



ORIGINAL PAPER

The Emergence of the Normative Inflationary Phenomenon in the Post-Communist Period

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Abstract

The normative inflationary phenomenon appeared and developed in the post-communist period, after the number of normative acts adopted increased considerably. This increase has led to inaccessibility and lack of legislative quality of the normative act. All these consequences have produced effects in the sphere of human rights protection, causing the regress of this protection. In order to identify the content, the determining factors and the effects of the normative inflationary phenomenon, we started from the meaning, causes and effects of inflation in the economy, proceeding to a legalization of the normative inflationary phenomenon. The simple analogy will not be sufficient to identify the cause and effect of normative inflation, so it will be necessary to identify effective adaptation methods that will help us to identify the most effective methods to counteract this phenomenon. Using the method of teleological interpretation, one of the adaptation methods that we will identify, will be that of reporting the emergence of the normative inflationary phenomenon to the protection of human rights, considering that the normative act by which this protection is affected is inflationary.

Keywords: *normative inflation; legalization of the concept of inflation; protection of human rights; post-communist period.*

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1. Introduction – What is normative inflation?

The term inflation has origins that precede the meaning it has in the economy. We propose to use the analogy method to determine the meaning and content of the normative inflationary phenomenon, as well as its cause and effects, in relation to the concept of economic inflation. Normative inflation, the cause of the decline in human rights protection, was approached from two perspectives: quantity and quality. The term inflation comes from the Latin language, "inflation" meaning "swelling" or "growth". Just as in the economy, not every quantitative or qualitative increase is harmful (Costescu, 2013: 21), as in the case of normative inflation, the large number of normative acts or the problems of legislative technique regarding them do not always determine the birth of the inflationary phenomenon. Thus, we can say that normative inflation cannot simply be understood as an increase in the number of normative acts adopted or as an increase in their unclearness and unpredictability, but must be addressed at the level of the main effect it has on freedom.

John Maynard Keynes explains the process of inflation formation starting from the double effect of increasing the effective demand under the influence of increasing quantity of currency put into circulation. Thus, if the supplementation of the effective demand no longer determines the increase of the production and is manifested exclusively by the increase of the prices, then we can speak of reaching the inflation threshold. Applying in the legal sphere the same criterion for determining the existence of the inflationary phenomenon, we conclude that in order to be in the presence of this phenomenon we need the following elements: an effective request of the community regarding the normation, normation considered indispensable to ensure a greater protection of the rights, accompanied by a considerable increase of the unjustified imperative norms, without being accompanied by the progress of the protection of the rights, but on the contrary, causing a regress of them.

2. The causes of the normative inflationary phenomenon

2.1. The citizen has lost the interest in exercising his political rights

In the economy, it has been established that not only "the increase in demand" can trigger the phenomenon of economic inflation, but also its decrease. This conclusion was reached following the analysis made to Romania after the 1990s, when the demand for energy for large consumers decreased permanently, as in the case of the demand for substantial imports of raw materials (Ciutacu, Chivu, 2003: 196-107). All of this has led to imbalances and chain bottlenecks for most of the market and agents in the economy. The lack of demand for old consumer goods together with the increased supply of money resulting from saving or restoring social shares were the causes of future price increases (Ciutacu, Chivu, 2003: 107).

Drawing an analogy with the phenomenon of normative inflation, we propose to check whether this principle remains applicable: the birth of the inflationary phenomenon is also determined by a decrease in the demand for protection of freedom or is exclusively determined by the increase of the demand for protection by demanding a special legal protection. In order to answer this question it is necessary to analyze historically the evolution of the way in which the individual has related to freedom.

Erich Fromm, in his book "Fear of Freedom", analyzed the evolution of the attitude towards freedom of the individual, starting from the continuous struggle of the social classes in order to get out of domination, a struggle that was related to the abolition of external domination. In addition to the abolition of external domination, the

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struggle for freedom also played an important role: satisfying the desire to assert human potential through: liberalism, economy, political democracy (Fromm, 1998: 11) This class struggle is characteristic of all types of society that have existed over time, the only difference being the form that external domination has taken.

After the abolition of the communist regime, Romania became a democratic and social state, in which human dignity, citizens' rights and freedoms, the free development of human personality, political justice and pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the 1989 December Revolution, being guaranteed. With the imposition (Dănișor, 2011, 52-69) of these supreme values, in the conscience of the individual was established the certainty that the protection of his freedom is maximized and he no longer felt the need to advertise with the same ardor his protection. Moreover, we could say that the individual has let go of the mirage of democracy and no longer considered it necessary to demand the protection of rights and freedoms, considering that their protection is already guaranteed.

The ideals of the 1989 Revolution are one of the supreme values enshrined at the constitutional level and these remind us of the way in which freedom and the struggle for its conquest must be viewed, in order to gradually eliminate state assistance and release the protection of freedom from the chains of the inflationary phenomenon. One of the ideals of the Revolution was the regaining of freedom to choose, freedom that belongs to man naturally. Although only three decades have passed since the abolition of the communist regime and the establishment of democracy, the individual has lost a great deal of interest in exercising his political rights.

2.2. Imitation of the inflationary phenomenon from the West

Another factor that contributed to the birth of the economic inflationary phenomenon caused by the decrease of the effective demand is the increase of the demand of the imported goods that had the effect of blocking the internal production (Ciutacu, Chivu, 2003: 107). If we place this theory in the sphere of normative inflation, we can see how the phenomenon of excessive normation has been taken over from the West, a kind of normative imitation which is nothing more than a practical exercise of the theory of forms without content.

In France, the Court of Accounts, analyzing the inflationary phenomenon at the level of the taxes applied to companies, characterizes the French state as suffering from a "disease of the norm" or "a bulimic normativism" (Maryvonne de Saint Pulgent, 2017). Seeing how the inflationary phenomenon is expanding in the other European states, Romania felt the need to develop the same excessiveness of the norm and to reduce the scope of individual freedom by closing the individual in a sphere of unjustified and excessive imperative.

2.3. Conclusion

We conclude that also within the normative inflationary phenomenon, the principle of existence of the two stages that led to the economic inflationary phenomenon is applicable. By analogy, these two stages are: lowering the demand for freedom protection and taking over the normative mode in the West which caused the internal mode of perception of freedom to be blocked. In the economy, it has been considered that the main effect of carrying out these two stages is the appearance of inflation as a cost or as a tax paid for the freedom to import / export goods. The price of

this opening was represented by the continuous closure and disappearance of internal production, favoring importers and disadvantaging exporters, exercising the freedom to import and export goods becoming a drug for the Romanian economy (Ciutacu, Chivu, 2003: 107).

If we analyze the normative inflation in the Romanian space, we notice that its emergence represents a cost, but a cost paid not for the positive side of the freedom to exercise political rights, but because of the negative side of this freedom. The phenomenon of excessive regulation has become a drug for both the Romanian state and the individual dependent on state assistance.

Looking from this perspective the phenomenon of normative inflation, we conclude that the determining factor of its emergence is represented in a greater weight by the lack of the individual's interest towards the protection of his freedom than by the excessive claim of the special legal protection, because the individual is fooled by the illusion of the inherent protection its rights and freedoms in a democratic society in which they are enshrined as supreme values.

3. The effects of the inflationary phenomenon

3.1. The experiment made with freedom

One of the main effects of the inflationary phenomenon, whether we are in the economic or the legal sphere, is the experiment made with freedom. Experiments with freedom are not allowed, which is precisely why when the exercise of freedom is restricted, the means of restraint must be able a priori to achieve the goal pursued (Dănișor, 2014). And yet, most of the normative acts adopted by the Romanian state represent only experiments made with freedom.

As in the economy, in Romania in the last decade, the economic policy has been confined in the monetary and budgetary fields, these policies making Romania an economic-social desert, a region mutilated by the great changes experienced in the global economy that is globalizing (Ciutacu, Chivu, 2003: 108), as well as in the normative sphere, in the last 27 years since the entry into force of the Constitution of Romania, 8798 laws, 3146 Government emergency ordinances and 1508 Government ordinances based on legislative delegation were adopted (Dănișor, 2018), these representing, undoubtedly, a marathon of experiments with freedom.

The character of experiment is all the more evident in the case of emergency ordinances, ordinances that theoretically should be adopted only in the case of the existence of an emergency state, the simple non-existence of this state giving rise to the experimental and unconstitutional nature of the norm. Emergency adoption of ordinances in areas of organic law, even if they can later be rejected by Parliament, sees a real danger of experimental norming, considering that for a short period of time, rights and freedoms can be affected.

Also, in the case of the laws adopted by the Parliament, the experimental character of the normation is reflected in the large number of adopted acts, in their unpredictability, inaccessibility, unclearness and incoherence, but also in the unjustified imperative of the social relations, which is reflected in the multitude of social tasks imposed on the individual, tasks that it is impossible to know, their subsequent fulfillment remaining in the field of science fiction.

3.2. Inflation cannot be fully controlled, only influenced

Regarding the economic inflation, it was considered that it is present in any economy and that it cannot be fully controlled, but only influenced. The imbalance caused by the emergence of inflation is represented by the increase in prices and the decrease in the purchasing power of the currency, leading ultimately to the main effect: the decrease in the value of money (Marinescu, Burea, Samson, 2017: 75). The imbalance caused by the normative inflation consists in the extension of the part of freedom ceded by the individual in exchange for the benefit of the state assistance, determining as the main effect the decrease of the value of the freedom itself. It is in fact the mirror image of the social contract, when the part of the ceded freedom increases with the purpose of "buying" the state assistance, the freedom losing its value to the detriment of the state imperialism. The state assistance takes the form of the special legal protection demanded by the individual. If we balance the benefits and the tasks obtained under this protection, we come to the conclusion that the tasks cancel the benefits and "buy" only the illusion of a special legal protection. Thus, the increase of the part of freedom ceded for the purpose of "buying" the same legal protection determines the major effect of the inflationary phenomenon - the decrease of the value of freedom.

3.3. Conclusion

We conclude that the effects of the normative inflationary phenomenon should be analyzed in relation to the protection of human rights, the experiment with freedom being one of the major effects caused by this phenomenon. Through the unnecessary imperative normative acts whose adoption is not weighed in terms of the protection of human rights, the freedom is ensured for the normative act and the human rights acquire theoretical and illusory character.

4. The interference of economic inflation with normative inflation

There is a sphere of interference of the phenomenon of economic inflation with that of normative inflation, at the level of inflation of normative acts that impede the development of the economy. This sphere is outlined in the analysis of the major effects of economic inflation, structured as follows: a. effects on the redistribution of income and wealth; b. effects on production and c. other effects (Marinescu et al., 2017: 77).

4.1. Effects on the redistribution of income and wealth

When we look at the effects of income and wealth redistribution, we see how the poor and middle classes suffer either because of wages or because of rising prices, which leads to an increase in poverty. In contrast, business people, traders or those with variable earnings, do not suffer as much during the price increase (Marinescu et al. 2017: 78).

The same effect on the social was found in the work "Simplifier le droit pour liberer economy", by Maryvonne de Saint Pulgent, analyzing the effects of the normative acts that regulate the economic activity, the complexity of the tasks imposed through them negatively influencing the activity of the economic agents and especially hindering the development of small and medium-sized enterprises, more than that of large enterprises. The study followed the evolution of enterprises in the French state and the statistics have shown that in the French economic structure there are insufficient medium-sized enterprises - 60% less than in Germany, less than half that in the UK and

¼ less than in Italy, all due to the normative inflationary phenomenon in the economic sphere (Maryvonne de Saint Pulgent, 2017).

The author proposed simplifying the law in order to free the economy. The economy must be released from the canvas of inflation of unnecessary imperative normative acts that block economic development through the barriers of excessive burdens. Also, as a method of counteracting, it proposes an economic approach to the law, which materializes in the judgment of the legal norm in terms of the effects it produces in the economic field. Applying this method of approaching the law, we could say that the utility of imposing a task by means of an imperative norm must be judged according to the effect that the imposition of the task has on the economic development.

By simplifying the law, the author not only understands the simplification of the formal quality of the normative act, ie the clarity, intelligibility and accessibility, but also the intrinsic simplification which refers to the standard content and the administrative burden, in particular to the costs of adapting to any new standard. Judging from these criteria the normative act and analyzing the economic effect that its imposition has in the sphere of small and medium-sized enterprises, we can judge whether the adoption is useful in the context of economic development. The utility analysis according to these criteria is required to be carried out prior to adoption, in order to avoid the experiments made with freedom.

The French State Council supports more the reduction of the costs imposed by standards than the simplification of the law by reducing the standards themselves (Maryvonne de Saint Pulgent, 2017). We consider that the reduction of costs is a method of counteracting in the short term, which is strictly related to the economic aspect. In order to counteract the inflationary phenomenon in the long term and to protect economic freedom in the face of this phenomenon, the most efficient solution is to simplify the law. Therefore, we do not agree with the opinion expressed by the French State Council, considering that the reduction of costs protects only the economic aspect, not the economic freedom of the individual or of the companies to which unnecessary and excessive burdens are imposed. The reduction of costs is equivalent only to a reduction in the weight of the burden, not to the simplification of the law by eliminating it.

4.2. Effects on production

With regard to the effects of inflation on production, the principle of the economy is that the increase of prices encourages production, with producers investing to obtain a higher profit, thus increasing employment, production and income. All this is possible until the full level of employment is reached. Increased investment beyond this level leads to severe inflationary pressures, with prices rising more than production (Marinescu et al., 2017: 80) . By analogy, we can see that in the case of normative inflation, there is the same guiding principle: when the part of freedom granted to the state grows, the social assistance granted to the individual refers to a larger sphere of social relations, with the purpose of the state to obtain even more legitimacy. in the exercise of the inflationary phenomenon.

One of the adverse effects of economic inflation on production is the reduction of quality, the continuous increase of prices giving rise to a market of the seller who sells sub-standard products to obtain profit. Applying this theory to the legal sphere, we observe that the seller's market is personified by a market of state power that gives

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freedom a sub-standard protection that the individual accepts and upholds by not exercising his political rights.

4.3. Social and political danger

Other effects of economic inflation include social and political danger. The social danger consists in the dissatisfaction produced among the masses, the differences between the poor and the rich, the workers resort to strikes, the manufacturers to manufacture products that do not meet the standards, etc. From the political point of view, the effects result in riots and protests that can lead to the fall of the Government, several governments being sacrificed in this way.

The social danger also manifests itself at the level of normative inflation, because the granting of special legal protection gives rise to the adverse reaction from those outside the special protected group. For example, granting special legal protection to persons belonging to an underprivileged group, protection granted in order to correct the injustices committed in the past against this group, ensuring them equal start and equal access, also creates the adverse reaction from those who are outside this protected social group. Granting a special legal protection only amplifies the feeling of rejection of those outside the group towards the protected group and thus we turn in the vicious circle: vulnerable group - protected group - group with an increased vulnerability.

5. Incompatibilities between the economic and the legal spheres - measuring inflation

Although there are compatibilities between the economic and the legal spheres in terms of the effects produced by the inflationary phenomenon, there are nonetheless incompatibilities which involve identifying methods of adaptation from the economic to the legal space. For example, the measurement of economic inflation that depends on numerical criteria not applicable in the legal space.

In the economy there are standards by which the emergence of the inflationary phenomenon and the form that it takes is found. Such substantial standards are incompatible with the ultimate purpose for which we condemn the normative inflationary phenomenon: the protection of human rights. If we were to protect human rights in the face of the inflationary phenomenon only when a certain numerical threshold was incident, then the protection of freedom would be dependent on the quantity of normative acts adopted.

The conclusion would be that of not incriminating the inflationary phenomenon only when the number of normative acts adopted reaches the quantitative standard. Such a hypothesis is false because human rights must be protected in the face of any normative act by which their protection is violated.

6. The normative inflationary phenomenon related to the normative act that violates the protection of human rights

The inflationary phenomenon was defined in the economy as a major imbalance present in the economy of any country, represented by a general increase in prices and the simultaneous decrease of the purchasing power of the national currency. By making an analogy with the normative inflation phenomenon we can define normative inflation as the imbalance present in the legal system of any country, represented by an increase in the number of normative acts adopted and by the simultaneous decrease of the accessibility of normative acts.

The main pillars through which the normative inflation phenomenon was defined were represented by the large number of normative acts adopted and the degree of accessibility of normative acts. Thus, the consequences caused by the normative inflationary phenomenon based on these two pillars fall within the sphere of legislative technique. However, the rules of legislative technique do not have as final purpose the protection of the accessibility of the normative acts as a social value. The accessibility of the normative acts is one of the fundamental characteristics of a democratic and social state, but the ultimate purpose of the accessibility requirement is the protection of human rights.

The protection of the accessibility of normative acts becomes a "means-protection" through which the ultimate purpose of human rights is ensured. Thus, we go beyond the strict sphere of human rights to an accessible normative act, extending the scope of protection to any fundamental human right. But what we can understand by a fundamental human right involves a much more complex discussion. We consider that a characteristic of the human being must be identified, a characteristic that represents the source of all these rights and which would lose its own legal essence in the absence of the protection of a fundamental right. This characteristic is represented by human dignity.

Human dignity is the center of the highest values. Each fundamental right validates its existence by relating it to human dignity. For example, the right to life has its essence in the dignity inherent in the human nature that would be deprived of the content without the recognition of such a right. The right to physical integrity, the right to a healthy environment, freedom of expression, the right to vote, all these represent only the species differences of the proximal genus represented by human dignity.

The theory of the proximal genus and of the species difference obtains another content on the field of human dignity - fundamental human rights. If the proximal genus continues to exist even if one of the differentiating species falls outside its scope, in the relationship between human dignity and human rights, human dignity is violated in its entirety and its content is altered by violation of even a single fundamental right which falls outside the scope of its protection. We consider that this is the reason why the normative inflationary phenomenon cannot be analyzed exclusively at the level of the right to an accessible right, but must be related to the whole sphere of fundamental rights, rights inherent in human nature, rights whose protection is individualized, not generalized.

An individualized protection of rights implies that each right benefits from its own protection and more than that, each individual benefits from the protection of each fundamental right. It follows from the initial definition of economic inflation that only a major imbalance determines the occurrence of the inflationary phenomenon and that the major imbalance is caused by a general increase in prices. Applying this theory analogically in the legal space, we will observe a clear incompatibility, which will lead to the conclusion of the necessity of the operation of legalizing the concept of inflation, going beyond the stage of simple analogy and orienting us towards identifying the adaptation methods.

The normative inflationary phenomenon cannot be strictly related to the generalized increase in the number of normative acts adopted because we have established that the rights benefit from an individualized protection, which means that through a normative act the protection of one or more fundamental rights can be violated. Through a "block protection" determined by reaching a threshold of the

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number of normative acts or an index of legislative quality, the protection of human rights will be related to objective criteria, making the calculation of opportunity and utility. In such a law, democratic and social state, such an approach to the protection of human rights is forbidden, because the individual and his protection represent the reason and purpose of the existence of the state and of the law system.

7. The reverse of the inflationary phenomenon

The phenomenon of normative inflation is like a currency which, although it represents a unit, has two faces at the same time. One of the faces of the inflationary phenomenon is represented by the existence of a normative act that violates the protection of a human right and the other face is represented by the lack of an act or the elimination from the legal system of the normative act by which the protection of a human right is ensured. If the normative inflationary phenomenon is characterized by unjustifiable imperative, in the case of the reverse of the normative inflationary phenomenon, the lack of imperative is characteristic, when the protection of human rights depends on the existence of the imperative of the normative act.

Such an example is the cause of non-punishment that we identify in article 220, paragraph 5 of the Criminal Code, regarding the sexual act with a minor who has not reached the age of 15 years, if the difference of age does not exceed 3 years. The legal, formal object of criminal law is the protection of the individual against actions or inactions that would violate social values such as: life, physical integrity, property, etc. If we are to judge a norm of incrimination as having the legal object a social value, from the category listed above, then we make of rights and freedoms means used to protect those social values. This is also the case of the existence of the cause of non-punishment of the sexual act with a minor who has not reached the age of 15, when the difference of age does not exceed 3 years.

The protected social value is the sexual and moral integrity of the individual, assuming that if the age difference is smaller, then these social values are less affected and should not be protected. But the main effect of the existence of such a cause of non-punishment is necessary to be analyzed in the level of the violations brought to the individual in front of these actions or inactions directed against the sexual and moral integrity. Thus, the individual needs to be protected from these actions or inactions regardless of the existence of objective criteria, such as that of the age difference. We will refer again to the principle of the impossibility of conditioning human rights protection from the existence of an objective criterion. The protection of the individual and his rights will occur whenever his sexual integrity is endangered, whether or not there is a significant age difference. Moreover, the action or inaction directed against the sexual integrity in the case of the difference of age that does not exceed 3 years, can produce negative effects more pronounced in the sphere of the protection of the individual than the consequences produced if the difference of age exceeds 3 years.

Therefore, in order to balance these effects and to determine whether or not the cause of punishment can be applied, is essential an analysis of the proportionality made by the judge and not the only pre-determined solution of punishment and the advance analysis of the consequences of the crime by the normative act. In such a case, we are confronted with a normative act that deprives human rights of protection by replacing the imperative with the permissiveness, in a sphere in which the imperative is claimed for the purpose of the protection of human rights.

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