

LAW IN THE NORMATIVE SYSTEM OF THE SOCIETY

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The context of this paper exemplifies the fact that law is interfering with the other normative systems, such as the morality, the religion, the customs and the traditions, and the juridical system has to be leveled so as to be similar to the one of the states standing as an example for us. In nowadays society, the adages and the maxims of the Romanian law, stating: „Ubi societatis ibi jus” (if there is a society, then the law is a must) and „Ubi jus ibi societas” (where law exists, it exists only to serve the society), are just as valid as always.

The whole normative system of the society is mainly expressed through law norms which include the other rules, as well as through the fact that the juridical system is characterized by clarity, precision, publicity, amplitude and concision. At the same time, the juridical command may be enforced, if necessary, by constraint. In order to impose the law and to make it enforceable, it has to be collectively acknowledged. Therefore, the society shall be organized based on the “power of the law” and on the juridical values and principles, the possibility of the “law of the power” being thus excluded.

At the same time the paper exemplifies the fact that the law, widely understood, is an assembly of social rules compulsory for people, although living in the society does not deprive the human being of his individuality or its prerogatives, despite of the fact that the freedom of his action is limited, being used in order to coordinate the activities of all members of the collective society.

Knowing the law is one of the conditions necessary in order to observe it and to benefit from its protection. At the very base of being informed and forming a social conscience there is the knowledge and the understanding of the country’s laws as well as of the various regulations. Despite all these, the process of making the people aware of the necessity of amendments of the Romanian juridical system is determined, along with a number of other factors, by our accessing to the European Union and implicitly by Romania’s alignment to the other developed member states.

Key words: morality, religion, customs, traditions, normative system, juridical system, social conscience, amendments, European Union.

1. Function of the Norms in the Public Order

The social rule has to be supported by the social order, which represents the very base of the rule of law. But the state has to ensure the social order through its specialized, democratically elected authorities, namely the state has to make available for its citizens all the instruments necessary in order to guarantee the order. At the same time with the implementation of these instruments, a civic conscience has to be formed.

Firstly, the moral and juridical legitimacy of the rule of law must take into consideration the human rights, the free market, the democratic society, meaning that the country’s resources are to be administrated on behalf of all its citizens. Last but not least, the state subject to the rule of law must take into consideration the most significant

necessities of its own citizens. In order to come close to a normal situation, the Romanian society still has to run a long way. This is more difficult to accomplish as the cultural level, generally speaking, and especially the juridical and political cultural level of the ones elected to manage the country, suffers from serious lacks.

Starting from the idea that only a man having a certain cultural level can act and find appropriate solutions, we conclude that the superficial juridical training and the political immaturity of the ones summoned to create and eventually to manage a coherent juridical system in Romania impede them to find these solutions anytime soon. Despite all the menaces and constrains that have come from the international bodies, things move quite slowly towards the direction intended by these bodies as well as by most of the Romanian citizens.

It is quite difficult to invoke the public order when there are no well-established rules, obviously observed and enforced accordingly, firstly by the ones responsible with their implementation, who should represent role models for most of the people asked to enforce them. The mechanisms based on which this long expected coherent juridical system is supposed to function have functional flaws at all levels.

2. Democratic Juridical System versus Totalitarian Juridical System

The passing from a totalitarian juridical system to a democratic juridical system was accomplished as a result of the 1989 events, although it is very hard to say whether this passing was actually achieved, due to the fact that almost 20 years later the status of our country is the result of many unsuccessful attempts in this direction.

Apart from the other responsible factors, a very important part in the accomplishment of this objective should be also played by the civil society, but in Romania, the civil society's role is quite insignificant. Unfortunately, neither the civic spirit is very well exercised when it comes to contributing to the creation of new power structures and implicitly, to responsible decisions. Again, the low cultural level of the citizens is responsible for this. Their cultural level can be easily noticed in the way the citizens understand to manage their own life, activity and orientation in the society, but also during the elections, irrespectively whether they exercise their right to vote in order to elect the representatives of the state's bodies and structures or in matters related to national interest laws, such as, for instance, the fundamental law of the country, namely the Constitution. Although it is difficult to believe, most of the voters are not very well aware of what they are supposed to do. They lack the fundamental knowledge of the subject, and rather listen to the advice of their neighbors, friends and acquaintances on their way to the polling station. One may naturally ask himself whether the vote of those citizens, simply expressed without having any certainty, any motivation, actually represented their true belief or it was nothing but the suggestion of the people they asked for advice. On the other hand, it is impossible to provide national level juridical education, only on the occasion of such events, every four years or even every 10-15 years, as in the case of the Constitution referendum or the uninominal electoral system referendum.

In our opinion, both the juridical education and the civic education have to be provided within the educational institutions, starting with the high school. At this age, the beneficiaries of this type of education begin to become aware of its advantages, fact proved by the 14-year old students who have different views as compared to others having the same age 10-15 years ago. The means of communication, but not only, to which the nowadays generations have access, contributed to their maturity or emancipation.

The lack of the minimum necessary knowledge in this area – guiding the life of the young people – makes some of them to choose a one-way path. Another factor contributing

to the stagnation of the change related to the status of the Romanian citizens is the specific Romanian mentality, as well as the personal structure of each individual, the difficult adaptation of some people or even the impossible adaptation of others, when they come into contact with a superior juridical system (the European one). This is how one may explain the transfer of the Romanian crimes to the European space (crimes committed by Romanians as well as by gypsies). These individuals are not capable to accommodate themselves to the rigorous system of the European Union's developed states (see the recent incidents from Spain, Italy and France, where Romanian citizens were involved).

These incidents also affected the diplomatic relations between those countries and Romania, as a result of the crimes committed and the discomfort created for the authorities of the above mentioned countries. The question that comes naturally is: if these persons cannot adapt to the system existent in their origin country, how can they adapt to a much rigorous one, such as the systems of most of the developed countries, where they can easily reach, as the frontiers are wide opened after Romania's joining the European Union. Due to these circumstances, the European bodies try to find solutions in order to contribute to the decrease of the criminal phenomenon in the Union. At the same time, they are trying to find educative measures aimed at ensuring, for each individual, the basic support in order to make him responsible of his actions. We are consistent with the idea that a society whose citizens have a solid culture can be able to contribute to the creation of the support necessary to a normative construction, in accordance with the developed countries that we decided to join on January 1st, 2007.

3. The Dynamics of the Normative Factor

In our opinion, the *dynamics of the normative factor* represents the assembly of transformations that occur in the area of the juridical system, and in this particular case, in a transition society. The passing from a totalitarian society to a democratic one offers the citizen the opportunity to actively involve himself in the decision making process, as these decisions concern and directly affect him. A number of changes related to society's modernization and development, generally speaking and also at the citizen's level, occur on the occasion of this passing.

During this period the state has the constitutional obligation to elaborate a coherent legislation. A period like this is menaced by certain risks previously inexperienced by the Romanian society, such as: unemployment, inflation, lack of housing, rapid increase of the real estate prices, etc., while the rapid social changes are accompanied by conflicts between generations.

It is imperiously necessary to elaborate a juridical and legislative system leading to the juridical conviction of the family violence (also known as domestic violence), to the regulation of the woman's status, to the judges' intervention in case of sexual abuse or parental neglect, to effective alternatives to foster care. At the same time, it is necessary to eliminate the confusion made between the executive power and the judicial power when enforcing the law, to abolish old laws and to replace them with new, coherent ones, in accordance with the changes occurred. In the context of the revolutionary changes that occurred after 1989, the law becomes a fundamental factor of the change and progress. Depending on how it is enforced by the political forces, it may represent not only a progressive factor but also a regressive one.

A good and coherent legislative system does not suffice, if it is not efficiently enforced, if the ones who are supposed to enforce it do it according to their own preferences, to the social status of the one on who the law is enforced, or according to the relations between the ones enforcing the law and the ones for whom the law is intended.

Knowing the law means always acting accordingly, and the conscientious commitment to the law, to the juridical norm, leads to the fulfillment of the individual as a conscientious and free being, and a simple enunciation of those principles is insufficient.

After 1989, the juridical system was characterized by a rapid dynamics, meaning that a great amount of normative acts (laws, ordinances, decisions) were issued. Unfortunately, we may only mention the quantitative aspect. As to the quality, these normative acts have a number of deficiencies. On the one hand, the issued normative acts are characterized by a series of *incongruities, of law superposition*, between laws and ordinances, between laws and decisions, and on the other hand one may easily notice the lack of structure of these normative acts.

A number of *knowledge and implementation difficulties* were experienced even by the *specialists in the area*, needless to mention those experienced by the organizations, the communities, and the society in general. There is a certain confusion, and therefore certain attempts of infiltrating in the nowadays thick Romanian legislative system result in serious or less serious breaching of the juridical provisions.

There were a number of flagrant breaches of the law, the authors being actually the ones responsible with elaborating such normative acts. As it is the case of certain emergency ordinances or government's decisions, they took advantage of the parliamentary vacation or of their legal privilege to issue certain acts, thus either abolishing the previous, freshly issued acts, or issuing different provisions contradicting the previous ones. This led to the superposition of several normative acts and therefore not even the best trained specialists of the area have been able to establish the normative acts in force that should be enforced.

A number of normative acts were issued, according to which certain state-subordinated bodies were transferred in the subordination of other institutions, and our opinion is that this was accomplished exactly in order to create the favorable background for the commission or the cover of certain crimes.

As to the initiation of law projects in nowadays Romania, another important aspect is the fact that a many uninstructed persons (lacking the slightest juridical knowledge) are proposing projects, some of them aberrant, others unrealistic, confusing the legislative process, while the ones invested with the authority to elaborate such legislative acts are the first to flagrantly breach them, causing the international bodies to react negatively and thus making Romanian representatives to appear ridiculous.

In these circumstances, we may very well say that what we are dealing with is political or juridical immaturity, lack of education, lack of political or juridical culture, or we may even say that what we are dealing with is actually the immaturity of most of our politicians.

What we do not understand is the reaction, or better said the lack of reaction of the juridical specialists, who do not have a common position towards this situation found in 2009 Romania, as well as of the specialists belonging to other areas of expertise, areas where regulations are amended and abolished with such a frequency that it is hard for us to believe that they would be as easily accepted anywhere in the world.

We cannot speak about the dynamics of the normative factor in Romania after 1989, if the things are rather going backwards than evolving, and the progress is inexistent, if all the ones responsible with Romania's destiny set as a priority their personal interest rather than the general one. All these internal affairs inspire some of the Romanian citizens who immigrated to Europe and who breach the laws of the countries they live in at present, just like they did in their own country. This is another reason for which we consider that our analysis of such problems is not useless and maybe, through these signals, we may

modestly bring our contribution to the improvement of these aspects, by making the responsible people's conscious of these deficiencies.

4. The Transition Society and the Normative Construction of Society. Necessity of Modernizing the Juridical System

After the 1989 events, our country entered a profound process of transformations, called "transition", meaning the changes that determine the passing from the totalitarian period to a new type of society, namely the democratic one. The term *transition* was adopted by the political ideology as well as by the social sciences in order to define the process by which the former socialist society was turning into a new capitalist society.

As a result of the crash of the entire European communist system, the former socialist countries of Eastern Europe, Romania included, started to politically orient towards the West, especially towards the European Union, and began to promote a democratic system in most of the social life's areas, in the public administration and in the economy. In the area of the juridical system, one of the priorities was the implementation of the legal instruments of the market economy and of the democratic state, as well as the alignment to the European practice by the assimilation of the communitarian law, as an essential condition for joining the European Union.

In Romania, the price paid for these transformations was the crash of the economy and the significant impoverishment of the population, as well as the workforce degradation, the dissolution of families, the abandon of the children, the significant increase of the delinquency, especially of the organized crime, the illicit drug trade and consumption, the decrease of the citizens' security, the high increase of violence, the appearance of new types of crimes such as: the blackmail, the kidnappings, the protection fees, the traffic in persons (as a result of the opportunities to travel aboard), the sexual and economical exploitation, even the traffic in children, the increase of the homeless children phenomenon, the social integration difficulties experienced by the young people coming from poor families (especially by those coming from social protection facilities), the degradation of the participation to the school education, etc. Apart from these aspects, the general health status of the population became worse and incurable diseases appeared (HIV/AIDS, tuberculosis, venereal diseases), as a result of the population's modest financial means necessary to prevent and treat these diseases.

The promiscuity or the lack of housing and the malnutrition are serious consequences of the transition. They impose the elaboration of a series of normative acts intended to regulate and to create new bodies to fight for their decrease. But paradoxically, after 1989, the Romanian law system became one of the most important areas of disintegration of the Romanian society.

Many Romanian citizens believe that the ones invested to adjust the existent situation, to contribute to the smooth development of the society, from the juridical point of view, are corrupted. They are being accused of complicity in covering a number of corruption deeds and in breaching the law, impoverishing the population by the *preferential distribution of the justice* to the rich areas in the detriment of the poor ones, as well as by the *high cost of the justice act*. Practically, the groups disposing of financial resources won most of the times when fighting against the state's institutions intended to make justice, in the detriment of the ones lacking the financial means. Thus, things' evolution was not a positive one, as in 2008 too the justice was not able to settle the matters so as to be considered, as it actually should be, the main balance instrument in the Romanian society.

As a result of the preferential enforcement of laws related to real estate (especially land and housing) restoration, a number of trials and conflicts followed, taking years and

years to be settled, involving huge costs that the poor ones could not bear. On top of it, there is the *unrighteous character of the ones making justice* – many of them not being true professionals of this area of expertise, others being in the pursuit of a high standard of life ensured by this profession – who made their “duty” according to their own interest and priorities and not according to the rightful enforcement of the laws.

All these cases were also favored by the *legislative emptiness* characteristic to a number of fundamental areas, such as the ones related to the increase of the authority and correctness in the functioning of the juridical bodies. These necessary regulations were elaborated only around the year 2000. After the year 2000, laws on the corruption fight, cross-border organized crime and traffic in human beings were promoted. If only had they been a priority in the 90s, the situation in 2009 would have been totally different.

Thus, the *insufficiently elaborated versions of certain laws* led to their frequent change or amendment, as cases unpredicted by those specific laws appeared.

The only thing accomplished was to create confusion in the entire juridical system, and the consequences were the social disorganization and the system’s stagnation, therefore one cannot speak about any kind of progress.

Thus, we may speak about the dynamics of the normative factor *only quantitatively, and not qualitatively*, as most of the laws are made just to make do. The legislative system is truly characterized by chaos. That is why when they start building a highway, they notice that we have no laws to regulate this area. Therefore the transition process in Romania takes quite a long time.

Generally, for a social system to function, it needs the support of his members’ mentality. The major social changes affecting that system are facing, independently of the will, the obstacles of the mentalities shaped by the former structures, but also the population’s ability to adapt to a new institutional system.

Conclusions

During this transition period, the normative factor is influenced by the social, political, economical and cultural background, but the change process of the Romanian juridical system supposes, together with the institutions’ restructuring, the reformation of mentalities that are to contribute to the smooth functioning of the social system. Unfortunately, these mentalities are still characterized by shadows of the past.

Despite of the difficult problem related to our juridical system, Romania however does not seem to seriously take into account the solutions and the approaching methods used by other countries facing similar problems, countries that actually made considerable progresses. The changes that took place in countries starting from the same point, such as the Czech Republic, Poland, Hungary, were supported by the civil society of these countries, from inside the juridical communities as well as from outside them, and by the ones practicing in this area of expertise. Unfortunately, this is not happening in Romania.

An independent, impartial, credible and efficient judicial system is a necessary requirement for the supremacy of the law and of the principles of the rule of law, and the consolidation of the independence of the judicial system must lead not only to the affirmation of the separation of powers principle (that does not seem to apply in Romania) but also to its practical application, so that the society should become its main beneficiary. But one of the main deficiencies of the juridical system influencing the act of justice and its credibility is the *inconsistent judiciary practice and the inconsistent enforcement of the legislation in force*.

Without the initiation of measures on the juridical education, the reformation of the juridical professions and the establishment of the clear duties of the bodies involved in

the justice process, the profound changes, long-expected by the common citizens, won't occur. We are consistent with the idea that there are at least three priorities that should define the changes expected by the society for almost 20 years now from the justice system, namely: *the juridical education, the transparency and the real competition between the professionals of this area of expertise.*

In order to create a juridical system similar to the one functioning in the countries that represent a role model for us, we believe that it is imperiously necessary to impose the actual enforcement of certain fundamental principles, such as the reinforcement of the rule of law and of the law supremacy, the existence of a real separation of powers and of a balance of powers in the state. This can be accomplished by the consolidation of the independence of the judicial power, the observance of the human rights, the implementation, at the level of the juridical system, of the best European practices, the commitment to the transparency of the justice act, the use and the creation of the judiciary cooperation opportunities, in order to enter the European freedom, security and justice space, the amendment of the Romanian juridical system so as to make it institutionally and legislatively compatible with the judiciary systems of the European Union. Eventually, after their application into practice, the beneficiary shall be the Romanian society.

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