MODALITIES OF APPROVAL FOR SIMPLE ORDINANCES

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The herein study is based on the idea of emphasizing the constitutional proceedings through which the Romanian legislative body exercises Parliament control over Government simple ordinances. The possibility was considered that by the approval law of an ordinance, The Parliament could amend the same pursuant to its right to enact. There is also under consideration the issue of approving an ordinance by Parliament, if up to the effective debate of the same it had been recalled by another ordinance adopted based on the same empowerment law and the possibility of adopting the law of approval by Government responsibility undertaking on Government initiative.

Key words: ordinances, ratification, treaties, Government, law

As it is already known, simple ordinances are submitted to Parliament approval in compliance with the legislative proceedings, up to the empowerment term, solely if the empowerment law so requires. As such, the Parliament has three possibilities:

To adopt the draft of law that comprises the ordinance under the form it had been adopted by the Government;

To adopt the draft of law comprising the ordinance with amendments and / or completions;

To dismiss the draft of law comprising the ordinance.

Our study aims to tackle solely those simple ordinances which, according to the empowerment law, must be a posteriori submitted to Parliament examination, as the issue of approving simple ordinances, unaffected by the obligation of subsequent political control is not raised.

Considering the current provisions of fundamental law, the ordinances ‘approval is performed by law. It is, in our opinion, the only possibility, although juridical literature suggests that „theoretically, approval or dismissal of the ordinance could have been also performed exclusively by vote”, and not mediated by legal instruments. Yet, considering article 74, paragraph (3) of the Constitution, that specifies that the Government performs its legislative initiative by passing on the draft of law to the proper Chamber for adopting it, as the first called upon Chamber, we admit to the fact that this is the only possibility of the Government to execute legislative initiative by << passing on the ordinance >> to the proper Chamber. Per a contrario, the Government cannot exercise its legislative initiative by << passing on the

...The called upon Chamber failing to deliberate on the draft of law for approving the emergency ordinance..." as calling upon the proper Chamber is not actually made by the ordinance, but by a draft of law for ordinance approval, whose initiator can solely be, as shown above, the Government. For reason identity, we find the last sentence of the same paragraph deemed for rephrasing, meaning that the emergency ordinance, comprising organic law like norms, is approved, „by law” we would add, with the majority provisioned by art. 76, paragraph (1).

To file drafts of law for ordinances’ approval, ordinary drafts of law, is an action that must be taken by Government, as constitutional liability, up to the empowerment deadline, under the penalty of suspending the ordinance’s provisions effects. To submit them for debate and approval can be done, considering the current provisions of article 75 in the reviewed Constitution, solely by the Senate, as the first called upon Chamber. Exception is made by those drafts of law that concern legislative measures that would be the outcome of enforcing treaties or other international agreements, ratified in advance, that must be submitted to the Chamber of Deputies, as the first called upon Chamber. The Senate shall rule in 45 days on the ordinance approval draft. The term is of 60 days, as specified in the Constitution, considering, naturally, solely those regulations that don’t regard organic laws. At the same time, nothing hinders the two Chambers to adopt an ordinance approval law during emergency proceedings as well, according to the Parliament’s regulatory provisions.

Considering these legal stipulations, the drafts of law for the approval of simple ordinances that concern ratifying of treaties or other international agreements and that should theoretically be submitted to the Chamber of Deputies, as first called upon Chamber, are not taken into account, as, in our opinion, the Government has no prerogatives in the area of ratifying by simple ordinances. This may be drawn out form the Law of Treaties that provisions that ratification, as modality of expressing consent to become party to a treaty signed by the Romanian party, can be performed by adopting a ratification law by the Parliament, or, subject to the law, by Government Emergency Ordinance. Consequently the rule is represented by Parliament ratification and the exception by ratification through emergency ordinance. Nevertheless, the state level treaties cannot be ratified by emergency ordinances, no matter their area of regulation. Treaties submitted to law ratification, as specified by art. 19, paragraph (2) of the Law of Treaties, cannot be ratified by Government Ordinances and we believe that simple ordinances were being referred to. Briefly, we should not even debate on the matter, as a Government empowerment law to adopt ordinances, through which the Government would become empowered to ratify treaties or other international agreements, is unconstitutional, and as a result there is the impossibility of adopting this type of ordinances based on legislative delegation. The opposite thesis would be „inadmissible, as solely the Parliament, subject to the law, could proceed to ratifying”, and the thesis is „senseless and useless”, and „clear distinction should be made between the ratification assignment and the enactment assignment”, as solely enactment can be the subject to legislative delegation. In fact, enactment is part of the deliberative function of the Parliament, and ratification is part of the instruction function of external politics. Putting together art. 91, paragraph (1), art. 146, paragraph (1), letter (b), art. 147, paragraph (3) of the Constitution and art. 1, point 19, paragraph (1) of Law 232/2004 that amends and completes Law 47/1992 regarding the organization and functioning of the Constitutional Court, it clearly comes out that ratification of treaties and other...

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3 Art.19 paragraph (3) of Law of Treaties.
4 Please consider solely those treaties and international agreements that are submitted to law ratification, in compliance with art. 19 of Law no. 590 / 2003.
international agreements falls under the exclusive charge of the Parliament. Should we admit ratification by ordinances, a constitutional control, on request, performed a priori, before ratification, would be impossible to accomplish, and this fact is in obvious disagreement with the provisions of art. 146, paragraph (1), letter (b) of the Constitution. It is not the time to further analyze this issue, nevertheless, to support our opinion we emphasize the fact that requiring the Constitutional Court to perform this control, in compliance with the new constitutional texts, cannot be made by non-Parliament law entities, as the Government, People’s Attorney (Ombudsman), President of Romania etc. Exactly as it is the case with the constitutional control for Parliament regulations, the entitled referral law entities are entirely comprised by the Chambers. Within other constitutional systems, for instance the French one, considering art. 54 of the Constitution, the compliance with the Constitution control of international treaties may be initiated on President of the Republic request, on the Prime – Minister’s or on the one of 60 deputies or senators. Under every circumstance, the French Constitution allows for the ratification of an international treaty only if it didn’t comprise clauses contrary to fundamental law. Per a contrario, an international treaty can solely be ratified pursuant to prior constitutional review.

The thesis has been claimed that forbidding the Government to ratify international treaties by simple ordinances would be unconstitutional, as the concerned ratification „is not subject to organic laws”, consequently, „the legislative delegation and Government intervention by simple ordinance are possible in all the areas not subject to organic laws.” 9 It is true that international treaties do not fall in the area category reserved to regulation by organic law, as it comes out of art. 73, paragraph (3) of the Constitution, but considering that the instrument to be ratified may include regulations subject to organic laws it is only natural to assign such a nature to the ratification law. Consequently, should an international treaty be on the verge of being ratified pursuant and in compliance with the procedure acknowledged by organic law, obviously, the very same treaty could not be ratified by simple ordinance, expression of legislative delegation, legal act equal to ordinary law.

One may conclude that as Parliament regulations, expression of legal autonomy, are the exclusive work of the Chambers, and no other authority has the right to interfere thereof, the same goes for the ratification of treaties and other international agreements that represents the Parliament’s exclusive prerogative, and no other state institutions can interfere thereof. It is true that both the President of Romania and the Government directly intervene in the procedure of entering international treaties, nevertheless the negotiation and completion of the same are compulsory operations, foregoing ratification. 10 Considering the above, we deem as unconstitutional the provisions of the Law of Treaties that allow the Government to ratify international treaties through emergency ordinances. 11 We also deem unconstitutional the provisions of art. 40 of the same law that surprisingly stipulate the possibility that one of the presidents of the two Romanian Parliament Chambers, or at least 50 deputies or 25 senators have to request the Constitutional Court the authorization (!) in 30 days from referral, concerning compatibility of treaties’ provisions with the Romanian Constitution.

First of all, The Constitutional Court’s attributions are solely set out by Constitution and the organization and functioning Law of the Constitution. And, among those there is the one of issuing fast authorizations concerning the constitutionality of international treaties. Confronted with such claim, The Constitutional Court can but dismiss it. Consequently all the Law of Treaties does is to add a new assignment to the Constitutional Court, which is of course unacceptable.


10 The President enters into international treaties on behalf of Romania, negotiated by the Government and submits them for ratification to the Parliament, in reasonable term. By entering treaties we understand, in compliance with art. 1 letter b) of the Law of Treaties „the stages succession that must be followed, the activities ensemble that must be performed and the proceedings and regulations ensemble that must be complied with so as the Treaty comes into force in Romania”.

11 The Government practice to ratify international treaties by which it committed externally has been criticized in the doctrine and deemed as an alienation from constitutional provisions. (I. M. Anghel, The European Union Joining Treaty of Romania, could have been performed without avoiding the examination of its constitutionality, in „Public Law Magazine”, no.2/2005, page. 127
Second of all, within ratification of international treaties, the Constitutional Court, when called upon, adopts resolutions pursuant and in compliance with the procedure set by Law 47/1992, new edition. Nonetheless, The Constitutional Court admitted, with a hue, that legislative delegation may affect on the ratification of certain international treaties. At the same time, the doctrine also carried forth such a possibility, and „the constant solutions of the Constitutional Court to assert the constitutional character of empowering the Government to ratify by ordinance the international treaties submitted to ratification are deemed as correct, if the matter regulated by the same is not subject to organic law”\(^\text{12}\). The final conclusion we considered in rapport to the ratification through simple ordinances of international treaties is the following: ratification could not make the object of legislative delegation through a particular empowerment law.

An issue raised in practice was that of establishing whether, by the law of approval for a Government ordinance, the Parliament may operate any amendments on the same, considering its right to enact, as granted by the Constitution through art. 61, paragraph (2) of the Constitution. Normally, Government ordinances may be amended and/or completed during the control performed by the Parliament, subject to one condition: that they should be in full agreement with constitutional texts. By case, The Constitutional Court was called upon in order to rule on the constitutional character of the sole article, point 6 of the Law for the approval of Government Ordinance 25/1995\(^\text{13}\) concerning the regulation of organization and funding of the research – development activity, regarding the introduction of article 11 in the contents of this ordinance that provisioned as follows: „the share annually allotted through the state budget for funding the research and development activities provisioned by art. 14 shall be of at least 1% of the Gross Domestic Product”. In its claim the Government justifiably deemed this text as unconstitutional due to the following reasons:

Should a legislative initiative involve amendment of the state budget or public social security provisions, the request to inform the Government is mandatory, in compliance with art. 110 of the Constitution, thing that did not actually occur;

In compliance with art. 137, paragraph (2) of the Constitution, the ability to draw up the state budget draft belongs exclusively to the Government;

As a budget provision is involved, it should have been debated upon and approved in a joint meeting of the Chamber of Deputies and the Senate, as stipulated by art. 62, paragraph (2), letter (b) of the Constitution;

No budget expenditures can be approved without setting the funding sources and this constitutional obligation was infringed.

Analyzing the non-constitutional objection, the Constitutional Court retained, among other things, that in compliance with art. 137, paragraph (2) of the Constitution, „the Government has sole competence to draw up the state budget draft and to send it over to the Parliament for approval”. At the same time it has been emphasized that „this way, a budget type expenditure – the minimum allotted to the research and development activity – had been pre-established by law, thus directly impacting on the constitutional Government competence to draw up the state budget. Based on this competence, no public authority can pre-establish budget allowances within the budget draft, as it would replace the Government in the draw – up process of this draft”. It is clear that the Parliament will be able to amend budget expenditure solely when the state budget law is on debate, provided the conditions in the Fundamental Law are met. The Constitutional Court found, considering the above and other matters stated in the resolution device, that article’s 11 provisions, included in Government Ordinance no. 25 of August 11, 1995, concerning the regulation of organization and funding for research and development activities, through sole article point 6 of the law for the approval of this ordinance, are unconstitutional.

The doctrine debated on the issue of an ordinance approval by the Parliament should it have been recalled until actual debate by another ordinance adopted pursuant to the same empowerment law.\(^\text{14}\) The two points of view focused on the following arguments:


a) One opinion states that a Government ordinance’s approval by law can only be made if that ordinance is in force. On the contrary, should the ordinance have ceased to produce legal effects, “either due to having met the term, or due to its abolishment, the Parliament’s approval lacks object”, and the approval law draft is rendered void by lack of object\(^\text{15}\). The solution was accepted, on one condition: the ordinance be recalled by another adopted ordinance ,,based on another empowerment law or by the legislator himself through another law”\(^{16}\);

b) The opposite opinion sets out from the fact that by acting as such, all the Government does is to retrieve the ordinance from Parliament control, the purpose of the abolishment being none other than to avoid the enacting competence of the Parliament. The sanction of nullity must be delivered under the circumstances, due to the failure to submit the ordinance for approval on due empowerment term.

In our opinion, the matter should be approached differently, considering how empowerment is passed, during vacation or during Parliament sessions. If during empowerment a simple ordinance is recalled through another simple ordinance, adopted based on the same empowerment law or through an emergency ordinance, and the Parliament is not in session, the Parliament control should also report to the recalled ordinance considering the same arguments of the above mentioned second point of view. On the contrary, hypothetically speaking, should the empowerment refer to a time period that coincides with Parliament sessions, a simple ordinance should no more make the object for Parliament control, if failure to debate the approval draft of the recalled ordinance was caused by Parliament’s passivity and not by Government action. Doing his << homework >>, namely filing the approval law draft of the ordinance in due time, the Government << passes on >> the consequences of not adopting the approval law draft to the Parliament. Thus, the Parliament would cease to be entitled to censor the ordinance that is no longer in force, as it failed to do so when it was still producing legal effects.

The issue of adopting the approval law by Government undertaking of liability, at its initiative, was put into practice. Government responsibility undertaking on its initiative can concern any law, without the representative legislator making a difference between the two. Undoubtedly, the undertaking of responsibility is ruled out from the Government competence area on a constitutional review draft, because the laws of review are adopted by specific proceedings, as provisioned by Constitution. On path of consequence, this constitutional procedure ,,of control and enactment combined”\(^{17}\) impacts on any approval law of an ordinance, as the case may be, organic or ordinary. The constitutional text expressly specifies, without place for construal, that undertaking of commitment can be made on...,a law draft”. This is the reason why we believe the Government cannot undertake responsibility on the same occasion for several distinct law drafts or for the ones comprised in “mammoth” drafts of law. Although the legislative practice tends to defeat this constitutional principle, it can only be deemed unconstitutional\(^{18}\).

Summarizing, we find that a law through which a simple ordinance, ordinary law is approved, may be adopted on Romanian Parliament level by one of the following constitutional proceedings: :
- Regular legislative procedure;
- Emergency procedure;
- Procedure of Government undertaking responsibility on its initiative.

**Bibliography**

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\(^{18}\) The doctrine concluded in the same sense, considering that the idiom “draft of law” must be plainly translated in singular, as it is not “a fascicle of laws, even if it bears a sole name”. (I. Deleanu, *Constitutional..., cited works*, footnote no.. 1).
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