PARLIAMENTARY CONTROL OVER THE ORDINANCES OF THE GOVERNMENTMENT. INITIATIVE, FORM, RULES

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Abstract

The work is focused on the characteristics of the control procedure on Government Ordinances, namely the initiative, the form and the rules. Concerning the initiative of the control, as simple or Emergency Government Ordinances are concerned, the problem is risen on the competent authority as being the Government or the Parliament. Regarding the form, the analysis highlights the constitutional dispositions that states the ordinances are approved or rejected by law. Regarding the rules of the control, the article concludes that ordinances are approved by ordinary law and normal parliamentary procedure. For emergency ordinances the procedure is established by the Constitution.

Key words: Government Ordinances, Parliament control, Constitution

1. Control Initiative

As already known, if by a special law of authorizing the Parliament entitles the Government to ratify simple ordinances, in the same way, the legislative, if required through authorizing law, will be forced to control the way in which this public authority exercised its vicarious legislative competence. The legal device to capitalize this element belonging to the function of parliamentary control over the Government is called „approval", through which the Parliament does explicitely agree or not with the governmentmental action. It is worth noticing that the legal institution that legislatively delegates implies a double parlamentary control: an *a priori* one, through the authorizing law and the other one *a posteriori*, through the law of approval or rejection. Although, at first sight we would feel like summarizing, that, in case of simple ordinances, the Government will be the initiator of parliamentary control, we think that , in fact, *ab initio* even the Parliament is its

holder, because only the legislator through the authorizing law may produce it. The obligation of control does not exist in the authorizing law, nor does the obligation of the Government to hand over, till the fulfilment of the authorizing term, the draft law for the approval of ordinances.

Thus, the right to exercise control over simple ordinances is arogated by the Parliament to itself, while, correlatively, corresponds the Government obligation to apprise the legislative of a authorizing draft law. As a conclusion, if the initiative of control exclusively belongs to the Romanian Parliament, the legislative initiative, whose consequence will be the control as such, may belong to the Government only, in which case we will be able to speak about an exclusive legislative initiative.

As far as the control initiative is concerned, related to emergency ordinances, the Parliament cannot avoid such a control, which it has to exercise, but only *a posteriori*, or according to the disposals in Article 115, paragraph (5) in the Constitution. In its turn, neither may the Government avoid the Parliament, being forced that before the law has come into effect to hand over the draft law for the approval of the emergency ordinance at the parliamentary Chamber that can be initially apprised.

2. Control Form

Paragraphs (7) and (8) in the Consitution include settlements common to both types of ordinances. Thus, according to the first part in paragraph (7) „The ordinances the Parliament was apprised of", and we mean here both simple ordinances, and emergency decrees, „ are approved or rejected by means of a law...". We may formulate some observations related to this constitutional text:

a) The vicarious legislation does not mean anything else but a „parenthesis" of the usual legislative exercise. By approving ordinances, the Parliament doesn't do anything else than close the brackets. The „order" is thus established at the level of competence of the state bodies, after the legislative had initially accepted, as benefits of inventory, the settlements in ordinances which, by approval, „debit"[1];

b) The approval of simple ordinances, if by means of the authorizing law there is such a law, is always done through an ordinary

[1] G. Yves, *La loi administrative*, in „Revue du droit public", nr. 1/2006, p. 71.

law. But, there is an exception: when, as a result of parliamentary debates upon the project of approval legislative changes occur so as to give the law the character of an organic law, the majority that ratifies the law is different, being an absolute majority, not a simple one. For example, a simple ordinance hints at secondary settlements, less important ones, in education. But there is the possiblity that once the ordinance is ratified , the Parliament, and it is not prevented to do this by any law text, to also resort to settlements about the general structure of education, that, as a hypothesis, would become of a majority. But this belongs to organic laws, therefore their ratification couldn't be done execpt with an absolute majority;

c) The approval of emergency decrees can be done both by an ordinary law, and an organic one, depending on the nature of the settlements established through an ordinance;

d) The approval of ordinances, no matter what their nature is, is done through a law that might be, accordingly, explicit or implicit. It is an implicit approval of an ordinance, if the Parliament, before the explicit approval of the law to approve the ordinance takes in through a law, as a whole or partly, its content.

e) The Government's position surprises here, as, at a certain momnet, it said: „when ordinances are issued according to authorizing laws in which is stipulated, the obligation that the Government should obey them, subsequent to the approval of the Parliament, the approval of ordinances or the ceasing of their effects is only express and cannot be implicit[1];

f) The rejection of ordinances, be they simple or emergency decrees, can be done only by means of an ordinary law;

g) We reiterate the fact that the Parliament cannot be apprised of Government ordinances, but only of drafts law for approving such legal acts;

h) The apprisal of the Parliament is done by handing over the draft law for approval of the ordinance to the competent Chamber to be apprised, related to the nature of the settlement. The legislative cannot

[1] See the Decision of the Constitutional Court nb. 6, 16 January, 1997, published in Romanian Official Journal, part I, no. 42, March 14 1997.

be apprised of governmentament ordinances. Consequently, the Parliament is not subject of apprisal, as we are not within a unicameral system, situation in which the wording would have been correct, but only one of its components.

For strictness, we would choose a rephrasing of paragraph (7), namely: „The approval or rejection of ordinances is done, according to legislative procedure, by means of a law that will also include the ordinances whose effects ceased according to paragraph (3)".

In the approval or rejection law „... will also be included the ordinances whose effects ceased according to paragraph (3)". Only simple ordinances are taken into consideration, affected by the coercitiveness of parliamentary control and whose effects ceased, not being subject of the Parliament approval, according to legislative procedure, till the fulfilment of the authorizing term[1]. Obviously, in case through the authorizing law there isn't the condition of being subject to approval of ordinances, they could not be subject for approving or rejecting by means of a law, continuing to have effects as goverment legal documents, in the form they had been adopted by the Government up to the moment of their abolishment, amendament, or suspension, either by means of a new simple ordinance, or by means of a law ratified by the Parliament.

3. Control Rules

The approval laws of simple ordinances, although the Constitution doesn't say anything about it, have to be discussed with priority. This, after quite a long period during which nothing was said about it. Starting with the Authorizing Law nb. 4/1994[2], the coercitiveness of debating ordinances on emergency regime was stated. Subsequently, this wording was given up, so that all the authorizing laws ratified up to now stipulate in Article 2 paragraph (2) that"ordinances handed over by the Government according to

[1] Related to matters concerning the approval or rejection of ordinance by means of law see; I. Deleanu, *Instituții şi proceduri constituționale,* Servo-Sat, Arad, 2003, pp. 619-620; T. Drăganu, *Drept constituțional şi instituții politice*, Lumina Lex, Bucureşti, vol. II, pp. 139-143; I. Muraru, M. Constantinescu, *Ordonanța guvernamentală, Doctrină şi jurisprudență*, seccond edition, reviewd and completed, Lumina Lex, Bucureşti, 2002. pp. 140-181.
[2] Published in Romanian Official Journal part I, no. 7, January 13, 1993.

paragraph (1) will be discussed with priority"[1]. We think that the term „on emergency regime" or, why not, even „on emergency procedure" was, namely would be more appropriate, taking into consideration the unusual way of legislation through ordinances. However, there is no sanction against breaking this legal coercitiveness, the Parliament having supreme power to establish its priorities regarding legislation. This was true till the verification of the Constitution in 2003 when, in the light of the disposals in the present Article 75, parliamentary debates will be concluded in a definite period of time and by creating certain terms which being overtaken draw the consideration of drafts law as being ratified.

It is also true that these constitutional terms devolve obligations only regarding the first apprised Chamber, the second Chamber having the liberty to make a final decision not being conditioned, unfortunately, by the existence of an imperative term. Although the authorizing laws presently assign the obligation of discussing the approval and rejection laws with priority, the regulations of the two Chambers do not spefify anything about it. Thus, the Regulation of the Chamber of Deputies[2] stipulates that, when making the agenda, the demands „of the boards of standing committes, debated on emergency procedure, the demand for ratifying such a procedure, drafts of law and legislative proposals for which the Chamber of Deputies is the first apprised Chamber and the debates of reports done by the mediation board will be done with priority." Therefore, the approval laws for simple ordinances, as long as not mentioned, are included in the common category of drafts law, making useless the disposal regarding „priority" assigned by the qualification law. Even more, should there be demands from the President of Romania, reports and declarations of the Prime Minister, these have absolute priority in the agenda.

Similar to this is the Senate Regulation[3], that has the following order of priority in the agenda, without mentioning the draft laws for approval of simple ordinances, which should be discussed, according to qualification laws, with priority: drafts law for the ratification of international treaties, as well as the Prime Minister's reports and

[1] This lawful stipulation was done when the Authorizing Law n0. 130/1995, published in Romanian Official Journal, part I, no. 298, Decembre 28 1995 was ratified.
[2] Art. 87 paragraph (4) and (6).
[3] Art. 85-86.

declarations regarding the Government policy, Government emergency decrees, drafts law or legislative proposals on emergency procedure, drafts of law or legislative proposals which are in the competence of the Senate, as first apprised Chamber, and reports of the mediation board. The formulation in the Senate Regulation, according to which „ priority will be given to the debates regarding emergency decrees, drafts law, or legislative proposals on emergency procedure...” can be criticized from a double aspect. First, drafts law for approval of some emergency decrees and, second, the formulation is redundant, because the drafts law for approval of emergency decrees, are also discussed on emergency procedure. It would have ben correct, we say, to specify that „priority will be given to drafts law for approval of emergency ordinances, as well as to other drafts law or legislative proposals on emergency procedure”.

Summarizing, we consider that the laws for approval of simple ordinances, compulsery being ordinary laws, should follow, in the Parliament, the same legislative procedure used for any ordinary law.

Not the same thing can be said about drafts law for approval of emergency decrees, which depart from the usual procedure. The major procedural elements are settled by the very disposals of the Constitution: the discussion of the ordinance is done on emergency procedure; in 30 days from its being laid down at the apprised Chamber, the latter should pronounce itself; not doing this at the appointed time, has as a consequence, its being considered ratified and send the draft law for approval to the other Chamber, which will make a final decision; the Decision Chamber would be able to ratify the draft law also on emergency procedure, whose characteristic elements are settled by Parliamentary Regulations.