LEGISLATIVE DEVELOPMENTS IN POST-REVOLUTIONARY ROMANIA. WEAKNESSES. POSSIBLE SOLUTIONS

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Abstract. *This article aims to analyze the developments in the regulatory system in Romania post-revolutionary period.It is structured on two major coordinates, namely: constitutional evolution and the one of the primary regulatory levels. The objective of the study is to reveal those weaknesses which have been produced over the time on the practice of law-making, both in terms of how to interpret the Constitution and its revision and on the exercise by the Government, under legislative delegation, of the task of adopting simple ordinances or emergency ordinances. There are highlighted the excesses observed in this matter, which led to the transformation of the exception in rules and vice versa. The message of the study is to be aware of such situation, the negative effects that it has on the rule of law and to identify solutions to eliminate them in the future, including those that the study itself proposes.*

Keywords: enactment, Constitution, review, organic law, ordinary law, simple ordinances, emergency ordinances, legislative delegation, legislative gaps, rule of law.

1. Introduction

After 40 years of totalitarian regime, Romania opened, in December of 1989, the gates of another type of political and legal system. This was done with sacrifices of human lives.

With hope and confidence in equal measure. The significance of this moment for Romania's fate also results from the fact that the fundamental law enshrines in par. (3) of its first article, that *Romania is rule of law, a democratic and social state, where human dignity, rights and freedoms, justice and political plurarismul are supreme values guaranteed in the spirit of the democratic traditions of the Romanian people* and of **the Revolution of 1989**. We note that **the revolutionary moment 1989 was elevated to the rank of constitutional value**, which gives it special values, both legally and politically equally.The period of over 25 years that have elapsed was one of some fundamental mutation in the legislative, whose development and meaning we will analyze below. In drafting this study we considered the views expressed in legal doctrine, contained in the selective

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bibliography at the final of the paper. Also, we reported to the normative acts that also I mentioned, and to the Constitutional Court's jurisprudence which is the guarantor of Constitution supremacy in Romania. Equally, we have considered some documentation from the European Union, which are mandatory for our country as EU member state.

2. Progress at the constitutional level

The transition from democracy to the rule of law implies, first, replacing the old Constitution. Previous Constitution of Romania[1] consecrated a totalitarian regime, which had been abandoned, so it was necessary to lay the foundations, through a new fundamental law, of the rule of law to the construction of which had committed Romania. A period of approximately two years was necessary to develop, in a first phase, the theses of the Constitution, to be discussed in primary Constituent Assembly whose chairman was our late Professor Antonie Iorgovan[2], to formulate hundreds of amendments to these theses and finally to develop the draft of the The Constitution, which was subject to approval by the people through referendum[3]. Constitution approved by referendum was published in the Official Gazette[4] and entered into force after its approval by the national referendum of 8 December 1991. On that date had not yet been established the Constitutional Court, which was, moreover, created in Romania for the first time by Constitution, was regulated to one year after its adoption by Law no. 47/1992[5], an organic law and actually created in 1992 so that it could not pronounce on the draft law of adopting the Constitution. In drafting what became, in December 1991, our fundamental law, were considered as benchmarks, the Constitutions of the European Union states such as France[6] and Spain[7] and advice from some national and international bodies, of which, of reference, is the Venice Commission for Democracy through Law. The Constitution of 1991 established a state of law, democratic, as it was, moreover, declared through its first article,

[1] It is the Constitution of the Socialist Republic of Romania adopted by the Grand National Assembly on 21 August 1965, published in the Official Gazette of the Socialist Republic of Romania, Part I, No. 1 of August 21, 1965.
[2] Antonie Iorgovan 1948-2007, administrative law professor at Law Facultuy from University of Bucharest, known to the public as "father of the Constitution" because of its quality of Chairman of the Constitution Drafting Committee.
[3] The referendum to approve the constitution was organized and took place on the December 8, 1991.
[4] It is the Official Gazette, Part I, no. 233 of 21st november 1991
[5] Law on organization and functioning of the Constitutional Court, published in the Official Gazette of Romania, Part I, no. 101 of November 21, 1992.
[6] The French Constitution known under the name of "the Constitution of the French Fifth Republic" was adopted in 1958 and has undergone several changes, the last being in 2007.
[7] Spanish Constitution was adopted in 1978.

para. (3). In our opinion, **the virtues of our fundamental law** of 1991 were, essentially, the following:

a) **the consecration of a system of fundamental rights and freedoms**[1] and of an institutional guaranteed system of these amongs which is found the Ombudsman [2] and the administrative contentious[3];

b) **laying the basis for the functioning of the Romanian state and of the constitutional democracy in Romania** of **some principles** that have paved the rule of law and its strengthening over the time, among which mention:

- **the free access to justice,** to protect the rights, freedoms and legitimate interests[4];
- **the protection of national minorities** and their recognized rights in relation to the Romanian majority population[5];
- **the political pluralism** qualified as a condition and guarantee of the rule of law and a limit of the revision of the Constitution[6];

c) guaranteeing the right to private property, protection of private property[7] **and the establishment of a system of constitutional guarantees** by that the private property is guaranteed and protected equally[8], and the **establishment of the presumption on the licit acquiring of wealth**[9]**.**

d) **consecrating a qualified political regime** in doctrine as a **semi-presidential type attenuated**, a **parliamentarized**[10] or a **parliamentary one**[11] ,

[1] By its Title III , called *"rights, freedoms and fundamental duties"*
[2] Regulated in Chapter IV of Title II of the Constitution.
[3] Regulated by Articles 52, 126 para. (6) 123 para. (5) and 73 par. (3) k letter of the Constitution.
[4] Guaranteed by Article 21 of the Constitution.
[5] By section 4 (2) of the Constitution it is provided that *"Romania is the common and indivisible homeland of all its citizens, irrespective of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin "*
[6] By Article 8 and Article 152.
[7] By Article 41 became Article 44 after revision and republication and Article 136, ex Article 139 .

[8] In the conception of Professor Antonie Iorgovan **the protection and guaranteeing** oprivate property shall be made as follows: creation of the legal regime of ownership; the exercise of the two forms of protection regardless of the holder; the prohibition to confiscate the assets obtained illegally and the presumption on the licit acquisition; the entire system of guaranteeing fundamental rights. Antonie Iorgovan – Tratat de drept administrativ, Ed. All Beck, Bucureşti 2005, ed. a IV –a, Vol. II, p. 171.
[9] By Article 41, the current 44 para. (8) of the Constitution
[10] Antonie Iorgovan - Tratat de drept administrativ, op. cit. Vol. I, pp 295 – 298
[11] Ioan Vida în Ioan Muraru, Elena Simina Tănăsescu (coord.) – Constituția României, Comentariu pe articole, Editura C.H. Beck, Bucureşti, 2008, p 592.

by declaring the Parliament as the supreme representative body of the Romanian people[1] and the consecration for the President **of a role especially of representation** which, in the first decade after the revolution of December 1989, had a positive role, preventing the risk of a totalitarianism from the head of state.
From the discussions with our late teacher resulted the precaution that the Constitutional Commission had manifested it, starting from the reality of over 40 years of totalitarian regime, in which one person omnipotence of *"supreme leader of party and state"*, was raised to the rank of state policy.
It was necessary for such a risk to be countered by a strong legislative, giving the Parliament the role of *"supreme representative body of the Romanian people and the sole legislative authority of the country"*.
e) **creating some autonomous central authority with an essential role** in strengthening the rule of law and we relate to:
- **the Constitutional Court**[2], which is entrusted with ensuring the supremacy of the Constitution, in this way our country has joined the countries that have constitutional jurisdiction[3] and, therefore, the European model of constitutional review;
- **the Court of Accounts**[4] , which is a traditional authority in Romania, created in 1864 by the ruler Alexandru Ioan Cuza which has today an existene for over 150 years and that has been existed in the period of the totalitarian regime[5] in in a specific form and whose mission is to control the formation, administration and use of financial resources of the public sector. Such role led us to qualify it as exercising the role of g**uarantor of legality public spending**, similar by meaning to **the guarantor of the supremacy of the Constitution**, that the Constitutional Court exercises. A rule of law is, by definition, a state where the law is respected in all its forms of interpretation and application. And respecting the laws regarding how public money is spent has a special significance, since it is the financial support of the functioning of the state as a whole.

[1] By Article 58, Article 61 of the current Constitution.
[2] Article 142, The Constitutional Court is the guarantor for the supremacy of the Constitution.
[3] Under the form of the Constitutional Courts, Constitutional Courts and Councils. For development, see Ioan Muraru, Mihai Constantinescu – Curtea Constituțională a României, Ed. Albatros, București, 1997, pp 5-11; 27 – 36.

[4] Regulated by former Article 139 (now Article 140)
[5] It is the former Supreme Court of Financial Control. For developments on this subject, see Bogdan Murgescu (coord.), Istoria Curții de Conturi a României, Bucureşti, 2014, Imprimeria Națională.

e) **the consecration of some limits to revise the Constitution**[1] which include **four of the five traits of the Romanian state** proclaimed by Article 1 para. (1) of the Constitution, respectively *the national state*, *unitary, indivisible and independent.* We note that among these "limits of the review" is not found the *"sovereign state"* trait of the Romanian state, which is explained, in our opinion, by the perspective, meanwhile becoming reality, of the integration of Romania into the European Union, which guarantees more the disputed issue of *"joint exercise of sovereignty"* or *"sharing sovereignty exercise"*, which according to some authors that we do not share, is even a *"surrender of sovereignty"*. In such a context, the constituent legislator has not placed the sovereignty of the Romanian state through the values removed of the possibility review, the way how the sovereignty in cooperation with EU structures is being decided *"by mutual agreement"* by the competent bodies of the Union. In conclusion, **the 1991 Constitution** in its original form, laid the foundation to build a rule of law, with a participatory democracy, whose meanings and also weaknesses,were revealed over the time.

A Constitution, by definition, has as a trait **its stability**. Therefore, unlike the common law, the Constitution is designed to last over the time. But equally, it erodes over the time this virtue, by emphasizing some of its weaknesses. This is all the more as we relate to the particular situation in which Romania was, like other countries in the so-called **"communist bloc**[2]**"** within the meaning of abandonment for a period of over 40 years of a totalitarian rule in the favor of a democratic one, pretending to integrate, in less than two decades, in Western democracies. Moreover, since the adoption of the Constitution there were heard *"voices"* claiming alleged or real weaknesses[3]. One of these complaints concerned **the alleged undemocratic character of the Constitution,** because it did not guaranteed the principle of separation of powers and a Constitution that does this can not be democratic. Referring to this issue, the professor Antonie Iorgovan argued in his Treaty, that the fundamental law of 1991 falls within the guidelines set by the modern European constitutionalism, in which the separation of powers is no more, but with rare exceptions, expressly declared, but it is implicit

[1] Under Article 158, the current 152 entitled *"Revision limits"*.

[2] The phrase, in our opinion, is not free from some reservations, in the context in which the states that had a totalitarian regime, were not all communist states. There were *socialist countries, communist countries* in different stages and with different features.

[3] We consider direct and indirect accusations made against the late president of the Constitutional Commission, Professor Antonie Iorgovan that he has removed them by his works. Antonie Iorgovan - Tratat de drept administrativ, op. cit., ed. a IV- a, Vol. I, pp 30 – 43.

understood in the way how the authorities conducting the three classical prerogatives of state power are regulated in the Constitution. The Romanian Constitution itself devotes Title III called **"public authorities"** to this matter, regulating in Chapter I **the legislative power**, in Chapters II - V **the executive power** (President, Government and public administration at central and local level) and in Chapter VI **the judiciary power**[1]. However, the review carried out in 2003 scored between its priorities also the express consecration of this principle in Article 1, para. (4)[2]. Another alleged weakness was that the Constitution did not guaranteed, by the former Article 41, the property, as did the Article 17 of the 1923 Constitution[3], but only guaranteed the property right. This also was a false problem, as Professor Antonie Iorgovan argued in his Treaty[4], which was however removed by subsequent amendment of the article on private property. Finally, an issue that had legitimacy and imposed, effectively, the changing of the fundamental law aimed **the absence**, therein, of the regulations by which to establish **the legal framework for the integration of Romania into the European Union**, including in terms of changes that should be made mandatory for some texts that contained restrictive provisions, unacceptable from the perspective of European integration of our country. Briefly, we are referring to the absence of a title specifically devoted to this matter, that should regulate the key aspects of Euro - Atlantic integration of Romania and the existence of the restrictive provision of Article 16 para. (3) according to that the public functions and dignities could be occupied only by people who had exclusively Romanian citizenship and residence in Romania. The prohibition to accede to certain functions and citizens members of the European Union was undoubtedly in conflict with the concept of **European citizenship**[5] enjoyed by all citizens of the

[1] For a developed analysis, see Verginia Vedinaș - Drept administrativ, Ed. Universul Juridic, Buc. 2015, ed. a IX –a, pp 11 – 24.

[2] Article 1 par. (4) states: *"The State shall be organized based on the principle of separation and balance of powers - legislative, executive and judicial - within the framework of constitutional democracy"*

[3] The 1923 Constitution, published in the Official Gazette no. 282 of 29 March 1923. Article 17 on property, stated: *"The property of any nature and the state bonds are guaranteed"*.

[4] See Antonie Iorgovan – Tratat de drept administrativ, op. cit. Vol. II pp 168 – 170.

[5] Regulated by art. 8 of the Lisbon Treaty, ratified by Romania by Law no. 13 of February 7, 2008 published in the Official Gazette of Romania, Part I, no. 107 of 12 February 2008 which states *"In all its activities, the Union shall respect the principle of equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Union citizen is any person holding the nationality of a Member State. Citizenship of the Union shall be additional to national citizenship and shall not replace it. "*

Member States and the free movement of persons, one of the four freedoms recogniozed in the European Union[1].

I presented above only some of **the reasons** which led to the amendment of the Constitution 12 years after its entry into force, by Law no. 429/2003[2]. The review made was trying to correct those weaknesses that were revealed, over the time, and secondly, to introduce in the regulatory body of the Constitution those provisions which, by their absence, were affecting the country's integration into the European Union. We will begin our brief analysis on this issue with the second category, considering that, in our opinion, are essential the following novelty items brought by the law for constitutional revision: a) **the introduction of the current Title VI of the Constitution** consecrated to the "Euro - Atlantic integration of Romania", which in its turn, sometimes becamed obsolete after 8 years since Romania joined the European Union and from the entry into force of the Treaty of Lisbon[3]; b) **amending Article 16 para. (3) of the Constitution**, in the sense that **it should allow citizens and other citizens in addition to Romanian citizenship to hold public functions** in the state, **correlated with the introduction of equal opportunities between women and men in occupying these positions and dignities[4].** c) **the introduction** among the fundamental rights also **the right to elect and be elected in the European Parliament,** as recognized under national and European law to all citizens of the Member States[5]; States[5]; d) **guaranteeing private property**.

As regards **the correction of some constitutional texts** whose application in time created some problems in the functioning of the state institutions, we shall refer

[1] It is the freedom of movement of persons, goods and services and capital for development, see Nicoleta Diaconu - – Cadrul juridic privind realizarea liberei circulații a serviciilor și lucrătorilor din Uniunea Europeană în Revista Română de Drept Comunitar nr. 5/2009, pp 47 – 60.

[2] Published in the Official Gazette of Romania, Part I no. 758 of 29 October 2003. The Constitution was republished in the Official Gazette of Romania, Part I no. 767 of October 31, 2003

[3] Concerning the arguments necessary to revise the Constitution, see Mircea Duțu – Revizuirea Constituției: între tradiție, integrare, modernizare; Simona Tănăsescu – Despre funcțiile Constituției și necesitatea revizuirii; Dan Claudiu Dănișor – Raport privind revizuirea principiilor generale ale Constituției României și a dispozițiilor comune în materia drepturilor și libertăților fundamentale, articole publicate în Revista de Drept Public nr. 1/2013, pp 33-40, 41 – 53 și 23 – 33.

[4] It is Article 16 para. (3) of the Constitution which states:

"(3) public office or dignity, civil or military, can be employed, under the law, of persons who have Romanian citizenship and residence in the country. The Romanian State shall guarantee equal opportunities for men and women to occupy such positions and dignities. "

[5] We consider Article 38 of the Constitution which states:

"Romania's accession to the European Union, Romanian citizens have the right to vote and to be elected to the European Parliament."

briefly below, to those connected with this study, devoted to analysis of some of the deficiencies made in the regulation in the 25 years of democracy in Romania, of which 23 years spent under the rule of a basic law:

a) **changing the constitutional regime of legislative delegation**[1] regarding **emergency ordinance**, which, according to the revised text, may intervene in *"extraordinary situations"* whose regulation can not be postponed. We found that the original collocation *"exceptional cases"* was replaced for reasons which, in our opinion, are well founded, in the sense that it was inducing the existence of some extreme situations, emergency, necessity, siege, war and similar cases. The new collocation may also cover different *"situations"* that are *"extraordinary"* by the immediacy with which impose rules which, by ordinary parliamentary procedure would not be satisfied. Another relevant amendment targets to introduce relevant **regulatory limits for emergency ordinances** which aims either **the category of law** (the constitutional one), either **the subject to regulation** (rights, fundamental freedoms) or possible effects of regulation (may not **affect** the constitutional values specified and may not concern measures of forcible transfer of assets to public property);

b) the change of the constitutional regime of liability of the Government[2] in the sense of **consecration the possibility for parliamentarians to formulate amendments to the draft of law subject to committment**, which however **must be accepted** by the Government, a procedure which, unfortunately empties it of content. When I make this statement, I have the responsibility as a former parliamentarian[3], was actually involved in carrying out such procedures and I have seen how Government, as a rule, ignores the amendments of substance, aiming the regulation background, focusing on the form ones, drafting, to create an appearance that is not yet completely ignored.

c) changes in constitutional provisions **on the procedure for adopting laws**, in the meaning of cancellation those mediation committees, which in the original form of the Constitution[4], were made up of representatives of both Chambers of Parliament and were meant to reconcile the divergent texts remaining.

II. General considerations regarding the legislative activity in Romania

[1] Regulated by Article 115 of the Constitution
[2] Regulated by Article 114 of the Constitution
[3] In the period 2004 - 2008, I was a member of theRomanian Senate
[4] There were covered by former Article 76 of the 1991 Constitution

The Constitution proclaims, in Article 61, **the Parliament as the single legislative authority of the country**[1]. Such a classification determines, in our opinion, at least two conclusions: a) **only Parliament can adopt legal acts with the force of law and with this name;** b) all other public authorities that could be empowered to legislate, must exercise that power so as not to violate the unique role of Parliament as a legislative body, within the strict limits of empowerment legislation that has been conferred.

For the current system in Romania, the authority to which we refer is **the Government** that under the legislative delegation enshrined in Article 115 of the Constitution, may adopt laws by force of law, called Government Ordinances. Analyzing the Article 115 of the fundamental law, we note **the precaution proved by the constituent legislator when has regulated the regime of the two types of ordinances.** Regarding **the simple ordinance** it **was imposed the obligation of the Parliament to empower the Government**, through a special law, in which to be specified **the domain** and **the deadline** within which it is empowered to adopt them. Moreover, it was foreseen the possibility that **in the enabling law to be mentioned the need to submission for approval by the Parliament of this type of ordinance.** Although this is a simple *possibility*, as a rule, all the enabling laws provide it[2] for **and the practice is to approve those ordinances by the Parliament**, which presumably gives it a complete and comprehensive control over the content of the ordinance adopted, by preserving Parliament's role of sole legislative body[3].

With regard to **the emergency ordinance**, the things are more complex and we can say that caution **was inversely proportional to the governmental practice**, contrary to constitutional norms. Concentrating the letter and spirit of paragraphs (3) - (6) of Article 115, we consider that they enshrines **the following items aimed that the emergency ordinance not to affect the role of the Parliament as single legislative authority:**

a) it was provided that such ordinances may intervene only *"in exceptional cases, whose regulations may can not be postponed"*.

[1] The other dimension of the status of Parliament is the supreme representative body of the Romanian people.

[2] As an example see Law no. 184 of 29 December 2014 empowering the Government to issue ordinances, Article 2 which states *"In accordance with art. 115 para. (3) of the Romanian Constitution, ordinances issued by the Government under art. 1 will be submitted to Parliament for approval, according to the legislative procedure to resume work in the first session of the Parliament of 2015. Failure to comply leads to the cessation effects of the ordinance. "*

[3] On this issue see Gheorghe Iancu – Drept constituțional și instituții politice, Ed. C.H. Beck, București, 2011, pp 450 – 452.

The Constitution does not define the term *"extraordinary situations"* (which, otherwise, has replaced the *"exceptional cases"* originally used), given that it is not the role of a Constitution to define terms. The Constitutional Court is the one that, by its jurisprudence, cleared the meaning of concepts including the one mentioned above. In this regard, by the Council Decision 123 of 5th March 2013[1] ,the Court[2] recalled its constant jurisprudence in which it stated that the extraordinary situations expresses a high degree of deviation from the usual or common, an aspect strengthened by adding the phrase *"the regulation of which can not be postponed"* (Decision no. 255 of 11 May 2005[3], Decision no. 188 of March 2, 2010[4]).

b) it was stated the obligation to motivate the emergency provided in the content of the ordinance. The motivation, in the simplest definition that we allow to formulate, represents showing the reasons of fact and law, which entitles a matter of public or private law to issue a legal act or to make an operation or a concrete material fact. And, in this respect, the practice was fundamentally ward off from the spirit of the constitutional text, the motivations being genuine samples of formalism, of perpetual invocation of our state status in the process of European integration, that either is in the process of European integration, either was integrated in the Union[5]. In our opinion, there are few ordinances that have a motivation developed according to the constitutional requirements. Equally, in the extraordinary situation in which the phrase "extraordinary situation" fell into ridiculous, the high number of such ordinances, sometimes between 250 -300 per year[6] and allowing us to ask, rhetorically of course, **if it is possible that a State,**

[1] Published in the Official Gazette of Romania, Part I, no. 214 of 16 April 2013.

[2] Unfortunately there are few CCR decisions that were declared unconstitutional because there were no "exceptional" or "extraordinary circumstances". Example, Decision no. 83 of 19 May 1998 which was declared unconstitutional EO no. 22/1997 amending and supplementing Law no. 69/1991 of local government.

[3] Published in the Official Gazette of Romania, Part I, no. 511 of 16 June 2005.

[4] Published in the Official Gazette of Romania, Part, I, no. 237 of 14 April 2010

[5] For example, we mention the motivation to GEO no. 195/2005, published in Official Gazette of Romania, Part I, no. 195 of 22 December 2005 which reads as follows:

"Given the need to fulfill the commitments undertaken by our country in the process of European integration, it is urgently necessary, urgently, to this legislation, under which subsequent legislation can be adopted environmental and

Given the need to create a unitary framework which stipulates the principles governing the entire business of environmental protection and regulatory outlining the directions of economic activities to achieve the objectives of sustainable development elements aimed at the public interest and constitutes extraordinary emergencies.

Pursuant to art. 115 para. (4) of the Romanian Constitution,

The Romanian Government adopts this emergency ordinance "

[6] For a picture of those ordinances in the period 1992 – 2015, see Verginia Vedinaş, Drept administrativ, Ediţia a IX –a, Ed. Universul Juridic, Bucureşti 2015, p 392.

even the Romanian one, to be in such situations throughout its whole active period, if we subtract public holidays, secular and religious.

c) have been provided some restrictions and prohibitions to Government regarding the possibility of their adoption[1]. They aim **the constitutional laws area, the prohibition to affect the regime, either of the fundamental institutions or of the fundamental rights and freedoms, of the electoral rights[2] and to target measures of forcible transfer of some assets to public property.** The wording of the constitutional text raises some issues that have been discussed in doctrine[3].What is *"affecting"* means? It involves an absolute prohibition to regulate in those matters or to prohibit only the possibility of **negative consequences** in terms of the status of those institutions? Or, in other words, **if the regulation is beneficial, may it be adopted on the way of government ordinance and if it is not beneficial, it can not be otherwise regulated?** Our opinion, which could be categorized as demanding, but we assume it, is that the solution aim the first will. The constituent wanted that the fundamental institutions of the state to be regulated solely by the Parliament, given its double capacity as supreme representative and as unique legislative authority. The problem is about the meaning of the phrase *"fundamental institutions"*. As we already mentioned, it can not think of defining it by the Constitution, not being the Constitution's task to do it. However, given the *"authority"* of the text which seriously restrict the ability of Government's regulatory intervention, it would have been desirable that by the Constitution instead referring to the *"fundamental institutions"* to specify expressly which are those for who the Government may not intervene through emergency ordinance, which would have eliminated the risk of abuses. Such a solution we propose, given the imminent constitutional revision since this is, in my opinion, about the public authorities under the Constitution (Parliament, President, Government, central government, local government,

[1] We consider Article 115 paragraph (6) according to that *"Emergency ordinances can not be adopted in the constitutional laws, or affect the status of state institutions, rights, freedoms and duties stipulated by the Constitution, electoral rights and can not establish measures of forcible transfer ofsome assets in public property ".*

[2] Specifying electoral rights "is tautological, given that these are all fundamental rights". We appreciate that the legislature has provided, however, the desire to give special protection, since it is through their representative bodies through which people exercises sovereignty.

[3] Corneliu Liviu Popescu – Ordonanțe de urgență. Afectarea regimului instituțiilor fundamentale ale statului. Neconstituționalitate, în Curierul judiciar nr. 9/2006, pp 4-10.

prefect, the Court of Accounts, the Constitutional Court, the Ombudsman, Legislative Council, the Supreme Council of National Defence and the courts of law). If we consider that their regulation is related to organic laws, which are, how the doctrine says, "extensions of the Constitution"[1] we even better understand the reasons for which it has been prohibited to the Government to intervene in a regulatory manner by emergency ordinances in their domain. Concerning the electoral rights, the number of emergency ordinances is consistent in every election cycle, which practically empties the content of the constitutional norm[2]. The same reality is also found in terms of regulation, by the Constitution, of the *"fundamental institutions"* we do not believe that any *"escaped"* of the Government *"enthusiasm"* to regulate them or to change the legal status on the way of emergency ordinances. Not infrequently, the whole structure of the Government and ministries was modified in this way, has been made reorganizations, dissolution and establishment of others, which means more than a "damage" of their legal status[3].

The problem addressed by us would allow a monographic study, that we are not allowed to do it. Reporting the constitutional provisions **on legislative delegation as a whole,** to the governmental practice after adoption of the Constitution, we can identify, in our opinion, the following forms of violation of constitutional principles in matter of regulation:

a) **frequent use of emergency ordinances**, in the absence of those *"extraordinary situations"* to which Constitution obliges. In this way, **the emergency ordinance was transformed from an exception to the rule in the matter of legislating in this area;**

b) **lack of some serious and real motivations**, which gives legitimacy to the Government to use the emergency ordinances. The formalism and repeating the

[1] See Ioan Vida în Ioan Muraru, Elena Tănăsescu (coord.) - Constituţia României op. cit., 2008, p 689.

[2] As an example, Law no. 35/2008 for the Chamber of Deputies and the Senate and for amending and supplementing Law no. 67/2004 on the election of local authorities, the Local Public Administration Law no. 215/2001 and Law no. 393/2004 on local elected representatives.

[3] For example see O.U.G. no. 11/2014 on the reorganization measures at central government level and for amending and supplementing certain acts, published in the Official Gazette of Romania, Part I, no. 203 of 21 March 2014; O.U.G. No .86 / 2014 on the establishment of reorganization measures at central government level and for amending and supplementing certain acts, published in the Official Gazette of Romania, Part I, no. 920 of 12/17/2014.

same alleged arguments are arising from simple comparison of such normative acts[1];
c) failure to comply with restrictions imposed by the Constitution, following its revision in 2003, under the pretext that the emergency ordinances on different "fundamental institutions" or "electoral rights" **does not affect their content, which would entitled the Government to adopt them[2].**

Following this argument it was not only reached **the emptying of the constitutional norms, but also the „emptying" of the Parliament** from the subject of its work, the legislating and the elimination of its role as the sole legislative authority. And the emergency ordinance has turned, as I already mentioned, from exception in matters of regulation, in a rule in this matter.

III. Irregularities in the matter of regulation generated by the interpretation and application of the governmental liability assumption procedure.

Stipulated by art. 114[3]of the Constitution, this institution has been received in the Romanian system from other countries such as France, Belgium[4] etc. It may cover equally a draft law, a general policy statement, or government programme.The first one and the most serious and frequent violation of Article 114 was liability assumption by the Government on several laws, a package, with the trend of

[1] As an example see O.U.G. no. 37/2009 published in the Official Gazette of Romania, Part I, no. 264 of 22 April 2009 and Emergency Ordinance no. 105/2009 published in the Official Gazette of Romania, Part I, no. 669 of 6 October 2009, whose motivations are similar flagrant.
[2] See Decision. 544/2006 published in the Official Gazette of Romania, Part I, no. 586 of 30 June 2006, by which the Constitutional Court ruled that the Emergency Ordinance no. 43/2006 on the organization and functioning of the Court of Accounts unconstitutional by the Government to overcome the limits of the delegation which is impermissible interference and the role of Parliament; ie a breach of the principle of separation of powers (Corneliu Liviu Popescu, art.cit. 4 - 10 pp).
[3] Article 114 of the Constitution states:
"(1) The Government may assume responsibility before the Chamber of Deputies and the Senate, in joint session, upon a program, a general policy statement or a draft law.
(2) The Government shall be dismissed if a motion of censure, tabled within three days from the submission of the program, a general policy statement or draft law, was passed under Article 113.
(3) If the Government has not been dismissed according to paragraph (2), the draft law presented, amended or supplemented, where appropriate, with the amendments accepted by the Government, shall be deemed adopted and the application program or general policy statement shall become binding on the Government .
(4) If the President of Romania demands reconsideration of the law passed according to paragraph (3), the debate thereon shall be carried in the joint session of both Chambers ".
[4] For the development of this institution see Dana Apostol Tofan, Drept administrativ, Vol. I, Ediția a 2 –a , Ed. C.H.Beck, București, 2008, pp 223 – 233.

multiplying the number of packs[1]. Such a practice has been confirmed, unfortunately, by the Constitutional Court, that by its constant jurisprudence[2] essentially ruled that **the liability assumption may concern several laws at once, with the condition to exist a regulatory unit in terms of their subject.**

In our view, we reject this interpretation and the jurisprudence created and we believe that **the will of the legislature constituent was that Government top assume liability on a single draft law.** Such conclusion emerges not only from the philosophy of the institution, from the literal interpretation of the text using **cardinal number** "an"or "a" but from the whole constitutional architecture of public authorities, **primarily of the Parliament and Government**, whose one mission is to legislate and another to execute.

A second draw away from the constitutional rules was assuming liability by the Government several times in the same day, with a break between procedures, which ridicules not only the role of single legislative authority of Parliament, but also its role as **supreme representative body**, including **the relations between Parliament and Government.** Given that the Parliament's programme is decided by the Government in such a vision it is basically obvious "the reversal" of roles, transforming the legislative in executive and vice versa.

A third practice contrary, in our opinion, to the spirit of Government's assuming liability procedure is adopting by this procedure of some codes, of substantive and procedural law. Moreover, the two civil and criminal codes in force in recent years[3] have been adopted by this illegitimate procedure, that has affected very much their content and generated numerous amendments, made even by the laws that thery were put in force. The explanation is, in our opinion, mainly in the fact that, under this procedure, the Parliament is weakly involved, its members being able to do, in theory, **amendments** that must **be accepted by the Government.** Statistically, we consider that less than 10% from amendments are not accepted, which reduces their effectiveness. Over this is added the timeliness of these procedures and the fact that, by its specific, **it excludes the involvement of Parliament's specialized committees that** are the genuine "*laboratories"* in the process, complex and responsible, of adopting a normative act. A final irregularity affecting the constitutional government assuming liability, as well as the quality of lawmaking, in general, **aims assuming the executive's liability on a draft law**

[1] For a monograph on this institution see Mariana Oprican – Angajarea răspunderii Guvernului, Teză de Doctorat, Universitatea București, 2015.

[2] See Decision. 298/2006 published in the Official Gazette of Romania, Part I, no. 372/2006; Decision no.147 / 2003 published in the Official Gazette of Romania, Part I, no. 79/2003.

[3] It is the Criminal Code adopted by Law no. 286/2009, the Civil Code adopted by Law no. 287/2009.

that is debating in Parliament. In this way was proceeded with the Law No.1/2011 on national education[1], whose project is in progress at the specialized committee of the Senate and which had to be abandoned, the Government promoting through this procedure a new draft law, becoming the future national education law. This has resulted in fact in two conflicting decisions of the Constitutional Court[2], which practically accepted both notifications, from the Government and from the President of the Senate, creating a situation difficult to accept in a society that functions according to the laws of democracy .

Conclusions

As I already mentioned, the subject that we have proposed allows a development inclusively at monographic level. We intend to achieve this study in order to set off assuming, with responsibility, of some debates on the way how to legislate in Romania, with the legitimate desire, moreover, to diminish and in perspective to eliminate from the governance practice irregularities whose gravity affects the process of genuine democratization of Romanian society. Romania is declared by the Constitution "rule of law" and by the essence of such a type of state is to respect the role and the place that the public authorities occupies in the state's architecture. And this can be achieved by interpreting and applying the law equally, in its letter and spirit.

And the spirit and letter of our fundamental law gives the Parliament the status of **the only legislative body** and to the Government **the executive role**, mainly, and through exceptional conditions and limits established by the Constitution, also some virtues of primary normative regulation, which can not turn into rules, equally that the authorities can not *"borrow"* or *"transfer"* functions, except within the limits and conditions that the Constitution prescribes. Deficiencies of this nature have been reported and sanctioned by the European bodies and we refer, in particular, to the notorious Mechanism for Cooperation and Verification (MCV), which signaled repeatedly the harmful phenomenon for democracy, of governing by *simple ordinance or emergency ordinances*[3]. As a professor of public law, but also as *"man of the city"* I have the professional and moral duty to point these

[1] Published in the Official Gazette of Romania, Part I, no. 18 of 10 January 2011.
[2] It is Decision. 1431 of 3 November 2010 and Decision. 1525 of 24.11.2010.
[3] See, by way of example COMMISSION REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Romania's progress under the Cooperation and Verification Mechanism {SWD (2015) 8 final, Brussels, 01.28.2015, COM (2015) 35 final , http://ec.europa.eu/cvm/docs/com_2015_35_ro.pdf consulted on 18 June 2015. Throughout his notes that "previous MCV reports have addressed the use of government Emergency ordinance (EO) as a legal instrument in the context of the need to have laws on judicial reform and combating corruption "

phenomena, confident that in this way, expressing the vision of these realities in relation to the constitutional principle, we contribute to their elimination and strengthening the rule of law and of the Romanian democracy. And the law has a fundamental role in achieving this objective given that, as the "social phenomenon and anti-entropic, regulatory, mandatory and constraint by public force, the law is ultimately the expression of social consciousness in general, of legal consciousness, in particular, related to the circumstances and conditions, needs and opportunities".

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[2] Bogdan Murgescu (coord.), *Istoria Curții de Conturi a României,* (Bucureşti, 2014, Imprimeria Națională);

[3] Dana Apostol Tofan, *Drept administrativ*, Vol. I, Ediția a 2 –a , Ed. C.H.Beck, Bucureşti, 2008;

[4] Gheorghe Iancu, *Drept constituțional și instituții politice*, (Ed. C.H. Beck, Bucureşti, 2011);

[5] Ioan Muraru, Elena Simina Tănăsescu (coord.) , *Constituția României, Comentariu pe articole* (Editura C.H. Beck, Bucureşti, 2008);

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[10] Corneliu Liviu Popescu *Ordonanțe de urgență. Afectarea regimului instituțiilor fundamentale ale statului. Neconstituționalitate*, în Curierul judiciar nr. 9/2006;

[11] *Revista Română de Drept Comunitar* nr. 5/2009;

[12] *Revista de Drept Public* nr. 1/2013.