

# COVID-19 AND DIGITAL RIGHTS IN ROMANIA, MOLDOVA AND UKRAINE

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DOI: 10.24989/ocg.v341.14

## **Abstract**

*The Covid-19 pandemic has caused tensions between protecting public health and upholding fundamental rights and freedoms, resulting in high-pressure on digital rights. Extending existing human rights and freedoms to cyberspace has more than ever come to the fore.*

*In some cases, authorities succeeded in guaranteeing the enjoyment of fundamental rights and freedoms online. But they fell short in many others, in particular, regarding the right to education, due process rights, the right to privacy. More, some authorities used the pandemic to crack down on digital rights. This is especially true about the freedom of expression.*

*Analysing the digital rights crisis in Romania, Moldova, and Ukraine, reveals different approaches in each country to the above-mentioned cases. In order to get over the crisis, such complexity urges extensive legal, political and social transformations. Hence, this brief identifies the necessary transformations and provides guidance to undergo them, highlighting among the most significant: adopting a rights-based approach, countering the digital divide, increasing transparency over the internet, enhancing data security and protection.*

## **1. Introduction**

In dealing with Romania, Moldova, and Ukraine's digital rights in the age of the Covid-19 pandemic, this brief aims to tackle some fundamental questions in greater depth. Would Covid-19 pandemic crisis boost towards digitization, or a return to the previous state of arts is expected after vaccination? If the former is affirmative, what are the challenges and how to overcome shortcomings? Would the pandemic's impact be sufficient to raise awareness that digital rights are individual rights? What could be done to defend individual rights online?

In order to answer these questions, the structure of this paper is divided into three parts. The first part defines the concept of digital rights in light of technological evolution, international recognition, and relationship with individual rights. The second part analyses the digital ways and means that were adopted to solve the challenges caused by the crisis regarding the right to education, due process rights, the freedom of expression and the right to privacy. Finally, the last part presents solutions and recommendations to overcome challenges and shortcomings.

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## **2. Features of digital rights**

### **2.1. Defining digital rights**

What do we mean when we talk about digital rights? Digital rights mean different things to different people. There is a degree of confusion about it. A quick search online yields a variety of definitions, but most of them are about the relationship of humans with devices and networks. Many of these focus on the issue of copyright, freedom of expression and the right to access. Such a narrow framework is due to the evolution of digital technologies.

Twenty-three years ago digital rights meant something different than its today meaning. With the start in the 90s of the World Wide Web available for everyone, the internet was firstly used for text and file sharing. Such utilization had inevitably touched issues regarding copyright information, resulting in associating digital rights with the protection of copyright online. The outcome of this identification got the name of digital rights management (DRM) [22].

Since the 2000s, this perception of digital rights has evolved towards including various facets of the freedom of expression, due to the development of online social platforms and mobile devices with access to them. Even if “digital rights” today is still anchored mainly to freedom of expression, this is only a transition process. The tendency of shifting towards covering the whole group of individual rights and freedoms is getting more evident and the process seems imminent. The Covid-19 pandemic crisis contributed a lot in this sense.

### **2.2. Digital rights are human rights**

In the last decade, an increasing number of human rights organisations, lawyers and activists have been invoking that digital rights are the same offline individual rights but applicable indistinctively online, in the digital sphere or in the internet era [32]. This interpretation has been agreed by consensus and promoted mostly by the UN Human Rights Council, asserting in several resolutions that "same rights that people have offline must also be protected online" [49] [50].

Even if the said resolutions expressly point that the above-mentioned affirmation is true in particular to freedom of expression, one might erroneously think that the applicability of the offline human rights in the online sphere regards only the said freedom. Instead, such focus should be read from the perspective of the UN's awareness of the transition process towards recognition of all human rights online, of which freedom of expression is one of the cornerstone pioneers. The UN message suggests instead that rather than seeking to define new rights for the online space, we should focus on extending existing human rights to cyberspace. There is no need to invent new human rights, but rather finding solutions to adapt the existing toolbox to the digital world [16].

### **2.3. Facets of human rights in the digital sphere**

At this point, one might wonder, if digital rights are individual rights, why use a different term? Such terminology is pursuing the scope of drawing attention to particular issues, that is, the threats of individual rights in the digital sphere. Such framing has a higher potential of capturing attention to the said issues [18] [19].

Another aspect that needs clarification is the wide-spread indifferently use of terms human rights and fundamental rights throughout the various debates regarding aspects of technology implications

[36]. Despite overlapping between these two notions, they mean different things in terms of protection and enforceability. Human rights are those rights that belong to every human being and are protected by virtue of international law through covenants and conventions. While fundamental rights are the rights granted in the Constitutions of the States, as such, are the primary source of recognition and protection when dealing with someone's rights. In order to avoid confusion, this brief will use the "neutral" term of individual rights, unless the former would be more appropriate in a specific context.

Finally, another important query that comes to the fore is the degree of application of individual rights in the digital sphere. Since digital rights are the offline rights but in the online sphere, are they subject to the same features that apply to offline rights? In other words, are they universal, inalienable, indivisible, interdependent and interrelated as are human rights? Or, do they distinct like fundamental rights between absolute rights and rights subject to limitations, rights that oblige to action or inaction, rights that are exercised individually or collectively, etc.?

At a glance, the Covid-19 crisis highlighted that offline rights need adaptation to the digital sphere since they are not automatically transposing to the digital sphere. This brief aims to identify such shortcomings and provide for the necessary recommendations in the case of Romania, Moldova and Ukraine. In order to do so, it will engage the term digital rights at the scope of capturing attention to the individual rights' issues in the digital sphere and suggest making no difference of protection between individual rights offline and online. More, it points out the governments' duty to adopt positive actions to guarantee and protect digital rights, albeit admitting meanwhile for their limitation. Last but not least, it presents the increased digital rights' tendency in losing ties with specific individual rights towards enclosing them all. In other words, the pandemic pushed for distancing digital rights from the dominium of the freedom of expression towards the human rights intrinsic concepts of universality, inalienability, indivisibility, interdependence and interrelation.

### **3. Digital rights in the age of Covid-19**

#### **3.1. Crisis pushed towards digital**

The COVID-19 pandemic has underscored the vital role of digital technologies in our lives. Digital has been crucial in managing the crisis and ensuring the many parts of our life that were brought to a halt, including individual rights. However, the rapid adoption of digital technologies can neglect the adherence to individual rights and the related principles of transparency and accountability. Indeed, digital fell short in the countries with weak digital foundations, exacerbating gaps and inequalities which amount to violations of individual rights.

#### **3.2. The right to education**

Education was among the first affected by the pandemic, thus, one of the first to test digitalization. Under international and national law of case-study countries, education shall be free and compulsory, at least in the elementary and fundamental stages. And safeguarding the right to education is a public responsibility relying on the States. This means that along with safeguarding the fundamental rights to life and health, the States are obliged to guarantee also the right to education. The former does not abrogate the latter, but only modify the ways in which it is ensured.

Such a state of affairs made the application of digital technologies a critical lifeline for the learning process. Remote learning via digital means has rapidly become the only way of guaranteeing safe

education. However, as the practice had shown, it wasn't without obstacles and difficulties. Rapid digital adoption has ensured the continuation of learning, "but has also created new barriers and unintended consequences" [34], such as, widening an existing digital divide, compromising the right to privacy and data protection, undermining parents' right to autonomy in choosing the type of education for their children, psychological effects due to less socialization, lack of nutrition, absence of suitable learning home spaces, request of more education skills from parents, physical and psychological violence, etc.

In Romania, school closure was very problematic from the rights perspective. It was a sudden decision that caught off guard the education process. The first two months have been the most taught period. The sudden decision of school closure, in a context of encouraging online education but in the absence of any centralized overview of the situation [40], have induced school administrations, teachers, and children to fast searching for ways and means of connecting. This due diligence resulted in the use of a variety of ad-hoc tools for on-line classes, mostly messenger apps, which put at-risk children's personal data.

But this wasn't the case for almost a third of all children and nearly a half of the teachers, as they had no access to online education. A survey of the NGO Save the Children showed that 43% of the teachers and 28 % of all children do not possess material resources for online education, with this percentage being 10 % higher in rural areas [44]. Also, 28% of all children do not possess adequate skills for online learning, with this percentage being 5% higher in rural areas. Most of these children come from socioeconomically disadvantaged families. However, the government reacted promptly and actively and allocated the necessary funding for supplying with tablets children from socio-economically disadvantaged backgrounds to ensure their participation in remote learning [39]. Also, various online platforms for facilitating online learning have been elaborated since then. Nevertheless, this hasn't totally countered inequalities due to the gap of digital literacy that needs a long-term policy.

Also in Moldova, the closure of schools was one of the first decisions taken during the state of emergency. Although Moldova had established before the pandemic an online platform for online classes (*studii.md*), it hasn't been much used after school closure [53]. By July 2020, over 70 public schools with 77,000 users utilised the platform, which means 5% of all schools and 23% of all children in Moldova [31]. Also, even though other platforms facilitating online learning have been elaborated during the first period of the pandemic, messenger apps and videotelephony software have been way more popular.

As of June 2020, 5% of all children and 10% of all teachers hadn't access to ICT technology, with a rate of 11% in rural areas. Of those children that had instead access to ICT technologies, nearly 86% have internet connectivity in urban areas and 75% in rural areas. Among them, the access to the internet is considerably lower in families with a lower level of education (64.7%) than families with higher education level (94%).

Ukraine adopted a more flexible mode of operations. It encouraged remote learning but left to the school boards the final decision in respect of the software for remote learning [51]. Unlike Romania and Moldova, Ukraine adopted a more passive approach regarding the software. The Ministry of Education has recommended using the online digital platform but without further indication in this direction [48], which resulted in a higher threat for children since in most of the cases they have used random freeware. Also, unlike the other case-study countries which have relied primarily on

ad-hoc platforms with digital books and lesson recordings, in Ukraine many of core subjects have been broadcasted through TV channels and YouTube.

Aside from these differences, Ukraine also faces challenges of guaranteeing equal access to education. Rural and socioeconomically disadvantaged children being the most affected. Up to 19% of all children have no or limited access to a computer. Of those that instead have access to a computer, 85% that live in the urban area have also a stable internet connection, while in the rural areas less than 60% [25]. Also, many of the teachers and rural and socioeconomically disadvantaged children are usually affected by the absence of digital literacy [46].

The right to education is universal, which means that it belongs to every person, but the pandemic has shown the fragility of this declaration. Although is one of the social rights *par excellence*, which means that authorities have the duty to guarantee its enjoyment by positive actions, it hasn't been guaranteed to thousands of children.

Making digital the default means of learning delivery had consequences on all of the children, but on some of them more than the others. Turning education digital had exposed and exacerbated once more inequalities. The above-mentioned examples show that online education has highlighted inequalities between the rural and the urban, socioeconomically disadvantaged and advantaged, families with secondary education and families with higher education<sup>2</sup>. Whilst the main reasons for such inequalities are the lack of digital literacy and the absence of access to ICT technology and the internet [14]. Guaranteeing access to education in these conditions is a big challenge, nevertheless, Romania showed it is possible.

Besides these concerns, the threats to personal data of children have gone unnoticed by authorities. In all the countries, at least in the beginning, free products have been used for classrooms online. But some of these come at the cost of children's rights and dignity, due to the threats of exploitation of their personal data [34]. Last but not least, the digitalisation of education has undermined parents' right to the kind of education that shall be given to their children, who couldn't choose learning without any digital means or low tech teaching for their children [52].

Switching to online education has shown that digital literacy and access to ICT technology and internet connection is a prerequisite of the right to education, thus, the states have to meet their obligations and provide for them in order of guaranteeing the right to education. Otherwise, the states could be accused of violating not only the right to education but also the right to equality and non-discrimination. In doing so, caution should be exercised regarding personal data and parent's right to autonomy.

### 3.3. Due process rights

Along with education, the judicial system has been seriously affected by the pandemic. Like many other sectors, the pandemic had diminished the functioning of the judiciary via physical contact, compensating for the negative impact through boosting digitalization. Digitalization turned indispensable to ensuring due process rights.

During Romania's state of emergency, most of the Courts have restricted their program to the public. Many cases had been paused and postponed and communications with the Court turned

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<sup>2</sup> This is also true with respect to children with disabilities and Roma, albeit not mentioned in the examples.

almost exclusively in electronic format [5]. The Courts were updating regularly on their website the upcoming hearings and trials, indicating that petitions could be submitted by regular post and email. More, the circulation of procedural documents through e-mail was presumed and didn't require the agreement of the parties. The judicial bodies could request via phone, as needed, the electronic addresses to communicate the said documents [43]. In a similar way, the right to be heard of the persons deprived of their liberty also was presumed and has been ensured via videoconference. An exception to the above-mentioned rules were the cases of extreme urgency, which couldn't be paused. But even then, when possible, the Courts could decide to conduct the hearings through videoconference and communicate the procedural documents through telefax, e-mail, or other means which ensure sending the text of the act and the confirmation of its receipt [47].

Also, prosecutors started to use remote communication, as they were receiving receipts of notifications, requests and memos by correspondence, electronic means of communication, or post. However, the absence of means for videoconference has prevented remote hearings. Thus, these have been done face to face in extreme cases, while postponed in the other [5]. While convicted persons have seen suspended their right to receive visits, goods, or permits to leave temporarily the penitentiary [12]. These restrictions have been compensated by the right to videoconferences and an increased number and duration of phone conversations.

Even after the state of emergency had been lifted, the Ministry of Justice recommended using videoconferencing and teleworking at most [42]. Also, the communication of procedural documents through electronic means; like e-mail, WhatsApp and others. This last decision is questionable at best, as it doesn't take into account the absence of ICT technology, internet connection, or digital literacy. More, it allows such communication through freeware, which represent a high risk to personal data.

In Moldova, videoconferencing enabled delivering justice during the pandemic. From the early days, the Courts have been encouraged to schedule hearings through the videoconference and to communicate the procedural acts or other related documents electronically" [7]. Although, Moldovan Courts have started using videoconferencing system even before the pandemic. Since 2019, videoconferencing has been used in criminal cases related to early release from custody and complaints regarding prison conditions, connecting in this way remotely inmates in penitentiaries to participate in court hearings. More, the Courts were using the videoconferencing system also for training and meetings.

The pandemic has boosted this tendency towards other issues and cases as well, like extending the period of arrest. From March 17, 2020, immediately after the state of emergency was declared, to the end of October 2020, the Courts used videoconferencing for over 6.800 remote hearings<sup>3</sup>. A significant number if compared to the total of almost 11.200 remote hearings that have been conducted since the very implementation of the system in November 2018 [37]. The rapid increase of hearings through videoconferencing during the pandemic shows that the system turned very useful. In a similar vein, besides doubling the duration and number of telephone calls, videoconferences on software previously accepted by the penitentiary institutions have been allowed to convicted persons for online meetings with their families [28]. Extending the system to other types of legal procedures is a potential next step for the Moldavian justice system.

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<sup>3</sup> Until October 23, 2020.

Besides videoconferencing, the Courts were allowed to communicate the procedural documents through fax, e-mail, or other means which could ensure sending the text of the act and the confirmation of its receipt. But e-mail was used more than other means by most prosecutors and judges. The circulation of procedural documents by e-mail was presumed and didn't require the agreement of the parties [28]. In case of the absence of e-mail address in the case file, it was asked via phone call. Also, in order to avoid human contact, the Courts recommended to the parties sending all the materials by e-mail or by ordinary post [2].

Notwithstanding the pandemic, authorities continued reforming justice. The integrated file management program (PIGD 5.0) has been updated to a new version and implemented for testing in more Courts [17]. It consists mainly of allowing submitting and sending summonses electronically, facilitating the coordination of hearings and the inclusion of documents in the system, offering to the parties better access to all procedural actions performed by the Court.

The lockdown measures negatively impacted Ukraine's judicial system, which appeared unprepared to respond to existing challenges [51]. Unlike Romania and Moldova, Ukraine adopted a decentralized approach. During the initial period of quarantine, which was declared on March 12, the highest judicial bodies and institutions issued recommendations towards using the remote communications facilities; in particular, videoconferencing the hearings, circulation of documents in digital form, teleworking [21]<sup>4</sup>.

At the end of March, the Parliament adopted amendments towards simplifying the procedure for participation in Court hearings by videoconference [23]. According to these, during the quarantine regime and by using own technical means, the parties could ask the judge for remote court hearings via videoconference. The confirmation of the identity of users to the said hearings to be made via electronic signature. Alternative means have been indicated in case of impossibility to provide the electronic signature. The said amendments have been later completed with further specifications regarding criminal cases, indicating the possibility of using videoconferencing for pretrial and trial hearings. The latter could be held by the judge's decision or on a party's request, while the former only with the defendant's consent [24]. However, it was left up to Courts to decide upon the rules, criteria, procedure, and procurement of necessary technology [46].

Following the abovementioned amendments, the State Judicial Administration issued a Regulation on videoconferencing and launched a system of videoconferencing for the participation of parties in proceedings (EasyCon). This can be launched on any computer or smartphone and allows the exchange of documents. However, it limits access to citizens without digital signature. Later on, the Regulation have been updated towards allowing people without a digital signature to participate in hearings and the Courts to use any software that complies with a set of specific technical requirements.

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<sup>4</sup> The Chairman of the Council of Judges recommended to the Courts of informing citizens about the possibility of videoconferencing the hearings and about receiving the statements on reviewing through remote communications facilities. Also, he advised citizens to submit documents in electronic form and by remote means. The State Judicial Administration and the Council of Judges have advised courts to switch to e-filing systems and e-mails for submissions and procedural documents. The Supreme Council of Justice has advised all Courts for the period of quarantine to hold hearings via videoconferencing where possible and to receive documents in digital form. The High Council of Justice recommended to the Courts, where possible, to conduct hearings in real-time via the Internet, to process correspondence electronically, to provide the Courts' staff with the possibility to perform their duties remotely. The Higher Anti-Corruption Court advised citizens to submit all necessary documents by email or by post. Dniprovskiy District Court of Kyiv city recommended providing all necessary documents to the Court in electronic form, and to get acquainted with the case materials after quarantine or remotely, if so technically available.

Nevertheless, these innovations had little effect on ensuring justice and protect due process rights. This is first of all due to the legislative framework, since videoconferencing has been stated as an alternative way to participate in hearings only during the quarantine regime, that could be asked by the parties, with the final decision belonging to the judge, and in consideration of technical possibility [20]. The risk of bad connection is carried out by the party that had asked for videoconferencing. While the judge decides over the possibility of identification with other documents than the electronic signature, which can easily turn into restricting de facto the right of access to justice.

Besides this, Courts were unwilling and unprepared to use digital means, mainly due to the lack of standardised videoconferencing equipment and internet security measures for hearings and e-filing. Courts have been using a plethora of third-party videoconferencing platforms, with only one of these deemed sufficiently secure (Webex Meetings) [45]. Indeed, monitoring of the Human Rights Ombudsman's office has revealed that in Kyiv, due to the lack of equipment and coordination, only 6.5% of all pretrial detention hearings were held via videoconferencing. Better in Odessa, where over 17% of hearings were held online, although in at least one case a hearing had to be postponed because of connectivity issues [46].

### **3.4. Freedom of expression.**

Digital communication had been a critical factor allowing the free flow of information about the pandemic, including false information. Unfortunately, many governments have abused of their power of censoring false information via sanctioning selectively information that they deemed fake [54]. Moreover, the excuse of protecting the information ecosystem from misinformation was used to deny the fundamental right of access to information. Although freedom of expression and the right to information could be limited, such a decision should be taken only in extreme cases and proportionally to the pursued aim. This is true even during a public health crisis when the free flow of reliable information is critical to containing the pandemic, governments should avoid restricting free speech through prior restrictions, closing media outlets, or blocking access to online communications. Such actions "call for the most careful scrutiny and are justified only in the most exceptional circumstances" [9].

From the beginning of the pandemic in Romania, information was one of the major concerns of the government. The Government created a separate section on its web page dedicated to coronavirus with information about the new regulations. Also, it had been continuously running information campaigns on TV and social media, while public institutions were actively re-distributing them on their web pages and in social media. In addition, a dedicated free phone line (telverde) was introduced for information and support [12].

However, other decisions were less popular. One such decision was the double term in which public institutions could answer the access to information requests. According to civil society, some public institutions invoked the term extension to suspend the access to information entirely [6]. Another unpopular decision is the criminalization of fake news, since it allows authorities to order interrupting the transmission or the storage of the content concerning online media accused of spreading false information about the COVID-19 outbreak [47]. This power was used against a website for publishing disinformation [41].

Since the beginning of the pandemic, Moldova adopted several decisions regarding the freedom of expression and the right to information that are questionable at best [1]. The first was the extension



of the period for government agencies to respond to freedom of information requests from 15 to 45 days [28]. Another more controversial was the request of authorities, quickly revoked due to harsh criticism, to audiovisual media to present only the official position of authorities in coverage of the pandemic and prohibiting journalists from expressing their personal opinions in reflecting the topics concerning the COVID-19 pandemic [29]. The third such decision regards the order of Information and Security Service to block access to more than 50 websites for “promoting fake news about coronavirus evolution and protection and prevention measures” [10]. This heightening concerns regarding the extension of censorship measures as blocking was without any warning or public explanation and the fake news published on these websites weren’t related to coronavirus [30].

Besides above-mentioned cases, the authorities fell short of their obligation to effectively inform the public. For example, while the government created, like in Romania, a separate section on its web page dedicated to coronavirus where it posted information about the new regulations, it made little effort to translate their complex legal language into simple and understandable guidance, making it difficult for a non-specialist audience to understand and follow them [27]. Many of the decisions concern the organization of transport to bring citizens into the country, making a separate list with such decisions would facilitate navigating and accessing the other more relevant decisions.

Ukrainian authorities also attempted to limit access to public information during the pandemic, but the harsh criticism led the government to withdraw. Nevertheless, some public institutions refused access due to the pandemic. Unlike Romania and Moldova, Ukraine was very active regarding the flow of information, both positively and negatively. About the latter, Ukraine used existing legislation to curb what it deemed fake news related to coronavirus, resulting in cyber-police taking down social media posts and blocking 10.000 web-links and the Security Service blocking 2,500 web-communities and identifying nearly 400 web-agitators [46].

However, Ukraine took also positive steps towards effectively informing the public. It has created a user-friendly and easily understandable for non-specialist audiences website dedicated to Coronavirus<sup>5</sup>, but which unfortunately ignores minority languages as it’s available only in Ukrainian and English languages [52]<sup>6</sup>. Also, a Telegram channel with more than 600.000 subscribers and almost 200.000 views of daily updates<sup>7</sup>, daily press briefings which are available also on YouTube<sup>8</sup>, a free phone line, mobile loudspeakers [38].

All the countries took concrete actions regarding the information space in the pandemic. Some of them had a positive effect in preventing the spread of Coronavirus, but others are questionable at best. Besides the suspension of access to information, serious concerns raise the extension of censorship online under the excuse of combating fake news. This is especially true in the case of Moldova and Ukraine. Instead of combating false information, authorities must consider taking affirmative measures towards bolstering the information ecosystem through consistent and transparent actions.

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<sup>5</sup> <https://covid19.gov.ua/>

<sup>6</sup> “Some groups did not have any access to COVID-19 online information because they lacked access to Internet or had language or accessibility barriers”, “67% of rural women do not have access to Internet at home”.

<sup>7</sup> Коронавірус\_інфо, [https://t.me/COVID19\\_Ukraine](https://t.me/COVID19_Ukraine)

<sup>8</sup> <https://www.youtube.com/channel/UCYITFedAEZiqE6r9eY0PZ1A/videos>

### 3.5. Right to privacy and data protection.

Bio-surveillance and Covid-1984 are just two examples of alluding to the governments' extraordinary surveillance powers to contain the spread of the virus<sup>9</sup>. According to public health experts, monitoring and tracking are significant steps of epidemic surveillance. Nevertheless, such surveillance raises concerns regarding the impact on an individual's right to privacy. The governments' use of modern technology to police Covid-19 lockdowns is a real risk of causing irreversible harm to personal data.

There haven't been registered any serious infringements of privacy or data protection rights via digital technology during the pandemic in our case-study countries. In Moldova, there was a little collection of personal data in a non-electronic form. While the only surveillance regarded the people in self-isolation and it was enacted via physical monitoring by police officers.

Few concerns were raised about privacy and data protection in Romania. In an isolated case, these were raised in relation to the publication on Facebook by a public official of data allowing the identification of patients [12]. While another such issue was the temperature screening at the entrance in closed public spaces, but the Data Protection Authority clarified that such screening without taking records is not data processing [13]. The most concerning was the authorities' attempt to develop a contact-tracing application. The civil society raised concerns about the lack of transparency and potential for abuse of geo-tracking people in quarantine as no judicial authorisation was required for it [3]. In contrast to many other states, Romania abandoned plans to develop such an application [13].

Some exceptions regarding personal data have been adopted for the period of quarantine in Ukraine. At the scope of preventing the spread of Coronavirus, it authorized some agencies to process personal data without the consent of the person [35]. More importantly, however, is the mobile contact-tracing application (Дій вдома - Act at Home), designed to control the observance of obligatory self-isolation during the quarantine [26]. Persons entering Ukraine may choose between hospitalization to specialized observatories or 14 days self-isolation with the use of the application. If the latter is picked up, the person has to answer random requests by sending geo-tagged selfies. If no such answer is received within 15 minutes since the request, the app sends a notification to the police. Unfortunately, the app suits only smartphones with Ukrainian phone numbers, which means, one is forced to hospitalization or to provide a negative result of testing for COVID-19 if doesn't have a Ukrainian phone number or its device is unsuitable with the application. Aside from tracking, the main issue with the application regards the collection and storage of data. Many human rights activists are concerned that the data could be used for purposes other than preventing the spread of Coronavirus. Also, that the data wouldn't be effectively deleted in 30 days after the end of the quarantine regime as stated in law [8]. Several incidents of leaked sensitive personal data from the application into the public domain highlighted indeed the app.'s fails in relation to privacy and data protection [46].

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<sup>9</sup> Covid-1984 is an allusion to George Orwell's dystopian social science fiction novel in order to point to the infringements to the right to privacy during the Covid-19 pandemic.

## 4. Conclusions and Recommendations.

### 4.1. Challenges as opportunities for a rights-based approach.

The Covid-19 pandemic crisis has been challenging. However, it also offers an opportunity to revisit strategic approaches on the use of digital towards improving the delivery of public value [33]. Such an improvement is possible by making individual rights the bedrock of digital transformation [11]. Since digital tools and data are inevitably integrating into our lives, individual rights should constitute the central normative framework for the policies related to digital technologies [19]. Digital is an opportunity to do the right thing, as protecting individual rights online is necessary for our growth and prosperity.

### 4.2. Counter digital divide via the right to access.

The digital divide appears to be the main issue that has been underscored by the pandemic. There are three main gaps between those able to benefit from the digital and those who are not; absence of internet connection, lack of an adequate device, poor digital literacy.

Even if a stable broadband internet connection is available for a large part of the population in all the case-study countries, where it lacks was sufficient to prevent the exercise of individual rights for a significant part of the population. Internet access is often connected to classic rights as their digital projection [36]. But the crisis has changed this perception by showing the deep impact of absent access on political space and socio-economical rights. The right to internet access is not anymore just an appendix of the freedom of expression broadly conceived but is a self-right. Indeed, the crisis has shown that the right to internet access possesses the human rights' features of universality, indivisibility, interdependence and interrelation, as it was indispensable for the full enjoyment of human rights [15]. There was no point of rights if one hadn't access and vice versa. As such, the crisis confirmed the UN's last decade policy of stating internet access as a human right. Also, the tendency of many countries that have codified it in their legislation. For example, Greece, Ecuador, Portugal, Mexico, and more recently Georgia and Sudan have codified access to the internet as a fundamental right at the constitutional level, although seems that in all the cases it has emancipated from the scope of protection of the freedom of expression. Other countries have codified it at the sub-constitutional level; like Finland, Estonia, Spain [36]<sup>10</sup>. While in France and Costa Rica it was asserted by the constitutional judges [4].

But the pandemic has shown that the proliferation and flourishing of advocacy towards asserting the right to access the internet becomes more meaningless if lack of digital literacy or the absence of adequate devices. Along with internet access, access to adequate devices and to the knowledge of using them is extremely important for the enjoyment of individual rights. Romania's example of purchasing hundreds of thousands of tablets to solve the problem with access to adequate devices is a perfect example showing that it is possible. More problematic is digital literacy. Digital literacy shall be a key component of education and everyone shall be educated about digital technologies. Governments shall consider organising and offering assistance to citizens in using digital devices, networks and services. Reforms towards digitalization raise many questions and queries, especially for citizens that are less familiar with informational technologies. Therefore, governments could

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<sup>10</sup> Finland law states internet as a universal service and oblige telecommunications companies to provide a minimum standard internet speed. While Estonia indicates it as universal public service which must be available to all users.

consider creating ad hoc informational centres and holding apposite classes that would instruct and assist citizens during the transition to digitalization.

Overall, access is the number one problem. Therefore, it urges significant legal and social reforms like the codification in national Constitutions. Codifying the right of access to the internet, devices, and knowledge as a social right, which implies active intervention from public authorities to guaranteeing it to everybody<sup>11</sup>, would be a significant step towards ensuring the enjoyment of individual rights in the digital sphere. Moreover, it would be consistent with the UN 2030 agenda for sustainable development's call of leave no-one behind, which aims to enhance the human rights of all, without discrimination on any grounds.

### **4.3. Multi-stakeholder approach for transparency and data protection.**

Transparency and privacy are other pieces of the aforementioned puzzle. The pandemic has highlighted the significant role of access to digital technologies and how vital is to maintain an open and secure approach to it. Digitalization can advance human rights, but can also support abusive and unlawful restrictions on individual rights. The misuse of digital technologies carries a real risk of increased illegal access, monitoring, control, repression [11].

Digital technologies have the potential to contain and remedy the pandemic. At the same time, this potential should not be left unchecked and unbalanced [9]. Indeed, the harmful impact on privacy due to the rapid adoption of digital technologies in the context of the pandemic could be avoided via more transparency and accountability.

A reliable solution to this shortcoming could be adopting a multi-stakeholder approach, that will include civil society, the media community, businesses, governments, and citizens. Technologies and policies should be developed and adopted in an open way so that the other members could verify them. Such an open and cooperative could solve the problem of trust concerning the use and storage of data obtained via Ukrainian contact-tracing application; and an independent regulator could be one of its pragmatic outcomes. The governments should consider creating an independent supervisory authority chaired by civil society and independent media representatives to monitor the observance of individual rights and ensure that the digitalization reform process is human-centred.

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<sup>11</sup> Such an attempt have been registered in Italy where the right to internet access was supposed to be included in the Constitution's section of social rights, immediately after the right to education.

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