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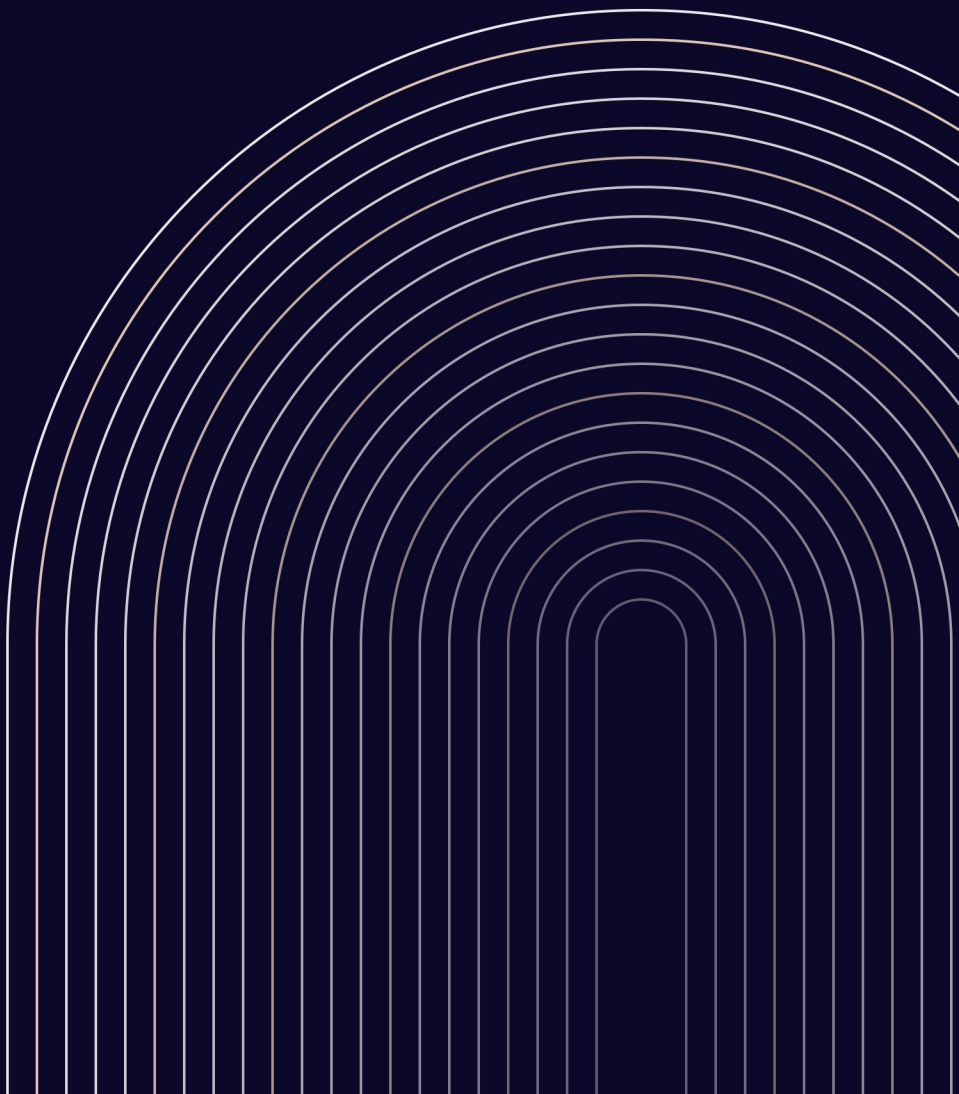
LEGAL OPINION

on the draft law on special legal regimes of an exceptional nature



I. Subject of the opinion and introductory considerations

This legal opinion examines the draft law on special legal regimes of an exceptional nature, prepared by the Ministry of Defence of the Republic of Moldova, in terms of its compatibility with the Constitution of the Republic of Moldova, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the standards of the Venice Commission and the principles of the rule of law.

In particular, the analysis examines the provisions of the draft that govern the grounds for declaring a state of siege and a state of war, the powers of public authorities, derogations from legislative and regulatory acts, restrictions on the exercise of fundamental rights and freedoms, the obligations of citizens in the context of mobilisation, and the mechanisms of parliamentary and judicial oversight.

The need to update the legal framework on defence and national security is legitimate. Developments in the security environment, including hybrid threats, the risk of armed aggression, vulnerabilities of critical infrastructure and the need to ensure the continuity of the functioning of the state, justify the establishment of appropriate legal mechanisms for managing exceptional situations.

However, regulating the state of siege and the state of war entails direct interference with the ordinary constitutional order. In such circumstances, public authorities may order measures affecting freedom of movement, the right to property, economic activity, the functioning of institutions and the exercise of certain fundamental rights and freedoms.

The law must therefore set out not only the powers required to defend the state but also their legal limits, so that the exceptional regime does not become a mechanism for an excessive concentration of executive power.

The exceptional nature of a situation does not suspend the principles of the rule of law. On the contrary, it calls for stricter legal safeguards, precisely in order to prevent arbitrariness and to maintain the constitutional balance.

In this context, the draft should be examined against the following fundamental principles:

- the supremacy of the Constitution;
- the separation and balance of powers in the state;
- the legality and foreseeability of legal norms;
- the necessity and proportionality of measures;
- the temporary nature of exceptional regimes;
- the protection of fundamental rights and freedoms;
- effective parliamentary and judicial oversight;
- the accountability of public authorities;
- compliance with the international obligations of the Republic of Moldova.

II. Compatibility of the draft with the constitutional order

1. Delimitation of the constitutional powers of public authorities

The draft must be examined in relation to Articles 6, 54, 63, 66(l) and (m), 72(3)(m), 80, 85, 87 and 94 of the Constitution of the Republic of Moldova. Article 66(m) of the Constitution vests Parliament with the power to declare a state of emergency, siege and war. Article 72(3)(m) reserves the regulation of the

regime of these states to organic law. At the same time, Article 87 of the Constitution sets out the powers of the President of the Republic of Moldova in the field of national defence and in the event of armed aggression. The exception provided for in Article 87(3) must be interpreted strictly: it concerns only the state of war, applies only in the event of armed aggression that has already begun, and its constitutional content is limited to measures to repel the aggression and to declaring a state of war. Under Article 87(2), the President may declare mobilisation only with the prior approval of Parliament. Consequently, the draft must ensure a clear delimitation between the powers of Parliament, the President of the Republic of Moldova, the Government and the authorities of the national defence system.

Such delimitation is essential because exceptional regimes entail an intensification of executive powers. This intensification cannot, however, lead to the executive substituting itself for Parliament in exercising the legislative function or to the transfer of exclusive constitutional powers to other authorities.

In particular, it is necessary to clarify the limits within which executive authorities may adopt acts of a normative nature, including where such acts are necessary to apply special measures.

2. Amendment of the definition of the state of siege

Law No. 212/2004 defines the state of siege in connection with the imminence of armed aggression and the preparation of combat capability, the population, the economy and the territory. Article 3 of the draft proposes a broader definition, linked to serious threats to national security, the constitutional order, territorial integrity and defence capability.

The difference is not merely terminological. The legal definition determines the threshold for access to an exceptional regime: the more broadly the triggering circumstances are worded, the more situations can be brought within a regime that allows extraordinary measures to be applied. The amendment may therefore indirectly widen the scope of the powers and restrictions provided for in the other articles of the draft.

National security, the constitutional order and territorial integrity are legitimate constitutional values whose protection may require urgent action. The evolution of threats – including combined or covert actions, or actions with military and non-military components – may justify modernising the definition. However, merely invoking a serious threat is not sufficient to justify recourse to a state of siege.

The legislator should establish a qualified threshold: the threat must be real, concrete and sufficiently serious, and must genuinely endanger the functioning of constitutional institutions, territorial integrity or defence capability. It must also be demonstrated that ordinary legal instruments are insufficient to manage the situation. This subsidiarity requirement prevents the exceptional regime from being used as a substitute for the ordinary mechanisms of administration and public order.

Wording such as "serious threats to national security" or "to the constitutional order", if not accompanied by delimiting criteria, may allow excessively broad interpretations. In practice, there is a risk that political instability, protests, administrative malfunctions, disinformation campaigns or public order incidents could be presented as grounds for declaring a state of siege, even though ordinary legislative and institutional responses may be available.

This does not mean that such phenomena cannot be relevant to security. The essential legal distinction lies between a phenomenon that constitutes a threat and the attainment of the exceptional threshold that justifies activating a special regime. Such a classification must be based on verifiable facts,

reasoned institutional assessments and a demonstration of seriousness, not on general political characterisations.

2. Article 6 – grounds for declaring a state of siege or a state of war

Article 6(1) of the draft provides for the possibility of declaring a state of siege in the event of:

- the imminence of armed aggression against the Republic of Moldova – letter (a);
- hostile actions of a military nature or with an identifiable military component, including hybrid or subversive actions, which seriously affect, or pose a direct and serious danger to, the sovereignty, independence, unity, territorial integrity, constitutional order or defence capability of the state – letter (b);
- other serious threats to national defence with an identifiable military component which cannot be removed by the measures provided for in Law No. 248/2025 or in other legislative and regulatory acts – letter (c).

At first sight, the draft seeks to distinguish the state of siege from crisis situations that can be managed through the ordinary mechanisms provided for in Law No. 248/2025 on crisis management. This distinction is necessary and justified.

Nevertheless, Article 6(1)(b) and (c) raises questions as to the degree of precision of the grounds for declaring a state of siege.

In the case of letter (b), the notions of "hybrid actions" and "subversive actions" are used in the context of serious threats, but are not accompanied by sufficient legislative criteria to distinguish the situations that justify applying the exceptional regime.

The notions of "hybrid actions" and "subversive actions" are broad enough to include: cyberattacks; destabilisation operations; sabotage; foreign interference; information manipulation; clandestine activities; and actions affecting state institutions. Not all of these actions, however, justify declaring a state of siege.

For example, a disinformation campaign, a political demonstration, a crisis of confidence in institutions or a political dispute should not be capable of being turned, through extensive interpretation, into grounds for applying an exceptional regime.

The Venice Commission has stressed that the situations justifying the introduction of an emergency regime must be clearly defined and delimited.[1]

Although the draft introduces the requirement of an identifiable military component and of serious harm or a direct and serious danger, the application of these criteria may depend to a large extent on the assessment of the executive authorities.

In the case of Article 6(1)(c), the phrase "other serious threats with an identifiable military component" may be open-ended, particularly if the threshold of seriousness and the nature of the threat are not defined with sufficient precision.

The requirement that the threats cannot be removed through the mechanisms of Law No. 248/2025 is an important safeguard. However, it should be clarified how the insufficiency of these mechanisms is to be assessed and demonstrated.

[1] Venice Commission report CDL-AD(2020)014-e

Article 6(5) provides that declaring a state of siege on the basis of paragraph (1)(c) is permissible only if the insufficiency of the measures provided for in Law No. 248/2025 is expressly reasoned in the proposal for its declaration and confirmed by Parliament.

This requirement is positive, but it would be advisable for a similar obligation of factual and legal substantiation to apply also to the grounds provided for in paragraph (1)(b).

It is recommended:

- to define or delimit in law the notions of "hybrid actions" and "subversive actions";
- to establish objective criteria regarding the seriousness and imminence of the threat;
- to require that concrete factual circumstances be presented;
- to indicate the link between the identified threat and the exceptional measures to be applied;
- to give express reasons why the situation cannot be managed through ordinary legal mechanisms;
- to strengthen parliamentary oversight of the grounds invoked.

As regards Article 6(2) and (3), the draft regulates the grounds for declaring a state of war and lists the acts of armed aggression. This enumeration is important for the foreseeability of the norm and for its consistency with international law.

However, these provisions must be applied in accordance with the Charter of the United Nations and the rules of international law on armed aggression and the right of self-defence.

At the same time, the list of acts of aggression in Article 6(3) reproduces the categories of acts listed in UN General Assembly Resolution 3314 (XXIX) of 1974, an instrument designed to identify and characterise aggression in international law. Incorporating this list into national legislation must not, however, lead to an expansion of the constitutional powers of the President of the Republic of Moldova regarding the declaration of a state of war.

By referring in Article 7 to the notion of "armed aggression" without an express delimitation in relation to Article 87(3) of the Constitution, the draft may give rise to interpretations under which the President could unilaterally declare a state of war on the basis of any of the situations listed in Article 6(3), including where the constitutional condition of armed aggression directed against the Republic of Moldova is not met.

The risk is particularly relevant to the cases in letters (f) and (g), concerning the use or continued presence of foreign armed forces on the territory of a state in breach of the conditions of an agreement or after its termination, and a state placing its territory at the disposal of another state for the commission of an act of aggression against a third state. In such situations, characterising an act as aggression within the meaning of UN Resolution 3314 does not, in itself, establish the existence of armed aggression directed against the Republic of Moldova within the meaning of Article 87(3) of the Constitution.

A similar problem may arise with the blockade of ports or coasts (letter (d)), whose characterisation and consequences must be examined in light of the specific circumstances and of whether there is armed aggression directed against the Republic of Moldova.

It is therefore recommended that Article 7 be revised so that the President's power to declare a state of war is exercised exclusively under the conditions and within the limits laid down in Article 87(3) of the Constitution. For the other situations provided for in Article 6(2) and (3), which do not meet the constitutional conditions of armed aggression directed against the country, the declaration of a state of

war should be examined and decided by Parliament, in accordance with Article 66(m) of the Constitution and the procedure in Article 8 of the draft.

3. Article 7 – declaration of a state of war by presidential decree in the event of armed aggression

Article 7(1) provides that, in the event of armed aggression against the Republic of Moldova, the President of the Republic of Moldova, as Supreme Commander of the Armed Forces, takes the measures necessary to repel the aggression, declares a state of war by decree and immediately informs Parliament.

Under paragraph (2), the decree is countersigned by the Prime Minister and takes effect from the date and time indicated, but not before countersignature.

Article 7(4) provides for Parliament to convene by operation of law within 24 hours, and paragraph (6) states that Parliament examines the circumstances of the aggression and adopts a decision on maintaining, amending or ending the state of war.

The provision aims to ensure an immediate response by the state in the event of armed aggression, which is justified by the nature of the situation.

The mechanism is, in principle, consistent with Article 87(3) of the Constitution, which it reproduces, and takes over the solution in Article 12(2) of Law No. 212/2004. The parliamentary confirmation in paragraph (6) in fact reinforces a systematic reading of Article 87(3) in conjunction with Article 66(m): the decree is provisional, and the substantive power lies with Parliament. The constitutional problems do not arise from the text of Article 7 as such, but from the rules governing the content of the decree and the subsequent regime of the state of war (Article 9(2) and Article 11(2)–(3)).

Nevertheless, the relationship between the presidential decree and Parliament's subsequent decision must be clarified, in particular as regards the legal effects of the decree and the limits of the measures adopted before parliamentary scrutiny.

Article 7(5), which allows the decree to be examined at the first sitting of Parliament after the circumstances preventing it from convening have ceased, must be interpreted strictly. A temporary inability to convene cannot lead to the unlimited exercise of exceptional powers without parliamentary oversight.

First, under Article 9(2), the presidential decree may contain, "to the extent applicable", the elements of the parliamentary decision listed in paragraph (1), including restrictions on the exercise of rights and freedoms (letter (f)), mobilisation measures (letter (i)), measures concerning the judiciary and enforcement (letter (j)), and the empowerment of authorities to take decisions derogating from legislative and regulatory acts (letter (k)).

Such a provision risks extending the President's powers beyond the limits set by Article 87(3) of the Constitution, which empowers the President to take the measures necessary to repel armed aggression and to declare a state of war. Moreover, the possibility of including restrictions on the exercise of rights and freedoms in the decree raises issues of compatibility with Article 54(2) of the Constitution, under which the exercise of rights and freedoms may be restricted only by law and only under constitutional conditions. As regards mobilisation, Article 66(l) and Article 87(2) of the Constitution establish Parliament's power to declare partial or general mobilisation and the requirement of its prior approval for a declaration of mobilisation by the President, respectively. In this respect, the

draft is also internally inconsistent, since Article 24(c) correctly provides for the prior approval of Parliament for mobilisation.

Second, under Article 11(2) and (3), after the initial confirmation, the state of war may be amended or ended by Parliament only on a proposal from the President of the Republic of Moldova. In this way, the exercise of Parliament's power under Article 66(m) of the Constitution becomes conditional on the initiative of another public authority. This solution is also inconsistent with Article 8(8) of the draft, which allows Parliament to declare a state of siege or war in the absence of a proposal from the President. Taken together with the indefinite duration of the state of war (Article 11(1)), the ban on holding elections (Article 16) and the impossibility of dissolving Parliament during a state of war under Article 85(4) of the Constitution, this arrangement creates a risk that initiating the procedure to end the exceptional regime would depend solely on the will of the President of the Republic of Moldova, unjustifiably limiting Parliament's ability to exercise its constitutional powers autonomously.

Third, Article 7(4) sets the deadline for convening Parliament but sets no deadline for examining the presidential decree and adopting a decision on it, nor does it specify the legal consequences if no decision is adopted. In addition, paragraph (5) allows the examination of the decree to be postponed until the circumstances preventing Parliament from convening have ceased, without setting a time limit or sufficient safeguards for parliamentary oversight. In these circumstances, the decree may continue to produce effects without parliamentary scrutiny within a set period, even though Article 15(5) of the draft already provides for Parliament to convene by means of secure electronic communications. Paragraph (5) should therefore apply only in the alternative, where it is genuinely impossible for Parliament to convene, including by secure electronic means.

It is recommended to specify:

- the nature and limits of the measures that may be adopted before parliamentary scrutiny;
- the effectiveness of the periodic reporting to Parliament provided for in Article 18(11)–(12), including in the period before the decree is examined;
- the procedure for verifying whether the circumstances of the aggression persist;
- the mechanism for reviewing measures adopted while Parliament is unable to convene;
- that the content of the decree is limited to declaring a state of war and to the military measures necessary to repel the aggression, while restrictions on the exercise of rights, derogations from legislative and regulatory acts and mobilisation are to be ordered exclusively by decision of Parliament (amendment of Article 9(2));
- a firm deadline for Parliament's decision on the decree (for example, 72 hours from convening) and the effects of failing to adopt it, at least as regards measures affecting the civilian population;
- the subsidiary nature of paragraph (5), applicable only once the possibility of convening by secure electronic means has been exhausted;
- Parliament's right to amend or end the state of war on its own initiative as well (amendment of Article 11(2) and (3));
- that the transition from a state of war to a state of siege (Article 12) is ordered exclusively by decision of Parliament.

4. Article 8 – procedure for declaring a state of siege or a state of war

Article 8 regulates the procedure for declaring a state of siege or a state of war by decision of Parliament, on a proposal from the President of the Republic of Moldova and on the basis of assessments by the competent authorities. Under paragraph (8), Parliament may declare a state of

siege or war even without a proposal from the President, a solution consistent with Article 66(m) of the Constitution, which does not make Parliament's power conditional on a presidential initiative.

The procedure includes examination of the proposal within no more than 24 hours, convening Parliament in an extraordinary or special session and the submission of reasoned reports by the competent authorities.

These provisions are important for ensuring that the decision is properly substantiated and subject to democratic oversight.

However, given the urgent nature of the procedure, a mandatory minimum level of reasoning must be ensured, including where the information is classified.

The fact that certain information may constitute a state secret must not prevent Parliament from effectively examining the grounds for introducing the exceptional regime.

It is recommended that the law expressly regulate access by members of Parliament and the competent parliamentary committees to the information necessary for exercising their constitutional oversight functions, in compliance with the requirements for the protection of classified information. Mechanisms should also be provided whereby the executive authorities submit to Parliament sufficient factual and legal elements to verify the necessity and proportionality of the proposed measures, without the invocation of state secrecy being capable of justifying an unconditional refusal to inform the legislature.

The draft does not establish special majorities for adopting decisions on declaring, extending or ending a state of siege or a state of war. Consequently, in the absence of a special provision, the general rule in Article 74(2) of the Constitution applies, under which decisions of Parliament are adopted by a majority of the members present.

Given that Parliament consists of 101 members and that its sittings are quorate when a majority of the elected members, i.e. at least 51, are present, applying this rule could allow, with the minimum quorum, a decision introducing an exceptional regime to be adopted with as few as 26 votes. Such an outcome is not a sufficient guarantee of democratic legitimacy for a decision with such significant consequences for the functioning of state institutions, the exercise of fundamental rights and freedoms, the holding of elections and the application of ordinary legislation.

The voting threshold should be seen as a safeguard against the abusive or excessive use of exceptional powers. At the same time, setting an excessively high majority for the initial introduction of the exceptional regime could enable a parliamentary minority to block measures needed in the face of a real threat to the security of the state. The solution must therefore take into account the nature of the decision, the duration of the exceptional regime and the intensity of the measures adopted, by setting differentiated thresholds for the relevant stages and decisions.

Article 74(2) of the Constitution establishes the general rule of a majority of members present for the adoption of decisions of Parliament. In this context, introducing higher majorities for certain parliamentary decisions by organic law raises issues of constitutional compatibility, particularly in the absence of an express constitutional provision authorising a derogation from the general rule. The possibility of establishing such thresholds must therefore also be examined in light of the case law of the Constitutional Court on Article 74(2), to determine whether, and to what extent, they can be regulated by law or whether a constitutional amendment is required.

Comparative constitutional practice shows that some states have established special procedural safeguards for declaring and maintaining exceptional regimes.

In Spain, a state of siege is declared by the Congress of Deputies by an absolute majority, exclusively on a proposal from the Government, with Congress determining its territorial scope, duration and conditions (Article 116(4) of the Constitution).

In Germany, the state of defence is determined by the Bundestag with the consent of the Bundesrat, by a two-thirds majority of the votes cast that must include at least a majority of the members of the Bundestag (Article 115a(1) of the Basic Law). The Basic Law also provides an alternative mechanism where the Bundestag cannot convene in time or is unable to take decisions: the Joint Committee may exercise certain powers of the Bundestag under the conditions and with the majorities laid down in Article 115a(2).

In Ukraine, the President's decree introducing martial law is subject to approval by the Verkhovna Rada, whose decisions, under Article 91 of the Constitution, are adopted by a majority of its constitutional composition. This mechanism reflects a constitutional choice in favour of an absolute majority of the members of Parliament for adopting decisions, including those relating to exceptional regimes.

These examples cannot be transposed automatically into the constitutional order of the Republic of Moldova, but they demonstrate the importance of establishing appropriate procedural safeguards for decisions affecting the functioning of state institutions and the exercise of fundamental rights.

In particular, the German Joint Committee mechanism merits consideration in relation to situations in which the Parliament of the Republic of Moldova cannot convene under Article 7(5) and Article 15(6) of the draft. Such a solution could serve as a reference point for designing an alternative institutional mechanism that ensures the continuity of parliamentary oversight and prevents the concentration of exceptional powers in the hands of the executive.

It is recommended that the draft be supplemented with the majorities required for:

- declaring a state of siege and confirming the decree declaring a state of war – a majority of the elected members;
- extending a state of siege – a majority of the elected members and, after a cumulative duration of, for example, 90 days, a three-fifths majority of the elected members;
- measures with a major impact on political rights and freedom of expression (suspension of elections, restrictions in the information space) – a three-fifths majority of the elected members;
- ending a state of siege or a state of war – a majority of the members present, on the initiative of the President of the Republic of Moldova, the Government or a group of members of Parliament.

It is further recommended:

- to regulate expressly access by members of Parliament and the competent parliamentary committees to classified information relevant to examining a proposal to declare a state of siege or war;
- to require the competent authorities to provide sufficient factual and legal reasoning, including where classified information is used;
- to establish mechanisms for periodically reassessing the circumstances justifying the continuation of a state of siege or war;
- to require express reasons for each extension decision, with reference to the necessity, proportionality and temporary nature of the measures maintained;

- to consider setting maximum time limits for extending a state of siege and additional safeguards for successive extensions;
- to strengthen parliamentary oversight of measures that significantly affect fundamental rights and the functioning of democratic institutions;
- to consider establishing an alternative parliamentary mechanism for situations in which Parliament cannot convene under the conditions provided for in the draft.

To the extent that special majorities are considered necessary for adopting decisions on introducing and extending exceptional regimes, and for approving certain measures with a major impact on fundamental rights, this solution should be examined in the context of a possible constitutional amendment, if such a derogation cannot be introduced in a manner compatible with Article 74(2) of the Constitution. Any amendment should follow the procedure in Articles 141–143 of the Constitution. It should be borne in mind that Article 142(3) prohibits amending the Constitution during a state of emergency, siege or war. Any constitutional change in this area must therefore be made under normal conditions, before such an exceptional regime is introduced.

III. Derogations from legislative and regulatory acts and the risk of expanding executive powers

1. Article 9(1)(k) – empowering public authorities to take decisions derogating from legislative and regulatory acts

Article 9(1)(k) provides that Parliament's decision declaring a state of siege or a state of war includes empowering the competent public authorities, indicated in the declaring act, to take the decisions necessary to apply the measures imposed, including by way of derogation from legislative and regulatory acts.

This provision is one of the most important in the draft from the perspective of the delimitation of constitutional powers.

Although the empowerment is provided for in the act introducing the exceptional regime, the wording "including by way of derogation from legislative and regulatory acts" may allow an extensive interpretation of the powers of the executive authorities.

In the absence of an explicit substantive delimitation, it is not sufficiently clear:

- which categories of legislative and regulatory acts may be derogated from;
- whether derogations may affect organic or ordinary laws;
- whether the authorities may adopt measures of a general normative nature;
- what the limits of the derogations are in relation to the exclusive powers of Parliament;
- what safeguards apply to derogations affecting fundamental rights and freedoms.

Such an empowerment must be interpreted strictly. It cannot amount to a general mandate for the executive authorities to amend, suspend or replace legislation adopted by Parliament.

Moreover, the empowerment conflicts with Article 18(4) of the draft, under which the declaring acts "may not, by themselves, introduce new restrictions on the exercise of rights and freedoms". If the declaring act can empower authorities to derogate from any legislative or regulatory act, the safeguard in Article 18(4) may be circumvented through derogating decisions of the empowered authorities. The

risk is heightened by Article 9(2), which allows this empowerment to be included in the President's decree as well (see Section II, point 3).

In this context, it is recommended that Article 9(1)(k) be supplemented with explicit substantive and procedural limits.

In particular, it should be provided that derogations:

- are permitted only in areas expressly specified by law;
- are strictly necessary for applying defence measures;
- may not amend or suspend provisions of the Constitution;
- may not replace the exclusive legislative powers of Parliament;
- may not affect non-derogable rights;
- are limited in time and space;
- are subject to parliamentary and judicial review;
- must be reasoned with reference to the specific circumstances.

Separately, Article 9(1)(l) provides for the Ministry of Defence to establish the rules on the use and application of force. The draft does not specify the legal form of these rules, the procedure for approving them or their publication regime, namely whether they are to be published or whether certain provisions may be classified. Although Article 17 regulates the publication of acts declaring, extending, amending and ending a state of siege or war, it does not expressly establish the publication regime for the rules on the use and application of force.

This omission is relevant to the protection of fundamental rights, since the rules setting out the grounds, conditions and limits for the use of force must be sufficiently clear and foreseeable, and the legal framework governing them must be accessible to those concerned. In *Boboc and Others v. the Republic of Moldova*, judgment of 7 June 2022, the European Court of Human Rights stressed the importance of an adequate legal and administrative framework delimiting the circumstances in which law enforcement officers may resort to force and firearms.

Classification may be justified for certain operational information, intervention tactics, action plans or technical data whose disclosure could compromise the security of operations. However, classification must not extend to the principles, conditions and legal limits of the use of force, including the requirements of necessity and proportionality, the safeguards for the protection of life and physical integrity, and the conditions for the use of firearms.

The issue also requires particular attention in relation to Articles 32, 33, 37 and 39 of the draft, which provide for certain units of the Ministry of Internal Affairs, the General Inspectorate of Carabinieri, the Information and Security Service and the State Protection and Guard Service to be placed under the operational command of the General Staff for national defence or military missions. Since these institutions also perform functions in the field of public order and security, the rules applicable to military operations must be clearly distinguished from those applicable to missions to maintain or restore public order. Placing units under the operational command of the General Staff must not lead to an expansion of powers to use force in public order missions, nor to a weakening of the legal safeguards applicable to them.

It is recommended that Article 9(1)(l) be supplemented with a requirement that the rules on the use and application of force be approved by a legal act with an appropriate publication regime, ensuring the accessibility of the rules on the grounds, conditions, limits and safeguards for the use of force. Any annexes or provisions of a strictly operational nature may be classified in accordance with the law,

provided that such classification does not affect the accessibility of the applicable legal framework or permit derogations from the constitutional and international safeguards for the protection of life and personal integrity.

2. Article 14 – effects of acts and measures

Article 14(1) states that legislative and regulatory acts continue to apply during a state of siege or a state of war, but the competent public authorities expressly indicated in the act declaring, extending or amending the regime may take decisions derogating from such acts.

Paragraph (2) provides that acts ordering measures must be in writing and reasoned, indicating the legal basis, purpose, content, territorial and temporal limits, the competent authority and, where applicable, the available means of appeal.

Paragraphs (3) and (4) regulate the termination of temporary measures and the possibility of certain legal effects continuing after the exceptional regime has ended.

The requirements of form and reasoning in paragraph (2) are positive safeguards. However, they do not resolve the substantive issue of the scope of the derogation power in paragraph (1).

In particular, it must be clarified whether the derogation refers exclusively to implementing administrative acts or whether it can produce effects equivalent to amending or suspending legislative provisions.

This distinction is fundamental for respecting the principle of the separation of powers in the state.

Likewise, Article 14(4), which allows certain legal effects to continue after a state of siege or war has ended, must be applied strictly. The effects of restrictive measures should not continue after the exceptional regime has ended except under conditions expressly provided for by law and for a specific legal purpose.

It is recommended:

- to specify expressly the legislative and regulatory acts from which derogation is permitted;
- to clarify the legal nature of derogating decisions;
- to prohibit derogations that replace Parliament's legislative powers;
- to establish review of the legality and proportionality of derogations;
- to regulate expressly the cessation of the effects of restrictive measures;
- to establish a procedure for reviewing acts that continue to produce effects after the exceptional regime has ended.

IV. Duration of exceptional regimes and the temporary nature of measures

1. Article 10 – duration and extension of the state of siege

Article 10(1) provides that a state of siege is declared for a fixed period not exceeding 30 days.

Under paragraph (2), it may be extended by decision of Parliament for successive periods of up to 30 days if the circumstances persist.

Paragraph (3) makes extension conditional on the continued existence of the grounds and legal conditions and on the necessity and proportionality of the measures applied.

Paragraph (4) requires a report on the circumstances justifying the continuation of the state of siege, the measures applied, their impact on fundamental rights and the need to maintain, amend or end the measures.

The provision is positive in that it establishes a fixed duration and makes extension conditional on Parliament's approval.

However, the extension report must not be a formality. Parliament must have sufficient information to assess whether maintaining the exceptional regime is still necessary.

It is recommended:

- to publish an accessible version of the extension report;
- to adopt extension decisions by a majority of the elected members and, after a cumulative duration of, for example, 90 days, by a qualified majority (see Section II, point 4);
- to assess each restrictive measure separately;
- to give reasons for the need to continue the measures;
- to revoke measures that are no longer necessary;
- to debate in Parliament the periodic reports provided for in Article 18(11)–(12), with the possibility of amending or revoking individual measures.

2. Article 11 – duration of the state of war

A state of war may be declared for an indefinite period, given the nature of armed aggression and the need to repel it.

The indefinite nature of the state of war must not, however, lead to all restrictive measures being maintained automatically for the entire duration of the regime.

The draft provides for the principle of periodic reassessment (Article 5) and for Government reports at least once every 15 days during a state of war, which must address the need to maintain, amend or end the measures (Article 18(11)–(12)). It is recommended that these reports be followed by an express decision of Parliament on maintaining the measures affecting individual rights, economic activity or the functioning of civilian institutions.

In this regard, a distinction must be drawn between the duration of the state of war and the individual duration of special measures. A measure may become unnecessary or disproportionate even while the state of war continues.

In addition, Article 11(2) and (3) make the amendment and ending of the state of war conditional on a proposal from the President of the Republic of Moldova (see the observations in Section II, point 3). It is recommended that Parliament be able to amend or end the state of war on its own initiative as well.

V. Article 15 – continuity of public authority and the limits on the exercise of powers

Article 15(1) establishes the obligation of public authorities to ensure the continuity of the exercise of public authority and of the functioning of the state.

Paragraphs (2) and (3) regulate the continuity of the mandates of Parliament and the President of the Republic of Moldova in accordance with the Constitution.

Paragraph (5) allows Parliament to meet anywhere on the territory of the Republic of Moldova and, in exceptional cases, by secure electronic communications.

Article 15(6) provides that, where Parliament is temporarily unable to convene, the President of the Republic of Moldova and the Government continue to exercise their constitutional and statutory powers and may, within their competence, order the measures strictly necessary to ensure the continuity of public authority, national defence and the functioning of essential services.

Paragraph (7) states that these measures may not replace the exclusive powers of Parliament and must be submitted to it immediately after it resumes its work.

These provisions pursue a legitimate aim, namely ensuring the continuity of the state where Parliament is temporarily unable to function.

However, the notion of "temporary inability of Parliament to convene" must be delimited sufficiently clearly. Without objective criteria, it could become a basis for the exercise of extended executive powers.

It is important to stress that Parliament's temporary inability to convene cannot lead to the legislative function being transferred to the President or the Government.

It is recommended:

- to define the objective circumstances that constitute temporary inability;
- to establish a procedure for establishing and documenting it;
- to require that alternative ways of convening be exhausted, including meeting by the secure electronic means provided for in paragraph (5);
- to limit the measures to those strictly necessary;
- to introduce an obligation to report immediately;
- to ensure subsequent review of the measures adopted.

VI. Article 16 – holding of elections and referendums

Article 16(1) provides that no elections or referendums are called or held during a state of siege or a state of war, except in cases expressly provided for by the Constitution or by organic law.

Paragraph (2) provides for the automatic suspension of electoral or referendum procedures initiated before the exceptional regime was introduced, while paragraphs (3) and (4) regulate the resumption of electoral deadlines and procedures after it has ended.

Suspending electoral processes may be justified in circumstances where holding elections would be impossible or would endanger the safety of the population.

However, suspending elections affects the exercise of the right to participate in political life and the principle of periodic elections.

In this context, Article 16 must be aligned with the constitutional rules on the mandates of public authorities, the Electoral Code and the international obligations of the Republic of Moldova.

The issue also has a direct constitutional dimension. The Constitution allows the mandate of Parliament (Article 63(1)) and that of the President of the Republic of Moldova (Article 80(3)) to be extended only "in the event of war or catastrophe", by organic law. Article 16, however, also prohibits elections during a state of siege, which may be extended successively for periods of 30 days with no maximum limit. If a mandate expires during a state of siege, there is no constitutional basis for extending it. For the mandates of local public authorities, the Constitution provides no extension mechanism at all.

In this context, Article 15(4) of the draft provides that, where elections for local public authorities cannot be held during a state of siege or a state of war, the continuity of the exercise of their functions is ensured in accordance with the law until the newly elected authorities are constituted. Although this provision seeks to avoid an administrative vacuum, it does not sufficiently clarify the legal basis and limits for continuing to exercise those functions after the expiry of the four-year electoral mandate. Administrative continuity must not be confused with the extension of an electoral mandate, for which the Constitution sets express conditions in the case of Parliament and the President, but not in the case of local authorities.

The issue becomes particularly relevant in view of the general local elections expected in autumn 2027, given that the draft is due to enter into force on 1 January 2027. If a state of siege were in place at that time, even on only part of the territory of the Republic of Moldova, the general wording of Article 16(1) would prevent local elections from being held throughout the country, including in administrative-territorial units unaffected by the situation that led to the exceptional regime. Consequently, the expiry of the mandates of local authorities could be followed by a period in which they continue to exercise their functions, without the draft sufficiently clarifying the limits and constitutional basis of that situation.

Furthermore, the prohibition is general, even though a state of siege may be declared on only part of the territory (Article 3). The draft also reduces the flexibility that currently exists: Article 4(2) of Law No. 212/2004 allows elections to be held if Parliament's decision declaring the state so provides, whereas the draft admits exceptions only where they are "expressly provided for by the Constitution or by organic law".

It is recommended:

- to establish objective criteria for suspending elections;
- to limit the suspension to the period strictly necessary;
- to reassess periodically whether the electoral process can be held;
- to regulate clearly the procedure for resuming elections;
- to avoid the de facto extension of mandates without constitutional justification;
- to limit the automatic prohibition to a state of war and, during a state of siege, to have any suspension of elections determined by decision of Parliament, solely for the affected territory;
- to retain Parliament's power to authorise elections in the declaring decision, following the solution in Article 4(2) of Law No. 212/2004;
- to regulate the situation of mandates that expire during a state of siege, in conjunction with Article 63(1) and Article 80(3) of the Constitution, as well as the mandates of local public authorities.

VII. Article 18 – restriction of the exercise of fundamental rights and freedoms

Article 18(1) provides that the exercise of certain rights and freedoms may be restricted only in the cases, under the conditions and within the limits provided for by law, in compliance with the Constitution and international treaties.

Paragraph (2) states that a restriction may be ordered only if it is necessary to achieve a legitimate aim, proportionate to the situation, limited in time, space and the persons concerned, and does not affect the existence of the right.

These provisions are important and, in principle, meet the requirements of legality and proportionality.

Nevertheless, the safeguards must be sufficiently clear to be effectively applied by the authorities and relied upon by those affected.

In particular, the draft must clearly distinguish between restricting the exercise of rights under Article 54 of the Constitution and derogating from obligations under the European Convention on Human Rights pursuant to its Article 15.

The main reference point, however, must be Article 54(3) of the Constitution, which prohibits restricting the rights and freedoms enshrined in Articles 20–24: free access to justice, the presumption of innocence, the non-retroactivity of the law, the right of every person to know their rights and duties, and the right to life and to physical and mental integrity. In this respect, constitutional protection is stricter than the derogation regime under Article 15 of the European Convention on Human Rights, which in principle allows derogation from certain fair-trial guarantees enshrined in Article 6, under the conditions laid down by the Convention. The draft should therefore refer expressly to Articles 20–24 of the Constitution, especially in the context of measures concerning the judiciary and enforcement (Article 9(1)(j) and Article 54(4)(m)).

Under Article 15 of the Convention, derogation is permitted only in time of war or other public emergency threatening the life of the nation. Moreover, derogating measures must be strictly required by the exigencies of the situation and must not be inconsistent with the state's other obligations under international law.

It should be noted that the draft already contains a number of relevant safeguards in this respect: a list of rights that may not be restricted or derogated from, and the prohibition of torture (Article 18(5)); a ban on introducing new restrictions through the act declaring a state of siege or war (Article 18(4)); constitutional and judicial review, and a guarantee of free access to justice (Article 18(8)–(9)); notification of derogations (Article 8(9)–(14)); and the periodic reports and final report submitted by the Government (Article 18(11)–(13)). The following observations therefore concern not the absence of these safeguards but their sufficiency and the effectiveness of the mechanisms through which they are to be applied.

These safeguards need to be supplemented as regards:

- the rights that may be restricted;
- non-derogable rights, by expressly listing the rights provided for in Articles 20–24 of the Constitution;
- the conditions for triggering a derogation;

- the mandatory nature of judicial review (deleting the words "where applicable" from Article 18(8)) and parliamentary debate of the periodic reports;
- the procedure for reviewing restrictive measures.

Non-derogable rights must be respected, including the prohibition of torture and inhuman or degrading treatment, the prohibition of slavery and servitude, and the principle of legality in criminal matters, in accordance with the Convention and applicable treaties.

Likewise, the right to life must be respected in accordance with Article 2 of the Convention, including the exceptions it strictly provides for in respect of lawful acts of war.

VIII. Article 20 – obligations of natural persons

1. Article 20(3) – travel restrictions applicable to reservists

Article 20(3) provides that reservists may leave the localities in which they have their permanent domicile or residence for more than 12 hours after mobilisation has been declared only with the written permission of the commander of the territorial military-administrative body, granted in duly justified cases.

This provision imposes a restriction on the freedom of movement of a category of persons.

Although the obligations of reservists may be justified by the needs of mobilisation and national defence, the rule must respect the principles of legality and proportionality.

The wording "duly justified cases" is not precise enough to determine foreseeably the conditions under which permission may be granted or refused.

Furthermore, the draft does not sufficiently clarify:

- the criteria for examining a request;
- the time limit for deciding on it;
- how a refusal is communicated;
- whether a refusal can be challenged;
- exceptions in cases of medical, family or professional emergency;
- how the restriction applies where it is objectively impossible to obtain permission.

It is recommended that Article 20(3) be supplemented with a clear procedure and safeguards for challenging the decision.

2. Article 20(6) – obligations of citizens of the Republic of Moldova abroad

Article 20(6) provides that citizens of the Republic of Moldova who are abroad, are subject to mobilisation obligations under the law and have received a call-up order or have been notified of the obligation to report following the declaration of mobilisation, must take the necessary steps to return to the country and report at the place and within the time limit set by the competent authorities.

They must also urgently contact the diplomatic or consular missions of the Republic of Moldova or other competent bodies and act in accordance with the instructions received.

This provision must be examined with particular care, since it imposes legal obligations on citizens of the Republic of Moldova who are outside the national territory.

The wording of paragraph (6) indicates that the obligation does not apply automatically to all citizens of the Republic of Moldova abroad, but to persons who are subject to mobilisation obligations under the law and who have received a call-up order or notification of the obligation to report.

Nevertheless, the rule raises questions as to how the obligation is to be applied and whether it is proportionate.

In particular, the draft does not sufficiently clarify:

- how the call-up order is communicated individually;
- the time limit within which the person must return;
- the procedure applicable to persons who cannot return for objective reasons;
- the situation of persons in states where transport is interrupted or access is restricted;
- the legal consequences of being unable to return;
- how the order or the notified obligation can be challenged;
- the relationship between the obligation to return and the person's legal status in the state of residence.

The obligation to return must not be worded or applied in a manner that disregards objective impossibility, force majeure or other circumstances beyond the person's control.

It is recommended that a clear procedure be established for notification, for examining individual situations and for challenges, and that cases in which return is not possible be expressly regulated.

3. Relationship between military obligations and citizens' rights

Military and mobilisation obligations must be governed by rules that are foreseeable, accessible and proportionate.

In particular, measures affecting freedom of movement, private life or the legal situation of individuals must be accompanied by sufficient safeguards against arbitrariness.

It is recommended that the draft clearly establish the relationship between the obligations under this law and those laid down in the legislation on mobilisation, military registration and military service.

Alignment is also needed with Article 34(2)(d) of the draft, which tasks the General Police Inspectorate with assisting military-administrative bodies in "identifying and bringing in" persons who fail to comply with military registration obligations or call-up orders. Forcibly bringing in a person constitutes a deprivation of liberty within the meaning of Article 25 of the Constitution and Article 5 of the Convention, and must follow a procedure prescribed by law, with time limits and a means of appeal.

IX. Article 19 – protection of persons and the right to property

Article 19(3) provides that requisition, temporary taking, use or other measures affecting privately owned property may be ordered only in the cases and under the conditions provided for by law, with appropriate compensation.

Paragraph (4) provides for compensation for damage caused by unlawful acts or measures, or by the abusive or disproportionate application of measures.

These provisions are important for the protection of the right to property.

However, the notion of "appropriate compensation" should be supplemented with objective criteria for valuing property and a procedure for awarding compensation.

It is recommended that the law expressly regulate:

- the procedure for valuing property;
- the criteria for determining compensation;
- the time limit for paying compensation;
- the procedure for returning property;
- the right to challenge a requisition;
- the right to challenge the amount of compensation.

Requisition may be justified by the needs of national defence, but it must not result in a disproportionate shifting of the costs of defence onto particular natural or legal persons.

The same logic applies to the obligations of legal persons under Article 21. Under paragraph (1)(f), they "bear the costs incumbent on them under the law, mobilisation plans and tasks", without the draft setting any limits or compensation mechanisms, and under paragraph (2) a special working regime may be established for certain entities, organised in the manner determined by the Government. Restrictions on employees' rights (Article 43 of the Constitution) cannot be established by Government decision, but only by law. The explanatory note does not quantify the impact of these obligations on the private sector.

X. Article 28 – alignment with the crisis management system

Article 28(4) provides that, when a state of siege or a state of war is declared, the powers of the National Crisis Management Commission are suspended and taken over by the Supreme Security Council, and the hierarchical and operational relationships of the National Crisis Management Centre are transferred to the Supreme Security Council.

This provision entails a significant change to the mechanisms of institutional coordination.

In the context of Law No. 248/2025 on crisis management, it must be clarified whether the transfer of powers and operational relationships is delimited sufficiently well to avoid overlaps or uncertainty about institutional responsibility.

It is recommended:

- to identify expressly the powers that are suspended;
- to delimit the powers taken over by the Supreme Security Council;
- to clarify the operational relationships of the National Crisis Management Centre;
- to establish procedures for transferring information and responsibilities;
- to regulate the mechanism for returning to the ordinary institutional structure after the exceptional regime has ended.

XI. Article 54 – general regime and categories of special measures

Article 54(4) lists the areas in which the competent authorities may order special measures during a state of siege or a state of war.

These areas include, among others:

- national defence and mobilisation;
- the protection of strategic sites and critical infrastructure;
- the continuity of public authority and essential services;
- the resilience of the financial and economic system;
- special operating regimes for authorities and economic operators;
- the maintenance of public order and security;
- the evacuation and protection of the population;
- restrictions on the movement of persons, goods and means of transport;
- the protection of the information space and cybersecurity;
- requisitions and the provision of services in the public interest;
- ensuring the population's access to essential goods and services;
- employment relations and the use of human resources needed for defence;
- measures concerning the judiciary and enforcement.

Article 54(5) allows additional measures to be adopted during a state of war in respect of the aggressor state and entities associated with it, including the suspension of diplomatic, economic or trade relations and the introduction of special control measures over assets and property interests.

The breadth of the listed areas can be explained by the nature of states of war and siege. However, a very broad list of areas of intervention may create a risk of the authorities' powers being applied extensively.

In particular, Article 54(4)(e), (h), (i), (j), (k) and (l) may have significant effects on the activities of economic operators, freedom of movement, the right to property, access to goods and services, and employment relations.

Although paragraph (2) refers to the principles in Article 5 and the safeguards in Article 18, these general references do not remove the need to regulate the measures and their limits in concrete terms.

Particular attention is required for the measures in Article 54(4)(i) – protection of the information space and electronic communications, and ensuring cybersecurity. Although these areas may require special measures in conditions of siege or war, the current wording is general and does not sufficiently delimit the nature of the measures that may be ordered, the competent authorities or the applicable procedural safeguards. Taken together with the possibility under Article 9(1)(k) of empowering authorities to adopt measures derogating from legislative and regulatory acts, this provision could pave the way for interventions such as blocking online sources, restricting access to digital platforms or suspending broadcasting licences, without a clear delimitation of the legal grounds, the conditions of application or the mechanisms of judicial review.

The safeguard in Article 44(3) concerns the exercise of the powers of the Centre for Strategic Communication and Countering Disinformation and provides that these may not serve as a basis for restricting freedom of expression, freedom of the press or access to information of public interest

except in the cases and under the conditions expressly provided for by law. However, this provision does not itself regulate the specific conditions under which such restrictions may be ordered by the other competent authorities, nor the procedural safeguards applicable to them.

The experience of the 2022 state of emergency, when the licences of several television channels were suspended and websites were blocked by orders of the Commission for Exceptional Situations, shows that the risk of such interventions is not purely hypothetical. Indeed, Law No. 248/2025 on crisis management already allows, during a state of emergency, a ban on publishing certain information and the banning or closure of media outlets in order to counter disinformation (Article 32(f)), as well as restrictions on access to certain categories of information (Article 32(g)). During a state of alert, the same law allows access to telecommunications services to be restricted (Article 27(f)).

Under Article 28(1) of the draft, the measures and mechanisms established under Law No. 248/2025 continue to apply during a state of siege or a state of war, to the extent that they are compatible with the new regime and with the measures ordered under the draft. The measures already provided for in Law No. 248/2025 may therefore be combined with those that could be ordered under Article 54(4)(i).

In this context, it is relevant that Law No. 248/2025, through Article 32¹, establishes mechanisms for communicating acts to Parliament within 72 hours, for their examination by the standing committees and for the submission of a final report. By contrast, the draft does not provide a sufficiently clear list of the measures that may be ordered in the information space, nor specific procedural safeguards for their application. This creates a risk that, in an area that directly affects freedom of expression and media pluralism, the legal regime applicable in situations of siege or war would offer weaker safeguards than the law governing the management of less serious crisis situations.

These provisions must be assessed in light of Articles 32 and 34(5) of the Constitution, which guarantee freedom of opinion and prohibit censorship of the mass media, and Article 10 of the European Convention on Human Rights. It is therefore recommended that the measures that may be ordered in the information field be expressly delimited, that the specific grounds and conditions for their application be laid down, that the competent authorities be identified and that effective safeguards of parliamentary and judicial oversight be put in place. Any restriction must meet the requirements of legality, necessity and proportionality and must not be justifiable solely by a generic reference to countering disinformation or protecting the information space.

Another problem arises from Article 28(4) of the draft, under which, when a state of siege or a state of war is declared, the powers of the National Crisis Management Commission are suspended and taken over by the Supreme Security Council. This solution must be aligned with Article 25(2), which states that the Council's decisions may not amend, suspend or derogate from legislative and regulatory acts and may not, by themselves, introduce restrictions on the exercise of fundamental rights and freedoms.

Since Law No. 248/2025 vests the National Crisis Management Commission with the power to order certain mandatory measures, the draft must clarify to what extent these powers are taken over by the Supreme Security Council and the legal nature of the measures it may adopt. A distinction must be drawn between the power of strategic coordination and the power to order measures with direct legal effects on natural and legal persons. The takeover of the Commission's powers cannot be interpreted as an implicit extension of the Council's powers, nor as a derogation from the limits set in Article 25(2).

Consistency must also be ensured between the Council's powers, the obligation to inform Parliament under Article 25(6) and the mechanisms of parliamentary oversight of the measures ordered under a state of siege or war.

Separately, Articles 52–53 regulate the organisation and planning of national resistance. Under Article 53(4), the National Plan for National Resistance is approved by Government decision on a proposal from the Ministry of Defence, after endorsement by the Supreme Security Council. The draft provides neither a procedure for parliamentary examination or approval of this document nor an express obligation to inform the relevant parliamentary committee of its content and updates.

The issue is also relevant from the perspective of the regime for classified information. Article 52(6) provides that information on the planning, organisation, capabilities and conduct of national resistance that meets the conditions laid down in the legislation on state secrets is classified and protected in accordance with that legislation. The draft therefore does not provide that the entire Plan is classified automatically, but allows the classification of information that meets the legal conditions. In this context, it must be clarified whether the Plan will be classified in whole or in part and what mechanisms will allow parliamentary oversight of it, including of its classified components.

This aspect is all the more important because national resistance involves the participation of structures and persons outside the armed forces, including territorial defence units, as well as central and local public authorities and critical infrastructure operators. In these circumstances, the legal status of the participants, the delimitation of their functions and responsibilities, the safeguards applicable to them and the principles for organising national resistance must have a sufficiently clear legal basis. This is necessary also from the perspective of the application of international humanitarian law.

It is recommended:

- to distinguish the measures applicable during a state of siege from those applicable during a state of war;
- to identify the competent authorities for each category of measures and clearly delimit their powers;
- to regulate the specific conditions and criteria for applying the measures;
- to set temporal and territorial limits on their application;
- to introduce specific safeguards for the protection of the right to property and economic freedom;
- to establish effective mechanisms for challenging the measures ordered;
- to regulate the procedure for periodically reviewing and ending measures once the conditions that justified them no longer exist;
- as regards measures concerning the information space [Article 54(4)(i)], to list the permitted measures exhaustively, to require that the acts ordering them be reasoned, to ensure their publication unless there are legal grounds for classification, to limit their duration and to establish effective and prompt judicial review. Mechanisms of parliamentary oversight at least equivalent to those in Article 32^1 of Law No. 248/2025 should also be provided;
- to supplement the draft with adequate mechanisms of parliamentary oversight of the National Plan for National Resistance, enabling it to be examined by the relevant parliamentary committee, including where certain components are classified, in compliance with the regime for classified information. The classification of certain components of the Plan should not exclude parliamentary oversight, but should determine how it is exercised.

XII. Article 55 – administration of justice and enforcement

Article 55(1) provides for the courts and the prosecution service to continue operating during a state of siege or a state of war. It also states that justice is administered only by courts established by law and prohibits the creation of extraordinary courts and extraordinary criminal investigation bodies.

This provision is an important safeguard of the rule of law.

However, the formal continuity of the courts' work must be accompanied by effective safeguards of access to justice, judicial independence and the possibility of challenging restrictive measures. In this regard, paragraphs (2)–(4) of the draft provide certain organisational mechanisms to ensure the continuity of the courts and the prosecution service, including temporarily operating from other premises, changing territorial jurisdiction and temporarily redistributing tasks within the prosecution service. Nevertheless, the provision should also ensure the procedural safeguards needed for the effective exercise of the rights of persons involved in judicial proceedings.

A separate issue arises from the interplay between Article 55 and Article 43(2)(f) of the draft. Under that provision, the NAC (National Anticorruption Centre) places its subordinate units performing national defence missions under the operational command of the General Staff, while retaining administrative command over them. The draft does not, however, identify the units concerned or specify whether they may include structures that carry out criminal investigations.

This omission is relevant given that Article 43(2)(b) provides that the NAC continues to prevent, detect, document and investigate corruption and other offences within its competence, while paragraph (3) guarantees the institution's functional and operational independence. If the units placed under the operational command of the General Staff were to include criminal investigation bodies, problems could arise in delimiting military operational command from the procedural powers of criminal investigation bodies and the prosecutor, including as regards the direction and supervision of criminal investigations under the Code of Criminal Procedure.

The draft must therefore expressly delimit the NAC units that may be placed under the operational command of the General Staff and specify that such command concerns exclusively the performance of national defence missions. It may not interfere with criminal investigations, the gathering of evidence or the exercise of procedural powers that lie with the prosecutor under the law. It must also be clarified how the guarantee of the NAC's functional and operational independence applies in relation to this form of operational command.

At the same time, the continuity of the courts and the prosecution service is not in itself sufficient to guarantee effective access to justice. The exceptional regime cannot lead to the removal of judicial review of the legality of the authorities' measures, nor to a weakening of the guarantees of the right of defence.

It is recommended:

- to clarify the procedures applicable where the courts cannot operate under normal conditions, including as regards individuals' access to court, the examination of urgent cases and the operation of courts in areas affected by military action;
- to establish procedural safeguards ensuring the right of defence and an effective possibility of challenging restrictive measures, including where special procedures or measures are applied;

- to ensure the continuity of judicial review of measures ordered by public authorities, without unjustified suspension or limitation of access to court;
- to clarify the enforcement regime, including the conditions for postponing or suspending enforcement and the safeguards for resuming it once the circumstances preventing it have ceased;
- to delimit expressly the NAC units that may be placed under the operational command of the General Staff and to exclude any interference by that command in criminal investigations and in the prosecutor's procedural powers.

The exceptional regime cannot justify establishing mechanisms of military command that affect the independence of law enforcement institutions or the procedural safeguards provided for in national legislation.

XIII. Alignment of the legal framework on exceptional regimes and crisis management

1. Alignment with Law No. 212/2004 and Law No. 248/2025

The draft provides for the repeal of Law No. 212/2004 on the regime of the state of emergency, siege and war and the establishment of a new legal framework for the state of siege and the state of war.

According to the explanatory note, the draft was coordinated in advance with Parliament's Committee on National Security, Defence and Public Order and with the Office of the President of the Republic of Moldova, before the public consultation was launched.

In this context, it would be appropriate to publish the observations, proposals and any objections raised by those institutions at the prior coordination stage, together with how they were examined and reflected in the final version of the draft submitted for public consultation.

Access to this information would make it possible to clarify the reasoning behind certain regulatory choices, particularly those relating to the delimitation of the constitutional powers of Parliament and the President of the Republic of Moldova and to the mechanisms of parliamentary oversight of the exercise of exceptional powers.

Under the transitional provisions of the draft, legislative, regulatory and administrative acts issued under Law No. 212/2004 continue to apply insofar as they do not conflict with the new law, until they are amended, repealed or replaced.

The repeal of Law No. 212/2004 is justified by the need to restructure the regulatory framework and to align it with Law No. 248/2025 on crisis management. It should be noted that the provisions on the state of emergency were already removed from Law No. 212/2004 by Law No. 248/2025, in force since 1 September 2025, so the repeal does not create a regulatory gap regarding the state of emergency provided for in Article 66(m) of the Constitution.

Nevertheless, the draft must ensure a clear legislative transition, without overlapping powers and without uncertainty about the applicability of existing legislative and regulatory acts.

A detailed comparative analysis of the provisions of Law No. 212/2004 and of the draft is recommended, expressly identifying:

- the rules carried over;

- the rules amended;
- the powers redistributed;
- the newly introduced measures;
- the legal safeguards removed or reworded;
- any regulatory gaps;
- the legislative and regulatory acts that need to be amended accordingly.

In particular, the relationship between the mechanisms provided for in Law No. 248/2025 and the exceptional regimes regulated by the draft must be clarified.

The new law must not create a parallel system of powers or allow exceptional measures to be activated without sufficient delimitation from the ordinary crisis management mechanisms.

2. Comparative analysis of Law No. 212/2004 and the proposed legislative solutions

Law No. 212/2004 should be examined in its consolidated form, including the amendments made by recent legislation on crisis management. The comparison below is indicative and highlights the systemic effect of the changes.

AREA	LAW NO. 212/2004	DRAFT LAW	EFFECT / OBSERVATION
Subject matter	Regulation of the state of siege and war (provisions on the state of emergency repealed by Law No. 248/2025)	Siege and war regimes	Regulatory specialisation
Definition of siege	Focus on imminent armed aggression and preparedness	Serious threats, including to the constitutional order and defence	Broader grounds
Declaration	Powers and procedure under the current law	New mechanism, including the scenario in Art. 8(8)	Greater parliamentary autonomy; procedural verification needed
Duration of siege	30-day limit and extension	Maximum 30 days, reasoned extensions	Stronger procedural safeguards
State of war	Ends once hostilities and the legal conditions cease	Indefinite duration until the circumstances cease	Requires periodic review
Regulatory derogations	Current mechanism less generalised	Arts. 9 and 14 allow derogations	Risk of expanding executive discretion
Rights	General safeguards in the current law	Art. 18 more systematic	Needs clarification on non-derogability
Reservists	Obligations under the existing regime	Art. 20(3): permission to leave locality for more than 12 hours	Restriction on movement; criteria / appeal
Citizens abroad	No identical wording in current legislation	Art. 20(6): return of persons called up / notified	Explicit obligation; clarify objective impossibility
Justice	More succinct regulation	Art. 55 details continuity and prioritisation	Positive development
Oversight	General reporting	Periodic reports and final report	Strengthened, but effectiveness needed

XIV. Relationship with the European Convention on Human Rights

1. Article 15 of the Convention

Article 15 of the European Convention on Human Rights allows derogation from certain Convention obligations in time of war or other public emergency threatening the life of the nation.

Derogation is permitted only to the extent strictly required by the exigencies of the situation and provided that the measures are not inconsistent with the state's other obligations under international law.

Consequently, declaring a state of siege or a state of war is not a general authorisation to suspend fundamental rights.

The draft must ensure that the measures adopted are:

- prescribed by law;
- necessary in the specific circumstances;
- proportionate to the threat;
- limited in time and space;
- subject to review;
- compatible with the international obligations of the Republic of Moldova.

2. Non-derogable rights

The draft must ensure respect for the rights from which no derogation is permitted under the Convention.

Article 18(5) of the draft contains such a safeguard, but in general terms. It is recommended that the non-derogable rights be listed expressly, including those provided for in Articles 20–24 of the Constitution, together with a prohibition on adopting measures that would impair their essence.

The obligations to notify derogations to the competent international bodies are regulated in detail in Article 8(9)–(14), which is a positive development.

3. Judicial review

In line with Convention standards, restrictive measures must be open to effective judicial review.

It is recommended that accessible and rapid procedures be established for challenging individual measures, especially those affecting freedom of movement, the right to property, personal liberty or other fundamental rights.

XV. Relationship with the standards of the Venice Commission: assessing the draft from a rule-of-law perspective

The Venice Commission has consistently stressed that exceptional regimes must be governed by clear, foreseeable and limited rules that ensure parliamentary and judicial oversight of the exercise of extraordinary powers.

A relevant document is CDL-AD(2020)014, Respect for Democracy, Human Rights and the Rule of Law during States of Emergency – Reflections, together with the updated Rule of Law Checklist, CDL-AD(2025)002. The updated Checklist was adopted by the Venice Commission in December 2025 and endorsed by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe in May 2026.

In its documents on states of emergency and the rule of law, the Venice Commission highlights the need for:

- a clear delimitation of the grounds for introducing exceptional regimes;
- a list of the extraordinary powers that may be activated;
- time limits on measures;
- Parliament to continue functioning;
- parliamentary oversight of executive measures;
- guaranteed judicial review of individual measures;
- the protection of non-derogable rights;
- preventing a long-term transfer of legislative powers to the executive.

In this context, Article 9(1)(k), Article 14, Article 15(6) and (7), Article 18 and Article 54 of the draft require in-depth examination to ensure that the exceptional regime does not disproportionately affect the principles of democracy and the rule of law.

XVI. Conclusions and recommendations

Having examined the draft law on special legal regimes of an exceptional nature, we find that the legislative initiative responds to a real need to update the legal framework on defence and national security.

The draft introduces important mechanisms for declaring, extending, amending and ending a state of siege and a state of war, for the continuity of public authority, the protection of the population, mobilisation and the application of special measures.

Nevertheless, certain provisions raise serious questions regarding the delimitation of the powers of public authorities, the foreseeability of the rules and the safeguards needed to protect fundamental rights and freedoms.

The main issues identified concern:

1. **Art. 6(1)(b) and (c)** – the need to delimit more precisely the grounds for declaring a state of siege, especially with regard to hybrid and subversive actions and other serious threats with a military component.
2. **Art. 7** – the need to limit the content of the presidential decree to measures to repel aggression (Art. 9(2)), to set a deadline for parliamentary examination and to narrow the scenarios of aggression that allow a state of war to be declared by decree.
3. **Art. 11(2) and (3)** – making the amendment and ending of the state of war conditional on a proposal from the President, contrary to Article 66(m) of the Constitution.
4. **Arts. 8 and 10** – the lack of special majorities for declaring, extending and maintaining a state of siege or war in the long term; as currently worded, the decision may be adopted by a majority of the members present (Article 74(2) of the Constitution).
5. **Art. 9(1)(k)** – the risk of conferring excessive derogation powers on the executive authorities.

6. **Art. 14(1)** – the need to delimit clearly the legislative and regulatory acts from which authorities may derogate and the limits of such derogations.
7. **Arts. 10–11** – the need to ensure periodic reassessment of restrictive measures, irrespective of the duration of the exceptional regime.
8. **Art. 15(6) and (7)** – the need to clarify the conditions for Parliament's temporary inability to convene and the limits on executive measures.
9. **Art. 16** – the ban on elections during a state of siege, without a constitutional basis for extending mandates (Article 63(1) and Article 80(3) of the Constitution), and the need for objective criteria on suspending elections and resuming electoral processes.
10. **Art. 18** – the need to strengthen the safeguards on restricting the exercise of fundamental rights and freedoms and on respecting non-derogable rights, including through an express reference to Articles 20–24 of the Constitution (Article 54(3)).
11. **Art. 20(3)** – the need for clear rules on the travel restrictions applicable to reservists and on the appeal procedure.
12. **Art. 20(6)** – the need to clarify the obligations of citizens of the Republic of Moldova abroad in the context of mobilisation and situations in which return is objectively impossible.
13. **Art. 19(3) and (4)** – the need to strengthen the safeguards on the requisition of property and the award of compensation.
14. **Art. 28(4)** – the need to delimit powers and institutional relationships within crisis management.
15. **Art. 54(4) and (5)** – the need to delimit special measures and the powers of authorities in areas with a major impact on individual rights and economic activity.
16. **Art. 54(4)(i)** – the risk of restricting press freedom and access to information through measures in the information space.
17. **Art. 9(1)(l) and Art. 34(2)(d)** – setting the rules on the use of force by departmental act and forcibly bringing in persons without a procedure prescribed by law.
18. **Art. 21(1)(f) and (2)** – financial burdens and a special working regime for legal persons, imposed without statutory limits.
19. **Arts. 52–53** – establishing the framework for national resistance solely by Government decision.
20. **Art. 55** – the need to ensure effective access to justice and the continuity of judicial review.

Consequently, we consider that the draft law **should not be taken forward in its current form without a substantial revision of the provisions that may affect the constitutional balance, fundamental rights and freedoms, and the mechanisms of democratic oversight.**

The author of the draft is recommended:

- to revise the rules conferring derogation powers on the executive authorities;
- to clarify the grounds for declaring a state of siege;
- to strengthen parliamentary oversight of the introduction and application of exceptional regimes;
- to establish special majorities for introducing, extending and maintaining exceptional regimes in the long term;
- to limit the content of the presidential decree declaring a state of war and to guarantee Parliament's power to amend and end the state of war on its own initiative;
- to ensure effective judicial review;
- to regulate restrictive measures in detail;
- to introduce explicit safeguards for fundamental rights;
- to align Article 16 with Article 63(1) and Article 80(3) of the Constitution;
- to introduce specific safeguards for freedom of expression and press freedom;

- to clarify the obligations of citizens abroad;
- to strengthen the safeguards on requisition and compensation;
- to ensure that the draft is consistent with the national legislation in force and the international obligations of the Republic of Moldova.

In addition to the substantive issues, the draft also requires a review of its legislative drafting.

1. Consistency of the rules

Articles 9, 14, 18 and 54 must be aligned more rigorously to avoid contradictory interpretations of the authorities' power to adopt measures by way of derogation. In particular, Article 18(4), which prohibits introducing new restrictions through the declaring act, must be aligned with Article 9(1)(k) and Article 14(1), which allow authorities to be empowered to derogate from legislative and regulatory acts.

2. Clarity of the rules

Expressions such as:

- "other serious threats";
- "hybrid or subversive actions";
- "other circumstances arising from the state of siege";
- "duly justified cases";
- "other measures expressly provided for by this law";

must be used with care, as they may allow too wide a margin of discretion.

3. Accessibility of the law

A law on exceptional regimes must be sufficiently clear for those concerned to understand:

- when the regime is introduced;
- what obligations they have;
- which rights may be restricted;
- which authorities may order the measures;
- how they can challenge the measures;
- when the obligations cease.

4. Transitional provisions

Article 60(3) provides for the continued application of legislative, regulatory and administrative acts issued under Law No. 212/2004, insofar as they do not conflict with the new law.

This solution is useful for legal continuity.

Nevertheless, the legislative and regulatory acts and planning documents that will need to be revised must be identified expressly, to avoid maintaining rules that are incompatible with the new legal framework.

In addition, the entry-into-force date (1 January 2027), by which the Government must adopt all implementing legislative and regulatory acts (Article 60(2)), appears difficult to meet and may create a regulatory gap.

Final position

The need to ensure national security and the state's preparedness for exceptional situations is beyond dispute. However, national security cannot be invoked as grounds for establishing discretionary powers, weakening constitutional safeguards or restricting fundamental rights beyond what is strictly necessary.

An effective legal framework for the state of siege and the state of war must be robust enough to allow the state to respond to real threats, yet precise enough to prevent abuse and to maintain democratic control over the exercise of power.

The draft law can therefore serve as a basis for modernising the legal framework on defence, but its adoption must be preceded by a substantial revision ensuring compliance with the Constitution of the Republic of Moldova, the European Convention on Human Rights, the International Covenant on Civil and Political Rights and European rule-of-law standards.

In our opinion, an exceptional legal regime must strengthen the state's capacity to defend itself without turning the exception into an instrument for weakening the constitutional order and the guarantees of human rights.

Legal and institutional references

- Constitution of the Republic of Moldova, in particular Articles 6, 54, 66(m), 72(3)(m), 85 and 87.
- European Convention on Human Rights, in particular Article 15.
- International Covenant on Civil and Political Rights, in particular Article 4.
- Law No. 212/2004 on the regime of the state of emergency, siege and war.
- Law No. 248/2025 on crisis management.
- Draft law on special legal regimes of an exceptional nature, unique number 1031/MA/2026.
- Venice Commission, *Respect for Democracy, Human Rights and the Rule of Law during States of Emergency – Reflections*, CDL-AD(2020)014.
- Venice Commission, *Compilation of Venice Commission Opinions and Reports on States of Emergency*, CDL-PI(2020)003.
- European Court of Human Rights, Guide on Article 15 of the Convention – Derogation in time of emergency.
- Constitution of the Kingdom of Spain, Article 116; Basic Law of the Federal Republic of Germany, Article 115a; Constitution of Ukraine, Articles 83 and 91.