RESEARCH ARTICLE:

Better regulation - good governance dimension

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ABSTRACT

The concept of good governance is generally recognized at European level, its content being expanded and developed from the economic and political dimension to a legal principle immanent for the rule of law and to common EU policies.

Rule of law is a guarantee against arbitrary and abusive exercise of power; legal rules provide certainty and security for regulated relations by their clear, consistent, stable, predictable character.

The activity of quality evaluation of legal regulations must have a permanent and systematic character and contribute to building a genuine culture in this respect.

KEYWORDS: *administrative democracy, participatory democracy, local communities, administered people.*

1.Conceptual approaches to good governance

The concept of governance is very old and yet its meanings seem not to be deciphered completely until today!

Aristotle was referring even to good governance, to describe a state guided by the principles of ethics and justice.[1]

The concept of good governance has emerged as a goal of social, political and administrative organization of human communities and acquired new dimensions with the emergence of modern states, emphasizing technological progress. Since the 90s of last century many international bodies bring back to the debates and evaluations of processes of governance the concept of good governance. The World Bank identifies a link between the quality of a country's governance system and its ability to pursue sustainable economic and social development. For the World Bank governance means a manifestation of the political regime, a process for the exercise of authority for the use of economic and social resources for development and also the government's ability to design, formulate and implement public policies and to exercise functions.

The World Bank has made good governance based on accountability, transparency, effective management combined with eradication of corruption at the heart of its assistance programs. On the list of WB indicators of good governance are: accountability, political stability and absence of violence, government efficiency, and regulatory quality, rule of law and control of corruption.[2]

This approach has been taken over by other organizations including the International Monetary Fund, OECD, sometimes adding features, or even adapting the concept to their needs in order to legitimate the conditioning needs for interventions or assistance programs.

An evaluation based strictly on economic efficiency is inadequate, democracy being inherently attached to the issue of governance, and this is the only way to achieve good governance.[3]

Size and parameters of good governance were constantly adjusted, leading in 2009 through a document UNESCAP to identify the major characteristics of good governance as being: a participatory process, consensus oriented, accountable, transparent, responsive, effective and efficient , equitable and inclusive that follows the rule of law.[4]

It can be seen that there are different criteria for assessing the content of good governance. Some of them set standards for the exercise of political power, others relate to

[1]See in this respect the European Commission for Democracy through Law (Venice Commission) - On the Notions of "Good governance and good administration".

[2]World Bank. 1991. The reform of public sector management: Lessons from Experience, Washington DC.

[3]U.N., The Millennium Declaration Resolution, adopted by the General Assambly on 18th of September 2000 – A/RES/55/2, paragraph 13.

[4]United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) - the body that monitors progress and advises countries in pursuit of the Millennium Development Declaration.

efficiency, effectiveness, administration, etc.

Accepted or criticized, the concept of good governance has been assimilated and recognized at European level its content being expanded and developed from the economic-political dimension to an imminent legal principle "the rule of law" and to "common European policies." The issue of governance has been addressed systematically, for the first time with the publication of the White Paper of 2001.[5]

2.Constitutional state and rule of law

Through its normative dimension, good governance focuses on aspects that define a democratic regime and ensure the rule of law requirements. In a state of law the exercise of public power should be governed by law and fundamental social relations are subject to the rules of law.

The principle of legality imposes impartiality and accountability in the exercise of power that it must be correctly distributed among the various political actors.

In the legal system, fully understood as all rules of law (as a normative system) and also as all forms of expression, the constitution has a unique central position. This position stems from the fact that it is the supreme law of the state, and from the following elements[6]:

- All the rules of law, enshrined in laws and regulations subordinated to law must conform to the Constitution, which provides their structure in the system. The pyramidal structure of the legal system is given by the relationship between law and subordinated normative acts, but the essential element of this relationship is the Constitution. In terms of institutional framework, constitutional supremacy is ensured by the Constitutional Court's role to remove those legal rules from the legislation that do not conform to a constitutional provision;
- Constitution is directly applicable, thus representing the fundamental legal document enshrining the legal status of citizens and the main public authorities, defining for the exercise of state power; that is why the Constitution configures from the normative perspective and in its essence the state, representing the fundamental normative act for its existence;
- The Law as the main normative act regulating social relations, can be adopted only in accordance with the legislative procedure established by the Constitution;
- The Constitution cannot be amended except by a constitutional law that adopted following the provisions enshrined in it; according to the final provisions of the Constitution the amendment procedure is likely to provide a high degree of stability to the instituted constitutional regime.

The concept of law is broad, covering both the normative act adopted as such by Parliament under

[5]European Commission, European Governance - A White Paper, COM (2001), p. 10.
[6]Constantinescu, M. and others. Constitution, commented and annotated, *RA Gazette*, Bucharest, 1992, pp. 123-124.

the procedure prescribed by the constitution and bylaws normative documents: Government ordinances and resolutions, ministerial instructions, etc.

Mandatory law, enshrined in the Constitution envisages both the normative aspect, namely the rule of law established and the hierarchy of normative acts and their adoption procedures. Mandatory law is the main guarantee of rights and freedoms of citizens and of the proper functioning of public authorities.

Without legal certainty that the law provides for social relations, the uncertainty of correlative rights and obligations would make impossible even the common life, the subjective right would be an illusion and the corresponding obligation would become optional. Legality and the law order which it establishes represents the basic conditions of democracy, pluralism in social life, the free development of human personality.

Rule of law is a guarantee against arbitrariness and abuse of power, and legal rules must be clear, consistent, and thereby will ensure certainty / legal security.

The complexity of the law in terms of a dynamic society can create difficulties in ensuring the rule of law requirements. To be respected, the law must be known, and for this it should be clear and stable.

Regulatory instability can harm both organizations and citizens and credibility of political action.

As foundation of the rule of law legal certainty is ensured through clear norms, which are not subject to too frequent changes and especially unpredictable ones.

The principle of legal certainty requires the law to be predictable in order for legal solutions to remain relatively stable. Considering the exigencies imposed by legal certainty it can be seen that a competition with the legality principle is developing, even though the two concepts are mutually reinforcing. The legality principle may have consequences on legal certainty, particularly in the case of contentious retroactive cancellation or in the hypothesis of jurisprudence changes.

The requirements of legal certainty impose also the respect of rules hierarchy, of the quality of legal and regulatory enunciations, of simplicity for dispositions and procedures, of legal ensemble coherence, of transitory regimes organizations.

3.Regulatory Quality

The formal axis of legal certainty is the quality of law, while the temporal axis is its predictability. Speaking about the quality of law, in a published study, the French Council of State stated:

„The law is made to impose, to ban, and to punish. It is not made to blab, create illusions, causing ambiguities and deceptions. The law should be therefore normative; non-normative law usually decreases the required regulation, inducing doubt about the actual effect of its provisions...

To know what the law requires it is not sufficient for it to be accessible

in a material sense. It's certainly an essential requirement, and the publishing of the norm, which is designed to make it accessible, it is in fact a condition of its enforceability. But the rule must be intelligible. This involves both clarity and accuracy of the statements and their coherence. It also requires the rules to acquire their entire force in the context of the legal corpus that they are called to join without, to this end, calling for too many provisions outside the text."[7]

In developed countries regulatory activity is subject to assessment based on rigorous standards, the Organisation for Economic Cooperation and Development (OECD) having an important role in this process.

In the European Union, there were debates about the quality of regulation, which included, among other things, regulatory evaluation, a process completed by the publication, in 2001of a report called "Mandelkern Report" after the chairman of the working Group.

The term regulatory is derived from the British system of "regulation", naming all rules governing the economic, social, political, relations etc., applicable in a particular state.

Evaluation of regulation can be achieved through procedural steps prior to the application - ex ante - or in the next stage - ex-post. Ex-ante involves a legal assessment on compliance of the text with the superior norms. Opportunity to adopt a text, which is also the object of analysis, is of essence for the exercise of political power and the quality of the act to be adopted. In this regard, it is used a technical measure, the impact analysis. Impact studies should decipher the legal consequences that the act will produce to social relations.

Reflecting on the current situation of Romanian legal landscape, we exemplify with the situation of the draft law on property restitution which Romanian Parliament should adopt at the request of the Council of Europe. From official news release results that "the government is taking steps on studying the laws before they enter into force."[8]

The other type of assessment, ex-post assessment, after the finalization and adoption of the text of regulation may take the form of a check from those which are subject to it, for example the judiciary, etc.

From the practice of the Constitutional Court of Romania we exemplify with two situations which involve relative approaches to the quality of legislation. Thus, CC decision no. 903/2010, on the plea of unconstitutionality of art. 11 GEO. 55/2002 on the regime of detention of dangerous or aggressive dogs[9], stated as appreciations towards the controlled act and on its quality:

[7] Conseil d'Etat, *Rapport public annuel 1991*, De la sécurité juridique, La Documentation française.

[8] "I'm so glad that the Romanian Government adopted this method, which is to study carefully the laws before they take effect, and so it is important for this method to be applied in respect of the adoption of the law on restitution, so that there will not be afterwards all sorts of appeals to the Court in Strasbourg. "- statement Thorbjorn Jagland, Secretary General of the Council of Europe - HotNews March 20, 2013.

[9] Official Journal of Romania, Part I, no. 584 of 17 August 2010.

- Lack of correlation between the penalty limits and so a direct infringement of constitutional guarantees on the right to a fair trial. For this right to be insured, legal statements must be clear, precise, explicit so as to unequivocally warn of the seriousness of the legal consequences of non-compliance with requirements contained therein;
- Drafting flaws as improper form of drafting is used;
- Lack of internal logic of the act, which deprives the efficacy and leave uncovered the manner in which a penal action is started.

Legal norm must contain strict regulations and must meet the requirements of precision, clarity, predictability required by law, so that people can understand and control their conduct.

From the Constitutional Court Decision no. 81/2013 on the objection of unconstitutionality of the Law amending and supplementing Law no. 96/2006 on the Statute for Members and Senators as a whole and, in particular, the provisions of art. I Section 3 (amending Article. 7) and art. I, section 14 (relating to the introduction of Art. 191) of the law[10], would like to point out that:

"The legality principle requires the establishment of equal treatment in situations in which depending on the purpose are not different ... Consequently, a different treatment may not only be exclusively the expression of appreciation of the legislature, but must be justified rationally, in respect with the principle of equality of citizens before the law and public authorities ... Or, in the present case the situation of Deputies and Senators, in terms of the scope of Law no. 176/2010 is the same as the other categories of officials and civil servants to whom the law applies. Consequently, establishing a different procedural treatment on their part is discriminatory".

[10] Official Journal of Romania, Part I, no. 136 of March 14, 2013.

4.Conclusions

The evaluation activity of legal regulations adopted and on how them meet the standards of constitutionality, legality, hierarchy, and so on, must be permanent and systematic, to ensure compliance with the rule of law requirements.

Regulatory Quality must be for the leadership of public entities a fundamental concern and must contribute to building a genuine culture in this regard. This involves not only provisions, organization but also a behaviour that respects the values of the rule of law.

It can be appreciated that the evaluation of regulation quality gives content to good governance and it will find new developments, new spheres of application, as the culture of evaluation will impose.

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