LEGISLATIVE TECHNIQUE OR FORMAL LEGISTICS - ELEMENTS OF COMPARATIVE CONSTITUTIONAL LAW

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Abstract:
The legislative technique, also called formal legistics, is the art of drafting laws and is part of the legislative science that has as its object, the use for the purpose of application, the options of legislative policy and consists not only in drafting the law or more generally, in its organization, but also in the choice and coordination of the ways of enunciating the norm of law and of the technical procedures of realization. In order to translate political and administrative imperatives into feasible, efficient, clear regulations with appropriate legal terminology and notions, in accordance with the drafting conventions on the structure, form and style of laws, specialized legal skills are required, which should be the responsibility of lawmakers. who are, as a rule, officials with legal education and experience.
Keywords*:* *legislative technique; formal legistics; the rule of law; legislative policy; legislative bodies.*

Elements of comparative constitutional law

The legislative initiatives of the members of Parliament are transformed into bills drafted by the specialists of the legislative departments of Parliament.

For the legislative practice, some countries have adopted directives for all drafters of legislative acts that they must comply with. Such a situation is seen in France, Belgium, Canada, the Ukraine.

Regarding the examination and approval of bills, they concern in particular: harmonization with the legislation of the European Union; compliance with the provisions of the Constitution and the laws in force; compliance with international treaties, in particular the European Convention on Human Rights; rules for implementation, delegations on terms of legislation, legal form, clarity and accuracy. [1]

Thus, in France, when a text is to be deliberated in the Council of Ministers - bill of a law, of an ordinance, of a legislative decree, the Prime Minister, through the General Secretariat of the Government, is the only one authorized to notify the Council of State and to monitor compliance with the procedure. Sending the text to the Council of State

cannot take place if the mandatory prior approvals have not been obtained - from the Economic and Social Council for economic and social projects, except for the financial ones, from the joint technical commissions, etc.

In Belgium, certain formalities must be completed before submitting bills to Parliament: the opinion of the Council of State, consultation of trade unions in various forms of cooperation. Failure to comply with these formalities entails the annulment of the approved act, and the Council of State may refuse to examine the texts for which the cited formalities have not been fulfilled.

In Slovakia, the Government has created the Legislative Council, an advisory body guaranteeing the quality of the texts of legislative acts drafted by the executive; it examines each legislative act bill submitted to it. The members of the Legislative Council are appointed and revoked by the Government, at the proposal of the Deputy Prime Minister. They are specialists from ministries, law schools, representatives of companies, trade unions, financial institutions, as well as the Supreme Court of Justice and the General Prosecutor's Office.

In Slovenia, drafters of a bill within a ministry are responsible for this law, until its adoption in Parliament, following the course of the bill. Thus, the bill must receive visas of conformity with the provisions of the Constitution and the legal system from the Secretariat responsible for legislation and legal issues within Parliament.

In France, bills for legislative acts are accompanied by a statement of reasons or a presentation report, depending on the type of act.

Bills are always preceded by a statement of reasons indicating the reasons why the bill is presented to Parliament and the objectives it sets. This statement includes a brief explanation, on articles; it is traditionally attached to the bill when it is submitted to the Council of State.

Bills for decrees as well as bills for Government decisions are always accompanied by a presentation report setting out the reasons the proposed text is submitted, the nature of the enacting part and, where appropriate, explaining the reasons which for the basis for amending the rules in force.

In Lithuania, the bill must be accompanied by an explanatory document which must show: the objectives of the bill; the current regulation regarding the subject treated in the

bill; the new provisions created by the bill; the positive results that should result from the regulation in question; the evaluations and conclusions of the specialists participating in the drafting process; the names of the authors of the bill; the keywords of the bill for it to be included in the computerized search system. [2]

In Romania, the bills for legislative acts must be accompanied by the following motivating documents: explanatory documents, in the case of bills for laws and legislative proposals; substantiation notes, in the case of Government ordinances and decisions; approval reports, for the other legislative acts.

The motivation of legislative acts refers mainly to: the requirements that require legislative intervention, the existence of legislative discrepancies or a legislative vacuum; the basic principles and purpose of the proposed regulation with highlighting new elements, the implications on internal law, in case of ratification or approval of international treaties or agreements, as well as the necessary adoption measures; the phases completed in the preparation of the bill and the results obtained, highlighting the studies, research, artistic evaluations, specialists consulted, the preoccupations of legislative harmonization. For emergency ordinances, the objective and stringent circumstances that determined the exceptional case that justifies this legislative procedure will be presented separately. [3]

In the countries of the Romano-Germanic law system, the style and the way of writing differ from one state to another, depending on the syntactic and lexical particularities, there are, however, a number of widely accepted common principles such as: avoiding long sentences; stating the rules in a prescriptive form and not in a narrative way; formulating the rules directly, avoiding periphrases and stating only the rules that perform a necessary legal function; observing normal syntax; using common language, using legal terminology, the text must be concise, etc. [4]

It can be said that this elaborate process of drafting legislative acts (norms) includes both: choosing the category of legislative acts in order to regulate social relations, drafting technique, legislative language, legislative codification, publicity and entry into force of legal norms, republishing and rectifying legislative acts. [5]

In France, the drafting of a bill for a legislative act and the accompanying document, namely the explanatory statement or presentation report, must be clear and

grammatically correct; it is requested that only terms belonging to the French language be used, the use of foreign terms or phrases being prohibited, if there is a phrase or an equivalent term in French. It is recommended to avoid the use of new words, unknown through usage or dictionaries. The written text must be clear, the articles shall be short. Each sentence must express only one idea. Definitions are a legislative technique seldom used in France, unlike Anglo-Saxon law, which systematically uses general definitions at the beginning of each law. This technique is often used in Community law as well to ensure unity regarding the content of a concept in different languages.

In Luxembourg, legislative acts are drafted in French, except for the provisions that may be applied in the field of international conventions. [6]

In Romania, the specific legislation clearly states that legislative acts must be drafted in a concise, sober, clear and precise style, which excludes any ambiguity, with strict observance of grammatical and spelling rules. [7]

With regard to the references, amendments and completions of a legislative act, they must be made clearly, concisely, and when it comes to amendments, they must contain the text concerned in full, contained in the article, paragraph or in the marked element of an enumeration. The provisions amending and supplementing shall be incorporated in the basic act on the date of their entry into force, identifying themselves with it.

Legislative language does not indicate the feminization of generic terms that apply indefinitely to men and women, and it is recommended to write dignities and functions in the traditional way.

Cardinal and ordinal numbers are written in letters with a few exceptions. When it comes to terms of days, months or years in prison, they are written in digits. The name of the institutions, services, public establishments is written in full. Dates and times are generally written in digits, except for the name of the month.

It is also recommended to avoid abbreviations as much as possible. Regarding the use of capital letters, they follow the rules of writing the language in which the act is written.

Compared to national drafting rules, Community rules also include the so-called protocol rules on the order of citation of different bodies or countries.

The order of citation of the treaties that form the communities is the historical order. The order of citation of the Member States is the alphabetical order of the countries of origin (e.g. Albania, Bulgaria, Czechia, etc.).

Regarding the structure of the legislative act, it is traditionally the following: title, introductory formula, preamble, operative part, annexes.

As for the title, which is the main identifying element of the legislative act, it must be precise, complete and concise and must not be misleading as to the content of the operative part.

The article is the basic structural element of the operative part.

In Canada, the Quebec Legislative Drafting Guide states that the title of a law must indicate its essential purpose and allow the publisher to easily identify it. It must be as precise and short as possible.

In Romania, the title of the legislative act includes the generic name of the act, depending on its legal category and the issuing authority, as well as the object of the regulation expressed synthetically. It is forbidden for the name of the bill of a legislative act to be the same as that of another legislative act in force. In the case of legislative acts amending or supplementing another legislative act, the title of the act shall express the operation of amending or supplementing the legislative act in question.

As for the introductory formula, it is represented by a phrase that sets out the legal basis on which the respective legislative act was issued and also highlights the competence of the issuing body.

In Romania, according to the incident legislative provisions, the introductory formula consists of a sentence that includes the name of the issuing authority and the expression of the decision-making process regarding the decision for the issuance or adoption of the respective legislative act. [8]

The preamble is an introduction to the law which usually explains the reasons for adopting the law and sets out the political, social or economic motivation.

In Belgium, all decisions have a preamble, but laws, decrees and ordinances do not have a preamble. [9]

The preamble may include: the legal basis, references to any provisions amended or repealed by this act, any justification of opportunity, a statement of the completion of

the required formalities.

In Romania, the preamble precedes the introductory formula and summarizes the purpose of the regulation, and cannot contain any directives or rules of interpretation. In the case of legislative acts of the specialized central public administration or of the local public administration, the preamble also mentions the mandatory approvals according to the law. As regards the operative part, it represents the contents of the regulation and is made up of all the legal rules created.

The basic unit of a legislative act is the article. Grouping articles into larger units is similar from country to country: subsections, sections, chapters, titles, books, parts. Differences are found in the division into items and paragraphs or sub-paragraphs. Thus, according to the drafting rules in the Ukraine, Luxembourg, Belgium and many other countries, it is considered that the paragraph contains several items, while in France it is provided that the article is divided into items and the division into paragraphs is not recommended, while in Canada it is accepted that the article is divided into items, which contain several paragraphs and sub-paragraphs. In Belgium, according to the Code of formal legistics, the operative part is the part of a legislative act that establishes the will of the author of the text, containing both the formulation of new rules, as well as provisions to ensure the compliance of new rules with existing legislation and regulations (amending, repealing, transitional provisions, etc.).

The normal grouping of articles is done in chapters, which can be divided into sections, possibly divided into subsections. The chapters are grouped into titles, these into books, and the books into parts. Each group can have its own title.

In Romania as well, the basic structural element of the operative part is the article, which usually includes a single legislative provision, applicable to a given situation, the structure of the article must be balanced, addressing only the legal aspects necessary for the regulatory context. The article is expressed in the text of the law by the abbreviation "art." The articles are further numbered in the order of the text, from the beginning to the end of the legislative act, in Arabic numerals. There may be a situation when the legislative act contains a single article, this being defined by the expression "Single article".

The item represents a subdivision of the article, being usually made up of a single

sentence or clause that regulates a legal hypothesis specific to the whole article.
Articles may be grouped into chapters, which may be divided into sections and, where appropriate, into paragraphs. In codes and other laws of great extension, the chapters may be grouped in ascending order, in titles and, as the case may be, in parts which, in turn, may be organised in books. Chapters, titles, parts and books are numbered with Roman numerals, in the sequence they have in the structure of which they are part.

Regarding the "systematization" of the legislative content we have the following order of presentation of ideas: general provisions; regulatory provisions, transitional provisions and final provisions.

In the U.S.A., the purpose of a law is to create a new law, amend an existing law, or repeal an existing law. Usually, bills have the following structure: title, short title or citation, statement of reasons or legislative purpose - if used, definitions - if used, basic divisions, special provisions, interpretative clause, divisibility or indivisibility clause, prohibition or non-prohibition clause, bills for financial laws, repeals, etc.
With regard to the legislative language, the wording of laws requires special legal skills, which are based on a special understanding of legislative methodology and extensive experience in drafting techniques. The main task of editors is to transpose a particular policy into a coherent set of rules; also, the bill of a law must be correlated with the other legislative texts, the methods it uses must be easy to use and, from a legal point of view, effective, and the legal wording must be pertinent and intelligible. The final text of the bill must clearly and accurately reflect the legislative imperatives, the social order.

Conclusions

In conclusion, it should be noted that the law does not have to regulate in the smallest detail the field in question, but it is enough to limit it to determining the principles and the most important regulations, leaving the legislation subordinate to the law - government decisions, orders, instructions, etc. - the task of carrying out the detailed regulation.

Regarding the distinction between organic law and ordinary law, it can be considered that the main argument is that organic law intervenes in the areas indicated

in the Constitution at the level of regulation having a general character or principles, and ordinary law intervenes to detail the regulation in a more specific area or another.

Research must be carried out on ensuring the correlation between legislation and social relations, legislative activity and legislative technique, the legislative program, the relationship between law and technical-scientific and social progress leading to a better harmonization of legislation with the needs of the litigant having as aim his faith in the legislative system and, by extension, in justice.

However, a pure theory of legislative technique in terms of the effectiveness of the law loses much of its rational or logical value and is fundamentally indifferent. The legislative technique must be a practical work, with the precisely limited purpose of achieving an effective legislative work that judges, pragmatically, to produce its effect: the law to be successful. If the law is not successful, surely the legislative technique was defective or aimless and the technical element of this creation is the contribution of the specialist lawyer to the spontaneous drafting of law within the legal system having as final recipient all legal subjects. The legal creation must be a work of reason that evaluates actions, relationships and, in general, all realities that concern the social order, the security of human relations, public welfare as the sum of individual welfare.

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