

The Restrictions of Fundamental Rights during a State of Emergency

Robert Șerbănescu

*“Dimitrie Cantemir” Christian University of Bucharest, Faculty of Juridical and Administrative Sciences–Law,
Bucharest, Romania, serbanescu.robert.2013@gmail.com*

ABSTRACT: Human rights are one of the fundamental pillars for a democratic society. In order for one to benefit from freedom of thought and action, these elements must be recognized and guaranteed by the state legislation. However, there are certain times when sacrifices must be made in order to overcome a threat. The danger can be represented by either a climate of war, a pandemic or any other phenomenon that can affect one or more countries on a general level. Basic rights can be exemplified by the right to private property, freedom of circulation, freedom of speech and consciousness. The article will provide a general presentation of the state of emergency and the conditions which are required for it to be implemented in Romania. In the same manner, the implications on a legal, social, psychological and moral level will be brought into evidence. For a society to be able to push past any large scale obstacle, there must exist an understating from both the citizens and the institutions. Cooperation, communication and transparency are the main factors by which a community can protect itself and remain united during hardships.

KEYWORDS: fundamental rights, state of emergency, the right to private property, freedom of circulation, general threat

Introduction

Since the oldest recorded times up until today, Humanity has gone through different stages in its evolution process. These segments of existence for our entire species have been marked individually either by positive aspects or by negative events. As dark episodes gathered to challenge humankind's resistance, innovation, perseverance and will to survive, our ancestors stepped up to the challenge and made significant progress in different areas of society, for example during World War II, new technologies had to be invented in order for one side to gain an upper hand in areas such as communication, weaponry or travelling speed. Even so, there have been many other dangers in our world, threats which did not embody the form of a normal human. As an example, we can mention Justinian's Plague (541 AD), the Bubonic Plague (1346-1353) or the Spanish Flu (1918-1920). These invisible attackers claimed the lives of tens of millions during their ravages, but also during those hardships, bright minds were forged and eventually solutions were brought into reality, such is the case with the development of medicine and methods of prevention and protection. Nowadays we have a significant advantage, unlike ancient and medieval times, the states have various institutions which serve the public interest. The service is done with the help of well thought legal dispositions, prevention plans, investments in key domains such as medicine, public health and education. It can be said that modern day countries, especially the advanced ones, can deal with almost any kind of issue, either an armed conflict or another pandemic. The 21st century may well represent the perfect moment for our kind to prove that a united society, at a national and global level, can work together to reach the supreme common good.

It is imperative to know that a large scale issue cannot be dealt with by one man alone. Each one of us is a part of a more complex social structure, we complete a task or a service in order to help other people and different individuals do their part in their domain in order to assist us. Humans depend more on others than they would like to admit. After all, based on ancient Greek philosophy, the community is a natural aspect of life and thus the individual is a social creature (Baumgarten 2015, 15).

The concept of human rights

As a definition it can be said that the human rights represent a category of freedoms to which any person is entitled to benefit from as a result of his/her own existence. They are a direct consequence of the better understanding of the human being as a whole. The ideal environment in which this type of concept can flourish is none other than a society with a democratic regime.

The fundamental rights and freedoms constitute both a necessity and a reality due to the fact that the ordinary individual has the need to be placed in the center of the state's attention (Deaconu 2011, 181).

This was not always the case, since throughout history many civilisations did not recognize the equality between people, such was the situation in the Roman Empire where the inhabitants of newly conquered territories ended up mostly becoming slaves.

The end result present today in regards to the basic rights can be seen as a manifestation of all the actions taken in the last 300 years since the appearance of the Declaration of the Rights of Man and of the Citizen in 1789 which laid the foundation for modern democracy.

Although it is of a significant importance that a state recognizes the fundamental rights and freedoms of its citizens, the same can be formulated when it comes to ensuring their constant protection. This is solved by continuously upholding the rule of law by the state with the help of the institutions facilitated with such tasks.

In Romania, one significant principle of the law is the principle of liberty and equality, thus equality can find its place only among free people and liberty can exist only between equally recognized citizens (Popa 2008, 97).

Freedom presumes that anyone can do as they please as long as their activities follow the limits dictated by the legal norms, stepping over this end point would mean the end of any form of liberty (Montesquieu 1964, 193).

Responsibility is a key factor for someone who desires to be free, because from the moment a person understands that he is responsible for their way of acting, he is no longer a simple obedient being, but an active and conscious participant in regards to the values of society (Florea 1976, 85).

It can be observed that equality and freedom cannot exist one without the other. No man is less than another and everyone has the right to live a fulfilled life due to them receiving the same treatment, as instated by the legal dispositions.

The aspect of fundamental rights in Romania

After the Revolution in 1989, the Romanian state transitioned from a totalitarian form of governance which used to oppress the generally accepted freedoms of the individual to a more democratic form of society. Since that moment, the country made noticeable progress in relation to the recognition and maintenance of the fundamental rights standards.

One of the most important steps was the integration in the European Union on the 1st of January 2007, a community which promotes cooperation and cohabitation between different nationalities, despite their historical conflicts.

Romania, with reference to its fundamental law, mentions that within her borders, human dignity, the rights and freedoms of the citizens, the free development of each personality are supreme values and they are guaranteed (Romanian Constitution, Article 1). This is the basic rule from which all the rights and freedoms can be recognized.

Examples of such privileges can be represented by the right to private property, freedom of circulation, the right to benefit from education, freedom of speech, consciousness and the right to privacy. Important to mention is the fact that the state confirms the equality in rights for the Romanian citizens and that none is above the law (Romanian Constitution, Article 16).

Being part of the European Union, Romania had to align with the other member states in areas such as economic improvement, quality of public services and the harmonization of its own

system of law to the community principles, therefore today the Constitution is almost a perfect reflection of the European Convention of Human Rights, proving the desire to gradually leave its past behind.

Within the territory of the EU all the citizens of the member states are considered also European citizens, benefitting from the right to travel freely across the territories of the members, the right to diplomatic protection, the right to address a petition to the European Parliament as well as the right to elect and to be elected in the previously mentioned institution (Fuerea 2011, 292). This international community has been formed after the conflictual events which took place in the 20th century, as an effort to unite a long term divided European continent.

The impact of a potential state of emergency on the fundamental rights

The state of emergency consists of several measures implemented on a national or local level in order to deal with a certain threat that could have a large negative impact either on the existence of the constitutional democracy or on the national security (OUG no. 1/1999, Article 3).

In order for a state of emergency to be declared in Romania, the President will proceed by emitting a decree which will also have to be signed by the Prime Minister and afterwards published in the Official Gazette as soon as possible (OUG no. 1/1999, Article 10).

From the above presented information, it can safely be stated that two institutions require to work in a balanced manner to be able to determine the level of danger and the correct measures once the state of emergency has been installed, these being the President and the Government.

Every country needs to have a leader, regardless of how symbolic that role may be when it comes to the attributions given by the law (Iorgovan 2001, 282).

The President of Romania has the main role of mediating between the legislative, executive and judicial powers and to represent the interest of its people on an international level.

The Government can be explained as that public authority, with a central role in the realization of the executive power, led by the Prime Minister which is named by the President, the entire team of officials being validated by the Parliament via voting (Trăilescu 2003, 13).

It is well known that the purpose of the Government consists in seeing realized the internal and external political objectives of the country (Tofan 2003, 149).

During a state of emergency, the executive power has to ensure the protection of the public interest and order of law.

The main impact of such a situation occurring would be that some restrictions could find their place in the area of fundamental rights. As an example, during a potential pandemic, the freedom of circulation may be limited only within the location where a person resides. Also, people may have to give up a series of day to day activities for a determined period, activities such as group gatherings, travelling in or abroad, taking part in cultural or sports events.

Even if all the measures are taken with the purpose of protecting the general interest, the institutions have the obligation to correctly inform the people in a complete and correct manner regarding every step taken. Consequently, the citizens also have the duty of lending a helping hand in the process of fighting against the common enemy.

From an international point of view, the competent organisms require to monitor that the states apply their regulations in a balanced, proportional and non-excessive way. They have the role of a larger authority, and of a final and most powerful entity that can guarantee the legitimacy of the implemented dispositions.

Facts which should be considered during a crisis

Firstly, the measures applied should be on a proportional level with the scale of the threat present at that time. Any excessive and abusive decision needs to be prevented and eliminated.

Secondly, the institutions should focus on transparency and communication as often as possible. In order for the citizens to maintain a high level of confidence in the state's capacity to handle such a difficult task, they require to have the correct data at their disposal on which a clear representation and judgement can be formed.

Thirdly, the everyday person requires to understand that they are facing a temporary state of prohibition and all of his/her freedoms will be fully restored once the storm has passed. Individuals should help the activity of the state by promoting a calm attitude, a clear judgement and a correct information gathering from official sources.

Lastly, it is clear that having to restrain basic rights and freedoms can be promoted by toxic political movements in such a fashion that presents the current leadership as being harmful. In other words, authorities should direct a part of their attention to the extremist groups, because society would be at a delicate point, making it the perfect moment for such social negative constructions to try and change the current form of governance.

Conclusions

A state of emergency is a method by which a system with its corresponding institutions handles a crisis, with the central objective of protecting the general interest and the order of law.

Humanity has faced many challenges in the last thousands of years and proved that only a single solution can be implemented, common effort followed by sacrifices.

Investments should be made in key segments in order to prevent and offer the possibility of handling any large danger which could appear.

Transparency, communication, correct information and patience are the basic aspects on which the state should focus in order to maintain the confidence given by the population to their leaders.

Restrictions implemented in order to serve the common good are a necessity, as long as they are for a limited period and to ensure that the danger has will be fully eliminated.

References

- Baumgarten, A. 2015. *Aristotle Politics*. Bucharest: Univers Encyclopedic Gold Publishing House.
- Deaconu, Ș. 2011. *Constitutional Law*. Bucharest: C.H. Beck. Publishing House.
- Florea, M. 1976. *The Responsibility of social actions*. Bucharest: Scientific and Encyclopedic Publishing House.
- Fuerea, A. 2011. *Manual of the European Union*, Bucharest: Universul Juridic Publishing House.
- Iorgovan, A. 2001. *Treaty of Administrative Law, Volume I*. Bucharest: All Beck Publishing House.
- Montesquieu. 1964. *About the spirit of law, I*. Bucharest: Scientific Publishing House.
- Popa, N. 2008. *General Theory of Law*. Bucharest: C.H. Beck Publishing House.
- Tofan, D-A 2003. *Administrative Law, Volume I*. Bucharest: All Beck Publishing House.
- Trăilescu, A. 2003. *Administrative Law*. Bucharest: All Beck Publishing House.
- Romanian Constitutions, European Convention for Human Rights of the European Union, 10th edition 2018. Bucharest: Rosetti International Publishing House.
- OUG no. 1/1999, with reference to curfew and the emergency state published in the Official Gazette of Romania no. 22 on the 21st of January 1999.