
XVI.

THE URGENCY PROCESS

1. Introduction

The urgency process is regulated under Articles 155 et seq⁸³⁹ of the Rules of Procedure, displaced from the normative locus of the legislative procedure.⁸⁴⁰

It is not, as seen above, a special legislative process *per se*. Therefore, it is definitely not a special legislative process, as opposed to, or in a relationship *vis-à-vis*, the common legislative process, but rather a rushing of a legislative process, in its common form (or specialised if such a process exists; currently, no special process has been established).

The urgency process should be viewed in relation to the normal — and not the common — process.⁸⁴¹ Indeed, the urgency process is stripped of a special nature, for it does not incorporate qualifying elements, nor is it intended to produce a special category of legislative act; it entails a streamlining of the normal course, caused by the emergence of a relevant need or crisis.⁸⁴²

In fact, the location of the urgency process in the Rules, as well as the absence of a formal attribution, seem to indicate and confirm the idea that no special nature is attached thereto.

What is the object thereof? Any bill.⁸⁴³

2. Procedure

The urgency process must be requested until the beginning of the general debate of the bill, at the initiative of any Member and of the Chief Executive.

The Plenary may decide, after a debate, to adopt the urgency process, according

⁸³⁹ Namely: Article 155 (Object), Article 156 (Deliberation on the urgency), Article 157 (Effects of the deliberation), and Article 158 (Subsidiary framework).

⁸⁴⁰ The same was already the case, for example, in the Legislative Assembly's Rules of Procedure of 1977: the urgency process appeared in an autonomous Chapter IX, separate from Chapter VI (Forms of Processes), encompassing the common legislative process and several special legislative processes.

⁸⁴¹ Jorge Bacelar Gouveia, *Manual Direito Constitucional*, vol II (7th edn, Almedina 2021) 1282.

⁸⁴² *ibid.*

⁸⁴³ Also applicable to the procedure on resolutions.

to the circumstances and the assessment of the urgency's reasonableness and necessity.

The application for adoption of an urgency process⁸⁴⁴ *per se*, is not binding; and regardless of its provenance, the decision by the Plenary should depend on the reasons and their underlying rationale,⁸⁴⁵ as presented in the application. Furthermore, this process is conceived as an exception measure, and should not be disguised as a feature of normalcy,⁸⁴⁶ nor as a means for overcoming any expected resistance in parliament.

A nebulous issue concerns the majority required for approval — will a simple majority suffice or, perhaps — for example by analogy — might one defend the need for an absolute majority? Article 81 of the Rules of Procedure seems to point to a simple majority, the decision itself taking the form of a simple deliberation of the Plenary.

This doubt was unequivocally clarified in the 2017 review of the Rules of Procedure. Paragraph (2) of Article 81 was amended to “2. *Deliberations aimed at approving the following shall be passed by more than half of the total number of Members: [...] (b) The adoption of the urgency process, under Articles 155 to 158.*”⁸⁴⁷

A point that really deserves to be stressed is that the urgency process should only occur when there is a grounded urgency, incompatible with the adoption of the common legislative process. The urgency process should not be adopted for the sake of political convenience, still less so if the outcome is a downgrading, or *degradation*, of the form of the normative act, from a law to an administrative regulation⁸⁴⁸. As a Committee's Report laid out:

“or rather, in addition to the possibility of adopting the form of law, it was asked whether, to shorten the slowness of the process, it would be possible to update the amount through an administrative regulation or an executive order; it is a technical and legislative issue. The conclusion reached was that the amount of the compensation under appraisal is within the scope of the

⁸⁴⁴ Jorge Miranda and Rui Medeiros, *Constituição Portuguesa Anotada II* (Coimbra Editora 2006) 581.

⁸⁴⁵ The request for urgency must be made “with some particularity”: Philip A Joseph, *Constitutional and Administrative Law in New Zealand* (Brookers 2001) 313. Another example under comparative law may be seen in Spain, where, in addition to a pre-formatted urgency process (with a reduction in half of all procedural deadlines), has another process called “single reading”: albeit seldom used, for elementary texts, which sometimes are justified by extreme urgency, Fernando Santaolalla López, *Derecho Constitucional* (Dykinson 2004) 320. In other words, the requirement of exceptionality, and/or of true urgency, are factors which condition the use of this type of abbreviated legislative procedures.

⁸⁴⁶ Philip A Joseph, *Constitutional and Administrative Law in New Zealand* (Brookers 2001) 325.

⁸⁴⁷ From the respective Explanatory Note, “Several Members considered that notwithstanding the fact that urgent processes for the approval of legislative initiatives are adopted by means of simple deliberations of the Plenary, these should garner the same political consensus as the legislative initiatives. Consequently, they proposed a modification to the quorum for decision-making, to the effect that approval of the deliberation on an urgency process would require the favourable votes of more than half of the total number of Members.”

⁸⁴⁸ A recurring criticism of legislative procedures and parliaments is the “excessive use of unorthodox legislative procedures that short-cut the normal legislative process, such as fast-track and omnibus legislation”, Ittai Bar-Siman-Tov, ‘Mending the Legislative Process – The Preliminaries’ (2015) 3(3) *Theory and Practice of Legislation* 245. The abuse of this practice can also be deemed as putting in crisis what some define as the legislature transparent dedication to lawmaking, Jeremy Waldron, ‘Representative Lawmaking’ (2009) 89 *Boston University Law Review* 335, 336.

guarantee of fundamental rights, under Article 39 of the Basic Law, Article 40 of the same Basic Law, and Article 6, paragraph (1), of the Legal Framework Governing the Internal Sources of Norms (Law No. 13/2009). Therefore, the matter in hand is included in the area reserved to the law, and may not be regulated under an administrative regulation or an executive order. On the concern over the slowness of a legislative process that could, as such, be harmful to workers' interests of workers, the solution may be found by adopting the urgency process (Articles 155 to 158 of the Rules of Procedure), under which the examination on the specifics in committee may be dispensed with.”⁸⁴⁹

In other words, this deviation from the common process must embrace a grounded need for an immediate assessment and decision on a given subject-matter:⁸⁵⁰ “it is intended to permit the speeding up of the parliamentary procedure [...] in view of circumstances that require a timely deliberation.”⁸⁵¹

There is no strictly established urgency process — a range of specific possibilities may, on a case-by-case basis, conform to a given urgency process.

The following features may serve to mould the urgency process: exemption from examination on the specifics in committee; exemption from final drafting by the competent committee (or a reduction of the respective deadline); or the approval, both in general and on the specifics, during the same plenary meeting (a very speedy shortcut).

Finally, if the Plenary does not determine a specific deadline, the period for final drafting is residually reduced to two days.

One or two additional observations are pertinent.

Naturally, no public consultations are held during an urgency process.

However, I contend that mandatory consultations with third parties may not be dispensed with, merely on the pretext that an urgency process has been adopted.

The limit of limits on this issue should be thusly addressed: if the urgency is indeed really necessary, an exemption from consultation should merit a special and extraordinary requirement of grounding and rationale. A specific and urgent request, to that effect, should be submitted for the Plenary's decision, namely until the beginning of the meeting. In this fashion, compliance with the obligation to consult may go hand-in-hand with respecting the urgency of the legislative process.

This mechanism should not be confused with prioritising the agenda of a plenary meeting, which is the responsibility of the President of the Legislative Assembly, at the

⁸⁴⁹ SSC, Report No. 1/V/2015, “*Amendment to Law No. 7/2008 (Law on labour relations)*”.

⁸⁵⁰ Gomes Canotilho and Vital Moreira, *Constituição República Portuguesa Anotada II* (Coimbra Editora 2014) 366.

⁸⁵¹ Jorge Miranda and Rui Medeiros, *Constituição Portuguesa Anotada II* (Coimbra Editora 2006) 580.

request of the Chief Executive — both situations are cumulative.⁸⁵²

The praxis may be described as follows: “the Legislative Assembly has also been approving, in a timely manner, the bills submitted by the Executive, and with urgency in critical circumstances. Regarding the latter, one may recall the bills on temporary tax exemptions and benefits to mitigate the negative economic impact of atypical pneumonia, and the wealth partaking scheme, which were placed on the agenda’s priority list.”⁸⁵³

In recent practice, the Advisory Staff of the Legislative Assembly has been called upon to participate in the discussion and analysis of Government bills, being afforded the opportunity to suggest amendments, although often within a very short period of time; such role is an attempt to compensate or overcome the lack of examination on the specifics in committee.⁸⁵⁴

3. A Few Critical Observations of the *Praxis* — the *Taxes Fast-Track*

There has been a certain tendency, detected as of late, of using the fast-track granted by the urgency process in legislative procedures on tax issues, almost like a special legislative process aimed at tax law. In fact, the three most recent laws⁸⁵⁵ in this field have always followed a shortened path and, among the remainder, several more⁸⁵⁶ were

⁸⁵² As a mere example, the following deliberation is transcribed:

“Resolution No. 6/2009/Plenary

The Legislative Assembly deliberates, under the terms and for the purposes of Articles 154 to 156 of the Rules of Procedure, the following:

Article 1. The urgency process is adopted, at the request of the Chief Executive, in relation to the Government bill entitled “Authorisation for the Government of the Macau Special Administrative Region to incur debts”.

Article 2. The urgency procedure adopted under the terms of the previous article consists of the following:

a) Exemption from examination on the specifics in committee;

b) Inclusion, in item 2 of the present plenary meeting’s agenda, of the debate and voting on the specifics the Government bill entitled “Authorisation for the Government of the Macau Special Administrative Region to incur debts”;

c) Exemption of the approved texts from final drafting by the competent committee.

Article 3. The present deliberation enters into force immediately.

Approved on 14 May 2009.

The President of the Legislative Assembly, Susana Chou”

Official Bulletin of the Legislative Assembly, Series II, No. III-47, 14.

⁸⁵³ Susana Chou, *Balanço do Decénio de Actividades da Presidente da Assembleia Legislativa: 1999.12.20–2009.10.15* (Assembleia Legislativa 2009) 20. See also, regarding the use of the urgency process and its possible correlation with the necessary preservation of the areas reserved to the law: SSC, Report No. 1/V/2015.

⁸⁵⁴ Taking into account a few laws previously approved under urgency processes, which were revealed to have been affected by several problems, namely of a formal nature. Naturally, the urgency process, by usually excluding the intervention of a committee (and its report) from the stage of examination on the specifics, reduces the chances for the legislative initiatives in question to be corrected and improved upon, and also inhibits Members from making an informed decision.

⁸⁵⁵ Law No. 14/2015, “Amendment to the Regulation on the Motor Vehicle Tax”; Law No. 9/2015, “Amendment to the schedule to the Regulation on Excise Tax”; Law No. 15/2012, “Amendment to Law No. 6/2011 (Special stamp duty on the transfer of residential immovable property) and to the Regulation on Stamp Duty”.

⁸⁵⁶ Law No. 11/2011, “Amendment to the schedule the Regulation on Excise Tax”; Law No. 6/2011, “Special stamp duty on the transfer of residential immovable property”; Law No. 8/2008, “Amendment to the Regulation on Excise Tax”.

also approved through this expeditious process.

To be fair, there have been a few exceptions.⁸⁵⁷

On the one hand, one must bear in mind that such issues are embedded in relations of citizenship, that is, of individuals with political power; on the other hand, such matters belong to the spheres not only of areas reserved to the law — at stake is the fundamental right to private property — but also, in some aspects, of reserved legislative initiative. It is a matter of minor importance. Even a single amendment to attached schedules of taxed items, rates or tariffs may have great impact.

The reality is that bills containing substantive modifications have also followed the path of the urgency process, which in principle seems unsuitable to the purposes of such process — what is required is the justification for urgency, and not the nature of the subject-matter covered by a bill.

A good example of an appropriate use of the urgency process, aimed at a truly urgent legislative intervention, was that of Law No. 15/2012, “*Amendment to Law No. 6/2011 (Special stamp duty on the transfer of residential immovable property) and to the Regulation on Stamp Duty*.”⁸⁵⁸

After stressing that “The very dynamics of the debate and voting of laws in the parliamentary body is conducive to adjustments, of varying degrees of magnitude, to the originally formulated options”, LUÍS PESSANHA makes the following observation:

“However, the record of legislative practice shows a certain tendency by the Government to submit bills on tax matters, accompanied by a request for the urgency process to be adopted. This phenomenon has occurred absent the need for an urgent intervention in the legal order. Such entails a limitation, by the very nature and framework of such abbreviated process, wherein voting, in general and on the specifics, takes place in the same Plenary, without the examination of the legislative initiative in committee. The legislative body is restricted in its power to intervene with respect to the text of the bill initially submitted to the Legislative Assembly.”⁸⁵⁹

⁸⁵⁷ Law No. 1/2012, “*Amendment to the Regulation on the Motor Vehicle Tax, Second Standing Committee, Report No. 1/IV/2012*”; Law No. 1/2011, “*Amendment to the Regulation on the Urban Land Tax, Second Standing Committee, Report No. 1/IV/2011*”; Law No. 4/2009, “*Amendment to the General Schedule to the Regulation on Stamp Duty, Third Standing Committee, Report No. 2/III/2009*”.

⁸⁵⁸ A truly urgent matter at the time, or rather, requiring very speedy approval, to counter the extreme levels of speculation in the real estate market. The designation of “Regulation” is not synonymous with administrative regulations, nor any other normative act placed beneath the law in the hierarchy of legal sources. Such formal designation is applied to several tax laws in the MSAR legal order, as a remnant from history and tradition.

⁸⁵⁹ Luís Pessanha, ‘A Reserva de Lei Fiscal, o Orçamento e a Tributação Anualizada’ (The Basic Law, the Budget and the New Budgetary Framework Law of Macau, Macau, 2017).

