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JURIDICAL REGIME OF THE ORDINANCES IN THE ROMANIAN CONSTITUTIONAL REGIME

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Abstract: *Legislative delegation is known in all constitutional systems of the democratic States as a means of co-operation between the legislative power and the executive power, to the purpose of achieving the interest of society. This institution represents the mandate for a certain well-delimited period of time and under conditions rigorously stipulated by the law, of another authority than the legislative one, to execute legislative prerogatives.*

Key words: *legislative delegation, constitutional, legislative prerogatives.*

1. Simple Ordinance and Enabling Law

The legislative delegation was considered an exception from the principle *delegata potestas non delagatur*, considering that, as the people delegated the exercise of their decisional power to the Parliament, this latter one could not delegate the received decisional competence, to another authority of the State.

In Romania, in the current system of law, legislative delegation is achieved through the intermediary of the Government ordinances, which may be simple and of emergency. [1] This delegation is achieved on legal grounds – through an enabling law, or on constitutional grounds – on the basis of the dispositions of the art. 115 paragraph (4), there being thereby issued simple ordinances and emergency ordinances. Legislative delegation is achieved on the basis of the Government enabling law to deliver ordinances, a law which must contain the domain in which ordinances may be issued and the date up to which the Government is empowered to issue them. The ordinance issued by the Government on the basis of a special enabling law must be submitted to the Parliament for approval through a law of approval. If this is rejected, the ordinance cannot produce juridical effects. The Government ordinance submitted for approval produces juridical effects since its deposition in the Parliament and until the publication of the ordinance adoption law. [2]

The Government enabling law always stands for an initiative of its own, which means that the Government is the one who solicits the adoption of an enabling law. The achievement of the attributions delegated by the Parliament does not represent a faculty for the Government, but an obligation, the latter not having the power to appreciate upon the opportunity of the ordinance issuing, with whom it was habilitated. The enabling law through which simple (legal) ordinances are

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adopted contains two categories of dispositions: obligatory and facultative. The compulsory ones refer to the period of habilitation and to the fields in which ordinances may be adopted, fields that cannot enter into the sphere of the organic law, fields identified through elimination, the sphere of the law being expressly and under limitation stipulated in the art. 73 paragraph (3) from the revised Constitution. The facultative element concerns the obligation of submitting simple ordinances to the Parliament for approval, according to the legislative procedure. [3] Although in the Constitution of Romania, no regulation is stipulated as regards the period for which an enabling law may be adopted, in the parliamentary practice, ordinance on the grounds of the enabling law may be deemed to be issued for the period of the parliamentary vacation.

On the grounds of the art. 114 of the Constitution, the Parliament may therefore issue, a special law of habilitation for the Government to issue ordinances. Precisely because this is a deviation from the principles shown above, the procedure of the legislative delegation is minutely formulated: delegation presupposes the adoption of a special enabling law; only in exceptional cases, the Government may adopt emergency ordinances; however they enter into force only after their submittal for approval to the Parliament. If the Parliament is not in session, It will be compulsorily summoned; the enabling law compulsorily stipulates the field and the date until which ordinances may be issued; those fields which make the object of the organic law are excluded through Constitution from the space of legislative delegation; through the enabling law, the Parliament may ask that the ordinances should be submitted for Its approval, according to the legislative procedure, until the completion of the habilitation term; the lack of observance of the term entails the ceasing of the ordinance effects, which will be ascertained through a law.

2. Emergency Ordinance and Law of Approval

Emergency ordinances are limited through the exceptional character attributed to them. The Constitutional Court, in a decision previous to the revision of the Constitution, appreciated that "in exceptional cases, in the sense of the art. 114 paragraph (4) from the Constitution, there are understood those situations that cannot fit within those expressly stipulated by the law. Under such cases, the intervention of the Government is justified by the public interest harmed by the abnormal and excessive character of the exceptional cases. What characterizes emergency ordinances is that they are adopted on the grounds of its own authority, granted by the fundamental Law, to the Government, without the necessity of a previous authorization, the only condition being for the measures taken to be imposed by an exceptional situation". [4]

Through the revision of the Constitution, a terminological modification was brought to these exceptional cases, they being called "exceptional situations", a completion – "whose regulation cannot be adjourned" – as well as an imperative obligation incumbent on the Government, which is the necessity of motivating the emergency in the situation stipulated in the ordinance. These extraordinary situations presuppose efficacy, transgressions from the general constitutional rules and, not in the last instance, measures for removing and preventing the public danger. They are objective and independent situations, as they do not depend on the will of a public authority; they are, also, unforeseeable, the danger that determines them must be

certain and impending, endangering the public interest and, for these reasons, their regulation bears no delay. Likewise, the extraordinary situation was defined as an "unforeseeable situation, which deviates from the customary rules and expectations, of a nature to maintain, to determine or to favour the imperilling of public interest, implying, for this reason and in default of other immediate constitutional means, urgent means for removing or for preventing the danger, applicable at once, at least partially. [5] In the second part of the paragraph (4) of the art. 115 of the revised Constitution, another condition of the extraordinary situation is stipulated, which is to consist in an emergency state.

The elements of objectivity and of content of the extraordinary situation, which the Government should take into consideration in adopting emergency Government ordinances represent, to an equal extent, dispositions through whose intermediary there are set the limits to an extraordinary situation. Going beyond these limits means eliminating the Parliament from the legislative process. Ordinances, unlike decisions, regulate social relations instead of the laws (therefore primarily), modify or abrogate existing laws, undergo the control of constitutionality and not the one of legality. Moreover, emergency ordinances are directly issued on the basis of the Constitution. These arguments are sufficient for considering that the ordinances, be them either simple or of emergency, represent acts issued by the Executive in virtue of special legislative competences and having the juridical force of the laws. [6]

Once with the revision of the Constitution, there were amended the initial dispositions as regards submitting emergency ordinances for approval to the Parliament. This way, according to the art. 115 (5) from the republished Constitution, the emergency ordinance enters into force only after its submittal for debate in emergency procedure to the competent Chamber to be notified and after its publication in the Official Monitor of Romania. The Chambers, if they are not in session are compulsorily summoned within 5 days since the submittal. If within at most 30 days since the submittal, the notified Chamber does not pronounce itself upon the ordinance, it is considered adopted and is sent to the other Chamber, which also decides within emergency procedure. The emergency ordinance, comprising norms of the organic law nature, is approved with the majority stipulated at art. 76 paragraph (1). The adoption of the emergency ordinances by the Parliament is completed in a different manner, depending on the regulated field. This way, if the regulated field is organic, the ordinance will be adopted with the majority required for the organic law (the vote of the majority of the members of each Chamber), and if the domain of the ordinance is ordinary, then the adoption will be completed with the majority required for ordinary laws (the vote of the majority of the present members from each Chamber).

This way, following the revision of the Constitution, the integral bi-Chamber-nism was removed, with the purpose to accelerate the debate of the emergency ordinance. In both Chambers, the emergency procedure is applied, the term of pronunciation upon the ordinance being of only 30 days and not of 45 days, as for all projects of law, or of 60 days, for codes and laws of special complexity, and exceeding the term signifies the tacit adoption of the ordinance. [3]

Following the debate, if the Parliament observes the term of 30 days, it may adopt a law of approval of the ordinance in the initial form, a law of approval with modifications and completions of the

ordinance or a law of rejection of the ordinance. In the first case, the publication in the Official Monitor of Romania, Part I, of the law of approval of the ordinance will change nothing in the normative content of the regulation, but will change its juridical cover. This way, the act will change from one of legislative nature, of the executive power, into a legislative one of the legislative power. In the second case, from the moment of the publication in the Official Monitor of Romania, Part I, of the law of approval of the ordinance with modifications and completions, the ordinance ceases its application and the normative act of the Parliament enters into force. There must be however considered that the effects of the Ordinance are produced until the date of the adoption of the law. In the third case, the publication in the Official Monitor of Romania, Part I, of the law of rejection of the ordinance, marks the moment since it ceases its juridical effects.[3] Emergency ordinances, according to art. 115 paragraph (6) in the Constitution, "cannot be adopted in the domain of the constitutional laws, cannot affect the regime of the fundamental institutions of the State, the rights, liberties and duties stipulated by the Constitution, the electoral rights and they cannot aim at measures of forced passing of several goods into public property." Through such a constitutional disposition, two categories of final non-acceptance were consecrated, which are – the category of the constitutional laws, on one hand, and the status of the State fundamental institutions, on the other hand. This disposition presents the advantage of constituting a serious basis in the case of notifying the Constitutional Court, with the exception of non-constitutionality of a Government emergency ordinance that infringes its content.

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