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Public health exclusive responsibility of the state? Aspects regarding the crisis generated by the COVID-19. The legal framework that regulates public health in Romania

Keywords: Public health, Pandemic, limitation of rights, measures imposed by the authorities, management of the effects of the Pandemic in Romania

Summary. The right to public health is a right guaranteed to all people, a right of major importance like the right to life, respectively individual freedom.

With regard to public health, Article 35 of the Charter of Fundamental Rights of the European Union governs Health Protection. According to the article, everyone has the right to access preventive healthcare and to receive medical care under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities¹.

Wyłączna odpowiedzialność państwa za zdrowie publiczne? Aspekty dotyczące kryzysu wywołanego wirusem COVID-19. Ramy prawne regulujące zdrowie publiczne w Rumunii.

Słowa kluczowe: zdrowie publiczne, pandemia, ograniczenie praw, środki nałożone przez władze, zarządzanie skutkami pandemii w Rumunii

Streszczenie. Prawo do zdrowia publicznego jest prawem gwarantowanym wszystkim ludziom, prawem o doniosłym znaczeniu, takim jak prawo do życia, odpowiednio do wolności jednostki.

W odniesieniu do zdrowia publicznego art. 35 Karty praw podstawowych Unii Europejskiej reguluje ochronę zdrowia. Zgodnie z artykułem każdy ma prawo do dostępu do profilaktycznej opieki zdrowotnej oraz do korzystania z opieki medycznej na warunkach określonych przez ustawodawstwo i praktykę krajową. Przy określaniu i urzeczywistnianiu wszystkich polityk i działań Unii zapewnia się wysoki poziom ochrony zdrowia ludzkiego.

¹ <https://fra.europa.eu/ro/eu-charter/article/35-protectia-sanatatii> [access: 19.01.2022].

Introduction

Coronavirus disease (COVID-19) is an infectious disease caused by the SARS-CoV-2 virus.

Most people infected with the virus will experience mild to moderate respiratory illnesses and will recover without the need for special treatment. However, some will become seriously ill and will need medical attention. Older people and those with underlying medical conditions, such as cardiovascular disease, diabetes, chronic respiratory disease, or cancer, are more likely to develop serious illnesses. Anyone can get COVID-19 and get seriously ill or die at any age.

“The virus can spread through the mouth or nose of an infected person into small particles of liquid when they cough, sneeze, talk, sing or breathe. These particles range from larger respiratory droplets to smaller aerosols”².

By referring to the measures taken by the authorities since the beginning of the Pandemic, people who did not believe in the existence of the virus, believing that everything is a conspiracy, invoked the fact that by applying and observing some essential measures to stop the pandemic (such as wearing a mask) their freedom is violated. Freedom is not absolute, but it extends to the meeting of the freedom of others.

According to the doctrine, individual freedom, like all human freedoms, is not, cannot and must not be absolute³. Therefore, certain restrictions imposed in exceptional situations do not represent the denial of the individual’s freedom, but his protection, the protection of the state and the rule of law.

If the states had not taken measures to combat the spread of the virus by establishing rules such as isolating the positive ones for 14 days, respectively quarantining contacts, we would have discussed genocide today, or in the opinion of some natural immunization.

Article 53 of the Romanian Constitution regulates “Restriction on the exercise of certain rights or freedoms”.

According to para. (1) The exercise of certain rights or freedoms may be restricted only by law and only if required, as the case may be, for: the defense of national security, order, public health or morals, the rights and freedoms of citizens; conducting criminal investigation; prevention of the consequences of a natural disaster, of a disaster or of a particularly serious disaster.

² https://www.who.int/health-topics/coronavirus#tab=tab_1 [access: 19.01.2022].

³ I. Muraru, E.S. Tănăsescu, *Constitutional law and political institutions* Vol. I, ALL Beck Publishing House, Bucharest 2003, p. 179.

According to the provisions of art. (2) Restriction may be ordered only if it is necessary in a democratic society. The measure must be proportionate to the situation which gave rise to it, it must be applied in a non-discriminatory manner and without prejudice to the existence of a right or freedom.

Romania is currently on alert, a situation marked by the possibility of restricting certain rights as well as in a state of emergency. the courts declaring that the provisions of the normative acts of the Government are unconstitutional. In this sense, we mention the decision of the Cluj Court of Appeal⁴.

Decision no. 826/2021 on the extension of the state of alert on the territory of Romania starting with August 11, 2021, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-19 pandemic.

The decisions are not final, there is the possibility of appealing them to the High Court of Cassation and Justice of Romania.

Decision no. 932/2021 on the extension of the alert status on the Romanian territory starting with September 10, 2021, as well as the establishment of the measures that will be applied during it to prevent and combat the effects of the COVID-19 pandemic;

Decision no. 990/2021 for the amendment and completion of annexes no. 2 and 3 to the Government Decision no. 932/2021 on the extension of the alert status on the Romanian territory starting with September 10, 2021, as well as the establishment of the measures that will be applied during it to prevent and combat the effects of the COVID-19 pandemic⁵.

With regard to public health, Article 35 of the Charter of Fundamental Rights of the European Union governs Health Protection. According to the article, everyone has the right to access preventive healthcare and to receive medical care under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities⁶.

⁴ The Court of Appeal of Cluj annulled on Tuesday, September 28, 2021: "Rejects the exception of the lateness of the change of action. Dismisses the plea of annulment of the application and the plea of lack of interest of the applicants in bringing the action. Admits in part the action brought by the applicants K M K and M G against defendants G R and M A I. It annuls in its entirety GD 826/5 August 2021, H G 932/9 September 2021 and GD 990/17 September 2021. Dismisses the claim for non-pecuniary damage. With the right to appeal within 15 days from the communication".

⁵ <https://www.juridice.ro/751822/curtea-de-apel-cluj-a-anulat-hotararile-de-guvern-care-impun-certificatul-verde-digital-si-continuarea-starii-de-alerta.html> [access: 19.01.2022].

⁶ <https://fra.europa.eu/ro/eu-charter/article/35-protectia-sanatatii> [access: 19.01.2022].

1. The concrete impact of the pandemic on the Romanian society

Undoubtedly, the situation generated by the appearance of COVID-19 changed the factual situation with which we were familiar until the beginning of 2020. What would follow from the moment the coronavirus spread overwhelmed us both from a health and social point of view, political, economic. One of the worst problems we have faced and still face is the health system. For about 2 years we have been struggling with the lack of places in hospitals, medical staff, treatments but also the equipment necessary to fight the pandemic and we are trying to deal with a health system „taken by surprise” and unprepared, which continues to condemn people to death. The unprecedented health crisis caused by the spread of this disease continues to fuel fear, anxiety and mass hysteria. Outbreaks appear to be exacerbated⁷, dividing and traumatic. The emergence of SARS-CoV-2 coronavirus has split the population in several ways. On the one hand, there are those who fear illness or a worsening of the disease and turn to the health services as soon as the first symptoms appear, and on the other hand there are those who not only look with skepticism at the idea of hospitalization, even they hide the fact that they may be carriers of the disease and refuse testing for symptoms just to avoid possible contact with hospitals. Unfortunately, the second category also includes those people who, at one point in their existence, were victims of the health system, people who accessed medical services to treat certain diseases and who have endured the consequences of this fact. throughout its existence. We are also referring here to the nosocomial infections that a significant percentage of both those hospitalized and those who were discharged from a hospital faced or even other more serious consequences that they suffered after hospitalization.

Then, the lack of treatments, of high-performance specialized devices, the lack of specialized personnel are major risk factors in the fight against this disease that develops new and new strains. Unfortunately, in our country, there were situations in which people hospitalized to benefit from treatment against COVID-19, lost the fight with the “system” rather than with the disease. Several hospitals in Romania have faced a series of fires, in the midst of a pandemic; tragedies in which dozens of patients lost their lives and many others were seriously injured. In most cases, there has been talk of power outages that have been overloaded, but the mystery lies in the investigations and possible perpetrators of the disasters.

The way in which a virus has literally brought the health system to its knees should lead us all to reflect and become more involved in all that this exercise of exercising rights and assuming responsibilities entails.

⁷ K. Schwab, M. Thierry, *COVID-19: Great Reset*, Forum publishing, Geneva 2020, p. 2.

From another perspective, the economy has been seriously affected and, unfortunately, only the first effects are being felt at the moment. The beginning of the pandemic culminated in a “barrier” between what I knew until then and what was to come. It has been shown that the global economy in the pandemic we are facing is the most significant, since 1945 and in terms of speed, it is unmatched. The situation is all the more dangerous and more difficult to manage as economic interests seem to be in a constant struggle with the interests of public health. The cessation of the activity of some economic actors that culminated in the loss of jobs, technical unemployment, the impossibility of certain units to continue their activity due to the restrictions imposed by the authorities in order to prevent and combat the pandemic, stagnation or decrease of salaries are just some of the events. have marked the population in the last 2 years. In an attempt to “shut down” the pandemic, the governments of the affected countries have shut down much of the economy, but each sudden recovery has shown that much more effective and long-term measures are needed⁸.

The evolution of the pandemic affected the execution of contracts, so that many individuals or legal entities could no longer enjoy the execution or could no longer perform the obligation assumed by the contract, as a result of the intervention of force majeure. Also, in these situations, the liability is removed, so that the one who did not have the opportunity to perform the contract, could not be held to repair, and as examples we have contracts for the provision of services for special events (weddings, baptisms, etc.), leases, etc. According to art. 1351 para. (1) Civil Code, unless the law provides otherwise or the parties do not agree otherwise, the liability is removed when the damage is caused by force majeure or fortuitous event. Force majeure evokes the idea of insurmountability, so that in order for an event to constitute a case of force majeure, it must be unpredictable, irresistible and external⁹.

The crisis triggered by the pandemic has considerably accelerated the development of artificial intelligence so that, through new technologies, an automation of tasks has been pursued, in order to replace employees, this solution being preferable all the more as during this period and not he knows for how long it is essential to avoid face-to-face interactions. As a result of automation, jobs have disappeared, and in others the number of employees has dropped considerably.

From an economic point of view, things remain questionable after the pandemic ends. The labor market could be divided between very well paid work and many jobs that have disappeared or are not paid or are not very interesting. It is also very possible to witness a wave of innovation characterized by the emergence

⁸ *Ibidem*, pp. 13-16.

⁹ M. Fabre-Magnan, *Droit des obligations. 2 – Responsabilité civile et quasi-contrats*, PUF 2021, pp. 262-263.

of new industries, which we hope will provide jobs to the large number of people who need them. Of course, it all depends on the trajectory of economic growth and what results we will feel through the goal of GDP growth. What should be the new compass for monitoring progress, what will be the economic emergency responses to the pandemic, and how carefully and with interest and world leaders will handle this whole situation to ensure the well-being of citizens and the planet, remains to be seen¹⁰.

It is well known that, over time, pandemics have been one of the most severe tests for society. The most notable impact is related to the revolt of the population, of the citizens, directed against those with decision-making power, against the political figures who took inappropriate measures and proved to be ill-prepared to be able to face COVID-19. The prosperity of nations depends on their confidence in the institutions that are able to prevent disasters or, if necessary, to face them and restore balance. We appreciate that after the end of the pandemic, the “taste” that will remain will be a bitter one, and the perception of ignorance regarding the measures adopted by the government will be a desolate one. The dramas that individuals go through throughout this period will accumulate, promoting resentment, anger, violence, etc., because those who have experienced poverty, homelessness, unemployment, lack of rights and power, will erupt and produce disorders¹¹.

Given the above situations, we believe that if this crisis is not managed pragmatically, the consequences will be devastating, because the pandemic has already brought significant changes in the behavior of people, of society. The lack of a stable government in the midst of a pandemic illustrates the precarious situation we are in as a state. Although at the moment political figures say that this political crisis is over, we appreciate that the perception and trust of citizens in the authorities in relation to how political figures have decided to communicate with those who govern them speak for themselves.

2. Measures imposed by the authorities in Romania on public health before and during the Pandemic

By decision no. 1414/2009 was established and the organization and functioning of the National Institute of Public Health was regulated.

According to the provisions of Art. 2 of the present law, the National Institute of Public Health of Romania aims at: a) the prevention, surveillance and control of communicable and non-communicable diseases; b) health monitoring; c) health promotion and health education; d) occupational health assessment; e) monitor-

¹⁰ *Ibidem*, pp. 21-22.

¹¹ *Ibidem*, pp. 30, 34.

ing health in relation to the environment; f) elaboration of regulations in the field of public health; g) ensuring the management of public health; h) development of specific public health services; i) organization, management, guidance and verification from a technical and methodological point of view, on the entire territory of the country, of the health information system; j) organization, management and control of the IT system in the sanitary field; k) organization and administration of the national database on health statistics; l) elaboration of indicators for evaluating the state of health and the efficiency of the health network¹².

In order to be able to relate to the legality of the imposition of the green certificate, it is necessary to define it. The EU digital certificate on COVID is accepted in all EU Member States. It helps to ensure that the restrictions currently in place are lifted in a coordinated manner.

During travel, the holder of the EU digital certificate on COVID should, in principle, be exempted from restrictions on free movement: Member States should refrain from imposing additional travel restrictions on them, unless they are necessary and proportional to the protection of public health.

In such a case, for example in response to new variants of the virus of concern, the Member State concerned should notify the Commission and all other Member States and justify this decision¹³.

Therefore, analyzing the above, the EU digital certificate (called the Green Certificate) is an important tool to guarantee free movement and not to limit the access of people in certain spaces inside the state, much less at work.

We consider it natural in a situation of danger to restrict certain civil rights, but we cannot rely on a state of legal instruments that guarantees the facilitation of free movement in order to impose measures internally.

It is important to distinguish between reversible measures and irreversible measures. We believe that the vaccine is a possibility to fight the Pandemic, but only if it is correlated with the other measures.

Just as we support the right of every person to be vaccinated and to have access to vaccination and treatment, we also support the person's freedom to choose.

In accordance with the provisions of the European Convention of 4 April 1997 for the Protection of Human Rights and Dignity of the Human Being from the Applications of Biology and Medicine, the Convention on Human Rights and Biomedicine expressly regulates consent. Thus, according to art. 5 "An intervention in the field of health can be carried out only after the person concerned has given

¹² <https://insp.gov.ro/wp-content/uploads/2020/08/Hotararea-de-Guvern-1414-pentru-Infiin-tarea-Organizarea-si-functionarea-Institutului-National-de-Sanatate-Publica.pdf> [access: 19.01.2022].

¹³ https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate_ro#ce-este-certificatul-digital-al-ue-privind-covid [access: 19.01.2022].

his free and informed consent. This person receives prior information regarding the purpose and nature of the intervention, as well as the consequences and risks. The data subject may at any time freely withdraw his or her consent”¹⁴.

Obviously, a person who refuses to be vaccinated for personal reasons and also a vaccinated person must, like everyone else, submit to other measures to help combat the disease.

In the idea that the person vaccinated or non-vaccinated refuses other necessary measures (wearing a mask, observing the distance or testing) we can discuss bad faith and at that time legal sanctions can be applied. The Romanian Penal Code distinctly regulates the crime of thwarting the acquisition of diseases. The conditions for incurring criminal liability for the fight against disease in vain will be described below.

3. Criminal liability for non-compliance. The crime of thwarting the fight against disease

The new Criminal Code adopted by law 289/2009 in the special part regulates the category of crimes against public safety, respectively against public health in Chapter V. The exceptional situations we have faced since the beginning of 2020, have imposed emergency measures and adaptation legislation to the existing reality. Thus, art. 352 of the Penal Code has also undergone amendments and includes seven additional paragraphs as opposed to the initial regulation of the crime of futility of combating diseases, which provided in para. (1) that “non-compliance with measures relating to the prevention or control of infectious diseases, if it has resulted in the spread of such a disease, shall be punishable by imprisonment from 6 months to 2 years or by a fine”. And according to the provisions of par. (2) “if the act provided for in paragraph (1) is committed through guilt, the punishment is imprisonment from one month to 6 months or a fine”. Although this text of the law has not raised any major problems so far, the pandemic generated by the appearance of SARS-CoV-2 has generated extensive analysis among legal specialists and the acute need for a comprehensive regulation, introducing new facts in the sphere of criminal law. Also, in relation to the gravity of the crime and the danger of the offenders, the penalties were considerably increased in the case of meeting the constituent elements of the crime of thwarting the fight against disease.

According to the current regulations, “non-compliance with quarantine or hospitalization measures provided for the prevention or control of infectious diseases is punishable by imprisonment from 6 months to 3 years or a fine. Failure to comply with measures to prevent or combat infectious diseases the spread of such a disease

¹⁴ <https://www.coe.int/t/dg3/healthbioethic/Activities/Bioethics%20in%20CoE/> [access:19.01.2022].

is punishable by imprisonment from one to five years” (art. 352 para. (1) and (2) of the Criminal Code). In the form provided in par. (3) in art. 352 of the Criminal Code, the legislator expressly provides that “the transmission, by any means, of an infectious disease by a person who knows he suffers from this disease is punishable by imprisonment from 2 to 7 years and a ban on exercising certain rights”.

If in the case of par. (1) and (2) we are talking about the situation in which either it did not occur or if it did occur, it was not followed; in the case of par. (3) the text of the law refers to the “standard portrait” of the offender, ie the person who knowingly follows or accepts the possibility of transmitting the coronavirus to other persons. Even if, through an exercise of imagination, the text of the law leads us to the idea of the individual who uses the fact that he is infected to pose a threat to those around him, such as threatening to be infected to steal from a store, most of the time, we appreciate that this category includes those carriers of the disease who, being aware that they are sick, do not really understand the seriousness of the situation and therefore do not take the necessary measures to protect those around them¹⁵.

Therefore, a person who intentionally fails to comply with the measures imposed by the authorities to prevent and / or combat such diseases may be held criminally liable. On the one hand, we are talking about the person who does not comply with the quarantine and hospitalization measures, arranged to prevent or fight an infectious disease, and on the other hand, we are talking about the person who is consciously transmitting this disease. It is true that the fundamental law, respectively the Romanian Constitution, gives any person the right to dispose of their own body, but, at the same time, it also establishes certain limits in this regard. According to art. 26 para. (2) of the Constitution, each person is free to dispose of himself, as long as his actions or inactions do not affect the rights and freedoms of other persons, public order or morals. Or, in the case of infection or self-infection with COVID-19, the perpetrator violates the social values protected by criminal law, so that self-infection with this virus is not limited to the freedom to dispose of one’s own body. The state with this coronavirus, in the sense of fighting it¹⁶.

Next, the analysis will capture the aggravated and attenuated forms of this crime, respectively para. (4)-(8) of the Criminal Code. One of the mitigating elements is the one inserted by the legislator at par. (4), according to which, if the form of guilt

¹⁵ To be seen Alex Cajvanean, *Zădărnicea combaterii bolilor sau cum strănutul și scuipatul devin fenomen criminal*, de pe <https://www.avocato.ro/blog/zădărnicea-combaterii-bolilor-sau-cum-strănutul-și-scuipatul-devin-fenomen-criminal/> [access: 29.11.2021].

¹⁶ To be seen www.pasalica.ro, Monitorul Justiției. Autoinfecțarea cu virusul COVID 19. Întrunirea elementelor constitutive al infracțiunii de zădărnicea combaterii bolii prevăzută de dispozițiile art. 352 din Codul penal. - Cabinet de Avocat Sorin George Pașalică (pasalica.ro) [access: 29.11.2021].

with which the deed from par. (2) is the fault, the punishment will be imprisonment from 6 months to 3 years or a fine. Regarding this form of committing the deed, the one who commits the deed according to par. (4) is a person who either predicted the result of his deed but does not accept it, appreciating without any reason that it will not occur, or did not foresee the result of his deed, although he should and could have predicted it. In short, we are talking about a mistake, recklessness or negligence of the person responsible for the act.

Regarding the commission of the deed in the aggravated variants provided in par. (5) - (7), we notice a significant increase in the applicable penalties, because the behavior of the offender produces significant and particularly serious consequences, such as personal injury or even the death of one or many people. If by the deed provided in par. (1) and (2) the bodily injury of one or more persons has occurred, the punishment is imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights, and if the death of one or more persons has occurred, the punishment is imprisonment from 5 at the age of 12 and the prohibition of the exercise of certain rights. If, through the transmission of an infectious disease, by a person who is aware that he is suffering from this disease, he has caused bodily injury to one or more persons, the penalty is imprisonment from 3 to 10 years and a ban on exercising certain rights, and if death occurred, the penalty is imprisonment from 7 to 15 years and the prohibition of the exercise of certain rights. Finally, if the act committed through guilt results in bodily injury to one or more persons, the penalty is imprisonment from one to five years and the prohibition of the exercise of certain rights, and if it resulted in the death of the person, the punishment is imprisonment from 2 years. at the age of 7 and the interjection of the exercise of certain rights.

We note, therefore, that if in the case of the first 3 paragraphs, the legislator sanctions the attitude towards public health, starting with para. (5) aims to protect each individual from the unfortunate consequences of the disease, punishing more severely the one who not only defies the law and public health, but also causes harm or even death to certain people. We welcome the legislative initiative to adapt this text of the law as we all know that a person's life and health are fundamental values protected in both domestic and international law. It is natural that if by committing the deed provided in art. 352 of the Criminal Code, there was the death of a person, who is responsible for being punished more severely, as "crimes", regardless of their nature, require greater rigor on the part of the law. Crime is a term used to describe the most serious crimes, in systems where crimes are classified as crimes, misdemeanors and misdemeanors (for example, in French criminal law). In the current language, crime refers to a crime in general or to those crimes by which a person's life has been suppressed, but the term is not enshrined

in law. In the field of criminology, crime means the act provided by the criminal incrimination norm¹⁷.

Regarding the attempt, the legislator provides for its sanctioning only regarding the commission of the deed in the form provided in par. (3), ie in the situation where the perpetrator, knowingly, transmits the infectious disease he suffers from.

In terms of the constituent elements, we note that the legal object of this crime is the social relations that protect public health and which are harmed by committing this act, namely social relations regarding compliance with measures to prevent or combat disease. In principle, this crime has no material object, the immediate consequence being the state of danger created around the protected area, without there being an act of execution directed directly at a good or a being. However, we can talk about a material object, for example, in the case of disinfection of public places, destruction of certain objects, etc.

Regarding the subjects of the crime, both the active and the passive subject can be represented by any person, the law does not impose certain requirements or special qualities. Therefore, anyone can commit the crime of thwarting the fight against disease, just as any person can suffer the harmful consequences of this act.

Regarding the objective side, in the case provided in par. (1), the material element consists in an inaction in which the quarantine or hospitalization measures are violated; the immediate consequence consists in the state of danger created for the protected social value and the causal link results from the committed deed. In the form provided in par. (2), the material element of the deed consists in an action or inaction by which the measures of prevention or control of the infectious disease are violated, the immediate consequence consists in the spread of the disease and the causal link must be proved. Finally, for the form provided in par. (3), the material element of the objective side consists in an action or inaction by which the disease is transmitted; the immediate consequence is the transmission of the disease and the causal link must be proven¹⁸.

In terms of the subjective side, the most common form of guilt is indirect intent, because everyone is aware of the existence of these measures, they are intensely publicized and constantly presented to the population, so it is difficult to imagine a situation where the person does not know the existence of measures. We appreciate that we are in the presence of indifference, indolence, rather than ignorance.

Finally, for clarity and precision, at para. (9) in art. 352, the legislator defines quarantine in the sense of the criminal law “quarantine means the restriction of

¹⁷ M. Udroi, *Criminal Law Sheets. The special part. Theory and case studies*, Editura C.H. Beck, Bucharest 2020, p.1.

¹⁸ To be seen A. Cajvanean, *The futility of fighting disease or how sneezing and spitting become a criminal phenomenon*, from <https://www.avocato.ro/blog/zădărnicea-combaterii-bolilor-sau-cum-strănutul-și-scuipatul-devin-fenomen-criminal/> [access: 29.11.2021].

activities and the separation from other persons, in specially arranged spaces, of persons ill or suspected of being ill, in a manner that prevents the possible spread of infection or contamination”.

The case law stated that “the act of the defendant who, after being hospitalized in a specially designed container, is suspected of being infected with the new type of coronavirus, being tested in this respect, although he was informed that he has no right to leave the location in question without the doctor’s consent, not to comply with the hospitalization order and who, before finding out the result of the test, fled the yard of the medical unit, moving on foot to a nearby town, where he came into contact with third parties, thus having the risk of transmitting the virus, meets the essential features of the offense provided for in Article 352 (1) C. Pen”¹⁹.

Conclusions

Throughout this period, the watchword is uncertainty. The uncertainty looming over COVID-19’s mutations in this virus makes it extremely difficult to accurately assess the risk of this disease and constantly fuels fear. Ever since the pandemic broke out, we have been bombarded daily with countless information and data, and yet we still do not know exactly how dangerous this virus is. Despite the constant involvement of specialists in various fields and even the identification of a possibility to improve the symptoms of the disease by vaccinating the population, there are still questions about the transmission rate from asymptomatic people, the effect of seasonality, the duration of the incubation period and so on which, without a doubt, makes it difficult for public officials to adopt a correct public health strategy²⁰.

In a context in which the more we believe we are informed about the evolution of this disease, the more questions it raises, the more we face the promotion of the division of vaccines by the unvaccinated and vice versa. This division of the population, which is based on the cult of revolt and hatred of our neighbor, only takes us away from the values on which this society has developed and, implicitly, makes it difficult to fight COVID-19, so that each of us would we need to understand that united, we are stronger.

We believe that in order to address this growing phenomenon, the benefits and disadvantages of vaccination should be further promoted, and the measures that the authorities consider useful in combating the pandemic should be made known to the public through the art. communication and not coercion.

¹⁹ Buzău Court, *Coronavirus. Crime of thwarting the fight against diseases*, [in:] “Pandectele Române” 2020, no. 6 at the Buzău Court, criminal section, criminal sentence no. 707 of 10 September 2020, www.sintact.ro [access: 19.01.2022].

²⁰ K. Schwab, M. Thierry, *op. cit.*, p. 14.

We appreciate that only in this way, without feeling the pressure, the person will be able to deliberately make a decision about his own health, which he will assume as such, while reducing the risk of revolt. Article 7 of the Universal Declaration of Human Rights states: “All human beings are equal before the law and are entitled without any discrimination to equal protection of the law. All persons have the right to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.

It is natural to impose restrictive measures when the situation requires it, but it is not in the spirit of the law to distinguish between a vaccinated person (who may be carrying the virus) and a person with a negative covid test.

Another serious problem that the Romanian society faced during this period was the misinformation made by some television stations. They obsessively repeated the same news: “from the 10th date, the law on compulsory vaccination will be adopted in the Parliament”. The adoption of the compulsory green certificate was submitted to the vote in the Romanian Parliament (although this is a tool used to facilitate free movement in the European Union). “The green certificate includes: vaccination, passing through the disease (in the last 180 days) or presenting a negative covid test”. The bill did not pass the vote of the Senate, and it will be decided on its adoption in the Chamber of Deputies.

We do not dispute the importance of vaccination, we challenge the odious way in which it is tried to be imposed by misinforming the population by the media. We consider that the adoption of the green certificate is an important measure, but we need to find new solutions to get out of this situation. Specialists in Romania are discussing the importance of introducing antivirals in pharmacies and the importance of mass testing of the population, which is beginning to be put into practice because on Thursday 2.12.2021 students will be tested quickly to detect contaminants in a timely manner.

We consider that any measure must be corroborated with the opinions of the specialists in the field as well as with the defense of the fundamental rights of the individual.

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