SUPREMACY OF THE LAW AND LEGAL SECURITY

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Abstract:
Based on the supremacy of the law, the rule of law has the obligation to guarantee, among other things, legal security, a principle that is characterized by great complexity.
Trying to summarize its content, we can appreciate that legal security involves two large categories of rules. On the one hand, there are those that aim at the quality of laws and, on the other hand, those rules that concern ensuring the stability of legal situations, i.e., the non-retroactivity of the law, its accessibility and predictability and the actions of the state.
Starting from these considerations, this article debates the concept of supremacy of the law and its qualities in correlation with the principle of legal security.
Keywords: *supremacy of the law, legal security, accessibility, predictability, retroactivity of the law, state of law*

Introduction

The rule of law is based on a minimal corpus of conditions, such as: the autonomy of the law, its predictability, the separation of powers in the state, the vertical devolution of power, the protection of rights and freedoms, the respect of the normative hierarchy, a cordial, open attitude of the state towards civil society [1]. At the same time, the rule of law is based on the rule of law.

In the specialized literature, the law was defined as the normative act issued in the exercise of the legislative function, regardless of the body that adopts it and the name it bears [2].

Using mainly the functional criterion, we define the law as the legal act having a normative feature, drafted in accordance with the Constitution, according to a predetermined procedure, by using a specific technique, issued in the exercise of the legislative function and by which a primary field is regulated. Therefore, we consider that they are laws: the normative acts of the Parliament; normative acts adopted by referendum to regulate a primary field (referendum laws); normative acts of the

Government that regulate a primary field, i.e., governmental acts issued in the exercise of the legislative function (ordinances, emergency ordinances, decree-laws).

The place of the law in the normative hierarchy. Supremacy of the law.

Establishing the place occupied by the law within a legal order depends on two aspects: the rigid or flexible character of the constitution and the system of reporting domestic law to international law, monist or dualist [3]. Thus, in the case of flexible constitutions, the laws are on the same position as the fundamental law. Within such a legal system that does not enshrine the idea of the supremacy of the Constitution and therefore, neither the hierarchy of normative acts, the reality is revealed according to which the supremacy of the Constitution is included in the supremacy of the law. On the contrary, in the case of legal systems where the constitution is qualified as being rigid, it cannot be modified by an ordinary law, the laws occupy an infra-constitutional position.

If the system of reference of the domestic law to international law is a dualist one, then the problem of the hierarchy of laws and treaties does not arise, but in the hypothesis where the system is monist with the priority of international law, then the laws occupy a lower position than the treaties, being necessary to be compliant with the latter, an aspect that imposes the control of conventionality. If we are in the presence of a monist system with the priority of domestic law, then laws are superior to treaties, and in case of contradiction, the law will have priority. Often, especially in the matter of human rights, one encounters combined systems, i.e., in principle, the treaty has priority, but, by way of exception, if the law contains provisions more favorable to the person, then this will have priority [4].

Traditionally, in our legal system, the law is placed at the top of the normative hierarchy, but immediately below the Constitution, thus having an infra-constitutional position, that is why the distinction is made between the supremacy of the Constitution and the supremacy of the law. Thus, the rule of law is revealed in relation with the rest of the normative acts, and not in relation with the Constitution.

The supremacy of the law represents a quality, a feature of it, according to which the law drafted according to a procedure in accordance with the Constitution is legally

superior to all other normative acts. At the same time, the law is able to intervene at any time to modify, suspend or abolish a legal norm established by an administrative act.

The scientific foundation of the supremacy of the law certainly has a historical basis, namely the recognition of this norm as the expression of the general will, or in other words, as an expression of national sovereignty, it being natural that the norms of conduct consecrated by it have the greatest force legal in relation to the other normative acts likely to be carried out by means of the coercive force of the state.

Even if this conception was upset by the profound evolution that the hierarchy of legal norms underwent in the contemporary period, it still left deep traces in positive law. Although competing directly with the acts of the Government, the law retained a certain pre-eminence over the acts of the Executive, pre-eminence guaranteed through the control of legality. The principle of legality guarantees compliance with the law in relation to the hierarchically inferior norms and especially in relation to the acts of the Executive. The control of legality understood *stricto sensu*, i.e., respect for the law, retains an essential place because, on the one hand, it leads to the compliance of all administrative acts with the law and, to the same extent, of private law acts, and on the other on the other hand, it must be registered within the constitutional limits.

Accessibility, predictability and non-retroactivity of the law – exigences of the legal security

However, the supremacy of the law cannot be arbitrary, because then it turns into the opposite of the rule of law. This means, on the one hand, that the law must meet certain qualities, which make it comprehensible to those who are called to apply and respect it, namely, to be clear, precise and predictable, both regarding its period of application, as well as the conditions it imposes and the legal consequences it generates. On the other hand, the law must ensure compliance with the principle of legal security, considered in doctrine as a rule of maximum generality, applicable in all branches of law, considering that the predictability and stability of legal norms is a necessity for any legal system. [5].

Regarding the link between the rule of law and the principle of legal security, it was argued that “the rule of law is not the state of any law, but of a law that guarantees the

legal security of individuals, because it is certain and is based on certain values" [6]. It is about the certainty of the law, which involves the accessibility of the legal rule, the clarity of the expression of the rule, the non-retroactivity of legal norms and the predictable nature of normative changes [7].

The rule of law is not an end in itself but, first of all, it must provide the necessary framework for asserting and respecting people's rights. Therefore, in order to outline the content of the principle of legal security, it is necessary to first clarify the meaning of the notion of security of the person [8]. In a narrow sense, the safety or security of the person means his right not to be subjected to controls, detained or arrested except in the situations, conditions and according to the procedure established by law. This right is expressly enshrined in art. 23 of the revised Romanian Constitution, which enshrines the inviolability of individual freedom and the safety of the person and makes the search, detention or arrest of a person exceptions that must be regulated by law.

In a broad sense, the security of the person means its legal security, legally guaranteed, specifying in this sense that "the security of the person is a principle that is almost the reason of being of the law itself" [9] or that "legal security is the quality of a legal order that guarantees the individual legibility and confidence in what constitutes the right at a given moment and which, according to all probabilities, will be the right in the future as well" [10].

Starting from such considerations, it was said that legal security is characterized by the fact that it must protect the person "from the danger that comes from the law itself, against an insecurity that the law has created or that it risks creating" [11].

The principle of the stability of legal relations is not expressly enshrined in the Constitution of Romania, but it is deduced both from the provisions of art. 1 para. 3, according to which Romania is a state of law, democratic and social, and from the preamble of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in its jurisprudence [12].

Starting from the multifaceted nature of the principle of legal security, some authors argued that it is not possible to define it precisely [13]. However, in Romanian doctrine, legal

security has been defined as “that principle that tends to remove from the legal order the risk of uncertainty generated by the imprecision or instability of the law” [14].

Based on the above, we also try a definition and say that the principle of legal security is a fundamental element of the rule of law, which includes in its content the non-retroactivity of the law, the accessibility and predictability of the law, as well as its unified interpretation.

Accessibility and predictability presuppose both the public nature of the norm as an intrinsic element of its legality, the clarity of its content, which will give it intelligibility, not only for the legal specialist, but also for the simple litigant, but also the predictable nature of normative revisions. From this perspective, it was shown that “the formal axis of legal security is represented by the quality of the law, while the temporal axis is represented by the predictability of the law” [15].

The unitary interpretation of the law constitutes another requirement of the principle of legal security and even if, apparently, this element brings to the fore the role of the courts, in reality, the requirement covers all legislative activity, because of the way in which are elaborated, correlated, systematized legislative acts, depends on the unitary nature of their interpretation [16].

At the same time, the observance of the principle of legal security also implies the obligation not to affect legal situations consummated before the entry into force of a new law. In other words, the law must not be turned into a tool for “governing” or “correcting” the past. This is why we consider that the non-retroactivity of the law, which is often expressed in the doctrine by the idea “the past escapes the new law” is an essential component of the principle of legal security.

The principle of non-retroactivity of the law is the rule of law according to which a law applies only to situations that arise in practice after its entry into force, and not to previous situations. As a consequence of this principle, the relations that took place in the past, based on the law in force at that time, cannot be abolished on the grounds that the legislator intends to give a different regulation to these relations [17].

The Constitution of Romania, adopted in 1991 and revised in 2003, enshrines the principle of non-retroactivity of the law through art. 15, para. 2, sentence II, when it states that “The law disposes only for the future...”. The criminal law and the more favorable contravention law are exempted from the application of this principle.

The effects of elevating this principle to constitutional rank are among the most "severe", as expressed by the Constitutional Court, which ruled on several occasions the universal nature of the principle: "the principle of non-retroactivity is valid for any law, regardless of its field of regulation" [18], the notion of law, being used in its broad sense, by any normative act. The principle thus became mandatory not only for the judge who applies the law, but also for the legislator, who is obliged to respect it in the legislative process.

Conclusions

Legal security is one of the foundations of the rule of law. Beyond the non-retroactivity of the law, it also implies the right of people to be able to determine what is allowed and what is prohibited by law. In order to achieve the goal, the adopted rules must first be known, clear, understandable and predictable.

For the existence of the rule of law, guaranteeing compliance with the principle of legal security must represent a priority and implies giving as much importance as possible to the quality of the rules. Therefore, although the legislative inflation and the complexity of the laws can be justified by historical, sociological, political, economic factors, as we have already shown [19], a sustained effort is still necessary to reduce the normative excess and to submit the norms dictated to the demands of security legally.

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