

*This is an unofficial translation of the text of Government Emergency Ordinance no. 13/01.02.2017 as published for public consultation on the website of the Ministry of Justice (<http://www.just.ro/proiectul-ordonantei-de-urgenta-pentru-modificarea-si-completarea-codului-penal-si-a-codului-de-procedura-penala/>), provided by CASA DE TRADUCERI for information only. This text can be reproduced freely, provided that the mention „**Translation by Casa de Traduceri, Bucharest, Romania**” is included in the reference.*

Draft

Emergency Ordinance for the amendment and completion of the Criminal Code and of the Criminal Procedure Code

Whereas, from the last express legislative interventions on the wording of the new Criminal Code and of the new Criminal Procedure Code to make them consistent with certain decisions of the Constitutional Court until now the contentious administrative court has issued additional decisions requiring express regulation to ensure a uniform and coherent implementation of the texts of law - for example: Decision no. 586/2016 according to which „the provisions of article 25 paragraph (5) of the Criminal Procedure Code, with reference to the provisions of article 16 paragraph (1) letter f) of the Criminal Procedure Code are unconstitutional in what regards the non-settlement of the civil action by the criminal court, when the criminal trial is put to an end further to the occurrence of limitation of criminal liability”, namely Decision no. 614/2016, according to which „the provisions of article 215¹ paragraph (2) of the Criminal Procedure Code are constitutional to the extent to which the extension of the preventive measure of judicial control is done with the application of the provisions of article 212 paragraph (1) and paragraph (3) of the Criminal Procedure Code”,

Noting also that there are certain decisions of the Constitutional Court issued in relation to certain texts in the Criminal Code, which were not yet enshrined in legislation according to the ruling of the Constitutional court, in particular Decision no. 603/2015 which found that „the wording „commercial relations” in the provisions of article 301 paragraph (1) of the Criminal Code is unconstitutional”, while „the wording „or within any legal entity” in the provisions of article 308 paragraph (1) of the Criminal Code, in relation to article 301 of the Criminal Code, is unconstitutional”, namely Decision no. 732/2014 according to which „the wording „at the time of taking biological samples” in the provisions of article 336 paragraph (1) of the Criminal Code is unconstitutional”,

Considering, at the same time, the decisions of the Constitutional Court regarding the wording „defectively performs”, namely decision no. 405/2016 in which the constitutional court admitted the unconstitutionality objection and found that the provisions of article 246 of the 1969 Criminal Code and of article 297 paragraph (1) of the Criminal Code are constitutional to the extent to which the wording „defectively performs” in these provisions is read „performs, in violation of the law”,



Whereas it is necessary, in the context of strengthening the process and procedural guarantees, to align the provisions of the Criminal Procedure Code with the provisions of Directive 2016/343/EU of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings,

Considering that all the above constitute an extraordinary situation whose regulation can no longer be postponed, for the purposes of article 115 paragraph (4) of the Constitution of Romania, as republished. On account of the negative effects that could result from a non-uniform interpretation, we believe that any regulation by means other than legislative delegation, even in an emergency procedure, would be incapable to remove such negative consequences immediately,

On grounds of article 115 paragraph (4) of the Constitution of Romania, as republished,

The **Government of Romania** hereby adopts this emergency ordinance.

Article I. - **Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania, Part I, no. 510 of 24 July 2009, as subsequently amended and completed, is hereby amended and completed as follows:**

1. Article 297 is hereby amended and shall read as follows:

Article 297. Abuse of office

(1) The act of a civil servant who, in performing his duties, fails to perform or performs an act in violation of the law thereby causing material damage in excess of RON 200,000 to an individual or legal entity shall be punished by imprisonment from 6 months to 3 years or by fine.

(2) The act of a civil servant who, in performing his duties, restricts the exercise of the right of a person or creates for the latter a situation of inferiority based on race, nationality, ethnic origin, language, religion, sex, sexual orientation, political affiliation, wealth, age, disability, non-contagious chronic disease or HIV/AIDS infection shall be punished by [imprisonment] from one month to one year or by fine.

(3) Criminal proceedings shall be initiated upon the prior complaint of the affected party”.

2. Article 298 is repealed.

3. Paragraph (1) of article 301 is hereby amended and shall read as follows:

“(1) The act of a public servant who, in performing his duties, has performed an act or took part in making a decision which allowed undue benefits to be obtained, directly or indirectly, for himself, for a spouse, relative or next of kin up to and including the second degree shall be punished by imprisonment from one to 5 years and the deprivation of the right to hold public office”.

4. Paragraph (1) of article 308 is hereby amended and shall read as follows:

“(1) The provisions of articles 289 - 292, 295, 297, 299, 300 and 304 regarding public servants shall apply accordingly to acts performed by or in relation to the persons who exercise, permanently or temporarily, with or without remuneration, a commission of any kind in the service of an individual such as the ones provided in article 175 paragraph (2) or within any legal entity.”

5. Paragraph (1) of article 336 is hereby amended and shall read as follows:

„Article 336 - (1) Driving on public roads a vehicle for which the law provides as mandatory for the driver to hold a driving license by a person having a blood alcohol content in excess of 0.80 g/l pure alcohol in the blood stream is punished by imprisonment from one to 5 years or by fine.”

6. A new article 336¹ is introduced after article 336, which shall read as follows:

Article 336¹. Consumption of alcohol or other substances after a traffic accident has been produced

(1) The act of a driver or driving instructor, during teaching time, or of the examiner of the competent authority, during the performance of the practical tests of the examination to obtain the driving license, to consume alcohol, drug products or substances or medicines producing similar effects, after a traffic accident has been produced resulting in the killing or injury of bodily integrity or health of one or several persons, prior to the collection of biological samples, shall be punished by imprisonment from one to 5 years.

(2) Is not an offence the consumption of medicines producing effects similar to drug products or substances, after the traffic accident has been produced and before the arrival of the police on-site, if such medicines are administered by authorized medical personnel, if such medicines are required to be administered considering the health state or bodily injury of the driver”.

Article II. - Law no. 135/2010 on the Criminal Procedure Code, published in the Official Gazette of Romania, Part I, no. 486 of 5 July 2010, as subsequently amended and completed, is hereby amended and completed as follows:

1. Paragraph (5) of article 25 is hereby amended and shall read as follows:

“(5) In case of acquittal of the accused or ending the criminal trial, based on article 16 paragraph (1) letter b) first thesis, letters e), f)- with the exception of limitation, i) and j), in case of ending the criminal trial following the withdrawal of the prior complaint and in the case provided by article 486 paragraph (2), the court shall leave the civil action unsettled.”

2. Paragraph (2) of article 215¹ is hereby amended and shall read as follows:

“(2) During the criminal investigation, judicial control may be extended by the prosecutor, by order, if the underlying grounds of such measure are maintained or new grounds have occurred justifying the extension of the measure, each such extension not to exceed 60 days. The provisions of article 212 paragraphs (1) and (3) shall apply accordingly”.

3. A new paragraph (3) is introduced in article 290, which shall read as follows:

“(3) The report of a criminal offence shall be submitted to the competent prosecuting authority within 6 months from the date the deed sanctioned under the criminal law has been committed, under the pains and penalties of the report no longer producing the legal effects provided by law resulting in the removal of criminal liability”.

4. A new paragraph (1¹) is introduced after paragraph (1) of article 557, which shall read as follows:

“(1¹) Upon being handed the writ of execution, the convicted person shall acknowledge in writing and confirm such acknowledgement by signature the right provided by article 466 paragraph (1), and, should such person be unable or refuse to sign, a protocol shall be concluded to this end”.

Article III – (1) Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania, Part I, no. 510 of 24 July 2009, as subsequently amended and completed, including by the ones in this Emergency Ordinance, shall be republished in the Official Gazette of Romania, Part I, after having been ratified by law.

(2) Law no. 135/2010 on the Criminal Procedure Code, published in the Official Gazette of Romania, Part I, no. 486 of 15 July 2010, as subsequently amended and completed, including by the ones in this Emergency Ordinance, shall be republished in the Official Gazette of Romania, Part I, after having been ratified by law.

This emergency ordinance transposes article 8 paragraph (4) of Directive 2016/343/EU of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.