

REQUIREMENTS OF THE LANGUAGE USED BY THE LEGISLATOR IN THE CONSTRUCTION OF THE NORMATIVE TEXT. SPECIAL LOOK AT THE ROMANIAN LEGISLATIVE TECHNIQUE

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Abstract. Any law is the reflection of a thinking before it is the expression of a will. The law can have beneficial or negative effects at the time of its application, and it can be validated or rejected by social practise depending on the quality of this thought, how the legislative solutions are expressed in words, and how they are structured. Therefore, in normative construction, drafting is an extremely important stage and should start from the fact that the law intervenes to respond to a social need. The scientific knowledge of this reality and the choice of a language appropriate to the norm's recipients become necessary prerequisites for the normative act's intended outcome. With reference to the standards established by the norms of Romanian legislative technique in the area of language, this article discusses the rules that a lawmaker must follow in the development and structure of the content of the normative act starting from these considerations.

Keywords: legislative language, legal vocabulary, legislative technique, the structure of the normative act.

INTRODUCTION ON THE LEGISLATIVE LANGUAGE

The law is a result of the legislator's thinking and requires a high degree of typification and abstraction. Its development requires a complex process, constrained by complex realities, in which two equally significant and interrelated aspects are highlighted: the aspect connected to the understanding of the social realities to be governed and the technical, formal aspect. The latter concerns elements related to the structure of the normative act, the style, the language in which it is drafted, as well as the specific procedure for its adoption.

The effective translation of the legislation into language holds a specific place in this procedure since it is essential to upholding the originality of the legislator's ideas and intended solutions when carrying out the application activity.

In the old, specialized literature it has been shown that "At this stage it is necessary to find the word and the formula for expressing the concepts that would allow the expression of the rules of law. The word and the formula of expression constitute the absolutely necessary tools for the communication of legal notions, norms and reasonings" (Gény 1919: 119). The resources of the current language are at the disposal of the legal technician to develop the legal norm. The words from the ordinary language, by inserting in the formulation of a legal norm, change their nature, transforming into legal concepts, and their meaning constitutes an integral part of the norms to whose elaboration they contribute.

Thus, legal vocabulary is defined as a set of terms within a language that have in this language one or more legal meanings (Fiodorov 2018: 97-103). Legal texts are divided into chapters, sections, and articles to make the regulations contained therein more easily accessible. The language used in normative acts is part of the language of legal specialty. Emphasizing the relationship between law and language, English doctrine has shown that "Language is medium, process and product in the various arenas of law where legal texts, spoken or written, are generated in the service of regulating social behavior" (Maley 1994: 11). In addition, „the law is understandable to the recipient only if it serves their communicative needs. The coherence of the law is one of the conditions of the intelligible law" (Osiejewicz, 2020).

Legislative language is not only an external formula of the legislator's decisions, but it is a structured language, with its internal dynamics, with its own content and form. So, the language issue that the legislator should resolve is rather complicated. It seems incredibly difficult or very challenging to achieve the goal of translating the complexities of thought into a simple text that seeks to be used by everybody in the same manner. The rules of legal linguistics are usually used to achieve this goal (Duminică 2021: 7-18).

The word choice, the syntax, and the textual organisation are three equally key factors that the law's drafter should consider.

REQUIREMENTS OF THE LEGISLATIVE LANGUAGE ENSHRINED BY THE ROMANIAN NORMS OF LEGISLATIVE TECHNIQUE

The Law No. 24/2000 On the Rules Of Legislative Technique, chapter IV, headed "Drafting normative acts", specifies the requirements relating to the quality of the language used by the legislator while drafting a normative act in Romania.

It follows from the text of Article 35 of this law that, in order to ensure a logical progression of the proposed legislative solutions and to achieve internal coherence of the normative act, the development of a plan for grouping concepts in accordance with their connections and natural relationships within the overall conception of regulation should take place prior to the writing of the text.

1. Clarity, Simplicity and Precision of Language

According to Romanian law, normative acts must be written in a particular normative

language and legal style that is clear, concise, sober, and exact, excluding any ambiguity, and that strictly adheres to grammatical and spelling rules.

It follows that the drafting of a normative act should comply with the following requirements: to be clear, i.e., easy to understand, unequivocal; to be simple, that is, concise, without unnecessary elements; to be precise, without leaving room for uncertainty in the mind of the recipient of the norm (Ghid 2021: 14-17).

These qualities are an application of two general legal ideas, namely the principle of legal certainty and the principle of the equality of all people before the law.

The equality of citizens before the law is enshrined in the Romanian Constitution by Article 16 which stipulates in Paragraph 1 that “Citizens are equal before the law and public authorities, without privileges and without discrimination”, which means that the law must be accessible to all and understood by ordinary citizens, regardless of level of education, level of culture, position in society, etc.

In Romanian law, the idea of legal security is not explicitly codified as a rule of law in and of itself; rather, it follows implicitly from Article 1 Paragraph 3 of the Constitution and is seen as a corollary of the rule of law. From the perspective of drafting the law, in essence, the principle of legal certainty includes the following aspects: non-retroactivity of the law, accessibility and predictability of the law, unitary interpretation of the law, coordinates whose observance is a *sine qua non* condition for quality legislation.

Both accessibility and predictability presuppose that the norm’s public nature is a fundamental component of its legality, that its content is clear and understandable for everyone with average intellect as well as for legal experts, and that normative updates are predictable. Therefore, the two concepts are closely related and in a relationship of interdependence, stating in this sense that “accessibility is the immanent condition of predictability: to predict, however, you must have access to sufficient and comprehensible information. The phrase accessible and predictable, thus, evokes a *sui generis* causal chain. Accessibility and predictability are not just a formal category-pair, but a dialectical unit” (Deleanu 2011: 53).

So, it is important that the requirements of clarity, precision, and simplicity of the language used to be observed when it comes to its drafting in order to fulfil the objectives of accessibility and predictability of the law.

2. Vocabulary Topicality and Ensuring Terminological Unity

The standards of legislative technique that prevent the use of neologisms, assuming there is a synonym for widespread in Romanian, reinforce the notion that the drafting of the law must be subordinated to the desideratum of the simple interpretation of the document by its recipients. In cases where the use of foreign terms and expressions is required, their correspondent in Romanian will join, as appropriate. The texts are written using words from the modern Romanian language with their present meanings, eschewing regionalisms.

Article 37 of the Law No. 24/2000 also establishes that in “normative language the same notions are expressed only by the same terms. In the event that a notion or term is not established or may have different meanings, its meaning in context is established by the normative act that establishes them, within the general provisions or in an annex intended for

the lexicon and becomes mandatory for normative acts from the same area. The expression by abbreviations of some names or terms can be done only by explanation in the text, at the first use”.

Although it is required by the rules of legislative technique that words be used in the legal texts’ current meanings in contemporary Romanian, it is important to remember that one characteristic of legal language is the use of expressions that are similar to those used in everyday language but, most frequently, have a different meaning. Words such as “property”, “possession”, “loan”, “obligation”, “goods”, etc. have a different meaning in legal language than the usual one, being terms of legal specialty. Therefore, in order to avoid unintelligible wording for the ordinary citizen, if words with a meaning different from the one in the usual language are used, it is recommended to define the terms by the legislator.

The definition of concepts is both a condition of scientific precision and a condition of social efficiency of the rule of law. This consists in assigning a clear and precise meaning to the notions used in the construction of the normative text, which contributes to its intelligibility. In this sense, it was stated that “the first of the conditions that ensure the practicability of the law is a sufficient definition” (Dabin 1969: 268).

A good definition of the terms used helps to discover the scope of the regulations, to notice the nature of legal institutions and as such to ensure the practicability of the rule. However, this does not mean that every term used in the elaboration of concepts is defined. Law texts are not doctrinal or didactic works, which means that legal definitions should not be abused. If notions already existing and clarified in other normative acts are used, the definition of terms can be abandoned, thus avoiding repetitions that can be confusing.

In the literature, it is recommended that the terminology used should be uniform both within the provisions of the same act, so as to avoid contradictions, and between that act and those already in force. The same concepts are expressed in the same terms and as far as possible, without departing from the meaning they have in current language, legal or technical (Naschitz 1969: 256-257; Mrejeru 1979: 103; Țăndăreanu, 2003).

3. Rules regarding the Expression of the Normative Content

The Romanian legislator emphasises the requirement for the wording of the articles to have a dispositive character and to provide the established norm without explanations or reasons in relation to the expression of the normative content.

The imperative nature of that provision is typically emphasised by using verbs in the present tense, affirmative form, and the employment of interpretational norms is only permitted insofar as it is strictly necessary for interpreting the text.

According to Article 16 of the Law No. 24/2000 On the rules Of Legislative Technique, in the legislative process it is forbidden to establish the same regulations in several articles or Paragraph of the same normative act or in two or more normative acts. The reference rule is used to emphasize legislative connections. If there are any parallelisms, they will be eliminated either by deleting the redundant provisions or by consolidating them into a single regulation. They are a part of the process of having laws that are concentrated into a single regulation and laws that are distributed throughout the currently in effect legislation. It is advisable to only cite the relevant texts in a normative act that is based on and implemented

in accordance with a higher-level normative act rather than copying its specific contents verbatim. In such circumstances, it is only possible to develop or detail the answers from the fundamental act by adopting certain standards from the basic act.

Last but not least, the legislative text must be written in a clear, fluent, and understandable manner, free of grammatical complexities and ambiguous or opaque portions. Emotionally charged language is not permitted. The legal style, accuracy, and clarity of the requirements should not be compromised by the expression's form or aesthetics.

THE STRUCTURE OF THE NORMATIVE ACT

The legal content has a purely intellectual character, being about the will of the legislator. In order for this content to be accessible to its recipients, it is necessary to externalize it in a certain form. Therefore, "the legal form is the sensitive expression of the legal content" (Dănișor 2008: 226).

The normative act should achieve a grouping of the legal norms that it comprises in certain fundamental components, which in turn will form the structure of the normative act, in order to react to specific requirements of legislative method. A network of relationships between the normative act's component elements is considered to represent its structure. These relations between the constitutive elements of the normative act are relations of complementarity and coordination, on the basis of which the systematization of the normative material is realized and the unity of the regulations included in the normative act is ensured. The way of placing the constitutive elements of the normative act and the relations between them are likely to give the normative decision of the public authorities its own architecture, unmistakable with other elements of legal construction (Vida, 2012).

The form of expression of normative acts is pre-established by the provisions of Law No. 24/2000 On the Rules Of Legislative Technique within a distinct section, suggestively entitled "Constitutive parts of the normative act". The title and, when relevant, the preamble, the introductory formula, the operative part, and the formula for attesting the authenticity of the act are thus deemed to be the constitutive elements of a normative act under the legal provisions. This structure is adapted depending on the type of normative act, its scope and the object of regulation.

Therefore, a first constitutive element of the law is its title which, according to Article 41 Paragraph 1-2 of the Law No. 24/2000 On the Rules Of Legislative Technique, includes "the generic name of the act, depending on its legal category and the issuing authority, as well as the object of the regulation expressed synthetically. The legal category of the normative act is determined by the regime of competences established by the Constitution, laws and other normative acts by which prerogatives of legal regulation are granted to public authorities". Therefore, the title of a law is considered to be the element on the basis of which its identification is made in all normative acts and can be expressed by a descriptive formula such as "law on ..." or "law regarding..." or in a substantivized form "Law on social assistance", "Law on national education". The title is necessary to be short, suggestive, to clearly express the content of the regulation, and after the adoption of the law, it is completed with a serial number and the year of adoption. Moreover, Law No. 24/2000 explicitly forbids that the title of a drafted normative act be the same as the title of another normative act that is already

in action. The title of laws that amend or supplement another normative act will, last but not least, represent how the law works to amend or supplement the targeted normative act.

Regarding the preamble, it is considered an optional element, which precedes the introductory formula, cannot contain directives or rules of interpretation, being rarely encountered in the case of laws and expresses, briefly, the purpose of the normative act and, as the case may be, its motivation. The only situation where this optional nature does not apply is when the government issues emergency ordinances; in this case, the preamble is a crucial component of the structure of the normative act by law and is made up of a description of the factual and legal aspects of the extraordinary circumstance that gave rise to the appeal for this particular method of regulation.

The introductory formula is that part of the law that indicates the legal, constitutional basis, based on which the regulation is given and consists of a sentence that contains, according to Article 42 Paragraph 1, 2 and 3 of the Law No. 24/2000, “the name of the issuing authority and the expression of the decision to take the decision regarding the issuance or adoption of the respective normative act. In the case of laws, the introductory formula is as follows: The Romanian Parliament adopts this law. For the acts of the Government the introductory formula is: Pursuant to Article 108 of the Romanian Constitution, republished, the Government of Romania adopts the present decision or, as the case may be, the ordinance. The ordinances also refer to the empowerment law. At the emergency ordinances, the introductory formula is: Pursuant to Article 115 Paragraph. 4 of the Romanian Constitution, republished, the Government of Romania adopts the present emergency ordinance. To the decisions given in the express execution of some laws is added the basis of the respective law”.

The dispositive element of a law, which is made up of the collection of normative guidelines and legal standards established for the domain of social relations that constitutes its aim, is its most significant constituent element. The operational part of a legislation typically consists of broad principles, content provisions, transitional provisions, and final provisions. According to Article 52 of the Law No. 24/2000 On the Rules Of Legislative Technique “The general provisions contain statements that guide the entire regulation, determine its object and principles. They are grouped in the first chapter and are not repeated in the rest of the regulation, unless they are strictly necessary for the understanding of some provisions with which they form a unitary whole”. The largest scope of the law is in the content provisions, which are divided into parts, titles, sections, subsections, etc. The final provisions enshrine issues pertaining to the application of the law, its entry into force, and the resolution of incidents that the act produces on other acts with which it interacts, while the transitional provisions contain the measures to be established regarding the development of legal relations arising on the basis of the act. In some cases, they can be used, as components of the law and annexes that include provisions regarding numerical expressions, statistics, drawings, sketches, plans, flow charts, etc. for the purpose of law enforcement.

At the same time, the operative part of a law is a form of expression of legal norms, being composed of articles placed in a certain order.

In the literature, the article was defined as “the smallest subdivision of the normative act that must have a unitary character, expressing a single command, or sometimes several, but all subsumed to one and the same idea. A heterogeneous article, which violates the

above idea, is a technical failure, because it will be very difficult to quote, and any references to it in other texts would fall into ambiguity” (Zlătescu 1995). There may be only one or more articles in the composition of a law, in relation to the object and purpose of the legal regulation. The article, in turn, may consist of one or more Paragraph, in the event that the provision contained is expressed in several sentences or contains several problems. The Paragraph represents a part of the article, which reveals an independent position only in the context of the article, and not in relation to the norm contained in the respective article.

Therefore, in the doctrine (Mrejeru 1979: 114-125) it was shown that there is a deep unity of content between the two elements of structure, the respective division being of a technical nature, obviously with legal consequences easily identifiable in case of abrogation or partial completions of law, when the reference may concern the whole article or only one or more Paragraphs of the article in question.

Regarding the formula for attesting the legality of the normative act, it is used both in the case of draft laws adopted by a Chamber and in the case of laws to be promulgated. These final formulas of the law have the role of attesting the fact that the law was adopted in compliance with the constitutional, legal or regulatory provisions and at the same time allow the identification of the nature of the law. Thus, the reference made to Article 151 of the Constitution indicates a constitutional law; the one made to Article 76 Paragraph 1 of the Constitution indicates an organic law, and the reference to Article 76 Paragraph 2 indicates an ordinary law.

Besides, government ordinances are signed by the prime minister and countersigned by ministers who are responsible for enforcing them. Laws are signed by the presidents of the two Chambers or by the vice presidents who presided over the meeting at which the law was enacted. After promulgation, the law, together with the decree of the President of Romania confirming this stage of drafting the law, is sent to the Chamber of Deputies where it receives a number and is registered in the Law Register, the number being accompanied by the registration date, which is the law.

CONCLUSION

In conclusion, the way of choosing the external form of regulation, the way of legal regulation, the conceptualization procedures and the observance of the requirements of the legislative language depends on ensuring the accessibility of the new legal rule.

Legislative language is the bearer of a cultural dimension that is reflected not only in the specific terms of a legal system, but also in its own ways of expressing them. The language of normative acts is governed by pragmatic principles because it is a formalised language. According to the examined standards for legislative technique, it is necessary to avoid neologisms, regionalisms, non-functional expressions, and words with uncertain meanings while creating laws and instead employ widely used terms. The requirement of the correct and simple understanding of the text by any subject, not just by the legal specialist, must take precedence over the sentence structure and style of expression. Law terminology needs to be consistent and standardised. This requirement applies to the entire body of law, not just the specifics of one normative act. It must exhibit terminological unity because this unity lays the groundwork for the subjects’ ability to comprehend the message of the law with clarity.

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