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COVID-19 Legal Insights



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1. GEO No. 28/2020 amending the Romanian Criminal Code

Amendments to the Romanian Criminal Code. New offenses and more severe sanctions for disregarding obligations to prevent and combat the spread of contagious diseases

The current context of the rapid spread of COVID-19 virus has led to the adoption of an exceptional and expedient set of measures, including in criminal matters, to limit the infection of the population.

These measures were taken, among other reasons, due to the recent, numerous cases where either the quarantine or home isolation measures were not observed, or false statements have been made as regards recent travels to risk areas contacts with infected persons, which might threaten the life and health of the population.

Government Emergency Ordinance No. 28/2020, published in the Official Gazette of Romania No. 228/20.03.2020, amended and supplemented the Criminal Code regarding the offense of giving false statements and hindering the fight against diseases, while also providing for a new felony: omitting to provide information on having possibly made contact with a person suffering from a contagious disease.

The amendments aim both at increasing the penalties for the already existing offences, as well as regulating alternative forms of committing the incriminated acts and aggravated forms of these offenses, with specific penalties.

Amendments brought to the offence of giving false statements

False statements, consisting in making false statements to a public official or to the institution in which he carries out his activity in order to produce a legal consequence for oneself or for another are already incriminated (Article 326 of the Romanian Criminal Code) and sanctioned with imprisonment from 3 months to 2 years or with a fine.

The new enactment increases the lower limit of the prison sentence for such offences to 6 months. A **second paragraph is added sanctioning the act of giving false statements** in order to hide the existence of a risk of infection with a contagious disease with imprisonment from 1 to 5 years, or a fine.

Amendments brought to the act of preventing the fighting of diseases

Prior to the adoption of the emergency ordinance, Article 352 of the Criminal Code sanctioned with imprisonment from 6 months to 2 years or a fine the intentional failure to comply with the measures regarding the prevention or control of infectious diseases that results in the spread of such disease, and with imprisonment from one month to 6 months or a fine the same acts if they were committed from negligence.

1. Penalties for this offense are being increased

The new legislation increases these prison terms from 1 to 5 years for intentional acts, without the possibility to apply an alternative criminal fine, and imprisonment from 6 months to 3 years or a fine if the acts are committed from negligence.

2. New modalities to commit the offence are introduced

The ordinance introduces a new modality of committing this offence: the failure to comply with quarantine or hospitalization measures to combat infectious diseases; this offence is punished by imprisonment from 6 months to 3 years or a fine.

The new form of incrimination defines "*quarantine*" as restriction of activities and social separation, in specially designated spaces, of persons who are sick or suspected of sickness, in a way that prevents a potential spread of the infection or contamination.

These provisions are to be interpreted in conjunction with [Order No. 414 of 11 March 2020](#) establishing quarantine measures for the persons undergoing the international public health emergency situation caused by the infection with COVID-19.

According to Article 1 of the Order, quarantine includes both the institutionalized quarantine measure in specially designated spaces, and isolation at home.

The institutionalized quarantine consists of isolating the asymptomatic persons entering the territory of Romania from the areas with extended community transmission affected by COVID-19 (red area), for a period of 14 days in specially designated spaces made available by the local authorities. The quarantined person may be relieved after 14 days if clinically healthy and after performing two tests for COVID-19 at a minimum interval of 24 hours, with negative result.

Authorities may declare quarantine in a community if more than three cases of infection with the new coronavirus are identified and have an epidemiological link among them. The quarantine of a community represents the isolation of a specifically defined area where entering and leaving are forbidden.

Home isolation is a measure imposed upon persons who:

- Have travelled in the last 14 days to areas affected by COVID-19, other than those with extended community transmission (yellow area);
- Have come in direct contact with people showing symptoms and who travelled in areas with extended community transmission;
- Have come in direct contact with people who have been confirmed to be infected with the coronavirus (COVID-19);
- Are family members of a person who falls into one of the above situations.

For the time being, the general obligation for the citizens to limit leaving their home as much as possible is provided only by way of a recommendation, therefore its violation will not have criminal consequences; however, the persons who violate the quarantine measures or the measures imposed by hospitalization will be held liable under criminal law.

The new ordinance **also incriminated the acts of intentional transmission of an infectious disease** by a person of carrying the disease, the punishment for such offense being imprisonment from 2 to 7 years.

The attempt is punishable, and, where the consequences consisting of bodily harm or the death of another, the penalty consists in imprisonment from 3 to 10 years (bodily harm caused to one or more persons) or from 7 to 15 years (death of one or more people).

3. Aggravated forms for grave consequences

The law also provides for the **aggravation of penalties if the above offenses have resulted in bodily harm or death of one or more persons**. These grave consequences may occur without the intent of the perpetrator of the crime, who did not pursue them. Otherwise, the perpetrator will be held responsible for committing bodily harm or murder in conjunction with the offense of hindering the fight against diseases, the sanction being the highest prison sentence set for one of the offences, to which one third of the prison sentence for the other offence is added.

Bodily harm means having inflicted one or more of the following on the victim:

- An impairment;
- Health impairment of an individual the healing of which required more than 90 medical care days;
- A serious and permanent aesthetic injury;
- Endangering the individual's life.

The number of days of medical care is not limited to that of the days of hospitalization of the patient in a public hospital, but is determined through a forensic expert report. Also, infection with the new coronavirus can irreparably affect the respiratory system and endanger the lives of vulnerable people, which could lead to the above conditions being met.

The penalties for these consequences are drastic, namely imprisonment from 2 to 7 years in the case of bodily harm, and from 5 to 12 years if the acts lead to the death of one or more persons.

Introducing a new felony. Failure to disclose information

The new legislation provides for a new offence, punishable by imprisonment from 6 months to 3 years or fine, which consists of the act of the person who omits to divulge - to the medical professionals or to a public official or to the institution in which they carry out their activity - essential information regarding that person's having possibly come into contact with an infected person carrying an infectious disease.

Thus, the law requires all persons to inform the doctors or other public officials, voluntarily, that it is possible they have come into contact with persons infected with the new coronavirus.

The law does not explain what qualifies as essential information. Essential information may concern the identity of the possibly infected person, the place and time of contact, if and what symptoms they manifested, or other such data.

Nor is the *possibility of having come into contact with an infected person* defined. It seems that this does not require a positive diagnosis of Covid-19 infection, and a presumption that the person was infected is enough.

Also, criminal liability is not conditional upon the consequence of the person having infected herself or others. Individuals can be criminally liable for the mere omission of disclosure, even if they receive a negative diagnosis after a clinical examination.

manuela.gornoviceanu@tuca.ro

Editors

COVID-19 - Legal Insights is our response to the COVID-19 outbreak. We shall keep you informed on the various legal challenges posed by the coronavirus, thanks to a dedicated practice group comprising lawyers with different backgrounds, such as compliance/regulatory, corporate and commercial, insurance, labour and employment, litigation and arbitration, insolvency, public procurement, data privacy, tax and customs. In addition, our taskforce offers strategic advice on crisis-specific matters: corporate restructuring, review and (re)negotiation of agreements (including collective bargaining agreements and individual employment contracts), performance of the contracts which are affected by force majeure and hardship, unblocking pre-litigation relationships, etc. To be up to date with the news in these matters, you may access the resources available at the following link: <http://www.tuca.ro/covid-19/>



Manuela Gornoviceanu
Managing Associate
+4 021 204 88 90
manuela.gornoviceanu@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro

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