

Romania

Romanian Institute for Human Rights

International accreditation status and SCA recommendations

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. It had been previously accredited with C status, which is no longer a valid accreditation status. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) and the Romanian Institute both applied for accreditation. The request for accreditation of both bodies is being processed by the SCA, in accordance with its Rules of Procedure.

Impact of 2020 rule of law reporting

Follow-up initiatives by the Institution

The Institute (RIHR) informed the leadership of the two human rights committees of the Romanian Parliament about the ENNHRI Report and the Institute's contribution to this document. At the same time, the Human Rights Directorate of the Ministry of Foreign Affairs was informed about the report.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

In 2020, a legislative proposal to amend Law no. 9/1991 on the establishment of the Romanian Institute for Human Rights, was discussed in the Romanian Parliament.

The RIHR proposed to amend the Law in order to update the Institute's obsolete regulatory framework, taking into account international bodies' recommendations (in particular from the SCA) notably to strengthen the RIHR autonomy and independence.

The proposed amendments included:

- Regulation of the legal status of the Institute as an independent institution from any other public authority;
- Providing that the activity of the Institute should follow the Paris Principles;
- Systematisation and completion of the attributions included in the mandate of the Institute;
- Plurality and transparency of the process of appointing members of the governing bodies of the Institute;
- Limitation of the mandate of the members of the Institute's management;
- Clarification of the status and remuneration of the staff of the Institute;
- Public debate of the Institute's report;

On June 30, 2020, it was adopted by the Romanian Senate, as decisional Chamber. However, as the document was subject to constitutional review; the Constitutional Court admitted an unconstitutionality objection raised by the Romanian President. In its analysis, the Constitutional Court identified several elements of extrinsic unconstitutionality on the legislative process (the wrong qualification of the legal nature of the Institute determined the adoption of the document as organic law and not as ordinary law, thus reversing the order of referral of the Chambers [1]; at the same time, Parliament did not request the financial statement from the Government, as laid down in art. 15 of Law no. 500/2002 on public finances [2]). As a consequence, considering the nature of the unconstitutionality issue, the Court decided that the law was unconstitutional as a whole.

Moreover, considering the status of the Institute, the objectives for which it was created, its attributions and institutional connections, the Constitutional Court noted that the Institute is a public institution of national interest, and its main role is to be a documentation/consultation and research centre in the field of human rights.[3]

Currently, a legislative proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination is under debate in the Senate. However the two institutions have major differences regarding their legal status, mission, and mandate:

- RIHR has the status of independent body with legal personality; NCCD was established as a state authority with legal personality,
- RIHR's mission is to ensure a better knowledge by public bodies, NGOs and Romanian citizens, of human rights issues; NCCD's mission is to implement the principle of equality

between citizens, provided by the Romanian Constitution, in the national and international legislation

- Finally, RIHR has a general mandate to provide research, information, training and education activities in the field of human rights; NCCD exercises a mandate limited to the field of implementing the principles of equality and non-discrimination

The proposition of this merger with the NDDC has caused an unfavourable working climate in the RIHR, as the staff of the Institute was affected by the lack of security and uncertainty regarding the future.

References

- [1] The Court notes that the law does not change the legal nature of the Institute from public institution into autonomous administrative authority, see §51-57 of the Decision of the Constitutional Court, no. 772 of October 22, 2020, <https://senat.ro/legis/PDF/2020/20L266DC.PDF>
- [2] Under the constitutional relations between the Parliament and the Government, it is mandatory to request information when a legislative proposal affects the provisions of the state budget. Thus, given the imperative nature of this obligation, it follows that non-compliance has as a consequence the unconstitutionality of the adopted law. See §59-65 of the Decision of the Constitutional Court, no. 772 of October 22, 2020, <https://senat.ro/legis/PDF/2020/20L266DC.PDF>
- [3] According to §47 of Decision no. 722 of October 22, 2020
- [4] https://www.senat.ro/legis/lista.aspx?nr_cls=L701&an_cls=2020

Enabling space

Several elements have hindered the activity of the Institute, including insufficient resources and an obsolete legislative framework. Indeed, the Law establishing the Institute dates from 1991 and has not been modified since, although in the past two years there were two legislative proposals in this regard, aimed at strengthening the observance of the Paris Principles. In the past 10 years, the Institute carried out its activity with a shortage of the staff, especially with regards to specialists: in 2020, the Institute operated with a staff deficit of 31% (the unoccupied positions being specialised positions).

The Institute nevertheless kept on pursuing to fulfil the mandate provided by Law no. 9/1991, as recognised for example by the Working Group on discrimination against women and girls following in its working visit to Romania, February 24–March 6, 2020:

„(...) We are pleased to note the operation of different independent state-based human rights bodies: the National Council for Combating Discrimination, the Office of the Romanian Ombudsman, and the Romanian Institute for Human Rights, all of which are playing an important role in the promotion and protection of the human rights of women and girls. We call on the Government to ensure adequate resources to these institutions and strengthen their independence. (...)”[1]

References

- [1]
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25687&LangID=E>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The fact that the proposal on the merger by absorption of the Romanian Institute for Human Rights by the National Council for Combating Discrimination is under debate in the Senate has been under parliamentary debate has created a less favourable environment for the Institute's activity, as explained above.

Human rights defenders and civil society space

In 2020, the composition of the Romanian Economic and Social Council changed [1]. Civil society members were appointed following a voting process, but initially one of the elected civil society members was replaced by a decision of the interim Prime Minister. Subsequently, this decision was reversed, under pressure from civil society and the media, and the position went to the person who had been voted for.

The RIHR collaborated with and promoted the work of women's rights organisations and of representatives of civil society with expertise and experience in the field of combating bullying and cyberbullying.

References

- [1] The Economic and Social Council is a consultative body for setting economic and social strategies and policies at national level

Checks and balances

According to Law no. 218/2002 on the organisation and functioning of the Romanian Police [5], the latter is part of the Ministry of Internal Affairs and has responsibilities in defending fundamental rights and freedoms of individuals, private and public property, crime prevention and detection, observance of public law and order, in accordance with the law. The activity carried out by the Romanian Police is a specialised public service and is carried out in the interest of the person, of the community, as well as in the support of the state institutions, exclusively on the basis and for the enforcement of the law. However, some provisions of the Law no. 218/2002 may lead to the limitation of the police officers' liability and, implicitly, to potential abuses on their part: Article 36 (4) and (5) lack predictability, as they allow the application of a custodial measure, without an appropriate temporal circumstance: The verification of the factual situation and the potential taking of legal measures against the person taken to the police headquarters is carried out *immediately*. The police officer has the obligation to allow the person to leave, *immediately*, the police headquarters after the completion of the activities according to par. (4) or the required legal measures. The absence of clear and predictable legal regulations clearly establishing the period within which the police officer is responsible for performing his/her duties reduces the degree of accountability of national authorities.

The decision of the Court is the final step of the judicial procedure. Although the judgment of the Court is usually enforced voluntarily, an enforcement can proceed if necessary - as a phase subsequent to the trial. In order to contest the enforcement, conclusions given by the enforcement officer, or any enforcement act, an appeal can be lodged by interested or injured parties. The appeal can also be lodged when the enforcement officer refuses to carry out a seizure or to fulfil an act of enforcement under the conditions of the law.

Article 719 of the Code of Civil Procedure, in its current formulation, hampers the implementation of judgments of national courts: "Pending the judgement on the appeal against enforcement or another request for enforcement, at the request of the interested party and only for good reasons, the competent court may suspend enforcement. The suspension may be requested together with the appeal against enforcement by a separate application.". Its wording is

ambiguous, leaving it to the interpretation of the courts the determination of the actual procedural moment until which the execution of the judgment can be suspended following the filing of an appeal against enforcement. In particular, it does not specify whether the decision on the appeal on enforcement shall be taken following the decision of the Court of First Instance or the final judicial decision.

This confusion was mitigated by the judgment rendered on 8 February 2021 by the High Court of Cassation and Justice of Romania following an appeal in the interest of law submitted by the People's Advocate. The Court established that the suspension of enforcement is "limited in time up to the date a court of first instance rules in the challenge brought against foreclosure." [6]

- GEO no. 26/2020 [7] amends and completes some normative acts regarding elections for the Senate and the Chamber of Deputies, as well as some measures for the efficient organisation and conduct of early parliamentary elections, aspect contrary to the provisions of Article 115 (6) of the Constitution, which provides that emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly. It is clear that the legitimacy of the electoral process is harmed, in the context of regulation, by normative acts having legal force inferior to the law, (GEO), as these aspects are, *expressis verbis*, in the competence of the country's legislative authority. Another aspect that implies effects on the legitimacy of the electoral process consists in the fact that GEO no. 26/2020 was adopted in the immediate period of the organisation of elections, affecting the principle of legal certainty, changing the perception of voters from the perspective of legitimate expectations regarding the general framework of elections. The Constitutional Court emphasised in 2012 [8] that an untimely legislative amendment could create additional difficulties for the authorities in charge of its application, in terms of adapting to the newly established procedure and the technical operations it entails. By Decision no. 150/2020, the Constitutional Court held that the Government Emergency Ordinance no. 26/2020 is unconstitutional, in whole. [9]

The legislation in force applicable to the activity of public administration authorities ensures the concrete realisation of the requirements of openness and transparency of public administration activity, consequently improving communication with citizens and increasing their trust in public authorities. Law no. 52/2003 [10] states that the purpose of the regulation is: to increase the degree of responsibility of the public administration towards the citizen, as a beneficiary of the administrative decision; to actively involve citizens in the process of making administrative decisions and in the process of drafting normative acts; to increase the degree of transparency of the entire public administration.

With a view to implementing these principles , normative acts that appropriately amend the legislation in force have been adopted: the Law no. 10/2020 [11] modifies Government Ordinance no. 71/2002 providing that local public administration authorities must "*ensure the transparency and the access of operators to the information and documents necessary for the development of procedures to award the management delegation contracts, in compliance with the legislation in the field of public procurement and works and services concessions*".

From a legislative point of view, the requirements of openness and transparency of the public administration activity are therefore ensured, however in practice, it is too slow regarding the digitalisation process that would facilitate communication to citizens. And even more considering how the COVID-19 pandemic showed the importance and need to introduce digitalisation in all areas of social life.

References

- [5] Law no. 218 of 23 April 2002 on the organisation and functioning of the Romanian Police, published in the Official Journal no. 170 of 2 March 2020.
- [6] Please see <https://www.scj.ro/en/1538/5498/Press-releases-appeals-in-the-interest-of-the-law-2021/Press-release-Panel-for-Appeals-in-the-interest-of-the-Law-in-its-session-of-8-February-2021>.
- [7] Emergency Ordinance no. 26 of 4 February 2020 on the amendment and completion of some normative acts in the matter of elections for the Senate and the Chamber of Deputies as well as some measures for the efficient organisation and conduct of early parliamentary elections, published in the Official Journal no. 118 of 14 February 2020.
- [8] Constitutional Court of Romania, Decision no. 51 of 25 January 2012, published in the Official Journal no. 90 of 3 February 2012.
- [9] Constitutional Court of Romania, Decision no.150 of 12 March 2020, published in the Official Journal no.215 of 17 March 2020.
- [10] Law no. 52/2003 on transparency of decision-making in public administration, published in the Official Journal no. 749 of 3 December 2013.
- [11] Law no. 10 of 9 January 2020 amending and supplementing Government Ordinance no. 71/2002, published in the Romanian Official Journal no. 14 of 10 January 2020.

Functioning of the justice system

In 2020, the RIHR organised training for specialists of the Bucharest Bar on the European system for the protection of human rights. The course entitled “Regional Human Rights Instruments and Mechanisms” aimed to provide the conceptual definition of human rights-specific terminology, the detailed content of regional human rights instruments (namely the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union), an analysis of rights categories and their articulation, as well as a detailed illustration of the proceedings before the European Court of Human Rights and the Court of Justice of the European Union, and of the mutual relations and influences between them.

The RIHR dealt with issues related to the efficiency of the justice system in accordance with its mandate as provided for by Law no. 9/1991, which include the possibility to carry out initiatives in particular in the field of research, training, information and human rights education. On this basis, in 2020, RIHR carried out a research concerning the particularities of the organisation and functioning of the European Court of Human Rights, in which led to the publication of the volume “European Court of Human Rights: theoretical landmarks and case-law analysis”.

Given that parliamentary elections took place in December 2020, the new parliamentary majority and the new government are considering disbanding the Special Section [1], considering the reports of the European Commission (EC 2020 Rule of Law Report [2] and EC report on Progress in Romania under the Cooperation and Verification Mechanism [3]). In this sense, on February 18, the Romanian Government approved the draft law proposed by the Ministry of Justice, regarding the disbanding of the Section for the investigation of offences committed by the judiciary [4]. The project is to enter the parliamentary debate.

References

- [1] Section for the Investigation of Offences in the Judiciary
- <https://www.mpublic.ro/ro/content/sec%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-din-justi%C8%9Bie>
- [2] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0322&from=EN>
- [3] https://ec.europa.eu/info/sites/info/files/progress-report-romania-2019-com-2019-499_en.pdf
- [4] <https://sgg.gov.ro/new/wp-content/uploads/2021/02/LG.pdf>

Media pluralism and freedom of expression

Taking into account the responsibility to provide information according to the RIHR mandate, the Institute guaranteed the access of the media to the results of actions, events, programs, projects organised under its coordination. In this sense, the Institute ensures the publicity of research, education and training actions by disseminating specific information on its website (www.irdo.ro).

The Institute also issues shared opinions on particular human rights issues at the request of the media, thus providing adequate information according to which media representatives can inform citizens in a relevant, responsible and objective manner. The RIHR issue for instance, at the request of the media, an opinion on the promotion and protection the rights of older persons in the context of the challenges of the COVID-29 pandemic. The collaboration between the Institute and the media structures is also highlighted through the press releases sent by RIHR following the organisation/participation in events and actions provided by its mandate.

Corruption

The national legal framework establishes a comprehensive approach to the issues related to corruption, taking into account both legal and financial implications. Three legal initiatives were taken in 2020 on these matters to further strengthen the anti-corruption legal framework:

- Law no 283/2020 [1] addresses financial implications of corruption, harmonising the national legislation with the requirements of Directive (EU) 2017/1371. This Law amends Law no. 78/2000 on the prevention, detection and sanctioning of acts of corruption by

introducing new offences which affect - from a material point of view - the budget of the European Union.

- Government Emergency Ordinance no. 111/2020 [2] amends the existing normative framework (especially Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, published in the Official Journal of Romania, Part I, no. 589 of 18 July 2019) by inserting provisions in the spirit of implementing the principles of interinstitutional cooperation and transparency.
- Law no. 105 of 3 July 2020 [3] complements the regulatory framework for rules on integrity in the exercise of public office and dignity, taking into account the communication challenges posed by the COVID-19 pandemic, and introduces provisions to facilitate electronic communication in this area.

Romania still has to transpose into national law the EU Whistleblowers Protection Directive 2019/1937. One of the obligations imposed by the directive is that public institutions and private companies having 50 or more employees must establish certain mechanisms dedicated to warnings/reports, safety standards, procedures to guarantee anonymity of the data of whistleblowers. The transposition deadline is December 2021. In December 2020, the Ministry of Justice had a meeting with civil society to discuss the drafting of the transposition law [4]. While the transposition of the directive is an important step for the protection of whistleblowers, it is then essential that it is implemented.

At the same time, a bill was submitted to Parliament to make information of public interest transparent and to facilitate citizens' access to information of public interest (the Chamber of Deputies is the decision-making chamber) [5]. The expected changes of the normative act are represented by the new obligation for public authorities and institutions to publish and communicate information of public interest in an open format that can be processed automatically, and the realisation and updating of an electronic public register of registered requests and answers in an anonymous manner.

On another hand, in 2020, there were attempts to reduce access to public information. For example, a draft law restricting access to information limited to normative administrative acts concerning the general public interest has been submitted to Parliament. The draft law has meanwhile been withdrawn by the initiator [6].

References

- [1] Law no. 283 of 8 December 2020, published in Official Journal no. 1199 of 9 December 2020.
- [2] Government Emergency Ordinance no. 111 of 1 July 2020, published in Official Journal no. 620 of 15 July 2020.
- [3] Amending Law no. 176/2010, published in Official Journal no. 588 of 6 July 2020.
- [4] <https://euwhistleblowingmeter.polimeter.org/promise/14109>
- [5] http://cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=18851
- [6] https://senat.ro/legis/lista.aspx?nr_cls=b584&an_cls=2020

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

There were a series of normative acts adopted during the state of emergency/alert, established following the COVID-19 pandemic, which raise concern in terms of their compliance with the principle of separation of powers in the state, a principle enshrined in art. 1 (4) of the Romanian Constitution. The following normative acts have been the object of the constitutionality review exercised by the Constitutional Court:

After the Presidential Decree no. 195/2000 declaring the state of emergency (an administrative act that restricted/limited multiple rights and fundamental freedoms e.g. freedom of movement, right to private and family life, free access to justice, economic freedom) was issued the Court was notified to determine the constitutionality of art. 14 c¹)-f) of the Government Emergency Ordinance (GEO) no. 1/1991, as they would allow the President to legislate – in areas for which the Constitution requires the intervention of the primary or delegate legislator – by amending organic laws and by effectively restricting the exercise of human rights.

- The Constitutional Court considered [1] that the provisions of GEO no. 1/1991 "[...] do not entitle the President to adopt norms with the rank of law, so that the Constitutional Court to find a violation of the invoked constitutional norms". Thus, urgent regulations that the

President can adopt have an administrative nature and can only target aspects that are regulated by the law. "The Court noted that the way in which the President exercised his constitutional role, by exceeding the legal framework, is not the result of an unconstitutionality flaw of the normative act of primary regulation, by virtue of and within the limits of which the public authority was empowered to act." "The Constitutional Court holds that in the current legislative framework, the legal regime of the state under siege and state of alert can only be regulated by a law, as a formal act of the Parliament, adopted in accordance with the provisions of art. 73 (3) g) of the Constitution, as organic law."

At the same time, the Constitutional Court also examined the constitutionality of GEO no. 34/2020 amending GEO no. 1/1991 and held that there was a violation of art. 115 (6) of the Constitution, i.e., the requirement that the legislative delegation should not be applied for acts which affect rights and freedoms stipulated in the Constitution.

- The GEO no. 21/2004 on the National Emergency Management System (approved by Law no. 15/2005, with subsequent amendments and completions) allows to adopt measures to restrict the exercise of fundamental rights through administrative acts (regulations, plans, programmes or operational documents approved by decisions, orders or provisions) issued by high administrative bodies. This does not respect the rule by which the measure restricting the exercise of certain rights should be provided by law. The Constitutional Court ruled in [2] that although the legislation providing for the legal regime of crisis situations that require exceptional measures implies a greater degree of generality than the legislation applicable during the normal period (precisely because the peculiarities of the crisis situation are the deviation from normal (exceptionality), and the unpredictability of the serious danger affects both society as a whole and each individual), the generality of the primary rule cannot be mitigated by secondary legislation that complement the existing regulatory framework. In this sense, the Constitutional Court concluded that the actions and measures taken during the state of alert, pursuant to the provisions of Government Emergency Ordinance no. 21/2004, cannot target fundamental rights or freedoms. The Court also found that the delegated legislator cannot, in turn, delegate to another administrative authority/entity measures for which it itself does not have jurisdiction.

According to the provisions of Law no. 55/2020, the Government is empowered to adopt a decision enforcing the state of alert in order to adopt measures to prevent and combat the effects of COVID-19 pandemic. Article 4 (3) of this Law provides that if the state of alert targets at least half of the administrative territorial units of the country, the decision of the Government is

subject to the approval of Parliament, which can then approve, in full or with amendments, the measure adopted by the Government (Article 4 (4)).

The Constitutional Court ruled [3] that the Parliament cumulates the legislative and executive powers which is incompatible with the principle of separation of powers in the state, enshrined in art. 1 (4) of the Constitution; it skews the legal regime of Government decisions, as acts of law enforcement, enshrined by art. 108 of the Constitution; it creates a confusing legal regime of government decisions, likely to raise the issue of exemption from judicial review under the conditions of art. 126 (6) of the Constitution, with the consequence of violating the provisions of art. 21 and 52 of the Constitution, which stipulate the free access to justice and the right of a person aggrieved by a public authority.

- Under GEO no. 11/2020, the Government enforces specific measures to prevent and combat the effects of the Covid-19 pandemic, without explicitly clarifying those measures. The provisions of the ordinance are incomplete, merely establishing adequate measures such as enforcing a quarantine, restrictions on free movement, evacuation measures, without concretely identifying methods of implementation. In general, the effect of these measures restricts rights and freedoms, and the RIHR identified the GEO as an inadequate/incomplete normative act, lacking predictability in regulating the way in which the respective measures will operate. By expressly mentioning the possibility of implementing the measures previously provided by a normative act in the category of orders, there is an interference in the correct application of the principle of separation of powers in the state. The Constitutional Court admitted [4] this argument of unconstitutionality invoked by the People's Advocate (institution whose mandate provides the possibility to notify the Constitutional Court), reiterating that, according to the provisions of article 115 (6) of the Constitution, emergency ordinances cannot be adopted in the field of rights and freedoms stipulated in the Constitution. The Court specified that art. 53 of the Constitution considers law *stricto sensu*, as legal act adopted by Parliament, excluding emergency ordinances, as provided by art. 115 (6) of the Constitution and secondary legislation.

The measures taken during the state of emergency, as a result of the COVID-19 pandemic, have had an impact on certain human rights organisations. Due to traffic restrictions, some organisations could not actually perform field work. However, some of their work took place online to a greater extent than in previous years.

At the request of members of the Romanian Parliament, the RIHR conducted a study on the crisis generated by the COVID-19 pandemic and its impact on human rights [5], especially regarding vulnerable groups (children and young people, women, older persons, people with disabilities). A

key element of the study was the evaluation of measures specific to the state of emergency/alert which restricted certain rights (right to assembly, right to free movement, right to a fair trial, right to privacy, family and private life, the right to education, and the freedom of assembly) in order to protect the right to health of the population. These measures were analysed from the perspective of the standards of necessity, proportionality, objectivity, equality and non-discrimination, the results being read in conjunction with the evaluation of the way in which the competent state authorities exercised, under the given conditions, the executive, legislative, judicial prerogatives. The Institute also stressed that all measures taken should be legal, clear, predictable, in accordance with the principles of legal certainty and separation of powers.

The impact of the state of emergency at national level on the rule of law can be observed through the regulations concerning the field of justice [6]. According to art. 63 (1), the first sentence of Decree no. 240/2020, during the state of emergency, the judicial activity continues in cases of special urgency. The purpose of the measures was to avoid congestion in the courts; in this sense we are talking about a restriction of non-urgent causes. During the state of emergency, all procedural and prescription periods were also suspended by law, which implies a mitigation of the restriction of rights.

Regarding the right to a fair trial, the Superior Council of Magistracy and the management boards of the Courts of Appeal established the types of cases to be tried during the state of emergency. These administrative acts added to the provisions of the decrees establishing or extending the state of emergency and contributed to the emergence of non-unitary jurisprudence and different management of those types of cases.

Decision no. 417/24 March 2020 of the Superior Council of Magistracy (SCM) provides guidelines regarding the cases assigned to the courts for trial, on the merits or in appeals, during the state of emergency. Thus, the cases assigned to the courts were individualised, depending on their object. This SCM Decision remains applicable even in the period of extension of the state of emergency, decided by Decree no. 240/2020. Although the purpose of adopting the SCM Decision was to ensure unity as to whether the trial continues during the state of emergency, the actual effect differed. For instance, the SCM decision (art 1(2)) established that, during the state of emergency, cases that are judged without summoning the parties should be resolved. However, a Decision of the Management Board of the Bucharest Tribunal (no. 8 of 30 March 2020) stipulates the contrary.

Under these circumstances, the courts have acted differently, with different approaches to cases concerning the appeal of enforcement in criminal matters, requests for amendment of the sentence, in general, cases concerning judicial proceedings relating to the enforcement of final

judgments in criminal matters; there were also different approaches to the types of cases considered to be urgent by each panel.

The lack of predictability of the manner of managing cases during the state of emergency could lead to violations of the right to a fair trial, given that litigants in identical or similar situations have received different legal treatment, regardless of the quality of the pronounced decisions.

Taking into account the evolution of the state of emergency and the dynamics of the applications whose solution was necessary during the state of emergency, the Superior Council of Magistracy adopted Decision no. 707 of 30 April 2020, which expands the list of cases whose resolution is required during the state of emergency. Consequently, in the jurisdiction of the courts, during the state of emergency, there were included complaints against decisions to reject in accelerated procedure, complaints against decisions to reject applications for access to a new asylum procedure, cases tried without summoning parties, applications for bail refund. Cases referred to tribunals during the state of emergency have been extended to include: public procurement disputes, requests to open insolvency proceedings filed by the debtor, appeals against the decision to dismiss or the decision to suspend the individual employment contract, cases tried without summoning parties, applications for bail refund. In the jurisdiction of the courts of appeal were included cases related to public procurement, cases that are tried without summoning the parties, cases for bail refund.

The RIHR, in its role of promoting a human rights-based approach to the handling of the crisis, drew attention through its Covid-19 report to the fact that the protection of fundamental rights and freedoms should be a strategic governmental priority during the crisis caused by the pandemic. During the state of alert, the critical evaluation of the measures adopted, the identification of the failure to fully protect human rights and the efforts for their restitutio in integrum was necessary, and it still is. At the same time, the Institute stressed the need to reconfigure public priorities, resume dialogue between public authorities and civil society, in a non-fragmented manner, in order to restore the violated rights and provide remedies for irregularities during the state of emergency.

Following Decree no. 195/2020 establishing the state of emergency, respectively the Decree no. 240/2020 of prolonging the state of emergency, there is a real need to complete the national regulatory framework with provisions likely to ensure the gradual relaxation of the sectoral measures adopted in order to prevent and combat the COVID-19 pandemic. Currently, Law no. 55/2020 on measures to prevent and combat the effects of the COVID-19 pandemic establishes the legal basis for enabling the Government to adopt normative acts in order to establish an intermediate legal regime.

The principles of proportionality, necessity and adequacy of the measures adopted to the circumstances of the COVID-19 pandemic must be observed in both state of emergency and alert. However, the measures taken during the state of alert should be adapted to the circumstances, taking into account any non-compliant restrictions enforced in the state of emergency.

Although the challenges posed by the state of emergency and the state of alert are indisputable, the measures taken during those periods should be legal, clear, predictable, in accordance with the principles of legal certainty and separation of powers.

During the state of alert, measures restricting rights and freedoms shall be more flexible by comparison to the degree of severity imposed during the state of emergency; the state of alert generated by the health emergency determines the maintenance exclusively of those measures aimed at combating the pandemic.

The Institute emphasised that the measures taken by authorities during the state of alert are subject to the assessment of civil society in terms of social acceptability. Thus, relevance, coherence, legality are standards that are recommended to be implemented in order to develop relevant solutions, as little restrictive as possible in terms of fundamental rights and freedoms.

In the preliminary study on the effects of COVID-19 pandemics [7], the RIHR highlighted that the restrictions on the right to peaceful assembly and association should be established so as to ensure that civil society remains active, and it is consulted in the process of developing or reviewing appropriate measures proposed by national authorities.

Acknowledging the particular impact of the COVID-19 pandemic on the economic and psychological dimension of social life, the Institute drew the attention to the need to rebuild the framework for social interaction by replacing social isolation measures (where they are not justified by infection/suspicion of infection with SARS-CoV-2 virus) with social distancing measures.

Restrictions adopted during the state of emergency that applied to public services (especially the field of justice, education or health) need to be reassessed in order to ensure the principles of openness, transparency and continuity of public services. It is clear that the efficiency of the functioning of public services is directly related to the efficiency of the functioning of information systems. To this end, public authorities must act responsibly, constantly monitoring any risks associated with information technology. [8]

With regard to access to information, during the state of emergency, journalists drew the attention of the authorities to the provision of conclusive data on cases of COVID-19 [9].

According to the report prepared by the Centre for Independent Journalism (CIJ) on freedom of expression during March-July 2020 [10], the presidential decree declaring the state of emergency provided at art. 54 the possibility for the authorities to require content providers "to immediately interrupt, after informing users, the transmission of content in an electronic communications network or its storage, by eliminating it at source, if the content promotes false news about the evolution of COVID-19 and protection and prevention measures." The decision to interrupt an online publication would be made by the Ministry of Internal Affairs (MIA), based on the analysis of the Strategic Communication Group [11], and, according to the MIA, the measures did not refer to well-known media institutions [12].

At the same time, the state of emergency decree doubled the delays for answering to requests made in the exercise of free access to information of public interest, as well as petitions. The report of the Centre for Independent Journalism points out that in some cases the activity of providing information was even suspended. In this regard, it reminds of an MIA order to county prefects regarding the prohibition to publish local information on the number of COVID tests made, the number of people tested positive after the tests, the health of patients and the locations where quarantine centres would open. Both the CJI and APADOR-CH [13] called for the transparency of information on the evolution of COVID-19.

The same report points out that, in many cases, the authorities did not provide certain information, based on the provisions of the GDPR on the anonymisation of information, stating that it did not fall within their responsibilities.

The RIHR reacted to many Covid-19-related issues through opinions issued at the request of citizens and/or public authorities with attributions in the field of human rights, to clarify the normative acts that involve shortcomings in terms of clarity and predictability. Thus, RIHR has issued opinions on:

- (1) the special legal protection of older persons in the context of the COVID-19 pandemic. [14];
- (2) the assessment of the legal framework adopted during the state of emergency/alert regarding:
 - (a) the impact of final examinations (national assessments and baccalaureate) in COVID-19 context; and
 - (b) the impact of the epidemiological triage measure (including taking the temperature and assessment of candidates' personal history of respiratory symptoms) on the right to education and health of children and young people [15];

(3) clarification of the national legal framework adopted in the medical field during the state of emergency/alert in relation to the conditioning of access to private medical centres by performing tests for the detection of infection with the SARS-CoV-2 virus [16];

(4) on the regulatory framework established to guarantee the rights of revolutionaries (with special regard to the right to housing and related land as well as the right to benefit from compensation) [17];

(5) the analysis of the legal and non-discriminatory character of the requests formulated by the Romanian public administration authorities in the relations with the Romanian citizens living abroad, to present the marriage certificate in order to issue a new passport [18];

(6) the non-discriminatory application of the free movement of capital in the light of the compatibility between national law and the European Union legislation [19].

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Most important challenges due to COVID-19 for the NHRI's functioning

The Covid-19 crisis has altered the activity of the Institute, however, RIHR managed to adapt to these challenges:

- the advisory activity at RIHR headquarters was suspended during the entire state of emergency/alert. During this period, in order to implement safety measures to prevent infection, public relations were conducted via distance communication (e-mail, telephone, written correspondence). At the same time, the Presidential Decrees establishing and extending the state of emergency doubled the deadlines for answering to petitions,
- training sessions, organised on the basis of an institutional agreement between the Romanian Institute for Human Rights and the Institute for Public Order Studies, on the Prevention of Torture and Inhuman Treatment designed for staff working in Detention and Preventive Arrest Centres at the country level, were interrupted for a certain period following the COVID-19 outbreak.
- the events organised by the Institute have taken place online, for example: the Annual Conference on Human Rights on the Respect for Human Dignity and Equal Opportunities and Treatment in Crisis Periods, organised in partnership with the National Agency for

Equal Opportunities between Women and Men (ANES), Titu Maiorescu University (Faculty of Law) and Dimitrie Cantemir Christian University (Faculty of Foreign Languages and Literatures); the campaign against moral harassment at the workplace launched under the motto 'Moral Harassment is Illegal - Stop dysfunctional work relations!' was carried out between 15 September and 15 October, in partnership with ANES.

