

## **Inter-institutional Cooperation for Achieving Public Order and Safety**

**Jurist Cristian GÎSCĂ, PhD**  
*“Danubius” University of Galati*  
*crisi\_gisca@yahoo.com*

**Abstract:** In the area governed by the authority of the Romanian state, the public order is part both of the national security and of the European public order. The actions of defining and making clear the concept of public order drew the attention of many specialists and researchers in the field; therefore, there are countless ways of defining this concept. The spheres of this concept connect continuously to the spheres of other concepts: the state, the executive power, the state of legality, the national dimension of the public order etc. Essentially the public order represents a minimum of important conditions for a convenient social life. Its content varies with the stage of social trust and mirrors the state of legality, equilibrium and social peace, being omnipresent when, according to the Constitution, the order forces ensure the public peace, the safety of person, collectivities and goods, the public health and moral principles.

**Keywords:** public order; contravention; executive power

### **1. The Concept of Public Order and Administrative Legal Doctrines**

A company organized as a whole can not exist and, even more so, in effect, can not progress democratically beyond the existence of a state of general order respected by all its members outside the legal framework, well structured and of ensuring the respect for fundamental human rights and freedoms.

In the Universal Declaration of Human Rights it is stated in article 28 that every person is entitled to benefit from, at a social and international level, the existence of an order that allows the established rights and freedoms to find a full accomplishment, corresponding to the national security interests, which include "civic safety of the citizens". After the 1989 Revolution, the Romanian society, unbound from the constraints of the communist regime, came into a vortex of deep changes that they have triggered a series of events that have affected the climate of civilized social life and safety of citizens.

Thus, events have occurred: the exacerbation of freedom, understood by some citizens outside any legal regulation and any control; the tameness, blaming and even the rebound of preventing-fighting activity of the bodies empowered to protect public order, public peace and legality; the invoked nullity or *sui generis* of the legislation in the field under the Ceausescu's domination and totalitarianism accusations, due to alarming growth of crimes of all sorts, with serious damage to the security, integrity, person's life, property, social climate, internal stability and functioning of public institutions. In these circumstances, the need for order played an important role, and the legislative, economic, political and social measures have started to show up. The *public order* is currently a phrase on everyone's lips, both the governors and the governable, or simply, we may say that everyone is good at public order, but for written clarification of this concept it was written very little, the legal doctrine is poor at this chapter.

The word order has its origin in Latin: „*ordo, ordinis*”. Of all the meanings to the word *order* we are interested in the one about organizing, settling some elements according to requirements, in line with the Latin adage "*ordo est anima rerum*" (the order is the soul of all things) or "*dispozitie unius rei, post aliam, suo quemque loco collocatur*" (the order is showing things one after another, so that everything would be at its place). In a rigorous scientific analysis made by the famous jurist and Professor Micescu Istrate, he stated that the order is harmony, so the order is at the same time, every thing in its place and harmony that emanated from this settlement of things, just right to receive them, or laid out for them to be arranged.

The term *public* from the *public order* expression is polysemantic and it has the meaning of: something that belongs to and regards the state, concerns everyone, belongs to a community or refers to one, attends to a community, takes place in the presence of a community or a gathering, available to everybody and it can be used by everyone.

Defining and clarifying the concept of public order was the concern of many scholars and researchers in the field, and as such, there are many ways of defining the concept. Public order is an element of legal order indispensable in political organized societies. It is also one of the primary functions of the state, achieved by all three powers: legislative, executive and judicial. The public order is part of the National Security Strategy and it concerns many branches of law.

The scope of this concept is always connected with other concepts, such as: the state, executive power, legal status, national dimension of public order etc.

### **1.1. State and Executive Power**

There is a diversity of views and perspectives on the state because of, largely, the personal ideas of different authors on the origin and evolution of the state. In the view of Professor Ioan Alexandru, the term *state* refers to a community, situated on a territory and it is subject to a sovereign authority. It also designates a unit of institutions, which allows it to lead and take action.

It performs many functions - some internal, others international. Among these we mention the organization and management of the social system; defending the rule of law, public and constitutional order, the legal and regulatory functions in the national space, adapted to the international law; preserving the independence and sovereignty; promoting collaboration and cooperation with other states etc.

Professor Ion Alexandru nominates the executive powers attributions, including making the necessary decisions for functioning the public services, implementing material execution measures in public order domain, territorial arrangement of the armed forces and police.

### **1.2. Legal Status**

Social order is achieved according to law, by peaceful coexistence and harmonious cooperation between classes and social categories, without infringing the rights and interests of society members. The state order requires the normal functioning of the state law and order bodies created to enforce laws. The natural order expresses the equilibrium state of natural and environmental factors as they manifest in nature.

In essence, the public order represents a minimum of essential condition for affordable social life, its content varies with the stage of social confidence and expressing the state of law, balance and social peace, omnipresent when, according to the Constitution, the police ensures public tranquillity, personal community and property safety, health and public morals. How to introduce and maintain the legal status? Knowing and obeying the law, acting for compliance by which there are lawful generalized, the social values that are mentioned above.

### 1.3. National Dimension of Public Order

In the space under the authority of the Romanian state, the public order is part of both national security and European public order. We emphasize that public order has also an ethnic and national dimension, whereas the minority and the majority are equal in the Romanian legal system, which is one and the same for Romanian citizens, regardless of ethnicity. Obviously, the authorities in Romania manage and control, non-discriminatory, the public order in Romania. The normative feature of this action is based on the country's Constitution, the Integrated Concept on National Security, the European Convention on Human Rights, other documents, settlements and international agreements to which Romania is party.

The rule of law is not arbitrary; it is manifested in all aspects of public order: knowledge of legislation, preventing and fighting public disturbance. In connection with this last aspect, we mention the order and disorder (disturbance) are in bi-univocal relations and opposite. Their research allows us to see that the level of public order decreases when committing acts of disorder, which:

a) have public echo and induce or maintain a state of danger contrary to the law and regulations of social life;

b) are committed against the public or public state agencies, local and central government, with powers to maintain the public order. The disturbance is provoked either by isolated individuals or turbulent groups resulting from the agglomeration of individuals, spontaneous, in case of an event in a public place (street, stadium etc.). These individuals or groups come into conflict with the law when their actions affect the peace and order of the citizens, state or social order, or it is directed against the authorities or it means disobeying the law. The state, through its public order function, uses its status in its complex action of preventing disturbance, maintenance and restoration of public order.

Regarding the connection of national public order to the European one, the legal sources, originating from Community law, speak of a "cooperation in justice and internal affairs" and the Project of European Constitution states "the space of freedom, security and justice in the EU" where the national service of public order collaborate in order to ensure the overall objectives of the European Union and fundamental rights and freedoms of European citizens.

#### **1.4. Protecting the Public Order**

Whenever the public order is threatened, the legal competent authorities take the necessary measures, that are named differently: maintenance, insurance or restore public order in relation to the concrete created situation, which means that public service order has as primary goal maintaining, restoring and ensuring order for the benefit of the society.

In this context the use of the expression of defending the public policy defence, we believe that it is the most appropriate from two points of view. Firstly because it is used in some normative acts such as local public administration law and the Ordinance regarding the legal regime of contraventions and, secondly, it includes the three processes (maintenance, insurance and restoration); in this case there is the relationship between whole and section.

In our opinion, defending the public order can be defined as all legislative, economic and social actions and activities, carried on by central and local administrative authorities, as well as those undertaken by competent state institutions to maintain, restore and ensure public order in case of disorder.

The elements that are included in the content of the words defending the public order are: the maintenance, insurance, restoration of public order. By maintaining public order we understand all the measures taken by state authorities, especially police for preventing disorder or other violent manifestations in order to avoid the use of force.

Ensuring public order means all measures taken by the competent authorities, for the normal development of meetings, demonstrations, marches, cultural-artistic manifestation, sports etc., and restoring public order is defined as a set of specific actions, organized and executed in time, depending on the situation, (the severity for achieving public order or disorder), which is based on the intervention in force by using the supplied technical and materials means for the purpose of bringing back the normality for the created situation.

#### **1.5. The Connection between Public, Legal and Constitutional Order**

##### **a) Public Order – Legal Order**

The two entities - public order – legal order - are in a close interconnection, the public order has established by the legal order the legal framework for a proper

operation; the first being subordinated to the second. This idea can be expressed in other ways too: the legal order determines public order; a change in the legal order reflects a decisive influence on public order. Another connection is the legal and public order: none of them is immutable; they both change to correspond to the reality, being in a continuous changing.

Also, disturbing legal order law determines the public order to adapt, because that disorder may have profound implications in the sense that the social system can be modified (but kept) or replaced.

#### **b) Public Order - Constitutional Order**

The constitutional order, that is the order stated by the Constitution, is an expression of constitutional law, setting all the rules that regulate the relations concerning the fundamental and state social-political system. It subsumes the public and legal order in the sense that the constitutional provisions are the basis, so that the organization and operation can be in accordance with the Constitution. More than that: only this bill has the competence to provide concrete measures on the rights and liberties of the citizens, limiting individual rights, public order, morals. Still the Constitution is the fundamental legal document that establishes, under specified conditions, the limitation of some rights - whether they affect fundamental values, endangering the national security defence, defending the public order, health or morals. Also, some rights can not exist if public order is not respected.

The statement "Romania is a state law" includes the quintessential relations between legal - public - constitutional order, meaning that the basis of all activities are the Constitution and the law of the country, as any action of public authority that carries on in the constitutional, legal framework. There are also situations - mentioned in the Constitution - when the President of Romania shall, with the consent of Parliament, and according to the law, declare the state of siege or emergency, and those states restrict the exercise of rights and freedoms, allow removal by specific means of the disturbing facts and it ends when public order is restored.

## **2. Risk Factors and Threats of Public Order**

Human society is a system composed of several subsystems and their interconnections. Different causes may disrupt the normal state of society or of its subsystems. It triggers what we call crisis. The term of crisis, currently used in various circumstances, means difficulties passing one by one, restlessness or decay.

A crisis occurs when a system that tends towards equilibrium begins to strive for imbalance, which means a switch of the situation, a phenomenon that occurs when the global social system receives brutally and what is called challenging the history, that is facing major difficulty of different internal or external order (religious, cultural, economic, geo-climate, etc.), and the society turns out to be unable to respond or adapt to this challenge.

Between the normal state of the society and the crisis there are many other moments that manifest risk factors and threats to public order. The careful study of the evolution of the phenomenon is called public order in post-revolutionary years, which leads us to the conclusion that it is threatened everywhere and all the time by risk and it requires an integrated management, the main task being to prevent and control these risks and threats. The main risk factors and threats to public order in our country specified in several programming documents of the specialized services are:

- a) internal disturbances and tensions, representing the situations that cause serious political, ethnic, racial, social, religious, economic tensions, or very serious collisions, which involve acts of violence, moving from spontaneous manifestations to the fight between groups more or less organized and the competent authorities;
- b) organizing or training, managing or controlling groups of people, in order to usurp the functions of police, gendarmerie or army;
- c) organizing and conducting training activities with the use of weapons and practicing military exercises without the assistance of specialized and authorized military personnel, and the use of, by organizations or groups of individuals, military uniforms during marches, meetings or parades;
- d) association in political parties and organizations which, by their purposes or activity, militate against political pluralism, the principles of state law, sovereignty, integrity or independence of Romania; rallies, demonstrations, processions or any other meetings organized and performed in non-peaceful way, with any weapons or

violating other legal provisions relating to the organization and development of public gatherings;

e) defamation of the country, urging to war, to national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, and also to obscene manifestations contrary to morality;

f) exercise the free conscience right contrary to the conditions and limits set by law and also not respecting the necessary guarantees for ensuring essential services for society;

g) exercise the free conscience right contrary to the spirit of tolerance and mutual respect, religious statutes, cults, adopted under the law, and also spreading religious feuds by any means, acts or actions;

h) propaganda for changing the form of government;

i) political propaganda in institutions of religious cults, public authorities and educational institutions and also on the occasion of religious or school demonstrations;

j) attacking a community through mass poisonings, setting epidemics or other means, or thwarting the spread of disease control, water infestation;

k) environmental incidents;

l) acts of collective violence, consisting of the use or threat of violence by a group of people to a person characterized by normal psychomotor ability, and the presence at the scene of the crime, a strong fear of physical integrity;

m) outrage against morals and disturbance of public peace;

n) acts of sabotage;

a) illegal migration of people in large groups.

Countering these threats and risk factors may be achieved through the intervention of Ministry of Administration and Interior Forces, the guarantor of public order in Romania. When it is disturbed the constitutional order and the fundamental national interests are at stake, the military units act too, specialized and properly equipped for such situations, but only when the police of the Ministry of Administration and Interior Forces have been overcome, and the evolution of the crisis may seriously affect the Romanian state or a significant area of the country.



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