

# Considerations Concerning the Legislative Delegation Procedure as it is Now Enforced in Romania

Nicu Alina-Livia

*Habilitated Professor, PhD, University of Craiova, Faculty of Law, Craiova, Romania  
nicu1940ion@gmail.com*

**ABSTRACT:** The paper presents a critical analysis of the modalities through which the legislation that does rule the legislative delegation procedure is nowadays effectively applied in Romania. Its excessive use is therefore pointed out, as well as the negative consequences respectively generated by this now custom-enforced practice. The present work's structure includes an introduction describing the main motivations that have led us towards the choice of its topics, its present impact, a section reserved to the description of the currently enforced legal frame which does rule over this procedure, and a case study. This latter refers to the Government's Emergency Ordinance no. 57/2019 issued on July 3, 2019, concerning the Administrative Code, which could be considered as the subsequent evolution undergone by the regulation process fulfilled throughout it and the quality level itself held by its contained juridical norms. De lege ferenda suggestions are as well formulated.

**KEYWORDS:** administrative code, legislative delegation procedure, juridical norm, quality level of regulatory activity

## 1. Introduction

The Administrative Code is in the Romanian case a quite longtime awaited for normative act (more precisely for about thirty years); the personnel who is active in the frame of public administration as well as the citizens who do interact with the above-mentioned personnel have sought for it hoping that its consequently enforced juridical norms and that it could contribute to the increase of the public administration's quality standards (simultaneously in its respectively held senses of *ergonomic structure* and *performed activity*). By the end of 2022, the Official Monitor of Romania, Part I, has published two normative acts through which the Administrative Code has been modified. In its no. 1255 of December 27, 2022, it had published the Law no. 375 of December 23, 2022, on the modifying and completion of the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code (adopted by the Romanian Parliament). In the Official Monitor of Romania no. 1280 of December 30, 2022, it had published a normative act issued by the Government of Romania namely its Emergency Ordinance no. 191 of December 28, 2022, on the modifying and completion of the Emergency Ordinance no. 57/2019 concerning the Administrative Code.

While performing a routine check-up of this above-mentioned normative act ([https://www.cdep.ro/pls/legis/legis\\_pck.frame](https://www.cdep.ro/pls/legis/legis_pck.frame)) "Government's Emergency Ordinance no. 57 of July 3, 2019, concerning the Administrative Code" we have remarked the respective facts that after its enforcement it had suffered a lot of successive changes – that is to say through thirteen Emergency Ordinances and through thirteen laws. On its turn the Constitutional Court of Romania had as well stated upon it through two issued Admission Decisions of its own, respectively concerning two non-constitutionality exceptions, the respective objects of which had been some juridical norms which pertained to the above-mentioned Administrative Code. These namely are: -Decision no. 112 of February 23, 2021, concerning the non-constitutionality exception held by the respective statements of; -the Law no. 188/1999 concerning the Statute of the Public Servants in its art. 98 par. (1) letter d) under the written form that had been prior to its modifying operated through the Law no. 156/2018 on the modifying and completion of the Law no. 188/1999 concerning the Statute of the Public

Servants in its art. I item 24; - Law no. 188/1999 concerning the Statute of the Public Servants in its art. 98 par. (1) letter d) as these had been modified through the Law no. 156/2018 on the modifying and completion of the Law no. 188/1999 concerning the Statute of the Public Servants in its art. I item 24; - the Law no. 188/1999 concerning the Statute of the Public Servants in its art. 98 par. (3) as well as the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code in its art. 517 par. (1) letter d)"; or through this Decision the fact has been ascertained that the above-mentioned statements held by the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code in its art. 517 par. (1) letter d): «are constitutional insofar the syntagm: „standard age conditions” should not exclude for a woman the possibility of requesting for the continuation of her own employment prerogatives under conditions that would be identical to the ones which are legally imparted to a man that is to say until she had reached to the statutory age of 65». The Constitutional Court had thus been vested to elucidate certain aspects which apparently would have led towards the idea of a non-constitutionality statute eventually held by the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code in its art. 517 par. (1) letter d); its drawn conclusion had been the one that insofar its statements would be interpreted otherwise than in accordance with the argument line precisely upheld by the Court the concerned regulation would be non-constitutional (See for details the Official Monitor of Romania, Part I no. 353 of April 7, 2021). The Court's conclusion does therefore demonstrate the concerned regulation's lack of clarity, therefore its defective quality level.

The second studied decision is respectively the: "Decision no. 240 of June 3, 2020, concerning the non-constitutionality objection risen against respectively the: - Law for the approval of the Government's Emergency Ordinance no. 44/2020 concerning the prolongation of the mandates held by the local public administration's authorities contained within the time period going from 2016 until 2020; - certain actions taken in view of organizing the local elections held in 2020; - modifying of the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code; - modifying of the Government's Emergency Ordinance no. 44/2020". On its occasion the constitutional Court has therefore decided to: "admit the risen non-constitutionality objection and state that the: - Law for the approval of the Government's Emergency Ordinance no. 44/2020 concerning the prolongation of the mandates held by the local public administration's authorities contained within the time period going from 2016 until 2020; - certain actions taken in view of organizing the local elections held in 2020; - modifying of the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code; - modifying of the Government's Emergency Ordinance no. 44/2020 - all of these normative acts being understood as a coherent legislative aggregation - are not constitutional" (See for details the Official Monitor of Romania, Part I no. 504 of June 12, 2020). The Court had thus stated that the contested normative acts - being understood as a coherent legislative aggregation - do find themselves in a therefore attested contradiction with certain norms stated by the Constitution of Romania so we do find ourselves again in the presence of a defective quality level held by the concerned regulation.

The above-mentioned normative act had as well been the object of two hereby mentioned decisions stated by judicial teams acting within the frame of Romania's High Court of Cassation and Justice. In these two situations, the above-mentioned judicial instance had been vested to clarify (through the procedure tool known as recourse in the interest of the law) certain aspects so that could be effectively ensured: "the law's unitary interpretation and applying by all of the judicial courts" (Law no. 134/2010 – New Civil Procedure Code in its art. 514 par. (1)). The Civil Procedure Code in its art. 515 does bring the precision that in order to be admitted the above-mentioned procedure of the recourse in the interest of the law ought to fulfill the respective requirements that: "the fact should be proven that the law issues which do form the object of the judgement had before been differently resolved through

definitive judicial decisions” and that these decisions ought to be thereby annexed to the request through which the recourse in the interest of the law’s procedure is therefore promoted. The deduced conclusion had thus been the one that certain juridical norms which pertained to the Administrative Procedure Code had been differently interpreted and therefore applied by the judicial courts which means that these had been formulated without clarity – thus leaving a void to be occupied by further interpretations. For example through the Decision no. 1 of January 18, 2021, concerning the interpretation of the Government’s Emergency Ordinance no. 57/2019 concerning the Administrative Code in its art. 160 par. (1) letter b), with the text’s changes supervened prior to the Decision’s uttering moment, the recourse in the interest of the law sustained by the Guiding College of the Appeal Court of Craiova had been eventually admitted. The lawful modality of applying the above-mentioned legal text had been thus elucidated because corroborated with the statements of the art. 91 par. (1<sup>^</sup>) of the Law no. 161/2003 concerning certain actions to be taken in order to ensure transparency in the exercise of public dignities, of public offices and throughout the business environment, the prevention and sanction of corruption deeds – with its ulterior modifying and completions as well as with the statements of art. 25 par. (1) and (3) of the Law no. 176/2010 concerning the integrity status while exercising public dignities and offices for the modifying and completion of the Law no. 144/2007 concerning the foundation, organization and functioning of the National Integrity Agency as well as for the modifying and completion of other normative acts with its own ulterior modifying and completions. The above mentioned court has as well brought the precision that the above-mentioned corroborated legal texts do lead towards the drawn conclusion that: ”the mayor’s mandate lawful ceasing should supervene even if this latter would be ulterior in respect to the mandate during which the incompatibility status had been ascertained through an evaluation report elaborated by the National Integrity Agency and the legal validity status of which had been stated through a judicial decision remained afterwards definitive.”

The second hereby studied recourse in the interest of the law had been formulated by the Guiding College of the Constanța Appeal Court being therefore resolved through the Decision no. 19 of September 27, 2021, concerning the interpretation of the Government’s Emergency Ordinance no. 57/2019 concerning the Administrative Code in its art. 382 letter h) and in its art. 536 with its ulterior modifications and completions of the Law on social Dialogue no. 62/2011 in its art. 1 letter p) thesis I republished with its ulterior modifications and completions and of the Law no. 550/2004 concerning the organization and functioning of the Romanian Gendarmes’ Corps in its art. 23 par. (1) with its ulterior modifications and completions, published in the Monitorul Oficial al României, Part I no. 1080 of November 11-th 2021, by its admission. The Court has elucidated the lawful interpretation modality of the corroborated interpretation of the art. 382 lit. h) and of "art. 536 of the Government’s Emergency Ordinance no. 57/2019 concerning the Administrative Code with its ulterior modifying and completions”, of the Law of Social Dialogue no. 62/2011 republished with its ulterior modifyings and completions in its art. 1 letter p) thesis I and of the Law no. 550/2004 concerning the organization and functioning of the Romanian Gendarmes’ Corps in its art. 23 par. (1)”. The Court had also brought the precision that should these be corroborated the mentioned texts would lead towards the following interpretation: ”the material judicial competence of resolving in their first lawsuit the causes the object of which does consist in the obligation of the public institutions which are active in the frame of the Romanian Gendarmes’ Corps to pay certain salary rights to their own military personnel does belong to the sections/panels specialized in the matter of labor conflicts that are active in the frame of tribunals.”

Upon the site of the Deputies’ Chamber the precision is brought ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2022&emi=3&tip=13&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2022&emi=3&tip=13&rep=0)) that in 2002 the Government of Romania had adopted thirty-seven ordinances pertaining to the

category also denominated in the specialized literature and by the law's practitioners "simple ordinances" in order to be differentiated from the *emergency ordinances* about which doctrine had instead expressed the opinion that these could as well be denominated „*constitutional ordinances*” (Apostol Tofan 2015, 243) because the Government's prerogative of adopting them does directly result from the constitutional norm and the respective number of which had been of one hundred and ninety-two ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2022&emi=3&tip=18&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2022&emi=3&tip=18&rep=0)). As we have therefore continued our research we have ascertained the respective facts that: in 2021 the Government had adopted 145 emergency ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2021&emi=3&tip=18&rep=0&nrc=100](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&emi=3&tip=18&rep=0&nrc=100)), and 19 ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2021&emi=3&tip=13&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&emi=3&tip=13&rep=0)), in 2020 it had adopted 226 emergency ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2020&emi=3&tip=18&rep=0&nrc=200](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2020&emi=3&tip=18&rep=0&nrc=200)) and 8 ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2020&emi=3&tip=13&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2020&emi=3&tip=13&rep=0)); in 2019 it had adopted 91 emergency ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2019&emi=3&tip=18&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2019&emi=3&tip=18&rep=0)) and 27 ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2019&emi=3&tip=13&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2019&emi=3&tip=13&rep=0)); in 2018 it had adopted 114 emergency ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2018&emi=3&tip=18&rep=0&nrc=100](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&emi=3&tip=18&rep=0&nrc=100)) and 18 ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2018&emi=3&tip=13&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&emi=3&tip=13&rep=0)) while in 2017 it had adopted 117 emergency ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2017&emi=3&tip=18&rep=0&nrc=100](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2017&emi=3&tip=18&rep=0&nrc=100)) and 30 ordinances ([https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2017&emi=3&tip=13&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2017&emi=3&tip=13&rep=0)).

We have on purpose also chosen three years prior to the Covid-19 pandemics in order to illustrate the fact that the great number of issued emergency ordinances had been in no way at all related to the special situation undergone by the social relationships during the pandemics. All of the above evoked aspects have therefore convinced us of the imperative necessity of realizing a study which should be focused upon the respective necessity and usefulness held by the juridical institution usually designated as "legislative delegation procedure" (and the specific sources of which are by the way constitutional ones) as well as upon the specific modalities through which the current Romanian social practice does effectively make use of it.

## 2. Current legal frame of the legislative delegation procedure in Romania (See Nicu Alina Livia 2020, 51-68)

The Government's Emergency Ordinance no. 57/2019 of July 3-rd 2019 concerning the Administrative Code does state in its art. 16 that the Government ought to function in accordance with the constitutional statements upon the ground of the Governance Program accepted by the Parliament in order to transpose it into the practical reality. In view of fulfilling the objectives previously established through the Governance Program the Government does effectively exert six legal functions ruled over through the art. 15 of the above-mentioned Government's Emergency Ordinance no. 57/2019 of July 3, 2019, concerning the Administrative Code. Those six functions respectively are:

„a) *Strategy* through which the elaboration of the applying strategy concerning the Governance Program is ensured;

*It has been in the exercise of this function* that for example upon the respective grounds of the re-published Constitution of Romania in its art 108 and of the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code with its ulterior modifyings and completions in its art. 25 letter e) that had been adopted the Government's Decision no. 430/2020 concerning the approval of the National Strategy of Social Reintegration of the liberty deprived individual persons 2020-2024.

b) *Implementing* through which the applying strategy concerning the Governance Program is pursued;

This function does refer to the existing ensemble of attributions and correlative responsibilities upon the ground of which concrete actions could be taken in view of the transposition in the practical life of the decided upon Governance Program. For example, the Government of Romania in the Governance Program 2017-2020, ([https://www.cdep.ro/pdfs/guv201706/Program\\_de\\_Guvernare.pdf](https://www.cdep.ro/pdfs/guv201706/Program_de_Guvernare.pdf)) in the chapter „Policies in the health domain” had mentioned that: „The main vision uphold by the Government's Program in the health domain is built around the citizen and not around the medical system as its final goal is that the individual citizen should no more have to travel far for a high quality medical act but that instead the system itself should be edified as close it could be to the citizen” and had defined a set of measures to be adopted which only concerned the materially owned patrimony. Yet in the practical daily life, the gravest problem which required its solution had been acknowledged as being the existence of an acute lack of medical personnel within the public health establishments. As a direct consequence and upon the technical ground of the implementing function the Government had therefore decided that the measure of the salary increases which had been disposed through the Frame Law no. 153/2017 concerning the salaries paid towards the personnel waged from public ownership funds should be applied sooner insofar the medical personnel should be concerned and that this should be done with the aimed purpose of stopping the departures of the medical doctors and of the medical assistants from the country. On February 8, 2018, the Ministry of Health had thus posted upon its site a communiqué where the precision is brought that: „The salaries' increases stated by the government been disposed through the Frame Law no. 153/2017 concerning the salaries paid towards the medical personnel waged from public ownership funds should be applied in two different stages: – Starting from January 1, 2018, the gross salaries of the medical personnel should increase by 25% in respect to their level that had been granted in December 2017 including the ones of the additions that had been effectively paid on December 31-st 2017; – Starting from March 1, 2018, the salaries paid to the medical doctors and to the medical assistants are increasing until the level of the basic salaries prior established for the level held by the year 2022” Ministry of Health Romania (2018).

c) *Regulation* which ensures the elaboration of the normative and institutional frame necessarily required by the realization of the strategic objectives;

d) *Administration of the state's ownership right* which ensures the administration of the state's public and private ownership rights as well as the management of the services which the state is due to provide;

As an example of exercising the administration function in respect to the State's owned patrimony, let us mention that upon the respective grounds of the Constitution of Romania re-published in its art. 108 and of the Government's Emergency Ordinance no. 57/2019 concerning the Administrative Code with its ulterior completions in its respective articles 287 letter a), art. 288 par. (1), art. 297 par. (1) letter a) and art. 299 as well as of the Law no. 287/2009 concerning the Civil Code re-published with its ulterior modifyings in its art. 867 par. (1) and art. 868, the Government of Romania had consequently adopted the Decision no. 105/2020 concerning the entrusting for administrative purposes towards the Accounts' Court of an immobile good situated in the department of Dolj and until then pertaining to the State's public domain and its inscription into the annex no. 33 of the Government's Decision no.

1.705/2006 for the approval of the centralized inventory drawn of the goods pertaining to the State's public domain. This is as well an illustrative example concerning the regulatory function.

e) *Representation* through which on behalf of the Romanian state and under the conditions stated by the law its internal and exterior representation within its domain of activity;

As an illustrative example of materializing the representative function, let us mention the fact that on December 5, 2018, in Bruxelles a meeting took place between the Prime-Minister of Romania and the General Secretary of the European Union's Council in the frame of which the members of the Government of Romania had as well participated; or this meeting had been a duly acknowledged part pertaining to the: „usual dialogue of the representatives of the state which is going to exert the rotating Presidency of the E.U.'s Council with some high officials active within the European institutions” (Government of Romania 2018).

f) *State Authority* through which are ensured the pursuit and control of the applying and respect vowed to the regulations in the domains of defense, public order and national security as well as within the economical and social domains together with the one of the functioning of the institutions and organisms, which are carrying out their activities as subordinates of or under the Government's authority”. As a practical example, we may read about the modalities through which the state's authority function could be fulfilled in „Balance of the Main Activities Carried Out by the Prime Minister's Control Corps during the Year 2022” (Prime-Minister's Control Corps 2022) that ”during the interval 01.01.2022 - 31.12.2022 at the PMCC's level (*our note*: PMCC = Prime-Minister's Control Corps) had been carried out 50 control/documentation profiled actions (of which 30 control actions and 20 documentation actions) out of which had been finalized 24 control/documentation actions (of which 11 control actions and 13 documentation actions). The control-related documents being sent for analysis and reevaluation to the authorities competent to dispose the taking of actions in order to remedy the ascertained defaults. The 24 actions finalized until 31.12.2022 had been respectively carried out during time intervals going from 3 months until 17 months; on 31.12.2022, their mean time duration had therefore been of about 8,5 months/control action.”

The Constitution of Romania under its re-published form does rule through its art.108 two types of juridical acts that the Government could be able to adopt while exercising the imparted attributions, which do compose its legal profile functions: *Government's Decisions* respectively *Ordinances* with the further brought precision in its art. 115 – „Legislative Delegation Procedure” – that the above-mentioned ordinances could as well pertain to two distinct categories respectively: (*simple*) *ordinances* and *emergency ordinances*. In its par. (1) the art. 115 does also bring the precision that the (simple) ordinances are to be adopted upon the ground of a habilitation law which should be adopted by the Parliament, yet under the brought reserve that no ordinances could ever be adopted insofar as it could respectively involve the domains which are chosen to be reserved to their ruling through organic laws. In the same article par. (2) and (3) do bring the precision that the respective habilitation law ought to imperatively indicate „the domain and the date until when ordinances could be issued” as well as suiting the case if the concerned ordinance to the Parliament is submitted for approval (in accordance with the current legislative procedure) prior to the date when the term ends until which the Government had been habilitated to issue ordinances should have been reached or not be taken into consideration as necessary. In the occurring case of an affirmative response towards this latter question but when the respective ordinance would still not be submitted for approval within the time interval legally established through the habilitation law, the sanction that is therefore prescribed by the Constitution should be the: „ceasing of the ordinance's effects”.

The Constitution through its art.146 letter d) does enumerate among the prerogatives that are imparted to the Constitutional Court of Romania its latter's aptitude to decide upon the non-

constitutionality exceptions that would be sustained versus the Government's ordinances in judicial or in arbitration courts.

The current legal frame concerning the legislative delegation procedure does as a matter of fact as well contain regulations that had been enforced in virtue of a special law. For example, the Government's Emergency Ordinance no. 57/2019 of July 3-rd 2019 concerning the Administrative Code does state in its art. 37 that: "Throughout the exercise of its imparted attributions the Government does adopt decisions and ordinances. The decisions are issued in view of organizing the execution of laws. The simple ordinances are issued upon the ground of a special habilitation law under the conditions established by the Constitution through its art. 115 par. (1) - (3). Should extraordinary situations supervene emergency ordinances could be issued under the conditions established by the Constitution through its art. 115 par. (4) - (6)." The Administrative Code does then through its art.38 bring the precision that the consensus among the Government's members should be required in order to issue its decisions; should the consensus not exist instead, the legislator had reserved to the Prime Minister the decision right upon the respectively concerned matters.

Insofar the *ordinances* could be concerned these are *administrative authority acts adopted upon the respective grounds of a legislative delegation procedure granted by the Parliament*; furthermore these are only issued under certain special conditions (lawfully qualified as being extraordinary) which are defined in virtue of the emergency feature held by the effectively occurred situations which ought to be ruled over. The syntagm „*extraordinary situations*” had been inserted to the Constitution's revised form in order to substitute the syntagm „*exceptional situations*” which had existed before in the Constitution's form of 1991 for the purpose of eliminating the existence of „numerous non-unitary practical applying” since the new formulation „*extraordinary situations*” is able to evoke „*an emergency status related to the juridical regulation of a fortuitously occurred issue which could take no delay at all*” (Vedinaş 2018, 234). It is the Government which is due to sustain the imperative peculiarity of the concerned situations prior to the Parliament's possibly granted (or not!) habilitation. As doctrine has already stated the *legislative delegation procedure* does represent (Constantinescu 1992, 254) in virtue of the valid and acting principle of the power's separation yet cooperation within the state of law the most appropriate modality through which the Parliament and the Government could work together in view of the occurring possibility for the Government to be vested under certain fulfilled conditions with the (limited) exercise of a legislative function.

As it has been understood by the constituent legislator as an exceptional situation the possible adoption of emergency ordinances is therefore ruled through the uttered statement that this type of ordinance: „could become enforced only after it should be submitted in view of its debate under an emergency status procedure to the Chamber which is competent to be vested with it and after its publishing within the Monitorul Oficial al României”. The Constitution in its art. 115 par. (5) does as well precise the existence of certain procedure norms which do concern the emergency ordinances out of which could be specifically deduced these latter's intrinsic feature of peculiarity. These above-mentioned rules are:

- should the Chambers not be in session, these would be imperatively summoned within a five days' interval from the concerned ordinance's moment of submission to (or suiting the case envoy towards the) Parliament;

- should the vested Chamber not utter upon the concerned ordinance within an interval of at most 30 days from the concerned ordinance's moment of submission then the ordinance would be taken into consideration as being adopted and therefore sent towards the other Chamber which would be thus due to decide upon it under an emergency status procedure;

- for the approval of the emergency ordinances which might contain norms that through their inner nature should pertain to an organic type of law, the respective votes of the

majorities of the members of each Chamber should be necessary (in accordance with the statements of the Constitution in its art. 115 par. (5) corroborated with its art. 76 par. (1));

- the ordinances should be either approved or rejected by the Parliament in virtue of a law which should as well mention the ordinances the respective effects of which had ceased due to the fact that these had not been submitted for approval inside of their respective habilitation intervals;

- the approval or rejection law should contain if this fact would be necessary: „the required measures to be taken concerning the juridical effects consequently produced during the ordinance’s applying period” (Art. 115 par. (8), Constitution of 2003 re-published).

Because these are normative acts that is to say acts which do contain juridical norms endowed with a lawful power *the ordinances* (both the *simple* and the *emergency* ones) do produce juridical effects from the moment of their respective publishing on or if not then from an ulterior date on which should be stated within their respective final dispositions.

As lawful exceptions (Art. 115 par. (6), Constitution of 2003 re-published) from the regulation regime manifested through emergency ordinances the Constituant legislator has respectively instituted: - the domain of constitutional laws; - the regime of the State’s fundamental institutions; - the rights, liberties and duties respectively stated by the Constitution; - the electoral rights; - the actions taken in view of a compulsory transition of some goods towards the public ownership regime.

The Constitutional Court through its Decision no. 68 of February 27, 2017 in its par. 74 concerning the request for a lawful solution in the existing conflict of a constitutional nature between the Government of Romania and the Public Ministry – Prosecutor’s Office pertaining to the High Court of Cassation and Justice – National Anticorruption’s Direction – the respective request being formulated by the President of the Senate – had therefore referred towards its own Decision no. 63 of February 8-th 2017 concerning the requests for lawful solutions in the existing conflicts of a constitutional nature between on one side the executive authority – namely the Government of Romania – and on the other side the legislative authority – namely the Parliament of Romania as well as between on one side the executive authority – namely the Government of Romania – and on the other side the judicial authority – namely the Magistrate’Superior Council – the respective requests being formulated in the former case by the President of the Magistrate’Superior Council while in the latter case by the President of Romania (published in Monitorul Oficial al României, Part I no. 145 of February 27-th 2017) had therefore stated that: „the rule is the one that the Government does not dispose of the right of primary regulation over the social relationships but instead of the only right of adopting the secondary legislation” (Decision of the Constitutional Court no. 63 of February 8-th 2017 in its par. 89) and: „in spite of the fact that through the habilitation’s effect the Government does issue an act which in virtue of its own contents does hold a legislative nature because it is the direct consequence of a legislative delegation procedure the ordinance does however remain an administrative act issued by the executive authority” (Decision of the Constitutional Court no. 63 of February 8-th 2017 in its par. 90) since the main reason for which its own existence has been regulated is the one that: „as a normative act which does allow for the Government (while being still situated under the Parliament’s survey) to cope with an extraordinary situation, the emergency ordinance should therefore be justified through the necessity and emergency status generated by this situation which due to its occurring circumstances does impose the adoption of some immediate solutions in view of avoiding a grave prejudice which could be brought to the public interest” (Decision of the Constitutional Court no. 63 of February 8-th 2017 in its par. 91).

Yet since 1998 the Constitutional Court in virtue of its Decision no. 83 of May 19th, 1998, concerning the non-constitutionality exception risen against the dispositions of the Government’s Emergency Ordinance no. 22/1997 on the modifying and completion of the Law on the local public administration no. 69/1991 re-published (Published in Official Monitor of Romania, Part I no. 211 of June 8th, 2017) by referring to the syntagm which at that moment



was contained by the constitution but which in 2003 had been substituted by the one of „*extraordinary situations*” had clarified the precise motivations which could define a situation as being *exceptional* that is to say extraordinary in the exact sense that it does effectively by far deviate from the usual and therefore commonly known situation. It had thus stated that: „its main feature is objectiveness in the sense that its existence does in no way at all depend upon the Government’s will which under such circumstances is constrained to most promptly react in order to defend a public interest through the emergency ordinance’s mean”.

As doctrine has demonstrated: „neither the Constitution nor other regulation had precised how and starting from whatever criteria could be grounded the appreciation that exceptional cases do effectively occur which could determine the Government to take on the recourse of ruling over certain matters through the emergency ordinance’s procedure (Negruț 2004, 74-75). The Romanian legislator has expressed its opinion (through the Constitution re-published in 2003 in its arts. 102 and 108) according to which in order to realize our country’s internal and foreign policy as well as in order to exert the general guiding process upon the public administration the Government could be therefore entrusted by the Parliament to adopt some acts that could contain juridical norms holding the value of laws. These normative acts being therefore denominated simple ordinances respectively emergency ordinances; yet this could only happen while the Government should be correlatively obliged to respect certain conditions and regulatory limits as well as under the assumed condition that the survey regulation of this mechanism itself should be so enforced that the principle of the power separation within the state could be respected and effectively applied throughout the current social practice. The Parliament should not be turned into a simple accessory while the Government should not instead turn into an ambivalent social organ namely both a legislative and executive one. We do fully uphold the above-mentioned opinion.

As doctrine has demonstrated (Deleanu 2006, 669) as a category pertaining to the delegation’s concept, the legislative one should constitute an exception because it has been defined precisely in order to substitute the Parliament’s *legislative exercise under some particularly critical circumstances such as the status of an ongoing war*. As its social role had been analyzed, the appreciation has been issued (Constantinescu 1992, 254) that the legislative delegation procedure is a working together modality between the Parliament and the Government in virtue of the principle of the State’s power separation and cooperation. This principle does allow for the Government to be vested under certain fulfilled conditions with the lawful exercise of a legislative function. Yet the question does hereby rise: what these conditions should exactly be?

Should we then analyze the Constitution statements in its art. 115, we could remark the fact that in the respective cases of the simple or „legal” (Apostol Tofan 2008, 203) ordinances, the necessary habilitation law should contain two compulsory elements: namely the habilitated time intervals and the respective domains into which the ordinances could be adopted as well as a facultative element: namely the submission procedure of the concerned ordinances to the Parliament’s approval in accordance with the ordinary legislative procedure. The respective habilitation’s time interval may be situated wherever throughout the year (that is to say no matter if within a Parliament’s session or outside of it) (Iorgovan 2005, 408; Preda 2007, 92; Prisăcaru 2002, 129). Their regulation domain does contain all domains except for the ones which are on purpose and restrictively ruled by the Constitution in its art. 73 par (3) as being regulation objects that are reserved to organic laws. Insofar the facultative element could be concerned. That is to say the compulsory submission of the simple ordinances to the Parliament’s approval: even if as doctrine had demonstrated (Apostol Tofan 2008, 204) „in virtue of the interpretation granted to the constitutional norm concerning these ordinances’ ulterior approval by the Parliament the naturally drawn conclusion should be the one that usually the simple ordinances would not be submitted for approval since this latter could only become necessary if on purpose requested.” The author does however sustain the trend effectively generated due to the Parliament’s daily practice. In the author’s opinion, should

this action be imposed by the occurring social reality, the habilitation ought to be granted with no reserves at all but that simultaneously the ordinances' ulterior submission for approval ought to effectively become a rule. The author does uphold the above-mentioned opinion because she does take into consideration as being necessary to preserve a certain minimal quality standard to be held by the issued regulations; or as a matter of fact, the current trend is the one that the Parliament does better sustain this minimal quality standard than the Government and on the other hand this latter ought to remain aware of the fact that the legislative mandate has been imparted directly by the electorate to the Parliament only. In the author's opinion the Constitution's art 73 in its par. 3 ought to acquire the following form: „Ordinances should be submitted to the Parliament's approval in accordance with the legislative procedure until the fulfillment of the habilitation's granted time interval. The disrespect brought to this limit would generate the ceasing of the ordinance's juridically created effects". In the author's opinion, the only difference that should exist between the simple and the emergency ordinances would be the existence of the respectively issued habilitation law and that the request for the Parliament's approval should be compulsory for the both ordinance types because these are both exceptions in respect to the normal course of the legislative process and because the respective modalities through which the delegated legislative mandate had been carried out ought to be duly supervised. She does also appreciate that in terms of time durations the respective debates of the ordinances' approvals should not be lingered upon but instead performed under an emergency regime too. Insofar the emergency ordinances could be then concerned. These do represent a species of normative acts which should be adopted in „extraordinary" cases only and therefore as doctrine has demonstrated (Apostol Tofan 2008, 205) the cumulative existence of two elements is necessary: the urgent necessity of juridically regulating an effectively occurred situation which does impose the taking of some immediate actions and the necessity of avoiding a grave prejudice which might be brought to the public interest. The Constitutional Court through its Decision no. 65/1995 published in the Official Monitor of Romania, Part I no. 129/1995 has as a matter of fact also pointed out the effective necessity for these two elements to exist. In the author's opinion, the regulation currently stated by the fundamental law in its art. 115 par. 6 is effectively defaultive because due to it some rather troubling situations could occur: on the one hand the so-called „extraordinary" case ought to necessarily imply the fact that no exceptions could ever exist from the regulation through emergency ordinances therefore rendering possible the use made of them for whatever domain – which in the author's opinion could jeopardize the grounds themselves of the state of law – or on the other hand the lack of a precise definition brought to the syntagm „extraordinary situation" should lead towards the Government's abuse made of the emergency ordinances because under extraordinary circumstances habilitation laws would no more be required and should such a case occur should these even be afterwards rejected or either declared as being non-constitutional their consequently generated juridical effects would still remain valid (a fact which in many cases could serve the Government's interests). In the author's opinion, the Constitution's art.115 in its par. (6) should therefore acquire the following formulation: „(6) Emergency ordinances could not be adopted in the respective domains of the constitutional laws and of the organic laws, could not afflict upon the rights, liberties and duties stated by the Constitution." No matter how intensely extraordinary an occurring circumstance could effectively ever become, this procedure instrument should not be allowed for the Government to make use of in the respective domains of the constitutional and of the organic laws since the Parliament is by itself in such cases able to issue some duly deliberated upon laws under an emergency procedure. Such a solution could on one hand oblige the M.P.s to effectively assume their own imparted responsibilities while being confronted with some extraordinary situations and thus to hide no more behind the rather large and most comfortable Government's back or to no more sweetly linger in the softy shadow graciously provided by the Government's most comprehensive umbrella while on the

other hand no more political intrigues could be realized through the often most useful instruments that the emergency ordinances might easily become.

As for the fundamental law's art.73 par. (5) in accordance with the opinion expressed by the doctrine [(Apostol Tofan 2008, 213): „Consequently in few but clear and simple words some precise terms ought to have been established for both Chambers (not just for one of the Chambers and not just for the emergency ordinances but as well for the simple ones – our own underlining) into which the ordinance ought to be effectively approved or rejected under the sanction of caducity this term once flown.”] in the author's opinion, it ought to be formulated as it hereby follows: „The emergency ordinance could only be enforced after its submission for due debate under an emergency procedure to the chamber respectively competent to be vested with it and after its publication in the Official Monitor of Romania. Should these not be in ordinary session, the Chambers ought to be compulsorily summoned within a five-days time interval from the moment of the respective ordinance's submission (or envoy suiting the case). The vested chamber ought to state upon the respective ordinance under an emergency procedure therefore sending it to the other chamber which is as well due to state upon it under an emergency procedure.”

In the author's opinion, though its regulatory sphere does in its appearance assume a quite petty importance, the legislative delegation procedure ought to be dressed into such juridical clothes so that its feature of being an exceptional procedure tool could be most obviously pointed out and that it could therefore no more be applied throughout the social relationships' pathological sphere.

### 3. Aspects concerning the use made of the legislative delegation procedure in Romania

Insofar could be concerned the modalities through which the Romanian Government does effectively make use of the legislative delegation procedure, the author has estimated as being necessary for her analysis to elaborate a survey perspective about how intensely is this work modality made use of. Information published upon the Chamber of Deputies' site had therefore been gathered while the data concerning the time period going from 1990 until 2022 had been consequently reunited within an illustrative Table. (For reasons of scientific rigor, it is imperative to precise that on this site there is as well uttered a responsibility declining statement that does concern the offered information having the form: “*Responsibility declining: Informations published in this column as well as the texts of the normative acts are deprived of an official acknowledgement*” but that these still are offered for informative purposes to the interested readers. [https://www.cdep.ro/pls/legis/legis\\_pck.lista\\_anuala?an=2021&emi=3&tip=18&rep=0](https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&emi=3&tip=18&rep=0), accessed on January 22nd, 2023).

Table 1: Information published on Chamber of Deputies' site from 1990-2022

No. crt.	Year	Number of emergency ordinances/ information's source	Number of ordinances/information's source
1.	1990	<a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1990&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1990&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1990&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1990&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
2.	1991	<a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1991&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1991&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1991&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1991&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
3.	1992	<b>1</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1992&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1992&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<b>28</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1992&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1992&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
4.	1993	<b>2</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1993&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1993&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<b>27</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1993&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1993&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
5.	1994	<b>2</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1994&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1994&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<b>70</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1994&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1994&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
6.	1995	<b>2</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1995&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1995&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<b>45</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1995&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1995&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
7.	1996	<b>13</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?</a>	<b>44</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an</a>

		<a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1996&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">an=1996&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1996&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">=1996&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
8.	1997	<b>92</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1997&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1997&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<b>70</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1997&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1997&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=0</a>
9.	1998	<b>72</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1998&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1998&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=0</a>	<b>131</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1998&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1998&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=100</a>
10.	1999	<b>218</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1999&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1999&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200</a>	<b>120</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1999&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=1999&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=100</a>
11.	2000	<b>297</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2000&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2000&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>138</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2000&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2000&amp;emi=3&amp;tip=13&amp;rep=0&amp;nrc=100</a>
12.	2001	<b>195</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2001&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2001&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>88</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2001&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2001&amp;emi=3&amp;tip=13&amp;rep=0</a>
13.	2002	<b>209</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2002&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2002&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200</a>	<b>73</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2002&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2002&amp;emi=3&amp;tip=13&amp;rep=0</a>
14.	2003	<b>127</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2003&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2003&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>95</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2003&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2003&amp;emi=3&amp;tip=13&amp;rep=0</a>
15.	2004	<b>142</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2004&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2004&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>94</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2004&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2004&amp;emi=3&amp;tip=13&amp;rep=0</a>
16.	2005	<b>209</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2005&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2005&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200</a>	<b>55</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2005&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2005&amp;emi=3&amp;tip=13&amp;rep=0</a>
17.	2006	<b>136</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2006&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2006&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>64</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2006&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2006&amp;emi=3&amp;tip=13&amp;rep=0</a>
18.	2007	<b>157</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2007&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2007&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>47</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2007&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2007&amp;emi=3&amp;tip=13&amp;rep=0</a>
19.	2008	<b>229</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2008&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2008&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200</a>	<b>28</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2008&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2008&amp;emi=3&amp;tip=13&amp;rep=0</a>
20.	2009	<b>111</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2009&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2009&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>27</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2009&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2009&amp;emi=3&amp;tip=13&amp;rep=0</a>
21.	2010	<b>131</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2010&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2010&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>29</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2010&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2010&amp;emi=3&amp;tip=13&amp;rep=0</a>
22.	2011	<b>125</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2011&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2011&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>30</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2011&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2011&amp;emi=3&amp;tip=13&amp;rep=0</a>
23.	2012	<b>95</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2012&amp;emi=3&amp;tip=18&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2012&amp;emi=3&amp;tip=18&amp;rep=0</a>	<b>26</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2012&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2012&amp;emi=3&amp;tip=13&amp;rep=0</a>
24.	2013	<b>115</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2013&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2013&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>32</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2013&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2013&amp;emi=3&amp;tip=13&amp;rep=0</a>
25.	2014	<b>94</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2014&amp;emi=3&amp;tip=18&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2014&amp;emi=3&amp;tip=18&amp;rep=0</a>	<b>29</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2014&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2014&amp;emi=3&amp;tip=13&amp;rep=0</a>
25.	2015	<b>66</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2015&amp;emi=3&amp;tip=18&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2015&amp;emi=3&amp;tip=18&amp;rep=0</a>	<b>43</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2015&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2015&amp;emi=3&amp;tip=13&amp;rep=0</a>
26.	2016	<b>99</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2016&amp;emi=3&amp;tip=18&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2016&amp;emi=3&amp;tip=18&amp;rep=0</a>	<b>27</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2016&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2016&amp;emi=3&amp;tip=13&amp;rep=0</a>
27.	2017	<b>117</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2017&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2017&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>30</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2017&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2017&amp;emi=3&amp;tip=13&amp;rep=0</a>
28.	2018	<b>114</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>18</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2018&amp;emi=3&amp;tip=13&amp;rep=0</a>
29.	2019	<b>89</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2019&amp;emi=3&amp;tip=18&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2019&amp;emi=3&amp;tip=18&amp;rep=0</a>	<b>27</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2019&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2019&amp;emi=3&amp;tip=13&amp;rep=0</a>
30.	2020	<b>226</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2020&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2020&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=200</a>	<b>8</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2020&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2020&amp;emi=3&amp;tip=13&amp;rep=0</a>
31.	2021	<b>145</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&amp;emi=3&amp;tip=18&amp;rep=0&amp;nrc=100</a>	<b>19</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2021&amp;emi=3&amp;tip=13&amp;rep=0</a>
32.	2022	<b>192</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2022&amp;emi=3&amp;tip=18&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2022&amp;emi=3&amp;tip=18&amp;rep=0</a>	<b>37</b> / <a href="https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2022&amp;emi=3&amp;tip=13&amp;rep=0">https://www.cdep.ro/pls/legis/legis_pck.lista_anuala?an=2022&amp;emi=3&amp;tip=13&amp;rep=0</a>

From it the general trend, which does obviously result, is the one that from 1992 until 2022 the legislative delegation procedure had been made use of with an always increased intensity degree. For example, if in 1992 a one and only emergency ordinance had been adopted their maximum number of 297/year had been respectively reached to in 2000 while even in 2022 have been adopted 192 of such normative acts. Such an evolution does indeed

respect logics because it does closely follow the current dynamics of the social relationships. The author does as well remark the fact that from 1992 until 2022 every year a lot of ordinances had also been adopted upon the lawful grounds of habilitation laws duly adopted by the Parliament but that however comparatively speaking, these latter number had been by far smaller.

Of course, a simple enumeration of how many ordinances or emergency ordinances had been adopted every year could in no way at all lead towards the real understanding of the currently manifested social phenomena in the respective senses that there are not enough grounds upon which to appreciate that the effective use made of them could be or not excessive or either that their use could or could not be associated with an allegedly doubtful quality level held in general by the regulatory activity itself. Though the legislative delegation procedure is by itself an exceptional mean, the great number of normative acts usually adopted through it is however not the most dangerous concern to become worried about in this respect. It is instead the creation and subsequent existence of some social relationships which are effectively able to evolve upon the respective grounds of some juridical norms in regard to which a certain moment could come when the fact should be ascertained that these are effectively contrary to the fundamental law. The author does mention two issues we should be worried about. The former issue does refer to the possible valid effects which could therefore be generated by the non-constitutional juridical norms initially enforced because of being contained by ordinances or emergency ordinances. Throughout the current juridical practice, the effects generated by the above-mentioned defaultive norms might still remain applicable even after the Constitutional Court should have had ascertained these norms' non-constitutional status. In this sense the Constitution of Romania in its art. 147 par. (1) does state that: "(1) Should these have been respectively ascertained as being non-constitutional the dispositions contained by the enforced laws and ordinances as well as the ones of the enforced regulations would cease their current juridical effects within a time interval of forty-five days since the moment of the publishing of the Constitutional Court's Decision should within this interval the Parliament or Government suiting the case not situate the above-mentioned and uttered as being non-constitutional dispositions in accordance with the statements of the Constitution. Throughout the duration of this term the dispositions having been ascertained as non-constitutional are lawfully suspended." The concerned persons and law subjects could therefore in no way be restored into their respective status that had existed before the enforcement of the ordinance or emergency ordinance which had contained the juridical norms afterwards declared as non-constitutional because this issue is by now not even taken into consideration. The second issue to become worried about is the one that the constitutional or not respective status held by the juridical norms that are contained within ordinances or emergency ordinances could be verified by the Constitutional Court of Romania only should this latter be intimated through a to it submitted non-constitutionality exception. (The Law no. 554/2004 of December 2nd, 2004 – Law on the administrative contentious procedure, published in Official Monitor of Romania, Part I, no. 1154 of December 7th, 2004, with its up-to-dated modifyings does precise what should be the procedure to be followed by a law subject person which would consider herself as being prejudiced in one of her rights or legitimate interests through ordinances or dispositions by these latters contained:" Art. 9 Lawsuits versus the Government's Ordinances).

(1) The person prejudiced in one of her rights or legitimate interests through ordinances or dispositions by these latters contained may sue them at the administrative contentious procedure's court should this lawsuit be accompanied by the forwarded non-constitutionality exception. Insofar the lawsuit's main object would not be the ascertaining of the non-constitutionality status held by the respective ordinance or emergency ordinance.

(2) Should it appreciate that the forwarded exception does effectively fulfill the conditions stated by the Law no. 47/1992 on the organization and functioning of the Constitutional

Court, re-published, in its art. 29 par. (1) and (3) the contentious administrative procedure's court would therefore intimate about it through a motivated conclusion the Constitutional Court would as well suspend the essential resolution of the cause.

(3) After the Constitutional Court has uttered the contentious administrative procedure's court would therefore reinstate the cause upon its own lawsuits current roll with the sides citing procedure therefore also issuing a time interval. Should the respective ordinance or one among its dispositions have been declared as non-constitutional, the court would resolve the cause's essential issue; on the opposite case the respective lawsuit would be rejected as non-admissible.

(4) Should the Decision of declaring a non-constitutionality status have been the consequence of an exception risen in another cause, the initial lawsuit could therefore be directly intimated towards the competent administrative contentious procedure court within the limits of a one-year decay term calculated from the moment of the Constitutional Court's Decision's publishing in the Official Monitor of Romania, Part I.

(5) The lawsuit stated by the present article may have as its own object the granting of indemnifications for the prejudices caused through the Government's ordinances, the annulment of the administrative acts issued upon their grounds as well as suing the occurred case the obligation for a public authority to issue an administrative act or to realize a certain administrative operation. Should no person at all feel prejudiced through the applying of such a norm (even would this norm be effectively contrary in respect to the constitutional statements), it would therefore continue to produce its juridical effects because it could still enjoy the presumption of lawfulness.

Since the lawfulness analysis, which ought to be performed upon the ordinances adopted by the Government, is the imparted prerogative of the Constitutional Court, the author has therefore performed the analysis of the admission Decisions it had uttered (<https://www.ccr.ro/jurisprudenta-decizii-de-admitere/>). The respectively ascertained facts had been the ones that during the time interval going from 1994 until 2022, there had been years when no non-constitutionality exceptions at all had been admitted (1997 and 1999) but that in other years a lot of them had been admitted instead (for example in 2007 and 2008 each year a number of ten non-constitutionality exceptions had been admitted, which did concern dispositions from ordinances or emergency ordinances; or in the author's opinion, this is a too large number). This statement does not point out the number itself but instead towards the social consequences respectively generated by the above-mentioned ten regulations afterwards declared as being non-constitutional. It does practically underline the unfortunately existing phenomenon that a still unknown number of juridical relationships do exist which had been created as direct consequences because upon the grounds of some regulations afterwards declared as being non-constitutional; or these juridical relationships would be able to still exist even after their respectively generating regulations would have ceased their actions.

The question does thus naturally arise: Is this legislative mean useful? Is it worthy to be maintained?

The author does estimate that to this question the answer could only be affirmative. The legislative delegation procedure does continue to be necessary in order to resolve some quite urgent social problems that the legislative practice while functioning in accordance with its usual procedure could not efficiently cope with because it would take too much time or because the Parliament might not be active right at that respective moments. The author has studied all of the admission Decisions uttered by the Constitutional Court during the chosen period and has therefore ascertained the respective facts that it had issued a rather important number of Decisions which do concern the non-constitutionality status established for juridical norms which are contained by laws (so which had eventually been adopted through the usual legislative procedure). For example, in 2007 apart from the above-mentioned ten

non-constitutionality exceptions that had been admitted which did concern dispositions from ordinances or emergency ordinances, another twenty-six non-constitutionality exceptions had as well been admitted which had concerned norms contained by laws ([https://www.ccr.ro/jurisprudenta-decizii-de-admitere/?anul\\_postului=2007](https://www.ccr.ro/jurisprudenta-decizii-de-admitere/?anul_postului=2007), accessed on January 15, 2023). The main problem to be dealt with does thus not refer in the author's opinion to the procedure instrument itself through which the legislative practice is effectively performed but instead to the by far more delicate issue which as a matter of fact is represented by the quality level effectively reached to by the individual persons which do become involved in the legislative process (Nicu 2012, 293-301). In the author's opinion most of the issues that ought to be perfected do pertain to this latter area.

## References

- Apostol Tofan, Dana. 2008. *Drept administrativ/Administrative law*, 2-nd edition, vol. I. Bucharest: C.H. Beck.
- Apostol Tofan, Dana. 2015. *Drept administrativ, Curs universitar/Administrative law*, University course, III-rd edition, vol. I. Bucharest: C.H. Beck.
- Constantinescu, Mihai, and Deleanu Ioan, Iorgovan Antonie, Muraru Ioan, Vasilescu Florin, Vida Ioan. 1992. *Constituția României-comentată și adnotată/The Constitution of Romania-commented and annotated*, Bucharest: Regia Autonomă „Monitorul Oficial”.
- Constitutional Court, Decision nr. 68 of February 27, 2017, par. 74, concerning the request for a lawful solution in the existing conflict of a constitutional nature between the Government of Romania and the Public Ministry. Published in Official Monitor of Romania, Part I nr. 181 of March 14, 2017.
- Decision nr. 1 of January 18, 2021, issued by the Court for the resolution of the recourse procedure initiated for the interest of the law; published in Official Monitor of Romania Part I nr. 277 of March 19-th 2021. <https://legislatie.just.ro/Public/DetaliiDocumentAfis/239717>.
- Deleanu, Ioan. 2006. *Tratat de drept constituțional/Treaty of Constitutional law*. Bucharest: C.H. Beck.
- Government of Romania. 2017. *The Governance Program 2017-2020*, accessed on January 15, 2023, [https://www.cdep.ro/pdfs/guv201706/Program\\_de\\_Guvernare.pdf](https://www.cdep.ro/pdfs/guv201706/Program_de_Guvernare.pdf).
- Government of Romania. 2018. *Official visit to Brussels*. Accessed on January 12, 2022. <https://gov.ro/ro/stiri/vizita-oficiala-la-bruxelles-impuna-cu-membrii-guvernului>.
- Iorgovan, Antonie. 2005. *Tratat de drept administrativ/Treaty of Administrative law*, 4-th edition, Vol. I. Bucharest: All Beck.
- Ministry of Health, Romania. 2018. *Salary increases*, <https://www.ms.ro/2018/02/08/in-urma-aplicarii-noii-legi-a-salarizarii-salariile-personalului-medical-vor-inregistra-cresteri-semnificative/>, accessed on January 15, 2023.
- Negruț, Vasilica. 2004. *Drept administrativ/Administrative law*, Revised and completed edition. Bucharest: Lumina Lex.
- Nicu, Alina Livia. 2012. "The Responsibility of Subjects Implicated in the Adoption of Unconstitutional Norms in Romania" In International Conference on European Integration - Realities and Perspectives, Galați - EIRP Proceedings, Vol 7 (2012), pp. 293-301. <http://www.proceedings.univ-danubius.ro/index.php/eirp/article/view/1261>.
- Nicu, Alina Livia. 2020. *Guvernul și administrația ministerială/The government and the ministerial administration*, III-rd edition, Craiova: SITECH.
- Official Monitor of Romania, Part I nr. 353 of April 7-th 2021. <http://www.monitoruljuridic.ro/act/decizia-nr-112-din-23-februarie-2021-referitoare-la-excep-ia-de-neconstitu-ionalitate-a-prevederilor-art-98-alin-1-lit-d-din-legea-nr-188-1999-nbsp-privind-statutul-func-ionarilor-publici-240762.html>.
- Preda, Mircea and Vasilescu Benonica. 2007. *Drept administrativ. Partea specială/Administrative law. Special Part*, up-to-dated edition. Bucharest: Editura Lumina Lex.
- Prime-Minister's Control Corps. 2022. „Balance of the Main Activities Carried Out by the Prime Minister's Control Corps During The Year 2022.” Accessed on January 12, 2022. <https://control.gov.ro/web/wp-content/uploads/2023/02/RaportActivitate2022.pdf>.
- Prisăcaru, Valentin. 2002. *Tratat de drept administrativ român. Partea generală/Treaty of Romanian administrative law*. The general part, III-rd revised and completed edition. Bucharest: Lumina Lex.
- Vedinaș, Verginia, 2018. *Tratat teoretic și practic de drept administrativ/Theoretical and practical treatise on administrative law*, tome I. Bucharest: Universul Juridic.