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THE NOTIONS OF MOVABLES AND IMMOVABLES PUBLICITY IN ROMANIAN AHD ENGLISH

Comments

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Abstract

In the present paper we focus on analyzing the notions of movable and immovable publicity from two points of view: that implied by the Romanian language and the one implied by the English language. The problem of translating these two notions required studying each of them by distinctly acknowledging their specificity.

In Romanian, when discussing about publicity, we automatically correlate it with the common usage, from the field of marketing and, more largely, of business. At first sight, this approach has as a linguistic equivalent the term „advertising".

If we want to use the term „publicity" in the field of law, we find this notion included in the domain of the Civil Law- the right to ownership and other main real rights. Given this situation, the Romanian term „publicitate" is synonymous with the notion of „movable and immovable publicity". Therefore, the translation of this term will be made into English— according to the notion it refers to— as „publicity" or „advertising".

We came across these issues when we analyzed the outcome of some research undergone in the field of real rights and the publicity of some rights. On this occasion, we became conscious of how important a correct translation was in order not to distort the course of our research.

Introduction

Publicity can be approached from several perspectives. We stopped at two of the best known, namely, the perspectives offered by economics and law. Regarding the economic approach, it uses this term in business with a certain connection with the field of marketing. Commonly speaking, the term is often used interchangeably with that of *advertising*.

Apart from this approach, we find the concept of advertising and law, specifically the branch of civil law, in property law, real rights, but also in matters of civil obligations. Here, although we can express in a shortened form, talking about *publicity*, in fact, professionals in this field know that it is about movables or immovable publicity.

Note that, at least from a linguistic perspective, but not only, the term *publicitate* partially intersects with the English terminology. Therefore, it is not coincidentally that have chosen the analysis of these terms by comparing Romanian and English terminology.

Publicity vs advertising-a linguistic perspective

According to ***Longman—Dictionary of Contemporary English*** (2003), the term *publicity* refers to 1. The attention that someone or something gets from newspapers, television etc.; 2.The business of making sure that people know about a new product, film etc. (1323). According to the same source, *advertising* refers to the activity or business of advertising on television, in newspapers etc (23). Unless one checks these terms with business literature, the definitions can be misleading for native speakers, not to mention for non-natives.

What is more, the Romanian term *publicitate* is so close in form to the English *publicity* that the not-so-experienced translator might replace it with the word *advertising*, for fear the former could be a false friend.

When translating this piece of research, we inevitably had to decide on the most appropriate equivalent for this tricky notion. In the following section we are going to draw a few differences between the two notions that helped us decide upon the right terminology.

According to specialists in the field, *publicity* and *advertising* are different in meaning. Seen as the major element of the Promotion Mix, advertising is content you pay for (radio, TV, newspaper, banner advertising, etc.) and it is mainly concerned with selling. Publicity on the other hand, refers to free content about you and your company that appears in the media. The first difference then refers to **costs** (paid vs. free). As a result, another characteristic that tells the two notions apart: the type of message carried by advertising is always positive as opposed to the messages carried by publicity which can be either positive or negative. The third has at its center the **source**: advertising comes from an identified sponsor and publicity comes from a neutral and impartial source. From this derives the fourth distinction and it has to do with **power**: advertising is controllable by the organisation while publicity is not controllable because it comes from a neutral source. Another feature that differentiates between the two is also linked to source and relates to the issue of **credibility**: coming from an impartial source, publicity is more credible, whereas advertising is less credible. Finally, these notions target **audiences** that are specific in the case of advertising, but unfocussed in the case of publicity.

If all these features do not point to the term *publicity* as being the correct choice, there is one more definition provided by the online source the free dictionary (http://legal-dictionary.thefreedictionary.com/publicity. According to its legal section, „Publicity must be given to the acts of the legislature before they can be in force, but in general

their being recorded in a certain public office is evidence of their publicity". The decisive step was made once the phrase 'property publicity' was searched on the internet and the browser returned over five million results!

The notion of *publicity* in the common usage. A historical overview

A brief history of the concept of *publicity* begins in the ancient period when the historical sources identify one of the first forms of *publicity*as internal company posterswhich seems to have been painted on a wall. Then the oldest posters were discovered among the ruins of great ancient cities (city- states) Babylon, Pompeii and even Rome.

Later, historical documents talk about pieces of rock that were carved with messages containing information about goods or services (Egypt) and painted messages containing information about game, or meant to persuade the electors to vote (Rome).

Going through the thread of history, during the Middle Ages a new form of advertising was invented. It consisted of „hiring" people praising the quality of goods sold by street cry. This profession of street caller or „town crier" is found and perpetuated today in the form of the modern media broadcaster.

Later, with the invention of printing, there were the so-called „flyers" or posters— pieces of paper through which various products were promoted. From this type of advertising, we came to the first written advertisement in English announcing the sale of a book of prayers.

By the mid nineteenth century, the first shop that dealt with advertising goods and services appeared in Philadelphia (USA). The documents consider this store as the precursor to today's advertising agency.

In our country, publicity was done by calling the goods in the street, by notification or the so-called „anunciuri", by „selling by auction", or sales that were announced in the newspapers. Nowadays, these archaic forms turned into „classified ads".

The first advertising agency in Romania appeared in 1880 and it was founded by David Adan. A few years after World War I, more precisely in 1920, publicity got to the rank of an advertising industry. More advertising agencies set up which develop marketing and copywriting strategies, there are studies and research in the field, according to the target audience to whom various goods or services are addressed (Clow, Kenneth E.; Baack, Donald, 2007, pp. 165–171).

This was also supported by the invention of the radio and, later, of the television and, then, of the Internet, where online advertising was used (1990).

The notions of movables and immovable publicity in the Romanian law. A historical overview

The idea of publicity in the field of law was determined by accurate situational awareness of property in general and of immovable property in particular. This implies a strictly regulated system of publicity, which could point out the identification elements of the property in question, and the legal issues relating to assets, documents and legal facts concerning the aforementioned.

In this analysis, an important place is occupied by ownership holders and property transfer that cover the property to which we have referred, divisions of the property rights and the existence of liens that encumber these rights. The same attention is paid to the legal transactions which convey rights or obligations on the property (Anechitoae, Constantin, Albu Ileana-Irina Panaitescu, Vlad-Adrian,2010, pp. 53-59).

Thus, the aim is to recognize and protect the patrimonial rights which have been acquired legitimately from the date of disclosure to third parties and to their extinguishment/termination. The transfer of such rights and obligations that remain

known only to the parties between whom transactions operate cannot be opposed to other persons/parties.

Taking over all this information, we legally define *publicity* as *the totality of means or ways in which certain acts, facts or economic transactions, legal or otherwise are made in public, or, where applicable, are committed in public places with or without their participation*(Marian Nicolae, 2006, p. 128). Moreover, by publicity it is intended a disclosure to third parties, interested in certain situations or legal operations, but it can also be a means of acquiring or preserving certain situations or legal operations about to be established or consolidated.

Doctrine and jurisprudence show that publicity is manifested in many forms, depending on its object or nature, but also on the particularities of the situation, act or fact subject to publicity. It is in this sense that the new civil code understood to regulate the notion of *publicity*.

Movable publicity stands for tracking movables. To keep track of the owners or ownership of movables, the Romanian legislation has not provided strict regulations. Evidence of this category of goods cannot be organized as a general publicity system. For these there are special regulations starting with the Electronic Archive of Security Interests to the *estimate state*.

The Civil Code of 1864 regulated the acquisition of movable property by the mere factual possession (Art. 1909 the former Civil Code). And if a movable was sold to two successive buyers, the owner was considered the buyer that possessed that particular movable.

Immovable publicity is a set of means provided by law, which ensures obviousness, security, enforceability against third parties as far as the legal documents are concerned by means of which real rights are constituted, transmitted or paid up (Chis, Ioan-Daniel. 2012, I, p. 77).

It was done in several ways, two of which are known, namely *thepersonal publicity system* in which transcriptions and inscriptions records functioned (which was applied in the so-called Old Kingdom - Oltenia, Wallachia, Moldavia and Dobrogea) and *the real publicity system* which operated, and it still operates, and the record of based on land-books. As intermediate systems, there were a. the *land-books publicity system*, with limited applicability, more precisely in Bucharest and several neighbouring towns; and b. the *land-books recording system* applicable in certain towns from Transylvania.

Within the system of immovable publicity mediated by transcriptions and inscriptions records, the main criterion of recording was the *person* and not *the estate*. This system involved keeping two books, one of transcriptions, which fully transcribed the transmission documents and the provision of rights by copying and another one of the inscriptions, which included declarations on the privileges and mortgages.

The drawback of this system was represented by the fact that using these registers made it difficult to determine who the real owner of the property and the existing liens was, as records research is done for up to 30 years after the transmissions and for up to 15 years for mortgages, given that they are in an advanced stage of wear.

Once the Act Decree no. 115/1938 was passed, applicable in Transylvania, Banat and Northern Moldavia, *the immovable publicity system based on land books* came into existence. This system takes into consideration the recording of the building as well as the manner of its precise identification. This system performs full publicity, meaning that it requires the mandatory registration of all legal acts and facts relating to the immovable property in the land register. The land register is a public register which includes full and accurate legal records of buildings and property owned by natural

and legal persons of the same town. The Land Registry is not a book in itself. The notion of *record*, even as it appears in the definition given above, it is not used for the purposes of the book, but rather it exists as a file containing documents relating to the records of the movables.

Using the land-book, one can prove the real right registered in favour of a person who acquired or constituted a real right in good faith. This proof is presumed/assumed to be correct until another person proves otherwise. Immovable publicity is accomplished throughout the country by the land-book and its purpose is to enrol ownership rights and other real rights that are transmitted, amended, or, if necessary, extinguished and radiated off as result of acts and legal facts relating to a property. In addition, in the land-book there shall also be entered, or, if applicable, shall be cancelled other legal positions, personal rights, prohibitions, incapacities and judicial litigation related to immovable.

Any property registering of a contract of sale (the equivalent transcription in the Register of property inscriptions and transcriptions) must be preceded by the opening of the land register. Opening the land register is not always a prerequisite of a sale, but it often made in this situation. Typically, a book land of an estate is opened whenever acts concerning the estate ownership are drafted, an estate for which the land-book has not been open yet. In the event that such a book is open, only the appropriate entries are made on the respective property.

Since land registry system was an efficient one, the Romanian legislature adopted the Cadastre and Land Registration Act no. 7/1996. This act was intended to expand the real estate publicity system based on books land in the whole country. The new regulation better emphasizes the legal position of buildings, providing full information about, among other things, the owner of the property, liens, securities/mortgages and other privileges or about the different ways that can affect the acquisition of ownership (Chis, Ioan-Daniel. 2012, I, p. 29).

Closely related to the issue of immovable publicity is the concept of Cadastre, which stands for the unitary and mandatory technical, economic, legal of all buildings on the administrative territory. The basic entities of this system are the plot, the building and the owner. The purpose of the cadastre record system is the enrolment in the immovable publicity. It should be mentioned that the General Cadastre is the record of the buildings across the country.

From the historical documents we find that the first regulation in the field of cadastre and first geometric plans of estates, based on lifting/topographical measurements, emerged in the late seventeenth century and early eighteenth century, first in Banat, Transylvania and Bukovina and then in the Old Kingdom. Thus there were set up the first institutions of higher education that taught the course of „geodesy and field initiation" in Jassy (in 1814, under the leadership of Gheorghe Asachi) and Bucharest (in 1818, at the initiative of Gheorghe Lazar). Initially, the person who specialized in this area was named „landmark engineer". The concept officially appeared in 1868, by the regulation for rebuilding landmarks (based on the former Romanian Civil Code), and after 1930, it was amended, earning the title of „cadastral engineer". In 1933, Act no. 23 was passed in order to organize land cadastre and to introduce land books in the Old Kingdom and Bassarabia. Once this piece of law was passed, there appeared the modern cadastre and was also raised the possibility that the cadastral documents could recognized on the „stock market" through „securities".

The period 1933-1955 is known as the beginning of the general cadastre and land books unification. This was followed, between 1955-1991, by the phase of land record systems and land cadastre. During

the period 1974-1990, the lands were not tradable and the cadastre system and land regime adapted to this situation, realizing nevertheless cadastral maps and land evaluation marks, especially for centralized economic planning, taking into account the estate owners of that time.

Under some laws that formed the basis for land records, the cadastre turned into real estate record of the socialist state and cooperative ownership. It should be recalled that, at the time, the cadastre helped to joining land together.

After 1991, our country underwent a period of stagnation of general cadastral works.

In the period 1990-1996, in Romania, the Cadastre and Agricultural Land Office operated (OCAOTA), which was subordinated to the Ministry of Agriculture.

Since 1997, under the provisions of Act No. 7/1996 for Cadastre and Land Registration, the National Office of Cadastre, Geodesy and Cartography (ONCGC) was founded. It was a public institution subordinated to the Romanian Government. This body is the one which directs controls and carries out topographical work, photogrammetry, remote sensing, cartography and cadastre throughout the country.

Subordinated to the National Office of Cadastre, Geodesy and Cartography works the Institute of Geodesy, Photogrammetry, Cartography and Cadastre, as well as 42 Offices of Cadastre, Geodesy and Cartography, one in each county, plus the municipality of Bucharest.

Since 2004, the National Agency for Cadastre and Immovable Publicity has been operating through a reorganization of ONCGC and taking over the task of immovable publicity from the Ministry of Justice.

Conclusions

After focusing on the analysis of the notion of publicity and its meanings, and after presenting a brief overview from an economic and legal perspective, we concluded that each of the fields has its own unique translation of this concept into English, as specific areas use specific terminology. This happens because of the meaning of those words in the legal and economic jargon respectively, but also to the domain-specific linguistic rules.

The right definitions of terms and their meanings in context help us to make the correct translation of the present undertaken research, and of its findings. As mentioned at the beginning of this study, communicating the information that we want to convey in a foreign language (English, in our case), can only be achieved by the use of correctly translated words and idioms.

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