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## REGULATION OF OFFENCES AGAINST PUBLIC SECURITY IN THE CRIMINAL CODE OF ROMANIA

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### **Abstract**

*The aim of this article is to highlight the place the Romanian lawmaker has given to criminal offences against public security in the criminal law. At the same time, we seek to delineate the legal object of crimes against public security from that of crimes that affect relations of social coexistence, especially those protecting public order and peace. Knowledge of the legal object contributes to a better understanding of the concepts of public security and social order that are interdependent with law and human capital. Also, through the method of documentation we aimed to highlight, in the context of the pandemic: some legislative changes that had an impact on the activities carried out in the field of public security; the main measures taken to ensure the safety of the person and the observance of health measures in criminal proceedings; the activities that were carried out online in the judicial proceedings and the manner in which the intra-institutional communication or inter-institutional communication took place; the main changes brought by the legislator in the matter of criminal offences against public security (safety).*

**Keywords:** public, security, forensic, criminal offence, pandemic

### **INTRODUCTION**

In order to understand public security and to have a sense of peace in the public space, and not only, it is necessary to be aware of the preoccupations of specialists in several fields.

The change in perception is determined by several factors of an economic, social, educational nature, by the values protected by the legislator, by the rapidly changing environment, and by the known risk (For the interpretation see S. Madai, 2020a, pp. 188-194).

If any unexpected conditions occur which lead to changes in behaviour in a particular territory or at regional level, the feeling of insecurity leads to health damages, and may result in atypical safety and reaction issues.

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The prevention of and fight against the commission of criminal or contravening acts depend, on the one hand, on the extent to which the provisions of the law are known, the protection measures being applied by fields of activity, and on the other hand, on the level of education of each individual, who can educate others, even members of one's family, or receive educational messages.

The process of administration of justice with respect for fundamental rights and freedoms is essential in ensuring a climate of public safety in which institutions should be efficient, the human resources involved in functional systemic mechanisms should use forms of communication in good faith and risks should be known, understood by all parties in the public space and every individual should be aware that they have constitutional duties and obligations arising from the profession they carry out (See in Hungary: S. Madai, 2020b, pp. 49-53) .

#### **I. CONSIDERATIONS REGARDING THE USE OF TECHNOLOGY IN A PANDEMIC CONTEXT**

The management of crisis situations also implies the existence of specific regulations ensuring the general framework and/or the foundation for the adoption and applicability of certain necessary regulatory acts, depending on the types of epidemics/epizootics, etc. We have identified specific regulations in the content of the regulatory framework of Romania (Emergency Ordinance, 2004), that had been applicable prior to the COVID-19 pandemic which was declared in March 2020, from which date on several aspects were regulated, including the establishment of the duties of state bodies empowered to intervene in the implementation of risk plans developed per field of activity.

The efficient implementation of urgent measures also implies the existence of a financial framework to support the costs generated by the pandemic context (Cîrmaciu, 2020, p. 89).

The emergence of the pandemic in 2019 caused a revision of this regulatory framework, given the urgent need to adopt measures imposed by the evolution of the epidemiological situation, the necessity of taking urgent/exceptional measures in order to protect human safety, the right to life, and to provide health safety.

The main regulatory acts on the basis of which specific measures were taken in the general pandemic context are the President of Romania's Decree no. 195 of 16<sup>th</sup> March 2020 establishing the state of emergency in Romania, as well as the decrees extending the state of emergency in Romania. To the same effect, we make reference to the government decisions establishing and extending the state of alert, and to the decisions of the National Committee for Emergency Situations and the County Committee for Emergency Situations regarding the regulation of restrictions imposed at national or local level in the alert period, as well as Law no. 55/2020 on measures intended to prevent and combat the effects of the COVID-19 pandemic.

In the area of information technology, the activities aimed at the procurement of technology have intensified, accompanied by a relaxation of the procurement procedures, as well as a dynamization of the research activity in the IT field, in

order to prepare a response measuring up to the severity of the effects of the pandemic. The activation of software that had been little used previously, the identification of cyber solutions by creating software with an auxiliary role of prevention and control, but also aimed at identifying and stopping the flow of fake information, were constant concerns for specialists from almost all public or private institutions/entities.

The means to be used during this period were specified in the Decree, namely: fax, e-mail or other appropriate means in the existing context, but with the due diligence required in order to ensure security, text transmission and the acknowledgment of receipt.

At the same time, we emphasize that common software was used, according to a single design ensuring a good interconnection of the computer systems necessary in order to monitor specific situations, such as the evolution of the pandemic both at national and world level (interactive topographic map systems, statistical and data reporting systems, including the setting-up of call centre cells, with a role in reporting and conducting epidemiological investigations).

In this respect, it should be mentioned that the activation/setting-up of alternative computer networks of an INTRA/INTER type in order to ensure the alternative security required for data collection/transmission and capitalization is a constant that contributes to communication in the context of the need for physical distancing. Thus, posting information on internal networks specific to a field of activity is the method by which operators/specialists in a particular field, along a systemic line, find out within a short period of time the remarks, proposals or criticisms regarding some issues that might affect their work.

In terms of recruitment of new employees, the activity of interviewing and recruiting applicants for the available jobs took place online. Also, the activities specific to professional training were carried out via certain online platforms.

During this period, the concept of globalization has been discussed, the tendency being to give up the paradigm and to highlight the specific elements of the concept of personal security and safety, at individual level.

Regardless of the field of activity, a large number of activities are carried out online, among which we mention: invoicing methods, various summoning methods, the conduct of evidentiary procedures, receiving documents through the computer system, examining documents/legal files, communicating the rulings of the panels of judges.

The intensification of security and safety measures is a need that also results from the fact that the circulation of documents within institutions, intra-institutional/inter-institutional communication took place online to a great extent.

The revision of the work schedule and the introduction of a new work delivery system, *telework (remote work)*, brought about a paradigm shift in the labour market, meaning that we witness specific programs of work robotization, digitization of labour relations, which results in the emergence of a new category of employees on the labour market – remote employees.

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The action impact is also felt at the level of state law enforcement institutions (Ministry of Internal Affairs, Ministry of National Defence), but also in ministries specialized in the enforcement of pandemic measures (Ministry of Health, Ministry of the Economy, Ministry of Education and Research, etc.).

The implementation of the operative and medical measures was achieved by formalizing a common inventory, and by concretely applying measures that, as part of the operative activities on the ground and inside the institutions, were meant to contribute to the prevention of contamination or to limiting the number of victims.

With reference to the activity of police officers in the judicial structures, circuits adapted to the circumstances/specifics/topography of the buildings and the specific nature of the activities carried out were put in place, such as installing plexiglas panels in the premises where the presence of the main procedural subjects, parties or other procedural subjects is required, as part of the legal proceedings.

The hearings of persons have been carried out by telephone, and in urgent or time-dependent works, appropriate means of communication for online or videoconference communication are used, depending on the logistics available to the bodies carrying out activities in this field.

Activities involving the public were suspended during the state of emergency, after which they were limited by reassessment, including by limiting the number of people allowed in a specific room.

The means used for communication are those specific to remote communication, including in terms of receiving complaints or petitions.

From the standpoint of the relationship between operators in various departments, the measures taken were minimal, given that the activity presupposes an ongoing relationship between structures. Thus, personal contacts were limited to the minimum, intra-institutional relations were maintained by telephone and by correspondence.

This rule was circumvented only in exceptional situations, as required by cases in which several different structures intervened, such as on-site investigation, actions in an integrated system, supplementing the personnel with human resources from other structures for the execution of missions, and other such situations that presented aspects of a specific typicality.

Regardless of the level at which the judicial institutions/bodies carry out their duties, they remain concerned with ensuring the necessary materials for the activities to be carried out in appropriate conditions, as safely as possible and in compliance with epidemiological measures.

In all specific activities, materials necessary for protection against SARS CoV2 virus contamination and for the reduction of the viral spread risks, have been made available to the personnel.

In view of minimizing the risk for employees to fall ill as a result of contact, a segmental plan for scheduling activities to be carried out from the office and online – from home, was implemented. The mixed model of work by shifts (alternating

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from one week to the next) has been used in some institutions with responsibilities in maintaining public order and security.

As regards the *measure of checking people placed in quarantine or isolation*, it was implemented by online calls and/or eye contact, and in some localities checks, respectively communications with persons finding themselves in one of the above specific situations, were performed by means of unmanned aircraft (Elena-Ana Nechita Iancu, Marin Lazău Păcuraru, 2018).

In specific activities, workers from the public order and road control structures were equipped with body worn camera equipment for the audio-video recording of interactions between police officers and citizens/traffic participants.

In *criminal investigation*, judicial proceedings were carried out in accordance with the provisions of the Criminal Procedure Code, so they were conducted according to the classical system, without any procedural differences as compared to the period preceding the pandemic.

In terms of the relationship between the criminal investigation bodies of the judicial police, we highlight the fact that major changes occurred, namely: discussions were conducted by telephone and the circulation of documents was carried out by correspondence, except in urgent situations where it was necessary to apply preventive measures or other procedural measures that required the approval or authorization of the prosecutor.

In the *criminal prosecution* phase, videoconferences were organized, the hearings being conducted through online correspondence. The files are scanned and can be viewed according to the relevant legal provisions in the field and the capacity of the people involved. Summoning is also done electronically.

Law courts have taken measures based on the same Decree (Decree no. 195, 2020), as well as on the decrees extending the state of emergency on the Romanian territory. In Chapter 5 of the President's Decree no. 195, Art. 41-47 indicate the legislative framework in which the first measures were taken in the field of justice. We highlight Art. 42, paragraph 3, which shows that the courts have duties related to carrying out, approving and ordering the necessary measures for the conduct of court hearings by videoconference. Thus, at the level of law courts across the country, arrangements were made to participate in court hearings in an online format (videoconference), a standardized document which is signed by participants in court hearings, depending on the type of proceedings they agreed to, accepting several conditions that are needed for the proper conduct of a videoconference, such as: connectivity, time of unfolding, security of data and of communications made during the court hearing, solemnity, proof of the activity, possible subsequent controls by judicial inspectorates.

We specify that these arrangements also contain conditions regarding the administration of documents or material means of evidence that must be submitted in advance, and only in duly justified cases can be transmitted during the hearing in order to avoid a postponement of the trial.

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The activity of the courts has been adapted depending on the specifics of the case, so as to take the form of online debates, the parties agreeing or not to this procedure.

The necessary translations and/or oral interpretations in judicial proceedings were carried out by means of either synchronous or asynchronous remote communication equipment.

Also, another sub-domain of activity with maximum degree of risk among the classic methods of conducting meetings between litigants and communication between participants in the criminal proceedings is the communication of procedural documents.

If the presence of persons was necessary in the courtrooms, in cases of special urgency (within the meaning of Art. 42 par. 1 of Decree no. 195), lists indicating the situation for each day were drawn up, and with the help of clerks in the access area, the observance of the circuits established was ensured, according to the topography, the specificities of the buildings, the type of case pending before the court and the scheduling announced in relation to the time range allocated to the activity for which the person concerned was invited. The hearings of persons in criminal cases should be conducted by videoconference.

Within the various departments, activities were limited, sometimes suspended by decisions of court presidents. For example, the Archives and Registry Department of the courts conducted, depending on the epidemiological situation, online or fax operations and e-mail was the main means of communication.

The rulings of the panels of judges with regard to the case were communicated by the court clerk by telephone to the parties, lawyers and experts, judicial liquidators, other participants, according to the law.

The topics of non-unitary practice, works specific to professional education, as well as other communications between the courts took place through the internal network.

## **II. PLACE OF CRIMINAL OFFENCES AGAINST PUBLIC SECURITY IN THE ROMANIAN CRIMINAL CODE**

Title VII of the Criminal Code of Romania (CP, Law no. 286/2009), with the marginal name "*Offences against Public Security*", is structured into several chapters. Therefore, through each chapter, social values that are important for the smooth conduct of social relations, partnerships or activities regulated by law are protected. Values are protected by criminalizing acts as criminal offences in relation to the importance of social, human values and social relations (L. Popoviciu, 2014, p. 147).

If the values protected by law are respected, on the one hand this will increase the degree of trust in the institutions/entities that take part in consolidating a safe environment around all of us and on the other hand, it will change the degree of perception of peace around us, trust among peers, the complexity of activities specific to maintaining public security, which means more than just public order and peace.

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In this respect, I refer to Title VIII of the Criminal Code with the marginal name “Offences That Harm Social Relationships”, structured into three chapters which, through Chapter I with the marginal name “Offences Against Public Order and Peace” delineates the legal object from that which is protected by Title VII.

Title VII of the Criminal Code is structured into six chapters that include offences whose legal object protects public security. The marginal names of the chapters are as follows: “Offences Against Railway Traffic Security” (Chapter I), “Offences Against Public Roads Security” (Chapter II), “Violation of Rules for the Control of Weapons, Ammunition, Nuclear Materials and Explosives” (Chapter III), “Violation of Rules Established for Other Activities Regulated by Law” (Chapter IV), “Offences Against Public Health” (Chapter V), “Offences Against the Security and Integrity of Computer Systems and Data” (Chapter VI).

By following the preference of the Romanian legislator to group criminal offences into the above-mentioned chapters, we note that social values specific to the fields of activity indicated in Chapters I, II, III, V, VI and social values pertaining to certain professions or activities “for which a permit is required by law” (Criminal Code, Art. 348), are all included in the category of public security. As a result, in order to understand the concept of public security (or public safety) from a legal perspective, it is necessary to know, understand and deepen, in addition to the criminal legal rules, the regulations in the special laws applying to professions in various fields.

**III. CHANGES IN THE MATTER OF OFFENCES AGAINST PUBLIC SECURITY  
IN THE CONTEXT OF THE PANDEMIC**

With reference to the criminal offence provided in Art. 352 with the marginal name “Failure to Prevent Diseases”, we specify that by Government Emergency Ordinance (GEO) no. 28/2020, the legal content was modified. In the standard version, we notice that the material element is achieved by not complying with some measures that are required for quarantine, or some hospitalization measures. Quarantine is defined in the same Article, paragraph 9, as “restriction of activities and separation from other persons”. Therefore, the legal text shows the meaning of the concept of quarantine including by indicating the place where it is carried out, in specially arranged premises. Persons against whom quarantine-specific measures may be imposed are persons who are ill or suspected of being ill, without specifying the disease. The purpose of imposing a quarantine is to prevent the spread of infection or contamination. In the case of the aggravated variant indicated in Art. 352, paragraph 2, the material element is achieved by “non-compliance with the prevention or control measures”, with the essential requirement that the deed should result in the spread of infectious diseases. If in the variant provided in paragraph 1, the form of guilt is intention in any of the forms provided in Art. 16, paragraph 3, letters a, b, in the typical situation of paragraph 2, the form of guilt may be intention in the aggravated variant, or basic intent in the attenuated form provided in par. 4. The aggravated variant provided in paragraph 3 is committed, in

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terms of the subjective side, with the form of guilt direct intent: the active subject knew that he was suffering from an infectious disease and the transmission is made by any means.

Failure to comply with quarantine or hospitalization measures (paragraph 1) or with measures for the prevention or control of infectious diseases (paragraph 2) if they cause bodily injury to one or more persons (paragraph 5, sentence 1) or the death of one or more persons (paragraph 5, sentence 2), the form of guilt is oblique (exceeded) intent. If this modality is committed with the form of guilt basic intent (paragraph 7), the legislator provides penalties (punishments) with a special minimum and a special maximum higher than the penalty provided for in paragraph 4, which refers to the deed committed with basic intent. If the transmission of the infectious disease results in the bodily injury of one or more persons (paragraph 6, sentence 1) or the death of one or more persons (paragraph 6, sentence 2), the form of guilt is oblique intention. The penalties provided by law are as follows: in the simple form, imprisonment for no less than 6 months and no more than 3 years or the payment of a fine; imprisonment for no less than one year and no more than 5 years, in the aggravated variant (paragraph 2); imprisonment for no less than 2 years and no more than 7 years in the aggravated form (paragraph 3); in the attenuated form, imprisonment for no less than 6 months and no more than 3 years or the payment of a fine; for the transmission of infectious diseases, in cases where a bodily injury occurred, imprisonment for no less than 3 years and no more than 10 years; for the transmission of infectious diseases, in cases where death occurred, imprisonment for no less than 7 years and no more than 15 years.

In the same context of the pandemic, in 2020, the legislator introduced in the Criminal Code of Romania a new Article 352<sup>1</sup>, with the marginal name "*Omission to Declare Information*". The material element is achieved by omitting to disclose essential information "about the possibility of having come into contact with a person infected with an infectious disease". The active subject is not circumstantiated (not the object of aggravating or mitigating circumstances), it can be any person, and the obligation to give, to disclose information is related to several categories of persons, namely: - persons provided in Art. 175 of the Criminal Code, i.e. a public servant (par. 1, par.2); - medical staff; - persons from the unit in which the active subject carries out his activity. The penalty provided by law is imprisonment for no less than 6 months and no more than 3 years or the payment of a fine.

We also retain, from the doctrine (M. Pătrăuș, D. Pătrăuș, 2018, pp. 49-58) in the field of international judicial cooperation in criminal matters, the references of the authors to Law no. 302/2004 and the list of the 39 criminal offences, among these being mentioned the "conduct which infringes road traffic regulations and which, if punishable in the issuing Member State, gives rise to the recognition and enforcement of the judgment, without the need to check double criminality" in relation to the offences against road traffic security provided for in the Criminal Code in Title VII, Chapter II, Articles 334-341.

In the Criminal Code of Hungary, in Chapter XXX, with the marginal name "Offences Against Public Security", Sections 314-325 include offences which the

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Romanian legislator provided for in the special law. An example in this respect is Section 314 of the Criminal Code of Hungary which has the marginal name of “Acts of Terrorism”, and the following articles, 315, 316 which do not have a marginal name, but from the legal content it results that the person who “instigates, proposes, offers, adheres to or collaborates in the commission of any act” provided in par. 1, par. 2 of Section 314 or the one that threatens to commit an act of terrorism is also punishable. In the Romanian legislation, the offences provided for in Chapter IV, Art. 32-38<sup>1</sup> are to be found in Law no. 535/2004. Section 321 of the same code criminalizes acts that are typical to “Participation in an Organized Criminal Group”, whereas, in the Criminal Code of Romania, Art. 367 provides for the “Creation of an Organized Criminal Group”, but is placed by the legislator in the chapter on offences against public order and tranquility.

### CONCLUSIONS

In the context of the pandemic, changes have been necessary both in order to toughen the penalties provided by law and to help prevent infectious diseases, by ordering, enforcing and complying with measures applicable in daily activities in each field.

The main measures complied with by persons in the judicial system in order to ensure personal safety in a pandemic context are related to the observance of health rules, as well as to the avoidance of overcrowding in the common areas inside the institution.

In the field of justice, the activities carried out online are numerous, from summoning, the unfolding of some evidentiary procedures, the receipt of documents through the computer system, the examination of documents/the legal file to the notification of the rulings of judge panels.

The circulation of documents within institutions took place mostly online, but security and safety measures need to be intensified.

At the end of 2021, it is still necessary to maintain physical distance while also taking protective measures, such as wearing a sanitary mask and complying with personal and collective hygiene measures in all areas of socio-economic life.

It is necessary to train personnel with regard to the occurrence, spread and risk of contacting the virus, the manner of obtaining the information necessary for prevention (only from authorized sources), all of the above in order to combat fake news.

Effective communication is achieved if there is coordination on the vertical level, between decision-making authorities and subordinates, as well as on the horizontal level, between departments on the same hierarchical level. The need for human resources remains high even if the activities have been carried out online.

We notice the tendency to give up on the concept of globalization as a paradigm and the new orientation towards the concept of personal security and safety, at individual level.

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