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## CONSIDERATIONS REGARDING THE SCOPE OF NOTIONS OF "EXCEPTIONAL SITUATIONS"

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### **Abstract**

*From the beginning of the existence of state entities, measures were necessary to maintain and defend them against internal and external dangers. At the beginning, these measures were taken exclusively in military terms, later taking shape also in law and evolving simultaneously with state development. This evolution has outlined other risk factors, which can threaten the existence of the rule of law or the normal development of social, economic and political life. In order to combat these dangers, which can intervene unexpectedly, and to establish the state of normalcy as quickly as possible, the power factors in the state must take energetic and immediate measures.*

*The content of exceptional states derives from those situations that are beyond the normal state of the rule of law, situations accompanied by serious dangers that may threaten its very existence or the normal development of social, economic and political life.*

**Key words:** *exceptional situation, very serious dangers, extent of measures, legal effect,*

**JEL classification K150;**

### **INTRODUCTION**

By declaring them, exceptional states are substituted for ordinary states of law, adapting to the needs of the moment and the abnormal circumstances that caused them, or forcibly brought them about, and which undoubtedly justify themselves.

The exceptional states are instituted in those cases determined by the emergence of moments of crisis for the rule of law, moments that can be triggered

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by either internal or external factors. The dangers can be so serious that they can target *supreme state institutions and values*<sup>1</sup> such as:

- defense of the country and national security,
- constitutional democracy,
- the life of citizens, their rights and freedoms,
- public health and morals,
- public or private property, etc.

Very serious dangers such as armed aggression directed against the country, actions or inactions aimed at sovereignty, independence, the unity of the state or its territorial integrity, complex social adversities, disturbances and demonstrations that tend to overturn the constitutional order and security of the state and may degenerate into civil war, the serious violation of legality, the occurrence or imminent occurrence of disasters are clear elements that require the establishment of exceptional states.

Usually, in such situations, order, tranquility and civil peace can only be imposed through resistance and coercion measures that the civil authorities, with the help of the police and judicial bodies, cannot guarantee, and then the armed forces are called upon.

There may also be situations which, discovered by intelligence and counter-intelligence structures, raise the issue of the security of state structures ("underground" movements, occult interests), which due to their scale become very dangerous for the constitutional order, for the government and the stability of the state entity and which, through by definition given their occult character, they sound difficult if not impossible for public opinion to perceive. Based on this information, exceptional states can also be established.

The state of emergency is mandatory for a certain period of time, when all interests must be absorbed in the need for common defense.

Thus, necessity conditions the imposition of exceptional states, justifies their exercise and limits their duration. Only necessity, not opportunity, can justify the establishment of an exceptional state.

The necessity arises from the fact that states of emergency represent the public's right to self-defense when civil authorities are unable to prevent or resist a public danger by resorting to additional forces. They are justified by the pre-existence of a disastrous enemy attack, by a special internal situation that requires the control of the armed forces over the civilian population, not only to restore order and law, but also to ensure the relief of the population, the resumption of production, the restoration of the economy, the protection of life and properties, evacuation and traffic control, as well as prevention of diversionary actions or other illegalities.

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<sup>1</sup> The Romanian Constitution of 1991 amended and supplemented by the Law on the revision of the Romanian Constitution no. 429 of 2003

The fact that states of emergency must be dictated by necessity, and their extension depends on circumstances, reinforces their value as an object of a country's legislative process.

The need dictated by the realities of a critical situation calls for immediate measures, the importance of the need being determined by the measures that must be taken in the interest of common defense. If it is required that the civilian population be placed under the control of the armed forces, so that military operations can be carried out unhindered, this not only falls within the constitutional powers of the President, the Parliament and the Government, but it also becomes an undoubted constitutional obligation for these state bodies .

The extent of the measures taken and the military forces used within the states of emergency depends on the extent and complexity of the disturbances that affect the normality of the state. Of course, in the conditions of an enemy invasion or attack, or of a major natural calamity, the forces and means to be used will be proportionally greater than in the case of small-scale local disturbances.

Dangers to the community do not only come from outside, they can also have internal causes. Disturbances, violent demonstrations, insurrections, etc. they can sometimes take a large scale, reaching the point of denying the constitutional order, of disregarding the principles and institutions of the rule of law, and may even turn into a civil war.

The constitutional order can only be restored through an energetic intervention, through measures of resistance and coercion, which as a rule cannot be applied by the civil authorities, requiring the call to the armed forces.

The need to establish states of emergency, followed by the extent of the measures that need to be taken and the military forces used, determined in turn by the extent of the dangers that must be faced and overcome, demand a hierarchy at the level of the anti-crisis actions of the rule of law. For greater dangers the measures and actions are wider and deeper, for lesser dangers they will be reduced.

In such a situation, the complex mechanism of the power of the rule of law is set in motion, various levers act, competence transfers from one power to another take place, the organized military force of the state comes into action, the support given to local administrative authorities increases and increase their skills.

### **1. BRIEF LEGISLATIVE EVOLUTION**

In Romania, starting from 1864, through the State of Siege Law and then through the Constitution of 1923, the name state of siege is consecrated and used. The name, consecration and legislation of the state of siege, like almost the entire Romanian legislation of that period, are of French inspiration. Later, in the post-war period, the constitutions of 1948, 1952 and 1965 enshrine the state of emergency that could be instituted throughout Romania or in certain areas.

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In the new conditions of democratic development of Romania after 1989, inspiration continues from French doctrine and legislation and from the Romanian experience acquired based on the application of the 1923 Constitution, so that currently, based on the 1991 Constitution, exceptional situations in our country are analyzed on the two levels: *state of siege and state of emergency*<sup>2</sup>. Cases of extreme urgency require the immediate declaration of a state of siege.

The character of necessity, specific to the state of siege, translates into the urgent need to apply military force to suppress or counteract the force of belligerents or insurgents. The state of siege, being a measure of public safety, has the effect of suspending the actions of the civil laws and replacing them with the military regime. This measure can be general, for the entire country, or only partial, for a certain territory or locality.

Like the extent of the measures to be taken, its territorial extent is determined by the nature, the character of the disturbances and movements, and the proportions of the danger to which the country is exposed.

In the area under its control, the temporary military government (*temporary dictatorship*)<sup>3</sup> becomes the supreme governmental authority over the civilian population, to the extent provided in the normative act declaring the state of emergency. The rules and regulations imposing controls and restrictions on such situations will be published immediately in the form of orders of the military authority. Police functions will be provided by the military command. Security restrictions will be imposed that involve limiting the exercise of some fundamental civil rights and freedoms:

- prohibition of movement at certain times and camouflage;
- restrictions on population movement;
- occupation by military forces of some places considered important from a strategic point of view;
- temporary detention of suspicious persons, etc.

The purpose of imposing the state of siege is to restore order, so that the normal functioning of civil authorities can be restored as quickly as possible. Beyond this goal, a state of siege has no justification. Except where it is necessary to ensure the continuation of a necessary function, the state of siege is not intended to replace civil administration. Within the limits of this purpose, the subordination of the civil authority to the military authorities is inherent.

The real (effective) state of siege, which can only occur in time of war, consists in the situation of a locality or portion of territory surrounded by the besieging enemy, a situation that justifies the military authority to take any

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<sup>2</sup> GEO no. 1 of 1999 regarding the regime of the state of siege and the regime of the state of emergency amended and supplemented by Law no. 164 of 2019,

<sup>3</sup> In the French Constitution of 1958 we find the expression "temporary dictatorship" which refers to the measures taken in the event of a serious crisis that would endanger democracy, as a last resort to block a threat to public power.

restriction regarding the rights of the civilian inhabitants of the besieged area them, provided that those restrictions are taken for the purpose of ensuring a complete resistance, or for the purpose of exiting the besieged area (*V. Pantelimonescu, 1940, citat de C. Sava și C. Monac, 2000, p.5*).

So, in a classic sense, the state of siege is justified by the siege of a territory or localities, by the enemy troops, territory or locality that must be governed according to exceptional provisions, established by laws that pass on the military authority a good part of public powers. The application of the state of siege must be justified by public necessity, by the existence of a real threat to public order and safety.

The fictitious (political) state of siege can occur both in wartime (for unsieged territories) and in peacetime and consists in the situation of a country, locality or portion of territory, whose inhabitants are subject to certain restrictive measures regarding the rights them, in order to remove imminent dangers.

These restrictions based on the proclamation of the state of siege are taken by the Government, through the military authority, within the limits provided by the act by which the state of siege was established (*V. Pantelimonescu, 1940, p.5. citat de C. Sava și C. Monac, 2000, p.5-6*).

The state of siege in peacetime is therefore a fiction of the real state of war and borrowed from the latter with all the rigors determined by the conditions and requirements commanded by the reason of the state.

Looking at the state of emergency (OUG nr. 1/1999), we usually refer to periods of low intensity but which still require the declaration of an exceptional state. It can only occur in peacetime and usually refers to the existence of threats to national security or Constitutional democracy, which makes it necessary to defend the institutions of the rule of law and maintain or restore the state of legality. This can also refer to the occurrence or imminent occurrence of disasters (OUG nr. 21 din 2004), which requires organized military action to prevent, limit and eliminate their effects.

The need to institute one or another of the exceptional states derives from a thorough analysis of the seriousness of the dangers, an approach that constitutes an attribute of the responsible power factors in the state and is based on constitutional provisions and other laws in the field, relevant assessment criteria but also truthful information and complete provided by specialized bodies.

The analysis of the seriousness of the dangers to the rule of law calls for the appropriate, gradual establishment of the exceptional state that is imposed: the state of siege and the state of emergency, as, in relation to the evolution of the danger situations, in compliance with the constitutional provisions, it is possible to move from state of emergency to state of siege or vice versa.

## **2. GENERAL CONSIDERATIONS REGARDING THE STATE OF SIEGE**

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Cases of extreme urgency require the immediate declaration of a state of siege. The character of necessity, specific to the state of siege, translates into the urgent need to apply military force to suppress or counteract the force of belligerents or insurgents. The state of siege, being a measure of public safety, has the effect of suspending the actions of the civil laws and replacing them with the military regime. This measure can be general, for the entire country, or only partial, for a certain territory or locality.

In the area under its control, the temporary military government (*temporary dictatorship*)<sup>4</sup> becomes the supreme governmental authority over the civilian population, to the extent provided in the normative act declaring the state of emergency. The rules and regulations imposing controls and restrictions on such situations will be published immediately in the form of orders of the military authority. Security restrictions will be imposed that involve limiting the exercise of some fundamental civil rights and freedoms:

- prohibition of movement at certain times and camouflage;
- restrictions on population movement;
- occupation by military forces of some places considered important from a strategic point of view;
- temporary detention of suspicious persons, etc.

The purpose of imposing the state of siege is to restore order so that the normal functioning of civil authorities can be restored as quickly as possible. Beyond this goal, a state of siege has no justification. Except where the continuation of a necessary function is to be ensured, the state of siege is not intended to replace civil administration. Within the limits of this purpose, the subordination of the civil authority to the military authorities is inherent.

### **3. GENERAL CONSIDERATIONS REGARDING THE STATE OF EMERGENCY**

Regarding the state of emergency (OUG 21 din 2004), we usually refer to periods of low intensity but which still require the declaration of an exceptional state. It can only occur in peacetime and usually refers to the existence of threats to national security or Constitutional democracy, which makes it necessary to defend the institutions of the rule of law and maintain or restore the state of legality. This can also refer to the occurrence or imminent occurrence of disasters<sup>5</sup>, which requires organized military action to prevent, limit and eliminate their effects.

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<sup>4</sup> In the French Constitution of 1958 we find the expression "temporary dictatorship" which refers to the measures taken in the event of a serious crisis that would endanger democracy, as a last resort to block a threat to public power;

<sup>5</sup> GEO 21 of 2004 regarding the National Emergency Management System, published in M. Of. no. 361/ April 26, 2004 and republished in M. Of no. 190/March 7, 2005;

The military lexicon (1980, pp.628-629) defines this state as "a situation in which, due to the strained relations between states, some measures of a political, military, economic and social nature are taken to raise the state of readiness for the fight of the troops and the population in order to be able to enter to war in a very short time."

The state of emergency also represents, in comparison with the state of siege, a regime of restriction of public liberties, which is characterized by the extension of the ordinary police powers of the public authorities, in case of extraordinary events (Lexique de termes juridiques, 1998, 8 eme ed., 1990, p.222).

### CONCLUSIONS

*The need to establish one or the other of the exceptional states arises from a thorough analysis of the seriousness of the dangers, an approach that constitutes an attribute of the responsible power factors in the state and is based on constitutional provisions and other laws in the field, relevant assessment criteria but also truthful information and complete provided by specialized bodies.*

*The analysis of the seriousness of the dangers to the rule of law calls for the appropriate, gradual establishment of the exceptional state that is imposed: the state of siege and the state of emergency, as, in relation to the evolution of the danger situations, in compliance with the constitutional provisions, it is possible to move from state of emergency to state of siege or vice versa.*

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