
XIX.

RECTIFICATION AND REPUBLICATION

Proceeding with the analysis of a few issues that precede or complement the legislative procedure, a prior warning must be jotted down: in the case of lawmaking impetuses, such issues are upstream of the legislative procedure; the two cases to be addressed below emerge downstream thereof.

1. Rectification of Laws

Another issue, residing outside the legislative procedure, but relating thereto, is the rectification of laws.⁹⁴³

The act of rectifying a law is not a step or stage in the legislative procedure, imaginable as an atypical act in the legislative process,⁹⁴⁴ — it is external and distinct, though not necessarily from an organic point of view.

The question of rectifying laws has been described as “*One of the more obscure and even discomfoting issues*”.⁹⁴⁵

Notwithstanding the due diligence that must be employed in a legislative procedure, the occurrence of errors, typos and inaccuracies in the final text published in the OG — by reference to the approved original text — is always a possibility.⁹⁴⁶

The legal order must not only offer a solution to these “minor” problems, but also establish limits, otherwise the intended function and purpose of rectifications risk being subverted.

Article 9 of the Law on Forms and Templates of Legal Enactments provides the framework of, and the limits — organic, material and temporal — to, rectifications.

A rectification of any dissimilarity between the original text and the text printed in the OG shall be initiated and performed by the Government Printing Bureau; in addition, the entity that enacted the original text may correct errors and omissions, and request that

⁹⁴³ For the purposes herein, rectifications may be viewed as errata or corrigenda.

⁹⁴⁴ Refusing this view and pointing out the problematic consequences of its adoption, Carlos Blanco de Morais, ‘Problemas relativos à rectificação de actos legislativos dos órgãos de soberania’ (1994) 11 *Legislação* 35, 40 et seq. The author speaks of a declarative administrative act. See also José Eduardo Figueiredo Dias, ‘Procedimento legislativo’, in *Formação Jurídica e Judiciária — Colectânea, Tome I* (CFJJ 2006) 250.

⁹⁴⁵ Carlos Blanco de Morais, ‘Problemas relativos à rectificação de actos legislativos dos órgãos de soberania’ (1994) 11 *Legislação* 35.

⁹⁴⁶ On this topic, see *inter alia*, David Duarte and Alexandre Sousa Pinheiro and Miguel Lopes Romão and others, *Legística: perspectivas sobre a concepção e redacção de actos normativos* (Almedina 2002) 275 et seq.

said Bureau publish the rectification, provided that the latter does not entail a substantial modification of the respective text.

Rectifications are published in the same Series as the original text: the rectifications of laws are necessarily published in Series I, being admissible until sixty days after the original text's date of publication. If difficulties arise from the rectification process that affect the readability of the corrected text, the entity responsible for the rectification shall promote the republication of the entire text.

Rectifications are effective from the date of entry into force of the original text of the law, without prejudice to the rights acquired until their date of publication.

This very precise and duly regulated scope of the rectifications' framework may not lend itself to correct errors related to the legislative procedure finalised with the enactment of the law. Such errors may be remedied solely under a new procedure.⁹⁴⁷

This period of 60 days for rectification⁹⁴⁸ must be considered an absolute cut-off deadline and not merely an indicative timeframe. "From the letter of the legal provision, one may surmise the existence of an eminently prohibitive meaning: overdue rectifications are therefore not admissible."⁹⁴⁹

2. Republication

A final aspect to consider is republication. A republication necessarily presupposes the existence of a first law, together with a second law (or laws) containing amendments thereto. When dealing with a republication, one should also be mindful of general and abstract amendments with direct, indirect or reflexive repercussions on certain laws or norms. In the MSAR, the evident case is Law No. 1/1999, the Reunification Law — Article 4, paragraph (2), and Annex IV.

In other words, there is no republication of unamended laws.⁹⁵⁰ A republication may not be confused with a rectification.

A law in effect may undergo various types of amendments — partial repeal, addenda of articles and paragraphs, modifications to the normative content of provisions, creation of new chapters, etc — which, due to their relevance and quantity, and in compliance with the principles of clarity, certainty and access to the Law,⁹⁵¹ require a new

⁹⁴⁷ As affirmed by José Eduardo Figueiredo Dias, 'Procedimento legislativo', in *Formação Jurídica e Judiciária — Colectânea, Tome I* (CFJJ 2006) 250.

⁹⁴⁸ Article 9, paragraph (4), of Law No. 3/1999, Publication, forms, and templates of legal enactments.

⁹⁴⁹ Carlos Blanco de Moraes, 'Problemas relativos à rectificação de actos legislativos dos órgãos de soberania' (1994) 11 *Legislação* 35, 55.

⁹⁵⁰ Except in the event discussed above, of a rectification giving rise to difficulties in understanding the full text.

⁹⁵¹ A fundamental right in the MSAR legal order — see Article 36 of the Basic Law.

consolidated or restated version to be so published.⁹⁵² Naturally, such consolidation and restatement bring into existence the text which, inclusive of the amendments, is to be in force.⁹⁵³

Under certain circumstances, and in a step further than that of a mere clarification, one may speak of consolidating laws.⁹⁵⁴

A refusal to republish may create interpretative doubts and confusion in the addressees and society, thus generating an obstacle to the implementation of the fundamental right of access to the Law.

A republication basically consists of “the publication of the updated version of a legal enactment subject to amendments”⁹⁵⁵ and “has always been used to facilitate the access of citizens and companies to the Law”.⁹⁵⁶

A republication does not innovate the normative fabric, but rather arranges it in a comprehensive and accessible way; it should insert the amendments in the proper place and, if need be, renumber the articles. The republication shall be expressly provided for in the law amending a previous one.

The decision to republish is within the remit of the body competent for the approval of the amending law; it is a facet of the exercise of a common legislative power.⁹⁵⁷ Such power alone shall be able to provide republication with the intended force of law.⁹⁵⁸

⁹⁵² On legislative consolidation and similar notions, Carlos Blanco de Morais, *Manual de Legística* (Verbo 2007) 612 et seq.

⁹⁵³ Stressing the desirability of republications when amending certain Codes, “it should be noted that amendments to the Great Codes should, as a rule, be accompanied by republication. In fact, the legal certainty that is required in the interpretation and application of a Code is not compatible with the existence of a vast number of amendments to a given legal enactment, nor with the latter remaining on the books without an official consolidated version – the legal system needs stability and certainty.”: José Miguel Figueiredo, ‘Alterações aos Códigos: Questões de Técnica Legislativa a Partir do Enquadramento Normativo da Região Administrativa Especial de Macau’ [2017] *Administração* 118, 176, especially 177.

⁹⁵⁴ On this issue, see from Portugal, Article 11-A (Consolidating laws) added by Law No. 43/2014, of 11 July 2014, to Law No. 74/98, of 11 November 1998, on the publication, identification, form and templates of legal enactments:

“1. These consolidating laws bring together, in a single legislative act, the norms relating to a given area of the legal order previously regulated by different legislation.

2. The consolidating laws do not affect the material content of the consolidated legislation, except in the event of a need to, namely: a) Update and standardise normative language and legal concepts; b) Standardise identical factual realities.

3. The consolidating laws: a) May contain a different internal systematic organisation and numbering from that of the consolidated legislation; b) Shall maintain the repealing norms contained in the consolidated laws, and also indicate the norms repealed as a result of the consolidating law; c) Shall safeguard the regulations approved under the repealed consolidated legislation, unless otherwise expressly provided for.”

⁹⁵⁵ Maria Cristina Coelho, ‘Regras e boas práticas de Republicação’ (2010) 53 *Legislação* 5.

⁹⁵⁶ *ibid.*

⁹⁵⁷ Carlos Blanco de Morais, *Manual de Legística* (Verbo 2007) 615.

⁹⁵⁸ I am referring to laws; *mutatis mutandis*, in a republication of an administrative regulation, the legal force of administrative regulation. Otherwise, any consolidated publication will be nothing more than an instrument to facilitate reading or consultation but shall certainly not be endowed with the force of law and may never prevail over the legal text (including the *unconsolidated* one).

Ideally, the consolidated and restated version should be immediately contained in a schedule to the amending law,⁹⁵⁹ and published therewith in the OG.

⁹⁵⁹ Mainly due to difficulties caused by the possibly immense volume of suppressions, addenda, plus the reordering and renumbering, a republication may, in practice, not be carried out as a schedule to the amending legislative act; the republication may thus occur at a later date. However, this circumstance does not contradict my argument that the amending legislative act should normatively provide for such republication, even if the execution thereof may come at a deferred moment.

