



The Quality of Regulation

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Abstract: Good governance also involves the affirmation and practice of some principles that allow the structures of the public space to administrate the general interest in the respect of the democracy and of the state of law pre-requisites, as well as the ones of a good administration: trust and predictability, openness and transparency, responsibility, efficiency and efficacy. The assurance of such desideratum imposes that the rules invested with the force of law, applicable to the juridical rapports to be clear, not equivoques, predictable, to allow both the protection of public interest and the respect of the citizens' dignity and interests. The evaluation of the quality of regulation represents a necessary process of the appreciation of the impact that juridical norms are intended to produce and measures in which the outcomes of the implementation correspond to the ones established during the stage of formulating the public policy. The study tries to identify ways of evaluating the quality of regulation, valid in a social and political space governed by democratic rules and principles.

Keywords: public policies; regulation; quality; juridical security; evaluation

1. Introduction

Good governance also involves the affirmation and practice of some principles that allow the structures of the public space to administrate the general interest in the respect of the democracy and of the state of law pre-requisites, as well as the ones of a good administration: trust and predictability, openness and transparency, responsibility, efficiency and efficacy.

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The equilibrium in dynamic of the rapport between the public and the individual interest requires permanent evolutions and adequate adjustments, and the quality of regulation represents an essential premise.

Deriving from the concern of rapidly adapting juridical norms to the economic and social realities at the moment, the reforms come one next after another with an accelerated rhythm, so that law becomes a succession of dim images – a field of the improvisation and of the juridical insecurity. (Richevaux, 2002)

The analysis effectuated is grounded on data from the field literature or data collected from the practice of regulation and public policies. In order to capture the complexity of the approached phenomenon, it was used an interdisciplinary analysis where the juridical perspective is dominant.

2. The Form and Content of Regulation. Principles

The evaluation of the quality of regulation makes part of the culture of the occidental states members of the OECD, and at the EU's level it was elaborated and put to debate the Mandelkern Rapport for a Better Regulation (Mandelkern Rapport, 2001). On the basis of this Rapport, European Parliament the Council and the Commission have adopted in 2003 the inter-institutional agreement to *better law-making*.

The society's values intended to be juridical protected are transposed into juridical rules by means of words, phrases, language. The clarity and the precision of the language used by the juridical field is obtained from the adequate utilization of terms and expressions taking into account their usual usage, as well as the respect of the grammatical and orthographic requirements, effectuating the assurance of the terminological unity of the juridical style.

Legal dispositions adopted by the legislative power (in the form of laws), by the executive (in the form of ordinances and Government decisions) or by the central and local public administration's authorities (orders, methodologies, decisions, dispositions) and whose content is transmitted to the addressees under written expression, through publication in the Official Journal of the state – *Monitorul Oficial* – represent normative messages of the state. (Popescu & all, 2007) the form in which it is expressed the content of the ideas of the message represents one indicator of the quality of regulation.

The way of editing such a message improved during time. There were elaborated norms and guidelines concerning the structure, constitutive elements, syntax, style and form. The specialists in the language philosophy had to accept that juridical norm is also a linguistic norm, making part of the so-called *linguistic law*. (Geny, 1921)

To know the real will of the legislator can be difficult in many situations, making use only of the texts published in the Official Journal.

That is why the addresses of the law, in order to decipher it and to understand its meaning have to resort to the debates that antecede the adoption of the normative act, to the doctrine's commentaries – that usually carry the mark of subjectivity – or to the jurisprudence.

The number of normative acts that compose the legal order knows a continuous increase, and its studying and mastering prove to be more and more difficult. The excess of regulation, *the normative inflation* can lead to the depreciation of the rules of law, with consequences on the State's authority. When *the law speaks too much, citizen doesn't listen to it*. (Chevallier, 2004) Thus it is put into cause the stability of the law, the security of the juridical rapports.

3. Ways of Evaluating the Quality of Regulation

Law tends to constitute itself into a coherent assembly of norms, coherent, intelligible, that utilizes a clear concise and precise language. The complexity of the law, of the normative acts that carry juridical norms, has consequences on the security of the juridical rapports. In order to respect it, the law must be acknowledged, and to be acknowledged it must be clear and constant, essential elements of its quality. (Popescu & Țândăreanu, 2007)

Both the content of juridical ideas and the form of expression of the message of the normative act are submitted to the *ex ante* and *ex post* qualitative evaluation of the adoption of the act.

Juridical security implies that law is predictable and that juridical solutions enjoy a relative stability. The legislative "inflation" in Romania beginning with 1990 can be considered only as a factor of juridical insecurity. Even if this situation is put into direct correlation to the complexity and the unforeseen situations of the transition period, combined with the necessity of harmonizing the community acquis, the instability can also prove an insufficient elaboration of the normative solutions and of their implications.

A way of removing the before mentioned situation and of improving the quality of regulation is the preliminary **utilization**, by the author of the norms, of the **impact studies** through which are analyzed different options and their consequences on the economic, social or environmental fields etc.

In order to make the adopted regulations to be easier assimilated and implemented, it is imposed as much as possible the cultivation of a participative attitude of those upon which the regulations are going to produce effects. On such considerations, it is necessary the **consultation** of the social partners of the NGOs, of the economic

environment of as many persons that can contribute, through their expertise or knowledge of the fact state to framing the possible impact of new regulation.

One of the objectives of the law is to do as such as the decision is taken after receiving an information as complete as possible, and upon the text that makes the object of the examination to be heard as many opinions as it can. (Couderc, Becanne, 1994)

Transparency and consultation are indispensable ways of assuring a better quality of regulation. Reducing the normative *jungle* through **simplification, systemizing and codification** of the juridical norms represent another way of improving the quality of regulation meant to increase the citizens' accessibility to the content of the juridical norm.

The law represents a *unique thought*, the law-maker's word addressed to the citizens, to the addressees. (Cornou, 1978) it is expressed under imperative and prescriptive forms that oblige the person to a certain behavior or it allows him/hers a certain behavior. When a text of law is edicted, the law-maker hopes to modify the behavior of the citizen in the way intended by the elaborated text.

The profound knowledge of the law-maker's will can be sometimes difficult, only based on the normative act. Sometimes, the interpreter will have to broaden his research also on the motivation and debates that grounded the respective regulation. To make this process easier it would impose the publication into the official journal of the state of the exposures of reasons of the laws and of the notes of grounding for the Government's decisions.

Nat at last, the quality of regulation must be evaluated in which concerns the **normative content** of the act in relation to the reference provided by the supremacy of the Constitution and legality. The hierarchy of the normative acts, the rapports between different categories, the correlation with the assembly of the existing regulations represent premises of the legislative efficiency.

The result of the implementation of different regulations, the impact produced on the juridical and social rapports represent aspects that are suitable for a complex analysis of political, social, jurisdictional and scientific nature. The quality of regulation, through the validity of the normative solutions adopted, through their coherence and duration are being reflected into the security of the juridical circuit, of the juridical order. The criteria of evaluation must concern the measures in which the results of the evaluation of public policies by means of juridical norms correspond to the ones established in the stage of their formulation, the rapport between the intended costs and the effective ones, the respect of the content and the terms established through strategies and actions plans.

4. Conclusions

The proliferation of the juridical has as consequences the adoption of too numerous normative acts to be known by everyone, too technical and many of them insufficiently technically edited to be convincing. They are often wrongly understood and implemented, limitation to the text of law being insufficient for a correct interpretation. Thus, the text applied by the practitioner or by the judge is not the one written by the positive legislator, but one which is re-built by the subjectivity of the interpreter, on the basis of his knowledge and beliefs, helped by the opinions expressed by different materials: doctrinaire commentaries, previous jurisprudence, or which refers to almost similar situations, results of an intended application. The legislator builds its normative product for the future, and if he wishes it to be efficient he must assure himself that the transmitted normative message is clear, coherent and easy to understand by the addressees, and that at the same time it has the necessary premises to produce the intended impact.

The factors that favor the proliferation of law and the complexity of norms are not all of them controllable, the unforeseen situations – as the situation of the actual global crisis – being able to play an important role. The exigencies of the juridical security make it necessary a more efficient control of the deviation that compromise and disqualify the law and its authors, threatening social cohesion.

Discouraging the normative excess and increasing the stability and accessibility of regulation can be the result of some organizational measures, combined with educational others, to change mentalities and cultivate a culture of the juridical quality and security. The assurance of the quality of regulation must represent for the governors a permanent preoccupation. Perhaps it wouldn't be out of interest inscribing into the Constitution of a solemn enounce in that sense, to encourage the stability and security of the juridical rapports.

5. References

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