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TECHNICAL AND LEGISLATIVE EXTERNAL STRUCTURE OF THE LEGAL NORMS

C. C. Buzdugan

Corina Cristina Buzdugan
"Dimitrie Cantemir" University, Bucharest
Faculty of Law, Cluj-Napoca
*Correspondence: Corina Cristina Buzdugan, "Dimitrie Cantemir" Christian University, Faculty of Law, 2 Burebista St., Cluj-Napoca, Romania
Email: buzdugan_corina@yahoo.com

Abstract

If the logical, trichotomic organization of the laws forms its stable internal structure, the technical and legislative body forms its external structure. It is correlated to the celerity requirements which are included in the legislative system, in different stages of its development, and also to the general principles of legal techniques.

Keywords: *law, article, paragraph, external structure.*

Introduction

The technical and legal structure, unlike the logical structure refers to the external form of expression of laws, to its written form, which must be clear, concise and well-shaped. Therefore, the technical and legal structure takes into account the normative aspect, the way legal rules are expressed within written laws. The laws established by legislation are subjected to specific legal requirements aimed at modeling certain social relations through mechanisms that transform them into legal relations, while making tools that create, foster, alter or extinguish these relations, depending on the purpose of the legislator.

The drafting of the final regulatory action is part of the process of law. In this process, the drafting operation follows the legal concepts and notions, especially the rules of law. At this stage it is necessary to find the words to express concepts and formula to enable the drafting of rules of law. The right combination of words is a tool for communicating concepts, rules and legal reasoning.[1]

Since the law is an abstract construction that very often emerges from the combination of several items that are in different places in the body of the law, it is important that the sequence of articles in laws is correct, logical, making it easy to detach the meaning intended by the legislator.

Arguments to support this idea have been made, for example, to resolve a dispute regarding the correct application of Decree 92/1950. In the first article of this decree, the conditions under which some property may be nationalized are shown. According to the stipulations of article II, certain categories of people are exempted from nationalization. In that dispute, on appeal, the defendant argued that the plaintiff could not be exempted from nationalization, since he owned, at the time of nationalization, two buildings, exceeding his housing needs, and some commercial spaces. The buildings were used for rental purposes and it was obvious that the owner had another residence.

[1] F. Geny, *Science and technique in positive private law*, Sirey, Paris, 1922, p. 51.

Even though the article II of Decree no. 92/1950 exempted from nationalization certain categories of people, article I, paragraph 2 was not changed and was applied so that the buildings were nationalized according to the Law no. 112/1995. The court did not share this point of view, stating that "The stipulations of article II of Decree no. 92/1950 should be considered as derogating from those of article I, with the result that even if the owner of the buildings belonged to one socio-professional categories listed in Article II, the buildings should be excluded from the measure of nationalization. This conclusion sends to the topographic argument. The stipulations of article II are consecutive - and so derogating those of article I".[2]

The language plays a very important role in the materialization of the rules of law.[3] The law promotes the "legal language", a special way to express legal thoughts and realities that deviates from everyday speech and borrows external elements, through which the laws and rules are expressed.[4] Since ancient times, Roman jurists showed that normative acts must use the lexical, colloquial language, but in a refined form, to achieve technical accuracy, without which there is no legal language in the scientific sense of the term.[5] The word, the language becomes, in ancient times, an element of legal formalism and therefore required in enforcing the law. The value of the word is underlined by Gaius, the jurist, who states that the slightest error in terminology can result in losing a lawsuit, since the lawyers used to *verbatim reproduction* sacred texts of the law.[6]

The overall technical words belonging to a particular field of activity forms its terminology. In law, for a harmonious expression of legal concepts, it is necessary that each concept is expressed through an appropriate word. Thus the legal terminology and the legal semantics arise. By virtue of legal terminology and legal semantics, a word used in law always has certain significance. Usually, the words used in legal terminology are taken from the common vocabulary and semantic undergoes conversion by charging them with a specific legal meaning. Thus, apart from having a common sense, the words become independent elements of legal terminology.[7]

The legal terminology is part of the legal vocabulary, which is the main corpus of the Romanian language used in the legal field.

The legal vocabulary responds to some legal requirements concerning the quality of the law and its dissemination.

For securing the quality of the law, for achieving its purpose in the most efficient way and applying it consistently, it must be characterized by unity, order, precision and clarity. In order to achieve this, the rule of law must first be expressed in clear and precise words, to remove the possibility that those who apply the law to confer it their own interpretation, making it irrelevant for the legislator's intention.

The external form of laws is characterized by legislative enactment or by normative style. The latter represents all the methods and artifices forming the drafting of normative acts. The former refers to a set of features that legislative texts take[8].

In our specialized literature, there is not a single legislative style, but a multitude of styles specific to certain fields of law[9]. In other words, it has been argued that the style is specific for a normative writ because the legislator rarely uses writs particular for a branch of

[2] Civil Decision no. 171/2001 Court of Appeal Cluj, unpublished.
[3] V. Hanga, *Technical and Legal Right. A Summary*, Lumina Lex Publishing House, Bucharest, 2000, p. 33.
[4] To see J. L. Bergel, *General Theory of Law*, 3e issue, Dalloz, Paris, 1999, p. 222.
[5] V. Hanga, *Work cited*, p. 33.
[6] Ibidem, p. 35-36.
[7] I. Vida, *Introduction to Formal Legislation*, Lumina Lex Publishing House, Bucharest, 2000, p. 110.
[8] J. Voyame, *Legal Methods and Procedures*, Institute of Advanced Studies in Public Administration, Lausanne, 1991, p. 87-88.
[9] V.D. Zlătescu, *Introduction to Formal Legislation-*, Rompit Publishing House, Bucharest, 1995, p. 66.

law.[10]

The issue concerning the style of writs is addressed in a separate chapter and also in Law of legislative techniques no. 24/2000, in which the legal norms ensuring intelligibility, the use of neologisms, the terms, the regionalisms and other tools needed for the drafting of such writs, allow easy understanding of their content.

The normative style has to render the permissive legal standards and the devices that should make clear whether the person is obliged to have a certain conduct in the circumstances described, because otherwise he/she will be subjected to a penalty, or to recommend a certain conduct a person may adopt.

For the laws to be understandable, the style in which it is written has to be concise, sober, clear and precise, to exclude any ambiguity, in strict compliance with the rules of grammar and spelling.

A concise style involves expressing ideas in a few words, avoiding redundant[11] statements and terms with a high degree of abstraction, to cover a wide range of phenomena due to abide future legal regulations.

However, one should avoid replacing a term used in the law along with another, even if it is synonymous with the first one. Thus, the cohesion of terminological texts will be ensured, removing confusion, ambiguity and the potential for uncertainty that would otherwise contradict the intended meaning of the law.

The moderate style of the law lies in eliminating tropes, using, as much as possible, the basic meaning of words, in the most common occurrences.

Clarity and precision of the style is achieved by proper use of words in their ordinary meaning. Even though it is generally used the common language, in the absence of adequate means to express as accurately as the law intended, legal terminology, neologisms or specialized terms will be used.

The legal terminology is useful because ensures the terminological cohesion of written laws, expressing legal concepts in an accurate form. Terms such as: the individual, legal entity, termination, revocation, will never be replaced by other terms, because it would cause a disruption in the interpretation and application of legal rules.

If the legislator is required to use concepts and terms that are not part of everyday speech, or to give them a different meaning, he is obliged to define and clarify the meaning of these terms as they are used in content of the law. Definition consists of a technical process that specifies the structural elements of the legal concepts and legal institutions, thereby facilitating legal rules[12]. As Jean Dabin stated, the first condition for practicality is just to define[13].

Defining legal concepts has a formal and a more practical meaning. In terms of practicality, the concept expresses substantial consistency and in terms of formality, it designs the shape and meaning of a concept.[14]

Modern law makes a distinction between scientific definitions developed in doctrine and law, and positive law, which represents the will of the legislator.

Legislative definitions are treated as such in the texts of the laws or are implied in the wording given by the legislator.

For example, the Criminal Code, at the end of the General Part in Title VIII certain terms or phrases of criminal law are defined as “public”, “relatives”, “family member”, “public official”, “serious consequences and effects”, “tools”, etc.

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[10] I. Vida, *Work cited* p.112.
[11] I. Mrejeru, *Legal Technique*, Academy Publishing House, Bucharest, 1979, p.102.
[12] V. Hanga, *Technical and Legal Right. A Summary, Work cited* p. 54.
[13] J. Dabin, *General Theory of Law*, Dalloz, Paris, *1969*, p. 268.
[14] J. L. Bergel, *General Theory of Law, 3rd edition*, Dalloz, Paris, 1999, p. 195.

The legislator uses many terms without giving a definition. Such terms are, for example: "national sovereignty", "people", "unitary state", "administrative and territorial unit". In these cases, it is the doctrine and judicial practice that will explain the meanings and in doing so, giving a full understanding of the law.

In order to define certain concepts, we can also use the enumeration process. It consists in the decomposition of an abstract idea - considered to be too vague to allow a consistent and efficient implementation - in practical applications[15]. Using the enumeration process enables us to completely understand a legal statement with a high degree of abstraction. The legal statement includes references to the concept, and then, by example, shows some features of the concept within the statement. For more abstract concepts we can substitute more practical ideas, more concrete elements[16].

The enumeration can be illustrative or exhaustive. The illustrative enumeration is characterized by the fact that the legislator allows the law enforcement officer to extend its application to other similar cases.

Thus, in article 16, paragraph 3 of the Decree no. 31/1954 it is stipulated: "Those who disappeared during war, in a railway accident, in a shipwreck or in other similar circumstances, are supposed dead, without any previous announcement of their disappearance...".

The exhaustive enumeration forces the law enforcement officer to confine to it. It is often used when setting exceptions to general rules of law.

For example, in article 31, letters a)-c), e)-f) of the Family Code are listed exhaustively each spouse's own assets, goods which are exempted from the general community of goods. The text of article 31 of the Family Code is just an example of how the two types of enumerations can be combined; at letter d) the enumeration is illustrative: "property acquired as a prize or reward, scientific or literary manuscripts, drawings and artistic projects, inventions and innovations projects, and other such goods".

Legal concepts can be defined via substitution, by assumption. Thus, instead of defining a difficult concept another one, more easily perceived is chosen. For example, instead of saying "failure of individual spiritual maturity", it was agreed to use numbers, to express the age. It is supposed that minor age is equivalent to insufficient development of mind.

As far as the formal aspect of the definition is concerned, it has been shown that there is a real distinction between definitions and terminology.

A real definition consists of a substantial determination of elements and attributes of the concept in question. In this way, concepts relating to individuals, legal documents, property, property rights and servitude were defined. The terminological definition explains the meaning of a word used in a legal text[17].

This kind of definition was regarded as defective and dangerous because the legal system constrains the perception and concepts on which it is based, the restrictive nature of the definition representing a limitation in the way that integrates the concepts into the law[18].

In our opinion, the use of terminology definitions is useful insofar as it is not abused.

In criminal law, the offense is labeled as crime only if it is under the criminal law, and the use of terminology definitions is needed to outline more precisely the crime range. Otherwise, greater flexibility is beneficial while enforcing the rules of law on rapidly changing social conditions. If the legislator is required to use concepts and terms that are not

[15] A. M. Naschitz, *Theory and Technique in the process of creating the Law*, Academic Publishing House, Bucharest, 1969, p. 263.
[16] J. Dabin, *op. cit.*, p. 289.
[17] G. Cornu, *Civil Right. Introduction. The people. The goods*, 7th edition, Montchrestien, Paris, 1994, p. 74.
[18] I. Vida, *Work cited*, p. 78.

part of everyday speech, or which give them a different meaning from that already established, he is obliged to define and clarify the meaning of these terms as they are used in the content of the laws.

The law concerning the technical standards is quite restrictive on the use of neologisms in order to provide a better understanding of the law to all people, regardless of their level of general knowledge. The law prohibits the use of neologisms if there is a synonym widespread in Romanian. If the case, the usage of words and phrases from foreign languages is accepted as long as their Romanian correspondent is used alongside.

Even if the use of neologisms is not desirable as a general rule, there are situations in which there is a corresponding term in Romanian. The legal situations which are new for our society should be regulated though. There are such cases, for example, with different types of contracts: *franchise* contract, *leasing* contract, *management* contract, *and know-how* contract. The legislator has regulated these types of contracts, without finding a counterpart in Romanian. They were practically regulated from the contract: objectives, parties, concluding and implementing ways.

Legal reality also has a quantitative dimension, related to length, size or extent of regulated phenomena. This dimension is expressed in laws using figures offering the legislator detailed procedures[19].

Using measurements, the legislator may use absolute numbers to introduce a rigid determination (such as the cash taxes and other contributions) or, if a flexible quantification is needed, he can use the minimum and maximum limits (such as criminal penalties).

To meet the requirements of legal text style, the arrangement of words in sentences and phrases should closely follow the grammatical rules. The simplest structure is given by subject - verb - complement[20].

The subject indicates the participant in the social relations whom the law is addressed. The precise determination of the subject is essential for the correct application of legal rules. For legal rules with maximum level of generality, the subject is the person.

By using this term, we understand all subjects seen as individuals, regardless of the position they occupy in society.

When a human being is regarded individually, it is referred to by the term “registered sole trader”, and when it is a collective subject, by the term “legal entity”. The two terms have been devoted to the branch of civil law but are now used interchangeably in all the branches of the law[21].

Preferably, the subject is expressed in singular, articulated form (minor, person, husband), thus eliminating any confusion regarding the identity of the person the law is addressing. The use of plural form is not excluded, especially in situations in which the legal action intended cannot be carried out but with the help of more subjects together (associations, wives, union members, etc.).

The subject can be expressed using demonstrative and indefinite pronouns: anyone, everyone, that, those. When the subject is expressed by personal pronouns (he, she, etc.) is recommended to avoid extended usage, in order to prevent confusion and uncertainty.

When the text of the law is a sequence of topics, proper use of conjunctions will determine whether the legal standard applies to a collective subject, made up of all those listed, or only to one of them. If the last element of the enumeration is linked to the last but one by the conjunction “and” that means the law applies to all. If they are connected by the conjunction “or”, on the contrary, that law applies only to one of them.

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[19] A. M. Naschity, *Work cited* p. 261.
[20] V. D. Zlătescu, *Work cited* p. 68.
[21] E. M. Fodor, *The Legal Norm, part and parcel of the social norms,* Argonaut Publishing House, Cluj-Napoca, 2003, p. 146.

The use the verbs in writing texts of law also follows some rules. Verbs are generally used in the active voice, reflexive or passive present tense or future. Using the present tense is preferable to other times, because the law is usually enforced in the present.

The prescriptive style specific to written laws is inextricably linked to the verb, the impersonal verbs or verbal expressions used: prohibited, is chosen, it is recommended, should undertake and so on.

Verbs can be used in affirmative or negative, expressing the prohibitive character of rules.

A well-defined language and accurate grammar structures are important for the correct application of laws, the more so as one of the methods used for the interpretation of legal texts; the grammar involves interpreting and analyzing the meaning of words, the morphological and syntactic analysis, taking into account both the position and agreement between words and different parts of the sentence, and also the linking words.

Conclusions

In terms of legal technique[22] a law ranges, usually between writs of certain legal value (law, decree, judgment, order...).

The normative law is a written document, the content of which includes legal rules developed by legislator.[23]

Viewed from the legal point of view, the normative law is its form of technical and legal existence. It can be divided into chapters, sections, articles, paragraphs.

The structural element of any basic law is the article that contains stipulations in its own right. It may include one or more phrases; if several phrases are used, each of them forms a paragraph. Therefore, in an article several rules of conduct might be included or on the contrary, an article may contain some or only one element of the law (hypothesis, disposal or penalty). There are situations in which multiple articles contain one legal standard.

To correctly determine the contents of a legal standard, one should corroborate texts from articles and even from different laws.

In conclusion, the technical and legal structure of a legal standard takes into consideration the way in which appears in the normative act, being its external "coat".

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