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## LEGISLATIVE DELEGATION IN THE ROMANIAN CONSTITUTIONAL SYSTEM

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### **Abstract**

*Charles de Montesquieu says, “anyone in power tends to abuse it”, this is not done in a rule of law. Thus, as a reaction to this problem, the aforementioned author elaborated the principle of separation of powers, which enshrines the three powers existing in a democratic state, namely the legislative, executive and judicial power. These three powers were entrusted to different bodies, power being limited by power, as he himself had said. Post-decembrist Romania adopted the system of the three powers, entrusting the legislative power to the Parliament, the executive power to the Government and the President, and the judicial power to the courts. Although the Parliament is the exclusive holder of the legislative function, in certain situations, it delegates this function to the Government, through the institution of legislative delegation, regulated at the constitutional level.*

**Keywords:** legislative delegation, ordinances, enabling law.

### **INTRODUCTION**

I chose to present this topic at the conference, entitled *Public Safety and the need for high social capital*, due to the impact that ordinances, especially emergency ordinances, have on the social life of the entire community. It is clear that the institution of legislative delegation is the object of study of the constitutional law branch, but through the ordinances are regulated a wider range of social relations are regulated, for example, emergency ordinances have applicability also in the field of criminal law, because as we will be able to observe during this article, it can also be issued in the field of organic laws.

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## I. LEGISLATIVE DELEGATION

Making a foray into history, the **legislative delegation** was justified by the need for the existence of a law-making power that would be available to the **executive**, because the legislators were not able to foresee and prevent by laws everything that could be of use to the community, thus, the executive having at hand this possibility to use it, until such time as the legislator can be constituted. (Muraru, Tănăsescu, 2019, p. 963)

As can be seen from the above, the legislative delegation in favor of the **Government** is an exception, the coroner being the only one entitled to regulate the social relations in a **democratic society**.

In **Romania**, the institution of delegation was established as an exceptional measure for particularly critical periods, such as war periods. (Muraru, Tănăsescu, 2019, p. 963), the Government being substituted to take decisions that are initially taken by the Parliament.

In an attempt to provide a definition of legislative delegation, we can say that this represents the way of cooperation between the **Parliament and the Government**, by virtue of which the Government is vested with the exercise of a part of the legislative function under certain conditions. The act by which the Government exercises this delegated power is called an ordinance, (Muraru, Tănăsescu, 2019, p. 963) which, as we will see below, is of two kinds, simple ordinance and emergency ordinance.

The seat of the matter is located in the **fundamental law** itself, in **article 115**, which has the following content: *"(1) Parliament may adopt a special law empowering the Government to issue ordinances in areas not covered by organic laws. (2) The enabling law shall mandatorily establish the field and the date until which ordinances may be issued. (3) If the enabling law so requires, the ordinances shall be submitted to parliament's approval, according to the legislative procedure, until the end of the empowerment period. Failure to comply with the deadline entails the termination of the effects of the ordinance. (4) The Government may adopt emergency ordinances only in extraordinary situations, the regulation of which cannot be postponed, having the obligation to motivate the urgency in their content. (5) The emergency ordinance shall enter into force only after its submission for debate in an **emergency procedure** to the Chamber competent to be notified and after its publication in the **Official Gazette of Romania**. The chambers, if they are not in session, are compulsorily convened within 5 days of submission or, as the case may be, of referral. If, within 30 days of submission, the notified Chamber does not pronounce on the ordinance, it shall be deemed to have been adopted and shall be sent to the other Chamber, which shall also decide in an emergency procedure. The emergency ordinance containing rules of the*

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*nature of the organic law shall be approved by the majority provided for in Article 76(1). (6) Emergency ordinances may not be adopted in the field of constitutional laws, may not affect the regime of fundamental institutions of the State, the rights, freedoms and duties stipulated by the Constitution, electoral rights and may not concern measures of forced passage of goods into public property. (7) The ordinances referred to the Parliament shall be approved or rejected by a law which shall also include the ordinances whose effects have ceased according to paragraph (3). (8) The law approving or rejecting shall regulate, if necessary, the necessary measures regarding the legal effects produced during the period of application of the ordinance." (Article 115 of the Constitution)*

From this text, we can see that **simple ordinances** are issued by the Government on the basis of an enabling law voted by the Parliament, which provides for the field and the limit under which the ordinance can be issued, and **emergency ordinances** represent a delegation of a constitutional order in favor of the Government, which in exceptional situations that do not bear postponement can issue ordinances, with the obligation to submit them for approval to the Parliament, followed by the publication in the Official Gazette of Romania.

At the same time, it is stated that the legislative delegation represents an exception even from the principle of separation of powers, because this time, the function of lawmaking is transmitted to the executive, as a rule, it is the prerogative of the legislative power.

It should also be noted that the legislative delegation represents a deviation from the rule according to which the powers received by delegation can no longer be delegated in their turn. (Deleanu, 2006, p. 701)

It is imperative to mention that the Parliament is in accordance with **the Constitution of Romania**, the **supreme representative** body of the Romanian people and the sole legislative authority of the country (Article 115 of the Constitution), which makes it the exclusive holder of the legislative function. By the mere fact that the legislator can delegate this function, it cannot deprive it of it, because it can issue an enabling law, which of course it can repeal, and in terms of constitutional delegation, here too parliament can approve or reject an emergency ordinance, which is what the holder of the office does in its own conscience.

In the first years of the adoption of the current **Constitution of Romania**, the legislative delegation was not so used, the Parliament exercising the legislative function it had received through the fundamental law. Since 1997, doctrine has begun to pay more attention to this institution, and government practice has caused it to move further and further away from the letter and

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spirit of the Constitution. The first prime ministers from 1996 to 2000 began to use this institution in excess, even reaching the situation that, in 2000, the Government adopted more ordinances than the days of a year. (Muraru, Tănăsescu, 2019, p. 965).

By way of example, we state that until 2016, namely at the 25th anniversary of the adoption of the present Constitution (1991), 2,850 emergency ordinances were issued, that is, on average, one emergency ordinance every 3 days. It is important to note that between 1992 and 1996 only 20 emergency ordinances were issued, and the remaining 2,830 between 1997 and 2015, so an average of one emergency ordinance per 2 and 4 days respectively. (Boc, 2016, p. 19)

Unfortunately, this custom of the Government to use this institution in an excessive way is still practiced today. On the official website of the Chamber of Deputies<sup>1</sup> are listed the emergency ordinances issued by the Government in 2021, the number is quite small, namely 99 ordinances, compared to other years, I would like to say, only the emergency ordinances are listed, not the simple ones.

Before proceeding to the presentation of the ordinances by which the legislative delegation is exercised by the Government, it is necessary to define these **ordinances**, thus, the ordinance is a **governmental act** of enforcing the enabling law, by its approval by the Parliament, it becomes law, and as far as the emergency ordinances are concerned, the Constitutional Court states that the law of approval integrates in all the provisions of the approved emergency ordinance, and by approval, the emergency ordinance ceases to exist as a separate normative legal act, the approval thus giving rise to a new normative act that absorbed the emergency ordinance. (Muraru, Tănăsescu, 2019, p. 966)

In other words, the simple ordinance, that is, the one issued under the enabling law, only meets the requirements laid down by Parliament in that law. And as for the emergency ordinances, that is, those issued on the basis of constitutional delegation, they are absorbed into the law of approval, being considered law, but they, as we could see, were issued by the Government, not by the Parliament. As a conclusion to the above, the ordinances, regardless of whether they are simple or urgent, are the fruit of the cooperation of the two powers, legislative and executive.

As for the simple ordinances, they are issued by the Government on the basis of the special enabling law approved by the Parliament. This law must

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<sup>1</sup> [http://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2021&emi=3&tip=18&rep=0](http://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&emi=3&tip=18&rep=0), accessed on 27.10.2021, at 10:17.

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necessarily establish the field in which the Government may intervene with primary legal regulations, and the date until which it may intervene. It is important to note that the non-observance of the time period entails the unconstitutionality of the ordinance. Simple ordinances cannot be issued in the dement of organic laws. As for their entry into force, they enter into force 3 days after their publication in the Official Gazette of Romania. (Vida, 2012, p. 198).

As for the emergency ordinances, they are issued by the Government in exceptional situations, which do not bear postponement, hence resulting in two substantial determinations, the first is the existence of an exceptional situation, and the second is the urgency. The government has an obligation to motivate emergency ordinances, and in short, the motivation must answer the questions of how? and why?. The emergency ordinance enters into force only after its submission for debate in an emergency procedure to the Chamber competent to be notified and its publication in the Official Gazette of Romania. Emergency ordinances can also be issued in the field of organic laws, which cannot be issued in the field of constitutional laws, they cannot affect the regime of fundamental institutions of the state, the rights and freedoms and duties provided by the Constitution, electoral rights, and they cannot concern the forced transfer of some goods into public property. (Deleanu, 2006, p. 705, 706)

As can be seen, the differences between the two ordinances refer to the basis of issue, to the areas in which they can be issued, as well as to the way in which the legal effects are produced.

### CONCLUSIONS

In conclusion, the legislative delegation is nothing more than an interinstitutional collaboration between the legislative power, represented by the Parliament and the executive power, represented by the Government. Although some authors in the field of constitutional law consider that emergency ordinances should no longer find their legal regulation, using other means that the Constitution enshrines, I am of the opinion that they are necessary, but they should not become a rule, but should consist of being just exceptions, and the general rule should be that the Parliament adopts the laws, as the sole legislating authority of the country.

*By lege ferenda*, the revision of the text of the law that allows the Government to issue emergency ordinances by limiting to a certain number that the executive cannot overcome with the risk of unconstitutionality of the ordinance, this would make the Government more responsible and

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attentive to the situations that require the issuance of such ordinances, avoiding abuse in their issuance.

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