

EMERGENCY ORDINANCE No 228 of 30 December 2008

for amending and completing certain normative acts

ISSUER: THE GOVERNMENT

PUBLISHED IN THE OFFICIAL GAZETTE OF ROMANIA No 3 of 5 January 2009

Whereas the fact that completing the rehabilitation / reconstruction programs of roads of national interest within the terms established by the work execution contracts is conditioned by delivering the lands necessary for the execution of works to the builders employed, and accomplishing the procedures for obtaining the necessary approvals causes major delays in carrying out the execution of works, which leads to the impossibility of complying with withdraw deadlines stipulated by the loan agreements and generates penalties for major delay in the execution of works compared to the terms stipulated by the loan agreements,

Considering the necessity of adopting urgently a series of measures necessary for accelerating the execution of construction works for the roads of national interest declared of public utility that are subject to priority investments with external financing and state budget financing,

Under Article 115 paragraph (4) of the Romanian Constitution, republished,

The Government of Romania hereby adopts this emergency ordinance.

ARTICLE I

Emergency Government Ordinance No 34/2006 regarding the award of the public procurement contracts, public works concession contracts and services concession contracts, published in the Official Gazette of Romania, Part I, No 418 of 15 May 2006, as approved with the subsequent amendments and completions by the Law No 337/2006, with the subsequent amendments and completions, shall be amended and completed as follows:

1. In Article 256, after paragraph (1) four paragraphs shall be inserted, paragraphs (1¹) to (1⁴), as follows:

(2) Notwithstanding the provisions of paragraph (1), the challenges regarding the award procedures for the works related to transport infrastructure of national interest are drawn up under the provisions of the Law No. 554/2004 on administrative litigation, with the subsequent amendments and completions.

(1²) The procedure instituted before the court drawn up under paragraph (1¹) fall within the competence of Bucharest Court of Appeal and shall be judged in emergency procedure and preferentially, by summoning the parties.

(1³) If the parties are not able to prepare defence due to justified reasons, the Court may exceptionally grant a single acknowledged term of maximum 5 days of delay for the cause, for such reasons.

(1⁴) The Court shall rule within 3 days from the closure of hearings and shall communicate its decision to the parties within 5 days at the latest from its judgement.

2. In Article 266, paragraph (1) shall be amended as follows:

“Article 266. (1) Notwithstanding the challenges provided by Article 256 paragraph (1¹) the Council shall have the competence to solve the challenges brought up during the award procedure, before the conclusion of the contract, through specialized panels, constituted according to the Council’s Rules of organization and operation, approved according to Article 291.

ARTICLE II

Law No 50/1991 on authorizing the execution of construction works, republished in the Official Gazette of Romania, Part I, No 933 of 13 October 2004, with the subsequent amendments and completions, shall be amended as follows:

1. In Article 4, paragraph (4) shall be repealed.

2. Article 43 shall be amended as follows:

Article 43. - Notwithstanding the provisions of Article 4, the authorization of the execution of constructions works

a) of military nature shall be made by the ministries and the other relevant organs of the central public administration concerned, based on a procedure established together with the Ministry of Regional Development and Housing;

b) related to the road transport infrastructure of national interest shall be made by the Ministry of Transports and Infrastructure, through its relevant direction, by observing the law provisions regarding certain measures prior to the construction works of roads of national, county and local interest, and the methodological rules implementing it.

ARTICLE III

Article VIII of the Emergency Government Ordinance No 214/2008 for amending and completing Law No 50/1991 on authorizing the execution of construction works, published in the Official Gazette of Romania, Part I, No 847 of 16 December 2008 shall be repealed.

ARTICLE IV

Law No 198/2004 on certain measures prior to the construction works of roads of national, county and local interest, published in the Official Gazette of Romania, Part I, No 487 of 31 May 2004, with the subsequent amendments and completions, shall be amended and completed as follows:

1. In article 4, paragraphs (1) and (8) shall be amended as follows:

Article 4. - (1) On the basis of the technical and economic documentation provided for in Article 3 paragraph (1), the Government or the competent public local authority, as appropriate, approves, by means of decision, the technical and economic indicators, the location of the work, according to the final version of the pre-feasibility study and of the feasibility study, respectively, as appropriate, the financing source, as well as starting the expropriation procedure for all the buildings constituting the expropriation corridor, the global amount of the compensations estimated by the expropriator on the basis of an evaluation report drafted according to paragraph (9) and the time limit for it to be transferred into an open account in the expropriator's name. The work's location shall be announced publicly by displaying it at the office of the local council concerned, by displaying it on the expropriator's own Internet page, and shall be communicated to the National Agency for Cadastre and Land Registration in order to notify the intention of expropriating the buildings located on the expropriation corridor. Location shall be materialized by marking all the coordinate points defining it. The local public administration authorities shall include the coordinates of the expropriation corridor in the general urban plans of the localities.

.....
(8) Before the date of starting the activity provided for in Article 6 paragraph (1), an expert evaluator specialized in evaluating real estate properties, member of the National Association of Evaluators of Romania, shall elaborate an evaluation report for the buildings subject to expropriation, for each administrative and territorial unit, for each category of use. The evaluation report of the forestry and agricultural lands shall be elaborated by an authorized evaluator, agreed by the Ministry of Agriculture, Forests and Rural Development.

2. In Article 4, after paragraph (8) a new paragraph (9) shall be inserted, as follows:

(9) The evaluation report shall be elaborated by taking into account the expertise updated by the Chamber of Public Notaries, according to Article 77¹ paragraph (5) of the Fiscal Code, with the subsequent amendments and completions.

3. In article 9, the paragraphs (3) and (5) shall be amended as follows:

(3) The appeal brought up in accordance with the provisions of this article shall be solved according to the provisions of the Articles 21 to 27 of the Law No 33/1994 on expropriation for public utility reasons, as regards the establishment of the compensation.

.....

(5) Both the expropriation procedure and the public utility works for the roads that are subject to this law cannot be suspended or ceased upon request of a person who may invoke the existence of certain litigations on holding or owning the expropriated building.

4. In Article 10, paragraph (1) shall be amended as follows:

Article 10. - (1) The requests submitted to the Court in order to establish, in the debate with the Romanian State or the administrative and territorial units, as appropriate, the right of receiving compensation for expropriation and its level shall be excepted from the payment of the legal stamp and shall be solved by the ordinary Courts.

5. In Article 10, after paragraph (2) a new paragraph (3) shall be inserted, as follows:

(3) The expenses necessary for accomplishing the expertises for evaluating the level of compensations due as a result of expropriation following the litigations provided for in paragraph (1) shall be put forward in accordance with the general procedure.

PRIME MINISTER
EMIL BOC

Countersigned by:

The Minister of Transports and Infrastructure,
Radu Mircea Berceanu

The Minister of Regional Development and Housing,
Vasile Blaga

The Minister of Administration and Interior,
Gabriel Oprea

The Minister of Public Finances,
Gheorghe Pogea

Bucharest, 30 December 2008.

No 228.
