

*Translation from Romanian*

**CRAIOVA UNIVERSITY  
FACULTY OF LAW AND SOCIAL SCIENCES**

**DOCTORAL THESIS**

**LEGAL STATUS OF GOVERNMENT ORDINANCES**

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## Abstract

The pressures coming from the economic, social and political environments, the intensified political battles and the inconsistent behavior of the political elite, the parliamentarians' lack of specialization, the contradictory interpretations given by the authority of constitutional control, urge the Government to delegate, in certain preset conditions and limits, the competence of primary regulation, which materializes in the possibility to adopt ordinances, norms that have legal power.

In my analysis, I have emphasized the theoretical and practical attributes, the opportunities and restrictions that may influence the restraint of the benefit of legislative delegation in the conditions set by the constitutional democracy and by the rule of law that our country enjoys. In this paper, it has been shown that the Government, although it does not have direct political legitimacy, is empowered by the Constitution with a competence that is not specific to the executive power (by the relaxed application of the principle of separation of powers in the State). For this purpose, it may adopt emergency ordinances and it may issue ordinances in fields that are not the object of organic laws. The adoption of said acts issued by the Government is explained by condensing the time required to adopt certain decisions which, in the context of speeding up the dynamics of the economic and social events, demand the extension of the legislative delegation as a condition to maintain the public order and peace in exceptional situations.

In the specialized doctrine, the argumentation of the legislative delegation to the benefit of the Government is supported by the acknowledgement of the alteration of the legislative power by distorting its activity at Parliament level, which could only trigger the dilution of the "comprehensiveness of the legislative power" to the benefit of other authorities of the State.

The use of legislative delegation has *its strengths* held by the specialized Romanian literature, which notices that, although the time limitations and the conditions related to the justification of the emergency have been satisfied, the criterion of exceptional circumstances is exceeded in practice, when the legislative delegation becomes a remedy to the incapacity of the law-making power to adopt in due time the technical and circumstantial measures demanded by the economic situation, constituting a necessary bad aspect of the current society, where the opportunities that would motivate the increase of the Government's part in adopting primary legal norms are amplified. The Parliament, due to the heavy procedures, due to the large number of parliamentarians of the two chambers, and due to the fact that parliamentarians remember the electorate only during the electoral campaigns, as well as out of the need to

demand from the authorities of executive power to provide technical information, in order to carry out a dynamic, efficient and creative legislative activity, it prevents itself from having an orderly legislative activity.

*The weaknesses* of the legislative delegation to the Government are constituted by its lack of direct political legitimacy, which triggers the violent dispute of its right to adopt primary normative acts. In the contents of this paper, the Government was acknowledged to have adopted ordinances only based on an ordinary law, therefore in the absence of an authorizing law, and it was also acknowledged to have failed to observe the obligation not to ignore certain draft laws or legislative propositions that were under debate or that had even been adopted by one of the two Chambers, which has generated parallel regulations in the same field (ordinances, in such circumstances, could be held as unconstitutional).

The willingly wrongful interpretation of constitutional texts has caused ordinances to be adopted even in fields reserved to the organic laws. The constitutionality of many emergency ordinances is doubtful both in terms of failure to observe the constitutional conditions of their issuance (only in exceptional situations), and in terms of their material limits (the norms stipulated in the Constitution force the Government not to exceed certain barriers, and to observe the set restrictions, that limit the adoption of ordinances). As regards the limits set in relation to the object of regulation, they are constituted by the fact that the Government cannot adopt simple ordinances in the field of organic laws, but only in the field of ordinary laws. The violation of these limits constitutes the breach of the Constitution, and in this case, the Government commits abuse of power. Another limit of the object of regulation refers to the field of constitutional laws which, since they are superior to the organic laws, they cannot be regulated by simple ordinances.

As regards the circumstances to adopt the ordinances, the barriers consist in : existence of extraordinary situation [art. 115 para. (4) of the Constitution, the existence of an authorizing law, the regulation should not be able to be postponed (therefore there should not be another way of regulation, like emergency procedure or Government's liability), motivation of the emergency in the contents of the ordinance, and, as regards the ratification of international treaties by emergency ordinance, the obligation of the express approval of the Romanian President.

The importance of the legal status of government acts is revealed throughout the entire paper, highlighting that the legislative delegation constitutes an important lever of the mechanism to apply power in the rule of law, in order to emphasize the deviations from the fundamental principles of constitutional democracy. Thus, I have shown how to solve the

controversies in terms of legislative delegation to defend the values of the rule of law. Throughout the paper, I have made certain propositions *de lege ferenda* that would limit power by legally classifying it in the strictest of manners. I suggested that, in a future revision of the Constitution, the democratic feature of the Romanian State, the rule of law, the separation of powers and pluralism should be introduced as provisions that cannot constitute the object of revision, as supreme values in the State. Paragraph 2 of the article concerning the revision of the Constitution should change citizens with persons, also adding person protection procedures to the guarantees of their protection to provide greater defense of their rights and freedoms.

**De lege ferenda**, I believe that paragraph 1 of article 73 of the Constitution should also specify, together with the constitutional, organic, ordinary laws, the codes – civil, criminal, tax, of civil procedure, of criminal procedure, of labor and electoral – as a distinct category of laws, superior to the organic laws, because by these codes, the human dignity, the rights and freedoms of the citizens, which constitute supreme values, could be injured.

As regards the adoption of codes, we believe, **de lege ferenda**, that art. 76 of the Constitution should also be amended, by introducing a new paragraph stipulating the adoption of the codes by the Chamber of Deputies and by the Senate, in common session, with a majority of three fifths of the number of deputies and of senators, justified by the importance of social relations that the codes regulate, correlative to the code complexity, which is superior to organic laws, and, *a fortiori*, to ordinary laws. The procedure suggested by us, a very heavy one in terms of adoption, amendment and approval, is justified by the fact that the material superiority of the codes in relation to the organic and ordinary laws would make them formally superior, providing more protection to the rights and freedoms regulated by codes, as well as the latter's correlative stability.

As regards the conditioning of the use of citizens' legislative initiative by their territorial origin and by their number, we believe, **de lege ferenda**, that it is necessary to amend para. 1 of art. 74, namely that the legislative initiative belongs, as the case may be, to the Government, to deputies, senators or to a number of 75,000 citizens with the right to vote, to render effective the semi-direct democracy and to facilitate the application of one of the means of direct intervention of citizens in the normative function. The citizens' legislative initiative is not checked *a priori*, but *a posteriori*, by the other stages of enactment, that are carried out in the Parliament. There is also the obligation that the legislative propositions made by citizens by legislative initiative should not have the form required for draft laws, because the law-making authority holds the necessary technical system that will give the draft law the suitable legal form.

We have made another proposition **de lege ferenda**, which refers to the appointment of the judges of the Constitutional Court which should be carried out for “any” judge, whose specificity should be revealed by the duties or by the special part as guarantor of the supremacy of the Constitution.

By analyzing the controversies in terms of legal system of government’s acts, by detailing the decisions of the Constitutional Court related to the application of the principle of separation of powers in the State, we draw the conclusion that the legislative delegation looks, in these present days, like an institution permanently inventing itself.