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**Controversial Aspects regarding the Provisions of Law No. 60/1991 on the Organization and Conduct of the Public Assemblies. Vulnerabilities on Generating Risk Situations at the Level of Public Order and Security**

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**Abstract:** In the midst of complex global challenges, a firm approach is needed, in a context where European security is being violated, with terrorism and violence affecting North Africa and the Middle East, as well as Europe. In these difficult times, the European Union's overall foreign and security policy strategy<sup>3</sup> has helped to implement priority directions at Community level, the latter continuing to be a trusted global power and a strong security provider. The new security challenges, generated by the overlapping of phenomena such as globalization, fragmentation of some states, are added to classic forms of regional risks and vulnerabilities (emergence and development, respectively radicalization of movements that promote a nationalist ideology with extremist values). Thus, gaps between the levels of security assurance and the degree of stability of the states in the vicinity of Romania, the negative sub regional developments in the field of democratization, respect for human rights and economic development have highlighted a state of affairs that favored the translation into public space of some events whose materialization has led to the emergence of crisis situations, culminating in the escalation of dissatisfaction and the production of street confrontations, violent events in Bucharest on 10.08.2018, having destabilizing effects over a large area, in reference to the security of our country. In the light of the above, it should be noted that this new global strategy for the European Union's foreign and security policy has triggered a fruitful discussion in the field of security and defense, leading to a comprehensive approach to security policies involving Member States and EU institutions.

**Keywords:** democracy; new global strategy; security policy; European Union's foreign policy

## 1. Introduction

The continuity and speed with which the security and defense issues were elaborated was remarkable, as a result of migration, terrorism, political unrest, respectively of the armed conflicts in the neighboring regions, the perceptions changing in the last few years.

Thus, Europeans clearly expect that representatives of the governments of the EU Member States to take more responsibility for identifying and implementing viable solutions in terms of their safety and security. These expectations are also reflected in the new strategy, which stipulates that the European Union will promote peace and guarantee the security of its citizens and territory.

There is no doubt that the pace of defense cooperation and coordination between Member States and EU institutions has increased, as has the significant increase in the political will to deal with defense and security issues. At the same time, the UK's decision to leave the European Union has generated disappointment at European level.

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<sup>3</sup> Global Strategy of the European Union - Foreword by the High Representative of the Union for Foreign Affairs and Security Policy, Vice-President of the European Commission, Federica Mogherini.

This moment can be considered crucial from the perspective of the need to make every effort to maintain the momentum of organizing and homogenizing the actions of EU Member States that show their willingness to act towards the common goal of security of citizens and the territory of the EU.

In a more connected world, by assessing the opportunities, fears, challenges it produces, the European Union is ready to promote a participatory, interdependent approach, in order to avoid external threats, respectively to promote the security and prosperity of citizens and to protect democracies.

Also, in a more contested world, the European Union will be governed by a strong sense of responsibility, by engaging responsibly into Europe and neighboring regions, acting globally by addressing and assessing the root causes of conflict and poverty, i.e. drawing attention to the fact that the responsibility must be shared by the Member States, in pursuit of the set objectives, requiring the participation of regional bodies, international organizations, the deepening of partnerships with civil society and the private sector.

In this context, the need to ensure the security of citizens and preserve the EU's territory, by adhering to clear principles, in the context of perpetuating issues related to terrorism, hybrid threats, economic volatility, climate change and insecurity in the exploration and exploitation of resources, and ensuring an appropriate level of strategic autonomy, they represent an important aspect for Europe's ability to promote peace and security inside and outside its borders, with the intention of stepping up the efforts in defense, counterterrorism, strategic communications and energy domains.

It also becomes necessary to transpose, from the Treaties, into action by the Member States the commitments of mutual assistance and solidarity, the E.U. intending to intensify its contribution to Europe's collective security, in close cooperation with its partners (with NATO involvement) by pursuing the current policy of enlarging the Community space, a credible accession process based on strict and equitable conditionality, a vital feature for enhancing resilience; countries in the Western Balkans<sup>1</sup>.

The implementation of the Joint Security and Defense Plan aims at improving the protection of the European Union and its citizens, providing support to governments with a view to building joint response capabilities and developing an effective crisis management mechanism.

In this regard, the European Union intends to strengthen states and societies by supporting good governance, responsible institutions and close cooperation with civil society.

Also, the maintenance of internal security is directly influenced by the need to manage security outside the EU borders, in this regard bearing in mind the following manifested action priorities:

- Strengthening its democracies, as well as respecting the values that determine credibility and external influence;
- Promoting a rules-based "concept of global order" and rules agreed to provide global public goods and contribute to a lasting state of peace (*an approach that integrates, as a key principle, the values promoted by the United Nations*);
- Application by the E.U. comprehensive approaches, *through the coherent use of all policies at EU level*, acting promptly at all stages of the conflict, in terms of prevention, responding responsibly and decisively to the effective resolution of crises<sup>2</sup> that may affect the public safety climate, in stabilization and coherence, respectively to avoid premature disengagement

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<sup>1</sup> In a globalized world, local pressures and resistance, regional dynamics are at the forefront. Voluntary forms of regional governance provide states and peoples with the opportunity to better manage security concerns, express cultures and identities, and project their influence. This is a fundamental reason for the EU, in which regional cooperation commands will be supported worldwide (in different regions - in Europe, the Mediterranean, the Middle East and Africa; along the Atlantic, both north and south; in Asia, and in the Arctic).

<sup>2</sup> Conflicts with local, national, regional and global dimensions that need to be addressed/solved only through deep and lasting global agreements, regional and international partnerships, which the EU will promote and support.

A number of international human rights treaties and other instruments adopted since 1945 have given human rights a legal form and developed the international human rights body. Other instruments have been adopted at regional level that reflect the specific concerns of the region for the protection of human rights, providing specific response mechanisms. Most states have also adopted constitutions and other laws that officially protect fundamental human rights.

While international treaties and common law form the backbone of human rights protection at the international level, other instruments, such as declarations, guidelines and principles adopted at the international level, contribute to their implementation, development and understanding.

The respect for human rights requires the establishment of the rule of law at national and international level, and by participating in international treaties, states assume obligations under international law to respect, protect and fulfill the requirements related to the protection of these rights.

The *obligation to respect* means that states must refrain from intervening to prevent the exercise of human rights, and the obligation to protect requires states to protect individuals and groups against human rights violations, which also means that states must take positive measures in order to facilitate the defense and to guarantee the fundamental human rights.

The international approach to human rights was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948 designed as “a common standard of achievement for all peoples and nations”.

The declaration, for the first time in human history, speaks openly about the fundamental civil, political, economic, social and cultural rights of all human beings, which they should enjoy. It has long been widely accepted as the fundamental human rights rule that everyone must respect and protect.

Forty-eight states voted in favor of the Declaration, none against, with eight abstentions. In a statement after the voting exercise, the President of the United Nations General Assembly stressed that the adoption of the “Declaration” was “*a remarkable achievement, a major step forward in the evolutionary process*”.

Conceived as *a common standard of achievement for all peoples and all nations*, the Universal Declaration of Human Rights has become a *benchmark for measuring respect degree and for guaranteeing international human rights standards*.

Since 1948 it has been, and rightly so, continues to be the most important and comprehensive of all United Nations declarations and a fundamental source of inspiration for national and international efforts to promote and protect fundamental human rights and freedoms.

Thus, the direction was set for all further work in the field of human rights and provided the basic philosophy of many internationally binding, legally binding instruments designed to protect the rights and freedoms it proclaims.

The International human rights law provides for obligations that states must comply with, providing the basic philosophy of many internationally binding, legally binding instruments to protect the rights and freedoms it proclaims.

Becoming a party to international treaties presupposes the obligations of states to respect, to protect the fulfillment of human rights arising from international law. The obligation to respect means that states must refrain from interfering with or impeding the exercise of human rights. By ratifying international human rights treaties, governments are committed to implementing domestic measures consistent with the law and the obligations and duties of the treaty.

Where domestic legal procedures do not address human rights abuses, mechanisms and procedures, individual complaints or communications are available at regional and international level to ensure that compliance with international human rights standards is indeed implemented at local level.

Structural factors and the culture of entities with responsibilities in the field of public order, national security and safety also influence the civil, economic and social rights of staff, such as working

conditions/ working hours, social security, transparency and participation in the processes of communication and human resource management, managerial responsibility or training and education.

When carrying out the tasks entrusted to the personnel within the structures of public order, security and national security do not act as a private person, but as a body of the state. Thus, the state has an obligation to respect and protect human rights, therefore it has a direct effect on the choices of personnel who must respond to aggression.

The rights of law enforcement personnel who could risk injury or death during the execution of the tasks entrusted must also be respected and protected, and in this regard I reiterate the need to continue, firmly, the process of harmonizing the national legal framework with the one applied at Community level, amending normative acts in order to ensure action and decision-making transparency, from the perspective of carefully planning operations or implementing the preventive measures necessary to preserve the climate of public order and safety.

There are also cases when serious consequences are identified that resulted from the actions of law enforcement (*individually/ through different subunits*), but in these cases a clear individualization of responsibility is required (*for actions / inactions*), in deep respect for by the laws of the country, respectively other legal instruments resulting and which must be respected, in accordance with the responsibility undertaken in reference to international institutions and bodies.

In general, due to a *legislative void*, the leaders of the structures of which the aforementioned staff belongs, tend to make them responsible, being adopted various disciplinary measures within the organization.

To these are added a series of pressures materialized by creating the necessary framework for shaping and multiplying in public space, through various *communication channels*, issues that generate tension and increase the level of emotion in groups that form a “critical mass” or even of society, through subjective approaches, trying to propagate the feeling of restriction, by the so-called institutions of force, of the possibility of manifestation of some fundamental rights and freedoms.

In such cases, when law enforcement is confronted with allegations of ill-treatment or are accused of committing various acts / omissions in the performance of their duties, a vital conflict of interest arises: as every citizen has the right to make complaints regarding the procedural acts performed by the police, it must be borne in mind that the personnel within the structures of public order, security and national security have the right to a fair trial, including the presumption of innocence.

These conflicting interests must be balanced by considering the legal responsibilities as well as the concrete ways of fulfilling the entrusted missions, respectively by the principle of proportionality.

The year 2019 presents a series of challenges in terms of ensuring and restoring public order and safety, specific to an election year, which generates certain “expectations” among the population, amid the programs launched in public by major political parties, the lack of concrete solutions their implementation having the potential to outline “positions” of a protest nature, respectively the appearance of factors that can generate security degradation, a fact that can be materialized, most often, by committing acts of disorder that can take various forms .

Thus, the possibility of translating some vindictive actions from socio-economic aspects to some of a political nature is maintained, a state of fact favored by the continuous erosion of trust in state institutions, the feeling of dissolution of authority, all corroborated with increasing anti-EU feeling, or against other international bodies on the grounds that they impose national policies in conflict with the interests of citizens.

Therefore, in the midst of a complex challenge, it is necessary for the institutions of the national system of public order, defense and national security to act in an integrated system based on signaling threats and risks to preserve the climate of public order and safety, respectively an information system focused on collecting, recording, analyzing and processing data on actions, events and results specific to all areas of activity, aspects necessary for assessing the degree of fulfillment of legal responsibilities, monitoring performance and optimizing processes.

## 2. The Specific Situation and *de lege ferenda* Proposals

The *de lege ferenda* proposal addresses, in our opinion, two important aspects and aims at ensuring action and decision-making transparency at the level of the component structures of the national defense system, public order and national security, respectively at the level of courts called to solve various actions executed by the specialized structures of the state with attributions on the segment of preserving the climate of public order<sup>1</sup> and safety<sup>2</sup>.

In this context, their implementation can support the promotion of some “legislative initiatives”, tools through which there are ensured and strengthened the implementation of Community programs to ensure the security of citizens, defending their interests and upholding their values.

We also consider it appropriate the *de lege ferenda proposal*, the implementation of these legislative initiatives having, in our opinion, a competing role in establishing the main interests and principles to give Romania, in relation to other EU states, the implementation of the *Global Strategy for foreign policy and Security of E.U.* and a sense of common approach and direction, the current social context generating the expectation that the specialized structures of the Ministry of Internal Affairs will remain a reliable partner of the citizen and a strong provider of security, being necessary to think strategically, share the same vision and act as a unit.

Specifically, we bring to your attention a series of provisions of Law no. 60/1991 on the organization and conduct of public meetings, published in the Official Monitor no. 192 of 25.09.1991, maintaining them in their current form, being carriers of vulnerabilities likely to generate risk situations in terms of public order and security, leading to subjective approaches, trying to induce, through various channels of communication, of the feeling of restriction, by the so-called *institutions of force*, of the possibility of manifestation of some fundamental rights and freedoms.

Thus, starting from the provisions of Law 24 of 27.03.2000 *regarding the norms of legislative technique for the elaboration of normative acts*, art. 30 paragraph (1)<sup>3</sup>, respectively art. 39 paragraph (1)<sup>4</sup> of the Romanian Constitution and art. 1<sup>5</sup> of Law no. 60/1991 on the organization and conduct of public meetings, in order to provide maximum efficiency to this mechanism, we propose the following legislative amendments:

**2.1. Modification of the provisions of art. 6 of Law no. 60/1991** on the organization and conduct of public meetings which provides that applicants to address in writing to the mayor of the locality on whose radius the public meeting is to be held.

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<sup>1</sup> Public order, as a component of national security, represents the state of legality, balance and peace, corresponding to a socially acceptable level of compliance with legal norms and civic behavior, which allows the exercise of constitutional rights and freedoms, and the functioning of state-specific structures of law and is characterized by the credibility of institutions, public health and morals, the state of normalcy in the organization and conduct of political, social and economic life, in accordance with legal, ethical, moral, religious and other norms, generally accepted by society.

<sup>2</sup> Public safety expresses the feeling of peace and trust that the police service confers for the application of measures to maintain public order and tranquility, the degree of safety of individuals, communities and property, as well as for the partnership between civil society and police, in order to solve community problems, the protection of the rights, freedoms and legal interests of citizens.

<sup>3</sup> Public safety expresses the feeling of peace and trust that the police service confers for the application of measures to maintain public order and tranquility, the degree of safety of individuals, communities and property, as well as for the partnership between civil society and police, in order to solve community problems, the protection of the rights, freedoms and legal interests of citizens.

<sup>4</sup> Rallies, demonstrations, processions or any other gatherings are free and can be organized and held only peacefully, without any weapons.

<sup>5</sup> The freedom of citizens to express their political, social or other opinions, to organize rallies, demonstrations, processions and any other gatherings and their attendance is guaranteed by law.

Such activities can be carried out only peacefully and without any weapons. Public meetings - rallies, demonstrations, processions and others alike - to be held in markets, on public roads or in other outdoor places may be organized only after the prior declaration provided by this law.

We consider it opportune to modify the respective article, as follows: *“For the organization of public meetings, the applicants will address, in writing, the Institution of the Prefect of the county on whose radius the meeting is to take place”*.

**2.2. Modification of the provisions of art. 7** of Law no. 60/1991 on the organization and conduct of public assemblies, which requires *the organizers of public assemblies to submit the written statement to the mayor’s office, in this regard being provided a period of at least 3 days prior to the event, as well as other organizational issues*.

Thus, we bring to your attention the analysis of the opportunity for the respective article to take the form of *“The organizers of public meetings will submit the written declaration to the Institution of the Prefect of the county on whose territory they are to be held, at least 3 days before the event, where it should state the name under which the organizing group is known, the purpose, place, date, time of commencement and duration of the action, the inflow and outflow routes, the approximate number of participants, the persons empowered to provide and be responsible for the organizational measures, the required services on behalf of the local council, of the local police and of the gendarmerie, of the mayor’s office, according to the model presented in the annex”*.

**2.3. Modification of the provisions of art. 8 par. (1) of Law no. 60/1991 which stipulates the establishment of the commissions for approving the applications at the level of the local councils, as well as their composition.**

Thus, we bring to your attention the analysis of the opportunity for the respective article to take the form of: the commission for approving the requests for organizing public meetings at the level of the Prefect’s Institutions is established, consisting of: President-Prefect (legal substitute) and members: Mayor (legal substitute), Head of the Monitoring Service Deconcentrated Public Services, Community Services of Public Utilities, Situations Emergency, Public Order at the level of the Prefectures (legal substitute), representatives of the Police and Gendarmerie, each member having a concrete mandate within the Commission”.

**2.4. Modification of the provisions of art. 11** of Law no. 60/1991 on the organization and conduct of public meetings, which shall take the following form: *“The decision of the approval committee shall be communicated in writing to both the organizer and the institutions represented in the approval committee, showing the reasons that determined it, within 48 hours from the receipt of the written declaration”*.

In this regard, please allow me to present the following aspects of the decision:

- HCCJ Decision<sup>1</sup> (Complete RIL) no. 19/2018 (Press release): Article 3 thesis I, reference to the provisions of art. 26 para. (1) letters a) and d) of Law no. 60/1991 regarding the organization and conduct of public meetings, in the context in which the object of the appeal in the interest of the law was constituted by the provisions of art. 3 of Law no. 60/1991 **regarding the organization and conduct of public meetings, respectively art. 26 para. (1) letters a) and d) of Law no. 60/1991 on the organization and conduct of public meetings**.

Thus, by the HCCJ Decision (Complete RIL) no. 19/2018 admits the appeal in the interest of the law formulated by the Board of the Court of Appeal, and in this sense the High Court established that, in the interpretation and application of the provisions of art. 3 first sentence of Law no. 60/1991 on the organization and conduct of public meetings, republished, with reference to the provisions of art. 26 para. (1) letters a) and d) of the same law, *there is the obligation to declare public meetings in advance, when the meetings are to be held in squares or on public roads (public road, roads and sidewalk) or in*

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<sup>1</sup> According to the official website ([www.scj.ro](http://www.scj.ro)), on October 15, 2018, the HCCJ met in the Panel on Appeals in the Interest of the Law, to solve several legal issues, including the interpretation and application of the provisions of article 3, first sentence of Law no. 60/1991 on the organization and conduct of public meetings, republished, with reference to the provisions of art. 26 para. (1) letters a) and d) of the same law.

*other places provided by art. 1 para. (2) of Law no. 60/1991, located in the immediate vicinity of the headquarters or buildings of legal entities of public or private interest.*

- According to the provisions of art. 1 paragraph (1) and (3) of Law no. 340/2004 regarding the prefect and the institution of the prefect, notes the fact that the prefect is the representative of the Government in the territory and the guarantor of the appliance of the law.
- According to the provisions of art. 5 of Law no. 340/2004 of the previously mentioned normative act, among the principles that govern the activity of the prefect, they mention ***the legality and the orientation towards the citizen.***

*According to the provisions of chapter III art. 19 paragraph (1) of Law no. 340/2004, the prefect fulfills the following responsibilities:*

- a) ensures, at territorial level, the application and observance of the Constitution, of the laws, respectively of the public order;*
- b) acts to maintain the climate of social peace, paying constant attention to the prevention of social tensions, the prevention of crime and the defense of the rights and safety of citizens;*
- c) verifies the legality of the administrative acts of the county council, of the local council or of the mayor;*

According to the provisions of chapter III art. 20 of Law no. 340/2004 regarding the prefect and the institution of the prefect “*The prefect may notify the competent bodies in order to establish the necessary measures, in accordance with the law*”.

- According to the provisions of art. 19 paragraph (1) of Law no 60/1991 “*The intervention in force will be approved by the prefect or his substitute at the request of the commander of the gendarmerie forces who ensures the measures of public order at the place of public assembly*”.
- According to the provisions of art. 15 point 4 of Law no 60/1991 “Municipal, city or communal town halls are obliged:

- a) to establish by decision and to bring to public knowledge, within 5 days from the publication of this law, the places that fall under the provisions of art. 5;
- b) to provide, for a fee, the services and technical arrangements required for the normal conduct of public meetings;
- c) to prohibit the sale of alcoholic beverages in places intended for public meetings, in the immediate vicinity or, when it deems necessary, even in the entire locality, throughout their duration;
- d) to undertake any other legal measures likely to ensure the peaceful and civilized nature of public assemblies;
- e) to return the amounts advanced according to art. 12 paragraph (1) letter e, if the public assembly was prohibited for reasons other than those provided in art. 9 or which are not attributable to the organizers.

• **According to the provisions of Art. 61.** – par. (2) of **Law no. 215 of April 23, 2001 - Law on local public administration**, the mayor ensures the observance of the fundamental rights and freedoms of citizens, the provisions of the Constitution, as well as the implementation of prefect orders.

**2.5.** We need to highlight the opportunity to quickly ***adopt a normative act (Government decision or Order of the Minister of Internal Affairs-O.M.A.I.) regulating clear methodological norms for the full application of the provisions of Law no 60/1991 on the organization and conduct of public meetings, corresponding to a regulation on the organization and functioning of the approval commissions approved by O.M.A.I.***

In this sense, considering the social interest, the legislative policy of the Romanian state and the requirements of correlation with all internal regulations, as well as the harmonization of national legislation with Community law and international treaties to which Romania is a party, it is imperative

to adopt a Government decision with reference to the establishment of the norms for the application of the provisions of Law no 60/1991 which should detail and customize aspects of a procedural nature, taking into account, with predilection, the provisions of art. 8, respectively the provisions of art. 19-22.

Thus, in the application norms, with reference to the provisions of art. 8, the normative act to include the text *“The regulation on the organization and functioning of the commissions for approving the requests for the organization of public meetings will be approved within 30 days by Order of the Minister of Internal Affairs”*. The regulation will consider the particularization of some actions, as follows:

- Appointment of full and alternate members of the commission;
- Deadlines for commission meeting;
- Commission quorum;
- The way to adopt and solve requests;
- The needed majority to solve the requests;
- The legal basis and the documents necessary to substantiate the decision;
- Documents prepared before/during/after the meeting of the commission;
- Any other aspect likely to compete in the legal and speedy settlement of the requests for approval of the organization of public meetings.

At the same time, in the application norms, with reference to the provisions of art. 19 and 22, the normative act to include the following text: *“The methodological norms for the application of articles 19-22 will be adopted by an order of the Minister of Internal Affairs, which will be published in the Official Monitor of Romania, Part I, in maximum 60 days after the entry into force of this decision”*.

Within this Order of the Minister of Internal Affairs, the particularization of some actions will be considered, as follows:

- *Conditions of form and substance of the document by which the commander of the gendarmes' forces that ensures the public order measures requests to the prefect the approval of the intervention in force;*
- *How to establish the appropriate time left for participants to disperse and how to determine it in relation to the number of participants, respectively the context and particularity of the place of public meeting (topographic aspect/roads/flow possibilities, etc.);*
- *Detailing the phrase used by the legislator at art. 20 paragraph 2 of Law no 60/1991, respectively the “imminent danger” in which the personnel of the structures that perform public order missions can find themselves, context in which the warning and summons in the perspective of using force are not necessary.*

**2.6. We also consider it appropriate and necessary to introduce it: *O.M.A.I. methodological and procedural aspects that detail and customize aspects related to tactical rules on the use of force, equipment and weapons during the execution of missions to ensure and restore public order and safety, with constant attention to management at a superiority of the decisional and action transparency, respectively of the maneuver of forces and means, in reference to:***

- *Tactical rules regarding the use of force, means and weapons;*
- *The specific action device adopted during the missions of ensuring and restoring public order;*
- *Tactics and action techniques for ensuring and restoring public order (release of a means of communication in urban or rural areas, release of a market illegally occupied by protesters, crossing a barricade, replacement of a subunit, evacuation of an illegally occupied premises, reaction of a subunit*



when is fired on it by an isolated shooter, the use of vehicles in specific missions, the evacuation of supporters from inside a sports arena, the concrete certification of the run-off period, etc.);

- Action procedures for restoring public order.

### 3. Conclusion

The aspects presented above, in their entirety, represent premises and, at the same time, arguments for the continuous improvement of the national legislation, at the same time with the permanent accession with the European one and of human rights, to ensure the access of the social partners (effective within the system of defense, public order and national security, respectively the citizens) to the specific legislation, on the one hand, as well as their manifestation within the limits of the legal provisions, on the other hand. We consider appropriate our scientific approach, as it is required the need to preserve the balance and social values, the standards developed by the jurisprudence of international human rights courts, as well as a firm reaction of institutions and factors with legislative competence.

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