regime*

of the state of siege and the state of emergency apply. During the state of siege and the state of emergency, the exercise of some fundamental rights may be restricted only to the extent that the situation requires it and in compliance with the provisions of the Romanian Constitution. Some exceptions to this rule are provided concerning the limitation of the right to life, the application of torture and inhuman or degrading treatment or punishment, the conviction of unforeseen offences as such under national or international law and the restriction of free access to justice.

We can therefore conclude that *“in the case of the establishment of the state of emergency, cumulative compliance with both the constitutional rules on the restriction of fundamental rights and freedom, from a constitutional perspective (art. 53 of the Constitution) and those concerning the state of emergency, from a legal perspective (the content of the OUG no. 1/1999)”* (Barac, 2020).

RESTRICTION OF THE EXERCISE OF FUNDAMENTAL RIGHTS AND FREEDOMS IN THE CONTEXT OF THE CORONAVIRUS PANDEMIC

This turning moment generated by the COVID-19 pandemic led to profound changes globally and, implicitly at the national level in the most varied areas of our society. It was therefore necessary to activate national mechanisms to respond to a major crisis by shaping the legal regulatory framework allowing for effective measures and joint efforts on the part of both decision-makers and the civilian population. *“We have faced the biggest challenge since 1989 for our society, and the economic crisis already triggered will be the strongest of those that have hit Romania in this century. Managing the viral crisis has shown that our institutions still can face great challenges.”* (Scutaru, 2020).

Following the mandatory legal provisions, the state of emergency is established by the President of Romania by decree, countersigned by the Prime Minister and published immediately in the Official Journal of Romania. It must include the first emergency measures to be taken, the military and civil authorities designated for the execution of its provisions as well as their competencies. From a normative point of view, *“the decree of the President of Romania, an infra-legislative act, establishes the state of emergency or the state of siege, according to the Constitution and according to the special organic law, this organic*



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At the time of the adoption of Decree No. 1/2002, Romania has already had the image of the experience of some European countries that had been severely affected by the evolution of COVID-19, and which legislated measures that had been shown to have a positive impact in limiting the spread of the virus. The adoption of special restrictions by establishing an exceptional state was carried out based on the analysis of the epidemiological situation on the national territory for mainly protecting the right to life and secondly the citizens' right to health.

law regulating the legal regime of the state of emergency or siege, including as regards the restriction of the exercise of fundamental rights or freedoms.” (Popescu, 2020).

Thus, by the Decree of the President of Romania no. 195/2020, a state of emergency was established throughout Romania for 30 days from 16 March 2020. Subsequently, by Decree No. 240/2020, the state of emergency has been extended by a further 30 days from 15 April 2020.

At the time of the adoption of Decree No. 1/2020, Romania already had the image of the experience of some European countries that had been severely affected by the evolution of COVID-19, and which legislated measures that had been shown to have a positive impact in limiting the spread of the virus. The adoption of special restrictions by establishing an exceptional state was carried out based on the analysis of the epidemiological situation on the national territory for mainly protecting the right to life and secondly the citizens' right to health. The decree stressed the need to establish a state of emergency to mitigate the negative effects on Romania's economy determined by the measures adopted at the national and international level to combat the spread of the coronavirus and to legitimately outline the restrictions or limitations of fundamental human rights and freedoms for a definite period.

The Decree of the President of Romania for establishing a state of emergency lays down at Article 2, within the limits of the organic law on the regime of the state of emergency and the state of siege, the list of fundamental rights and freedoms that may be restricted and the forms of restriction. Thus, the administrative act provides that *“to prevent the spread of COVID-19 and to perform the management of the consequences, concerning the evolution of the epidemiological situation, the exercise of the following rights is restricted during the state of emergency: the free movement, the right to intimate life, family life and private life, the inviolability of the home, the right to education, the freedom of assembly, the right to private property, the right to strike and the economic freedom.”* (Decretul nr. 195/2020).

These restrictions included measures concerning the isolation and quarantine of persons coming from risk areas, those who contact them and lockdown measures on buildings, communities or geographical areas. As an exception from the freedom of movement guaranteed

by Article 25 of the Constitution as well as the European Convention on Human Rights, it was decided to gradually close the state border crossing points, to limit or prohibit the movement of vehicles or persons in or to certain areas or between certain times, as well as leaving those areas. The right to intimate, familial and private life, protected by Article 26 of the Constitution, was affected by medical examinations for identifying the presence of COVID-19 virus infection in the body. To prevent the spread of the epidemic, the responsible authorities could enter the residence of persons suspected of infection with coronavirus without their consent, therefore the decree included a derogation from the fundamental right provided for in Article 27 of the Constitution on the inviolability of the private homes. During the state of emergency, restrictions on the right to education provided under Article 32 of the Constitution were put in place, with classes in all educational establishments and institutions being suspended. The restriction on the private property right guaranteed by Article 44 of the Constitution could be materialised by identifying and requisitioning stocks, production and distribution capacities, protective equipment, disinfectants and medicines. Economic freedom was also seriously affected, with measures taken to temporarily close facilities in the hotel or food industry, offices of associations and other public establishments.

Against the background of the persisting exceptional context that led to the declaration of the state of emergency, in conjunction with the fact that the general public interest required the extension of this state and concerning the benefit of the continued application of the restrictions, the President of Romania adopted the *Decree No. 240/2020 on the extension of the state of emergency on the territory of Romania*. The restrictions of fundamental rights and freedoms provided for in the first decree were maintained for a further 30 days in the assessment that these unprecedented restrictions were necessary to ensure a smooth return without major difficulties to the situation of normality.

At the same time, new measures were adopted to enable public authorities to intervene effectively and with adequate means to manage the crisis. By derogation from the freedom of assembly, during the state of emergency, it was forbidden to organise and hold rallies, demonstrations, processions or any other meetings in open



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spaces and any other meetings of the nature of cultural, scientific, artistic, religious, sporting or entertainment activities in indoor spaces. The Romanian President's act also stipulated that the servants of religious cults may officiate in places of worship, practices and rituals of a public nature specific to the cult, without the participation of the public, while practices and rituals of a private nature specific to the cult, such as baptisms, weddings or funerals, with the participation of the minimum number of persons according to the canonical rules and with strict observance of individual and collective protection measures for preventing the spread of the COVID-19 virus.

The Ministry of National Defence supported central and local public administration authorities by carrying out specific activities or actions to limit the infection with the coronavirus of communities, based on the training and available resources. The armed forces, which are the foundation of national security and national defence, have been tasked with the protection of human security for Romanian citizens.

THE CONTROL EXERCISED BY THE ARMED FORCES ON THE COMPLIANCE WITH THE RESTRICTIONS DURING THE STATE OF EMERGENCY

The restrictions on fundamental rights and freedoms and certain measures imposed by the presidential decrees were compulsory for both public authorities and legal entities, as well as for individual persons. For the restrictions to be effective, the government created a monitoring and control mechanism in which the Ministry of National Defence has had increased powers, the area of which exceeded the provisions of *Government Decision No. 557/2016 on risk management*. The Ministry of National Defence supported central and local public administration authorities by carrying out specific activities or actions to limit the infection with the coronavirus of communities, based on the training and available resources. The armed forces, which are the foundation of national security and national defence, have been tasked with the protection of human security for Romanian citizens.

Considering the need for the armed forces to be always available for intervention in actual cases arising from the pandemic, during the state of emergency, exercises, simulations, applications and any other activities which could interfere with the measures taken by the relevant authorities to prevent and combat the spread of COVID-19 infections were suspended, except for those of a military nature carried out in the training ranges, so that the armed forces have been continuously operational and dedicated to this major objective.

One of the main motivations for the involvement of the armed forces in the management of the pandemic was that the armed forces had specific capabilities that could essentially support and complement

crisis response efforts. The rapid mobilisation of resources, how resources were organised and prepared to act in conditions of uncertainty and stress, and the conduct of activities that contributed to the health effort but were not within the competence of public health institutions, made the actions of the military decisive for the expected outcome.

“More controversially, however, troops have also been deployed to enforce mandatory lockdowns by patrolling the streets, constructing roadblocks and curbing movement. These measures, which aimed to stem the spread of the coronavirus, have been adopted throughout the world” (Kalkman, 2020, p. 1). The military personnel who participated in public order support missions or to ensure the security and protection of objectives or areas have been empowered under Article 85 of Decree No. 240/2020 *“to identify and establish the identity of persons and to verify the reason for the movement of persons outside the dwelling/household”* (Decretul nr. 240/2020). The armed forces also had the power *“to prohibit, temporarily, the entry into buildings, communities or delimited and marked geographical areas in which quarantine or lockdown measures are ordered, in a means of transport, or to order the temporary evacuation from them of any person, if there is a danger to life, health or body integrity, to himself or another person”* (Decretul nr. 240/2020). The military could warn people, by any means of communication, to cease actions affecting quarantine or containment measures.

All these missions carried out by the armed forces were intended to implement exactly and promptly the measures imposed by political decision-makers, while watching over how the fundamental rights and freedoms of citizens, even restricted in the emergency situation, are respected. *“While the use of armed forces for domestic crisis management is not unique, the sheer scale and size of military capabilities deployed inside countries are unprecedented in recent times. This contribution aims to explain the prominent role of the armed forces in managing the COVID-19”* (Kalkman, 2020, pp. 1-2).

CONCLUSIONS

The adoption of some restrictions on fundamental rights and freedoms for stopping the spread of the coronavirus did not allow the civil liberties to be undermined more than it was strictly necessary to achieve the aim of limiting the virus transmission within the community.



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In very realistic and non-ideological terms, the COVID-19 pandemic showed the true contemporary meaning of global human security. National and international public policies focused on threats to public health, these threats being seen as a global human security issue for which governmental authorities intervened through firm and prompt measures that took into account the public interest, even by affecting fundamental rights and freedoms at the individual level.

In adopting restrictive measures, the political authorities took into account the balance and proportionality between the health objectives of the population and the fundamental human rights and freedoms, which are the essence of democratic governance. The restriction of fundamental rights and freedoms under the constitutional provisions aimed for implementing the principles of necessity, proportionality and good faith.

The pandemic brought up once again uncertainty as a certain element of the contemporary world, despite all the current contingency plans or the degree of development of science and technology. In very realistic and non-ideological terms, the COVID-19 pandemic showed the true contemporary meaning of global human security. National and international public policies focused on threats to public health, these threats being seen as a global human security issue for which governmental authorities intervened through firm and prompt measures that took into account the public interest, even by affecting fundamental rights and freedoms at the individual level.

Romania, like most countries around the world, used its armed forces in response to the pandemic and their contribution to monitoring and controlling the restrictions imposed has materialised into concrete actions to limit the spread of the coronavirus during the period when the state of emergency was established at a national level while continuing to fulfil their national and collective defence responsibilities in the allied context.

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