



**avocatul  
poporului**  
OMBUDSMAN

# THEMATIC REPORT

## **Assessment of National Legal Framework on Regulation of State of Emergency in the Republic of Moldova**

# THEMATIC REPORT

## Assessment of National Legal Framework on Regulation of State of Emergency in the Republic of Moldova

---



2024

Approved by  
**Ceslav PANICO,**  
People's Advocate (Ombudsman)



**Author:**

**Andrei LUTENCO**, Independent Expert

**Co-authors:**

**Victor MORARI**, Senior Consultant, Department for the Prevention of Torture, People's Advocate Office

**Alexandru ZUBCO**, Head of Department, Department for the Prevention of Torture, People's Advocate Office

**Coordinator:**

**Ceslav PANICO**, People's Advocate (Ombudsman)

**LIST OF ABBREVIATIONS:**

---

<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>NHRI</b>	National Human Rights Institution
<b>UNHCR</b>	Office of the United Nations High Commissioner for Refugees
<b>CES</b>	Commission for Exceptional Situations
<b>OI</b>	Ombudsman Institution
<b>Moldova CPR</b>	Centre for Policies and Reforms



## CONTENTS:

---

Executive summary .....	Error! Bookmark not defined.
Introduction .....	Error! Bookmark not defined.
Assessment of the normative framework .....	8
International standards.....	8
Constitutional regulations.....	9
Legislative framework.....	Error! Bookmark not defined.
Grounds for declaring a state of emergency.....	12
Declaring a state of emergency .....	13
Duration and extension of the state of emergency .....	Error! Bookmark not defined.
Effects of the state of emergency.....	16
Parliamentary control .....	Error! Bookmark not defined.
Judicial review.....	20
Role of national human rights institutions .....	22
Civic control, transparency and public participation .....	24
Recommendations .....	Error! Bookmark not defined.

---



avocatul  
poporului  
OMBUDSMAN

In the last 5 years, the state of emergency in the Republic of Moldova has been imposed 6 times in response to a series of epidemiological, security or energy crises. The emergency measures adopted during this period, often necessary, have also been questioned in terms of democratic norms and human rights. This legal regime is likely to continue to be used frequently, which is why it is crucial that the normative and institutional framework prevents possible abuses and deviations.

In order to cope with the challenges endangering the State of the Republic of Moldova and, at the same time, to prevent anti-democratic deviations and violations of human rights, the authorities must strengthen the legal regime of the state of emergency by establishing constitutional safeguards and limits of emergency powers, control by the Parliament, courts, national human rights institutions and citizens.

The Constitution of the Republic of Moldova insufficiently regulates the state of emergency regime<sup>1</sup>, and the special legislation fails to establish sufficient safeguards to prevent possible violations<sup>2</sup>. The grounds, procedure and main limits of a state of emergency should be expressly regulated in the Constitution, and the definition and grounds for declaring it should be revised to clearly establish that this regime is only established in exceptional situations and only when the usual democratic instruments of governance are not able to cope with the crisis situation.

The decision-making mechanism during states of emergency must take into account human rights and minimum standards of transparency, while the provisions adopted must be subject to parliamentary control and judicial review.

The extension of a state of emergency must in all cases be justified and subject to additional safeguards, such as time limits or the need for a qualified majority of Members of Parliament.

---

avocatul  
poporului  
OMBUDSMAN

---

<sup>1</sup> Constitution of the Republic of Moldova, Article 66, available at:  
[https://www.legis.md/cautare/getResults?doc\\_id=145723&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro#)

<sup>2</sup> Law 212/2004 on the Regime of State of Emergency, Siege or War, available at:  
[https://www.legis.md/cautare/getResults?doc\\_id=134875&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=134875&lang=ro#)

The hands of power in a democratic state are always tied. They are bound by human rights conventions and the Constitution, which lays down the principle of the separation of powers between institutions that are in balance and control of each other, or the rules on decentralisation. On the other hand, there are situations where States may face the need to take quick and decisive decisions in order to survive.

In the words of Oliver Cromwell, “if you do only what the law allows, the nation’s throat will be cut while we wait for someone to write us a law”.

To effectively respond to a crisis that endangers the entire nation (war, natural disaster, global epidemic) the Government, charged with

immediate welfare of its citizens, needs to untie its hands to react quickly and decisively to remove the danger. However, this does not require abandoning democracy or the rule of law.

State of emergency’s main purpose is to allow the State to effectively respond to a crisis while preserving rule by law. In other words, the suspension of certain laws, the limitation of certain rights and the redistribution of power must also be done by law.

Declaring a state of emergency works like a switch - when you turn it on, there is a transition from the constitutional regime of everyday life to one of emergency. Power is reconfigured - the executive takes more powers from the legislature, has more power over citizens and local administrations. Once the emergency period is over, things return to normal. The legislation on the state of emergency has to make sure that this switch is functioning, is not abused, and contains sufficient safeguards, i.e. it complies with the principles of good governance and the rule of law.

In the last 5 years, the state of emergency in the Republic of Moldova has been imposed 6 times<sup>3</sup>, the last time in December 2024, and extended 12 times. The grounds for this have included the COVID-19 pandemic (which caused the first use of this regime in our country in 2020), the energy crisis, the war in the neighbouring country and the massive influx of refugees that immediately followed and the energy crisis again. In the terms used by the human rights conventions, each of these situations had to be of sufficient seriousness to “threaten the life of the nation” and justify additional powers of the executive and derogations from fundamental human rights.

The variety of emergencies and the anticipation of new situations that could constitute such a danger - from new energy crises, physical and hybrid (including cyber) security risks, to climate change and catastrophic manifestations thereof - allows us to speak about a polycrisis and even permacrisis<sup>4</sup> – a situation where multiple crises occur simultaneously or cause each other in a cycle that makes the threats permanent and makes emergency measures increasingly necessary.

In their turn, crises are always associated with political upheavals, periods of emergency being followed by changes in the structure and dynamics of power in a State, often in an undemocratic direction. This makes the existence of clear safeguards imperative, which do not allow going outside the limits of the rule of law even during a state of emergency and, in particular, prevent the

---

<sup>3</sup> To be calculated, including the Decision of the Parliament of the Republic of Moldova No.49 of 31.03.2021 on declaring a state of emergency: [https://www.legis.md/cautare/getResults?doc\\_id=125901&lang=ro](https://www.legis.md/cautare/getResults?doc_id=125901&lang=ro), declared unconstitutional on 28.04.2021,

<https://www.constcourt.md/libview.php?l=ro&idc=7&id=2172&t=/Media/Noutati/Hotararea-adoptata-de-Parlament-referitoare-la-declararea-starii-de-urgenta-neconstitutionala>

<sup>4</sup> <https://theconversation.com/permacrisis-what-it-means-and-why-its-word-of-the-year-for-2022-194306>

instrumentalization of the state of emergency for undemocratic purposes. Even more important is that a state of emergency should be declared and extended for reasons of real necessity, not convenience.

**Against this background, the clear regulation of emergency regimes - the procedure for declaring them, the powers granted to the authorities, the limits and control over them - becomes indispensable for a democratic State.**

This Report aims to assess the national normative framework in the field of state of emergency from the point of view of good governance standards, the rule of law and human rights, and to suggest recommendations for improvement taking into account the social-political and legislative context in the Republic of Moldova.

This Report was prepared by a reputable expert contracted by the Ombudsman Institution in 2024, who acted independently and objectively. Both the findings and the style of the report belong to the authors and are endorsed and coordinated by the Ombudsman.

The Ombudsman ensures the promotion and protection of fundamental human rights and freedoms, exercising its activity under Article 59<sup>1</sup> of the Constitution of the Republic of Moldova, Law No. 52 of April 3, 2014 on the Ombudsman, the Principles Relating to the Status of National Human Rights Institutions (Paris Principles).

In this respect, the Ombudsman Institution, using its specific mechanisms, examines applications from persons who consider that their fundamental rights and freedoms have been violated, conducts regular preventive and monitoring visits to places of deprivation of liberty, issues reports and recommendations to the authorities concerned, etc. The Ombudsman's reports have become a source of reliable information for the ECtHR, UN CAT/ UN SPT/ CPT<sup>5</sup> on the situation concerning the compliance by the Republic of Moldova with the commitments undertaken to protect and ensure the right to life, physical and mental integrity of persons; protection of asylum seekers or other forms of protection; victims of any form of violation of fundamental rights and freedoms, as well as access to effective remedies in national courts, etc.

The Ombudsman contributes to the protection of human rights and freedoms by preventing violations of human rights and freedoms, monitoring and reporting on compliance with human rights and freedoms at national level, improving legislation in the field of human rights and freedoms, international cooperation in this field, promoting human rights and freedoms and mechanisms for their<sup>6</sup> protection. According to the Law, the Ombudsman has access to any registers, border crossing points, border police sectors, including in restricted areas, making photos data processing, conducting interviews with persons in custody or subject to other restrictions, etc. In addition, the Ombudsman Institution has extensive experience and expertise in the field of monitoring respect for human rights in the custody of law enforcement bodies and bodies responsible for deprivation of liberty. And, monitoring processes are independent, comprehensive, objective and based on methodologies adapted and standardised to the respective qualifications.

---

<sup>5</sup> See CPT Standards "<https://www.coe.int/en/web/cpt/standards> RO

<sup>6</sup> Law 52/2014 on the Ombudsman available at:  
[https://www.legis.md/cautare/getResults?doc\\_id=141519&lang=ro](https://www.legis.md/cautare/getResults?doc_id=141519&lang=ro)

The normative framework regulating the state of emergency comprises the international treaties to which Moldova is a party, the Constitution and the laws and acts implementing the law.

### International standards:

Requirements imposed by international acts in relation to the regulation of states of emergency can be divided into binding (required by international treaties to which the State is a party) and recommended (*soft law*).

International and regional human rights treaties stipulate the possibility to derogate from the protection of rights in emergency situations, so we can say that there is a set of binding international rules that apply when a state of emergency involves restrictions beyond the usual limitation of human rights.

Thereby, Article 15 of the European Convention on Human Rights provides that States Parties may, in exceptional circumstances, derogate temporarily, on a limited and supervised basis, from their obligation to guarantee certain rights and freedoms under the Convention<sup>7</sup>.

The Article lays down procedural and substantive conditions for this. **The substantive conditions** regulate the following issues:

When rights may be derogated from: only in time of war or other public emergency threatening the life of the nation;

The extent to which derogations may be made: only to the extent strictly required by the exigencies of the situation and only to the extent that the derogations are not inconsistent with the State's other obligations under international law;

Rights from which the State may derogate: certain Convention rights allow no derogation (right to life, except for lawful acts of war; prohibition of torture and inhuman or degrading treatment or punishment; prohibition of slavery and servitude and the rule of "no punishment without law", right not to be tried or punished twice).

**The procedural conditions** stipulate that: -

The State availing itself of this right of derogation must keep the Secretary General of the Council of Europe informed thereof.

Similar provisions are contained in the International Covenant on Civil and Political Rights and explained in the General Comments No 5 and No 29 of the Human Rights Committee. In addition to the non-derogable rights set out in the ECHR, the Covenant also includes the prohibition of discrimination, freedom of conscience and the right to recognition everywhere as a person before the law.

---

<sup>7</sup> European Convention on Human Rights, [https://www.echr.coe.int/documents/d/echr/convention\\_ron](https://www.echr.coe.int/documents/d/echr/convention_ron)

The Human Rights Committee reiterates **six specific requirements** that States must comply with if they want to derogate from their human rights obligations: States must

- 1) proclaim a state of emergency,
- 2) formally notify the UN Secretary General of their intent to derogate,
- 3) ensure that derogation measures meet strict tests of necessity and proportionality;
- 4) ensure that derogation measures don't interfere with other international human rights obligations;
- 5) guarantee that derogation measures are applied in a manner that is not discriminatory, and
- 6) uphold non-derogable rights.

At the level of international standards in the soft law category, the opinions, compilations and recommendations of the Venice Commission and the Office for Democratic Institutions and Human Rights of the OSCE<sup>8</sup>, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights<sup>9</sup>, the Paris Minimum Standards of Human Rights in Emergency Situations, adopted by the International Law Association in 1984<sup>10</sup>, can be cited.

These standards cover not only the human rights derogations regime, but also include the perspective of the functioning of the rule of law. These recommendations aim to ensure a constitutional regime of the state of emergency that maintains the legality and legitimacy thereof. These recommendations usually cover the following issues:

- ✓ Necessity, proportionality and temporary nature of a state of emergency;
- ✓ Grounds and procedures for declaring a state of emergency;
- ✓ Nature and scope of emergency measures;
- ✓ Adoption of emergency measures;
- ✓ Parliamentary, judicial and national human rights institutions control.

We shall refer to these and other recommendations and standards in the following analysis.

### Constitutional regulations:

A state of emergency usually involves derogations from normal human rights standards, as well as changes in the distribution of functions and powers between the different branches of power in the State, which means that it is essentially constitutional in nature<sup>11</sup>.

---

<sup>8</sup> Venice Commission, Compilation of Venice Commission Opinions and Reports on States of Emergency, available at: [https://www.venice.coe.int/WebForms/pages/?p=02\\_EmergencyPowers&lang=EN](https://www.venice.coe.int/WebForms/pages/?p=02_EmergencyPowers&lang=EN)

<sup>9</sup> Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, available at: <https://www.icj.org/resource/siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant-on-civil-and-political-rights/>

<sup>10</sup> Paris Minimum Standards of Human Rights in Emergency Situations, available at: <https://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/ParisMinimumStandards.pdf>

<sup>11</sup> Venice Commission, Emergency powers, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1995\)012](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012)

Most of the world's Constitutions include provisions on emergency regime that allow for a temporary exception from normal constitutional safeguards. These relate in particular to the temporary restriction or suspension of some (but usually not all) constitutional rights; the temporary concentration of power in the executive branch to the detriment of the legislature, and the centralisation of power in the central government to the detriment of sub-national authorities; and, in some cases, the postponement of elections<sup>12</sup>.

Such constitutional provisions prevent a “constitutional rupture” caused by events threatening the State and ensure that the constitutional regime continues to be applied even in emergency situations. In the absence of the state of emergency regime mandated by the Constitution, the Government would be in a position to act outside the constitutional framework (to suspend the Constitution) in order to take emergency measures.

Some constitutions do not mention emergency provisions in the constitutional text (e.g. Norway and Canada), or mention emergencies only in passing—for example, the US Constitution permits the suspension of *habeas corpus*<sup>13</sup> “when in cases of rebellion or invasion public safety requires it”. In these countries, the legislature, rather than the Constitution, determines emergency powers.

In the Netherlands, the Constitution lays down only a general rule which allows the Parliament, by ordinary laws, to define a state of emergency, to declare the legal consequences of an emergency in terms of restrictions on rights and the concentration of powers, and to determine in which cases a state of emergency may be declared<sup>14</sup>.

However, international standards recommend a constitutional approach to states of emergency:

*“Arrangements that give legislatures such broad discretion over how to regulate emergency provisions may be acceptable where there is a strong tradition of constitutionalism and deeply rooted democratic values. However, where legislatures and judiciaries are weak, or where human rights and democratic values are more fragile, this approach could be very perilous. In most contemporary constitution-building processes, there is a strong case for directly regulating states of emergency and emergency powers in the constitution. Since constitutions are supposed to provide procedural certainty, especially in times of crisis, it is prudent to be precise on these points. Moreover, rules on emergency powers are inherently constitutional in nature, since they affect citizens’ rights and can influence a political system’s entire balance of power”<sup>15</sup>.*

The Venice Commission recommends among its standards that “emergency situations capable of giving rise to the declaration of states of emergency should be clearly defined and delimited by the constitution”.

The Constitution of the Republic of Moldova contains no article dedicated to the legal regime of the state of emergency. It only mentions that the declaration of a state of emergency is the competence

---

<sup>12</sup> <https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf>

<sup>13</sup> The right to be protected by the court from unlawful detention.

<sup>14</sup> <https://legislationline.org/taxonomy/term/23638>

<sup>15</sup> <https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf>

of the Parliament (Article 66), that the regulation of the state of emergency is made by organic law (Article 72, paragraph 3), that the Parliament cannot be dissolved (Article 85, paragraph 4), and that the Constitution cannot be amended (Article 142, paragraph 3) during the state of emergency.

Thereby, the fundamental law mandates the legislature to develop the legal framework for the state of emergency.

The lack of regulations at constitutional level which at the very least lay down the grounds, attributions of the various powers and limits thereto is a problem of law, but it also entails practical risks.

Regulating this regime by organic law means that the effects of the state of emergency, including derogations from human rights and the separation of powers regime, have no constitutional basis. However, the effects of the state of emergency operate at the level of Constitutional actors and institutions - it empowers the executive to the detriment of the legislature and justice, allows derogations from constitutional rights, weakens local autonomy.

The Constitutional Court has repeatedly addressed this shortcoming in its decisions on the state of emergency, ruling that (1) in the absence of exceptions expressly established by the Constitution, during a state of emergency, siege or war, *the balance of state powers shall not be altered*<sup>16</sup> and (2) the restriction of rights and freedoms by emergency measures shall take place in accordance with the general standards laid down in Article 54 of the Constitution.

Thereby, in the Court's interpretation, the state of emergency neither affects the constitutional institutions - the balance of powers in the State nor the exercise of rights. And the explanation is that the authors of the Constitution did not regulate such effects in order to prevent "the emergence of dictatorship, given the country's historical past and the fact that most abuses are committed against the background of emergency situations"<sup>17</sup>.

However, both the legal provisions and the practice of implementing emergency measures in the Republic of Moldova contradict this interpretation. Law No. 212 on the State of Emergency, War and Siege stipulates that "during the state of emergency the laws and other normative acts adopted until the establishment of the state of emergency shall act in so far as they do not contravene this law", while the provisions of the Commission for Exceptional Situations often expressly state that they "derogate" from certain laws.

This possibility for the executive branch to derogate from the legal provisions during a state of emergency entails a change in the balance of powers in the State, which should normally be regulated by the Constitution.

Similarly, the institution of derogation from human rights, by notifying the relevant international institutions, involves more than the usual restriction under Article 54 of the Constitution, allowing the

---

<sup>16</sup> "The constitutional organisation of the Republic of Moldova, based on the principle of separation and cooperation of the branches of state power and the exact delimitation of the competences of public authorities involved in the exercise of state power, cannot be changed following the declaration of a state of emergency. Even in these exceptional circumstances, the Constitution does not allow any derogation from this order and a fortiori does not allow the concentration of the branches of state power in a single authority", Decision No. 17 of June 23, 2020, paragraph 95.

<sup>17</sup> *ibid.*

State to effectively suspend certain rights (for example, by banning public assemblies, as decreed in the past by the CES<sup>18</sup>).

#### **Recommendation 1**

The Parliament should consider introducing into the Constitution provisions setting out the grounds, effects and constitutional limits of states of emergency, war and siege. The latter should include provisions for parliamentary control and judicial review of (1) the declaration of a state of emergency, (2) the provisions adopted under a state of emergency.

#### **Legislative framework:**

The state of emergency regime in the Republic of Moldova is governed by the Law No. 212 of April 26, 2004 on the State of Emergency, Siege and War (hereinafter - Law No. 212)<sup>19</sup>, as well as by some provisions of other legislative acts and subordinate to the law. The Law No. 212 establishes the grounds, manner and conditions for declaring a state of emergency, siege or war, the competence of the authorities declaring it, the measures to be applied during the state of emergency, as well as the rights, obligations and liability of legal entities and individuals during this period.

#### **GROUNDS FOR DECLARING A STATE OF EMERGENCY**

Although it contains no article on the grounds for declaring a state of emergency, they can be deduced from the definition of a state of emergency in Article 1 of the Law. Thus, a state of emergency may be declared provisionally in response to:

- a) the outbreak of exceptional situations of a natural, technogenic or biological-social nature, which makes it necessary to prevent, mitigate and liquidate their consequences;
- b) the existence of a danger to national security or constitutional order, which makes it necessary to defend the rule of law, maintain or restore the state of legality;

The grounds described are broad enough to include most situations that would endanger the State and its citizens. An important part of the definition is also the temporary and provisional nature of the exceptional situation. This is in line with international standards and implies that a state of emergency will not be declared to deal with situations which, although serious, are systemic in nature and part of the daily life of society (such as endemic corruption, periodic droughts year after year or every few years, sporadic protests with episodes of violence).

<sup>18</sup> CPR, Position Note: Commission for Exceptional Situations' ban on public meetings is unjustified and abusive, available at: <https://cpr.md/2021/04/08/nota-de-pozitie-interzicerea-intrunirilor-publice-de-catre-comisia-pentru-situatii-exceptionale-este-nejustificata-si-abuziva/>

<sup>19</sup> Law 212/2004 on the Regime of State of Emergency, Siege and War, available at: [https://www.legis.md/cautare/getResults?doc\\_id=134875&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=134875&lang=ro#), art. 2.

It is worth noting that both the ECtHR and the Constitutional Court's case law give a wide margin of appreciation to the State as to what may constitute an exceptional situation or a danger to the existence of the State.

However, one of the conditions for declaring a state of emergency must be that the situation is serious enough to be unmanageable by the ordinary instruments of the legislative power<sup>20</sup>. Therewith, the human rights treaties require that, where the declaration of a state of emergency involves derogation from fundamental rights, the situation justifying it must be of sufficient seriousness to "endanger the life of the nation". In its cases, the ECtHR has also given some definitions of "public emergency threatening the life of the nation": in the case of *Lawless*, the Court speaks of "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community"<sup>21</sup>.

Similarly, the Siracusa Principles also provide criteria for assessing a state of emergency, which justify measures derogating from civil and political rights. They define a threat to the life of the nation as one which:

- (a) affects the entire population and either the whole or part of the territory of the State; and
- (b) threatens the physical integrity of the population, the political independence or territorial integrity of the State or the existence or basic functioning of institutions indispensable to the security and protection of human rights.

Such criteria for the seriousness of the situation justifying the introduction of a state of emergency would improve the definition in Article 1 and, implicitly, the grounds for declaring a state of emergency.

#### **Recommendation 2**

The Parliament should revise the definition of a state of emergency in Article 1 of Law No. 212, or introduce a new rule clearly establishing among the conditions for declaring a state of emergency

(1) that the exceptional situation affects the entire population of the territory for which the state of emergency is declared and threatens the organised life, physical integrity of the population, the political independence or territorial integrity of the State or the existence or basic functioning of the institutions indispensable for the assurance and protection of human rights on that territory, and (2) cannot be managed through ordinary legal instruments.

## **DECLARING A STATE OF EMERGENCY**

According to Law No. 212, a state of emergency, siege or state of war shall be declared by a decision of the Parliament, except in cases of armed aggression against the country, in which the President of the Republic of Moldova shall take measures to repel the aggression, establish a state of war and

<sup>20</sup> Venice Commission, *Respect for Democracy Human Rights and Rule of Law during States of Emergency - Reflections*, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)005rev-e)

<sup>21</sup> Case of *LAWLESS v. Ireland* (No.3), available at: <https://hudoc.echr.coe.int/eng?i=001-57518>, paragraph 28

immediately inform the Parliament. If the Parliament is not in session, it is convened by operation of law within 24 hours of the outbreak of aggression (Article 11).

The specific provisions (Chapter 2 of the Law) on the declaration of a state of emergency (as a regime distinct from a state of siege and war) establish that a state of emergency shall be declared at the proposal of the President of the Republic of Moldova or the Government. Thereby, although the Parliament has the power to declare the establishment of this legal regime, the process shall be initiated by the executive.

When the Parliament declared a state of emergency in March 2021, the draft of the decision was registered by a group of Members of Parliament, which was an argument for demanding the unconstitutionality of that decision. Although, the Constitutional Court did not expressly rule on this argument of unconstitutionality, it did expound on the roles of the different institutions in the declaration of the state of emergency<sup>22</sup>, and the decision was declared unconstitutional under a series of grounds.

Article 19 of Law No. 212, describes how the Government proposes to declare a state of emergency: the Commission for Exceptional Situations shall submit to the Government a report on the necessity to declare a state of emergency, the Government shall examine it as a matter of emergency and shall take the decision to submit the proposal to declare a state of emergency to the Parliament. The Prime Minister then forwards the proposal on the declaration of a state of emergency to Parliament.

The decision on declaring a state of emergency, adopted by the Parliament, must state (Article 13) the reasons, the territory where it is to be imposed, the duration of the imposition, the urgent measures to be taken and the competent bodies responsible for the implementation thereof.

Although in practice, the declaration of a state of emergency is usually accompanied by an information note containing the findings of the CES report on which the Government's proposal is based, given the importance of the justified nature of the state of emergency, the law could establish an express requirement to this effect. This will bring more transparency, clarity but also confidence that the state of emergency is indeed necessary and will allow society to debate the necessity thereof.

---

<sup>22</sup> “With regard to compliance with the procedure for declaring a state of emergency, the Court observes that the Constitution does not give Parliament sufficient instruments to collect on its own initiative information on possible dangers likely to seriously affect the functioning of the State or the ordinary life of the population. The competent authority to collect information on the actual situation in the country, including information on possible social dangers, and to assess the need to declare a state of emergency is the Government, which is responsible for the implementation of the State's internal and foreign policy and exercises the general direction of the public administration [Article 96 paragraph (1) of the Constitution], and the President of the Republic of Moldova if the need for a state of emergency is required, inter alia, to ensure national security or public order [Articles 77 and 87 of the Constitution].

Thereby, although the Parliament may declare a state of emergency, this competence becomes active when the necessity of declaring a state of emergency is requested and duly motivated by the competent public authority. Otherwise, the provisions of Articles 1 paragraph (3), 6 and 73 of the Constitution are infringed”, <https://www.constcourt.md/libview.php?l=ro&idc=7&id=2172&t=/Media/Noutati/Hotararea-adoptata-de-Parlament-referitoare-la-declararea-starii-de-urgenta-neconstitutionala>

### Recommendation 3

The Parliament should include a paragraph in Article 19 stating that the report on the necessity of declaring a state of emergency drawn up by the CES shall be made public, insofar as it does not contain information of a limited nature.

## DURATION AND EXTENSION OF THE STATE OF EMERGENCY

According to Article 18 of Law No. 212, a state of emergency may be imposed for a period not exceeding 60 days. Depending on the evolution of the situation, the Parliament may extend the duration of the state of emergency at the request of the President or the Government, may extend or restrict the (geographical) area of action of the state of emergency.

The law does not set a limit on the number of extensions, or a temporary limit on the state of emergency extended. Other States have established additional safeguards in this regard by regulating a qualified majority in parliament for the extension of the state of emergency (e.g. ⅔, in South Africa) or by establishing a limit on the total period of the state of emergency (e.g. with all extensions the state of emergency cannot exceed two years).

According to the Venice Commission:

*"[...] the prolongation of a state of emergency is not always the best solution to re-establish public security and restore the rule of law. Experience in certain other countries shows that the longer the emergency regime lasts, the further the State is likely to move away from the objective criteria that may have validated the use of emergency powers in the first place. The longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools."*<sup>23</sup>

*Continuing this logic, if the conditions that led to the state of emergency persist (be it natural disasters or threats to state security), the authorities should strive to address the situation through ordinary legislation so that the state of emergency does not need to be prolonged.*

### Recommendation 4

The Parliament should establish limits on the number of extensions of the state of emergency, a qualified majority of votes in the Parliament for further extensions and/or a limit on the total duration of the state of emergency (including extensions).

<sup>23</sup> Venice Commission, Compilation of Venice Commission Opinions and Reports on States of Emergency, available at: <https://rm.coe.int/venice-commission-Compilation-on-states-of-emergency-ro/16809e85ba> , p. 21

## EFFECTS OF THE STATE OF EMERGENCY

---

### Effects on the normative framework

Article 4 of the Law establishes the pre-eminence of Law No. 212 over other laws in force, the abrogation by law of emergency provisions upon the end of the state of emergency, war or siege, the extension by law of the mandate of the Parliament and the President (Article 11).

Provision of Article 4 paragraph 1 – “during the period of a state of emergency, siege or war, the laws and other normative acts adopted until the establishment of that state of emergency, siege or war shall act to the extent that they do not contravene this Law” – resolves a possible conflict of rules between Law No. 212 and other acts in favor of the former. This rule does not fall within the normal framework for resolving conflicts of laws provided for in Articles 5 and 6 of Law No. 100 on normative acts, and it is not based (solely) on the special or derogatory nature of the rule, nor on the organic nature of the law. It is therefore recommended that the legislator ensures the consistency of the conflict of laws legislation by amending Law No. 100.

#### **Recommendation 5**

The Parliament should stipulate the applicability of the rules of Law 212 in case of conflict with other laws by constitutional regulation, either by introducing a special provision to this effect in Law No. 100 on normative acts.

Similarly, although in practice the CES provisions adopted during the state of emergency often contain binding provisions derogating from the laws in force, neither the Constitution, nor Law No. 212, nor the legislation on normative acts contains any rule that univocally establishes the applicability of the derogating rule in the CES provision to the rule in the law or other normative act.

#### **Recommendation 6**

The Parliament should expressly regulate the possibility for the CES to derogate by its provisions, during a state of emergency, from the laws and other normative acts in force.

### Emergency measures / CES provisions

The Law No. 212 establishes that during a state of emergency, siege or war, certain powers of the central and local public administration are entrusted to the emergency management bodies, in the manner established by the Government, and the central and local public administration authorities exercise only those powers that have not been delegated to these bodies.

During a state of emergency, the coordination of the measures imposed is managed by the Commission for Exceptional Situations (Article 21), although the wording of the Article suggests that its activity is

limited to situations requiring the management of “exceptional situations of a natural, technogenic or biological-social nature”. The legislator should revise this article to make it clear that the CES also manages the situation described in the second part of the definition in Article 1 (“the existence of a danger to national security or constitutional order, which makes it necessary to defend the rule of law, maintain or restore the state of legality”), as is the case in practice.

The Law lays down a series of tasks of the CES and measures on managing the state of emergency. From March 2020, this list is an open-ended one, with the Parliament then adding to the exhaustive list in the Law the phrase “other necessary measures/tasks”.

While flexibility is indeed needed to effectively manage an emergency situation, the law should also set certain limits to the possible measures derogating from the law.

In general terms these limits should be linked to the *necessity* of the measure to overcome the state of emergency, the *proportionality* thereof.

According to the Venice Commission<sup>24</sup> the power of the executive (in our case the CES) to issue legislative acts in times of emergency should be limited both in terms of content and of time: such acts should only relate to issues related to the exceptional situation and they should not remain in force beyond the state of emergency. Certainly, a state of emergency must not become a way of simply circumventing the normal legislative process.

In other countries, the legislator has been more precise in delimiting the powers of the executive during a state of emergency.

For example, the Constitution of Argentina (Article 99.3) allows the President to issue emergency decrees “when exceptional circumstances make it impossible to follow the regular procedures established by this Constitution for the adoption of laws”. However, they may not “involve rules regulating criminal, fiscal or electoral matters or the system of government of political parties”, and must be issued not by the President acting alone, but by a general assembly of the Cabinet of Ministers.

In the case of the Republic of Moldova, a series of areas could also be established, in which the CES cannot and should not intervene through provisions.

#### **Recommendation 7**

The Parliament should expressly provide that the measures adopted by the CES during the state of emergency must be necessary to overcome the situation which led to the declaration of the state of emergency and proportionate to the aim pursued. At the same time, it should lay down regulatory areas in which the CES may not derogate from the law.

---

<sup>24</sup> Venice Commission, Respect for Democracy Human Rights and Rule of Law during States of Emergency - Reflections, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2020)005rev-e)

A state of emergency involves the concentration of powers in the executive branch of power, to the detriment of the legislature. The possibility of derogating from the legislation in force by means of emergency measures entails risks and problems of legality and legitimacy. This is why the international recommendations suggest that governments establish some form of Parliamentary control over the exercise of emergency powers.

According to the Siracusa Principles, the national Constitution and the laws regulating states of emergency must provide a prompt and regular independent review by the legislature of the necessity of measures derogating from human rights.

The Venice Commission suggests, as a solution combining the principle of the supremacy of the legislature with the need for speed and decisive action, a mechanism whereby all government provisions issued under emergency powers are promptly submitted to the legislature, either for approval or to give it the opportunity to disapprove them.

The Law No. 212 does not expressly provide any form of supervision by the legislature of the state of emergency regime. The Parliament's role is limited to establishing and possibly prolonging the state of emergency, with no possibility to intervene in or evaluate the decisions taken by the executive/CES (the presence in the CES of some Members of Parliament is not sufficient to have genuine parliamentary control).

This has been reported in 2020 by the Constitutional Court, which also issued an address to the Parliament suggesting the regulation of an effective parliamentary control mechanism over the measures ordered by the Executive during the state of emergency<sup>25</sup>. The address was formulated following the Decision No. 17 of 23.06.2020 for the constitutionality review of some provisions of Law No. 212<sup>26</sup> in which the Court found that the Law on the Regime of State of Emergency, Siege and War does not establish sufficient mechanisms that would allow the Parliament to verify whether the authorities responsible for managing the state of emergency act within the limits provided by law. According to the Court, parliamentary control is necessary to compensate for the imbalance of powers in the State created by the increased powers given to the Executive and to ensure respect for the principle of pre-eminence of law.

Similarly, the European Commission in its report on EU enlargement in 2023 suggests that “the Government should adopt a mechanism for effective parliamentary control of decisions issued by the

---

<sup>25</sup> Address No. PCC-01/47a dated 23.06.2020, available at:  
<https://www.constcourt.md/ccdocview.php?l=ro&tip=adrese&docid=133>

<sup>26</sup> Decision of the Constitutional Court No. 17 of 23.06.2020 for the constitutionality review of some provisions of Law No. 212 of June 24, 2004 on the Regime of State of Emergency, Siege and War and some provisions of the Parliament Decision No. 55 of March 17, 2020 on the declaration of state of emergency, available at:  
<https://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=738>

Commission for Emergency Situations, in line with the Siracusa Principles”<sup>27</sup>. This recommendation became part of the National Action Plan for Moldova’s accession to the European Union for 2024-2027<sup>28</sup> with an implementation deadline of December 2024.

A draft law to this effect was registered in the Parliament in March 2023, but at the time of writing, after the end of the second ordinary session in 2024, it has not been adopted in any legislative session.

The draft law stipulates that some, but not all, of the measures in the provisions and orders of the bodies responsible for managing the state of emergency (CES)<sup>29</sup> “shall be communicated without delay to Parliament, which shall convene in session and examine them within 5 days. If these acts are not submitted to Parliament or if Parliament does not approve them within the set time limit, they lose their legal force retroactively”.

Limiting parliamentary control to only a few categories of measures seems arbitrary, and does not present a solution to the problem of lack of parliamentary control of the CES. This was also pointed out in the opinions on the draft law<sup>30</sup>. The Parliament should ensure control, if not of all measures in the CES provisions, at least of those that affect human rights and the balance of power between the legislature and the executive (which derogate from the legislation in force), especially in the context of the European Commission's recommendation to establish parliamentary control, after the CES ordered the disqualification of several candidates in the 2023 local elections and in the context of the CES provisions that affected the right to freedom of assembly<sup>31</sup>. Alternatively, the Law could provide a presumption of approval of the measures if the Parliament fails to comment thereon.

#### **Recommendation 8**

The Parliament should amend the Law No. 212 by stipulating that "the Parliament shall subject to parliamentary control any measure applied during the state of emergency by the competent bodies.

<sup>27</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, Brussels, 8.11.2023, available at: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_698%20Moldova%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_698%20Moldova%20report.pdf), p. 14.

<sup>28</sup> Parliament Decision No. 829/2023 on the approval of the National Action Plan for Moldova's accession to the European Union for 2024-2027, available at: [https://www.legis.md/cautare/getResults?doc\\_id=141820&lang=ro](https://www.legis.md/cautare/getResults?doc_id=141820&lang=ro), p. 28

<sup>29</sup> “g) amendment of the procedures for appointing, suspending, dismissing, releasing and terminating the employment or service relationships of heads of public authorities and institutions, state and municipal enterprises;

i<sup>1</sup>) introduction of special rules on the admission, stay and documentation of foreign nationals, with the application and respect of specific measures ordered by the competent authorities;

j<sup>1</sup>) re-profiling and changing the purpose and mode of activity of public and private institutions, according to the necessities caused by the emergency situation;

<sup>30</sup> Opinion of the Legal Directorate-General <https://parlament.md/f5612589-5a3b-4af5-ba9c-4b28b0df0991>

<sup>31</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, Brussels, 8.11.2023, available at: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_698%20Moldova%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_698%20Moldova%20report.pdf), p. 38

The provisions and orders disposing of the measures referred to in paragraph (I) shall be promptly communicated to the Parliament, which shall convene in session and examine them within 5 days. Parliament may decide to fully or partially repeal certain measures.”

The draft law also stipulates that after the expiry of the period for which a state of emergency has been declared, the Commission for Exceptional Situations of the Republic of Moldova will submit a report to the plenum of the Parliament, which will include information on the measures adopted and the impact thereof on the resolution of the exceptional situation, the assessment of the situation at the end of the period for which a state of emergency has been declared and the list of acts adopted for the period of the state of emergency. In the light of its findings on the development of the situation, Parliament shall decide whether to extend the duration of the state of emergency and whether to extend or restrict its scope during the period for which it has been extended.

Even in the absence of the legal requirement, in 2024, the CES presented to the Parliament a Report on the actions taken during the state of emergency (October 22, 2021 - December 30, 2023)<sup>32</sup>.

While the presentation of the CES report to Parliament is welcome, the legislature could play a more active role in assessing the work of the competent bodies during a state of emergency. The Venice Commission recommends that parliaments use their general *post-hoc* control powers to conduct inquiries and investigations to assess the execution of emergency powers.

In addition, the State could encourage monitoring and assessment efforts of the state of emergency by civil society organisations specialised in governance by law and human rights.

## JUDICIAL REVIEW

International standards suggest that, in addition to Parliament, the judiciary plays a crucial role in controlling the prerogatives of the executive during states of emergency. It should have the power to take decisions on:

- ✓ the legality of declaring a state of emergency
- ✓ the review of the legality of specific emergency measures.

According to the Venice Commission, judicial review of the declaration of a state of emergency may be limited to review of the procedural aspects of the declaration, but in the case of measures involving derogations from human rights, the substantive reasons for the state of emergency must also be subject to judicial review.

<sup>32</sup> Government of the Republic of Moldova, Report on actions taken during the state of emergency (October 22, 2021 - December 31, 2023), available at: <https://gov.md/ro/content/raport-privind-actiunile-intreprinse-pe-perioada-starii-de-urgenta-22-octombrie-2021-31>

As for judicial review of the acts of the authorities regulating the emergency situation, the Commission suggests that this should always be possible, as they constitute typical unilateral administrative acts and actions. Even in the case of decisions executed immediately, there must be the possibility of *ex post* judicial challenge. This is especially crucial in cases where emergency provisions infringe human rights. In such cases judicial remedies must always be available. In particular, the court must be able to assess whether the emergency measures:

- ✓ comply with the criteria of legality, necessity and proportionality in relation to the situation that led to the state of emergency;
- ✓ do not infringe rights from which derogation has not been declared or is not possible.

Judicial review of the state of emergency implies, not explicitly, that, during the state of emergency, the justice system must preserve its functionality, prerogatives, independence and ensure the right to a fair trial. Thus, even if the state of emergency imposes certain limits on the exercise of judicial power, it cannot limit the very possibility to challenge/verify emergency measures. The Venice Commission concludes that the functioning of the judiciary should be restricted only when absolutely necessary or when its functioning is factually impossible.

The Law No. 212 includes no provisions on judicial review of the declaration of a state of emergency or of the measures taken following the declaration thereof. However, given that a state of emergency is declared by a decision of the Parliament, it can be subject to review by the Constitutional Court in general order (which has happened repeatedly).

On the other hand, the CES provisions adopted under the state of emergency can be challenged in the administrative contentious proceedings. Thereby, Article 225 of the Administrative Code ("Limits of judicial review") stipulates that "individual administrative and normative acts and regulations related to the national security of the Republic of Moldova, to the exercise of the regime of exceptional state, to emergency measures taken by public authorities to combat natural disasters, fires, epidemics, epizootics and other similar phenomena, the court may be notified only for exercising control over the following circumstances:

- a) existence of the exceptional situation at the time when the act was issued;
- b) competence of the public authority to issue the act;
- c) existence of the public interest justifying the issuance of the administrative act;
- d) effective impossibility of the public authority to issue the act under ordinary conditions;
- e) proportionality, in accordance with Article 29, of the measures adopted by administrative act."

Verification of proportionality has been included<sup>33</sup> among the circumstances subject to judicial review after the Constitutional Court's Decision No. 17 of June 23, 2020, by which it declared unconstitutional Article 225 paragraph (3) of the Administrative Code in the part that limits the competence of the courts to conduct the proportionality review of the measures ordered by the public authority.

---

<sup>33</sup> Law 155/2022 on amending some normative acts, available at:  
[https://www.legis.md/cautare/getResults?doc\\_id=135221&lang=ro](https://www.legis.md/cautare/getResults?doc_id=135221&lang=ro)

Thereby, the legislation provides for judicial review of both the declaration of a state of emergency and the measures adopted by the authorities pursuant thereto. However, the current positioning of the provision in the Administrative Code, as well as its wording, requires revision.

It is recommended to regulate it in a separate article rather than in an article dedicated to "Limits of judicial review". The scope of the review should also include the criterion of necessity, assessing whether the measure adopted is indispensable to overcome the exceptional situation, as described in the judgment declaring a state of emergency. Therewith, the terminology should be harmonised with the terminology laid down in Law No. 212, in order to ensure consistency and clarity of the legal rules.

#### **Recommendation 9**

The Parliament should regulate in a separate article in Law No. 212 the possibility of challenging the measures applied during the state of emergency by the competent bodies in administrative contentious proceedings.

#### **Recommendation 10**

The Parliament should replace Article 225 paragraph 3 of the Administrative Code with a separate article dedicated to Judicial review of the measures adopted in the context of the state of emergency, laying down the order and subject matter of the judicial review (including the verification of the necessity and proportionality of the measures).

## **ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

---

According to international recommendations, parliamentary control and judicial review should also be complemented by monitoring by national human rights institutions (NHRIs), in particular the Ombudsman Institution. According to the Venice Commission, through their mandate to promote and protect human rights, the Ombudsman institutions can play a crucial role in raising human rights concerns in times of emergencies and can assist citizens affected by emergency measures.

An ODIHR guide on the role of NHRIs in emergencies recommends that NHRIs should have a proactive role not only during the state of emergency, but also in the context of declaration thereof by state authorities and after its end.

Thereby, due to the specific role, status and structure thereof, in times of public emergency, the NHRIs can:

- ✓ Act as bridges between individuals and the State by raising issues of concern to citizens and non-citizens with the authorities;

- ✓ Act as bridges between civil society and the State by creating platforms for communication between civil society and government to discuss emergency measures or, if this is not possible, by raising issues of concern to CSOs and relaying their ideas where appropriate;
- ✓ Communicate with Parliament and Government in the process of drafting legislation and policies and in providing prompt feedback;
- ✓ Act preventively and protectively with regard to respect for human rights and fundamental freedoms;
- ✓ Provide protection against discriminatory measures;
- ✓ Supervise concrete measures (or inaction) taken by the executive and act as observers on the protection of rule of law standards, etc.;

Neither the Law No. 212, nor the Law on the Ombudsman or the Law on Ensuring Equality contain provisions on the role of the NHRI in the institutional framework of the state of emergency. However, Law No. 52 of April 3, 2014 on the Ombudsman includes the guarantee of the plenipotentiary mandate of the Ombudsman during the state of emergency (“The declaration of a state of emergency, siege or war throughout the country or in some localities neither suspends the activity of the Ombudsman nor restricts his powers”)<sup>34</sup>.

Thereby, during the state of emergency, the NHRIs should continue to exercise their statutory powers in terms of: examining and resolving applications and complaints, submitting proposals and recommendations to the authorities (including those responsible for managing the state of emergency, contributing to the improvement of legislation, monitoring and promoting respect for human rights. In the context of a state of emergency, the Ombudsman Institution, as a subject with the right to refer a matter to the Constitutional Court, has the possibility to request a constitutional review of the declaration of a state of emergency.

However, given the potential impact of the state of emergency on human rights, the role of the NHRI should be strengthened both at the stage of the declaration of the state of emergency and the adoption of emergency measures by the CES.

In the run-up to the declaration of a state of emergency, NHRIs should ensure that it is indeed justified and scrutinise how the declaration may impact on human rights. To this end, it is good practice for NHRIs to be consulted on a mandatory basis by the authorities empowered to declare a state of emergency, for example by issuing opinions.

#### **Recommendation 11**

The Parliament should include in the Law No. 212 the need for a binding opinion by the Ombudsman and the Equality Council on the CES report on the need to declare a state of emergency and Parliament's Decision to that effect.

<sup>34</sup> Law 52/2014 on the Ombudsman, available at: [https://www.legis.md/cautare/getResults?doc\\_id=141519&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=141519&lang=ro#), Article 5, paragraph 6

Therewith, given the experience of recent years in the management of the state of emergency by the CES and the numerous cases in which disproportionate limitation of human rights (ban on assemblies, withdrawal of media licences, cancellation of registration of candidates for elections) including indirect discrimination of different groups (anti-pandemic measures with disproportionate effect on vulnerable persons) has been claimed, it is also necessary to include a human rights based approach (HRBA) in the adoption of the Commission's provisions.

This can be achieved by including the NHRI representatives in the CES as observers. In fact, an initiative to this effect was launched as early as 2021, targeting both the CES and the National Extraordinary Public Health Commission (NEPHC)<sup>35</sup>.

#### **Recommendation 12**

The Government should amend the composition of the CES in order to include representatives of the People's Advocate and the Equality Council, as well as human rights experts from civil society in the Commission, at least with observer status.

### **CIVIC CONTROL, TRANSPARENCY AND PUBLIC PARTICIPATION**

---

Independent monitoring by civil society and citizens' involvement in decision-making processes should complement the other safeguards for respect for the rule of law and human rights during a state of emergency.

Monitoring reports from specialised NGOs can complement or contradict official ones, increasing the democratic accountability of authorities for decisions taken and enhancing the quality of the State's response to crisis situations. Such initiatives should be supported by the State and international partners.

#### **Recommendation 13**

The Government should encourage and support efforts made by civil society organisations to monitor the state of emergency. The international donors should provide support to these initiatives.

For such monitoring to be possible, authorities need to ensure high standards of access to information both through pro-active publication of information and the release of information on request. Moreover, given that informing citizens is crucially important in times of emergency, these standards

---

<sup>35</sup> CPR, Public Appeal on the Human Rights-Based Approach in the Decisions of the National Extraordinary Public Health Commission, available at: <https://cpr.md/2021/11/22/apel-public-cu-privire-la-abordarea-bazata-pe-depturile-omului-in-hotararile-cnesp/>

should be increased and not reduced, as was the case, for example, in 2021 when the CES provisions extended the deadlines for considering petitions and requests for information<sup>36</sup>.

Therewith, the decision-making processes related to the state of emergency must be open for citizens' participation, as required by Law No. 239 on Transparency in the Decision-Making Process<sup>37</sup>. Currently, the legislation does not limit the right to participate during periods of emergency, and the exceptions from the obligation to publicly consult draft decisions only concern processes that relate to information with limited accessibility and operational meetings. We believe that these regulations are sufficient, but need to be implemented in practice. In addition, the authorities could also examine the possibility of including civil society representatives as observers in the CES.

#### **Recommendation 14**

The Government should ensure compliance by the CES with the Law No. 148 on Access to Information of Public Interest, including the pro-active publication (Chapter 2 of the Law) of information of public interest, and the Law No. 239 on Transparency in the Decision-Making Process.

## **RECOMMENDATIONS**

---

### **To the Parliament of the Republic of Moldova:**

1. Consider introducing into the Constitution provisions setting out the grounds, effects and constitutional limits of states of emergency, war and siege. The latter should include provisions for parliamentary control and judicial review of (1) the declaration of a state of emergency, (2) the provisions adopted under a state of emergency.
2. Revise the definition of a state of emergency in Article 1 of Law No. 212, or to introduce a new rule clearly establishing among the conditions for declaring a state of emergency (1) that the exceptional situation affects the entire population of the territory for which the state of emergency is declared and threatens the organised life, physical integrity of the population, the political independence or territorial integrity of the State or the existence or basic functioning of the institutions indispensable for the assurance and protection of human rights on that territory, and (2) cannot be managed through ordinary legal instruments.
3. Include a paragraph in Article 19 stating that the report on the necessity of declaring a state of emergency drawn up by the CES shall be made public, insofar as it does not contain information of a limited nature.
4. Establish limits on the number of extensions of the state of emergency, a qualified majority of votes in the Parliament for further extensions and/or a limit on the total duration of the state of emergency (including extensions).

---

<sup>36</sup> CPR, Article "How Authorities Use the State of Emergency to Limit Access to Information and the Right to Petition", available at: <https://cpr.md/2021/04/28/cum-autoritatile-utilizeaza-starea-de-urgenta-pentru-a-ingradi-accesul-la-informatie-si-dreptul-la-petitionare/>

<sup>37</sup> Law 239/2008 on Transparency in the Decision-Making Process, available at: [https://www.legis.md/cautare/getResults?doc\\_id=142655&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=142655&lang=ro#)

5. Provide for the applicability of the rules of Law 212 in case of conflict with other laws by constitutional regulation, either by introducing a special provision to this effect in the Law No. 100 on normative acts.
6. Expressly regulate the possibility for the CES to derogate by its provisions, during a state of emergency, from the laws and other normative acts in force.
7. Expressly provide that the measures adopted by the CES during the state of emergency must be necessary to overcome the situation which led to the declaration of the state of emergency and proportionate to the aim pursued. At the same time, lay down regulatory areas in which the CES may not derogate from the law.
8. Amend the Law No. 212 by stipulating that “The Parliament shall subject to parliamentary control any measure applied during the state of emergency by the competent bodies. The provisions and orders disposing of the measures referred to in paragraph (I) shall be promptly communicated to the Parliament, which shall convene in session and examine them within 5 days. The Parliament may decide to fully or partially repeal certain measures.”
9. Regulate in a separate article in the Law No. 212 the possibility of challenging the measures applied during the state of emergency by the competent bodies in administrative contentious proceedings.
10. Replace the Article 225 paragraph 3 of the Administrative Code with a separate article dedicated to Judicial review of the measures adopted in the context of the state of emergency, laying down the order and subject matter of the judicial review (including the verification of the necessity and proportionality of the measures).
11. Include in the Law No. 212 the need for a binding opinion by the Ombudsman and the Equality Council on the CES report on the need to declare a state of emergency and Parliament's Decision to that effect.

#### **To the Government of the Republic of Moldova:**

1. Amend the composition of the CES in order to include representatives of the People's Advocate and the Equality Council, as well as human rights experts from civil society in the Commission, at least with observer status.
2. Encourage and support efforts by civil society organisations to monitor the state of emergency. International donors should provide support to these initiatives.
3. Ensure compliance by the CES with the Law No. 148 on Access to Information of Public Interest, including the pro-active publication (Chapter 2 of the Law) of information of public interest, and Law No. 239 on Transparency in the Decision-Making Process.

#### **To Development Partners:**

1. Provide support to initiatives to monitor the state of emergency by civil society organisations from a perspective of rule of law and human rights.