

CONSIDERATIONS REGARDING THE EFFECTS OF LEGAL COMMUNICATION

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Abstract

This article addresses some aspects of legal communication or legal effects of communication. As such, legal communication can have positive and negative effects. Both effects are briefly analyzed, and for the negative effects of legal communication we have also presented proposals to reduce the negative effects of law communication. Thus, the article presents the positive effects of right communication in various branches of law such as civil, constitutional law or tax law. On the other hand, the negative effects of communication leading to the deterioration of the legal message, so that much of the legal message becomes legal noise. Another negative effect of miscommunication of law is the phenomenon of legislative inflation, which has a profound impact on the way in which legal rules are understood and respected by community members. All these negative effects produce serious consequences in civil law, company law, tax law, and in many other areas of law.

Keywords: *legal communication, legal noise, legal pollution, legislative inflation*

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1. Introduction

This article addresses the study of the legal communication effects, approached from the General Theory of law perspective. Analysis of the law as a communication tool has been addressed in specialized literature by renowned law scholars such as Jurgen Habermas², Niklas Luhmann³ or Mark van Hoecke⁴. However, the legal communication structure and its effects have not been addressed in detail. Legal communication may have both positive and negative effects. The paper presents positive effects in matters of constitutional law, tax law, and other branches of law. However, law communication can have negative effects also, which should be examined carefully to mitigate. Also, seeing that within the national legal system, as well as in international law and European law, there are permanent legal changes⁵, it is very important to positively identify and analyze as detailed as possible the effects of legal communication.

2. The positive effects of legal communication

The structural matrix of legal communication can adapt and apply to the models proposed by communication theory. Of particular importance in the analysis of legal communication is its effects on society. Thus, we can differentiate between actual effects, present effects and desirable effects. In other words, it is necessary to analyze the causes that determine poor legal communication, if any, and how this communication's effects can be mitigated. Moreover, given the relationship between subjective approach and objective approach to law, we consider that the effects can be represented differently, according to the legal orientation applied to communication models. Also, legal communication may be analyzed with regard to the branches of law. The effects of law communication must also be classified in real effects and perceived effects of law communication, given that not always the communication addressees perceive the whole legal message. This should be taken into account in the material communication of law, meaning the communication of social needs by the community towards state entities, in which case the latter don't always fully or correctly

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² Jurgen Habermas, *Communication and the Evolution of Society*, trans. Thomas McCarthy, Beacon Press, Boston, 1979, p.58

³ Niklas Luhmann, *Theory of Society*, trans. Rhodes Barrett, vol. 1, Stanford, CA, Stanford University Press, 2012, p. 116

⁴ Mark van Hoecke, *Law as communication*, Hart Publishing, Oxford and Portland, Oregon, 2002, p.7

⁵ Alexandru Florin Măgureanu, *Sursele principiilor generale ale dreptului*, „Impactul transformărilor socio-economice și tehnologice la nivel național, european și mondial”, no. 5/ 2015, vol. 5, Bucharest, 2015, p. 154

perceive the social needs and requirements. Material and formal communication of law relates to the nature of the sources of law that stand as point of origin for the legal message. Material communication of law finds its origins in the material sources of law, which include⁶ natural law, legal conscience et.al., while formal communication of law originates from the formal sources of law, which constitute de positive law of a state⁷. Another case of miscommunication may appear within formal communication of law, where the recipients of legal rules can have other representations than those envisaged by the legislator when drafting laws. The reception of the legal message by individuals involves the correct and coherent transmission of it, understanding it and accepting it, plus the recipient's ability to manage the legal information received. About these issues we will discuss in more detail in the section regarding the negative effects of law communication. Concerning the effects of legal communication, we also have to make the distinction between the abstract effects of legal communication and the practical effects of this communication. In principle, the abstract effects of legal communication are always positive because theoretically, communication of law seeks to support the development of society by providing social efficiency. In regards to the practical effects of legal communication, certainly, the positive or negative valences thereof must be assessed on a case by case basis. As for the positive effects of the law, it is necessary to analyze these effects with regard to the different divisions and branches of law. Firstly, we should point out what should be considered to be an effect of legal communication. In law, the effects are found mainly in the field of legal documents, where the effects are considered to be the sum of individual rights and obligations, born, modified or extinguished following the conclusion of a civil legal act⁸. In this sense, legal communication in turn gives rise to rights and obligations for individuals, which means it has consequences in the real world. Within the division of public law, one must take into account, albeit for a brief analysis, the effects of legal communication in constitutional law, criminal law, administrative law and tax law. In constitutional law, the positive effects of communication can be seen without a doubt. In general, national constitutions contain fewer stipulations than other acts, but with a higher power of application. Moreover, the role of constitutional law is to protect the rights and freedoms of the citizens, which must be of course exercised in good faith⁹. One of the means by which this is achieved is through constitutional control. One positive effect of the law communication in this matter is to reduce information entropy. Often, constitutional control exercised by bodies with jurisdiction in this area, as there is in Romania, the Constitutional Court, intervenes to correct the normative acts when they are contrary to the Constitution. Many times, when notifying the Constitutional Court, the issues raised relate to legislative ambiguities, which are all situations of informational entropy. In constitutional law, legal communication has a positive effect by regulating a hard core of fundamental rights and freedoms, ensuring the development of society. In matters of administrative law, including the positive effects of the law communication we can illustrate the insurance of cohesion and interaction between the private and the public sector, administrative management etc. In criminal law, contained essentially within the concepts of legal positivism, legal communication has positive effects on educational-preventive and coercive-repressive functions of criminal law. In matters of tax law, the situation of legal communication effects are quite controversial. Tax law is generally a branch that serves as a tool to ensure effective execution of the social contract between individuals and the state authorities. The problem that arises with tax law is the enormous amount of legal information that the recipients must absorb and process. In matters of private law, it is necessary to first consider civil law as a fundamental source of legal information for other branches of private law. Current civil law is a result of legal communication, as far back as the Roman law. The magistrate's enactments were often adjusted by legal consultants and the crystallized

⁶ Mihai Bădescu, *Teoria generală a dreptului*, Sitech Publishing House, Craiova, 2013, p. 108

⁷ Mihail Nimesch, *Teoria generală a dreptului*, Hamangiu Publishing House, Bucharest, 2014, p. 92; Cătălin-Silviu Săraru, *Elemente de Teoria generală a dreptului pentru învățământul economic. Caiet de seminar*, C.H. Beck Publishing House, Bucharest, 2010, p. 60.

⁸ Gheorghe Beleiu, *Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil*, X edition, revised and enlarged, Universul Juridic, Bucharest, 2005, p. 198

⁹ Emilian Ciongaru, *Legal liability conditions for the abuse of law*, in volume *Challenges of the Knowledge Society*, „Nicolae Titulescu” University Publishing House, Bucharest, 2014, p.261

legal outcome lasted for long. The current Civil Code is a result of legal communication between the state entities and the community through an interface which is formed by the operators of law. Legal communication shows positive effects, especially at an abstract level, but also at practical level, given that the development and current state of the human community is due, among other to the positive effects of law communication.

3. The negative effects of law communication

The negative effects of law communication from an abstract perspective, regards the way legal information is transmitted. Before analyzing the negative effects of law communication concretely, it is necessary to note what might be the causes that determine negative effects in legal communication. First of all, the quality of the legal signal must be at high parameters in order to ensure intelligibility of the legal message. If this message is not understandable, then the legal sound becomes legal noise for the judicial receiver and he will not know how to interpret the legal signal transmitted. Obviously, within the field of law, the fact that we are dealing with legal messages is an axiomatic truth that doesn't require a logical argumentation, and this truth is known both to the issuer as well as to the receiver. As such, the quality of the legal signal determines the possibility of transforming the legal signal into legal noise. As such, the message may be built poorly by the issuer, which means that the receiver will get a distorted message and the purpose of the communication will not have been met. On the other hand, it is possible that the message has been properly built by the issuer, but the environment through which it is transmitted is a flawed one, likely to disrupt the informational integrity of the legal message. The result is the same, the receiver perceives legal noise that he will not be able to decode. A higher negative effect appears when the distorted environment that the information passes through, deforms the meaning or the sense of the legal message. This is possible in both material and formal legal communication, given that the most appropriate legal communication model is the constructivist one, which is a variety of the transactional model, with the mention that the message interpretation has an essential role. If the substantive communication message is distorted, then the legal authority will have a false representation of the social reality that requires regulations and they will develop rules relating to the formal communication which will not meet social needs. The same effect applies to the distorted formal communication that will give rise to ambiguities and conflicting interpretations of legal norms, so it will cause the informational entropy. Among the causes that can cause deformation to the legal message, we cannot fail to mention the legal inflation. Legal inflation can be defined as the addition of any kind of substance in an environment at a rate that exceeds the absorption capacity of the environment concerned, without causing damage¹⁰. As we shall explain below, in the section on legislative inflation, legal inflation is closely linked to legislative inflation. But legal inflation isn't a notion that is superimposed on the concept of legislative inflation. Legal inflation regards both substantive communication of law and its formal communication of the latter. As such, the legal information may be redundant from the substantive point of view, within the law communication towards the community in its brute form, but also from the state authorities as a transmuted form of the legal norm. The difference is that the state authority, like the law, regarded as a principle (*principium individuationis*) are manifestations of society, so it is necessary to adapt and to select those legal material information really necessary for the development of society. Legislative inflation concerns only formal legal communication and is part of the legal inflation. It follows therefore that between legal inflation and legislative inflation, a relationship of the whole to the part. Another cause of miscommunication law appears when a recipient is unable to understand the legal message due to failure of decoding the message. In psychology it was shown that certain items may be presented to individuals, regardless of age, if they are properly structured¹¹. Thus, we find ourselves in a situation where although properly transmitted and unaffected by environmental message loses its integrity or consistency due to faulty decoding.

¹⁰ <http://www.britannica.com/EBchecked/topic/468070/pollution>, last consulted on November 1, 2015.

¹¹ <http://www.britannica.com/EBchecked/topic/82186/Jerome-S-Bruner>, last consulted on November 1, 2015.

Another reason for the negative effects of legal communication is the fact that the legal message is received and decoded, but is not accepted. The message contains conducts which may be mandatory or optional. Whether the nature of the legal provision is imperative or otherwise optional does not absolutely imply that the recipient will comply with these rules. Simply, depending on the character of the provision in question, depending on the individual conduct adopted, effects and penalties may occur. Not accepting legal message, however, can have different causes. For example, the legal message imposes too restrictive obligations or obligations that involve a particularly high volume of activity. Finally, a case of miscommunication of legal messages may be due to the under-capacity to manage legal information transmitted by the issuer and decoded by the receiver. Regarding the analysis of legal communication and the negative effects of such a communication within various branches of law, we can observe, by example, that although the constitution norm has an alleviating effect on informational entropy, the creation of a legal void, as a consequence of declaring a legal norm unconstitutional reduces the manifestation of the law in that specific area to a quasi-static equilibrium, which may cause other dynamic systems to activate, to fill in the gap. In the field of penal law, the negative effects of legal communication may be found in situations regarding ambiguous and not systemized legal norms, especially when relating special norms to general ones. As it was shown within specialized literature, the vast amount and large variety of legal norms determine that they are especially difficult to manage, if they have no proper structure¹². As for the defective communication of law within the field of fiscal law, it suffices to say that the entire space dedicated to this paper is not enough to fully explain such a subject. The bureaucracy within the bulky fiscal system is colossal, and one of the reasons for this situation is poor legal communication. Knowing the right causes miscommunication and the effects that it causes communication is an important goal for the possible mitigation of such effects.

4. Conclusions

Communication of law is of particular importance in the analysis of the relationship between the subjects of law. It also is important in the analysis of legal relations established and between authorities and the members of the community. Actual knowledge of the effects of legal communication presents also a particular scientific interest. Thus, knowledge of the positive effects of communication allows augmenting communication of law by identifying the causes of such benefits, while analyzing the negative effects of communication law also allows identifying the causes of such communication, thereby helping to mitigate the negative effects. The most important causes for the negative effects of communication are legal noise and legal inflation. Detailed knowledge of these causes will help, of course, reduce the negative effects of legal communication.

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¹² Mihai Bădescu, op. cit., p. 257.