

The Need of Introducing One or More Temporary Criminal Laws During the State of Emergency (or Alert)

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ABSTRACT: To ensure the stability of the social order during a special period generated by emergency situations such as various natural disasters (earthquakes, floods, wildfires), pandemics or states of war, the decision-makers of each state facing such situations of general crisis, should adopt attitudes embodied in special temporary laws to provide security to their citizens, knowing that, oftentimes, potential offenders take advantage of such situations, considering that the vigilance of the prosecution bodies is greatly diminished, their attention focusing on the situation(s) that generated the state of emergency so, consequently the commission of crimes is easier and difficult to ascertain and follow. In the present study, we propose the introduction of one or more temporary criminal laws to ensure, on one hand, the conversion of virtual judicial efficiency into a real efficiency based on criminal norms, and on the other hand, to create a preventive factor against the commission of crimes by supplementing the exigency of the criminal treatment towards the potential criminals.

KEYWORDS: temporary criminal law, prevention, crime, delinquency, social stability

Introduction

Throughout history, humanity has had to fight against several situations with origins situated outside the sphere of normality, thus resulting the need of adapting to special social cases, which could not be neglected. From this context, we can exemplify the states of war, natural calamities, the epidemics, the pandemics, radiological urgencies, chemical accidents the pollution by accident and so on. For these types of scenarios, the legislators designated by the states, brought up in the structure of legal dispositions on an individual level and also on an international one, laws with the purpose the create a fair social balance and civil defense, in order to put in motion more severe sanctions then the usual through the introduction of temporary legislation, against the potential criminal phenomenon.

These limited by time regulations in the event of a state of emergency/necessity had the objective to prevent the illegal behavior by increasing the quantum of the punishments present in the criminal law or the introduction of new such rules with a temporary aspect in order to upgrade the awareness of the state.

In the event that any state finds itself in a situation of urgency, the population has to be informed in regards of how they should behave, to possess a social conduct with the purpose of preventing the birth of anarchy and vandalism. Empiricism managed to prove that punitive laws alongside imposed social behavior manifested positive effects when overcoming special situations. A significant example is the punishment by death for those who committed armed robberies during the periods of war. It cannot be disputed that, during exceptional times, legality is affected and *mutatis mutandis* the intervention of the legislator becomes mandatory; it is necessary a management for the states of emergency. This kind of management represents a complex process of identification, analysis and response to possible risks for a public entity, with the help of a documented approach that uses material, financial and human resources in order to achieve its objectives, with a strong accent on the reduction of possible losses (Risk management methodology 2018).

The existence of a good quality management for a possible state of emergency represents an important matter by which an efficient system of control is implemented at the level of the public entity, a system capable of dealing with these type of events. In the same manner, there must be present a direct connection between the plan of action (the activities done by the entity in order to achieve its objectives), and the set of measures designated to handle the difficult scenario.

Proposed criminal laws with a limited time duration, during a state of emergency or alert

The notion of temporary criminal laws should not be taken as an abstract idea, instead by *praetera et complementum lex* in Article 7 of the New Criminal Code of Romania it is stated that the temporary criminal law is applied to those crimes which are committed as long as the regulation is enforced, even if the deed was not prosecuted or judged in that specific time interval. Also, the temporary criminal law is that type of disposition which provides the date on which it will no longer produce any effects or is limited in its application by the nature of the cause which made is necessary to exist (Romanian Criminal Code).

The current planetary state of the pandemic named COVID-19 has made into a reality the decreeing of a state of emergency or alert by every country, thus an imposed social conduct was created for the citizens. Since these scenarios tend to create social panic, the potential for criminality can make a relatively easy appearance, wanting to take advantage of the confusion so it may finalize different illegal actions. Knowing this, an attitude of criminal law coercion is strongly imposed, the realization of if being left in the hands of the severe criminal policies, even if they are temporary, with the purpose of discouraging such antisocial elements.

Concrete proposals refer to adding an increase of up until 7 years of prison in the punishment for any kind of criminal offence done during a state of emergency or alert. We find ourselves in the need to remind that the criminal law alongside its function of punishment it also has the role of preventing any deviated conduct. The prevention part is completed *etiam magis* by adding the increased punishment.

It is important to mention that the temporary criminal norms require to be the result of the decision made by the Legislative Power, and not the outcome of presidential decrees or governmental urgent ordering. This information is necessary to be known due to the fact that an administrative act cannot remove or elude a legal norm admitted by the legislators. In this way, the adopted dispositions (temporary criminal laws) during the states of emergency or alert cannot be declared unconstitutional by the Constitutional Court in the case that they are brought to its attention.

The Romanian Ministry of Justice has launched a campaign entitled “Zero tolerance for crimes” through which it wants to spread the information regarding the possible punishments for the illegal acts committed during the emergency/alert state. Therefore the Ministry of Justice states that, based on the Criminal Code: “any type of crime committed against a vulnerable (ill) person can be sanctioned with an aggravated regime. Alongside the mentioned punishment for a certain crime an increase of maximum 2 years of prison can be added”. In the same time, the “aggravated theft, if the criminal took advantage of the vulnerability shown by the victim due to his/her health issues, for example COVID-19, it is punishable with a maximum of 7 years in prison”; “qualified robbery done with the usage of paralyzing substances, which ended up in personal injury or death for the victim, if the criminal took advantage of the obvious state of vulnerability of the target, as a result of her/his health issues (as a potential case, COVID-19), it is punishable, depending on the hypothesis, with a maximum of 12, 14 or 20 years of prison” (Digi24 2020).

As it can be seen, the modifications have in the center of attention the crimes which have as victims persons suffering from COVID-19 and not looking for an upper hand in the context of the state of emergency present nowadays in Romania. We consider that, as previously mentioned in the current paperwork, it is fundamental that a regulation for all the deviated conducts is brought on the legal scene, because special conditions require special norms with a general and

not partial application. Articles 77 and 78 of the Criminal Code state that the repercussion with the legally accepted maximum increase for a certain crime is applicable with the 2 year increase as well.

We are inclined to believe that the current steps taken by the Ministry of Justice are insufficient in comparison to the high levels of criminal activity and the low quantum of the punishments present in the Code.

Conclusions

We specify that, in exceptional situations, a cohesion must exist between the political class for the stability of the social interest and the protection of the state of law. Also, we can see the necessity for an international cooperation and a method of putting an end to the causes which determined the state of emergency/alert at a global level.

From the perspective of preventing crimes at an international level in the present context represented by the COVID-19 pandemic, we bring into light the function of prevention relevant to the criminal policy which is comprised of: “any activity related to criminal policy which has a fully or partial objective to limit the possibilities for any type of criminal conduct from making an appearance, either by making it impossible, difficult or improbable, without the threat embodied by the punishment or its application” (Gassin 1988, 613).

References

Gassin, R. 1988. *Criminology*. Paris: Dalloz.

Risk management methodology. 2018. Project selected within the Operational Program Administrative Capacity co-financed by the European Union, from the European Social Fund (Metodologie de management al riscurilor - Proiect selectat în cadrul Programului Operațional Capacitate Administrativă cofinanțat de Uniunea Europeană, din Fondul Social European).

Romanian Criminal Code

Digi24. 2020. “What punishments are applied to crimes committed during the state of emergency.” <https://www.digi24.ro/stiri/actualitate/justitie/ce-pedepse-sunt-aplicate-infractiunilor-comise-in-timpul-starii-de-urgenta-1281127>.