

STATE OF SIEGE AND STATE OF EMERGENCY LAW

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CHAPTER I

General provisions

ARTICLE 1.º

(State of exception)

1 - A state of siege or a state of emergency may only be declared in cases of actual or imminent aggression by foreign forces, serious threat or disturbance of the democratic constitutional order or public calamity.

2 - The state of siege or the state of emergency, declared in the manner provided for in the Constitution, shall be governed by the applicable constitutional rules and by the provisions of this law.

ARTICLE 2.

(Guarantees of citizens' rights)

1 - The declaration of a state of siege or a state of emergency shall in no case affect the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of criminal law, the defendants' right of defence and freedom of conscience and religion.

2 - Where it may take place, suspension of the exercise of rights, freedoms and guarantees shall always respect the principle of equality and non-discrimination and be subject to the following limits:

a) - residence fixation or detention of persons on grounds of breach of the security rules in force shall always be communicated to the competent investigating judge within a maximum of 24 hours after the occurrence, by ensuring in particular the right of habeas corpus;

b) - conduct of house searches and collection of other means of obtaining evidence shall be reduced to a record, in the presence of two witnesses, whenever possible residing in the respective area, and communicated to the investigating judge, accompanied by information on the causes and the respective results;

c) - Where freedom of movement of persons and circulation of vehicles are restricted or prohibited, authorities shall ensure that the necessary means for compliance with the provisions of the declaration are available, in particular with regard to the transport, accommodation and maintenance of the citizens concerned;

d) - Any type of publications, radio and television broadcasts, film or theatrical performances may be suspended, as well as the seizure of any publications, but these measures cannot include any form of prior censorship;

e) - Meetings of the statutory bodies of political parties, trade unions and professional associations shall under no circumstances be prohibited, dissolved or subjected to prior authorisation.

2 - Citizens whose rights, freedoms and guarantees have been violated by a declaration of a state of siege or emergency, or by a measure adopted to that effect, which is unconstitutional or illegal, particularly by illegal or unjustified deprivation of liberty, shall be entitled to compensation in general terms.

ARTICLE 3

(Proportionality and appropriateness of the measures)

1 - The suspension or restriction of rights, freedoms and guarantees provided for in Articles 8 and 9 shall be limited, in particular as regards their extent, duration and means employed, to what it is strictly necessary for a prompt return to normality.

2 -The declaration of a state of siege or a state of emergency may only alter constitutional normality under the terms laid down in the Constitution and in this law, and may not affect the application of constitutional rules on the competence and functioning of the sovereign bodies and organs of self-government of the autonomous regions, as well as the rights and immunities of their holders.

ARTICLE 4

(Territorial scope)

A state of siege or emergency may be declared in respect of the whole or part of the national territory, depending on the geographical scope of its decisive causes, and may only be declared in respect of the area in which its application is necessary to maintain or restore normality.

ARTICLE 5

(Duration)

1 - The state of siege or the state of emergency shall be limited in duration to what is necessary to safeguard the rights and interests which it seeks to protect and to restore normality and shall not extend for more than fifteen days, without prejudice to possible renewal for one or more periods, with the same limit, in the event that its determining causes subsist.

2 - The duration of the state of siege or emergency shall be fixed with reference to the day and time of its commencement and termination.

3 - Where circumstances permit, the renewal of the declaration of a state of siege shall be replaced by a declaration of a state of emergency.

ARTICLE 6

(Access to Courts)

During a state of siege or a state of emergency, citizens shall retain their full right of access to the courts, in accordance with general law, to defend their rights, freedoms and guarantees damaged or threatened with damage by any unconstitutional or illegal measures.

ARTICLE 7

(Crime of disobedience)

Violation of the provisions of the declaration of the state of siege or of the state of emergency or of this law, in particular with regard to the execution thereof, incurs the respective authors in a crime of disobedience

ARTICLE 8

State of siege and state of emergency

1 - A state of siege is declared when acts of force or insurrection are taking place or are imminent, which call into question sovereignty, independence, territorial integrity or democratic constitutional order and cannot be eliminated by the normal means provided for in the Constitution and the law.

2 - In accordance with the declaration of a state of siege, the exercise of rights, freedoms and guarantees may be suspended or restricted in whole or in part, without prejudice to Article 2, and civil authorities shall be subordinated to military authorities or replaced by them.

3 - During a state of siege, security forces shall be placed for operational purposes under the command of the General Chief of Staff of Armed Forces through their commanders-general.

- Civil administrative authorities shall continue to exercise powers which, under this law and the declaration of a state of siege, have not been affected by the powers conferred on military authorities, but shall in any case provide them with the information requested.

ARTICLE 9º

(State of emergency)

1 - State of emergency is declared when there are less serious situations, namely when there are or threaten to occur cases of public calamity.

2 – In the declaration of a state of emergency, only partial suspension of the exercise of rights, freedoms and guarantees can be determined, without prejudice to the provisions of article 2, providing, if necessary, for strengthening the powers of civil administrative authorities and the support to them by the armed forces.

CHAPTER III

The declaration

ARTICLE 10

(Competence)

1 -The declaration of a state of siege or a state of emergency shall be made by the President of the Republic and shall be subject to the hearing of the Government and the authorisation of the Assembly of the Republic or, when it is not convened and its immediate meeting is not possible, of the respective Standing Committee.

2 - When authorised by the Standing Committee of the Assembly of the Republic, the declaration of a state of siege or a state of emergency shall have to be ratified by the Plenary as soon as possible.

3 - Neither the Assembly of the Republic nor its Standing Committee may authorize and confirm the authorization with amendments.

ARTICLE 11

Form

The declaration of a state of a state siege or emergency takes the form of a decree by the President of the Republic and requires a government countersignature.

ARTICLE 12

(Modification)

In the event of a change in circumstances which has led to a declaration of a state of siege or a state of emergency, the steps and measures contained in the declaration may be extended or reduced in accordance with the procedure laid down in Article 26.

ARTICLE 13

(Cessation)

1 - In the event of cessation of the circumstances that have determined the declaration of a state of siege or state of emergency, it shall be immediately revoked by a decree of the President of the Republic, countersigned by the Government.

2 - The state of siege or the state of emergency shall automatically cease by the expiry of the period laid down in the respective declaration and, if authorised by the Standing Committee of the Assembly of the Republic, by the refusal of its ratification by the Plenary.

ARTICLE 14

(Contents)

1 - The declaration of a state of siege or a state of emergency shall clearly and explicitly contain the following elements:

- a) Characterization and justification of the declared state;
- b) Territorial scope;
- c) Duration;
- d) Specification of the rights, freedoms and guarantees whose exercise is suspended or restricted;
- e) Determination, in the state of siege, of the powers conferred on military authorities pursuant to Article 8(2);
- f) Determination, in a state of emergency, of the degree of strengthening the civil administrative authorities powers, and support by the armed forces, where appropriate;

2 - Reasons shall be given for the decisive cases referred to in Article 19(2) of the Constitution and for the consequences already noted or foreseeable in terms of changing normality.

ARTICLE 15

(Form of authorisation, confirmation or refusal)

1 - The authorisation or confirmation by the Assembly of the Republic of the declaration of a state of siege or a state of emergency shall take the form of resolution.

2 - When the authorisation or its refusal is deliberated by the Standing Committee of the Assembly of the Republic, it shall take the form of a resolution.

ARTICLE 16

(Contents of the authorization or confirmation resolution)

1 - The resolution authorising the declaration of a state of siege or a state of emergency shall contain the definition of the state to be declared and the detailed delimitation of the scope of the authorisation granted in respect of each of the items referred to in Article 14

2 - The resolution confirming the declaration of a state of siege or a state of emergency shall also contain the elements referred to in the preceding paragraph, but may not restrict the content of the declaration decree.

CHAPTER IV

Implementation of the declaration

ARTICLE 17

(Competence of the Government)

The execution of the declaration of a state of siege or a state of emergency is up to responsibility of the Government, which shall keep the President of the Republic and the Assembly of the Republic informed of its actions.

ARTICLE 18

(Operation of the administrative and supervisory bodies)

1 - In a state of siege or a state of emergency covering the entire national territory, the Supreme Council for National Defence shall remain in permanent session.

2 - The Office of the Prosecutor-General and the Office of the Ombudsman shall also remain in permanent session, for the full exercise of their powers to defend democratic legality and citizens' rights.

ARTICLE 19

(Competence of the authorities)

Subject to the provisions of Articles 8 and 9 and the relevant declaration, the authorities shall, during the state of siege or a state of emergency, take all necessary and appropriate measures to restore normality without delay.

ARTICLE 20

{Execution at regional and local level)

1 - With due regard for the provisions of article 17, and without prejudice to the powers of the Representative of the Republic and of the organs of self-government, the employment of the armed forces for the implementation of the declaration of a state of siege in the autonomous regions shall be ensured by their commander in chief.

2 - In compliance with the provisions of Article 17, the implementation of the declaration of a state of emergency in the autonomous regions shall be carried out by the Representative of the Republic, in cooperation with the regional government.

3 - Within the framework of powers conferred on the military authorities under Article 8(2), the implementation of the declaration of a state of siege on the continental territory at local level shall be carried out by the military commanders in their area of command.

4 – It is responsibility of the government of the Republic, without prejudice to its powers, to appoint the authorities that coordinate the execution of the declaration of a state of emergency at the local level in the continental territory; however, in situations of public calamity, the mentioned coordination is ensured by the operational commanders of the district for relief operations, in the area of the respective jurisdiction.

ARTICLE 21

(Government Commissioners)

In a state of siege or a state of emergency, the Government may appoint commissioners of its own free choice to ensure the operation of public institutes, public and nationalised companies and other companies of vital importance in such circumstances, without prejudice to the provisions of this law concerning the intervention of military authorities.

ARTICLE 22

(Jurisdiction)

1 – Subject to what is stated in the declaration of a state of siege or a state of emergency regarding the rights, freedoms and guarantees the exercise of which has been suspended or restricted, under the terms of the Constitution and the present law, the ordinary courts are upheld, during those situations, in the full exercise of their powers and functions.

2- It is their responsibility, during the same period, to ensure compliance with the constitutional and legal rules governing the state of siege and the state of emergency.

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CHAPTER V

The declaration process

ARTICLE 23

(Request for authorization to the Assembly of the Republic)

- The President of the Republic shall request the Assembly of the Republic, in a reasoned message, for permission to declare a state of siege or a state of emergency.

- The message shall contain the facts justifying the state to be declared, the elements referred to in Article 14(1) and mention of the Government's hearing and the Government's reply.

ARTICLE 24

(Deliberation of the Assembly of the Republic)

1 - The Assembly of the Republic or, when it is not convened and its immediate meeting is not possible, the respective Standing Committee, shall decide on the request for authorisation of the declaration of a state of siege or a state of emergency, in accordance with the Rules of Procedure and the provisions of Article 27.

2- Authorisation and confirmation of the declaration of a state of siege or state of emergency or its refusal by the Plenary of the Assembly of the Republic shall take the form of a Resolution, and the authorisation or refusal by the Standing Committee take the form of a resolution.

3- In addition to the provisions of Article 10(3), authorisation or confirmation may not be conditioned and shall contain all the elements referred to in Article 14(1).

4 – Through the fastest and most appropriate way in the circumstances The Assembly of the Republic shall consult the organs of self-government of the autonomous regions, in accordance with Article 229 of the Constitution, whenever the declaration of a state of siege or state of emergency refers to the respective geographical scope.

ARTICLE 25

(Confirmation of declaration by Plenary)

1 - Confirmation by Plenary of Assembly of the declaration of a state of siege or state of emergency authorised by the Standing Committee of the Assembly of the Republic shall take place in accordance with the Rules of Procedure.

2 - For the purpose of the previous paragraph, the Plenary should be convened in the shortest possible delay as soon as possible.

3 - A refusal to confirm shall not render null and void the acts performed under the unconfirmed declaration and during its validity, without prejudice to Articles 6 and 7

ARTICLE 26

(Renewal, modification and revocation of the declaration)

1 - Renewal of the declaration of a state of siege or state of emergency and its modification to the extent of the respective providences or measures shall follow the procedures laid down for the initial declaration.

2 - The modification of the declaration of a state of siege or of emergency in order to reduce the respective measures or providences, as well as their revocation, shall be made by decree of the President of the Republic, approved by the Government, irrespective of the prior hearing of the latter and the authorisation of the Assembly of the Republic.

ARTICLE 27

(Very Urgent Procedure)

1 - The acts of procedure provided for in the preceding articles are of the utmost urgency and have priority over all others.

2 - For the implementation of the same acts, the Assembly of the Republic or its Standing Committee shall meet and deliberate with dispensation from the statutory time limits, on a permanent basis.

3 - The Resolution of the Assembly of the Republic that grants or refuses authorisation and the decree of the President of the Republic that declares the state of siege, the state of emergency or the modification of any of them without extension or reduction shall be published immediately, and the services necessary for such publication shall be maintained on a permanent basis for this purpose.

ARTICLE 28

(Assessment of the application of the declaration)

1 -Until fifteen days after the cessation of the state of siege or state of emergency or, if the respective declaration has been renewed, until fifteen days after the end of each period, the Government shall forward to the Assembly of the Republic a detailed and, as far as possible, documented report on the providences and measures adopted during the period of validity of the respective declaration.

2 - The Assembly of the Republic, on the basis of this report and of any clarifications and documents that it may deem necessary to request, shall assess the application of the respective declaration, in the form of a resolution voted by the respective Plenary, which shall include, inter alia, the necessary and appropriate measures for the implementation of any civil and criminal liability for violation of the provisions of the declaration of a state of siege or state of emergency or of this law.

3 - When the supervisory powers provided for in the preceding paragraph are exercised by the Standing Committee of the Assembly of the Republic, its resolution shall be ratified by the Plenary Assembly as soon as it is possible assemble it.