

## Context

One of the measures imposed during the state of emergency in Romania was a significant increase in the value of the fines meant to discourage those who would hamper authorities' efforts to eradicate the new coronavirus. Under an emergency government decree, Romanians caught red-handed were forced to pay huge amounts, as to their purchasing power. Against a medium salary of approx. 700 Euro, the minimum fine was increased to 400 Euro, and the maximum one to over 4000 Euro.

Also, against the background of some rather vague provisions included in the military decrees issued during the state of emergency, whose interpretation was left to the discretion of the police, some people were caught offside and fined abusively; for example, elderly people without any kind of support or less informed or educated people from the rural areas.

## The decision of the Constitutional Court of Romania (not published yet)

The Constitutional Court of Romania admitted the claim filed by the Ombudsman against the emergency government decree that established those huge sanctions for non-compliance with the rules of quarantine and isolation. In other words, the very large fines were declared unconstitutional.

The Constitutional Court of Romania has ruled that the decrees under which president Klaus Iohannis declared the state of emergency 'exceeded the legal framework' and the increased fines given over this period are unconstitutional

The CCR judges argue that the provisions of the decree are lacking in clarity, precision and predictability, and the establishment of the facts constituting a contravention is left, arbitrarily, to the discretion of police officers.

## The grounds in accordance to the press release

1. The Court found that, in the field of establishing a state of emergency, the state authorities exercise shared powers: Parliament has the power to legislate, by organic law, the state of emergency, while the President has the constitutional power to establish the state of emergency and to enforce the legal provisions of the state of emergency regime, as established by the legislator. The organic law, transposing art.93 of the Constitution, gives the President the power to establish, by presidential decree, the state of emergency, which involves establishing concrete first emergency measures to be taken and identifying the fundamental rights and freedoms whose exercise will be restricted.

**The decree of the president is only an administrative normative act, so an act of secondary regulation, which has to implement an act of primary regulation.** The restriction of the exercise of certain rights can not be achieved by the decree of the President. Art.14 letter d) of the Government Emergency Ordinance no.1 / 1999 is the norm by which the primary legislator entitles the administrative authority (Romanian Presidency) to order the execution of the law, in this case art.4 of the same act of normative, which is able to express the restriction of the exercise of fundamental rights. In the present case, the President established, within the limits of the law, an identification of the rights and freedoms to be restricted. On the other hand, **the measures considered by the President as “first aid with direct applicability” (direct public procurement procedures, suspension from management positions of public officers, non-commencement of statute of limitation and deadlines, suspension of statute of limitation, suspension of the civil and criminal cases,**

**interruption of the time limits for exercising appeals, etc.) constitute, expressly or implicitly, derogations from the legislation in force at the moment of declaration of the state of emergency.**

The President ordered, on the one hand, the suspension or non-application of legal provisions, or, on the other hand, the amendment and completion of laws, his provisions having an impact on fundamental rights and freedoms (right to work, economic freedom, free access to justice, etc.). The Court noted that the manner in which the President exercised his legal power, in excess of 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. Thus, since no provision of Government Emergency Ordinance no. 1/1999 entitles the President to act beyond his constitutional powers, the Constitutional Court may not sanction, within the constitutionality control it performs, the legal norms criticized by the author of the exception. However, given the legal nature of the President's decree of normative administrative act subject to the approval of the Parliament, the Court found that the legislative power had the obligation to submit it to parliamentary control, and by the decision adopted to sanction the ultra vires exercise of legal powers by the President of Romania, only such a decision being susceptible to be appealed to the Constitutional Court, based on art. 146 letter 1) of the Constitution.

2. The Court noted that the law of contravention, like criminal law, is subsidiary in nature, intervening only where other legal means are not sufficient to protect certain social values. Under these conditions, the normative acts with the force of law and the administrative acts with normative character by which the contraventions are established and sanctioned must meet all the quality conditions of a "law": accessibility, clarity, precision and predictability.

Or, the Court finds that the provisions of art. 28 paragraph (1) by the phrase "non-compliance with the provisions art.9 constitutes a contravention" qualifies as a contravention the violation of the obligation to comply with and apply all the measures set out in the Emergency Ordinance of Government no.1 / 1999, in the related normative acts, as well as in military ordinances or in order, specific to the established state, without expressly distinguishing acts, deeds or omissions that may lead to liability.

**Implicitly, the establishment of the facts which constitute contraventions is left, arbitrarily, at the free discretion of the ascertaining agent, without the legislator having established the criteria and conditions necessary for the operation of ascertaining and sanctioning the contraventions. At the same time, in the absence of a clear representation of the elements that constitute the contravention, the judge himself does not have the necessary criteria in the application and interpretation of the law, on the occasion of solving the complaint on the report of finding and sanctioning the contravention. Moreover, the provisions of art. 28 of the Government Emergency Ordinance no. 1/1999 establish indiscriminately for all these facts, regardless of their nature or gravity, the same main contravention sanction.**

As regards the complementary sanctions, although the law provides that they are applied according to the nature and gravity of the infringement, as long as the infringement is not circumscribed, it is obvious that its nature or gravity cannot be determined in order to establish the complementary sanction applicable. In conclusion, the Court found that the provisions of Article 28 of the Government Emergency Ordinance no. 1/1999, due to a deficient legislative technique, do not meet the requirements of clarity, precision and predictability and are thus incompatible with the fundamental principle of compliance with the Constitution, with its supremacy and with the laws, stated by art.1 par.5 of the Constitution

and with the principle of proportional restriction of the exercise of fundamental rights and freedoms, provided by art. 53 paragraph (2) of the Constitution.

3. The normative act that regulates the legal regime of the state of siege and the state of emergency aims at creating the legal framework of the exceptional measures imposed by the management of the crisis situation, measures that, in themselves, affect the rights and freedoms of citizens. In other words, the rationale of the law is precisely to constitute the legal basis for restricting the exercise of fundamental rights or freedoms, in accordance with the constitutional imperative established in Article 53 paragraph (1), as well as the legal basis of exceptional measures that may also include powers of the fundamental institutions of the state. **Noting that the normative act that restricts / affects fundamental rights and freedoms of citizens or fundamental institutions of the state falls within the scope of the prohibition provided by art.115 paragraph (6) of the Constitution, the Court found that, in the current constitutional framework, such an act can be only a law, as a formal act of the Parliament, adopted in compliance with the provisions of art. 73 paragraph (3) letter g) of the Constitution, in the regime of an organic law.**

Considering that the Government Emergency Ordinance no.1 / 1999 was adopted based on art.114 paragraph (4) of the Romanian Constitution of 1991, so prior to the revision of the Constitution by Law no.429 / 2003 (published in the Official Gazette of Romania, Part I, no. 758 of October 29, 2003) which introduced the provisions of art.115 paragraph (6), the Court held that the Government Emergency Ordinance no.1 / 1999 was adopted in compliance with the constitutional framework in force at that date, which did not limit the legislative prerogative of the Government in the sense of not affecting the regime of the fundamental institutions of the state or of the fundamental rights and freedoms.

On the other hand, with regard to Government Emergency Ordinance no. 34/2020 amending and supplementing Government Emergency Ordinance no. 1/1999, the Court finds that it was adopted in violation of Article 115 paragraph (6) of Constitution, as its normative content aimed at restricting the exercise of fundamental rights and freedoms (the right to property, the right to work and social protection, the right to information, economic freedom).

**The decision is final and generally binding and should be communicated to the two Chambers of Parliament, the Government and the People's Advocate.**