SOME CONSIDERATIONS ON NORMATIVE INFLATION AND ITS EFFECTS ON FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

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Abstract:
The inflationary phenomenon of normative acts is more and more worrying. We live in a democratic society that promotes the protection of human rights.
The normative inflationary phenomenon must be appreciated according to the number of normative acts adopted or according to the aspects of legislative technique that defeat the principle of accessibility.
Anti-inflationary measures are substantial measures in the economy and we must use analogous methods to establish the normative inflationary phenomenon.
Keywords: *inflationary phenomenon, normative act, state, democracy, society*

In the contemporary legal space, the phenomenon of normative inflation is one of the most current topics. The inflationary phenomenon of normative acts in Romania has become more and more worrying, considering that the performance of adopting, on average, a normative act every day has been reached. Inaccessibility and unpredictability are not the only serious consequences of the development of this phenomenon of normative inflation.

Starting from the meaning and significance of inflation in the economy, we set out to analyze the concept of legal inflation. Thus, in its classical sense, economic inflation is a phenomenon that consists in increasing the amount of money put into circulation, which no longer has coverage in gold and goods and thus leads to a decrease in purchasing power. If we make an analogy with the legal meaning of this phenomenon, we can see that normative inflation is a phenomenon that consists in increasing the amount of legal norms adopted, which no longer covers human rights protection, predictability and coherence, thus reducing the value of the legal norm.

Analyzing the normative inflationary phenomenon, we must refer to two characteristic criteria: *quantity* and *quality*.

We made an analysis of the inflationary phenomenon according to the number of normative acts adopted or according to the aspects of legislative technique that defeat the principle of accessibility. Therefore, in our opinion, the totality of the proposed objectives and the measures to be adopted to counteract this phenomenon must be based on reducing the number of normative acts adopted and improving their legislative quality. We believe that the inflationary phenomenon should not be a heavy burden for the individual to bear and whose content is inaccessible to him. The law, and normative acts in general, acquiring a predominant character in the modern and contemporary epoch, must be accessible to all its addressees. [1]

As Rudolph von Ihering pointed out, a law must be thought of philosophically and drafted in such a simple way that it can be understood by all people so that it is useful to them. [2]

All normative acts issued by the legislature must be useful to the state and its citizens. It is not their large number that must be taken into account, but their quality. The democratic society in which we live today promotes as its primary objective the protection of human rights and freedoms; one of the most important means of ensuring and observing them is the control of the constitutionality of laws. [3]

If we refer to this protection, using terms such as quantity or quality, we face a pseudo-democracy that subjects individual rights and freedoms to the calculation of public opportunity and utility by establishing calculation policies and legislative technique to counter any phenomenon that relates mainly to individual freedom.

In the modern, contemporary and democratic state, where power belongs to the people, the state is used in the interest of man, of the satisfaction of the common good, of civil rights and freedoms. So, the state is useful to its citizens and ensures the protection of their rights and freedoms.

The problem of the usefulness of the state is also addressed by Robert Nozic and Pierre Lemieux, when they analyze how the state and democracy contribute to the protection of individual rights and freedoms. [4]

Taking as a point of reference the example given by Lemieux, we mention that, if the protection of rights and freedoms cannot be subject to public utility or opportunity, it cannot be conditioned by the numerical criterion or by a certain legislative qualitative standard. [5]

The difference between the phenomenon of economic and legal inflation consists in the type of economic or legal concept in which we frame the inflationary phenomenon, the content we attribute to it and the effects it produces, establishing the effects of this content on the protection of human rights. As Prof. D.C. Unfortunately, legal concepts are never substantial concepts, which means that they cannot have a fixed, predetermined content. [6]

The concept of economic inflation is a substantial concept, because in its content we identify all the objective data according to which we can see the existence of the inflationary phenomenon, the form it takes and, implicitly, the substantial methods of counteracting that must be adopted by reference to the nature and severity of the phenomenon. Anti-inflationary measures are substantial measures in the economy, which relate to the value criteria used to measure and determine the type of inflation. The use of an analogical method in the legal field cannot operate in the case of the normative inflationary phenomenon.

We must keep in mind that the large volume of normative acts adopted is the essence of normative inflation and is harmful to a democratic society because it brings with it inaccessibility and excessive burden. Accessibility of legal norms is one of the fundamental characteristics of a rule of law and enshrines a fundamental human right. If in a state there is an insignificant number of normative acts and they all infringe on individual rights and freedoms, we can appreciate that we are in the presence of the normative inflationary phenomenon.

Normative acts must be accessible to all citizens and according to the principle "Nemo censetur ignorare legem" all citizens must know their content and respect them, but if they infringe individual freedom, accessibility does not bring any benefit to the protection of rights. Correlating the issue of accessibility of normative acts with the issue of promotion - effective respect for human rights, this is related to a normal and genuine democratic development. [7]

If we analyze the ratio of existing normative acts - normative acts that infringe on freedom, we will notice that not the number of existing normative acts or their legislative quality is the threshold according to which we can measure the existence of inflation, but the degree of protection of human rights. We consider it impossible to set a numerical threshold or a legislative standard, because the type of society in which we live gives us this.

In the Romanian rule of law, fundamental rights and freedoms represent supreme values, enshrined at the constitutional level. The only violation that can be brought to them is the restriction of the exercise of certain rights and freedoms under the conditions provided by art. 53 of the Constitution. Apart from these conditions, another violation would lead to the violation of the Constitution in our country and of the democratic and social rule of law.

Law today expresses the supreme values of our society and its fundamental value is perspective. If the law makes sense, it is to provide a project of the future society that guarantees the protection of fundamental human rights and freedoms. He must contribute by his own methods to the realization and protection of freedoms because the right is meant to insert the future in the present guaranteeing that the social system will work. Law is a social project that aims at equality (freedom for all) and justice. [8]

The purpose of law is, therefore, to order society and to protect the rights and freedoms of its citizens. [9]

Normative acts that infringe on freedom are of two types:

- unnecessary normative acts, which refer to the unjustified intervention of the state in the sphere of social life through imperative acts that place the constraint in the sphere of social relations in which it should not exist;

- normative acts that violate the constitutional provisions regarding the protection of fundamental rights and freedoms.

Every time we find the existence of an act from the two categories we are in the presence of an inflationary phenomenon. Thus, the existence of a violation of people's freedom through a useless or unconstitutional normative act is in fact the threshold according to which the existence of the inflationary phenomenon can be determined.

Finally, if we establish that a normative act that violated freedom is the threshold that gives rise to the inflationary phenomenon, we will have to outline the essence of such an act. Of course, legal concepts are always oppositional concepts, so we cannot draw the value conditions that such an act must meet, but on the contrary, we must determine its essence by opposing another concept. [10]

We will put unnecessary imperative normative acts in opposition to the optional and alternative normative acts, and we will analyze the unconstitutional normative acts in opposition to the constitutional provisions. If we analyze the unconstitutional act in relation to the provisions provided in the Constitution, we can see the unconstitutionality of the provisions of the adopted normative act, which will lead to the automatic appearance of the normative inflationary phenomenon. [11]

Within a state, the freedom of the individual differs from freedom in the state of nature, when it was absolute, because the freedom of the individual is limited by the freedom of the other and can be opposed only to the instrument that has the power to control and limit state power. Coercion is the method that state power uses to act on individual freedom. [12]

At the level of normative acts, coercion translates into imperative. Imperativity is characteristic of criminal legal norms, which incriminate facts that could infringe fundamental rights and freedoms. The object of criminalizing an act that constitutes a crime is the protection of the individual in relation to the act that may infringe a right or a freedom belonging to him. The imperativity of the law is intended exclusively for the sphere of normativity.

In order to combat the phenomenon of normative inflation, its methods of coercion must be proceduralized, ie they must become procedures for the protection of human rights in the face of state intervention through unnecessary or unconstitutional normative acts. [13]

In France, a policy has been adopted to simplify and improve the quality of the law for a period of five years. [14]

Methods of counteracting must be protection procedures that protect the individual in a concrete way when his rights and freedoms are affected by unnecessary imperative normative acts or unconstitutional normative acts.

With regard to unnecessary imperative normative acts, the most efficient protection procedure is, in our opinion, the consecration of the right of normative option; as a reflection of a system of optional and alternative rules to which the individual freely decides to adhere. The optional norm has two elements: the conduct recommended by the state to the individual and the right of normative option of the individual, who may choose to adopt another conduct to achieve the goal pursued by the state when adopting the normative act (example: the case of normative acts for copyright protection). Alternative norms give the individual independence in his relationship with the state (example: the norms that govern the matrimonial regime).

Regarding the unconstitutional normative acts, the methods of counteracting consist in the consecration of some effective rules of control of the constitutionality of the laws, especially regarding these constitutional provisions that protect the fundamental rights and freedoms.

Conclusions

The normative inflationary phenomenon is a formal legal concept that does not describe a material reality, but a form that acts. The appearance of the normative inflationary phenomenon cannot be conditioned by objective criteria, but intervenes every time when the individual's freedom is affected by an unnecessary, unjustified imperative normative act or by ascertaining the existence of an unconstitutional normative act.

Normative inflation represents the adoption by the state of a useless normative act or the finding of the existence of an unconstitutional normative act that has as main effect the depreciation of the legal protection granted to freedom. This can be countered by granting the state an increased state of independence, leaving the individual free to contribute to the creation of the system of legal norms applicable to him and by creating effective procedures for protection against unconstitutional normative acts that infringe individual rights and freedoms.

By legalizing this concept, the leap is made from a binding right to a right based on communication and arbitration, so the leap is made from imperative to the civilization of law.

References:

[1] Ceterchi, Ioan; Craiovan, Ion. *Introducere în teoria generală a dreptului*. Bucureşti: All, 1996, p. 55-58
[2] Rudolph von Ihering, apud Craiovan, Ioan. *Introducere în filosofia dreptului*. Bucureşti: All Beck, 1998, p. 55-56
[3] Duculescu, Victor: *Protecţia juridică a drepturilor omului. Mijloace interne şi internaţionale.* Bucureşti: Lumina Lex, 1998, p. 172
[4] Nozic, Robert. *Anarhie, stat şi utopie.* Translation by M Dumitru. Bucureşti: Humanitas, 1997
[5] Lemieux, Pierre. *Du libéralisme à l'anarcho-capitalisme.* Paris: Presses Universitaires de France, 1988
[6] Dănişor, Dan Claudiu. *Juridicizarea conceptelor*. În: Dreptul, nr. 3/2011, p.52-69
[7] Duculescu V., op.cit., p.66
[8] Rigaux, François. *Introduction à la science du droit*. Bruxelles et Paris: Éditions Vie Ouvrière, 1974, p. 337-371
[9] Virally, Michel. *La pensée juridique*. Paris: Librairie générale de droit et de jurisprudence, 1960, p. 49 şi urm.
[10] Dănişor D.C., op.cit., p. 52-69
[11] Ibidem
[12] Tutunaru, Mircea. *Probleme teoretice şi practice în edificarea statului de drept*. Craiova: Scrisul Românesc, 2009, p.140-141
[13] Dănişor D.C., op.cit., p.52-69
[14] Conseil d'État - France. *Mesurer l'inflation normative*, étude adoptée le 3 mai 2018, https://www.conseil-etat.fr/Decisions-Avis-Publications/Etudes-Publications/Rapports-Etudes/Mesurer-l-inflation-normative

Bibliography:

Ceterchi, Ioan; Craiovan, Ion. *Introducere în teoria generală a dreptului*. Bucureşti: All, 1996
Craiovan, Ioan. *Introducere în filosofia dreptului*. Bucureşti: All Beck, 1998
Dabin, Jean. *Théorie générale du droit*. Bruxelles: Bruylant, 2e éd. 1953
Dănişor, Dan Claudiu. *Juridicizarea conceptelor*. În: Dreptul, nr. 3/2011
Duculescu, Victor: *Protecţia juridică a drepturilor omului. Mijloace interne şi internaţionale.* Bucureşti: Lumina Lex, 1998
Lemieux, Pierre. *Du libéralisme à l'anarcho-capitalisme.* Paris: Presses Universitaires de France, 1988
Nozic, Robert. *Anarhie, stat şi utopie.* Translation by M Dumitru. Bucureşti: Humanitas, 1997
Rigaux, François. *Introduction à la science du droit*. Bruxelles et Paris: Éditions Vie Ouvrière, 1974
Tutunaru, Mircea. *Probleme teoretice şi practice în edificarea statului de drept*. Craiova: Scrisul Românesc, 2009
Virally, Michel. *La pensée juridique*. Paris: Librairie Générale de Droit et de Jurisprudence, 1960
Conseil d'État - France. *Mesurer l'inflation normative*, étude adoptée le 3 mai 2018, https://www.conseil-etat.fr/Decisions-Avis-Publications/Etudes-Publications/Rapports-Etudes/Mesurer-l-inflation-normative