
Crisis restrictions and their influence on Fundamental Human Rights

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Introduction

The personality of Rector András Torma marked an important period of time for the partnership between the Law Faculties of the University Petru Maior of Targu Mures and the University of Miskolc. We owe to him the presence of representatives of the University of Miskolc to all our conferences organized in Targu Mures but also abroad, in Hungary. Beyond the great scientific value brought to him to the team he lead, he became a dear close friend to us and will always remain so. For me it was a joy and honour to be able to know and spend time with Professor András Torma, enjoying his presence, knowledge and most of all the humour that he brought into our reunions. For all of the above, I thank him and wish him all the best, and assure him that wherever we may meet next, in Targu Mures or Constanta, Rector András Torma will remain the same for me always. As I put it during the latest conference where we both participated, András Torma is the most Professor of all professors and the most Rector of all rectors.

1. The right to life

The most fundamental and sacred right¹, the right to life is the one which makes all the other rights exist, and without which we would of course no longer have any use for other rights and freedoms.² Breaching this right is possible through crimes that have been defined by international law as war crimes, crimes against humanity, genicide or mass murders.³

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¹ I. Muraru and S. Tănăsescu, *Constitutia României – Comentariu pe articole (The Constitution of Romania - Commentary on articles)*, Article 22 of the Romanian Constitution, Editura C. H. Beck, Bucureşti, 2008, p.197

² DRAGOS Chilea: *Drept internațional public (Public International Law)*, Editura Hamangiu, Bucureşti, 2007.

³ GABRIEL Manu: *Curtea Penală Internațională la 75 de ani de la crearea Organizației Națiunilor Unite*

During the current period, there are new aspects to the violation of the right to life:

- the lack of medical care, manifested through the lack of hospitals or space in the intensive care units, the lack of medical assistance in the case of chronic illness or the impossibility to perform urgent surgeries and treatments, due to the important changes affecting the entire medical organisational structure, during the fight against the COVID-19 pandemic, affecting individuals with other illnesses who are neglected.⁴
- the lack of vaccines and the lack of specialised medical personnel (doctors, nurses, emergency responders), and of adequate means (ambulances, isolating units).

2. The right to freedom of movement

The freedom of movement as a fundamental right has been profoundly affected by the restrictions of leaving or returning to one's own country, as well as by the mandatory quarantine periods that have to be respected when entering any new state.

There are strict rules of boarding planes or trains, of crossing borders, and there are checkpoints with mandatory COVID-19 testing or certificates attesting the state of health of the traveller.

The freedom to circulate in one's own country and even town, was also affected by the need to have declarations stating the reasons for leaving one's house, the justifiable reasons were established by the Government and counsels for the state of emergency.

One of the important negative effects generated by the current medical-sanitary crisis is the impossibility of the administration to ensure the continuity of activities whose realization is conditioned by administrative authorization, by extension/renewal of authorizations, approvals, agreements, etc., making use of some acts during the validity period, in the sense of giving them the effects provided by law, or the exercise of some personal rights, on the basis of some documents (such as identity documents) when they are in the period of validity.⁵

(International Criminal Court 75 years after the creation of the United Nations), Revista Universul Juridic no. 12/2020.

⁴ KENT Gallant: *Constitutional rights and emergency health restriction: a new approach ?*, Online Seminar - The International Criminal Bar as Defender of Human Rights, 10.12.2020.

⁵ GABRIEL Manu: *Regimul special de prelungire a valabilității documentelor eliberate de instituții, autorități publice și entități private autorizate în perioada stării de urgență și de alertă (Special regime for extending the validity of documents issued by institutions, public authorities and private entities authorized during the state of emergency and alert)*, Revista Dreptul (Law Journal) no. 8/2020, pp. 114-127.

3. The right to religion and practising religion

The interdiction to organize or participate in pilgrimages, has generated numerous conflicts between worshippers and the authorities. There were even various legal proceedings seeking to cancel these restrictions, for example in Constanta.

There were also restrictions on religious services such as christenings, weddings or funerals, where only a very limited number of people was allowed⁶, for example only 6 participants in a funeral service, with the ceremony being held outdoors in front of the church.

4. The right to education

The right to education was breached by the decision to close down schools, although we note that school establishments were used in Romania as poll stations for the elections, for both local and parliamentary elections. Due to these restrictions, thousands of students were obligated, with their teachers, to take part in a new experimental form of schooling for most of them, online courses.

In an environment where the access to education is already limited, due to the lack of financial and material means, online schooling brings a new type of difficulty as it requires adequate infrastructure. Educational institutions require tablets, laptops, internet networks and good data connections, as well as special software platforms, in order to allow the participation of a large amount of students and teachers to online courses. This is already a huge difficulty in Romania, let alone for even poorer countries, where the internet is either unknown or a distant dream for some children.⁷

5. The right to work

By locking down activities such as restaurants, hotels, museums, theaters, malls or markets, the right to work has been severely limited, and many businesses were affected by losing their activity, going bankrupt and/or having to let go employees, adding to the already large number of unemployed people. Businesses related to transport were also affected, for example flight or freight companies. Any traditional activities that involved interaction between people were severely affected, as well as the holiday and hotel businesses and their peak seasons. All these issues will generate trials in criminal, commercial, civil or labour law, and hearing all these cases on a national⁸ or international level, involves the presence and activity of lawyers

⁶ MADALINA Botină: *Freedom of conscience – a fundamental right in the European Convention on Human Rights and the Constitution of Romania*, Journal for Freedom of Conscience, Vol. 8, nr. 1/2020, pp. 707-713.

⁷ MADALINA Botină: *Ombudsman activity to defend human rights in Romania*, Online seminar -The International Criminal Bar as Defender of Human Rights, 10.12.2020.

⁸ I. Muraru and S. Tănăsescu, *Constituția României – Comentariu pe articole (The Constitution of Romania - Commentary on articles)*, Editura C. H. Beck, București, 2008.

that need to be ready to face this kind of situation.

6. The right to defense and to a fair trial

Lawyers no longer had the possibility to be near the individuals they were supposed to assist and counsel, therefore the communication between the lawyer and the client that was detained could not be established according to normal procedures and to a satisfactory standard, due to the restrictive measures imposed by places of detainment or incarceration.⁹

Ensuring the defense during hearings was also prejudiced as the hearings during trials or proceedings were no longer held in courtrooms and in the presence of the detained or accused individuals. The latter had to participate online, which prevented them from establishing a direct and confidential communication when necessary with their legal representatives, an aspect which is essential to the relation between lawyers and their clients.¹⁰

Digitization also ensures the effective and equal access to the case law, by applying the theory of open data in the field of judgements, respecting the limitations on certain elements of the decisions (personal data) or the decisions themselves (for reasons of public safety/national security).¹¹

⁹ Vincenzo Carbone, *Italian lawyers fighting for respect of human rights*, Online seminar - The International Criminal Bar as Defender of Human Rights, 10.12.2020.

¹⁰ Lucian Chiriac, *Droits et libertés fondamentaux dans la perspective de procédure pénale (Fundamental Rights and Freedoms from the perspective of criminal proceedings)*, Curentul Juridic (The Juridical Current), Vol.81/2020.

¹¹ Gabriel Manu, *Dreptul administrativ și acțiunea administrativă în era digitală (Administrative law and administrative action in the digital age)*, Revista Dreptul (Law Journal) no. 4/2020.