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The legal system as a communication being

ABSTRACT

The author points out that legal standards are a cultural component and at the same time a cultural factor. The legal system and lawyers are involved in public communication. An important tool of lawyers' work is undoubtedly their verbal and non-verbal activity, and it concerns work with text, as well as a specific person – the man. It is emphasized that the legal system is integrated into the communication system as it is a communication being itself. It is also pointed out that ubiquitous innovative information technologies can disrupt and subsequently transform the activities of lawyers and integrate them into the new communication system.

KEYWORDS: *legal system, legal language, social communication, communication situation*

Introduction

The issues covered by the title cannot be summarized in a modest size of the text. It is also not the ambition of the author to refer to numerous aspects of this issue. Its scope is extremely broad and complex, it concerns questions about the understanding of legal system, understanding of the world, culture, language, perception of legal activity, social communication,

etc. Only selected issues will be addressed. It should be noted that the concept of a system has become the basis for distinguishing the so-called systemic approach in scientific theory and social sciences, including legal sciences. In the perception of the world, the systemic approach goes back to ancient Greek philosophy. L. von Bertallanffy (Zięba, 1998, p.57–88) is considered to be the founder of a general theory of these systems. The systemic approach in sociology has been developed, among others, by N. Luhmann. Despite the ambiguity in understanding of the legal system, it is and will remain a component of the conceptual instrumentarium of theoretical reflection. The law is perceived as a system, depending on the problems undertaken, identifying it with a set of ordered legal standards, legal regulations or normative acts. Although the standards are usually regarded as law, only the texts of published normative acts are available to the public. Reconstruction of the content of standards always requires many procedures, in which the content of other collections is used. Law and communication become a system with the active participation of lawyers. As J. Mikołajewicz rightly points out, "it is not the systemic approach to law that is experiencing a crisis, but the contemporary system of law is changing, which some theoretical and legal concepts cannot cope with. In particular, it complicates the catalogue of legal sources and the image of relation between the law and other (sub)institutional systems. However, it is still possible, and even necessary, to speak of the legal system as a certain mental construct which preserves theoretical and conceptual cohesion and is sufficiently socially effective, exclusively determining legal obligations for legal entities" (Mikołajewicz, 2016). The simplest, but still the most accurate model seems to be Lasswelowski's, which expresses the essence of communication process by means of five elements determining the fields of detailed analyses: "who says, what, by what means, to whom and with what result?" Therefore, it is an analysis of the communication source, the content, medium, audience and effects (McQuail, Windahl , 1997). The constitutive element of communication in such a way is a human person, regardless of whether the subject is a single person or a group of people acting on behalf of an institution.

The intellectual richness of a lawyer, his legal mind, his systematic thinking about law has a decisive influence on the outcome of cognitive ethos through the interpretation of law and the image of law created by the legal community. The law in the context of communication functions in the political community, in action and according to M. Zirk-Sadowski – the law turns out to be an "interpretation fact" (Zirk-Sadowski, 2000, p. 213) A dissonance between understanding the system in positivist (dogmatic) approach to the law and at least in some theoretical and legal approaches treating it as an epistemological category can be noticed. The concept of social creation of reality presented by P.L. Berger and T. Luckmann (Berger, Luckmann, 1983) is perhaps the basis for a different view on the systemic nature of law, especially as postmodern systemicity is also related to the criticism of systemic images of law and the world.

In the work of a lawyer in a natural way, the spaces of responsibility result from the very structure of communication process. The profession of lawyer is that which in essence is constantly responding to all kinds of "matters" and therefore with "responding to …" there is a rise in "responsibility for …". It can be said that the world demands special responsibility from lawyers, because where there are also technical possibilities for the transfer of ideas, the role of responsibility increases (Ingarden, 2001, p.73–74) (Filek, 2003). H.G. Gadamer is right to admit that "language performs a constant synthesis of the horizons of the past and present" and that "in the mirror of language it is possible to see the views on the world of individual peoples" (Gadamer, 1979). It should be noted that a philosophy of dialogue that emphasizes the linguistic meaning of dialogue has its part to play in the discussion on language. P. Ricoeur points out that the field of language is the one in which all contemporary philosophical explorations intersect (analytical philosophy, phenomenology from Husserl, Heidegger, psychoanalysis, Wittgenstein's philosophy and others) (Ricoeur, 2008, p. 13). Representatives of the philosophy of dialogue refer to speech as a pre-language phenomenon – a phenomenon not included in the linguistic classification. For dialogues writers, "language does not come down to the maieutical awakening of common thoughts in all beings" (Levinas, 2012).

I

In the subject literature it is assumed that the existing paradigms, classical approach to the system and its implementation in the 21st century need to be verified, and the science and practice face new challenges. There are opinions that the existing (traditional) model of constructing the legal system, as something internally unified, coherent and complete, becomes increasingly inadequate due to circumstances resulting from social and cultural transformations, mainly due to the emergence of the so-called "soft" social structure in the last decades of the 20th century (Cyrul, Brozek, 2003, p. 93–110). The system of law and communication functions in a specific environment, culture and civilization. The system of law generally refers to the problem of normativity, normative pluralism and possible relations within individual systems. It is only necessary to point to the very important problem of many types of systems, both those traditionally considered to be legal and those considered "illegal". Some, such as "soft law" and religious law, have a disputed status (Twining, 2010, p. 478). For many centuries, individual states functioned in a monocentric system. The phenomenon of multicentricity, which E. Łętowska indicates, has changed this system into different centres, which can fill the same legal space in a binding way with their actions (Łętowska, 2005). As a result of, among others, the creation of transnational organizational, economic and mixed structures and the transition from territorial communities to communication communities, the perception of the role of law and its functions is also changing (Capella, 2005). It should be emphasized that these phenomena are always related to the reference to specific normative content. Each legal fact is a separate problem and a challenge for a lawyer to read it correctly. J. Zajadło writes that "the law in the meaning of state law (lex) is very often not perfect and we face the necessity to find a certain "surplus" (ius) to enable a reasonable and equitable decision to be taken. (…) In practice, especially where the law meets other normative systems, it may encounter a *hard case*" (Zajadło, 2008, p. 21). He rightly draws attention to the paradox: the positivist seeks a solution to difficult cases outside the law, not the positivist – in law (Zajadło, 2008, p. 29).

One of the main aspects of human social nature is the ability to use language for communication. It is no coincidence that community (communitas) and communication (communicatio) are based on the same linguistic core. Communicating with people through language can be considered crucial for understanding the normativity of social relationships and as a condition for the possibility of the purposeful nature of those relationships. Language and communication practices are associated with cognition, both theoretical and practical. It should be noted that implementation of the law's purposefulness presupposes the existence of social relations. A legal relationship arises when there are at least two entities and then an attribute and imperative relationship arises. The law (ius) is possible only if it is second (ius ad alium) and justice has a relational nature and can be anthropologically established in the social dimension of humanity. There are two basic types of human activity. The first is instrumental action, based on empirical knowledge and guided by technical rules, which the simplest manifestation is work and the task is to control things. The second one is a communication activity based on symbols and related to the influence of people on each other. In this respect, man creates standards, values and laws. The multidimensionality of communication issues is considered by various disciplines. Researchers formulate increasingly complex definitions and communication schemes.

The official legal system and postmodern culture, which is emanated by the media and their typical models of communication, already by their very nature appear as institutions that are largely culturally competitive. Both represent their own, separate system of meanings, values and communication patterns. Each of them is governed by its own laws and defines a different cultural circuit, speaking simultaneously to the same audience. The law was and is also based on stable structures of tradition, caring for the transmission of universal symbols, creating formally and meaningfully stable identities. The law already by its very nature assumes the objectivity of seeing and "closing meanings". The system of law is an intellectual order, which tries to be hierarchical. Like all modernist culture, the law is a generator of structurality. Through various devices for "matrixing", especially language, the law creates a social sphere around man and is its controller. Contemporary post-

traditional communication models and their cultural implementations do not generate structurality, but through their vagueness, hybridity, polysemicism and polymorphism they are essentially astructural. This also results in the fact that it is currently difficult to identify any points of achievement in the creation of messages. In the opinion of many contemporary researchers, including philosophers and sociologists of science, such a situation may lead to a dangerous relativism of values, nihilism understood as freedom from all existing limitations and obligations.

As lawyers, we are aware that legal language is a socially important variant of the general language, and the concern for common knowledge of the principles of its application, especially in the face of the pressure of codification works in the era of globalization and unification of law and social communication becomes particularly important. The legal language functions in the social circle, it is a communication being as a specialist code of the legislator. This in turn translates into legal subcodes: legal sciences, language of courts, official language, administration, legal journalism and the code in media, politics and in the everyday life of citizens. It should be emphasized that different pragmalinguistic approaches deal with the communication situation of legal statements as legal acts. In the linguistic functional classifications of Polish language varieties, legal language was included in the following stylistic varieties: administrative and legal (Gajda, 2001) (Malinowska, 2001), official (Butler, 1982) (Wojtak, 1993), regulatory and communication (Markowski, 1992). In legal sciences, legal language is a subject of research, especially in philosophy and legal theory. T. Gizbert-Studnicki points out that the legal language is a variety of ethnic language (Gizbert-Studnicki , 1979), while M. Zieliński emphasizes its specialist lexis, phraseology and syntax (Zieliński, 2002).

Issues related to the use of language are present in the work of a lawyer at all stages of dealing with the law. There is no doubt that this language is an important tool for a lawyer's work – it concerns both working with text and with a person – a man. Thus, communication takes place through a written or verbal and non-verbal channel of communication. Another issue is the correct construction of legal texts by the legislator.

As H. Jadacka (Jadacka, 2002, p. 10) describes it, "texts that are created as a result of the language have three main functions: communicative, expressive and impressively. The communicative function is based on efficient, i.e. unambiguous, undistorted, economic information transmission. This is the most important function of text, especially of usable text. The expressive function involves the transmission of feelings, impressions and emotions, thus reflecting the communication source's attitude towards the language message. Most often it is superimposed on the communicative function, but it can occur autonomously. The third function of the text – impressively – is related to the attitude of the recipient of a message, it is aimed at evoking specific impressions or behaviors, provoking specific moves [...]. Legislative texts having a communicative function are programmatically deprived of expressive elements, emotionally neutral. However, this does not mean that the other functions do not appear in legal texts. Judicial speeches, apart from objective information, also convey a lot of emotions and are aimed at evoking specific reactions of listeners. These texts are subject to a different language regime than the legal texts.

The Polish language used by lawyers, including legislators, cannot be considered a legal language in the strict sense of the term language, precisely because it does not have a proper grammar. However, there is no doubt that the field of law has its own terminology, as well as a certain amount of characteristic phrases (phraseologies). Therefore, this state of affairs enables to speak of a legal and/or juridical style, unless we allow a common, narrower understanding of the term language. This style is within the scope of special varieties of broadly understood general Polish language" (Jadacka, 2002, p. 11).

The legal system appears to us as a linguistic construction by means of which certain information is provided concerning mandatory or prohibited forms of permissible or prohibited behaviour of legal entities. Therefore, it can be considered as an element of the social communication system. Nowadays, opinions are revealed which to a lesser extent cover the ontological aspect of the phenomenon of law and focus on determining the function of law in society. Thinking about the law, it is important not to overlook the fact

that a certain legal system exists in a separate cultural area and it is also subject to influence and interpenetration of cultures.

The world is dominated by a variety of communication processes. When we realize that we function in a multicentric system of law in a rapidly changing social reality, the system of law is perceived as a system of conditional communications. The dynamics of law is conditioned, among others, by the responsiveness of law, it generates various messages in the normative sense, where the instrument of this legal system is the legal and juridical language. The law becomes a means of communication defining the rules of behaviour, specific rights and obligations in the relations of legal entities in a globalizing world. It should be mentioned that the cultural dimension of law in the context of communication concept was pointed out, among others, by Ch. Perelman (Perelman, 1984), R. Alexy (Alexy, 2010), J. Habermas (Habermas , 2005), M. Zirk-Sadowski (Zirk-Sadowski , 1998). The process of linguistic communication and its determinants in the work of a lawyer were highlighted, among others, by A. Choduń (Choduń, 2007), J. Pienkos (Pienkos, 1992), W. Van der Burg (Van der Burg, 2001, p. 31–59) (Van der Burg, 2005, p. 245–275), F. Studnicki (Studnicki, 1959, p. 195–201), M. Rzeszutko (Rzeszutko, 2003), R. Tokarczyk (Tokarczyk, 1980), S.L. Stadniczeńko (Stadniczeńko, 2008). It should be recalled that in the context of the system of social communication, such authors as B. Dobek-Ostrowska (Dobek-Ostrowska, 1999), H. G. Gadamer (Gadamer, 2003), J. B. Brownell (Brownell , 2002), E. Gryffin (Gryffin, 2003), J. Olendzki (Olendzki, 2001) should be mentioned.

A. Kość pointed out that the cultural approach to law highlights the fact that it is not only a phenomenon *limited* to societies organized in the form of a large social group, which is the state. The law is the *universal* of every social group (*ubi societas ibi ius*) (Kość, 2005). It is culture that shapes relations – social bonds through certain shared patterns of behaviour, social communication. A. Kojder indicates that the law is the most important component of culture, and at the same time the most important cultural factor (Kojder, 1998). M. Borucka-Arctowa defines legal culture as a whole of normative patterns of behaviour and values related to these standards,

socially accepted, learned, conveyed by means of meaning symbols, either within one generation or from generation to generation, where this conveyed has characteristics of a certain permanence (Borucka-Arctowa , 2002, p.14).

In the subject literature, the normative understanding of culture is expressed in different ways: – axionormative (T. Parson, P. Sztompka, A. Giddens), – social and regulatory (A. Kłosowska, L. Nowak, J. Kmita), – anthropological and legal (A. Korybski, B. Wojciechowski).

In contrast to traditional legal approaches, the anthropological approach highlights the real meaning of rules in the functioning of an individual and social group. Korybski states that for the cultural understanding of law, the fundamental significance is that legal phenomenon is a part of social phenomena, and therefore their study is a part of research conducted within the cultural anthropology. In many anthropological studies, legal phenomena are treated as one of the basic types of social phenomena. Thus, legal phenomena, i.e. law, belong to the main research area of cultural anthropology, and within their scope they constitute the basis for separating the anthropology of law (Korybski i in., 2015). According to B. Wojciechowski, legal anthropology enables to grasp the relations between various elements of culture, such as political, ideological, religious and economic factors, which affect every system of law, in most cultures it is myths, religious beliefs and rituals that determine the beginnings of law and legal institutions (Wojciechowski, 2002, p. 66–75).

II

There is no doubt that the law is a social phenomenon, a complex cultural product, which is dealt with in the methodology of social and human sciences. Culture is created by a set of relationships that people of a given civilization maintain with the world and with each other. In our culture, the expectation of rationality of practical action also includes legal practice and the rationality in selection of objectives. There is a multiplicity of behaviors in interpersonal relationships, including language, in a communicative community where different social standards are combined. It should be noted that communication aspects occur at the level of events of a legal phenomenon,

normative, empirical and axiological, which shows that communication is an attribute and not a constitutive feature of a phenomenon. Thus, without communication, the law and other social standards will not exist, they cannot be fulfilled. Apart from sources in the formal sense, the law also has its own material and cultural sources. Social standards are rules that mean a pattern of behaviour, which should be followed. They have a different approach in terms of certain methodological assumptions. From linguistic concepts, the standard is treated as a linguistic phrase. The multiplicity of scientific models is assigned on the assumption that the methodology allows for such a combination of multiple layers of considerations. Thus, multifaceted theoretical and legal considerations combine the problems of science related to particular planes, because the law is commonly treated through the prism of the dogma of law, and not the theory and philosophy of law as a science on standards (law). It is assumed that normativity is to characterize the dogmatic of law treated as a description of the system of law in force, although not only, because in case of contradictory rules it requires the use of conflict rules based on the relations between *lex generalis*, *lex specialis* or requires interpretation (interpretation plus legal reasoning). It should be noted that constructing concepts is a constitutive activity rather than a descriptive one, which consists in constructing and proposing a specific language and conceptual apparatus. It also contains proposals for the specific application (interpretation) of the law by making valuable choices and formulating postulates.

In many present lawyers (dogmatists) we can observe the realization of the complexities of ontological legal positivism and methodological statements of this direction expressed in the position on methodical approach to law according to recognized rules in science (theory of law) and statements of general scientific methodology included in jurisprudence. They do not assume that the elements of the communicative approach occur basically in all philosophical and legal directions dealing with the notion of law. Today, the law is integrated into the system of communication, hence the law should be considered against the background of the complex holistic concept of contemporary man. As J. Habermas explained it, "communication

reason" (Habermas, 2005) and "legal mind" (Brożek, 2018) are essential. B. Brożek states that thinking is a continuous game between questioning theory and mental stimulation, while thinking in law is based on the close cooperation of cognitive tools: intuition, imagination and language. The teaching of law comes with the help of cognitive sciences, and a significant example are concepts of natural law through which objective values (duties) can be described as sui generis reality, for this reason, among others, the theory of law can deal with the whole system of law, types of law. The theory and philosophy of law enables to better recognize and understand the context of legal standards functioning by deepening the awareness of the multiplicity of normative systems, which is important in the present day of lawyers' work. Nowadays, we are increasingly recognizing the importance of social communication in the jurisprudence. We treat the law as a communication phenomenon which, in a complex social reality, secures the transmission, exchange of information related to standards and values between different actors. This cognitive science allows lawyers to understand that communication is a phenomenon that determines the way a lawyer understands language while at the same time making him aware of the need to acquire communication skills, communicate efficiently, verbally and non-verbally, construct legal texts correctly in order to make them linguistically simple. In the context of law as a social phenomenon we will distinguish legal and juridical language as communication tools that create the surrounding social reality. It is important to realize that communication and the communication approach to law become an integral part of culture and a subject of scientific reflection in social sciences and humanities. In every moment of our lives, we are increasingly surrounded by a vast amount of information, events, objects and relations between them. We must be able to put these elements together in a meaningful whole in order to be able to draw attention only to what is important. It should be noted that the man now seeks comfort and simplicity even in thinking, has created an operating system for computer use, while in order to operate his own mind he needs two systems, i.e. intuitive (automatic, fast acting outside his consciousness) and reflective (although slower, subject to control, conscious). They symbolize

two types of information processing in the human mind, according to logical rules taking place in the consciousness. In many professions, including legal professions, the methods of the so-called information processing in the system (rules of inference, analysis, synthesis, interpretation and decision making) are used. The translatability of the results obtained is conditioned by the dimension of personality and motivation, and can also be associated with other variables, such as imagination and, above all, intelligence. New information technologies are neither good nor bad until they are implemented. The decisive influence in this case have people deciding for what purposes they are going to use them and giving to them the ethical meaning. In such complex situations it would be good for the intellect to connect with reason (wisdom), because otherwise the intellect enters into a system with emotions and passions, and they replace reason by creating various ideologies or inducing them.

In contemporary social and cultural formation, the prefix post (e.g. post-true, post-humanism, post-politics, post-democracy, post-tradition, post-secularization, post-modernity, post-structuralist, postmodernism) is often adopted, which implies the occurrence of specific phenomena and processes that determine the moment of transition from modernity, structuralism and modernism, tradition towards completely new qualities (Habermas, 1996) (Miczka, 2002, p. 70) (Bukke, 2010) (Frankfurt, 2008). They cover the communication sphere analyzed both at the development level of new technologies (all multimedia, noetelevision, IT services, Internet, mobile telephony) and at the level of language and communication behaviour. The polycentric and pluralistic nature of contemporary culture forms the basis for various ideologies. This world has become fragmented, ambiguous, open and the stable identity has been replaced by differences and transgression, while linearity, order and continuity have been replaced by simultaneous dispersion. All this has an impact on the emergence of a mediatized society, relativization of basic axiological and aesthetic categories, multiplicity of information, but also disinformation and emphasizing categories and usefulness – effectiveness of information, mercantilism of knowledge. The traditional textual determinants of consolidation, delimitation and

comprehensiveness are losing their importance (Wilk, 2000, p. 66). R.W. Kluszczyński states that in the existing communication systems there is a diachronic model of meaning transmission (one-way data transmission), on the other hand interactive, dialogical forms based on the process of continuous meaning negotiation, exchange and confrontation of different views, building alternative interpretations. Increasingly, deconstructionism becomes the principle defining all axiological and epistemological criteria, showing that anything can be a social construct, a form of linguistic game, a textual strategy that undermines the attempts to establish new cultural certainties. As R. W. Kluszczyński notes that cultural nomadism involves constant movement within various realities, including linguistic and textual ones, while its formulation resembles a peculiar bricolage composed of fragments of various sensations, different impressions, interrupted or unfinished messages (Kluszczyński , 2001, p. 7–10).

It is appropriate to address the issue of the specificity of legal translations, because as E. Źrałka explains – "legal translations are one of the most difficult areas of specialist translation due to the *great* problematic knowledge, as well as common systemicity differences between the principles of the law of source and target language culture" (Źrałka, 2008, p. 249–259). J. Pieńkos (Pieńkos, 2003) pointed to the fact that the law is an extremely complicated area, not only linguistically, but above all in terms of interpretation, while B. Kielar argued that translators agree that an interpreter should "understand what he writes or speaks about and know how a given content is expressed in the 2nd sub-language" (Kielar, 2013). The author argues that the interpreter of legal texts should be familiar with the terminology specific to both systems, have a basic knowledge of the law and legal systems, which will enable him to find an appropriate translation strategy and thus to create a message that is both linguistically and culturally adequate to the target language system. The interpreter, like a lawyer, must understand or interpret a legal text or a provision and then translate it. The mere knowledge of translation equivalents is sometimes insufficient, and their unreflective use may result in erroneous translations, distorted content of the source text (Kielar, 2013). Language is always associated with a concrete reality, the knowledge of

which is necessary to provide an adequate and equivalent translation. In order for an interpreter to fulfil his information and communication function, he must not only communicate the information, but also take into account the knowledge of the target audience and apply the target text conventions.

Conclusion

The law and its language as a regulator of social life is a product of culture, it functions in social circulation as a communication being. The law is a set of standards that should be treated as linguistic statements. It is a very important communication and language element. Systemicity is a property of a set of standards. It should be noted that in linguistic research the research problem is description, functioning of the language of legislation and jurisprudence in society.

The legal language is a system of characters and it is used to communicate with the legal community. The system of this language is expressive and has a specific language structure, as well as a specific semantic organization. Conversion from a legal language to legal writing consists primarily in depriving the text of its normative function and becoming an element of decoded communication.

The feature of modern legal systems is the interpenetration of different legal systems, i.e. national (internal) law, regional law and international law. Legal standards formulated outside the national borders are directly applicable in the national legal system or have a significant impact on the creation – establishment, application and interpretation of the standards of national law by providing specific language and cultural codes. S. Kowalczyk showed that the perception of the world, and consequently of the law in terms of system, is an essential feature of modern thinking about law, it becomes a "natural" object of attacks from the side of thought defined as postmodern (Kowalczyk, 2004, p. 30).

Postmodern anti-systemicity is a criticism of systemic images of law and building a systemic image of the world, such as language games and created cultural texts. The dominant model of lawyer's work under the influence of

new technologies is already changing – will we meet the expectations of modern society? Information technologies have an impact on the area of law as a system and administration of justice and a communication vision of law.

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