

Where is the “Special Legal Order” Heading in Romania?

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1. Constitutional and statutory regulation, types of special legal order

1.1. Types of special legal order

In the Romanian legal system, the constitution (adopted in 1991, amended in 2003)¹ does not dedicate a separate chapter to the issue of the special legal order, but certain sections of the chapter on the president of Romania provide for such situations. Additional special legal rules are regulated in different laws. With regard to the latter regulations, specific regulatory solutions will also be presented later, outlining the related constitutional court practice.

In the constitution² there are the state of siege and the state of emergency, as exceptional measures, and it regulates mobilization and the state of war as a response to an armed attack on the country. The state of siege and the state of emergency are governed by the same emergency government ordinance,³ and the rules for mobilization and the state of war are

1 As Attila Varga points out, during the successful constitutional amendment in 2003 and the unsuccessful attempts to amend the constitution in 2011 and 2013, the possibility and necessity of adopting a new constitution arose as an alternative to revising the constitution (albeit only as a theoretical debate) (Varga, 2019, p. 83).

2 Constitution Art. 73, points f and g

3 Emergency Ordinance No. 1 of 1999 on the State of Siege and the State of Emergency (Siege Government Ordinance), see: Dima, 2020.

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laid down by law.⁴ The constitution and the main sources of law⁵ adopted under it therefore distinguish between:

- states of siege and states of emergency as the highest types of emergency for which the president of Romania and the parliament have fundamental powers;⁶
- an emergency situation for which the government has basic authority; and
- a state of alert that presupposes a lower level of emergency.

A state of siege (*starea de asediu*) refers to measures of an extraordinary, political, military, economic, social, or other nature, which, in certain territorial-administrative units or throughout the country, address a threat to sovereignty, independence and territorial integrity of the state, and which may end in mobilization.

A state of emergency⁷ (*starea de urgență*) refers to measures of an extraordinary, political, economic, and public order, which is taken in certain territorial administrative units, or throughout the country, in the following cases:

- in the event of a serious, current, or imminent threat to national security or constitutional democracy;
- in the event of unavoidable or occurring disasters which make it necessary to prevent, limit or remedy their consequences.

The legal framework for measures to address the protracted epidemic situation was reconsidered through Act 55 of 2020,⁸ i.e., instead of general rules, the legislature created specific rules specifically for the coronavirus epidemic, which law also created the concept of the state of alert (*starea de alertă*): it is a system of measures for a special situation of exceptional magnitude and intensity, which is temporary and proportionate to the current or future severity of the situation, and which is necessary for protecting life, health, the environment, and important material, and it can also be ordered at the local, county, or national level under the authority of the government for up to 30 days, and can be extended for additional 30-day periods.⁹

4 Act No. 355 of 2009 on the Order of the Partial or Full Mobilization of the Armed Forces and the State of War (Armed Forces Act)

5 The sources of law cited are: the 21st Emergency Government Ordinance of 2004 on the National Emergency Management System; Ordinance 88 of 2001 on the Establishment, Organization and Operation of Community Public Services for Disaster Management; and Act 203 of 2015 on Defense Planning.

6 Pursuant to Article 61 of the constitution, the parliament consists of the House of Representatives and the Senate, these two chambers take their decisions in separate sessions: "They operate independently, like unicameral parliaments" (Varga, 2019, p. 352). Article 65 of the constitution does not exhaustively list the cases in which the two houses meet together; e.g., approval of a presidential decree on a state of siege or a state of emergency.

7 Cf.: Tănăsescu, 2020, pp. 191–192.

8 Act 55 of 2020 on certain measures to prevent and combat the COVID-19 epidemic

9 See, e.g., 1065/2020 Government Decision, which extended the state of alert by 30 days from December 14.

According to the basic rules of the state of siege and the state of emergency, the president of Romania may by presidential decree order the state of siege or the state of emergency throughout the country or in certain administrative units.¹⁰ The decree must be signed by the prime minister, and will be published immediately in the Official Gazette of Romania.¹¹ No later than five days after the promulgation of the decree, the president of Romania will ask parliament to approve the measures.¹² According to the constitution,¹³ if the parliament does not hold a session, the parliament is considered to be convened by law within a maximum of 48 hours from the introduction of the state of siege or state of emergency and will function for the entire duration of the announced special legal order. Even in times of a state of siege or state of emergency, parliament emerges as a counterweight to the executive branch, which itself exercises control over the decree of the head of state¹⁴ and its implementation and plays a key role in maintaining proportionality between the measures and the reasons for them. Parliament approves the decree in a joint sitting. If the state of siege or state of emergency is not approved by the parliament, the president of Romania shall immediately revoke the decree and the ordered measures shall cease.

A state of siege can be ordered for up to 60 days and a state of emergency for up to 30 days. With the consent of parliament, the state of siege or emergency may be extended in accordance with these time limits, and may be extended or reduced territorially. If the state of emergency ceases before the end of it, the special legal order can be revoked by decree and with the prior approval of the parliament. A state of siege or emergency may be ordered and maintained only to the extent of the reasons for it and in compliance with Romania’s obligations under international law.¹⁵ Within 60 days of the end of the state of siege or state of emergency, the president of Romania shall inform parliament of the reasons for the situation, the measures taken, and the possibilities of avoiding similar situations in the future.

An emergency situation (*situația de urgență*) is an exceptional, non-military event which, due to its size and intensity, endangers the life and health of the population, the environment, important material and cultural assets, and requires integrated management, additional resources and integrated management of the assets involved.

10 Cf. Presidential Decree No. 2020/195 on the state of emergency (COVID Decree), which is based on the fact that a semi-presidential system of government has developed in Romania following the change of regime. For more information, see Veress, 2006, pp. 299–311.

11 The mandatory content of the decree are: the reason, area, duration of the state of siege or state of emergency, the measures to be taken immediately, the designation of fundamental rights and obligations that are restricted, the designation of the military and civilian authorities that implement the decree and their powers and other necessary provisions.

12 The COVID Decree was approved by Parliament Decision 2020/3.

13 Constitution Art. 93

14 Kormányhatáskörök és parlamenti ellenőrzés rendkívüli állapot esetére az Európai Unió tagországában, 2016, p. 37.

15 The regulation introduced by Act 453 of 2004 (Government Ordinance on State of Siege, 3.1 Art.).

In the event of mobilization (*starea de mobilizare*) or a state of war (*starea de război*), parliament shall continue to function for the duration of those special legal orders or, in the absence of a session,¹⁶ within 24 hours of their declaration,¹⁷ shall be deemed to have been convened by law; the term of office of the president of Romania may be extended by an organic law in the event of war or disaster.¹⁸

The constitution cannot be amended during a period of state of siege or state of emergency, nor during a period of war.¹⁹

With regard to special legal orders, there is an important law: the Act on the National Defense, which,²⁰ in addition to preparing the population for defense and defining the rights and obligations of citizens in the preparation of the country's defense, also regulates military service rules. The Act on the Suspension of Compulsory Military Service and the Introduction of Voluntary Military Service in connection with military service also contains special rules regarding the special legal order.²¹

With regard to a state of war, a significant law is the Act on the Supreme Defense Council,²² which regulates the council's organization and operation, and also sets out the obligations and powers of the authority. The National Security Act,²³ which holds that the moral duty of citizens is to contribute to the realization of national security,²⁴ i.e., to the maintenance of social, economic, and political stability. And this, according to the law, is threatened, among many others, by acts against state sovereignty, the provocation of war or civil war, an armed act aimed at weakening the state and acts of terrorism.²⁵ The coordination of the measures necessary from the point of view of national security is the task²⁶ of the Supreme Defense Council (*Consiliul Suprem de Apărare a Țării*). In addition, important legislation for the special legal order are regulations and decisions that define the tasks of the competent ministries. These are usually legislation setting out the organizational and operational rules of a particular ministry.

16 Constitution Art. 89

17 Constitution Art. 92

18 Constitution Art. 83

19 Constitution Art. 152.

20 Act 446 of 2006 on national defense

21 Act 395 of 2005 on the Suspension of Compulsory Military Service and the Introduction of Voluntary Military Service

22 Act No. 415/2002 on the organization and functioning of the supreme council of defense of the country

23 Act No. 51 of 1991 on National Security Art. 2 (National Security Act)

24 It is also important to highlight the national security system in view of the fact, that Péter Tálas rightly states in relation to Romania that “the subjective approach to security, the perception of threat, is significantly detached and far from objective security” (Tálas, 2016, p. 43.).

25 National Security Act Art. 3

26 National Security Act Art. 6

In preparation for special legal order the role of non-defense ministries can be stated in peacetime that according to the constitution the government,²⁷ as the custodian of the executive power, ensures the implementation of the country’s domestic and foreign policy and general administration.²⁸ Furthermore, as set out in the Law on the Organization and Functioning of the Government and Ministries, it ensures the balanced functioning of the economy and society, and the promotion of national interests.²⁹ Under the governance program, the government exercises a state power function among many other tasks to ensure public order and national security rules.³⁰ The government consists of the prime minister, two deputies, and 18 ministers.³¹

The mobilization of the armed forces and the state of war are governed by a separate law. Mobilization involves the elaboration and preparation in peacetime of measures in various political, economic, social, administrative, diplomatic, legal, and military fields and their application in the event of a serious threat to the sovereignty, integrity, and democratic principles of the state.³² A state of war is a set of extraordinary measures that a state can take to exercise its right to self-defense, mostly in the political, economic, social, administrative, diplomatic, legal, and military fields.³³ Mobilization can be partial or complete, depending on whether it affects the state, as well as the apparatus as a whole.³⁴ During both mobilization and state of war, fundamental rights can only be restricted in accordance with the constitution.³⁵ Mobilization and the order of a state of war are carried out in accordance with the provisions of the constitution. All this presupposes cooperation between the president and parliament, as the decree of the president of Romania on mobilization and the state of war is approved or refused by parliament.³⁶ The management of the national mobilization system, which includes the related infrastructure and resources in addition, is the responsibility of the parliament, the president, the Supreme Defense Council, the government, and other authorities of the state. An indispensable institution is the Supreme Defense Council, which, as an autonomous administrative authority, unanimously organizes and coordinates activities related to national defense and participation in initiatives related to national security, maintaining international security, collective defense within military alliances, and maintaining

27 Romanian government website: <https://gov.ro/ro/guvernul/cabinetul-de-ministri> (Accessed: 16 November 2020).

28 Constitution Art. 102

29 Administrative Code Art. 14

30 Administrative Code Art. 1, section (5)

31 Administrative Code Art. 18; Government Resolution No. 31/2020

32 Armed Forces Act Art. 1

33 Armed Forces Act Art. 2

34 Armed Forces Act Art. 3

35 Armed Forces Act Art. 4

36 Armed Forces Act Art. 5–7

or restoring peace.³⁷ Pursuant to the Law on the Supreme Defense Council, the Supreme Defense Council proposes a national security and military strategy for Romania and, at the request of the president, proposes and analyzes a state of siege and state of emergency, mobilization of the armed forces and state of war in connection with its promulgation.³⁸

The constitution provides for responsibilities in the field of national defense, according to which the president of Romania is the commander of the armed forces and chairs the Supreme Defense Council.³⁹ With the prior consent of parliament, it may announce the partial or general mobilization of the armed forces. Only in exceptional cases may the president's decision be subsequently submitted to parliament for approval within a maximum of five days of the decision being taken. In the event of an armed attack on the country, the president of Romania will take steps to fight off the attack and bring it to the attention of parliament without delay. If parliament does not hold a sitting, it shall be deemed convened by law within 24 hours of the outbreak of aggression.⁴⁰

1.2. The role of central administration in relation to the special legal order

The Ministry of National Defense is primarily responsible for coordinating measures in exceptional situations and in preparation for them, but other ministries also have competencies in relation to the special legal order. The government itself is involved in the management of the national mobilization system,⁴¹ which includes the management of resources and infrastructure.⁴²

With regard to the government, it is worth mentioning that the countersignature of the prime minister is necessary for the president to order an exceptional measure. In addition to the Ministry of National Defense, the Ministry of the Interior has more serious responsibilities in relation to the special legal order. The basic tasks of the Ministry of the Interior include the fighting terrorism, illegal migration, and the fight against cybercrime, as well as the development of civilian crisis prevention and management training through its specialized administrative bodies.⁴³ The Emergency Government Ordinance on the organization

³⁷ Constitution Art. 119

³⁸ Law no. 415/2002 on the organization and functioning of the supreme council of defense of the country Art.

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³⁹ Constitution Art. 92

⁴⁰ Kormányhatáskörök és parlamenti ellenőrzés rendkívüli állapot esetére az Európai Unió tagországában, Országgyűlés Hivatala Közgyűjteményi és Közművelődési Igazgatóság Képviselői Információs Szolgálat, 2016, p. 36–37. [Online]. Available: <https://tinyurl.hu/SsjG/> (Accessed: 14. January 2020).

⁴¹ Armed Forces Act Art. 11

⁴² Armed Forces Act Art. 12

⁴³ See the website of the Romanian Ministry of the Interior: <https://www.mai.gov.ro/despre-noi/atributiile-ministerului-afacerilor-interne/> (Accessed: 12 December 2020)

and operation of the Ministry of the Interior states, that it is responsible for ensuring civil protection and crisis management, as well as the border protection system,⁴⁴ the literature notes that county bodies have also a decisive role in crisis management.⁴⁵ It also develops the implementation of the strategic requirements for the police and public security forces in peacetime, emergency situation and war, and ensures inter-ministerial coordination on the state border.⁴⁶ According to the Siege Government Ordinance, the Ministry of the Interior is responsible for coordinating the measures taken during a state of emergency in the event of a threat to the constitutional order.⁴⁷ During a state of emergency, the Minister of the Interior, his deputy and the officials approved by them, are authorized to issue a military ordinance (*ordonanță militară*),⁴⁸ depending on whether the state of emergency covers the entire territory of the country or only certain administrative units.⁴⁹ The Directorate-General for Emergencies (*Inspectoratul General pentru Situații de Urgență*) under the authority of the Ministry of the Interior is responsible for taking measures to prevent and deal with various emergencies. In the course of its operation, it monitors and assesses the causes of emergencies, informs the population, provides them with preventive education, and provides evacuation measures in the event of danger to persons and certain goods.

The role of the Ministry of Foreign Affairs is mainly to prevent special legal orders by contributing to international initiatives to develop peaceful relations and cooperation between states and promoting⁵⁰ Romania's national interests on the international stage. The decree on the organization and operation of the Ministry of Justice⁵¹ provides for a Ministerial Committee for Emergencies⁵² among the permanent working organizations at ministerial level, which, as a delegated body at ministerial level, plays a role in supporting crisis prevention and crisis management. In the course of its activities, it develops crisis management regulations, assesses crisis situations, envisages appropriate measures, supervises the use of the necessary (human, material, and financial) resources. and informs the National Crisis Management Committee through the Emergency Directorate-General.⁵³ The Ministry of Economy, Enterprise, and Tourism, in accordance with the decision on its operation and organization, ensures disaster response and civil protection measures, the identification, designation and

44 Ordinance No. 30 of 25 April 2007 on the organization and operation of the Ministry of the Interior (Hereinafter: Decree of the Ministry of the Interior) Art. 1

45 Cf.: Meltzer, Stefanescu and Ozunu, 2018, p. 2.

46 Decree of the Ministry of the Interior 3. Art., point (b) subpoints 5 and 10

47 Siege Government Ordinance 18. Art. Section (1)

48 Cf.: Țăgorean, 2020, p. 84.

49 Siege Government Ordinance Art. 23. point 2

50 Decision No. 16/2017 on the organization of the Ministry of Foreign Affairs Art. 1

51 Decree on the organization and operation of the Ministry of Justice

52 Ministerial Committee for Emergency Situations (*Comitetul ministerial pentru situații de urgență*)

53 Decree on the organization and operation of the Ministry of Justice Art. 26–28

protection of critical infrastructure at national and EU level, in the economic field makes a proposal to the Supreme Defense Council, participates in the work of inter-ministerial committees on issues related to national security, emergency management, civil protection, and critical infrastructure protection.⁵⁴ The Ministry of Transport and Infrastructure is responsible for emergency management.⁵⁵ The Ministry of Development, Administration, and Public Works contributes to the development of crisis management measures at central and local level and ensures the functioning of the operational center in the event of an emergency.⁵⁶ The minister of health takes the necessary measures to prevent and deal with emergencies caused by epidemics and infectious diseases.⁵⁷

Depending on the evolution of the emergency, the president may, with the consent of parliament, extend the duration of the state of emergency and extend or limit its scope. As a general rule, the state of siege and the state of emergency cease on the date specified in the decree on their order or extension, but in the event of premature cessation of the situation giving rise to the special legal order, the exceptional measure may be terminated in the decree.⁵⁸ In the course of exceptional measures (see above), military ordinances may be issued, the violation of the provisions of which entails civil or criminal liability.⁵⁹ The determination of those entitled to issue a military ordinance, both in a state of siege and a state of emergency, depends on whether it covers the entire territory of the country or only a specific part of the country. In the event of a state of siege imposed on the entire territory of the country, the minister of defense or the chief of staff and, in some districts, the commanders of the territorial units, are entitled to issue a military ordinance. In a state of emergency, the minister of the interior or his/her deputy; in a state of siege for the county, police chief inspectors and other officials authorized by the deputy are entitled to issue military ordinances.⁶⁰ However, even in times of a state of siege and state of emergency, the exercise of fundamental rights and freedoms may be restricted only as necessary, in proportion to the situation on which the special legal order is based, with the consent of the minister of justice.⁶¹

With regard to exceptional measures, the powers of the president of Romania are quite strong, but parliament's controlling role will not—in theory—end. According to the National

54 Decision No. 315/2021 on the operation and organization of the Ministry of Economy, Entrepreneurship and Tourism Art. 4

55 Decision no. 370 of April 1, 2021, on the organization and functioning of the Ministry of Transport and Infrastructure Art. 3

56 Decision no. 477/2020 on the organization and functioning of the Ministry of Public Works, Development and Administration Art. 5

57 Act 95 of 2006 on Health Care Reform Art. 25. Section (2)

58 Siege Government Ordinance Art. 15–16

59 Siege Government Ordinance Art. 27

60 Siege Government Ordinance Art. 23

61 Siege Government Ordinance Art. 4

Defense Act, national defense matters are decided by the president with parliamentary authorization.

In times of war, decisions are taken by the Supreme Defense Council, with an obligation to inform parliament, which must meet no later than 24 hours after declaring a state of war, and this will remain until the end of the war (the 24-hour time limit is only mentioned in the constitution). Army headquarters is responsible for operations and is the commander of military operations in peacetime and crisis situations (Crisis Center). In peace, crisis and war, the minister of national defense represents the ministry vis-à-vis other ministries and government bodies, as well as other administrative authorities, and also coordinates co-operation.

2. Issues related to restriction of fundamental rights

There are two levels of the restriction of fundamental rights in the Romanian constitution. The constitution contains a general clause restricting fundamental rights, according to which the exercise of certain rights or freedoms may be restricted only by law, if necessary for reasons of national security, public order, public health or morals, protection of citizens' rights and freedoms, criminal proceedings, prevention of the consequences of a natural disaster or an extremely serious disaster.⁶² It further provides that this restriction may be imposed only if necessary. The measure must be proportionate to the situation and must be applied in a non-discriminatory manner, without undermining the existence of a right or a freedom.

The system of constitutional conditions that can be deduced from the general restriction clause is the following:

1. The only means of restricting a fundamental right or freedom is the law. The Romanian constitutional order allows the government to legislate at the statutory level, in exceptional cases, which regulation does not tolerate delays (the so-called emergency government ordinance government ordinance, in Romanian: *ordonanțe de urgență*). The emergency government ordinance will enter into force upon its publication, but must be approved by parliament afterwards; it may approve, adopt, or reject such a regulation without amendment. The question is, can a restriction of a fundamental right or freedom be made by an emergency government ordinance? The issue was resolved by the 2003 constitutional amendment,⁶³ which introduced the provision that emergency government ordinances may not be adopted

⁶² Constitution Art. 53

⁶³ Constitution Art. 115

in the field of constitutional laws; they must not affect the status of fundamental state institutions, constitutional rights, freedoms and obligations, or voting rights; and may not impose coercive measures on the transfer of certain assets to the public domain. Consequently, an emergency government ordinance that restricts constitutional rights or freedoms (fundamental rights or freedoms) is unconstitutional. Legislative norms adopted before the constitutional amendment were also recognized as a means of restricting a fundamental right or freedom.⁶⁴ This is how two groups of government ordinances were formed:

- with government ordinances adopted after the constitutional amendment, it is not possible to restrict the fundamental right by a government ordinance;
- on the other hand, government ordinances restricting a fundamental right or freedom adopted before the constitutional amendment may contain a restriction of a fundamental right or freedom in a constitutional manner.⁶⁵

2. Restrictions of a fundamental right or freedom may be justified on grounds of national security, public order, public health or morals, the protection of citizens' rights and freedoms, criminal proceedings, the prevention of the consequences of a natural disaster, or a major disaster. Related to this, the constitutionality of two pieces of legislation has been established, because, although they restrict access to information, the restrictions are enforced by law for the sake of national security, within the framework of the constitution.⁶⁶ Incidentally, according to the interpretation of the Constitutional Court, the concept of national security also has an economic content: the macroeconomic and financial stability of the Romanian state is a matter of national security.⁶⁷

3. As regards the extent of the restriction, the constitution stipulates as a general requirement that the restriction be constitutional only if it meets the following criteria:

- the restriction is necessary (classified here by the Constitutional Court's practice that the restriction must be temporary);⁶⁸
- the restriction is proportionate to the situation giving rise to it;
- the restriction is applied in a non-discriminatory manner;
- the restriction must not affect the existence of a fundamental right or freedom, and consequently only the exercise of a fundamental right or freedom may be restricted.

64 The Romanian Constitutional Court adopts decisions (*decizii*) when examining constitutional issues, therefore the term decisions of the Constitutional Court is abbreviated as DCC. See DCC 1994/75, DCC 1994/139.

65 DCC 2005/148.

66 Constitution Art. 53., DCC 2006/766.

67 DCC 2006/855.

68 DCC 1994/75, DCC 1994/139, DCC 1992/6.

There is another related limitation of the constitution:⁶⁹ fundamental rights and freedoms or their guarantees cannot be abolished by an amendment to the constitution, consequently, a law amending the constitution may also be unconstitutional if it would impair fundamental rights or freedoms.⁷⁰ The judicial practice of the constitutional Court has clarified that this system of restriction applies only to fundamental rights and freedoms and not to any individual right. Thus, for example the following do not constitute a fundamental right or freedom: the transport of goods of any weight on public roads;⁷¹ the activities of the insolvent debtor;⁷² someone receives an additional absence fee before his/her leave, because in this case it is a subjective right established by a separate law and not a fundamental right,⁷³ whereas the right to pay is a fundamental right, suspension or postponement of payments.⁷⁴

Another level of constitutional restriction of fundamental rights is the so-called restriction of individual fundamental rights and freedoms. The constitution makes explicit reference to the possibility of restriction in many fundamental rights. In addition, the constitution explicitly states in the case of several fundamental rights that its exercise and provision is possible within the framework specified by law or in accordance with the conditions of law. It is important to note, that in cases, where the text of the constitution itself recognizes in further legislation the possibility for the legislator to determine the conditions for the exercise of a fundamental right or freedom,⁷⁵ there is no need to examine the system of conditions established by the general restriction clause, as the clause is a general rule over which the provisions on individual fundamental rights or freedoms, including the possibility of restrictions, take precedence. Obviously, there must be consistency between the constitutional rules governing each fundamental right or freedom and the statutory detailed legislation setting out the conditions and limits for the exercise of the right.

Restrictions on fundamental rights during a state of siege and a state of emergency are governed by common rules, which prohibit:

- restriction of the right to life, except where the death is the result of an act committed in compliance with the law of war;
- inhuman or degrading treatment;

⁶⁹ Constitution Art. 152

⁷⁰ Ibid

⁷¹ DCC 2004/11.

⁷² DCC 2001/223.

⁷³ DCC 2005/214.

⁷⁴ Constitution Art. 53., DCC 2005/148.

⁷⁵ For example according to Constitution Art. 25, domestic and foreign freedom of movement is guaranteed, but the conditions for exercising this right are laid down by law; similarly, in the case of administrative litigation, the right of a person who has been harmed by the authority in his legitimate interest to go to court may be limited by law. For example Act 554 of 2004 on administrative jurisdiction excludes from judicial review military acts and acts issued by public authorities in their relations with parliament (Art. 5).

- conviction for an offense not classified as a criminal offense under national or international law;
- restriction of free access to justice.

It is clear from the norm that these fundamental rights cannot be restricted during a state of siege or a state of emergency, in these times, it is therefore possible to restrict certain fundamental rights and freedoms, subject to the exceptions discussed above and under the conditions laid down in the constitution.⁷⁶ It is important to note here that the original wording of the legislation generally allowed for a restriction of a fundamental right, without setting any conditions, in complete disregard of the cited article of the constitution.⁷⁷ According to Emergency Government Ordinance No. 34 of 2020 on the amendment of the state of siege government ordinance, the transparency of administrative decision-making and social consultation rules can be avoided in the case of draft legislation on these conditions, this amendment under the Constitutional Court was found unconstitutional, so the state of siege government ordinance was not amended.⁷⁸ In times of state of siege or state of emergency, the rules on transparency of administrative decision-making and social consultation shall not apply to draft legislation which is a consequence of the introduction of such states.⁷⁹

During a state of siege⁸⁰ the following measures, which may also be used to restrict fundamental rights, may be taken:

- closing the border or increasing the intensity of controls;

⁷⁶ Constitution Art. 53

⁷⁷ Ibid. (Original version of the relevant text: “In times of state of siege and state of emergency, the fundamental rights and freedoms provided for in the constitution may be restricted with the consent of the Minister of Justice, in proportion to the gravity of the reasons for their order and only if necessary.” This unconstitutional condition was abolished by Act 453 of 2004.)

⁷⁸ DCC 2020/152. See Dănișor, 2020

⁷⁹ Regulation introduced by Emergency Government Ordinance 34 of 2020

⁸⁰ According to the regulation, the military and civilian authorities have the right to: order the mandatory periodic deposit of firearms and explosives in the public domain; restrict freedom of movement; restrict the right of assembly; allow or prohibit demonstrations, marches; remove any person whose presence is not justified from the sites affected by the state of siege or state of emergency; register and remove persons/refugees; information relating to a state of siege or a state of emergency, other than natural disasters, may be disclosed only with the permission of the military authorities; the audiovisual and print media must give priority to the publication of announcements by military authorities; may temporarily order the closure of service stations, catering establishments, or other public places; they may temporarily prohibit the distribution of printed press products or prohibit the broadcasting of radio and television programs; order military custody of various facilities; take measures to rationalize food and other basic commodities; may adopt military ordinances under the terms of an ordinance ordering a state of siege or a state of emergency; may prohibit road, rail, sea, river, and air transport; mobilize reserve soldiers.

- increasing the production activities of companies involved in the production of military products;
- providing priority for military transport; and
- confiscation of goods.
- In a state of emergency the following measures, which may also constitute a restriction on fundamental rights, may be taken:
 - to give priority to transport for defense purposes;
 - closing the border or increasing the intensity of controls;
 - confiscation of goods.

In times of state of emergency, public authorities, public institutions, businesses, and the general public are obliged to apply the relevant legislation and to comply with the measures ordered.

The regulations⁸¹ on the emergency situation and the state of alert do not contain provisions restricting fundamental rights and freedoms, but the regulation stipulates that special legal situations may be handled only with respect for fundamental rights and freedoms. Consequently, an emergency situation occurs during a state of siege, the restriction of a fundamental right may be required, whereas an emergency situation during a state of alert does not allow the restriction of a fundamental right. The regulation does not specifically address *health emergency situations*, because the Romanian legislature considers the legal institution of the *state of alert* to be appropriate for dealing with the health emergency. The public health system is responsible for preventing epidemics, ordering epidemiological states of alert, and controlling epidemics. Measures concerning situations caused by epidemics (e.g. ordering quarantines) are referred to in the scope of the Ministerial Decree by law.⁸² There is only one legal provision that is worth mentioning: public authorities may also approve the use of unauthorized drugs during an epidemic.⁸³

From a constitutional point of view, it is interesting how the above provisions work in practice. The Siege Government Ordinance is not suitable for dealing with an epidemiological emergency. It was drafted late, compared to the adoption of the constitution, and its content

81 Ordinance 21 of 2004 on the National Emergency Management System, as well as Government Ordinance No. 88 of 2001 on the Establishment, Organization, and Operation of Community Public Services for Disaster Management

82 Act 95 of 2006 on Health Care Reform (Reform Act) Art. 5–6, 25. The second part of Art. 25 Section (2) of the Act is unconstitutional according to DCC 458/2020, i.e., the conditions for the establishment of quarantine are to be determined by law, the forms, procedures, and restriction of fundamental rights cannot be regulated by ministerial decree.

83 Reform Act Art. 5–6., 25, 703

was shaped by the historical experience of “miners’ walks”.⁸⁴ As mentioned earlier, the Siege Government Ordinance contains an explicit provision that the restriction of fundamental rights may take place in accordance with the constitution,⁸⁵ namely that the exclusive means of restriction is the law, i.e., the restriction is the exclusive parliamentary competence. This approach may be partially relaxed by the fact that the Siege Government Ordinance is a statutory decree and includes the possibility of restricting certain fundamental rights.⁸⁶ Thus, the situation can be interpreted as meaning that the statutory level of a restriction is fulfilled by a statutory decree, the decree only imposes on the situation of the specific restrictions according to these legal provisions.⁸⁷

A presidential decree ordered as a result of the COVID-19 pandemic⁸⁸ lists in detail the fundamental rights to be restricted: the right to free movement, the right to private life, the inviolability of residence, the right to education, the freedom of assembly, the right to private property, the right to strike and economic freedom are restricted by the decree, but these also include rights (such as the right to education) for which the Siege Government Ordinance does not provide a legal basis (nor does it regulate in principle the possibility of restricting the right to education), the Venice Commission found that the issuance of this decree constituted a measure of government.⁸⁹ The COVID Decree, on the other hand, orders all educational institutions to suspend their activities for the duration of the state of emergency.⁹⁰ There is also no doubt that the parliamentary Decision No. 3 of 2020 approving the presidential decree is neither a law, nor a decree, so in Romania there are concerns about the constitutionality of the restrictions on fundamental rights introduced by the decree under the constitution,⁹¹ especially with regard to fundamental rights and freedoms where the possibility of restriction is not indicated by statutory regulation. There has also been expressed an opposite professional opinion, according to which the head of state may discretionarily restrict fundamental

84 In Romania, after the regime change, the post-communist political power deployed miners in the Zil Valley in 1990 against opposition movements. After the 1977 mining movement in Zil Valley, based on social demands but with anti-regime potential, communist secret services joined the local mining leaders. Mainly because of this, they were called to Bucharest to disband the opposition movement. Two mining missions also took place in January and February 1999, when miners made social demands and protested the conviction of Miron Cozma, a mining leader sentenced to prison for his role in the two “miners’ walks.” Armed forces were deployed against the miners, and the regulation is based on this historical experience.

85 Constitution Art. 53

86 Cf. Stănăsescu-Sas, 2020, p. 25.

87 This is where the problem that has already been mentioned becomes important: the 2003 Amendment to the Constitution prohibited the restriction of a fundamental right or freedom by a government ordinance, but previous restrictions, such as those adopted in 1999, remained in force.

88 Cf. Ceslea, 2020

89 Venice Commission, 2020, p. 13.

90 COVID Decree Art. 49

91 Constitution Art. 53

rights and freedoms due to ex-post parliamentary control,⁹² i.e., according to this opinion, ex-post parliamentary approval of a decree ordering a state of siege or state of emergency meets constitutional requirements. Rather, the argument serves to ensure the functioning of the entire legal architecture, because the examination of the logical unity of the regulation and the consistent application of the constitutional criteria do not lead to this result of interpretation.⁹³ Moreover, the lowest level of restriction on fundamental rights and freedoms is the scope of military ordinances (issued by the Minister of the Interior and countersigned by the prime minister) and which also introduced important restrictions under the COVID-19 presidential Decree.⁹⁴

Consequently, the statutory regulation of the state of siege and the state of emergency and the practical application of the rules based on the rule of law are not without problems, mainly because the regulation contained in the Siege Government Ordinance is inaccurate and insufficient. The state of siege should have been clearly defined in the Siege Government Ordinance regarding the rights that can be restricted and the maximum extent of the restriction, especially in a state of siege or a state of emergency, so that it can be specified by presidential decree and thus special legal order. The current practice is thus problematic due to the rule of law and not in line with the expectations of the current constitution.

It is also a matter of concern, as it includes restrictions on fundamental rights and freedoms, that the legislation on the status of military personnel and police officers has been amended by an emergency government ordinance, certain provisions of this decree⁹⁵ (a statutory decree), for example, the right to suspend or make compulsory paid or unpaid leave infringes the fundamental and constitutional⁹⁶ right to social security at work.⁹⁷ While,

92 Apostol Tofan, 2014, p. 148.

93 Constitution Art. 53

94 These restrictions include: closure of catering facilities (First Military Ordinance); prohibition of cultural, scientific, artistic, religious, sports, and entertainment events in enclosed spaces (First Military Ordinance); prohibition of events in open spaces of more than 100 people (First Military Ordinance); suspension of flights to Spain and Italy (First Military Ordinance) and extension of the ban to other states (Third Military Ordinance, Fifth Military Ordinance, Seventh Military Ordinance), suspension of international passenger transport (Seventh Military Ordinance); ordering home quarantine (First Military Ordinance); prohibition of dental services other than emergency interventions (Second Military Ordinance); closing of shops and malls (Second Military Ordinance); border closure for non-EU or non-EEA nationals (Second Military Ordinance); a maximum of eight people may attend a baptism, wedding, or funeral (Second Military Ordinance); introduction of curfew (exception: work, acquisition of basic necessities, urgent health needs, agricultural work) (Third Military Ordinance); Curfew for persons over 65 between 11 am and 1 pm (Third Military Ordinance); ordering quarantine for all persons entering the territory of Romania (Third Military Ordinance); quarantine of the city of Suceava and eight municipalities (Sixth Military Ordinance), quarantine of the city of Țândărei (Seventh Military Ordinance), etc.

95 Emergency Government Ordinance No. 36 of 2020

96 Constitution Art. 53, 115

97 Constitution Art. 41

for example, a restriction of liberty may indeed be justified in a state of siege or a state of emergency, its legal basis under the constitution⁹⁸ should still be provided by law and not by an emergency government ordinance. Moreover, the statutory decree justified the need for more precise regulation, on the grounds that the relevant laws were insufficient and did not contain provisions for a state of siege and a state of emergency. With regard to the judicial practice on the state of siege and the state of emergency, up to the date of closing the manuscript, there are ongoing proceedings in the first instance, such as challenging the legality of banning religious events under Military Ordinance No. 1.

De lege ferenda, a law regulating the issue of restriction of fundamental rights should be clearly and completely regulated in accordance with constitutional requirements, utilizing the experiences of the pandemic.

3. Management of COVID-19

In addition to the constitutional issues already discussed above, mention should be made of the emergency situation (*situația de urgență*), which is defined in the Emergency Government Ordinance on the Crisis Management System as an extraordinary event of a non-military nature affecting human life or health, the environment, it endangers material goods and cultural values, and thus urgent measures must be taken to restore normal conditions. In the event of a health crisis, Romania has three levels of crisis management systems: national, county and local. Appropriate crisis management operational centers have been set up at all three levels to share information, consult in a feedback loop, assist decision-making in its preparation, and cooperate with other bodies.

The National Committee for Emergencies, an inter-ministerial body operating at the national level,⁹⁹ performs complex tasks in the field of emergency management. The committee consists of decision-making members, experts and experts delegated by the ministries. The committee operates under the direct authority of the minister of the interior.¹⁰⁰

The Civil Protection Act¹⁰¹ sets out the measures required to protect the population, equipment, cultural property and the environment in the event of war or disaster, and

98 Constitution Art. 53, 115

99 See the website of the European Commission: https://civil-protection-humanitarian-aid.ec.europa.eu/what/civil-protection/national-disaster-management-system/romania_en (Accessed: January 30 2020)

100 The composition of the committee is as follows: chair: minister of the interior; vice chair: state secretary of the ministry of the interior; members: one secretary of state or senior representatives of central state institutions from each relevant ministry; advisers: one or two experts or specialists from each ministry and central state body.

101 Act 481 of 2004 on Civil Protection

provides for emergency planning in the event of a crisis or war. It is worth mentioning that the law may deviate from the rule of inviolability of permanent residence and stay, for example, in order to prevent the spread of an epidemic. As already mentioned, the minister in charge of the Ministry of Health shall take the necessary measures to prevent and deal with emergencies caused by epidemics and infectious diseases.¹⁰² No general ministerial decree on epidemiology was issued in Romania, only because of the COVID-19 pandemic was set out a decree by the minister of health¹⁰³ on quarantine, it contains the rules for coronavirus testing, and was amended in 2020. Compared to the previous rules, the ministerial decrees do not introduce new restrictions on fundamental rights, they only detail the content of the restrictions from a medical point of view.

The legal framework for measures to address the protracted epidemic situation was reconsidered through Act 55 of 2020,¹⁰⁴ i.e., instead of general rules, the legislator created rules specifically for the coronavirus epidemic. Instead of maintaining a state of emergency, there was a state of alert in Romania, and even during this period, the law restricted certain fundamental rights. Restrictions must be temporary in nature, and the law prescribes the principle of gradation for the implementation of restrictions, and declares that the purpose of restrictions is to protect life and health. This law also created the concept of the state of alert: it is a system of measures for a special situation of exceptional magnitude and intensity, which is temporary and proportionate to the current or future severity of the situation and which is necessary for protecting life, health, the environment, important materials, and it can also be ordered at the local, county, or national level under the authority of the government for up to 30 days and can be extended for additional 30 day periods.¹⁰⁵ The law allows for temporary evictions from infected areas during a state of alert, ordering home quarantine, restriction of the right of assembly, restriction or prohibition of cultural, scientific, religious, or sporting events, restrictions on freedom of movement, closure of specific areas, quarantine of settlements or areas, restriction of transport services, temporary closure of border crossings, restricting the operation of institutions or undertakings; restriction of catering establishments, suspension of shopping centers, mandatory mask-wearing, mandatory epidemiological screening when entering institutions and enterprises, working time can be modified, the exercise of the right to strike may be temporarily prohibited in priority economic areas, online education can be introduced.

102 Reform Act Art. 25, Section (2)

103 Ordinance No. 414/2020 on the introduction of a quarantine measure for those affected by an international public health emergency caused by a COVID-19 infection and laying down measures to prevent and limit the consequences of the outbreak

104 Act 55 of 2020 on certain measures to prevent and combat the COVID-19 epidemic

105 See e.g., 1065/2020, government decision, which extended the state of alert by 30 days from December 14.

The state of emergency was introduced on March 16, 2020, for 30 days and extended for another 30 days on April 14, 2020. At the moment of closing the manuscript, there is a state of alert in Romania, which has been extended for another 30 days from May 15, 2021.¹⁰⁶

4. COVID-19 as an economic crisis

COVID-19 has caused a shock in all Member States of the European Union, including Romania. The impact of the economic crisis caused by the pandemic did not equally affect the various economic sectors and companies. To reduce the effects of economic damage caused by the pandemic, the Romanian government adopted several economic protection measures in 2020 affecting the budget focused on two fundamental questions: to help combat the pandemic, and to support economically and socially affected populations and sectors.

The total cost of support measures related to COVID-19 was 4.85% of GDP in 2020. Impact of measures to combat the pandemic in relation to the general budgetary balance was 3.65% of GDP, of which 0.4 percentage points are funded by EU sources. To overcome the negative impacts caused by the pandemic, in 2020, the government adopted an emergency government ordinance on economic, fiscal, and budgetary measures,¹⁰⁷ it was limiting the negative effects of the COVID-19. A series of measures have been adopted which firstly aimed at supporting the public health sector and, secondly, to remedy the negative impacts caused by the restriction of different socioeconomic activities. To support small and medium-sized enterprises (SMEs), the amended emergency government ordinance¹⁰⁸ enabled the government to support enterprises with financial difficulties. Under the amendments, as part of the state-guaranteed loan program, up to 10 million slopes for investments in troubled companies, up to 5 million slopes to finance the turnover. The state guarantees up to 80% of the recruited loan instead of the previous 50%. Micro- and small enterprises may receive 1 million and 500,000 LEI loans to provide capital for investments or the financing of the turnover, and the state guarantees

¹⁰⁶ At the beginning of 2021, the number of cases per day stagnated around 3000, the third wave of the COVID-19, with 6000 infections per day, broke out in March, so austerity measures were introduced, from 14th of March the start of the curfew changed from 11 pm to 10 pm. As of March 25, where the infection index exceeded four thousandths, from Friday to Sunday, the curfew started at 8 pm rather than 10 pm till 5 am, the stores were closed at 6 p.m., when the infection index decreased below 3.5 thousandths, these new restrictions were dissolved. In the settlements with an infection index higher than 7.5 thousandths, the austerity measures were in force (the country territory was classified in green, yellow, and red categories). Due to the improvement of data, mitigation was introduced from May 15, 2021. With the exception of a few exceptional cases (e.g., markets), the mandatory wearing of masks has been abolished, and the night curfew has been lifted. The second phase of mitigations begins on June 1.

¹⁰⁷ No. 29/2020 Emergency Government Ordinance on some economic and fiscal-budgetary measures

¹⁰⁸ No. 110/2017 Emergency Government Ordinance on the support program of SMEs

90% of the loan. For both loan constructs, from the date of credit agreement (after March 21, 2020), the state granted a 100% interest rate subsidy until March 31, 2021. The maximum duration of funding for investment loans is 120 months, and 36 months for loans to finance the capital. In the framework of a state-guaranteed loan program extended to large companies, the value of state-guarantees was 12.48 billion (1.20% of GDP), while it was estimated at 28.10 billion (2.52 % of GDP) for 2021.

Legal persons with financial difficulties who have the risk of insolvency may be asked to reschedule their budget obligations according to emergency government ordinance,¹⁰⁹ the March 31, 2020, deadline was set out in another emergency government ordinance¹¹⁰ in October 30, 2020, and after several amendments, in 2021, a new regulation¹¹¹ extended this deadline until January 31, 2022.

During the state of emergency and for 30 days thereafter, according to an emergency government ordinance¹¹² no default interest or rate may be charged on tax liabilities due to the state; however, enforcement of tax arrears has been suspended or not commenced, except for those made in criminal court cases, the deadline was extended until December 25, 2020, by another emergency government decree.¹¹³ It can be observed that the government did not decide to suspend the tax liability, but sought to eliminate the negative effects caused by late payments.

Under the additional economic support measures of an emergency government decree,¹¹⁴ SMEs that had to suspend all or part of their activities due to the state of emergency could apply for public utility services in possession of an emergency certificate issued by the ministry of the economy, energy, and the environment, and the postponement of the deadline for payment of rent for registered offices and secondary residences. The provision has been extended to a number of professions directly affected by the measures taken by the authorities in relation to COVID-19, such as notaries, bailiffs, general practitioners, and dentists' offices with a maximum of 20 employees. The above provision has also been applied to national sports federations and sports clubs in so far as their activities have been directly affected by the actions of the authorities.

Parliament passed a law¹¹⁵ in March 2020 that provides paid days off for one parent to set up child custody during the period of temporary closure of educational institutions. By

109 No. 6/2019 Emergency Government Ordinance on the establishment of fiscal facilities)

110 No. 29/2020 Emergency Government Ordinance

111 No. 19/2021 Emergency Government Ordinance

112 No. 29/2020 Emergency Government Ordinance

113 No. 181/2020 Emergency Government Ordinance

114 No. 29/2020 Emergency Government Ordinance

115 Law no. 19/2020 on the granting of free days to parents to supervise children, in the case of temporary closure of educational units

law, a parent can claim paid leave from the employer, if the job cannot be done from home or telework, and if the child is under the age of 12, and the age limit for people with disabilities is 26. Paid leave is salaried to one parent who is entitled to 75% of the salary, for this period, but the amount may not exceed 75% of the average gross wage. Paid leave may not be deducted by the employer from the period of paid annual leave under the Labor Code. The amounts thus paid by the employer shall be reimbursed by the state until the end of the financial year in question. Wage subsidies provided in this way are subject to tax and contributions.

Under the regulation,¹¹⁶ which entered into force on March 31, 2020, the wages of workers sent on “compulsory leave” due to the COVID-19 are taken over by the state during the state of emergency and provided by the ministry of the Labor Unemployment Benefit Fund. The wage subsidy is 75% of the employee’s gross monthly salary, however, the amount may not exceed 75% of the gross average wage, these are subject to tax and contributions. Under the last amendment to the emergency government ordinance of December 2020, the state will provide wage subsidies to businesses in difficulty until June 30, 2021. Another emergency government ordinance¹¹⁷ provided tax incentives (bonification) to support the activities of enterprises. Thus, it provided that the so-called large taxpayers would receive a 5% discount, while the other taxpayers would receive a 10% discount if they paid their profit or income tax for the first quarter of the year by the set deadline. A law adopted the emergency government ordinance, and also extended the tax credit to the payment of profit and income tax for the second and third trimesters.¹¹⁸

The regulation of August 2020¹¹⁹ allowed companies whose turnover fell by at least 10% compared to the same month of 2019 during the state of emergency to introduce a reduction in working time of up to 50% (*Kurzarbeit*). Taxable and contributory benefits are reimbursed to the employer in arrears from the unemployment benefit fund.

From January 1, 2017, the legal regulation¹²⁰ introduced a sector-specific flat tax for catering businesses (e.g., hotels etc.). When determining the rate of a specific tax, several factors need to be taken into account (e.g., the capacity of the restaurant). Taxes must be paid

116 Emergency Government Ordinance no. 30/2020 for amending and completing normative acts, as well as for the establishment of measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-COV-2 coronavirus.

117 Emergency Government Ordinance no. 33/2020 on some fiscal measures and the modification of normative acts

118 Law no. 54 of May 14, 2020, for the approval of the Government Emergency Ordinance no. 33/2020 on some fiscal measures and the amendment of some normative acts

119 Emergency Government Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation determined by the spread of SARS-COV-2 coronavirus, as well as to stimulate the increase in employment

120 Law no. 170/2016 on tax of specific activities

by taxpayers half-yearly in two equal installments. Due to the COVID-19, the legislation¹²¹ exempted catering companies from the obligation to pay a sector-specific tax for 90 days from April 25, 2020, and set a deadline of October 25 for the tax return and payment obligation for the first half of the year. However, the measures restricting the catering industry remained in force, the government extended this exemption by two emergency government ordinances,¹²² so that companies engaged in the catering industry will enjoy a tax exemption in the first half of 2021.

Measures taken to address the negative economic situation caused by the epidemic had an impact on general government revenues and expenditures, including on the development of the central budget and the increase in government debt. Measures affecting revenues include: tax relief for economic operators, introduction of payment deferrals, granting of income tax incentives for profit tax for micro-enterprises, accelerating VAT refunds. Expenditure was affected by the following measures: wage subsidies (wage subsidies granted at the initiative of the employer for the temporary suspension of an individual employment contract; subsidies for the wages of employees with a fixed-term contract of no more than three months; staff risk allowances; and civil servants' wage allowances), expenditure on medicines, medical equipment, and other health products needed to diagnose and treat patients infected with COVID-19.

While in Romania, the general government deficit in 2019 was 4.4% of the GDP¹²³ and the government debt was 35.3% of the GDP, it closed the fiscal year 2020 with a deficit of 101.92 billion LEI, which corresponds to 9.79% of the GDP, while government debt accounted for 47.3% of the GDP at the end of the year. The reasons for the excessive deficit are the measures taken to combat the severe economic downturn, the COVID-19 pandemic and its economic and social consequences. Investment costs, tax breaks, and the cost of controlling the epidemic to boost the economy amounted to 4.45% of the GDP.¹²⁴

Romania's budget for 2020 has been affected by the the COVID-19 on both the revenue and the expenditure side, falling revenues and increased expenditures have forced the government to amend the budget three times. These amendments took into account the effects

121 Emergency Government Ordinance no. 99/2020 on some fiscal measures, the modification of normative acts and the pronation of some deadlines

122 Emergency Government Ordinance no. 226/2020 on some fiscal-budgetary measures and for the amendment and completion of some normative acts and the pronation of some deadlines; Emergency Government Ordinance no. 19/2021 on some fiscal measures, as well as for the amendment and completion of some normative acts in the field of taxation

123 The European Commission launched an excessive deficit procedure against Romania in spring 2020 for exceeding the 3% budget deficit.

124 The data come from the Ministry of Finance's report on the macroeconomic situation for 2021. <https://sgg.gov.ro/new/wp-content/uploads/2021/02/Raport-buget-2021.pdf> (Accessed: 28 April 2021).

of the COVID-19 pandemic on the health system and the economy, the measures taken by the government to deal with the crisis, the decrease in revenue and the increase in expenditure. While the budget adopted in January 2020 set the deficit target at 3.6% of the GDP, this is 6.7% of the GDP due to the April budget amendment and 8.6% of the GDP due to the August amendment, then, after the last revision in November, it changed to 9.1% of the GDP.

The economic impact of the COVID-19 has also affected local government budgets and management. The most important sources of revenue for local governments are local taxes (e.g., land and building taxes), pursuant to one of the measures in 2020, the deadline for the payment of these taxes for 2020 was extended to March 31, and the new payment deadline was set for June 30, 2020.¹²⁵ The introduction of deferrals of payments had a significant impact on local government finances, and several amendments to already adopted local government budgets were inevitable. Municipal revenues are supplemented by amounts redistributed from personal income tax and sales tax paid to the central budget in accordance with the provisions of the law.¹²⁶ The budget law provides for amounts redistributed from sales tax and personal income tax, this law fixed the reallocation by algorithm, which over the past few years has been overridden by budget laws several times. The 2020 Budget Act, followed by its first amendment, only modified the allocation algorithm, not taking away resources from local governments. In 2020, the government amended the sum of the amounts redistributed from local sales tax to local governments twice, in favor of local governments.

The primary objective of the National Bank of Romania (*Banca Națională a României*, NBR) is to ensure and maintain price stability, which is the best contribution of monetary policy to sustainable economic growth.¹²⁷ In 2020, the NBR adopted several measures aimed at mitigating the negative effects of COVID-19 on the population and Romanian companies. The NBR has taken all necessary measures to ensure the smooth operation of payment and settlement systems to ensure, that commercial and financial transactions operate normally. In March 2020, the board of directors of the NBR cut the key interest rate by 50 basis points from 2.5% to 2%, this meeting also decided to narrow the interest rate corridor around the base rate, reducing its limits to $\pm 0.5\%$ from the previous $\pm 1\%$, and this was aimed at reducing interbank interest rates. The interest rate on the Lombard loan was lowered by the NBR to 2.5% from the previous 3.5%. The lower value of the interest rate corridor remained unchanged at 1.5%. The board of directors of the NBR reduced the base rate, the Lombard loan interest rate, and the floor of the interest rate corridor by 25 basis points in May 2020 and again by 25 basis

125 According to the provisions of the Tax Act 2015, persons who pay their real estate and motor vehicle tax for the current year by March 31 will receive a 10% discount. With the amendment, the possibility to take advantage of the 10% discount remained until June 30.

126 Law no. 273/2006 on local public finances

127 Law no. 312/2004 on the Statute of the National Bank of Romania

points in August. In January 2021 the NBR’s board of directors reduced the base rate, the Lombard loan interest rate and the lower interest rate floor by another 25 basis points. The reason of the further reduction is that it contributes to stimulating the economy.

The NBR also decided to buy government securities in an active repo transaction to ensure the liquidity of credit institutions, encouraging commercial banks to restructure loans and extend the maturity of repayment installments, thus reducing the burden on households and businesses. The central bank also initiated the purchase of LEI-denominated government bonds from the secondary market. Through these purchases, the central bank provides liquidity to the financial system indefinitely to support the economy.¹²⁸

5. Summary

In the Romanian regulation in force there are four types of special legal order (state of siege, state of emergency, mobilization and state of war). A significant feature is that in the Romanian regulation—in a special way—it is possible to create a military ordinance and an emergency government ordinance.¹²⁹

The marked role of the president is clearly visible in each of the Romanian types of special legal orders. A dominant feature is the fact that the role of the president is strongly emphasized in Romania, as exemplified by the fact that according to the rules of state of siege and state of emergency, the president of Romania has the right to order a state of siege or a state of emergency in certain territorial–administrative units by presidential decree.

It is important to reiterate here that, due to COVID-19, the Romanian legislation has introduced—as a special regulation—the concept of *state of alert* by law.

The following table serves to illustrate the essence of the Romanian regulation.

	State of siege, state of emergency	Mobilization, state of war ¹³⁰
Level of regulation	Constitution, laws, and decrees	
Reasons of ordering	<ul style="list-style-type: none"> – Current or inevitable danger threatening the sovereignty or territorial integrity of the state – Serious, current or inevitable danger threatening national security or constitutional democracy 	<ul style="list-style-type: none"> – An armed attack on the country

¹²⁸ See the website of the central bank: <https://www.bnr.ro/Masurile-BNR-in-contextul-situatiei-generate-de-epidemia-COVID-19-21312-Mobile.aspx> (Accessed: 29 April 2021).

¹²⁹ Cf.: Szabó–Horváth, 2012, p. 403.

¹³⁰ Cf.: Kelemen, 2020, pp. 211–213.

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	State of siege, state of emergency	Mobilization, state of war ¹³⁰
Ordering of the special legal order	President (in cooperation with parliament)	
Authorized	President	
In practice	State of emergency: once (2020: COVID-19)	Not ordered.
An extraordinary situation that is not a special legal order	Emergency situation, state of alert	

Table 8
Emergency regimes in Romania
Source: Authors' compilation

The above leads to the conclusion that the Romanian regulation is *transparent*.

It has already been mentioned above that the law on healthcare reform does not regulate health emergencies separately, because the Romanian legislator considers the legal institution of the state of emergency to be appropriate for dealing with health emergencies.¹³¹ The tasks of the public healthcare system include the prevention of epidemic situations and the ordering of epidemiological alerts and the control of epidemics, but the law refers to measures for emergencies caused by epidemics within the scope of a ministerial decree.¹³² There is only one legal provision worth mentioning: public authorities may also approve the use of unauthorized drugs during an epidemic.¹³³

From a constitutional point of view, it is interesting how the above provisions work in practice. The state of siege government ordinance is not suitable for dealing with an epidemiological emergency, which is why it was justified to create a separate legal regulation, but in addition, the development of uniform, precise regulations would be justified in the future.

During the pandemic, a series of decisions of the Constitutional Court dealt with the issue of restriction of fundamental rights, so the Constitutional Court corrected the often hasty measures of the government, which were not integrated into the legal order.¹³⁴ The Constitutional Court has found, for example, that legislation imposing penalties for violating the curfew in a state of emergency is unconstitutional (because they are linked to restrictions on fundamental rights and can therefore only be prescribed by law and not by a government

¹³¹ Cf.: Till, 2017, pp. 73–75.

¹³² Reform Act Art. 5–6, 25

¹³³ Reform Act Art. 5–6, 25., 703

¹³⁴ Cf.: DCC 2020/152, DCC 2020/157., DCC 2020/397., DCC 2020/457., DCC 2020/458., DCC 2020/581. See: Dănișor, 2020. and Nițu–Nițu, 2020

ordinance);¹³⁵ that the quarantine obligation specified in an emergency government ordinance or ministerial decree is unconstitutional (restriction of a fundamental right requires legal regulation); that the declaration of a state of alert did not require the approval of parliament, as a legal institution established at a sub-constitutional level and the executive could exercise this power within the constitutional framework; and stated that an emergency government ordinance extending the term of office of mayors and councilors (municipal representatives) is unconstitutional, because such an extension can only be ordered by law.

6. Bibliography

- Apostol Tofan, D. (2014) *Drept administrativ, volumul I*. 3rd edn. București: C.H. Beck
- Ceslea, N-A. (2020) ‘Particularități ale actelor administrative emise de autoritățile publice pe perioada stării de urgență’, *Revista de Drept Public*, 2020/1–2, pp. 90–108.
- Dănișor, D.C. (2020) ‘Un pas important către statul de drept legal-parlamentar și unul incipient către un stat de justiție – cu privire la Deciziile Curții Constituționale nr. 152 și nr. 157 din 2020’, *Revista de Drept Public*, 2020/1–2, pp. 25–36.
- Dima, B. (2020) ‘Considerații cu privire la regimul constituțional și legal al stării de urgență’, *Revista de Drept Public*, 2020/1–2, pp. 63–78.
- Venice Commission (2020) Interim Report on the Measures Taken in the EU Member States as a Result of the COVID-19 Crisis and their Impact on Democracy, the Rule of Law and Fundamental Rights (Opinion No. 995/2020) [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)018-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)018-e) (Accessed: 12 December 2020)
- Kelemen, R. (2020) ‘Különleges jogrend az Európai Unió egyes tagállamainak alkotmányában’, in Farkas Á., Kelemen R. (eds.) *Székülla és Kharübdisz között – Tanulmányok a különleges jogrend elméleti és pragmatikus kérdéseiről, valamint nemzetközi megoldásairól*. Budapest: Magyar Katonai Jogi és Hadijogi Társaság
- Meltzer, M., Ștefănescu, L., Ozunu, A. (2018) ‘Keep Them Engaged: Romanian County Inspectorates for Emergency Situations’ Facebook Usage for Disaster Risk Communication and Beyond’, *Sustainability*, 10(5), pp. 1–24; <https://doi.org/10.3390/su10051411>
- Nițu, A.A., Nițu A.V. (2020) ‘Jurisprudența Curții Constituționale în contextul COVID-19’, *Revista Themis*, 2020/2, pp. 232–239.

¹³⁵ This meant the illegality of about 300,000 infringement fines imposed (Ursuța, 2020).

- Stănăsescu-Sas, M. (2020) 'Efectele stării de urgență asupra exercițiului drepturilor și libertăților fundamentale, cu privire specială asupra libertății conștiinței', *Revista de Drept Public*, 2020/1, pp. 190–211.
- Szabó, Cs., Horváth, L. (2012) 'Magyarország Alaptörvényének és a Magyar Köztársaság Alkotmányának összevetése a különleges jogrend vonatkozásában', *Hadmérnök*, 7(2), pp. 395–404.
- Țăgorean, P. (2020) 'Unele considerații privind starea de urgență și ordonanțele militare', *Revista de Drept Public*, 2020/1, pp. 79–86.
- Tálas, P. (2016) 'A terrorveszélyhelyzet-diskurzus margójára', *Nemzet és Biztonság*, 9(1), pp. 40–47.
- Tănăsescu, E. (2020) 'COVID-19 and constitutional law: Romania', in de la Garza, S., María J. (eds.) (2020) *Covid-19 and Constitutional Law. Covid-19 et droit constitutionnel*. Universidad Nacional Autónoma de México, Mexico
- Till, Sz. (2017) 'A különleges jogrendi kategóriarendszer egyszerűsítésének jövőbeli esélyei', *Iustum Aequum Salutare*, 13(4), pp. 73–75.
- Ursuța, M. (2020) 'Efectele Deciziei Curții Constituționale nr. 152 din 6 mai 2020 în materia contravențiilor la regimul stării de urgență', *Revista de Drept Public*, 2020/1, pp. 37–44.
- Varga, A. (2019) *Román alkotmányjog*. Budapest–Kolozsvár: Forum Iuris
- Veress, E. (2006) 'Elnök és kormány viszonya Romániában: a félpármentarizmus gyakorlata', *Magyar Kisebbség*, 10 (1–2), pp. 299–311.