LEGAL REGULATIONS DURING THE MEDICAL PANDEMIC IN THE ANALYSIS OF THE ROMANIAN CONSTITUTIONAL COURT

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ABSTRACT: *The medical pandemic COVID-19 represents not only a problem of a medical nature, but also of a legal approach. The states were not prepared for such situations, and the limited knowledge of the causes and evolution of the disease, determined an atypical legislative approach, bordering on the violation of fundamental human rights.*
The article presents the legislative situation of the state of emergency existing before the pandemic, then critically analyzes the legislative interventions at the national level. The important decisions of the Constitutional Court in the matter of legislation during the pandemic were analyzed, also showing how the courts reacted. A component of the study presents the doctrinal positions in the matter, as well as proposals for improving the regulation.
The medical pandemic COVID-19 found the Romanian state unprepared, both in the medical component and in the legal component. With a normative act establishing the state of emergency precariously adopted, during a situation of democratic crisis, beyond the constitutional requirements, Romanian institutions have improvised, trying to create the appearance of science, of understanding the phenomenon and of effective care for the rights and freedoms of the citizen.

KEYWORDS: *medical pandemic;human rights; Constitutional Court; European Union; law*
JELCODE: *K32, K33*

1. THE PANDEMIC, A REALITY AT THE LEVEL OF THE INTERNATIONAL SOCIETY

The pandemic is, today, one of the most used words at the level of the international community. A polarized world, in which separation is not given by democracy versus dictatorship, good versus bad, with a competitive economy or in poverty, but a separation given by the hope that science will win versus denying reality, and by a division between vaccinated people versus people who refuse to accept immunization.

What was announced in early January 2020 as just a medical problem located in China has turned into a health, economic and reliability nightmare that affects the whole world.

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The pandemic, declared late and with much hesitation by the World Health Organization, shows, once again, that the mechanisms used by the international community are ill-suited to technological development and to limiting vulnerabilities to the population. The United Nations, being based on the sovereign equality of states, has failed to identify mechanisms for overcoming the division of functions in its system between spheres of influence, on criteria other than meritocratic ones. Without questioning the operating principles of the only international organization with a universal vocation, I believe that a pragmatic, professional, transparent approach to specific activities in the UN system is needed, which is increasingly demanded by many developing countries, which contribute substantially in financing sectorally developed programs.

While the WHO alert system has proved ineffective, states have been affected not only by the exponential increase in the number of infections, but also by the lack of medical equipment and supplies needed to both prevent and combat the effects of the pandemic.

The evolution of the pandemic has revealed a weakness in developed societies, including the European Union: as the economy of the Member States has developed, the policies of the Union and the states have converged to limit the support of vital economic sectors for the rapid production of equipment and consumables, necessary for medical staff and citizens exposed to disease. Assessing the situation as well as the dependence on imports from economic areas where production costs are lower, at least in theory we can open a debate on how the European Union could develop policies to support vital economic sectors for the protection of public health (Ispas, 2020), as well as rethinking State aid, which could be considered compatible with Union law, when we consider sectors with a high degree of technology, intended to produce medical devices and instruments, supplies or medicine/vaccines to immunize the population. Today we are facing the COVID 19 pandemic, but the mechanisms should be streamlined for any kind of threat to the life or health of the population. This question is all the more relevant in view of the purpose of the prohibition of State aid, namely to protect the economy and the competitiveness of economic operators in the face of non-competitive and protectionist practices by States. However, the rapid development of the virus, the initial difficulty of providing the necessary material resources to limit the effects of the pandemic, the appearance of aggressive forms of the virus, the difficulty of anticipating when the pandemic will be considered over fundamentally affects the rights and freedoms of citizens, as well as the economies of the Member States, with far-reaching consequences for a seemingly imminent global economic crisis.

2. THE LEGISLATIVE SITUATION IN ROMANIA, AT THE TIME OF THE APPEARANCE OF COVID-19

The legal regulation of the state of emergency in Romania was, from the beginning, a reaction to a given situation, not an establishment of the legal norm on a solid, scientific basis, taking into account multiple possibilities of manifestation of the legal framework. Romania's 1991 constitution, revised in 2003, regulates a number of exceptional measures that the state president can take, including declaring a state of siege and declaring a state of emergency. The provisions of Article 93 of the Constitution provide that: "*The President of Romania shall, according to the law, institute the state of siege or state of emergency in the entire country or in some territorial-administrative units, and ask for the Parliament's*

approval for the measure adopted, within 5 days of the date of taking it, at the latest. If Parliament does not sit in a session, it shall be convened de jure within 48 hours of the institution of the state of siege or emergency, and shall function throughout this state."[1] The constitutional norm establishes that the regime of the state of siege and the state of emergency is regulated by the Parliament by organic law.[2]

It should be noted that the President's right to declare a state of emergency or a state of siege derives from his capacity as head of the armed forces and head of the Supreme Council of National Defense (Badescu, 2018). However, the right of the president is not a discretionary and absolute one, his decree being subject to the approval of the Parliament, as the only legislative authority in the state. The president decrees, establishes the territorial limits of the norm (at national level or at the level of one or more administrative-territorial units), however, the measures that will form the material body of the restrictions or limitations of some civil rights do not fall within the competence of the President, these being previously regulated by organic law, by the Parliament. Pursuant to Article 67 of the Constitution, it approves the measure decreed by the President, by adopting a decision, adopted in a joint sitting of the Chamber of Deputies and the Senate.

The regulation of the state of emergency and the state of siege was made in 1999, amid strong social tensions, in the context in which the miners from Valea Jiului had started marching towards the country's capital, Bucharest, in order to provoke the dismissal of the government. In order to understand the degree of social danger, it must be shown that in Romania, in the period 1990-1999, six Mineriads took place, being known as violent manifestations of miners, against peaceful demonstrations of citizens or against legitimately appointed governments. The legal regulation was enacted by the Government, by Emergency Ordinance no. 1/1999[3], under the old constitutional provision which provided that, in exceptional cases, emergency ordinances may be adopted, subject to the convocation of the Parliament, for their approval (Article 114 (4) of the 1991 Constitution). Although convened, Parliament did not complete the debate and approval of the ordinance, which went through the approval procedure in 2004[4], after the entry into force of the revised constitutional rules in 2003. Even if there was no official motivation of the Parliament to stop the parliamentary debate, the agreement of the Prime Minister in office with the leader of the miners, made at the Cozia Monastery, can be a determining factor in the decision of the parliament.

The doctrine has shown that a first anomaly of the regulation is that, although the Constitution expressly stipulates that the state of emergency or state of siege is regulated by organic law, although there was the possibility that the Parliament, in an extraordinary session, could adopt a legislative act of the nature required by the Constitution, however,

[1] The Romanian Constitution was adopted at the meeting of the Constituent Assembly on November 21, 1991 and was published in the Official Gazette of Romania, Part I, no. 233 of 21 November 1991, entering into force after its approval by referendum of 8 December 1991

[2] Article 73 (3) g) of the Romanian Constitution, published after revision in the Official Gazette of Romania, part I, no. 429 din 29.10.2003

[3] Published in the Official Gazette of Romania, no. 22 of January 21, 1999

[4] Law 453/2004 on the approval with amendments of the Government Emergency Ordinance no. 1/1999, regarding the state of siege and the state of emergency no. 1/1999, published in the Official Gazette of Romania no. 1052 of 2004

a questionable solution was chosen, exploited for the first time in this period of manifestation of the COVID-19 pandemic.

Starting from the regulation of Article 3 and Article 4 of GEO no. 1/1999, which stipulates that: "Article 3. The state of emergency represents the set of measures of a political, economic, social and public order nature, instituted throughout the country or in certain areas or in some administrative-territorial units, in the following situations:

a) the existence of threats to national security or constitutional democracy, which makes it necessary to defend the rule of law institutions and to maintain or restore the state of legality;

b) the imminent occurrence or the occurrence of disasters, which makes it necessary to prevent, limit and eliminate their effects.

Article 4. During the state of siege and the state of emergency in proportion to the gravity of the situation that determined their establishment and only if necessary, the exercise of fundamental rights or freedoms enshrined in the Constitution may be restricted, with the consent of the Minister of Justice.[5]", the doctrine criticizes the text of the law showing that "the definition abounds in indeterminate legal concepts, such as: exceptional measures, serious danger, calamity, disaster. The impossibility of the legislator is obvious (Article 3 was amended by Law 453/2004 for the approval of GEO no. 1/1999) in attempting to anticipate the situations that could determine the establishment of the state of emergency which inevitably entails the restriction of the exercise of certain rights or freedoms, under the conditions of Article 53 of the republished Constitution. The finding of the existence of the circumstances that determine the establishment of the state of emergency is left to the discretion of the one called to apply these provisions, i.e. to the President of Romania, who has a wide discretionary power in this respect, the risk of excess power being increased. (Apostol Tofan, 2020)

3. PANDEMIC, A REALITY WITH LACKING LEGAL REGULATIONS

Initially ignored by the national authorities, COVID-19 virus infection also began to be present in Romania, which was more emotionally affected by the realities in Italy, by the difficulties of a medical system recognized as a high-performance system. The President of Romania issued Decree no. 195/20201, establishing that the state of

[5] Articles 3 and 4 of GEO 1/1999 were amended by the approval law, introducing new provisions, the current form being: Article 3 The state of emergency represents the set of exceptional measures of a political, economic and public order nature, applicable throughout the country or in some administrative-territorial units that are established in the following situations: a) the existence of current or imminent serious dangers to national security or the functioning of constitutional democracy; b) the imminence of the occurrence or production of calamities that make it necessary to prevent, limit or eliminate, as the case may be, the consequences of disasters."After Article 3, two new articles are introduced, Articles 3^1 and 3^2, with the following content:"Article 3^1The state of siege and the state of emergency can be established and maintained only to the extent required by the situations that determine them and in compliance with the obligations assumed by Romania according to international law. Article 3^2 During the state of siege and the state of emergency, the following are prohibited:a) restriction of the right to life, except in cases where the death is the result of lawful acts of war; b) torture and inhuman or degrading treatment or punishment; c) conviction for unforeseen offenses as such, in accordance with national or international law; d) restricting free access to justice." Article 4 shall read as follows: "Article 4 During the state of siege or the state of emergency, the exercise of fundamental rights and freedoms may be restricted, with the exception of human rights and fundamental freedoms provided for in Article 3^2, only insofar as the situation requires it and in compliance with Article 53 of the Romanian Constitution, republished."

emergency is established on the entire territory of Romania, for a period of 30 days, providing that a series of rights provided in the Constitution to be restricted as an exercise, during the state of emergency: the right to free movement, the right to family 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 economic freedom. The President's decree, a veritable act with normative power, argues, in the preamble, the need to establish the exceptional measure, more on an emotional and precedent component from the experiences of other states, than on a well-founded legal situation. Moreover, the invocation of a decision of the Supreme Council of National Defense, not made public, as a result of a meeting whose organization was not publicly communicated, generated a feeling of fear, terror, violation of civil rights and freedoms, beyond the natural limits of a constitutional measure.

The Romanian Parliament, convened in a joint sitting of the two chambers, approved by decree the President's decree. Subsequently, the President issued decree no. 240/2020[6] to extend the state of emergency by another 30 days, with an argument similar to the first decree. The Parliament, being called to approve the decree, decided to approve the measure ordered by the President, with the establishment of some obligations for the Government, which were ignored, in fact, by it. The requests of the legislative authority, thorough and rational, in relation to the need to ensure that the principle of proportionality is respected, referred to: the legal obligation that any restriction of rights and freedoms be provided only by legislative acts (Safta, 2014), exclusively for reasons of prevention and control of the COVID-19 pandemic and exclusively for the period of the state of emergency.

Parliament imposes an obligation on the Government to comply with the provisions of the ECHR, including during the state of emergency, and it is given the task of informing Parliament at least every 7 days of the measures taken.
In fact, throughout the state of emergency, the Parliament's legislative authority has been undermined by the executive, under an apparent formula of "letting specialists speak." (Podaru, 2020) The discretionary, abuse and superficiality have taken the place of flexible legal regulation, with a well-defined legal framework, in which rights and freedoms are protected and the measures taken are proportionate to the cause that determined them. In reality, during the state of emergency, Romania was governed by so-called military ordinances, reminiscent of a totalitarian system, in which rights and freedoms were conditioned by the goodwill of the dictatorial system. The military ordinances issued by the commander of the action show a hilarious system, originating in Kafka's writings, rather than regulations of a European state that respects the fundamental values of man. Military ordinances, issued without a prior legal analysis, without a manifestation of its competence, without a legal logic and in contempt of the norms of legislative technique, communicated almost constantly in the late hours of the night, in an alarmist tone, represented a continuous change of previous decisions, in violation of civil rights and freedoms. In fact, in court, all military provisions were annulled on the grounds of illegality. The whole year 2020 was an apocalyptic image, with elderly people sanctioned for misdemeanors because they did not have solemn declarations containing the destination where they were traveling, with an economy on the brink of collapse, with purchases of medical equipment and supplies at exorbitant prices, investigated in cases of

[6] Published in the Official Gazette, Part I, no. 311 of 14.04.2020

high corruption by the National Anticorruption Directorate, but also parties in the government building, where the prime minister's birthday was celebrated with glasses of whiskey, cigarettes and lack of masks, which were mandatory.

Returning to the two decrees of the President, we agree with the doctrinal opinion that "…the two presidential decrees, which will probably remain a reference in the Romanian legal system, have a normative character, establishing imperative norms for the Romanian people which consist in restricting the exercise of some fundamental rights and freedoms, two annexes providing first emergency measures with direct applicability and, respectively, first emergency measures with gradual applicability. The measures taken in this context will certainly generate problems in the evolution of the Romanian society that will lead to numerous litigations in court." (Apostol Tofan, 2020, p. 12). We emphasize that, in doctrine, the act of government, as a discretionary manifestation of executive power, does not have well-defined criteria, and the lack of adequate control can lead to both a judicial review of legality, as well as one for establishing a material damage caused as a result of the application of the norm (Podaru, 2020, pp. 20-24).

After the end of the state of emergency, a state of alert was instituted throughout Romania, extended for 30 days by Government Decision, until the present moment. All decisions to issue a state of alert have been and are being brought before the courts, with a significant number of final decisions annulling the provisions of the government or ministers as unlawful.

4. DECISION 152/2020, OR A FIRST CENSORSHIP OF LEGISLATIVE ACTS/DECREES OF THE PRESIDENT OF THE PANDEMIC BY THE CONSTITUTIONAL COURT

A first intervention of the Constitutional Court was materialized by Decision no. 152 of May 6, 2020[7] and had as object criticisms of the constitutionality of some provisions of GEO 1/1999, as well as of GEO 34/2020, which amends and completes the first legislative act. The criticisms of the People's Advocate, the author of the complaint, were aimed at both criticisms of extrinsic constitutionality as well as criticisms of intrinsic unconstitutionality. Holding the case for trial, the Constitutional Court analyzed both the conformity of the law, as a whole, with the constitutional norms, as well as certain provisions invoked to be unconstitutional, regarding the obligations of persons (Article 9 of the ordinance), the elements necessary to be included in the decree (Article 14), respectively the manner of sanctioning the violation of the rules (Article 28).

Examining the first criticism of extrinsic unconstitutionality, regarding the President's ability to issue a normative act in a field in which the Constitution provides for the need for regulation by organic law, the Court notes that „the president acted as a state body, in a regime of public power, ... the decree being an administrative act issued by a public authority in order to organize the execution of the law or the concrete execution of the law that gives rise, modifies or extinguishes the legal relations"[8]. Whereas the constitutional norm fixes the role of the President in issuing the decree declaring a state of emergency, within the limits of the law, which in turn establishes extended powers for the President,

[7] Published in the Official Gazette of Romania no. 287 of 13 May 2020
[8] Paragraph 86 of the considerations of Decision 152/2020

including in determining whose freedoms and rights are violated, (from the enumeration contained in the order), the Court notes that "the decree establishing the state of emergency is a normative administrative act, subsequent to the law, which establishes in concrete terms the first emergency measures to be taken, as well as the fundamental rights and freedoms whose exercise is to be restricted."[9]Therefore, the act issued by the President does not have the power of primary rule of law, but of subsidiary character, to identify in the law the measures that are immediately applicable, related to the situation that determined the adoption of the measure, by applying the principle of proportionality. The Court notes that, "given the inferior legal force of the law, the President's decree cannot repeal, replace or add to the law, so it cannot contain rules of primary regulation."[10] Even if a crisis situation is characterized by novelty, unpredictability and, perhaps, abnormality, it is not possible to derogate from the general framework of separation of powers in the rule of law. The President's decree will not be able to use, thus, illegal norms by which to supplement the provisions of the law, but will use the tools allowed by law to customize the society's reaction to the emergency. The Court reiterates that Parliament has the constitutional authority to issue an organic law to regulate the state of siege and the state of emergency, and the President has the power to implement the provisions of the law by issuing a decree. The vocation of the presidential decree is to execute the law, by reference to the attributions of the parliament, reason for which it has the possibility to control the validity and legality of the decree, to censor it, partially or totally, in the decision it issues. Subsequently, after its approval by Parliament's decision, the decree may be subject to constitutional review. The issuance of the parliamentary decision is not a formal act, but a legally binding act for the validity of maintaining the state of emergency, in the absence of which the measures ordered by the President in the decree are revoked. Being a purely administrative act, positioned in the relationship between the Parliament and the President, the decree does not fall within the scope of acts that fall under the control of legality, by court (Chiuariu, 2020).

Reiterating that "the most urgent measures that the President may adopt are of an administrative nature and may concern only those matters regulated by law,"[11] the Court noted that: immediate emergency measures with immediate application include a number of elements which are not covered by the incident law and which go beyond the applicable legal framework in question (Dănișor, 2014). Among these measures we mention: the suspension from public office of those who led, through competition, the public health departments, the public health houses, the ambulance services, the directors of the public hospitals. Beyond the illogical approach, because when you are in a crisis situation you capitalize on all the expertise in the public domain, you do not generate chaos through repeatable, unpredictable and debatable changes and you do not affect the stability of the civil service, the act is deeply partisan, being known that in December 2019 a minority government had been installed, endorsed by the president of the state. Thus, we can take into account the fact that the president of the state used, with excessive power, the attributions conferred by law, using the state of emergency to solve some problems of a political-administrative nature. The interference with the judicial organization is obvious,

[9] Paragraph 89 of the considerations of Decision 152/2020
[10] Paragraph 90 of the considerations of Decision 152/2020
[11] Paragraph 99 of the considerations of Decision 152/2020

among the measures being the legal suspension of civil cases, the continuation of the activity of courts only in cases of special urgency, the limitation of criminal prosecution and judges of rights and freedoms, but also the legal suspension of criminal proceedings (paragraph 100). The president ordered the suspension of some laws, the non-application of some laws, but also the modification and completion of some laws, through abuse of power, in violation of the constitutional limits within which he could act. Moreover, attitudes of undermining the authority of the legislative institution were not achieved only during the state of emergency, being a constant of the presidential speech. In a fair manner, given that Parliament remains convened during a state of emergency, its dissolution is prohibited and, in the event of termination of office, its extension until the end of the state of emergency, Parliament had the opportunity to legislate, in areas that could be considered vital to overcoming the pandemic, all the more so as the measures in place were intended to limit the exercise of fundamental rights and freedoms.

Concluding, the Court noted that "the manner in which the President exercised his constitutional power by exceeding the legal framework is not the consequence of any defect in the unconstitutionality of the primary regulatory act by virtue of and within the limits of which the public authority was empowered to act."[12] At the same time, the Court noted the precarious attitude of the Parliament, which limited itself to approving the first decree, without censoring the measures taken with abuse of power by the President, while in the second judgment it is limited, as I have previously shown, to specify how decisions affecting fundamental rights and freedoms can be taken without censoring Annex 1, which identified measures that were in violation of the limits set by the constitutional and primary rules.

The second element of extrinsic analysis refers to the adoption of GEO / 1999, respectively GEO34 / 2020, by reference to the constitutional norms that establish that the field of state of siege and state of emergency is regulated by organic law. The Court noted that the relevant constitutional provisions oblige the legislator to regulate in these areas by organic law, but considers that the provisions of Article 115 (6) of the Constitution in force cannot be extended to an act adopted before its entry into force. We criticize the court's decision, as the 1991 Constitution also provided the same in terms of state of emergency, the reference to the limits of the adoption of emergency ordinances being questionable. Otherwise, any constitutional provision could be circumvented by reporting exclusively to the urgency of regulation. The Court declares GEO 34/2020 governing the sanctioning regime unconstitutional, as an amendment to GEO 1/1999, which was adopted in violation of Article 115 (6) of the Constitution, some of the provisions being themselves unconstitutional (confiscation does not limit, but infringes on the right to property itself), the suppression of decision-making transparency and social dialogue affects the right to information, which is not only guaranteed at national level, but also at European level by the European Union Directive no. 13/2012.

Among the criticisms of intrinsic constitutionality, the Court considered unconstitutional only the provision of Article 28 of GEO 1/1999, in reference to the principle of legality and the principle of proportionality, „whereas the rule in question does not clearly and unequivocally indicate the acts, facts, or omissions which constitute

[12] Paragraph 104 of the considerations of Decision 152/2020

infringements, nor does it make it easy to identify them by reference to the normative acts with which the incriminating text is linked"[13].

5. THE STATE OF ALERT, A PERPETUAL REALITY OF THE LAST TWO YEARS

After the end of the state of emergency, according to the constitutional provisions, the state of alert was established in Romania, this being extended by the Government, by decision, for successive periods of 30 days each[14]. For a start, by Decision no. 5 of 2020, the Romanian Parliament approved the measures adopted by Government Decision no. 394/2020 on the declaration of the state of alert and the measures applied during it to prevent and combat the effects of the COVID-19 pandemic. The decision of the Parliament was subject to constitutional review, by the decision of the Court no. 672/20 October 2021 retaining its unconstitutionality, an aspect to which we will return.

The decisions taken by the government to prevent, limit or cancel the effects of the pandemic were aimed at, in particular, measures to limit activity in some non-essential sectors, endorsing work from home, limiting activity in places of culture, sports, education, entertainment, both in terms of time and number of participants. The measures, taken by the government, based on the expertise of some specialists, not always known to the public, were challenged in court, many of them being annulled, as illegal, by the judiciary.

The medical acquisitions made during the pandemic were and are the subject of criminal investigations carried out by the National Anticorruption Directorate, the acquisition at exorbitant prices of qualitatively questionable products being a consequence of illegal labor, suspected of corruption. Including the purchase of 100 million doses of vaccine, for an adult population of about 17 million citizens, raises questions of a legal nature.

Now that the Omicron variant is making its presence felt across Europe, one question remains: could the epidemic be managed without this unprecedented assault on individual human rights? Will the chimera of collective rights be able to call into question human rights, as they are known and accepted in international society? Will the collective right to health affect the individual's right to choose? The pandemic will probably pass soon, but the consequences for the legal order will be felt for a long time.

6. DECISIONS OF THE CONSTITUTIONAL COURT FROM 2020-2021 REGARDING LEGISLATIVE ACTS ADOPTED IN CONNECTION WITH THE FIGHT AGAINST THE PANDEMIC.

In order to provide a legal framework for public actions during the pandemic, after the state of emergency has ended, Law 55/2020 was adopted[15], on measures to prevent and combat the effects of the COVID-19 pandemic. The People's Advocate, in exercising his powers, notified the Constitutional Court in connection with the possible aspects of

[13] Paragraph 128 of the considerations of Decision 152/2020

[14] In 2020, the following decisions were issued: Government Decision no. 394/2020, Government Decision no. 465/2020, Government Decision no. 476/2020, Government Decision no. 553/2020, Decision of 56/2020, Government Decision no. 967/2020

[15] Published in the Official Gazette of Romania, Part I, no. 396 of 15.05.2020

unconstitutionality contained in the law, in particular as regards the breach of the principle of the separation of powers in the State, free access to justice, as well as Parliament's relations with the Government, in relation to the legal nature of acts issued by the Government. In essence, the constitutional conflict concerned the definition of the state of alert, the manner in which it was established, as well as the measures that may be ordered by the government during this period, the related contravention regime, but also the manner of exercising control by Parliament.

The essence of the referral refers to the way in which the Parliament can intervene in an act of administration, in an act of enforcement of a law. The Court notes that the legislative institution, in defining the concept of a state of alert, sought an analogy with the state of siege and the state of emergency, with the stated purpose of limiting the possibility for the executive to abusively dispose of his right to declare a state of alert in at least half of the territory. The intention of the legislature was thus to limit the possibility of establishing a state of alert throughout the territory, as a form of parliamentary control. However, this type of regulation strongly interferes with the powers conferred constitutionally on the Government, in its mission to enforce the provisions of the law. If in the case of a state of siege and a state of emergency, the constitutional norm provides for this control of the decree of the president, as well as the certain relations between the two powers, in the case of the alert we are not in the presence of constitutional norms, but of legal norms. Infra-constitutional acts cannot constitute rules derogating from the powers established in the supreme act in the state for a certain power, in this case the Government. If the parliament wants to exercise control over the work of the government, it must use the constitutional instruments, including the institution of the motion of censure. On the other hand, the decisions of the government are subject to judicial review of legality, any person claiming a violated right having the opportunity to apply to the administrative court to verify the legality of the act in question.

The Constitutional Court upheld the merits of the complaint, "with the consequence of the unconstitutionality of Article 4 (3) and (4) of Law 55/2020 in relation to the provisions of Article 1 (4), Article 21, Article 52, Article 108 and Article 126 (6) of the Constitution, whereas, by these texts of law, The Parliament cumulates the legislative and executive functions, a situation incompatible with the principle of separation and balance of powers in the state ... the legal regime of Government decisions is distorted ... a confusing legal regime of Government decisions is created, likely to raise the issue of their exemption from judicial review, ...with the consequence of violating the free access to justice and the right of the injured person by a public authority."[16]

As previously shown, the Romanian Parliament adopted Decision no. 5/2020, for approving the alert status and the measures established by Government decision. A number of 50 parliamentarians from the Chamber of Deputies notified, *a posteriori*, the Constitutional Court in connection with the unconstitutionality of the adopted decision. It is clear from the preamble to the judgment that it was adopted pursuant to Article 4 (3) of Law 55/2020, a provision which was declared unconstitutional, as I have shown above. The Court noted that the Parliament had a non-compliant attitude towards the executive, so that, after establishing its power to issue a decision in application of the law, it obliges

[16] Paragraph 61 of the considerations of the Decision of the Constitutional Court no. 457 of June 25, 2020, published in the Official Gazette of Romania, Part I, no. 578 from 01.07.2020

the executive authority to appear before it in order to validate the executive action. This new type of decision, a validated executive decision, does not fall within the scope of constitutional regulation, and parliamentary control over the government cannot replace judicial control over the legality of administrative acts issued by the executive. Consequently, the Court found that the Parliament's decision was unconstitutional, with a unanimous vote.

In the time since the beginning of the pandemic and until now, the Constitutional Court has been called upon to resolve several complaints of unconstitutionality, generally with a topic subsequent to the issue of the pandemic (extension of the mandates of local elected officials, support measures from European funds to combat the effects of the pandemic, budget rectifications and allocation of funds for medical procurement, operation of the national emergency management system, measures on education).[17]

7. CONCLUSIONS

The medical pandemic COVID-19 found the Romanian state unprepared, both in the medical component and in the legal component. With a normative act establishing the state of emergency precariously adopted, during a situation of democratic crisis, beyond the constitutional requirements, Romanian institutions have improvised, trying to create the appearance of science, of understanding the phenomenon and of effective care for the rights and freedoms of the citizen. Manifest opacity, poor public communication, unconstitutional, illegal regulations made under the guise of coercive authority of the military system (especially during a state of emergency), the ambiguity of the laws and the constant change of the newly established laws, the change of mind, as a policy of practical regulation are just as many elements that have generated a feeling of distrust in public opinion and, despite the evidence, the belief that the virus does not exist, that vaccination is not necessary have spread especially among the population with a modest level of education. The fact that Romania is among the last European states to vaccinate the population is a direct consequence of the wrong regulation and the erroneous administration of the subject.

The pandemic has come and will pass, but human rights and the rule of law must be ensured. Legality of regulation, administration of justice without interference from other powers, separation of powers in the state, respect for civil rights and freedoms, good governance in the interests of citizens, the correlation of collective rights with individual rights must be fundamental in democracy, even in a state of emergency. Otherwise, history shows enough situations in which excess of authority has led to immeasurable humanitarian dramas. The efforts of public authorities must not be to limit the pandemic, at all costs, but to protect life and human rights in the fight against the virus.

[17] These decisions can be found at https://www.ccr.ro/decizii-covid-19/

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