PERSONAL MEDICAL DATA: THE COST OF THE PRIVACY IN THE SURVEILLANCE SOCIETY

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ABSTRACT*: Personal medical data is beginning to raise more and more interpretation issues in the context of the current crisis caused by the SARS-CoV-2 pandemic and is threatening to become an explosive social problem. In this paper, we draw attention to the difficulties that arise in the practical effort to protect personal privacy, including in terms of medical information. Collective values, the public interest or the rights of others may constitute legitimate limitations on individual freedom and the right to privacy. To these are added the illegitimate interferences specific to the surveillance society, as well as the anti-democratic slippages to which the global society is always exposed. Our conclusion is that only the Law can be the authentic social binder and the defender of all, in times of peace or crisis, and Justice must remain the supreme virtue of social systems.*

KEYWORDS: *personal data protection; medical law; social values; legal interpretation; SARS-CoV-2/COVID-19*
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1. INDIVIDUAL FREEDOM AS A COLLECTIVE VALUE

A democratic society implies not only the foundation of the Right on values considered to be democratic, but also the inherent risk that these values – multiple and diverse – often conflict with each other. About the collision of values, we have discussed in previously published works (Gorea, „…And Justice for All. Legal interpretation on democratic values", 2018), this topic being a constant concern of the research that we have undertaken in recent years (Gorea, Freedom of Speech and Lawyer`s Responsibility, 2017).

Without resuming the whole argument, we will only remind that the legislator's interpretation of social values means, on careful consideration, drawing and redrawing the contours of social life. The interpretation of values, imposed by the need to manage and prioritize them, has not only the logical meaning of explaining, clarifying obscure meanings, which restore meanings, but also the hermeneutic meaning, of reconstituting an attitude, which establishes and assigns meanings. (Gorea, Repere logice ale

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interpretării în drept, 2016)[1] The democratic exercise itself, in our view, requires – with a certain historical periodicity – re-interpretations and re-assessments, including of the key values of democracy, such as Righteousness and Justice (Gorea & Puha, Filosofie, Justiţie şi Drept, 2009). We accept as a natural the assertion of John Rawls, that justice is the first virtue of social institutions, just as truth is the first virtue of systems of thought (Rawls, 1987), but sometimes it may seem difficult to establish the content of this concept, especially when we find ourselves under the assault of the need to choose between pairs of subsumed values, such as freedom and responsibility, unity and diversity, citizens' rights and public security, or other such values, at the same time friends and enemies. What is Justice, after all? Can the legislature itself give us an answer to that question? Or the task of responding remains to philosophers, as it has been since the time of Greek antiquity?

In our opinion, a democratic legislation, led by its Constitution, cannot absolutely *choose* such a value over another, but can offer – at most – a general "recipe" about how to proceed when democratic values are in conflict, conditional opting for one of them. "The legislation is the result of the decision-making process of the representatives chosen by the majority of a community, who have been given this prerogative on the basis of the belief that they will act in accordance with the common goals of that community. [...] If the law must be sufficiently general and abstract to cover as many situations as possible, it must at the same time avoid interference with other rights." (Fodor, 2017)

So how do we manage our values, especially when they risk colliding? What kind of interpretation of democratic values do we choose? Who, when and in what way assumes the social role of "axiological arbiter"?

These questions are more topical than ever when addressing hot issues of current law, such as the right to privacy and the right to the protection of personal data. Both are considered fundamental, distinct, albeit intricately linked, as both reflect one and the same cardinal value of democracy: individual freedom. The individual is *free to choose* whether or not to give consent to the collection and processing of personal data concerning him, has the option to change his mind about a previous acceptance, may request the correction of such data, and is even recognized 'the right to be forgotten'. In practice, these issues relate to respect for privacy, i.e. the recognition of the right of each individual to defend his or her privacy from any intrusion, or to renounce it - if and to the extent that he or she is willing to do so, including information relating to his or her health status.

2. LEGITIMACY OF INTERFERENCE AND INTERFERENCE OF LEGITIMACY

Charter of Fundamental Rights of the European Union, which expressly enshrines the rights set out above[2], it is not limited to their generic enunciation, but provides – at least

[1] About the valences and ambivalences of legal interpretation, see Brinduşa Gorea (2016), *Repere logice ale interpretării in drept*, Bucureşti: Editura „Academiei Române", pp. 7-11.

[2] Article 7 of the Charter of Fundamental Rights of the EU legally establishes the right to respect for private and family life, while Article 8 of the Charter enshrines the right to the protection of personal data; also from the perspective of European law, we find the right to the protection of personal data in Article 16 of the Treaty on the Functioning of the European Union. Historically, the first regulation of the protection of private data was

with regard to the protection of private data – a true compliance testing tool: they must be processed fairly, for a purpose specified by the authors of the interference.

In interpreting Article 7 of the Charter, which guarantees the protection of the fundamental right to privacy, the Court of Justice of the European Union has decided[3] that even the installation of a surveillance camera on his own home by a private person may constitute a breach of the rules on the protection of personal data. In the present case, in response to repeated aggression, a Czech citizen - Mr Ryneš, installed a surveillance camera on his house. Following another attack on his home, the recordings made with this camera helped identify two suspects, against whom criminal proceedings were initiated. Since the legality of the processing of data recorded through the surveillance camera was challenged by one of the suspects before the Czech Office for the Protection of Personal Data, the latter found that Mr Ryneš had infringed the rules on the protection of personal data and imposed a fine on him. On appeal by Mr Ryneš against a decision of the Prague Municipal Court, which had confirmed the Decision of the Office, the Supreme Administrative Court asked the Court of Justice whether the registration made by Mr Ryneš, in order to protect his life, health and property, constituted an illegitimate data processing, as long as that recording was made by a natural person, in the context of an exclusively personal or domestic activity. The Court has held that the operation of a video surveillance system which results in a video recording of persons, stored on continuous recording equipment, such as a hard disk, installed by a natural person on his family home, in order to protect the property, health and life of the owners of the home, if this system also supervises the public space, constitutes indeed an infringement of the fundamental right to privacy, guaranteed by Article 7 of the Charter, which cannot be regarded as an exclusively 'personal or domestic' activity.

This strict interpretation of the permitted derogations from the protection of personal data is enlightening for the way in which the Court of Justice of the European Union intends to address restrictively the limitations on the right to privacy.

On the other hand, the European Court of Human Rights ruled in 2010[4] that the complainant – suspected of involvement in several bomb attacks – had not been infringed by GPS surveillance ordered by the investigating bodies. More specifically, GPS surveillance, as well as the processing and use of the data thus obtained, were indeed an interference with the applicant's right to respect for his private life, but had pursued legitimate purposes of protecting national security, public safety and the rights of victims, and of preventing the commission of criminal acts. In addition, the interference was proportionate: GPS surveillance was only ordered after less invasive investigation methods proved insufficient, took place over a relatively short period (approximately three months) and affected the complainant only when he was travelling in his accomplice's car.[5]

Indeed, what interests us most from the point of view of the present research is the cause of interference, which may be twofold: either the consent of the subject to the

made by the Convention for the Protection of Persons from Automated Processing of Personal Data", adopted by the Council of Europe in Strasbourg on 28 January 1981.

[3] Judgment of 11 December 2014, Ryneš (C-212/13, EU:C:2014:2428)

[4] Uzun v. Germany

[5] In the same vein, see the case of Ben Faiza v. France.

processing of his data (in which case the term 'interference' can no longer be used rigorously), or the existence of a legitimate basis for such interference.

Even if the Charter of Fundamental Rights of the European Union lacks detail of legitimate cases when it is possible to restrict the exercise of the right to the protection of personal data, we find these limits in other normative acts adopted at European and national level. For example, paragraph 2 of Article 9 of the Convention for the Protection of Persons from Automated Processing of Personal Data (Strasbourg, 1981) makes the admissibility of any interference with the right to the protection of personal data conditional on its regulation by law. Moreover, such a legal provision, which allows interference with the right to the protection of personal data, must be 'necessary in a democratic society' and such a necessity is limited to: 'a) the protection of state security, public security, the monetary interests of the State or the repression of criminal offences; (b) the protection of the persons concerned or the rights and freedoms of others'.

As a first conclusion, the right to the protection of personal data is also no exception to the waltz that the democratic exercise is forced to dance, between the firm statement of fundamental rights, on the one hand, and their limitation in favor of others, even going as far as depriving the former of content, on the other hand.[6]

The law guarantees rights, and the law also allows their limitation for the benefit of other rights. The law creates its own mobile framework, in which the guarantees and the interferences coexist. The legitimacy of the interference is, paradoxically, based on the interference of legitimacy.

3. PRIVACY AND THE SURVEILLANCE SOCIETY

In one of the first works that appeared in Romania on the right to the protection of personal data (Zanfir, 2010), the author takes a short excerpt from the novel "Blind Faith" by the British writer Ben Elton, which we consider telling:

He could not testify in any way that his decision was the result of a strange force within him, who wanted a moment of intimacy. A desire to keep something to himself, even if only for a split second. He could not have confessed to that. Nothing was more offensive to the community than privacy. "Why would anyone want to hide any aspect of oneself from the eyes of others? Do you have something to hide?" "I have nothing to hide, if that's what you mean." "I'm fascinated then. If you don't have anything to be ashamed of, why would you want privacy?" He stood thinking for a moment. "Because I consider it fundamental to my sense of self."

"If you don't have anything to be ashamed of, why would you want privacy?" is the kind of question that heralds a dystopia. And truly democratic societies know that values are fragile, always in danger, never self-evident. Democracy is always an ideal at the edge of utopia. Modern Western democracy seems to have understood the dangers that threaten it, or at least seems in a permanent process of awareness of these risks and threats.

[6] See, for example, the guarantee by the Romanian Constitution of the right to private property, balanced by the institution of expropriation for reasons of public utility. Details in Brinduşa Gorea (2018), „…And Justice for All. Legal interpretation on democratic values", pp. 15-16.

The Internet and digitalization have allowed in recent decades such access to information exchange that everyone agrees that humanity has moved into a new stage. Just as the industrial revolution has completely changed human society, the digital revolution has brought irreversible changes to our self-awareness. "Information age" is confused with the "information society." In 2020, even these revolutionary concepts are considered to be outdated – today we are talking about the "age of knowledge" and the "knowledge-based society". (Gorea & Gorea, The Stake of the Fake: Law and Communication in a Post-Truth Society, 2019)

Technology that is developing at an ever-faster pace only complicates the situation of the strange citizen who considers his privacy to be fundamental to his "own sense of self". The Surveillance Society is a reality that we cannot have the naivety to ignore. After all, the very purpose of European regulations on the protection of personal data is to 'protect all citizens of the Union from invasion of privacy and data, in a world that is increasingly relying on data."[7]

It is important to establish that privacy is not an offence to the community.

4. THE STAKE OF THE PUBLIC INTEREST

What justifies, in a democratic society, interferences in individual freedom, its restrictions or the limitations of fundamental rights is the 'public interest', a concept as vague as content, as deeply infiltrated into the collective consciousness, even since Rousseau.[8] By the 'social contract', which no individual has actually 'signed', but to which the vast majority of citizens 'adhere' tacitly and often unconsciously (or, at least, without deeply reflecting on costs and benefits), the individual accepts his status as part of a social body, his subordination to the "supreme leadership of the general will" (Rousseau, 1957) and, implicitly, the limitation of individual freedom, so that the latter can coexist with the freedom of others. My freedom ceases where your freedom begins. The public interest, the purposes pursued by the community and its common values, are allowed to impose/legitimize limitations of the particular interests of individuals, to put obstacles in achieving personal (possibly selfish) goals and – ultimately – an operational hierarchy of unanimously accepted values, in which collective values take precedence, when they collide with individual ones.

The social logic of the "public interest" is easy to understand. Giving it up is synonymous with anarchy. But its stakes can very easily cross the border of good coexistence/good governance, to a territory of obscure interests, dominated by underground powers. The history of the last century has proved to us, unfortunately, that monstrous totalitarian systems can be born from the bet on common values, at the expense of individual values - so diverse and difficult to harmonize. Make no mistake: fascism or communism are systems that also have values at the bottom of their

[7] General Data Protection Regulation (GDPR), as better known, or Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), which became applicable in May 2018.

[8] An interesting approach to the public interest can be found in the work of the same title by the author Mădălina Tomescu, published in 2014 at the Pro Universitaria Publishing House, available online on http://www.prouniversitaria.ro/carte/interesul-public/rasfoire/.

foundation, as are democratic societies! The difference lies not even in the quality of these values, but in exceeding the limits of interference in the privacy of individuals, motivated by the option for certain collective values.

Democracy means, even in the complex and yet shallow contemporary society, the legitimization *by individuals* of common values, collective decisions and social actions arising from it. Vigilance, the lucidity of the citizen is more than ever the only obstacle to undemocratic slippages, even if his power is no longer exercised directly, but through his politically elected representatives. The public interest must remain transparent to individuals, verifiable and re-assessable.

5. PERSONAL MEDICAL DATA

We live in an information society, a data society, as some call it, although the terms 'information' and 'data' are not necessarily synonymous.[9] Without going into details that are not necessary for the purpose of this research, information technology and digital communication have led to a real information explosion, which many researchers see as the beginning of a new era in the history of humanity. We can call it the post-industrial society, post-modern society, knowledge-based society, information society, data society or even the show society[10], we may or may not accept the new concept of 'digital citizen', which is in a co-dependent relationship with the Internet and computer technology – the fact is that our personal data is increasingly transposed into digital form, so it is increasingly easier to store, process and use for one purpose or another.

The vigilance of the citizen, or the lucidity we were talking about above, is gaining new valences in a global society, characterized by rapid technological changes. We will not insist here on the risks of all kinds to which intellectual convenience or superficiality exposes us, as well as the abandonment of critical thinking, especially in the hypnotic digital world. We will confine ourself to noticing that, if personal data were not precious, there would not be a real information war to obtain it, as there would be no regulations trying to stop the abuses that result from it.

Personal data of a medical nature have the characteristic of aiming for *per-se* aggregation towards information, because they include not only identifying elements (such as names, identification numbers, location data, identifiers of physical, physiological, genetic, mental, economic, cultural or social identity), but also elements of the person's physical or mental health, including the provided health care services. The breach of the security of this medical data can have at least humiliating consequences for the individual, if not dramatic repercussions.

In Z. v. Finland (1997), the European Court of Human Rights held that the protection of personal data, which also includes the confidentiality of information on the health of the person, plays a fundamental role in the exercise of the right to private and family life.

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[9] In general, data is considered to be support for information. The latter term refers to related data sets, which take on meaning by interpreting the user. Information becomes knowledge when the user understands it and realizes how it can be best used for a specific activity, motivated by a specific purpose.

[10] As Guy Debord called it in his 1967 paper, entitled "La Societe du Spectacle", in which he bemoaned the decline of "being" to "have", followed by "to appear". Human life degrades due to intellectual convenience, its quality suffers from lack of authenticity, social life turns into an empty show of content, critical thinking is replaced by superficial perception.

Respect for the confidentiality of health information is an essential principle of the legal system of all Contracting States and is essential not only for the protection of privacy, but also for trust in the medical system in general, the ECHR appreciated. In the absence of such protection, persons requiring medical care may be tempted not to provide information of an intimate nature necessary for the provision of the necessary care, or even not to consult a doctor, which would endanger both their life and the community.[11]

In the case at issue, applicant Z was married to X, the latter charged with several sexual offences. Both X and Z were infected with HIV. X was prosecuted not only for rape, but also for attempted murder, for intentionally exposing his victims to the risk of HIV infection. The determination of guilt for that count depended essentially on whether X knew, at the time of the rapes, that he was HIV positive. Therefore, the wife Z was summoned as a witness in the criminal trial which took place at the Helsinki Court. Since Mrs. Z refused to appear as a witness, several doctors and a psychiatrist treating the complainant were obliged, despite their protests, to testify and give information about her. In addition, X and Z's medical records were seized following a police search at the hospital where the two were being treated, and photocopies of these documents were filed with the court file. Although the court proceedings were conducted in closed doors, articles about the trial appeared in the press at least twice.

Although it ruled that, in the present case, the order of doctors to testify, as well as the confiscation of the applicant's medical records and their inclusion in the criminal investigation file, did not constitute infringements of the right to privacy, the ECHR nevertheless ruled that it constituted such an infringement the disclosure of the applicant's identity and health status by the Helsinki Court of Appeal, as well as the decision to make public the doctors' statements and medical data 10 years after the trial.

It should be noted that the decision to partially reject the applicant's complaint was adopted by a majority of 8 to 1, one of the ECHR judges expressing the divergent view that 'regardless of the requirements of criminal proceedings, such considerations cannot justify the disclosure of confidential information obtained by virtue of the relationship between doctor and patient or of those documents' and that 'medical data must remain confidential forever' , and 'the interest of ensuring the publicity of court hearings is not sufficient to justify the disclosure of confidential data, even after a large number of years have elapsed".[12]

On the other hand, in a case decided by the High Court of Cassation and Justice of our country, the appellant applicant requested that a Neuropsychiatric Recovery and Rehabilitation Centre be ordered to pay him moral damages in the amount of EUR 1,000,000 for infringing his right to privacy. The appellant complained to the Supreme Court that both the first court (the Sibiu County Court of Justice) and the appellate court (Alba Iulia Court of Appeal) wrongly rejected his claims, since the defendant committed

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[11] https://jurisprudentacedo.com/Z-c.-FINLANDA-Publicarea-declratiilor-doc%C2%ADtorilor-si-a-datelor-medicale.-Dezvaluirea-identitatii-si-a-starii-de-sanatate.html

[12] Judge De Meyer's partially divergent opinion also call into question the concept of the 'margin of discretion' of national authorities, which would authorize States to decide what is acceptable and what is not, a concept criticized by the author when it comes to human rights: 'The empty content formula relating to the discretion of States - repeated by the Court for too long - is a devious and unnecessary formula, designed to implicitly indicate that states can do anything that the Court does not consider incompatible with human rights. This terminology, as wrong in principle as it is meaningless in practice, must be abandoned without delay.'

an infringement of his fundamental rights, when she filed (in another trial, before the Sibiu City Court) documents concerning his mental health status. The damage is likely to have affected his image, the appellant states, since information of a medical nature, which was strictly confidential, was disclosed by the defendant, which was subsequently made aware of both the appellant's minor daughter and the child's mother's co-workers and the child's teacher. The complainant claimed that the defendant had sent those documents, requested by the Sibiu Court in a file establishing the visitation schedule for the minor daughter, without asking for his consent, without there being an authorization of the supervisory authority and without prior consultation of the Romanian College of Physicians, as provided for in Article 9 of Law No. 677/2001, for the protection of persons with regard to the processing of personal data and the free movement of such data.[13]

However, the High Court of Cassation and Justice rejected the applicant's appeal, giving reasons for its solution by the exceptions allowed by law from the prohibition on the processing of personal data, including the situation where processing is necessary 'for the establishment, exercise or defense of a right in court'. The supreme court also invoked the principle of the best interests of the child, which is internally governed by Article 263 (2) of the Romanian Civil Code and Article 6 of Law No. Article 272/2004 on the protection and promotion of the rights of the child, as well as by Article 24(2) of Regulation (EC) No 1493/1999, (2) of the Charter of Fundamental Rights of the European Union, which states that 'in all actions relating to children, whether carried out by public authorities or private institutions, the best interests of the child[14] must be considered paramount".

In accordance with art. 483 (1) of the Romanian Civil Code, „parental authority is the set of rights and duties which concern both the person and the child's property, and it belong equally to both parents". However, we consider that the exercise of parental authority by both parents is a right of the minor, of which he may be deprived of for reasons which are in the best interests of the child. (Nagy & Toncean-Luieran, 2013) In order to reinforce this last statement, we refer to the provisions of Article 398 (1) of the Romanian Civil Code, according to which, where there are reasonable grounds, and if it is in the best interests of the child, the court may order the exercise of parental authority by a single parent. (Nagy, Aspects concerning the divorce on parents and children relations, 2019)

In this case, the mental illness of one of the parents was regarded as a good reason for the exercise of parental authority exclusively by the other parent, in particular to prohibit the right of the parent who does not permanently reside with the child to have personal ties with him. In order to reach a fair solution and *in the best interests* of the child, the

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[13] Law No. 677/2001 for the protection of persons regarding the processing of personal data and the free movement of such data was repealed by Law No 677/2001. 129/2018, published in the Official Gazette of Romania, Part I, No. 503 of 19 June 2018, but the relevant legislative principles remained unchanged.

[14] In fact, the principle of the best interests of the child is repeatedly laid down in the rules on the protection of the child, both domestic and international. For details on the regulation of the best interests of the child in the Convention on the Protection of Children and Cooperation in International Adoption, see Ioana-Raluca Toncean-Luieran (2013), *Aspects regarding international adoption*, published in the volume of the Conference "Literature. Discourse and Multicultural Dialogue", I. Boldea, *Studies on* Literature. *Discourse and Multicultural Dialogue*, Tirgu Mureş: Archipelago XXI Publishing House, p.260.

court entrusted with the resolution of a dispute concerning the exercise of parental authority is obliged to administer all the necessary evidence for the purpose of establishing the correct facts, 'including in terms of the mental health of the parents, who cannot oppose their right not to give their consent to the processing of personal data of a medical nature. Otherwise, the scope of the evidence would be limited by the refusal of the parent to give his consent to the processing of medical data, since the court entrusted with the resolution of the dispute concerning the exercise of parental authority cannot use all the facts for the adoption of a measure converging with the best interests of the child.'

6. INSTEAD OF CONCLUSIONS

We have chosen this legal case for the end of the article, because – like Case Z v. Finland – we consider it relevant to the phenomenon of collision of values, in the latter case, between privacy, dignity and the right to the protection of personal medical data, on the one hand, and the best interests of the child, or his right to his own physical and mental security, even against the interests of the parents, on the other hand.

The case decided by the Romanian supreme court is also an illustration of the relative new conception that Western society has on children, which "must no longer be considered the property of parents, but must be recognized as individuals with their own rights and needs."[15] Today it seems a self-evident statement, but only a few decades separate us from a long time when the child was the "private property of the family", and by no means the object of a "public interest".

Last but not least, both of the cases presented allow an X-ray of the way in which values – both recognized and guaranteed by legislation, but often conflicted in social practice – can be effectively agreed, even if that agreement actually means an operation of legal interpretation, and even more – a concrete option between values, an act of decision, whereby one is preferred to the detriment of another.

As we have stated before (Gorea, „…And Justice for All. Legal interpretation on democratic values", 2018), the legislation decides how to proceed in the event of collision between values, but tacitly recognizes its inability (organic and functional) to adjust at the level of detail, of particular case, the final balance between values, by delegating this operation of finesse to Justice. The law is too general to take into account the details of each individual situation, but justice will lean on the specific case, will balance, for example, the right to the secrecy of medical data and other social/personal interests, and will decide which should take precedence. In other words, the final and most important phase of the interpretation of democratic values is, in the event of divergence, the judicial interpretation, whereby the judge decides how concretely to prioritize values.

Personal medical data is beginning to raise more and more problems of interpretation in the context of the current crisis caused by the SARS-CoV-2 pandemic. A crisis that goes beyond health, medical, economic, political, educational, etc. and which is

[15] Recommendation 874 (1979) of the Parliamentary Assembly of the Council of Europe. The text translated into Romanian is available online here:
https://drive.google.com/file/d/1FLbpBPc-Hewf_srr1xPDUrxjgNpBG3CILLr8dMwigT89A0zbfPhywwOc6mYk/view

increasingly evident a social crisis. There is already talk of the COVID-19 Era[16], with all the challenges, risks, and opportunities that a major change brings to the (self)perception of global society. At the time of writing this article (October 2020), we believe that the pandemic is only in its infancy and that it is - despite the attempts of experts and specialists - impossible to estimate its evolution and, in particular, the effects it will create in the medium and long term. The long-awaited appearance of a vaccine is already stirring up suspicion and heated debate in the public space, again fueling the conflict between "vaccinists" and "anti-vaccinists" (Gorea, „…And Justice for All. Legal interpretation on democratic values", 2018).

The issue of medical data threatens to become explosive. It has already been observed the social unrest triggered by the mandatory quarantine of patients detected with COVID-19, especially following the decision by which the Constitutional Court declared unconstitutional the legal provisions allowing the establishment, by order of the Minister of Health, of measures such as mandatory treatment or hospital admission, in the case of emergency situations caused by epidemics / pandemics.[17]

The "new COVID-19 era" may also mean a new era in the public perception of the Law, a rethink of legislative and judicial authority, perhaps even a reassessment of its intrinsic legitimacy. We believe that it is significant that there was also a separate opinion within the Constitutional Court, a different interpretation of the restriction of constitutional rights on individual freedom, more balanced with the right to health protection; the conclusion of this separate view is that 'constitutional mechanisms for the protection of fundamental rights exist and are functional, which entitles confidence in the resilience of the rule of law and democracy, even during pandemics or exceptional states."[18]

It remains to be seen to what extent and how the Law will succeed in adapting to this world in continuous change and whether it will be able to maintain that subtle balance between the public interest and the freedom of individuals. We believe that yes, it will succeed in this mandatory endeavor, because the alternative is frightening. The Law must remain the only reliable social binder, the defender of all, in times of peace or crisis, and Justice – the supreme virtue of social systems. Otherwise, in the battle with this virus, we can lose not only our health and life, not just "the trust in the resilience of the rule of law and democracy", but even our axiological landmarks and our humanity.

[16] Technically, the virus is called "SARS-CoV-2", and the disease caused by it – COVID-19 ("COrona VIrus Disease", where 19 is the year of occurrence), just as HIV is the virus, and AIDS is the disease.

[17] Constitutional Court Decision No 458 of 25 June 2020 on the exception of unconstitutionality of the provisions of Article 25 (2) of the Treaty on European Union (2) of Law No 2/2002 of the European Parliament and of the Council of 22 95/2006 on health reform and Article 8(1) of Regulation (EC) No 1493/1999. (1) of the Emergency Ordinance of the Government No. 11/2020 on medical emergency stocks, as well as some measures related to the establishment of quarantine, published in the Official Gazette of Romania, Part I, No 581 of 2 July 2020, available online on http://legislatie.just.ro/Public/DetaliiDocumentAfis/227548

[18] *Idem*.

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