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Distortion of the Principle of Separation of Powers Inflicted By the Decrees with the Force of Law (Case study of Republic of North Macedonia)

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ABSTRACT: *Dealing with the COVID 19 pandemic was a major challenge for the Republic of North Macedonia.The beginning of the pandemic confronted the state and the institutions with many problems from almost all spheres of social life. However, the challenges that the constitutional system faced, were particularly significant, especiallybecause by March 2020 the country had no experience with the application of the constitutional provisions regulating the issues of the state of emergency.*
The impression remains that in this period the system was a constitutional laboratory in which the main intention was the convulsive reading, interpretation and application of the constitutionalprovisions. This was the magic formula to get the system out of the danger to fade to black.
Severalaspectsseemtohave further enhanced the „ride to lightning" effect.
The paper will analyze the problem with the legal nature of the decrees with force of law. These decrees,although a constitutional category, cause an immediate and temporary distortion of the principle of separation of powers.This distortion of the principle of separation of powers driven by specific conditions and circumstances (some of them vismaior) can be politically justified. But for constitutional law, the distortion of this principle can be justified only by constitutional provisions or alternatively, by their broader interpretation which leaves room for constitutional gaps and is not desirable. Namely, in state of emergency, the established constitutional system remains in force, the bodies of the central state government do not change, but the division of competencies between them changes.Essentially this would mean that the twisting of the principle of separation of powers is aimed at the benefit of the executive power and to the detriment of the legislature.Hence, the issues that are normally regulated by law now instead of materialegis, become subject that is regulated by the decrees with the force of law.The powers of the executive related to the normative function are expanded, so the government, through the decrees with the force of law, takes over the role of the primary norm-maker.
An additional challenge for the system was to determine the scope of this normative function of the government.This issue is directly related to the legal nature of the decrees with the force of law.In this context, the paper will analyze the decisions of the Constitutional Court of the Republic of North Macedonia, which remained contradictory on this issue. It remained unknown what was hiding behind the "Cheshire Cat Smile" of the Constitutional Court when in two of its decisions it determined thatthesedecrees are bylaws that must regulate legal issues within the law vs. the interpretation that these acts are sui generis acts and can completely replace regular legislation and even derogate existing laws (contra legem effect). Thus, these interpretations of the Constitutional Court did not contribute to the strengthening of the constitutional statics.
Hence, the main focus of the paper will be the analysis of decrees with the force of law, as a constitutional instrument for deviation from the principle of separation of powers.
KEYWORDS: *decrees with the force of law, separation of powers, state of emergency.*

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I. INTRODUCTION

Several Aspects of the Decrees with the Force of Law

Decrees are acts that are immediately associated with the category of delegated legislation. The clear distinction between laws and decrees as a separate category of legal acts, is historically linked to the emergence of the first written constitutions. Guided by the views embodied in the Declaration of the Rights of Man and of the Citizen of 1789, according to which "in a society in which the human rights are not guaranteed and in which there is no separation of powers - there is no constitution at all", the legal theory sets the postulate - the legislature adopts the laws, and the executive power executes and enforces them. Hence, the heroic victory of the principle of separation of powers, as a condition for a constitutional state, imposed two requirements 1) the

presumption of a law as an expression of the will of the people and 2) a decree with precise features of a bylaw, and whose matter is exclusively within the law.

1. The decrees with a force of law are special type of decrees. They can be adopted either on the basis of the constitutional authorization of the executive power under certain conditions, or on the basis of a decision of the parliament by which, under certain conditions, even without constitutional authorization for such action, a part of its normative function is transferred by the parliament to the executive government[1](Јовичић,2006). The main difference is in the legitimacy of the legislation to adopt decrees with a force of law. In the first case the source of this authority is the constitution (*ex constitutionem*), while in the second case they appear as delegated authority from parliament. Decrees with a force of law are special type of decrees by which the bodies of the executive, on the basis of delegated legislative authority or under certain conditions, may primarily regulate certain issues that represent *legal materiae*[2](Милосављевић, Б.,Поповић, Д. М. 2009)

2. In terms of the question of which authority is responsible for the adoption of these decrees, the fact that their adoption is within the competence of the executivepower, is a constant factor in the constitutions where these decrees are a constitutional category. This normative solution is encouraged by the fact that, the problems that are of vital interest to the citizens and the state, caused by the extraordinary circumstances (usually in state of war or emergency), should be solved urgently, efficiently and effectively.Thistype of urgent action cannot be expected from the parliaments. That is the basic motive and reason that decreeswith the force of law are adopted by the executive power. The alternatives where their adoption is the responsibility of the head of the state (the President) or government, are a variation on this solution.

3. The adoption of decrees with a force of law is always linked to the fulfilment of additional preconditions. One of these assumptions is among the reasons for which the decrees with a force of law have been adopted, i.e. the circumstances due to which the request for their adoption have been imposed. The legal theory points out that it is difficult to define specifically what a state of emergency or a state of war means. In this context, the theoretical view of Carl Schmitt, according to which "the essence of the state is affirmed, not in a" normal situation ", but primarily in a state of emergency. Only in this moment the modern ideas for power and management are affirmed. In state of emergency it is the Decision that, "unrelated to the norms", keeps the order from within, in certain areas in which the norm cannot "be actually applied"[3] (Schmitt, Carl, 2005). If we limit ourselves to constitutional solutions, the technique of enumerating these various circumstances, is often used. Most often the examples include war, imminent military danger, declared war, state of alarm, disturbance or endangerment of public safety or order, "state of military readiness, state of emergency, state of siege, natural disasters, epidemic diseases of humans, animals or plants.

4. Regarding the legal nature of the decrees with the force of law, they are characterized by greater independence compared to the executive decrees. This basically means that, in case the delegating law on the basis of which they have been adopted ceases to be valid, they will have an independent existence and will continue to have legal effect. However, this seems to be of secondary importance, due to the fact, that these decrees can amend and supplement certain legal provisions, introduce new provisions or replace a law regardless of the majority with which it was adopted in the representative body. Namely, the decrees with the force of law are used for not only spontaneous, but also primary and original regulation. The possibility to derogate the legal regulations with these decrees is their *differentia specifica*. In that case, the decrees with a force of law do not represent *secundumlegem* (they are not adopted for the purpose of applying the law, and accordingly there is no obligation to be bound by law and to regulate the matter within its borders). These decrees are not even *intra legem* (there is no obligation for them to move within the framework of positive law). These decrees can even be *contra legem* (contrary to the law). This features of the decrees with the force of law completely change the physiognomy of decrees, categorizing them as a completely hybrid category. If, above all, their legal force has been taken into account, which is identical to the legal force of the law, and the fact that although they are bylaws, in their essence they are still a law in a material sense, then it can be completely concluded that they represent a separate category with very specific legal nature(sui generis category).

5. The issue of the scope of the decrees with the force of law is very important for the legal theory and practice.In connection with this issue, the question arises: can only the laws be changed by the decrees with a force of law or the constitution as an act, as well? An additional dilemma in the context of the aforementioned has occurred, that is, if a constitutional revision is conducted by a decree with a force of law, whether it will refer to a part of it or the decree will make the existing constitution null and void. These issues are of special importance for the science of constitutional law, because it depends on them whether the decrees with a force of law will limit the constitutionally guaranteed rights and freedoms of man and citizens, and thus whether the legitimacy of the established system will be indirectly questioned.

In the context of the previously mentioned dilemmas, it should be noted that in conditions when decrees with the force of law are passed, it is not desirable to approach to any form of revision of the existing constitution. The distortions imposed by these acts in relation to the principle of separation of powers, represent an additional burden on the already complex and complicated situation that both the legal and political systems are faced. Hence, approaching to any revision of the constitution (partially and completely) is extremely difficult and completely undesirable.On the other hand, constitutional history testifies about situations when the decrees with the force of law influenced the suspension of some constitutional provisions, mostly about guaranteed human rights.It is an indication that although a de jure partial revision of the constitution did not take place, behind the scenes these acts de facto influenced the constitution that was in force. To avoid this situation contemporary constitutions usually determine which rights are absolute and can not be limited even in the situations when the decrees with the force of law are adopted (war or state of emergency).However, the fact that the legal nature of these acts has the effect of shifting the power within the established system, is sufficient indicator that the adoption of these acts must be restrictive, limited and well regulated in the legal system.

And like all other aspects that refer to the decrees with a force of law: 1) those that constitute acts of special legal nature, 2) exception to all conventional rules that apply in the legal system, 3) acts that dominate in a special regime, 4) the legal force they have, their scope is a mind-blowing spark-plug in the legal theory.

6. Finally, among all the questions concerning the matter of decrees with a force of law, which seem to riddle more than to solve dilemmas, is the question of their control. And in this context, it seems that the basic starting premise is that this control over the decrees with a force of law is always complementary, additional. The second premise refers to the entity that needs to implement this control. In this sense, the additional a posteriori control over these acts is performed by the representative body, i.e. the legislative body (parliamentary control). This is also understandable and expected, given that the adoption of the decrees with a force of law is a reflection of the divergence and shifting of the principle of separation of powers in favour of the executive -government, and initially to the detriment of the legislature. In the systems of control of constitutionality which is implemented by special constitutional courts specialized for that purpose, the control of constitutionality over these acts can be performed by these bodies in the role of "guardian of constitutionality".

In the legal theory, upon conducting this type of additional parliamentary control over the decrees with a force of law, the legislative body has the opportunity to approve or reject these acts. However, the action of the legislative body, in exercising this additional control over the decrees with a force of law, aims at 1) to restore the balance distorted during the deviations in the principle of separation of powers and 2) to re-establish the stability of the constitutional statics.

In this context, constitutions may overlook various constitutional solutions related to the need for further confirmation of decrees with a force of law. Some constitutional solutions provide for a deadline within which the decrees should be submitted for confirmation. In that case, submitting the decree with a force of law to be ratified by the legislative body within the constitutionally provided deadline is a constitutional obligation. Namely, the fulfilment of this constitutional obligation is a condition for extension of the measures and instruments provided for by the decree. Failure to submit the decree to the legislative body within the constitutionally provided deadline means that it will not produce legal effect after the expiration of this period. On the other hand, if the constitutor did not provide for any deadline within which the decree should be submitted for confirmation, the conventional interpretation of the legal theory is that it should be done as soon as the conditions and opportunities for it are provided.

In conditions when the constitution will not provide for the duty to submit the decrees with a force of law for additional confirmation before the representative body, their submission is not necessary at all. Namely, there is no constitutional obligation for them to be additionally controlled, nor there is a constitutional obligation for their submission due to additional control. However, the legislature always has the opportunity to conduct this control and to further legalize these decrees, or to repeal them by law and thus remove them from legal circulation.

The issue of additional control of decrees with a force of law seems to be further complicated in cases when the constitution did not regulate the matter for decrees with a force of law and did not explicitly provide a basis for their adoption. In this context, the dilemma arises whether the legislature can retroactively provide legal force to these decrees after the end of the extraordinary circumstances. In this case, the legal theory adheres to the conventional legal interpretation that the only way to bridge this gap of unconstitutionality caused by the decrees with a force of law adopted without any grounds is for the parliament to legislate them retroactively (acting from the moment of adoption of decrees). Finally, the spiral of unconstitutionality that primarily originated in the adoption of these acts without a constitutional or legal basis for it, further creates new divergent categories such as "legalization with additional/subsequent confirmation, with retroactive effect". And ultimately, the abyss of these legal situations could end only if the constitution provides a basis for adopting laws with retroactive effect. In conditions when the constitution does not provide for such a possibility even

"legalization with additional/subsequent confirmation with retroactive effect" could not be used as a "legal remedy", and these acts will remain unconstitutional.

II. METHODOLOGY

This paper will analyze the subject matter using the comparative method, Socratic method, SWOT analysis, inductive and deductive method, etc.This paper will also usethe case study method for elaboration of the Constitutional Frame of State of Emergency in Republic of North Macedonia.

Constitutional Frame of State of Emergency in Republic of North Macedonia

1. Article 125 of the Constitution precisely defines the conditions when a state of emergency is declared. Thus, the mentioned article stipulates that "a state of emergency occurs when major natural disasters or epidemics occur".

The state of emergency is a special legal regime that can be established in the entire territory of the Republic or in some part of it. In order to prevent the abuse of the institute and the adoption of a decision establishing the existence of a state of emergency, without a constitutional basis for it, the framer of the constitution opted for an very restrictive approach in determining when it occurs. Therefore, this constitutional provision is important, because it provides in a precise manner only in which cases the declaration of a state of emergency is possible. These are natural disasters and epidemics.

The state of emergency is determined by the Assembly following a previous proposal by the President of the Republic, the Government or at least 30 deputies.

Hence, the authorized proposers for the introduction of a state of emergency are:

- The President of the Republic,
- The government or
- At least 30 MPs.

The decision determining the existence of the state of emergency is made with a two-thirds majority vote of the total number of MP`s.This decision is valid for 30 days.

However If the Assembly cannot meet, the decision to establish the existence of a state of emergency is made by the President of the Republic, who submits it to the Assembly for confirmation as soon as it can meet.

This constitutional solution is also very important. Namely, if the conditions when declaring a state of emergency (natural disasters or epidemics) are taken into account, the Constitution provided for a solution and directly authorized the President to make the decision to declare a state of emergency, if the Parliament cannot convene. At the same time, the same constitutional provision obliges the President to submit that decision for confirmation to the Assembly, as soon as it is able to meet. The obligation to submit the decision on the existence of a state of emergency for the confirmation of the Assembly refers to the instrument of additional parliamentary control.

In Article 126, the founding fathers of the constitution regulated the matter related to the competences of the Government to issue decrees with legal force.Namely, the framer of the constitution predicted that, "During a state of war or emergency, the Government, in accordance with the Constitution and law, issues decrees with the force of law. The authorization of the Government to issue decrees with the force of law lasts until the termination of the state of war or emergency, on which the Assembly decides.

This authorization of the Government is the constitutional basis for the executive-Government to act in conditions where a certain urgency in the action is required. The intention of the framer of the constitution, can be sought in the necessity for a smaller collective body (the government) as opposed to the legislative body, to bear the burden of decision-making and the urgency of action, in conditions of epidemics or major natural disasters or in a state of war. The aforementioned constitutional solution is justified, if it is taken into account that the usual way of working of the legislative bodies does not correspond to the needs of quick, efficient and effective decision-making in conditions of emergency or war on the one hand. On the other hand, the risk of the possibility of abuse of power, when this competence would be entrusted to an individual authority, it is significantly reduced.The purpose of these decrees with the force of law, is the urgency in acting and establishing a set of measures, instruments and mechanisms in order to overcome the state of emergency.However, this authorization of the Government is also limited in time, because it lasts until the end of the state of emergency, i.e. the state of war.

2. Finally, up to March 2020, the Republic had no experience with the application of the constitutional provisions that regulate *materiaeconstitutionis* of the state of emergency. The spread of the covid-19 virus imposed the need to declare a state of emergency. The government of the Republic of North Macedonia was the authorized proposer for making a decision on the existence of a state of emergency. Since the Assembly was dissolved, for the purpose of holding parliamentary elections, the decision on the existence of a state of emergency was made by the President of the Republic. The overall procedure related to the matter of declaring a

state of emergency was carried out in accordance with the constitutional provisions. A law that would regulate this matter in more detail, has not been adopted.

It is necessary to emphasize that during this period the constitutional system in the country represented a real constitutional laboratory. It seems that all the legal dilemmas that have puzzled the onset of the covid- 19 pandemic, have been put on the table for resolution. All decrees with legal force that were passed during the state of emergency were challenged before the Constitutional Court. The Court faced a serious challenge, especially since our constitutional system does not provide for another form of control of decrees with legal force. In the absence of a law that would regulate this matter in more detail and provide for additional parliamentary control of the constitutionality of decrees with legal force, the Constitutional Court was the only authorized authority in the system that was supposed to balance the deviation of the constitutional construction, that these acts cause.

Although the general impression is that the Constitutional Court has adequately borne this burden, some completely contradictory decisions of the Court must not be left out. Some of them, although passed at the same session, referred to a completely different legal nature of the decrees with legal force.

Namely, in one of its decisions, the Court identifies these acts with ordinary decrees, and in another decision, the Court assigns them a sui generis nature. However, if we take into account the practice of the court during this period of time, there is no doubt the acceptance of the opinion on decrees with legal force as acts that regulate legal matter (*materiaelegis*), but at the same time acts that must not encroach on the constitutional provisions that guarantee absolute rights. Such practice of the Court implicitly indicates that decrees with force of law may not encroach on constitutional matter. On the other hand, the nature of these acts and the matter that these acts regulate, undoubtedly support the thesis that the weight of decision-making in a state of emergency is transferred from the parliament to the executive - the Government. In the case of Republic of North Macedonia, since the assembly was dissolved to hold extraordinary elections, the overall decision-making process was carried out by the government. However, it seems that all the legal challenges imposed by the covid-19 crisis, were successfully managed.

III. DISCUSSION

About the Theoretical Standpoints of the Distortion of the Principle of Separation of Powers inflicted by the Decrees with the Force of Law

1. There is a need of a deeper analysis of the specifics of the legal situation in which the decrees with a force of law are adopted. Namely, when the Constitution lays the foundations of the constitutional order, this act determines the holders of certain functions of the state government and their competencies. Consequently, each of these state bodies acts within its scope of constitutionally provided competencies and do not encroach on the competencies of the other state bodies. If they do, the act adopted outside the competencies provided for by the constitution, will be unconstitutional.

However, as stated in the legal theory, conditions and circumstances may occur in the life of the state that can cause immediate and temporary distortion of the principle of separation of powers, and even jeopardize the survival of the state. The occurrence of circumstances that lead to a state of war or state of emergency, basically represents a regime, different from the one originally envisioned with the construction of the founding fathers of the constitution. Theendangerment of the principle of separation of powers prompted by specific conditions and circumstances (some of them vis major) can be politically justified. But for the science of constitutional law, the aforementioned twisting of the principle can be justified either by the existing constitutional provisions, or alternatively, in case they are not provided for, by a broader legal interpretation. The aforementioned interpretation may be applied in conditions of constitutional emptiness, legal vacuum and lack of established practice, which additionally complicates the already specific circumstances. Namely, the aforementioned endangerment of the principle of separation of powers, has a completely different meaning and highly uncertain effects, because the state faces a specific and concrete danger. *In this case, the established constitutional and legal system remains in force, the state bodies of the central government do not change, but the consequence of the new circumstances, change the division of the competencies among them.*

2. Thus, in these newly created circumstances the acts that are in the competence to be adopted from one state body, are adopted by another body. Essentially this would mean that the twisting of the principle of separation of powers is aimed at the benefit of the executive power and to the detriment of the legislature. Namely, the authorities of the executive- government have expanded powers and function- mainly the normative function. The acts for which adoptionthe legislative authority has competence, pass into the competence of the executive power (president or government).The bodies of the executive power engagethemselves in solving issues for which they are not competent. Those issues are usually in the competence of the legislative and constitutional authorities.Even in the cases in which these issues are already regulated with law, the authorities of the executive power, regulates them anew, regardless of the existence of legal acts in the system. Hence, the matter that would normally be regulated by law, now instead of *materiaelegis*, becomes a materia regulated by decrees

with a force of law. Decrees with a force of law substitute the existing legislation, so the decrees with a force of law can also regulate a matter that would normally be regulated by organic or systemic law. Moreover, the legal nature of these acts to act contra legem, can completely derogate the existing laws, regardless of the majority by which they were adopted.

Thus, the usual hierarchical legal pyramid through which the legal system is represented, gets spherical distortions from which the statics of the construction and its survival are at stake. It seems that the urgent, effective and efficient action in emergency conditions, in order to avoid major problems and damages that the citizens and the state could face, has an additional motive - a return to the original system construction.

3. In the context of the aforementioned, two situations are generally stated in the constitutional legal literature. The first one, when the constitution maker recognized the specificity of the state of emergency and the deviation from the division of competencies among the holders of the state power, and consequently, normalized it constitutionally.And the second one, when it did not foresee it or introduced only a general clause and a general formulation.

3.1. In the first case, the founding fathers practically intentionally introduced divergence in the system of organizationof powers. Thus, the explicit constitutional provision that regulates the decree with a force of law in extraordinary circumstances, does not make inadmissible the deviation from the principle of separation of powers, and the adopted acts unconstitutional. That is, it is constitutionally explicitly provided that the executive is allowed to encroach on the competencies of another state body. In this case, no special authorization from the legislative body is required at all, for the executive power (government/president) to adopt decrees with a force of law. Practically the Constitution is the source of these acts. Namely, the source of this authority for the executive power is the constitution (*ex constitutionem*).

3.2. The legal situation is completely different when the constitution does not provide for the deviation from the principle of separation of powers through the adoption of decrees with a force of law, or it does so, with a general wording. In this case, if such a divergence in the system occurs, and decrees with a force of law are adopted as a direct encroachment of the executive on the authorities of the parliament, then these acts will be unconstitutional, completely irrespective of the circumstances that imposed their adoption. In this context, the existence of special conditions necessary for the adoption of decrees with the force of law, by itself cannot cause a distortion of the principle of separation of powers, which the constitution originally established.It does not lead to new powers of the executive power, nor does it allow its expansion at the expense of the legislative power.This, if the analysis is kept exclusively on the legal aspects of the situation.If the political aspects are taken into account, everything seems to get even more complicated. The political justification for adoption of the decrees with the force of law does not go hand in hand with the legal justification, in a case where there is no constitutional basis for passing these acts.This dilemma raises the issue of "*natural right to emergency*", *Notrecht*, *Saluspublica suprema lex* (good of the state is supreme law).

The theoretical positions on *Notrecht* and *Saluspublica suprema lex* are specific for some authors of the late 19th and early 20th centuries. Namely, some authors advocate the opinion that the executive power have the right to act in conditions of emergency, regardless of whether the constitution provided for it or not. This Notrecht right always exists(Jelinek,,V. Gesetz und Verordnung.1887.p 376 ; LabandDroitpublic de l`EmpireAllemand, II p.386). According to this theory, in conditions of emergency and when it is necessary to expand the powers of the executive power at the expense of the legislative power, the executive has the right to take measures, even in cases where the constitution did not provide for it.Diguit andHaurio have similar theoretical opinions. They stipulate the justification for passing the decrees with the force of law even without constitutional authorization for this. They justify this theoretical position as legitimate and with the aim of keeping the established order until the end of the circumstances that led to their passing(Hauriou. Precis de Droiconstitutionnel. 1929.p.451, Laband. Droit public de lEmireAllemand, 1887).

However, regardless of the political justification for enacting decrees with legal force without constitutional authorization, I must emphasize that it represents an opportunity for abuse from the executive power and can be completely arbitrary. If the basic intention is to remain exclusively on the constitutional ground, any attempt to pass decrees with the force of law without a constitutional basis, should be completely abandoned. Any, encroachment on the powers of the legislature without expresisverbis constitutional authority for this is unconstitutional, whatever the circumstances that require it.Hence, the additional legalization of the decrees with the force of law through the parliamentary control of these acts, will not affect their constitutionality or legality.This is especially because their adoption is without a constitutional basis.

IV. CONCLUSION

1. Decrees with the force of law are special types of decrees. They are *sui generis* category.

2. Basic features of the Decrees with the force of law are:

- The authority with the competence to adopt the decrees with the force of law (the institutions of the executive power);

- The source of the authority to adopt these acts (*ex constitutionem* or delegated authority from the parliament);
- The need to be fulfilled certain preconditions in order to be adopted (state of war or state of emergency as a special legal regime in which they are enacted);
- Decrees with the force of law are characterized with greater independence compared to the executive decrees;
- These acts can derogate the existing law, do not represent *secundumlegem*, do not have to be *intra legem*, can be even *contra legem*;
- The legal force of these acts and their scope is a mind blowing spark in legal theory;
- The nature of the decrees with the force of law cause the effect of shifting the power within the established system;
- Because of these features the adoption of the decrees with the force of law must be restrictive, limited and well regulated.

3. Conditions and circumstances may occur in the life of the state that can cause immediate and temporary distortion of the principle of separation of powers and even jeopardize the survival of the state.
4. The occurrence of these circumstances that lead to the state of emergency or state of war, lead to a special legal regime different form the one constructed by the constitution makers.
5. In this case the stablished system remains in force, the state bodies of the central government do not change, but the new circumstances change the division of competences among them.
6. The *materiae* that would normally be regulated with laws (acts) becomes a*materiae* that is regulated with the decrees with the force of law.
7. The usual hierarchical legal pyramid through which the legal system is represented gets spherical distortions.
8. On the other hand, constitutional basis for the regulation of these acts is needed because their adoption is one of the constitutional preconditions for *restitutio in integrum.*
9. Although the Decrees with the force of lawrepresent the „ride the lightning" effect to the legal system, and although they completely shift the power form the legislature to the executive branch, they remain the main instrument to restore the established system and reduce the effects of the constitutional laboratory that occur during the state of emergency or state of war.

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