COMPARATIVE LAW ELEMENTS OF THE ACTION IN TIME OF THE PROVISIONS OF A LEGAL REGULATION

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Abstract
The legal regulation is a general measure which is applied in all cases which appear under it, for an indefinite period or within the time limit referred to in its contents, in a certain space and for certain subjects who participate in the legal circuit in this space. Therefore, the action of legal regulations presents three necessary coordinates: time, space, persons. A legal report is formed, on the basis of the legal regulation in force, at the time of its creation. Therefore, it is necessary to know, always, what legal regulation is applied to the given legal regulation. In each state, there are legal regulations governing the order of publication and entry into force of the laws and other normative acts. Normative acts are adopted in order to act on social relations, in order to direct the behaviour of the subjects of law for the purposes of compliance with the edited regulations. The problem of the choice between the old and the new law is of particular theoretical and practical importance. As regards the mode of entry into force of the normative act, a rule cannot be established, sometimes until the entry into force of the act a period of time is necessary, in order to ensure the preparation, with a view to introduce the new regulations.
Keywords: *juridical regulation; juridical report; normative acts; system of law; action of juridical regulation.*

Introductory elements

The time of the legal regulation defines its duration, its resistance. The history of the law records legal regulations with long lasting effects in time: The law of the 12 tables, has stood for example for over ten centuries and the Islamic law includes legal regulations from 1300 years ago. In the past, the pace of legislative transformations was slow. [1] The Locrian oligarchy of Ancient Greece imagined, as a matter of fact, the habit that the person who proposed a new law had to appear in front of the people with a noose around his neck, which meant that if the law in question failed, the one who proposed the law was hanged on the spot.

The legal regulation is a general measure which is applied in all cases which appear under it, for an indefinite period or within the time limit referred to in its contents, in a certain space – territory – and for certain subjects who participate in the legal circuit

in this space. Therefore, the action of legal regulations presents three necessary coordinates: time, space, persons.

A legal report is formed, on the basis of the legal regulation in force, at the time of its creation – tempus regit actum. Therefore, it is necessary to know, always, what legal regulation is applied to the given legal regulation.

Any legal regulation has its time limits, a beginning and an ending.

The legal regulation is entered in time and produces legal effects at its entry into force and ceases to be legally effective, to produce effects, when it is no longer in force.

A new regulation excludes, in principle, the further enforcement of the old regulation, but does not operate on the past. The changes determined by social requirements involve the succession of the regulations promulgated on different dates. In the action of the legal regulation in time three important moments are of interest: the entry into force of the legal regulation, the action of the regulation and the moment the legal regulation is no longer in force.

Regarding the first aspect, of the entry into force of the legal regulation, this moment is linked to the date of its publication in the Official Gazette, when it is brought to the attention of the public, or the date provided in its text.

Choosing one of these moments of entry into force of a legal regulation is determined by the socio-economic requirements, such as: special organizational measures, essential changes which must be prepared, etc.

In each state, there are legal regulations governing the order of publication and entry into force of the laws and other normative acts. Normative acts are adopted in order to act on social relations, in order to direct the behaviour of the subjects of law for the purposes of compliance with the edited regulations.

The question to be posed is from when and until when to apply the law, question which also raises the problem of its repeal.

Under this aspect, namely that relating to the limitations of the action of the regulation in time, in order to comply with the requirements of legality, normative acts adopted must exists within the time limits laid down, and thus regulations that do not correspond to reality must not be applied, which have therefore fallen in the disgrace of the lawmaker. Regarding the issue of the enforcement of the laws in time, Cicero was

one of the first erudites who talked about the retroactivity of the law, although, at that moment, the retroactive enforcement of the law existed.

Historical references of the action in time of the legal regulation

In the late period of the Roman Empire, Theodosius I strengthened, in the Constitution of 393, the principle of the retroactive character of penal law. Later, the so-called Law of Theodosius, named in honour of the emperor Teodosius II (440), which provided that any law acts only for the future, with the exception of the cases for which the lawmaker directly indicated their retroactive character. These provisions were included in the Code of Justinian. In the era of feudalism, and in particular the early one, issues associated with the action of the law could not even be posed, as the sole source of law [2] was the custom, a feature of it being the long term enforcement since ancient times. Coming to power, the monarchs gave an oath that they will respect and comply with the ancient customs. In France, the acts which were applied retroactively were called declarations. [3]

Savigny, in his work The Contemporary Roman Law, was the first to perform an analysis of the collisions of laws in time, stating that only through the determination of the essence of this mutual relationship between the old and the new law, will it be possible to establish the system of law to which it belongs and so as to be connected either to the old law or the new law.

The majority of contemporary jurists give priority to the action in time of the law, but do not exclude the action of the old law in certain, strictly determined, cases, especially in regulating homogeneous social relations.

The action in time of the legal regulation - elements of comparative law

The problem of the choice between the old and the new law is of particular theoretical and practical importance. As regards the mode of entry into force of the normative act, a rule cannot be established, sometimes until the entry into force of the act a period of time is necessary, in order to ensure the preparation, with a view to introduce the new regulations. The same situations also exist in Italy, France, etc.

In Italy, the laws and regulations of each of the palaces of parliament enter into force on the 15th day after their official publication, if another term is not set. As for the majority of the normative acts, they enter into force on the day following their publication.

In relation to the principle of nemo censetur ignorare legem, in order for it not to be mere fiction, the conditions of knowledge of the legal regulation must be ensured [4]; however, two exceptions to this rule are allowed, namely:

- when a part of the territory of the country remains isolated, through a case of force majeure, from the rest of the country, in which case lack of knowledge may be objective, not due to personal ignorance;

- in matters of civil or commercial conventions, when a person concludes an agreement, not knowing the consequences which the legal regulation causes to arise from the agreement.

It may request the cancellation of the agreement, invoking that it was a mistake of law, concerning will. It is of the essence of these legal relationships that the will of the contracting parties is not vitiated, is fully valid.

The normative act – the legal regulation – acts only in the present and in the future – while it is in force. The fundamental principle of the action of legal regulations in time is the principle of non-retroactivity. In the specialised literature it is stated that the law is incident, therefore it applies to all the acts during which it is in force. Consequently, the law acts from its entry into force until its removal from force.

In this matter, therefore, acts an absolute presumption of knowledge of the law, which cannot be overturned by evidence to the contrary, precisely because of the compulsory nature of the regulation. Otherwise, the regulation would be ignored, considered doubtful, optional, etc.

Although the law, as we have already stated, acts, in principle, for the present and the future, there are limited situations when it has a retroactive character, when it comes to:

- the adoption of a kinder, more favourable penal law;
- in the case of the adoption of interpretative law;
- if it is expressly provided in the law that this shall also apply to acts committed previously – express retroactivity.

In Luxembourg, the law enters into force 3 days following its publication in the Memorial, in Paris, on the day following its publication in the Official Journal.

In the Criminal Code of the state of Puerto Rico, regarding the principle of legality, it is mentioned: no criminal action against any person shall be initiated for a deed which is not specifically defined as a criminal offence in the Code or in a special law, nor shall a penalty or a measure of security that the law has not previously provided be applied.

In the same Penal Code it is mentioned that the penal law shall apply to deeds committed under it and provides the rule of applying the more favourable law for punishments, as well as for safety measures.

The French penal code regulates the enforcement of penal law in time, before regulating the enforcement of the penal law in space, the principle of the activity of penal law, i.e. the deeds which constitute crimes at the time when they were committed will be punished, the principle of the retroactive enforcement of a new, more favourable law, if the judgement has not remained final, are consecrated. From this wording it may be logically deduced that the more strict law is not retroactive. The text does not regulate the hypothesis ultra-activity of the old, more favourable law, nor that of temporary law. However, the situations where the law is retroactive in relation to the time the deeds were committed are regulated. In concrete terms, it concerns the laws of competence and judicial organization - if the Court of First Instance has not decided on the substance, the laws that refer to the methods for monitoring and procedural forms, those relating to the enforcement of sentences in certain conditions, etc.

In the design of the Italian penal legislation [5], regulating the enforcement in time of the law precedes regulating the enforcement in space.

According to the Italian penal code [6], nobody can be punished for a deed which has not been explicitly provided as a crime by the law and punishments which have not been laid down by law cannot be applied. As it can be observed, the principle of the legality of the incrimination and punishment is made by reference both to the idea of the existence of a regulation of incrimination and of penalisation, as well as to the idea of the precedence of the penal regulation in relation to the time the illicit deed was committed. The idea of the precedence of penal law is more clearly expressed in the Italian

Constitution - nobody can be punished unless on the basis of a law which entered into force before the deed was committed.

The Italian Penal Code refers to the succession of penal laws in time and consecrates the following principles:

- the principle of the non-retroactive nature of penal law in the sense that nobody can be punished for a deed which, according to the law at the time when the deed was committed, does not constitute a crime, as a logical conclusion of the principle of the activity of penal law;

- the theory of the non-retroactivity of law, which provides for the decriminalization of the deed – no one can be punished for a deed which, after the subsequent law, does not constitute a crime, and if he was convicted, the execution and the penal effects resulting from the conviction cease;

- the principle of the enforcement of the more favourable law – if the law at the time the deed was committed and the following ones are different, the one the provisions of which are more favourable for the criminal shall be applied – but only in the case of a decision which is not final.In the case of exceptional and temporary laws the provisions above shall not apply.

However, these provisions shall apply in the case of the revocation and the non-ratification of a decree-law, as well as in the case of the decree-law converted into law with amendments. In the Italian doctrine [7] it is stressed that the retroactivity and ultra-activity of the penal law express a superior principle, that the activity of the penal law, tempus regit actum - the validity of the penal law is circumscribed to the time it is in force.

Among the exceptions to the principle of the non-retroactivity of the penal law, the Italian authors also included the provisions of the European Convention on Human Rights. According to these provisions, the principle of non-retroactivity of the penal law, which provides for new incriminations, does not prevent the punishment of a person guilty of action or inaction, who, at the time when it was committed, was a crime according to the general principles of law recognized by civilized nations. [8]

Beyond this exception, the principle of the non-retroactivity of the more severe penal law is regarded as a guarantee that no citizen will be subjected to a more severe treatment than the one he knew, all the more so when the new law contains new

incriminations. The opposite principle, of the retroactivity of the penal law finds justification in the need for a more rational protection of the fundamental social values.

The assessment of the existence of the more favorable law shall be made in relation to the actual situation, especially when a law contains both favorable and unfavorable provisions.

In the category of the more favourable law, all the implications of each of the laws in conflict shall be taken into account, including the system of circumstances, of the causes of exclusion of the penal character of the deed, of the penal liability, of the punishment, the procedural conditions.

In accordance with the principle of the intangibility of the thing judged, the more favourable law cannot be applied unless there has been a final decision of conviction. Interpretive law is not part of a succession of penal laws in time, because such a law clarifies the law interpreted; it only appears to be a retroactive law, in fact, it is part of the law interpreted. Also, temporary, exceptional and financial laws are not subjected to the rule of the more favourable law, in this case the rule tempus regit actum being applicable.

The German penal law also regulates the enforcement of penal law in time, before the regulation of the enforcement of the penal law in space. [9] The law consecrates the following principles in the subject:

- the principle of the precedence of the penal law in relation to the time the deed was committed - a deed can only be punished if its penalty was laid down in the law before the deed was committed;

- the principle of the activity of penal law stipulates that its penalty and consequences shall be determined by the law in force at the date the deed was committed if the law is changed during the execution of the deed and the law in force at the time the deed was finalised shall be applied;

- the principle of the enforcement of the more favourable law – if the law in force at the time the deed was finalised, before rendering a decision, is changed, then the law, the principle of the ultra-activity of the temporary law shall be applied. The law shall apply to deeds committed while it was in force and after it ceases to be in force, if the law does not provide otherwise.

As it can be observed, German law consecrates the principles known in the matter, which we also find in our penal law.

The Spanish penal code regulates that most of the European penal laws of in force, in the first articles, the enforcement of penal law in time, as follows:

- no act or omission shall be sanctioned if it has not been provided for in law as a crime, consecrating the principle known as the principle of the precedence of the penal law.

- regulating the principle of the enforcement of the more favorable law, a final decision is issued, and the principle of the ultra-activity of the temporary law.

The Spanish penal code includes new provisions such as those concerning the intangibility of the subject of the trial or extending the principle of the activity of the penal law to the execution [10] of the punishment as well, as well as of safety measures.

Principles and rules of the action in time of the legal regulation

The arguments which impose the principle of the non-retroactivity of the legal regulation are related to the stability of the legal order, to the fairness and legality of the enforcement of the regulation and the reason for the presence of the regulation in social life.

The lawmaker cannot force the subject to have a certain conduct as long as such conduct is not prescribed in a legal regulation. [11]

On the other hand, certain relationships which were carried out in the past, based on a law then in effect, cannot be dismantled on grounds that the lawmaker gave a new legal regulation for such relationships. Otherwise, it would cause serious social disturbances, it would open the way for the arbitrary, any safety would disappear and the subject's confidence in the law would be shaken, with damaging consequences for the social order.

The active - non-retroactive - character of the legal regulation reveals interesting practical aspects in the field of private law. In this field, the immediate enforcement of the new regulation is possible under the conditions in which the legal actions and relationships carried out under the old regulation were completed.

For the legal actions and relationships producing successive, long term effects, things become more complicated. The judicial practice is faced with aspects of the retroactivity of the new regulation or the survival of the old regulation.

In classic theory, the distinction between the rights gained and the future rights was operated. It was argued that as long as the new regulation concerns the rights gained under the old regulation, it would derogate from the principle of non-retroactivity – it would be retroactive.

As far as the future rights are concerned, the new regulation is not equivalent to a retroactive regulation. For these, the new regulation does not have a retroactive character.

Modern theory does not share this criterion of the non-retroactivity of the legal regulation, pointing out that, in fact, it is very difficult to make a distinction between the rights gained, also called final rights, and future rights.

In the field of public law, it is a principle that the immediate enforcement of the new regulation is strictly necessary. Here, the issue of the conflict in time of the regulations is posed in other terms. Public law regulations – constitutional law, the regulations that organize public powers and authorities, the regulations relating to the exercise of citizen rights, the jurisdiction regulations, the procedure regulations – shall apply immediately, replacing the old regulations.

The same appears in the case to the mandatory provisions in the field of private law, which concern public order, such as: the regulations governing the organization of land ownership, the regulations relating to the status or capacity of persons, etc.

As regards the principle of the non-retroactivity of the legal regulation – the non-survival of the regulation – it implies that a judicial regulation may not extend its effects after it is no longer in force. The exception to this rule are the legal regulations with a temporary or exceptional character.

According to the principle that nobody can defend himself by invoking not knowing the law, it only concerns the law in force at the time of his own criminal activity, and not any law which may arise in the future.

It would be absurd, as a matter of fact, to impose to citizens obligations of knowledge and prediction of any legislative changes which might occur. Such an

interpretation would correspond and jurisprudence of the European Court of Human Rights that also claims, as a sine qua non condition for the enforcement of a law for a given situation, the requirement that the law in question be accessible. [12] The accessibility condition is met only if the texts of law incident in a specific case are published or, at least, their existence is reported in order to be consulted. In this context, we believe, however, that a distinction must be made between the situation in which the new law is not yet in force but is published in the Official Gazette, and the situation in which it is not yet published. The constitution provides that the entry into force of a law takes place either at the time of publication, or at a later date, provided in its text. If, at the time the previous participant contributes to the perpetration of the crime, the new, more severe, law is not yet published, the accessibility requirement is not satisfied.

As regards the final moment, namely that of the cessation of the action of the normative act, namely the cessation of the action of the legal regulation, this takes place by repeal, by the expiry of the period for which it was promulgated and by obsolescence.

As regards the various ways legal regulations cease to be in force, it is necessary to divide the entire system of legal regulations, by their action in time, into two groups, namely:

1. when the duration of the laws was not limited and then the cessation of their action takes place via one of the forms of repeal;

2. when the duration of the legal regulation is limited and then the legal regulation ceases its action by the expiry of the time limit, without the need for any special observation or decision for this purpose.

The repeal may be defined as the legal and technical process by which the normative acts without a time limit cease their activities through their surrender, i.e. their removal from use.

The repeal has several forms, namely: express – direct or indirect; tacit; total; partial.

The repeal may be express or direct, as it is also called when the new normative act explicitly provides that the old regulation is repealed, or express indirect, when the new normative act does not expressly specify the normative act which is repealed or

certain legal regulations from it, but is limited to the provision that it repeals all previous normative acts which are contrary to the new regulation.

In the Romanian legal literature, tacit repeal is also known under the name of implicit repeal.

Depending on the extent of the legal effects, the repeal may be total or partial.

In the first situation, all the provisions contained in a normative act are repealed, and when only certain provisions, stipulations of an act are repealed, we can talk about partial repeal.

As regards the cessation of the enforcement of a law by obsolescence, this means that it ceases to be valid through non-enforcement. Non-enforcement is a result of transformations which have occurred in society and come into conflict with the provisions of the law in question. It is said that the law is totally surpassed by events and, as such, nobody resorts to it.

Regarding the repeal, a famous jurist [13] invokes the following remarks:

- a normative act can be repealed only through a normative act with the same legal force or with legal force greater than that of the one repealed;
- within one and the same normative act, several forms of repeal may be operated;
- the tacit repeal operates only if we are in the presence of the same kind of provisions;
- the provisions contained in a special law only repeal the provisions contained in a special law;
- through the provisions of a general law the provisions of a special law cannot be repealed, and vice versa: through the provisions of a special law the provisions of a general law cannot be repealed.

In a system of law with a well-organised legislative technique, the method of direct express repeal is used. In international law, the repeal of treaties may be express or tacit. [14] The express one may result as a manifestation of the will of the signatory parties. The tacit repeal has in view the succession in time of the treaties, in the sense that a new treaty concluded invokes another intent of the parties, or is different and incompatible with the provisions of the previous treaty. [15]

The second way of cessation of the effects of the legal regulations is by reaching their time limit. If the legal regulation provides for a time limit up to which it is applied, reaching its limit removes it from force. There are certain laws which, by their nature, are temporary, for example, the laws enabling the Government to issue ordinances. According to the Constitution, the law enabling the Parliament shall mandatorily lay down the field and the date up to which ordinances are issued.

This way represents the exception to the rule, temporary normative acts having from the beginning their action limited for a specified, preset period of time. The normative acts drawn up in exceptional situations have a temporary character: war, natural disasters, etc. With the end of these exceptional situations, it is natural that the promulgated laws lose their legal effects.

As regards the ultra-activity of the regulation, especially exceptions from ultra-activity, when the provisions of the legal regulation repealed or having reached its term, by the effects which they produce or continue to be applied after their expiry.

Finally, the last form of cessation of the action of a normative act – legal regulation – is obsolescence. A legal regulation is deemed to be obsolete when, though it is still formally in force, it is not reasonable to be applied and this is because of the development of the social relationships, social – political and economic changes changes in society, the fact that the states of things which have determined the necessity of developing this normative act have ceased to exist or can no longer be supported. Regarding this issue, there are several opinions in legal literature. All agree that the customary legal regulations may cease their action by obsolesccnce. But what is questioned is whether the written legal regulation disappears by obsolescence. The traditional opinion leans towards a negative response, motivating that, although the law is the reflection of special needs which have determined its appearance, it is necessary to be repealed with certainty and extended and general disobedience to the law should not be encouraged, which obsolescence implies.

Another author has a different opinion in this aspect. He considers that obsolescence is an exceptional way of cessation of the action of written legal regulations which entails that the strict fulfilment of certain conditions. According to the above-

mentioned opinion, it is inaccurate to consider that obsolescence is a mere prolonged non-enforcement of the text of the law which leads to its disappearance. [16]

Therefore, in order for obsolescence to operate as a way of cessation of the action of the legal regulation in time, non-enforcement must result not from the desire to avoid the law or from simple indifference, but from the conviction that the obsolete regulation should no longer be supported, as it is incompatible with the current elementary legal and moral convictions in society or simply because it is nonsense.

Conclusions

In conclusion, with a longer or shorter duration, legal regulations exercise a moderator and conservatory role, within the meaning of defending the major social values, but, at a certain moment, legal regulations cease to respond to the social needs and must be replaced. The wear, deformation or death of legal regulations presents itself as a natural process which pertains to their nature and which makes the creation of new regulations a current issue.

Increasing the complexity of the relationships between people amplifies the volume of this creation, calling into question aspects of the coexistence of legal regulations in a specific space, their relationships, finding solutions of legal technique for resolving conflicts which could arise in the specific process for enforcing the rules.

The succession in time of the legal regulations, as well as their coexistence in space, have imposed certain rules which preside over their action. No matter how well constructed, modern and clear legal regulations are, they end up not able to meet the needs of society and to transform into an obstacle to social and legal progress.

The legal regulation, as a fundamental cell of law, has its own cycle, its own genesis, in the sense that it is created, produces effects and may no longer regulate the field in question, since the realities and needs which created it have disappeared. Within a time period and in a determined space, anachronistic legal regulations coexist together with the new, modern legal regulations, between which conflicts may arise in the process of enforcement of its contents. The succession in time of the legal regulations, as well as their coexistence in space have forced the lawmaker to impose rules to keep this situation under control.

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