

проф. др Јон Четерки,
потпредседник Академије друштвених и политичких наука,
Букурешт, Румунија

dr. Ioan Ceterchi,
Professor, Vice-Chairman of the Academy of
Social and Political Sciences, Bucarest, Romania

THE SCIENTIFIC AND DEMOCRATIC CHARACTER OF THE LEGISLATIVE PROCESS IN ROMANIA

1. In the constitutional conception of the Socialist Republic of Romania, the law occupies the highest place in the system of normative acts, representing the legal expression of the general lines of the socialist State's domestic and foreign policies, the main directions of development in economy, science, technology, culture and social life in general. The law governs relations among citizens in their different hypostases and relations among state organs, economic and socio-cultural units, mass and public organizations within the system of political organizations of society. The juridico-political status of the citizen, his rights, freedoms and duties are equally sanctioned and guaranteed by the law.

In consequence of the principle of the supremacy of law, all the other normative acts — government decisions, orders and instructions of ministries and other central bodies, as well as the Constitution and the laws in force, must be issued on the ground of the former and for their enforcement*. Since the Grand National Assembly meets in periodic sessions, in order to ensure the legislative process the Constitution authorized the State Council to enact decrees with force of law. These decrees — which cannot modify the Constitution or approve the state plan or budget — are subject to the approval of the Grand National Assembly during its next session, after which they become laws.

It is worth noting in the evolution of the legislative system and practice of the past two decades that the Grand National Assembly's legislative attributions have increasingly stronger asserted themselves, the sphere in which social relations are regulated by law has been broadened and the normative intervention of the executive organs, particularly of the government, has been restricted, this intervention being allowed only on the ground of express provisions contained in laws and for taking measures required to

(*) When referring to the supremacy of the law, we have in view the Constitution and other laws which must all conform with it.

carry them into effect. This evolution is also reflected in statistical data of recent years which indicate that the ratio between the laws (including the decrees with force of law having been enacted as laws), on the one hand, and the decisions of the Council of Ministers, on the other, is clearly in favour of the former. Thus the ratio was 101 to 29 in 1976, 166 to 25 in 1977 and 91 to 10 in 1980. The supremacy of the legislative body — the supreme representative organ of state power — and of the law has become an essential characteristic of government in the State and society.

2. Expressing the will and the interests of the people and reflecting the decision by which society is governed, the laws have to meet, by their provisions, the complex requirements of the building of the socialist society, to be really scientific and democratic.

These two characteristics of the legislative process should not be considered in isolation, but in their close and organic unity. Thus, the measures aimed at deepening the democratism of this process, mainly through the participation of the masses are, at the same time, a guarantee for improving the solutions sanctioned by the normative act. On the other hand, the scientific substantiation of the regulation contained in the normative act requires the participation in the drafting of the laws of the most competent factors which have traditionally been excluded from the legislative mechanism i.e. experts, scientists, highly cultured people, trained cadres from the different fields subject to juridical regulation. By ensuring this scientific substantiation, the sphere of participation in the legislative process is considerably widened. The broad participation of the most diverse categories of working people in the legislative process represents a facet of the work of building the new type of democracy based upon workers' self-management, upon the participation of the working class, of the working people, in the management of all the sectors of the economic and social life. The inextricable unity between the two characteristics of the legislative process disproves of the technocratic-elitist theses that underestimates, and even rule out, the role of the masses, while holding that the latter are capable only to elect their representatives and lack the ability to take part in the debate and proposing of solutions. It also contradicts the theses worked out from the positions of formal democracy which consider that the mere participation of the masses can resolve substantial issues and ignore the importance of a scientific analysis of social processes, of the fundamental studies conducted by the most competent specialists as indispensable premisses for the preparation of the drafts of normative acts and the substantiation of the solutions put forward.

It is at the same time significant that the general development of law in the Romanian society at present, as an important factor of social management, is subject to programming and planning. Legislative programming is based upon the analysis and diagnosis of social realities, upon the findings of scientific research and upon forecasts regarding the future development of the various sectors of social life.

Consequently, it has been established, with the 1975—1980 five-year plan, that the normative activity should be conducted on the basis of the legislative programme worked out in conformity with the single national plan for the economic and social development of the country and with the Romanian Communist Party's Programme for the building of the multilate-

rally developed socialist society and Romania's advance to communism. According to the general Methodology of legislative technique concerning the preparation and systematization of the drafts of normative acts (approved by State Council Decree no. 16/1976), the legislative programmes are drawn up for a period of five years corresponding to the five-year plan and are updated every year in keeping with the annual plan targets. The legislative programme is certainly not intended and cannot exhaustively comprise the normative acts that are to be enacted during the five year plan period because the need for many of them to be adopted may arise during the fulfilment of the plan. The legislative programme is so conceived as to put in a better perspective the development and improvement of legislation, of the principles of law, and to create the framework for the development of the entire normative activity. The legislative programme includes the principal normative acts that are to be drawn up for all the sectors and fields of activity.

Taking into account the importance of the stability of normative acts, the legislative programme ensures, at the same time, the intervention of the legislative form in such cases where the normative act has to be modified, completed or repealed and replaced with new normative acts. A dialectical unity is thus achieved between the stability and the dynamics of legislation, an essential requirement for furthering and ensuring social progress.

3. The constitutional principle according to which the Grand National Assembly is the sole legislative organ, does not rule out the participation of the masses in the whole process of initiation, preparation and drafting of laws. The passing of a law by the Grand National Assembly, as the culminating moment of the legislative process, marks the transition from ascertainable to imperative, from 'le donné' to 'le construit', from 'sein' to 'sollen' thereby ensuring the configuration of norms of conduct as generally binding juridical norms.

Yet, the process of preparing and drawing up bills implies a large number of factors that concur to the finding of the best possible solutions to be included in the final form of the draft. One guarantee from attracting the masses to the legislative process is the fact that bills can be initiated not only by state organs — such as the Grand National Assembly, by its commissions, the State Council, the Council of Ministers, — and by members of the Grand National Assembly but by other organs as well, which directly reflect the will and interests of the masses. Legislative initiative has been vested, for instance, in the National Council of the Socialist Democracy and Unity Front of the Socialist Republic of Romania as the broadest standing, democratic and representative political body which unites, under the leadership of the Romanian Communist Party, trade unions, women and youth organizations, co-operative organizations, working people's councils of the coinhabiting nationalities, many social, cultural, scientific, technical, professional, sports, artistic organizations — 36 in all — the representatives of the 14 recognized denominations and individual members. Through the National Council of the Socialist Democracy and Unity Front, citizens' organizations are able to initiate and put forward ideas for the drafting of bills. At the same time, given the fact that the president of the Central Council of the General Trade Unions of Romania, the president

of the National Council of Women, the president of the National Union of the Producer Cooperative Farms and the first secretary of the Young Communist League are, as of right, members of the Council of Ministers, the normative acts required by their organizations can also be initiated through the government.

Likewise, the workers' self-management bodies, recently set up in industry, constructions, transports and agriculture, education and culture widen the sphere in which such normative acts can be initiated.

4. The preparation of any draft a normative act presupposes the participation of the most competent experts, the full use of the findings of scientific research and social practice as well as the critical examination of previous regulation.

Pursuant to the general Methodology of legislative technique drafts of normative acts are drawn up according to the importance and complexity of the social relations subject to regulation on the basis of studies and other documentation designed to ensure full agreement between juridical regulations, on the one hand, and the requirement of the development of the economic and social life, on the other. These studies and documentation are prepared by specialists with professional experience working in the branch or field of activity that falls under the regulation, with the participation of jurists, academics, researchers and experts in the respective area. They are based on scientific, and socio-economic investigations likely to supply several possible variants to the decision factors, synthesizing the elements needed for a solid substantiation of the forthcoming option.

When it comes to codes or other important laws, the fundamental theses of the future normative act are worked out first, being followed by guidelines and the major solutions to the regulation envisaged. Once these studies have approved, the working out of the respective bill gets under way.

Once the draft has been worked out and approved by the initiating body, it is submitted to a wide debate with a view to its completion and enactment.

An important role in ensuring the drawing up the drafts of enactments belongs to the Legislative Council, created in 1974 as a specialized consultative organ alongside the State Council. Its task is to assist state organs in the preparation, co-ordination and systematization of legislation and to issue advisory opinions on all bills, draft decrees of the State Councils and draft decisions of the Council of Ministers.

5. The participation of the masses in the legislative process is a regularity of the development of the socialist society which stems from the organic unity between socialism and democracy, and from the unity between the rights and freedoms of the citizens and the conscious responsibility of every individual for the implementation of the programme for the building of the new system.

To this effect, President Nicolae Ceausescu underscored at the 12th Congress of the Party: „All State organs, industrial centrals, the management of enterprises, people's councils must base their activity on a broad

consultation of the masses, setting out from the fact that socialism is built with the people and for the people”*.

A closer look at the legislative practice of recent years indicates that an increasingly larger number of bills have been submitted to public debate before being passed by the Grand National Assembly. The mechanism of people's participation in the legislative process has been continuously developed and perfected.

In an attempt to systematize and classify the forms of citizens' participation in the debate of bills in recent years, the following can be singled out:

a) The public debate of the draft normative acts by workers' collectives of socialist units, at public meetings in villages, communes and constituencies, through the mass media and through proposals and remarks made in working people's letters are by far the most wide-ranging form of attracting the citizens to the discussion and completion of the bill. This is made possible by the publication of the bill and its wide circulation.

As a rule, the proposals emerging from these debates are centralized at the Grand National Assembly. On the basis of such proposals, appropriate amendments are introduced in the bills which are subsequently submitted, in an improved version, to the Grand National Assembly for enactment.

Fifty nine bills have been published and submitted for public debate in recent years. During the public debate of the bill for the amendment of the law on remuneration according to the quantity and quality of the work performed in 1978, all socialist units held ample debates on the draft that was to modify the law. These debates enjoyed the participation of more than 4 million workers of whom over 127 000 took the floor. Of the approximately 2 900 proposals put forward in connection with the education bill during public debates, some 2 000 have been retained and included therein, a large number of these proposals referring, however, to the same issue.

b) An important form of the masses' participation in the drafting of bills is achieved by having the latter submitted for debate to people working in the branch or field of activity falling under the rules contained in the bill. We have in mind those bills which refer to fields or branches of more limited scope concerning mainly the people working in that sector of economic and social activity. Following the observations and proposals from experts in the respective field of activity, these bills are improved and presented to the Grand National Assembly in their form which represents the result of the collective thought of all those who will have to abide by those norms in the future. Such debates are often held nation-wide at periodic meetings which examine the activity carried on in a given sector of the economic and social life.

c) Some bills that are of special importance for the organization and management of social life are submitted for debate to the supreme organs of the Romanian Communist Party, the Congress and the National Confe-

(*) Nicolae Ceausescu, *Raport la cel de-al XII-lea Congres al Partidului Comunist Român* (Report at the 12th Congress of the Romanian Communist Party), Bucharest, Edit. politică, 1979, p. 63.

rence. The National Conference of the Romanian Communist Party of 1972, for instance, had on its agenda the discussion of bills relating to the Labour Code, the Law on the remuneration of work according to its quantity and quality, the Law of Romania's planned economic and social development, and the Law on public finances. All these bills were publicly debated and subsequently presented — in their final form — before the supreme legislative body.

d) An especially significant role in improving the draft enactments devolves upon the bodies of workers' self-management from those in the units (enterprises, industrial centrals etc.) until national fora organized under the form of national congresses and councils. Thus, there have been already institutionalized and held the Congress of the working people's councils in industry, constructions and transports, the Congress of the working people in agriculture, the Congress of political education and socialist culture, the Congress of education and respectively the National Council of the working people in industry, constructions and transports, the National Council of Agriculture and the Council of education.

These bodies include large numbers of people working directly in production — workers, co-operative peasants, engineers, technicians, scientists, persons working in the field of culture, teaching staff as well as cadres from the management of ministries, centrals, enterprises, producer co-operative farms or state farms.

These self-management bodies have, among others, the task of analysing the bills referring to their field of activity and also the right to initiate bills concerning these sectors. Although of a relative recent date, the experience of these workers' self-management bodies has shown that they can make a substantial contribution towards preparing and improving the drafts of normative acts. In this sense, the bill on the organization of socialist units and the normative acts drafted during the implementation of the new economico-financial mechanism on the basis of the self-management and self-administration of economic units, have been debated in 1978 and 1979 by the working people's councils of enterprises and centrals, then by the National Council of the Working People and the National Council for Agriculture, after which they were presented to the state organs for enactment.

The bills on the activity of local bodies and the development of territorial administrative units have been debated by the Legislative Chamber of the People's Councils which includes all the members of the executive committees of the county people's councils and of the Municipality of Bucharest. Likewise, the Congress of the people's councils deputies, the All-Country Conference of the people's councils presidents, held once every five years, as well as the county conferences of the people's councils deputies — held once every 2 and a half years — discuss the drafts of the normative acts concerning the local administration.

e) In the context of the forms of participation examined so far, the particular importance of the citizen's participation in the preparation of the legislative acts regarding the five-year and annual plans has to be emphasized. The single national plan for economic and social development (five-year and annual) represents the outcome of an intensive activity by broad masses of people. The five-year plan indicators are made known to

all economic and social units and debated in enterprises, socio-cultural units, scientific research institutions and centrals, and then in people's councils and ministries. An important role in the process of drawing up, substantiating and finalizing the plan devolves on the High Council for Economic and Social Development, a representative party and state organ. Likewise the draft plan is debated by the leadership of the Socialist Democracy and Unity Front and the National Council of working people.

f) Romania's legislative process also includes the process of experimental law-making. Under certain circumstances, any final conclusion on the modality of regulating a given sector of activity is preceded by the adoption of a normative act which is experimentally applied for a limited period of time, say one or two years. The law in question gets its final form on the basis of the observations and opinions of those testing the experimental regulation. Thus, the law on the remuneration of the work performed in co-operative agricultural units has been applied, on an experimental basis, for one year; the decree on the establishment, organization and functioning of production, research, design and servicing units for the integration of higher education with production and scientific research has been experimentally applied for a period of two years.

g) To conclude, let us try to pinpoint some of the conclusions deriving from the masses' participation in the legislative process in Romania:

In the preparation of bills are involved experts and the most competent people from different fields of activity in drafting the bills. This makes possible the drafting of bills of high scientific stature in keeping with the objective needs of improving management by using the results of scientific investigations and research.

The forms of citizens' participation in the initiation and drafting of bills are diverse. This diversity stems from the nature and importance of the bill in question and is achieved through broadening people's right to legislative initiative, taking also the form of public debate by mass media, public meetings and other forms, discussion of the bills in social and public bodies or in the working people's self-management bodies.

The legislative process as a deeply democratic process which presupposes to involve in the preparation of bills broad masses of people who are invited to put forward their views on these bills and to contribute to their improvement so that their final form — the law — should actually represent the expression of the citizens' will and basic interests, the consensus of the entire nation, of the entire people.

Citizens' participation in the legislative process must not be viewed as ending in the adoption of the law. Being a premiss of the strict compliance with the law and its application throughout its existence, citizens' participation in the legislative process is naturally and necessarily completed by their participation in the enforcement of the law in the entire social life. Citizens' participation in the enforcement of the law, in the unabated implementation of the legality principle in government activity, gets the same measure of importance as the other preoccupations for deepening and broadening the democratism of government.

This is, of course, another form of manifestation, another facet of the democratism of social management, but I thought it advisable and necessary to point it out because it is only by completing the participation in the

drafting of the law with citizens' contribution to its enforcement, that the basic requirement for participative democracy i.e. for the masses' involvement in running society and the State, through their representative bodies or directly, can be ensured. It is only this way that the running of the State and society by the people, for the people, for every citizen, can be achieved.

РЕЗИМЕ

НАУЧНИ И ДЕМОКРАТСКИ КАРАКТЕР ЗАКОНОДАВНОГ ПОСТУПКА У РУМУНИЈИ

Полазећи од концепције да су научни и демократски карактер законодавног поступка у Румунији међусобно повезани, ова студија је углавном анализирала следеће аспекте тога питања:

— Припрема предлога нормативног акта претпоставља учешће најкомпетентнијих стручњака, коришћење научних истраживања и друштвене праксе, као и критичко испитивање претходног уређења и добијање саветодавног мишљења Законодавног савета.

— О предлогу нормативног акта води се јавна дебата у радничким колективима социјалистичких јединица, на јавним зборовима у селима, комунама и изборним јединицама, преко средстава масовних комуникација и путем предлога и примедба радних људи изнетих у писмима.

— О предлогу расправљају и људи запослени у оној грани делатности на коју се предлог односи.

— Предлог разматрају највиши органи Румунске комунистичке партије, Конгрес и Национална конференција, уколико се ради о предлозима од посебног значаја за целокупни друштвени живот.

— Посебно важну улогу у побољшавању законодавног поступка имају радничка самоуправна тела у јединицама и различити национални форуми организовани у облику националних конгреса и савета.

RÉSUMÉ

LE CARACTÈRE SCIENTIFIQUE ET DÉMOCRATIQUE DE LA PROCÉDURE LÉGISLATIVE EN ROUMANIE

En partant de la conception que les caractéristiques scientifiques et démocratiques de la procédure législative en Roumanie sont mutuellement entrelacées, la présente étude analyse en somme les aspects suivants de la question:

— La préparation du projet d'un acte normatif suppose la participation des experts les plus compétents, l'utilisation des recherches scientifiques et de la pratique sociale, ainsi que l'examen critique du régime précédent et l'obtention de l'opinion consultative du Conseil législatif.

— Le projet d'un acte normatif doit être soumis au débat public devant les collectifs travaillistes des unités socialistes, devant les réunions publiques dans les villages, dans les communes et les unités électorales, par le moyen de mass media, ainsi que par les lettres dans lesquels les ouvriers font des propositions et des remarques.

— Le projet est discuté aussi par les gens travaillant dans la branche d'activité à laquelle le projet examiné se réfère.

— Le projet est envisagé par les organes les plus élevés du Parti communiste roumain, le Congrès et la Conférence nationale, en tant qu'il s'agit des projets de portée particulière intéressant l'ensemble de la vie sociale.

— Dans l'amélioration de la procédure législative un rôle particulier est joué par les corps autogestionnaires travaillistes dans les unités, ainsi que par les différents forums nationaux organisés en forme de congrès et de conseils nationaux.