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THE NON-RETROACTIVITY OF NEW LEGAL NORMS - FUNDAMENTAL PRINCIPLE OF LAW. EXCEPTIONS

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Abstract

The legal norm represents the internal structure of the law as a whole. The rule of law contains in its content the prescriptions to be followed, the rights and obligations of the subjects of law. All the social actions of our peers are placed in a normative framework, whether we are talking about law, morality, religion etc. The legal norm requires the acceptance and observance of the prescribed conduct. In this article, we have proposed to make a short analysis of the exceptions to the principle of non-retroactivity of legal norms, in particular the decriminalizing criminal norms and the criminal and contravention norms more favorable to the offender, respectively the contravenor; of interpretative legal norms; and express retroactivity.

Key words: *legal rule, principle, exceptions, non-retroactivity, interpretability, express retroactivity.*

INTRODUCTION

The legal norm is a general measure that applies to all cases that will arise under its rule, for a specific time or in the time interval provided in its content, in a certain space and to some subjects that participate in the legal circuit in this space. Therefore, the action of the legal norm has three necessary coordinates: time, space and people *(Vonica, 2000, p. 263).*

With regard to the action of the rule over time, in order to be able to determine exactly the action of the rule of law over time, it is necessary to establish exactly the moment of entry and exit of the legal rule into and out of force *(Vâlcu, 2012, p. 43).* Regarding the application of the legal rule over time, it is essential to determine whether the rule applies only to the future or also to the past.

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This issue considers the duration or resistance of the rule of law over time. There are examples of laws that have had a long existence of over 1000 years (the Law of the XII Tables) due to the heavy pace of economic-social transformations and because, in ancient times, the process of drafting laws was very slow *(Boghirnea, 2013, p. 77).* With the passage of time, these legal norms cease to respond to the needs of modern society and precisely for this reason it is necessary for the laws to be adapted or replaced, otherwise they no longer find their application.

As a constitutive element of law, its "basic cell", the legal norm can be roughly defined as a rule of conduct, instituted by the public power or recognized by it, whose compliance is ensured, if necessary, by the coercive force of the state. This traditional definition, although correct, is susceptible to amendments in the sense that, not necessarily, the legal norm must refer to human behaviors, it being in a broader sense a directive susceptible to public coercion related to human behaviors, but also to defining some legal concepts, establishing some competences or duties. *(Craiovan 2007, p. 352).*

In the specialized literature, the legal norm has been defined as a general and impersonal rule of conduct, established or recognized by the state, which expresses the will of the state and whose mandatory compliance is guaranteed by the coercive force of the state. *(Rădulescu, 2016, p. 84).*

The purpose of the legal norm corresponds to the finality of the law, namely ensuring social coexistence that guides people's behavior in the direction of a promotion and consolidation of social relations according to the ideals and values that govern society.

The fundamental principle of the action of the legal norm is represented by the *non-retroactivity of the law.* It derives from the natural circumstance according to which the law regulates for the future. It applies to conduct and social relations from the date of its entry into force. The state cannot ask citizens to obey a law whose regulations are unknown because it does not exist.

The Constitution of Romania[1] provides in art. 15 para. (2) that *"The Law disposes only for the future, with the exception of the more favorable Criminal or Contraventional Law".* The exception listed in the above-mentioned provisions concerns only substantive criminal laws, not procedural ones.

The Criminal Code provides in art. 3 that *"The criminal law applies to crimes committed while it is in force".*

EXCEPTIONS

[1] As amended and supplemented by the Law on the revision of the Romanian Constitution no. 429 of October 23, 2003, republished by the Legislative Council, updating the names and giving the texts a new numbering.

For humanitarian reasons, but also for some practical needs, it nevertheless determines the admission of some exceptions to the principle of non-retroactivity of the law.

Such exceptions that admit the retroactive application of the law are, in principle, the following:

- The decriminalizing criminal rules and the criminal and contraventional rules more favorable to the criminal, respectively the contravenor (the more favorable criminal law);
- Interpretive legal norms;
- Express retroactivity, when the normative act expressly states that it also applies to previous situations or establishes a date prior to the date of its adoption when it will enter into force.

1. DECRIMINALIZING CRIMINAL RULES

The application of the Criminal Law on decriminalization is provided for in art. 4 of the Romanian Criminal Code: *"The criminal law does not apply to acts committed under the old law, if they are no longer provided for by the new law. In this case, the execution of punishments, educational measures and safety measures, pronounced on the basis of the old law, as well as all the criminal consequences of the court rulings regarding these facts cease with the entry into force of the new law."* From these provisions follows the rule that the new decriminalizing law applies to those acts committed even before it enters into force.

Decriminalization - *abolitio criminis,* was defined as an exclusion of a concrete fact from the scope of crimes by repealing or modifying the norm of criminalization *(Hotca, 2017, p. 95).*

Considered as a more favorable type of criminal law, the incidence of the retroactivity of the decriminalization criminal law is limited in relation to the stage at which the resolution of the legal relationship of the conflict has reached, and in order to produce its effects, it must enter into force until the intervention of the convict's rehabilitation *(Duvac, Neagu, Gament and Băiculescu, 2019, p. 243).* Otherwise, it will no longer produce any effect, except for safety measures *(Hotca, 2017, p. 96).*

The criminal law more favorable

The mitior lex Principle - of the more favorable criminal law is provided for in Article 15 para. (2) of the Romanian Constitution. The principle is also reflected in art. 5 and art. 6 of the Romanian Criminal Code.

The Criminal Law Principle of the application of the more favorable law expresses a humanitarian conception. Thus, it allows the person who committed the crime in the past, under the action of the old law, replaced by a new one, to apply, of the two regulations, the one that establishes a less severe punishment for

the deeds committed. When the new law is more favorable it will apply retroactively, even if the act was committed before the entry into force of this law.

The Romanian Criminal Code distinguishes between the application of the more favorable criminal law until the final trial of the case - art. 5 and the application of the more favorable criminal law after the final trial of the case - art. 6.

The first situation, provided for in the Criminal Code at art. 5, gives satisfaction to the constitutional principle of the application of the more favorable criminal law in the case of the succession of criminal laws, even if they were in force for a short period of time. The same is the solution in the case of normative acts declared unconstitutional by the Constitutional Court.

The second situation, respectively the one stipulated by art. 6 of the above-mentioned Code, assumes that when, after the conviction remains final and until the full execution of the prison sentence or the fine, a law has intervened in the content of which there is a lighter punishment, the sanction applied, if it exceeds the special maximum provided by the new law for the crime committed, must be reduced to this maximum.

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. Făinişi, V. Al. Făinişi, 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, 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.

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. INTERPRETIVE LAWS

The Legal Dictionary defines the interpretive law as the law that clarifies the meaning of a previous law (e-juridic.ro), namely the one that explains, details or analyzes the previous regulations without modifying them.

In the conception of the old Romania Civil Code, the provisions of these laws applied from the date when the law they were interpreting entered into force. It was natural and logical, since the goal was to apply the exact meaning of the interpreted law, the meaning that should have been attributed to it since its entry into force. In other words, it applied retroactively and was also an exception to the rule that a law no longer applies.

According to the Romanian Civil Code in force, the interpretive laws are no longer retroactive, but only act for the future.

3. THE CASE IN WHICH THE LAW EXPRESSLY PROVIDES THAT IT ALSO APPLIES TO PREVIOUS SITUATIONS OR ESTABLISHES A DATE OF ENTRY INTO FORCE PRIOR TO THE DATE OF ITS ADOPTION

This express provision of the retroactive application of the law derives from the will expressed directly and indirectly by the legislator by virtue of his right to legislate. Thus, the legislator will expressly indicate the retroactive nature of the legal norm in question. He is the only one entitled to make a normative act retroactive.

In a regime of legality of the rule of law, some rules of principle at the constitutional or legal level will be established to prevent and limit this possibility. Moreover, this measure will be resorted to with caution and only exceptionally, so as not to disrupt the normal development of social relations. If this would harm the rights and legitimate interests of citizens, such a provision will never be accepted.

CONCLUSIONS

The social relations that arise on the basis of legal norms make up the legal order which, in turn, is a component part of the social order. With the adoption of the Constitution in 1991, the principle of non-retroactivity of the law became a principle of constitutional force.

Through the provisions of art. 3 of Law no. 187 of October 24, 2012 for the implementation of the Criminal Code, the rule was established that in order to decide whether the new law decriminalizes the act, the actual act must be examined and not just the non-existence of a new incriminating norm.

The scope of application of the more favorable criminal law is different, depending on when the succession of laws intervenes in time, compared to the moment of the final conviction. Therefore, if the new, more favorable law intervenes before the conviction becomes final, its effects will be wider than if the same law intervenes after the conviction becomes final.

In accordance with art. 5 of Criminal Code, the more favorable criminal law will be determined by taking into account both the successive criminal laws and the normative acts or their provisions that are declared unconstitutional, but also the emergency ordinances approved by the Parliament, in the situation in which when they were in force, they also included more favorable criminal provisions.

Regarding the more favorable criminal law, by art. 6 of the Criminal Code regulates the only incidence situation of the *Mitior lex* Principle in relation to the cases in which the judgment has been definitively completed.

The interpretation of a legal norm can be done by the legislator himself, either within the very content of the law that contains the norm, or through the provisions of a subsequent law.

The interpretive laws only explained, detailed or analyzed the old laws to clarify their meaning, in the old conception of the Civil Code. Currently, the interpretive laws are no longer retroactive, but they also act only for the future.

Finally, express retroactivity is that exception to the principle of non-retroactivity, which results from the text of the legal norm itself. In that text there is an express provision that the law also applies to certain situations, facts that happened previously.

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