THE GOVERNMENT AND THE PARLIAMENT PARTNERS IN THE LEGISLATIVE PROCESS

Assistant Ph.D. Mihaela Macavei
The Faculty of Law and Social Sciences,
"1 Decembrie 1918" University of Alba Iulia

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Although, in principle, the law is the Parliament's work (the Article 61 from the Romanian Constitution stipulates that Parliament is the supreme representative body and the unique legislator authority of the country), the process of law's development does not represent anymore its exclusive monopoly.

The mechanism of the legislative process supposes a constant collaboration between the legislative bodies, the Chamber of Deputies and Senate, and the executive bodies, the Government and the President of Romania. The latter interferes at the end of the process, on the stage of promulgation the laws.

Under the aspect of the report between Parliament and the Government, in this field, we can notice, in most of the constitutional systems, a predominance of the Government, both on the institutional and political plan. This preponderance is not only the effect of the fact that the Government is always based on a parliamentary majority, which votes and sustains the Government's bills, but it is also the provision to the executive powers of a set of measures and powers. This set of measures establishes the scope of Parliament, in order to allow the rulers to impose their point of view.

Thus, we can not ignore the major role that the Government plays in the initial stage of development of laws, in the pre-parliamentary phase of referral and even of debating the projects and legislative proposals. Still, in the end, the Parliament, which is not a simple voting machine made to adopt the bills as submitted by the Government, will censor the legislative material put under the parliamentary examination, giving it the final shape according to political interests supported in Parliament by the representatives of the people.

As for the legislative delegation, it is said that it represents the most complete and complex form of cooperation between these authorities, under the principle of separation and collaboration of powers, under which the Government is invested with the exercise, in certain circumstances, of a legislative function.

1. LEGISLATIVE INITIATIVE

1.1 PREPONDERANCE OF THE GOVERNMENT LEGISLATIVE INITIATIVE

Generally, the initiative of laws is conferred both to Parliament and to the executive power.

In the present Romanian constitutional system, the legislative initiative belongs to the Government, deputies, senators, and to a number of at least 100.000 citizens entitled to vote, as provided by Article 74 of the fundamental law.

In the French constitutional system, the initiative of laws belongs either to the Prime Minister, either to the Parliament's members (Article 39 paragraph 1 of the France Constitution). In the Italian constitutional system, the initiative belongs to the Government, to each Chambers' member as well as to the bodies and to the organizations that have been entrusted with it by a constitutional law. Also, the people have the right to propose legislation through the proposal made by at least 50.000 voters (Article 71 of the Italian Republic's Constitution).

The legislative initiative of the Government has the highest share in the democratic world's parliaments, materialized in over 90% of cases in which the legislative power is hearing a bill, being more effective than the legislative initiative exercised by the members of Parliament.

The priority of the legislative initiative belonging to the Government must not be understood as its preeminence towards the parliamentary or civic initiative, but it must be taken under consideration aspects of technical and political matters[1]:

- infinitively greater possibilities of information, of documentation for Government, which has the opportunity to easily know the areas and issues about which appears the necessity to develop new regulations to the legal force of law, in relation to the means available to a senator or a deputy;
- proper elaboration of bills, in accordance with the exigencies of legislative technique;
- the need of assuring the country's government, according to the government's program proposed by the governmental team to the authority exercising the legislative power[2];
- the Government, being the expression of the will of the parliamentary majority, makes the draft laws, that are made accordingly to the governmental program, to meet in most of the cases the majority of votes required for adoption.

In addition, some bills may be submitted to Parliament only if they are coming from the Government. In this case, the initiative right belongs exclusively to the Government. Thus, the Government, as proprietor of the budget policy and responsible for managing the state budget funds, is obliged, every year, to submit to Parliament for approval the draft State budget and the State social security budget, under the provisions of Article 138 of the Constitution. Similarly, the initiative of laws for ratification or approval of a treaty or international agreement is subject to governmental monopoly.

Thus, in our constitutional system, the governmental initiative holds the greatest share as number and importance, even if there are no additional obstacles to the parliamentary initiative. Unlike this adjustment, in the French constitutional system, the governmental initiative stands on an obvious superior position. The legislative initiative of the parliamentarians is submitted to an extremely important restriction: their proposals cannot be received if their promulgation should have as consequence either a reduction of public resources or the creation or worsening of a public debt (Article 40 of French Constitution). The motivation for this restriction would be the parliamentarian's tendency to yield to specific temptation of electoral demagogy[3].

The exertion of the Government's right to legislative initiative is conditioned by its approval of the draft in cause, based on the examined text and on the advice received from the bodies required to express their point of view on the future bill. Then, the draft law, initiated by the Government, together with the explanatory statement, is delivered to the Chamber having competence for its adoption, with its primary examination, under Article 74 of the Constitution, under the signature of the Prime Minister. In the address signed by the Prime Minister, it is necessary that the intention of the Government to exercise its right to legislative initiative, through

[1] I. Deleanu, *Drept constituțional şi instituții politice*, Tratat, vol. II, Editura Europa Nova, Bucureşti, 1996 p.305.
[2] I. Vida, *Puterea executivă şi administrația publică*, Ed. Monitorul Oficial, Bucureşti, 1994, pp.87-88.
[3] F. Hamon, M. Troper, *Droit constitutionnel*, 30 edition, L.G.D.J., Paris, 2007, p.782.

the notice of the notified Chamber with the draft law in cause, to be intentionally provided. Once with the notification of the competent Chamber to adopt the bill as a first notified Chamber, this bill shall be sent to the other Chamber, which will make a final decision.

In France, the right to legislative initiative of the Prime Minister is exercised according with a procedure established by Article 39 of the Constitution: the draft law is developed by a ministry or by the services subordinated to the Prime Minister; the draft law is subject to the notice of the State Council, and then, possibly fined according to the previous notice, it is subject to deliberations in the Council of Ministers. After the approval in the Council of Ministers, the Prime Minister may submit to debate the bill, either in the National Assembly, or to the Senate. In this situation, he has the right to choice, under the reserve of three exceptions[4].

Although, generally, the Government exercises its right to legislative initiative, mostly under the bill's form, it is not impossible, during the legislative process, for it to interfere and to propose amendments and sub-amendments, modifications, completions or suppressions of some elements belonging to the original text subject to the legislator assembly.

The right to amendment represents, according to most of the experts, one of the right's expressions to legislative initiative or to legislative proposal. It is a "corollary" of this right. But it is about a "limited initiative", "accessory", "derivative", because it exercises only in the project or in the legislative proposal[5].

According to Article 99 of Regulation of the Chambers of Deputies, the Government, under the signature of one of its member, has the right to present amendments to the committee responsible. The Government must do this in a time limit stipulated by Article 65 paragraph 4, time limit that can not be less than half the term that has the committee responsible for presenting the report. For legislative proposals developed by a special parliamentary committee, the amendments must be submitted by the Government on that committee within 7 days of the announcement in the Chamber of Deputies.

Also, during the debates, the Government has the possibility to put under discussion the amendments rejected by the committee responsible or the amendments submitted to the committee[6].

1.2 PARTICIPATION OF MEMBERS OF THE GOVERNMENT TO PARLIAMENTARY DEBATES

The members of the Government have free and guaranteed access to work in plenary or in committee Chambers, especially since they may have the quality of parliamentarians. And if their presence is required, their participation is compulsory according to Article 111 of the Constitution of Romania[7].

The ministers or their representatives will take part, both in the work of specialized committees, where are discussed the draft laws or the amendments proposed by the Government, and in the debates in plenum. In this case, as they are the initiators, they are forced to submit the reasons which led to the promotion of the bill, and finally, after the general debate, they shall present their point of view.

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[4] The laws regarding the finances and the bill regarding the financing of the social security must be compulsory sent firstly to the National Assembly, while the bills regarding the organization of the territorial collectivities or the representative institutions of the French people established outside the boarders of France, must be firstly sent to the Senate.

[5] M. Prelot, J. Boulouis, *Institutions politiques et droit constitutionnel*, 10e éd., Dalloz, Paris, 1987, p. 851.

[6] According to Article 108 of Regulation of the Camber of Deputies.

[7] They are constitutional systems, in which the exercise of a ministerial function is incompatible with the exercise of a mandate in Parliament. In this sense we have the example of France, U.S.A. On the contrary, in other constitutional systems, modeled on the British system, the ministers, if they are not members of the Parliament when they are appointed, they must become members within a certain period after the entry into office. This is the case of Australia, Japan, and Zambia. There is a third system too, the middle one, in the countries where the ministers are not obliged to be parliamentarians too. But, nevertheless, they must meet the eligibility requirements.

The solution that the members of the Government shall participate in Parliament's works, as a rule, without prior conditions and procedures, is specific to the parliamentary regime. This solution is stated explicitly in some constitutions (France, Spain), and other constitutions accept the presence of the Government's members in Parliament's works only when this presence is required (e.g. Belgium)[8].

In France, the members of the Government, although they can not have the quality of parliamentarians, they have access to the meetings of the two Chambers of Parliament. The ministers also have access to the works of the parliamentary committees, being obliged to participate, if requested.

Similar, in Spain, the Article 40 paragraph 3 of Regulation of the Congress of Deputies allows to the members of Government to attend the meetings of the committee having the right to speak. But they can vote only in the committees where they belong.

1.3 COMPARATIVE LAW ASPECTS REGARDING THE INTERVENTION OF THE EXECUTIVE IN THE ENACTMENT ACTIVITY

In France, the involvement of the Government in the enactment activity is important. The Government has at its hand a set of measures and prerogatives to determine, to a high degree, the Parliament's field of action and to finally impose its point of view.

a. Entry on agenda

Firstly, in order to underline the main role of the French Government in the legislative activity, we mention that before the constitutional reform on August 4, 1995, the Article 48 of the French Republic Constitution gave the opportunity to the Government to dispose almost entirely of the agenda of the Chambers. Therefore, the discussion of the draft laws and the legislative proposals accepted by the Government was made in accordance with its priority and in the order established by it. Later, under paragraph 3 of Article 48, the government's monopoly on the agenda is limited: one meeting per month (which means nine meetings per year) takes place after the agenda established by each chamber. This stipulation enables the deputies and the senators to exercise and materialize their right of initiative[9].

The last constitutional modification, that came into force on March 1, 2009, provides that two weeks out of four of a parliamentary session are reserved, with priority, to the review of the government initiatives, in the order that the Parliament sets.

b. Blocked vote

In principle, each article and each amendment proposed is the subject of a discussion and of a separate vote. However, if the Government wants to prevent the meeting to pronounce on certain amendments, it may use the procedure known as "blocked vote". This procedure was stipulated, without any limitation, in Article 44 paragraph 3 of the Constitution of France: "If the Government so requests, the House before which the Bill is tabled shall proceed to a single vote on all or part of the text under debate, on the sole basis of the amendments proposed or accepted by the Government".

It was considered that the blocked vote leads to significant restriction of the right to propose amendments, which is the main form of the legislative initiative of parliamentary origin. This procedure is denied by the members of Parliament, and the Government, sensitive to these protests for many years, has avoided using this procedure[10].

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[8] M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *Constituţia României revizuită - comentarii şi explicaţii*, Ed. All Beck, Bucureşti, 2004, p. 205.

[9] F.Hamon, M.Troper , *op.cit*., p. 784.

[10] If, for instance, in 1991 the Government resorted 33 times to this procedure, in 2001 – 2002 was not made any request to this effect.

Probably, taking into consideration these precise reasons, the constitutional revision from 2008 gave a new wording to Article 44 of the Constitution. The procedure of the blocked vote was restricted quite extremely, meaning that the French Government may oppose to the examination of an amendment only if it has not previously been proposed to the special committee.

Nevertheless, if the Government requires, the notified assembly pronounces by a single vote, on the whole or on a part of the text put under discussion, keeping only the amendments proposed and accepted by the Government[11].

c. Petition on a second deliberation

After the vote on articles, the Government may request, as well as all the parliamentarians, just that they have less chances to succeed, a second deliberation on a part or on the whole text. Finally, the assembly is the one that will decide on a second debate, but normally there is a parliamentary majority behind the government. The second deliberation acts only on the new proposals of the Government or of the notified committee, and on the amendments related to these.

d. Adoption of laws by the National Assembly vote only on the intervention of the Prime Minister

The intervention of the Prime Minister is subordinated to the existence of a disagreement between the National Assembly and the Senate, regarding a bill or a legislative proposal. The Head of the Government will intercede only if the legislative text could not be adopted after two readings by each Assembly. He has the possibility to bring together a parity joint committee. If the Government wants a legal text to be quickly adopted, it may declare the emergency, situation that allows to the Prime Minister to initiate the same procedure after a single debate in each assembly (Article 45 of the Constitution of France).

If the joint committee fails to propose a transitional text, or if the proposed text is not adopted by the National Assembly and the Senate after a new debate, the Government may request to the National Assembly to reach a final decision. Thus, the law will be finally adopted despite the Senate's opposition. At this stage, the National Assembly may resume either the text proposed by the joint committee, or the last text passed by it, modified, if necessary, with one or more amendments adopted by the Senate[12].

In the British constitutional system, the possibilities of the executive to intercede in the development of the legislative procedure are more reduced compared with the French system.

However, in order to avoid that the opposition unduly delays the procedure for adoption a bill through endless discussions in the House of Commons, the Government may propose a motion to limit the duration of speaking. This motion is known as the "guillotine". The motion must be debated and voted by the whole Chamber. In the motion is established the further allocated time for each legislative procedure that will come. Also, the time allocated to the discussion on some articles or chapters of the project can be specified[13].

2. LEGISLATIVE DELEGATION

2.1 The institution of the legislative delegation

In accordance with the theory of separation of powers, the chosen of the people rest with the mission to ensure the legislative function, except the situation when the people accomplish themselves. In this respect, the Article 2 of the Romanian Constitution stipulates that the national sovereignty belongs to the Romanian people, who exercise it, either directly, through referendum, or indirectly, through his representative bodies. Among theses bodies, the Parliament, by its role and functions, occupies a fundamental place.

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[11] J. Gicquel, J.-E. Gicquel, *Droit constitutionnel et institutions publiques*, 22 Edition, Montchrestien, Paris, 2008, p. 719.

[12] F. Hamon, M. Troper, *op.cit*., p.791.

[13] C. Ionescu , *Regimuri politice contemporane*, Ediția 2, Ediția C.H. Beck, București, 2006, p.103.

As an expression of this position in the public authorities' system of the Romanian state, the Parliament is the sole legislative authority of the country, according to Article 61 of the Romanian Constitution.

In principle, a delegated power may not in its turn to delegate. So, the legislative power belonging to the Parliament can not be delegated to another power or another body.

Yet, unavoidable social demands require exceptions, namely the transmission of the legislator's prerogatives to the Executive, through the legislative delegation procedure.

The legislative delegation represents a specific institution of the constitutional right, which is defined in nuances from one author to another.

Professor Ioan Vida shows that through legislative delegation is understood the transfer of some legislative prerogatives from Parliament to the Government, under certain conditions stipulated by the Constitution, by the law, or even a seizure of such prerogatives by the executive power, by virtue of some actual positions[14].

In his turn, Professor Ioan Deleanu defines the legislative delegation as "a variety of delegation in general", being invented as a "substitute for the legislative work of the Parliament during particularly critical periods, especially during war"[15].

Other authors[16] qualify the institution we are referring to as being "one of the most controversial in the constitutional system in Europe", by which "either directly the Constitution, or the Parliament by law, based on a text from the Constitution, gives prerogatives to the executive to adopt normative acts with primary character".

Synthesizing, the legislative delegation is that institution of the constitutional law by which the Parliament, under and within the constitutional and statutory provisions, give to the Government and to the Head of State the power to adopt normative acts with primary character. This legislative delegation is accorded only in extraordinary situations or in other situations where the Parliament considers being necessary[17].

What interests us is the relation between the Parliament and the Government. The legislative delegation represents the supreme and the most complex form of cooperation between these authorities, under the principle of separation and collaboration of powers. By virtue of this principle, the Government is invested with the exercise, in certain circumstances, of a legislative function.

Although the legislative delegation is not an usual attribution of the Government, it was sustained in the doctrine, and, however, it may be considered a necessary enabling for exceptional cases. In other words, the ordinance, as a normative act of the Government, is the expression of a delegated competence. It goes beyond the strict area of "the general management of the public administration". It appears as a way for the participation of the Government in accomplishing "the legislative power", participation required by the very second part of its role: "the completion of internal and external policy of the country"[18].

Historical and comparative law

The procedure of the legislative delegation is tightly connected to the appearance in the evolution of the states of some extraordinary situations, primarily the state of war, which demanded firm and urgent measures. On this basis it was born in the U.S.A. the theory of war powers, under

[14] I. Vida, *Delegarea legislativă* in *„Studii de drept românesc",* nr. 3-4/1999, p. 239.
[15] I. Deleanu, *Delegarea legislativă – ordonanțele de urgență ale Guvernului* in *„Dreptul",* nr. 9/2000, p. 9.
[16] M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *op.cit.*, p. 221.
[17] Şt. Deaconu, *Delegarea legislativă în România – Analiză jurisprudențială* in *Perspective privind instituția parlamentului*, Editura All Beck, Bucureşti, 2005, pp. 93-94.
[18] Dana Apostol-Tofan, *Puterea discreționară şi excesul de putere al autorităților publice*, Ed. All Beck, Bucureşti, 1999, p. 86; A. Iorgovan, *Tratat de drept administrativ*, ed. a III-a, Ed. All Beck, Bucureşti, 2006, p. 401.

which the qualities of the President, as head of the army and the navy, gave him unlimited powers, which may go beyond the competence of the Congress[19].

In the U.S.A. the exceptional powers of the President manifests in times of peace too, particularly in the economic field, under the legislative delegation passed by the Congress, although this is a paradox in the American political system characterized by a strict separation of powers[20].

In France, during the IIIrd and the IVth Republic, the Constitution did not stipulate the Parliament's possibility to delegate even temporarily its legislative power. The Article 13 of the Constitution of 1946 forbade clearly the delegation of the legislative power.

The World War I underlined the inefficacity of the French political system, its impossibility to cope with the problems of a nation at war: the slowness of the Parliament when it had to act fast, the weakness of the Government when the power had to be strong. In this situation, the chambers have delegated to the Government the power to elaborate laws, bearing the name of decree-laws. The practice continued after the war too. In 1918 the Government substituted itself to the legislator and issued decree-laws, which were then ratified by the Parliament, and in 1926 Poncaré, the President of the Council of Ministers, obtained a new delegation and issued an important number of decrees-law. All these led to the birth of the legislative delegation's theory, based on reasons of expediency, which generates lawfulness, in accordance with the constitutional provisions[21].

Article 38 of the current French Constitution consecrates the practice of the legislative delegation, establishing that "the Government, in order to execute its program, may require to the Parliament the authorization to take, by ordinances, within a limited time, measures which are normally of the law's domain".

The procedure can be used especially in budgetary matters, according to Article 47 of the Constitution. If the draft budget introduced by the Government was not adopted by the Parliament within 70 days, the Government itself has the right to adopt the legislative act through ordinance[22].

In France, the ordinances make the subject of a deliberation in the Council of Ministers. But this only after the ordinances have been previously approved in the Council of State and are bearing the counter signature of the Prime Minister and of the Ministers responsible. Finally the ordinances are invested by the President of the Republic[23].

In the British constitutional system, there are situations where the Parliament expressly empowers the Government, through a special enabling law, to adopt norms that have the power of law. This legislative delegation is quite common and it is explained by the concentration of the executive and legislative power in the hands of one party[24]. The party will choose this path when it considers it is better to use it instead of the ordinary legislative procedure.

The Parliament reserves its right to control the normative activity of the Government by its special commissions and by creating the legal framework in which any natural or moral person may complain that, by the acts of the Government, he suffered unwarranted damages[25].

In Italy, the Parliament may delegate the Government to adopt norms with law power in certain circumstances and for a limited time. In cases of extreme necessity and urgency, the Italian Government has the right to adopt on its responsibility and without the empowerment of the Chambers provisional remedies with law value (Article 77 of the Constitution). But the Government has the obligation in this case to present them to the Parliament, at the same day, in order to be discussed and adopted by it[26].

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[19] I. Vida, *op.cit*., p. 240.
[20] Ph. Ardant, *Institutions politiques & droit constitutionnel*, 8 édition, L.G.D.J., 1996, p. 313.
[21] I. Vida, *op.cit.*, p. 241.
[22] C. Ionescu, *op.cit.*, p. 146.
[23] P. Pactet, F. Mélin – Soucramanien, *Droit constitutionnel*, 26 edition, Dalloz, 2007, p. 608.
[24] Ph. Ardant,*op.cit.*,p. 263.
[25] C. Ionescu, *op.cit.*,p. 104.
[26] C. Ionescu, *op.cit.*, p.146.

Concluding, in most constitutional systems the intervention of the Government in legislative matters is supported by extraordinary events taking place in the state life. The legislative delegation is in itself an institution of emergency, meaning that, the Government's action to regulate social relationship is put under some mandatory moments. These precise moments exclude the possibility of the Parliament's intervention, at the same time, and they are materialized in emergency measures to ensure the social order[27].

In Romania, the practice of issuing the decrees - law has been used in various historical periods, being originally laid down by Alexandru Ioan Cuza after the French model. Thus, in Article 18 paragraph 2 of the developer Statute of the Paris Convention of 1858, was stipulated that "the decrees that until the convening of the new Assembly, will be given by the Lords, after the proposal of the Council of Ministers and of the Council of State, will have the power of law". Also, in art. III of "Modificațiunilor îndeplinătoare Statutului" ("The adjustments completing the Statute"), it is shown that "if the Government would be forced to take emergency measures that requires the concurrence of the Elective Assembly and of the Senate, while these meetings are not open, the Minister will be obliged to submit, to the first convocation, the reasons and results of these measures".

This practice has been used in Romania during the World War I, the Constitution of 1923 ratifying by Article 133 some of the decrees - law adopted in the previous period.

Under the empire of the Constitution of 1938, the King had the right, when the legislator assemblies were dissolved and during the interval between sessions, to issue decrees invested with law power. These decrees were to be subject to ratification to the Assemblies in their nearest session.

During the World War II, the Chambers of the Romanian Parliament being dissolved, the decrees-law were the form to pass the bills. According to the stipulations of the Constitutions of 1948 and 1952, the Presidium of the Grand National Assembly and then the State Council had the power to issue decrees with the power of law.

The practice of decrees-law was also used in Romania right after the revolution of December 1989 until the establishment of the Romanian Parliament, after the elections of May 20, 1990[28].

2.2 Legislative delegation to the Government

The Romanian Constitution regulates in Article 108, corroborated with Article 115, the institution of the legislative delegation. This institution aims to solve, as we already mentioned it, certain problems of legislative policy, namely to proclaim through a special category of the Government's acts, called ordinances.

According to the Constitution, the legislative delegation may be of legal or constitutional order.

A. Simple ordinances

The simple ordinances are always adopted under a special enabling law coming from the Parliament. This one must necessarily set the field and the date by which the ordinances can be issued. The ordinances produce similar effects by transforming the Government, head of the executive power, in a real participant in achieving the legislative power specific to the Parliament.

In the special literature, it was underlined that it would be inconceivable an implicit implied entitlement, outside a special enabling law. The implicit enabling of the Government can operate only for its rights to issue decisions that, according to Article 108 paragraph 2, are issued to the organization of the fulfillment of laws[29].

[27] I. Vida, *op.cit.*,p. 250.
[28] C. Ionescu, *op.cit.*,p. 146.
[29] A. Iorgovan in *Constituția României revizuită – comentarii şi explicații*, *op.cit.*, p. 223.

Concerning the area in which the Government may issue ordinances, in principle, there are no restrictions, except for the domains reserved for the organic laws, expressly defined by Article 73 paragraph 3 and other rules of the Constitution. The competence of proclaiming in the area of the organic laws can not be delegated by the Parliament, given the importance and the nature of these laws. Through them is organized the state and are regulated the basic social relations, such as the general legal status of property and inheritance, the working conditions, the syndicates, the employers, the social protection, etc.

The time limit to issue the ordinances must be a certain date and it must be considered as a maximum limit of the legislative delegation. The issuance of ordinances over this term represents a violation of the Government's competence, which attracts the unconstitutionality of the ordinance.

Nothing stops the Parliament to set other conditions too, beyond those mentioned above by the law of enabling. These conditions could be the coordinates or the limits of the future legal adjustment or the obligation of the Government to submit the adopted ordinances to the Parliament's approval[30].

By ordinances, the Government may amend or repeal the existing laws, except those organic and it may issue new legal regulations in the approved areas. Also, throughout the term of empowerment, the Government may change the ordinances it gave, within the legislative delegation, or it may repeal them.

The ordinances issued under an enabling law are published in the Official Gazette of Romania, Part I. They shall come into force in three days of the publication or from the date provided in their text.

As we have already shown, the ordinances issued under a special enabling law may be affected by the Government's obligation to subsequently submit them to Parliament's approval. The failure to fulfill this obligation has as a direct consequence the cession of the ordinance's effects. The time limit by which the ordinance must be submitted for approval is the precise term when the granted delegation ceases.

It results, therefore, that this time limit is the loss of the Government from the right to issue ordinances according to the enabling law. And in respect of the failure to submit to Parliament for approval the ordinances issued, the expiry of the time limit has as result their caducity, the ordinances ceasing their legal effects. Most of times, the ordinances, that are subject to the subsequent approval of Parliament, are regarding the adoption of unpopular adjustments or they are regarding some critical aspects. By this precise adoption the Parliament reserves its right to censor them later, after a period of application and, possibly, even after the solving of problems[31].

Even if from the constitutional text's formulation results that the submission for approval should have an exceptional character - "if the enabling law requests it, the ordinances are subject to the approval of the Parliament" – in the state practice of the last years, although the Parliament gave empowerment to the Government, whenever requested, it also frequently requested the submission for approval of ordinances that were to be adopted, turning the exception into a rule[32].

The legal operation of approving the ordinances by Parliament is done according to the usual legislative procedure, only that this time the legislative initiative of the Government is circumstantiated. Actually, it aims the ordinance that is subject to the approval of the Parliament[33]. The entire parliamentary debate is, in fact, a debate over the ordinance's text, the Parliament having the possibility to approve the full text of the ordinance, to approve it with amendments or to reject

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[30] I. Vida, *Legistica formală, Introducere în tehnica şi procedura legislativă*, Ed. a III-a Revizuită şi completată, Editura Lumina Lex, Bucureşti, 2006, p. 278.

[31] A. Iorgovan in *Constituţia României revizuită – comentarii şi explicaţii*, *op.cit.*, p. 224.

[32] D. Apostol-Tofan, *op.cit*., p. 87.

[33] Şt. Deaconu, *op.cit.*, p. 95, D. Apostol Tofan, *Despre natura juridică şi regimul juridic aplicabil ordonanţelor de urgenţă*, in *Revista de Drept Public* nr.1/1995; D. Apostol Tofan, *Consideraţii în legătură cu regimul juridic aplicabil ordonanţelor Guvernului*, in *Dreptu,* nr.4/1998.

the ordinance entirely. So, it cannot be admitted that the entire parliamentary debate, as well as the vote of the Chambers, would cover only one bill, consisting of a single item, and it would not cover the ordinance, too. Evidence is that the law adopted does not have a name that ignores the ordinance; on the contrary it is titled "Law for approving the Government's Ordinance no. ... of ... "or" Law for rejecting the Government's Ordinance no. ... of ...".

The particularity of the legislative procedure in this situation is given by the fact that unlike the ordinary bills, which call for regulation new social relations, the draft law of approving the ordinance proposes to the Parliament norms issued by the Government, under the motive of enabling, which belongs to the ordinary law. We also mention that, after submission of the ordinances to the Parliament, the Government is not allowed to amend or repeal them, because the ordinances entered into the legislative procedure with all its stages[34].

If the enabling law does not require that the ordinances issued by the Government to be submitted to the Parliament's approval, they continue to have legal effect after the expiry of the term given for the legislative delegation, too. But this only if they are not amended or repealed by another law.

B. Emergency ordinances

These ordinances can be issued only if an extraordinary situation emerged, its regulation cannot be delayed and the Government is in the impossibility of obtaining in due time the approval of an enabling law.

The emergency ordinances are now regulated by Article 115 paragraph 4 and 5 of the Romanian Constitution. The Constitution suffered important modifications subsequent to the constitutional revision in 2003, modifications that point out a fundamental change of conception. If in its initial form, the emergency ordinance was based on exceptional cases that, according to Article 93, justified the institution of the state of siege or the emergency state, in the new conception, the extraordinary situation is based on an emergency state in the regulation of a matter that cannot be postponed[35]. Thus, the term "exceptional cases" used by the old regulation was replaced, in the new wording, with that of "extraordinary cases", to highlight even more the deviation from the normal or common. The addition of the term "of which regulation can not be postponed "consecrated *in terminis* the urgency's imperative of regulation. Finally, because of legislative reasons, it was laid down the exigency of motivating the urgency, within the content of the ordinance adopted outside an enabling law.

As for the Government's possibility to adopt emergency ordinances, the jurisprudence of the Constitutional Court is constant. It established that the extraordinary case represents "the necessity and the emergency of adjustment a situation that, due to its extraordinary circumstances, imposes the adoption of an immediate solution, in order to avoid serious prejudice to public interest"[36].

The Constitutional Court, too, stated that according to the constitutional provisions, the Government may adopt an emergency ordinance under the following conditions cumulatively met:

a. the existence of an extraordinary case;
b. its regulation cannot be postponed;
c. the emergency status must be motivated within its contents.

Also, the Constitutional Court specified that the essence of the extraordinary case is the objective character: "its existence does not depend on the Government's will, which, in such circumstances, is constrained to react promptly to protect a public interest through the emergency ordinance"[37].

The provisions of Article 115 of the Constitution do not provide the prohibition to issue emergency ordinances in the organic laws. This provision is stipulated because the exceptional case

[34] Şt. Deaconu, *op.cit.*, p. 96.
[35] A. Iorgovan in *Constituţia României revizuită – comentarii şi expicaţii*, *op.cit.*, p. 226.
[36] *Decizia Curţii Constituţionale nr. 255/11.05.2005* published in *Monitorul Oficial nr. 511/16 iunie 2005*.
[37] *Decizia Curţii Constituţionale nr.83/19.05.1998* published in *Monitorul Oficial nr.211 din 8 iunie 1998*.

that requires the adoption of an urgent action to protect a public interest could denounce the institution of a regulation belonging to the organic legislation, not just ordinary, which, if it could not be adopted, would lead to the killing of the public interest pursued, which is contrary to the constitutional purpose of the institution[38]. However, it cannot be regulated through emergency ordinances fields regarding the constitutional laws, which can affect the status of fundamental institutions of the State, the rights, freedoms and fundamental duties, the electoral rights, and there cannot be established steps for transferring assets to public property forcibly.

According to paragraph 5 of Article 115, the emergency ordinance shall only come into force after it has been submitted for debate in an emergency procedure to the Chamber having the competence to be notified, and after it has been published in the Official Gazette of Romania.

Apparently the constitutional text includes two time limits, the first aiming to submit the ordinance in an emergency procedure to the competent Chamber, and the second, its publishing in the Official Gazette. It is only an appearance because the logical interpretation of the text, reported to a systematic interpretation of the Constitution, leads us to the conclusion that it is inconceivable that the emergency ordinance's publication in the Official Gazette to be done before its submittal for debate at the competent Chamber[39].

If, within 30 days of the submitting date, the notified Chamber does not pronounce on the emergency ordinance, the latter shall be deemed adopted and shall be sent to the other Chamber, which shall also make a decision in an emergency procedure. The emergency ordinances' adoption by the Parliament is done otherwise, according the regulated field. So, if the regulated field is organic, the ordinance shall be passed by the majority requested for the organic law, and if the regulated field is ordinary, then the ordinance shall be passed by the majority requested for the ordinary law. If the ordinance is passed by Parliament by law, it continues to produce effects, and if it is rejected, its effects cease from the date of adopting the rejection law[40].

[38] Şt. Deaconu, *op.cit.*, p. 106.
[39] A. Iorgovan in *Constituţia României revizuită – comentarii şi explicaţii*, *op.cit.*, p. 229.
[40] *Decizia nr. 68/27.04.1999* published in *Monitorul Oficial al României nr. 323/1999*, *Decizia nr. 85/1.06.1999* published in *Monitorul Oficial al României nr. 336/1999* and *Decizia nr. 95/11.05.2000* published in *Monitorul Oficial al României nr. 392/2000*.