

LEGAL NORM – GENERAL ASPECTS

PhD Lecturer Delia-Georgiana SEMENESCU
PhD Lecturer Viorica-Mihaela FRÎNTU
“Constantin Brâncuși” University of Târgu-Jiu

Abstract:

The concept of legal norm is part of the overall concepts and categories of legal thinking, through which legal reality is explained. At the same time, the legal norm constitutes the primary element of the legal system, the vector through which the legislator's message reaches the subject [1].

Key words: *legal norm, law, legislator, laws, purpose.*

The individual exists in society, in a correlated system of relationships that put him in direct and diversified contact with his peers. The mutual interaction of individuals and collectivities form "social life". [2]

In this way, his actions and relations generate society, and institutionalized social relations, objectified, then become forces shaping the qualitative determinations of individuals. Current historical evolution is characterized by an increase in the complexity of relationships between the individual and society, through an acute diversification and multiplication of economic and social exchanges. [3]

Human activity takes place in a complex framework - social-human and physical-natural. The human being (*homo faber*, but also *homo sapiens*), involved in an action must be understood as both a natural anatomic and neuro-physiological system able to influence the environment, but also as a reflecting system, able to foresee and anticipate the course of events involving itself as agent and select from several alternatives the (optimal) behaviour variant. Of the many dimensions of human activities (ontological, cognitive-informational, teleological etc.), we are interested mainly in the normative dimension, the one that requires from the agent an acting model, a behavioural variant (ethical, political, legal, religious etc.), causing (programming) certain thresholds in relation to which he *must* do something, he *can* do something or, conversely, *must refrain from doing* anything. Social norms regard social behaviour, have regard to the distinction between indicative and imperative, passing from the domain of "sein" (which is) into the area of "sollen" (what must be). [4] The conduct of an

agent can be described as a " sequence of pragmatic attitudes, active or passive, as executions of operations or programs and as expectations or abstentions in other circumstances (...)". [5]

Analysed in their entirety, social norms as well as technical ones have as support of their existence and assertion the objective laws of nature and society, independent from human subjectivity. [6]

Social norms, as norms of inter-human relationships, have general characteristics such as:

1. Social norm aims at including human actions, attributes and behaviours within certain limits, limits that protect the interests and values of the other representatives of the community and ensure a certain order and stability in the conduct of human relations;

2. The main content of social norms is aimed especially at human action and conduct, setting out ways in which they can, should or should not take place: the highest percentage of social norms (as well as of the legal ones) are predominantly "action" type rules, meaning conduct rules;

3. Through their content, social norms either summarize past experience, or express a perpetual need, or project future conduct subordinated to a goal or to an ideal;

4. Social norms are aimed, in an impersonal, general fashion, at potential social subjects, prescribing either mandatory actions or conduct, either permissible ones or prohibitive ones, either recommending or encouraging conduct or actions from which arise obligations of the potential subjects to which they are addressed;

5. Social norms are (should be) mutually consistent through their content, in the sense that social norms governing the same conduct or action can not at the same time allow it, and also prohibit that conduct or action, or to demand concrete achievement of an unfeasible act or conduct;

6. Regardless of their form or their field of reference, social norms reflect, to some extent, the characteristics of the age in which they were crystallized; therefore they bear the imprint by significant differences, of the changes produced in terms of social relations;

7. From this results the specific dynamic character of social norms, and at this level there are differences depending on the core that is conserved: some categories of rules have a higher degree of stability (religious, moral, familial, scientific) compared to others, with greater dynamic character (political, economic, legal). [7]

Social life involves rules; these rules play the role of the organizing forces of human interaction. Legal norms do not remove, but join other sets of rules, they coexist with them, their regulatory action intertwined with the action of other rules. Therefore, many of the characteristic features of legal norms are, in one way or another, found in the separate analysis of each social norm. [8]

The purpose of legal norm is to ensure social cohabitation by disciplining (channelling) the behaviour of humans and institutions in the direction of promoting and strengthening social relations in accordance with the settled values in society. [9]

According to prof. N. Popa, the goal of the rule of law – goal achieved by the law, by the activity with legal character of the administration and by the citizens – is that of ensuring the *essential safety* of the social relations, as well as *harmony* under an idea of value contemplated by the legislator. Legal norm will achieve its purpose if it answers – in an understandable and technical fashion – to the interest that it represents. [10]

According to other opinions, of professors I. Ceterchi and I. Craiovan, the purpose of the legal norm or of the rule of law corresponds to the finality of law, namely to ensure the social cohabitation by channelling the human behaviour in the direction of promoting and consolidating social relationships in accordance with the ideas and values governing that society. Through the legal norms, the law of inter-human relations is ordered and regulated in specific forms, in compliance with these values. [11]

The legal norm is the basic cell of law, it is the elementary legal system. Law cannot exist nor can it be explained outside its normative reality. Within the contents of any legal norm a certain conscious representation of the legislature is stored regarding the possible conduct of the subjects participating to social relations. In this sense, the legal standard is a benchmark, a pattern of behaviour, a "program". It is necessary to understand the exact role of the legal system in the process of asserting and maintaining social order, of the social balance in the conditions in which society has many conflicting interests. [12]

As noted by the French professor Burdeau “legal order is often mistaken for a sort of life-destroying venom. Law would have petrifying virtues paralysing the acts or relations to which it is applied; the order it establishes paralyzes progress and contrasts any innovative initiative”. [13]

Emerging from social norms, legal norms also have certain specific characteristics. [14]

In order to understand the features of legal norm, as well as its structure, we must start from the premise that the legal norm contains that which a subject must achieve, what it is entitled to do or what is advised it should do or is stimulated to do.[15]

The characteristic features of legal norm are:

1. The legal norm is general and impersonal - legal norm prescribes a conduct, a behaviour standard, designed for a generic topic; it addresses its addressees in a diffuse and impersonal fashion. The legal rule does not address a specific individuals, concretely nominated; it is abstract.

The general and impersonal character of the legal norm does not mean that its provisions will be applied every time on the entire territory of the country and to the entire population. [16]

2. The legal norm has a typical character – this feature comes from the general character of the rule of law. The formation of the type (model) of conduct and the care for accepting or imposing it in social relations practice is undertaken in order to achieve the coding of action, its standardization, modelling it in relation to a legally protected social interest. [17]

3. Legal norm involves an intersubjective relation – legal norm is not just a general-abstract and typical prescription; it imagines the human being in relation to its peers, it regulates legal trade. Legal norm takes into account the rightful exchange between people in a permanent relationship. [18]

4. The legal norm is compulsory - legal rule contains provisions which are not left to the free will of the subject; they are imposed on it in a variety of ways. The mandatory character of legal command goes up to imperative in public law (criminal, administrative, etc.) and drops to permissive in private law (civil, commercial). [19]

Considering the characteristic features of legal norm presented above, it has been defined by authors taking into account said features.

Although there is a diversity of view points in defining legal norm (Gh. Boboș, I. Santai, N. Popa, I. Ceterchi, I. Craiovan) they essentially express the same characteristics, namely:

- they are a species of the social norms;
- they are rules of conduct and represent a constituent of law;
- they are established by public authorities, or recognized by them;
- their compliance is ensured through legal conscience, and if necessary, by
- the coercive force of the state. [20]

Thus, professor N. Popa defines legal norm as a general and mandatory rule of conduct, whose purpose is to ensure social order, a rule which can be enforced through means of the state, if necessary, by coercion. [21]

Another definition presents legal norm as a rule of conduct with general and compulsory character, developed or recognized by the state power so as to ensure social order, which can be accomplished, if necessary, through coercive force of the state. [22]

The concept of legal norm is part of the concepts and categories of legal thinking, through which legal reality is explained. At the same time, legal norm constitutes the primary element of the legal system, the vector through which the legislator's message reaches the subject. [23]

The legislator will describe a certain conduct in the legal norm (a complex of rights and obligations), conduct required from the subject in the given circumstances (a set of circumstances) and in relation to which some form of reaction (sanction) is attached. [24]

Taking note of the norm, the subject will act in accordance with the conduct provided by the rule, will refuse purposes prohibited by normative prescription, refraining from action or, conversely, will undertake the risk of sanction, circumventing the limitation or violating it. All of the above - conditions, conduct, sanction – are elements of the legal norm, also called the structure of the legal norm. The structure of legal norm appears as a link between elements of the law. This structure appears both in a static form, and in a dynamic one, internal or external. [25]

The structural analysis of the legal norm is generally done from a dual perspective: a) a perspective given by the logic of the norm - *logical and legal structure* of the norm; and b) a perspective offered by the *technical-legislative construction* of the legal norm. [26]

The logical structure of the legal norm makes up the *static, internal and stable* part of the norm. From the point of view of its logical structure, the legal norm consists of the following elements: *the hypothesis, the disposition and the sanctions*. [27]

The hypothesis of the legal norm describes the circumstances in which the disposition or sanction of the norm come into action. In the hypothesis, the quality of the subject can be defined (citizen, parent, child, husband/wife, manager, etc.) or in the hypothesis, the subject can be characterized generically (natural person, legal person, “he who...” etc.) [28]

The disposition makes up the core of the legal norm. In the disposition, the rights and obligations of the subjects participating in the social relations are summarized, their conduct. Therefore it is stated that the disposition of the rule of law constitutes its content. It includes the imperative, the command of the norm or its rational element (conscious representation of the legislator regarding the demands of social life). The disposition of the legal norm may *order* (impose a certain conduct), foresee *the obligation of abstention* from committing an act, contain certain *permissions*. [29]

The sanction is the third structural element of legal norm. The sanction contains adverse consequences arising in the conditions of non compliance of the disposition or hypothesis

(negative sanction) or the stimulation measures, to incentives for the subject, in order to promote the desired conduct (positive sanction). [30]

Unlike the logical structure of the legal norm, where the three components (hypothesis, disposition, sanction) make up the static, internal and stable part of the legal norm, the technical and legislative structure of the legal norm envisages the external form of expression of content, and in drafting it, it must be concrete, concise and clear. [31]

In conclusion, the technical and legislative structure considers the way in which legal norms are stated, phrased, in legislative acts. [32]

REFERENCES

- [1]. N. Popa, *Teoria generală a dreptului*, 5th Edition, revised and amended, C.H. Beck Publishing House, Bucharest, 2014, p. 129.
- [2]. J. Szezepanski, *No?iuni elementare de sociologie*, ?tiin?ifică Publishing House, Bucharest, 1972, p. 24 quoted by N. Popa, *op. cit.*, p. 114.
- [3]. N. Popa, *op. cit.*, p. 114.
- [4]. *Idem*, p. 114-115.
- [5]. C. Popa, *Dimensiuni ale conduitei umane, Perspectivă praxiologică*, Vol. Conduită, norme ?i valori, Politică Publishing House, Bucharest, 1986, p. 14, quoted by N. Popa, *op. cit.*, p. 115.
- [6]. A. Gorun, *Fundamentele filosofice ale dreptului*, Bibliotheca Publishing House, Târgovi?te, 1997, p. 81.
- [7]. A. Sida, *Introducere în Teoria Generală a Dreptului*, Cluj-Napoca, 1997 quoted by A. Gorun, *op. cit.*, p. 81-82.
- [8]. N. Popa, *op. cit.*, p. 123.
- [9]. C. Voicu, A.C. Voicu, *Teoria generală a dreptului*, University Course, Revised and Updated Edition, Universul Juridic Publishing House, Bucharest, 2013, p. 145.
- [10]. N. Popa, *op. cit.*, p. 129.
- [11]. I. Ceterchi, I. Craiovan, *Introducere în Teoria Generală a Dreptului*, ALL Publishing House, Bucharest, 1993, p. 35.
- [12]. N. Popa, *op. cit.*, p. 123.
- [13]. G. Burdeau, *Traité de science politique*, ed. II, t. I, 1966, p. 168, quoted by N. Popa, *op. cit.*, p. 123.
- [14]. A. Gorun, *op. cit.*, p. 85.
- [15]. N. Popa, *op.cit.*, p. 124.
- [16]. C. Voicu, A.C. Voicu, *op. cit.*, p. 146
- [17]. N. Popa, *op.cit.*, p. 126.
- [18]. *Idem*, p. 127.
- [19]. *Ibidem*.
- [20]. A. Gorun, *op. cit.*, p. 85.
- [21]. N. Popa, *op.cit.*, p. 129.
- [22]. C. Voicu, A.C. Voicu, *op. cit.*, p. 145.
- [23]. N. Popa, *op.cit.*, p. 129.
- [24]. *Ibidem*.
- [25]. *Ibidem*.
- [26]. *Idem*, p. 130.
- [27]. *Ibidem*.
- [28]. *Ibidem*.
- [29]. *Idem*, p. 130-131.
- [30]. *Idem*, p.131.
- [31]. C. Voicu, A.C. Voicu, *op. cit.*, p. 153.
- [32]. *Idem*, p.154.