

# **ASSESSMENT ON THE EFFECTIVENESS OF ROMANIAN BICAMERALISM DURING THE 2004-2005 TERM**

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*The present study proposes an analysis of bicameralism, marking the 2000-2005 term on account of the legislative stability and direct intervention of the bicameral Parliament in the fields subject to law making. The analysis attempts to observe the means by which the Senate is able to accomplish its role of Chamber of reflection, and implicitly that of factor of stability in the Romanian bicameral law-enacting process.*

The political and social context for the setup of the bicameral model (initially achieved by Decree 92/1990 and then by the Constitution of 1991) was one that imposed the restructuring of the state institutions whereas the constituent legislative, although well-intentioned, had a rather theoretical understanding of the value of the essential operating mechanisms of democracy. Consequently, it chose to adopt the mechanisms that were impossible to assess feasibility-wise in the context of the concrete social, political and economic realities of the moment. There are a few basic elements that the constituent legislative should have known with respect to the unicameralism-bicameralism controversy: first of all, unicameralism is preferred in the case of a political system needing rapid and complex changes of the legislation (the case of Romania between 1991-1992), while bicameralism can be useful if it becomes a source of political stability (including legislative). In what this last statement is concerned, things become more complex: even though, generally, one may assert that the bicameral model may represent a source of political stability<sup>1</sup>, the different nuances of its functional features help outline the second Chamber's usefulness. Thus, the capability of the Second Chamber to guarantee this stability is directly proportional to the degree of incongruence

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<sup>1</sup> Tsebelis G., Money J., *Bicameralism*, Cambridge: Cambridge University Press, 1997, p. 217

of the two Chambers. Moreover, the incongruence of the two Chambers is to some extent difficult to justify from the point of view of democratic legitimacy in unitary states which are defined by an amplified national homogeneity.

During the Constituent Assembly of 1991, the egalitarian spirit played a decisive role in the setup of a symmetric and congruent<sup>2</sup> bicameralism, which demonstrated that its existence within a unitary state finds no justification. Moreover, most decisions are taken in the joint parliamentary assembly, in the case where the bicameral Parliament functions as unicameralism<sup>3</sup>. This conclusion was confirmed during the revision of the constitutional text in 2003, when the legislative, while attempting to repair the substance errors of a unproductive dual parliamentary structure, only succeeded – under inevitable political constraints - to define a quasi-egalitarian form of bicameralism, which preserved its congruence with regard to the political structure of the Chambers.

Our study will pursue an analysis of the Romanian bicameralism reformed subsequent to the 2003 revision of the constitutional texts. The analysis aims not as much at outlining the pros and cons of the bicameral system, as it aims at debating on the efficiency of the bicameral formula within the Romanian political system. Thus, we shall not insist on labelling the Romanian bicameral system as *weak* or *medium* in terms of *symmetry* and *congruence* of the two Chambers, but in terms of effectiveness. In this given context, when we refer to the effectiveness of bicameralism<sup>4</sup>, the departing premise is that both Chambers have a shared interest: the quality of the final political decision. The analysis of the effectiveness of bicameralism aims at the quality and stability of the legislation.

The following study focuses on the analysis of the effectiveness of bicameralism, outlining the 2000-2004 term, which reveals certain features of the Romanian bicameral system, both before and after the revision of the Constitution. The purpose of this approach is to identify the impact that the reformed bicameralism has had on the legislation quality improvement, after the constitutional revision. Since a complete study of the quality of legislation would additionally require certain investigations on the social and economic impact of the legal provisions, as well as on the law-implementation feasibility, this study will only focus on the legislation stability criterion in order to define the effectiveness of bicameralism.

Through a first stage of the analysis, we shall investigate the extent to which the legislation passed by the bicameral Parliament during each legislative year, was modified at a later moment (until 2005).

The second stage would require an attempt to identify and establish a packing order of the legislated fields that have experienced successive changes and of those which have experienced legislative stability, respectively. This undertaking will contribute to the identification of the elements that influence the stability/instability of the legislation (which may be economic, political, relative to the complexity of the ratification procedure, or to the complexity of the field subject to the regulatory activity).

Additionally, for the same purpose of evaluating the effectiveness of the Romanian bicameralism, the third stage will comprise the analysis of the *effective and exclusive intervention* of the bicameral Parliament on the fields subject to regulatory activity.

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<sup>2</sup> Lijphart A., *Modele ale democrației*, Bucharest: Polirom, 2000, p. 192-193

<sup>3</sup> Drăganu T., *Drept constituțional și instituții politice, tratat elementar*, Bucharest: Lumina-Lex, 2000, p.90

<sup>4</sup> Tsebelis G., Money J. idem, p. 16-17

## **I. The first stage occurs with each legislative year between 2000-2004:**

### 2000 legislative year in review

As a first comment on the **stability of the legislation**, we may note that out of 233 laws passed, 41 have been modified, that is 17.596% of the corpus subject to regulatory activity.

As to the regulated fields which have been subject to modifications, these generally refer to: the re-establishment of the right to property over farmlands and timberlands, the procedure concerning the organisation of the referendum, the public pension system and other social security rights, insurance companies and the supervision of the insurances, the local dues and taxes, the prevention, exposure and punishment of corruption, companies, the fight against illegal drug trafficking and consumption, the Criminal Code, the practice of the physician profession.

### 2001 legislative year in review

In connection with **the stability of legislation**, we may note that out of **796** laws passed, **138** have been modified, that is **17,336% of the corpus subject to regulatory activity in 2001**.

As to the regulated fields which have been subject to modifications, these generally refer to: The judicial framework of certain buildings abusively taken over between 06.03.45 and 22.12.89, the contributions to social security funds, the structure and operation of the Romanian Government and ministries, the structure of the judicial system, the legal framework of aliens in Romania, regional development in Romania, the establishment, organisation/reorganisation or operation of certain ministries, specialized bodies of the public administration and public institutions, the privatisation of the companies responsible for the administration of the state's public and private property farmlands and the establishment of the State Domains Agency, the social security of individuals which will have their employment contracts terminated as a result of collective dismissal, the promotion of direct investments triggering an important economic impact, local public finance, the arrangement of the public domain, urbanism, the law on Employer Unions, the Audiovisual Law, non-subsidised undergraduate and post-graduate public education, free access to public-interest information, the value added tax, individual security with respect to the processing of personal data and the free circulation thereof, the prevention and the fight against human traffic, the Law on education , local public finances, the legal framework of foreign investments in Romania.

### 2002 legislative year in review

In connection with the **stability of legislation**, we may note that out of **683** laws passed, **161** have been modified, that is **23,572% of the corpus subject to regulatory activity in 2002**.

As to the regulated fields which have been subject to modifications, these generally concern: Community services concerning the cadastre and agriculture, the prevention and punishment of all forms of discrimination, the legal circulation of timberlands, the Law on cadastral and real-estate advertising, the status of the teaching staff, the establishment and organization of the National Institute of Administration, measures for the acceleration of the privatization process, the structure and operation of the People's Lawyer office, the security of classified information, equal opportunities between men and women, public purchase, the Law on the financing of political parties, the structure and operation of the Romanian Police, the Law on Library activities, the public pension system and other social security rights, the value added tax, the Banking law, the re-establishment of ownership rights over farmlands and timberlands, capital gain tax, income tax.

### 2003 legislative year in review

In connection with the **stability of legislation**, we may note that out of **609** laws passed, **118** were modified, that is **19,376% of the corpus subject to regulatory activity in 2003**.

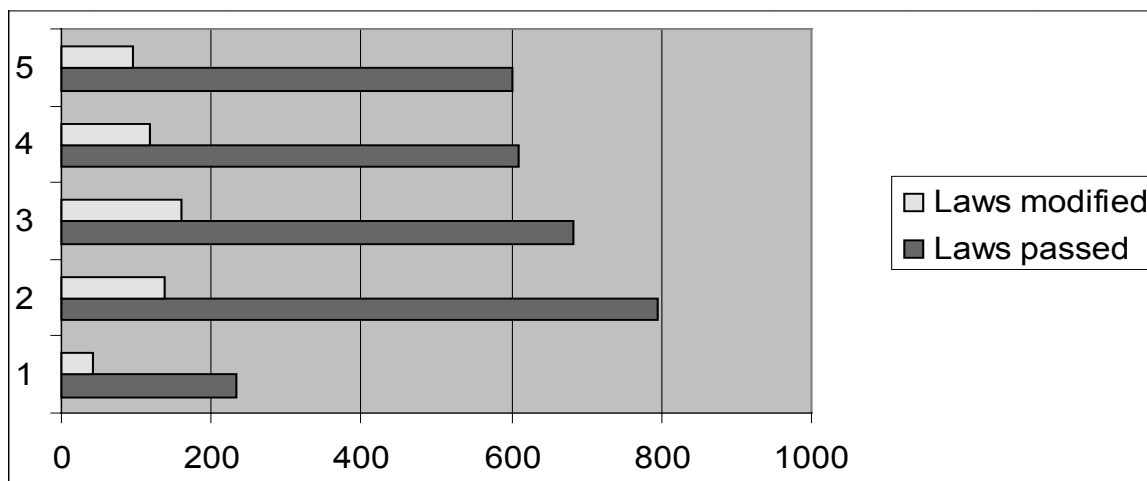
As to the regulated fields which have been subject to modifications, these generally concern: The legal framework of adoption, the Audiovisual law, the Banking law, procedures for the acceleration of privatization, the legal framework for excise duties, the reorganization and privatization process of certain national companies and companies having the state as major shareholder, the public pension system and other social security rights, the unemployment social security system and the encouragement of employment, the financing of political parties and of political campaigns, insurance companies and the supervision of their activities, the judicial restructuring procedure bankruptcy procedure, local dues and taxes, measures concerning the transparency in performing the duties of a public office and the transparency in the business environment, the prevention and punishment of corruption, regional development in Romania, the law on Education, the Criminal code, the election procedure for the Chamber of Deputies and the Senate, public-private partnership contracts.

#### 2004 legislative year in review

In connection with the **stability of legislation**, we may note that out of **602** laws passed, **95** have been modified, that is **15,780% of the corpus subject to regulatory activity in 2004**.

As to the regulated fields which have been subject to modifications, these generally concern: Education law, the election procedure of local public administration offices, the Romanian Inland Revenue, the Criminal Code, measures for the acceleration of the privatization process, the restructuring of the central public administration, the structure and operation of the Constitutional Court, the election procedure of the President of Romania, the election procedure of the Chamber of deputies and the Senate, the Tax code, measures concerning the transparency in performing the duties of a public office, the structure and operation of the health security system, the prevention and punishment of corruption.

A first conclusion on the evolution of legislation from 2000 to 2004 may be inferred from the following diagram:



**Figure 1.** Legislative stability between the years 2000-2004

If we were to evaluate the **stability of the legislation during the 2000-2004 term**, on account of the above-presented data, we may note that out of **2923 laws passed**, **553** have been modified, that is **18.918% of the corpus subject to regulatory activity between 2000 and 2004**.

However, legislative stability cannot be assessed only quantity-wise. A quality-wise analysis, may lead to completely different conclusions as compared to the hitherto nearly optimistic results. Therefore, if we attempt to establish a pecking order of the fields subject to legislative activity, from

the point of view of the constituent legislative, we may identify the most important fields subject to legislative activity – those regulated by organic laws – and the less important – regulated by ordinary law. Nevertheless, if from the point of view of the legislative technique, this order established by Article 73 of the Constitution, is strictly viewed from a legislative procedure perspective, we will not always be able to regard solely organic laws as being important and ordinary laws as being less important. This is because organic laws only outline the general regulatory framework in a certain field. The ordinary laws are complementary thereto. Consequently, the alternative may be criticisable, subjective, but we will nevertheless take into account – having Article 73 of the Constitution as a starting-point – important fields subject to legislative activity, irrespective of the type of law they were regulated by, such as: The voting system; the structure, operation and financing of political parties; the deputy and senator office; the civil servant office; the organization of the referendum; the organisation of the fundamental state institutions, those related to armed forces and the exceptional state procedure, offences, punishments and the execution thereof; the organization and operation of the judiciary, the regulation concerning ownership, education, employment relations (listed by Article 73), to which one can add the fundamental citizen rights and liberties, health, economic and financial/taxation laws, international treaties.

Consequently, a first observation on the stability of the legislation may be that ***more often than not, it was the case of laws governing the most important fields that have been subject to changes and amendments.*** As one can infer from the above listed domains subject to most legislation alteration, these successive alterations refer to the most important fields regulated, although proportionally, they only correspond to 19% of the passed legislation. This reveals that effectiveness-wise, the Romanian bicameralism does not succeed in providing regulatory stability in what important laws are concerned, does not succeed in anticipating all the consequences deriving from passing a law, does not hold the necessary tools to assist it in discovering every assumption needing a regulatory framework and is not able to anticipate the impact thereof, respectively. Hence, the need of an immediate alteration of the incidental law.

Of all important laws that rejoice with legislative stability, most are laws pertaining to the ratification of international treaties or agreements (many of the remaining steady laws, holding no intention to label them as significantly less important – are laws which established communes and municipalities, laws regulating the decoration procedure, the establishment of military orders, laws on zootechny, fishing, medical plants etc.). Thus, holding no means of measuring the exact proportion between important and less important laws that have been subject to subsequent alterations, we undoubtedly ought to note that the stability of the legislation does not concern the laws which we have defined to be important, on the contrary.

## **II. The second stage shall pursue an analysis of certain predefined laws that were passed for the most important fields and thus, identify the determinants of legislative instability.**

### ***1. Laws that were subject to frequent alterations shortly after they were passed.***

- a. Such an example is law no. 303 of June 28, on the status of magistrates, published in the Official Gazette no. 576 of 29.06.2004

The approval of the Law on the status of magistrates was a highly important legislative objective in the context of the constitutional revision of 2003, which imposed the reform of the judiciary. The law underwent a slow legislative procedure given that the conflict-resolution method applied between the two chambers was mediation. Thus, it is presumable that the final decision should be a superior one with respect to quality, and stable at least for the immediate future.

However, the law underwent subsequent alterations quite soon after it had been passed. Thus, the first modification was performed through *Decision no. 433 of 21.10.04 of the Constitutional Court*,

published in no. 1267 of 29.12.04 of the *Official Gazette*, which declared the stipulations of paragraph 2 of article 15 from Law 303 on the status of magistrates, to be unconstitutional since it was noted that it contravened the stipulations of Article 21 of the Constitution of Romania regarding free access to justice, of Article 6, section 1 of the Constitution on the right to a fair trial and of Article 13 of the Convention on human rights and fundamental liberties regarding the right to recourse. It is noteworthy that the decision of the Constitutional Court was issued while an *a posteriori* constitutionality-control was performed, by interposing a plea of unconstitutionality before the court, after Law 303 had been passed by the legislative. Therefore, the unconstitutional elements were not taken notice of *a priori* by the legislative or by the other authorities enabled to prompt the court within the time-span awarded to the passing procedure.

The second modification on the law 303 of 2004 was performed through *Emergency ordinance no. 124 of 24.11.04 for the modification of law 303/2004 regarding the status of magistrates and of Law no. 304/2004 regarding the judicial organization, published in no. 1168 of 09.12.04 of the Official Gazette*. The reasons justifying the modification are pinpointed in the Ordinance's preamble. Subsequent to the approval of Law 303 of 2004, it became obvious that some of the stipulations therein were not feasible, i.e. the legislative did not take into account the insufficient number of judges.

The emergency ordinance no. 124 of 24.11.04 for the modification of Law no. 303/2004 regarding the status of magistrates and of Law no. 304/2004 regarding the judicial organization was approved by Parliament by *Law no. 71 of 07.04.05, published in no. 300 of 11.04.05 of the Official Gazette*. The Ordinance was passed with certain modifications; those performed on law 303 of 2004 regard the correlation of certain articles modified by the Ordinance (Article 22), with other articles of the law.

Law no. 303/2004 regarding the status of magistrates was modified by *Law no. 247 of 19.07.05 on the reform of property and justice as well as some adjoining measures, published in the Official Gazette no. 653 of 22.07.05*. Law 247 brings about significant modifications to the initial regulation. As to the content of these modifications, on the one hand we may note that the new legislation brings improvements in what the practical evaluation of enactment feasibility of the initial regulations is concerned. This is done by adjusting the enacting procedures of previous regulations according to concrete procedures and conditions, i.e. *content and feasibility-related elements of the regulation procedure*. On the other hand we may observe political elements which caused the legislation modification, elements related to political views on the enforcement of the justice independence principle (e.g. the text provides a definition for the bench, emphasizes the independence of judges, of prosecutors – a new development, indicates the terms on which the President may refuse judge appointments, imposes that magistrates be not permitted to be part of secret services etc.) The influence of political elements can be explained if we consider that these were not able to intervene within the bicameral Parliament given that the political structure of the two Chambers is similar, and only became manifest upon the restructuring of the political majority of Parliament, materialized on the legislative elections of 2004.

b. *Law no. 304 of 28.06.04 on the judicial organization, published in no. 576 of 29.06.04 of the Official Gazette, is to a certain extent similar example.*

Given that this law concerns the reform of justice and was passed almost simultaneously with the aforementioned one, we shall not insist on its substance but merely show that it underwent modifications by means of the same legislative act, subsequent to its ratification. *The Emergency ordinance no. 124 of 24.11.04 for the modification of Law no. 303/2004 regarding the status of magistrates and of Law no. 304/2004 on the judicial organization, published in no. 1,168 of 09.12.04 of the Official Gazette; Law no. 71 of 07.04.05 published in no. 300 of 11.04.05 of the Official Gazette; Law no. 247 of 19.07.05 on the reform of property and justice as well as some adjoining measures, published in the Official Gazette no. 653 of 22.07.05*. Similarly, a substance analysis reveals the same elements that influence instability.

c. *Law no. 370 of 20.09.04 on the election of the President of Romania, published in the Official Gazette no. 887 of 29.09.04*

The legislative procedure lasted for approximately 7 months following the exact procedure established through the revision of the Constitution, thus excluding the mediation between the two Chambers. The modifications occurred during that same year by Emergency ordinance no. 77 of 07.10.04 for the modification and extension of certain stipulations of Law 370/2004 on the election of the President of Romania, published in the Official Gazette no. 920 of 09.10.04; this shows that the necessity of rapid modifications occurred when the evaluation of the enacting feasibility commenced. In fact, the modifications occur only with two articles: Article 21 and Article 22; an additional article is also included: Article 28<sup>1</sup>. These three articles bring about technical specifications concerning the "total number of voters", the copy of permanent voters list etc.

A first conclusion indicates that the rapid modifications occurred during the same legislative term are caused by *substance-related factors, by regulations feasibility*, rather than by political factors.

d. *Law no. 373 of 24.09.04 on the election of the President of Romania, published in the Official Gazette no. 887 of 29.09.04*

Similar to the previous example, this law was passed having in view the preparation of the 2004 elections. The procedure inside Parliament lasted for approximately 3 months. The first modification occurred approximately 2 weeks after it had been passed and, again, with a view on the practical side of the law, attempting to regulate certain situations that had not been taken into account upon the first release of the law. Thus, Emergency ordinance no. 80 of 14.10.04 regarding the modification and extension of the stipulation of Law no. 373/2004 on the election of the Chamber of Deputies and of the Senate, published in the Official Gazette no. 941 of 14.10.04, makes specifications on Article 75 and Article 117 which regulate the appointment procedure for observers and the passport vote right applicable to Romanian citizens located abroad.

However, the second modification of Law 373/2004 performed by Emergency ordinance no. 89 of 14.07.05 on the modification and extension of the stipulation of Law no. 373/2004 on the election of the Chamber of Deputies and of the Senate, published in the Official Gazette no. 643 of 19.07.05, also produces substance modifications. Hence, it becomes evident that, upon the restructuring of the governing majority, the legislative modifications also brought about substance enhancements – the correction of legal shortages revealed upon the last elections – or the avoidance of institutional blockage in the event of early elections. With respect to the latter, one can fairly easy identify the political factors that have caused the instability of the legislation, namely the preparation for early elections.

e. *Law no. 10 of 08.02.01 on the judicial framework of certain real-estate properties abusively taken over between 06.03.45 and 22.12.89, published in the Official Gazette no. 75 of 14.02.01.*

The analysis of a law passed during the first part of 2000-2004 term, pertaining to an important field may become interesting. The legislative initiative was recorded with both of the two Chambers almost simultaneously - 30.06.99 with the Chamber of Deputies and 29.06.99 with the Senate (according to the procedure valid anterior to the revision of the Constitution). The Chamber of Deputies passed it on 25.08.99 and the Senate passed it on 03.10.00 with some alterations. Thereafter, the mediation procedure and the postponement of the final vote followed. The law was passed definitively on 16.01.01. Upon the ratification, subsequent changes were brought to the following legislative acts: *Government Ordinance no. 7/2001 approved with modifications and additions by Law no. 493/2002; Emergency Government Ordinance no. 109/2001 approved with modifications and supplementations by Law no. 469/200; Emergency Government Ordinance no. 145/2001 approved with modifications and supplementations by Law no. 91/2002; Emergency Government Ordinance no. 175/2001 approved with modifications and supplementations by Law no. 426/2002; Emergency Government Ordinance no. 184/2002 approved with modifications and supplementations by Law no. 48/2004; Emergency*

*Government Ordinance no. 10/2003 approved with modifications and supplementations by Law no. 289/2003; Law 571/2003 which repealed Government Ordinance no. 7/2001 starting with 01.01.04 by article 298 paragraph 1 section 24; Law no. 247 of 19.07.05.*

If we relate only to the modifications acted on Law 10/2001 subsequent to the shift of majority occurred in the two Chambers, these only refer to the regulation of certain hypothesis which were not stipulated upon the first ratification of the law and emphasizes the need to be correlated with other legislative stipulations in effect. Thus, were we to ignore the last modification (wherein we can also identify political factors that led to its approval, i.e. the different approach on the *restitution in integrum and property warranty principle*), the remaining factors are related to the legislature's expertise, to the ability to evaluate the enactment feasibility of a legislative text, the situations (economic, financial, legislative correlation with other legal texts) which can affect the enactment thereof, respectively.

## **2. Laws passed in important fields which have not been modified or have been modified to a lesser extent.**

For the purpose of identifying the legislative stability factors, the analysis of certain unmodified laws passed in important fields may prove interesting. Although the identification of such laws (except for those ratifying international agreements and treaties) raised serious problems during the study carried out on the legislative activity of 2000-2004, we shall expand our analysis on the important laws that were least modified.

a. *Law no. 14 of 09.01.03 on political parties, published in the Official Gazette, no. 25 of 17.01.03.*

The law is organic by nature; it was passed based on the mediation procedure and is a *new law of political parties*, repealing the stipulations of Law 27 of 1996 on political parties (except for the section concerning their financing which was subsequently repealed by Law no. 43/2003 on the financing of political parties).

The stability factors which can be identified are related to the following matters: it is a law that reconsiders and adapts a pre-existent regulation in an field that is not highly complex which made its concrete applicability easier to anticipate; all political interests expressed within the legislature, desired that this field be regulated thoroughly and unequivocally; it did not require a highly-specialized expertise in the field.

b. *Law no.43 of 21.01.03 on the financing of political parties and of election campaigns published in no. 54 of 30.01.03 of the Official Gazette.*

The legislative initiative was recorded with the Chamber of Deputies on 10.09.01 and passed definitively after the mediation procedure in the joint parliamentary assembly of 19.12.03. Once more, this is an organic law, a framework law departing from a pre-existent regulation in the field, which repeals Chapter 6 of Law no. 27 of 1996, the previous law on political parties. Law 43/2003 only underwent one modification. The modification was performed by Law no. 90 of 18.03.03 on the sale of estate subject to the private ownership of the state or of the administrative divisions, intended to accommodate the headquarters of political parties. As to the potential identification of quasi-stability factors of the here-mentioned regulation, we believe that the situation resembles to the previous one.

c. *Law no. 356 of 10.07.0, the law on Employer Unions, published in the Official Gazette, no. 380 of 12.07.01.*

The legislative proposal was recorded with the Chamber of Deputies on 01.04.98; subsequent to the mediation procedure it was passed definitively on 18.06.01. The law, containing only 22 articles, generates the general framework for the organisation and operation of Employer Unions and does not approach a complex field. It only underwent one modification (Article 73, paragraph 3, which was repealed by the Tax code). As to the quasi-stability factors of the here-mentioned regulation, they resemble those described with the previous examples.

d. *Law no. 546 of 14.10.02 on the pardon and the pardon-granting procedure published in no. 775 of 16.10.02 of the Official Gazette.*

We have labelled the above-mentioned law as pertaining to an important field given that it refers to one of the fields that the Constitution requires to be regulated by organic laws. It was initiated on 26.09.01 and passed by the mediation procedure on 14.05.02. Subsequently it was reassessed by the President of Romania and sent to be promulgated on 04.10.02.

Content-wise, even though the bill regulates an important field, it does not require the legislative to hold high expertise given that it does not encompass any notable complexity. In effect, the bill is not extensive as it only comprises 22 articles. Considering this and the fact that the bill is quite rarely applied with practical cases (given that pardon is an exceptional act of clemency), we have probably retrieved wherefore it underwent no subsequent alterations.

e. *Law no. 340 of 12.07.04 on the prefect office, published in the Official Gazette, no. 658 of 21.07.04.*

The law was passed under the pressure generated by the need of a reformed public administration and of including the prefect and sub-prefect in the category of high public servants, administration experts. Law no. 340/2004 underwent no alteration since it was passed. However, we must consider that it had Law 215/2001 of public administration as a basis (which had regulated the prefect's office), with the subsequent modifications and additions. By the date Law 340/2004 was put into effect the respective provisions were repealed. Thus, we are not dealing with primary regulation but with one that is based on a public administration law and aims at enhancing its quality; furthermore it holds the asset of practical assessment of certain hypotheses and plans to regulate, from a legal point of view, a single public administration institution. Consequently, the law holds, according to our assessment, an ordinary complexity and does not require highly-specialized expertise despite the fact that it is an organic law. In effect, the bill comprises 44 articles but several alterations occurred during 2005.

*In what the stability and instability factors are concerned, we may conclude that, apart from the political factor and the economic factors which inevitably cause certain legislative alterations, one additional source of legislative stability would consist of an extensive and professional expertise in the fields regulated and in the technical legislative process (which correlates new regulation with existent regulation that produces legal effects).* This analysis should be carried out during the preparation of the law-passing process and should materialize in extensive studies on the socio-economic and feasibility impact derived from the implementation of the laws, observing the relationship expenses-benefits. Additionally, these analyses ought to be transparent (in order to legitimize the system) by publishing normative acts before they are passed, by consulting the major specialized institutions able to provide the legislature with a pertinent feed-back regarding their approval or disapproval of the bills passed.

Seemingly, the Second Chamber, which is intended to be a reflection source leading to improved final political decisions, is not able to provide for such expertise. If we were to consider the expenses of bicameralism over the 2000-2004 period<sup>5</sup>, it would seem reasonable to allot the respective amounts

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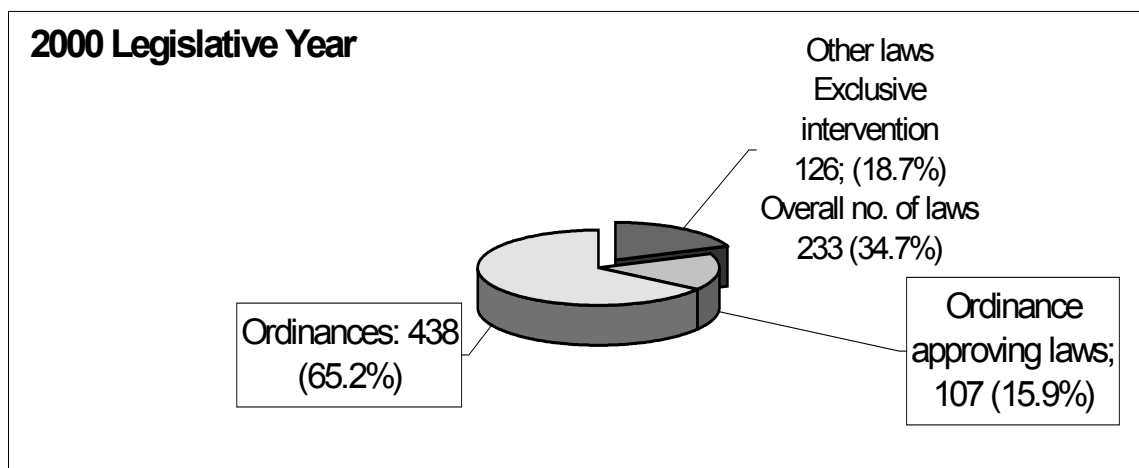
<sup>5</sup> In what the 2004 state budget is concerned, it was approved by Law no. 507 of 28.11.03, modified and supplemented, the expenses of the Chamber of Deputies initially reached *1,446.0 billion lei and 680.0 billion lei with the Senate*. The subsequent additions and modifications have resulted in a budgetary correction of *-21.0 billion lei applied* to legislative authorities, by Ordinance no. 48 of 15.07.04 on the correction of the state budget for year 2004. The state budget for 2003, approved by Law no. 631 of 27.11.02 initially stipulated a expense quantum of *1,355.0 billion lei, and 600.1 billion lei for the Senate*. Subsequently, by ordinance no. **87** of 28.08.03 on the correction of the state budget for the year 2003, the budget for legislative authorities was supplemented by *213.0 billion lei*. In accordance with the Law on the state budget for 2002, the budget expenses reached *1,146.5 billion lei* for the Chamber of deputies and *528.0 billion lei for the Senate*. The

to contracting expert assistance for the regulated fields and thus perform content analyses prior to bill ratification, both in what the prediction of law implementation effects and the inclusion of all hypotheses that need to be regulated by the lawmaker, are concerned.

**III. The analysis of the effective and exclusive intervention of Parliament in fields subject to regulatory activity** may prove useful for the purpose of assessing the effectiveness of the bicameral Parliament.

#### 2000 Legislative Year

In 2000, the Romanian Parliament adopted 233 laws, among which 107 (i.e. 45.922% of the legislative activity of Parliament) were approving laws (addition, modification, rejection laws) of Government Emergency Ordinances implying a previous action of the Government in the regulated field. In the same year, the Government adopted 438 ordinances (ordinary and emergency ordinances). The fields regulated by laws, ordinary and emergency ordinances, reached a total of 671. Parliament adopted legislation in 233 fields, i.e. 34.724% of the total amount of fields subject to law-making, of which 107 were approving laws (addition, modification and rejection laws) of government ordinances, i.e. 946%. Consequently, the exclusive intervention of Parliament without any previous action of the Government totalled a number of 126 laws, representing 18.777%, while the intervention of the Government through ordinary and emergency ordinances reached the amount of 438, i.e. 65.275%.



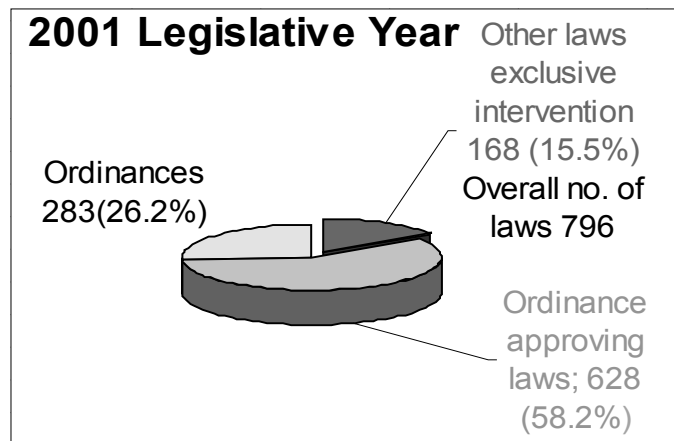
#### 2001 Legislative Year

In 2001, the Romanian Parliament adopted 796 laws, among which 628 (i.e. 78.8% of the legislative activity of Parliament) were laws approving (addition, modification, rejection laws) Government Emergency Ordinances implying a previous action of the Government in the fields thereof. In the same year, the Government adopted a number of 283 ordinances (ordinary and emergency ordinances). The amount of fields regulated by laws, ordinary and emergency ordinances reached a total of 1079. Parliament adopted legislation in 796 fields, i.e. 73.7% of the total amount of fields subject to law-making, among which 628 were laws approving (addition, modification and rejection laws) government ordinances, i.e. 58.2%. In conclusion, the exclusive intervention of Parliament

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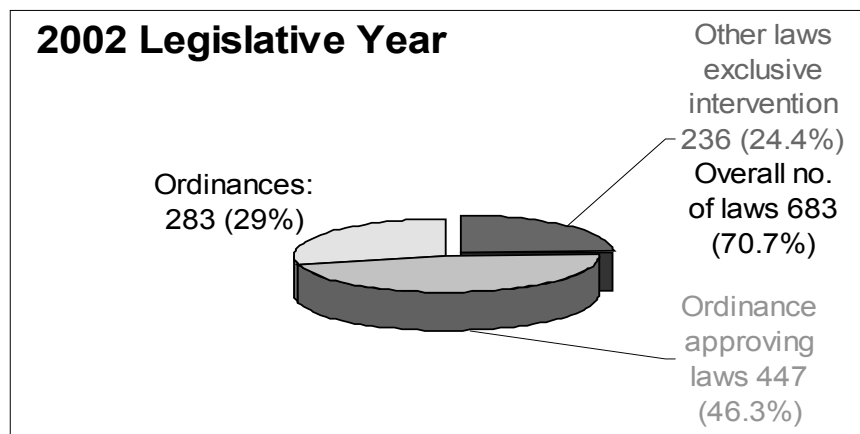
budget of the legislative authorities was corrected by Emergency ordinance no. 144 of 2002 by *-121.3 billion lei*. In accordance with the Law on the state budget for 2001, the budget expenses reached *529.9 billion lei for the lei* for the Chamber of deputies and *253.7 billion lei for the Senate*. The budget of the legislative authorities was corrected by Emergency ordinance no. 145 of 21.09.00 and was supplemented by **2.3 billion lei**. The 2000 state budget was approved by law no. 36 of 08.03.99; the budget expenses reached *337.7 billion lei for the lei* for the Chamber of deputies and *151.1 billion lei for the Senate*.

without any previous action of the Government totalled a number of 168 laws, representing 15.5%, while the intervention of the Government through ordinary and emergency ordinances reached the amount of 283, i.e. 26.2%.



### 2002 Legislative Year

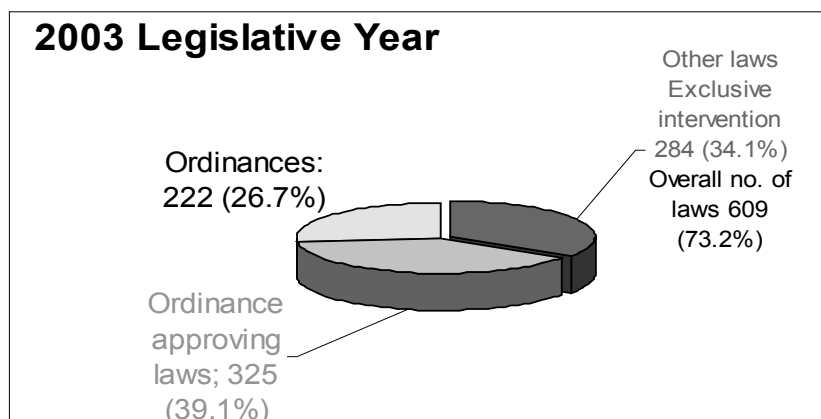
In 2002, the Romanian Parliament adopted 683 laws, of which 447 (i.e. 65.4 % of the legislative activity of Parliament) were laws aproving (addition, modification, rejection laws) Government Emergency Ordinances implying a previous action of the Government in the fields thereof. In the same year, the Government adopted a number of 282 ordinances (ordinary and emergency ordinances). The number of fields regulated by laws, ordinary and emergency ordinances reached a total of 965. Parliament adopted legislation in 683 fields, i.e. 70.7% of the total amount of fields subject to law-making, among which 447 were approving laws (addition, modification and rejection laws) of government ordinances, i.e. 46.3%. Consequently, the exclusive intervention of Parliament without any previous action of the Government, totalled a number of 236 laws, representing 24.4%, while the intervention of the Government through ordinary and emergency ordinances reached the amount of 282, i.e. 29.2%.



### 2003 Legislative Year

In 2003, the Romanian Parliament adopted 609 laws, among which 325 (i.e. 53.3% of the legislative activity of Parliament) were laws approving (addition, modification, rejection laws) Government Emergency Ordinances implying a previous action of the Government in the fields thereof. In the same year, the Government adopted a number of 222 ordinances (ordinary and emergency ordinances). The amount of fields regulated by laws, ordinary and emergency ordinances reached a total of 831. Parliament adopted legislation in 609 fields, i.e. 73.2% of the total amount of fields

subject to law-making, among which 325 were laws approving (addition, modification and rejection laws) government ordinances, i.e. 39.1%. In conclusion, the exclusive intervention of Parliament without any previous action of the Government totalled a number of 284 laws, representing 34.1%, while the intervention of the Government through ordinary and emergency ordinances reached the amount of 222, i.e. 26.7%.

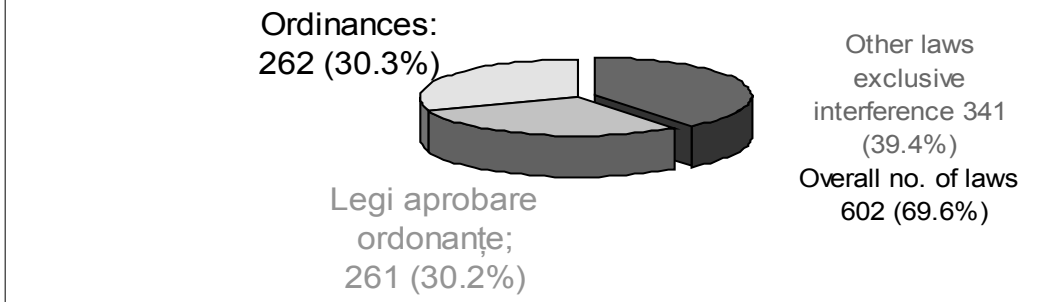


#### 2004 Legislative Year

In 2004, the Romanian Parliament adopted 602 laws, among which 261 (i.e. 43.3 % of the legislative activity of Parliament) were laws approving (addition, modification, rejection laws) Government Emergency Ordinances implying a previous action of the Government in the field thereof. In the same year, the Government adopted a number of 262 ordinances (ordinary and emergency ordinances). The amount of fields regulated by laws, ordinary and emergency ordinances reached a total of 864. Parliament adopted legislation in 602 fields, i.e. 69.6% of the total amount of fields subject to law-making, among which 261 were laws approving (addition, modification and rejection laws) government ordinances, i.e. 30.2%. In conclusion, the exclusive intervention of Parliament without any previous action of the Government totalled a number of 341 laws, representing 39.4%, while the intervention of the Government through ordinary and emergency ordinances reached the amount of 262, i.e. 30.3%.

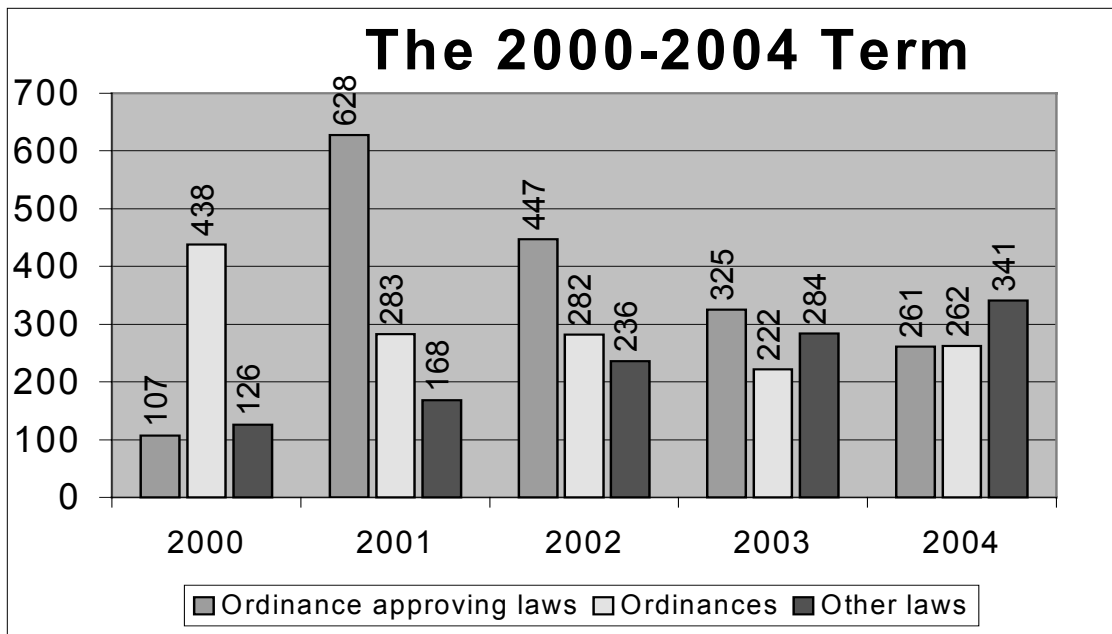
<b>Overall number of laws passed in 2004</b>	<b>602</b>
<b>The number of amended and modified laws of the overall number of laws ratified in 2004</b>	<b>95</b>
- through other laws	17
- through ordinary and emergency ordinances	25
- through other laws and ordinary or emergency ordinances	53
- through other laws and ordinary or emergency ordinances (where the first modification was initiated through ordinances)	43 (out of 53)
<b>The number of unchanged laws of the overall number of laws ratified in 2004</b>	<b>507</b>
- approving, addition, modification and rejection/abrogation laws,	226
- laws ratifying international conventions and agreements	73
- laws through which geographic divisions acquired the status of commune or city	43
- laws introducing titles, orders and order medals	10
- <b>Other laws</b>	<b>155</b>
<b>The overall number of approving, addition, modification and rejection/abrogation laws of Government ordinances</b>	<b>261</b>
<b>The overall number of emergency ordinances ratified in 2004</b>	<b>142</b>
<b>The overall number of ordinary ordinances ratified in 2004</b>	<b>120</b>

## 2004 Legislative Year



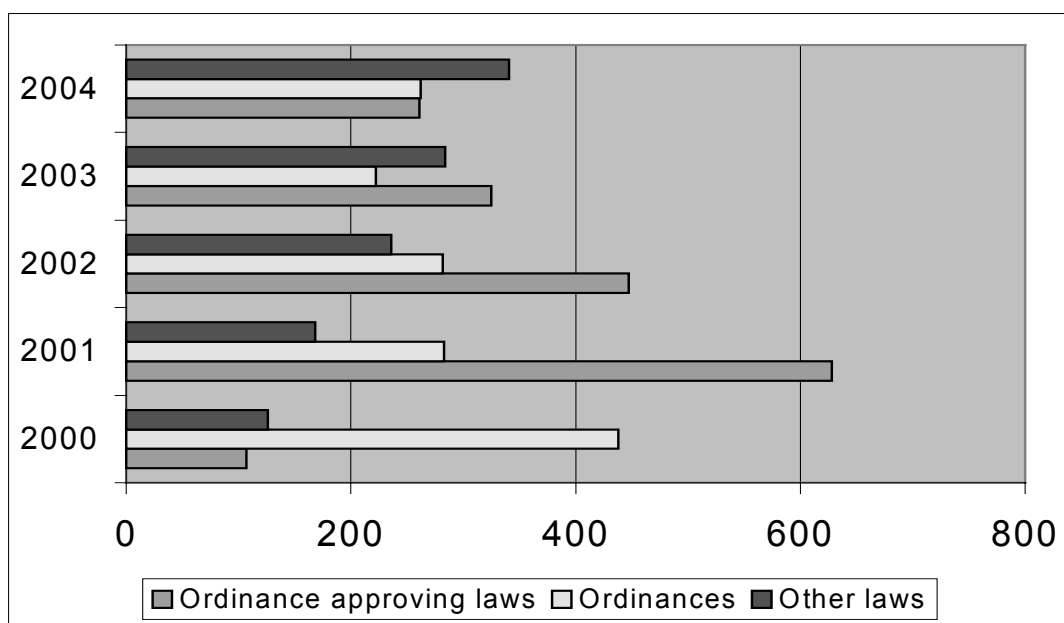
### The Activity of the Bicameral Parliament throughout the 2000 – 2004 Term

In the 2004-2005 term, the Romanian Parliament adopted 2293 laws, among which 1768 (i.e. 60.4 % of the legislative activity of Parliament) were approving laws (addition, modification, rejection laws) of Government Emergency Ordinances implying a previous action of the Government in the field thereof. Throughout the same years, the Government adopted a number of 1487 ordinances (ordinary and emergency ordinances). The amount of fields regulated by laws, ordinary and emergency ordinances reached a total of 4410. Parliament adopted legislation in 2923 fields, i.e. 66.2% of the total amount of fields subject to law-making, among which 1768 were approving laws (addition, modification and rejection laws) of government ordinances, i.e. 40.0 %. In conclusion, the exclusive intervention of Parliament without any previous action of the Government, totalled a number of 1155 laws, representing 26.1 %, while the intervention of the Government through ordinary and emergency ordinances reached the amount of 1487, i.e. 33.7 %.



In conclusion, we can spot down several specific characteristics regarding the efficiency of the bicameral Parliament in the discussed period. Thus, on the one hand, if we compare 2000 with 2001, 2002, 2003, 2004 we shall notice that the number of ordinances has continually dropped with the exception of the year 2000 – the high number of ordinances passed during this year was due to the

fact that the CDR regime tried to impose as much 'last minute' legislation as possible, since it was quite clear that they would lose the forthcoming elections. This situation led to the increase of the number of laws approving (addition, modification and rejection laws) ordinances in 2001, since the new parliamentary majority could 'attenuate' the possibly undesired effects of the last ordinances imposed by the former political regime. We may notice that the number of ordinances issued every year between 2001 and 2004, is mostly constant (with a small drop in 2003 and an increase in 2004 – for the same reasons as in 2000). This was due to the necessity of the Government to constantly interfere in the legislative activity through ordinances in order to carry out the programme for government. The ratification procedure of bills adopted by parliamentary majority requires a longer period of time due to the bicameral system and hence it is less efficient than the procedure of Government ordinances.



After the revision of the Constitution, the number of ordinance approving laws equalled the number of ordinances (the year 2004), as the new Constitution imposed the discussion thereof by Parliament within 30 days of its issuance by Government, as opposed to the previous years when some emergency ordinances were ratified by Parliament even after a year or two from their issuance by the Government.

On the other hand, one may also notice an increase of the number of laws passed directly by Parliament without the intervention of the Government, mostly after the revision of the Constitution (the 2004 legislative year). The revised Constitution tries to make the legislative procedure more efficient by assigning the 'final word' to the Decisional Chamber, which in most of the fields is The Chamber of Deputies.

The conclusions on the efficiency analysis of the bicameral system revealed by the study conducted on the legislation stability in the most important fields subject to law-making, corroborated with the actual capacity of the Bicameral Parliament to independently interfere in the law-making process, the exercise of the regulation, initiation and adoption prerogatives thereof, bring into question the role of the Secondary Chamber in the Romanian political system. Thus, although the rate of rapid fluctuations of legislation during the term subject to our study was no higher than 19%, if we take into account the fields in which they occurred, the rate may seem quite significant. More often than not, it was the case of laws governing the most important fields that have been subject to changes

and amendments. This means to show that the Romanian bicameral system is unable to maintain stability in important legislation fields, it fails to foresee all the consequences of adopting a law, it lacks the necessary means to identify all the hypotheses that should be subject to law-making and finally, it lacks the ability to foresee the impact of such laws. Hence, there occurs the necessity of immediately modification the incidental legislation along with all the consequences thereof applying to the Romanian political system.

In the mean time, if we refer to the factors of legislative stability and instability, we shall notice that besides the *political and economic factors* which inevitably determine certain changes in legislation, *there exists another important source of legislative stability, namely the professional expertise in the fields subject to law-making as well as in the law-making procedure (which implies the correlation of new legal regulations with existing ones)*. Within every bicameral system, the legislative stability in view of improving the quality of the final political decision should be ensured by the Second Chamber. The expertise is also closely linked to the preliminary stage of the ratification process. During this stage, the legislative body should carry out complex socio-economic and feasibility impact studies with reference to the costs and benefits of the implementation of future acts. In order to confer transparency to the development stage, it is very important that the preliminary analyses be published before the ratification process and that the initiators consult the main specialized institutions capable of giving pertinent feed-back by agreeing or disagreeing with the bills subject to ratification. As presented earlier, considering the high costs of the bicameral system in the 2000-2004 term, one may infer that the same amount of money could be invested in consulting experts in the fields subject to law-making, in such a way that the content analyses regarding both the predicted effects of future acts and the examination of all hypotheses that should be subject to regulation, be carried out before the ratification of bills.

In what regards the rate of exclusive intervention of Parliament in the fields subject to law-making, as it has been revealed before, it never managed to go beyond 40% of the total amount of passed bills. This aspect should be corroborated with the provisions of Article 61, paragraph 1 of the Romanian Constitution which stipulates that "Parliament is [...] the only legislative body of the country". Even though the number of emergency ordinances has decreased as compared to 2000, one shall notice that during the 2001-2004 term, it remained constant, since the Government was bound to interfere in order to carry out the programme for government. After reforming the legislative procedure by conferring 'the final word' to the decisional Chamber, it can be noticed that Parliament has dealt with emergency ordinances more efficiently, as the revised Constitution imposes a maximum term for the ratification thereof. In the mean time, after the revision of the Constitution, one may notice a slight increase of the direct intervention of Parliament in the legislative procedure. However, in what regards the stability of legislation, little has changed since the revision and considering that in practice, the role of decisional Chamber is played by the Chamber of Deputies, we may infer that the Senate is unable to fulfil its duties of Chamber of Reflection, *i.e. of ensuring stability in the same manner as any Second Chamber within an efficient bicameral system would do*. Although the revision of the Constitution has made the legislative procedure more efficient, by conferring the final decision to only one Chamber (both may assume the role of decisional Chamber, however it is more often held by the Chamber of Deputies), the changes agreed upon by the Constituent Assembly have neither influenced the stability of legislation nor improved the quality thereof. In conclusion, it should be noted that the efficiency of the Senate raises serious questions as long as through its composition it cannot offer qualified or specialized expertise in the fields subject to law-making.

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