

Human Rights and Fundamental Freedoms of Data Subjects between Balance, Proportionality and Evolution during the Pandemic COVID – 19

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ABSTRACT

With the COVID-19 pandemic, Romania, like other EU Member States, had to take a number of measures to assure the distance between the human subjects. It was intended to prioritize work and life in virtual reality, the use of new technologies for learning or for performing work tasks. Electronic communication between employee – employer – citizens was encouraged. Thus education, health, and commercial activities all moved online for long periods of time.

The respect for the fundamental right to life and the right to privacy in this context has been a cause of “contesting Europe on the periphery” during the pandemic period and that because any action on the internet leaves digital traces and sometimes because of the improper digital infrastructure.

The data subjects, as defined in the General Data Protection Regulation (GDPR), real or false personalities, in the online environment, do not have control over the fact that, through simple activity on the internet, they become the subject of profiling but also of possible cyberattacks.

The European Commission notes the increased frequency of large-scale attacks against information systems and the trend toward the use of information and communication technologies for political, economic and military supremacy. Cyberattacks are without borders. Human rights should remain without borders.

Regarding the respect for the fundamental human rights and freedoms during the COVID – 19 pandemic in Romania and at Union level, history is still being written.

Borders? Proportionality? Evolution? Balance?

The future is under construction.

KEYWORDS: data subject, fundamental human rights and freedoms, personal data, GDPR, COVID, 19 pandemic.

1.Introduction

The CoE Convention 108 is the first and only legally binding international instrument dealing with the protection of personal data. Enshrined in the Charter of Fundamental Rights of the European Union, the Treaty on the Functioning of the European Union (TFEU) and the European Convention for the Protection of Human Rights and Fundamental Freedoms, the respect for the fundamental rights to privacy and the protection of personal data rely on a desire to place the natural person at the center of society by granting her the right to individuality.

Privacy International considers that „in the absence of the right to privacy, other rights and freedoms are at risk”. The right to privacy makes possible „to have an option as to how, when, to

whom a person chooses to disclose his or her personal data.” The right to privacy gives the data subject the opportunity to be in control of his or her identity and the way in which he or she interacts with the environment, provides security to the person in the face of an unjustified abuse of power and allows him or her to think freely without discrimination. The right to privacy allows a person to be autonomous and to live in dignity. (<https://privacyinternational.org>)

In accordance with Title II, Article 26, paragraphs 1) and 2) of the Constitution of Romania:

”(1) public authorities respect and protect private, family and private life;

(2) the individual has the right to dispose of himself, if he does not violate the rights and freedoms of others, public order or good morals.”

However, some measures to prevent and combat the COVID-19 pandemic at the level of the European Union and in each Member State lead us to legitimately ask ourselves, if have been respected in the last two years, at EU level, the human rights and fundamental freedoms of individuals.

Does the processing of personal data, including the transfer of special categories of personal data between Member States of the Union respect the right of individuals to privacy? Is it possible to shift the interest of the Union from the traditional respect for the privacy of individuals and the protection of their personal data to the collective rights of citizens?

In this article I propose, by using the content analysis, the direct observation and the analysis of documents, a presentation of how the respect for human rights and fundamental freedoms and the right of data subjects to the protection of their personal data was managed in Romania and in the European Union during the pandemic and now. The first goal is to observe the awareness impact of the data subjects regarding their rights in a democratic society. The second goal is to observe the proactivity of the data subjects, aware of their rights, but also the trust they have in public institutions.

2. Human rights and fundamental freedoms: a framework that requires placing the human being at the center of democratic societies

The respect for fundamental rights to privacy and the protection of personal data is enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, in Article 16 of the Treaty on the Functioning of the European Union (TFEU) and in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Also, in accordance with the opinion (4) of the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC (GDPR):

„[...] This Regulation respects all fundamental rights and observes the freedoms and principles recognized in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.”

In accordance with Title I, Article 1(3) of the Constitution of Romania: “Romania is a rule of law, democratic and social, in which human dignity, citizens rights and freedoms, the free development of human personality, justice [...] represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the December 1989 Revolution and are guaranteed.”

In accordance with Title II, Article 20, paragraphs 1) and 2) of the Constitution of Romania: “(1) the constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the covenants and the other treaties to which Romania is a party;

(2) if there are inconsistencies between the treaties and treaties on fundamental human rights to which Romania is a party, and the internal laws, international regulations shall prevail, unless the Constitution or internal laws contain more favourable provisions.”

In these circumstances, unvaccinated people in Romania have been subjects to discriminatory treatments: they had no access to restaurants, theatres, cinema, public spaces without a *green certificate* in the last part of the pandemic.

In Austria the government-imposed fines to people who refused the vaccine and imposed the green certificate including for exercising the right to work of the working population. In France, the president declared his intention to “annoy unvaccinated people” until they choose to get vaccinated. Greece has approved a €100 monthly fine for people over the age of 60 who refused to get vaccinated until they agree to do so.

The question is therefore legitimate: is it ethical to constrain a person by discriminatory restrictions to make decisions that he refuses for objective reasons, invoking precisely the fundamental right to life?

In accordance with the article 7 of the Universal Declaration of Human Rights: “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

In accordance with the article 1 of the Treaty of Lisbon: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

In accordance with the article 177 (e.g. Article 130u) of the Treaty establishing the European Community: “2) Community policy [...] shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.”

States that have acted mimetically, imitating other States which have imposed preventive measures “to ensure the health of the population”, sometimes by carrying out aggressive actions against a segment of the population were sanctioned by organizing protests or demonstrations even during state-imposed emergency or alert states.

In this case the question about how functional is the framework that requires to place the human being at the centre of democratic societies is legitimate.

3. Imposing a green certificate to restrict the right of access to certain locations for unvaccinated persons or the exercise of their right to work: imbalance of power?

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At European Union level the use of the green certificate was regulated by the *Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on the framework for the issue, verification and acceptance of interoperable COVID-19 vaccination, testing and healing certificates to facilitate free movement during the pandemic*, respectively by the *Regulation 954/2021 which sought to resolve the situation of third-country nationals within the EU*.

These two regulations constitute the legal framework for the introduction of the green certificate in order to avoid closing the borders of EU Member States. These regulations also introduced a number of conditions for the legal use of the green certificate in accordance with human rights and personal data protection laws.

However, there was a draft law in Romania that provided for the introduction of the green certificate with the goal to limit the access to work of medical staff, but also to limit the access to work of public officials. This law, if adopted, would have violated not only two European regulations but also the Constitution of Romania. The right to work is a fundamental human right and cannot be restricted or prohibited.

Therefore, in accordance with Title II, Article 20, paragraph (2) of the Romanian Constitution, the mandatory use of the green certificate in Romania in order to limit the access to supermarkets, malls, restaurants in the case of persons who did not opt for the inoculation of an experimental serum in their bodies, was not legal and contrary to the provisions of two European regulations: “[...] international regulations shall prevail, unless the Constitution or internal laws contain more favourable provisions.”.

Imposing by law the green certificate in order to restrict the exercise of the right to work for unvaccinated persons, in order to oblige them to meet a requirement to get vaccinated, the Romanian Government would have been in the situation of an imbalance of power in a democratic state in which the Government must act fairly for all the citizens. In this case, a majority segment of Romania’s population could be discriminated because it demanded respect for their fundamental rights and freedoms.

However, a government decision was adopted, the object of which was to limit the access of citizens in public institutions and office buildings: the Government Decision no. 1130/2021 amending the Annexes 2 and 3 to Government Decision no. 1.090/2021 establishing measures to be applied during the period for prevention and combating the effects of the COVID-19 pandemic.

A sign of the data subjects’ awareness regarding their rights was the number of demands that these rights be respected addressed to the court, the organization of protests, increasing numbers of disgruntled people.

What is the visible denouement at present?

The court of Appeal of Cluj-Napoca annulled the following Government Decisions in full: the Government Decision 826/21 August 2021, the Government Decision 932/9 September 2021 and the Government Decision 990/17 September 2021.

Among the reasons invoked by the Court to annul in full *the Government Decision no. 826 of 5 August 2021 on the extension of the alert state on the territory of Romania, as well as establishing the measures applied to prevent and combat the effects of the COVID-19 pandemic* were:

“Even if it does not expressly mention the obligation of all persons to vaccinate, the Government Decision discriminates without being necessary in order to ensure the health of the population by disadvantaging the category of unvaccinated persons representing the majority of the Romanian population. The effect of the Government Decision norming of the green certificate and its use is obviously illegal, and again the normative administrative acts substitute an organic law.”

“At the moment, the evolution of the pandemic is no longer unpredictable, as it was at the beginning of the pandemic, so the measures are no longer urgent. Consequently, the government’s recourse to a repeated extension of the state of emergency based on the same reason that was the basis of its declaration last year represents a real excess of power, which must be sanctioned by the judiciary. The continued maintenance of measures that drastically restrict fundamental rights is abusive and flagrantly contravenes Article 53 of the Constitution, the measures being neither proportionate nor necessary, in relation to the concrete situation at this time and was not even at the beginning.”

Also, the Bucharest Court annulled all the provisions of the Decision of the Bucharest City Committee for Emergency Situations 61/02.10.2021, which conditioned the participation of Bucharest inhabitants of testing/vaccination or passing through the disease (green certificate) in various activities. Among the reasons invoked by the Court I mention the following:

- “The term prohibiting unvaccinated/unvaccinated persons from accessing certain activities is deleted.”
- “Imposing the condition of being healthy for the exercise of certain rights blatantly violates the Universal Declaration of Human Rights, the European Convention on Human Rights and the Constitution of Romania. The citizen is entitled not to recognize the obligations imposed on him under these conditions.” (Amer Jabre, judge).”

4. Proportionality, necessity in imposing restrictions on a segment of the Romanian population during the pandemic: legality and legitimacy of the measures taken by the Government?

In accordance with the opinion (170) of the General Data Protection Regulation (GDPR):

“(…)In accordance with the principle of proportionality as set out in that Article [Article 5 of the Treaty on European Union (TEU)], this Regulation does not go beyond what is necessary in order to achieve that objective”.

According to Article 9 – Principle of proportionality of the Administrative Code of Romania: “The forms of activity of public administration authorities must be appropriate to the satisfaction of a public interest, as well as balanced from the point of view of the effects on persons. Regulations or measures of public administration authorities and institutions shall be initiated, adopted, issued, as appropriate, only after the assessment of public interest needs or problems, as appropriate, of the risks and impact of the proposed solutions”.

Any legislative measure imposing restrictions on the exercising the right to work, the right to life and privacy or the right to the protection of personal data must be necessary and comply with the principle of proportionality. The opinion (73) of the General Data Protection Regulation states that a legislative measure restricting the aforementioned rights must comply with „the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms”.

In accordance with the Article 52(1) of the Charter: “[...] in respect of the principle of proportionality, restrictions may be imposed only where they are necessary and only if they effectively meet the objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others”.

Pressure exerted by the government on unvaccinated persons, as well as restrictions of access to commercial spaces, auditoriums, in theatres or in cinemas or public administration institutions proof again a power imbalance but also an imbalance of proportionality.

In this case, the question is legitimate: The Romanian government could have done more to respect people’s fundamental rights and freedoms in Romania?

Obligatory vaccination/vs./ fundamental right to life: free will? proportionality? the letter of the law?

The mandatory inoculation of experimental serums to the entire population of a Member State of the European Union or the imposition of green certificate were subjects of wide debate during the period of the COVID pandemic.

Right to life, protection of the vulnerable, abuse of power, coercion, all these terms have been debated and used extensively the last years. History is still writing of establishing the legality and legitimacy of imposing obligatory vaccination, but there are a number of cases that can be considered at present.

Interesting are the cases „Zambrano” against France or «Thévenon » against France, this last case referred from the point of view of Article 8 of the Convention, taken alone and combined with Article 14, and Article 1 of Protocol No 1. For the European Court of Human Rights (ECHR) a mandatory vaccination strategy is legal, responding to the pressing social need to protect individual and public health from the well-known diseases of medicine, but ECHR must exercise a control of proportionality of the measures adopted to the legitimate aims pursued.

On the other hand, talking about the possibility of mandatory vaccination of children, Anne-Stéphanie Renon, Deputy Auditor at the State Council in Belgium, explained the contents of the decision in Vavříčka et al/ versus/ the Czech Republic, handed down on 8 April 2021 by the European Court of Human Rights (ECHR). The ruling did not deal with COVID-19 vaccination

but was instructive in the context of the proposal in some EU Member States to impose mandatory vaccination. (<https://www.justice-en-ligne.be/La-Cour-europeenne-des-droits-de-l-1440>)

From a legal point of view, the vaccine obligation raises questions regarding respect for the fundamental right to privacy, both as regards the protection of physical integrity and the protection of personal data. Any measure considered necessary for the protection of human health must be balanced with other fundamental rights.

In its decision in *Vavříčka et al/versus/ the Czech Republic*, the Court recognized that mandatory vaccination, “as an involuntary medical intervention”, constitutes an interference in the exercise of the right to privacy.

In order to determine whether there is a violation of Article 8 of the European Convention on Human Rights, the Court has verified the compliance with the principle of legality, legitimacy and proportionality. A legitimate objective, in this case, was the necessity to respond to the social need to protect individual and public health from the well-known diseases of medicine.

The Court highlighted among several elements concerning children, the following elements to conclude that the measure of vaccination obligation is proportionate:

- „– the person’s suitability for vaccination;
- a ban on the forced administration of the vaccine against the wishes of those concerned;
- the fact that the vaccine obligation only concerns vaccines deemed safe and effective by the scientific community;
- the moderate nature of the sanctions and the time-limited nature of the effects suffered by unvaccinated children;
- the existence of an obligation in the Head of State to place the best interests of the child at the centre of all decisions affecting their health and development;
- the fact that the safety of the vaccines used is subject to permanent monitoring by the competent authorities.” (<https://www.justice-en-ligne.be/La-Cour-europeenne-des-droits-de-l-1440>)

The Court admits that, exceptionally, a restriction on the right to physical integrity can be introduced in order to achieve “societal solidarity” with the most vulnerable people.

5. Protection of personal data in the digital age

With the COVID-19 pandemic, Romania had to take a number of measures to assure the distance between the human subjects. It was intended to prioritize work and life in virtual reality, the use of new technologies for learning or for performing work tasks.

Thus education, health, and commercial activities all moved online for long periods of time. The pandemic has created the premises for the beginning of the era of digitalization. Through the Romania's National Recovery and Resilience Plan will be financed extensive digitalization programs, with a major impact on priority sectors of activity.

The present is already under the sign of technology, and that’s because “among the most significant features of contemporary society are: Speed, information, Voracity and Vulnerability.” (I. Vasîu, L. Vasîu: 2011, pag. 10)

However, any link access, any action on the internet leaves digital traces, which “combined and connected in a virtual ecosystem” can lead to “a transposition of personality into a virtual environment” and we don't know if we're talking about real or fabricated personalities.

The data subjects, as defined in the General Data Protection Regulation (GDPR), real or false personalities, in the online environment, do not have control over the fact that, through a simple activity on the internet, they become subjects of profiling but also of possible cyberattacks.

In “Cyberspace crime” I. VasIU and L. VasIU identified among the purposes of the cyber attacks “financial benefits”, “intimidation”, “surveillance or manipulation of information”. They're presenting three types of threats that aim to:

- *exploitation* for the purpose of economic or political espionage or infringement of intellectual property rights;
- *sabotage* or attacks of distributed denial of Service, spam and disruption of means of communication;
- *physical destruction*. (I. VasIU, L. VasIU: 2011, pag. 14-15)

In the same time the European Commission notes the increased frequency of large-scale attacks against information systems and the trend toward “the use of information and communication technologies for political, economic and military supremacy”. (www.legalup.ro/protectia-datelor-personale-in-era-informationala)

During the COVID pandemic, electronic communication between employee – employer – citizens was encouraged. Thus, all the activities moved online for long periods of time. If we refer to the triangle of communication and inter-conditioning operator – data subject – control institutions, as described and regulated in European and national legislation, the protection of personal data becomes a complex and sensitive subject in the era of digitalization.

The rights of the data subjects (right to erasure, right of access, right of rectification, right to object, etc.), as set out in the General Data Protection Regulation, bring the person to the heart of democratic society. The right to privacy and the right to the protection of personal data become the core of human existence. If information is power, personal information contributes to the ability to influence or manipulate. A person's search history on the Internet reveals information about their browsing behaviour allowing those interested to create profiles that can be exploited through manipulation. The same principle is also used in large-scale manipulation of the masses through the use of fake news.

In the case of online commerce or profiling activity, the sale of personal data falls within the scope of the consideration (24) of the *Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services*, according to which „personal data cannot be considered as a commodity”.

Online business activities involve the risk of material or financial losses as a result of cyber attacks. The protection of personal data decreases if the exposure of individuals in the virtual environment increases. In the case of mass manipulation actions are identified risks of losing the autonomy of the data subjects to decide. They lose control, they lose the power of free will.

In this perspective, the new European Union orientation to build a data-driven society must also be taken into account. “The Commission's strategic documents, together with a number of

already adopted legislative acts or legislative proposals, are more concerned with the valorisation and opening up of data than their protection”, although the importance of respect for privacy and personal data is still recognized. (<https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/european-data-strategy-ro/>)

In the Article 10(1) the *Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information* introduces the principle of ‘open by default’. “In that context, concerns relating to intellectual property rights, personal data protection and confidentiality, security and legitimate commercial interests shall be taken into account in accordance with the principle of “as open as possible, as closed as necessary”.

So, in an era of digitalisation, the future comes with risks to everything that means human rights, but if the individual is exposed, democratic societies must find, by supporting this direction, a common denominator between digitalization and respect for human rights and fundamental freedoms.

6. Does the existing infrastructure allow the protection of personal data?

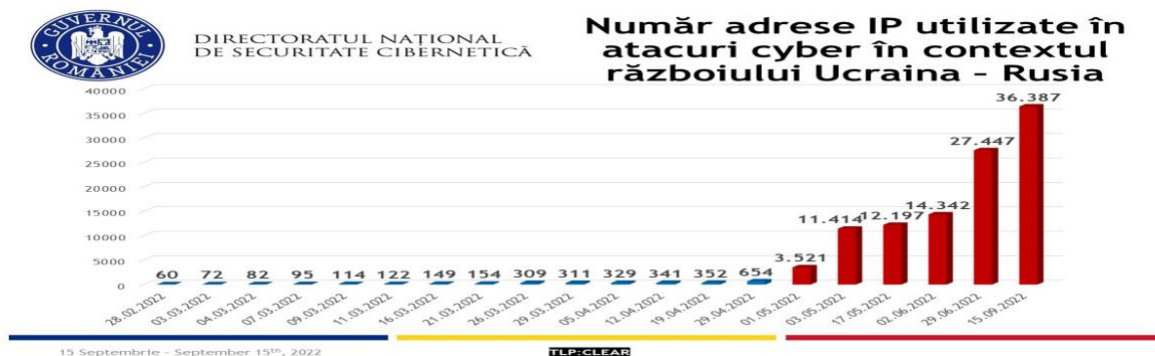
The National Directorate of Cyber Security from Romania published on the official site the Cyber Security Guide, developed within the program "Improving and developing cyber capacity in Romania for preventing and combating cybercrime" (<https://dnsc.ro/vezi/document/ghid-securitate-cibernetica-2021>). Thus, we can observe in the first table below the countries that are part of the top 20 by apparent geographic location of IP addresses and, in the second table, the frequency of attacks, who has increased dramatically since may 1, 2022. Among the top 20 countries we note, several Member States from the European Union such as: Germany, position 7, with 1239 IP addresses used in cyber attacks in the context of the war Russia - Ukraine, France, position 10, with 914 IP addresses used in cyber attacks, Italy, position 11, with 740 IP addresses used in cyber attacks and Spain, position 16, with 448 IP addresses used in cyber attacks.

Also, the formulation “apparent geographic location” is extremely important. The word “apparently” highlights both the benefits and the risks of using Internet. The virtual environment makes it extremely easy to build false personalities all over the world, acting, perhaps, from a fixed location.

Table A



Table B



What does the present say about the future?

In this section I will propose a foray into the headlines of the year 2022 in the press. The titles and a brief overview of the context will allow us to observe how the protection of personal data has been ensured so far. These cases will probably be presented in the 2022 report of the National Supervisory Authority for Personal Data Processing.

- „The biggest data leak in the Romanian medical system: A state institution accidentally reveals the diseases of over 130.000 patients”, July 21, 2022; (<https://recorder.ro/cea-mai-mare-surgere-de-date-din-sistemul-medical-romanesc-o-institutie-a-statului-divulga-din-greseala-bolile-a-pestre-130-000-de-pacienti/>)

This is a security breach of the Health Insurance House of Constanta. Thus, the personal numerical codes (CNPs) and treatments of over 130.000 patients from the city of Constanta were visible to the general public. 582 Excel files that included all the compensated medicines released between 2015-2021 by 87 pharmacies in Constanta County: From treatments for hypertension or diabetes to HIV, cancer or hepatitis C, all of which have patients' CNPs attached.

- „Cluj Court of Appeal: The fine of 100.000 EUROS applied by the National Supervisory Authority for Personal Data Processing to Transilvania Bank for the violation of the GDPR is legal”, April 13, 2022; (<https://legalup.ro/curtea-de-apel-cluj-amenda-de-100-000-euro-aplicata-de-anspdcp-catre-bt-pentru-incalcarea-gdpr-este-legala/>)

The incident consists in the disclosure in public space of the statement requested by the operator to a client about how he intended to use a certain amount of money that he wanted to collect from his account. This statement was distributed among several employees of Transilvania Bank by email. One employee listed the email containing the customer's statement as well as the email containing the internal conversation between the operator's employees. Another employee photographed the listing with their mobile phone and shared it through WhatsApp. Subsequently, the listing was posted and distributed on the social network Facebook and on a website.

- „Instagram got a fine-Record. €405 million for the inadequate management of children’s accounts”, September 16, 2022; (<https://legalup.ro/instagram-amenda-record/>)

A natural person, David Stier, reported that between October 29, 2018 and March 1, 2019, Facebook revealed the data of nearly 20% of Instagram users by including phone numbers and email addresses in the HTML source code of the web version of Instagram profiles. Mr. Stier reported that some of the users were under 18 years old. After the investigation it was found that they were professional accounts that had originally been personal accounts. Thus, when a Facebook user migrated from a personal account to a professional account, his contact details (phone number and email address) became public by default.

- „ENEL fined 10.000 EUROS for confusing customers and disclosing personal data”, July 2022; (<https://legalup.ro/enel-amendata-cu-10-000-euro-pentru-ca-a-incurcat-clientii-si-a-dezvaluit-datele-personale/>)

An individual reported that after a telephone request to Enel Energie Muntenia S.A. he received on his e-mail address a reply addressed to another client, natural person, accompanied by certain documents that could be viewed.

- “Vodafone and BCR, fined 2.000 euros each for illegally accessing the data of some customers: Third parties have fraudulently bought new phones”, September 19, 2022, (<https://economie.hotnews.ro/stiri-telecom-25798264-vodafone-bcr-amendate-cate-2-000-euro-pentru-accesarea-ilegala-datelor-unor-clienti-terte-persoane-cumparat-mod-fraudulos-telefoane-noi.htm>)

The personal data of more than 560 customers of the Romanian Commercial Bank (BCR) were transmitted via e-mail from a technical error of an IT application to other customers, which is why the bank was fined 2.000 euros. A similar fine for illegally accessing customer data has also received Vodafone. The announcement was made by the National Supervisory Authority regarding the Protection of Personal Data. According to the information mentioned in the notification form regarding the Romanian Commercial Bank, the data processing security breach occurred as a result of a technical error of an IT application of the operator.

The data breach has led to unauthorized disclosure or unauthorized access to certain personal data, such as: name and surname, CNP, home address, telephone number, email address, together with mis-generated financial information on cumulative gain, cumulative loss, net gain, net loss, cumulative tax due, tax to pay, tax to recover. A total of 564 people, clients of the bank, were affected by the incident. Regarding the Vodafone case, the national Supervisory Authority found that the Vodafone Romania SA operator did not verify compliance with the procedure for identifying the caller by the commissioners. This allowed third parties to fraudulently purchase new phones on behalf of customers of the operator. Also, third parties had access to data from customer contracts with the operator and data from My Vodafone personal accounts, such as: name, surname, address, personal numeric code, contact phone number, PUK code, account holder contact number, original SIM card number, last unpaid invoice amount and data traffic.

- “Tens of thousands of equipment from the US, Russia and China were used for cyber attacks on IT infrastructure in Romania”, September 2022; (<https://247newsreel.com/economy/294059.html>)

The National Directorate for Cyber Security (DNSC) states that, in the context of the war between Ukraine and the Russian Federation, starting with February 2022 it has identified a series of cyber attacks executed by hostile actors against infrastructures in Romania as well as allies from Member States of the European Union or NATO. Attacks were varied, including Distributed Denial of Service (DDoS), spear-phishing campaigns against decision-makers and executors, ransomware propagation, attempts to gain unauthorized access to computer systems, or brute force attacks.

- „Meta announced the destruction of the most complex Russian disinformation operation since the outbreak of the war against Ukraine”, September 27, 2022 (<https://www.hotnews.ro/stiri-razboi-ucraina-25813776-meta-anuntat-destructurarea-cele-mai-complexe-operatiuni-dezinformare-ruseasca-declansarea-razboiului-impotriva-ucrainei.htm>)

The associated press and Agerpres reported Meta, the parent company of Facebook and Instagram, announced that it had destroyed a major disinformation network about the Russian war in Ukraine. Meta representative David Agranovich explained that the Russian operation began in May and mainly targeted Germany, but also France, Italy, Ukraine and the UK. “An unusual combination of sophistication and brute force,” said Agranovich. “On the one hand, imitating existing websites in several languages, on the other hand, spreading articles on social networks. This was done mainly through the purchase of advertising or fake accounts.” The company said it had blocked a total of 1.633 accounts, 793 pages and a group on Facebook, as well as 29 accounts on Instagram.

The examples could continue. These complaints and investigations, sometimes fines after the completion of investigations, prove either insufficient information about the risks of non-implementation of the GDPR, or poor training of operators to implement the GDPR, or that the current infrastructure does not allow an optimal implementation of the GDPR.

Instead of conclusion I will capture a point of view issued by the National Supervisory Authority for Personal Data Processing from Romania in the 2018 annual report on page 8:

“The adoption of the General Data Protection Regulation is a crucial moment in the field of personal data protection, with direct effects on the activity of operators in order to strengthen the specific rights of natural persons. First of all, we emphasize the express consecration of the “right to be forgotten” and, on the other hand, the establishment of the right to data portability and the right to restriction of processing, which is such as to give individuals effective control over their personal data.”

7. Evolution in the awareness of the obligation to implement the GDPR from the perspective of sanctions and recommendations of the National Supervisory Authority for Personal Data Processing

According to the Annual reports of the National Supervisory Authority for Personal Data Processing from Romania from 2018 to 2021, the number of warnings and fines fluctuates, but is clear that the number of investigations is decreasing. This is also the case for the number of investigations, corrective actions and the total amount of fines.

	2018	2019	2020	2021
DPO declared to ANSPDCP	7225	4318	2081	2164
Notifications and clarifications of aspects regarding the processing of personal data/Complaints and notifications regarding security incidents	7.114	6193	5480	5006
Investigations	1021	912	694	691
Warnings	124	134	64	93
Corrective actions	1185	128	65	56
Fines	56	28	29	36
Total amount of fines/year	631.500 lei	2.339.291, 75 lei	892.115, 95 lei	371.131,9 5 lei

We can observe that the number of fines increased in 2021 compared with 2019, the first full year of application of the GDPR, but their value decreased compared to 2019. That can be a sign of the awareness of the operators regarding the consequences of the application of the GDPR. This assumption is also supported by the constant declaration of data protection officers (DPO) to the Supervisory Authority from 2019 to 2021. Even the number of DPO declared decreased this is normal because the number of operators remains almost the same.

According to a recent survey, mentioned on the official website of the National Supervisory Authority, Romania holds third place in the Union in terms of fines imposed since 2018 by now. Thus, the National Supervisory Authority has applied, since May 25, 2018, a number of 68 fines with a total amount of 721.000 euros, which places Romania after Spain and Italy.

Compared to the number of complaints, the number of warnings, corrective actions and fines is not very important, but the object of complaints is a good sign that the number of data subjects aware of their rights is increasing.

In support of this hypothesis comes also the fact that, according to the annual reports of the supervisory authority from 2019 to 2021, the object of complaints is, in most cases, violation of the right of access of the data subject, the right of opposition and of the right to erasure, processing images through video surveillance systems installed by employees at the workplace, disclosure of personal data on the internet, processing of personal data in violation of the provisions of Article 6 of the GDPR, breach of security and confidentiality measures of personal data processing, receiving unsolicited commercial messages by telephone or electronic mail, illegal access to personal data of clients in the banking system, unauthorized access to closed circuit video surveillance systems (CCTV), disclosure of personal data in the medical system. (2021 Annual Report of the National Supervisory Authority: pag. 49-50)

In the same time, in the 2021 Annual report, the National Supervisory Authority declare that in 2021 this institution transmitted to the Ministry of Foreign Affairs points of view in 26 cases pending before the Court of Justice of the European Union. Also the National Supervisory

Authority issued opinions on 68 draft normative acts prepared by public institutions and authorities from Romania involving complex aspects of the processing of personal data. In 2018 the National Supervisory Authority issued opinions on 78 drafts of normative acts in 2019, 53 in 2020 and 65 drafts of normative acts in 2021.

These drafts of normative acts were submitted by some ministries, such as the Ministry of Internal Affairs, the Ministry of Labour and Social Solidarity, the Ministry of Development, Public Works and Administration, the Ministry of Agriculture and Rural Development, the Ministry of Transport and Infrastructure, the Ministry of Communications and Information Society, the Ministry of Finance, the Ministry of Environment, Water and Forests, the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Education, the Ministry of Investments and European Projects, but also by other central public authorities or institutions. (ANSPDCP annual report 2021: pag. 11)

By referring to the above we can observe a tendency to increase the level of information and awareness about the implementation of the GDPR both at the level of the operators and the data subjects. We can conclude that the data subjects become aware of their rights and the operators become aware of the consequences of not assuming the GDPR provisions.

8. Conclusions

“The Data Protection Regulation is a declaration of rights, even if territorial, would appear to have limited effects. However, due to the fact that the General Data Protection Regulation applies to all European citizens regardless of the location of the operators, territorial application becomes, in fact, global. The Data Protection Regulation places the data subject at the center [...]” (Daniel –Mihail Șandru, Irina Alexe: 2018, pag. 9)

The situation regarding the respect for the fundamental human rights and freedoms and the right of data subjects to the protection of their personal data during the COVID – 19 pandemic in Romania and at Union level, history is still being written.

The war in Ukraine and the incidents reported in the period 2019 - 2022 to the National Supervisory Authority by many data subjects also send signals about the need to improve the infrastructure both in the institutions of central and local administration and at the level of the operators in general. This is a necessary first step to make sure to ensure an optimal protection of personal and special data of data subjects.

Balance in respect of the fundamental rights and freedoms of the data subjects? Proportionality in the measures imposed on the population? What development assumptions could exist regarding the respect of the fundamental rights of data subjects?

Article 35 of *Section 3: Data Protection impact assessment and prior consultation* of the General Data Protection Regulation provides, indirectly, a pertinent response to the idea of balance and proportionality. Measures affecting an entire society from an economic, financial, political and long-term strategic point of view should be based on balancing tests, tests based on the assessment of the necessity and proportionality of the operations envisaged in relation to the objectives set, risk assessments for the rights and freedoms of data subjects and measures

envisaged to address risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with the documents establishing them, taking into account the rights and legitimate interests of data subjects.

On the other hand the Article 9: *The processing of special categories of personal data* of the General Data Protection Regulation provides directions for anything that represents the future evolution of the Union: “The processing of personal data must be necessary for reasons of overriding public interest, on the basis of Union or national law, which is proportionate to the objective pursued, respects the essence of the right to data protection and provides for appropriate and specific measures to protect the fundamental rights and interests of the data subject.”

So, this is not about *some* data subjects but about *all* the data subjects, all identified or identifiable persons who live on the territory of the European Union or arrive on the territory of the Union in order to stay here!

To conclude, leaving the research horizon open, I would like to believe that any measure taken by the Member States of the European Union or by the States outside the Union, in unforeseen circumstances, unknown situations, not evaluated until the moment of the confrontation of these situations, must be proportionate to the legitimate objective pursued, proportionality having only one constant: the human factor. Human rights should remain without borders. Humanity, the right to life, the right to work and the protection of privacy must remain without borders.

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