

The imperative of improving the pragmatic competence in elaboration of normative acts

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Abstract

The mechanisms by which social relationships are strengthened depend of the law maker's capacity to create an optimal juridical environment. Social function of juridical messages emitted by the Legislator compel to an accessible language.

The reason of being of Laws is the citizens to be obedient to the prescriptions of rules. This must be the major interest of the Legislator and justifies efforts to make as the language of communication is easily perceived.

Juridical pragmatics analyzes the legal language and its influence on human behavior.

To dissolve the apparent antagonism between technicality and accessibility featured in legislative texts, legal vision must be united with the techniques of language.

Accessibility impediments of a legislative text created by technical terms are removed with the frequent use and increasing level of legal culture of citizens.

Impenetrability to legislative measures that leave room for laxity and legislative inconsistency must increase. Also the number of simple concepts, where the first option is clarity, not its aesthetic form or scholarly expressions.

Increased knowledge of the law, applying of the simplification strategy, in particular by clarifying and improving legibility of legislation, are compulsory demands.

By simplified legislation, citizen's level of accessibility to law is increased. The number of pieces of legislation does not equate to the level of general welfare. On the contrary, while the number of law has decreased, the power of understanding has risen. Protection against legislation's inflation is for certain what citizens ask from Legislator.

Keywords: Normative message; Communicative competence; Pragmatic purpose

Introduction

In the Romano-Germanic legal system's space of action, law is the means by which States disciplines in its ample dimensions, the behavior of people who are organized and operate in their territories. For social relationships to develop plotted coordinates of a coherent legislative policy, it requires a predictable conduct of all social partners, conduct which can be established only through a well-defined legal framework.

As a sine qua non condition, prior to any other requirements of conformity to a will, including as a social partner state, it must exteriorize that will. And, in the circumstances, the only acceptable way to exteriorize it through legal rules which can

be complied with conviction and determination applied only if they are the product of expression consistent with a high potential for reception.

Legislative policy objectives, presumed to be superior in terms of conceptual translate into real imperative through normative acts that give expression to understand how the state superstructure construction to design complex society.

The mechanisms by which social relations are reinforced in the presence of an optimal regulatory structure needs to be managed early stage of the project, the Lawgiver, with the utmost vigilance, being the Architect of the society.

The beneficiaries of this major constructs are dependent on its durability, the consequences will Lawgiver assumed responsibility to find the most representative and including specific social indicator, the legal norm represented by welfare recipients, circumscribed legal certainty of a nation.

Message regulations; conjugation legislative technique in legal language

It is inconceivable incapacity of communicating the message normative legislature condemned the continued development of a language as close to perfection and depth of perception connected to the recipients.

Consummation of the law to higher value meaning, can, in turn, be conceived without total access in all aspects, rules that any State had anchored justice. How, with any great power comes a proportional responsibility, under these constraints noble, is acknowledged dependence on ability, intuition and knowledge editors normative acts, legislating not only a science but, to some extent, an art [1].

Genesis strictness in efforts to achieve a legislative expression sends us the third century AD, the Ulpian that the Laws 1 and 52 clarifications about the rules to formulate laws and the legal standards. This example is not an isolated and can be completed easily by adding monumental work of Justinian in the sixth century AD, in his Corpus Juris Civilis, Title XVI of the Digest, called The verborum signification, establish fair rules for drafting legal texts. Nevertheless deserves to be mentioned and regulations them belonging to Montesquieu, in his famous De l'Esprit des lois, published at the end of 1748, of which the XXIXth Book is even entitled representative About how to elaborate law [2]s.

In Romania, the content of his work from year 1907 *Essai sur une theorie generale des droits eventuels*, Nicolae Titulescu, one of the few pre-war authors concerned about legislative technique, emphasizes, in a manner very current, it, by trying to include specific procedures the realities of social life, in construction and likely to embrace the principles and statements as new needs of social life [3].

Currently, under the pressure of a legislative maze it becomes ever more pressing need to develop a legal language to evolve towards ensuring ownership, clarity and concision, given desideratum of unification, specialization and legislative modernization [4].

Multifunctional and multidimensional nature of legal language requires consideration of its various levels, each representing a particular type of speech: legislative (legal), judiciary (the courts), contractual (conventions), and doctrinal (jurisprudence) [5].

In light of the major importance of its social function, the legislature is necessarily normative message to be expressed in legal language that leaves no space to inaccessibility on any kind.

The monologue characteristic of normative legal type of communication, achieved through the legislative text, research legal language might make a future act, which would focus attention exclusively on pole coding issue and the action of the message [6]. Nothing could be more erroneous, given the primacy of the recipient's communications policy objective in the enactment of laws transposed issued [7].

The premises of any attempt to develop an appropriate legal language must substantiate a constant and stable balance between technicality and accessibility, without deviating from the transparency that go into the conflict with an excessive amount of laws and their ambiguity.

Opaque and body overabundance of laws leading to an insufficient force, unable appreciation, real acceptance of rules, resulting in a reduced desire of obedience to them.

And as the *raison d'être* of any legislation is its recipient to show obedience to the requirements of the standard, in the interest legislature to work as communication language to be the easiest perceived.

The quasi-unanimous opinion is that the dominant normative acts is very ubiquity obligation to respect, according to the legislature entails limiting communication within small of a speech with maximum practical purpose. Legislative texts must be seen as statements given as Truth, in the absence of this feature, the recipient norm allegedly being exonerated certain conduct, sometimes under threat of coercion.

It should be noted this time that unique trait (except as provided by article 115 of the Constitution and the Law nr.502 / 2006) to issue normative acts of the Parliament corresponds to a lack of homogeneity of the addressee, especially in light of differentiated capacity reception of the message of law.

Legal pragmatic competence

Elaboration of a consistent set of provisions outlining policy objectives legislative overlap simultaneously with the general interest of society, it is a precision operation and constant involvement with the more so as the various categories of acts, acting within a process characterized by an acute interference [8], as evidenced distinguished professor Nicolae Popa.

Legislative power exercises the role of issuing normative acts, is characterized by traits Authority and Competence, while standard recipients are obliged to conform to the provisions of the Authority [9].

Starting from the premise that this operation is a success prior, it was developed a legal framework based on acts which fall into dissonance with immutable values of the social fund, the legislature's task to disseminate its legislative creation in order to claim later compliance and its application.

With the general goal of avoiding complications message expressing normative legal language was analyzed and multidisciplinary scientific study, especially in terms of the general theory of state and law, deontic logic, argumentation theory and rhetoric, communication [10].

Legal language is intolerant of narrative form of legislative texts.

Prescriptions are given or issued by anybody. They "evolve" in or have their "source" in the will of a normative authority. They also address an agent or agents, whom we will call topics norm [...]. Issuing rule making authority expresses the will of

the subject (subjects) to behave in a certain way [...]. The intentional element (intention communication) is a factor of a pragmatic nature, with pole issuing role. At the same time, it also implies the receiver, to the extent that it recognizes, in addition to the information content of the message, pragmatic finality [11].

Communicative function of language is the natural consequence of highlighting the pragmatic, the precise role to strengthen the legislative, bond strength between linguistic and legal process that includes ambivalence of its specific regulatory text.

Pragmatics is defined in the Dictionary of Language Sciences, as a linguistic use - with multiple interdisciplinary implications - studying the effects of various components on the production and reception context statements, both in terms of structure and of their significance [12].

However, the literature that has been done and accurate legal pragmatic analyzes producers in terms of legal language and legal language handles influence on human behavior [13].

Ability of awareness and reporting the entirety context, in terms of communication intention of the legislature, outlines what together with language skills, constitutes communicative competence.

Exteriorizing will, embodied in legislative policy, represents a factor of pragmatic communication intention is also clearly a factor pragmatic, to the extent that the concept reflects the purpose of the speaker makes use of the language system [14].

It is essential and crucial to recognize that the recipient norm, besides legal normative content of the speech, and the consequences will materialize product issuer.

No study of normative legal discourse, given the profound social structure and its functionality is not really rigorous and exhaustive if not harnessed the following components of context, the communication situation [15]:

- a. socio-cultural and historical context in which it was created and is functioning legal system;
- b. situational context (including socio- and psycholinguistic issues concerning the status and roles participants communicative act, the relationship between them, the intentions and purpose of discursive action;
- c. referential context (represented by the branch of law);

d. linguistic context (in the intra- and intertextual).

It is this social structure essentially social drives a thorough review of compliance with the normative legal discourse pragmatic standard. This analysis may be undertaken only under the auspices of the principles of legislative technique; Romania is among the few that have a framework law in this important area - Law no.24 / 2000 regarding the rules of legislative technique for drafting laws, republished.

Using procedures of legislative technique, combined with pragmatic purpose to closely follow the normative legal discourse will lead to increased effectiveness normative message. A landmark of the degree of competence achieved by the legislature will be pragmatic ability to transmit, in a condensed form, said message. The most commonly lacks the ability to simplify, the action should be more rapid identification of the sources of communication failures.

Accessibility and technicality

The predominance recipients unfamiliar with the subtleties of the legal language and scarcity, by comparison, of those who manage to decipher the message normative easy, combined with inflation legislative, juridical norms constrain issuer simplify legal language.

Numerous specialized terminologies in all languages have their origin in the general vocabulary of the language. Romanian Language and legal terminology no exception, we can identify a number of technical terms with a more pronounced degree of specialization or lower and therefore accessibility.

To dissolve the apparent antagonism between technicality and affordability, the specific features of legislative texts, legal vision must be united with the linguistics [16].

Put into light legislative technique, two essential requirements are as linguistically reflex coexistence within the legal vocabulary, lexical three distinct layers: specializing strictly legal terms; technical terms taken from other terminologies; general vocabulary words used by legal acceptance [17].

Spreading legal terms with the property of having a single direction is sufficiently rare to be able to extend their full requirement of precision beyond the scope of strict legal neologisms specialized and therefore it is found almost exclusively in niche acts.

Amplified by the existence of these legal terms, but not limited to this reason, legal language sometimes receives criticism in terms of accessibility of a difficult for the layman.

It recommends different reasons however, prevent these criticisms by official use sparingly, in its normative acts, both specialized monosemantic terms dogmatic and strict polysemantic terms which are compromising the rigor of legislative technique.

Exposure to similar risks may occur in the situation of an excess of Latin phrases, even with international circulation, commonly used in legal language.

Examination diachronic legal vocabulary reveals that high obstacles in the way of accessibility legislative text technicality terms, diluted shown that the use frequent, leading to increased legal culture of citizens, including progressive determinologisation strictly legal terms or shift from specialists language in the juridical language and then in literary language. [18]

With remarkable acuity was noted, however, that the judge, the legal text must be written in clear language, without misunderstandings, without words with several meanings or inappropriate, even if some of them would be difficult to understand for non-lawyers ... From legislative acts cannot be excluded all legal terms of movement limited to the circle of specialists. Their removal would require the lengthy expression, cumbersome, which should replace the content concise, fused remove terms. Such texts would wordy style more imprecise and therefore more likely to misinterpretation [19]. But the need for a specialized terminology is identified including the requirements of accuracy, brevity and stability, specific normative legal discourse.

Despite the availability and simplicity of legislative texts are preferred strictly specialized terminology, to which the recipient is not familiar rule has its role, impossible to ignore.

Certainly not recommended for adoption by the Romanian legislative body even for our legislative tradition's reason [20], dissociation occurs between accessibility and economy specific German legislation which aims to be an extraordinary technicality. [21]

Constant, must be remedied precarious balance between simplification and precision given by technicality. Normative intention must be reduced to simple terms;

the main concern is clarity, not its aesthetics [22] or scholarly expression. It must also be increased imperviousness place legislative measures which are legal laxity or legislative inconsistency [23].

The imperative to simplify

Beyond any doubt, a system unresponsive to changes on social life which makes its way to the new inexorably, everywhere, is doomed sclerosis and certainly would not survive [24]. However, solutions and goals rule of law likely to succumb under an excessive technicality normative legal discourse [25], which cannot and must not impose unacceptable changes.

The meaning of terms, the institutions can be made intelligible not only through direct enunciation of definitions, but by how it is configured all the regulations, by the way they are drawn from the characteristic features of the institution in question. It is more than useful to use assimilation processes, including simplified form of expression, represented by the fiction of language [26].

It is a fallacy to say that not even lawyers cannot even know all the laws of a State.

Legislative political reasons imposed which apparently is a presumption but in reality constituted a legal fiction: *Nemo censetur ignorare legem*. Undoubtedly, the lack of adoption of this fiction, legality would not be achieved [27].

The risk of failure legislative policy of the state, in the absence of such a legal process is ubiquitous, placing the principle of law in the sphere of irrational knowledge.

The sad fact that more than a third of the normative acts have been repealed and, most other suffered one or more substantial changes or additions interventions, requires a spirit of caution major legislative act indispensable. Even the smallest legislative inconsistency erodes the authority of law [28].

This would transform knowledge into a law requiring unattainable ideal, with maximum urgency, rigorous application of the simplification strategy, in particular by clarifying and improving legibility of legislation as firmly established in the Community Lisbon Program [29].

The principle of accessibility and economy of means in elaboration of legislation, along with other principles of law-making, such as the scientific basis for development, that of ensuring a natural relation between dynamic and static correlation system of law and normative acts [30], should govern how Legal normative legislature conceive his message, within a linguistic expression corresponding to its true objective.

Unquestionably, the primary principle on the accessibility of the normative acts precedence over any other central ideas of legislative technique that creates an unclear legal norm disorder, controversy, litigation and regulatory texts obscurity is the last refuge of power [31].

The fact that unnecessary laws weaken the necessary laws [32], though it was reported by a maximum expression of accuracy, since the eighteenth century, is by no means lacking in actuality, drawing attention to legislative inflation can always trigger a crisis of law. The exponential growth in the number of regulations can only lead to a drop in their quality, the appearance soulless laws [33] or, worse, to an impending tyranny of government, in which the presence, laws are not the result of the general will and the determination becomes law ineffective [34].

Abuse of legal regulations causing an inevitable loss of their binding force, the principle of separation of powers is compromised; the case goes to contradict the law, ultimately the rule of law being atrophied administrative hypertrophy [35].

Conclusion

The imperative to simplify the normative legal discourse is in an inextricable link with the manner in which the legislator finds necessary means to increase its pragmatic competence, principle of efficiency in the transmission subsumed as comprehensible, the content of normative acts by those required to apply and respect.

Identify methods to counter the instability legislative remedy legislative inflation must be an ongoing effort. Finding solutions such as coding, according to a flowchart, although definitely enhances the understanding of the functioning of the legal system [36] must not give enough satisfaction.

On the contrary, attempts should be intensified, because only if they are harmonious, clear and reject the unfounded differences [37], legal rules may govern

society and their assimilation can reach the expected level. It remains, more than recommended by professionals support recipients law rules with advisory duties by exploiting their position of intermediaries in access to sources of law [38].

Access to legal norms is a fundamental right, accounting for the public authorities must organize access system so no cost of any nature, are not imputed citizen and do not constitute an obstacle to the realization of the law [39].

References:

- [1] Zlătescu V.D. - Introducere în logistica formală. Tehnica legislativă, Editura Oscar Print, București, 1996, p.127
- [2] Popescu S., Țândăreanu V. – Probleme actuale ale tehnicii legislative, Editura Lumina Lex, București, 2003, p.98
- [3] Apud Zlătescu V.D., op. cit., p.17-18
- [4] Apud Zlătescu V.D., op. cit., p.17-18
- [5] Cornu G. - Linguistique juridique, Montchrestien, Paris 1990, p.28, în: A. Stoichițoiu-Ichim – op. cit., p.38
- [6] Ruxandoiu Ionescu L. - - Conversația. Structuri și strategii. Sugestii pentru o pragmatica a românei vorbite, Editura ALL Educational, București, 1999 , p.35
- [7] Schveiger P. - O introducere în semiotica, Editura Științifică și Enciclopedică, București, 1984, p.163
- [8] Popa N. - Teoria generală a dreptului, Editura Proarcadia, București, 1993, p.224-225
- [9] A. Stoichițoiu-Ichim – op. cit., p.82
- [10] Idem
- [11] Von Wright G.V., Henrik G. - Norma și acțiune, Editura Științifică și Enciclopedică, București, 1982, p.24
- [12] Bidu-Vrânceanu A., Călărășu, Ionescu-Ruxandoiu C. L., Mancaș M., Pana-Dindelegan G. - Dicționar general de științe. Științe ale limbii, București, Editura Științifică, 1997, p.373
- [13] Mihai Gh. - Elemente constructive de argumentare juridică, București, Editura Academiei 1982, p.25
- [14] Vasiliu E. - Introducere în teoria textului, Editura Științifică și Enciclopedică București 1990, p.111
- [15] Stoichițoiu-Ichim A.– op. cit. p.103
- [16] Stoichițoiu-Ichim A.– op. cit., p.129
- [17] Idem
- [18] Ibidem, p.137
- [19] Reteșan C. - Unele aspecte ale limbajului actelor legislative, in: Ioan Ceterchi - Legislația și perfecționarea relațiilor sociale, Editura Academiei Romane, București, 1976, p. 233;235
- [20] Iliescu D. – Cuvant inainte, în:S. Popescu, V. Țândăreanu – Probleme actuale ale tehnicii legislative, Editura Lumina Lex, Bucuresti, 2003, p.3
- [21] Zlătescu V.D., op. cit., p.24
- [22] Popescu S., Ciora C., Tandareanu V. – Aspecte practice de tehnica si evidenta legislativa , R.A. Monitorul Oficial, Bucuresti, 2007, p.180
- [23] Goyard-Fabre S.– Le Droit et la Societe d'aujourd'hui,in: Panser la justice, 1998, p. 186, în:I. Vida – Logistica formală, Editura Lumina Lex, București, 2010, p.22
- [24] Zlătescu V.D., op. cit, p.19
- [25] Ibidem, p.22
- [26] Naschitz A. – Teorie si practica in procesul de creare a dreptului, Editura Academiei, București, 1969, p.256
- [27] Zlătescu V.D., op. cit, p.138
- [28] Popescu,S. Ciora C., Țândăreanu V. – op. cit. p.12
- [29] S Popescu., Ciora C., Țândăreanu V. – op. cit., p.33;34
- [30] Popa N. - op. cit., p. 225
- [32] Lambotte –C. Tehnique legislative et codification, in:S. Popescu, C. Ciora, V. Țândăreanu, op. cit., p.36

- [33] Montesquieu C-L. – De l'esprit de lois, Paris, 1856.p.492, în:S. Popescu, C. Ciora, V. Țândăreanu – op. cit., p.22
- [34] Atias C. - Le droit civil, PUF 1984, p.31 în:I. Vida – op.cit., p.20
- [35] Vida I. – op.cit., p.20;21
- [36] Idem
- [37] Popescu S., V. Țândăreanu - op. cit., p.239
- [38] Lambotte C.– Qualite redactionelle de la legislation cummunautaire; Regles de technique legislative; Code de redaction interinstitutionnel, in: S. Popescu, V. Țândăreanu - op. cit., p.37
- [39] Popescu S., Țândăreanu V. - op. cit., p.240
- [40] Idem