

THE IMPACT OF EMERGENCY MEASURES ON FUNDAMENTAL RIGHTS: PROPORTIONALITY, JUDICIAL CONTROL AND COMPARATIVE PERSPECTIVES

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ABSTRACT: *Exceptional measures adopted during public emergencies have a profound and often long-lasting impact on the exercise of fundamental rights and freedoms. This article examines the substantive effects of emergency and alert measures on fundamental rights in Romania, with particular emphasis on the COVID-19 pandemic. Focusing on the principle of proportionality, the study analyses how restrictions on freedom of movement, private life, assembly, education, work, and religious freedom were justified, implemented, and controlled. The article further explores the role of judicial review exercised by the Constitutional Court, administrative courts, and the Ombudsman, highlighting their function as safeguards against excessive executive intervention. Through a comparative perspective involving selected European states, the research identifies both convergent practices and divergent constitutional responses. The findings suggest that effective emergency governance requires not only swift executive action, but also continuous proportionality assessment and robust judicial oversight*

KEY WORDS: *fundamental rights, proportionality, judicial review, emergency measures, COVID-19, constitutional law.*

JEL CLASSIFICATIONS: *K33, K38, II8.*

1. INTRODUCTION

The adoption of emergency measures in response to extraordinary situations inevitably alters the normal relationship between the individual and the state. While constitutional democracies accept that certain limitations on fundamental rights may be necessary in order to protect collective interests, such limitations must remain exceptional, justified, and subject to rigorous control. The COVID-19 pandemic

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brought this tension into sharp focus, as states across Europe imposed unprecedented restrictions affecting almost every dimension of social, economic, and private life.

In Romania, the succession of the state of emergency and the state of alert generated a dense normative environment characterized by extensive regulatory intervention. Measures restricting freedom of movement, limiting public gatherings, suspending educational activities, conditioning access to workplaces, and regulating religious practices were adopted on a scale previously unknown in peacetime. Although these measures were justified primarily by the imperative of protecting public health, their breadth and duration raised complex legal questions concerning proportionality, discrimination, and the protection of the core content of fundamental rights.

From a constitutional perspective, the impact of emergency measures cannot be assessed solely by reference to their stated objectives. Rather, it requires a substantive analysis of their concrete effects on individual rights and a continuous evaluation of whether such effects remain justified as circumstances evolve. As Bîrsan emphasizes, the legitimacy of rights restrictions depends not on their intention, but on their necessity and proportionality in practice (Bîrsan, 2020).

This article seeks to examine the **material dimension** of emergency governance, focusing on how exceptional measures affect fundamental rights in *concreto*. Unlike the first article, which analysed the constitutional and institutional framework of exceptional regimes, the present study concentrates on the **content and consequences of restrictive measures**, the application of the proportionality principle, and the role of judicial control in correcting excesses.

The central argument advanced in this article is that the prolonged application of emergency measures transforms proportionality from a static legal test into a dynamic constitutional obligation. Measures that may be justified at an early stage of a crisis must be continuously reassessed in light of their cumulative impact on individual rights and social life. Failure to conduct such reassessment risks converting temporary restrictions into structural limitations incompatible with democratic constitutionalism (Dănișor, 2007).

2. THE IMPACT OF EXCEPTIONAL MEASURES ON FUNDAMENTAL RIGHTS: CONCEPTUAL AND LEGAL FRAMEWORK

The impact of emergency measures on fundamental rights must be analysed within a coherent conceptual and legal framework that distinguishes between the formal legality of restrictions and their substantive effects. While emergency legislation may formally comply with constitutional requirements, its practical implementation may nonetheless generate disproportionate or discriminatory outcomes. This distinction is essential for understanding the real consequences of crisis governance on individual freedoms.

Fundamental rights are not abstract entitlements, but living legal guarantees whose meaning is shaped by their concrete exercise. Restrictions imposed during emergencies directly affect this exercise, often in ways that extend beyond their immediate legal scope. For example, limitations on freedom of movement may

indirectly affect the right to work, access to education, or the enjoyment of family life. Similarly, restrictions on public gatherings may have implications for political participation and religious freedom.

Romanian constitutional law approaches the limitation of fundamental rights through the framework established by Article 53 of the Constitution, which applies irrespective of the exceptional regime activated. As discussed in the first article, this provision imposes cumulative conditions of legality, legitimate aim, necessity, proportionality, temporariness, and respect for the essence of rights (Muraru & Tănasescu, 2019). These conditions form the normative benchmark against which the impact of emergency measures must be assessed.

However, the application of Article 53 in the context of prolonged emergencies presents specific challenges. Unlike short-term crises, prolonged emergencies generate a layering effect of restrictions, whereby successive measures interact and reinforce each other. This cumulative impact complicates proportionality analysis and requires a holistic assessment of how multiple restrictions affect the overall enjoyment of rights.

European human rights jurisprudence reinforces this approach by emphasizing that proportionality must be assessed in light of the concrete circumstances of each case and the evolving nature of the threat. The European Court of Human Rights has consistently held that states enjoy a margin of appreciation in emergency situations, but that this margin is not unlimited and must be exercised under effective supervision (Bîrsan, 2020).

In the Romanian context, the absence of systematic impact assessments accompanying emergency measures further exacerbated these challenges. While authorities regularly invoked epidemiological data to justify restrictions, less attention was paid to their social, economic, and psychological consequences. This asymmetry underscores the importance of judicial and institutional oversight mechanisms capable of evaluating not only the legality, but also the proportionality of emergency measures.

At a conceptual level, the impact of exceptional measures on fundamental rights can be analysed along three dimensions: scope, intensity, and duration. Scope refers to the range of rights affected; intensity concerns the severity of the restriction; and duration relates to the length of time over which the restriction is maintained. A measure with limited scope but prolonged duration may be as intrusive as a short-term measure with high intensity. This multidimensional approach provides a more nuanced understanding of proportionality and will guide the subsequent analysis of specific rights affected during the pandemic.

3. ANALYSIS OF SPECIFIC FUNDAMENTAL RIGHTS AFFECTED BY EMERGENCY MEASURES

The impact of exceptional measures adopted during the COVID-19 pandemic was not uniform across the spectrum of fundamental rights. Some rights were directly and severely restricted, while others were indirectly affected through the cumulative effects of regulatory interventions. This section provides a detailed analysis of the principal rights affected, assessing the scope, intensity, and duration of restrictions through the lens of proportionality and necessity.

Freedom of movement was among the most extensively restricted rights during both the state of emergency and the state of alert. Measures such as stay-at-home orders, curfews, travel bans between localities, and mandatory quarantine directly limited individuals' ability to move freely within the national territory. Initially justified by the urgent need to contain viral transmission, these measures were characterized by high intensity and broad scope.

From a constitutional perspective, restrictions on freedom of movement are explicitly permissible under Article 53 when justified by public health considerations. However, the prolonged application of such measures raised proportionality concerns. While strict limitations may be justified at the onset of a public health crisis, their continuation requires continuous reassessment in light of epidemiological data and less restrictive alternatives. Necessity is not static; it must be re-evaluated as circumstances evolve (Dănișor, 2007).

Moreover, freedom of movement restrictions produced significant indirect effects on other rights, including access to work, education, and family life. These cascading consequences underscore the importance of assessing proportionality holistically rather than in isolation.

The right to respect for private and family life was affected through a combination of quarantine measures, restrictions on social interactions, and data-processing practices related to contact tracing and epidemiological monitoring. Mandatory isolation and limitations on private gatherings interfered directly with personal autonomy and family relations.

Additionally, the collection and processing of personal health data raised concerns regarding privacy and data protection. Although such measures pursued a legitimate aim, their implementation required strict safeguards to prevent misuse and ensure compliance with legality and proportionality standards. Romanian doctrine stresses that even in emergencies, the right to private life cannot be reduced to a residual guarantee (Bîrsan, 2020).

The cumulative duration of these measures intensified their impact. Prolonged isolation and surveillance practices risked exceeding what was strictly necessary, particularly in the absence of clear sunset clauses or individualized assessments.

Restrictions on public gatherings significantly affected freedom of assembly and, by extension, political participation and religious freedom. Public demonstrations, cultural events, and religious services were either prohibited or subject to strict limitations regarding attendance and conditions of organization.

While such restrictions were justified by public health concerns, their blanket application raised questions regarding non-discrimination and proportionality. In particular, limitations affecting religious services generated constitutional debate, as freedom of religion occupies a central position within the system of fundamental rights. Romanian constitutional doctrine emphasizes that restrictions on religious practice require especially careful justification and must preserve the core content of the right (Muraru & Tănăsescu, 2019). The differential treatment of various types of gatherings also raised concerns regarding equal treatment, highlighting the need for transparent and reasoned decision-making.

The right to education was profoundly affected by the suspension of in-person teaching and the transition to online learning. Although digital education enabled continuity, it also exposed structural inequalities related to access to technology, internet connectivity, and educational support.

From a constitutional perspective, the restriction of in-person education raises complex issues. While temporary closures may be justified to protect public health, prolonged reliance on remote education risks undermining the substance of the right, particularly for vulnerable groups. As noted in constitutional scholarship, the effectiveness of a right is inseparable from the conditions of its exercise (Vedinaş, 2021).

Emergency measures also imposed significant restrictions on the right to work and economic freedoms. Temporary closures of businesses, limitations on operating hours, and sector-specific bans affected both employees and employers. Although compensation schemes were introduced, they did not fully offset the economic and social consequences of prolonged restrictions.

The proportionality of such measures depends on their duration, scope, and the availability of mitigating mechanisms. Prolonged restrictions without adequate compensation risk transforming temporary limitations into structural deprivations incompatible with constitutional guarantees (Bîrsan, 2020).

For analytical clarity, the principal rights affected and the characteristics of the restrictions imposed are summarized in Table 1.

Table 1. Fundamental rights affected by emergency measures: scope, intensity, and duration

Fundamental right	Scope of restriction	Intensity	Duration	Main constitutional concerns
Freedom of movement	General	High	Prolonged	Necessity, cumulative impact
Private and family life	Broad	Moderate–High	Prolonged	Privacy, data protection
Freedom of assembly	General	High	Variable	Non-discrimination
Freedom of religion	Targeted	Moderate	Variable	Core content of the right
Right to education	General	Moderate	Prolonged	Equality of access
Right to work	Sector-specific	Moderate–High	Prolonged	Proportionality, compensation

Source: Author's own elaboration based on Romanian emergency legislation and constitutional doctrine

The analysis demonstrates that the material impact of emergency measures cannot be reduced to isolated restrictions. Rather, it reflects an interconnected web of limitations whose cumulative effects must be assessed in light of constitutional principles. This finding reinforces the argument that proportionality analysis must

account for scope, intensity, and duration simultaneously, rather than focusing exclusively on individual measures.

4. JUDICIAL AND INSTITUTIONAL CONTROL OF EMERGENCY MEASURES

The legitimacy of emergency governance depends not only on the normative framework authorizing restrictive measures, but also on the existence and effective functioning of control mechanisms capable of correcting excesses and preventing abuses of power. In constitutional democracies, judicial and institutional oversight plays a decisive role in ensuring that exceptional measures remain compatible with fundamental rights and the rule of law. In Romania, this oversight was exercised primarily by the Constitutional Court, administrative courts, and the Ombudsman, each performing distinct yet complementary functions during the COVID-19 pandemic.

The Constitutional Court of Romania occupies a central position in the system of constitutional guarantees, acting as the ultimate arbiter of the conformity of legislation and emergency ordinances with the Constitution. During the pandemic, the Court was repeatedly called upon to review the constitutionality of norms regulating restrictive measures, thereby reaffirming the binding force of Article 53 of the Constitution.

One of the most significant contributions of the Constitutional Court was its insistence on the principle of legality. In several decisions delivered in 2020, the Court held that fundamental rights may be restricted only by law in the formal sense, and not by secondary legislation or administrative acts. This jurisprudence underscored the constitutional requirement that the essential content of restrictions must be determined by Parliament, even in emergency contexts (Muraru & Tănăsescu, 2019).

The Court also emphasized the cumulative nature of the conditions imposed by Article 53. It rejected arguments suggesting that the existence of an emergency automatically validates restrictive measures, reaffirming that necessity and proportionality must be demonstrated concretely. As constitutional doctrine notes, these decisions played a crucial role in preventing the erosion of constitutional standards under the pressure of crisis governance (Dănișor, 2007).

Administrative courts provided an essential avenue for individuals and economic operators to challenge concrete restrictive measures. Unlike constitutional review, which focuses on norms, administrative litigation addresses the application of emergency measures to specific cases, thereby offering a more immediate form of protection.

During the pandemic, administrative courts examined challenges against fines, closure orders, quarantine decisions, and other administrative acts adopted under emergency regulations. These proceedings enabled courts to assess the proportionality of measures in *concreto*, taking into account individual circumstances. Such case-by-case analysis is particularly important in emergency contexts, where generalized measures may produce disproportionate effects on certain categories of persons. Nevertheless, access to administrative justice was itself affected by emergency measures, including procedural delays and restrictions on court activity. This paradox

illustrates the fragility of judicial protection during crises and reinforces the importance of maintaining functional access to justice as a constitutional priority (Vedinaş, 2021).

The Ombudsman emerged as a key institutional actor in safeguarding fundamental rights during the pandemic. By virtue of its constitutional mandate, the Ombudsman has the authority to challenge the constitutionality of laws and emergency ordinances directly before the Constitutional Court. This prerogative proved particularly valuable in contexts where political oversight was weakened.

Through constitutional referrals, the Ombudsman facilitated judicial scrutiny of emergency measures that might otherwise have escaped review. This role was especially important during the state of alert, where parliamentary involvement was limited and executive dominance more pronounced.

The effectiveness of the Ombudsman's interventions highlights the importance of independent institutions in preserving constitutional balance during emergencies. At the same time, it underscores the need to protect the autonomy and authority of such institutions against political pressure.

The Romanian experience demonstrates that judicial and institutional control mechanisms operate most effectively when they function in a complementary manner. Constitutional review ensures normative conformity, administrative litigation addresses individual grievances, and the Ombudsman facilitates access to constitutional justice. Together, these mechanisms form a multi-layered system of safeguards.

However, reliance on *ex post* control alone is insufficient to guarantee the full protection of fundamental rights. Judicial interventions often occur after restrictive measures have already produced significant effects. This structural limitation reinforces the importance of preventive safeguards, including parliamentary oversight and transparent decision-making processes.

The principal forms of judicial and institutional control exercised during the pandemic are summarized in Table 2.

Table 2. Judicial and institutional control of emergency measures in Romania

Oversight mechanism	Competent institution	Object of review	Main contribution	Structural limitations
Constitutional review	Constitutional Court	Laws, emergency ordinances	Enforcement of legality and proportionality	<i>Ex post</i> , abstract review
Administrative litigation	Administrative courts	Individual administrative acts	Case-by-case proportionality analysis	Procedural delays
Constitutional referral	Ombudsman	Laws and ordinances	Access to constitutional justice	Dependent on institutional initiative

Source: Author's own elaboration based on Romanian constitutional practice

The analysis confirms that judicial and institutional oversight constituted a critical safeguard against excessive restrictions on fundamental rights. At the same time, it

reveals the inherent limitations of reactive control mechanisms in managing prolonged emergencies. These findings provide the basis for the comparative analysis developed in the following section.

5. COMPARATIVE PERSPECTIVES ON EMERGENCY MEASURES AND FUNDAMENTAL RIGHTS PROTECTION

A comparative analysis provides an essential framework for assessing the adequacy of national responses to emergencies. While constitutional systems differ in structure and tradition, European states faced similar challenges during the COVID-19 pandemic, particularly in reconciling public health protection with the safeguarding of fundamental rights. Examining selected European approaches allows for the identification of convergent constitutional standards as well as divergent institutional solutions.

This section focuses on Germany, France, Italy, Spain, and Sweden, chosen for their differing constitutional traditions, degrees of centralization, and approaches to emergency governance. The comparison highlights how variations in constitutional design and institutional culture shape the proportionality and legitimacy of emergency measures.

5.1 Germany: Parliamentary Centrality and Judicial Vigilance

Germany's constitutional response to the pandemic was characterized by a strong emphasis on parliamentary involvement and judicial oversight. Emergency measures were primarily adopted under the Infection Protection Act (Infektionsschutzgesetz), which was repeatedly amended by the Bundestag to provide a clear legislative basis for restrictions.

German constitutional doctrine emphasizes that even severe restrictions on fundamental rights must remain grounded in parliamentary legislation and subject to strict proportionality analysis. The Federal Constitutional Court (Bundesverfassungsgericht) played an active role in reviewing emergency measures, often focusing on the necessity and temporal limitation of restrictions. This jurisprudence reaffirmed the principle that emergencies do not suspend constitutional scrutiny, but rather intensify it (Dănișor, 2007).

Germany's approach illustrates the advantages of maintaining parliamentary centrality in crisis governance, even at the cost of slower decision-making processes.

5.2 France: Executive-Led Governance under Constitutional Supervision

France adopted a more executive-driven model through the declaration of a public health emergency (*état d'urgence sanitaire*). This regime granted extensive regulatory powers to the executive, enabling rapid and comprehensive interventions. Parliamentary involvement was present but more limited, focusing primarily on ex post oversight.

Judicial control was exercised by the Constitutional Council (Conseil constitutionnel) and administrative courts, which reviewed the proportionality of restrictive measures. While French courts generally upheld the necessity of emergency measures, they also imposed limits, particularly where restrictions disproportionately affected specific rights or categories of persons.

The French experience demonstrates that executive efficiency can coexist with constitutional supervision, but it also highlights the risks associated with prolonged reliance on executive regulation.

5.3 Italy and Spain: Fragmentation and Regional Complexity

In Italy and Spain, emergency governance was complicated by strong regional structures. Both states adopted extensive emergency measures through executive decrees, often supplemented by regional regulations. This multi-level governance generated legal uncertainty and uneven application of restrictions.

Constitutional courts in both countries were called upon to clarify the distribution of powers between central and regional authorities. These interventions underscored the importance of constitutional clarity in preventing fragmentation and ensuring equal protection of fundamental rights across the territory.

5.4 Sweden: A Soft-Law Approach to Emergency Governance

Sweden adopted a distinctive approach, relying primarily on recommendations and voluntary compliance rather than binding restrictions. This model reflected a strong cultural emphasis on individual responsibility and institutional trust. While this approach limited formal restrictions on fundamental rights, it also raised concerns regarding the effectiveness of public health protection.

From a constitutional perspective, Sweden's model illustrates that the intensity of rights restrictions is not the sole determinant of legitimacy. Transparency, public trust, and social consensus also play crucial roles in shaping the effectiveness and acceptability of emergency responses.

The key features of the selected national approaches are summarized in Table 3.

Table 3. Comparative overview of emergency governance and rights protection in selected European states

Country	Dominant governance model	Parliamentary involvement	Judicial control	Intensity of restrictions
Germany	Legislative-centered	Strong	Strong	High, time-limited
France	Executive-centered	Moderate	Strong	High
Italy	Executive-regional	Moderate	Moderate	High
Spain	Executive-regional	Moderate	Moderate	High
Sweden	Soft-law based	Strong	Limited	Low

The comparative analysis reveals that no single model offers a perfect solution. However, systems that preserved strong parliamentary involvement and judicial vigilance were better equipped to ensure proportionality and democratic legitimacy.

6. CONCLUSIONS

The analysis undertaken in this article confirms that emergency and alert measures adopted during extraordinary situations have a profound and multidimensional impact on the effective enjoyment of fundamental rights and freedoms. While constitutional democracies accept that certain restrictions may be necessary to protect overriding collective interests, such as public health, the legitimacy of these measures depends on their continuous compliance with constitutional principles, particularly legality, necessity, proportionality, and respect for the essence of rights.

The Romanian experience during the COVID-19 pandemic illustrates the complexity of translating abstract constitutional safeguards into concrete regulatory practice. Although the constitutional framework governing the limitation of fundamental rights, as established by Article 53 of the Constitution, provides a coherent normative benchmark, its application in the context of prolonged emergency governance proved challenging. The cumulative and long-term nature of restrictive measures transformed proportionality from a static legal requirement into a dynamic constitutional obligation, requiring constant reassessment and justification (Dănișor, 2007).

One of the central findings of this study is that the material impact of emergency measures cannot be adequately assessed by examining individual restrictions in isolation. Restrictions on freedom of movement, private and family life, freedom of assembly, religious practice, education, and work interacted in complex ways, generating indirect and cumulative effects that significantly altered the conditions of social and economic life. As emphasized by constitutional doctrine, the effectiveness of fundamental rights is inseparable from the practical conditions of their exercise, and prolonged limitations risk undermining the substance of rights even when formally justified (Bîrsan, 2020).

The analysis of specific rights affected during the pandemic demonstrates that duration and repetition are as constitutionally relevant as scope and intensity. Measures that may be proportionate in the short term can become excessive when maintained without meaningful differentiation, individualized assessment, or adequate compensatory mechanisms. This observation is particularly relevant in the context of the state of alert, where successive extensions allowed restrictive measures to persist for extended periods under a predominantly executive-driven governance model.

Judicial and institutional control mechanisms played a crucial role in mitigating the risks associated with emergency governance. The Constitutional Court of Romania reaffirmed the binding nature of the legality and proportionality requirements, emphasizing that fundamental rights may be restricted only by law and not by secondary legislation. Administrative courts contributed to protecting individual rights through case-by-case proportionality analysis, while the Ombudsman facilitated

access to constitutional review in contexts where political oversight was limited (Muraru & Tănăsescu, 2019).

However, the Romanian experience also highlights the structural limitations of ex post control mechanisms. Judicial review, by its very nature, intervenes after restrictive measures have already produced effects. While essential, it cannot fully substitute for preventive democratic oversight and transparent legislative deliberation. This finding reinforces the importance of maintaining a central role for Parliament in validating and reassessing emergency measures that significantly affect fundamental rights.

The comparative analysis of selected European states further supports this conclusion. Systems that preserved strong parliamentary involvement and robust judicial vigilance - such as Germany - were better positioned to ensure proportionality and democratic legitimacy, even when adopting severe restrictions. By contrast, models characterized by prolonged executive dominance or fragmented governance structures encountered greater difficulties in maintaining constitutional coherence. The Swedish approach illustrates that alternative governance strategies, based on trust and soft-law instruments, may limit formal restrictions on rights, but raise distinct challenges related to effectiveness and accountability.

From a normative perspective, the findings of this article suggest several directions for improving constitutional resilience in future emergencies. First, proportionality assessments should be institutionalized as ongoing processes rather than one-time justifications, particularly in prolonged crises. Second, mechanisms of parliamentary oversight should be strengthened, especially with regard to the extension and substantive content of emergency measures adopted under legislative regimes such as the state of alert. Third, greater emphasis should be placed on transparency, reason-giving, and impact assessment, enabling both judicial review and informed public debate.

Ultimately, the legitimacy of emergency measures depends not only on their effectiveness in addressing the crisis at hand, but also on their conformity with constitutional values and democratic principles. Exceptional situations do not suspend the Constitution; on the contrary, they test its capacity to guide public action under pressure. The Romanian case demonstrates that safeguarding fundamental rights during emergencies requires a combination of clear legal frameworks, active institutional oversight, and a sustained commitment to proportionality and the rule of law. Strengthening these elements is essential not only for managing future crises, but also for preserving public trust in constitutional democracy and the enduring protection of fundamental rights (Vida, 2000).

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