

RULE OF LAW IN TOUGH TIMES – A CASE STUDY ON THE ROMANIAN SANCTIONING POLICY DURING THE COVID-19 PANDEMIC

Laura ȘTEFAN
Cezara GRAMA

Abstract

The COVID-19 pandemic was a genuine stress test for societies around the globe. Societal values were put under public scrutiny, while fear reigned supreme allowing large margins of maneuver for governments in taking restrictive measures promising at least to win some time for health systems to adapt to the new challenges. Along with health systems governments, judicial systems and societies at large had to change the way they function to face the pandemic. In this paper we will present a case study on Romania and the usage of sanctioning mechanisms by the Police and Gendarmerie during the state of emergency, March 16–May 14, 2020. We will explore the challenges regarding the adoption of a sound legal basis for restrictive measures in line with the constitutional provision and the actual implementation of these restrictions with a focus on the performance of two enforcement institutions – the Romanian Police and the Gendarmerie – in this process. In times of crisis, or particularly in times of crisis when the government enjoys even more power than usual, the governmental action must be transparent to build trust and ensure that abuses do not happen. Moreover, the data gathered during the first wave of COVID-19 could help shape public policies for the subsequent waves with the view to improve efficiency while possibly decreasing the restrictions of human rights.

Keywords: COVID-19 sanctions, constitutions, state of emergency, access to information, Police, Gendarmerie.

Laura ȘTEFAN

Executive director, Expert Forum Association,
Bucharest, Romania

PhD candidate, Doctoral School of Administration
and Public Policy, Faculty of Political, Administrative
and Communication Sciences,
Babeș-Bolyai University, Cluj-Napoca, Romania
Tel.: 0040-21-211.7400
E-mail: laura.stefan@expertforum.ro

Cezara GRAMA

Legal counsellor, Expert Forum Association,
Bucharest, Romania
Tel.: 0040-21-211.7400
E-mail: cezara.grama@expertforum.ro

1. Introduction

The COVID-19 pandemic was a genuine stress test for societies around the globe. Societal values were put under public scrutiny, while fear reigned supreme allowing large margins of maneuver for governments in taking restrictive measures promising at least to win some time for health systems to adapt to the new challenges. Along with health systems governments, judicial systems and societies at large had to change the way they function to face the pandemic.

The newly published ‘Rule of Law’ report of the European Commission (EC) features the COVID-19, alongside other key aspects of rule of law: judicial independence, anti-corruption, media freedom and pluralism, and the overall system of checks and balances. The EC underlines that while this health-related crisis allows governments to take extreme measures affecting the rights and freedoms of European citizens it is important to ensure that they remain within the limits of what is acceptable in a democratic, rule of law society. The response to this pandemic is considered a ‘stress test for rule of law resilience’ in EU member states. Among the elements to be taken into consideration when conducting the analysis are: ‘measures were limited in time, whether safeguards were in place to ensure that measures were strictly necessary and proportionate, and whether parliamentary and judiciary oversight as well as media and civil society scrutiny could be maintained’ (European Commission, 2020, p. 6). Furthermore, the EC looks at the measures taken to counter COVID-19 through the lens of functioning checks and balances in EU societies, and it underlines the importance of scrutiny of the media and the civil society over the governmental actions, and last but not least at the capacity of the judiciary to operate during lockdowns.

Democracy Reporting International mapped the governmental actions taken by EU countries in a policy brief published in May 2020 (Meyer-Resende, 2020, pp. 4–7). The data shows that while the degree of limitation varies across EU countries, all have taken measures to restrict human rights by mid-March – the most affected being the freedom of movement¹. The authors note that ‘Responses that should have been dealt with in laws were addressed by government decrees or decisions of administrations. The constitutional and legal bases for measures were often unclear or absent. However, after a few weeks – by the end of March – almost all member states corrected early problems through legal amendments (for example Bulgaria, France, Germany,

1 ‘Thirteen states declared an official state of emergency. Some, like Bulgaria and France, created a new state of emergency at the very beginning of the crisis. Others applied a broader emergency framework either based on ordinary legislation (Czech Republic, Italy, Estonia, Finland, Latvia, Slovakia) or based on the Constitution (Portugal, Spain, Luxembourg, Romania, Hungary’s ‘state of danger’). Fourteen states did not call a state of emergency in the strict sense, but instead used various special legislation. Belgium and Romania relied on existing legislation on exceptional circumstances. Greece used the procedure of ‘acts of legislative content’ foreseen in its constitution. Most governments applied special legislation related to public health, the prevention of infectious and communicable diseases, or civil protection (Austria, Croatia, Cyprus, Denmark, Germany, Ireland, Malta, Poland, The Netherlands, Sweden, Lithuania and Slovenia).’ (Meyer-Resende, 2020, p. 3).

Italy, and Portugal). Nevertheless, it appears that ‘many constitutions would benefit from having stronger legal bases for such emergencies’ (Meyer-Resende, 2020, p. 1).

Constitutional Courts or higher courts within the EU played a key role in ensuring that the measures taken by governments fall within the margins set by the European Treaties and by the national constitutions and national relevant legislation. There have been situations where legislation upon which some of the measures taken were stroke down as unconstitutional or illegal – i.e. Austria (Agerpres, 2020), Germany (Hotnews, 2020), Romania, Slovakia, France – while in other countries the legislation passed the constitutionality test, either in its entirety or partially – Bulgaria, France, the Czech Republic (European Commission, 2020). In other member states the judicial proceedings are still ongoing. Also, some EU member states involved the constitutional oversight institutions in the decision-making process through ex-ante opinion requested before the adoption of legal norms enforcing restrictions (Belgium) (European Commission, 2020, p. 12).

While in the public discourse politicians used abundantly the mantra of the overriding national health interests, it was the decisions of these constitutional or higher courts that pushed decision makers back on the path of long-established legal drafting procedures that allow enough space even for taking extraordinary measures to respond to emergencies. Some decisions stressed the importance of involving the Parliament in the legislative process, in particular with regard to rules that set restrictions and establish sanctions for misbehavior. Rather than a governmental act, these types of norms must be included in primary legislation issued by legislators. Also, the limits of administrative discretion must be clearly set in primary legislation – in particular with regard to the application of sanctions. In the Netherlands, the Council of State stated in an advisory opinion that: ‘the longer the crisis situation lasts, the stronger the need for a solid legal basis for such measures becomes’ (European Commission, 2020, p. 14).

IFES published a paper looking at mechanisms to prevent government corruption in crisis with a focus on public procurement processes, government relief programs, risks for political party funding and limited judicial oversight and increase judicial discretion. Among the recommendations, transparency and accountability feature high together with need to empower the civil society and the media to truly act as gatekeepers against governmental excess. The report quotes the Chief Ombudsman in New Zealand, ‘there may be a need for even greater transparency when a decision involves public health and safety or those that affect someone’s financial circumstances, housing situation or family circumstances’ (Ellena, Brown and Dreher, 2020, p. 10).

In this paper we will present a case study on Romania and the usage of sanctioning mechanisms by the Police and Gendarmerie during the state of emergency, March 16 – May 14, 2020. We will explore the challenges regarding the adoption of a sound legal basis for restrictive measures in line with the constitutional provision and the actual implementation of these restrictions with a focus on the performance of two enforcement institutions – the Romanian Police and the Gendarmerie – in this pro-

cess. Unfortunately, the data received from the Police was only partial, not allowing for all the meaningful comparisons to be made. In times of crisis, or particularly in times of crisis when the government enjoys even more power than usual, the governmental action must be transparent to build trust and ensure that abuse does not happen. Moreover, the data gathered during the first wave of COVID-19 could help shape public policies for the subsequent waves with the view to improve efficiency while possibly decreasing the restrictions of human rights.

2. Methodology

The data used in this article has been collected by the authors on behalf of Expert Forum, a Romanian NGO, with the purpose of publishing a policy brief (Expert Forum, “The fines crisis: how should the pandemic have been fought?”), inviting to reflect on how to handle better the subsequent potential waves of the COVID-19 pandemic by drawing lessons from the experience with the first wave. The data was obtained through requests based on Law no. 544/2001 (the Romanian Freedom of Information Act) which provides that public institutions have an obligation to answer request for access to public information within a maximum of 30 days. These requests were sent to the Romanian Police and to the Romanian Gendarmerie.

The General Inspectorate of the Romanian Police deferred answering the request for information at national level, shifting this task to county level offices of the police (the IPJs). This approach generated variations in the quality of data released (the main variation related to the breakdown of information in accordance with the three time periods included in the request). Both the Gendarmerie and The County Police Inspectorates (IJPs) answered our requests in the general time limit provided by the Romanian FOIA (Law no. 544/2001) even though, through the Presidential Decree no. 195/2020, the time limits for providing access to information were extended from 30 days to 60 days (art. 55). However, the information was not released fully, but only partially as shown below.

In May 2020, Expert Forum requested from the General Inspectorate of the Romanian Police and the Police Inspectorates (IJPs) data on the overall amount and number of sanctions applied and split into the following categories: (a) the period during which sanctions were applied: March 15–31, 2020, April 1–15, 2020, April 15–21, 2020²; (b) the place where sanctions were applied: rural and urban areas; (c) the type of violations of the restrictions imposed by the military ordinances for which they were applied.

The IPJs answered the first question regarding the overall amount and the number of sanctions applied. However, IPJs argued the split between urban and rural areas is not possible because the statistics tools used by the police does not allow for

² This split is relevant because the level of fines varied throughout time as explained in the legal background section. Also, the Prime Minister and the Minister of Internal Affairs have issued public statement calling for more caution in applying sanctions.

such categorization. However, the Police has both rural and urban police units and a simple addition of similar units would have generated the requested information. As such, it is virtually impossible to analyze if sanctions were applied in communities where problems surfaced during the lockdown, including in the media. Similarly, it is impossible to assess if vulnerable communities were excessively impacted by these measures. In addition, information regarding the type of violation for which sanctions were applied was only seldom communicated (the Municipality of Bucharest, Botoșani, Harghita, Vâlcea and Vaslui were the only ones who did). Unfortunately, this means that it is impossible to perform a comprehensive analysis to see if the governmental efforts indeed focused on the most serious breaches that would significantly impact the spread of the disease at national level or rather on the breaches that were easier to document.

After receiving the majority of answers from IJPs, a new clarification request was submitted to IPJs regarding the nature of the sanctions applied – how many of them are warnings (verbal or written) and how many are fines. This information is relevant for accurately calculating the average sanction applied. All of the IJPs answered that the total number of sanctions communicated following the first FOIA request included both warnings and fines, but that the Police does not collect data regarding the overall number of warnings and the overall number of fines, and that both are aggregated in the overall figure regarding sanctions. This data limitation impacts on the accuracy of the analysis that can be performed because a significant number of warnings which are valued at 0 RON added to the proper fines applied would artificially decrease the value of the average of sanction.

The same types of information were requested from the Romanian Gendarmerie. A single answer containing aggregated and comprehensive information regarding the activity of the Romanian Gendarmerie in each county was communicated. The Gendarmerie provided all information requested in the format requested: amounts and number of sanctions in three time periods (including the split between warnings and fines), split by rural/ urban areas, and main categories of breaches for which sanctions were applied.

The variation in the quality of data received impacts the capacity of performing meaningful comparisons between the sanctioning behaviors of the two law enforcement institutions. While for the Gendarmerie the data allows for the correct calculation of average fines (by excluding from the total number of sanctions the warnings which are valued at 0 RON) for the Police, the data regarding the split of sanctions into warnings and fines are absent, the only average value that can be calculated is the average value of sanctions which is certainly lower than the average value of fines applied.

3. Analysis of the Romanian sanctioning regime

3.1. Legal background

3.1.1. Primary legislation and military ordinances

The Constitution sets the framework for emergency situations and restrictions of fundamental rights and freedoms (art. 53 of the Romanian Constitution). The President has the key role in declaring the state of emergency, with the Parliament having to ratify this decree within 5 days (art. 93 of the Romanian Constitution). In the eve of the pandemic, Romania decided not to adopt special primary legislation to regulate the pandemic-related governmental actions, but to use the existing legal framework for emergencies: Government Emergency Ordinance ('GEO') no. 1/1999 on the state of siege and the state of emergency (approved by Law no. 453/2004). This piece of legislation is 20 years-old, and was mainly designed to address situations of social unrest proved to be unfit to address the legislative needs during the pandemic.

On March 16, 2020 the President of Romania decreed the state of emergency on the entire territory of Romania (Presidential Decree no. 195/2020). This initial decision was subsequently prolonged until May 14, 2020, bringing limitations to individual rights and freedoms in order to stop the spread of the virus among the population.

Once the state of emergency is declared, the center of governmental decision-making becomes the National System for Managing Emergency Situations under the leadership of the Minister of Interior and the coordination of the Prime-minister. The Minister of Internal Affairs is granted the power to adopt Military Ordinances and Orders to fit the needs of the fight against the pandemic (art. 20¹ of GEO no. 1/1999). The concrete restrictions were introduced through Military Ordinances adopted on the basis of GEO no. 1/1999. The breaches of restrictions amounted to misdemeanors that would be sanctioned either by a warning or a fine (art. 28 of GEO no. 1/1999). According to article 29 of the GEO no. 1/1999 the sanctions are applied by agents of the Ministry of Interior and the Ministry of National Defense to both natural and legal persons (this provision was further detailed through the Military Ordinances adopted during the state of emergency).

Between March 18, 2020 and March 22, 2020 restrictions with regard to large scale events and the functioning of bars, restaurants and shops were introduced (Military Ordinance no. 1/ March 18, 2020). Between March 23, 2020 and March 25, 2020 further restrictive measures were taken including the movement during night hours that was prohibited, while for the day hours there was a recommendation to the general population to refrain from unnecessary travel (Military Ordinance no. 2/ March 21, 2020). On March 25, 2020 more drastic restrictions of freedom of movement introduced by the article 1 of the Military Ordinance no. 3 (Military Ordinance no. 3/ March 24, 2020) started to apply:

'The movement of all persons outside the home/ household is prohibited, with the following exceptions:

- a) travel in professional interest, including between home/ household and the place/ places of professional activity and back;
- b) travel to provide goods that cover the basic needs of persons and domestic animals/ pets, as well as goods necessary for the development of professional activity;
- c) travel for medical assistance that cannot be postponed or made remotely;
- d) travel for justified reasons, such as the care/ accompaniment of the child, the assistance of the elderly, sick or disabled or the death of a family member;
- e) short trips, close to the home/ household, related to the individual physical activity of the persons (excluding any team sports activities), as well as for the needs of domestic animals/ pets;
- f) travel for the purpose of blood donation, to blood transfusion centers;
- g) travel for humanitarian or voluntary purposes;
- h) travel for agricultural activities;
- i) the movement of agricultural producers for the sale of agri-food products.’

The restrictions provided by Military Ordinance no. 3/2020 remained in place until the May 14, 2020. To justify the need to move, individuals had to make proof of a written self-liability statement or certificate from the employer. The Romanian Police, the Romanian Gendarmerie and the local police were designated to ensure compliance with these provisions (Military Ordinance no. 3, art. 14). During the state of emergency 12 Military Ordinances were adopted. As to the primary legislation, GEO no. 1/1999 was subsequently amended by GEO no. 34/2020 to harshen the sanctioning regime, including by significantly increasing fines (see Table 1).

Table 1: Value of fines during state of emergency

Time period	Limits of fines	
	Fines for natural persons	Fines for legal persons
March 16 to 30, 2020	100–5,000 RON	1,000–70,000 RON
From March 30, 2020	2,000–20,000 RON	10,000–70,000 RON

This legislative inflation corroborated with the outdated implementation and sanctioning mechanisms provided by GEO no. 1/1999 generated legal unpredictability and confusion among the general public and ultimately led to a constitutional challenge of the primary legislation by the Ombudsman.

3.1.2. Decision of the Constitutional Court

On April 16, 2020, the Romanian Ombudsman challenged to the Constitutional Court of Romania (CCR) several provisions of GEO no. 1/1999 (including art. 28 which is the legal basis for sanctions) and the GEO no. 34/2020 in its entirety. The Constitutional Court ruled on May 6, 2020 that art. 28 of GEO no. 1/1999 and GEO no. 34/2020 in its entirety are unconstitutional (Constitutional Court of Romania, Decision no. 152/2020).

Consistent with its previous jurisprudence, the CCR reiterated that criminal and misdemeanor laws should be used as last resort, only when more lenient legal mechanisms prove insufficient to defend certain social values. Sanctioning laws should be clear, predictable, proportionate and comprehensible to the general public. Article 28 of the GEO no. 1/1999 does not meet these standards as it qualifies as misdemeanors and provides for the same sanctioning regime for all breaches of the restrictions introduced without assessing their seriousness. In doing so, the primary legislation allows for excessive discretion for the enforcement officer in deciding if and what sanction should be applied for misbehavior without any guidance and criteria established at national level. The CCR concludes that not even judges would be in a position to exert judicial oversight regarding the sanctioning practice of enforcement officers, absent such criteria.

As to the GEO no. 34/2020, the CCR found that it is unconstitutional because it breaches article 115 para. (6) of the Constitution which stipulates that the Government may not restrict rights and freedoms through emergency ordinances: GEO no. 34/2020 'through its normative content it aimed at restricting the exercise of fundamental rights and freedoms (property rights, the right to work and social protection, the right to information, economic freedom)' (Constitutional Court of Romania, Press release, May 6, 2020 on Decision no. 152/2020).

The immediate impact of this CCR decision was that the legal basis for fines applied during the emergency state was invalidated for not complying with the constitutional standard. This would give grounds for natural and legal persons to challenge to regular courts their fines and obtain the annulment. In addition, following the decision of the CCR, in June 2020, the Senate initiated and passed a draft law seeking to annul the sanction and reimburse those who had already paid them (Legislative proposal on some administrative and fiscal measures, Law no. 358/2020, Romanian Senate). By October 2020 the draft was not passed by the Chamber of Deputies, adding to the legal uncertainty surrounding the sanction applied during the emergency state.

3.1.3. Follow-up actions

Once the Decision no. 152/2020 of the CCR was published on the May 13, 2020, the legal basis for applying sanctions in the state of emergency virtually disappeared. The state of emergency was lifted on May 14, 2020 but until present no law has been approved by Parliament to address the concerns expressed by the CCR and reinstate a constitutional sanctioning regime. The consequence is that should Romania need to re-enter the state of emergency in the future, the sanctioning mechanism for breaches of restrictions would be absent.

On May 14, 2020 the state of alert was declared by the Government on the basis of GEO no. 21/2004 on the National Emergency Management System. The state of alert is not regulated at constitutional level. The Ombudsman challenged GEO no. 21/2004 to the CCR claiming that the definition of the 'state of alert' lacks clarity and that the executive receives excessive powers to restrict rights and freedoms. On May

13, 2020 the CCR decided that the GEO no. 21/2004 is constitutional insofar as it does not restrict fundamental rights and freedoms – the decision was published on May 15, 2020. The essence of having a state of alert regime is to allow for restrictions to be introduced. Thus, the government has to produce swiftly a law draft on measures to be taken to tackle the COVID-19 pandemic and present it to the Parliament. Law no. 55/2020 was adopted on May 15 and entered in effect on May 18, 2020. According to this law, the Government declares the state of alert, and if it affects more than half of the territory of Romania, the decision has to be approved by Parliament. The law provides categories of measures and restrictions which can be imposed during the state of alert. The state of alert can be declared for 30 days of a time and prolonged for as many times is necessary. In October 2020, Romania is still under state of alert.

3.2. Data analysis

Starting with March 30, 2020, the National Committee for Emergency Situations published the number and total value of sanctions imposed daily, at national level, for infringing restrictions imposed by Military Ordinances. After the entry into force of the restrictions, information surfaced in the media about alleged police excesses and pressure from the hierarchy to meet sanctions thresholds. By May 4, 2020 the total values of sanctions applied had reached over 120 million euros. The daily amount of sanctions was higher around the Easter holidays, with a peak on April 14. According to the data provided by the Strategic Communication Group, the amount and number of fines decreased substantially immediately after the adoption on May 6, 2020 of the CCR decision no. 152/2020.

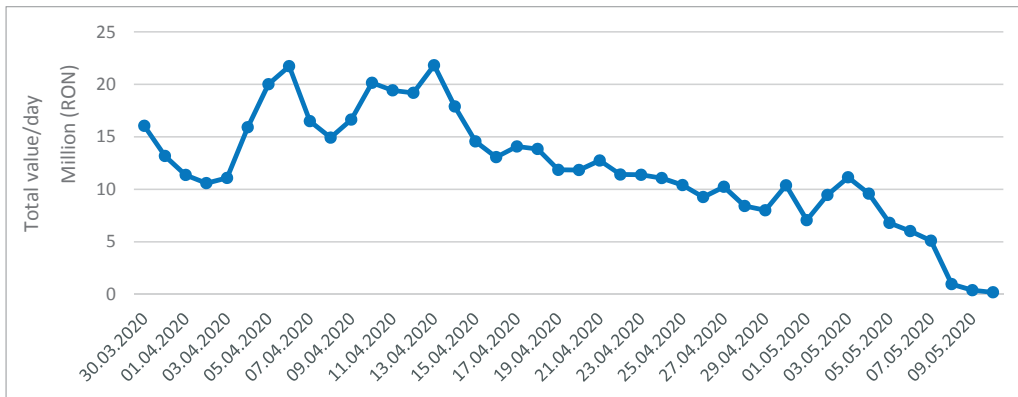


Figure 1: Evolution of the total values of fines by day

Source: Data published by the Strategic Communication Group

Under growing criticism in the public sphere about the sanctions imposed by the Police, on April 24, 2020 Prime Minister Ludovic Orban (Prime Minister, Press Release, 2020) asked police to first use warnings, and, only as a last resort, fines. He also

denied pressure being put on enforcement officers and underlined that sanctions are applied only for very clear and severe breach of the rules.

On May 4, 2020, Interior Minister Marcel Vela (Interior Minister, Press Release, 2020) publicly acknowledges that there are excesses of the Police in the enforcement of sanctioning and gave assurance that measures were taken to address these challenges. He argued that the Romanian Police was under serious human resources stress, and had to use agents with only a minimum 6 months of training. The Romanian Police indeed benefits from a privileged early retirement scheme that impacts its human resources.

The data on the municipality of Bucharest provided by the Police and Gendarmerie will be analyzed separately from the data on the other 41 counties.

3.2.1. Romanian Police data at county level (IjPs)

The quality of the data provided by the IjPs is inconsistent³. Some of the counties did not provide data according to the time periods indicated in the FOIA request: Bucharest and Vâlcea only provided overall number and value of sanctions for the interval March 16–April 21, 2020. Botoşani provided data for a different interval than requested: March 16–April 14, 2020 and April 15–21, 2020.

Other counties provided partial data: Gorj provided data starting with March 21, while Ilfov lacked data for the interval March 16–18 and for the last day, April 21, 2020. Harghita, on the other hand, provided data for a longer time period than requested (until April 30, 2020).

The counties with the highest total values of sanctions applied for the entire period are Dolj, Iaşi, Prahova, Timiş and Mureş. The first three counties (Dolj, Iaşi and Prahova) applied sanctions of approximately 17 million RON, and Timiş and Mureş approximately 15 million RON.

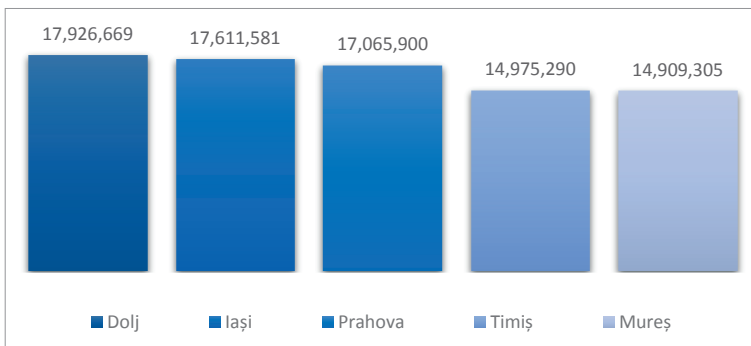


Figure 3: Top 5 counties by total value of sanctions (RON)

Source: Data provided by County Police Inspectorates

3 Data source for all figures presented below: County Police Inspectorates (IjPs).

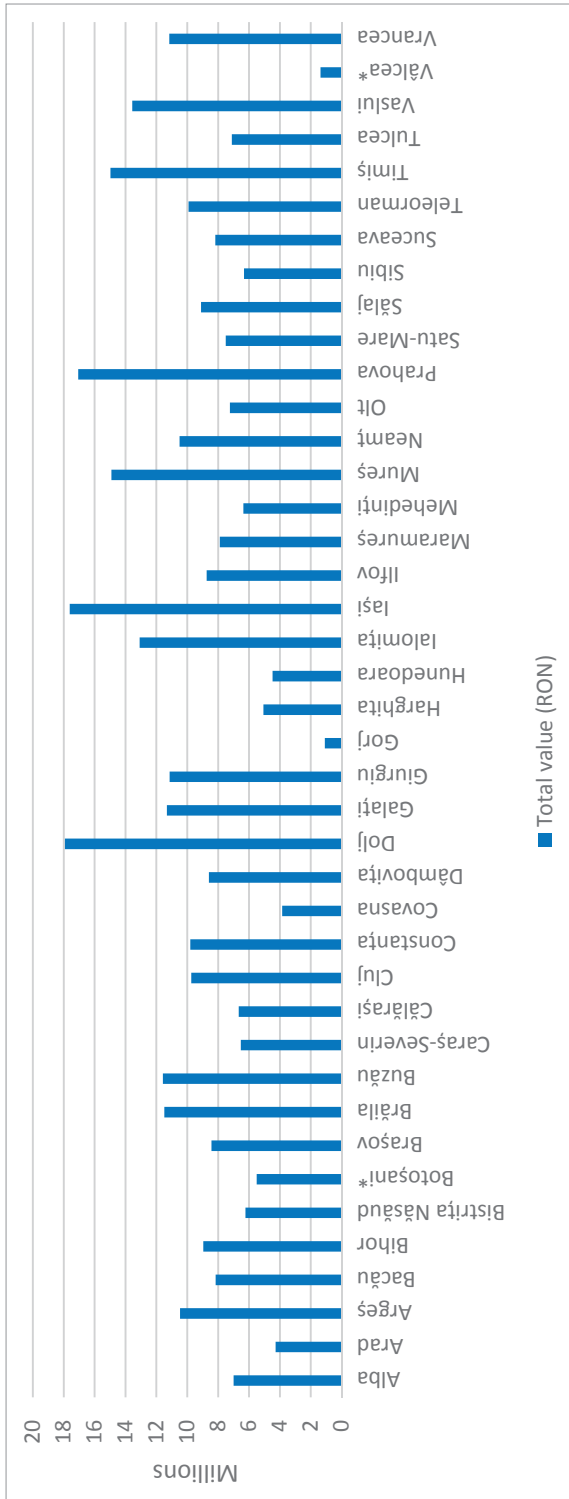


Figure 2: Total value of sanctions (RON)

Source: Data provided by County Police Inspectorates

The counties with the lowest total amounts of sanctions applied are Gorj, Covasna, Arad, Hunedoara and Harghita. By comparison, Gorj imposed sanctions totaling RON 1,090,900 RON, an amount almost 17 times lower than the fines imposed by Dolj.

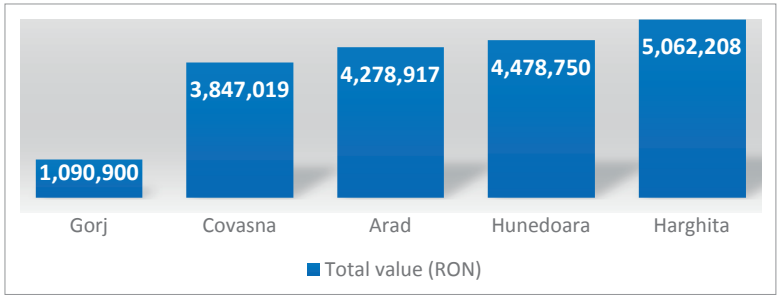


Figure 4: Last 5 counties by total value of sanctions (RON)
Source: Data provided by County Police Inspectorates

In an attempt to explain the disparities, we note that while three of the top counties (Iași, Dolj and Timiș) are border counties, but at the same time Arad is in the bottom of the ranking though it hosts one of the busiest border crossing point towards Central and Western Europe. Dolj and Gorj are neighboring counties, but we see a drastic difference in the sanctioning behavior. Gorj did not provide data for the entire interval, but only starting with March 21, 2020. While Prahova hosts one of the busiest roads – DN1 – so is Brașov which is not among the outliers.

The highest number of sanctions was applied in Prahova (11,462), followed by Constanța (9,556), Iași (8,720), Dolj (7,846) and Timiș (7,658). At the other end of the ranking, the counties with the smallest number of sanctions applied are Gorj, Covasna, Botoșani, Mehedinți and Tulcea. Here it is worth noting that the split of sanctions into warnings and fines is unknown, and that Botoșani provided partial information, only for the period March 16–April 14, while Gorj provided information starting with March 21, 2020.

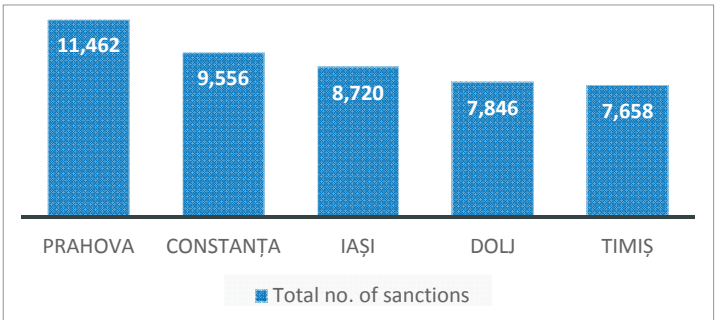


Figure 5: Top 5 counties with the highest number of sanctions applied
Source: Data provided by County Police Inspectorates

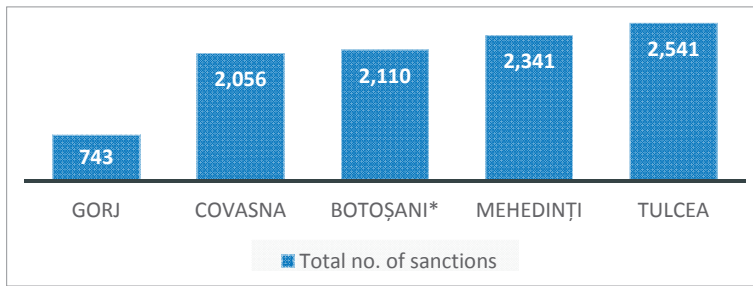


Figure 6: Counties with the lowest no. of sanctions
Source: Data provided by County Police Inspectorates

According to the average value of the sanctions applied during the whole period for which we requested data (March 16–April 21, 2020), the first counties are Bihor, Neamț, Tulcea, Mehedinți and Botoșani. On the first place is Bihor county, where the average value of the sanctions was 2,878 RON.

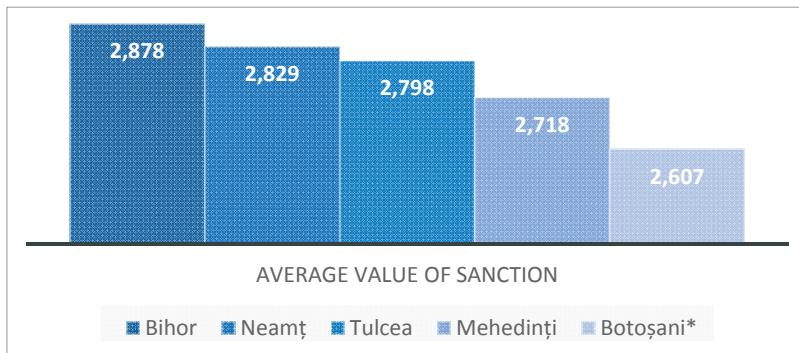


Figure 7: Highest average value (RON) of sanctions imposed
Source: Data provided by County Police Inspectorates

In more than a third of the counties (15 counties out of 41 plus Bucharest) the average value of the sanctions applied exceeded 2,000 RON, which is very high compared with the average net income in Romania in March 2020 – 3,294 RON. At the bottom of the ranking, Constanța has the lowest average value of sanctions (1,025 RON), together with Brașov, Alba, Arad and Gorj.

In addition, the very significant differences between the average values of the applied sanctions in each county confirm in practice the finding of the CCR: absent individualization criteria in the law, and law enforcement officers have a very large margin of appreciation. Analyzing the data per period, we note that the total amount of sanctions increased significantly between April 1–15, 2020, after the moment when the legal limits of the fines were increased (March 31), and then decreased significantly after the urging messages of the Prime Minister and the Minister of Internal Affairs

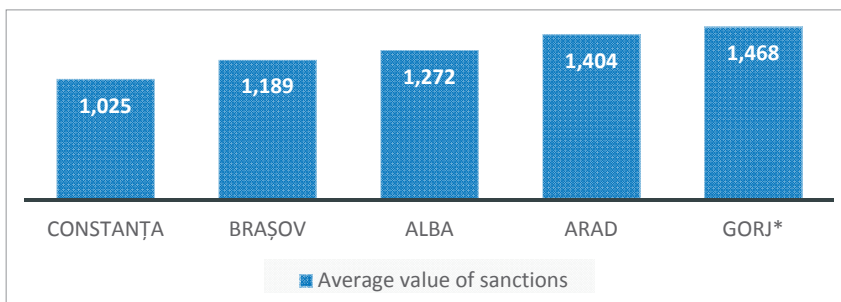


Figure 8: Counties with the lowest average value of sanctions

Source: Data provided by County Police Inspectorates

to relax the policy of sanctioning. It should be noted, however, that the last period (April 16–21) is shorter than the previous intervals.

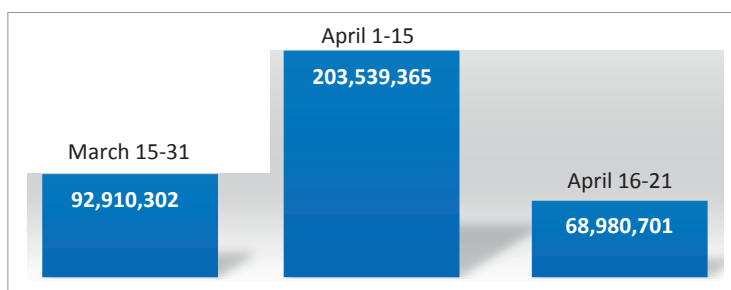


Figure 9: Total value (RON) of sanctions imposed according to a specific period

Source: Data provided by County Police Inspectorates

During March 16–30, 2020, the limits of fines were 100–5,000 RON. In Bihor, Bistrița Năsăud, Neamț, Vrancea and Mehedinți the value of the average sanction is around or well above the maximum level.

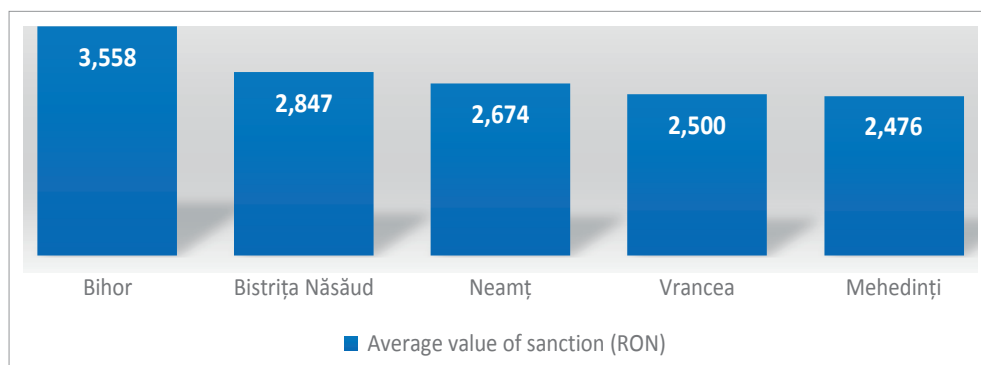


Figure 10: Highest average value of sanctions for March 15–31, 2020

Source: Data provided by County Police Inspectorates

Starting with March 31, 2020, the maximum allowed value of a sanction goes up to 20,000 RON, but the average value of sanctions in the high-ranking counties in the next two periods remains still between 2,500 and 3,400 RON. However, the inclusion of warnings in these overall figures could draw the average value down.

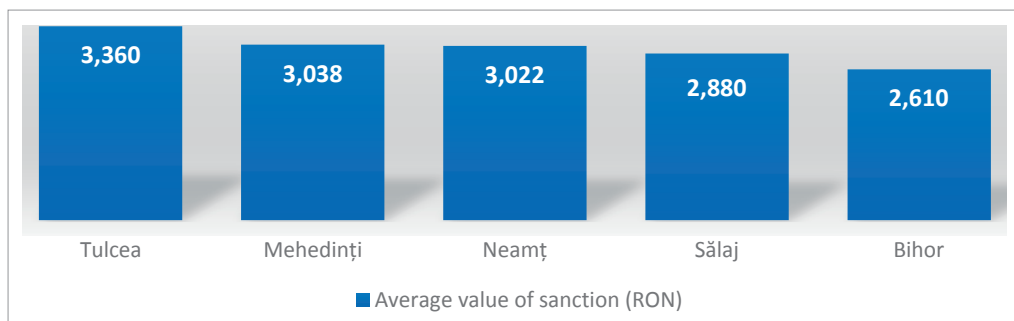


Figure 11: Highest average value of sanctions for April 1–14, 2020

Source: Data provided by County Police Inspectorates

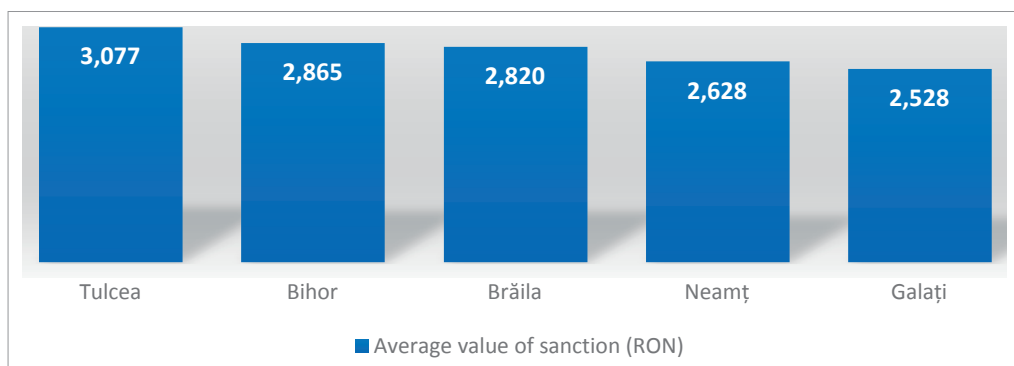


Figure 12: Highest average value of sanctions for April 14–21, 2020

Source: Data provided by County Police Inspectorates

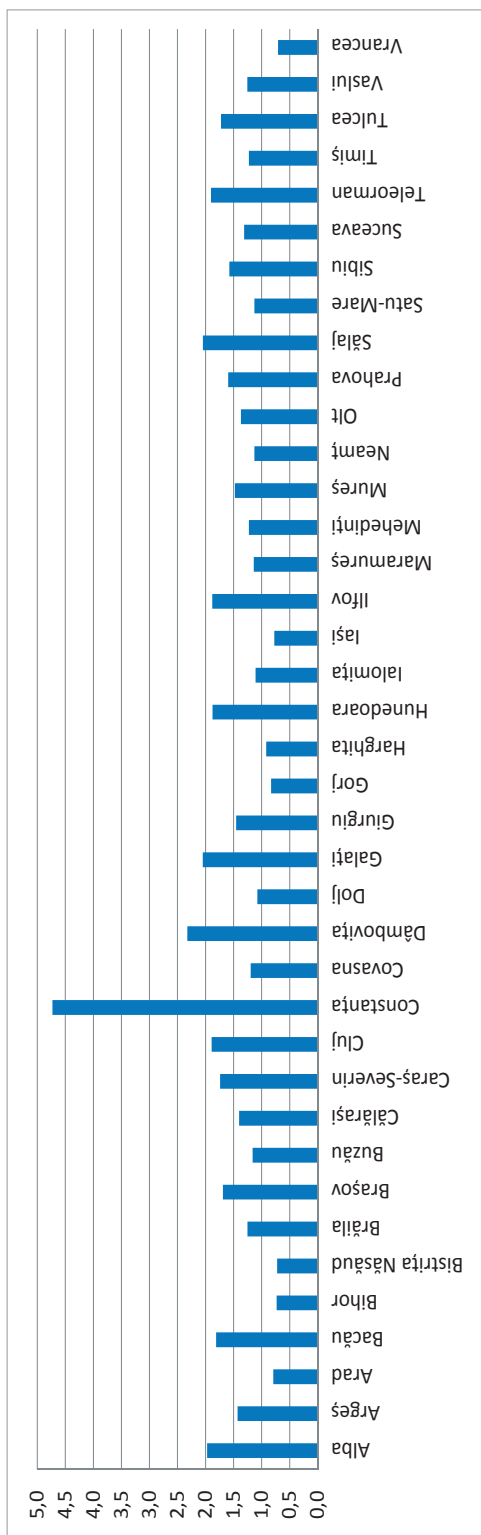


Figure 13: Index of increase between March 15–31, 2020 and April 1–14, 2020 (average values of sanctions)

Source: Data provided by County Police Inspectorates

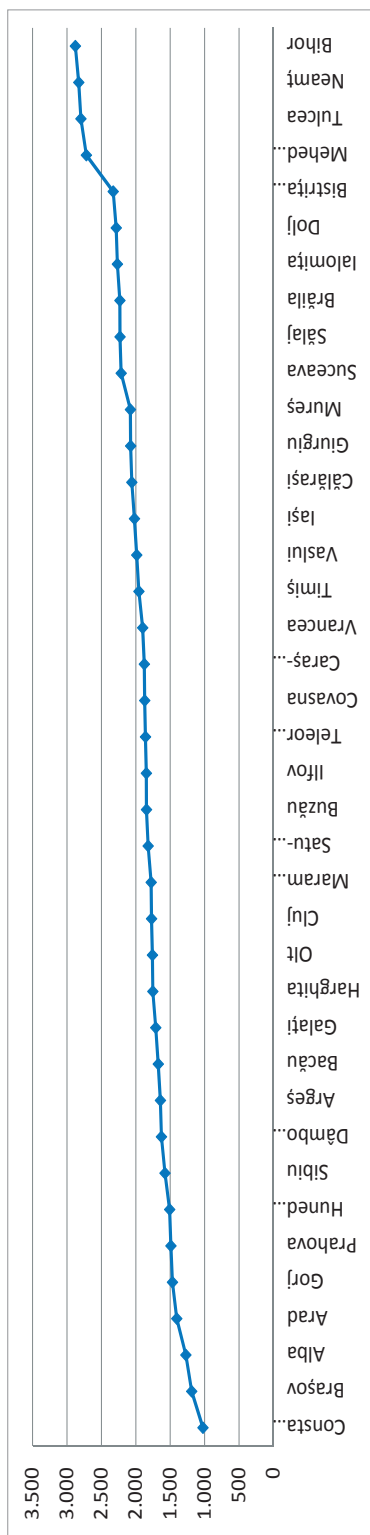


Figure 14: Average value of sanctions imposed (RON)

Source: Data provided by County Police Inspectorates

3.2.2. Gendarmerie data

The counties with the highest value⁴ of fines applied are Braşov (4,265,700 RON), Bucharest (4,156,450 RON), Iaşi (3,105,600 RON), Constanţa (2,412,400 RON), Bacău (1,770,600 RON) and Neamţ (1,724,650 RON).

Only Iaşi is found in both rankings of the Police and Gendarmerie among the top performers, the other counties being different. Braşov stands out in the Gendarmerie data superseding even Bucharest.

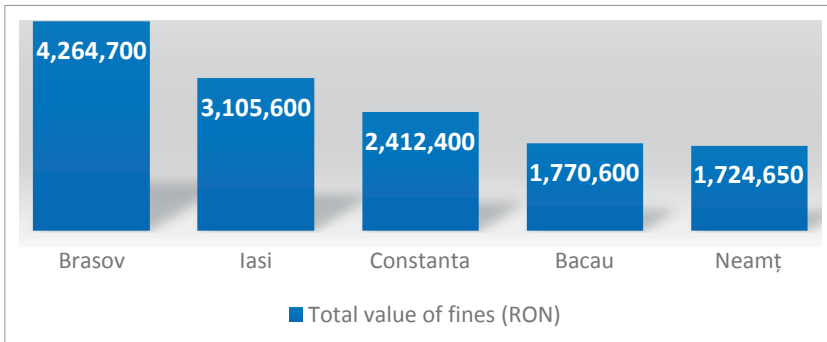


Figure 15: Top 5 counties with the highest total value of fines (RON)

Source: Data provided by Romanian Gendarmerie

Gorj and Harghita are among the last in the ranking of applied sanctions both for the Police and the Gendarmerie, while Olt ranks among the top performers for the Police and among the last for the Gendarmerie. A simple calculation shows that the total value of fines in Gorj was almost 20 times lower than in Braşov.

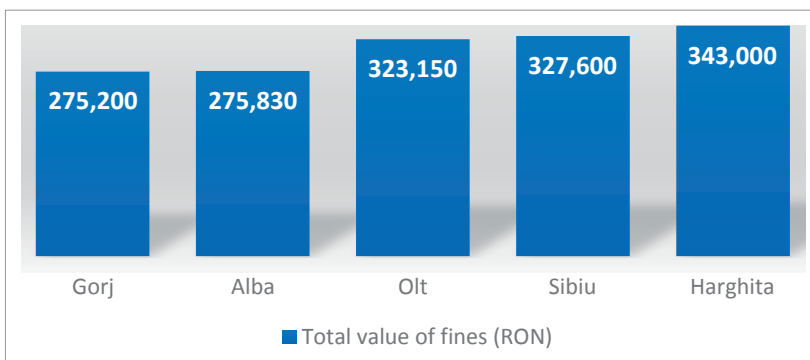


Figure 16: Last 5 counties by the total value of fines (RON)

Source: Data provided by Romanian Gendarmerie

⁴ Data source for all figures presented below: Romanian Gendarmerie.

The counties with the highest number of fines applied are Braşov (2,733), Constanţa (1,504), Iaşi (1,314), Prahova (1,189) and Bacău (1,162). With the exception of Prahova county, the other four counties are in the top of counties with the highest number of fines applied as well (Braşov, Bacău, Iaşi and Constanţa).

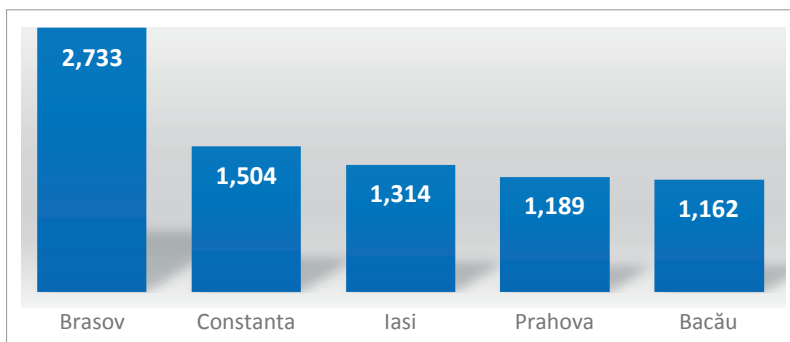


Figure 17: Top 5 counties by the number of fines

Source: Data provided by Romanian Gendarmerie

At the other end, the counties with the lowest number of fines applied are Mehedinţi (210), Caraş-Severin (205), Sibiu (203), Alba (161) and Bihor (145). By comparison, in Braşov the Gendarmerie applied fines 18 times more than in Bihor. A particularity of Bihor though is that almost all of the fines were applied in the rural areas of the county (96%).

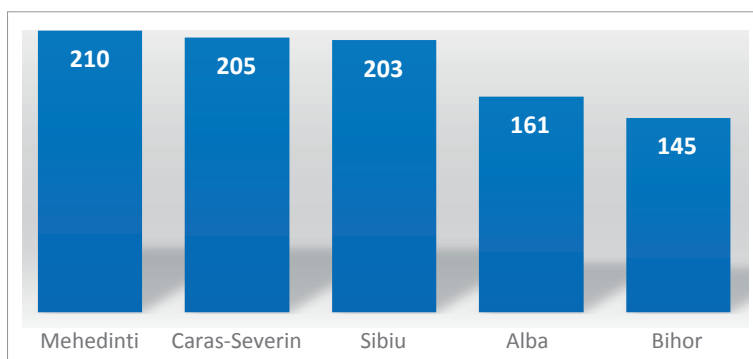


Figure 18: Top 5 counties with the smallest no. of fines

Source: Data provided by Romanian Gendarmerie

Over the entire period (March 15 to April 14, 2020), the counties with the highest average value of fines were Neamţ (3,442 RON), Tulcea (3,384 RON), Mehedinţi (3,235 RON), Caraş-Severin (3,184 RON) and Sălaj (2,513 RON). This shows that in these counties the average fines applied were high, in some cases above the average income in March 2020: 3,294 RON.

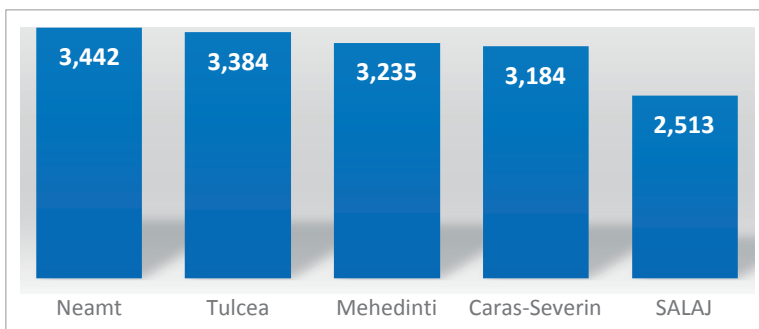


Figure 19: Top 5 counties with highest average value of fines

Source: Data provided by Romanian Gendarmerie

The lowest average value of fines was in Hunedoara (1,303 RON), Harghita (1,221 RON), Olt (1,167 RON), Gorj (1,110 RON) and Timiș (1,024 RON).

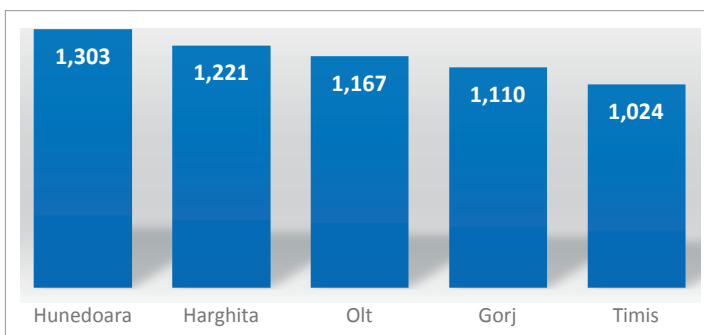


Figure 20: Counties with the lowest average value of fines (RON)

Source: Data provided by Romanian Gendarmerie

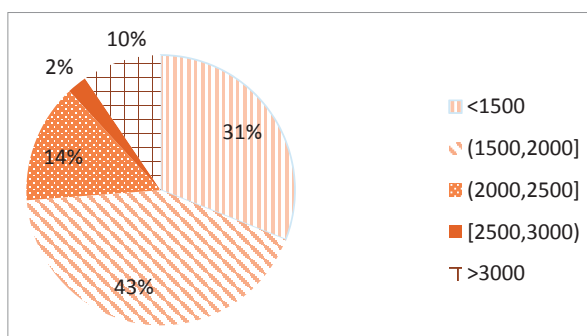


Figure 21: Distribution of counties by the average values of the fines

Source: Data provided by Romanian Gendarmerie

Time periods

During the first period, in Tulcea, the Gendarmerie applied fines close to the maximum allowed by law (5,000 RON), and Neamț, Caraș-Severin and Mehedinți went above half of the maximum.

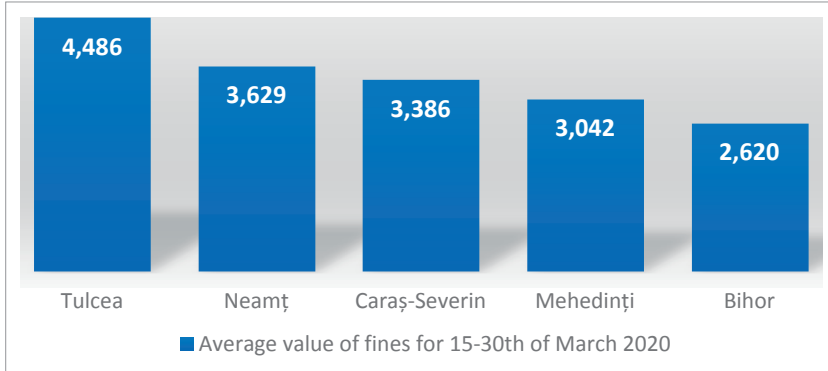


Figure 22: Highest average value of fines for March 15–30, 2020

Source: Data provided by Romanian Gendarmerie

The limits of fines were increased significantly on March 31, 2020 (20,000 RON); however, the highest average fines for the next two periods do not exceed 4,000 RON (a fifth of the maximum) and less than the highest average of the first period (Tulcea with 4,486 RON).

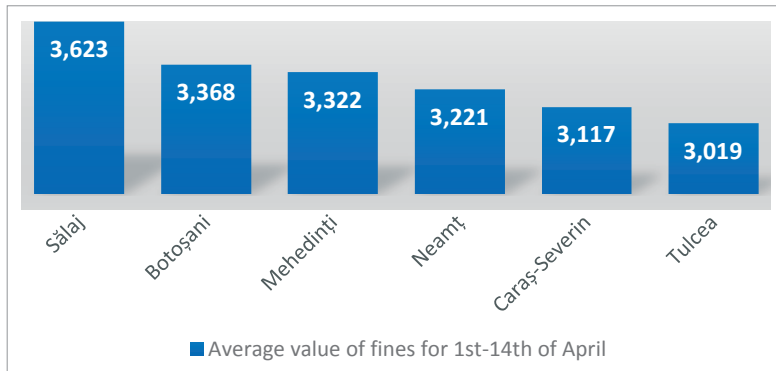


Figure 23: Highest average value of fines for April 1–14, 2020

Source: Data provided by Romanian Gendarmerie

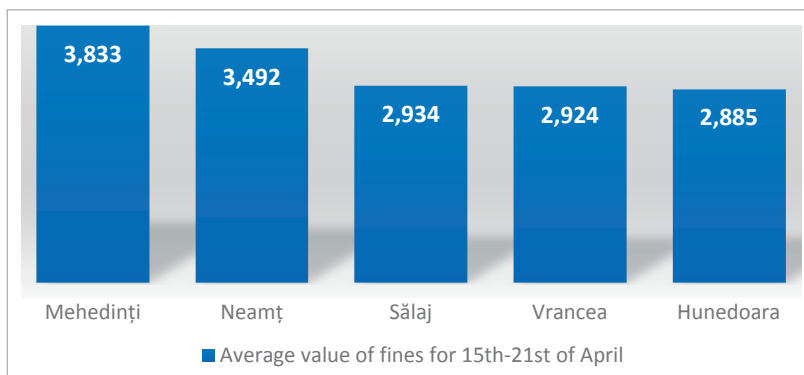


Figure 24: Highest average value of fines for April 15–21, 2020

Source: Data provided by Romanian Gendarmerie

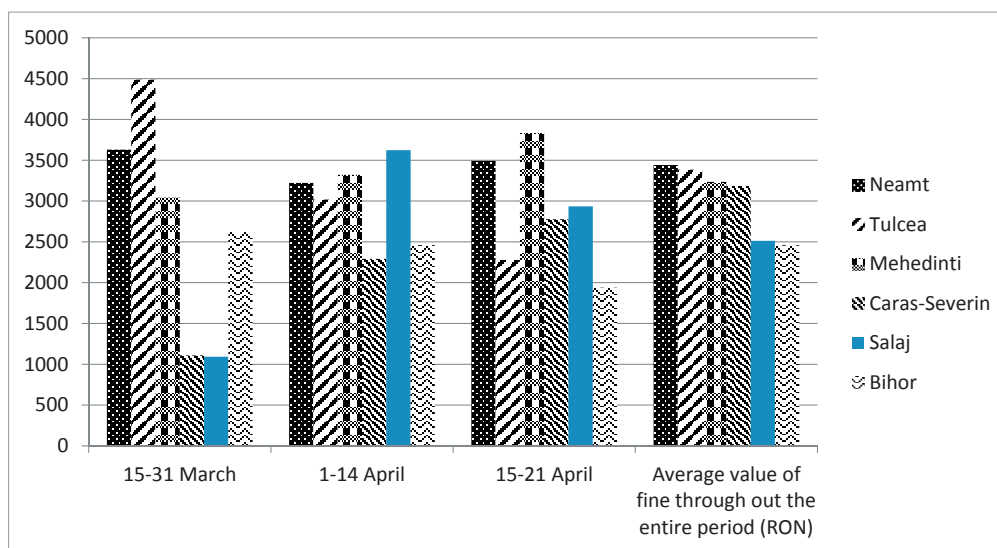


Figure 25: Top counties according to the average value of fines (RON)

Source: Data provided by Romanian Gendarmerie

Tulcea is in the top of the rankings during all three periods. For the first period (March 15–30) Tulcea applied fines towards the maxim limit allowed – 4,468 RON is the average fine while the maximum allowed is 5,000 RON. The next highest fines during this period were in Neamț and Caraș-Severin. Between April 1 and 14, Tulcea remains in top five counties with the highest average value of fines, with an average of 3,019 RON, with Sălaj taking the lead with 3,623 RON. In the last period, Tulcea drops to the 5th place in the ranking with 2,279 RON, with Mehedinți reaching an average of 3,833 RON. Overall, Tulcea is ranked second in the top counties with the highest average value over the entire period.

Neamț had the highest average fines during the entire period, being the 1st in the ranking overall. Its average fine was consistent throughout the entire period – 3,629 RON, 3,221 RON and 3,492 RON. While most of the counties see a decrease in the value of fines applied during the last period (April 15–21), in Mehedinți we see a consistent increase (3,042 RON, 3,322 RON and 3,833 RON). Bihor presents an interesting case as it ranks last according to the total number of fines, but the average value is quite high, placing Bihor on the top 6th position in the overall average value of fines (2,459 RON). In Sălaj the average fine triples when the limits of the fines are increased: 1,092 RON in the first period and 3,623 RON in the second period.

The data provided by the Gendarmerie shows that fines were more used than warnings in all counties. The county with the highest use of warnings during this period is Alba with 123 warnings (43% of the sanctions), followed by Caraș-Severin with 124 warnings (38% of the sanctions) and Constanța with 654 warnings (30% of the sanctions). In 32 counties warnings account for less than 20% of the sanctions applied. In Tulcea (three warnings) and Bihor (two warnings) which are among the top-ranking counties in terms of average value of the fines, warnings account for less than 1% of the sanctions. This shows that the ambiguity of the legal provisions made it possible for the law enforcement agent to decide to use the harshest form of sanctioning (fines) in most of the situations encountered.

The Gendarmerie applied sanctions in urban area and rural areas, but the split between warnings and fines is not done. Overall, sanctions were applied predominantly in urban areas. In most of the counties (30) the Gendarmerie issued less than 20% of the sanctions in rural areas.

There is one exception, the county of Bihor where the Gendarmerie applied 96% of the sanctions in the rural area. If we correlate this information with the fact that in Bihor there were only 2 warnings and 145 fines issued by the Gendarmerie, as well as the fact that Bihor ranks 6th on the highest values of fines overall (2,459 RON), we conclude that the fines imposed on rural inhabitants in Bihor county were quite high.

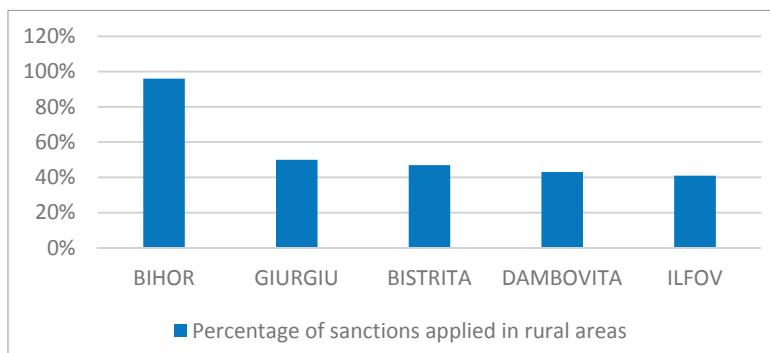


Figure 26: Counties with highest percentage of sanctions applied in rural areas

Source: Data provided by Romanian Gendarmerie

3.2.3. Bucharest

Bucharest has been excluded from the general analysis as the total number of sanctions and the overall value is higher than any other counties. This difference is explicable given the total population of Bucharest, the capital city of Romania.

The data provided by the General Directorate for Bucharest Police (DGMB) was incomplete in the sense that the information provided covered globally the period March 16–April 14, 2020. Thus, only the average value of sanctions can be calculated and only for the overall period, not for the time intervals requested. Although Bucharest is by far the first of all the counties when it comes to the number of sanctions and overall value of sanctions, by the average value of sanction Bucharest is in the 32nd position in the ranking, toward the lower end (1,705 RON).

The DGMB did provide information on the legal basis of sanctions. Most of the sanctions issued were related to breaches of restrictions of circulation, both in number of sanctions and overall value of sanctions.

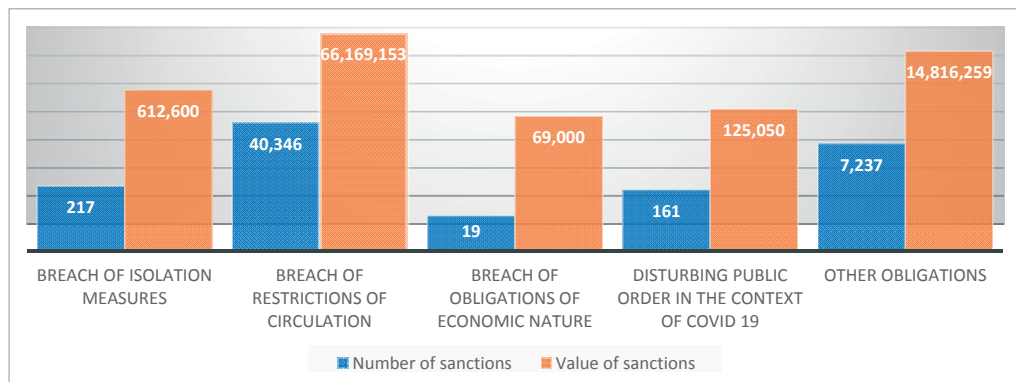


Figure 27: Sanctions issued by the Police in Bucharest by legal basis

Source: Data provided by Romanian Gendarmerie

The Gendarmerie provided detailed data on the municipality of Bucharest. Bucharest is actually on the second position in the overall ranking. Braşov County issues sanctions higher in value (4,265,700 RON) and number of fines (2,733). In Bucharest the average value of fines is higher than Braşov (1,593 RON to 1,560 RON). Nevertheless, Bucharest ranks on the 26th position in the ranking of highest average value of sanctions. Regarding the capital of the country and its neighboring areas (Ilfov), it is interesting that overall, the average value of fines was higher in Ilfov county (2,039 RON) than in Bucharest (1,593 RON). Similar to the rest of the counties, in only 7.35% of the sanctions issued in Bucharest were warnings.

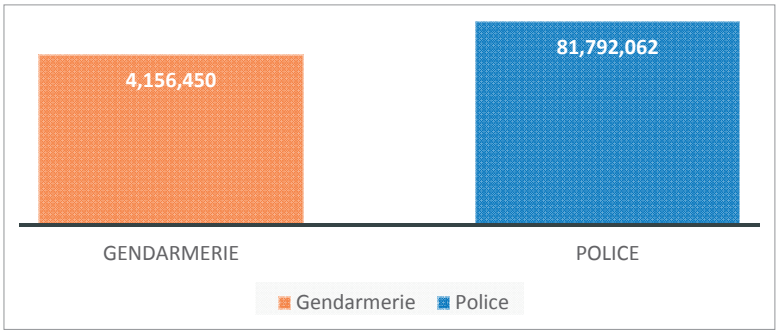


Figure 28: Comparison of total value of sanctions (RON)

Source: Data provided by Romanian Gendarmerie

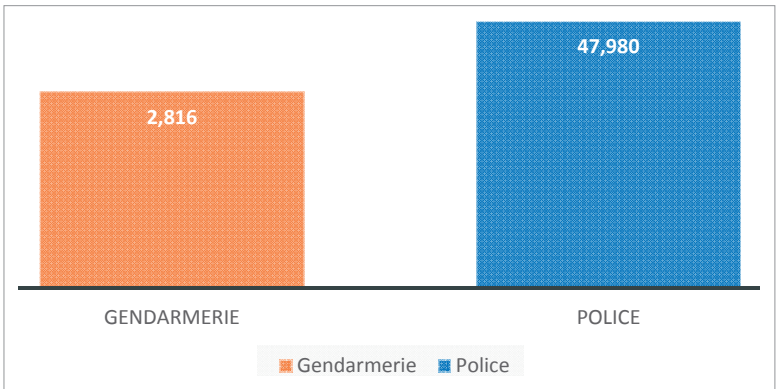


Figure 29: Comparison of number of sanctions

Source: Data provided by Romanian Gendarmerie

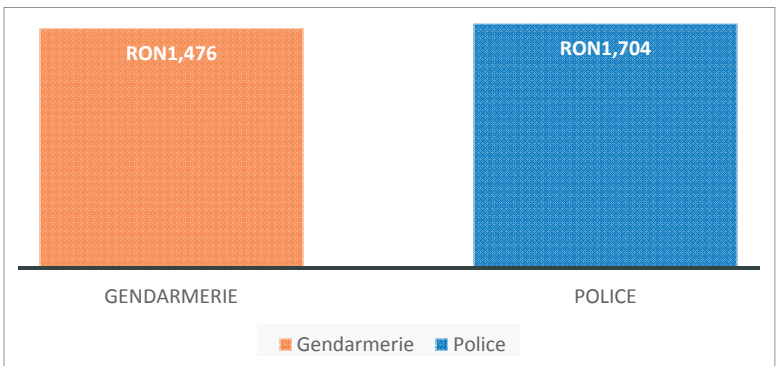


Figure 30: Comparison of average value of sanction (RON)

Source: Data provided by Romanian Gendarmerie

3.3. Comparative analysis of data provided by IJPs and Gendarmerie

A comparative analysis is possible only with regards to the total number of sanctions, total value of sanctions and the calculated average of sanctions (not fines) as the IJPs did not provide information on how many fines and how many warnings they applied⁵.

4. Conclusions

Months after the legal basis for applying sanctions during emergency situations was stroke down by the CCR, Romania still has not adopted norms to fill this loop-hole. As for the state of alert – a situation that is not provided for by the constitution – the existing legal framework regards strictly the COVID-19 pandemic. Should the situation worsen to a level that requires the re-instatement of the state of emergency or should new challenges apart from COVID-19 arise requiring restrictive measures, Romania will again find itself unprepared to efficiently respond to these urges.

The quality of the data provided by the Police shows that data-based policies are still a far-away goal. Not only was the data not communicated, but the Police claims that the reason behind this denial is that they do not collect information regarding the split of sanctions between warnings and fines, between rural and urban areas and categorized considering the breaches for which the sanction was applied. In these circumstances it is impossible to assess if the Police's sanctioning policy was fair, proportionate and predictable, if it focused on areas where significant breaches occurred, if it achieved its purpose. This undermines governmental accountability and in turn trust in the government which are even more important during times of hardship. Public policy recommendations to help address the problems in the most problematic areas are not possible, correlating indicators such as poverty, education or crime at the local level. Expert Forum has started strategic litigation against the Romanian Police throughout the country in an attempt to make comprehensive sanctioning data transparent.

The consolidated response of the Gendarmerie shows that if the data management systems function well it is possible to produce reliable and comprehensive data which would in turn generate meaningful analysis. The Gendarmerie data shows little use of warnings as a sanctioning tool, while the overall data indicates that the level of fines applied was rather high across the country.

Should researcher in other jurisdictions embark on a similar evaluation effort of the implementation of the sanctioning policies in their respective countries, a more detailed puzzle could be generated. It would be very interesting to compare and assess the impact of the governmental response to the COVID-19 pandemic in various countries beyond what the legal texts provide for. A very meaningful discussion re-

⁵ Data source for all figures presented below: County Police Inspectorates (IJPs) and Romanian Gendarmerie.

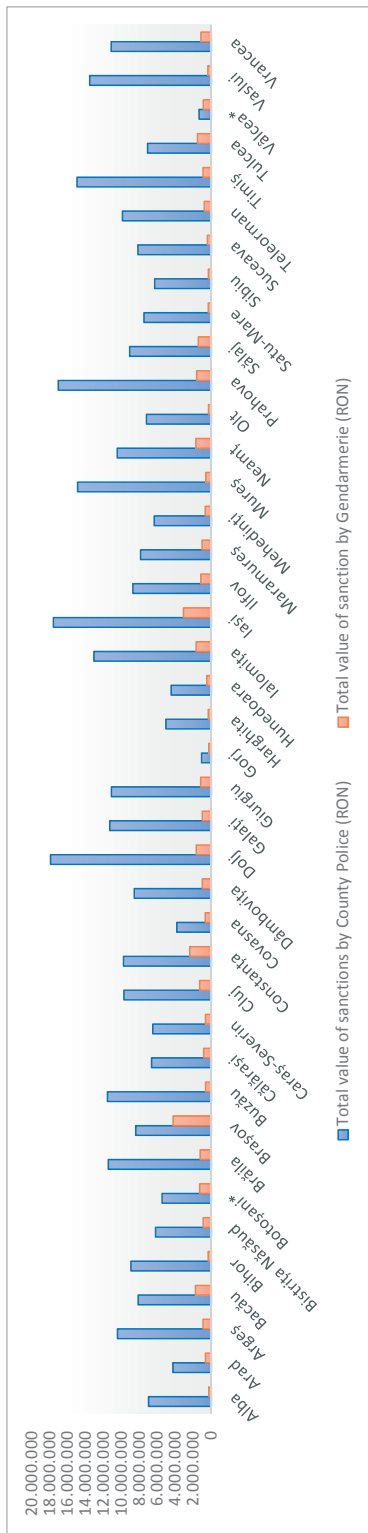


Figure 31: Comparison of total value of sanctions (RON)

Source: Data provided by Romanian Gendarmerie

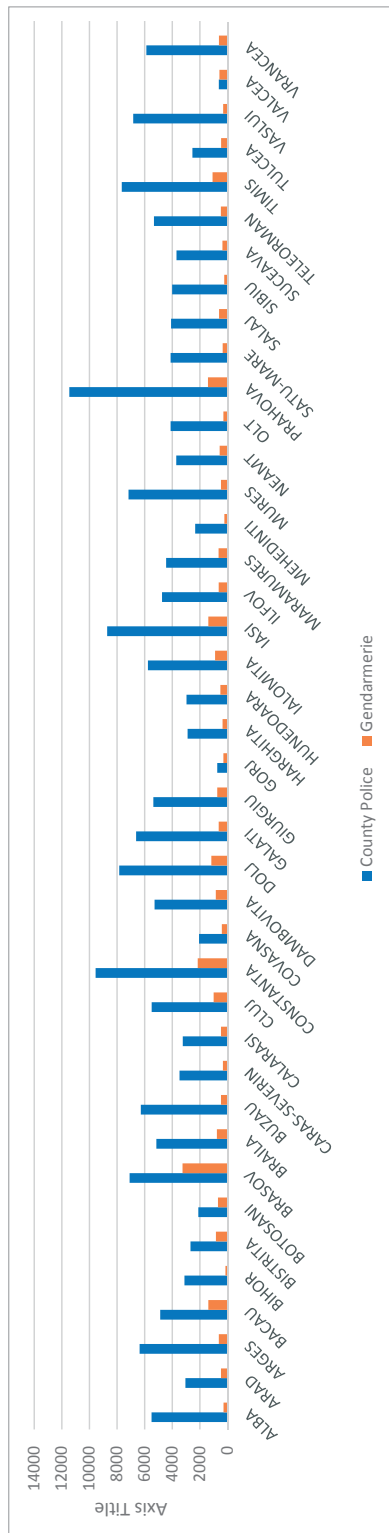


Figure 32: Comparison of total number of sanctions

Source: Data provided by Romanian Gendarmerie

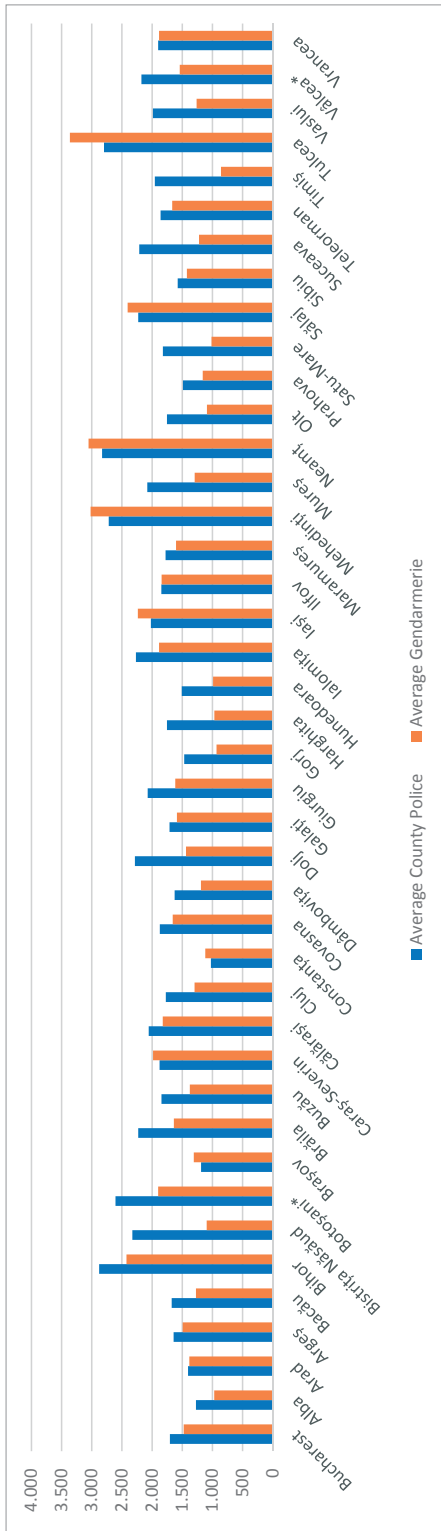


Figure 33: Comparison of average value of sanctions
Source: Data provided by Romanian Gendarmerie

garding transparency of law enforcement could be started alongside with one on the soundness and coherence of the constitutional and legal framework for emergency situations in other countries. All these debates would incentivize change in the way the government operates and would hopefully place all of us in a better position to handle future potential crisis.

References:

1. Agerpres, 'Curtea Constituțională a Austriei: Măsurile de izolare impuse de COVID-19, neconstituționale' [Constitutional Court of Austria: COVID-19 Imposed Isolation Measures, Unconstitutional], [Online] available at <https://www.agerpres.ro/politica-externa/2020/07/22/curtea-constitucionala-a-austriei-masurile-de-izolare-impuse-de-covid-19-neconstituționale--544257>, accessed on October 15, 2020.
2. Constitutional Court of Romania, Decision no. 152/2020, published in the Official Journal of Romania no. 387 of May 5, 2020.
3. Constitutional Court of Romania, Press release on Decision no. 152/2020, May 6, 2020 [Online] available at <https://www.ccr.ro/comunicat-de-presa-6-mai-2020/>, accessed on October 15, 2020.
4. Ellena, K., Brown, A. and Dreher, C., 'Preventing Government Corruption in Crises', The International Foundation for Electoral Systems (IFES), 2020.
5. European Commission, Rule of Law Report: 'The Rule of Law Situation in the European Union', 2020.
6. Hotnews, 'Coronavirus Germania: Menținerea marilor magazine închise este neconstituțională, a stabilit o instanță administrativă din Bavaria' [Coronavirus Germany: Keeping Department Stores Closed is Unconstitutional, Bavarian Court Ruled], [Online] available at <https://m.hotnews.ro/stire/23935810>, accessed on October 15, 2020.
7. Interior Minister, Declarations by the Minister of Interior of Romania, Marcel Vela, on May 4, 2020, as quoted by Digi24, [Online] available at <https://www.digi24.ro/stiri/actualitate/vanzatoare-aflata-la-munca-amendata-ca-nu-avea-adeverinta-vela-e-evident-ca-sunt-abuzuri-sunt-tineri-cu-6-luni-la-scoala-de-politie-1301473>, accessed on October 15, 2020.
8. Meyer-Resende, M., 'The Rule of Law Stress Test. EU Member States' Response to COVID-19', Democracy Reporting International, May 2020.
9. Prime Minister, Declaration by the Prime Minister of Romania, Ludovic Orban on April 24, 2020, as quoted by Digi24, [Online] available at <https://www.digi24.ro/stiri/actualitate/orban-politistii-nu-au-plan-de-amenzi-am-solicitat-sa-existe-intai-un-avertisment-1295554>, accessed on October 15, 2020.
10. Romanian Senate, Legislative proposal on some administrative and fiscal measures, Law no. 358/2020, [Online] available at <https://www.senat.ro/legis/lista.aspx>, accessed on October 15, 2020.
11. Strategic Communication Group, Press releases, [Online] available at <https://www.mai.gov.ro/category/comunicate-de-presa/>, accessed on October 15, 2020.
12. Ștefan, L. and Grama, G., 'Criza amenzilor: cum trebuie combătută epidemia?' [The Fines Crisis: How Should the Pandemic Have Been Fought], Expert Forum, 15 May 2020 [Online] available at <https://expertforum.ro/wp-content/uploads/2020/05/Policy-brief-amenzi-v2-15.05.pdf>, accessed on October 15, 2020.