
PART 4

LEGISLATIVE PROCESSES

XIII.

THE COMMON LEGISLATIVE PROCESS — INTRODUCTION AND STAGES

1. Introduction

Chapter I of Title IV of the Rules of Procedure is entitled “Legislative Processes” and Section I thereof “Common Legislative Process”. This procedural designation is erroneous as it gives the appearance that at least two legislative processes exist: one common and, *de minimis*, a special one.

Such plurality does not currently occur in our procedural framework. There is only one end-result, one final act, in a single form: the Law of the Legislative Assembly.

Indeed, there is no other procedure, no set of special elements added to the existing procedure, and no other forms of law.

In the legal framework previously in force,⁶⁴⁷ there indeed was a group of special legislative processes alongside the common one, and thus catalogued, which were those relating to the Organic Statute of Macau, legislative authorisations, and the ratification of decree-laws. This resembles the situation in Portugal, where special legislative procedures coexist with the common procedure. Sometimes, these special legislative procedures are characterised by a plurality in their object, predicated upon adopting additional procedures, either of a qualified/aggravating nature or with special lawmaking features.⁶⁴⁸

A natural question is whether the so-called urgent legislative process is a special procedure or an abbreviated one.⁶⁴⁹ My answer is negative.⁶⁵⁰

The urgency process is viewed *vis-à-vis* the common process, not in tandem with the binomial relationship between special and common processes, as pointed out by JORGE BACELAR GOUVEIA.⁶⁵¹ The urgency process does not have a special nature,

⁶⁴⁷ For a summary of the legislative procedure in force in the Territory of Macau, including the procedure relating to the Governor in the exercise of the legislative function, Jorge Costa Oliveira and Jessica Leão and Paulo Cardinal and more, ‘An Outline of the Macau Legal System’ (1993) 23 HKLJ 371. Taking advantage of the opportunity, for a synthesis of the legislative procedure in the HKSAR, Yash Ghai, *Hong Kong’s New Constitutional Order* (Hong Kong University Press 1999), *passim*, especially 359.

⁶⁴⁸ Carlos Blanco de Moraes, *Curso de Direito Constitucional I* (Coimbra Editora 2012) 439–440.

⁶⁴⁹ Agreeing with it, I believe, Carlos Blanco de Moraes, *Curso de Direito Constitucional I* (Coimbra Editora 2015) 439.

⁶⁵⁰ Besides, see the systematic placing within the Rules of Procedure.

⁶⁵¹ Jorge Bacelar Gouveia, *Manual Direito Constitucional*, vol II (7th edn, Almedina 2021) 1282.

does not incorporate aggravating elements, nor is it intended to create a special category of legislative act. Rather, it streamlines the normal course of a procedure in the event of a relevant need or in times of crisis.⁶⁵² In fact, the systematic placing of the urgency process in the Rules concurs with the idea that it is not a special process *per se*.

2. The Stages of the Common Legislative Procedure

When studying the legislative procedure, it is normal to present a phase-by-phase, or stage-by-stage, outline or scheme, wherein the various moments and steps of the lawmaking route are inserted. This method of presenting the procedure facilitates a better and more immediate understanding of the winding and complex stages that lead to the final destination, the law.

As JORGE MIRANDA explains,

“The legislative process or procedure, by its very nature, has a temporal dimension, therefore the acts into which it unfolds shall be situated in relation to each other at different moments; it becomes appropriate and convenient to group the acts, which are closer and more inter-connected, in relatively homogeneous phases, identified by specific functions.”⁶⁵³

The problem is that dissent is rife in legal scholarship, even in view of specific legislative procedures. There are experts who identify three phases, or five, or four, and of course, comprising different designations and contents. In any event, here are some examples, namely one specifically targeted at Macau.

For instance, one hears of the following phases or stages:

By reference to **Portugal**:⁶⁵⁴

- **Initiative** — the moment when the creation of the legislative act begins its journey; it may be an internal and external initiative, reserved or shared, original or supervening;
- **Examination** — led by a specialised committee and comprising acts and procedures such as hearings, negotiation and public discussion, for the purposes of an in-depth assessment of the specifics of a legislative initiative;
- **Deliberation** — the most relevant moment in the entire legislative procedure, being the constitutive and voting phase; it includes several sub-moments, such as the various approvals, for example, in general, and on the specifics, as well as

⁶⁵² *ibid.*

⁶⁵³ *Direito Constitucional V*, 262.

⁶⁵⁴ Jorge Bacelar Gouveia, *Manual Direito Constitucional*, vol II (7th edn, Almedina 2021) 1283 et seq. See also, *inter alia*, José Melo Alexandrino, *Lições de Direito Constitucional*, vol II (AAF DL EDITORA 2015) 250 et seq.

promulgation and ministerial ratification, endorsement or countersignature;

- **Effectiveness** — corresponding to the entry into force of the legislative act, including the need to give the diploma the appropriate publicity, which is achieved through publication in the official journal or bulletin of the State.

Or, in another example, relative to **Macau**.⁶⁵⁵

- **Preparation** — including the legislative initiative and examination phases;
- **Main constitutive** — encompassing the debates and the voting phases, both on the whole and on the specifics;
- **Control (still with a constitutive value)** — comprising the signature of the Chief Executive and, in the case of refusal, the veto;
- **Integrative (of effectiveness)** — the publication in the OG and the reporting for the record to the Standing Committee of the National People's Congress.

For a broader comparative context, I shall mention yet another example, from the **Italian** legal order.⁶⁵⁶

- **Initiative** — the legislative initiative and the definition of its various entities empowered to exercise such power;
- **Examination** — taking place within a specialised committee, the specific role thereof varying according to the different types of legislative procedure;
- **Deliberation** — which develops differently depending on the different types of procedure;
- **Promulgation** — the competence of the Head of State;
- **Publication** — in the official journal or bulletin.

I could also try to make a brief tour through the legislative procedure in Hong

⁶⁵⁵ João Albuquerque, ‘*Curso sobre a Lei Básica da Região Administrativa Especial de Macau da República Popular da China: I – Da reunificação da China à organização político-administrativa da RAEM*’ (unpublished and archived with the Author, 2013) 188 et seq.

⁶⁵⁶ Augusto Barbera and Carlo Fusaro, *Corso di Diritto Costituzionale* (Il Mulino 2012) 339 et seq. In reference to the Spanish legal order, J. Alonso Antonio and A. Alonso Antonio, *Derecho Constitucional Español* (Editorial Universitas, S.A. 2015) 559 et seq using a different terminology, preferring the expression “stages” to that of “phases”: the prior stage; the decision-making stage; and the perfection stage.

Kong, its various phases, *the journey of a bill*,⁶⁵⁷ including the informal pre-consultation stage between the Administration and Parliament, as a matter of practice and common sense, and the various *readings*, but I do not have the required time, nor space, to pursue such an undertaking in a *comprehensive* manner.⁶⁵⁸

Similarly with respect to the legislative procedure adopted in mainland China, I shall be unable to plunge here into its *Legislation Law*,⁶⁵⁹ or to discuss the original impact of such legal enactment in promoting the idea of the *rule of law*.⁶⁶⁰

⁶⁵⁷ Margaret Ng, 'The Legislature' in Johannes Chan and C L Lim (eds), *Law of the Hong Kong Constitution* (Sweet & Maxwell 2015) 294.

⁶⁵⁸ For a good summary, Margaret Ng, 'The Legislature' in Johannes Chan and C L Lim (eds), *Law of the Hong Kong Constitution* (Sweet & Maxwell 2015) 292 et seq.

⁶⁵⁹ See, with many references and a contextualisation, Jianfu Chen, *Chinese Law: Context and Transformation* (Martinus Nijhoff Publishers 2008) 229 et seq.

⁶⁶⁰ Jianfu Chen, *Chinese Law: Context and Transformation* (Martinus Nijhoff Publishers 2008) 237.