

THE ROLE OF CONSTITUTIONAL COURTS IN UPHOLDING THE RULE OF LAW IN EMERGENCY SITUATIONS

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Abstract. *The way in which the security of the State and its democratic institutions, human rights, and the safety of its officials and population are protected in emergency situations constitutes one of the benchmarks of the rule of law. From this perspective, the role of the constitutional courts is a prominent one since the courts are the guarantor of the Constitution, as a fundamental law enshrining all the values and rules of organizing and functioning of the public authorities. In Romania, both the Constitutional Court and the ordinary tribunals have encountered numerous requests from individuals. The citizens have challenged and questioned the acts of public authorities, raising sensitive issues, balancing competing fundamental rights, and, finally, the rule of law as a general principle enshrined in article 1 of the Constitution. In our study, we will present the case law of the Romanian Constitutional Court which is more relevant for the role of this court and constitutional courts in general in protecting democratic values in the context of emergencies, with special reference to the relationship and powers of the public authorities.*

Keywords: rule of law, emergency situations, constitutional courts, constitutional review

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1. Introduction

One of the main reference documents characterizing the complex dimensions of the rule of law is *Rule of law checklist* adopted by the Venice Commission¹. According to this document, a dimension that it should be taken into account to evaluate the respect of rule of law concerns emergency situations: “the exceptions permitted in the cases of emergency require parliamentary control and judicial review of the existence and duration of a declared emergency situation in order to avoid abuse”. Accordingly, the way in which the security of the State and of its democratic institutions, and the safety of its officials and population are protected in that situations, also by the constitutional review, constitutes one of the benchmarks of the rule of law.

Recently, in the context of Covid-19 pandemic, the Venice Commission recalled that «“[it] the concept of emergency rule” is founded on the assumption that in certain situations of political, military and economic emergency, the

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¹ https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf