Normative acts management

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Abstract: *The presence of the normative act amongst the formal law sources system is the result of the constructive activity of specialized bodies, designated by the Constitution, by laws or by regulations of normative power (having the right of drafting norms of generally mandatory power). Such bodies are named lawgiving bodies (also referred to as the "lawgiver" or "lawmaker") and they are first of all the bodies of the lawgiving power, entitled to issue on a primary and originator level the fundamental social relations in a society, to organize the juridical order of a nation or of a community of nations.*

The activity of these bodies is carried out under rules of juridical technique and in accordance with the general purposes imposed by the proper functioning of the social mechanism regarding the coexistence of social freedoms.

Key words: normative act, legislative technique, prerequisites, presumptions.

1. The notion of juridical technique

Creating the law, grounded on the needs of life, represents an action of large social resonance and with deep implications in the normal carrying out of the essential rapports between people. In this process, a fundamental – if not exclusive – role is played, mostly in modern societies, by scientific knowledge, by the juridical theory. There are also important the technical procedures, artifices, practical modalities of normative construction. By such, the prerequisites of social life get the specific legal provisions form.

In order for realities to be legally regulated, intelligence must intervene for the purpose of making them accessible to human spirit.

Due to its imperative nature, law requests a form of precision and systematization which can be only provided by intellectual precepts. By generalizations and abstractions, the juridical techniques tend towards parsimony of thinking or means.

From the fact that the law is "built" it must not be deduced that this construction could be randomly erected. The lawgiver does not extract rules from nowhere and it does not build it in vacuum. The juridical production is a creation of reason, considering the facts, the relations, and in general all realities of interest to the social order, the security of human rapports, the "public welfare".

The idea should be kept in mind according to which the necessary distinction should be operated between science and technique. By such distinction science subjects to the investigation the social environment requesting the lawgiver's intervention, whilst technique establishes the modalities by which that intervention becomes possible, by the lawgiver's direct action. By reminding this distinction, we consider that no question should arise regarding the two said concerns' breaking up, but on the contrary, that the *unity* between the scientific and technical action should be considered in the process of normative-juridical drafting, unity in which the scientific operations provide the essential reasonability framework preventing the creation's voluntarism, subjective intervention ungrounded on knowledge of the lawgiver. Technique, by its long and carefully shaped procedures designs behavior models, establishes his behavior compared to the categories of participating subjects and to certain categories of values that should be protected by specific juridical means [1]. In such an understanding framework, juridical science is also concerned with creating the law; it is not a simple "juristic" concerned only with what law is and how law should not be.

In conclusion, *juridical technique represents the set of means, procedures, artifices, by means of which the needs in the social life get a juridical form (are expressed within the legal norm) and by means of which the process of human living together is fulfilled*.

The content of the term of juridical technique is revealed as extremely complex, as it involves the moment when the lawgiver receives the social command, its selective assessment and the norm's drafting (legislative technique), and also the moment when the law norm is accomplished (transposed into life), as it was built by the lawgiver (the technique of law creation and interpreting).

2. The notion of legislative technique

Legislative technique represents an integrant part in the juridical technique and is formed of a complex set of methods and proceedings, aiming to ensure an appropriate form to the juridical provisions' content (substance).

Sometimes the juridical technique is confounded with lawgiving (with legislative technique), by reducing the area of juridical technique only to the normative drafting process.

Legislative technique strictly refers to the lawgiver's creating the normative solutions, action representing a synthesis and a balance of past experiences of the participants in the social life, by filtering such experiences by the view point of the lawgivers' value related judgments.

In order to enter the practical exercise of justice administration, legislation science first drafts the ideas, the guiding principles

[1] **N. Popa**, *Theoretical Aspects on the Technique of Drafting Normative Acts* (Romanian: *Aspecte teoretice privind tehnica elaborării actelor normative*), AUB, Law, 1993; **V.D. ZIătescu**, *Introduction in Formal Lawgiving* (Romanian: *Introducere în legistica formala*), Oscar Print Publishing House, 1996

of positive law. By such, lawgiving comprises two important moments: a) ascertaining the existence of social situations calling for juridical regulation; b) identifying the juridical ideal, which should apply to those situations depending on society's juridical conscience[2].

The lawgiving action involves a tendency to change, to create some new normative juridical solutions, regarded as superior or as better than existent regulating solutions. The lawgiver's assessment modality, its own set of values, the means it uses, are extremely various and they depend on a large number of factors.

The nature of the legislative mission can be of permanent institution or of occasional delegation.

The law rule cannot reach a satisfying, or at least sufficient, technical form unless for the conscious action of the lawgiver. However, in the same time methodological exclusiveness should be prevented; law must not be reduced to a simple putting into form (dictated by specific technical methods and rules) of the social "given". Besides the lawgiver's skills, it also implies taking into account the influence of the values system, in a certain sense a resultant of such system. For this reason, the art of writing laws is extremely difficult and requests not only serious information, but also a feeling of social usefulness and some sort of intuition only a few people have.

Lawgiving has become a central and defining element in the State's activity; it has become synonym with governing.

The selection of the technical proceedings for lawgiving is up to the lawgiver. Nonetheless, it can by no means be a random one. Certain principles exist on which the lawgiving action is based, principles deduced from constitutional provisions or written in legislative technique methodologies adopted by parliaments. This sort of principles is pursued both in the parliamentary normative practice, and in the activity of other state bodies holding normative competencies.

3. Lawgiving principles (prerequisites)

A. ***The Principle (Prerequisite) of Scientific Grounding in the Activity of Juridical Norms Drafting***

Given the increased significance of social reality's juridical dimension, due to the amplification and deepening of inter-human relations' complexity, the lawgiver now faces entirely new regulation aspects. Thus, new regulation areas appear, such as: the competition area, the development area, the cosmic area, the undersea area etc. Approaching such areas involves higher specialization, an understanding of the internal and international correlations in the regulation process, and undertaking new knowledge. The need of in depth knowledge of the realities compels the lawgiver to make economic, sociologic, social psychology related prior investigations. The lawgiver never reaches randomly to a definition of the normative statement (of the norm), but by practice and reasoning (by what used to be named *progressio a singularibus ad universale*). In such complicated process, it must ensure grounded on thorough study of the reality, necessary correspondence between deed and law.

Lawgiving implies prediction and li-

[2] **M. Djuvara**, *General Law* Theory (Romanian: Teoria *generala* a *dreptului*), Vol.II, p. 563; **I.** Mrejeru, *Legislative Technique* (Romanian: *Tehnica legislative*), Bucharest, 1979

ability. Preparing laws involves methodical preparation, grounding such on the results of serious scientific researches, which could avoid and eliminate "routine empirics". The legislative piece should be grounded on profound and exact understanding of social and national needs and on clear perspicacity of identifying real deeds, and it is only after finishing these operations that the normative solutions will be build by the lawgiver's constructive imagination.

Insufficient understanding of the deed can lead to ungrounded juridical solutions; it can depict a false image over the social effects of that provision, along with all its negative consequences. The simple appeal to the possibility of imposing a law by the State's compelling force, regardless its acceptance by the society cannot be sufficient, or decisive for that law's sustainability and efficiency. Sooner or latter such provision, in disrespect of real social needs, will face a rejection phenomenon, the revolt of deeds against law.

Scientific grounding of a legislative project should comprise: *the description of the actual situations to be transformed into law situations, the analysis of the values judgments regarding the identification of the actual situations to be transformed, changed, and which take contact with the values judgments from which the change itself is inspired, the establishing (foreseeing) of the potential effects of the future provision, the social cost of the envisaged legislative reform, its appropriateness*, etc.

Scientific research should also lead to grounding some legislative short, medium and long term legislative forecasts, and to reducing the manifesting area of the context related legislative action, which lacks an appropriate analysis base.

Whereas juridical decision bodies (parliaments) by themselves cannot make such operations, specialized juridical bodies are usually used, which are entitled to approve normative acts projects.

B. The Principle (Prerequisite) of Ensuring a Natural Rapport between the Law's Dynamics and Static

In the process of normative drafting, the lawgiver faces various social pressures (economic, political, cultural, and ideological). Rapid social changes lead to mutations in the social rapports' content, to institutional changes. The role of the law rule is to put an order in these rapports, to guarantee their juridical security and safety, to calm possible conflicts, providing calmness and relative stability feeling. In order for the law to achieve this purpose it is necessary for the conduct rule to be incorporated in the individual's and social groups' psychological patrimony.

In general, the law regulates for longer periods. In its relations with politics, the law seems more conservative, it attempts to protect and to ensure unity between existence and norm, between deed and value. Of an organizational nature, the law permanently improves its regulation technique. As a product of people's social activity, by its technical elements, the law can reach not only relatively large independency levels, but it can also circulate from one society to another, creating diffusion and tradition. On an historical level a borrowing process takes place, of in time propagation and juridical contamination. The law's relative autonomy makes it more resistant to modifying pressures. Politics mainly tends to permanently break down relations, to innovate new different forms for their manifestation. The lawgiver should maintain

the law into balance, ensuring by its legislative policy the natural stability of the legally regulated social relations.

C. The Principle (Prerequisite) of Correlating the Normative Acts' System

In a state, normative acts exist in close connection to one another. The normative acts' system (the legislation or legislative system) involves multiple connections between its composing parties. The various categories of normative acts – laws, decrees, resolutions, and decisions – aim to regulate social rapports, within a process characterized by severe interference. Within such process, the law ensures the regulation of the relations which are essential for the good functioning of the social mechanism. Nonetheless, the law does not exclude, but it also implies the regulating action regarding other normative acts categories. At the moment of issuing normative acts the lawgiver has to take into account those correlations, it must consider the totality of implications of a new regulation, the subsequent normative amendments, the areas affected by introducing new normative solutions, as well as any potential conflicting provisions. For instance, when a new regulation appears introduced by a law, it is necessary for the normative acts of lower ranks than the law to be also abrogated and reworded in line with the new regulation.

D. The Principle of Accessibility and Means Parsimony in Normative Drafting

This principle directly brings into discussion elements underlining the contribution of legislative technique means in the normative act's physiognomy. The content of the juridical norm, the way in which its structural elements combine, the clear, unequivocal nature of the text, are always evidences of the lawgivers' talent. The lawgiver should consider that the addressees of the juridical norms are people of various cultural levels, of different capacities of receiving a normative message, and that the concrete carrying out of life relations could lead to difficult situations in applying the norm. Its art arises from creating norms which could mitigate such difficulties.

The main prerequisites in fulfilling this principle are the following:

a) selecting the exterior form of the regulation;

b) selecting the modality of juridical regulation;

c) selecting the conceptualization proceedings and the norm's language.

a) Selecting the exterior form of the regulation is a legislative technique prerequisite because of the regulation's external form its value and juridical power depend, as well as its position in the normative acts' system, its correlation with the other normative acts etc. Depending on the regulating area, on the nature of the relations subjected to regulation, the lawgiver will decide upon the exterior regulation form. Thus, if the relations to be put in a legal form are part of what is referred to as "law area", it is mandatory for such to be legally regulated by means of a law, and not by another normative act.

b) Selecting the modality of juridical regulation – refers to the lawgiver's option regarding a certain way of imposing the behavior prescribed by the law subjects norm.

As we know, a juridical norm can imperatively (prohibitive or imposing) regulate a certain conduct, it can allow the parties to decide upon their conduct or it can stimulate the subjects in adopting a certain conduct. In the same time, the regulation modality is different from one norms category to the other.

The lawgiver deliberately decides upon a sort of conduct or another, for a regulation method or another, depending on the specific of the social relations, on the features of the subjects taking part in such relations, on the nature of the interests to be satisfied and on the value related significance of the provisions.

c) The prerequisite of legal norm accessibility and means parsimony is put into practice by using certain conceptualization proceedings and adequate language.

This prerequisite directly refers to: designing the norm, comprising structural elements in the norm, setting out the behavior type, the juridical style and language. The law norm is the result of abstracting process, the direct consequence of a complex evaluation and valorizing operation regarding the social relations. Without referring to concrete cases, but to general hypothesis, the norm cannot be descriptive, but it necessarily operates with a series of concepts, categories, definitions, etc.

Taking into account that most times the norm refers to regulating a future conduct, it must delimitate social relations and categories of potential participant subjects. These will be valuable for as long as they correspond to the social needs and they must be reformed, modified when they no longer correspond to those needs.

Another construction of the juridical norm is represented by *fictions* and *presumptions*.

Juridical fiction is a technique proceeding according to which a certain deed is considered as existent or established, although if it has not been established or if no reality exists[3]. Fiction replaces a reality with another inexistent one. For instance, the situation in which a person is declared permanently incapable, although cases exist when that person is capable, and he has lucidity moments, yet by a fiction the said is deemed as permanently incapable. The conceived child is deemed as already born, and represents a law subject in respect with its right.

Presumptions are in their turn technical proceedings used by the lawgiver in juridical constructions. Art. 1199 of the Civil Code defines presumptions: "*consequences drawn by the law or by the magistrate from a known deed to an unknown deed*". In certain situations, the lawgiver assumes that something, without having been proven, really exists. For instance, the presumption of law knowing, upon its consequence: *nemo censetur ignorare legem* (one cannot excuse oneself by invoking not-knowledge of the law); the paternity presumption, according to which the assumed father of the child is the mother's husband etc. Another aspect regarding the prerequisite of juridical norm accessibility is its *style* and *language*. The juridical language is by excellence a specialized, institutionalized language [4]. It has been acknowledged that the juridical language is a special preferential language, in the sense that it provides a behavior model

[3] **M. Djuvara**, quoted paper, vol. lI, p. 457

[4] **A. Stoichiţoiu**, *Juridical Style in Contemporary Romania* (Romanian: *Stilul juridic în România contemporană*), PhD thesis abstract, University of Bucharest, , 1984, p.6

of a certain pattern, considered as preferable in respect with its usefulness and public interest, compared to another type of behavior. The text of juridical norm should be characterized by maximum clarity, precision, concision and stereotype nature.

As institutionalized language, the juridical normative acts' language is governed by pragmatic rules; in its evolution it follows a specialization and modernization process on all levels (textual, syntactic and lexical-semantic).

In drafting the normative act text the lawgiver will have to use largely utilized terms, by avoiding neologism and regionalism. The phrase construction and complexity will rank second after the demand for correct and easy understanding of the text by any subject[5].

The law terminology should be constant and uniform. This demand refers both to the content of a single normative act, in which certain norms are comprised, and to the legislation global system, which should be characterized by terminological unity. A legislation's terminological unity creates both the conditions for the subjects to clearly understand the law's message (the normative commandment), and also the possibility of introducing a legislative information system.

In the normative act text the use should be avoided of words (expressions) which are non-functional or of those with ambiguous sense.

4. Constitutive parts of the normative act

A normative act is usually composed of the following parts: reasons description, title of the normative act, preamble and introductive formula, general provisions or principles, content provisions, formal and transitory provisions.

Reasons' description accompanies extremely important normative acts. It comprises a brief description of the normative act, of the conditions having lead to its apparition, of the purposes pursued by adopting that normative act.

The title of the normative act is its identification element. It should be short and suggestive (it should clearly express the content of the normative act).

The preamble of the normative act comprises an introduction, a briefing of the subjects regarding the social-political grounds for the lawgiver's intervention. This part is not mandatory, and appears in normative acts of particular importance.

The introductive formula comprises the constitutional or legal grounds for the regulation. Under this part there are institutionalized the competence norms for the body issuing that particular normative act.

The general provisions comprise those provisions by means of which there are identified the object, purpose, area of the regulated relations, some terms definitions etc.

The content provisions actually form the content of the normative act. In this part there are included the rules setting forth rights and obligations, a certain behavior is stipulated, unfavorable effects are regulated in case of breach of the imposed conduct.

The formal and transitory provisions comprise provisions regarding: the regulation's enforcement, its coming into effect, the relations with pre-existent regulations etc.

Normative acts can also comprise Appendixes, representing integrant part of the

[5] **I. Mrejeru**, quoted paper, p.101; **V.D. ZIătescu**, quoted paper, p.127

law and having the same juridical power. Their need arises from the fact that by their content organizational charts, tables, drawings, statistics etc. are illustrated.

5. Structural elements of the normative act

The juridical norm, with its internal structure, is comprised in the articles of the normative act. The structural element of the normative act is the *article* (as well as the juridical norm represents the basic cell of the law). The juridical norm's content is variously illustrated in the normative act's articles. The article usually contains a single individual provision. Cases exist, however, when in the normative act an article comprises a single norm or, on the contrary, a norm is comprised in more than one article. In the same time, the various components of the juridical norm's logical structure (hypothesis, provision, sanction) can be found in various articles. For such reason, the juridical norm cannot be identified with the normative act's article. It would be ideal for each article in the normative act to comprise a single rule (norm), along with all features characterizing it. These features should be worded in such a manner as to express as complete as possible the juridical norm and to precisely delimitate its content compared to the other norms in the normative act. In a good legislative technique the articles of the normative act should be created in close connection, and the structuring into articles should be made in a logical presentation order. The complexity of the regulation is imposed by the nature of social relations. For this reason, the article is subdivided sometimes in paragraphs and letters. Articles are numbered by Arabian numbers. In the case of normative acts amending the regulation of other normative acts, the Roman numbers are used. Usually, letters and paragraphs are not numbered. In case of very important normative acts (the Constitution, the Codes), articles also have marginal notes, rewording in synthesis the content of that respective article.

When in a normative act new articles are included without modifying the old numbering of the normative act, the method is used of introducing indexes.

For a better systematization of the normative act, its articles can be grouped into sections, chapters, titles. Some codes are structured in parts (general part and special pat). Sections, chapters, titles have names evoking in short the content of their provisions. In case a normative act refers to provisions in another already existent normative act, the first mentioned one will not quote the provisions in the pre-existent normative act, but it will only mention its provision by a *see* norm.

6. The technique of systematizing normative acts

The variety of normative acts imposes the need to systematize them. The systematization of normative acts is determined by the need of organizing them grounded on precise criteria, for the purpose of a good knowledge and application of the juridical norms in the social relations.

The main forms of systematizing the normative acts are: *inclusion* and *codification*.

A. Inclusion

Inclusion is an inferior (initial) systematization form and it refers to simply sorting the normative acts by external criteria – chronologically, alphabetically, per law areas or legal institutions etc. Such a systematiza-

tion form can be *official* or *unofficial*. It is an official inclusion the one made by law bodies (for instance: law collections, decrees, periodically published decision, collections combining the chronological criterion with the one regarding the normative act's legal power). Besides those collections, private individuals can also create normative acts compilations (in the form of legislative guidelines).

In such inclusions the normative material is not processed, the juridical norms comprised in collections or compilations are not modified (only certain material errors or potential grammar mistakes are corrected).

B. Codification

Codification is a superior form of systematization. It implies the inclusion into a code (normative act having the legal power of a law) of the juridical norms referring to the same law area. The codification action involves large activity for the lawgiver, complex processing of the entire normative material, removing overdue, obsolete norms (including habits), filling in gaps, legislative novelty (introducing new norms, requested by the social relations evolution), logical structuring of the normative material and using modern legislative technique means (selecting the regulation modality, the external regulation form, the use of adequate conceptualization means).

Codification is a superior systematization form performed by the lawgiver, as it is always grounded on the general principles of law system and of a law area, attempting to reflect into a single act of unitary content and form, as complete and coherent as possible, all juridical norms in a particular law area (civil law, criminal law, financial law etc). Although its juridical power is equal to a law's, the Code is not a common law, but it is a unique legislative act, with specific internal organization, in which juridical norms are structured upon a stringent logical consecutive order, by a well designed system, reflecting the internal structure of that particular law area.

Four groups of factors are included into a code: political, economic, ideal and juridical.

A code's qualitative conditions are: clarity, precision, presentation integrality, practical nature, logic, style beauty etc.

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