ORGANIC LAWS AND THE PRINCIPLE OF DEMOCRACY IN FRANCE AND SPAIN

Boldizsár Szentgáli-Tóth*
Hungarian Academy of Sciences

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1. INTRODUCTION

As a preliminary consideration, I will identify what I understand under the term qualified law, which is called as «organic laws» in France and Spain respectively. Different countries have constituted diverse concepts of qualified law, but we could outline the general content of this notion on the basis of national constitutions. Qualified law is a special category of statutes with clear constitutional background, which covers certain domain of crucial subject matters, and which is adopted with stricter procedural rules, than the ordinary

* Young research fellow at *Research Center of Social Sciences, Institute for Legal Studies*.

legislative process (Camby, 1998; Jakab, Szilágyi, 2014; Avril, Gicquel, 2014, 267-307).

Several expressions are used for the identification of qualified laws in the national legal instruments, such as organic law; cardinal laws; laws with constitutional force, laws adopted by two-thirds majority. These denominations show the key functions of qualified laws, which are not only constitutional, but also political, historical, and have a clear sovereignty aspect also. Organic law appears in the French [1], and the Spanish [2] Constitution, this terminology focuses on the constitutional role of these texts. In Spain, these laws are part of the constitutional concept (constitutional bloc), and in most of the countries concerned, they are invoked during the constitutional review of ordinary laws (Troper, Chagnollaud, 2012, 340) [3].

France and Spain represent the two main models of qualified law. However, the issue of qualified law concerns not only the two abovementioned countries, but a huge number of jurisdictions around the word. The modern history of qualified laws dated back to 1958, with the Constitution of the Fifth Republic of France [4]. After the decolonization of Africa, from the inspiration of the French model, numerous African countries from the francophone legal family (David, 1964, 630), accepted this legal solution, currently, the Constitution of twenty-one African countries contains the category of organic law such as Algeria [5], Senegal [6], or Tunisia [7]. The second wave of the spread of qualified law started after the fall of the authoritarian regime in Spain and Portugal [8]: qualified law was implemented in both constitutions, and later, from that legal family, several Latin-American countries followed this sample, like Ecuador [9], or Venezuela [10]. Finally, as the third stage of spread of qualified law, this framework was added to the Hungarian, Romanian [11], and Moldovan [12] constitutional system after the democratic transition. Moreover, some former member states of the Soviet Union have also codified a concept

[1] Art. 46. of the French Constitution of 4 October 1958.
[2] Art. 81-1 of the Spanish Constitution.
[3] N° 66-28, DC du 8 juillet 1966 (Rec., p. 15).
[4] Art. 46 of the French Constitution of 4 October 1958.
[5] Art. 123 of the Constitution of Algeria.
[6] Art. 78 of the Constitution of Senegal.
[7] Art. 65 of the Constitution of Tunisia.
[8] Art. 136 (3) of the Constitution of Portugal.
[9] Art. 133 of the Constitution of Ecuador.
[10] Art. 203 of the Constitution of Venezuela.
[11] Art. 73 of the Constitution of Romania.
[12] The Constitution of Moldova (29.07.1994): art. 61 (2), art. 63 (1) and (3), art. 70 (2), art. 72(1), (3) and (4), art. 74 (1), 78 art. (2), art. 80 (3), art. 97, art. 99 (2), art. 108 (2), art. 111 (1) and (2), art. 115 (4), art. 133 (5).

of qualified law, but these initiatives have been repealed. There are further concepts such as constitutional laws of Italy, which are close to organic law in certain receipts, but their essence and logic are inherently different, as these norms target to complete and amend the constitution itself (Bin, Pitruzzella, 2008, 322).

The foregoing considerations give us some sense of the main constitutional issues, raised by the concept of qualified law, and its relationship with the principle of democracy. Each country has applied this solution to promote a clear constitutional aim, therefore, in the first chapter, I will compare the historical background of the two emerges. In the second chapter, I will outline the scope of ordinary and qualified law in Spain and France, and I will argue for a narrower scope of qualified law. Furthermore, qualified law may have a special position in the hierarchy of norms, somewhere between statutory and the constitutional level, so chapter three will cover this issue (Troper, 2012, 340). I will concentrate especially on the level of precision of constitutional articles in this regard. Then, the practical impact of this concept on the constitutional system and political configuration shall be taken into consideration: so, I will deal with the separation of powers perspective of qualified laws as the fourth chapter, which would lead to the main conclusions regarding the principle of democracy. From this perspective, I have two main points, which may serve the compliance between the concept of qualified law and the principle of democracy: the narrow scope of qualified law; and the mandatory a priory review. As the main outcome, certain points will be highlighted for a potential constitution-drafting process.

2. THE HISTORICAL BACKGROUND OF ORGANIC LAW IN FRANCE AND SPAIN

2.1 **The historical background of organic law in France**

Firstly, since France had consistently a number of qualified norms even at the constitutional level (Camby, 1998, 1686), not surprisingly, this country was the first which incorporated the concept of qualified law in its constitutional system in 1958. Organic law had been expected to be a proper instrument to promote the aims of the framers to weaken the Parliament and to rebalance separation of powers. De Gaulle had at least four considerations for playing down the legislature. Firstly, the Fourth Republic was suffered from a very serious degree of instability: governments were not able to survive even a year

(Debré, 1959, 7-29). It was generally considered, that the over weakness of the government was the main reason of this discrepancy, consequently, the legislative branch had too broad margin of movement. De Gaulle and his colleagues intended to reduce the decisive role of the Parliament, accordingly, the distribution of public power was reconsidered in favour of the executive: Parliament would not have unlimited power to determine the organisation of state, the executive branch would have wider competences in these fields (Blacher, 2012, 11-23).

Secondly, the significant laws were modified too frequently during the Fourth Republic, in light of the preferences of the actual parliamentarian majority. We have to take into consideration that the composition of the legislation changed rapidly, and there was not any safeguard on the stability of norms. Owing to the «rationalisation of the parliamentarism» (Ardant, Mathieu, 2014, 344-345), certain subject matters would be protected from the unlimited power of the Parliament, the basic rules of the organisation of state would be not subject to actual political considerations.

Thirdly, the original constitutional framework of the Fifth Republic focused on institutional issues, the constitutional text does not contain any catalogue of fundamental rights (Troper, 2008, 13). This is the main reason, that the French model of qualified law is applied only in the field of the organisation of state fundamental rights are not covered by this concept. The founders of the Fifth Republic wanted to create a safeguard only for the basic institutions of the state, but the framers were not interested in other possible fields of introduction, such as fundamental rights.

Fourthly, as an implicit aspect, we shall mention the fear from the dictatorship, which was experienced during the Second World War, by the Vichy regime. Organic laws were able not only to protect the democracy from instability, but also exclude the future chances of an authoritarian regime.

The original model of organic law was slightly modified by constitutional amendments. To set an example, the organic laws related to the Senate shall be enacted with identical terms by the two chambers. This category was created for preventing the National Assembly to have the final word from the status of the Senate. This compromise was entrenched in a very special political situation: French-based EU citizens were permitted to participate in local elections, but they were prevented from voting in the elections of the Senate [13].

[13] Constitutional amendment on 25th June of 1992.

2.2 **The historical background of qualified law in Spain**

Organic laws were added to the Spanish constitutional system by the Constitution of 1978, after the fall of the Franco regime, as part of the democratic transition of the country. Despite the clear French influence, the historical background of the constitution-drafting process was completely different, than in France. Spain had lack of democratic traditions, the two previous Spanish republics had very short life, these regimes failed to gain stability, and to create efficient mechanisms to prevent authoritarian aspirations (Comella, 2013, 4-34).

Moreover, a remarkable degree of uncertainty surrounded the transition: initially, it was very questionable, whether the new king was engaged to democratic processes, or try to maintain some sort of dictatorship. Regarding these circumstances, the drafters sought for such solutions, which were able to promote the self-defence of the democratic system. Indeed, the primary purpose of the framers was the emerge of democratic safeguards, and organic law was one of them. Due to the numerous parties (Bonime-Blanc, 2010, 200), and ethnicities (Conversi, 2002, 223-244), the Spanish political life was very fragmented, thus, wide consent was essential to outline the new structure and to maintain the integrity of the country (*ibid*, 230). Despite the clear French influence (Troper, 2012, 344), the requirements of a democratic transition, the huge fear from authoritarian tendencies, the protection of integrity, and the demands of autonomous regions explain, that the scope of Spanish organic law is significantly broader, than its French counterpart as will be demonstrated later.

3. THE SCOPE OF ORGANIC LAW

3.1 **The scope of organic law in France**

In France, most of the organic laws cover institutional fields: inter alia, the functioning of the Parliament [14], the status of the members of the judiciary [15], the status of the Constitutional Council [16], the functioning of the Economic, Social and Environmental Council [17], the powers and actions of the Defender of Rights [18]. Moreover, the limitation of sovereignty of France also falls

[14] Art. 25. sec. 1. of the French Constitution of 4 October 1958.
[15] Art. 64. sec. 3. of the French Constitution of 4 October 1958.
[16] Art. 63. of the French Constitution of 4 October 1958.
[17] Art. 71. of the French Constitution of 4 October 1958.
[18] Art. 71-1 sec. 3. of the French Constitution of 4 October 1958.

under the scope of organic law. The most conspicuous phenomena here is the almost exclusive dominance of the institutional aspect. Since fundamental rights were not included in the original framework of the Constitution of the Fifth Republic, they are almost ineligible to fall within the scope of organic law. Since 1958, the scope of organic law was slightly extended by constitutional amendments, for instance, the defender of rights was referred to the qualified domain in 2008.

The organic character within the practice of the Constitutional Council is related to particular provisions and subject matters rather than certain laws, which regulates organic subject matters (Camby, 1998, 1690). As a consequence, there are several statutes, which contains organic as well as ordinary provisions. Accordingly, in case of legal doubt, it is the task of the Constitutional Council to determine the scope of ordinary and organic law even within the same legal text. What is more, the scope of organic law is not only a technical circle of laws, but it has also strong constitutional protection, with the help of the notion of organic character [19]. Each law shall provide explicitly its character; organic laws may contain ordinary provisions, but this dispositions shall be declassified [20], by contrast, organic provisions shall not be placed within ordinary laws [21]. This ambiguity shows that despite the primary role of principle of competence, some hierarchic elements are not alien from the relationship between organic and ordinary laws in France.

3.2 **The scope of qualified law in Spain**

The Spanish structure differs significantly from the French approach. A separate article determines the two main areas of organic law: the statutes of the autonomic communities, and the fundamental rights and freedoms [22]. Apart from this, several articles of the Spanish Constitution prescribe organic law on further institutional matters: for instance, the organisation of military forces [23], the succession of the throne [24], the referendum [25], or the organisation of the judiciary [26], and the functioning and organisation of the Constitutional Tribu-

[19] N° 84-177 DC du 30 aout 1984.
[20] 75-62 DC du 28 janvier 1976, 87-228 DC du 26 juin 1987, 88-242 DC du 10 mars 1988.
[21] 86-217 DC du 18 septembre 1986.
[22] Art. 81-1 of the Constitution of Spain.
[23] Art. 8. of the Spanish Constitution.
[24] Art. 57. (5) of the Spanish Constitution.
[25] Art. 93. of the Spanish Constitution.
[26] Art. 122. (1) of the Spanish Constitution.

nal [27]. Accordingly, the scope of Spanish Organic Law covers two main fields: fundamental rights, and the most important institutional aspect, as the Spanish Constitutional Court have identified. The institutional framework is based on the statutes of autonomous communities however, other fields are also crucial (Iliopoulos-Strangas, 2007, 153) [28].

Regarding the extent of organic matters, the Spanish model is also based on particular matters, prescribed by the Constitution. For instance, in this regard, fundamental rights are exclusively those, which are regulated by art. 15.-29. of the Spanish Constitution [29]. Since the Spanish Constitution outlines the scope of qualified law with very broad terms, the main task of the Constitutional Tribunal is to give a rational interpretation in this regard. Within the practice of the Spanish Constitutional Court, the key term is not the organic character, or essential content of a subject, but the reserved constitutional domain for organic law [30]. If an ordinary law intervene to the organic domain, it would be strike down by the Constitutional Tribunal.

4. QUALIFIED LAW WITHIN THE HIERARCHY OF NORMS

Although in light of the national context, constitutional courts apply slightly different frameworks, the main experimental issues are almost the same in the two countries. Inter alia, these circle of issues include: whether an ordinary law could amend a qualified law; whether an ordinary law could contradict with qualified law; whether an ordinary law is entitled to intervene into the qualified domain, whether an ordinary law could include qualified provisions or vice versa; whether there is a hierarchy between ordinary and qualified laws; whether qualified law constitute a separate legal category; whether qualified law is part of the constitutional framework (Camby, 1998, 1688).

In France, despite of their clear constitutional background, the Council have clarified, that organic laws do not fall inside neither the constitutional framework, nor the constitutional bloc [31]. The Constitutional Council have improved its practice during the recent decades. The approach of the Council is based on three considerations.

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[27] Art. 65. of the Spanish Constitution.
[28] Art. 104. par. 1. of the Spanish Constitution.
[29] SJCC 76/1983, of 5 August, LC 2; 160/1987, of 27 October LC 2.
[30] JCC no. 236-2007.
[31] La décision du CC, n° 84-177 DC du 30 aout 1984.

Firstly, the Court have recognized the different legal character of organic and ordinary statutes but have refused to create some sort of clear hierarchy between them (Camby, 1998, 1690). This approach was also confirmed by the French Government [32], and by the academic literature (Luchaire, Conac, 1987, 179-207). Either the competence of the organic as well as the ordinary legislature enjoy the same level of constitutional protection, both of them are prohibited from any interference in the other domain [33]. «From 1958, the term of organic law has been descriptive rather than normative.» (Avril, 2014, 274). In other words, the relation between qualified and ordinary statute is outlined by the principle of competence instead of the principle of hierarchy. The principle of competence emphasises, that ordinary and qualified law are in the same level within the hierarchy of norms, they just have separate domain of subject matters. By contrast, the principle of hierarchy means that qualified law has supreme effect over ordinary law. However, despite the consistent rejection of supremacy of organic law over ordinary law, the French framework is not absolutely clear, for instance, the prohibition of explicit of even implicit amendment of organic law by an ordinary statute refers to some sort of hierarchic order [34].

Although an organic law could precise and complete the constitutionally prescribed scope of statutes [35], this authorization does not constitute an extra constitutional power to outline the scope of organic law, hence this catalogue shall be in conformity with constitutional provisions and principles. Organic laws fall outside from the constitutional bloc (Verpeaux, Maryvonne, 2007, 101), nevertheless, the contradiction with an organic law has the same impact, as a conflict with a constitutional provision [36]. Furthermore, the rules of the procedure of the two assemblies shall comply also with organic laws (Pourhiet, 2007, 379) [37], as well as other parliamentary acts [38].

The second point from the Council is the distinction between ordinary and qualified provisions within the same legal text. The competence of the organic legislator is described by particular subject matters, and not by statutes. Accordingly, a legal text could include the provisions from both domain, but the Council would struck down such organic provisions, which are adopted

[32] Documents pour servir à l'histoire de l'élaboration de la Constitution, Volume III, 350.
[33] N° 87-234, DC du 7 janvier 1988, Rec., p. 2.
[34] La décision n° 96-386, DC du 30 décembre 1996.
[35] Art. 34. of the French Constitution of 4 October 1958, last clause.
[36] La décision du Cc, n°60-8 DC du 11 aout 1960.
[37] La décision en 2006-537 DC, 22 juin 2006; la décision en 99-419 DC du 9 novembre 1999.
[38] Art. 40 (5) of the Regulation of the National Assembly of France.

under the ordinary legislative procedure [39]. When an organic law includes provisions from the field of ordinary law, these provisions shall be declassified, and could be amended without the application of art. 46. of the Constitution. The Council have established the notion of organic character, and it uses this term to bound, the scope between qualified and ordinary law. As a consequence, the terminology of «organic text» would be more precise, than the traditional wording of organic laws hence the organic character is related to certain provisions, and not always to whole statutes.

The third tendency in the French practice is the diversification within the category of organic law: there is some sort of hierarchy even amongst institutional acts. This legal framework does not constitute a unified legal concept, some subgroups of organic law demand special treatment (Camby, 1998, 1695). On the one hand, certain ordonnances (legislative acts adopted by the executive on the basis of parliamentary authorization (Ardant, 2014, 417-419)) are not allowed only in the field of ordinary law, but also within the domain of institutional act [40].

The main considerations are similar in Spain, than in France: organic laws as legal sources are bound by the Constitution [41] and by the organic law from the constitutional court [42]. As a result, Spanish organic laws are subject to constitutional review (Troper, 2012, 344). Although some hierarchic elements between organic and ordinary laws (Troper 2012, 344-345), the principle of competence is highlighted *vis a vis* principle of hierarchy, organic law is not a separate constitutional category [43]. However, some hierarchic aspects are also relevant, organic laws are considered during the constitutional review of ordinary statutes (Troper, 2012, 344-345). Nevertheless, the constitutional character of qualified laws has been rejected (Prakke, Kortmann, Brandhof, 2004, 743), organic laws shall comply with constitutional provisions [44]. The Spanish approach is more pragmatic, than the French one, the organic law is installed to certain domain, based on subject matters. As a consequence, the distinction within a particular legal instrument is not so strong, than in France. However, the intervention in the ordinary domain shall be prevented therefore the Constitutional Tribunal strikes out ordinary and organic provisions which infringes

[39] N° 84-177, DC du 30 août 1984, Rec., p. 67; N° 86-217, DC du 18 septembre 1986.
[40] Droit constitutionnel et science politique, (Constitutional law and political science), XVe édition, 379; also, for instance: Organic ordonance of 24 October 1958.
[41] Art. 9. (3) of the Spanish Constitution.
[42] 2/1979 Organic law of the Constitutional Court of Spain, art. 27. (2), art. 28. (2).
[43] JCC no. 236-2007.
[44] JCC. no 53. of 1985. (IV. 11.)

the constitutionally prescribed distribution of competences respectively [45]. In spite the fact, that organic laws are incorporated within the constitutional bloc in Spain, they are infra-constitutional sources of law, and their legal value is clearly between the constitutional and the statutory level (Troper, 2012, 346).

5. QUALIFIED LAWS FROM SEPARATION OF POWERS PERSPECTIVE AND THE PRINCIPLE OF DEMOCRACY

To bring the principle of democracy also to the picture, during the foregoing pages, I will briefly outline the two main separation of powers aspect of qualified law, and as a background, I will also provide the relevant procedural rules from the three countries. I refer here not to the classical sense of separation of powers with three totally different branches of power (Montesquieu, 1748), but as a system of checks and balances, which provides interdependence for all relevant factors of the constitutional system (The Federalist no. 51).

In case of stable majoritarian support behind the government, the absolute majority would not modify radically the separation of powers between the government and the opposition. The government would be able to prevail its will regardless of the disagreement of the opposition. The role of absolute majority, as well as an additional vote at the end of the process [46] is to provide a further check on the power of the majority: qualified statutes should not be promulgated, unless they have been supported widely by deputies, at least on the government side. These requirements have multiple functions. Broader consent is sought for the enactment of an organic statute and with the help of this heightened level of minimum support, the stability of certain circles of law could be increased. Moreover, the opposition would have a better chance to prevent the government from adopting the bill, even a slight resistance on the government side is sufficient to put the enactment off. And this is a crucial safeguard of pluralism, and the protection of minorities and consensual democracy [47]. Apart from this, since most of the democratic governments are coalitional, smaller groups in the government side could play decisive role, since their consent is needed for absolute majority. To set an example, some smaller fractions benefited from this situation regularly in France during the 1980s (Avril, 2010, 267).

[45] JCC No. 236. of 2007.
[46] Art. 81.1. of the Spanish Constitution.
[47] Cc n° 2007-559 DC du 6 décembre 2007.

The French and Spanish model shows, that absolute majority does not tend to be the lone special requirement in the field of qualified law. However, the Spanish model (followed also by Latin-American countries) do not operate with a wide circle of guarantees, organic laws differs from their ordinary counterparts only by an additional round of vote, and by the prescription of absolute majority. This is the main reason, that the distinction between organic and ordinary laws is not so strict in Spain, as in France. Indeed, in France, this concept has been completed with further elements (mandatory control of constitutionality a priori, additional procedural safeguards, bicameral consent). To show an example, within the French system, The Senate is entitled to block the legislation of the first chamber in such matters, which are related directly to the Senate [48]. This competence was founded as a compromise after expanding the right to vote to EU citizens in local elections [49]. In light of the traditional oppositional attitude of the French Senate, this is not only a theoretic consideration (Ardant, 2014, 430). Another special case is the cohabitation, when the majority of the two chambers is different (Avril, Pourhiet, 2008, 83). When the qualified majority requirement is stronger (two-third consent is needed), the concept of qualified law would be based on the consent aspect other potential elements are neglected.

Regarding the other relevant separation of powers aspect, the relations between the constitutional court and political branches of power, we shall highlight the role of constitutional courts as a counterbalance on concentration of powers within the hands of political actors (Avril, Seiller, 2010, 104). Two main questions are to be raised here: whether the constitutional review of qualified law is mandatory or optional; and whether there is an initiative of constitutional review, or it is conducted ex officio.

As regard the first issue, the review is optional, and mostly a posterior in Hungary [50], and in Spain [51]. However, the concept of qualified law is prescribed in these systems by constitutional provisions, which are enforceable by the respective constitutional bodies. As a consequence, this constitutional concept would create additional grounds of constitutional review: the constitutional court is entitled to examine the prevalence of the procedural norms [52], and in case of any doubt, to bound the scope of qualified and ordinary law [53]. This

[48] N° 85-195, DC du 10 juillet 1985.
[49] Amendment of the French Constitution on 25th June 1992.
[50] Art. 24. of the Fundamental Law of Hungary.
[51] Art. 28. of the organic law 2/1979 of the Constitutional Tribunal of Spain.
[52] La décision n° 89-263 DC du 11 janvier 1990.
[53] For instance: La décision du CC, n° 84-177 DC du 30 aout 1984; Spanish Constitutional Court Judgment No. 11/1981, of April 8; Decision 1/1999. (II. 24.) of the Constitutional Court of Hungary.

mechanism raises the compliance not only with procedural, but also with substantial requirements [54]. The details of this theoretical framework have been analysed elsewhere, but here, we should already highlight the role of the constitutional court in dealing with these issues. The basis of this distinction is prescribed by the constitution, but the relevant constitutional provisions are subject to interpretation (Bodnár, Módos, 2012, 33-34), even if they are formulated by certain levels of precision. In other words, the constitutional court is entitled to control whether a qualified subject matter is covered exclusively by qualified law. Certain constitutional frameworks, like the French also protect the domain of ordinary law [55] of the constitutional court as a check on the political branches would be significantly stronger.

The second model, which is more special, than the previous one, is applied in France, and it cannot be understood without the consideration of the special historical background of this country. The scope of the legislation is outlined by a closed list of enumeration [56], however, this strict distinction has been relativized (Ardant, 2014, 425-476) Nevertheless, the Constitutional Council is still entitled to prevent the Parliament from overstepping this domain (Avril, 2014, 271). Therefore, the Constitutional Council has to mandatorily review all passed organic laws before their promulgation, without this step, these laws would not enter into force [57]. This system would prevent, at least theoretically, unconstitutional acts in some essential fields of law. Furthermore, the position of the Constitutional Council is remarkably strengthened by this solution: without its agreement, any organic law, even if the organic law from the organisation and functioning of the Council (Julien*,* 2010, 103; Camby*,* 2008, 6-14) would not be effective.

If the scope of control of constitutionality is narrow, and the qualified majority requirement is not so strict, the mandatory a priori review could be an effective safeguard, but we should also be aware of the risks of this mechanism. On the one hand, it would strengthen the competence of the constitutional court, but on the other hand, this would also be a vehicle of political engagement on the body and would undermine democratic principles (Troper, 2012, 341-342). Lack of direct democratic legitimacy is always a strong argument against any form of judicial review over legislation [58].

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[54] La décision du Cc, n°60-8 DC du 11 aout 1960.

[55] La décision du CC, ° 75-62, DC du 28 janvier 1976.

[56] Art. 34. of the French Constitution of 4 October 1958.

[57] French Constitution on 4th October 1958, art. 46. cl. 5, and art. 61. cl. 1.

[58] PRX » Piece » CBC – Sunday Edition: Justocracy www.prx.org/pieces/72-cbc-sunday-edition-justocracy, accessed: 2nd February of 2015.

Regarding the issue of initiatives, there is a clear bound between the French system, where the prime minister is obliged to refer qualified laws before the Council without discretion [59], and the other two approach, where an initiative is only facultative for the beginning of the review proceeding. We can classify initiatives on the basis of their binding force.

Finally, considerations of this chapter again demonstrate that a wide scope of qualified law would impose a disproportionate burden on the reigning government, therefore, the traditional principles of separation of powers and democracy would not prevail. The arguments based on separation of powers support a narrow coverage of qualified law, related to some institutional aspects, where the wide political consent is really necessary (for instance: the electoral system, and the fundamental principles of the organization of the state). With a restricted scope, the practical influence of the advantages of qualified law could be also reinforced, but the disadvantages could be played down. Therefore, as far as I am concerned, only some basic institutional matters shall be referred into the qualified domain, other possible fields, such as fundamental rights, or political matters shall be regulated by ordinary laws, and shall be protected by other mechanism (such as constitutional review, or international cooperation).

6. CONCLUSION

This contribution has opened up some new perspectives to conceptualize qualified law in the light of principle of democracy, and it has given some orientations for future constitution-drafting processes in this regard. Obviously, I have not targeted to build an exclusive concept, with all details. This study covers a particular comparative approach of qualified law accordingly, the conclusions are based on this analysis. The research of further aspects, especially within the comparative field would reveal several other valid points.

The main grounds of this research are strongly related to each other. I would demonstrate this through the scope of qualified law. Firstly, the scope of qualified law is strongly related to the historical functions assigned to this concept. Where the promotion of democratic transition was the essential purpose, the role of qualified majority in the protection of fundamental rights is stronger (Spain, and the original Hungarian model). In case of priority of stability, and consent requirement, institutional issues are more important.

[59] L'Ordonnance n° 38-1067 du 7 novembre 1958.

Secondly, the scope of qualified law would also have clear impact on the separation of powers. As a general remark, we can say that the basic rules of the organisation of state are adopted by a stricter procedure, especially by wider consent, and this would give some sort of stability for the political and administrative structure. Sometimes the relation between the central government and local entities are also concerned, as a separate aspect within separation of powers. For instance, the statutes of the Spanish autonomous communities or certain matters concerning overseas territories of France are covered by organic laws. What is more, the distribution of competences in the field of fundamental rights is remarkably different in countries, where the scope of qualified law includes these rights (like in Spain).

Another crucial achievement of the analysis is the requirement of precision as regard the relevant constitutional provisions. The legal nature of qualified law is evidently subject to interpretation, but some instruments could reduce the field of judicial considerations. Firstly, constitutional provisions from qualified law shall be drafted more precisely. In addition to this, we have to admit that the selection of qualified laws is not based on any clear principle. Theoretically, the significance of certain matters justifies this distinction, but in the the outcome of my research supports the idea that in the field of qualified law, a comparative analysis can provide quite valuable experience for future references from an existing theoretical setting. This paper argued for a narrower scope of qualified law, for a careful form of mandatory a priory constitutional review of qualified laws, and for the clarification of their constitutional and theoretical background. In light of the national context, the introduction of these policies may be slightly different, but as general standards these points may be appropriate to make compliance between the concept of qualified law, and the principle of democracy.

However, in the field of qualified law, the most relevant issue is the necessity of further extensive and deep professional discourse from this matter to seek more convenient solutions. This study would be a modest contribution to this process.

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