

RESEARCH ARTICLE:

Regulatory Quality Standards

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ABSTRACT

Man is a very complex social product. Individuals of the human species acquire language, culture, values, and norms of behaviour through socialization under the influence of social factors such as family, school, group of friends, macro-selectivity. People learn to shape their responsiveness to social stimuli and acquire a style of relationship with others, a role that corresponds to their status, their social position¹.

The research conducted is dedicated to the analysis of the regulatory quality standards.

The research develops important aspects related to: legal order, the regulatory quality standards and better regulation policies.

KEYWORDS: *legal order, standards, regulatory quality, policies, better regulation*

¹Mihaila, A. 2003. *Legal Sociology, course support* Babes-Bolyai University, Cluj-Napoca, Romania, pp.25-26.

1. Introduction

Legal order

In the 10th Book of Nicomachic Ethics, Aristotle says that "it is difficult to receive from your childhood a correctly oriented guidance to virtue unless you are educated according to the right laws, for a sober and firm life is not in the likeness of the crowd, and especially of youth. That is why the life style and the occupations of young people must be regulated by laws: turning into habit, they will cease to be difficult to bear"². Hans Eysenck's concern was the issue of personality. Eysenck starts from Pavlovian theory, considering man essentially as a being who learns, acquires new skills and knowledge that changes his attitudes and behavior³. This theory explains the role of environmental factors on people's behavior. Although people are born with certain personality traits, character can be influenced in such a way that the negative predispositions are not effective.

Social life, relations and the activity through which it is carried out has been and is governed by rules and norms of a great variety and complexity: moral, religious, ethical, economic, ecological, political, sanitary, sports etc. and not least legal. All of these rules give society that characteristic of being an existence subjected to social normality without society could not exist. The set of legal norms in the society - which forms the law - confers on society and that characteristic to be legally normalized⁴.

The normative order of the democratic states places legality at the rank of

fundamental principle upon which public activities are carried out and, at the same time, constitutive value of the rule of law. The importance of the principle goes beyond the scope of law, knowing the field of application, its limits and its determinations being of interest to the social sciences in general⁵.

On the other hand, the set of rules draws a certain social behaviour, attitudes and behaviour. Responsibility for awareness and predicting the impact that laws have on the conduct of people rests with the norm. This responsibility implies a high degree of professionalism, vigilance and integrity.

The specificity of legal rules derives precisely from the root they have, from where they are from the same social space, linked and interdependent: "every state of law is always the element of a system, a whole of a complex order"; By order, we can understand a certain mode of action and a social enterprise, a manifestation of authority. However, the rule of law is essentially imperative: it intends to obtain a ban on certain behaviours from its recipients and the binding force whose advantage gives it an irresistible constraint power "The legal order symbolizes the social order" indicating to all members of society that "are part of a coherent, rational whole, where each has its own place, has a status"⁶. In another way, the rule of law can be asserted as an actuarial limitation of the free manifestation of the will of the person. The behaviour of a person is expressed in acts and deeds only in accordance with what the state requires as a way of political organization by its will or at least only such expression is or would be correct in

²Pohoata, G. 2008. *The Philosophical-Legal Thought in Texts*, Bucharest, Romania: Pro Universitaria Publishing House, pp.57-58.

³Petcu, M. article *Characteristics of delinquent personality*, in *Fiat Justitia* magazine no. 2/2012 available at <http://fiatjustitia.ro>.

⁴Sida, A. and Berlingher, D. 2007. *The General Theory of Law*, 3rd Edition, Revised, Arad, Romania: "Vasile Goldis" University Press Arad, pp.28-29.

⁵Balan, E. 2018. *Article Considerations on Administrative and Judicial Control of Administrative Action in Administrative Coding Volume. Doctrinal approaches and practical requirements*, Bucharest, Romania: Wolters Kluwer Publishing House, p.208.

⁶Chevallier, J. 1983. *L'Ordre Juridique en Le droit en procès*, PUF, pp. 7-8.

relation to the head of the legislature, by logical consistency, legal sanction⁷.

Over time, the need for cortical force to ensure the fulfilment of collective goals and interests has been identified. People have felt the need for an entity that maintains a balance. This entity originally had divine origin, nowadays materializing in the state.

In a democracy, the legal order includes the Constitution, laws, regulations, treaties, conventions, decrees, jurisprudence, etc. It is dynamic, ie it may vary over time to suit the needs of the population. Components of the legal order are interdependent. They are organized and coordinated within a hierarchy of standards. In the specialized language, legal order is the set of rules of law that regulate the life of individuals in society⁸. Legislation is the preferred path, the primary and permanent dimension of legal prevention and social macro protection. The art of doing good laws, if it is well exercised, infallibly leads us to the art of good leadership and organization⁹.

Consequently, the drafting of a text should not be done in a hurry just to avoid the occurrence of mistakes, ambiguities. It is also very important to verify the updating and consolidation of the rules on the basis of which or in connection with which a new text is to be drafted. In order to facilitate the understanding of a text by all those interested, it is essential that the sentences, words, and constructions be simple, clear, precise, concise, and give an appropriate comment when the text imposes it. They have to clearly distinguish the rules from their comments, and the

placement of the rules is in a logical order. For example, when new rules are introduced into the device, the general provisions, the special provisions, the provisions on control of the new rule and the possible penalties are shown successively. Choosing the right words involves the use of precise words that accurately reflect the intention¹⁰.

2.Regulatory quality standards

Within the public institutions involved in the legislative procedure, the Legislative Council is one of the most important actors on the legislative stage because it intervenes before the debate and the adoption of the law. And in this respect, it is necessary to use a unitary methodology, which aims at ensuring the quality of the legal norms, guaranteeing the creation and maintenance of a coherent and stable legislative system¹¹. Observance of these purposes is likely to give effect to the provisions of Art. 79 paragraph (1) in conjunction with Article 1 paragraph (5) of the Romanian Constitution¹², republished.

During the year 2016, the Legislative Council was notified with 1362 draft normative acts and requests for republishing / rectification, submitted for approval, as follows¹³:

-from the Government - 900 (out of which: 86 draft laws, 33 draft ordinances,

¹⁰Conseil d'État Belgique, 2008. *Principes de Technique Legislative - Guide de rédaction des textes législatifs et réglementaires*, Bruxelles, pp.4-7.

¹¹Report on the activity carried out by the Legislative Council in 2016 in the *Legislative Information Bulletin no. 3/2017*, Bucharest, Romania: Official Monitor Printing House R.A., p.3.

¹²Art. 79 alin.(1): "The Legislative Council is a specialized consultative body of the Parliament, which approves draft normative acts for the purpose of systematization, unification and coordination of the entire legislation. He keeps the official record of Romanian legislation" and Art.1 alin.(5): "In Romania, observance of the Constitution, of its supremacy and of the laws is mandatory".

¹³Report on the activity carried out by the Legislative Council in 2016, Chapter II Approval activity of draft normative acts, available on the website <http://www.clr.ro/InfoPublic/rapActiv.aspx>.

⁷Moroianu, E. GH. Article *Concept of legal order*, in the Romanian Studies Law Review no. 1-2/2008, pp.33-35.

⁸Picotte, J. *Juridictionnaire, réalisé par le compte du Centre de Traduction et de Terminologie Juridiques, Actualisé au 8 février 2018*, Faculté de droit Université de Moncton, p. 2141.

⁹Le May, D. 1980. *Pour un manuel de légistique. Les Cahiers de droit*, Éditeur Faculté de droit de l'Université Laval, pp.995-997.

114 draft emergency ordinances, 530 draft decisions, 137 requests for updating reprints and rectifications)
-from the Senate - 410 legislative proposals;
-from the Chamber of Deputies - 44 (of which: 41 legislative proposals, 3 amendments to draft laws and legislative proposals);
-from the Competition Council - 5 draft regulations and instructions;
-Citizens - 3 citizens' legislative initiatives.

By categories of draft normative acts and other requests for endorsement, the 1332 opinion issued in 2016 is as follows:

-85 for draft laws;
-32 for draft ordinances;
-114 for draft emergency ordinances;
-522 for draft Government decisions;
-498 for legislative proposals;
-2 for amendments to draft laws;
-5 for draft regulations and instructions;
-71 for rectification and republication requests;
-3 for citizens' legislative initiatives.

According to the report on the activity carried out by the Legislative Council in 2016, there is a tendency in Romania to legislate much. It is to be seen whether this trend is due to the fact that the current legislation does not cover¹⁴ all legal relationships, whether it is legislated because the current laws have to be harmonized with the novelties that could

not be foreseen at the time of drafting the law or because the current legislation did not meet the quality criteria since he was born.

The need to improve the drafting of legislation, ie to make clearer and simpler texts in line with good practice in legislative technique, has been recognized at the highest political level ever since the Edinburgh European Council (1992). The Council and the Commission have taken a number of measures to address this need¹⁵. This was reaffirmed by the Declaration no. 39 on the quality of drafting of Community legislation annexed to the Final Act of the Treaty of Amsterdam. Following that declaration, the three institutions which participated in the procedure for the adoption of Community acts, the European Parliament, the Council and the Commission, adopted, in the Interinstitutional Agreement of December 22, 1998¹⁶, common guidelines aimed at improving the quality of drafting Community legislation, namely¹⁷:

1. Legal acts shall be drafted in a clear, simple and precise manner.

2. Drafting of U.E. is appropriate to the type of act in question, and in particular its obligation or non-binding nature (regulation, directive, decision, recommendation or other type of act).

3. The drafting of acts shall take account of the persons to whom it applies, in order to enable them to identify their rights and obligations without ambiguity,

¹⁴Balan, E. 2018. Bucharest, Romania: Wolters Kluwer Publishing House art. "Considerations on Administrative and Judicial Control over the Opportunity of Administrative Documents" in the Administrative Coding volume. "Doctrinal approaches and practical requirements on Administrative and Judicial Control on the Opportunity of Administrative Documents" in the volume Administrative Codification. Doctrinal approaches and practical requirements, p.217, "The appreciation of the moment and the extent of intervention by legal norms on the specific social relations, the opportunity, can be related to different forms of the decision made in the activity of lawmaking or in the activity of organizing the execution and execution in concrete of the law".

¹⁵European Council: Resolution of 8 June 1993 on the quality of drafting Community legislation (JO C 166, 17.6.1993, p.1). Commission: General guidelines for legislative policy, SEC document (1995) 2255/7 from 18 January 1996.

¹⁶Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (JO C 73, 17.3.1999, p. 1).

¹⁷*Guide to the drafting of legislative texts* drafted by the European Parliament, the Council of the European Union and the Council of Europe, the Publications Office of the European Union, Luxembourg, 2015, pp.6-7; 10-13.

as well as the persons responsible for the implementation of the acts¹⁸.

4.The provisions of the acts are concise and their content should be as homogeneous as possible. Excessively long articles and texts, unnecessarily complicated formulation and excessive use of abbreviations should be avoided.

5.Throughout the process of adopting them, the draft acts are written using a terminology and phrase logical structures that respect the multilingual character of.E. U; the concepts or terminology specific to a national legal system should be carefully used.

6. Terminology used in a particular act is consistent both within the same act and with acts already in force, especially in the same field. The identical concepts are expressed in the same terms and, as far as possible, without deviating from their meaning in common, legal or technical language.

7.All acts of general application shall be drafted according to a standard structure (title-preamble-instrumental-annex, if necessary).

8.The title of an act includes an as brief and complete as possible indication of the subject, which does not mislead the reader with regard to the content of the device. Where appropriate, the full title of an act may be followed by a shortened title.

9. The purpose of the references is to indicate the legal basis of the act and the main steps of the procedure that led to its adoption.

10.The purpose of the considerations is to pre-empt the concise reasons justifying the main provisions of the enacting terms without reproducing or paraphrasing them. They do not contain normative provisions or political statements.

11.Each consideration is numbered.

12.The provision of a binding act does not contain non-normative dispositions such as desiderata or political statements, nor dispositions reproducing or paraphrasing passages or articles of the Treaties or confirming the legal disposition in force. The acts do not have dispositions that announce the content of other articles or repeat the title of the act.

13. Where appropriate, an article is inserted at the beginning of the device part to define the subject matter and scope of the act¹⁹.

14. When the terms used in the act are not unambiguous, they should be defined together in a single article at the beginning of the act. The definitions do not contain autonomous normative dispositions.

15. The provision part shall, as far as possible, be drawn up according to a standard structure (subject matter and scope - definitions - rights and obligations - dispositions on the delegation of powers and conferring implementing powers - procedural dispositions - implementing measures - transitional and final dispositions). The enacting part is subdivided into articles and, depending on its length and complexity, in titles, chapters and sections. When the article contains a list, it is necessary to distinguish between each item in the list, preferably by a number or a letter, preferably a dash.

16. It is necessary to avoid, as far as possible, references to other acts. The references indicate precisely the act or provision to which they refer. Cross references) reference to an act or an article referring to the original disposition) and cascade references (reference to a disposition which refers to another disposition) are also to be avoided.

17. A reference from the enacting terms of a binding act to a non-binding act

¹⁸*Guide to the drafting of legislative texts* drafted by the European Parliament, the Council of the European Union and the Council of Europe, the Publications Office of the European Union, Luxembourg, 2015, pp.14-37.

¹⁹*Guide to the drafting of legislative texts* drafted by the European Parliament, the Council of the European Union and the Council of Europe, the Publications Office of the European Union, Luxembourg, 2015, pp.40-64.

does not have the effect of binding the latter. If the authors of the act wish to make the content binding- wholly or only partially- to the non-binding act, its text should be reproduced, as far as possible, as part of the binding act.

18. Any amendment to an act is clearly worded. Changes take the form of a text that is inserted in the act to be modified. It is preferable to completely replace the dispositions (article or one of its deductions) rather than the introduction or deletion of sentences, phrase words or words. An amending act does not contain autonomous dispositions that are not inserted in the amended act.

19. An act which does not essentially concern the amendment of another act may, at the end, include amendments to other acts resulting from the innovating effect of its own dispositions. When the amendments are significant, a separate act of amendment should be adopted²⁰.

20. Dispositions laying down dates, deadlines, exceptions, derogations, protocols and transitional dispositions (in particular those concerning the effects of the act in relation to existing situations) and the final dispositions (entry into force, transposition deadline and timely implementation of the act) is written in exact terms. The dispositions on the deadlines for the transposition and application of the acts provide for a date expressed as day / month / year. In the case of directives, these data are expressed in such a way as to guarantee an appropriate period for transposition.

21. Acts and provisions which have become defective are subject to an express repeal. Adoption of a new act should result in the explicit repeal of any act or provision that has become inapplicable or has

become devoid of purpose under the new act.

22. The technical elements of the act are included in the annexes, which are referred to individually in the enacting terms of the act. The annexes do not include any other right or obligation that has not been stated in the enacting terms. The annexes are drafted according to a standard structure.

3. Better regulation policies

The Better Regulation policy principles relate to actions aimed at the active body of legislation, the process of initiating, implementing and monitoring regulations, as well as the capacity to implement these initiatives at central government level, and those are²¹:

Transparency - Ensuring transparency in the process of initiating, implementing, monitoring and evaluating regulations is the engine of better regulation policies. Information and participation of citizens in this process is a prerequisite for ensuring an adequate regulatory framework;

Proportionality- Consists in adapting types of regulatory initiatives to identified policy issues;

Regulatory Impact Assessment - This principle refers to the need to carry out analyzes prior to the adoption of initiatives that provide data on their potential socio-economic or environmental consequences. This principle, specific to the functioning of a public administration in a democratic state, is correlated with the principle of ensuring that public consultations take place. Identifying the impact of regulations is not, according to this principle, a procedural / administrative approach attached to the process of adopting initiatives but the expression of ensuring transparency in public administration;

²⁰ *Guide to the drafting of legislative texts* drafted by the European Parliament, the Council of the European Union and the Council of Europe, the Publications Office of the European Union, Luxembourg, 2015, pp.64-75.

²¹ Better regulation strategy, 2014-2020, p.16.

Appropriate conduct of the consultation process - The consultation process must be proactive from public administration institutions with the right to initiate regulations in various policy areas. The consultation process must take place throughout the process of initiating, implementing, monitoring and evaluating regulations;

Simplifying legislation-maintaining a simple and easy-to-understand legislative body helps to increase the efficiency and effectiveness of implementing public policies that are subject to regulation.

The overall objective is to improve the quality of public policy implementation instruments represented by regulations (normative acts, procedures, etc.) as well as the process of initiating, adopting, implementing and evaluating them, the specific objectives being:

1.Simplification of the active foundation of legislation - simplification of legislation, measurement of administrative costs, simplification of procedures, improvement of position papers on European legislation;

2. Increasing the quality of regulation flow - substantiating normative acts, the quality of the consultation process, but also the implementation of the community legislation and the development of the administrative capacity for carrying out the corresponding activities;

3.Developing the administrative capacity to implement Better Regulation policies²².

The principles and objectives of public policies on better regulation aim to ensure the quality of regulation is improved, ie improving the normative act. The rationale for these efforts is that they are designed and implemented in order to solve some problems of citizens' interest.

4.Conclusions

Hans Eysenk showed the impact and role of environmental factors on people's behavior. Although people are born with certain personality traits, character can be influenced in such a way that the negative predispositions are not effective. Society is responsible for the conduct it intends to promote, legislation being one of the factors of influence.

The set of rules draws a certain social behaviour, attitudes and behavior. Responsibility for awareness and predicting the impact that laws have on the conduct of people rests with the norm. This responsibility implies a high degree of professionalism, vigilance and integrity.

The quality of regulation derives from the principle of the pre-eminence of law and, implicitly, from the principle of legal certainty. Clarity, consistency, predictability, accessibility are the goal and essential criteria of a qualitative regulation. Observance of these purposes is likely to give effect to the provisions of Art. 79 paragraph (1) in conjunction with Article 1 paragraph (5) of the Romanian Constitution, republished.

According to the report on the activity carried out by the Legislative Council in 2016, there is a tendency in Romania to legislate much. It is to be seen whether this trend is due to the fact that the current legislation does not cover all legal relationships, whether it is legislated because the current laws have to be harmonized with the novelties that could not be foreseen at the time of drafting the law or because the current legislation did not meet the quality criteria since he was born.

Clear, simple, precise drafting is one of the imperative conditions for ensuring legal certainty. Failure to comply with this minimum criterion may have unwanted consequences, both at the individual and at social level, such as the principle of *nemo censetur ignorare legem*, applicable also in

²²Better regulation strategy 2014-2020, p.17.

Romanian criminal law, according to which ignorance or mistaken knowledge of the law does not remove the obligation to respect its provisions. In other words, no one can invoke the ignorance of the law in his defence, the ignorance of the norm or the error in, this still attracts the guilt and criminal nature of the act, because every citizen has an obligation to become aware of the law. Consequently, in order for the law to be respected, it is necessary to understand precisely the text of the law.

Also, the quality, frequency and profile of the regulation indicate the level of performance of public administration and its capacity to initiate, substantiate and implement public policies. Initiatives underlying this policy are aimed at providing the premises for sustainable socio-economic development. Better regulation policies are a condition for good governance in terms of efficiency, effectiveness and the level of democratization²³.

Standards of the rule of law claim not only compliance with the formal letter and the spirit of the law, but also the interpretation and extension of its application to a vision that puts man and his rights in the center of power, a vision to stimulate democratic participation in the exercise of power, ensure good governance and its good management component²⁴.

²³Better regulation strategy 2014-2020, p.6.

²⁴ Balan, E. 2016 article Towards a new administrative procedure identity. Standards and principles of good administration in volume Non-contentious administrative procedure, Bucharest, Romania: Wolters Kluwer Publishing House, pp.17-18.

REFERENCES

1. Balan, E. 2018. *Considerations on Administrative and Judicial Control over the Opportunity of Administrative Actions*, in the Administrative Codification volume. Doctrinal approaches and practical requirements. 2018, Bucharest, Romania: Wolters Kluwer Publishing House.
2. Balan, E. 2016. *Towards a new identity of the administrative procedure. Standards and Principles of Good Administration*, in the Volume Non-contentious Administrative Procedure, 2016, Bucharest, Romania: Wolters Kluwer Publishing House.
3. Better regulation strategy 2014-2020.
4. Chevallier, J. 1983. *L'Ordre Juridique*, in Le droit en procès, PUF.
5. Conseil d'État Belgium. 2008. *Principes de Technique Legislative - Guide de rédaction des textes législatifs et réglementaires*, Bruxelles, Belgium.
6. Constitution of Romania republished.
7. Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (JO C 73, 17.3.1999).
8. European Commission: Resolution of 8 June 1993 on the quality of drafting of Community legislation (OJ C 166, 17.6.1993, p. 1) . Commission: General guidelines for legislative policy, SEC (1995) 2255/7 of 18 January 1996.
9. Guide to the drafting of legislative texts drafted by the European Parliament, the Council of the European Union and the Council of Europe, Publications Office of the European Union, Luxembourg, 2015.
10. Le May, D. 1980. *Pour un manuel de légistique. Les Cahiers de droit*, Éditeur Faculté de droit de l'Université Lava.
11. Mihăilă, A. 2003. *Legal Sociology*, Cluj-Napoca, Romania: course support Universitatea Babeş-Bolyai.
12. Moroianu, E. Gh. *The concept of legal order*, in the Romanian Law Studies journal nr. 1-2/2008.
13. Petcu, M. *Characteristics of the delinquent personality*, in Fiat Justitia magazine no. 2/2012.
14. Picotte, J. *Juridictionnaire, réalisé par le compte du Centre de Traduction et de Terminologie Juridiques*, Actualisé au 8 février 2018, Faculté de droit Université de Moncton.
15. Pohoată, G. 2008. *Philosophical and Legal Thought in Texts*, Bucharest, Romania: Pro Universitaria Publishing House, Bucharest.
16. Report on the activity carried out by the Legislative Council in 2016 in the Legislative Information Bulletin no. 3/2017, Printing House "Official Gazette" R.A., Bucharest.
17. Sida, A., Berlingher, D. 2007. *The General Theory of Law*, 3rd edition, revised, Arad, Romania: "Vasile Goldiș" University Press.

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