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ROMANIA: DEROGATION FROM THE EUROPEAN CONVENTION ON HUMAN RIGHTS – FREEDOM OF EXPRESSION DURING PUBLIC EMERGENCY

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Summary. A pandemic can provide a textbook example for the restrictions of fundamental rights and freedoms. Romania has decided to derogate from the application of the European Convention on Human Rights during the state of emergency caused by the COVID-19 pandemic. The questions discussed in this paper are whether the derogation of Romania fulfils the criteria established by the case-law of the European Court of Human Rights. If the answer is affirmative: does it have any effect on the inherent limitations on the freedom of expression as stated in art. 10 of ECHR?

Keywords: derogation from ECHR, public emergency, freedom of expression, restrictions on fundamental rights.

Rumunia: przypadek derogacji Europejskiej Konwencji Praw Człowieka – wolność słowa w sytuacji zagrożenia publicznego – Pandemia może stanowić podęcznikowy przykład ograniczania podstawowych praw i wolności obywateli. Rumunia postanowiła odstąpić od stosowania Europejskiej Konwencji Praw Człowieka podczas stanu wyjątkowego spowodowanego pandemią COVID-19. Kwestie omawiane w niniejszym artykule to pytanie, czy derogacja Rumunii spełnia kryteria ustanowione przez orzecznictwo Europejskiego Trybunału Praw Człowieka. W przypadku odpowiedzi

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twierdzącej: czy ma ona jakikolwiek wpływ na nieodłączne ograniczenia wolności słowa, o których mowa w artykule 10 EKPC?

Słowa kluczowe: derogacja EKPC, stan wyjątkowy, wolność słowa, ograniczenia praw podstawowych.

1. INTRODUCTION

Extraordinary circumstances require exceptional measures, and what is considered to be normal, like the enjoyment of certain rights and freedoms, from one day to another can be restricted more severely than usual. In the wake of the COVID-19 pandemic there was no uniform legal approach, solutions for the emerging challenges, nor best practices on applicable restrictions, measures that would achieve the most desired outcome.

Even in the context of the European Union, where the collaboration between states is considered to be close cooperation, covering essential fields like the economic integration, only few solutions were presented for the Member States². Thus in most countries individual and independent solutions were created, this was the case in Romania as well.

In these exceptional situations criticism towards the measures taken might have a negative connotation but it is as important as ever to present in an objective way the possible positive and negative effects of these emergency actions for future reference.

When it comes to the realization of fundamental rights and freedoms it is always essential to analyse it through different layers (national, supranational, and international), in a comparative perspective. Whereas the internationalisation of the constitutional values is widely accepted, it is equally important to emphasise that there is a scientific debate whether national constitutions can be compared because of their particularities and differences³. For the purposes of this paper the focus will be on Romania's national legislation, and only the derogations from the ECHR will be analysed using the comparative method. The convention rights are part of the domestic law and presumably would be interpreted in

² Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services, Issued on 23. March 2020 https://ec.europa.eu/commission/presscorner/detail/en/IP_20_510 (last accessed: 4.05.2020.).

³ See N. Chronowski, *Az alkotmányozás a globális alkotmányosság kontextusában*, [in:] JURA, 18/2012/2, Dialóg Campus, Budapest-Pécs.

a similar way in every State, if not the ECtHR would act as a guardian over the correct application and interpretation of the ECHR.

Several Council of Europe member states has resorted to derogation provided by art. 15 of the European Convention on Human Rights which allows the suspension of certain right from the ECHR during the state of emergency triggered as a result of the COVID-19 pandemic. Romania was among the firsts to notify the Secretary General of the Council of Europe about the derogation. The list has since grown longer and contains EU Member States as well. As of 4th of May 2020 the following states have notified the Secretary General of the Council of Europe: Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, Republic of Moldova, Romania, San Marino, and Serbia⁴.

2. FACTS OF THE CASE

The Presidential Administration published the decree signed by President Klaus Iohannis regarding the establishment of the state of emergency on the Romanian territory starting from 16th March 2020. Romania notified⁵ the Secretary General of the Council of Europe on the 17th of March, 2020. The state of emergency was established on the entire territory of Romania, for an initial period of 30 days until the 15th of April and was prolonged later on until the 15th of May.

3. ABOUT ARTICLE 15 ECHR

The European Convention on Human Rights provides one of the highest and most effective protection⁶ for fundamental rights and freedoms enshrined in it, on

⁴ The list only contains states that notified the derogation due to the COVID-19 pandemic before the 4th of May 2020. Note that Ukraine has notified the Secretary General of the Council of Europe of the derogation on the 5th of June 2015 registered at the Secretariat General on 9 June 2015, due to different circumstances. See Derogation contained in a Note verbale from the Permanent Representation of Ukraine, dated 5 June 2015, registered at the Secretariat General on 9 June 2015 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=oC00wpDO [access: 28.03.2020].

⁵ Reservations and Declarations for Treaty No.005 – Convention for the Protection of Human Rights and Fundamental Freedoms https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=oC00wpDO [access: 28.03.2020].

⁶ See Jean-François Renucci, Introduction to the European Convention on Human Rights The rights guaranteed and the protection mechanism “Internationally, the European Court of Human Rights undoubtedly constitutes a particularly effective system of protecting fundamental

a supranational level, as it has a relatively powerful control mechanism, a dedicated court the European Court of Human Rights with enforceable decisions. But this protection is not absolute; it is governed by the principle of subsidiarity. The Convention contains specific derogation clauses; one of them is in art. 15.

The article authorizes any State party to the Convention to severely limit some of the human rights, in exceptional circumstances, but imposes, *inter alia*, strict condition and a procedure to follow, for the validity of these restrictions. And as the cause for the derogation ceases the States must return to the normal application of the convention rights.

In these cases the States will have to take these restrictive measures in their domestic law. Simultaneously, or without delay the States have the obligation to notify the Secretary General about the derogation and must give an explanation which circumstances determined them to derogate from the normal application of the ECHR.

This possibility to derogate was not widely used up to date, as only a few European states ever resorted to using it, only in exceptional times like Ireland and the UK during the Northern Ireland conflict; or Turkey during the military coup.

The Directorate of the Jurisconsult⁷ issued an updated guide⁸ at the end of 2019 on art. 15⁹ of the Convention detailing essential elements from the case-law of the ECtHR when it comes to the application and interpretation of art 15. After several states notified the Secretary General about the derogation a new Factsheet¹⁰ was published in April, compiling all the relevant case-law of the Court, with the same content but more detailed as the Guide.

It is important to emphasise that these documents do not bind the Court and are not exhaustive; they act as a general guideline for the states in order to assess what are the requirements, conditions, procedures, and best practices when it comes to the notification of derogation and application of art. 15 ECHR.

rights and freedoms. The Court provides parties to court proceedings with particularly important safeguards, both institutional and procedural.” p. 95 [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-01\(2005\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-01(2005).pdf) [access: 28.03.2020].

⁷ Organ of the ECtHR, responsible for ensuring the consistency of case-law and supplying opinions and information <https://www.echr.coe.int/Pages/home.aspx?p=court/howitworks> (last accessed: 4.05.2020).

⁸ Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020].

⁹ Art. 15 ECHR: Derogation in time of emergency .

¹⁰ Factsheet – Derogation in time of emergency https://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf [access: 28.03.2020].

4. THE PROCEDURE FOR THE DEROGATION. PUBLIC EMERGENCY

Art. 15 paragraph 1: ‘In time of war or other public emergency threatening the life of the nation’. The first part of the paragraph defines the circumstances in which the Contracting States can validly derogate from their obligations under the Convention¹¹. In this scenario, focusing on the case of Romania, the circumstance that triggered the derogation is a ‘public emergency threatening the life of the nation’ – namely the COVID-19 pandemic.

In order to assess whether that affirmation is valid, and there was a ‘public emergency threatening the life of the nation’ the Court would take into consideration the factual elements of the case.

According to the applicable national law, the President of Romania by a decree, countersigned by the Prime Minister, and published immediately in the Official Gazette of Romania can establish the state of emergency for a maximum period of 30 days¹². Accordingly, the state of emergency was established on the 16th March 2020 on the entire territory of Romania, for a period of 30 days, with the possibility of further extensions by the decree of the President Klaus Iohannis, countersigned by the Prime Minister Ludovic Orban, and published on that day in the Official Gazette¹³. The formal requirements provided by the national law were respected.

When it comes to the evaluation of the substantial elements: whether it is a public emergency or not (a valid derogation or not), the states have a wide margin of appreciation, in line with the assessments in the case-law of the ECtHR. A public emergency is defined as “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed”¹⁴.

As the ECtHR stated in *Ireland v. the United Kingdom* (§ 207): it falls in the first place to each Contracting State, with its responsibility for ‘the life of [its] nation’, to determine whether that life is threatened by a ‘public emergency’. States

¹¹ Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020].

¹² See. art. 5 and 10 of the Emergency Ordinance No. 1/1999 on the state of siege and the state of emergency <https://lege5.ro/Gratuit/giztqzv/ordonanta-de-urgenta-nr-1-1999-privind-regimul-starii-de-asediu-si-regimul-starii-de-urgenta> [access: 28.03.2020].

¹³ Monitorul Oficial a Romaniei (Official Gazette of Romania) <http://www.monitoruloficial.ro/emonitornew/emonviewmof.php?fid=MS44MDM3NDAYNjc2NTc4RSszMA==> [access: 28.03.2020].

¹⁴ *Lawless v. Ireland*, Application No. 332/57, § 28.

are in principle better placed than the international judge to assess the emergency itself, the challenges created by it, and the most effective and adequate tools to avert it. This element from the case-law underlines the complementary nature of the human rights protection regime of the Court, as it primarily falls within the competences of the State Parties to ensure the protection of the rights listed in the Convention, and to provide judicial control and effective remedies in cases when the rights were allegedly violated.

Also the Court emphasised that this discretion of States to determine the nature and extent of the ‘public emergency’ is not unlimited, “The domestic margin of appreciation is accompanied by European supervision.”¹⁵

The authorities of Romania are at the moment the most well-informed about the existing situation in the country caused by the pandemic, the specialised institutions are the ones that have comprehensive information about the existing infrastructure, available means, equipment, personnel needed to combat a virus, and as no uniform measures and procedures were created by the institutions of the European Union or any other major regional supranational body, they had the task to create a response in order to protect the democratic order and to safeguard the values of the democratic society.

As stated in the *Note Verbale* of Romania sent to the Secretary General of the Council of Europe factual evaluation of the situation was made by the National Commission for Special Emergency Situations.

5. IMMINENT EMERGENCY

According to the case-law of the ECtHR the threat to the life of the nation should be imminent. The requirement of the ‘imminent’ threat cannot be interpreted “so narrowly as to require a State to wait for disaster to strike before taking measures to deal with it”¹⁶. When it comes to the assessment of the facts the ECtHR will primarily take into consideration the pieces of evidence known at the time of the notification¹⁷, but will consider the whole period of the derogation¹⁸.

¹⁵ Mehmet Hasan Altan v. Turkey, Application No. 13237/17, § 91; Şahin Alpay v. Turkey, Application No. 16538/17 § 75; Brannigan and McBride v. the United Kingdom, Application No.14553/89, § 43.

¹⁶ A. and Others v. the United Kingdom, Application No. 3455/05, § 177 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-91403%22%5D%7D> [access: 28.03.2020].

¹⁷ Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020].

¹⁸ A. and Others v. the United Kingdom, Application No. 3455/05, § 177: “The Court is not

In the case of Romania on the 16th of March the following statistics were available in connection with the COVID-19 virus:

Romanian Statistics on the 16 th of March* based on the official information provided by the Strategic Communication Group	
confirmed cases of people infected with the COVID-19 virus	168
institutionalized quarantine	3,078
solitary confinement at home	14,845
registered criminal cases were, under the aspect of committing the crime of thwarting the fight against diseases, under art. 352 para. 1 Penal Code.	36
Deaths	0

Worldwide statistics on the 16 th **	
confirmed cases of people infected with the COVID-19 virus	167,414
recovered from the COVID-19 virus	77.257
Deaths	6,507

* COVID-19 Information - Strategic Communication Group, March 16, 10.00 <https://www.mai.gov.ro/informare-covid-19-grupul-de-comunicare-strategica-16-martie-ora-10-00/> [access: 28.03.2020].

** Ibidem.

It is important to note that the ECtHR will only examine the validity of the derogation on the merits only if the following two cumulative requirements are fulfilled:

- 1) an admissible complaint addressed to the ECtHR by an individual whose convention rights were violated during the derogation¹⁹,
- 2) the parties of the dispute are challenging the validity of the derogation²⁰.

precluded, however, from having regard to information which comes to light subsequently (see, *mutatis mutandis*, *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107(2), Series A No. 215)" <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-91403%22%5D%7D> [access: 28.03.2020].

¹⁹ Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020].

²⁰ See *Khlebiuk v. Ukraine*, Application No. 2945/16, § 82: "The Court notes that the parties did not request the Court to apply art. 15 of the Convention in the applicant's case (see paragraph 65 above). Accordingly, and in view of the Court's conclusion above under art. 6 of the Convention, it is not necessary to assess whether the situation complained of was covered by a valid derogation made by Ukraine under art. 15 of the Convention (see, *mutatis mutandis*, *Ireland v. the United Kingdom*, 18 January 1978, § 191, Series A No. 25, and *A. and Others v. the United Kingdom* [GC], No. 3455/05, § 161, ECHR 2009), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-175656%22%5D%7D> [access: 28.03.2020].

6. THE MEASURES

According to the case-law of the ECtHR the derogation does not necessarily mean that there will be a violation of the convention rights, but a mere possibility that some of the measures taken during the ‘public emergency’ might lead to violation of certain rights²¹.

In the case of Romania it is important to highlight that the suspension of certain convention rights does not necessarily mean that there will be no other protection mechanisms. As art. 15 upholds measures should not be inconsistent with other obligations under international law, moreover other internal safeguards will apply.

7. “TO THE EXTENT STRICTLY REQUIRED BY THE EXIGENCIES OF THE SITUATION”

According to the *Note Verbale* of the Permanent Representation of Romania to the Council of Europe sent to the Secretary General the measures were taken in order to prevent the spread of COVID-19 and to manage the consequences, in relation with the evolution of the epidemiologic situation. The notification contained the list of rights that might be affected by the derogation, namely: a) Freedom of movement; b) Right to intimate, family and private life; c) Inviolability of home; d) Right to education; e) Freedom of assembly; f) Right of private property; g) Right to strike; h) Economic freedom. Although according to the Romanian wording of the original text from the presidential decree the rights listed above all will be affected.

The measures were taken for a well-determined period of time for the duration of the state of emergency, initially up to 30 days until the 15th of April and later on prolonged by another 30 days until the 15th of May.

As stated before, the ECtHR will examine the measures on the merits only if there will be an admissible complaint by an individual whose convention rights were violated during the derogation²².

²¹ Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020], p. 5, §4 the measures it is taking “may” involve a derogation from the Convention.

²² Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020], p. 5 §4.

As a criticism towards the remedies offered by the Court it is important to highlight that the ECtHR deals with individual complaints, meaning that in case of systematic violations of convention rights, during the derogation, a case against a State Party can hardly have meaningful impacts. Taken into consideration that according to the principle of subsidiarity all effective domestic remedies²³ must first be exhausted before the applicants can recourse to the ECtHR, as a control mechanism, it can take up to 6 years to get a proper evaluation on the validity of the derogation and the assessment of the measures used. This highlights the importance of a proper ex ante evaluation of the prospective restrictions in order to evaluate the possible effects. An ex ante regulatory impact assessment can reveal the hazards²⁴.

When it comes to the analysis of the measures the following non-exhaustive aspects will be taken into consideration:

- 1) Ordinary laws would have been sufficient to meet the danger caused by the public emergency?
- 2) The measures are a genuine response to an emergency?
- 3) The measures were used for the purpose for which they were granted?
- 4) The derogation is limited in scope?
- 5) Attenuation over time in the measures imposed?
- 6) Were the measures subject to safeguards?
- 7) The importance of the right at stake.
- 8) Judicial control over interferences with the restricted right.
- 9) Effective judicial control over the measures?
- 10) Proportionality of the measures and unjustifiable discrimination
- 11) Were the measure 'lawful' and 'in accordance with a procedure prescribed by law'?
- 12) The views of any national courts which have considered the question²⁵.

²³ See Guide to good practice in respect of domestic remedies (adopted by the Committee of Ministers on 18 September 2013) https://www.echr.coe.int/Documents/Pub_coe_domestics_remedies_ENG.pdf [access: 28.03.2020].

²⁴ About a proper regulatory impact assessment see. T. Drinóczi ,Legislative Process, [in:] Legislation in Europe: A Comprehensive Guide For Scholars and Practitioners, U. Karpen, Ulrich; H. Xanthaki (eds.), Oxford 2017.

²⁵ Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020].

8. NOTIFICATION

Romania notified²⁶ the Secretary General of the Council of Europe on 17th of March, 2020 that the state of emergency was established and wants to resort to derogation in accordance to art. 15 ECHR.

The Guide on art.15 expressly underlines the function of the notification: “the primary purpose of informing the Secretary General is that the derogation becomes public, as the Secretary General has the obligation to inform the other State Parties and the European Commission of Human Rights as soon as possible”²⁷.

In the case of Romania the general public and the media was informed by the derogation via *France Presse* and *Agerpres*²⁸ raising critical voices that the Strategic Communication Group failed to underline this measure in its daily briefings. A proper communication to inform the citizens and other interested parties of the measures adopted is not a requirement under ECHR, but it is a valid expectation from the society, especially in times of emergency.

Through the notification of the Secretary General all other Contracting States will be informed of the derogation, because the secretariat, according to Resolution 56 (16) of the Committee of Ministers, has the obligation to inform them.

9. DEROGATION WITH RESPECT TO FREEDOM OF MOVEMENT; RIGHT TO INTIMATE, FAMILY AND PRIVATE LIFE; INVIOABILITY OF HOME; RIGHT TO EDUCATION; FREEDOM OF ASSEMBLY; RIGHT OF PRIVATE PROPERTY; RIGHT TO STRIKE AND ECONOMIC FREEDOM

In a democratic governmental system a fair balance must be provided between human rights and the public interest²⁹. Some human rights are not abso-

²⁶ Derogation contained in a Note verbale from the Permanent Representation of Romania to the Council of Europe, dated 17 March 2020, registered at the Secretariat General on 17 March 2020 – Or. Engl., completed in the Note Verbale No. 670 from the Permanent Representation of Romania, dated 21 April 2020, registered by the Secretariat General on 21 April 2020 – Or. Engl. https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=oC00wpDO [access: 28.03.2020].

²⁷ Guide on Article 15 of the Convention – Derogation in time of emergency https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf [access: 28.03.2020], p. 11 § 33.

²⁸ <https://www.agerpres.ro/romania-in-lume/2020/03/19/coronavirus-romania-a-activat-derogarea-privind-aplicarea-conventiei-europene-a-drepturilor-omului-in-urma-declararii-starii-de-urgenta--470153> [access: 28.03.2020].

²⁹ A. McHarg, *Reconciling Human Rights and the Public Interest: Conceptual Problems and*

lute, but are subject to limitations, in order to protect the rights of others and/or the public interest of the society. When it comes to the character of the limitations we can differentiate two types: inherent limitations in ordinary situations, and derogatory limitations in exceptional situations.

For example in an ordinary situation art. 10 of the ECHR covers the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. But the second part of this article provides inherent limitations such as formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. And this structure is specific to all the convention right that have inherent limitations.

Among the question that will be raised by the courts the following one would most likely be difficult to prove: Ordinary laws would have been sufficient to meet the danger caused by the public emergency?

As it was highlighted by Rik Daems, the President of the Parliamentary Assembly of the Council of Europe when adopting emergency measures to deal with the COVID-19 crisis states should apply the safeguards established by the European Convention on Human Rights as the Convention is adaptable to any and all circumstances.

The affirmations were correct: all rights listed by Romania have inherent limitations, meaning that those limitations can be adapted to the circumstances caused by the public emergency. Thus it is hard to argue in favour of a valid derogation.

10. COMBATING FAKE-NEWS

One of the many threats during the coronavirus pandemic, and in any other public emergencies threatening the life of the nation, can be the spread of unreliable and false information. To tackle the misinformation many governments re-

Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights, *The Modern Law Review* 1999, Vol. 62, No. 5, pp. 671–696, https://www.jstor.org/stable/1097381?seq=1#metadata_info_tab_contents [access: 28.03.2020].

sorted to the creation of official informative websites³⁰, daily briefings by operational groups³¹, and other more severe measures like the immediate shutdown of any online website that is spreading misinformation. Art. 54 of the decree issued on 16 March by President Iohannis contained the following procedure for the dissemination of fake-news in mass-media and on-line in relation to COVID-19:

- 1) Hosting and content service providers have the obligation to immediately interrupt the transmission through an electronic communication network or the storage of the content, by removal the content at source in the eventuality that the content promotes fake-news.
- 2) When the removal of the content is not possible, the providers have the obligation to immediately block the access to that content³².

Providers will have to execute the motivated decision of the National Authority for Management and Regulation in Communication, shutting down the website or make it unavailable, but there is no effective remedy or judicial control over it.

The second part of art. 10 provides inherent limitations such as formalities, conditions, restrictions or penalties as are prescribed by law, but these are the same limitations as in the case of the other rights listed by Romania in its notification to the Secretary General triggering art. 15 ECHR. If in those cases derogation was needed, why is the freedom of expression an exemption?

11. HATE SPEECH AGAINST MINORITIES AND OTHER SOCIAL GROUPS

According to the report³³ drafted by the Fundamental Rights Agency the harassment of certain national or ethnic communities is marginal, isolated, and there were only a few alleged cases. Since the closure of the research the incumbent president of Romania Klaus Iohannis issued a video statement³⁴, blaming the op-

³⁰ Coronavirus Emergency: The National response, Italy <http://www.protezionecivile.gov.it/en/risk-activities/health-risk/emergencies/coronavirus> [access: 28.03.2020].

³¹ Daily online press conferences held by the Operational Group, lead by Cecilia Müller, the Chief Medical Officer <http://abouthungary.hu/blog/operational-group-number-of-deaths-and-rate-of-coronavirus-spread-still-highest-in-budapest/> [access: 28.03.2020].

³² Art. 54 Decree No. 212/16.03.2020 On the establishment of the state of emergency in the territory of Romania <https://rm.coe.int/16809e375d> [access: 28.03.2020].

³³ Human European Consultancy: Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications (Commissioned by FRA) https://fra.europa.eu/sites/default/files/fra_uploads/romania-report-covid-19-april-2020_en.pdf [access: 28.03.2020].

³⁴ <https://www.facebook.com/klausiohannis/videos/3183955031828732/> (last accessed: 4. 05. 2020.).

position that while the president and the government are working to protect the people from the pandemic the opposition gives Transylvania to Hungarians, and asked one of the leaders of the major opposition party (PSD) whether the prime minister of Hungary has promised something in return. Also revealed to his 'fellow' Romanians that he was backing an early Parliamentary election because PSD (opposition in the government) has a toxic majority in the Parliament, and he does not want that the problems of the nation be handled by the toxic majority. The statement caused displeasure both from the Hungarian minority, Hungary and in the media³⁵ as well, resulted in solicitations not to incite against the Hungarian minority. The Mikó Imre Rights Protection Service has denounced the head of state at the National Anti-Discrimination Council³⁶. Pending official verdict of the National Anti-Discrimination Council it is hard to assess whether the speech made by the President will be considered incitement against the minority group. However, it is important to highlight that there are historical roots to discourses of such character held by nationalistic leaders in Romania.

12. CONCLUSIONS

In these exceptional situations criticism towards the measures taken might have a negative connotation but it is as important as ever to present objectively the possible negative and positive effects of these emergency actions for future reference. This paper gives only a glimpse of the effects of the restrictions and measures on certain fundamental rights, only from the perspective of the ECHR to highlight the importance of a well-designed emergency scenario which can be put into use in extreme circumstances such as a pandemic to avoid distress, calamity, disaster, violation of human rights or any other undesired outcome.

It is also important to underline the responsibility of leaders and authorities to not to abuse their position in order to forge political capital.

³⁵ President Iohannis accuses Transylvanian Hungarians of secessionism <http://hhrf.org/2020/05/05/president-iohannis-accuses-transylvanian-hungarians-of-secessionism/> [access: 28.03.2020]. Romanian president causes diplomatic spat with Hungary <https://www.euractiv.com/section/politics/news/romanian-president-causes-diplomatic-spat-with-hungary/> [access: 28.03.2020].

³⁶ See <https://www.mikoimre.ro/peldatlanul-sulyos-magyarellenes-diskurzus-romania-el-noketol/> [access: 28.03.2020].

13. DE LEGE FERENDA

The COVID-19 pandemic has showed that in a relatively short time a lot of effective measures are needed to tackle the emergency, but also showed the infinite number where mistakes can slip into the system, like the closure of the borders affecting the transport of goods, causing disruption in the supply chains. Unproportioned restrictions on fundamental freedoms like the restriction on freedom of movement of villagers in rural areas where in the village only one grocery store was opened with limited supplies and inflated prices. Inadequate flow of information causing differences in the application of institutionalized quarantine. To highlight only some of the problematic point that will be discussed as part of a subsequent study. All these cases highlight the importance to prepare in advance an adequate legislation of quality governing emergency situations, emergency scenarios to be followed in public emergencies with detailed procedures, modifiable in case of need, and guidelines for the protection of human rights and fundamental freedoms during emergencies.

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