

REFLECTING THE PANDEMIC STATE IN LEGAL REGULATIONS WITH A DIRECT IMPACT ON SOCIAL AND ECONOMIC LIFE

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Abstract:

In a social and economic environment characterized by continuous changes generated by the context of the COVID 19 pandemic, legislative adaptability is one of the key aspects of the legislator to cope with changing economic and social conditions, while maintaining the continuity of vital areas of society and protecting the health and safety of citizens. This material addresses a coherent presentation of the regulatory area assumed by Law 136 of July 2020 as well as the consequences produced by this “legislative experiment” in terms of compliance with the principles on which the rule of law is built.

Key words: quarantine, isolation, epidemiological risk, pandemic, rule of law.

JEL classification: K20, K15, K19

1. INTRODUCTION

Over the years Romania has experienced several crisis situations and a retrospective analysis is useful to give us an idea of what we expect from an economic, social, and legislative point of view. History has lessons, even if interpretations may be different in relation to the applied solutions. Over the last century, Romania has gone through several economic crises:

1. the Great Depression of 1929-1933,
2. 1940s and 1950s - the war period, the famine of 1945-1947, post-war reconstruction,
3. the 1980s, marked by the payment of external debt; the two recessions of the transition,
4. the crisis of 1990-1992,
5. the crisis of 1997-1999,
6. the Great Recession.

Beyond the specific features, all these crises have some common points:¹

¹Romanian Academy. *History of the Romanians*. vol. VIII: Romania reunited, coord. Ioan Scurtu, Bucuresti: Enciclopedica Publishing House, 2003, vol. IX, Romanian Academy. *History of the Romanians*. vol. IX: Romania in the years 1940-1947, coord. Dinu Giurascu, Bucuresti: Enciclopedica Publishing House, 2008. Catalin Zamfir. *A critical analysis of the transition. What will be “after”?*, Iasi: Polirom, 2004. Catalin Zamfir. *The social history of Romania*, 2nd edition, Bucuresti: Romanian Academy Publishing House, 2019. Florin Georgescu. *Capital in post-*

1. deep recessions, with massive declines in the standard of living of the population and long periods until the recovery of the pre-crisis level,
2. the reduced capacity of the economy to withstand shocks² and support a social safety net in the medium and long term; this also derives from Romania's peripheral position in the world economy and from the structural weaknesses of the economy,
3. the most difficult period from a social point of view - that of the degradation of the quality of life of the population - is not the one immediately following the economic shock, but manifests itself in time; for the population, the period of "sacrifice curves" lasts for years,
4. the time gap between the lowest point of the economic downturn and the lowest point of the degradation of the standard of living, respectively; the economy recovers faster than the standard of living,
5. the deterioration of public finances through large deficits and the increase of public debt, determined by the fall of the economy; the heavy burden of the effort to reduce the deficit and pay the debt is supported by the active generations at that time, not the future ones,
6. Romania's population is the one that has borne a disproportionately high share of the economic and social costs of the crises; in other words, almost every generation has experienced a period of "sacrifice"; the costs were unevenly distributed, pressing especially on the shoulders of the persons with medium and low incomes.

The crisis caused by the pandemic requires the massive intervention of the State on several levels: supporting the health care system, combating the spread of the epidemic, supporting economic agents, social protection of the population and relaunching the economy through a specific legal framework.

The beginning of the 21st century has been marked by the growth of the world economy, the rise of private enterprises and consumerism, but also by problems such as terrorism, epidemics, poverty, extremist political trends and climate change. In 2020, the COVID-19 pandemic broke out, which spread throughout the world and disrupted the entire socio-economic system.

Coronavirus has generated a crisis that does not stop at borders but affects all areas of our lives. Justice is no exception in this respect. The analysis of the nature and legal effects of the pandemic generated by the SARS-CoV-2 coronavirus is a permanent concern of legal specialists, to anticipate potential crisis situations, likely to arise during the state of emergency or even after its cessation (including by discontinuation of some of the effects of special legislation, derogations, adopted during this period, and therefore after the re-establishment of the internal legal order).

2. LEGISLATIVE MEASURES ADOPTED IN THE CONTEXT OF THE COVID-19 PANDEMIC

In retrospect, during this year, a series of decrees, laws and emergency ordinances were enacted, which established protection and safety measures in social and economic life in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus. Starting with the Decree of the President of Romania on the

communist Romania, vol. I-III, Bucuresti: Romanian Academy Publishing House, 2018

² For example, Romania's war economy collapsed in early 1945. In the 1980s, the effort to pay off the external debt in full and ahead of time led to a general state of disaggregation and blockage in the economy.

establishment of the state of emergency on the Romanian territory³ of 16.03.2020 which regulated aspects such as - during the state of emergency is restricted the exercise of fundamental rights and freedoms established in the Constitution, proportional to the degree of achievement of the criteria stipulated in art. 4 para. (4) of the Decree (rights and freedoms were restricted: free movement; right to privacy, family, and private life; inviolability of residence; right to education; freedom of assembly; right to private property; right to strike; economic freedom), then Emergency Ordinance no. 30/2020⁴, Order of the Minister of Health no. 487/2020⁵, Military Ordinance no. 3/2020⁶, Military Ordinance no. 4/2020⁷, Military Ordinance no. 5/2020⁸, Military Ordinance no. 7/2020⁹, Military Ordinance no. 8/2020¹⁰, Decree no. 240/2020 of the President of Romania on the extension of the state of emergency by 30 days on the territory of Romania¹¹, and not solely.

Recalling Emergency Ordinances on fiscal financial measures, on the granting of facilities for credits granted by credit institutions and non-bank financial institutions to certain categories of borrowers, and on the model of the implementation Convention on the financial management of European funds for the 2014-2020 programming period, as well as for the adoption of measures concerning the beneficiaries of European funds in the context of the spread of COVID-19, the adoption of measures in the area of companies to conduct meetings of statutory bodies, numerous government decisions have been adopted, continuing with laws such as, Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic¹², Law no. 60/2020 for the approval of the Government Emergency Ordinance no. 32/2020 on the modification and completion the Government Emergency Ordinance no. 30/2020 for amending and completing certain normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-CoV-2 coronavirus and for establishing additional social protection measures¹³, Law no. 75/2020 on the approval of the Government Emergency Ordinance no. 42/2020

³In the Official Gazette no.212 of 16.03.2020 was published the Decree of the President of Romania on the establishment of the state of emergency on the Romanian territory in the context of the COVID-19 pandemic. The decree entered into force on the date of publication, March 16, 2020, once it was published in the Official Gazette (according to art. 8 of the Decree) for a period of 30 days. According to Chapter II of the Government Emergency Ordinance - GEO no. 1/1999 on the state of siege and the emergency state regime, within 5 days from the publication of the Decree in the Official Gazette, the President of Romania will request the Romanian Parliament to approve the adopted measure.

⁴ Published in the Official Gazette, Part I no. 231 Emergency Ordinance no. 30/2020 for the amendment and completion of certain normative acts, as well as for the establishment of some measures in the field of social protection in the context of the epidemiological situation determined by the spread of the SARS-CoV-2 coronavirus.

⁵ Published in the Official Gazette, Part I no. 242 Order of the Minister of Health no. 487/2020 for the approval of the protocol for the treatment of SARS-Cov-2 virus infection.

⁶ Military Ordinance no. 3/2020 on measures to prevent the spread of COVID-19.

⁷ Military Ordinance no. 4/ 2020 on measures to prevent the spread of COVID-19.

⁸ Military Ordinance no. 5/ 2020 on measures to prevent the spread of COVID-19.

⁹ Military Ordinance no. 7/ 2020 on measures to prevent the spread of COVID-19.

¹⁰ Military Ordinance no. 8/ 2020 on measures to prevent the spread of COVID-19.

¹¹ Published in the Official Gazette of Romania no. 311 of 14.04.2020.

¹²Published in the Official Gazette no. 396 Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic.

¹³ Published on 19.05.2020, it was published in the Official Gazette no. 416.

for the amendment and completion of the Government Emergency Ordinance no. 110/2017 on the Support Program for Small and Medium Enterprises - SME INVEST ROMANIA, as well as for the approval of the State Aid Scheme for supporting the activity of SMEs in the context of the economic crisis generated by the COVID-19 pandemic¹⁴, Law no. 82/ 2020 on the approval of the Government Emergency Ordinance no. 43/ 2020 for the approval of support measures settled from European funds following the spread of the coronavirus COVID-19, during the state of emergency¹⁵, Law no. 136/ 2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk ¹⁶, and not merely.

Combating the spread of the pandemic during the emergency period also includes measures to sanction deviations from the (self) isolation norms for quarantine and from the rules for leaving the house. Initially, the sanction measures included warnings, fines or even deprivation of liberty, related to the liability imposed of a “disciplinary, civil, contravention, or criminal” nature.¹⁷ Subsequently, several additional sanctions were added, including confiscation of property or even temporary suspension of activity.¹⁸

3. LAW NO. 136/2020 ON THE ESTABLISHMENT OF MEASURES IN THE FIELD OF PUBLIC HEALTH IN SITUATIONS OF EPIDEMIOLOGICAL AND BIOLOGICAL RISK

Law no. 136/ 2020 regulates some necessary measures in the field of public health, in situations of epidemiological and biological risk, to prevent the introduction and limit the spread of infectious diseases caused by the SARS-CoV-2 coronavirus in Romania.

1. The measures provided by the Law are ordered and applied in situations of epidemiological and biological risk, to prevent the introduction and limit the spread of infectious diseases in Romania, exclusively for the protection of public health, respecting the fundamental rights and freedoms of citizens and public order.

Within the meaning of the law, the terms and notions used have the following meaning:

- **quarantine of persons** – a measure to prevent the spread of infectious diseases, consisting in the physical separation of persons suspected of being infected or carrying a highly pathogenic agent from other persons, in spaces specially designated by the authorities, at their place of residence or at the location declared by the quarantined person, established by a reasoned individual decision of the Public Health Directorate, which will contain information on the date and issuer of the act, the name and identification data of the quarantined person, the duration of the measure and the remedy provided by law,
- **zonal quarantine** – zonal quarantine - a measure to prevent the spread of infectious diseases, which aims at the physical separation of people and activities, including restricting movement in a perimeter affected by a contagious disease from

¹⁴ Published on 10.06.2020, it was published in the Official Gazette, Part I, no. 493.

¹⁵ Published on 17.06.2020, it was published in the Official Gazette, Part I, no. 520.

¹⁶ Published in Official Gazette no. 634 of July 18, 2020.

¹⁷ Military Ordinance 4/2020, art. 11, paragraph 3, art. 3, paragraphs 1 and 2.

¹⁸ Government Emergency Ordinance - GEO 34/2020 Art. 28, paragraphs 1 and 2.

neighboring perimeters, to prevent the spread of infection or contamination outside this perimeter,

- **isolation** – a measure consisting in the physical separation of persons affected by an infectious disease or of persons carrying the highly pathogenic agent, even if they do not show suggestive signs and symptoms, at home, at the location declared by the isolated person, in a sanitary unit or at an alternative location attached to the sanitary unit, in order to monitor the state of health and the application of a treatment, as appropriate, a measure instituted to cure and reduce the degree of contagion based on the consent of persons or, failing that, by a reasoned individual decision of the Public Health Directorate which will include information on the date and issuer of the document, the name and identification data of the isolated person, the duration of the measure and the remedy provided by law,
- **epidemiological risk** – the probability of occurrence of an event generated by a highly pathogenic agent that may affect the health of population groups, with the possibility of spreading locally, county, zonal, national, at European level or internationally,
- **sick person** – a person suffering from an infectious disease with suggestive signs and symptoms specific to the case definition or a person carrying a highly pathogenic agent, even if he does not show suggestive signs and symptoms to the objective clinical medical examination, but presents an epidemiological and biological risk,
- **suspect person** – a potentially infected person who comes from the area where there is an epidemic, epidemiological or biological risk, with a highly pathogenic agent, during the incubation period based on scientific evidence, or the person who came into direct contact with an infected person, or with goods contaminated with the highly pathogenic agent, until the end of the incubation period or the appearance of clinical or paraclinical signs or symptoms of the disease,
- **transmittable disease** – a disease caused by the invasion of body tissues by highly pathogenic agents, their multiplication, and the reaction of the host tissues to them and to the toxins they produce, and which can be transmitted from a source/ environment to a person and from one person to another,
- **population group** – a group of people presenting one or more common characteristics.

2. The measures referred to in point 5 below shall apply to population groups which are likely to present an epidemiological and biological risk to public health, by the National Committee for Emergency Situations and, in individual cases, by a reasoned decision of the Directorate for Public Health, which will contain information on the date and issuer of the act, the name and identification data of the quarantined person, the duration of the measure and the remedy provided by law. The measures and population groups shall be established by the National Committee for Emergency Situations, based on the proposal of the Technical-Scientific Support Group on the management of highly contagious diseases on Romanian territory.

3. The situations of epidemiological and biological risk for which the measures provided for in the Law are established are the following:

- an epidemic declared by order of the Minister of Health,
- a public health emergency of international importance, certified by the decision of the National Committee for Emergency Situations, based on the declaration of the World Health Organization,

- a pandemic declared by the World Health Organization and certified by decision of the National Committee for Emergency Situations,
- a case of imminent epidemiological and biological risk identified and ascertained by the structures under the coordination of the Department for Emergency Situations or by the institutions subordinated to the Ministry of Health.

The zonal quarantine is established for the persons and the activities carried out in the perimeter affected by the epidemiological and biological risk situations.

4. The quarantine of persons shall be established based on official scientific information and the definition of the case, at the place of residence of the person, at a location declared by him or her, as appropriate, in a special area designated by the authorities, for persons suspected of being infected or carriers of a highly pathogenic agent which:

- arrive from areas where the epidemiological risk is high, based on epidemiological data transmitted at national, European, and international level by the competent bodies in the field,
- they came into direct contact with at least one person confirmed to have an infectious disease.

If the above-mentioned persons refuse the measure of quarantine at home or at the location declared by them, and where the persons concerned infringe the measure of quarantine during that period, even if they have previously consented, their doctor or, where the case may be, the inspection bodies recommends, and the representative of the Public Health Directorate decides to quarantine the person in the special space designated by the authorities, if they find the risk of transmitting an infectious disease with an imminent risk of community transmission. The doctor or, if necessary, the control bodies will immediately inform the county or Bucharest Public Health Directorate, which confirms or refutes, as appropriate, the measure of quarantining the person in the special space designated by the authorities, by a decision of an individual character.

The decision shall be issued no later than 8 hours after the information is provided by the doctor or the inspection bodies and shall be communicated immediately to the person concerned. In order to prevent the spread of infectious disease, pending the decision of the public health department that the measure of quarantine recommended in the special area designated by the authorities has been communicated, or, where appropriate, the decision of the first court has been communicated, the person concerned may not leave his residence, the quarantine location declared or, as the case may be, the special area designated by the authorities without the approval of the doctor or the representative of the Public Health Directorate.

The quarantine measure is established during the incubation period specific to the suspected contagious disease. The measure ceases at the expiration of the term specific to the incubation period or earlier, following the confirmation of the person as a carrier of the highly pathogenic agent, with or without signs and symptoms specific to the case definition, being subject to the provisions regarding the measure of isolation from the Law.

2. Isolation is established for sick persons with suggestive signs and symptoms specific to the case definition, as well as for persons carrying the highly pathogenic agent, even if they do not show suggestive signs and symptoms.

The list of contagious diseases for which the isolation of persons is established at their home, at their declared location or in health facilities or alternative locations attached to them, as well as the list of basic health units in which sick persons are treated shall be established by decision of the Government. In order to ensure the right balance

between the need to prevent the spread of an infectious disease with imminent risk of community transmission and the right of freedom of persons, the isolation measure shall be established based on an infectious disease, respecting the following standards necessary for the exercise of fundamental rights and freedoms:

- the measure is ordered for a limited period of time, in a non-discriminatory manner and in proportion to the factual situation which determines it,
- the measure is intended to prevent the spread of an infectious contagious disease, dangerous to human safety and public health,
- the measure is instituted to protect the public interest and does not create an imbalance between the need to protect public health and the imperative to respect the person's freedom.

Isolation of persons shall be instituted with the consent of the persons under examination, and in his absence, under the conditions set out below, when the doctor finds that there is a risk of transmitting an infectious disease with an imminent risk of community transmission, in a health facility or, where appropriate, in an alternative location attached to the health unit, for the purpose of performing clinical, paraclinical examinations and biological evaluations, until the receipt of their results, but not more than 48 hours.

At the latest on expiry of the period of 48 hours, based on clinical and paraclinical examinations and if the risk of transmitting the infectious disease with a risk of community transmission is maintained, the doctor recommends extending the isolation measure in a health facility or alternative location attached to the health facility or, where appropriate, at the person's place of residence or at the location declared by him or her.

Isolation at the place of residence or at the declared location is established if the risk of contamination of other persons or the spread of the infectious disease is reduced. Isolation at home or at the declared location cannot be disposed in situations where official scientific information on the type of highly pathogenic agent, the route of transmission and the rate of transmissibility requires the isolation of persons exclusively in a health facility or alternative location attached to it.

If the person refuses the measure of isolation, the doctor informs immediately, after recording the person's refusal, the county, or Bucharest Public Health Directorate, which, within two hours at the most, will issue the decision confirming or refuting the measure of isolation recommended by the doctor, in the health unit or in an alternative location attached to it. The decision will be of an individual nature and will be communicated immediately to the person concerned. The decision will contain information on the date and issuer of the document, the name and identification data of the isolated person, the duration of the measure and the remedy provided by law. To prevent the spread of infectious disease, until the communication of the decision of the first instance of annulment of the contested administrative act, the person concerned may not leave the location where he is isolated without the consent of the doctor or public health representative.

If the person refuses the prolonged and recommended isolation measure or if the person violates the isolation measure established at home or at the declared location during it, even if they have previously consented, the doctor or, where appropriate, the control bodies shall immediately inform the Public Health Directorate of the county or of the municipality of Bucharest, which can confirm or deny the measure of isolation in a health unit or at an alternative location attached to it by a decision of an individual nature. The decision will be issued no later than two hours after the information provided by the doctor or by the control bodies and will be communicated immediately to the person

concerned. The decision will contain information on the date and issuer of the document, the name and identification data of the isolated person, the duration of the measure and the remedy provided by law. For preventing the spread of a contagious disease, until the communication of the decision of the Public Health Directorate revoking the measure of prolonging the isolation in the health facility or at an alternative location or, where appropriate, until the communication of the decision of the first instance, the person concerned may not leave the place where he or she is isolated without the approval of the doctor or the representative of the Directorate for Public Health.

The measure of prolonged isolation ceases on the date of confirmation of the person as cured based on clinical and paraclinical examinations or on the recommendation of the doctor who finds that the risk of transmitting the disease no longer exists.

In the case of minors, the measure of isolation is established for them as described above, as appropriate, at the domicile of the caregiver or at the location declared by him. The isolation of the minor in a health unit or at an alternative location attached to it is established according to the regulations in force. The minor's caregiver is subject to the measure of quarantine under the Law if the measure of isolation does not apply to him.

The intention of the legislator, expressed in art. 2 of the Law, is that the measures provided by law to be applied in the situations provided in art. 1, exclusively for the protection of public health, respecting the fundamental rights and freedoms of citizens and public order and be proportionate to the situation that determined them, limited in time to it and applied in a non-discriminatory manner.

The entry into force of Law no. 136/ 2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk brought, beyond the notorious controversies regarding the regulation itself, also specific problems of application of its provisions, arising in cases of non-unitary judicial practice.

Law no. 136/ 2020 regulates in art. 3 the establishment of quarantine of persons legally defined as “a measure to prevent the spread of infectious diseases, consisting in the physical separation of persons suspected of being infected or of carrying a highly pathogenic agent from other persons, in spaces specially designated by the authorities, at the place of residence or at the location declared by the quarantined person, established by a reasoned individual decision of the Public Health Directorate, which will provide information on the date and issuer of the act, the name and identification data of the quarantined person, the duration of the measure and the legal remedy” (art. 3, letter A)¹⁹ as well as the institution of isolation defined as “a measure consisting in the physical separation of persons affected by an infectious or contagious disease or of persons carrying the highly pathogenic agent, even if they show no suggestive signs and symptoms, at the location declared by the isolated person, in a health facility or at an alternative location attached to the health unit, in order to monitor the state of health and apply a treatment, as appropriate, a measure instituted to cure and reduce the degree of contagion on the basis of the consent of the persons or, failing that, by reasoned

¹⁹Distinct from quarantine of persons, Law no. 136/2020 also regulates the institution of zonal quarantine as “a measure to prevent the spread of infectious diseases, which aims at the physical separation of persons and activities, including limiting the movement of a perimeter affected by an infectious disease from neighboring perimeters, so as to prevent the spread of infection or contamination outside this perimeter”, which falls within the jurisdiction of the administrative contentious court according to art. 15 of the Law.

individual decision of the Public Health Directorate, which will contain specifications regarding the date and issuer of the act, the name and identification data of the isolated person, the duration of the measure and the appeal provided by law” (art. 3, letter c).

If the quarantine measure is instituted in a single stage, for the duration of the incubation period specific to the suspected infectious disease²⁰, the isolation process is susceptible to go through to two stages, first (1) the establishment of isolation for the purpose of clinical, paraclinical and biological evaluations, until the results are received, but not more than 48 hours, and then (2) the prolongation of isolation, on the basis of clinical and paraclinical examinations and whether the risk of transmitting the infectious disease with a risk of community transmission is maintained, subsequently ceased on the date of confirmation of the person as having been cured on the basis of clinical and paraclinical examinations or the recommendation of a doctor who finds that the risk of transmission of the disease no longer exists²¹. The isolation measure established in accordance with paragraph (4) ceases on the date of confirmation of the person as having been cured based on clinical and paraclinical examinations or of a medical doctor's recommendation that the risk of transmission of the disease no longer exists.

Within the meaning of the law, **isolation** is the measure of physical separation of persons affected by an infectious disease or of persons carrying the highly pathogenic agent, even if they do not show suggestive signs and symptoms. Isolation can be done at home, at the location declared by the person concerned, in a health facility or at an alternative location attached to the health facility, to monitor the state of health and apply a treatment.

The measure is instituted for the purpose of healing and reducing the degree of contagion based on the consent of the persons or, failing that, by a reasoned decision of the Public Health Directorate. The decision will contain information on the date and issuer of the document, the name and identification data of the isolated person, the duration of the measure and the remedy provided by law.

The list of infectious diseases for which isolation is established, as well as the list of basic health units in which sick persons are treated shall be established by a Government decision.

The measure of isolation is established according to the infectious disease, in compliance with the following standards necessary for the exercise of fundamental rights and freedoms: - to be available for a limited period of time, in a non-discriminatory manner and in proportion to the factual situation that determines it; - to aim to prevent the spread of an infectious disease, dangerous to human safety and public health; - to be established to protect the public interest and not to strike an imbalance between the need to protect public health and the imperative to respect a person's freedom.

In the absence of the agreement of sick persons with suggestive signs and symptoms specific to the case definition or of asymptomatic persons (carriers of the highly pathogenic agent, but showing no suggestive signs and symptoms), as well as if the person concerned refuses isolation, the measure will be introduced when the doctor becomes aware and notes the risk of transmitting an infectious disease with an imminent risk of community transmission.

In such situations, those persons will be isolated in a health facility or in an alternative location attached to the health facility for the purpose of performing clinical,

²⁰ For details see art. 7 of Law no. 136/ 2020.

²¹ For details see art. 8 of Law no. 136/ 2020.

paraclinical examinations and biological evaluations until their results are received, but not more than 48 hours.

Based on clinical and paraclinical examinations and if the risk of transmitting the contagious infectious disease with a risk of community transmission is maintained, at the latest on expiry of the 48 hours, the doctor recommends extending the isolation measure in a health facility or alternative location attached to the health facility or, where appropriate, at the person's domicile or at the declared location.

Isolation at the place of residence or at the declared location is established if the risk of contamination of other persons or the spread of infectious disease is reduced. This measure cannot be ordered in situations where official scientific information on the type of highly pathogenic agent, the route of transmission and the rate of transmissibility requires the isolation of persons exclusively in a health facility or an alternative location attached to it.

If persons refuse the prolonged and recommended isolation measure or if they go against the isolation measure established at their home or at the declared location during the period, even if they have previously consented, the doctor or control bodies immediately inform the Public Health Directorate of the county or of Bucharest, which can confirm or deny the measure of isolation in a health unit or at an alternative location attached to it, by an individual decision.

The decision will be issued no later than two hours after the information provided by the doctor or the inspection bodies, will be communicated immediately to the person concerned and it will contain information on the date and issuer of the document, the name and identification data of the measure and the remedy provided by law.

Until the decision regarding the measure of prolonging the isolation in the health facility or at an alternative location is revoked or until the decision of the first instance is communicated, the person concerned may not leave the place where he is isolated without the consent of the doctor or he representative of the Directorate for Public Health.

The measure of prolonged isolation ceases on the date of confirmation of the person being cured, based on clinical and paraclinical examinations, or on the recommendation of the doctor who finds that the risk of transmitting the disease no longer exists.

When the measure of quarantine or isolation has been taken against a person who is a caregiver of a minor, a person placed under interdiction, a person who has been placed under guardianship or curatorship or a person who, due to age, illness or other cause, for any other reason, remains without supervision and care, the parent, legal guardian, medical staff or the representative of the Public Health Directorate shall notify the Public Social Assistance Service, in order to monitor them and if necessary, in order to take legal measures for temporary protection for those persons.

Monitoring and, where appropriate, legal measures for the temporary protection of such persons may not be ordered if the parent or legal guardian has appointed another family member or a reference person for the supervision and care of those persons.

With a series of clarifications comes the **Emergency Ordinance no. 180 of October 22, 2020 for the amendment and completion of Law no. 136/ 2020** on the establishment of measures in the field of public health in situations of epidemiological and biological risk, of the Government Emergency Ordinance no. 158/ 2005 on leave and

social health insurance benefits, as well as for the establishment of measures regarding the granting of medical leave.²²

Considering the provisions of art. 7 and 8 of Law no. 136/ 2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk, republished, regarding the establishment of quarantine or isolation measures, whereas the provisions of Law no. 136/2020, republished, do not foresee the possibility of establishing isolation at home or at a declared location in the situation where sick people with suggestive signs and symptoms specific to the case definition, as well as persons carrying the highly pathogenic agent, even if they do not show any suggestive signs and symptoms, have not carried out clinical, paraclinical and biological examinations in a health facility or, where appropriate, at an alternative location attached to it for a period not exceeding 48 hours, taking into account the current epidemiological context, caused by an increase in the number of people infected with SARS-CoV-2 coronavirus requiring medical care by doctors in a health facility or at an alternative location attached to the health facility, or by family doctors for people in isolation at home or at a location declared by them, as well as the need to grant certificates of medical leave for quarantine or isolation and the allowances related to these certificates, on the basis of the document issued by the Public Health Directorates. In order to improve the access of the insured persons to the benefits granted by the social health insurance system, taking into account the fact that until the date of knowing the result of specific paraclinical investigations the person may be in quarantine, urgent legislative intervention is required on Law no. 136/ 2020, republished, in the sense of establishing the measure of isolation at home or at a declared location, with the consent of the person or on the basis of documents issued by the Public Health Directorates, as well as on the Government Emergency Ordinance no. 158/ 2005 on leave and social health insurance benefits, approved with amendments and completions by Law no. 399/ 2006, as subsequently amended and supplemented, for the purpose of amending the regulations on the granting of medical leave certificates to insured persons for whom the measure of isolation is established at home or at a declared location, as it is necessary to take into account all the situations which are referred to in the protocols for treatment of certain contagious diseases, so that, regardless of the place of medical care and the form of illness, any insured person can benefit from medical care and leave and social health insurance benefits. In Article 8, after paragraph 3, three new paragraphs are inserted, paragraphs 3 (1) to 3 (3), with the following wording: (3 point 1)

Until confirmation of infection with an contagious disease, persons who show suggestive signs and symptoms specific to the case definition, as well as those who, after confirmation of the diagnosis of infectious disease by specific paraclinical investigations, according to the case definition, do not show any suggestive signs and symptoms or show symptoms that do not require isolation in a health facility or, as appropriate, in an alternative location attached to the health facility, they will be isolated at their home or in another location of their choice for a period which may not exceed the disease-specific period of contagion determined by the pathogenic agent, established according to existing scientific data. If the respective persons do not agree with the isolation measure, under the above conditions, the measure is established by decisions of the county Public Health Directorates, respectively of the Bucharest municipality. (3²) Decisions issued by the county Public Health Directorates county, respectively of the municipality of Bucharest

²² Published in the Official Gazette of Romania no. 982 of 23.10.2020

based on par. (3¹) apply the provisions of art. 16. (3³). The persons who find themselves in the situations provided in par. (3¹) informs the family doctor about the hypothesis they are in, including about the place where they decided to isolate themselves or the isolation was established. The family doctor has the obligation to record and monitor the health of the persons concerned and sends to the county Public Health Directorate, respectively, to the municipality of Bucharest, the monitoring sheet of the isolated person, whose template is approved by order of the Minister of Health.

In Article 8, two new paragraphs are inserted, after paragraph 6, paragraphs 6.1 and 6.2, with the following content: (6.1) If the persons refuse the measure of isolation established according to par. (3.1) or if the persons violate the measure of isolation established at their place of residence or at their declared location during that period, even if they have previously consented, the family doctor or, where appropriate, the control bodies will immediately inform the county or Bucharest Public Health Directorate, which may confirm or rule out the measure of isolation at place of residence or at the declared location, by an individual decision, which shall be issued no later than two hours after the information provided by the family doctor or, where appropriate, by the inspection bodies, and it will be communicated immediately to the person concerned.

The decision will contain information on the date and issuer of the document, the name and identification data of the isolated person, the duration of the measure and the remedy provided by law. For preventing the spread of a contagious disease, pending communication of the decision of the Public Health Directorate revealing the measure of isolation at home or at the declared location or until the communication of the first instance decision, the person concerned is not allowed to leave the place where he isolated without the consent of the family doctor or of a representative of the Public Health Directorate. (6²) All Decisions issued by the county or Bucharest Public Health Directorates based on para. (6.1) are subject to the provisions of art. 16.3.

Article 13 is amended and will have the following content: Article 13. In the situations of epidemiological and biological risk referred to in art. 6, for monitoring the evolution of risk situations and for establishing measures to limit the spread of infectious diseases in Romania, the National Institute of Public Health has the obligation to report on a daily basis the number of newly confirmed cases, the number of positive cases in retesting, the total number of tests performed and the number of tests performed reported separately, at national and county level. Article II After paragraph 2 of Article 20 of Government Emergency Ordinance no. 158/ 2005 regarding leave and social health insurance benefits, published in the Official Gazette of Romania, Part I, no. 1.074 of November 29, 2005, approved with amendments and completions by Law no. 399/ 2006, with the subsequent amendments and completions, two new paragraphs are introduced, paragraphs (2.1) and (2.2), with the following content: (2.1) For the insured persons for whom the isolation measure has been ordered, under the conditions of art. 8 para. (3.1) of Law no. 136/ 2020, republished, medical leave certificates are issued by the family doctors who have registered and monitored these persons, for a period established according to the evolution of the disease and the duration of the monitoring. (2.2) For the insured persons for whom the measure of isolation has been ordered, under the conditions of art. 8 para. (3.1) of Law no. 136/ 2020, republished, and following specific paraclinical investigations the diagnosis of infectious disease was not confirmed, the family doctor grants medical leave for quarantine based on the document issued by the Public Health Directorate of the county or Bucharest municipality, where appropriate, and for the period inscribed in it.

CONCLUSIONS

Coronavirus or COVID-19 is one of the most discussed internal and external topics, certainly the object of research not only in medicine, but in all spheres of life. Although we are apparently facing a medical problem, this virus is having a huge impact on representative democracy, the rule of law and the economy. Treating this pandemic only as a medical problem would be a huge mistake.

Romania faces a major problem in terms of legislative regulation, social dialogue, the protection offered by the collective bargaining system based on coordination and centralization, being practically unstructured. The SARS-COV2 coronavirus pandemic poses unprecedented risks to the normal functioning of the judiciary and thus to the rule of law.

Unlike other periods, however, there are the technical, financial, and cognitive resources needed to mitigate the negative impact of the public health crisis and turn it into an opportunity for long-delayed reforms and modernizations.

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- *** Order of the Minister of Health no. 487/2020 for the approval of the protocol for the treatment of SARS-Cov-2 virus infection.
- *** Military Ordinance no. 3-8 / 2020 on measures to prevent the spread of COVID-19
- *** Decree no. 240/ 2020 of the President of Romania on extending the state of emergency by 30 days on the territory of Romania.
- *** Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic.
- *** Law no. 60/2020 for the approval of the Government Emergency Ordinance no. 32/2020.
- *** Law no. 75/ 2020 on the approval of the Government Emergency Ordinance no. 42/ 2020 for the amendment and completion of the Government Emergency Ordinance no. 110/ 2017.
- *** Law no. 82/ 2020 on the approval of the Government Emergency Ordinance no. 43/ 2020 for the approval of support measures settled from European funds following the spread of the coronavirus COVID-19.
- *** Law no. 136/ 2020 on the establishment of measures in the field of public health in situations of epidemiological and biological risk.