



Brief Considerations Regarding the Concept of Rule of Law in the Context of the Covid-19 Global Crisis¹

Mihaela Agheniței², Andreea Elena Matic³

Abstract: In the present paper we aim to analyse some aspects in which the COVID-19 pandemic generated a crisis regarding the application of the rule of law. First, we will refer to some general aspects regarding the content and importance of rule of law concept in democratic societies. Then, taking into account the fact that the law regulates situations that occur in real life, in society, we will discuss the fact that the COVID 19 pandemic situation generated circumstances which had not been foreseen by the democratic states authorities and this generated an actual global crisis. This crisis affected the rules regarding the good governance. As the pandemic is approaching its end, our societies are not yet prepared to enforce new necessary aspects of the rule of law. Also, we will refer to the fact that the year 2021 was the third year in a row in which WJP Rule of Law[®] reported that the rule of law scores of several countries have declined rather than improved.

Keywords: rule of law; COVID 19 pandemic; good governance; democracies; public crisis

1. Introduction

When United Nations was created, in 1945, the organisation was based on three pillars: international peace and security, fundamental human rights and development. Today, almost seventy-five years later, the complex political, social and economic transformation of modern societies has brought new challenges and

¹ This paper is financed out of the funds of the project unfolded by the “Dunărea de Jos” University from Galati with the title: “Society based on democracy and common values”, financing Contract no. RF 3638/30.09.2021.

² Lecturer PhD, “Dunarea de Jos” University of Galati, Romania, Address: Domneasca Street no. 47, Romania, member of the Legal Research Institute – Romanian Academy, ESIL member, ELI member, Corresponding author: mihaela.agenitei@ugal.ro.

³ Associate Professor, “Dunarea de Jos” University of Galati, Romania, Address: Domneasca Street no. 47, Romania, E-mail: emirica@ugal.ro.

opportunities that require a collective response that must be guided by the rule of law, as it is the foundation of friendly and equitable relations between states and the base of all correct societies.

For the United Nations (UN) organisation, the rule of law is considered to be “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”¹ (Report of the [United Nations] Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)). Also, the states have to enshrine laws which are consistent with international human rights and individual freedoms norms and standards. Each state has to enforce measures in order to ensure the compliance with the rule of law principles, equality and accountability to the legal norms, fairness in law application, respect for powers separation, avoidance of arbitrariness and transparency in legal procedures.

According to an official definition, the rule of law concept is a “mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government, and more generally prevents the arbitrary use of power” (Choi, 2022, www.britannica.com).

2. The Rule of Law

The rule of law concept is fundamental in democracies and also for international peace and security as well as to political stability, it is important in order to achieve economic progress, development of societies and to protect people's fundamental rights and freedoms. It is fundamental for people's access to public services, reducing corruption, limiting the abuse of power and establishing the social contract between people and the state. It is the base itself for a life in which the human rights and fundamental freedoms are actually respected and guaranteed by

¹ Report of the [United Nations] Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616, available at <https://libguides.bodleian.ox.ac.uk/law-const/rol>, accessed on 15.09.2022.

the authorities. The rule of law and development are closely linked, and strengthening the rule of law of the law-based society should be considered as an outcome of the 2030 Agenda and the Sustainable Development Goals (SDGs)¹ (<https://www.mae.ro/node/35919> accessed on 26.06.2022).

In addition, in particular, Goal 16 is a goal to enable Member States to generate policy changes at national level that make progress on other SDGs. Developing inclusive and accountable justice systems and rule of law reforms will provide people with quality services and build confidence in the legitimacy of their government. This approach should address the needs of individuals and groups and their meaningful participation from the outset, paying particular attention to those historically marginalized and at risk of being left behind. This includes preventing serious human rights violations, achieving credible accountability for those responsible at national and international levels, and empowering individuals and communities to use justice mechanisms to protect their fundamental human rights.

The rule of law is an important component of sustaining peace, as the General Assembly and the Security Council have argued in two resolutions on the review of the peacebuilding architecture. Sustaining peace requires an integrated and comprehensive approach within the UN system, based on coherence between political, security, development, human rights, gender equality and rule of law activities in support of efforts led by Member States.

Rule of law issues include emerging and critical problems such as: the proliferation of hate speech and incitement to violence, prevention of radicalization/violent extremism, climate change and the environment impacting people's security and livelihoods, prevention of wars and the complexity of artificial intelligence and cybercrime.

3. The Crisis Regarding the Application the Rule of Law Principle

Almost unpredictable, the COVID-19 pandemic appeared at the beginning of the year 2020, and changed life as we knew it. As it was all very new, one of the consequences was that the new situations which were potentially very dangerous for human life and public health were not legally regulated as they had not been foreseen by the legislators. Generally speaking, the law is enshrined in order to

¹ Agenda and the Sustainable Development Goals (SDGs) <https://www.mae.ro/node/35919> accessed on 26.08.2022.

regulate social relationships or situations in order to allow the exercise of human rights and civil rights for all the members of a society. Suddenly, from one day to another, all democracies (and not only democracies) faced this crisis: a new situation with no prior regulation. At the same time, some gaps in the rule of law already existed and this was considered a high risk for the spreading of the COVID-19 pandemic and undermine the States' ability to respond effectively to the pandemic and for the authorities to be able to save as many lives as it would be possible.

According to World Justice Project¹, “the rule of law is an enduring system of laws, institutions, norms and community engagement that provides accountability to both government and private actors, fair laws that protect fundamental rights, open government, and accessible justice. [...] In a strong democratic society of the rule of law, these four principles intersect to ensure that citizens have effective, transparent, and accountable institutions that can defend the right to life, liberty, ensure public safety, including public health and facilitate prosperity.”

Evidence shows that there is a correlation between the rule of law and public health. People who live in countries where the rule of law is organised better have lower rates of maternal and infant mortality, longer life expectancy and lower incidence of chronic disease. The rule of law nurtures trust in institutions and sustains a social contract between citizens, both indispensable to solving a public health crisis like the COVID-19 pandemic where a collective approach is the only way to contain and control the disease. (Gillet, 2020).

In a period of deep crisis such was the COVID-19 pandemic, it was necessary for the states to have a strong legal system and a powerful rule of law in order to be able to save as many people as possible and to have financial means which were necessary for the health system. But, For the third year in a row, the recently released 2021 WJP Rule of Law® Index reported that more countries' rule of law scores have declined rather than improved.

The proper exercise and protection of the human rights is threatened when new emergency laws appear and they impose not to communicate important information such as those regarding the spreading of a dangerous virus. Good public health practice requires adequate information which are needed in order to protect the people. We need to know what to do and how to do it. If the specialists are not yet

¹ World Justice Project, available at <https://worldjusticeproject.org/about-us/overview/what-rule-law>, accessed on 15.09.2022.

sure about the details and treatment the population must be advised to be careful in order not to get sick. Hiding vital information may prove to be an actual crime. Also, of course it is not recommended to frighten the population with unnecessary and uncertain information. But the line between these two actions is very thin and the authorities must carefully choose what to communicate publicly.

As there are involved and necessary a lot of money in order to keep the population health at a normal level, there are also many cases of corruption. The corruption problem was already high in the public health department before the pandemic. In a 2019 report, Transparency International estimated that corruption in the health sector costs \$500 billion a year globally¹. As it is to expect from a health crisis, the pandemic only increased the amount of money that the states lost to corruption. This unfortunate situation created opportunities for price gouging, scams involving sale of defective or counterfeit goods, and bribery. The normal mechanisms of fighting corruption were delayed because the virus was a very serious menace to public health and people lives.

Moreover, during the pandemic the access to justice became very difficult. For a period of time, at least in Romania the litigations were suspended, the judge's decisions failed to appear. The World Justice Project estimated that "5 billion people globally have unmet justice needs. This global justice gap includes 2.1 billion people employed in the informal economy, 2.3 billion who lack evidence of housing or ownership over land and 1.4 billion people who have unsatisfied civil problems, or administrative justice needs – people who have been unable to resolve day-to-day legal issues such as land, housing or employment issues, family disputes, debt or consumer problems"².

The economic crisis generated even more justice needs, especially for the poor communities, people whom lacked legal identity, a home, employment and access to emergency assistance. Meanwhile, according to World Justice Project, under-resourced justice institutions, many of which are operating at reduced capacity due to the pandemic, risk falling further behind³.

A weak rule of law decreases the peoples trust in state institutions and this also had

¹ Health, Transparency International, available at <https://www.transparency.org/en/our-priorities/health-and-corruption> , accessed on 15.09.2022.

² Measuring the Justice Gap, World Justice Project, available at <https://worldjusticeproject.org/our-work/research-and-data/access-justice/measuring-justice-gap>, accessed on 15.09.2022.

³ World Justice Project, available at https://wikicro.icu/wiki/world_justice_project, accessed on 13.09.2022.

a negative impact in fighting the pandemic. As we mentioned before this was a serious problem in the matter of spreading the information regarding the virus. “Timely, accurate and reliable information is critical to an effective response, yet governments that restrict access to information and free expression or otherwise impede checks on authority may not be reliable sources of such information.” (Rosca, 2020).

The main problem of disinformation was due to the attitude of the Chinese authorities' whom tried to hide the vital information as long as they could and this led to a high degree of infection for many people around the world. Unfortunately China was not the only state with such attitude, many leaders choose to hide the number of cases at the beginning. “Where leaders have been honest about the onerous measures needed to keep people safe, as in New Zealand, contagion has demonstrably slowed.” (Pompeo, 2020).

4. Recovery Opportunities

Still, the pandemic also created the necessity and opportunity to make reforms, to digitalise the society and the public services, and this will probably have a positive impact on population. In this way, strengthening the rule of law is an essential aspect for a healthy society.

World Justice Project will continue to share the latest analysis and recommendations on how to ensure that, as our societies recover from the Covid-19 pandemic.

5. Conclusions

After the pandemic, additional measures are required in the legislative field even if this support for the rule of law was appropriate to the previous development, for a better coordination between the situations created by this state and the socio-economic needs in order to recover the economies of the states in the European Union and beyond.

Any new situation that has such big impact on our day to day lives, on the economy, on public health and justice system shakes the very foundation of life and society as we knew it. It is not a surprise that the authorities were not prepared for such a huge crisis or that the law did not contain specific norms to guide us

through this big challenge. Still, there is a lot to learn from it, a lot to understand. Every day of the life we know and we are used to be a small miracle, we have to be prepared for changes, as the adaptable ones survive crisis. It has been like this from the moment in which the first life forms appeared on this planet. In such a complex society like the contemporary human society the principles of the rule of law must continue to be fundamental pillars and, if necessary, it has to be adjusted to new, dangerous or provocative situations.

References

*** *Transparency International* available at <https://www.transparency.org/en/our-priorities/health-and-corruption> , accessed on 15.09.2022.

*** *World Justice Project*, available at https://wikicro.icu/wiki/world_justice_project, accessed on 13.09.2022.

Choi, N. (2022) Rule of law. *Encyclopedia Britannica* available at <https://www.britannica.com/topic/rule-of-law>, accessed on 11 September 2022.

Gillet, K. (2020). Coronavirus: Romania set to ease its lockdown next month after fines pay dividends. *Euro news*, available at <https://www.euronews.com/2020/04/22/coronavirus-romania-set-to-ease-its-lockdown-next-month-after-fines-pay-dividends>, accessed on 15.09.2022.

Hulot, N. (2020). Les 100 principes de Nicolas Hulot pour un nou beau monde. *Le Monde*.

Michael, R. P. (2020) *Europe and the China Challenge – Virtual Copenhagen Democracy Summit – 19.06.2020* available at <https://www.state.gov/secretary-michael-r-pompero-at-the-virtual-copenhagen-democracy-summit/> accessed on 22.08.2022.

Roşca, M. (2020). *Disinformation fuels Romania's coronavirus spike*, available at <https://www.politico.eu/article/as-infections-grow-in-romania-so-does-corona-scepticism/>, accessed on 15.09.2022.