The principles of elaboration of the normative acts

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Abstract: The present paper represents a theoretical-practical approach of the principles governing the arduous activity of initiation, elaboration and drafting of the projects for normative acts by the participants in the legislative process, as well as by the specialists in central and local public administration involved in this important activity: the principle of the scientific founding of the activity of elaboration of legal norms, the principle as a unity of the system of the law, the principle of insuring the balance between the dynamics and static of the law and the principle of accessibility and economy of means in the elaboration of the normative acts.

Key-Words: normative act, normative technique, legislative technique, normative activity.

1 Introduction
The elaboration of normative acts is unfolded with the compliance and fulfilment of some principles that, as emphasized by Mircea Djuvara, must tend to the embodiment of rationality and morality of law, to satisfy the society’s ideal of justice [1]. The normative activity, especially, at the legislative level, is unfolded by the following principles [2]:
1. The scientific foundation of the elaboration of legal norms;
2. The principle of compliance with the unity as a system of the law;
3. The principle of balance between the dynamics and the static of the law;
4. The principle of accessibility and of economy of means in the elaboration of the normative acts.

2 The scientific foundation of the elaboration of legal norms
This principle starts from the idea that the elaboration of the legal norm must be made by the legislator, based on some previous economical, sociological and psychological investigations and studies, on a scientific documentation and on specialty researches in the area in which the regulation takes place, for a better knowledge of reality and the identification of the purposes of the legislative policy. Only a better knowledge of what is called the ratio legis can lead to the correct expression of the legal norm in the content of the law.

The foreseen solutions must be grounded and reasoned under scientific aspect, and when in the solving of issues result more hypotheses shall be presented more possible variants, among which shall be chose the optimal one, the most efficient under the aspect of results and of its acceptance by the legislative forum and by those to whom is shall be applied the legal norm. The scientific foundation of a project of law shall comprise: the description of the de facto situations that must be transformed in de iure situations, changed, completed and which are found in connection with the judgments of value, which determine the change of the legal regulation, the social cost of the legislative reform, its opportunity [3].

The scientific research must be founded and some legislative forecasts, on short, medium and long term, and remove the conjuncture or interposed legislative actions without a sufficient research of reality. Such operations are developed, usually, by the government, ministries, the Legislative Council or other bodies interested in the achievement of such legislative projects.

The legislative authorities have the possibility to unfold complex observation operations of the factual and evaluating situations of the future perspectives and efficiency of the normative act.
3 The principle of compliance with the unity as a system of the law [4]
The normative act which is elaborated must fit in the legislative system which involves multiple connections and forms a unitary complex in which there are relations of hierarchy, correlation, compatibility, interdependence etc. The unity of the normative acts must be understood horizontally and vertically. Horizontally, in the elaboration of a law are had in view all the other normative acts which comprise provisions related to the area settled by the new law; thus, it appears a conflict between the regulations of the same system of law which affects the unity of the normative acts. Vertically, the normative act which is elaborated must take into account the supremacy of the Constitution and the principle of the hierarchy of the normative acts, the correlation with the other normative acts and also the limits of the competence which ordains them, thus the provisions of the new law to be in accordance with the superior normative acts and with the Constitution, to correlate with the equal normative acts and with the Constitution, to correlate with the inferior normative acts. This means that all the normative acts elaborated based on the old law shall cease to be applied, being necessary the elaboration of new normative acts based on the new law. Thus, is being respected the unity of the normative act adopted by the legislator authority and the unity of the system of law.

4 The principle of balance between the dynamics and the static of the law.
In the elaboration of the legal norms it must be insured the balance between the stability and the mobility of the regulations, between their dynamics and static. The adopted rules of law must correspond to the changes in shape and content of the social interactions and have a great stability, necessary condition for a legal order, in a rule of law. In the same time, the regulations must be drafted as to rapidly allow their adoption, transformation and perfection.

The system of the law is an opened system, in which there is a dynamic balance between the trends of conservation of the permanent values of law and of change, determined by the new requirements of the social life. The relation between the dynamics and the static of law is an issue not only of legal policy, but also of ration of law and of social ends. The stability preserves the legal norms which protect and guarantee the supreme values of the concrete society, the mobility determines and impulses the multiplication of social behaviors and actions.

5 The principle of accessibility and of economy of means in the elaboration of the normative acts
This principle has in view the fact that legal norms must send a clear message, understood by its addressees and with by the simplest means. Accessibility, which is the main feature of the law must be insure the possibility that the legal norm to be understood by all its addressees. It would be immoral that the subjects of law to be forced to know and to comply with legal norms, if these cannot be understood by any person. Accessibility means also the excessive avoidance of the technical terms and of some procedures that are hardly deciphered, in stead of using, where appropriate, an understandable language. But the accessibility must not fall in vulgarization [5].

The main requirements of the principle of accessibility are [6]:

a) Choosing the exterior form of the regulation on which it depends the force of the legal norm, its position in the system of legal norms etc.

b) Choosing the mean of regulating the legal norm.

c) Choosing the conceptualization means and the language of the legal norms.

a) Choosing the exterior form of the legal regulation is an essential requirement of legislative technique, because on the exterior form of expression depends its legal value and force, its position in the system of the normative acts. The legislator shall choose the exterior form of regulation relating on the nature of the relations subjected to regulation.

By its mean of expression, the normative act must insure for its provisions a compulsory feature. The provisions comprised in the normative act can be, depending on the situation, imperative, suppletive, permissive, alternative, derogative, facultative, transitory, temporary, of recommendation or other as such; these features must expressly result from the drafting of the regulations.

The exterior form of regulation refers to the determination of the category of the legal act which is to be elaborated (law, Government injunction, Government decision, order of a ministry etc).
b) Choosing the mean of regulating the legal norm, stated imperatively, disposing or with a character of recommendation is an option of the legislator, regarding the behaviour prescribed for the subjects of law. This principle refers to the used type of norms, based on the behaviour prescribed by the norm, by the specificity of the social relations, on the features of the subjects of these relations, on the nature of the interests to be satisfied and the values protected by the legal norm.

Thus, regulating the organization and function of the public authorities is made by imperative norms, while the regulation of the family relations is made by incentive norms etc.

c) Choosing the conceptualization means and the language of the legal norms. The principle of accessibility and economy of means in the elaboration of the normative acts is transposed in practice using some conceptualization means (concepts, categories, notions, definitions, fictions, presumptions etc) and of an appropriate language.

This requirement directly regards: the construction of the norm, the comprehension in the norm of the structural elements, fixing the type of behaviour, the legal style and language [7].

The legal norm is the result of an abstracting process, a direct effect of some complex evaluating and valuing operations of the relations in society. Not aiming specific cases, but general hypothesis, the norm cannot be descriptive; it necessary operates with a series of concepts, categories, definitions etc.

To state the legal norm, the technician of the law has the resources of the common language. This language contains words corresponding to some concepts evoking a certain degree of abstraction [8].

The words of the current language, by the integration in the statement of a legal norm, change their nature, becoming legal terms or legal concepts, and their meaning represents an integrant part of the norm to which they contribute.

The terms of the current language, by their transformation in legal terms often change their meaning. Thus, the concepts of “fruit” or “mobile” have in law a different and intense value than the words in the common language.

The legal technique creates its own legal realities (as for instance, the notion of “guarantees”), giving birth to an own notions and legal terminology.

Thus, at the very base of the technique is placed a legal conceptualism [9]. To individualize these concepts, the legal technique used definitions, classifications, enumerations and other technique means.

The definition seeks to group in a general and abstract formula the specific features of the concept had in view, but sometimes, to clearly generate an ensemble formula, it is necessary to resort to the enumeration of the cases to which the norm is applicable [10].

The legal technique does not only limit to basic concepts and notions. It seeks, with the help of the classifications, constructions and legal categories to imply other concepts.

Classifications gather all the legal notions and concepts, by common features. It can be shown examples of such classifications, the ones on persons (legal or natural), on goods (mobile and immobile), of rights (real and personal), of legal facts and legal acts etc. Classifications are of a great interest, because each of the terms has effects and a special legal regime.

The mean of classification is very often used by the legislator. Thus, as noted A. Naschitz [11], unlike the definition based on enumeration, which starts from a higher degree of generality, to descend to more concrete situations, the classification starts from the premise of a generality, tending to group different elements in a common idea. In the first situation is acted analytically, and in the second one synthetically.

The main requirement, emphasized by the quoted author, is that all the elements of classification to be subsumed to a general idea, “to not be taken arbitrary”.

Legal constructions consist of extracting from the study of some particular cases a general idea which connects and explains them. Thus, the rules regarding groups as societies, associations or administrative bodies have generated the general idea of legal personality. These systematizations have an explanatory value, clearing and affirming solutions, represent instrument for discovery and perfection of the law, as long as they allow the solution of unpredictable difficulties. The main feature of the legal constructions consist of introducing an element of logical coherence in the complex of legal regulations, allowing to discern the unity of the regulations, creating an institution, as well as of their relations to other institutions [12].

Legal categories are the result of splitting all legal realities into categories, each having its own characteristic physiognomy. Their utility results from the fact of stating the features of each legal institution or situation and to thus determine its own effects. The degrees of abstracting shall be emphasized by characteristic proceedings and artificial means considered necessary or useful regarding on the practicability of the law.
Beside the legal proceedings above mentioned, the legal technique has created the legal presumptions and fiction.

Presumptions [13] represent a mean of legislative technique, often used and which, in certain situations, gains essential significations for the structure of some institutions.

Presumptions are a mean of legislative technique very characteristic to abstraction and to legal artifice and consist of the decision based on a stable reality, but grounded on a probability or even a possibility.

It is distinguished between factual presumptions (presumptions of the individuals) and legal presumptions (presumptions of law) [14].

Factual presumptions are defined by Art 1199 of the Civil Code as being “consequences that the law or magistrates draws from a known or unknown fact”.

Legal presumptions are defined by Art 1200 of the Civil Code as being “those which are especially determined by law, such as:

1. Acts which the law declares null or as being committed in the fraud of its provisions;
2. In the cases in which the law declares that the obtaining of the right to property or the liberation of a debtor results from certain determined circumstances;
3. The proving power given by the law to the testimony or oath made by a party;
4. The power given by the law to the authority of res judicata. But about presumptions we shall talk in a different section”.

In opposition to the presumption, which connects to reality, by a connection more or less solid, based on a probability or even a possibility, the legal fiction involves the voluntary unawareness of this material and legal reality. The technique artifice reaches here its extreme limit.

Fiction, as presumption, is part, in the opinion of J. Dabin, of the “proceedings of deformation” [15], used by the legislator in the conceptualization. But if the term of “deformation”, which in the case of presumptions has a metaphoric feature, in the case of fictions it is totally fit.

Fiction expresses as being real things which does not exist, denies already existent things, assimilates things or situations which are not identical, considers as being existent thing that do not exist or considers as being inexistnt things or situations which continue to have effects [16].

Fictions are used to cover the lacks of the law and to reach a legal solution. Therefore, even if the technique adopted by the legislator is based on a fiction, what definitively interests, is the purpose of the norm, which must be achieved and which gives the real measure for the normative disposal had in view.

6 Conclusion
As a conclusion, it must be emphasized the fact that the principles that grounds the process elaboration of the legal norms are complementary and interdependent, it conjugate and interconnect reciprocally in their process of application and, thus, express social objective requirements and can be stated in different ways.

References:
[7] In this regard see also “Limbajul juridic” and “Stilul actului normativ”, by M. Grigore, op cit., pp. 161-185.
[8] Regarding on technique and abstracting, see R. P. Vonica, op. cit., pp. 346 and following.


[10] This mean is inferior to a definition of ensemble. The stated situations are just examples designed to clear or to present the general notion.


[12] Ibidem, p. 275

[13] Under the aspect of the legislative technique it only interests the legal presumptions (established by the law).

