

**The Law No. 415/June 27, 2002 (\*updated\*)**

on the organization and functioning of the Supreme Council Of National Defense

(updated on July 23, 2009\*)

ISSUED BY: PARLIAMENT

Date of entry into force: August 9, 2002

Consolidated form valid on March 13, 2024

This consolidated form shall be valid from July 23, 2009 to March 13, 2024

-----  
\*) CTCE note:

The updated form of this legal act on March 13, 2024 was produced by the Legal Department of S.C. Centrul Teritorial de Calcul Electronic S.A. Piatra Neamț (CTCE)- Territorial Electronic Computing Centre) by including all the amendments and additions introduced by LAW No. 141 of July 10, 2008; EMERGENCY ORDINANCE No. 224 of December 30, 2008; DECISION No. 1.008 of July 7, 2009.

The content of this document belongs exclusively to S.C. Centrul Teritorial de Calcul Electronic S.A. Piatra-Neamț and it is not an official document, being intended for the users' information.

-----  
The Romanian Parliament adopts this law.

**CAP. I**

General provisions

**ART. 1**

The Supreme Council of National Defense is the autonomous administrative authority invested, according to the Constitution, with the task of organizing and coordinating the activities related to the country's defense and national security.

**ART. 2**

The activity of the Supreme Council of National Defense is subject to parliamentary scrutiny and control. Annually, no later than the first trimester of the following year, as well as at the request of Parliament's specialized committees or whenever necessary, the Supreme Council of National Defense presents, in a joint session of the Chamber of Deputies and the Senate, its report on the activities carried out.

**ART. 3**

In the exercise of its powers, the Supreme Council of National Defense issues decisions, according to the law, which are binding on the public administration authorities and public institutions to which they refer. They are responsible, under the law, for the measures taken to implement them.

**CAP. II**

Tasks

**ART. 4**

The Supreme Council of National Defense has the following tasks:

a) analyzes and/or proposes, according to the law, the promotion of:

1. Romania's national security strategy and the country's national defense strategy;

-----

Point 1 paragraph a) of Article 4 was amended by the sole article of Law No. 141 of July 10, 2008, published in the Official Gazette of Romania No. 533 of July 15, 2008.

2. Romania's military strategy;

3. Romania's strategies on public order and national security, in relation to the responsibilities of the competent institutions;

4. data, information and assessments provided by the intelligence services and other structures responsible for the national security;

b) at the request of the President of Romania, analyzes and proposes measures for:

1. the imposition of curfew or state of emergency in the whole country or in certain localities;

2. the declaration of partial or general mobilization of the armed forces;

3. the rejection of armed aggression directed against the country;

4. the declaration of state of war and its cessation;

5. the initiation, suspension or termination of military action;

c) proposes for approval:

1. the implementation of the plan to mobilize the national economy and the implementation of the state budget, for the first year of war;

2. the necessary measures for the defense and restoration of constitutional order;

d) endorses the drafts of normative acts initiated or issued by the Government regarding:

1. the national security;

2. the general organization of the armed forces and other institutions responsible for the national security;

3. the organization and functioning of the Supreme Council of National Defense;

4. preparing the population, the economy and the territory for defense;

5. the budget proposals of the institutions responsible for the national security;

6. budgetary allocations to ministries and services responsible for defense, public order and national security;

7. the conditions of entry, passage or stationing on Romanian territory of foreign troops;

8. appointment to the positions provided for in the organizational statutes at the rank of General Lieutenant, Vice-Admiral, similar and superior to them;

e) submits for approval to the Commander of the Armed Forces the plans for the use of forces in peacetime, crisis situations or wartime;

f) approves:

1. the basic guidelines for international relations on national security;

2. the drafts of international treaties and agreements on national security or with implications in this area;

3. the establishment of relations with similar entities abroad by institutions and structures responsible for national security;

4. the completion of military structures with personnel, according to the organizational charts in peacetime;

5. the execution of the combat alarm so as to bring military structures into a state that allows them to move, on order, to the performance of combat missions;

6. plans of action on declaration of mobilization and on declaration of state of war;

7. plans of action when a curfew and a state of emergency is declared;

8. the draft of national economy mobilization plan and the draft of state budget plan, for the first year of war;
9. the plan for checking the state of preparedness for defense of the population, through mobilization exercises and training;
10. the distribution of the number of incorporated conscripts to the institutions responsible for national security;
11. the objectives of land readiness meant to ensure the operational needs of the national defense system's forces;
12. the nomenclature and the levels of mobilization reserves;
13. the multiannual programs for the equipping of the national defense system's forces;
14. the militarization, under the law, of economic agents whose activity is directly related to providing the necessary resources for defense;
15. joint plan of intervention of the units of the Ministry of National Defense and the Ministry of the Interior to limit and remove the effects of disasters on national territory;
16. the regime of special telecommunications networks and equipment and criteria for the allocation of subscriber positions to users of these networks;
17. the organizational structure and tasks of the Grand Headquarters;
18. the establishment of the military commander position under the General Headquarters and its powers to ensure unitary leadership in wartime;
19. the persons and objectives who benefit from the protection and security of the Protection and Guard Service and the rules regarding the anti-terrorist protection of Romanian and foreign officials, as well as other officials;
20. the reports and briefings submitted by heads of public administration authorities on national security;
21. the general information search plans submitted by the institutions and structures responsible for national security;
22. the main directions of activity and the general measures necessary for the removal of threats to national security;
23. the organizational structure, staff and operating regulations of the Romanian Intelligence Service, the Foreign Intelligence Service, the Special Telecommunications Service and the Protection and Guard Service;
24. the operational expenditures allocated to achieve national security;
25. the rules on the planning, recording, use, justification and control of operational expenditure for the implementation of national security for the institutions with tasks in this area;
26. the annual budget implementation accounts for operational expenditure for national security purposes of the institutions responsible for national security, after approval of the reports on their activities;
27. the establishment, dissolution, dislocation and redeployment, in peacetime, on national territory, of large military units from brigade echelon upwards, including;
28. proposals for the rank of Marshal, General, Admiral and similar;
- g) coordinates the enrollment process in the European and Euro-Atlantic security structures, supervises the armed forces' adapting

process to NATO requirements and formulates recommendations, in accordance with the standards of the Alliance;

h) appoints and removes from office, in the cases and under the conditions established by law;

i) exercises any other powers provided for by law in the field of defense of the country and national security.

### **CAP. III**

Organization and functioning

### **ART. 5**

(1) The President of Romania serves as President of the Supreme Council of National Defense.

(2) The Prime Minister of the Government of Romania serves as Vice-President of the Supreme Council of National Defense.

-----

Paragraph (2) of article 5 returned to the previous form of EMERGENCY ORDINANCE No. 224 of December 30, 2008, published in the Official Gazette of Romania No. 899 of December 31, 2008, following the declaration of unconstitutionality of the law regarding the approval of the Government Emergency Ordinance No. 224 of 2008 for the amendment of Article 5 paragraph (2) of Law No. 415 of 2002 on the organization and functioning of the Supreme Council of National Defense by the decision of the Constitutional Court No. 1.008 of July 7, 2009, published in the Official Gazette of Romania No. 507 of July 23, 2009.

---

\*) CTCE note:

By the Decision of the Constitutional Court No. 1.008 of July 7, 2009, published in the Official Gazette of Romania No. 507 of July 23, 2009, it was established that the Law regarding the approval of the Government Emergency Ordinance No. 224 of 2008 for the amendment of Article 5 paragraph (2) from Law No. 415 of 2002 on the organization and functioning of the Supreme Council of National Defense was declared unconstitutional.

The CONSTITUTIONAL COURT ruled, in the DECISION No 1.008 of July 7, 2009 that:

"In examining the objection of unconstitutionality, the Court shall first rule on the criticisms of extrinsic unconstitutionality raised and then examine the reliability of the criticisms of intrinsic unconstitutionality of the law under review.

I. Regarding the criticisms of extrinsic unconstitutionality, by reference to the provisions of Article 115 paragraph (4) of the Fundamental Law:

Article 115 paragraph (4) stipulates that the Government may adopt emergency ordinances only in extraordinary situations whose regulation cannot be postponed, having the obligation to state reasons for urgency in that matter.

Referring to the Constitutional Court case-law, as exemplified by Decision No. 255 of May 11, 2005, published in the Official Gazette of Romania, Part I, No. 511 of June 16, 2005, and Decision No. 258 of March 14, 2006, published in the Official Gazette of Romania, Part I, No. 341 of April 17, 2006, the authors of the objection of unconstitutionality claim that the Government Emergency Ordinance No. 224 of 2008 was adopted in breach of the conditions stated in Article 115 paragraph (4) of the Fundamental Law, the extraordinary situation and urgency being merely proclaimed, without specifying any quantifiable element demonstrating in what way the activity of the Supreme Council of National Defense would be disrupted in the absence of the amendment regulated by the Emergency Ordinance.

In relation to the subject matter of the criticism of unconstitutionality, the Court notes that, in the preamble to the Emergency Ordinance approved by the contested law, the existence of an extraordinary situation whose regulation cannot be postponed and its urgency are justified by the Government as "the need to ensure the leadership of the Supreme Council of National Defense, reflecting the importance of this entity in the Romanian constitutional system" and that "the non-inclusion of the leadership of the legislative forum in the management of the Supreme Council of National Defense may lead to deficiencies in the work of this entity". These circumstances are described as extraordinary situations which, "being in the public interest", justify, at the same time, the urgency of their regulation and the imposition of the measure deemed necessary to remedy any "deficiencies", a measure consisting in the inclusion of the President of the Senate in the leadership of the Supreme Council of National Defense.

The Court finds that this reasoning of the extraordinary situation and the urgency is insufficient and meet neither the requirements of Article 115 paragraph (4) of the Constitution, nor the relevant case-law of the Constitutional Court on this matter. From its contents, it does not appear in what way the activity of the Supreme Council of National Defense will be jeopardized by the non-inclusion of the President of the Senate as Vice-President, in the leadership of this entity, the delegated legislator merely stating that "the non-inclusion in the leadership of the Supreme Council of National Defense of the legislative forum's management may lead to deficiencies in the activity of this entity".

According to the law-case of the Court, in order for an emergency ordinance to be issued, there must be an objective and quantifiable state of affairs, independent of the will of the Government, which endangers a public interest. Thus, at the time of the promulgation of Decision No. 255 of May 11, 2005, published in the Official Gazette of Romania, Part I, No.511 of June 16, 2005, the Court first noted the implications of the difference in terminology between the notion of exceptional case, used in the conception of Article 114 paragraph (4) of the Constitution prior to the revision, and that of extraordinary situation, showing that, "(...) although the difference between these two notions, in terms of the degree of deviation from ordinary or common law to which they give expression, is obvious, the same legislator felt the need to protect it from any interpretation likely to minimize such a difference, by adding the phrase "the regulation of which cannot be postponed", thus preserving, in terminis, the imperative of urgent regulation. Finally, for reasons of legislative rigor, it established the requirement to state the reasons for urgency in the very content of the ordinance adopted outside a rehabilitation law". Recalling the constitutional jurisprudence on the matter, pronounced prior to the revision of the Fundamental Law, which stated that the essence of the exceptional case lays in its objective character, which means that "its existence does not depend on the will of the Government, which, in such circumstances, is compelled to react promptly to defend a public interest by means of an emergency ordinance" (Decision No. 83 of 1998), on the same occasion, the Court held that "reliance on the element of opportunity, by definition of a subjective nature, which is given a

decisive contributory efficiency of urgency, which implicitly converts it into an extraordinary situation, requires the conclusion that it does not necessarily and unequivocally have an objective nature, but can also give expression to subjective factors of opportunity (...). However, since such factors are not quantifiable, the assertion of the existence of an extraordinary situation, by virtue of them or by converting them into such a situation, confers on it an arbitrary nature, likely to create insurmountable difficulties in legitimizing legislative delegation. This would mean that a criterion of constitutionality – the extraordinary situation – whose compliance is by definition subject to review by the Court, would in practice, be exempted from such review, which would be inadmissible”.

Moreover, when the decision No. 421 of May 9, 2007 was issued in the Official Gazette of Romania, Part I, No. 367 of May 30, 2007, the Constitutional Court ruled that “the urgency of the regulation does not equate with the existence of the extraordinary situation, and that the operational regulation could also be carried out by means of the ordinary legislative procedure”.

II. On criticisms of extrinsic unconstitutionality, by reference to the provisions of Article 115 paragraph (6) of the Fundamental Law:

The Court also notes that the Government Emergency Ordinance No. 224 of 2008, through its regulatory object, intervenes in the organization and functioning of a fundamental institution of the state – the Supreme Council of National Defense – and thus disregards the provisions of Article 115 paragraph (6) of the Constitution, according to which “the emergency ordinances (...) shall not affect the functioning of the state’s fundamental institutions”.

The regime of the Supreme Council of National Defense as a fundamental institution of the state is given by its constitutional status, Article 119 of the Constitution expressly stipulating this institution and its role within the public authorities contained in Title III, Chapter V – Public Administration, Section 1 – Specialized Central Public Administration. Also, its organization and functioning, that is, its legal status, shall be regulated, according to Article 73 paragraph (3) letter e) of the Constitution, by organic law and therefore cannot be modified by an emergency ordinance. In this respect, the Constitutional Court also ruled by Decision No. 544 of June 28, 2006 on the exception of unconstitutionality of the Government Emergency Ordinance No. 43 of 2006, on the organization and functioning of the Romanian Court of Accounts, published in the Official Gazette of Romania, Part I, No. 568 of June 30, 2006, and Decision No. 104 of January 20, 2009 on the exception of unconstitutionality of the provisions of Articles I and II of the Government Emergency Ordinance No. 75 of 2008 regarding the establishment of measures to resolve certain financial issues in the justice system, published in the Official Gazette of Romania, Part I, No 73 of February 6, 2009.

As regards the meaning of the provisions of Article 115 paragraph (6) of the Fundamental Law, the Constitutional Court ruled, by Decision No 1.189 of November 6, 2008, published in the Official Gazette of Romania, Part I, No 787 of November 25, 2008, that “(...) it can be inferred that the ban on the adoption of emergency ordinances is absolute and unconditional when they state that “they cannot be adopted in the field of constitutional laws” and that “they cannot concern measures of forced transfer of assets into public property”. In the other areas provided for in the text, emergency ordinances cannot be adopted if they “affect”, if they

have negative consequences, but, may instead be adopted if, through the regulations contained, they have positive consequences in the areas in which they intervene".

In this context, the Court notes that the Supreme Council of National Defense is an autonomous central government authority, which, according to Article 65 paragraph (2) subparagraph g) and Article 111(c) paragraph (1) of the Constitution, is under direct parliamentary control, thus the inclusion of the President of the Senate as member of this entity "affects" the relations between the two fundamental State authorities, which must be governed by the constitutional principle of separation and balance of powers.

However, the Court holds that the adoption of emergency ordinances regarding those fundamental institutions of the State, such as the Supreme Council of National Defense, whose legal status is established, according to constitutional provisions, by organic law, is excluded.

The Constitutional Court has consistently ruled in its constitutional case-law, for instance Decision No. 421 of 2007, mentioned above, that the unconstitutionality of an emergency ordinance or ordinance issued by the Government cannot be covered by the Parliament's approval of that ordinance. Consequently, the law approving an unconstitutional emergency ordinance is itself unconstitutional.

In the light of the foregoing, the Court finds that the review of criticisms of intrinsic unconstitutionality of the Law on the approval of the Government Emergency Ordinance No. 224 of 2008 for the amendment of Article 5 paragraph (2) of Law 415 of 2002 on the organization and functioning of the Supreme Council of National Defense became devoid of purpose, since the formal procedure for the adoption of the law is a preliminary aspect in the analysis of the constitutionality of the regulations of a law before its promulgation".

---

(3) The members of the Supreme Council of National Defense are: the Minister of National Defense, the Minister of Interior, the Minister of Foreign Affairs, the Minister of Justice, the Minister of Industry and Resources, the Minister of Public Finance, the Director of the Romanian Intelligence Service, the Director of the Foreign Intelligence Service, the Chief of the General Staff and the Presidential Adviser for National Security.

(4) The Secretary of the Supreme Council of National Defense is appointed by the President of Romania and has the rank of State Adviser within the Presidential Administration.

#### **ART. 6**

(1) The Supreme Council of National Defense shall be convened by its President, quarterly or whenever necessary.

(2) The Supreme Council of National Defense may also be convened on the initiative of at least one third of its members.

(3) The Supreme Council of National Defense functions in the presence of at least two thirds of its members and adopts decisions by consensus.

#### **ART. 7**

(1) The meetings of the Supreme Council of National Defense are of a secret nature. The meetings of the Supreme Council of National Defense are conducted by its president and, in his absence, by the vice-president.

(2) The agenda shall be drawn-up by the president in consultation with the vice-president.

(3) The proposals from ministries must be endorsed by the Prime Minister in order to be registered in the agenda.

**ART. 8**

If a member of the Supreme Council of National Defense is unable to attend the meeting, he may be represented, without voting rights, by his/her legal replacement.

**ART. 9**

Representatives of the Parliament, central and local public administration, non-governmental organizations, other public institutions with responsibilities in the field of defense and national security, as well as the civil society, other persons whose presence is necessary in relation to topics on the agenda, may participate as guests at the meetings of the Supreme Council of National Defense, with the President's approval.

**ART. 10**

The Supreme Council for National Defense carries out its activity on the basis of rules of procedure approved by its decision.

**ART. 11**

(1) The Supreme Council of National Defense has a secretariat which operates within the Presidential Administration, coordinated by the Secretary of the Supreme Council of National Defense.

(2) The tasks, organization and functioning of the secretariat provided for in paragraph (1) shall be established by decision of the Supreme Council of National Defense.

**ART. 12**

(1) The decisions of the Supreme Council of National Defense shall be signed by its President and communicated to the public administration authorities and public institutions to which they refer, in full or in extract, except those for which it is decided otherwise. Decisions which have the character of state secrecy shall be communicated in compliance with the legal provisions on the protection of classified information.

(2) The Secretariat of the Supreme Council of National Defense may send press releases, the content of which is approved by the Council.

**ART. 13**

The members of the Supreme Council of National Defense are responsible for ensuring compliance with its decisions.

**CAP. IV**

Final provisions

**ART. 14**

This Law shall come into force 30 days after its publication in the Official Gazette of Romania, Part I. On the same date, Law No. 39 of 1990 on the establishment, organization and functioning of the Supreme Council of National Defense, published in the Official Gazette of Romania, Part I, No. 142 of December 13, 1990, as well as any other provisions to the contrary shall be repealed.

This law was adopted by the Senate at its meeting held on May 30, 2002, in compliance with the provisions of Article 74 paragraph (1) of the Romanian Constitution.

p. PRESIDENT OF THE SENATE,  
DORU IOAN TĂRĂCILĂ

This law was adopted by the Chamber of Deputies at its meeting held on June 18, 2002, in compliance with the provisions of Article 74 paragraph (1) of the Romanian Constitution.

PRESIDENT OF THE CHAMBER OF DEPUTIES  
VALER DORNEANU



