

FUNDAMENTAL RIGHTS UNDER SIEGE

2020

**EXCEPTIONAL
CIRCUMSTANCES
CREATE DANGEROUS
ANTECEDENTS FOR THE
ROMANIAN PRESS**



CENTRUL PENTRU
JURNALISM
INDEPENDENT



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Fundamental Rights under Siege, 2020

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The aim of this report is to present a series of abuses identified by our organisation during the state of emergency during the COVID-19 crisis. We have identified and exposed in this period actions of state actors that have threatened, affected or directly attacked fundamental rights such as the right to freedom of expression, the right to information and, implicitly, the media freedom.

1 Introduction

From the early days of the COVID-19 pandemic crisis, the local and international political discourse borrowed mobilizing language more appropriate for situations of war and siege, rather than a health crisis: “We are in a state of war”¹, President Klaus Iohannis would declare in March 2020, just a few days after he decreed a state of emergency in Romania. His words would echo similar speeches of the leaders of France, Great Britain and the United States. And it was not just rhetoric. Military crises are managed with military forces and with the help of institutions designed to control the population of a state. This logic of control was visible from the first days of the lockdown in Romania, when the streets of the country were flooded with police and army cars, and some hospitals got ad-hoc military management teams. At times, it became difficult to tell the nature of this crisis: was the pandemic a military or a health crisis?

The Presidential Decree, published on March 16, 2020, that introduced the state of emergency made possible a series of measures aimed at containing the spread of the virus: increased police presence in the streets, public procurement exempted of tender procedures, limited freedom of movement and accepted infringements of people’s private life, just to name a few. Some of these measures raised questions from the public and from civil society organizations. Moreover, more anxiety was added when Romania requested to derogate from the European Convention on Human Rights (ECHR)² on March 18, 2020, without prior public consultation and without informing the public. The news of the derogation was first reported by the France Press news agency and was later published by the national news agency, Agerpres. Once the state of emergency ended on May 14, Romania re-joined the ECHR³.

Initially, the heavy-handed approach of the state to contain the spread of the virus had some followers (not just critics) who saw the strong intervention of the authorities as welcomed and necessary, given the poor state of the underfunded and, at times, completely absent medical facilities. The feeling that we needed to avoid a catastrophe was very present. However justified the need for swift actions, the measures taken during a state of emergency must still be legal, necessary and proportional, non-discriminatory, adopted via a proper parliamentary procedure and should be limited in time⁴. To what extent have the measures taken by the Romanian authorities respected these principles?

Our research and ongoing monitoring of the state of fundamental rights in Romania during the first five months of the crisis (March-July, 2020) found two types of measures that can be easily qualified as attacks on the freedom of the media: (1) limitations of freedom of expression: suspending a number of websites allegedly spreading misinformation, without a transparent due process, restricting the right to information, enforcing a strictly controlled flow of information to the public, limiting the right to assembly (the right to protest is considered as a fundamental part of freedom of expression, especially as an act of publicly criticising authorities)⁵ - and (2) financial interventions of the state in the media market: public procurement exempted of tender procedures and the setting up a Government-controlled “advertising fund” presented as a form of support for the press.

1 DIGI24 (20.03.2020), Iohannis: Ne aflăm în plin război pentru păstrarea sănătății omenirii. Fiți responsabili!, articol disponibil aici: <https://www.digi24.ro/stiri/actualitate/mesajul-presedintelui-klaus-iohannis-ne-aflam-in-plin-razboi-pentru-pastrarea-sanatatii-omenirii-fiti-responsabili-1278563>

2 Verbal note of the Romanian Representation to the Council of Europe (18.03.2020), available here: <https://rm.coe.int/16809cee30>

3 Verbal note of the Romanian Representation to the Council of Europe (15.05.2020), available here: <https://rm.coe.int/16809e5ea6>

4 Article19 (20.03.2020) Coronavirus: Emergency powers must be kept in check, available here: <https://www.article19.org/resources/covid-19-emergency-powers-must-be-kept-in-check/> și Council of Europe (16.04.2020), CDL-PI(2020)003-e Compilation of Venice Commission Opinions and Reports on States of Emergency, available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)003-e)

5 For a more detailed discussion on the freedom of assembly during the crisis, please see section of this report: II.4 Threatened forms of protest and of expressions

02

2 The state of emergency and the state of alert

The state of emergency in Romania is regulated by an emergency ordinance (OU 1/1991), voted on a January midnight in 1999. The reason behind this hasty law-making process was a coal miners strike originating in the Jiu Valley, approximately 300 km away from the capital city of Bucharest⁶. Although the ordinance suffered several amendments since⁷, the historical context of its birth needs to be brought forward, because it shows the type of action and public discourse that created lead to its current form. It should be underlined that this piece of legislation was aimed at countering a potential violent attack of 1000 miners, who at that time were marching toward Bucharest to put pressure on the Government conducting the strike negotiations.

Two decades later, the context in which the state of emergency was instated was very different. The spread of the SARS-Cov-2 virus in Romania was preceded by mass infections in China, Western Europe and South-East Asia. The uncontrollable spread of the virus in countries such as Italy and Spain determined Eastern European countries, including Romania, to opt for strict intervention measures rather early on. The state of emergency was initially introduced on March 16, 2020 by the Presidential Decree nr.195⁸, for a period of 30 days and was extended for another 30 days on April 14. With this decree in place, the authorities could make use of a normative framework that would allow them to control the population, to steer economic resources, and to limit fundamental human rights. Knowing the dire situation of the healthcare system in the country - underfunded, understaffed, with run down facilities, affected by red tape and corruption -, the measures were initially well received by the public.

The type of expertise called to solve a problem will not only dictate the solutions to that problem, but will define the nature of the problem itself. Together with President Klaus Iohannis and Prime-Minister Ludovic Orban, the crisis was managed by the Ministry of Internal Affairs and the Ministry of Health. The Group for Strategic Communication⁹, already set up at the end of February, would become a very important actor during the crisis. Composed of experts from the Department for Emergency Situations (within the Ministry of Internal Affairs), the General Inspectorate for Emergency Situations (Ministry of Internal Affairs), the National Institute for Public Health (Ministry of Health), the Ministry of Health and the Ministry of Defence, the group was headed by Raed Arafat, the director of the Department for Emergency Situations. The qualifications of the Group for Strategic Communication is difficult to assess, given that the names of the experts who are part of the group were never released to the public, in spite of several requests coming from both media and civil society organizations, including our own¹⁰. The refusal of the authorities to disclose the identity of the group - on whose deliberations and decisions were based the measures affecting the whole country - is one of the major breaches of transparency during the crisis.

6 In one instance, in June 1990, the miners attacked anti-government protesters in Bucharest, while the security forces looked on. The history of these strikes is very controversial in Romania and will not be detailed here. However, it is important to note that the authorities in 1999 were caught off guard by the strike and felt an imminent and potentially violent event would take place - either in Bucharest or on the way between Jiu Valley and the capital city.

7 By Law no. 164/2019, Law no. 453/2004 și Emergency Ordinance 34/ 2020.

8 Romanian Presidency (16.03.2020) Decree signed by the Romanian President, mister Kalus Iohannis, regarding the institution of the state of emergency on the territory of Romania available online here: : <https://www.presidency.ro/ro/media/comunicate-de-presa/decret-semnat-de-presedintele-romaniei-domnul-klaus-iohannis-privind-instituirea-starii-de-urgenta-pe-teritoriul-romaniei>

9 The establishment of the group was announced in a public information note published on the website of the ministry, with a title that is, to say the least, not coherent with the content of the post. Ministerul Afacerilor Interne (24.02.2020), As of yet, there is no Romanian citizen infected with the virus known to the general public under the name of Coronavirus, available in Romanian here: <https://www.mai.gov.ro/pana-in-acest-moment-nu-exista-nici-un-cetatean-roman-contaminat-cu-virusul-cunoscut-publicului-larg-sub-denumirea-de-coronavirus/>

10 See our request for public information, in Romanian, here: <https://cji.ro/92-de-redactii-si-163-jurnalisti-cer-acces-la-informatii-si-transparenta/>

2.1 The right to free expression

The text of the presidential decree introducing the state of emergency in Romania was expressly mentioning limitations of fundamental rights, such as the right to freedom of movement, the right to strike, the right to a privacy and family life¹¹. The right to freedom of expression was not explicitly restricted by the text of the decree. However, its paragraph 54 mentions the possibility of blocking the content of online publications or restricting the access of Romanian users to them, “if through their content they promote false news regarding the evolution of COVID-19 and of the prevention and protection measures”. The blocking of online content, even as a way of containing disinformation, risks to limit freedom of expression, to affect the freedom of the press by intimidating journalists and to give notoriety to the blocked content. Moreover, content takedown is completely ineffective in an online environment where new websites can be created practically overnight.

The telecom regulator National Authority for Management and Regulation in Communications (ANCOM) was made responsible for blocking the harmful content, This decision only deepened the controversy around this measure, as ANCOM has no expertise whatsoever in editorial matters. Later, a public communication issued by the Ministry of Internal Affairs (MAI) transferred the decision-making responsibility to the elusive Group for Strategic Communication and assigned ANCOM the role of enforcer¹². In this note, MAI states that “the regulation does not concern media organisations recognized by the public opinion, who have a known identity and with whom the authorities have an ongoing relationship of cooperation and dialogue”¹³. Thus, informing the population during the state of emergency became the exclusive prerogative of the state, while the media was reduced to a mere channel for disseminating the official messages. The authorities reserved for themselves the right to decide what a “credible” media institution is, while “respectability” was established based on cooperation and dialogue with state institutions. Consequently, media outlets that have a collaborative relationship with the Government appear to be favored by these measures, or at least, excluded from content examination. In addition, the MAI note did not define what “public recognition” means, nor the type of collaboration and dialogue that was supposed to give legitimacy to media organizations. The attitude of the authorities, as well as the explicit measures they have taken against media organisations, be them “respectable” or not, are tantamount an attack against freedom of the media, as well as an attack on the freedom of speech.

While blocking of sites considered harmful, the Government has created an official website for the dissemination of official information and has urged the public to get informed only from official sources. The portal stirioficiale.ro¹⁴ was launched at the beginning of the state of emergency, but for the most part it provided press releases already published on the platforms of other institutions such as the Ministry of Internal Affairs website. It later added a section of data and useful tips for different social categories, such as tips for parents, diaspora, etc. But in a country where trust in the government was low¹⁵ and the popularity of the ruling party had plummeted¹⁶ before, and during the pandemic, the advice to access only official information was, to say the least, naive. Moreover, this advice became harmful once the “unofficial” press reported the authorities’ efforts to keep far from the public eye essential information, such as the number of infections broken down by counties.

11 Article 2, Romanian Presidency (16.03.2020) Decree signed by the Romanian President, mister Kalus Iohannis, regarding the institution of the state of emergency on the territory of Romania available online here: <https://www.presidency.ro/ro/media/comunicate-de-presa/decret-semnat-de-presedintele-romaniei-domnul-klaus-iohannis-privind-instituirea-starii-de-urgenta-pe-teritoriul-romaniei>

12 ANCOM, as an infrastructure manager, has the authority to order internet providers to block access to certain websites or their content for users based in Romania.

13 Ministry of Internal Affairs, (16.03.2020), Public notice - 23, available in Romanian here: <https://www.mai.gov.ro/precizare-23/>

14 The website is available in Romanian here: <https://stirioficiale.ro/informatii>

During the state of emergency, 15 websites were suspended and another two were forced to remove articles published on their platforms. The decisions, issued by ANCOM at the recommendation of the Group for Strategic Communication, were justified by the alleged immediate danger that the published information represented for the population. But the criteria for making such decisions have not been disclosed. There were also no procedures to allow the affected parties to appeal or challenge these decisions. A few examples of blocked content include news that ambulances had been attacked, that supermarkets will be closed during a state of emergency, or that authorities publish exaggerated numbers of infections to control the population, to force them to get vaccinated or to get money from the European Union. Site blocking proved to be inefficient. One example is the now notorious case of the niche site ortodoxinfo.ro that reappeared online with a slightly changed domain name only 24h after it was blocked in Romania¹⁷. It demonstrated that removing online content does not work if no major resources are involved in the process.

A Romanian authority can block the access to a site located on a server in the United States, asking all the Romanian Internet providers to block Romanian users' access to that site. But another domain can be created within 24 hours, posted on the community's Facebook page which will just advertise a different URL. This game of cat and mouse only ridiculed the efforts of the authorities and revealed that the chosen experts of the Group for Strategic Communication did not have the necessary expertise to manage an infodemic. With the end of the state of emergency on May 16, all blocked sites became again operational. What remains after this exercise of the authorities is the proof of an old reflex that makes censorship the first option in crisis communication, of tendencies to secrecy in the actions of public institutions, of lack of expertise in the area regulated by those authorities and of lack of dialogue with sections of society that could provide more reasonable and effective solutions than censorship.

¹⁵ According to an opinion poll conducted by IRES in April 2020, only 26% of Romanians trusted the Government at the time of the survey. The Ministry of Health (57%), the General Inspectorate for Situations of Emergency (75%) and the National Committee for Special Emergency Situations (68%) enjoyed a higher level of trust at the time. Source: IRES (7-8.04.2020), Romania during the pandemic, available in Romanian here: https://media.hotnews.ro/media_server1/document-2020-04-11-23828782-0-sondaj-ires.pdf.

¹⁶ EuropaFM (30.04.2020) Barometrul Europa FM: PNL scade din nou, Pro România urcă la 8,2% [Europa FM barometer: PNL decreases again, Pro Romania rises to 8.2%], available in Romanian here: <https://www.europafm.ro/barometrul-europa-fm-pnl-scade-din-nou-pro-romania-urca-la-82/>

¹⁷ From ortodoxinfo.ro to ortodox.info.ro, currently back to ortodoxinfo.ro.

2.2 The right to information

The presidential decree also introduced worrying measures concerning the access to information during the state of emergency. The decree doubled the response time of requests for public information, from 10 to 20 days in the case of simple requests, from 30 to 60 days in the case of complex requests and from 24 to 48 hours in the case of requests coming from the press. In practice, the authorities neglected, if not completely suspended their legal obligation to provide information by request of the public.

In at least two cases documented by the media, County Health Directorates - DSP Cluj and DSP Botoșani - refused to respond to requests for information during the crisis. Moreover, an order to prefects (Governmental representatives at local level) issued by the Ministry of Internal Affairs on March 21 2020, banned the release of locally collected information on the number of COVID tests performed, the number of people tested positive, the health of patients and the locations where quarantine centers would be opened. Other institutions - including the Ministry of Internal Affairs - have simply ignored requests for information. The right to information is an integral part of the right to expression, and blocking or obstructing access to information creates obstacles in monitoring and holding the authorities accountable. The free movement of information implies the pluralism of information sources. Practices restricting the pluralism of these sources, such as the de facto suspension of the activity of providing information and the tacit refusal to respond to requests for information, are clear violations of this right.

There has been a number of reactions to the lack of transparency of the authorities, but they have often been ignored by the relevant institutions. The Center for Independent Journalism initiated a public information request¹⁸, co-signed by 97 newsrooms and 165 individual journalists asking for the release of vital information on the evolution of the SARS-Cov-2 virus in Romania, including the names of the members of the Group for Strategic Communication. Another petition¹⁹, initiated by APADOR-CH, signed by thirteen human rights organizations reacted to the lack of transparency of the authorities and asked the government to release detailed data on the number of tests and infections with Covid-19²⁰. Even the Ombudsman's Office made a formal request to the Group for Strategic Communication calling for clarification on the reporting procedure and the monitoring of false news in the context of the crisis²¹.

The decisions taken by the Romanian authorities have also attracted the attention of international organizations. The Organization for Security and Co-operation in Europe (OSCE)²² has expressed its concern over the measures introduced in Romania by the Presidential Decree, recalling that the free movement of information is an essential component of the right to expression.

The authorities responded to the request for transparency submitted by APADOR-CH, stating that the authorities have the obligation "to make available the existing information, in their current form, and not to process certain data to obtain a new final product in the requested form", mentioning Decision no. 2495/2009 of the Bucharest Court of Appeal, by which it was held that:

18 Center for Independent Journalism(02.04.2020), 97 de redacții și 165 jurnaliști cer acces la informații și transparență!, [97 newsrooms and 165 journalists are requesting free access to information and transparency!] available in Romanian here: <https://cji.ro/92-de-redactii-si-163-jurnalisti-cer-acces-la-informatii-si-transparenta/>

19 APADOR-CH (20.03.2020), Prin lipsa de transparență, instituțiile statului alimentează conspirationismul și dezinformarea [Through its lack of transparency, state institutions are fueling conspirationism and disinformation] , available in Romanian here: <https://www.apador.org/prin-lipsa-de-transparenta-institutiile-statului-alimenteaza-conspiracionismul-si-dezinformarea/>

20 APADOR-CH (23.03.2020), Cerem guvernului transparentizarea datelor privind testările și îmbolnăvirile cu Covid 19, [We request from the Government the transparent release of data on testing and infections with Covid 19] available in Romanian here: <https://www.apador.org/cerem-guvernului-transparentizarea-datelor-privind-testarile-si-imbolnavirile-cu-covid-19/>

“Law no. 544/2001 does not require any institution to process the information held in order to provide those interested with any kind of “a la carte” statistics, but only refers to the provision of information in the form in which it is held by the institution.” It should be noted that the information requested by APADOR-CH and the Center for Independent Journalism, together with other civil organizations and media organizations, is essential in the management of the Covid-19 crisis. The data requested concerned the number of infected patients, the number of tests applied, the amount of protective equipment for medical staff, all split by counties. It remains to be seen whether the authorities did not have this data - which would call into question all decisions taken during this period - or that the authorities refused to release public information, in which case the right to information would have been violated.

21 The request is available in Romanian here: <https://www.avpoporului.ro/rec/doc20.pdf> and the answer of the Ministry of Internal Affairs is also available online here: https://www.avpoporului.ro/rec/raspuns_doc20.pdf

22 OSCE (30.03.2020) Coronavirus response bill should not curb freedom of information in Romania, stresses OSCE Media Freedom Representative, available online here: <https://www.osce.org/representative-on-freedom-of-media/449380>

2.3 Whistleblowers threatened

The right of whistleblowers to release information on irregularities concerning the management of the health crisis was not expressly restricted, in any official regulation, during the state of emergency. Only indirectly, certain restrictions described in the text of the Presidential Decree establishing the state of emergency - such as those described in Article 54 - also had implicit effects on freedom of expression, including the right to issue public warnings. The crucial role of whistleblowers as sources of information for journalists, especially investigative ones, is recognized internationally. All the above mentioned measures that affected the freedom of the press and the strong and repeated recommendations to stick only to "official information" compromised the link between journalists and whistleblowers as sources of information. However, in a democratic society, the right to reveal illegalities and irregularities that harm the public interest cannot be limited even in times of pandemics or in the context of derogation from the European Convention on Human Rights (ECHR). In other words, the right to issue public warnings or to blow the whistle on wrongdoings cannot be restricted due to a state of exception.

There have been cases of hospital managers forbidding medical staff to disclosing to the media information about the health crisis, about its management and the prevention measures taken in hospitals. As a result, many employees of health units did not release information about the badly managed internal situation of their hospital, fearing possible retaliation. But some challenged the orders and faced the consequences. One such case²³ is that of a chief physician working for the Infectious Diseases Hospital in Iași, who was released from his position as head of unit as a result of him disclosing irregularities of the management to a journalist. The doctor was threatened with a criminal file for hindering efforts to combat diseases - the article of the Penal Code most invoked during this period in order to intimidate whistleblowers - and was subsequently transferred to another hospital in the city of Suceava, which at that point was the biggest Covid-19 cluster in the country. In this context, it was increasingly difficult for journalists to obtain information on how the health crisis was being managed. For example, Victor Ilie, a journalist who approached over 50 medical staff from the County Emergency Hospital "St. Ioan cel Nou" from Suceava, where the largest outbreak of Covid-19 in Romania was declared, says that out of all the sources he contacted, only 10 dared to declare something on the record. The others, afraid of possible reprisals, preferred either not to declare anything or to speak off the record, revealing the mismanagement of the hospital. There have been also cases of journalists threatened with criminal files if they tried to obtain information from medical staff for publication. Therefore, some journalists described the relationship between them and their sources - the medical whistleblowers - as similar to the one between a priest and their parishioners in a confessional: one could hear their troubles, but did not have the possibility to share the data publicly.

As proof that whistleblowers are still stigmatized and discouraged from disclosing irregularities is the situation of the policeman and union leader from Timiș County, who revealed the pressures applied by the local police chiefs on field agents in order to administer a large number of fines (for not respecting the measures imposed to contain the virus) during the state of emergency²⁴.

23 Nedelcoff, A. în Libertatea (03.07.2020), Mihnea Hurmuzache, medicul care a reclamat neregulile de la spitalul de Boli Infecțioase din Iași, a fost destituit din funcția de șef de secție, [Mihnea Hurmuzache, the doctor who disclosed irregularities at the Infectious Disease Hospital in Iasi, was released from his position as head of unit] available in Romanian here: <https://www.libertatea.ro/stiri/mihnea-hurmuzache-destituit-sef-de-sectie-carmen-dorobat-3054402>

24 Dobrescu, P. în Libertatea (14.04..2020), Valer Kovacs, polițist IPJ Timiș și lider de sindicat: "Șefii pun presiuni pe noi să dăm mai multe amenzi", [Leaders are putting pressure on us to give more fines] available in Romanian here: <https://www.libertatea.ro/stiri/valer-kovacs-politist-ipj-timis-si-lider-de-sindicat-sefii-pun-presiuni-pe-noi-sa-dam-mai-multe-amenzi-in-starea-de-urgenta-2954262>

. "I was the subject of an internal disciplinary investigation because I spoke up on [a] [TV] show, as a whistleblower and a union leader. I was found not guilty by the officer who investigated me. Subsequently, at the orders of the chief inspector, a Disciplinary Board was set up, which had the clear task of making an example out of me", declared the policeman Valer Kovacs from Timiș, He was sacked from the police by the local inspectorate, but the decision was later on reversed by the central police chiefs.

Why is it abusive to violate the right of anonymous tipping during a pandemic? In a state of emergency, decisions of public interest are made under conditions of urgency, often outside any democratic control. In these circumstances, in order to signal as soon as possible the potential slippage in the management of the health crisis and to avoid the panic generated by the deterioration of democratic control over decisions of public interest, it is reasonable to encourage those who have information about irregularities or illegalities to go public. It would reduce conspiracy theories, would temper the flow of misinformation and could provide a guarantee for the presumption of good management of the health crisis.

The Secretary General of the Council of Europe, who is being notified of all ECHR derogations, emphasized: "Official communications cannot be the only channel of information on the pandemic.(...) The pandemic should not be used to prevent whistleblowers from reporting mismanagement of the health crisis."²⁵ Restricting the media's efforts to inform the public using information received from whistleblowers and limiting the freedom of expression of medical staff or employees of institutions engaged in managing the crisis was not a proportionate measure to ensure public health and was not necessary for a proper management of the crisis. By trying to control the public flow of information, by restricting the actions of journalists and intimidating, even "demonizing" potential whistleblowers, the authorities missed the opportunity to strengthen public confidence in the decisions made at the top. The effects of this erosion of trust were to be seen in the summer of 2020, when the decisions of the authorities were increasingly challenged and the degree of public adherence to them was reduced.

25 Council of Europe (07.04.2020) Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis- A Toolkit for Member States [A respecta democrația, statul de drept și drepturile omului în cadrul crizei sanitare COVID-19 - Un set de instrumente pentru statele membre], available online here: <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

2.4 Forms of protest threatened by fines

Attacks on the freedom speech also came from the Police. Two cases of violation of the right to expression attracted the public's attention in the first weeks of the state of emergency, both taking place in Florești, Cluj County. In one of these cases, student Iulia Ungureanu was fined for criticizing the way the mayor managed the crisis²⁶. In a separate case, a man was beaten after displaying an anti-police banner on the balcony²⁷ of his house. This caught the attention of the press, the civil society and of the Romanian Ombudsman's office. The local media also reported other cases in which Facebook users were fined for insults brought to the Police. In Borșa²⁸, Șișești²⁹ (Maramureș) and Hârlău³⁰ (Iași) three people were fined for criticizing the Police for the way they managed the restrictions imposed by the state of emergency. All three used vulgar language addressed to the institution. Also, the local press in Satu Mare county reported that seven people were fined based on legislation against insults and slanderous expressions, although the reports do not specify the reasons for the insults³¹. All these incidents took place during the state of emergency.

The right to opinion and the right to criticize public authorities, even if that criticism contains insults or vulgar language, are fundamental elements of freedom of expression. It is important to note the context of these fines: the freedom of movement was limited by the strict requirements set by the authorities, the right to protest was canceled, the population was forced to isolate at home and the presence of police and army on the streets was overwhelming. Fines for non-compliance with travel restrictions outside the home were initially set between RON 100 (~ 20 EUR) and 5000 (~ 1100 EUR). In order to increase their deterrent power, starting March 31 they have been increased to RON 2000 (~ 410 EUR) to 20,000 (~ 4100 EUR) lei, absolutely prohibitive amounts for a person who earns even an average income in Romania (~650 EUR net). The fines were challenged by the Ombudsman's Office at the Constitutional Court, who later declared them unconstitutional.

According to Article 2 of the state of emergency decree, the right to strike and the freedom of assembly could be restricted by the authorities, but this restriction was not subsequently regulated by emergency, military ordinances or other normative acts. Although the freedom of assembly was restricted only during the period of alert (after May 15, when the state of emergency ended) this was not explicitly communicated to the population. On the contrary, the messages from the authorities and the active presence of law enforcement in the public space during the state of emergency created the general impression that protests are forbidden. During the state of alert³², protests and strikes were banned, although other public gatherings, such as concerts, were allowed, but were limited to a maximum of 500 participants.

26 APADOR-CH, april 2020, the notice is available in Romanian here: <https://www.apador.org/wp-content/uploads/2020/04/Sesizare-MAI-abuz-politie-locala-Floresti.pdf>

27 Dudescu, D. in Libertatea (22.04.2020), Video | Bărbat din Cluj, încătușat de agenți pentru că a pus pe balcon un banner în care critică Poliția [Viceo] Man in Cluj, handcuffed by agents for displaying on his balcony a banner criticising the police], available in Romanian here: <https://www.libertatea.ro/stiri/video-barbat-din-cluj-incatusat-de-agenti-pentru-ca-a-pus-pe-balcon-un-banner-in-care-critica-politia-2966569>

28 PresaSM (15.04.2020) Amendă mare pentru un cetățean, după ce a înjurat Poliția pe Facebook [Huge fine for a citizen, after cursing the Police on Facebook], available in Romanian here: <https://www.presasm.ro/amenda-mare-pentru-un-cetatean-dupa-ce-a-injurat-politia-pe-facebook/>

29 Dale, V. în vasedale.ro (08.04.2020) Un băimărean o primit o amendă de 1.000 lei pentru un comentariu pe Facebook, [A person from Baia Mare received a fine of 1000 lei for a comment they made on Facebook], available in Romanian here <https://vasiledale.ro/2020/04/08/un-baimarean-o-primit-o-amenda-de-1-000-lei-pentru-un-comentariu-pe-facebook/>

30 DIGI FM (23.04.2020) Dosar penal pentru ultraj după postări jignitoare pe Facebook la adresa Poliției, [Criminal case for insult for vulgar posts on Facebook addressing the Police] available in Romanian here: <https://www.digifm.ro/stiri/dosar-penal-pentru-ultraj-dupa-postari-jignitoare-pe-facebook-la-adresa-politiei-66297>

31 Satu-Mare News (14.05.2020) Sătmăreni amendați pentru postări/comentarii pe Facebook, [Residents of Satu Mare fined for posts/comments on Facebook], available in Romanian here: <https://www.satumarenews.ro/index.php/locale/item/13377-satmarenii-amendati-pentru-postari-comentarii-pe-facebook>

Then, several minor demonstrations were organized, such as the protest in front of the Cotroceni Palace, the HQ of the Presidency, against the amendment to the National Education Law that would have banned addressing gender identity issues in schools and universities³³ or the protest against quarantine and isolation measures. In the first case, just a small number of people participated, who received only written warnings from the law enforcement officers. The anti-quarantine protests mobilized around 1000 people instead. In this case, a small number of participants were fined³⁴.

Both during the state of emergency and during the state of alert, the right to criticize the authorities in public was limited, although the option to impose social distance measures to protect participants was available. The legal framework during the state of emergency would have allowed, in theory, the protests, but only because the authorities legislated poorly during that period. In practice, the messages from the authorities and the fear of crippling fines have made this fundamental right impossible to practice. Under these conditions, social media platforms became one of the few places where the right to protest could have taken form, but these spaces also became monitored and controlled by the authorities: firstly, by blocking online content and secondly, by applying fines for insulting state institutions or public servants.

32 Until the data collection for this report ended, on July 31st 2020..

33 Radu, C. în Libertatea (19.06.2020), Comunitatea LGBT îi cere lui Iohannis să nu promulge legea care interzice discuțiile despre identitatea de gen în școli: „Dacă interzicem un discurs nu înseamnă că noi dispărem, [The LGBT community requests from President Iohannis not to pass the law banning gender discussions in schools: If you ban discussions, we wont disappear] available in Romanian here: <https://www.libertatea.ro/stiri/comunitatea-lgbt-flashmob-cotroceni-3039144>

34 Mediafax reported 13 fines amounting to a total of 16.500 lei: Ioniceanu, C in Mediafax (12.07.2020) GALERIE FOTO. cum a arătat PROTESTUL din Piața Victoriei împotriva restricțiilor cerute de premierul Orban? Jandarmii au dat amezi de 16.500 de lei [PHOTO GALLERY. How did the PROTEST against restrictions asked by prime-minister Orban look like? The Jendarmerie gave fines of 16.500 lei] available in Romanian here: <https://www.mediafax.ro/social/carantina-si-izolarea-au-scos-oamenii-in-strada-protest-in-piata-victoriei-impotriva-restrictiilor-cerute-de-premierul-orban-19420800>

03

3 The economical problems and the advertising from public money

The Covid-19 pandemic found the Romanian mass-media still deeply wounded by the Great Recession of 2008-2009. A study published by CIJ in March 2020 highlighted the two fundamental problems affecting the Romanian media: *an endemic lack of financial resources and a loss of professional credibility*³⁵. These crises were exacerbated by the pandemic, by the measures taken by the authorities in response, and by the media institutions themselves.

Print media took the biggest hit, as they were already on the edge of collapse because of the loss of their old business model, new economic and political pressures, and of bad management. The state of emergency and the travel restrictions issued as a response to the epidemic affected or closed most of the small businesses, which canceled their ad spending. They also wiped out the direct sales of newspapers. Subscriptions suffered, as the Romanian Post delayed even more these deliveries - sometimes to once a week in case of daily newspapers. In some cases, the lockdown and social isolation measures meant that new subscriptions were harder to start, or to renew.

One by one, most of the national printed weeklies suspended their print editions and most of the local print newspapers reduced the number of pages in order to cut costs. The local media editors we spoke to said that, only in March and April, their income fell between 70-90%.

National TV stations also saw their income diminished, but in a much smaller proportion. According to data from Publicis³⁶, the TV ad market fell by 36%, while print and radio lost 60%. For example, Coca Cola, which had one of the biggest advertising budgets³⁷ in the country, stopped all ad spending, as their priority was now „the safety and health of their employees and of the communities”³⁸. The online ad market was the only sector that grew, but with a small 0.7%, from the local market, without considering spending on Google and Facebook.

But the ad spending didn't completely dry out - the ad spending from public funds continued to flow, making the media dependent on this very problematic source of income. Over the years, public ad spending often came with editorial strings attached - in a direct way, as in direct censorship and editorial conditioning embedded in contracts, or in an indirect way, as in self-censorship, for fear of losing these contracts due to any kind of perceived criticism of authorities.

35 https://cji.ro/wp-content/uploads/2020/04/STUDIU-PRESA-2020_roBT-rev-01.pdf

36 <https://www.paginademedi.ro/2020/05/piata-publicitate-scadere-tv-online/>

37 <https://www.forbes.ro/topul-comaniilor-cu-cele-mai-mari-bugete-de-publicitate-pe-televiziune-anul-2018-132037>

38 <https://www.iqads.ro/articol/50016/coca-cola-opreste-publicitatea-pe-timp-de-pandemie> Compania a reluat publicitatea în iulie 2020

3.1 Public money funding mass-media through the system for public procurement

The Center for Independent Journalism monitored these direct allocations of ad budgets via the e-licitatie.ro platform, through SEAP (the Electronic System of Public Procurement) using a series of 19 specific identification codes (CPVs)³⁹. According to our monitoring report, between March 2nd and July 31 2020 there were 4,500 contracts with a total value of 15 million lei (3.125 million euro). Almost half were attributed in the March-April period and totalled 8.6 million lei (1.8 million euro). There were also over 700 contracts allocated via offline procurement procedures, published in the same period, for activities supposed to be completed March to December 2020. Their value was approximately 2.4 million lei (500,000 euro).

The detailed analysis of this monitoring for the March-September period will be published in a separate CIJ report, in November 2020.

Our monitoring leads to several main conclusions, relevant both for the public institutions offering advertising contracts and for the media bidding for them.

- **The publicity contracts or the bulk acquisitions of print publications did not just buy ads or a number of copies, but also access to the editorial content: invitations for politicians to live or recorded shows or even whole issues dedicated to promoting interviews, official „news” and covering of state affairs, and dissemination on social media.** This became a general practice for institutions that buy media space. In this way, the public is cheated into thinking it is offered editorial content in radio, TV or online media, while being exposed to „news” served by the authorities. For example, the Florești township in Cluj county is the third largest spender of media ad budgets, with 14 contracts worth 252,401.24 lei plus VAT (approx. 52,600 euro). Eight of these contracts clearly specify buying news, interviews, and access to radio and TV shows.
- **In March-July 2020, state authorities, especially local institutions, continued to ask for offers of special PR-style media publications packaged as independent journalism.** Even from the initial announcement, it is clearly stated the involvement of the contracting institutions in the editorial content. It is not a new practice, but it is even more important to monitor now, because most of these publications will be released in the 2020 April-December period, with two elections, one of them for local authorities. The largest sum was awarded by the City Hall of District 1 in Bucharest, which offered, on July 30th, a contract worth 123,000 lei plus VAT (25.625 euro) to CHELGATE LTD UK company, specialized in “Reputational and Relationship Management”, for an „Informative Bulletin for Sector 1, in 100,000 copies”. The contract specifies, among others, that „the subjects will be approached in a journalistic style and form, in order to get the reader’s attention and to stimulate his interest”. We found dozens of other such contracts for „newspapers” dedicated to and controlled by the local authorities.

³⁹ The list in the Annex

- **Offering ad contracts to all the local or county media outlets.** This practice shows that the funding decisions are made on objective criteria, in order to guarantee proper spending of public funds, or to get a maximum impact, by using criteria like audience measurements or community relevance. The local authorities in Ialomița county have the second largest spending on media contracts, with 29 contracts worth 317,228.72 lei (approx. 66,000 euro). Six of these, worth 12,000 lei (2,500 euro) each, were allocated in June 2020 to six online and print media outlets. Another one, worth 14,400 lei (3,000 euro) was awarded to an online publication for use of its website and Facebook page. Five contracts, each worth 30,000 lei (6,250 euro) were given to local TV and radio stations, and another one, worth 75,000 lei (15,625 euro) was signed with Antena 3 Slobozia TV station. The contracts have a period of one year and are meant to promote the activity of the local institutions through press releases and news.
- **Ad contracts during the pandemic to promote events that were supposed to take place in March/April - December period.** Even during the national state of emergency, which clearly forbade any large public events or gatherings, local institutions continued to offer ad contracts, sometimes even on a monthly basis, for media coverage of socio-cultural and sporting events. For example, between March 4th - April 10th, Mangalia City Hall offered four contracts to a company called Mangalia Media, for „Photographic and journalistic services in covering socio-cultural and sporting events in Mangalia city” during March-December 2020 period. The contracts were worth 70,000 lei without VAT (approx. 14,600 euro). On March 27th 2020, Florești township, in Cluj, offered two contracts with a total value of 83,920 lei without VAT (approx. 17,500 euro) to Agro TV Network, for promoting various cultural events.
- **Some media institutions obtained a large number of ad contracts with public funds.** Our report highlighted 12 media companies that managed to each get between 40 and 70 contracts. The most successful was Unirea newspaper, in Alba Iulia, with 120 ad contracts in March-July 2020, worth a total of 237,000 lei (49,375 euro).
- **Some media companies specialized in selling bulk subscriptions to public institutions, especially in small townships and cities, in exchange for promoting local authorities and politicians.** The Jurnal de Ilfov weekly, published by Prestige Events company in Bucharest, signed 8 contracts worth 264,000 lei plus VAT (55,000 euro) to deliver bulk issues to eight local institutions (approx. 2,200 copies per week). Another company, Press Group Moldova, publishes two weeklies, Bună dimineața Suceava și Bună dimineața Botoșani, for which it signed, between June 16th and July 17th, 28 contracts with multiple city halls for subscriptions and promo services worth 43,000 lei (approx. 9,000 euro).

3.2 Public funds spent in the national health safety awareness campaign for safety measures against the Covid-19

After two months during which the authorities eroded the credibility of the media by urging citizens to inform themselves only from „official sources“ (mainly, governmental sources) and hindered the efforts of journalists all over the country by blocking their access to public interest information and threatening whistleblowers with penal cases, the Romanian Government decided that mass-media are important for the citizens, so they must be supported in order to survive the economic crisis brought on by the pandemic. Following negotiations with some industry associations and some local media institutions, the solution took the form of a national fund worth 200,000,000 lei (41.6 million euro) that will pay for information campaigns in mass-media to promote protection measures against Covid-19, for a period of four months (May-September 2020).

Seen as a lifeline for the industry, the decision was accepted without objections by most of the media institutions. Very few voices, CIJ⁴⁰ among them, criticized the decision, warning that it may lead to self-censorship and the erosion of the trust in the media. The Emergency Ordinance no. 63/2020 was published in the Official Monitor on May 8th 2020 and was modified in July by the Parliament, which, among other changes, raised the total sum to approx. 240,000,000 lei (50 million euro) and extended the duration of the campaigns to the end of 2020, with the possibility of prolonging it⁴².

After more than two months since the start of the campaign, several conclusion are already visible:

- **The discretionary allocation of public ad budgets, with no performance criteria in order to judge the impact of the campaigns, is against the law of public acquisitions.** The articles of the law that refer to public ad spending, adopted in 2005 by a government which included the National Liberal Party (PNL), the very party now in power, were meant to correct the abuse of these funds up until that point.
- **The main beneficiaries of this ordinance are the national TV and radio stations, with measured audience numbers. Local media, most affected by the financial effects of the medical crisis, receive the least help.** 25 beneficiaries, TV and radio outlets, received 52.3 million lei (approx. 10.9 million euro) for four months. Next are 83 national online outlets, which received contracts worth 23.4 million lei (4.9 million euro). From local media, there are some relatively large regional TV and radio stations, but with no measured audience. They received almost 18.3 million lei (3.8 million euro), followed by 83 local online outlets (3.3 million lei/687,500 euro). Print media, national and local, received just 9.3 million lei (1.94 million euro).

40 <https://cji.ro/fondul-de-publicitate-pentru-mass-media-naste-suspiciuni/>

41 <https://cji.ro/fondul-de-publicitate-modificarile-care-nu-schimba-nimic/>

- **The awareness campaigns had a boomerang effect regarding the credibility of the media.** In the last few months, critical and hate messages multiplied in the comments sections, the outlets being accused of being bought by the government to write about Covid-19 in order to fuel panic. This is a general attitude among the readers, attacking even media outlets that did not apply or were not included among the national fund recipients.
- **The criteria for the allocation of these funds are encouraging and rewarding clickbait and a focus on traffic and indiscriminate audience.** Media companies had to declare, on one's own responsibility, the audience numbers for their outlets, numbers that were then used to set the financial value of the contracts. At the end of the campaigns, if those audience numbers were not reached, some of the money has to be repaid. In order to keep the money, the editors are forced to reach the inflated numbers declared at the signing of the contracts, even during summertime, when audience numbers experience a natural dip. Even in normal operations, online traffic used to be generated by sensational news, accidents and deaths, even misinformation. By choosing this mechanism, the government failed to predict that the money will actually work against the desired objectives of the campaigns - the dissemination of proper health information and advice and a quality coverage of the health crisis.
- **The ads are poorly done and inefficient,** if we judge by how quickly a high percentage of the population abandoned the proper implementation of prevention measures. Despite this clear failure, demonstrated by an accelerated rise in cases and deaths, way over the levels registered during the state of emergency, the government did not change the content or the creation of the ads until the beginning of August.
- **There is little transparency in regards to other beneficiaries of these public ad funds,** for example the companies paid to create the ads and the values of their contracts. It is important to have transparency and accountability for the spending of all the money in this fund.

Public money, spent either in a strictly commercial relationship, or as a support for mass-media during a crisis, must be allocated justly, without losing sight of the main objective - informing the citizens on public interest subjects, important for the society. In this particular case, in the context of a financial crisis for mass-media and of electoral campaign on the horizon, it is vital that the authorities do not abuse these funds, by buying editorial content, paying for „positive news“ and propaganda, masked as journalism products, or conditioning the contracts with „non-aggression pacts“.

04

4 Conclusions and recommendations

Ideally, in a state of emergency there should be no room for mistakes, abuses or any acts of dishonesty, despite decisions being taken under the pressure of events. Pandemics do not give us time to fix mistakes. Ensuring and protecting fundamental rights, such as the right to free expression and information, the right to assembly and protest, among others, are essential. Procedures that clearly and predictably present measures of return to the pre-crisis situation are also essential. We emphasize again the minimal standards - listed in this introduction - for measures limiting fundamental rights during states of emergency and alert: the measures taken must be legal, necessary and proportionate, non-discriminatory, adopted through a proper parliamentary procedure and clearly limited in time. The Center for Independent Journalism considers that the regulations and practices adopted by the Romanian authorities during the state of emergency and alert did not live up to these standards. Moreover, they created dangerous precedents for democracy. The lightness with which some fundamental rights have been restricted, either out of incompetence, panic or for reasons related to political and economic interests shows that the governing structures of the Romanian state can easily turn to an authoritarian leadership style without any major reaction from the public.

Some of these limitations have proved excessive, some insufficiently thought out, others poorly applied. We believe that, given the announced risk of the COVID-19 crisis spreading, including during the fall of 2020 and beyond, it is imperative that the Romanian authorities, together with civil society partners, analyze the effects of these restrictions and take the necessary measures to maintain a fair balance between the need for safety - sanitary or otherwise - and real respect for human rights in times of crisis.

On this optimistic note, the Center for Independent Journalism proposes the following interventions:

1. At the legislative level:

- Immediate revisions to the Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency, and the subsequent regulation of states of emergency through a bill debated and approved by the Romanian Parliament, reflecting the democratic acquisitions of the last 30 years. The bill should include solid guarantees for the protection of the fundamental rights such as the right to free expression and information during exceptional circumstances. Such a law must ensure transparency in the management of the state of emergency, in the appointment and monitoring of the bodies that manage it, as well as their obligation to publish an activity report at the end of the state of exception.
- Harmonization of current legislation (Ex: Civil Code, Criminal Code, legislation on public assemblies, national security, the functioning of law enforcement agencies, etc.) to ensure the coherent exercise of individual rights and freedoms.

2. At the administrative level:

- Analyzing the way in which the public administration respected the right to information and the right to free expression of the public during the state of emergency, publishing a report in this regard.
- Increasing the capacities of bodies with a role in defending the public interest and freedom of expression (Ombudsman Office, National Audiovisual Council, etc.) for fulfilling their mandate in favor of the citizens;
- The correct implementation of Law 544/2001(freedom of information law) and the creation of internal mechanisms and practices for streamlining access to information, mainly through electronic means. Compliance with the legal obligations regarding the publication of the names and contact details of the responsible spokespersons within public institutions and authorities.
- Increasing the organizational capacity of the public administration, by re-evaluating the performance of public information departments and spokespersons; the training (or other forms of skills development) of civil servants with regard to freedom of expression, including access to information, updates on the digital context and legitimate constraints in any exceptional circumstances.
- Training and professional development of personnel in law enforcement structures (Police, Gendarmerie) regarding the freedom of expression, including in a digital context, in accordance with international standards.

3. At the societal level:

- Opening a real dialogue, with the participation of all stakeholders, on the exercise of freedom of expression in the digital context, including its legitimate limits and international standards;
- Launching long-term programs, with financial support from the state on media education, critical thinking, civic and legal education, in order to increase the public's valorization of the fundamental rights, including freedom of expression, media freedom and pluralism. Such programs must be based on a broad and honest dialogue with all stakeholders and should capitalize on their experience developed so far in all sectors of society.

5 Annex: The list of the CVPs

22200000-2 - Newspapers, journals, periodicals and magazines

22210000-5 - Newspapers

22212000-9 - Periodicals

22212100-0 - Serials

22213000-6 - Magazines

79340000-9 - Advertising and marketing services

79341000-6 - Advertising services

79341100-7 - Advertising consultancy services

79341200-8 - Advertising management services

79341400-0 - Advertising campaign services

79342200-5 - Promotional services

92621000-0 - Sports-event promotion services

92200000-3 - Radio and television services

92210000-6 - Radio services

92211000-3 - Radio production services

92220000-9 - Television services

92221000-6 - Television production services

92312211-3 - Writing agency services

92400000-5 - News-agency services



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