SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2023), pp. 11-20

LEGISLATIVE ASPECTS AND DOCTRINAL OPINIONS REGARDING LEGISLATIVE EVENTS

I. BOGHIRNEA

Received 30.09.2023; accepted 29.11.2023
https://doi.org/10.55516/ijlso.v3i1.126

Iulia BOGHIRNEA
Associate Professor PhD
The National University of Science and Technology POLITEHNICA Bucharest, Pitești University Centre
E-mail: iuliaboghirnea@gmail.com
ORCID ID: https://orcid.org/0000-0002-1634-1681

Abstract

Through this study, we want to bring back to attention the legislative events provided by law 24/2000, as a result of the appearance in their list of consolidation, which is regulated by law as not having legal effects. There is a similar legal institution in the Union legislation which has the value of republication in domestic law.

That's why we have briefly analysed the legislative events provided by the law and the effects they have produced, comparing them to the new technical procedure called consolidation.

Key words: *modification, completion, republication, consolidation, repeal, rectification, legislative events*

INTRODUCTION

After its entry into force and until it expires, i.e. for the entire duration of the existence of a normative act, the legislator can intervene on his/her text to rectify, modify, complete, republish, suspend, derogate or abrogate it, procedures that bear the legal name of "events legislation" (*I. Boghirnea, 2022, pp. 13-19*). These fall within the competence of the issuing body of the normative act or of a body issuing a normative act with a higher legal force.

As an exception to this rule, only in situations that are thoroughly justified, Law no. 24/2000 provides in art. 58 para.2 that only normative acts that have a special "importance and complexity" can be modified, supplemented or repealed by the issuing body in the time interval between the date of publication in the Official Gazette of Romania (Part I) and the date indicated for the entry into force

of the respective normative act, respecting the imperative requirement that the entry into force of the proposed interventions should occur at the same time, simultaneously, with the normative act that was subjected to those legislative events. Although the mentioned law enumerates in Chapter VI a series of legislative events, apparently the legislator limits this exception to only three of them: modification, completion and repeal.

All these legislative events must be produced in the same register in compliance with the principles of the entry into force of a normative act and the *nemo censetur ignorare legem* the Latin adage, therefore any new intervention by the legislator on the normative act in force must be brought to public knowledge , by publishing them in the Official Gazette of Romania, Part I, or in the Local Official Gazette, as the case may be *(N. Popa, 2020, pp.160-161, M. Bădescu, 2022, p.143, M. Niemesch, 2019, p.112, I. Boghirnea, 2023, p.122).*

I. MODIFICATION

In the opinion of Professor I. Mrejeru, the amendment represents the express partial replacement of a *lato sensu* law, which is imperatively necessary due to the finding of new legislative solutions for a new social requirement, without the amended normative act needing to be replaced in its entirety (*I. Mrejeru, 1979, p. 136; for the same idea see also L. Barac, 2009, p. 196).*

I. Vida and M. Enache are of the opinion that the amendment or other legislative events appear inevitable also as a result of non-compliance with the rules for the elaboration and drafting of normative acts that have a certain complexity *(I. Vida, M. Nicolae, 2012, p. 134).*

It is worth noting that the amendment, as well as other legislative events, could not intervene in the period between the publication of the normative act and its entry into force, but through the adoption of O.U.G. no. 61/2009 for the amendment and completion of Law no. 24/2000, a new paragraph of art.58 was introduced, which stipulates that in thoroughly justified situations, normative acts of great complexity can be both supplemented and repealed. This ordinance was approved by Parliament through Law no. 60/2010, which added, in addition to these two events, a third one, namely the amendment. This was the legal basis on the basis of which, since the publication of the new Civil Code in 2009, it could be amended by Law no. 71/2011, although it had not entered into force *(I. Vida, E. Enache, 2012, p. 134).*

The legislator defines the modification of a normative act as the replacement of a text of an article or some articles or paragraphs and their rewriting in a new form (art. 59 of Law 24/2000 republished).

An important aspect will be noted, namely that the amendment can only be carried out through an act with the same legal force as the amended one, which must be naturally integrated into the amended act because it is necessary to ensure a uniform style and terminology, but also a harmonious succession of articles.

The author M. Grigore shows that sometimes, for efficiency and economy of means of expression, the legislator can, through a normative act, amend several normative acts *(M. Grigore, 2009, p. 230).*

Regarding the effects from the entry into force of the amending regulations, they will be incorporated into the amended act, becoming a unitary whole. The provisions that have been modified act only for the future, with the exception of the milder criminal or contraventional rules (*mitior lex*), which, according to this principle, retroactive to the moment of the criminal or contravention act, as the case may be. Art. 62, sentence two, from Law no. 24/2000 provides that if other amending texts are subsequently introduced, they will refer to the basic act.

II. COMPLETION

Regarding the completion, as a legislative event, there is a legal definition according to which it consists in adding some regulations to the existing ones, which include additional assumptions and new legislative solutions, the legislator using the formula: "After the article ... a new article is inserted ... with the following content".

What should be remembered is that the articles or paragraphs that are added to the text in force, will gain the number of the corresponding structures in the text to be completed, to be introduced with a numerical index, so that they can be differentiated. In other words, the old numbering of the normative act will not be changed, as these added indexes will be used *(N. Popa, 2020, p. 207).*

Professor V.-D. Zlătescu shows that this completion of the text can be understood as a modification since the completed normative text becomes different after this addition of new provisions, in some cases the addition affects the original text by introducing some exceptions *(V.-D. Zlătescu, 1996, p. 104).*

The legal doctrine lists several rules that must be taken into account by the legislator *(M. Bădescu, 2012, p. 11):*

The legal doctrine lists several rules that must be taken into account by the legislator *(M. Bădescu, 2012, p. 11):*

a) Supplements will be made only through an act with the same legal force, or through a normative legal act with a higher legal force (for example: an organic law can supplement an ordinary law), thus not changing the nature of the completed law;
b) The texts that are newly introduced must be compatible in order to fit harmoniously into the entire completed normative act.

And the legislator provides in art. 61 of Law no. 24/2000 that the provisions which are to be amended or supplemented would affect the general concept or the unitary nature of a normative act, or if these provisions do not concern the entire regulation or a large part of it, then he /she will proceed to

replace with a new regulation of the regulation in question, the latter being necessary to be repealed.

- With regard to the effects of the new regulations that modify or supplement, from the date of their entry into force, they will be incorporated into the modified or supplemented act, as the case may be, being identified with it, i.e. together they form a "common body" and other subsequent interventions to complete them will refer to the basic act, as provided by art. 62, sentence two, from Law no. 24/2000. These newly introduced provisions have effects only for the future, except for more favourable criminal or misdemeanour law.

III. REPUBLICATION

Republishing is a legislative event, which can occur as a result of the legislator's express will, during the activity of a regulation, as a result of the fact that it has been modified and supplemented "*substantially*". Therefore, the republication will only occur as a result of a provision expressly provided by the legislator, which is contained in the normative act of amendment or addition.

We are of the opinion that, if the repeal is allowed by the legislator in the period between the publication of the normative act and its entry into force (art. 58 para. 2 of Law no. 24/2000), then, *a fortiori*, its republication could be allowed, at the express request of the legislator. The law expressly provides that, within this term, normative acts can be repealed (which is the legislative event with the harshest legal effect), then even more so, these normative acts could be republished, following some changes or important additions.

That is precisely why we believe that this was the rationale of the legislator who republished the Civil Code before it entered into force on October 1, 2011, a republishing that was expressly provided for by Law no. 71/03.06.2011 which entered into force on 13.06.2011, the conditions stipulated by Law no. 24/2000, namely "*the interventions proposed to enter into force on the same date as the normative act subject to the legislative event*" being met (see, on the contrary, the argument presented by *I. Vida, M. Enache, 2012, p. 136*).

Thus, the normative act is drawn up in which all the changes and additions it has had throughout its existence will be found in its "trunk", one removing the texts that were indicated by the legislator as being abrogated. By republishing, new texts cannot be added, nor can existing ones be changed *(M. Bădescu, 2012, p. 11)*.

Thus, the updating of the text in a unitary body will entail a new renumbering of the normative act, only if this has been expressly ordered, and the updating of phrases that have undergone changes as well as the names of authorities and public institutions or localities.

Only the simple and emergency ordinances of the Government, which have been supplemented, amended or partially repealed, can be republished only after they have been approved by the Parliament, in order not to create possible

inadvertences with the approval law, in the situation where the latter would modify the text of the ordinance that is subject to approval.

IV. CONSOLIDATION

Recently also in our legislation, by Law no. 343/2002, the term "*consolidation*" was introduced, which is used in European Union legislation, but with a different meaning. If in the union legislation this term has the meaning of republication, in our legislation it has the meaning of an update of the text, being only a "*documentation tool*", which does not produce legal effects, which is done only by the Legislative Council.

Consolidation is a legislative event whereby the laws *stricto sensu*, ordinances and Government decisions of a normative nature, on which legislative events intervened, will be displayed in a consolidated version on the official website of the Legislative Council (http://www.clr.ro/)

We note that the legislator first refers to normative acts of amendment or completion, then he expresses himself in a general way to "on which legislative events have intervened", which means, in our opinion, that repeals are also considered partial, express and direct, republications and/or corrections.

It may be thought that it is similar to republication, however, through consolidation (art. 70^1 paragraph 2):

a) there will not be a new renumbering of the articles, paragraphs and chapters or other structures of the content of the new common body of the amended and supplemented text or containing partial repeals of the text;
b) it will not be possible to update the new names of public bodies and institutions or of the administrative-territorial units

Therefore, the consolidation is a permanent update of the text, after the occurrence of some legislative events and their publication in the Official Gazette.

V. RECTIFICATION

The legislator placed and regulated the rectification last time, after having regulated all legislative events, since, in our opinion, the rectification does not occur only after a new law enters into force, but also after modification, completion, republication, repeal, if necessary *(art. 71 of Law no. 24/2000).*

In the opinion of S. Popescu, rectification is an official legal operation, which aims to correct a material error in the content of a normative act, which is ascertained after it has been published in the Official Gazette, by publishing the corrected text in the Gazette *(S. Popescu, 2008, p. 150).*

After the publication or re-publication of the normative act, material errors may be discovered in its content that require rectification. This is done at the request of the issuing authority of the respective act, with the approval of the Legislative Council, request addressed to the Secretary General of the Chamber of

Deputies and what must be included in the act to be corrected, the identification elements of the Official Monitor in which it was published (number and date), the material error accompanied by explanations.

Thus, a note will be published that will include the rectifications that are necessary, not correcting them leading to difficulties, ambiguities or inadvertences in the phase of their interpretation and application.

M. Grigore in his work *Normative Technique* describes an atypical situation that happened in the case of an omission from the publication of a bilateral Treaty to which the Joint Declaration had to be annexed. After only the treaty was published, the correction of the omission was not made through a note, as required by law, but the two documents were published in a new Official Gazette, which had the same identification data as the one in which it was published only the Treaty, which contained a note explaining the fact that the official Monitor was being reprinted "due to" some mistakes that were found later, this one being distributed free of charge to subscribers *(M. Grigore, 2009, p. 257)*.

One must take into account that the law prohibits, under the penalty of nullity, that through the rectification procedure, changes are made to the provisions of the text of the normative act, which means that only material errors must be corrected or corrected *(art. 71 par. 2 from Law no. 24/2000; art. 17 paragraph 3 from Law no. 202/1998)*.

Therefore, those errors whose correction would lead to the change of the original meaning of the provisions that are subject to rectification cannot be the subject of the request, but only material errors that may consist of technical editing mistakes or may have complex sources such as *(M. Grigore, 2011, pp. 265-267):*

- the change of some addresses of offices, the published ones being actually indexical;
- replacing some phrases with correct ones, in the case of international documents, because they were not faithfully translated;
- grammar and spelling mistakes, which can make it difficult to understand the text, etc.

VI. REPEAL

Repeal is a legislative event by which the provisions of a normative act are suppressed as a result of the appearance of a new regulation, of the same level or of a higher level, which contains other provisions than the old regulation that has contrary provisions *(art. 64 of Law no. 24/2000)*.

Repeal can only be done by the legislator through a normative act of the same level or a higher level. However, if a normative legal act with higher legal force has not expressly abrogated a normative legal act with lower legal force and it contains contrary provisions, then this task will fall to the authority that first adopted the normative legal act.

It is worth noting that the Romanian legislator gave expression to the principle of *lex posterior derogat priori* or *lex superior derogat priori* through its regulation in that it decreed that it is inadmissible to re-enforce the old (previous), regulation the repeal being definitive, with one exception, the provisions of those emergency ordinances by which normative acts were repealed, but were rejected by the Parliament, as provided by art. 64 para. 3 of Law no. 24/2000.

However, these provisions do not fall under the scope of other situations of the termination of a normative act[1], as such in the situation where the Constitutional Court declares as unconstitutional the provisions from which certain regulations were repealed, the latter re-enter into force[2].

As for the classification of abrogation, in the specialized literature it was stated that it is divided into (*M. Grigore, S. Ionescu, D. Gună, D. Barbu, 2015, p. 525):*

a) Express or explicit repeal (direct and indirect) - we encounter it in the situation where the legislator expressly provides which normative acts, chapters, articles come out of force by the formula "On the date of entry into force of this law, art. . [...], chapter [...] or Law no. [...]" or it is expressed in the formula "*on the date of entry into force of Law no. [...] any contrary provision is repealed*", as the case may be.
b) Tacit or implicit repeal when the legislator does not provide anything in this sense but leaves it up to the interpreter to find that the new law contains contrary provisions, different from the old law (in this sense see, as a comparative study, also *A. Hameed, 2023, pp. 429-455)*

Repeal can also be classified into total repeal (the case in which the entire normative act is suppressed) and partial repeal.

The partial repeal is assimilated by the legislator to another legislative event, namely the amendment, since the first one does not affect the provisions remaining in force and they continue to apply as such / *tale quale*.

Until the entry into force of O.U.G no. 60/2009, in the logic of the activity of a normative act, it was that from the moment it entered into force until the moment it came into force, it could have been subject to legislative events regarding its rectification, completion, modification, republication, derogation or repeal, i.e. after its adoption, publication and entry into force of the normative act.

[1] Not to reduce as the only way of leaving a legal rule out of force only to repeal, knowing that legal rules cease to have their effects and as a result of reaching the term, obsolescence, unconstitutional declaration by the Constitutional Court of a provision or regulation (art. 147 of the revised and republished Constitution of Romania) or by cancelling it, if it has an administrative nature, by the administrative court (according to Law no. 554/2004)

[2] It is the situation in which the provisions of art. were declared unconstitutional. I, point 56, from Law no. 278/2006 which repealed art. 205-207 of the Criminal Code in force, the dissociations that have re-entered into force

This emergency ordinance, we believe, was issued as a result of a situation that arose in 2004, with the adoption and publication of Law no. 301/2004 by which the entry into force of a new Criminal Code was desired.

This law stipulated in its content that it would come into force within one year *(i.e. June 29, 2005).* After the completion of this term and until its repeal, the following legislative events took place:

a) was amended art. 512 by O.U.G. no. 58/2005[3], which stipulated that the normative act will enter into force on September 1, 2006, and expressly ordered its republishing;

b) by O.U.G. no. 50/2006 one extended the term provided for in art. 512 on September 1, 2008;

c) by O.U.G. no. 73/2008 extended, again, the term provided for in art. 512 until September 1, 2009;

d) by Law no. 286/2009, as such, this normative act was repealed and Law no. 301/2004 did not enter into force even for a single day, being finally repealed.

In order to be able to appeal to the repeal, Law no. 24/2000 was amended and supplemented in June 2009 by O.U.G no. 60, and thus additions, changes and repeals can be made since then and in the period between the publication of the normative act and its entry into force *(art. 58 paragraph 2 of Law no. 24/2000)*.

CONCLUSION

In conclusion, as the entire doctrine states, the legislative process must be considered as an activity that aims to create, modify, complete or abrogate legal norms, actions of the legislator determined by the need to ensure the satisfaction of society's needs and to protect the rights and citizens' liberties (L. D. Chulyukin, V. V. Guryanova, 2018, pp. 38-44).

Only the normative acts that are affected by the legislative events and that are published in the Official Gazette of Romania produce legal effects and can be used as reference texts for legal purposes.

So that through the new texts introduced in Law 24/2000 regulating the consolidation, it does not produce legal effects and must be understood as a "documentation tool" as provided by art. 70[1] paragraph 3 of the aforementioned law.

BIBLIOGRAFIE

Books, Articles

1. L. Barac, *Elemente de teoria dreptului*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2009;

[3] Published in the Official Monitor of Romania no. 552/28 June 2005

2. M. Bădescu, *Technical procedures of entropy and creation in legislation (Legislative events)*, in *Pro Pratria Lex*, no. 2 (23) 2012;
3. M. Bădescu, *Teoria generală a dreptului. Curs universitar, 7th edition, revised and added*, Hamangiu Publishing House, 2022;
4. I. Boghirnea, *Teoria generală a dreptului. Curs universitar,* Sitech Publishing House, Craiova, 2023;
5. I. Boghirnea, *The principle of publicity of the national normative acts. Legal effects*, in International Journal of Legal and Social Order, vol. 1, no. 1/ December 2022, DOI: https://doi.org/10.55516/ijlso.v1i1.60;
6. V. Balmuș, *Derogation and exception in doctrine and in national legislation*, in *Akademos* no. 1/2015;
7. L D Chulyukin, V V Guryanova, *Law-Making Activity as a Type of Legal Process*, Russian Journal of Legal Studies 5(4)/ December 2018, DOI: https://doi.org/10.17816/RJLS18442;
8. M. Grigore, *Tehnica normativă*, C.H. Beck Publishing House, Bucharest, 2009;
9. M. Grigore, *Republication and rectification of normative acts*, in *Journal of Judicial Studies*, Supplement VI/ 2011;
10. M. Grigore, S. Ionescu, D. Gun[, D. Barbu, *Legislative events. Abrogation and derogation*, Journal *Valahia University Law Study*, Supplement/2015;
11. A. Hameed, *Parliament's Constitution: Legislative Disruption of Implied Repeal*, in Oxford Journal of Legal Studies Vol. 43, no. 2/2023, DOI: https://doi.org/10.1093/ojls/gqad004;
12. I. Mrejeru, *Tehnica legislativă,* Academy Publishing House, Bucharest, 1979;
13. M. Niemesch, *Teoria generală a dreptului, ed. 3rd, revised and added*, Hamangiu Publishing House, Bucharest, 2019;
14. N. Popa, *Teoria generală a dreptului*, ed. 6th, C.H. Beck Publishing House, Bucharest, 2020;
15. S. Popescu, The current problem of non-publication and rectification of normative acts in S. Popescu, C. Ciora, V. Țăndăreanu, *Practical technical aspects and legislative evidence*, Monitorul Oficial Publishing House, Bucharest, 2008;
16. I. Vida, M. Enache, *Ierarhia legilor și evenimentele legislative care se produc între data intrării în vigoare și data ieșirii din vigoare*, in Dreptul no. 7/2012;
17. V.-D. Zlătescu, *Introducere în legistica formală.Tehnica legislativă*, Oscar Print Publishing House, Bucharest, 1996.

Legislation

18. Law no. 24/2000 regarding the rules of legislative technique for the elaboration of normative acts, republished in the Official Gazette of Romania, Part I, no. 260/21.04.2010, with subsequent amendments and additions;

19. O.U.G. no. 61/2009 for the amendment and completion of Law no. 24/2000 regarding the rules of legislative technique for the elaboration of normative acts, published in the Official Gazette of Romania, Part I, no. 390/9 June 2009;
20. Law no. 286/2009 regarding the Criminal Code, published in the Official Gazette of Romania, Part I, no. 510/24 July 2009;
21. Law no. 301/2004 regarding the Criminal Code, published in the Official Gazette of Romania, Part I, no. 575/29 June 2004 with subsequent amendments and additions (repealed by Law no. 286/2009);
22. Law no. 60/2010 regarding the approval of the Government's Emergency Ordinance no. 61/2009 for the amendment and completion of Law no. 24/2000 regarding the rules of legislative technique for the elaboration of normative acts published in the Official Gazette of Romania, Part I, no. 215/6 April 2010;
23. Law no. 202/1998 regarding the organization and operation of the Official Gazette of Romania, republished in the Official Gazette of Romania, Part I, no. 511/July 23, 2017 with subsequent amendments and additions;
24. GEO. no. 58/2005 to amend the law no. 301/2004 regarding the Criminal Code, published in the Official Gazette of Romania no. 552/28 June 2005, Part I;
25. O.U.G. no. 50/2006 regarding some measures to ensure the good functioning of the courts published in the Official Gazette of Romania, Part I, no. 566/30 June 2006;
26. GEO. no. 73/2008 for the extension of the terms of entry into force of Law no. 301/2004 regarding the Criminal Code published in the Official Gazette of Romania, Part I, no. 440/12 June 2008;
27. Law no. 286/2009 regarding the Criminal Code in the Official Gazette of Romania, Part I, 510/ 24 July 2009.