

Promo-LEX: Emergency measures must be clear, predictable and void of confusions

The Promo-LEX Association, presented today, 10.04.2020, a **Written Opinion** in response to the Request of the Constitutional Court of 27 March this year, regarding the petition lodged with the Court by a group of MPs (**Petition no. 47a**) to check the constitutionality of certain provisions of the *Parliament's Decision no. 55 of 17 March 2020 on the declaration of the state of emergency*, as well as of some new legal provisions included in the *Law no. 12/2004 on the regime of the state of emergency, siege and war*, which, in the opinion of the authors of the aforementioned petition, imply "practically granting to all central authorities unlimited powers not provided by law".

Promo-LEX stresses that the conditions for the functioning and powers of public authorities are subject to change in the event of a state of emergency, but **the measures applied therein must be proportionate to the aim pursued and must not be arbitrary**. For this reason, and in order to protect the citizens of the Republic of Moldova against any arbitrary situation, **the only possible and strongly needed solution** especially in the field covered by Law 212/2004 **is to include an exhaustive list of measures** that can be applied when a state of emergency is being declared.

Following on from that, **the Promo-LEX Association does not challenge the opportunity for making certain amendments to the legislation** relating to the exceptional situation, but **cannot accept the establishment of a vague regulatory framework**, which could endanger the observance of human rights.

Based on the analysis made as well as taking into account the

Promo-LEX experience, the Association believes that the wordings used by the legislator in the text of the law (and challenged by the authors of the petition): “enforcement of other required measures” and “exercise other required tasks”, do not offer the subject of law an express guarantee on the respect of his rights and freedoms. Moreover, they deny everyone the opportunity to know their responsibilities in a state of emergency imposed by the abstract powers vested in the authorities. As a result, from the point of view of Promo-LEX, they run counter to the general constitutional provisions on fundamental human rights and freedoms.

Promo-LEX believes that in exceptional situations, it is rather proposed **that the legislature should supplement the legislative framework, depending on social phenomena, with new express provisions, intended to regulate the phenomena related to the restriction of a certain right.**

Moreover, **Promo-LEX draws attention to the fact that the Parliament was not entitled to approve the amendments made to the law on the day of the emergency period, while the President was not entitled to promulgate the amendments thereof with immediate effect from 17 March 2020.**

The full Opinion can be accessed below:

WRITTEN OPINION

of Promo-LEX Association on the
Request of the Constitutional Court
of March 27th, 2020



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