

RIGHTS AND LIBERTIES OF THE HUMAN BEING WITHIN THE DEMOCRATIC SOCIETY IN-BETWEEN ALLEGEDLY EXCESSIVE IMPORTANCE AND LACK

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Abstract:

During the recent couple of years the objectiveness of reality has situated each of the human beings from this planet in front of some eventual circumstances which have determined all of us to take into a serious consideration a few rather complicated existential issues. In respect to these issues the various found answers have come to generate a worldwide spread trend of social discomfort turned into grief; or this intense but however still fuzzy inner sensation has further come to often materialize itself through some social movements carried on throughout the streets of various localities which have been also accompanied by some violent manifestations. We have therefore to remark the existence of a rather surprising fact namely the one that the respectively invoked motivations of these manifestations have been less related to economic issues – such as the size ranges of the granted wage rights or the lack of jobs – since the expressed griefs assumed by those participants did instead concern the restrictions which had been de facto operated within the respective spheres of some among their own fundamental rights and liberties. Since we have to take into consideration the fact that the usual dimensions of an ordinary paper destined to a journal could in no way at all allow us to exhaustively discuss the typological multitude of figure cases which could involve the outburst of social griefs we have thus chosen to analyze two situations only. The former studied case is the affliction which could be brought to the citizens' own fundamental rights and liberties through the excessively noisy proclaiming of the rights to which are entitled some minorities. The latter studied case to which we have by the way chosen to allow an extreme importance is the one of the limitations which have been brought to the citizen's own fundamen-

tal rights and liberties while justifying these limitations through the invoked ground of the chosen public health policies to be applied as actions to be taken in order to strive against the so-called “COVID-19 pandemics” which has been generated by the “acute severe coronavirus 2 respiratory failure syndrome (SARS-CoV-2)”¹.

The present work does include a few opinions which do make references towards the modalities of social action which have been chosen as most appropriate to be taken by the entities to which are imparted by the law the respective decision-making competencies insofar the citizens’ own fundamental rights and liberties could be concerned should these respective entities be situated at the national level, at the E.U.’s level and worldwide. Since these entities have initially been vested with their respective powers in order to take actions from which the individual human person should only benefit the current and effective extent is thus analyzed until which the above mentioned individual human person does indeed continue to be the real beneficiary of the concretely taken actions. The present work does attempt to offer a possible answer brought to the by now acutely arisen question: until where could the state be entitled to intervene by its actions taken in order to restrict some among the citizen’s own fundamental rights and liberties in virtue of the explicitly declared intentional motivation of protecting and standing as the warrant of the same citizen’s own fundamental rights and liberties? The regulatory actions which had been taken and which aimed to discipline the human conduit for the purpose of protecting the same citizen’s own fundamental rights and liberties have been especially taken into consideration. The actions taken in respect to this matter by the entities which do pertain to the sphere of public administration have as well been analyzed because their regulatory taken action is lawfully due to be immediately followed by the practical applying by the citizens themselves of the concerned juridical norms with the support duly brought to this effect by the public administration’s personnel. The issue has also been analyzed of what respective parts should play the civic training as well as self-imposed discipline throughout the respective social processes of protecting and warranting for the citizen’s own fundamental rights and liberties in the respective cases of both small and extended human collectivities; this was done in view of the fact that the deeds of each among the individual human persons are eventually determined by her own perspective upon and understanding of the philosophical concepts of owned fundamental right and liberty own fundamental rights and liberties respectively by her own possible extent of understanding the effective importance which is indeed held by each among the individual persons throughout the general circuit of the currently

1 https://ro.wikipedia.org/wiki/Pandemia_de_COVID-19

practiced social relationships. The present work does as well contain a few de lege ferenda suggestions.

Keywords: *rights and liberties of the human being, democratic society, positive discrimination, positive action, restriction.*

I. Determining motivations for the choice of the approached theme

December is the month when the Romanian people do painfully remember how immensely valuable the citizen's rights and liberties are. Some sources do state that² in December 1989 Romania had counted "totally 1.166 victims within the cities declared as martyrs: Alba Iulia, Arad, Brașov, Brăila, Bucharest, Buzău, Caransebeș, Cluj-Napoca, Constanța, Craiova, Cugir, Hunedoara, Lugoj, Reșița, Sibiu, Târgoviște, Târgu Mureș, Timișoara." These people have sacrificed themselves for freedom. In these moments each of the Romanians who was mature enough was assuming by himself the meaning of the word *freedom*, he was sensing its essence. Their life itself had come to be dissolved within the contents of this concept because the limitations which had been brought to the respective rights to free expression and free circulation as well as the various endured deprivations had come to immediately afflict their joy of living³. This is the reason why

2 https://ro.wikipedia.org/wiki/Victime_ale_Revolu%C8%9Biei_Rom%C3%A2ne_de_la_1989, visited on November 12-th 2021). As a data source made use of by the Institute of the Romanian Revolution from December 1989 is indicated the "Lista a martirilor decedați la Revoluția din 1989/List of martyrs killed in the 1989 Revolution" to be seen at the address: <http://istoria-romaniei.blogspot.com/2009/12/lista-martirilor-decedati-la-revolutia.html>.

3 Here are a few examples of specific Romanian restrictions enforced after 1981 which have been uniquely endured by the Romanian people; such restrictive examples might help us to understand why the Romanians do cherish freedom as being an extremely precious prerogative of their own.

a) The press used to be censored while the duration of the unique national TV broadcast used to be of only two hours daily. Under the title: „Istoria televiziunii în România: de la două ore de program pe zi la 750 de canale cu program non-stop/ The history of television in Romania: from two hours of programming per day to 750 non-stop channels „” published on December 29-th 2014 at 12:17 hours at the address: <https://www.digi24.ro/special/campanii-digi24/1989-anul-care-a-schimbat-lumea/istoria-televiziunii-in-romania-de-la-doua-ore-de-program-pe-zi-la-750-de-canale-cu-program-non-stop-34059> (visited on November 12-th 2021) the precision is brought that: "In 1971

into the first Communiqué to the country issued by the Council of the

has been founded at the suggestion of the much beloved Nicolae Ceaușescu the National Council of Radio and television. „From this moment on the lawfully established institution of censorship was officially watching over whatever audio-visual product. No programme could ever be broadcasted without having at first passed through the „filter” of the comrades in charge of censorship.” and that: “Due again to an order issued by Nicolae Ceaușescu the TVR broadcast duration has been reduced to only two hours a day starting from 1985 on.” About the taken decision of limiting the TV broadcast to 2 hours a day it should be useful to also see: V. Brădățeanu, “1985 – Ceaușescu a hotărât: Televiziunea Română să funcționeze doar două ore pe zi/1985 - Ceausescu decides: „Romanian Television should operate only two hours a day””, posted on 19/02/2018 at the address <https://www.rador.ro/2018/02/19/1985-ceausescu-a-hotarat-televiziunea-romana-sa-funcioneze-doar-doua-ore-pe-zi/> (visited on November 12-th 2021) a text into which is reproduced a fragment of the interview that Mrs. Virginia Călin has realized in 1997 with General Dumitru Nicolae who at that time had been the General Director of the Romanian Radio and Television and who on the respective occasion does state that: “In 1985 I have been summoned to a government session... the session was led by Dăscălescu, the prime minister. Elena Ceaușescu was also present at this session. To my surprise the following decision was placed in front of us: the Romanian Television should function daily for two hours only, between 20 and 22 hours and would be closed at 22 hours. As for the Romanian Radiodiffusion its central studios should function only until 24 hours, at 24 hours they would be closed and reopened at 6 hours in the morning. All of the territorial studios had been otherwise reduced to silence. The idea had sprung by then in my mind that Ceaușescu could be afraid that the television studios might be made use of without his own approval. So Romania had to be isolated, no one at all could be allowed to broadcast something from Romania, no problem at all could be allowed to rise because the current situation was a peculiar one which could no more be endured.”

b) Starting from 1985 on the private transportation vehicles could circulate on Sundays once only throughout a two weeks time interval while the gasolene consumption had otherwise been lawfully rationated. It practically was an alternated type of circulation: on Sundays one week could only circulate the vehicles the immatriculation plates of which did hold even numbers while next week on Sunday it was the turn of the private cars the immatriculation plates of which did hold odd numbers. See: Borcea Stefan, “Cum circulau mașinile, alternativ, pe vremea lui Ceaușescu. O duminică pe străzi erau doar autoturisme cu număr par, cealaltă duminică se circula cu impar/ How cars circulated, alternately, in Ceausescu’s time. One Sunday there were only even-numbered cars on the streets, the other Sunday there were odd-numbered cars”, posted on August 5-th 2017 at 06:04 hours at the address: https://adevarul.ro/locale/focsani/cum-circulau-masinile-alternativ-vremea-ceausescu-duminica-strazi-erau-doar-autoturisme-numar-par-cealalta-duminica-circula-impar-1_598462315ab6550cb8bce669/index.html (visited on October 12-th 2021).

c) Electric energy, natural gases and thermal energy had as well been rationated so that their respectively scheduled interruptions were gravely jeopardizing the ordinary living standards because people used to carry on living under low temperatures and into darkness. In this respect we are due to respectively mention the: Decree no 272 of November 10-th 1987 concerning certain measures taken in order to rationate the consumption of natural gases and electric energy adopted by the State Council and published in the

Front of National Salvation⁴ the item 10 of its program does state upon⁵ the promotion of the “full respect vowed to the human being’s rights and liberties including to the one to a free circulation”. In its antepenultimate paragraph the above mentioned Communiqué does also state the assumed objective worthy as an engaging promise formulated by the members of the

OFFICIAL BULLETIN no 53 of November 11-th 1987; Decree no 315 of October 13-th 1988 concerning the ensurance of the energy production, the rational use made of the electric, thermal energies and of natural gases as well as the work regime of the economical and social units during the winter period 1988-1989 adopted by the State Council and published in the OFFICIAL BULLETIN no 54 of October 14-th 1988 which in its article 9 was stating that: “all citizens are obliged to most carefully rationate the electric, thermal energies and natural gases as well as to eliminate whatever form of prodigality in their respect, to stand within the consumption normed frames and to take some strict actions in order to achieve economies out of the imparted quantities.”

d) Aliments had been otherwise rationated in accordance with the Law no 13 of December 19-th 1980 concerning the constitution, allotment and use made of by the departments of the resources for supplying the population with meat, milk, vegetables and fruits adopted by the Great National Assembly and published in the OFFICIAL BULLETIN no 111 of December 24-th 1980 as well as with the Decision no 5 of July 2-nd 1984 concerning the approval of the programme of scientific alimentation of the population adopted by the Great National assembly and published in the OFFICIAL BULLETIN no 53 of July 2-nd 1984 in virtue of which bread, sunflower oil, sugar were distributed through the use made of a rationating document. For each of the Romanian citizens one litre of sunflower oil and one kilogramme of sugar were monthly allotted while the daily bread portion was of half a loaf. This is the reason why this bygone time interval of thirty-two years is not enough to obnubilate the painful memory of such life experiences. During the recent thirty-two years the Romanians have not even come close of being fed up of the taste of their freedom, not all among them did achieve the performance of fully acquiring the ability to make a responsible use of their owned citizens’rights and liberties. As a direct consequence whatever affliction brought to the above mentioned rights and liberties would be a catastrophic action to be taken in the terms of social psychology which could generate a breaking-up of the current social equilibrium because of the fact that the subsequent effects suffered by the Romanians throughout almost 50 years of undergone tough pressure which had on purpose been exerted upon their own liberty of expression and entrepreneurial spirit could in no way be simply and suddenly dissipated. Should we take into consideration the size criteria held by history itself we would become aware of the fact that thirty-two years is a minimal lapse in time.

4 Published in the MONITORUL OFICIAL no 1 of December 22-nd 1989.

5 “10. Promotion of internal and foreign policies which should be subordinated to the needs and interests of the development of the human being, to the full respect of the human being’s rights and liberties including of the one of the right to a free circulation.”

Front of National Salvation, a chosen objective which does as well contain a component that is organically related to the human being's freedom and dignity⁶: "As we have constituted ourselves within this Front we have taken the strongest of decisions to do whatever might depend upon ourselves in order to restore the civil society in Romania and by these to guarantee for the triumph of democracy, liberty and dignity in respect to all of the inhabitants of our country".

After dozens of years spent within a totalitarian regime the Romanians have thus begun to learn how to live within freedom; or such an exercise was not at all simple not only for the ordinary citizen but neither for the personnel which was active within the structures which were then habilitated to exert the three powers functioning within the state. For example in the Constitution of Romania enforced in 1991⁷ the principle of the power' separation was an implicit result of the chosen modality through which the activity of the public authorities had newly been ruled over. After a twelve years long social practice the Constitution of Romania enforced in 1991 has been revised in 2003 in virtue of the Law no. 429 of October 23-rd 2003 for the revision of the Constitution of Romania⁸ the principle of the power separation within the state has acquired a regulation of a constitutional level through which the concept of their equilibrium has been enforced under the written form: "(4) The state is to be organized in accordance with the principle of its power separation and equilibrium – legislative, executive and judicial – within the frame ensured by the constitutionally grounded democracy."

2007 has brought another challenge into the lives of the Romanian citizens: upon the ground of the Adhesion Treaty signed on April 25-th 2005 at the Neumünster Abbey in Luxembourg. The Romanian citizens have been thus subjected to the obligation of understanding the paradox which is represented by the community's juridical order. This paradox does precisely consist in the respective facts that a supra-state structure has been edified which does rule upon the states' internal-type juridical order

6 <http://legislatie.just.ro/Public/DetaliuDocument/96559>, visited on November 12-th 2021.

7 Published in Official Monitor of Romania, Part I, no 233 of November 21-st 1991, approved through the National Referendum of December 8-th 1991.

8 Published in the Official Monitor of Romania, Part I, no 758 of October 29-th 2003.

but also that this action has been taken through the use made of some “technical and juridical means the grounds of which are provided through international treaties”⁹. The Romanian people have thus been obliged to become aware of the respective facts that the internal juridical order is defined through the lawfully enforced circumstance that the organizational pattern which is imparted to the public powers held by the state as well as their relationships with the private persons are ruled through norms which do pertain to the sphere of public law while the relationships which might exist among the private persons only are ruled through norms which do pertain to the sphere of private law since the internally enforced juridical norm is an unilateral act adopted by the legislative authority while the international juridical order does refer to the relationships which could be established among states and the appropriate regulation of which could be accomplished only through treaties made use of as juridical instruments since the treaty is defined as an “agreement among sovereign sides”¹⁰.

The free circulation of labor force into the E.U.’s community space has brought some mutations throughout its citizens’ behavior because their exigencies insofar their living standards could be concerned have increased and many among them have chosen to emigrate from Romania; yet many among them have then sent back to Romania some rather considerable sums of money destined to their families in the attempt - in most of cases successful - of ensuring for themselves too since the moment of their expected return some living standards which could be indeed compared to the ones they have encountered within the E.U.’s community countries where they had been working. This is how the Romanians have started to modify the inner core of their formerly held mentalities and the community’s values have therefore begun their integration to the Romanians’ thesaurus of fundamental values. As an unavoidable consequence of this phenomenon the Romanians have become much more attentive when they came to look at the social relationships which do exist into the E.U.’s community space. For instance media had spread some news ac-

9 Ioan Alexandru, Mihaela Cărăușan, Ilie Gorjan, Ivan Vasile Ivanoff, Cezar Corneliu Manda, Alina-Livia Nicu, Crina Rădulescu, Cătălin Silviu Săraru, *Dreptul administrativ în Uniunea Europeană. Drept administrativ comparat. Drept administrativ al Uniunii Europene/ Administrative law in the European Union. Comparative administrative law. Administrative law of the European Union*, Bucharest, Lumina Lex, 2007, p. 216.

10 Same cited source.

ording to which in a member country of the European Union a chamber of the local Parliament had adopted “an amendment according to which the school registration forms should contain the respective mentions of “parent 1 and parent 2” instead of the standard appellatives “mother and father”.¹¹

This circumstance has come to generate a lot of questions concerning the conformity of such an initiative with the respect principle devoted to the citizen’s rights and liberties as well as to the norms of morality. The legitimacy degree of this issue does indeed seem to be also elevated through the eventual circumstance that the original source itself¹² has brought in this respect the precision that both the Minister of Education from the concerned state and the speaker who had presented it had been personally opposed to the concerned normative act.

The interest proven in regard to such issues could only be accentuated due to the information according to which in another E.U.’s member state the taken action of making use within officially issued documents of the appellative mentions “parent 1 and parent 2” during the time period going from 2015 until 2019 had proven itself to be useless and that consequently the Government of the respective member state “has restored (...) the return of the terms “father” and “mother” in the official forms of the identity cards”¹³. For the concerned states the aimed purpose of implementing such measures had been the one to guarantee certain rights which

11 Anamaria Apostoiu, HotNews.ro, Miercuri, 13 februarie 2019, 16:10, <https://www.hotnews.ro/stiri-international-22971980-parinte-1-parinte-2-inlocuieste-mama-tata-formularele-scolare-din-franta-proiect.htm>, does cite as source [nouvelobs.com](https://www.nouvelobs.com), visited on November 12-th 2021.

12 „Parent 1 et parent 2”: un amendement consacre l’homoparentalité dans les formulaires scolaires”, Par L’Obs avec AFP, Publié le 13 février 2019 à 08h22 Mis à jour le 13 février 2019 à 08h41, <https://www.nouvelobs.com/education/20190213.OBS0078/parent-1-et-parent-2-un-amendement-consacre-l-homoparentalite-dans-les-formulaires-scolaires.html?fbclid=IwAR031MYEW3y-reDdGJQj9eINJw7IG1RjgJ0LGcxan8UUfjVY9V1WicMJDKY>, visited on November 12-th 2021; “The Minister of Education Jean-Michel Blanquer and the speaker Anne-Christine Lang (LREM) have issued a negative notification upon this amendment through the issued objection that the requested change does not pertain to the legislative domain.”.

13 „Tată și mamă revin în formularele oficiale din Italia și înlocuiesc mențiunile ‘părinte 1’ și ‘părinte 2’, valabile din 2015”, <https://www.digi24.ro/stiri/externe/ue/tata-si-mama-revin-in-formularele-oficiale-din-italia-si-inlocuiesc-mentiuunile-parinte-1-si-parinte-2-valabile-din-2015-1109183>, Digi 24 HD, 05.04.2019 16:42, does cite as source: Agerpres, visited on November 12-th 2021.

are imparted to certain minorities.

Since these measures had been taken at the national level only and within certain states only the preoccupation for understanding this phenomenon could only rise until a rather moderate level of interest; yet there also are some news through which we could become aware of the fact that the European Parliament has elaborated an internal guide “meant to help the personnel of this institution in its communication process concerning items like disabilities, sexual minorities and issues which do pertain to race, ethnicity and religion”¹⁴, guide into which the recommendation is brought to avoid the uttering of the words “mother” and “father” even into the official documents issued at the European level instead of which the use made of the term “parents” should be indicated while in the meantime the European Parliament itself has brought precisions about this issue¹⁵; or then in order to understand its motivations and consequences – should these either be immediate or far away in time – our preoccupation and degree of manifested interest could only increase.

The latter studied case to which we have by the way chosen to allow an extreme importance is the one of the limitations which have been brought to the citizen’s own fundamental rights and liberties while justifying these limitations through the invoked ground of the chosen public health policies to be applied as actions to be taken in order to strive against the so-called “COVID-19 pandemics” which has been generated by the “acute severe coronavirus 2 respiratory failure syndrome

14 Sorina Ionaș, „Parlamentul European: Cuvintele ‘mama’ și ‘tata’ ar trebui evitate în documentele oficiale la nivel european”, <https://stirileprotv.ro/stiri/social/parlamentul-european-cuvintele-mama-si-tata-ar-trebui-evitate-in-documentele-oficiale-la-nivel-european.html>, 18-03-2021 19:03, visited on November 12-th 2021.

15 G4media.ro, «Precizările Parlamentului European, după ce un eurodeputat italian a declarat că PE ar fi realizat “ghidul limbajului sensibil” de uz intern care interzice utilizarea termenilor de “mama” și “tata”», <https://www.g4media.ro/precizarile-parlamentului-european-dupa-ce-un-eurodeputat-italian-a-declarat-ca-pe-ar-fi-realizat-ghidul-limbajului-sensibil-de-uz-intern-care-interzice-utilizarea-termenilor-de.html>, March 18-th 2021, visited on November 12-th 2021: “The European Parliament does inform through a communication published on Thursday by its Bucharest office that at the level of the institution an “internal glossary” does exist the purpose of which is to ensure the use of a non-discriminating and inclusive language, which does recommend the strict use made of the term “parents” in the context of administrative forms and which is especially addressed to the E.P.’s translators.”

(SARS-CoV-2)¹⁶. Our analysis is fully justified by the restrictions operated upon the citizen's rights and liberties through the declared enforcement of the state of emergency or of the state of alert the invoked reason for which is the one that the public interest should be primordial which does consist in the protection to be ensured to the citizens' lives. Another determining motivation for the choice of our theme is the imminent introduction of the green certificate for the access at the citizens' working places; or this action once taken could indeed endanger the exercise of the right to work by the not vaccinated individual persons.

II. Impact exerted by positive discrimination upon the citizens' own rights and liberties

In a lot of situations the concept of positive discrimination does indeed seem to be taken into consideration as being an appropriate mean of social regulation and even more that is to say as the plainly said miraculous procedure through which the ones who ought to be protected do effectively become so. From the mass-media we do find out for example that: "In 2020, after having noticed a decrease of the number of women who were present within the boards of the companies which were listed at the Dax stock exchange market Germany does institute a minimal ratio and does as well prohibit the existence of such exclusively masculine boards."¹⁷ We do also find out that: "Positive discrimination for the benefit of the handicapped workers does exist in France since a few years ago. It is applied in the domain of occupying the labor force – for example through the system which has been enforced in virtue of the law issued on July 10-th 1987 which does impose to all of the private employers and furthermore since 2005 to all of the state administrative services as well as to all of the public units which are profiled upon science, technology or culture a compulsory obligation to hire which is equal to 6% of the reattributed labor force"¹⁸ respectively that: "In 1990 the French Defence Minister Jean-Pierre Chévènement has published a promotion directive concerning the preferential access of the

16 https://ro.wikipedia.org/wiki/Pandemia_de_COVID-19

17 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-23, visited on November 12-th 2021.

18 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-25, visited on November 12-th 2021.

YFMO (young French of a Maghrebian Origin) to drivers licenses and to superior professional situations thereby for the detriment of the people who are not parts of the YFMO.”¹⁹. About the current access to academic training in France we do find out that: “Since 2001 the Institute of Political Studies (IPS) from Paris was one among the first ever institutions to found a positive discrimination program in France – namely the Priority education conventions (PEC) – launched by the Director Richard Descoings and placed under the direct responsibility of Cyril Delhay. A special admission procedure has been instituted for the high school pupils who do come from a Priority Teaching Zone since they are exempted from the admission examination and they are thus recruited upon the grounds of a forwarded request followed by an interview.”²⁰ Insofar positive discrimination could be concerned within the United Kingdom of Great Britain we are therefore informed that: “Positive discrimination has been lawfully prohibited even since 1976 yet due to a certain subtleness of the concerned law criteria such as the ethnic origin and the religious beliefs might still constitute selective elements throughout the recruitment process. Administrative services such as the police forces could be enabled to grant their preference towards non-white candidates (groups which are locally also known as “visible minorities”) but should only their respective equal qualifications.”²¹ We have on purpose chosen our examples from three countries which are defined by the existence within them of some both ancient and steady democratic regimes, countries which do indeed deserve to be acknowledged as real representatives of the European culture.

We are therefore raising the following question: is it or not suitable to speak of both positive discrimination and negative discrimination? Is it both moral and legal to institute a chosen discriminating procedure which should *a priori* be designated as positive and by this fact itself to try to endow it with a *sui generis* legitimacy as if its qualifying as “positive” should by itself annihilate the essence of the concept which is none other than the effectively fulfilled action of discriminating?

19 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-26, visited on November 12-th 2021.

20 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-LeMonde3-27, visited on November 12-th 2021.

21 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-34, visited on November 12-th 2021.

As we have already stated in respect to another context²² discrimination does mean “difference, distinction established among several elements”²³. Doctrine has otherwise defined non-discrimination as²⁴ “an equal treatment provided to the sides should these find themselves within identical and/or comparable situations”. Insofar the definition of the concept of “positive discrimination” could be concerned the opinion has been expressed that it could be understood as being: “the fact of treating better a given category of population about which the appreciation does exist that it is systematically discriminated”, favoring which ought to be “temporary in view of restoring the equality of chances”²⁵.

Should we then analyze the definition provided by the *Dicționarul explicativ al limbii române/ Explanatory dictionary of the Romanian language*²⁶ according to which: “DISCRIMINĂȚION, *discriminations*, f. n. Action of *discriminating* and its result. 1. Difference, distinction operated among several elements. 2. Policy through which a state or a category of citizens of a state are deprived of certain rights on the grounds of some ill-founded considerations. ◇ *Racial discrimination* = segregation. – *Apud* Fr. **discrimination**, Lat. **discriminatio, -onis**”. The above mentioned question does thus persistently rise again: “Is it or not suitable to speak of both positive discrimination and negative discrimination?” Insofar this issue could be concerned in *Le Grand Dictionnaire terminologique*²⁷ an opinion

22 Alina Livia Nicu, *Fenomenul administrativ și integrarea socială a romilor. Discriminarea pozitivă – un mijloc real de integrare socială?/ The administrative phenomenon and the social integration of the Roma. Positive discrimination - a real means of social integration?*, Editura Sitech, Craiova, 2014, pp. 72-83

23 *Dicționar explicativ al limbii române/ Explanatory dictionary of the Romanian language*, Bucharest, Univers enciclopedic, 1998, p. 307.

24 Octavian Manolache, *Drept comunitar/Community law*, III-rd edition, Bucharest, All Beck, 2001, p. 29.

25 http://fr.wikipedia.org/wiki/Discrimination_positive, cited in Alina Livia Nicu, *op. cit.*, p.72 and revisited on November 29-th 2021.

26 *Dicționar explicativ al limbii române/ Explanatory dictionary of the Romanian language*, Bucharest, Editura Academiei Republicii Socialiste România, 1975, p.269.

27 According to https://fr.wikipedia.org/wiki/Le_Grand_Dictionnaire_terminologique, visited on November 12-th 2021 *Le Grand Dictionnaire terminologique* is the successor of the database *Banque de terminologie du Québec* (BTQ) which “is a terminological dictionary elaborated by the Office québécois de la langue française which does contain more than three million French and English terms (as well as Latin terms used for taxonomy and medicine) in more than two hundred activity domains.” which was

is expressed to which we agree. In accordance with it: “the expressions positive *discrimination* and *reversed discrimination* are not recommended even though they might be found within some specialized texts because they are not suitable. In French the word *discrimination* does since the beginning own a negative connotation; it does designate the fact of separating a social group from the others by treating it worse. Discrimination does thus stand versus equality should it be positive or negative.”²⁸ From the analysis of the above presented definition the fact does clearly appear that in Romanian too – where the word has entered through the French path – the same negative connotation of the concerned word does indeed exist *ab initio*. The logical and immediate conclusion to be drawn from it should be the one of the choice to make use of some more suitable expressions such as the ones which have been already suggested: “positive action”²⁹, “indiscrimination”³⁰, “corrective actions *versus* inequalities”³¹.

In our own opinion for the case of the Romanian language the optimal solution should be the one of making use of the word *antidiscrimination* the definition of which ought to be: “ANTIDISCRIMINĂȚION, *antidiscrimination*, f. n.: Action of preventing discrimination or removing an already existing discrimination and its respective result. 1. Removal of whatever possible different treatment exerted among several elements of the same kind which do find themselves in identical or similar situations. 2. Policy through which a state

realized in order to be “the most comprehensive resource for translating technical terms from English in Canada.”, a free access resource on Internet.

28 http://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id_Fiche=2068644, visited on November 12-th 2021.

29 At the address http://gdt.oqlf.gouv.qc.ca/ficheOqlf.aspx?Id_Fiche=2068644, visited on November 12-th 2021 the positive action (action positive) is defined as being: “A coherent set of actions taken in order to eliminate the discriminations suffered by a group of persons and in order to bring a remedy to the de facto unequal situations through the temporary granting of certain preferential advantages especially insofar recruitment could be concerned” the precision being also brought that: “The main target groups for the affirmative action are the women, the visible minorities and the persons with disabilities”.

30 Which is taken into consideration as being a synonym to the term of equalitarianism .https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-3, visited on November 12-th 2021.

31 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-4 visited on November 12-th 2021 does cite Amandine Gay, « *Ouvrir la voix* » pour la donner aux femmes noires » on the YouTube Médiapart channel, 2017.

or a category of citizens of a state are protected from whatever form of discrimination.”

Should we then look at it from the purely historical perspective the appearance of the concept of *positive discrimination* is by itself a...positive fact; it's just that in our own days the current evolution of social relationships has reached to a status where we do appreciate that its use is no more optimal. The appearance process of the expression *positive discrimination* is thus geographically situated in the United States of America³². Positive discrimination “has been created in the United States during the late sixties not just for the descendants of slaves but as well for all the citizens who were discriminated through criteria pertaining to gender or to ethnic origin”³³. Positive discrimination had been wished for as a solution able to eliminate the unfavorable situations in the respective cases of: “employment, attribution of public utility contracts and admission to selective academic training institutions”³⁴. According to the generally acknowledged opinion it was the American president John Fitzgerald Kennedy who for the first time ever has made use of the concept of “*Affirmative action*”³⁵ and then its use has been taken over by his successor Lyndon Baines Johnson. The cited source³⁶ does indicate the fact that during the bygone time the former usefulness held by this concept is no more actual because even since 2000 the current and effective situation has changed in respect to 1960. As a matter of fact the Supreme Court of the United States of America itself has taken into consideration as being not legally grounded the concept of *positive discrimination* in 1978 (the Bakke cause³⁷). In 1996 the Ameri-

32 http://fr.wikipedia.org/wiki/Discrimination_positive, cited in Alina Livia Nicu, *op. cit.*, p.72.

33 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-y1-7, visited on November 12-th 2021 does cite Daniel Sabbagh, « *La légitimation de la « discrimination positive » dans l'enseignement supérieur aux États-Unis et en France* », dans *États-Unis / Europe : Des modèles en miroir*, Presses universitaires du Septentrion, coll. « Espaces Politiques », 2 novembre 2017 (ISBN 978-2-7574-1905-2), pp. 113–132.

34 Same cited source.

35 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-8, visited on November 12-th 2021 does cite Nicole Bacharan, *Faut-il avoir peur de l'Amérique ?*, Paris, éditions du Seuil, 2005 (ISBN 2-02-079950-2), p.137.

36 https://fr.wikipedia.org/wiki/Discrimination_positive#Bacharan_2005, visited on November 12-th 2021.

37 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-y1-7, visited on November 12-th 2021, does cite Mathilde Gérard, *L'expérience de la discrimination*

can people itself has thus come to analyze the legal grounds of the *positive discrimination* through a “popular initiative referendum” organized in the state of California, referendum which in this state: “positive discrimination within public universities has come to its end”³⁸; this pattern has been afterwards adopted by the respective states of Florida, Washington, Michigan and Nebraska. In accordance to the same cited source the positive discrimination concept has also been sustained in France during the eighties by the socialist minister Alain Savary who was at that time stating his aimed to purpose which was to offer more rights to the individual persons who were by then afflicted due to pauperism.

The steady grounds upon which does rely our issued interrogation concerning the actual effectiveness of making use of the concept of *positive discrimination* are as well supported by the fact that in spite of the existence in the social practice carried on by many countries throughout the world of some enforced legal regulations therefore enabling the achievement of positive discrimination the same above mentioned enforced legal regulations do however also constitute by themselves some polemic issues.

On one side the assertion is sustained that whatever collectivity is due to support through concretely taken actions the groups of individual persons which are currently unfavorable because of some objective reasons do exist for that because among the public interest objectives fully assumed by the democratic society do as well figure the fact of ensuring the legal and material conditions which do enable whoever among its citizens to become completely integrated within it.

On the other side some opinions do also exist according to which the positive discrimination is as much a nuisance as whatever other form of discrimination because it does indeed bring an infringement to the principle itself of equality and non-discrimination which is the corner stone of whatever edified democratic state construction. The sustainers of this perspective do assert that: “the actions taken in view of positive discrimination are generating social discord through the fact that they do generate grief within the souls of the ones who become discriminated in respect to the normative act which does rule over the protective action taken in virtue

positive aux Etats-Unis, published in in Le Monde on January 18-th 2010 at 16:35 hours.

38 https://fr.wikipedia.org/wiki/Discrimination_positive#cite_note-16, visited on November 12-th 2021.

of the positive discrimination.”³⁹ New grounds for our question concerning the acceptance degree in respect to the concept of positive discrimination have been as well generated by the creation of the European Union and by the adhesion of Romania to it. To speak more exactly this is about the fact that due to the extension of the European Union a new phenomenon has appeared within its lawful practice which has been denominated by certain specialists as a so-called “positive discrimination”⁴⁰. It is the: “phenomenon through the member states ought to apply the community standards to the [foreign] community workers without being otherwise obliged to apply the same treatment to their own citizens. Certain cases may thus arise where while working upon the territory of a member state a community worker might benefit from more rights than a worker which is a lawful citizen of the host state but who had never benefitted from the legal status of a community worker [because he has never left the territory of his own member state for work-related purposes]”. The idea itself that a worker who is as well a lawful citizen of the member state where he does work but who has never owned the status of a community worker should benefit from a less effective legal protection in respect to the rights which are to him imparted in respect to his effectively owned quality of employee than an individual person who does own the same effectively owned quality of employee and does perform the same work but who is the citizen of another member state of the European Union so that he is able to benefit from the lawfully granted status of a community worker would be therefore able to lead us towards the conclusion that this type of positive discrimination could give birth to a genuine reaction involving the rejection by the indigenous population of the individual person who does benefit from the legal status of a community worker. While facing this type of so-called positive discrimination tolerance could be only determined by an excessive lack of labor force within a random domain.

The effective existence of this phenomenon of *pseudo*- “positive discrimination” within the community’s legal practice is for example confirmed through the jurisprudence of the Court of Justice of the European Union. Let us for example look at its uttered solution to the litigation

39 Alina Livia Nicu, *op. cit.*, p. 74.

40 Emanuela Ignățoiu Sora, *Egalitate și nondiscriminare în jurisprudența Curții Europene de Justiție*, III-rd edition, Bucharest, Editura C. H. Beck, 2008, p. 50.

which has existed between Étienne Koua Poirrez and Caisse d'Allocations Familiales of Seine-Saint-Denis which did concern the granting of a disability-related money allocation towards Étienne Koua Poirrez - an Ivoirian citizen who had been adopted by a French citizen⁴¹. The Court of Justice of the European Union had thus to provide the answers to the preliminary questions which had been raised by the Tribunal des Affaires de Sécurité sociale from Bobigny. The Caisse d'Allocations Familiales of Seine-Saint-Denis had refused the request of granting a disability-related money allocation by objecting through the motivation that in what could concern the grants of disability-related money allocations to adult individual persons no reciprocity agreement was at that time enforced between the native country of Étienne Koua Poirrez and France. The claimant had invoked the E.E.C.'s Treaty in its respective articles 4 and 48 paragraph 2 as well as the subsequent Regulations adopted in view of the implementation of these norms. In reference to the above invoked juridical grounds through the Item 12 of its Decision the Court has therefore stated that: "(...) the Community's norms concerning the free circulation of the workers cannot be applied to the situation of the workers who have never exerted the right to a free circulation within the Community."⁴² In other words and in accordance with the Court's lawfully stated opinion: in spite of the fact that the claimant's father did own the quality of being a lawful French citizen his adoptive son – the claimant – did not own the right to benefit from the stipulations of the community's law because his father had never exerted for himself the right to a work-related free circulation inside of the Community and thereby had never become a community worker. A solution of this type does obviously seem hard to be accepted and has therefore generated debates. On this occasion one among the formulated questions has been: "Until what extent is the community's law prepared to tolerate the *pseudo*-"positive discrimination" understood as an exception?"⁴³.

41 Cauza C-206/91, Arrêt de la Cour (deuxième chambre) du 16 décembre 1992 - Ettiien Koua Poirrez contre Caisse d'allocations familiales de la région parisienne, substituée par la Caisse d'allocations familiales de la Seine-Saint-Denis, <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:61991CJ0206&from=IT> , visited on October 29-th 2021.

42 Item 12, Court's decision (Second Chamber) of December 16-th 1992, Cause C-206/91.

43 Marc De Vos, *Au-delà de l'égalité formelle. L'action positive au titre des directives 2000/43/CE et 2000/78/CE*, Rapport thématique, Commission européenne, Direction

The fact that equality and non-discrimination ought to remain the golden rules of the social practice cannot be contested. Yet should it be related to social, economic, cultural, biological or racial issues the positive discrimination would unavoidably lead towards infringements to be brought in respect to certain rights owned by the citizen because the effective equality of chances could no more exist should positive discrimination intervene. However in our own days the idea that positive discrimination is inevitable is acquiring always more steady grounds. The general conclusions which have been drawn by the study entitled: *"Beyond formal equality. Positive action upon the grounds of the Directives 2000/43/CE and 2000/78/CE"* realized in 2007 under the patronage of the European Commission by Professor Dr. Marc de Vos from Université de Gand does precisely point out the alleged unavoidability of this course of action which has nearly come to acquire the status of an usually functioning social mechanism. For example through its Item 96 the above mentioned study does mention: "The fact that in the matter of equality the agenda of the European Union does necessarily require for a positive action could in no way be contested." and in order to support this statement a convincing example is furthermore brought: "The employment-related gender discrimination may already be more than thirty years from prohibited yet many inequality-causing practices do still remain deeply rooted". The above mentioned study does however define through its Item 92 a necessary condition for the exercise of positive action which should be instituted as a guarantee that could prevent the appearance of whatever excesses: "In accordance with the proportionality principle whatever positive discrimination ought to pursue the fulfillment of a legitimate purpose and to remain within the limits of what would indeed be both adequate and necessary in order to reach for it since its requirements ought to be as much as it could be possible balanced through the principle of the treatment's equality."

In our own opinion positive discrimination would not be necessary should at the worldwide level a more powerful accent be imparted upon the development of the educational process as well as upon the increase of the living standards until a level that could be closely comparable throughout all the zones of the world and should the educational process be so

orientated that individualism could be softened while the inner civic spirit could be further developed. As a matter of fact the usual quality level for which the educational process should strive as the best could indeed contribute to the preserving or then if not to the destruction of the human civilization itself.

III. Case studies: limiting of some citizen's rights motivated through the declared purpose of protecting the right to life and legal obligations imparted to the public authorities motivated through the declared purpose of sustaining the rights of certain minorities

The formulation of our chosen title may seem a surprising one: "rights and liberties of the human being within the democratic society in-between allegedly excessive importance and lack"; yet it still does most accurately express the two extreme situations which we have encountered during the recent couple of years upon the continent of Europe which until our own days has been blessed by God to have some extremely permissive natural conditions which do allow for whoever human being the insurance of food and of some satisfactory living standards. There is still no desert still in Europe though the global warming process has currently rendered the summers much warmer and the danger of a desertification process has already appeared in some places⁴⁴. In Europe we also have this social experiment denominated European Union which until now has demonstrated its potential of determining the increase within its member states of their respective levels of civilization and of the current living standards: in this respect Romania has otherwise become an example. The standards which have been imposed to the future member states in view of their adhesion to the European Union have consequently determined the acceleration of the democratizing process within the Romanian society. The norms of the community law and the common policies have as well helped the Romanian public authorities to orientate themselves easier upon the path of redefining in Romania the social and economic relationships.

44 Liviu Cojan, "Localitatea Dăbuleni ar putea deveni prima zonă de deșert a României. Pe lângă pepeni se vor cultiva kiwi, curmale și măslini" published on 30.01.2020 at 19:29 on <https://www.digi24.ro/stiri/economie/agricultura/localitatea-dabuleni-ar-putea-deveni-prima-zona-de-desert-a-romaniei-pe-langa-pepeni-se-vor-cultiva-kiwi-curmale-si-maslina-1252866> visited on October 21-st 2021.

However the extreme “lack” does refer to the case which does exist since March 2020 in Romania – the state of emergency⁴⁵ – when certain rights and liberties have been restrained among which the most severely has been affected the free circulation of the persons aged of more than 65 years (the juridical norm has made use of the exact formulation: “The circulation of the persons who have reached to the age of 65 years”). The effective existence in the social practice of the situation where for this category of persons the circulation freedom has been limited to only 2 hours a day⁴⁶ in spite of the fact that this freedom is enforced in virtue of the Constitution of Romania itself has determined us to appreciate it as being a practical restriction of a fundamental freedom until a level which we have taken into consideration as being equivalent to its lack that is to say to the depriving from a vital right because among the persons aged of 65 years or more a lot of them are afflicted by health conditions and for them it is

45 The state of emergency has been instituted in Romania due to the appearance of the COVID-19 pandemics in virtue of the Decree no 195 of March 16-th 2020 concerning the institution of the state of emergency on the territory of Romania issued by the President of Romania and has been prolonged in virtue of the Decree no 240 of April 14-th 2020 concerning the prolongation of the state of emergency on the territory of Romania issued by the President of Romania.

46 In its articles 2 and 3 the MILITARY ORDINANCE no 3 of 24.03.2020 concerning the actions to be taken in order to prevent the spreading of COVID-19 issued by the Ministry of Internal Affairs and published in the Official Monitor of Romania no 242 of March 24-th 2020 was bringing the precisions which follow: “Art. 2. – The circulation of the persons who have reached 65 years of age outside of their home/household is permitted only within the hours interval 11.00 – 13.00 and strictly for the following reasons:

- a) displacement in order to ensure goods which cover the basic necessities of persons and of pet/domestic animals;
- b) displacement in order to ensure medical attention which cannot be postponed neither performed from a distance;
- c) displacement due to justified motivations such as the caretaking/accompanying of a minor person, the assistance brought to other aged, ill or disabled persons or in the case of death having occurred to a family member;
- d) small distance displacements nearby the home/household related to the persons’ individual physical activity (whatever collective physical activities being excluded) as well as for the needs of pet/domestic animals.

Art. 3. – The circulation of the persons stated by art. 2 outside of their home/household would also be permitted outside of the hours interval 11.00 – 13.00 should it be done for a professional interest or for realizing agricultural activities.”

a lot more difficult to resist under stress; once they have been placed in front of the obligation to hurry on pressed by the flowing time so that they could go to the market which is not always nearby their homes or to the doctor where each of them is due to wait for her own turn and these facts did often render insufficient the allotted 2 hours. In view of our analysis we have taken into consideration the respective facts that the causes of the brought restriction have been objective ones and that the statistical data have afterwards confirmed the usefulness of this temporarily taken action. Yet this situation has generated the question: *until where the authorities may act through restrictive taken measures under the shield of their declared concern for the protection of an individual person's right to life?* This issue has been highlighted again due to the debate within the Romanian Parliament of a project of normative act referring to the obligation imparted to the non-vaccinated persons against the COVID-19 virus of presenting a document denominated "green certificate" so that they could enter within some public places and to be allowed to go to their employment siege⁴⁷.

The latter situation that is to say the "excess" extreme point has resulted from the amount of information offered by the mass-media in respect to certain preoccupations aiming towards the legislative sphere. These preoccupations have determined us to take them into consideration as being excessive ones because in our opinion the social values the enforcement of which is aimed to through juridical norms are not fundamental ones, they do not pertain to the sphere of the strict necessity and should they still not be regulated they could in no way cause clots throughout the existing social relationships. We are thus speaking of the mentions which are contained within the Romanian identity card as well as of the linguistic interest demonstrated by the institutions of the European Union insofar its own administrative procedures could be concerned.

Let us at first bring the precision that our choice of the analyzed situations is in a full accordance with the principles by which a democratic society is ruled. We are sustaining and respecting these principles in virtue of our personal beliefs. The analysis of our chosen examples has been performed while aiming to the purpose of attracting the attention upon the

47 Carmen Valică, *Senatul a respins obligativitatea certificatului verde. Decizia aparține Camerei Deputaților* posted on October 27-th 2021 on <https://romania.europalibera.org/a/certificat-verdesenat/31531749.html> visited on 28 October 28-th 2021.

necessity that the main preoccupation of the decision makers should they be situated at worldwide, European or national levels ought to be the one of action taking in order to identify the most appropriate economic and political mechanisms through which to whoever individual person could be ensured not only some decent life modalities but furthermore an as elevated as it could become level of civilization and culture. *In this respect let us proclaim our belief that the most important and effective ever known mechanism of social regulation is none other than education.* The greatest of interests ought to be therefore devoted in view of providing to the population an average mean level of education which should be suitable wherever on Earth since we are as well due to mention the fact that *the obligation of realizing the unity throughout diversity goal has been already proclaimed both morally and lawfully.* More exactly speaking at the worldwide level the instituted system of fundamental values ought to be carefully defined so that the cultural peculiarities of each among the existing communities could be preserved in their integrality. Let us as well proclaim our belief that an educated individual person is fully capable to self-discipline her conduit so that she could respect her fellows' rights and liberties; throughout the flowing time and gradually this person should become effectively able to displace the gravity center of her own behavior from a highly individualistic ego towards the civic spirit and the practice of altruism. As a matter of fact in our own days the individual lack of culture does turn into the rush for a badass opulence which is shown off through a snubbing and outrageous general attitude. This is the reason why in our opinion to make use of lawful regulations in order to enforce discriminatory taken actions – should these even be declared as “positive” – could only push further the actual individualistic trend and thereby generate a lot of frustrations.

For each of our case studies the legal frame involved is highly important. The second chapter of the Constitution of Romania which is entitled “The fundamental rights and liberties” does enforce the right to life and to physical and mental integrity⁴⁸, the individual person's freedom⁴⁹, the right to a free circulation⁵⁰, the respect vowed by the authorities towards the in-

48 Art. 22 par. (1): “The right to life as well as the rights to physical and mental integrity of the individual person are guaranteed.”

49 Art. 23 par. (1): “The freedom and safety of the individual person are inviolable.”

50 Art. 25 par. (1): “The right to a free circulation within the country and abroad is guaranteed. The law does state the conditions for the exercise of this right.”

timate, familial and private life and their subsequent obligation to protect these values⁵¹. The Constitution in its article 26 paragraph (2) does include a formulation which in our opinion all of the entities to which the legal competency is imparted to adopt or to issue juridical norms should take in an attentive consideration when they would formulate the norms and which ought to be known and applied by whoever citizen. The above mentioned text does state that: “*The individual person does own the right to dispose of herself should she not infringe the rights and liberties of others, the public order or the good morals and manners.*” The value of this formulation does reside in its double action: it does emphasize upon the responsibility of each of us in respect to the collectivity of which we are the respective parts but it does simultaneously emphasize upon the absolute right of whoever individual person to decide by herself how to carry on living.

In accordance with the statements of the “republished Constitution of Romania in its articles 93 par. (1) and 100 as well as with the ones of the Government’s Emergency Ordinance no 1/1999 concerning the regime of the state of siege and the regime of the state of emergency approved with modifications and completions through the Law no 453/2004 with its ulterior modifications and completions in its art. 3 and art. 10”⁵² the President of Romania has issued the Decree no 195 of March 16-th 2020 concerning the institution of the state of emergency upon the territory of Romania⁵³ due to the declaration by the World Health Organization on March 11-th 2020 of the state of “Pandemics” determined by the worldwide spreading of the SARS-CoV-2 coronavirus its purpose being the one to be lawfully entitled to apply some restrictive measures so that the citizens’ right to life could be respected and their lives could be protected. Through this decree for the duration of the state of emergency some restrictions upon the following rights have been disposed: “a) the free circulation; b) the right to an intimate, familial and private life; c) the inviolability of the domicile; d) the right to a taught instruction; e) the freedom of reunions;

51 Art. 26:

“(1) The public authorities do respect and protect the intimate, familial and private life.

(2) The individual person does own the right to dispose of herself should her not infringe the rights and liberties of others, the public order or the good morals and manners.”

52 Motivation of the Decree no 195 of March 16-th 2020 concerning the institution of the state of emergency on the territory of Romania.

53 Published in Official Monitor of Romania, Part I no 212 of March 16-th 2020.

f) the right to private ownership; g) the strike right; h) the economic freedom". The precision has been however brought that the concerned restrictive degree ought to be: "proportional in respect to the realization degrees of the following criteria"⁵⁴: "a) the intensity degree of the intra-community spreading of the COVID-19 virus; b) the appearance frequency of clusters within a given geographical zone; c) the number of patients within a critical condition in respect to the functional capacity of the sanitary system; d) the capacity and continuity of providing social services and public utilities for the population; e) the capacity of public authorities to maintain and ensure measures of public order and safety; f) measures established by other states with an impact on the population or the economic situation of Romania; g) the capacity to ensure the measures for quarantine; h) the occurrence of other emergencies."⁵⁵ Due to the evolution of the number of cases of COVID-19 diseases, the President of Romania issued Decree no. 240 of April 14, 2020 on the extension of the state of emergency on the territory of Romania⁵⁶, the state of emergency being extended by 30 days.

There have been sixty difficult days in which the mentioned fundamental rights have been restricted, but given the low level of knowledge about the new disease and the tragic situation in some countries that had a frightening number of deaths, we appreciate the state of emergency as absolutely necessary. During that period, the number of cases in Romania was small compared to other European countries (Italy, Spain, etc...).

During the state of emergency, 12 military ordinances were issued by the Ministry of Internal Affairs. Of these, the Military Ordinance No. 3 of 24.03.2020 on measures to prevent the spread of COVID-19 caught our attention especially due to the provision of Article 2 which stated that "The movement of persons who have reached the age of 65, outside the home / household, is allowed only in the time interval 11.00 - 13.00" for some express and limiting reasons specified in the respective text. It was a difficult time in which this category of people felt more overwhelmed by the state of emergency, because they had only two hours a day in which to solve a wide range of activities outside home. At the time, such a meas-

54 Art. 2 of the Decree no 195 of March 16-th 2020.

55 Art.4 par. (4) of the Decree no 195 of March 16-th 2020.

56 Published in Official Monitor of Romania/Official Monitor of Romania, Part I no 311 of April 14-th 2020.

ure seemed inadmissible, although later, given the evolution of the SARS-CoV-2 infection rate and the number of COVID-19 cases, the conclusion was that the measure was justified. On that occasion, the local public administration had to demonstrate its level of professional performance. The personnel within the structures of the gendarmerie, the local police, the traffic police gave a practical test regarding the professional competence, but also the civic spirit. For example, in the locality where they live - Craiova Municipality - in the Central Square, at that time between the hours 11-13 were organized rows so that the elderly enter the market quickly, and the rest of the people, entered on another row, only ten people, so as to avoid congestion on the market territory and our seniors to be able to fit in the limited time slot including the way home. We have seen gendarmes and police officers assisting the elderly, who, when they had, gave masks (they had a few) to people who did not have this mandatory object of protection. We refer to these aspects because the effect of the application of the legal norm and the state of comfort of the citizen in relation to the restricted content of the legal norm depends largely on the implementation method, the behavior of the public agent he interacts with, the quality of this agent's speech, i.e. the quality of public administration. This observation is also very important with regard to the public discourse on the appropriateness of vaccination against COVID-19.

After the cessation of the state of emergency, starting with May 15, 2020, the state of alert was established by the Romanian Government Decision no. 394 of 18 May 2020 on the declaration of the state of alert and the measures applied during it to prevent and combat the effects of the COVID-19 pandemic⁵⁷ in accordance with Decision no. 24 of 14 May 2020 on approving the establishment of the state of alert at national level and the measures for prevention and control of infections, in the context of the epidemiological situation generated by the SARS-CoV-2 virus, decision adopted by the National Committee for Emergency Situations⁵⁸. From that moment until now, the state of alert has been extended, the most recent normative act regarding this aspect being the Government Decision no. 1183 of November 8, 2021 on the extension of the alert status on the Romanian territory starting with November 9, 2021, as well as the

57 Published in Official Monitor of Romania, Part I no 410 of May 18-th 2020.

58 Published in Official Monitor of Romania, Part I no 395 of May 15-th 2020.

establishment of measures to be applied during it to prevent and combat the effects of the COVID-19 pandemic⁵⁹, amended by Government Decision no. 1238 of November 26, 2021 for the amendment and completion of annexes 2 and no. 3 to the Government Decision no. 1183/2021 on the extension of the state of alert on the territory of Romania starting with November 9, 2021, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-19 pandemic⁶⁰ respectively by Government Decision no. 1239 of November 28, 2021 for the amendment and completion of annex no. 3 to the Government Decision no. 1,183 / 2021 on the extension of the alert status on the Romanian territory starting with November 9, 2021, as well as the establishment of the measures that will be applied during it to prevent and combat the effects of the COVID-19 pandemic⁶¹.

The National Committee for Emergency Situations adopted Decision no. 94 of 25.10.2021 on the establishment of additional measures necessary to be applied during the state of alert to prevent and combat the effects of the COVID-19 pandemic⁶² by which additional restrictive measures were proposed, measures by which discrimination was created between citizens. Thus, it was proposed to create a permissive regime for the category of "persons who are vaccinated against SARS-CoV-2 virus and for whom 10 days have elapsed since the completion of the complete vaccination schedule, respectively persons who are in the period between the 15th day and the 180th day after confirmation of SARS-CoV-2 virus infection". As a consequence, a restrictive regime has resulted in which the rest of Romania's citizens are deprived of the right to purchase clothes, shoes and other consumer goods from specialized stores and are deprived of the possibility to enter into public institutions, in the headquarters of some companies for the payment of invoices⁶³.

59 Published in Official Monitor of Romania, Part I no 1070 of November 8-th 2021.

60 Published in Official Monitor of Romania, Part I no 1138 of November 26-th 2021.

61 Published in Official Monitor of Romania, Part I no 1145 of November 28-th 2021.

62 <https://www.agerpres.ro/social/2021/10/25/hotararea-cnsu-nr-94-din-25-octombrie-2021-text-integral--802449> visited on October 26-th 2021.

63 Decision no 94 of 25.10.2021 concerning the institution of some supplementary measures which are necessary to be applied for the duration of the state of alert in order

The respective measures were approved by Government Decision no. 1,161 of October 25, 2021 for the amendment and completion of annexes no. 2 and 3 to the Government Decision no. 1.090 / 2021 on the extension of the alert status on the Romanian territory starting with October 10, 2021, as well as the establishment of the measures that will

to prevent and strive against the effects of the COVID-19 pandemics: "Art.1 - (1) The proposal is made that the access within the precincts of the economical operators the main activities of which do have as object the trading of non-alimentary products should be permitted only to the persons who are vaccinated against the SARS-CoV-2 virus and for which 10 days have passed since they have finalized their complete vaccination scheme respectively to the persons who do find themselves within the period between the 15-th day and the 180-th day ulterior to the confirmation of their infection with the SARS-CoV-2 virus.

(2) The measure stated by par. (1) is not to be applied to the pharmaceutical units located outside the trading centers and parks as well as outside the gasolene stations.

Art.2 - The proposal is made that from the measure of prohibiting the access within the precincts of the central and local public institutions, of the autonomous administrations and of the economical operators the capital of which is of a public interest which should be applicable to the persons who: do not present the attesting evidence of their vaccination, of having passed through the contracted disease during the recent 180 days or who do not present the negative result of a RT-PCR test for the infection with the SARS-CoV-2 virus which should be performed not earlier than 72 hours before or either the certified negative result of a rapid antigenic test for the infection with the SARS-CoV-2 virus which should be performed not earlier than 48 hours before should as well)be exempted the following categories: a) the participants in the frame of procedures carried on due to reasons which pertain to public order and safety;b) the participants in the frame of judicial, disciplinary, contraventional or administrative-jurisdictional procedures;c) the persons who are in need for the access to medical services or social grants; d) the persons who are going to the vaccination centers in view of the administration of the vaccine. Art.3

- The proposal is made that from the measure of prohibiting the access within the trading centers and parks which is applicable to the persons who do not present the attesting evidence of their vaccination or of having passed through the contracted disease during the recent 180 days of: a) the persons who are going to the community public services which do function within their precincts should they present present the negative result of a RT-PCR test for the infection with the SARS-CoV-2 virus which should be performed not earlier than 72 hours before or either the negative certified result of a rapid antigenic test for the infection with the SARS-CoV-2 virus which should be performed not earlier than 48 hours before and who are able to prove the purpose of their displacement through presenting a justifying document in a litteral or an electronic form; b) the persons who are going to the vaccination centers in view of the administration of the vaccine and for whom some dedicated and controlled corridors are established in view of their entrance, displacement within and exit."

be applied during it to prevent and combat the effects of the COVID-19 pandemic⁶⁴.

It has been stated that such measures protect our right to life, although there are only two measures that are known for sure to protect our right to life because they prevent the spread of the virus, there are two measures: wearing a face protection mask and possession of a document attesting a negative test result for SARS-CoV-2 virus infection, a document that proves that the person we are interacting with is not infected. Nowadays practice has shown that people who are vaccinated can at best protect themselves by possibly making it a milder form of the disease, but

64 Published in Official Monitor of Romania, Part I no 1017 of October 25-th 2021. Art. 4, Annex 2, Hotărârea Guvernului no 1.090/2021/ Government's Decision no 1.090/2021 concerning the prolongation of the state of alert on the territory of Romania since October 10-th 2021 as well as the decision upon the actions to be taken throughout its duration in order to prevent and strive against the effects of the COVID-19 pandemics under its form modified through the Government's Decision no1161 of November 25-th 2021 for the modifying and completion of the Annexes nrs. 2 and 3 of the Government's Decision no 1090/2021 concerning the prolongation of the state of alert on the territory of Romania since October 10-th 2021 as well as the decision upon the actions to be taken throughout its duration in order to prevent and strive against the effects of the COVID-19 pandemics does state that:

“(1) Under the conditions stated by the Law no 55/2020 in its art.5 par. (2) letter d) with its ulterior modifications and completions the participating in one among the activities stated by the *Annex* no 3 through its art. 1 items 6, 9 și 12, art. 6 items 1, 2, 6, 6¹, 6³ and 6⁴, art. 9 items 1, 2, 4, 6 and 7, as well as through its art. 11 par. (2) is permitted only to the persons who do find themselves in one among the following situations: a) they are vaccinated against the SARS-CoV-2 virus and 10 days have passed since they had finalized the complete vaccination scheme; b) they find themselves within the period between the 15-th day and the 180-th day ulterior to the confirmation of their infection with the SARS-CoV-2 virus.

(2)“(1) Under the conditions stated by the Law no 55/2020 in its art.5 par. (2) letter d) with its ulterior modifications and completions the access is permitted in accordance with the *Annex* no 3 through its art. 6 item 6² and its art. 12 par. (4) only to the persons who are vaccinated against the SARS-CoV-2 virus and 10 days have passed since they had finalized the complete vaccination scheme, who present the negative result of a RT-PCR test for the infection with the SARS-CoV-2 virus which should be performed not earlier than 72 hours before or either the certified negative result of a rapid antigenic test for the infection with the SARS-CoV-2 virus which should be performed not earlier than 48 hours before and respectively who find themselves within the period between the 15-th day and the 180-th day ulterior to the confirmation of their infection with the SARS-CoV-2 virus.”

in relation to others, they can be carriers of the virus, transmit the virus, and can cause COVID-19 disease, so the registration in the legal norm of their right to enter any space is inappropriate, unfounded and creates a discrimination that violates the provisions of art. 26 para. (2) of the Constitution which states that “the natural person has the right to have valid authorization of himself, unless he violates the rights and freedoms of others, public order or morals”. Such a regulation has created the false idea that those who are vaccinated are not a danger and no longer have the obligation to wear a face mask, although the law also provides this obligation for them. In practice, we see people who did not wear a properly positioned face mask or did not have a mask, and when asked to correct the position of the mask or put on a mask, they responded with a superior tone that they were vaccinated and, therefore, they are not dangerous.

We believe that the constitutional right of the individual to have valid authorization of his or her person must be respected and any direct or indirect constraints on the decision to vaccinate against COVID-19 must be removed. We believe that public authorities should focus on conducting studies and information campaigns to inform the population in a completely transparent and informed manner about the positive results of vaccination actions, on cases of adverse reactions and to regulate the situation of persons who are contraindicated for vaccination, in the sense of specifying, to the extent that information is available, vaccination or that a person is at severe risk of responding to the vaccine. At present, the situation of people at such a risk is unclear. Nothing is said about people with drug allergies, with atypical allergies. We believe that if there is not enough data on the risk of a reaction to the vaccine, no one has the right to endanger a person's life. We believe that recommending a person to get vaccinated if there is not enough data on the risk of endangering the person's life is both immoral and illegal. It is not permissible to endanger a person's life with the justification that you are protecting his life, because as long as the vaccine does not immunize you, does not prevent the transmission of the virus, the statement that vaccination would protect the lives of others and thus serve the public interest is not supported. Imposing the existence of a digital certificate for access to the workplace is an inadmissible measure because it contradicts the provisions of Article 26 of the Constitution. Public authorities should give employees the chance to be tested on the job using the quick test with saliva, as well as students, or even with the obligation

to pay the tests by employees. By such a measure, the competent public authorities in the field would prove that the real concern is the protection of human life and not the concern to indirectly determine the vaccination measure.

In conclusion, we believe that the legislative framework needs to be changed. Specifically, if it is considered that restrictions cannot be waived, we propose that the text of Article 4 of Annex 2 to Government Decision no. 1.090 / 2021 on the extension of the state of alert on the Romanian territory starting with October 10, 2021, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-19 pandemic, we propose the following: “(1) art. 5 para. (2) letter d) of Law no. 55/2020, with subsequent amendments and completions, it is allowed to participate in one of the activities provided in Annex no. 3 art. 1 points 6, 9 and 12, art. 6 points 1, 2, 6, 6 ^ 1, 6 ^ 3 and 6 ^ 4, art. 9 points 1, 2, 4, 6 and 7, as well as art. 11 para. (2) only persons who are in one of the following situations: a) show the negative result of an RT-PCR test for SARS-CoV-2 virus infection not older than 72 hours show the certified negative result of a rapid antigen test for SARS-CoV-2 virus infection not older than 48 hours; b) shows the certified negative result of a rapid antigen test for SARS-CoV-2 virus infection not older than 48 hours; d) is in the period between the 15th and the 180th day following the confirmation of the SARS-CoV-2 infection”. Such a regulation would also prove that the legislator really took into account the public health aspects, i.e. the protection from the risk of infection with the SARS-CoV-2 virus, and not the compulsion of the population to be vaccinated.

The second case study came as a result of reading articles in the press: “Romania, fined by the ECHR for violating the rights of transgender people by lacking a procedure to change gender in documents”⁶⁵ and “Sex” or “gender”? Ministry of Internal Affairs (MIA) details about the electronic identity card. The director of the Directorate for the Registration of Persons states that “Any option is possible”⁶⁶, along with the already mentioned news that

65 Laurentiu Sîrbu, “România, amendată de CEDO pentru încălcarea drepturilor persoanelor transgender prin lipsa unei proceduri de modificare a genului în acte”, posted on Tuesday January 19-th 2021 at 13:44 hours at the address <https://ziare.com/social/romani/romania-amendata-de-cedo-pentru-incalcarea-drepturilor-persoanelor-transgender-prin-lipsa-unei-proceduri-de-modificare-a-genului-in-acte-1657431>, visited on September 15-th 2021.

66 Cosmin Pirv, «“Sex” sau “gen”? Precizări MAI despre cartea de identitate electronică. Directorul Direcției pentru Evidența Persoanelor afirmă că “Orice opțiune este posibilă”»,

in a member state of the European Union was adopted in a chamber of the Parliament “an amendment which stipulates that the school forms will contain the words “parent 1 and parent 2” instead of the standard names “mother and father”⁶⁷ and that in another Member State the measure of the use in the official forms of the names “parent 1” and “parent 2” in the period 2015-2019 it proved unnecessary and, as a result, the Government of that State “re-established (...) the return of the terms “father” and “mother” in the official forms of identity cards”⁶⁸, and that the European Parliament had developed an internal guide “which was meant to help the staff of this institution to communicate about disabilities, sexual minorities and issues related to race, ethnicity and religion”⁶⁹, a guide recommending the avoidance of the words “mother” and “father” in official European documents and indicating the use of the term “parents”.

We proceeded to analyze the legal framework in an attempt to understand what could be the criticizing aspects of the legislation, aspects that generate a state of discomfort in social relations for certain people, so that the press reports these conditions. In terms of personal records and identity documents, the legal framework consists mainly of the Government Emergency Ordinance no. 97 of July 14, 2005 regarding the evidence, domicile, residence and identity documents of the Romanian citizens⁷⁰

posted on August 4-th 2021 at 20:49 hours at the la address <https://www.mediafax.ro/social/sex-sau-gen-precizari-mai-despre-carta-de-identitate-electronica-directorul-directiei-pentru-evidenta-persoanelor-afirma-ca-orice-optiune-este-posibila-20216836>, visited on September 15-th 2021.

67 Anamaria Apostoiu, HotNews.ro, Miercuri, 13 februarie 2019, 16:10, <https://www.hotnews.ro/stiri-international-22971980-parinte-1-parinte-2-inlocuieste-mama-tata-formularele-scolare-din-franta-proiect.htm>, citând ca sursă nouvelobs.com, visited on November 12-th 2021

68 « “Tată” și “mamă” revin în formularele oficiale din Italia și înlocuiesc mențiunile “părinte 1” și “părinte 2”, valabile din 2015/”Father” and „mother” return to official forms in Italy and replace „parent 1” and „parent 2”, valid from 2015», <https://www.digi24.ro/stiri/externe/ue/tata-si-mama-revin-in-formularele-oficiale-din-italia-si-inlocuiesc-mentiuile-parinte-1-si-parinte-2-valabile-din-2015-1109183>, Digi 24 HD, 05.04.2019 16:42, does cite as source: Agerpres. visited on November 12-th 2021

69 Sorina Ionașc, “Parlamentul European: Cuvintele “mama” și “tata” ar trebui evitate în documentele oficiale la nivel european”, <https://stirileprotv.ro/stiri/social/parlamentul-european-cuvintele-mama-si-tata-ar-trebui-evitate-in-documentele-oficiale-la-nivel-european.html>, 18-03-2021 19:03 visited on November 12-th 2021.

70 Republished in Official Monitor of Romania no 719 of October 12-th 2011.

and the Decision of the Romanian Government no. 295 of March 10, 2021 for the approval of the Methodological Norms for unitary application of the provisions of the Government Emergency Ordinance no. 97/2005 regarding the evidence, domicile, residence and identity documents of the Romanian citizens, as well as for establishing the form and content of the identity documents, of the proof of residence and of the real estate card⁷¹.

Article 13 of the Government Emergency Ordinance no. 97 of 14 July 2005 in paragraph (1) specifies the role of the identity document, which may be “identity card, simple identity card, electronic identity card, temporary identity card and identity card, which are valid.”⁷² This role is: “proves the identity, the Romanian citizenship, the domicile address and, as the case may be, the residence address”. Proof of this data is necessary in multiple types of situations in which it is necessary to know that the subject of law that is being talked about or interacting with is indeed the one registered in the records of the persons with the respective name. With the entry into force of Law no. 248/2005 on the regime of free movement of Romanian citizens abroad, with subsequent amendments and completions, the identity card and the electronic identity card also acquired the role of “travel document in the member states of the European Union”⁷³.

Considering the role of the identity card and the role of the electronic identity card, the Government of Romania, in its activity of transposing into practice the Government Emergency Ordinance no. 97 of July 14, 2005, adopted its “Methodological norms for unitary application”, norms included in the Romanian Government Decision no. 295 of March 10, 2021. These rules include annexes which include details on the form, size and content of each identity document. Thus, Annex 2 to the mentioned government decision specifies that the elements of the identity card are: “a) the name of the state; b) the name of the document; c) the series, composed of two letters, and the number, composed of 6 digits; d) the name of the issuing structure, respectively of the community public service for the registration of persons or, as the case may be, of the Directorate for the Registration of Persons and Database Administration - the abbreviated

71 Published in Official Monitor of Romania no 312 of March 29-th 2021.

72 Government's Emergency Ordinance no 97 of 14 July 14-th 2005 republished in its art. 12 par. (3).

73 Government's Emergency Ordinance no 97 of 14 July 14-th 2005 republished in its art. 13 par. (2).

name, the initials of the county, as the case may be, and the code of the issuing structure; e) the term of validity; f) photo of the holder; g) personal identification number; h) last name and first name; i) citizenship; j) place of birth; k) gender; l) domicile.” Annex 5 of the same government decision specifies the elements of the electronic identity card as “the data provided in art. 17 para. (5) of the Government Emergency Ordinance no. 97/2005 on the registration, domicile, residence and identity documents of Romanian citizens, republished and the mentioned article⁷⁴, details that it is about “data in printed format and in format recorded by special techniques, data in electronic format, as well as elements of customization and security”, consisting of: “A – first page a) the name of the issuing state; b) the type of document; c) family name; d) first name; e) the gender of the holder (F for female or M for male); f) citizenship; g) date of birth; h) personal identification number (P.I.N.); i) document number; j) expiration date; k) the handwritten signature of the holder; l) the facial image of the holder. B second page a) domicile; b) the date of issue and the issuing authority; c) the automatic reading area with optically identifiable characters (MRZ); d) chip area.”

The enumeration of these elements clearly shows the difference between the types of documents, a difference that generated the articles in the media. In the case of the electronic identity card the element “gender of the holder (F for female or M for male)” is mentioned, while in the case of the identity card the element “k) gender is mentioned”. Obviously, the question arises: which statement is appropriate and what benchmark should we refer to when choosing the option considered appropriate? We appreciate that it is optimal to refer to the role of the respective identity document. The only elements that allow the physical, natural identification of a natural person are the photo of the holder and the sex.

So the conclusion is that for both the identity card and the electronic identity card, the essential elements for identifying the person are the figure of the individual and the gender. So, the regulation regarding the identity card, regulation that includes among the elements the photo of the holder and the gender, we consider that it is the appropriate regulation. For the electronic identity card, the facial image of the holder and

74 Government's Emergency Ordinance no 97 of 14 July 14-th 2005 republished in its art. 17 par. (5).

the gender should be regulated as elements, because gender is not a characteristic suitable to ensure the physical identification of a natural person only in certain situations. Gender is a concept that has more to do with the psychological aspects of the individual, with the way in which he or she acquires the natural data on sex or not. Some sources express the view that “Sex, sexual orientation or gender are distinct notions⁷⁵”, explaining the difference between notions. Of course, the inclusion between the elements of the electronic identity card of the gender element could determine the role of the travel document in the Member States of the European Union. This assumption takes into account that in Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on enhancing the security of Union citizens’ identity cards and residence documents issued to citizens of the Union and their family members exercise the right to free movement it is specified that.⁷⁶

“This Regulation shall apply to: (a) identity cards issued by Member States for their own nationals as referred to in Article 4 (3) of Directive 2004/38 / EC; This Regulation shall not apply to identification documents issued on a provisional basis with a period of validity of less than six months. (b) certificates of registration issued.” It is also stated in paragraph 24 of the statement of reasons that “Member States should be able to decide on the reference to the gender of a person in a document falling within the scope of this Regulation. If a Member State mentions the gender of a person in such a document, the specifications ‘F’, ‘M’ or ‘X’ in ICAO document 9303 or the corresponding single initial used in the language or languages of that Member State should be used where appropriate.” Given that the EU regulation itself speaks of the competence of national states to decide on the mention of the element of gender on identity cards, we consider that the regulation of the elements of the identity card should be correlated and consistent with the elements of the electronic identity card and the mention of gender contributes better to fulfilling the role of the identity card.

75 <https://ro.wikipedia.org/wiki/Transgen>, visited on September 15-th 2021.

76 E.U. REGULATION 2019/1157 OF THE EUROPEAN PARLIAMENT AND COUNCIL of June 20-th 2019 concerning the security consolidation of the identity cards held by the citizens of the Union and of the residence documents issued to the Union’s citizens and their respective family members who do exert their right to a free circulation in its art. 2 letter a).

III. Conclusions

In conclusion, the right to life, dignity, freedom of opinion and conscience are fundamental, and the EU or national institutions do not have the right to affect them even under the guise of the public interest. The State and the institutions of the European Union have the obligation to make available to a person who has both the status of a citizen of the Union and that of a national citizen the means, tools to exercise their rights established in national and Community law, but do not have the right to compel him to use those means.

Regarding the assertion of the rights of minorities, we consider that insofar as the principle of equality before the law is respected, protectionist measures are meaningless.

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