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COVID-19 Legal Insights



In this issue:

1. Emergency Status in Romania

National Emergency since Monday. What should you expect?

At the time of writing, the Romanian authorities are expected to declare emergency status on Monday, 16 March 2020, in order to combat the spread of the Covid-19 epidemic. This document is intended to summarize the current legislation on the emergency status and the measures which could be enacted by the Romanian authorities. Our comments rely on the current legislation as it exists today. We expect however the Government to pass new legislation as the emergency status will be officially instated. We reserve the right to update this document once such new legislation becomes public.

1. Applicable legislation

The declaration of an emergency status is unprecedented in living memory for democratic Romania and the existing legislation has remained so far untested.

An emergency status (Romanian: “stare de urgență”) may be declared pursuant to the provisions of the Constitution of Romania and of Government Emergency Ordinance no.1/1999. A different, albeit somehow similar legal concept is “emergency situation” (Romanian: “situație de urgență”), which is governed by Government Emergency Ordinance 21/2004.

2. How is the emergency status declared

The power to declare an emergency status belongs to the President of Romania. The emergency could be declared nationwide or only for certain local communities. We can expect however the emergency to be announced for the whole territory of Romania.

The Parliament needs to ratify to measure ordered by the President within 5 days.

The grounds for declaring an emergency status are the existence of grave or imminent danger for the national security or the functioning of constitutional democracy or the actual or imminent occurrence of a calamity (Article 3 of GEO 1/1999). Epidemics are not specifically listed among the reasons which justify the enactment of an emergency status. However, in the current context, we may expect either an amendment of the current legislation or an expansion of the concept of national security in order to encompass threats such as the Covid-19 epidemic.

An emergency status can exist for a maximum of 30 days. It is unclear whether this limit applies only to the initial duration of the emergency status or includes any subsequent extensions.

3. What the upcoming decree must provide

The decree establishing the emergency status must include, among other things, the following:

- a) The time period for the emergency status;
- b) The first urgent measures to be taken;
- c) The fundamental rights and liberties to be restricted;
- d) The military and civil authorities tasked to enforce the provisions of the decree and their powers.

4. What the authorities can do

The short answer is that once an emergency status is declared, the executive can do pretty much everything, subject to the observance of a requirement for proportionality of the measures taken and of particular limits placed in respect of the protection of certain fundamental human values, such as life and dignity.

The decree establishing the emergency status shall indicate which powers of the Government or of the local authorities are transferred to the military or other public authorities. Depending on the legal basis which is chosen for the establishment of the emergency status, the main coordinator for the implementation of the measures ordered by Presidential decree shall be either the Ministry of Internal Affairs or by the National Management System for Emergency Situations.

The authorities tasked by Presidential decree to fulfil duties in relation with the emergency status may issue military ordinances or orders, which shall be mandatory.

5. The authorities may resort to searches, requisitions or censure of mass media

The specific measures which the authorities may take include the following:

- a) Traffic restrictions for vehicles and persons. The authorities may issue safe conducts for certain individuals;
- b) Perform searches on persons or of any places. There appears to be no requirement for the issuance of prior search warrants;
- c) Perform random police raids;
- d) Restrict public assemblies;
- e) To order evacuations;
- f) To establish safe areas for evacuated persons or refugees;

- g) Order closure of any public locals, restaurants, clubs, gas stations, premises of associations etc.;
- h) To order the temporary suspension of any publication or any TV or radio broadcast;
- i) To ensure military guard of essential utilities, of public TV and radio stations and of economic agents which hold facilities of national strategic importance. As needed, interruptions of supply of gas, energy and drinking ordered may be ordered as well;
- j) To order rationing of food and essential products;
- k) To issue military ordinances or orders;
- l) Individuals able to work may be called to render services of public interest.

Also, the authorities may order the requisitions of certain assets.

The perpetration of criminal offences during the emergency status is generally defined as an aggravating factor and will result in increased prison sentences. Crimes such those against state security shall be indicted by military prosecutors and courts.

6. Continuity of essential services

Public authorities and the economical agents (public or private owned) acting in energy, health care, agriculture and food, water utilities, communications and transport have the obligation to ensure essential services for the population and the military.

7. Need to observe proportionality of measures

Under an emergency status the authorities receive wide and extraordinary powers which entail serious restrictions of the rights belonging to individuals and businesses. The authorities must however observe the provisions of Article 53 of the Constitution, which requires that any restriction placed on the exercise of fundamental rights is valid only insofar as it necessary in a democratic society, is commensurate to the situation which justifies the restriction, is applied in a non-discriminatory way and without impairment of the existence of the rights or liberties in question.

8. What the authorities cannot do

No revision of the Constitution is possible during the existence of the emergency status (Article 152 of the Constitution). There can be no restriction of the access to justice or any criminal convictions in for offences not foreseen by the national or international laws. Also, torture and inhuman or degrading treatment are prohibited (Article 3² of GEO 1/1999).

We note however that except fundamentally urgent cases, there is no currently effective access to justice as most of the courts stopped or severely limited their work with the general public and lawyers may be subject to quarantine or home confinement restrictions.

9. What we can do to give you support

We feel that it is our duty to make any efforts possible in order to keep the economy going and ensure the welfare of our clients and our team. Consequently, we have established certain measures which enable us to serve our clients without any disruption. Many members of our staff are already experienced users of remote work facilities and we have rolled out a program which made remote work a rule at all levels. Wherever possible, meetings will be held online in order to reduce the exposure to possible infections.

cornel.popa@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 keep abreast of developments, please feel free to regularly check our dedicated online resource: <http://www.tuca.ro/covid-19/>



Cornel Popa
Partner
+4 021 204 88 94
cornel.popa@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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