

# JURIDICAL CONSEQUENCES OF THE SUBMISSION OF EMERGENCY DECREES BETWEEN PARLIAMENTARY SESSIONS

*Tudor ONIGA\**

## Abstract

*The study aims at drawing attention upon the juridical consequences adopting emergency decrees during parliamentary vacations. The legal nature of the parliamentary session has been stressed, the one that can generate the submission of an approval bill of an emergency decree. Thus, having examined the constitutional disposals in the matter, but also taking into consideration the doctrine, the conclusion has been reached that in this case we talk about a plenary session, the differences from ordinary and extraordinary sessions being given in detail. In the end, juridical consequences of the submission of an approval bill regarding emergency decrees were stressed. The conclusion was that they have triple juridical loads.*

Key Words: *parliamentary session, decree, govern, law*

The parliamentary session was defined by the doctrine as the „organizational form of parliamentary work, established during a calendar year which is applied when the Parliament meets to deliberate in plenary sessions”<sup>1</sup>. In legal literature it is appreciated that there are two sessions which characterize the functioning of the Parliament: a) a regular session and b) an an extraordinary session. Sessions are rightfully considered as „a possibility of an extraordinary session, still being different from it, not being on demand”<sup>2</sup>. In our opinion, precisely this reason - convening is done without a request to do so - should lead to the delimitation session as from the other types of sessions.

According to constitutional percepts,<sup>3</sup> the two Chambers meet yearly in two ordinary sessions. They meet in extraordinary sessions whenever necessary. The doctrine also added, quite rightfully we believe, a thrid type of parliamentary session, namely the rightful one.<sup>4</sup> This, although not mentioned in our Constitution as a distinct session, it „obviously results from interpreting some of the constitutional disposals.”<sup>5</sup> This is our reason for considering the submission to debate the project of

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\* Lecturer Ph.D., Faculty of Law „Dimitrie Cantemir”, Cluj-Napoca.

<sup>1</sup> I. Deleanu, *Instituții și proceduri constituționale – în dreptul român și comparat*, C.H. Beck Publishing House, București, 2006, pp. 637.

<sup>2</sup> I. Muraru, M. Constantinescu, *Drept parlamentar românesc*, All Beck Publishing House, București, 2005, pp. 149 și urm. The authors treat the general legal regime of parliamentary sessions, with all what they imply.

<sup>3</sup> Art. 66 paragr. (1) and (2) in the Constitution.

<sup>4</sup> Regarding the types, number and duration of parliamentary sessions also see: *Les parlements dans le monde*, 2<sup>e</sup> éd., Union Interparlementaire, Bruylant, Bruxelles, 1986, vol. I, pp. 302-345.

<sup>5</sup> I. Deleanu, *Instituții și proceduri constituționale*, Servo-Sat Publishing House, Arad, 2003, pp. 553. This type of session was also mentioned by Jean-Pierre Camby și Pierre Servent, *Le travail*

an emergency decree in emergency procedure to one of the Chambers, this bringing forth its meeting rightfully, unless it already is in an ordinary or extraordinary session. We wouldn't take it as an extraordinary session, for not becoming a source of ambiguities or various interpretations, especially if the Government, for instance, could adopt an emergency decree during an extraordinary session. The submission of the project in the Chamber that is in an extraordinary session causes its submission in an extraordinary session as well? This might cause confusion.

In our opinion, the rightful session differs from the extraordinary session at least regarding the following aspects:

a) The rightful one is not convened on demand, its development being the immediate consequence of an unforeseeable, serious event. Its occurring, without any previous procedures, leads to the convening of the Chamber in a rightful session. The extraordinary session supposes a demand from the President of Romania, as a subject outside the Parliament, or from persons within the Chambers, that means the permanent Offices or at least a third of the deputies and senators.

b) The two types of sessions also differ from each other because of their origin. As we mentioned above, the rightful session is convened because of some unforeseeable, extraordinary events, which, because of their seriousness surpass those which justify an extraordinary session. If during the full right session the Parliament should response rapidly to some events which „, by their nature affect public liberties, other liberties and other fundamental rights, as well as the stability of the country,<sup>6</sup> the extraordinary session is imposed by „, the necessity of fulfilling an unusual task or the occurring of an unforeseeable event.”<sup>7</sup>

c) The instances when the Parliament meets in a rightful session are clearly and limitatively shown in the Constitution; in case the Government adopts an emergency decree, the submission of the approval project to be debated by the competent Chamber must be stressed. If the Chamber is not in session, it impels its convening in a full right session, in five days since the submission or sending. It is said in the doctrine that „in such a case, the President of Romania should have the initiative of submitting an extraordinary session, although there isn't such a text in the Constitution.”<sup>8</sup> There would be no juridical reason for such a judgement because, first, as noticed by the author himself, there is no constitutional text mentioning it. Second, the convening of the competent Chamber to be notified is achieved by the law effect, not by another initiative. Third, it is not an extraordinary session, that requires different rules to be convened, subjects to be debated, duration. It is a full right session, whose existence is stated and sustained by the author as a particular way of convening the Parliamentary Chambers.

d) If, as a rule, the request to convene the Parliament for an extraordinary session is done by subjects authorized as legal person, the convene as a full right

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parlementaire sous la cinquième République, Montchrestien Publishing House, 2<sup>e</sup> éd, p. 125; P. Pactet, *Institutions politiques. Droit constitutionnel*, Masson Publishing House, Paris, 1983, pp. 456-457.

<sup>6</sup> I. Muraru, M. Constantinescu, *Drept parlamentar românesc*, Actami Publishing House, București, 1999, pp. 164-165.

<sup>7</sup> I. Deleanu, *Instituții...*, cit. supra, Edition 2006, p. 636.

<sup>8</sup> C. Ionescu, *Drept constituțional și instituții politice*, vol. II, Lumina Lex Publishing House, București, 1997, p. 227.

session is compulsory in all cases, without any exception, the session taking place according to the Constitution. It is a surprise the opinion expressed in specialized literature according to which „the procedure of adopting emergency decrees is the only case mentioned in the Romanian Constitution when the government imposes upon the Office Chamber to convene the Parliament and this by the mere submission for approval of the decree text.”<sup>9</sup> „Non-convening the Parliament, in case it wasn't in a session, brought about the inexistence of the decree.”<sup>10</sup> If the Government, during parliamentary vacations, may by submitting a law project for approval to determine the parliamentary Chambers meet in full right session, we fully agree with it, we are quite reserved regarding the following:

- It is not the Parliament that is convened in session, but the Chambers of the Parliament separately. The situation can be considered an exception from one of the fundamental principles which characterizes the juridical regime of the session, namely the principle of simultaneity,<sup>11</sup> especially when, the legal project being debated, it is sent to the other Chamber. If the latter is not in session, the exception cannot be proclaimed, as the principle of simultaneity „does not exclude their convenience at different data, but within the same session.”<sup>12</sup> Things are completely different when the notification of the second Chamber is made during an ordinary session. Thus, as the project is debated at a Chamber in a rightful session, while the other in ordinary session, the mentioned exception cannot be denied.

- The Government cannot impose to Chamber Offices anything, nor convene the session of the Parliament. This because the Offices do not „convene”, but may request the convocation of the Parliament. The convocation can be made only by the Board Chairman;<sup>13</sup>

The fact that the Government submitted the approval project of the emergency decree and the decree was published in the Official Monitor are enough reasons – conditions being fulfilled – that this normative legal act produce juridical effects. Non-convening the legislative forum does not affect the existence of the decree, being not part of the constitutional conditions which devolve upon the Government and upon which it has no control. It would be absurd to consider that the con-convening might make the decree inexistent also because under art. 108, paragraph (4) in the Constitution, only not publishing it might have such an effect.

a) Convening the Parliament in an extra-ordinary session is conditioned by the existence of a request to convene, that is to be done „in a written form and will include the business of the meeting and the session duration.”<sup>14</sup> That is to say an extra-ordinary session will always have a given, determined period, while a rightful one will function till the end of the period that generated it. It is only one situation when

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<sup>9</sup> L. Chiriac, *Controlul constituționalității ordonanțelor Guvernului*, Accent Publishing House, Cluj-Napoca, 2004, p. 95.

<sup>10</sup> *Ibidem*, p. 98.

<sup>11</sup> At large about it in, I. Muraru, M. Constantinescu, *Drept...*, op. cit., ed. 2005, pp. 153-154.

<sup>12</sup> *Ibidem*.

<sup>13</sup> The Permanent Office of the Chamber of Deputies „requires that the Board Chairman of the Chamber would convene a session.” [art. 32 paragr. (1) pct. (b) in the Rules of the Chamber of the Deputies]. The Board Chairman of the Chamber of Deputies convenes deputies in sessions” [art. 34 lit. (a) in Rules of Chamber of Deputies].

<sup>14</sup> Art. 84 para. (9) in Rules of Chamber of Deputies.

the period is not sure, namely when the President of Romania convenes the new elected Parliament in an extra-ordinary session during the parliamentary vacation. It is true that in this way art. 84 paragraph. (3) in the Rules of the Chamber of Deputies is broken; this paragraph forces the one who requested to specify the period of the session, thus also forcing the Board Chairman not to take into consideration the request according to art. 84 paragraph (10) in the rules. The impossibility to pay attention to the convene procedures for an extra-ordinary meeting gives us the right to wonder if this is not a rightful meeting. In the case of the projects of emergency decrees the rightful session will last to the moment in which the Chamber will decide about it within 30 days.<sup>15</sup>

The rightful session, going on according to constitutional disposals, cannot be declined, blocked somehow, being compulsory. Things are completely different with an extraordinary session, when the members of the Parliament have the right to decline, by means of voting, the order of the day, and thus the session could not take place.<sup>16</sup> According to article 115, paragraph (5) in the Romanian Constitution, the adoption of an emergency decree by the Government between parliamentary sessions determines to compulsory convene the Chambers within 5 days from the application, or the sending of the decree. The Chambers of the Italian Parliament meet, according to art. 77 in the Constitution, in 5 days as well if they are on holidays, while the Government adopts (in extraordinary cases of necessity and emergency) decrees with value of laws. In Spain (art. 86), The Congress of Deputies is convened in 3 days, while on holidays, when the Government releases laws. To convene the Chambers is done in order to "examine the exceptional circumstances when the decree was released, its target and its predictable effects."<sup>17</sup> The period of 5 days flows, the Constitution says, from „ the submission or sending.” Regarding what we have mentioned before, we will take for granted the „submission” or „sending” of the law project for approval of the emergency decree, and not of the decree in its raw form. According to the way in which art. 115, paragraph (5) is given, it results that not both Chambers are convened simultaneously, but, taking into consideration the beginning of the paragraph we are talking about, where it is said that the decree is submitted to the competent Chamber, and that it must be appraised, only the latter Chamber will be convened.

After having expressed its intention, express or tacit, of the first notified Chamber, the project of approval of the bill will be sent for debate to the second Chamber, which will give a final decision. It will compulsory be convened also in 5 days, on condition that it is not in session, because if yes, the constitutional foresight is no longer valid. Before being re-examined, paragraph (4), in art. 114 had in our opinion at least three drawbacks:

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<sup>15</sup> Regarding the differences between the two types of sessions, it was stated that one of them consists in the fact that the rightful session „does not require an act of willingness as far as to convene is concerned, nor other procedural conditions, as the business of the meeting and its duration” (C. Ionescu, Drept..., *cit. supra*, p. 227).

<sup>16</sup> Art. 84 para. (9) in Chamber of Deputies Rules.

<sup>17</sup> I. Deleanu, *Delegarea legislativă – Ordonanțele de urgență ale Guvernului* – Dreptul, nr. 9/2000, p. 17.

1. The obligation to convene the Parliament was decided, if it was on holiday, in rightful session in case an emergency decree was adopted, without mentioning, as it was only natural, a datum to convene the deliberative forum to be able to debate upon the project, a fact that had as a consequence, sometimes, the postponement *sine die* of the debate. The doctrine says that „non-convening the Parliament, in case it was not in session, drew forth the inexistence of the decree, the more because convening was compulsory.”<sup>18</sup> To the previous statements we add:

- One fact is the submitting of decrees in order to be approved or, better to say, the decree projects to be approved, and it is completely different to convene the Parliament in full right session;

- The existence or inexistence of a decree, we appreciate, had and has not anything in common with convening the Parliament.<sup>19</sup> If the Government submitted the project of approval of the decree to one of the Chambers and then it is published in the Official Monitor in Romania, its validity was beyond any doubt. One thing was certain: The Government fulfilled its task as seen in art. 114, paragraph (4). From that point on, only the Parliament was the only authority that could decide and rule upon the decree; The obligation to convene the Parliament is a prerogative exclusively belonging to the Board Chairmen of the two Chambers, who answer to the requests of the Permanent Offices. There is only one exception: when the new elected Parliament is convened by the President of Romania, in less than 20 days from the elections. This exception is thoroughly justified, because of the inexistence of governing bodies of the Chambers until they are legally constituted. Thus, art. 29, paragraph (1), lett. a) in the Rules of the Chamber of Deputies establishes as an attribution of this Chamber the datum for the beginning and end of parliamentary sessions, and lett. g) says that this authority should establish the draft for the business project as well as its work program. The Board Chairman should „convene the deputies in ordinary or extraordinary sessions. It is the Constitution that consecrates in art. 66, paragraph (3) this very obligation: ”The Chambers are convened by their Board Chairmen.” The denial to fulfil its legal task produces two juridical effects: a) it is the moment when the Board Chairman’s responsibility appears; b) like with laws promulgation when we considered that the President’s refusal to promulgate a law leads to its coming into force, even if not promulgated, in order to follow the same path, we consider that the refusal to convene a parliamentary session gives the Chambers the right to start even when convocation is lacking.<sup>20</sup> We end by saying that the debate in the Parliament of a decree project has nothing to do with its validity. It continues to have effects until the legislature will pronounce itself and the legislative procedure will be ended.

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<sup>18</sup> L. Chiriac, *Controlul...*, cit. supra, p. 98.

<sup>19</sup> If the Parliament can be convened in sessions by various legal subjects, as far as convening in sessions is concerned, can be exclusively done by the Chairman of the two Chambers and is achieved by decision.” (I. Muraru. S. Tănăsescu, *Drept constituțional și instituții politice*, Edition X has revised and completed, Lumina Lex Publishing House, București, 2002, p. 456).

<sup>20</sup> Regarding the „possibility that the Chambers be convened by their own initiative”, if convocation is lacking, it was stated that „only thus the task will not be achieved by breaking the convocation obligation, that being right, as it is right that nobody should profit by his own mistake”. (I. Muraru, M. Constantinescu, *Drept...*, cit. supra, Edition 2005, p. 164).

• Coming into force of emergency decrees was achieved only after „their submission for approval to the Parliament.” But this was not exactly true as the project had to be submitted to one of the Chambers, according to the Government decision and not to the Parliament that, according to art. 61, paragraph (2) in the Constitution included the Chamber of Deputies and the Senate. The present one – art. 115, paragraph (5) – is in accordance with the above critic thus „the emergency decree comes into force only after being submitted for debate to the competent Chamber.”;

2. It is not the Parliament<sup>21</sup> that is convened in a full right session under such circumstances, but the initially notified Chamber. If the project was fulfilled in the first notified Chamber in a short period, it was subsequently sent to debate to the second one. If the latter was not in a session, it was convened, unfortunately in an indefinite period, but one that must have been quite short. No constitutional stipulation established the obligativity of discussing and approving emergency decrees within a determined or predictable time, consequently the opinion that „it could not overpass by all means the current parliamentary session,” seems to us exaggerated, taking into consideration the legislation of that moment. We do not deny the opportunity of such a solution, but the legal basis was lacking.<sup>22</sup> Luckily, there weren't such cases to give birth to politic-juridic disputes at that time. The re-examined Constitution regulates the situation: „The Chambers, if not in session, are compulsory convened within 5 days from the submitting of the request, or the sending of it.”

Consequently, the submitting of the law project for the approval of an emergency decree has a triple juridical load:

- a) It is a condition that the emergency decree be constitutional;<sup>23</sup>
- b) It is the very moment from which the period of 30 days is used to adopt the approval project for the emergency decree. It is an exception from the established rule, for instance, in the Senate Rules which under art. 113 states that during parliamentary vacations the project is recorded „from the datum of its submission and the terms of enactment start from the moment when the activity of the senate starts again.”
- c) Obligatory determines to convene the Chambers in a rightful session, within 5 days, if the decree was adopted when they were not in ordinary or extraordinary. How should the Parliament re-act if the Government adopted an emergency decree in the last day of an ordinary or extraordinary session and also submits to debate to the notified Chamber? We believe that the Parliament can do this in only one way: The Chamber must be convened in a rightful session, in 5 days from the submission to debate and adopt the project. In order to assure the continuity of the

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<sup>21</sup> Only on condition that the Parliament of Romania had been uni-cameral, the statement would have been correct.

<sup>22</sup> Also see: D. A. Tofan, *Despre natura juridică și regimul juridic aplicabil ordonanțelor Guvernului*, in *Drept public*, nr. 1/1995.

<sup>23</sup> At a certain moment it was considered that in juridical literature wrongly, we would say, that the submission of the law regarding emergency decrees would be the very datum when the decree comes into force (M. Preda, *Autoritățile administrației publice – Sistemul constituțional Român* – Lumina Lex Publishing House, București, 1999, p. 114).

legislative procedure it is preferable that in such a case the Chamber originally notified not to go on holidays for a couple of days, and meet again in order to debate the approval law of the emergency decree. After 30 days from submission, time during which the project was either adopted tacitly or rejected explicitly, it is sent to the other Chamber. If when talking about law projects or legislative suggestions, under art. 75 in the Constitution, it is said that the first notified Chamber can reject the debate, the exceeding of 45, or 60 days bringing about the decision that they are adopted. In case of emergency decrees, convening the Chambers in rightful sessions has as a consequence the effective debate of the law project and only if it cannot be adopted or rejected in a period of 30 days, it is sent to the other Chamber. Another solution, as unfortunately was that of the Emergency Decree 7 no. 1/1999, wouldn't be feasible, being „ also opposed to both juridical and political reasons”<sup>24</sup> of the reference constitutional texts. If the notification of the second Chamber was done during parliamentary vacation, the constitutional disposals regarding how to convene it in a rightful session, within 5 days from the submission are applied. The notification of the latter after the beginning of the ordinary session makes inapplicable art. 115, paragraph (5) in the Constitution, the only obligation the second Chamber has being that established by the Rules regarding the emergency decrees. No matter what the nature of regulations is, all the law projects regarding the approvals of emergency decrees are to be submitted to debate and possible adoption in the Chambers in emergency procedure.

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<sup>24</sup> I. Muraru, M. Constantinescu, *Ordonanța guvernamentală, Doctrină și jurisprudență*, Ediția a II-a, Lumina Lex Publishing House, București, 2002, p. 160.