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Some Shortcomings of the Legal Framework Applicable in the Covid-19 Context

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ABSTRACT: The article presents some aspects of the recent past of the pandemic with COVID-19, namely during 2020, either from a state of emergency or from a state of alert that was established in Romania. The exceptional situation still found around the world has led public authorities to take unprecedented action and to quickly develop a legal framework to implement these measures. The regulations adopted were not without ambiguities or ambiguities, which is why, in this study we set out to present some examples, namely: the situation of homeless people, rail passenger transport, restricting traffic exclusively in the metropolitan area, protection of chronic patients and not only. The aim of the research is to identify solutions to improve the legislation starting from concrete cases, but also to present the difficulties that the Romanian state authorities have faced and continue to face, in some cases and what solution has often been brought for balancing the relationship between rights and prohibitions, in the context of the need to protect public health by restricting individual rights and freedoms.

KEYWORDS: public health, human rights, pandemics

Legal framework regarding the accommodation of homeless persons in a state of emergency established in Romania in the COVID-19 pandemic

Although concrete measures have been taken to house and care for homeless people in specially designed centres, this category of people represents a potential danger of spreading or bringing coronavirus to centres, as the obligation to isolate them in centres is not regulated at national level.

Moreover, the homeless also posed a risk to the staff of the welfare departments who were employed at the centre and who were at that time in preventive isolation at work (Adam 2017a, 90). As a result of the analysis of the applicable legislation, a discrepancy was found in the obligations to be met by each of the two categories of persons listed - employees being obliged not to leave the centre, while homeless people are not imposed the same obligations.

Although most homeless people staying in the centre have understood the recommendations to stay in the centre, there is no possibility of effectively banning these people from leaving the centre. In this context, of the deficient legal framework, the public administration authorities approved or not, at local level, the restriction of the exit of the beneficiaries from the Night Shelter and the Residential Centre for homeless people (Oprea, 2020).

Considering the aspects reported, we find the following:

According to art. 6 of the Military Ordinance no. 3/2020, the local public administration authorities have the obligation to identify and keep records of homeless persons, as well as to ensure their shelter and care.

According to art. 10 of the Military Ordinance no. 8/2020, during the state of emergency, the measure of preventive isolation at work or in especially dedicated areas where people from outside do not have access is established for the staff of the art. 9 paragraph (1) for a period of 14 days. Indeed, art. 10 paragraph (7) of Military Ordinance no. 8/2020 specifies that the access of visitors / owners / supporters / legal representatives of beneficiaries of social services in residential centres is prohibited, but, according to the existing legal framework, it is not regulated the prohibition of homeless people accommodated in centres with this purpose to leave their premises.

The unclear legal framework regarding the establishment of the ban on the movement of persons outside the locality or the metropolitan area

Immediately, everyone wondered what “metropolitan areas” mean and what they are, as in a crossword puzzle that the population has to solve. This situation was found in several counties in Romania: Covasna, Galați, Prahova (Calin 2020; Ionescu 2020).

Given the situation created, we identified the following:

According to art. 7 and Annex I, point 11 of Law no. 351/2001 on the approval of the National Spatial Planning Plan - Section IV The network of localities, with subsequent amendments and completions, the metropolitan area is constituted by the administrative units - basic territories in the area of the Romanian Capital and of the first and second rank municipalities, which can be associated in a voluntary partnership in order to establish metropolitan areas related to the urban space and includes the administrative territory of the polarizing city and the administrative-territorial units included in its commuting area, at distances of up to 30 km, which respects the condition of spatial contiguity and within which cooperation relations have been developed on multiple levels.

From the analysis of the provisions of Annex no. 3, art. 2 to the Government Decision of Romania no. 394/18.05.2020 on declaring the state of alert and the measures applied during it to prevent and combat the effects of the COVID-19 pandemic, it is established the prohibition of the movement of persons outside the metropolitan locality / area, with certain exceptions expressly provided. A person can travel outside the metropolitan area / area only with justification, represented by the service card or certificate issued by the employer or a statement on his own responsibility regarding the reason for travel, completed in advance.

There was confusion in the public space, often considering that the metropolitan area is that area located within 30 km of the county seat.

In this regard, the Ministry of Internal Affairs came with clarifications:

“Are considered as part of the metropolitan area the localities within a radius of up to 30 kilometres from the main city (according to art. 11 of Law no. 351/2001 on the approval of the National Spatial Planning Plan - Section IV Network of localities)” (<https://www.mai.gov.ro/material-qa-stare-de-alerta/>).

However, we consider that these explanations were brief and did not clearly determine the meaning of the metropolitan area taken into account by Government Decision no. 394/2020, which is why there is a risk of a non-unitary interpretation of this phrase throughout the country, especially in areas where there is no metropolitan area established according to Law no. 351/2001.

As a result, the provisions issued must be clear and precise, in order to inform citizens correctly and coherently about the constraints on their movement, in order to avoid being fined.

Legal framework for rail passenger transport in the COVID-19 pandemic

According to art. 34 of Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, during the state of alert, in the field of rail transport, the relevant ministry may order measures, respectively restrictions, regarding: hygiene and disinfection of common areas in stations, stops, stations or stopping points, train equipment and fittings, procedures and protocols inside stations, stops, stations or stopping points, but also inside wagons and train sets, grade and the handling of the rolling stock, the rules of conduct for the staff of the operators and for the passengers, as well as regarding the information of the staff and passengers, in order to prevent the contamination of the passengers and the personnel working in the field of railway transport (Aldea 2020).

Also, according to Order no. 988/2020 on measures and rules in the field of transport, during the alert state, to prevent the spread of COVID-19, issued by the Ministry of Internal

Affairs and the Ministry of Transport, Infrastructure and Communications, for "resumption / deployment specific activities, institutions and public authorities under or under the authority of the Ministry of Transport, Infrastructure and Communications develop and approve system procedures related to the restrictions imposed by the Romanian state authorities, in the context of the pandemic generated by COVID-19, and Annex no. 4, Chapter I, point 8 regulates the fact that the railway operators establish and bring to the public's attention the organizational measures imposed by the specifics of the activity.

The joint order of the Minister of Internal Affairs and the Minister of Transport, Infrastructure and Communications No. 79/988/2020 was repealed on June 19, 2020 by Joint Order No. 97/2020 on measures and rules in the field of transport, during the alert period, to prevent the spread of COVID-19, issued by the Minister of Internal Affairs, the Minister of Health and the Minister of Transport, Infrastructure and Communications.

The provisions of Order no. 79/2020 were taken over in the new order, regarding the measures and rules in the railway field during the alert state, in order to prevent the spread of COVID-19, except for the following situations:

- the obligation for railway transport workers to be equipped with gloves and protective masks is no longer established;
- the obligation to use each access area is no longer established - in the case of railway stations with several access areas - only for one of the flows, either at the entrance or at the exit from the station;
- the operation of commercial spaces located in the space of the railway station, both in the station building and on the platform, where packaged products are sold, without allowing consumption inside them, economic operators having the obligation to take measures to avoid crowding of people inside commercial spaces.

According to art. 65 letter h) of Law no. 55 / 2020 in conjunction with art. 67 paragraph (2) letter b), c), d) of the same law, the non-observance by individuals of individual measures for the protection of life and for limiting the effects of the type of risk produced on the health of persons, established according to art. 5 para. (2) lit. d) the Finding of the contraventions provided in art. 65 and the application of the sanctions provided in art. 66 are made by the control personnel within the Department for Emergency Situations, as well as the non-commissioned officers and the officers of fire and civil protection; by police agencies and officers, non-commissioned officers and gendarmerie officers, local police officers, respectively by the staff of the public health directorates.

According to Annex no. 4, Chapter I, point 8 of the joint Order no. 97/2020, "railway operators establish and bring to the public's attention the organizational measures imposed by the specifics of the activity and its area of development".

Also, the National Centre for Railway Qualification and Training (CENAFER) within MTIC has developed the System Procedure on preventing and combating the spread of Sars-CoV-2 virus and its effects - COVID-19 for education and training activities and railway museum located in the CENAFER portfolio (https://drive.google.com/file/d/11b6BXiRLj-ge_-4oIX318AqQGtORHJll/view), according to the provisions of art. 5 of the Common Order no. 97/2020.

The legal framework regarding the hospitalization of chronic patients in the context of COVID-19

According to the Order of the Minister of Health no. 555/2020 on approving the Plan of measures for the preparation of hospitals in the context of the COVID-19 coronavirus epidemic, the List of hospitals providing medical care to patients tested positive for SARS-CoV-2 in phase I and phase a II and the List of support hospitals for patients tested positive or suspected with the SARS-CoV-

2 virus, through the amendments brought by the Order of the Minister of Health no. 961 of May 29, 2020 regulates the following:

1. Scheduled hospitalizations are reduced by up to 80%, such as scheduled surgeries for chronic patients in health facilities with beds in university centres, and up to 50% compared to February outpatient activity.

2. Chronic patients or pregnant women who require diagnostic or therapeutic interventions, the timing of which may lead to a reduction in the chances of survival, are excluded from the provisions of point 1. In this regard, health facilities will take measures in accordance with the regulations in force to prevent the spread of COVID-19 infection.

3. Hospitals will report daily in the centralized electronic system of the Ministry of Health the situation of bed occupancy.

4. This measure is necessary both to ensure the capacity of hospitals to take over cases and to save material and human resources.

5. Adequate public communication shall be ensured so that, during this period, the public addresses the hospitals only for emergencies.

6. After the cessation of the state of emergency, depending on the local epidemiological evolution, the hospitalizations and the scheduled surgical interventions can be resumed, as well as the activity in the outpatient clinics, not being necessary to respect the percentages mentioned in sub-point.

7. Depending on the local epidemiological evolution, hospitals that provide medical care to patients tested positive or suspected with the SARS-CoV-2 virus may provide, with the approval of the county health departments and the municipality of Bucharest, medical care and non-COVID-19 patients in the conditions for the existence of completely separate functional circuits (sn), without the need to discharge / transfer all hospitalized patients to other hospitals.

Therefore, it is important that the medical units - COVID hospitals and / or COVID-19 support units have separate functional circuits and, consequently, perform inpatient / outpatient appointments / surgeries / diagnostic interventions / therapeutic interventions for chronic patients and specializations, open in this respect at the level of each hospital (Schiopu 2020a, 132);

Concrete measures are also needed to support chronically ill patients who are in an emergency and cannot go to the medical units where they were being monitored or whose current doctors are currently working in the COVID-19 sector (for example, redirecting chronically ill patients) to other medical units, criteria for prioritizing emergencies, etc.).

Patients on waiting lists for national health programs were postponed for an unpredictable period, the supervision and issuance of medical prescriptions for chronically ill people who are in strict need of medication has been discontinued, with some patients being forced to buy their medicines without compensation or running out of medication for financial reasons (Jighira, 2020).

During this period, the medical staff could no longer provide outpatient clinical / paraclinical or hospital medical services (Adam 2017b, 277).

Many hospitals did not provide specialized medical staff in the organizational structure, namely a specialist in infectious diseases, a pulmonologist to provide medical care and specific treatment for the SARS-CoV-2 virus (Heghes 2020, 90).

The medical staff caring for coronavirus patients has reached mental exhaustion, nervousness, fatigue, burnout, and the scheduling of holidays can no longer be respected.

Conclusions

Although mankind has faced an exceptional situation, states must strike a fair balance between protecting the public interest, which imposes coercive measures, and protecting fundamental rights and freedoms (Schiopu 2020b, 14). Some measures are unfounded and others are

necessary, but they are not taken. The legal provisions must be clearly elaborated, in order to allow a uniform application and not to give rise to abuse or arbitrariness.

Thus, with regard to homeless people in functional centres at local level, a regulation developed at central level was needed to help local authorities take action to implement it.

However, the insertion of traffic bans in an area that cannot be clearly defined, such as the metropolitan area, has been clarified by the public authorities, who have thus recognized the deficiencies and eliminated them.

Rail transport must take stronger measures to protect against COVID-19, and medical units intended for COVID-19 must have separate circuits that allow the hospitalization of chronic non-COVID-19 patients.

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