

*THE LAW WITHIN THE CONTEXT  
OF EUROPEAN INTEGRATION PROCESS,  
THROUGH THE APPLICATION OF THE LEGAL NORM BY THE  
STATE BODIES*

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*In this publication, I addressed issues related to realization of the law by application by the state bodies, having the European integration vector. We cannot talk about a legal norm as a whole, confining ourselves only to its creation, there is a need to transpose it in life, in order to achieve the purposes and goals. We cannot overlook the requirements underlying the establishment of the rule of law in Moldova, which aligns the process of making law for cement. The establishment of the law state takes place by the law*

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European integration is the irreversible strategic objective of foreign and home policy of the Republic of Moldova. Association agreement between Moldova and the European Union in Brussels, June 27<sup>th</sup>, 2014, led to the creation of a new framework for cooperation in various fields, including the law. As a result, our country has embarked on a wide ranging reform to align the national law to the European one, a law based on democracy, respect for human rights and the guarantee of law. The facets of coordination can be brought out only through proper orientation of human behavior by creating an appropriate legal and regulatory framework, only on condition that the authorized state bodies perform their job». We must not forget that this is an intrinsic part of an establishing process of the state law. Beyond the adopted legislative system in accordance with the EU, Moldova also needs a viable mechanism

for applying them in to life. Other wise, the adopted rules lose the ir meaning, becoming «racked».

Legal norms are created for ordering and guiding the human behavior. For achieving the intended purpose, the recipients need to know the rules, to respect, execute and apply them, in the general theory of law it is entitled –law achievement. The fact we are interested in the subject of the research is the application of the law as a form of realization.

The National and foreign doctrine defines the application in the following ways:

«A certain way of achieving the law through the intervention of a competent organ of the state that develop according to a certain procedure, a legal act in specific forms- act of application” ;

«A highly complex process that goes on according to a number of factors: the type of social system, the nature of political relations, state organization, type of economic relations, the degree of civilization and culture, national and international conditions, legal consciousness of society» ;

«Elaboration and implementation of a system of state actions, in the view of transposing in practice the stipulations and sanctions of the norms of law” .

«Practical work in which the state organ administers the legal norms, acting as holders of state authority. It is an aspect, a form of state activity that takes place in form of legal acts established by legal -normative acts. Therefore, the development of this task requires ob-

servance of the procedural requirements, for formal completion of compulsory phases, all of which in turn require training from the qualified legal professionals.”

Applying a legal norm is to pass from the norm, as a general precept, to an individual case to determine the correlation between the specific case facts and conditions of application of legal rules to achieve the desired result. Applying the law, the lawyer passes from the general, represented by legal rule, to the individual represented by the facts. The mission of the lawyer and especially that of the judge is to apply the governed legal norms to facts, to ensure the transition from the given situation to the governed legal norm. Therefore, it was said that in applying the law we have to deal with a «to and fro» from law to the facts and from facts to the law, having been intended to be governed by legal norms and the latter to govern the fact.

In some works it is supported the idea that law enforcement reduces the resolution of disputes by the courts. If so, then this would provide in complete and in accurate application of the law. The application of the law is mostly applied in an unconscious way. For example, compliance with traffic rules by the drivers.

The law enforcement must be built on the following guiding ideas, namely:

1. legality in the application process- requires strict adherence to the law enforcement bodies, activity should be carried out with strict adherence to law enforcement procedure, issuance of documents in the form set.

The French political scientist Raymond Aron said that «... the law that must govern the social relations as a whole” ;

2. social equity in the application process- the activity of the state should not refer to a small group of people, they must act in the interests of the whole community;

3. objectivity-fairness in the application of law, the decision should be based on facts, irrefutable arguments, without taking into account the desirability of any particular topic;

4. unity-in similar cases should be taken similar decisions;

5. efficiency-quickness in the application of law, it is an effective condition in combating illegal acts to defend the legitimate interests of the people.

A special topic is the act of application-document that is drawn up, extinguishes or modifies legal relations, which generate rights and obligations towards the referred persons. Similarly, the implementing act must not only to reduce the penalty. There are situations where the provision of an implementing act given by state body consists of an appointment to a job, establishing a joint venture, concluding a contract, etc., thus, it is not considered an act of punishment.

Application documents can be issued by all three organs of the State: legislative, executive and judiciary, but with a different weight. Most application documents are issued by the judicial bodies that do not adopt legislation, but only as acts implementing judgments.

However between the normative acts and the acts of application there are many common features, but they differ essentially by the following:

- the act of applying the law is the legal publication, modification or extinction of a legal law, while publication does not create automatically legal rules;

- unlike the legal norms that are general, impersonal, the acts of application are concrete, individual, referring to a factual situation;

- the legal norm is developed by special category state bodies; the application act can be performed by any organ of state or non-governmental organizations within the determined jurisdiction;

- the legal rule acts repeatedly, to the extent that the situation envisaged time occurs, producing an impersonal and diffuse effect until leaving the force, but the act of application consumes the effects with the solving of the case in question;

- legal norms can be encoded, while the acts of application cannot be codified, due to the great variety and impressive volume;

- the acts of application are distinguished by the legal norms by the principles underlying their remedies against them;

- the acts of application and the legal norms have distinct purposes and finalities.

The development of the acts of application distinguishes certain phases, which is a unique process, although they do not have the same sequence for all categories of legal norms:

1. Establishment of the facts, the delimitation of the circumstances requiring the application of the facts. For example, a person or entity requests a permit to construct a building, a mayoralty, the competent authority must expose the facts, to see what the circumstances are and other issues related to the construction of that building. Obviously, in the case of a process and, especially, a criminal trial, the determination of the facts is important, because it means in reality, finding production of the criminal offense, in order to conclude (if that act was produced by a person if that person or those persons bearing legal liability, what kind of responsibility, what were the effects, etc.).

Depending on the function of the application, the determination of the facts is made according to certain criteria (e.g., the prosecution is done by certain rules, according to certain rules, observing the rules, for not violating the citizens' fundamental rights).

As it was mentioned above, the state of affairs differs from one act of application to another. When an administrative specialist has an address of a housing location, it relatively requires little check of factual issues - determining the number of persons, the annual income average of each person in determining the amount of the rent etc.

In other cases (in a trial, for example), the court requires to perform many activities in order to establish the exact circumstances of the case (hear witnesses, check different circumstances, make expertise etc.).

2. The choice of the legal norm applicable in the established circumstances constitutes a second time law enforcement.

Thus, knowing the circumstances, the body searches the rules or rules applying to them, then checks the connection between them, to see if the concerned offense or offenses are not subject to several rules, afterwards it is necessary to determine whether those rules came into force, if they were not repealed, whether they are applied to that person in terms of the place where the facts occurred and in terms of the status of the person - citizen, foreigner, stateless.

The verification of the chosen norm with other sources of legal norms contained in the higher-level rules and constitutional principles,

with the principles governing the law even with the principle of equity in particular.

It is often difficult to conduct a proper legal classification of facts when it falls under several norms by its features. The interpretation of the text or other legal texts plays a fundamental role in the selection and establishment of the rule that must be applied.

3. Interpretation of the legal norms is an activity in which the enforcement body is applied in order to determine the true meaning and the full legal norm, using for this purpose methods and procedures of interpreting the operating technique.

4. Elaboration of the act of application, which will lead to the establishment, modification or termination of the concrete legal relations. Several different classification criteria for acts of application can be distinguished in literature.

After their subject, the judicial acts are of two kinds:

a) stipulations in which the illegal act is specifically and nominally indicated that a person has to do;

b) stipulations in which the sanction that a certain person has to tolerate as a result of committing an illegal act is indicated.

According to the subject matter, we can distinguish:

a) administrative acts of application;

b) judicial enforcement acts.

After their outward form, the application acts are divided into:

a) document-acts (e.g., documents of investigative bodies, the courts, which have some strict requirements to the form);

b) action-acts (e.g. verbal indications of drivers, traffic police inspector gestures etc.).

After their importance, they are divided into:

a) primary or basic (e.g. basic judgment);

b) optional, additional (such as procedural acts, training acts etc.).

After their duration in time, they can be:

a) permanent or long (appointment of pensions, marriage registration);

b) for a single application (fine application).

It is also necessary to mention the qualities of the application:

- imperative feature;

- individual requirement based on the legal norm;

- competent requirement is sued by anybody-ora competent person;

- establishing subjective law sand obligations of participants in specific legal relationship;

- establishing liable measures for the committed wrong ful act.

5. Informing the state aut horities, the non-governmental organizations about the content of the received decision, it is the last stage (phase)of the law enforcement process, which-consists in bringing the attention of the interested bodies of the individual act of application.

In conclusion, the law application is a specific form of its own achievement, closely related to the application of legal norms in life by concrete and individual acts adopted by state bodies. It is quite important due to the fact that it ensures the pursued aim by the legislature through regulation, because it cannot be achieved by simply creating rules of behavior. A not applicable norm is a non-sense one (dead). In this way, the legal life involves two major phases: the elaboration of the legal norms and their application. Another question is how to apply these rules? Does our state have a mechanism for implementing them? However, the commitments of our country in relation to European partners should be the interests of the Moldovan society and of every citizen. For an effective implementation of the law, conditions need to be created so that the state institutions could function and act in the interests of the state, justice must function correctly, judge only according to the law, the prosecution and other state institutions should act in strict accordance with the law. In fact, European integration is important to us, because this vector will help us modernize the country, create functional state institutions in the interest of the citizen, create a state where we could have not only economic, social, political rights etc. but the state will also be able to create mechanisms to ensure these rights with real resources.

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