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## THE NECESSITY OF A HIERARCHY OF THE SYSTEM OF NORMATIVE ACTS AND PRINCIPLE OF THE SUPREMACY OF THE CONSTITUTION

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### **Abstract**

*In the approach and substantiating the hierarchy of the system of normative acts and the principle of the supremacy of the Constitution, we started from the idea that the relationship of legal norms, which gives substance to any system of law, must be characterized by unity, functionality and, last but not least, by hierarchy.*

*My study is mainly about the Romanian law system, but it also includes some generality observations, applicable to all national law systems.*

**Key words:** *hierarchy; system; normative acts; supremacy; Constitution.*

### **INTRODUCTION**

Like most contemporary national law systems and even regional law systems, as is the case with European Union law, in the Romanian legal system, the normative act is the main formal source of law, being created by the state legislative bodies, which includes “legal norms of general and binding nature, applied, applied, enforced, enforced, enforced, enforced, and enforced. if necessary, through the coercion of the state.” (*N. Popa, 2008, p. 194; M.-I. Grigore-Rădulescu, 2019, p. 131; C. Voicu, 2008, p. 168*).

The arguments supporting the placing of the normative act before other formal sources of law (*S. Cristea, 2022, p. 42*) are related to the external form it takes, regulated by the norms of legislative technique, contained in Law no. 24/2000, republished, with subsequent amendments and completions, to their elaboration and application (where appropriate) by state bodies with legal powers and competences in the matter, the publicity provided to these categories of acts and their binding nature.

Given the complexity of the extension of the analysis to the level of the entire system of law, I limited my research only to the hierarchy established within the system of normative acts and to the interpretation of the supremacy of

the Constitution in relation to this category of formal sources of law, leaving open the perspective to a future approach to the other sources of law, from the same point of view and with similar reporting.

### 1. HIERARCHY OF THE SYSTEM OF NORMATIVE ACTS

In justifying the title of this study and the substantiation of the need for hierarchy of the system of normative acts we start from one of the principles of regulation, respectively from the principle of correlation of the system of normative acts, according to which, between the normative acts components of this system there must be both an internal correlation, that is, a functional and pyramidal hierarchical relationship, as well as an external correlation, respectively a harmonization of the system of internal normative acts with those of European Union law and public international law (*S. Cristea, 2022, p. 76; M.-I. Grigore-Rădulescu, 2019, p. 148; I. Boghirnea, 2013, p. 123*).

Therefore, the normative acts fall into a system, correlate and, at the same time, subordinate to its purpose, which explains and argues the idea of the system.

The majority opinion of law theorists (*N. Popa, 2008, p. 195; I. Muraru, E.S. Tănăsescu, 2088, pp. 81-82; I. Vida, I. C. Vida, 2016, p. 76; C. Voicu, 2008, p. 169; M.-I. Grigore-Rădulescu, 2019, p. 132; for an opinion to the contrary, see, F. Făiniși, V. Al. Făiniși, 2018, p. 16-20*) is in the sense that the system of normative acts, starting from those with superior legal force to those with lower legal force, includes:

- a) the Constitution.
- b) constitutional, organic and ordinary laws (*Article 73 of the Constitution*) and other normative acts elaborated by the Parliament, such as decisions on the regulations of the Chambers (*Article 76 of the Constitution*);
- c) presidential decrees with normative character (*Article 100 paragraph (1) of the Constitution*);
- d) Government ordinances and decisions (*Article 108 of the Constitution*);
- e) other normative acts belonging to the central and local bodies of the state public administration, which may bear different names, depending on the issuer, namely orders, decisions, provisions, regulations, instructions, methodological norms.

The hierarchy of normative acts is a legal requirement, resulting from the analysis and interposition of Article 4(1) of Law no. 24/2000, republished, according to which “*normative acts are elaborated according to their hierarchy, their category and the public authority competent to adopt them*”, and the categories of normative acts and the legal regulations regarding the competence of the state bodies in their adoption are established by the Constitution, republished, and by laws.

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In the final paragraph of Article 4, the principle of legal subordination of normative acts by which laws, ordinances or Government decisions are implemented to them is established.

In ensuring the purpose of the system of normative acts and its functionality, the provisions of Article 4 shall be corroborated with the provisions of Article 13 of the same law, which establishes the need for the organic integration of the normative act in the whole legislation, purpose in which it also establishes the rules to give practical effectiveness to the mentioned legal provisions, as well as article 14, which establishes the rule on the uniqueness of the relevant regulation, article 15 on the adoption of special and derogatory regulations and article 16 on the avoidance of parallelisms (*M.-I. Grigore-Rădulescu, 2019, pp. 148-149*).

In the same sense, we also note the provisions of Article 81 of Law no. 24/2000, republished, which establishes the rule of subordination of normative acts of lower level to higher level acts, so that, at the time of drafting, decisions, orders or provisions, In the project phase, to subordinate, through their normative content, to the laws, ordinances and decisions of the Government and other higher normative acts.

Also, pursuant to Article 81, paragraph (2), the compliance rule is mandatory, that is, the need for the mentioned normative acts, namely the decisions of the county councils, the decisions of the local councils, the orders of the prefects and the provisions of the mayors to comply with the Constitution of Romania and all the legal norms contained in normative acts superior to them.

Another relevant normative act for demonstrating the need for ranking the system of normative acts is GD no. 561/2009, through which a regulation establishing specific governmental procedures aimed at ensuring compliance with the rules of subordination, compliance and correlation of normative acts was approved, as well as the normative acts with the public policies (*M. Niță, 2022, pp. 183-189*).

In addition to the internal correlation of the system of normative acts, there is also a need to ensure the external correlation, regulated in Article 22, called marginal the Report with Community legislation and international treaties, of Law no. 24/2000, republished, from the interpretation of which it follows that the new national legal regulations must be compatible, In terms of the normative content, with the existing regulations in the respective field in the European Union, with the international treaties assumed by Romania and with the jurisprudence of the European Court of Human Rights.

By paragraph (3) of Article 22, mentioned above, the legal solution for the existence of inconsistencies or contradictions between internal provisions with those of Union law, international treaties or the judicial practice of the European Court of Human Rights is also regulated, by the possibility recognized to the legislator to supplement, modify or intervene with other legislative events on internal normative acts.

The obligation to submit to the Parliament the draft amendment, completion or repeal, in whole or in part, of the internal normative act that is contrary to the European Convention on Human Rights, to the additional protocols to the Convention, ratified by the Romanian State or to the decisions of the Court, lies with the Government, which has a maximum of 3 months from the date of communication of the Court's judgment to draw up and present it to Parliament.

## **2. THE PRINCIPLES APPLICABLE TO THE HIERARCHY OF THE SYSTEM OF NORMATIVE ACTS**

From the interpretation of Article 1 paragraph (5) of the Romanian Constitution, which provides that: "In Romania, the observance of the Constitution, its supremacy and laws is mandatory", the two essential principles that govern the hierarchy of the system of normative acts, respectively:

- The principle of the supremacy of the Constitution;
- The principle of legality.

Art. 5 is corroborated by Article 16 paragraph (2) of the Romanian Constitution, which provides that: "No one is above the law", with the provisions of Article 23 paragraph (12), applicable in criminal matters, according to which: "No punishment may be established or enforced except under the conditions and under the law" (*T. Avrigeanu, 2017, pp. 7-32*), as well as other constitutional provisions, which place the Constitution at the top of the hierarchy of the normative acts, as a fundamental source of constitutional law (*S. G. Barbu, V. Coman, 2018*).

The principle of the supremacy of the Constitution requires that all legal regulations strictly comply with the constitutional provisions, and the guarantor of the supremacy of the fundamental law is the Constitutional Court, as follows from the provisions of Article 142 paragraph (1) of the Constitution of Romania, republished, which, based on Article 146 also of the Constitution, exercises control of the constitutionality of laws (*S. Mihăilescu, 2021, p. 43 and then*).

Based on the principle of legality, the activity of state bodies must be carried out according to their legal powers and duties, and the exercise of rights and the fulfillment of obligations by legal subjects must be carried out in accordance with legal norms (*M.-I. Grigore-Rădulescu, 2019, p. 68; C. Voicu, 2008, p. 98*).

Therefore, all judicial, jurisdictional and measures restricting the exercise of certain fundamental rights and freedoms must be expressly regulated by law, as a legal act of the Parliament, or by Government Ordinance depending on the regulatory field and respecting the constitutional provisions in the regulated matter (*S. G. Barbu, V. Coman, 2018; N. Diaconu, 2020, pp. 61-68*).

The Constitution and its observance are the foundations of the rule of law, which in turn ensures the supremacy of the Constitution, the correlation of

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normative acts with it, the realization of the principle of separation, balance, coordination, and mutual control of powers within the state, within the limits of the law and giving expression to the general will.

As a natural consequence of the mutual conditioning between the Constitution and the rule of law, the latter has the obligation, by virtue of its prerogative to elaborate and enforce law, to establish judicial and non-judicial guarantees for respect for fundamental human rights and freedoms.

In the field of human rights, international rules create rights for individuals, who may become holders of legal rights and obligations and may be parties to judicial and non-judicial proceedings in the matter (*E.-N. Vâlcu, 2016, p. 332-337; A. Rîpeanu, 2017, pp. 33-48*). All these benefits recognized to individuals at national level and only in the field of human rights, however, stem from the will of the states, which create international norms in the field of human rights. Thus, the possibility of action of the natural person “is regarded as an exception and is subordinated to the will of the state”. (*C. F. Popescu, M.-I. Grigore-Rădulescu, 2014, p. 41*).

In this regard, we consider that the provisions of Article 20 paragraph (2) must be interpreted according to which “if there are any inconsistencies between the agreements and treaties on fundamental human rights, to which Romania is a party, and the domestic laws, international regulations have priority, Unless the Constitution or domestic laws contain more favorable provisions”, taking into account also the regulation of paragraph 1, which establishes the rule for the interpretation and application of constitutional provisions concerning the rights and freedoms of citizens in accordance with the Universal Declaration of Human Rights, With the treaties and other treaties to which Romania is a party.

The relationship between national law and international law is regulated in Article 11 of the Constitution, which enshrines, in paragraph (1), the principle of the fulfillment in good faith by the Romanian State of the obligations assumed by the treaties to which it is a party (*C. F. Popescu, M.-I. Grigore-Rădulescu, 2017, p.. 18*), specifying that only treaties ratified by Parliament are part of national law.

Precisely on the basis of the principle of supremacy of the Constitution, by the rule contained in paragraph (3) of Article 11, it is stipulated that in the event of the existence of some in a treaty to which Romania is to become part of provisions contrary to the Constitution, its ratification may take place only after the revision of the Constitution.

We consider that an interpretation similar to that of Article 20 must also benefit Article 148(2), according to which: “As a result of accession (to the European Union – n.n.), the provisions of the constituent treaties of the European Union, as well as other Community regulations of a binding nature, shall take precedence over the contrary provisions of national laws, in compliance with the provisions of the Act of Accession.” In this case too, the priority application of

Union regulations is subordinated to the will of the State, expressed in constitutional norms.

### CONCLUSIONS

*From the analysis and interpretation of the two principles enunciated, integrated into the general principles of law, the principles of legislation and the legislative policy of the state, the conclusions of my study are drawn.*

*Thus, it is not possible for normative acts with lower legal force to lead to the modification or completion of normative acts with higher legal force, an opinion based also on the analysis of the doctrine of constitutional law and the case law of the Constitutional Court.*

*At the same time, it is also relevant that the principle of hierarchy of the system of normative acts is established by the constitutional and legal mechanisms established for this purpose, including with regard to international human rights rules and those of Union law, which may have a major influence on national law pursuant to Article 11, Article 20 and Article 148 of the Constitution.*

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