

Is the principle of the separation and balance of powers still valid in the conditions of the pandemic crisis?

Insights from Romania during the state of alert

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Abstract: In March 2020, the President of Romania established a state of emergency to prevent the spread of COVID-19 and to manage the consequences of its spreading, for a period of 30 days, which would be extended by another 30 days. Two months later, by means of a Decision, the Government of Romania declared a state of alert throughout the country, for a period of 30 days, establishing, at the same time, the measures to be applied to prevent and combat the effects of the pandemic of COVID-19. This state of alert and the applicable measures have, in turn, been extended by successive Government decisions, by 30 days each, until March of 2022. This study aims to investigate whether in the current pandemic context we can still talk about a real separation of powers in a state governed by the rule of law, especially with regard to the obligation of a fair cooperation between the executive and the judiciary. The originality of this study lies in the fact that it answers the question of whether the Government's apparent "unlawful" act is justified by the greater good, which is to protect the population in the current pandemic context, a question that ponders the public and the practitioners alike. The novelty lies in the analysis of the recent case-law of Romanian courts on the state alert, where decisions on the annulment of several Government decisions were ruled in the last months of the year 2021. The only possible conclusion is that, knowing that the judge is the one who "says" the law, there must be a real and effective mutual control between the state powers in order to avoid abuses by one or another of the state powers, in terms of exercising their specific powers in accordance with the law, which supposes the principle of separation and balance of power in the state, an effective mechanism specific to the rule of law and democracy.