



THE  
STATE  
OF  
DEMOCRACY  
IN  
2020

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PENTRU  
CETĂȚEAN

## **The state of democracy in 2020**

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## Introduction

The year 2020 was not a prosperous one for democracy or civic involvement. It was a bad year in more ways than one: the Covid-19 pandemic changed our way of life and had a deep impact on most of us. In times of crisis, we see how the conflict between liberty and the need for swift action becomes more and more acute. Governments are tempted to simplify the decision making process – sometimes having good reasons to do so – but too often, the fundamental liberties are obstructed.

In Romania, the instauration of the state of emergency in March 2020, followed by the state of alert, which started in May 2020 and is still going to this day, has given amplified powers to the government and has put limitations on the public space. Some limitations had justifiable reasons: big public gatherings can happen only in strict and safe conditions. Other limitations are questionable to say the least: the extension of deadlines regarding the access to public information or the outright secrecy and lack of transparency around some acquisitions that have no direct link with the pandemic. The current circumstances that often required urgency in the actions of authorities, was sometimes used as justification for the limitation of certain rights and we also see how some old demons reappeared, demons such as: prejudice, discrimination and authoritarian tendencies.

We made a summary of the evolution of the civic space in 2021. For starters we covered the proposed legislation that seeks to modify the freedom of assembly, freedom of association and governmental transparency. And secondly we covered the instances in which the authorities did not used proportionality in their response to certain situations, thus committing abusive limitations of rights.

## Proposed legislative changes regarding the civic space in 2020

### Free access to information

[Law no. 544/2001](#) regarding the free access to information of public interest was the subject that attracted two divergent attempts from the legislature: sabotage and improvement, but none of the two materialized. As we will present below, the proposals that would have put big restrictions on the free

access to information were withdrawn. The legislative proposal that would improve the law is still being debated in parliament.

In August 2020, the Government subjected to public debate a series of [changes](#) to the methodological norms for the application of Law no. 544/2001. Amongst this we find a controversial amendment which would have introduced a limitation on the reach of the law: “information of public interest will be accessible in the form in which it is identified and held by public authorities or institutions, in conformity with the legislation that covers the protection of personal data”. This proposal was criticized by the civil society, which underlined the fact that by using this amendment, the public authorities will refuse to give access to even the most trivial of information, – for example: how many petitions of a certain kind they received in a certain interval of time – using the justification that they do not have the information in the format that the petitioner requires. In the end, the Government withdrew these proposed modifications to the methodological norms.

On the 14<sup>th</sup> of October, a group of parliamentarians from the Chamber of Deputies from two different parties: the Social Democrats (PSD) and the National Liberals (PNL), introduced on the agenda of the parliament a [legislative proposal](#) which would add limitations on the free access to public information. According to this legislative proposal, public institutions can refuse to give access to public information if: they consider that the language used includes insults or brings slander; if the volume of information exceeds 50 pages; if the information required contains personal or classified information which they consider it cannot be anonymized; if the request was made in “bad faith”. More than this, the public institutions would be free to require arbitrary payment for copying, scanning or even searching the required information in the archives. Confronted with the strong negative reactions of the civic society and with questions from the mass-media, the initiators quickly withdrew the proposal, two days after it was filled.

Another [legislative proposal](#), initiated by the Save Romania Union (USR) and the Social Democrats (PSD), seeks to improve the access to public information by stipulating the obligation of public institutions to respond to the requests using electronic means and open formats, whenever possible. All requests and responses should also be posted in a special section on the website of the public institution. The proposal was passed by the Senate, the superior chamber of Parliament, before the Parliament went into an

extensive break due to the elections. At the time of writing this report (April 2021) the legislative proposal is on the agenda of the Chamber of Deputies.

### **Freedom of expression**

Academic freedom and the freedom of expression were the target of an attempted censorship by a legislative proposal initiated by parliamentarians from a multitude of parties.

On the 16<sup>th</sup> of June 2020, the Parliament adopted a legislative proposal which modified the Law of Education by banning the so-called “gender identity theory” in all educational institutions. The President of Romania, after analyzing the law which was sent to him for ratification, send a [notification](#) regarding the unconstitutionality of the law to the Constitutional Court. The President considered that the legislative proposal violates several articles of the Constitution.

The provisions of the legislative proposal were heavily criticized by universities, student associations, UNICEF and progressive nongovernmental organizations, but had the support of religious organizations and the Orthodox Church. A group of Romanian universities, supported by 885 research centers, institutes, international universities and researchers, submitted to the Constitutional Court an Amicus Curiae in support of the notification initiated by the president.

On the 16<sup>th</sup> of December, the Constitutional Court ruled that the proposal violates the Constitution, sustaining most of the president’s objections.

### **Freedom of assembly**

In 2020, fifteen organizations members of **the Coalition of “NGOs for the Citizen” (Coaliția ONG-uri pentru cetățean)**, started an advocacy campaign which seeks to change the legislative framework which regulates the right of the people to peaceably assemble. The group claims that the current [law](#) which regulates protest and other forms of assembly, written in 1991 and slightly modified in 2014, is designed to prevent public assemblies, in the name of public order and is outdated, having no dispositions that recognize the self-organization of citizens through social media or the new technologies that are available now.

The campaign led to the submission of a [legislative proposal](#) that seeks to amend the current law. The proposal is signed by multiple members of the Chamber of Deputies from all political parties. According to the initiators, the legislative proposal pursues five major objectives:

1. The removal of the useless and excessive administrative restrictions that seek to stop the organization of public gatherings;
2. The removal of subjective terms, which are used as the grounds for the arbitrary prohibition of public assemblies, terms such as: “offences against morality” or the “defamation of country and nation”;
3. The proportionality of sanctions with regards to the offences committed;
4. The proportionality of the law enforcement intervention with regards to the severity of the situation;
5. The recognition of spontaneous assemblies such as those that give an immediate response to a certain event or those that have no clear organizer.

The legislative proposal was adopted by the Senate and is now on the agenda of the Chamber of Deputies.

### **Freedom of association: the legislation regarding associations and foundations**

The COVID pandemic has once again showed the absurdity of the legislative requirements regarding the declaration of real beneficiaries by associations and foundations. In the current version of [Law no. 129/2019](#) for the prevention and combating of money laundering and terrorist financing, all organizations from Romania should have presented themselves, physically, to a notary, in order to sign the declaration regarding the real beneficiaries and then submit it, again physically, to the Ministry of Justice. The deadline was extended automatically up to three months after exiting the state of emergency, which was 19<sup>th</sup> of August, even if the epidemiological situation was far from resolved. On the last day, the Government extended the deadline until the 1<sup>st</sup> of November through an [emergency ordinance](#). Subsequently, through another [emergency ordinance](#), the deadline was extended to three months after exiting the state of alert.

Fortunately, at the end of 2020, the Parliament adopted and the President promulgated the amendment of the normative framework for the functioning of associations and foundations. [Law no. 276/2020](#) for the amendment and completion of the Government Ordinance no. 26/2000 regarding associations and

foundations brings some welcomed changes, including the modification of the declaration regarding the real beneficiaries:

- When registering or modifying the documents of an association or foundation, the constitutive documents can be presented to the court under private signature, if the initial patrimony does not include real estate;
- The constitutive document is no longer required to be a separate document, all the information will be included in the statute of the organization;
- The mandatory minimum value of the initial patrimony of an association, which used to be 200 RON, was eliminated;
- The mandatory minimum value of a foundation's initial patrimony has been reduced from the equivalent of 100 minimum wages to the equivalent of 10 minimum wages;
- The associations composed only of natural/physical persons and which have no other beneficiaries besides the members of the association are no longer required to submit the declaration regarding the real beneficiaries;
- The restrictions regarding the name of an association in a foreign language have been removed;
- It is no longer necessary to obtain the approval of the owners' association and the neighbors for the headquarters;
- The minimum number of members required to start a branch of an association was reduced to 2 persons (compared to 3 persons, as was in the previous provisions).

These changes garnered a positive response from the associative environment, even if there are some concerns regarding the non-unitary interpretation by the courts when it comes to the provisions regarding the private signature.

### **Regulations in the context of the pandemic**

In March of 2020, the President of Romania issued the presidential [decree](#) that instituted the state of emergency on the territory of Romania. This, together with the [Emergency Ordinance 34/2020](#) for the amendment and completion of [Emergency Ordinance 1/1999](#) regarding the state of siege and state of emergency and with the Military Ordinances that were issued during the state of emergency, imposed

restrictions on fundamental rights and liberties including those that are closely related to the civic society.

Amongst those who were affected we have:

- Freedom of expression
- Freedom of assembly
- The right to private life
- Freedom of movement
- Access to information

Even if these restrictions were justified by the current epidemiologic situation, the particularities, proportionality and implementation have often left room for abuses, as we will exemplify below. Another point that needs to be underlined is the fact that these restriction, be them in the state of emergency or alert, were conceived without any thought or consideration for vulnerable categories such as victims of domestic violence, people affected by poverty or any other category on which the impact of these restrictions is greater.

In regards to the political process and the observance of the principles of the rule of law, the transition from the state of emergency to the state of alert was plagued by bad management and political infighting. As our organizations [signaled](#) at the time, the responsible institution ignored the constitutional framework.

### **Consultation and transparency**

The first alarming signals regarding the limitation of the free access to information came with the provisions of the [Emergency Ordinance 34/2020](#) for the amendment and completion of [Emergency Ordinance 1/1999](#) regarding the state of siege and state of emergency and with the presidential decree that instituted the state of emergency in March 2020. These pieces of legislation:

- Suspended the legal norms regarding decisional transparency and social dialogue when it came to legislative proposal and normative acts that would establish measures applicable during the state of siege or state of emergency

- Doubled the deadlines in which the authorities were obliged to give access to information of public interest. The normal deadline for this kind of requests is 10 days and as an exception could be extended to 30 days. When it came to the media the deadline is 24 hours.

*Transparency and access to information of public interest:*

- Two days after the state of emergency was instated, on the 17<sup>th</sup> of March, Romania [notified](#) the Council of Europe that it will derogate itself from the provisions of the European Convention of Human Rights. The notification was not preceded by any debate in the public sphere and the public wasn't even officially informed about the derogation. The information was made public by a foreign media agency (France Press) two days after the notification was sent.
- Both in the state of emergency and in the state of alert, the identity of the persons who were part of the Committee for Strategic Communication remained unknown to the public, despite the repeated calls of the media and NGOs, which demanded more transparency when it came to this structure.
- Throughout 2020, the limited access to information regarding the Covid-19 pandemic was a permanent issue that was continuously signaled. Starting with 18-20 of March, several Public Health Directorates refused to respond to requests made by journalist, that demanded access to information of public interest. The Public Health Directorate of Cluj sent in response to a request made by a journalist, a document in which it was stated that the institution will “suspend” the activity of responding to requests of access to information of public interest as it is framed in Law no. 544/2001, during the state of emergency. At the same time, the Public Health Directorate of Botoșani sent a paper to the media in which they declined to give access to information because the institution did not have the necessary competence to do so and asked the media to address their requests to the Committee for Strategic Communication even if the target of the requests was the activity of the Public Health Directorate of Botoșani. A similar answer was used by the Public Health Directorate of Suceava. Shortly after on the 21<sup>st</sup> of March 2020, the Ministry of Foreign Affairs [formalizes](#) the abuse by asking the Prefects not to provide the public with information regarding the evolution of the pandemic at the local level.

- For a long period of time there were no reports on the number of cases assigned in specific administrative-territorial units. This limited the public access to useful information regarding the health situation in their locality or region.

*Consultation of the civil society in the decision-making process:*

- Although the need for restrictions when it came to some topics of public debate was understandable, at least for some normative acts, the suspension of social dialogue during the state of emergency has raised question marks in the civil society, business environment and trade unions. The measure was criticized by [the National Trade Union Confederation \(CNS „Cartel Alfa”\)](#) and by [Concordia Employers' Confederation](#), especially after the Economic and Social Committee (the main structure for social dialog) managed to adapt itself very quickly to the restriction that were put in place due to the pandemic, and was perfectly capable to participate to the process of approval of legislation
- Once we had into effect restrictions that enforced social distancing and limited the freedom of movement, the participation of the citizens and media to the Local Council meetings and the organization of offline meetings became undesirable. Even if some authorities adapted quickly and started to transmit their meetings online, others took advantage of the situation and organized their meetings behind closed doors. A good example is the meeting of the Local Council of Craiova from March. [The meeting](#) was organized online, without being publicly available. Shielded from the eyes of the public, the Council passed budgetary reallocations through which they decided to apply a series of expenditures that were presented by the mass media as unnecessary. In the municipality of Bucharest, in the first months of the pandemic, the online environment in which the meetings took place was also used to limit the opinions of the opposition. Our organizations [notified](#) the Prefecture of the Municipality of Bucharest, signaling the fact that during the meetings that took place in April 2020, the attempts of the opposition members to speak and get their point across were either ignored by the chair of the meeting or allowed only after the voting procedure for the issue at hand took place. During this period of time the councilors that were part of the opposition were rarely allowed to speak and when they did, they were disturbed or interrupted.

- Another moment which highlighted the lack of cooperation with the civil society was the process of organizing the local elections of 2020. Due to the epidemiologic situation, the Government decided to postpone the local elections and adjust the electoral rules. A number of organizations representing the civil society [heavily criticized](#) the lack of transparency and consultation of this process, arguing that the decisions that affects the right to fair elections is a topic that needs to be extensively discussed in society.

### **Freedom of expression and freedom of assembly**

- One of the freedoms that was limited during the state of emergency and later in the state of alert was the freedom to organize and participate to public assemblies. Throughout the year, there were discussion that focused on the relaxation of restrictions for certain activities (commercial, religious, cultural, sportive), even in the context of the pandemic. The right to organize public gatherings was not part of this discussions and was reinstated much later, in September, when many other activities were already allowed. This relaxation of the freedom of assembly came after many [calls](#) from the civil society, which pointed out the international recommendations and tried to remind the Government that the freedom of assembly is a fundamental right.
- The pandemic was used as a pretext for some so called “personal vendettas”. For example, a student from the commune of Florești, [was fined](#) by the local Police for a post made on Facebook, in which she criticized the mayor for his lack of action in regards to the fight against the pandemic. Showing an excess of zeal, the police agent decided to apply the maximum penalty stating that: “the above-mentioned, at the date and time mentioned, addressed defamatory remarks to the mayor of Floresti, on the social network Facebook, misleading the public, harming the dignity of the Mayor and provoking indignation amongst citizens, by using the statement <<The commander goes down with the ship, but you were the first to abandon it>>”.
- In their attempt to combat fake news, the Government tried to establish itself as the court that decides the value of truth of the information in the [public domain](#). The Presidential Decree regarding the state of emergency had written within him a mechanism of “removal from the source” of some information or “the restriction of access of users from Romania to content that promotes fake news with regards to the evolution of the COVID-19 pandemic”. This measures

were applied to a number of sites in the months of March and April of 2020. The mechanism had no gradualism, which would entail a warning, a request of modification of the false information, the elimination of the information and only as a last resort the shut-down of the website. In fact, the way in which the institutions tried to block these sites led to more publicity for those materials. Against the background of lack of transparency, the government's attempts to control the fake news not only failed, but also created an environment in which conspiracies and misinformation flourished.

- In order to fight misinformation and to support the media, the government allocated a fund consisting of 40 million euros for mass-media, in order to promote information awareness campaigns produced by the government. The mechanism that was used for financing was subjected to a lot of scrutinizing, because the government did not use qualitative methods to allocate subventions and the process through which funds were distributed lacked transparency. Paradoxically, the government funding protected some means of mass information which are well known for their transgression when it comes to the basic ethical standards. The most damaging effect was the propagation of the perception that auto-censorship is more acute in the media due to this financing mechanism.
- The attempt of the state to promote itself as the only provider of truth was also seen through the campaign “Inform yourself only from official sources”. Ironic, because, as we presented above, the state was the one which withheld relevant information about the pandemic from the public.

#### **Personal data – on the border between the right to privacy and the right to health**

- The Decree regarding the establishment of the state of emergency created the possibility to restrict the exercise of the Constitutional right to intimate, family and private life in order to support the efforts of the authorities to limit the spread of SARS-CoV2. However, some local authorities have published sensitive personal information, without worrying that it is not within their attribution or right to do so. This is the case of a local councilor from Câmpulung Moldovenesc and the Mayor of Commune of Perieni.

- In the first case, the counselor made public a list that contained the names of all the medical personal of the local hospital, that were infected with the SARS-CoV2 virus. In the second case, the mayor made public a [list](#) of people from the commune that were isolated at home.
- Another example is the website [ww.jurnalmedical.ro](http://ww.jurnalmedical.ro), administrated by the Authority for the Digitalization of Romania. On this site, anyone has the possibility to enter data about themselves but they can also enter data about other persons: family, friends, neighbours and even total strangers. The terms and conditions are vague and a far cry from the standards of the General Data Protection Regulation. The possibility of the user to delete his account was introduced late. The persons who have their personal data exposed have no means to find out, much less to oppose their processing by the Government.

### **Freedom of movement**

The restrictions of the freedom of movement, the main form of preventing the spread of the SARS-Cov2 virus, have also been a source of abuse, with grave implication especially when it came to human dignity.

- At the beginning of the pandemic, we had several cases in which the authorities limited the freedom of movement outside the legal framework. At least two public authorities (the Prefect of Maramureș and the Mayor of the Commune Greci, Tulcea county) have instituted rules that limited the freedom of movement of people inside the county respectively the commune before the Military Ordinance that allowed this kind of restrictions came into force. The Prefect of Maramureș had transformed the recommendations of the Military Ordinance no. 2 into obligations, while the mayor of the commune of Greci forbade the movement of elderly people.
- In some cases, the limitations were utilized against different categories of people. For [example](#), in Târgu Lăpuș, the mayor asked the police to restrict the access to the city for the neighboring community Ponorâta (Coroieni Commune) - a vulnerable community, severely affected by the pandemic economically wise, although neither of the two communities were in quarantine. The mayor [said](#) that "there are suspicions that a large part of these people have recently arrived from countries with red or yellow areas of COVID-19" without providing evidence to confirm this statement.

- A very worrying case took place in Baia Mare where the mayor [illegally detained](#) people who were begging. Not taking into account their wishes, the people were taken to a Social Center of the Municipality and in exchange for the services received there they were forced to do community service. We can clearly see in photos posted by the mayor on social media how people are forcefully removed from the streets.
- During the state of emergency, the press and nongovernmental organizations signaled many instances in which citizens were subject to abuses and violence perpetrated by the police for violating the restrictions of the freedom of movement. Even if there were cases in which the citizens did not respect the legal provisions that were in place at the time, the disproportionate use of force or the humiliation of those in the wrong was inexcusable. Some of these cases were fueled by racism:
  - [Four](#) persons were led to the police station and had their pictures posted on Facebook by a police officer because they were searching for food in the trash.
  - [The story](#) of a woman and her underage son who had their house raided by the police and who were humiliated in the street and then detained for hours at the police station.
  - [Several men](#) who are lying on the ground are beaten by the law enforcement agents.
  - At [Oțelu Roșu](#), a saleswoman was fined inside the store where she works, because she did not present the certificate from the employer at the request of an aggressive police officer. The fine received is higher than her monthly salary.

## Conclusions

The year 2020 was not a good year for democracy and civic involvement. But was it a bad year? As in most situations, it depends on your point of view.

If we think of the situation in countries like Hungary or Poland, where civil liberties are drastically limited by authoritarian governments, Romania is doing well. If we think of the situation of the civic space, that finds itself in decline, we have reasons to worry. We need to see the progress that was made but also the weakness that exist.

In Parliament, we had repeated efforts that tried to limit civil liberties, as was the case in previous years. The activity of associations and foundations and the free access to information of public interest have been the targets of these attacks. It is encouraging that this attempts were stopped in Parliament. Important factors were the swift responses of the civil society and mass-media and the electoral context.

At the same time, initiatives have also been launched in Parliament to improve the legislation that governs the civic space. We also have a punctual success, that was registered through the subsequent modification and improvement of the law on the functioning of associations and foundations. Beneficial amendments to the law on public assemblies and the law on free access to information of public interest, introduced in 2020, remain in the parliamentary circuit and there is at least hope that they could be adopted. These developments present a clear improvement on previous years.

The Government's management of the pandemic has been disappointing but especially so when it came to respecting the civic rights and freedoms. Probably the best term to describe their actions is "indifference". The government did not take into consideration the fact that civic liberties present a matter worthy of careful consideration. Indifference rather than bad faith seems to have led to most of the rights limitations listed above. No human rights experts or specialized institutions were included in any of the bodies responsible for managing the pandemic. The human rights perspective was not systematically taken into account, which allowed or overlooked violations of freedoms.

Against this background, the reflexes of discrimination against some social groups, such as the Roma or other vulnerable people came to light as well as a lot of local abuses, where we will never know for sure

how much were they the result of bad implementation and interpretation of the legislation and how much was the bad management, lack of professionalism and ethic of the law enforcement agencies.

Although the collaboration with the Ombudsman office could have been, theoretically, an additional filter of analysis regarding the need to restrict freedoms in the name of the pandemic, the relationship between the executive and the management of this institution was rather hostile. According to public information, there were no consultation meetings between the representatives of the two institutions. Moreover, the relationship was strained between the two so much so that now we find ourselves in the situation in which the PNL leadership has publicly stated that it wants to change the leadership of this institution. During 2020, in several public outings, members of the Government accused the Ombudsman, saying that the notifications that were made by the institution, served only to "undermined the efforts to contain the effects of the pandemic".

The prolonged pandemic also brought out the "pandemic fatigue", the angry reaction of people tired of restrictions. Out of anger and fatigue, citizens remember their rights and freedoms and oppose the restrictions imposed by the authorities, sometimes in an absolute and morally questionable manner.

We believe that the pandemic was a test for public authorities not only in terms of managing the medical crisis, but also in relation to freedoms and human rights. More than a year after the start of the state of emergency, we find that the reflex of public institutions is rather to exclude citizens and non-governmental organizations from the dialogue. We see how public authorities have failed to fulfill their public interest mandate and, instead of using transparency to build citizens' trust, at a time when conspiracy theories are easily taking over social media and even national media, they took the meaningless and ineffective approach (from our point of view) of concealment, closure of communication channels and sometimes arrogance and even institutional brutality (vis-à-vis vulnerable communities). In times of crisis we can see the true colors of elected officials and members of Government, because extreme circumstances make possible the situations described by us in this report, but also situations that strengthen citizens' trust, and this turns them into valuable partners in the challenges presented by this pandemic. The choices made by public institutions in relation to decision-making transparency and human rights last year are proof that the reflex of democracy is still a desideratum for Romania.