THE PROCESS OF CREATING THE LAW - THE STYLE OF THE LEGISLATIVE ACT

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Abstract

The mechanism of drafting a regulatory document is part of the complex process of creating and developing the law. In this process, the operation of developing a regulatory document is subsequent to the approach of establishing the legal concepts and notions, and especially the rules and rigors of law. In this fundamental stage, it is necessary and useful to found the word, the phrase and the expression formula of legal or non-legal concepts which can make possible the drafting of the rules of law. The word and formula of combining words or expressions are aimed at setting up the necessary mechanisms for the communication of all the concepts, norms, regulations, rules and legal reasoning, fundamental in the presumption of knowledge of the law. The essential concern of the person effectively drafting the regulatory document is to achieve a structure as comprehensive as possible that confers the architecture of that document a full integration into the legislative system, while achieving some individual regulatory prescriptions capable of integrating into the system of the law and the specific legal order. In accordance with the standards and rigors of the legislative technique, the requirements of the wording of the legislative solutions, in order to be better understood by those who apply the law, but also by the litigants, define the style of a regulatory document.

Key Words: *law; regulatory document; rules of law; legal order; legislative system.*

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As a social science in permanent evolution, the law continuously needs new terms that it can find in the daily language. The need and desire for innovation, even if not always triggered by logical justifications, cannot replace or eliminate what tradition has proven as an asset obtained for good in the general interest of the persons, the subject to legal proceedings and according to their will. (Rousseau, 2013: 101).

As a practical science as well (Popescu, 2000: 10), the law must be served every day, and this is not possible without the help of a terminology understood by everyone, a terminology that may provide legal safety in any law system. For this purpose, legal concepts must be precise and clear without avoiding the nuances so necessary in the process of enforcement and provision of justice. As a creation of social life, the legal language must take into consideration the evolution of social reality and to exclude the terminological realities that may generate traps in understanding legislative acts and implicitly the law as an assembly of rules and regulations created with the aim to civilize.

From the perspective of the desirable human behaviour, the authentic knowledge of law is the one organically continues into the positive action of fulfilment of the legal normativeness. (Butculescu, 2011: 97)

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In the process of law provision, when we choose and analyze a rule of law we must tackle with two aspects: the logical-legal structure and the technical-legislative structure. The issue of a similarity between the style of the rule of law and that of the legislative act may be discussed only in terms of the second aspect.

The main attention of the institution drafting a legislative act is paid to the obtaining of a very precise construction that may give the architecture thereof an as full as possible integration into the legislation system simultaneously with the creation of some provisions and customized legislative clarifications that might be integrated into the complex system of law. (Tutunaru, 2014: 407) The unity between the construction of the rule of law and the construction of the legislative act must dominate the entire operation of creation of law in any system of law.

As for the form of drafting legislative acts, the postulate according to which the creation of rules of law focuses on the establishment of some future conduct rules for the participants to the social relations comes into prominence from the very, (Montesquieu, 2011: 18) beginning. These legal commandments are determined by political objectives – the guarantee of fundamental rights and freedoms, the provision of social order, the obtaining of budgetary income, the distribution and redistribution of the national income, etc. – facts that can affect positively or negatively the life standard of the recipients of the rule of law (Friedmann-Nicolescu, 2015: 78) under the sanction provided by the rule of law in force. Subject to the requirements of the legal arrangement, the rules instituted by the legislative acts focus on a certain modelling of social relations through mechanisms that turn these relations into legal relations and, this way, into the establishment of instruments that create, stimulate, amend or annul them according to the goal followed by the legislator.

Starting from the political objective that is going to be attained through the legislative act, they proceed to the inventory of the legislative solutions envisaged. The legislative solutions determined this way fall into the interior order specific to the architecture of the legislative act. These solutions need to be assembled in legal rules that may meet the objectives sought by the elaboration of the legislative act. The exigencies of this manner of formulation of the legislative solutions are expressed in what the Law on legislative technique standards no. 24/2000 calls *the style of legislative acts.*

From this legal terminology, we may understand that this is not a matter of a certain style of the rule of law but a style specific to the very creation of the legislative act.

Thus, the definition of (Voyame, 1991: 87-88) the *legislative act style* might be *the totality of artifices and methods underlying the elaboration and drafting of legislative acts*.

In the European literature, the *legislative style* means *the assembly of features of the form of the legislative texts*. But the same author shows that this style is not identical in all the legislative systems. Thus, in continental Europe the legislative style deals more with principles and seeks clarity, concision and simplicity. It goes without saying that the precision thereof must not affect the quality.

In the autochthonous literature (Zlatescu, 1995: 66), they say that there is not only on legislative style which is generally valid, but there is in fact a plurality of styles. Thus, we may encounter a style specific to the private law, but which has special particularities in the legislative acts related to labour and social protection relations, another style in the criminal law and another one in the administrative law.

The law on the legislative technique rules approaches in a distinct article (*Law on legislative technique standards no. 24/2000, art.8.*) the *issue of the style of legislative acts*. This article specifies in four paragraphs *rules* regarding the provision of *intelligibility* of the rules of law, *the use of neologisms, specialized terms, regionalisms and other instruments necessary to achieve such drafting of the legislative acts* that may allow the easy understanding of them by the recipients of the legislative acts, namely the persons, the subjects to legal proceedings.

As for the provision of intelligibility of the rules of law, legislative acts must be written in a concise austere clear and precise style that may exclude any ambiguity in strict compliance with the grammar and spelling rules. (*Law on legislative technique standards no. 24/2000, art.36, para.1.)*

The concise style refers to the principle of economy of mans meaning not only wordings in few words but also the avoidance of certain insignificant ideas or the repetition thereof in new variants by which something unimportant or insignificant is added. Besides the avoidance of some redundant statements, the *concise style* also means the use of some words having a high level of abstraction so that to cover a very large area of phenomena that are going to fall within the scope of the future legislative act by a very low number of words.

As for the *austere style* of the legislative act, this means the elimination of phrases, comparisons, personifications, hyperbolae or metaphors from the structure of the act in question to ensure an efficient communication and well understood (Butculescu, 2014: 22-23) between the legislative system and the person subject to the legal proceedings. These means of artistic expression are useful in literary works and they must not make the object of the style of legislative act which must use words in their basic meaning or in their most widely used variant as much as possible. An example may be taken from the Constitution which stipulates that "Citizens are equal before the law and the public authorities, without any privileges or discriminations". In this regulatory statement words are used in their basic meaning without stylistic expressions and aim to impose the principle of equality of citizens before the law by establishing the limits and connotations of such equality through the suppression of both faces of inequality: the provision of some more advantages as compared to other fellows or depriving others from the advantages that others enjoy and, at the same time, they establish the landmarks for equality in relation to the law and the public authorities.

As for the *clear and precise style* of the legislative act, this means the appropriate us of words in relation to their usual meaning and above all the manner of arranging them into sentences and phrases, in strict compliance with the grammar rules. (Mrejeru, 1979: 102)

Another characteristic of the legislative style is related to the *manner of using words in the drafting of legislative texts*. The basic rule that must be observed in this approach is the use of common language, and usual words from the daily language. But such a rule may not be observed everywhere. Thus, the legislator resorts to the legal terminology, neologisms or specialized words in default of other means of expression.

The use of *legal terminology* is useful to the legislator to provide the terminological unity of the legislative act and to give concepts and gal standards a very truthful form. Thus, in the drafting of legislative acts, the well-known legal concepts cannot be replaced by words close in meaning from the common language. Where they must use phrases such as natural person, legal person, contract, mortgage, pledge, termination, nullity, offence, they shall not resort to other words since there might be a doubling of the notions used in the law with negative effects on the observance, interpretation and correct enforcement of the rules of law.

In terms of terminology again, *when drafting legislative acts regionalisms must be avoided that may also affect the understanding of the content of the legislative act through the limited area of circulation*.

Another requirement of the legislative style is represented by the *provision of terminological unity of the drafted texts*. Accordingly, the use of a notion or a certain word in a legislative act must be made uniformly from one end to the other of the elaborated text. To meet such a requirement, a word may not be replaced by another within the content of a legislative act, even if the latter is the synonymous of the former. The use of different words to express the same notion may lead to confusion and ambiguity which oppose the determination of the unique meaning of the legal regulation.

If the legislator is forced to use in a law notions or words that do not belong to the current language (Maurer, 2010: 5) or to whom a different meaning is given than the consecrated one, they shall define such words and specify the meaning with which they are used within the content of the legislative act. (Bădescu, 2013: 132)There is already a series of laws which have defined the words used within the content of the new regulation and the meaning assigned to them in the chapter "General provisions" or in an annex to the law.

When using terms specific to a certain legal regulation, they may resort to abbreviations of certain names or terms, but only after they explained the content of the abbreviation at its first usage.

Conclusions

Therefore, the enforcement as well the provision of law is not and cannot be a simple mechanical activity as it requires an interpretation of the legislative acts at least for the following reasons: the rules of law form a system which should operate without any ambiguity; their enforcement involves diverse relations and reactions and the language and style of the legislative acts is a specific one, a fact that does not exclude the existence of some legislative acts drafted in a confusing manner or which are contradictory and very difficult to

understand. The importance of the existence of a style of the legislative act very well structured and drafted in a concise and unequivocal manner aims to provide justice, which is why legislative acts evolve continuously by ways that seem illogical most of the time. An interpretation of a legislative act that might lead to injustice due to the existence of a style very difficult to understand is not a good interpretation and cannot provide an efficient legal security for the persons, the subject to the legal proceedings so that the presumption of knowing the law may be only legal fiction hard to use in the mechanism of law provision and enforcement.

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