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THE PRINCIPLE OF PUBLICITY OF THE NATIONAL NORMATIVE ACTS. LEGAL EFFECTS

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Abstract

In this paper, we want to identify the general rule regarding the moment when the legal norm enters into force: the moment of publication of the normative act in the official gazette or three days after bringing the normative act to public knowledge through publication?

In the following we will investigate what emerges from the spirit of the legal norms in the matter.

Key words: *entrance into force; normative acts; principle of publicity; legal effects; Official Gazette of Romania;*

INTRODUCTION

First, we would like to clarify the terminology in the matter.

Thus, the renowned professor G. Cornu in his extensive work "Vocabulaire juridique" shows that the term "vigor" comes from Lat. "vigor" which meant "in full force". Also, in a first sense, the same author shows that the expression "in force" means "binding force" and in a more precise sense, particularly, with reference to a (written) normative act, it denotes the period of time in which the text it has "the vocation to be effectively applied" *(G. Cornu, 2014, p.1074).*

In the same sense, the doctrine *(I. Santai, 2009, p.115)* defines this phrase as the obligation of the legal norm for all legal subjects that fall under the scope of the legal provision.

1. THE BASIC PRINCIPLE. EXCEPTIONS

In the spirit of Law no. 24/2000 emerges the general principle that the rule of law begins to produce binding legal effects from the moment it is brought to the attention of all individuals through publication, regardless of the method: printing or posting on the website, except for situations in which the final provisions of the normative act, another later date regarding its entry into force is

provided.

If the normative act has not been brought to public knowledge, according to the method imposed by law, it is considered as non-existent.

The Official Gazette of Romania (Law no. 202/1998) represents the official "newspaper" of our state in which, in Part I, the normative acts of the central public authorities[1] are published**.**

The Official Gazette is under the authority of the Chamber of Deputies, which is also its publisher (art. 1 para. 2 in conjunction with art. 2 par. 1) and carries out public activity of national interest (art. 1 par. 3).

The Autonomous Directorate "Monitorul Oficial" has the obligation to edit the Official Gazette both in printed format (for a fee) and in electronic format (online), which can be accessed from the official website "free and at any time, permanently".

Each publication is identified by number and date of publication (day, month, year).

An element of novelty in the current legislation is the regulation, by the Administrative Code (G.E.O. no. 57/2019), of the legal institution of the Local Official Gazette in which the acts of decentralized and autonomous local public authorities are published.

We will explain further, complying with the hierarchy of normative acts, for each individual legal norm, the moment of entry into force, according to the framework regulation in the matter, namely Law no. 24/2004.

As for the Constitution of Romania, the Constituent Assembly adopted it on November 21, 1991, to be published in the Official Gazette of Romania on the same day and to produce legal effects (becoming binding) on the date of its approval by referendum (art. 153 of the Constitution of Romania revised and republished), respectively on December 8, 1991.

After the revision of the Romanian Constitution for the purpose of Romania's accession to the European Union, in 2003, a term of 3 days was introduced for laws (*stricto sensu* – as normative legal acts of the Parliament), between the moment of their publication in the Official Gazette of Romania and the moment when they begin to produce legal effects, or, if it was mentioned in its text[2], another subsequent moment of entry into force (art. 78 of the Constitution of Romania, revised and republished – and the normative acts of the European Union have a reasonable term of entry into force of 20 days from the date of publication of the EU normative acts in the Official Journal of the EU, see in detail I.-N.

[1] The expression "public authority" is defined by the legislator as "the state body or of the territorial-administrative unit that acts as a public authority to satisfy the general interest" (art. 5 para. 1 let k) of the G.E.O. no. 57/2019 on the Administrative Code, published in the Official Gazette of Romania, Part 1, no. 555/5 July 2019).

[2] Before the revision, the Romanian Constitution adopted in 1991 provided in art. 78 that the law begins to have legal force from the moment of publication or at a later time provided in its text.

Militaru, 2017, pp. 129-146; E.-N. Vâlcu, 2012, pp. 42- 43).

Concrete example: Law no. 265/July 22, 2022, regarding the trade registry and amending and supplementing other legal instruments applicable to the registration with the trade registry. The legislator provides that this law produces legal effects 4 months from the date of publication in the Official Gazette of Romania, except for certain articles that enter into force 3 days after publication, a term provided for by the Constitution of Romania, revised and republished (art. 78).

The Romanian Constitution also provides that the Parliament can, through an enabling law, empower the Government to issue simple ordinances (art. 115 para. 1-2). These normative acts, being legislative acts, by virtue of legislative delegation (art. 115 of the revised and republished Romanian Constitution), have, by way of symmetry, the same regulation as that of the law as regards the moment when they begin to produce legal effects (art. 12 para. 1 of Law no. 24/2000), respectively 3 days from the date of their publication in the Official Gazette of Romania if no other term is provided in its text.

We believe that the legislator introduced the term of three days so that the subjects of law, participating in the legal relations, have enough time to know its text. This term is carried out at 24^{00} hours and is calculated on calendar days and not working days.

In exceptional situations, the Government by virtue of art. 115 para. 4 may adopt emergency ordinances, which, given the celerity of the regulation, will start to have legal force as soon as they have been published in the Official Gazette of Romania and only after they have been submitted for debate “in emergency procedure” to one of the Parliament’s Chambers, which has the authority to be notified in such situations (according to art. 115 para. 5 of the revised and republished Romanian Constitution), except for the situation when another moment is mentioned in their text (art. 12 para. 2 of Law no. 24/2000).

A wide variety of normative acts apply the principle of publicity, in the meaning that they begin to produce legal effects as soon as they are published in the Official Gazette of Romania, only if no other term of entry into force is mentioned in their text, namely: all other normative acts of the Parliament, of the central autonomous public authorities (the Supreme Council of National Defense, the Court of Accounts, the People’s Advocate, the National Bank of Romania, the Legislative Council, etc.), those issued by the specialized central public administration bodies, the Prime Minister’s decisions (unclassified), the orders and instructions of the ministers, etc. (art. 12 para. 3 of Law no. 24/2000).

The same law provides, in art. 11 para. 2 lit. a-b, that there are certain normative acts exempted from publication in the Official Gazette of Romania, such as those issued by the Prime Minister (classified decisions, according to the law) and by the autonomous administrative authorities and specialized central public administration bodies (normative acts and individual classified acts,

according to the law), the legislator not specifying when they produce legal effects.

We mention, as far as the orders of the prefect with a normative character are concerned, that for their entry into force the new legislator omits to mention where exactly are they published, specifying only that "they are published according to the law", that "they become mandatory from the date of bringing to public knowledge" and immediately bring it to the attention of the relevant ministry (art. 275 para. 3-6 of the Administrative Code). In this situation, however, we understand, to cover this legislative void by interpretation, applying the analogy of the law, in the sense that they begin to produce legal effects after they are made public in electronic format and on the official website of the institution of the prefect of each county, as we will see further on that happens with the normative acts of the local public authorities.

Thus, the decisions of the County Council, the provisions of the President of the County Council, the decisions of the Local Council, the provisions of the Mayor, as acts of local public authorities, are published, according to art. 197 of the Administrative Code, for public information, online in the Local Official Gazette and in electronic format.

Art. 1 para. 1 of the Annex 1 of the Administrative Code, which regulates this new legal institution, provides that on the webpage of each administrative-territorial unit, in the right part of the opening page of the website, it is mandatory to mention a label with the name Local Official Gazette.

Being a novelty, this newly regulated legal institution in the sphere of citizens' accessibility to the normative acts of the local public administration authorities, we continue to expose what the legislator provides regarding the Local Official Gazette. According to art. 1 para. 2 of the Annex 1 of the Administrative Code, by entering the main label, with the mentioned name, six other sub-labels are opened, of which we specify only those that are of interest for our study, namely: the label where the normative acts of the deliberative public authority are posted, namely the decisions of the Local Council and those of the County Council, as well as the label where the normative acts of the executive authorities are posted, namely the provisions of the Mayor and those of the President of the County Council.

Each issuer of normative acts has the obligation to number its normative acts in the order of the date of their adoption, for each calendar year.

2. LEGAL EFFECTS

It should be noted that from the moment of making it known, through the publication of the legal norms, "*no one can be considered ignorant of the law*" ("nemo censetur ignorare legem"), that is, no one can invoke ignorance (thec-absence of knowledge) in his defense or his error in law (inaccurate knowledge) *(I. Deleanu, 2005, p. 138; I. Deleanu, 2001, pp. 72-73; I. Rădulescu, 2013, p.*

105)[3], being binding on all equally.

This principle, although not regulated by the legislator (written), is respected and applied as a custom, since laws are created to be appropriated and respected, meaning only that "the law has binding force towards all, even towards those who have ignored it", *(I. Deleanu, 2005, pp. 139-140)* who could avoid legal liability by citing ignorance or the error committed.

Since there is no actual possibility to know the entire legislation, this Latin adage is complete fiction *(I. Deleanu, 2005, pp. 139; I. Deleanu and V. Mărgineanu, 1981, p. 166)*. But this is the role of legal fictions to be bridges to the progress of law, an indexical reality being put in place of an existing reality *(N. Popa, M-C. Eremia, S. Cristea, 2005, p. 194),* in order to achieve the goal of law and namely the social order *(N.-E. Buzatu, A. Păiușescu, 2011, pp. 286-291; T. Avrigeanu, 2017, pp. 7-32).*

It is considered that, from the moment of publication in the Official Gazette of Romania, respectively the Official Local Gazette, the normative acts are considered opposable to all, thus operating an absolute, irrefutable presumption of knowledge of the law *(I. Deleanu and V. Mărgineanu, 1981, p. 167)*, deduced from the constitutional texts themselves *(art. 78 corroborated with art. 1 para. 5 of the Romanian Constitution).*

Moreover, Law no. 57/March 31, 2021, which regulates differently in terms of online access to the official state publication by all interested persons, until then the normative act being available online for only 10 days for reading only. Thus, the electronic format is available free of charge, freely and permanently, for all users who are interested in saving, distributing and printing normative acts from this program *(art. 18 para. 2 of Law no. 202/1998).*

All these legal norms once entered into force produce legal effects until they are modified, supplemented or repealed by a new legal norm, thus written legal norms have a great advantage of fixity and legal security *(M. Djuvara, 1999, p. 316) (i.e., it is predictable in its application).*

M. Djuvara opines that "No matter how bad the law is, if it is precise and known, it can be an advantage" *(M. Djuvara, 1999, p. 316).*

CONCLUSIONS

The published legal norms have binding legal force towards everyone, even towards those who invoke their ignorance or committed error (I. Deleanu, Ghe. Buta, 2012, pp. 146-150)*, but in doctrine it is considered that a system of "truly scientific" law cannot completely remove all the circumstances that made it possible to not know the law for reasons not attributable to the subjects of law* (I. Deleanu, V. Mărgineanu, 1981, p. 171).

[3] This absolute presumption is in fact a legal fiction, since it is outside the system of legal presumptions and no norm of objective law enshrines it as such.

However, two exceptions to this rule are allowed (N. Popa, M-C. Eremia, S. Cristea, 2015, p. 150).

First of all, the Theory of Law accepts the invocation of ignorance of the law, when a part of the territory remains separated/ "isolated" from the contents/whole of the country, due to a major force[4] (A-V. Petrea, 2020, online). *The legal norm, in such situations, cannot be known for objective reasons, and not because of negligence or personal ignorance.*

Secondly, the legislator admits that, in matters of contracts, civil and commercial, it is possible to invoke the error of law, by the person who did not know the consequences that the effects of the legal norm result in concluding a contract, being able to demand its cancellation. In the case of contractual relations, it is necessary to know whether, in relation to that contract, the will of the contracting parties was valid or was flawed (I. Deleanu, 2004, pp.38-61; N. Popa, M-C. Eremia, S Cristea, 2015, p. 150). *Art. 1207 para. 3 of the Civil Code states for the first time the error of law, defining it as essential for the conclusion of the contract on a determined rule of law, relative to the will of the parties.*

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[4] Civil Code in art. 1351 para. 2 defines the „major force" as „any external, unpredictable, absolutely invincible and unavoidable event". For example, in the legislation, situations of major force were given – natural calamities, but also social actions – revolutions, wars. Thus, Chapter VI, art. 14 of the Methodological Norms for the application of Government Decision no. 707/1996 on financing telephone works in rural areas provides that "The major force invoked under the law protects the party who invokes it from liability. Major force means situations such as: natural calamities, revolutions, wars".

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