

The Notion of "Publicity" in the Legal Field

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ABSTRACT: The connection between "law" and "advertising"/"publicity" opens the way to a series of approaches that only an interdisciplinary analysis can portray as completely and correctly as possible. In this paper, we will analyze the notion of "publicity" with reference to the field of law, in particular, as well as some references to other fields where this notion is used. We will observe that the notions: "law", "social and legal order" and "social and legal norms" are present in different fields and analyzed in different visions. In each of these situations, the starting point is terminological benchmarks, as well as some aspects related to the origin and historical evolution of the analyzed notions. Although this work has, first of all, a legal approach, we intend to go a little beyond the boundaries characteristic of the field of law and to clearly delimit the notion of "immovable publicity/movable publicity" from the notions of "publicity" and "advertisement". Between these notions we bring as a bridge "communication within the limits of the law" or "the right of publicity". At the end, for an increased efficiency of the information presented, we propose a complete definition of the notion of "publicity", which will include all the meanings analyzed in this paper.

KEYWORDS: publicity, (i)mmovable publicity, advertising, real estate, right of communication, legal act, communication

1. Introductory aspects

When we encounter the term "publicity," we can think of several meanings, depending on the personal or professional interaction of each of us. This notion can be examined from two perspectives, namely, the perspective of characterization and the perspective of meaning. From the point of view of the characterization of the notion of "publicity", we have a general approach or character and a field-specific approach/character. From the point of view of the meaning of the notion, we encounter the notion of "publicity" in a broad sense and a narrow sense.

In the terminology specific to the Romanian language, the term "publicity" can be found both in the socio-economic field, when we associate it as a generic term with the notions of "advertisement", "marketing" and "communication", but also in the legal field, for which the term "publicity" acquires a special character, specific to the branch of public law or the branch of private law.

This paper presents an analysis of the notion of "publicity" that includes a series of information related to the legal field, as advertising is regulated in the field of public law and the private field. At the same time, it provides a brief characterization of the notion of "publicity", with the meanings that this notion has for each of the previously mentioned domains.

2. Linguistic concepts and legal terminology related to "publicity"

2.1. The notion of "publicity" – meaning "lato sensu"

Starting with the thread of history, the notion of "publicity" appeared in the ancient period, used more in the economic field than in the legal one. So, we will encounter the term "advertising" more often than the term "publicity." Historical sources identify one of the first forms of advertising as the so-called "interior sign," as a way of presenting a product by affixing a painting to a wall. Historical sources also tell us about the earliest forms of advertising to be discovered in antiquity, coming from the North African city of Cyrene (ca. 150 BC), as well as from the great city-states of Babylon, Pompeii, and Rome.

With the evolution of society (Rotaru 2014, 68-69), historical documents speak of the discovery of pieces of rock on which messages containing information about goods or services were carved (Egypt), as well as painted messages containing information about public games or to persuade voters to vote (Rome). All these forms of advertising belong to the economic field, being about the promotion of the goods or services that the ancient society knew and used in the respective period.

In the medieval period, we encounter new forms of “advertising,” also from the economic field. This consisted of “employing” people who praised the quality of goods sold by shouting in the street. This profession of “advertiser shouter” is perpetuated even today in the modernized form of announcers in the spoken press or advertising spots promoting a certain good, with the help of actors or stars from various fields.

Later, with the invention of printing, the so-called “flyers” or posters appeared, respectively, those pieces of paper through which various products were promoted. From this type of advertisement came the first written advertisement in the English language announcing the sale of a prayer book.

Around the middle of the 19th century, the first store that advertised goods and services appeared in Philadelphia (USA). Documents of the time consider this store to be the forerunner of today’s advertising agencies (Marin 2015).

In Romania, advertising was done by shouting the goods in the street, through announcements or the so-called “announcements,” “by way of” put up for sale” (in Romanian translation: “scosului la mezat”), or sales that were published in the press of the time. Nowadays, these archaic forms have morphed into “small advertising.” The first advertising agency in Romania appeared in 1880 and was founded by David Adania. A few years after the First World War, more precisely in 1920, advertising reached the rank of industry. More advertising agencies appear, true marketing and copywriting strategies appear and are developed, and studies and research are done in the field in relation to the target audience to which the various goods or services are addressed.

The advent of radio and, later, television and then the Internet, where online advertising was developed (1990), also contributed successfully to this.

Another meaning of the term “publicity,” which we also find from the ancient period, is related to the notion of “cadastre,” which has a correspondence in both the economic and legal fields. Historical sources attest to the word “katastikon” in ancient Greece, and it has the meaning of “tax register,” or “note book for change,” or “exchange book.” Here we find meanings of the word that can orient us towards economics or law, equally, depending on the context in which we are going to use that word.

The term “cadastre” finds another point of origin, respectively, some opinions claim that it derives from a medieval term of Latin origin “capitastrum”, which is related to the expression “capionis registrarum” or “capitum registrarum” and which, originally, meant “tax on the head of the family” (or so-called “capitatio”).

A special clarification must be made in relation to the translation of this term, “publicity” or “advertising,” in English, namely, according to some authors, in America, the place of origin of advertising, two terms are circulated in the specialized literature: “advertising” (with the meaning of advertising) and “publicity” (with the meaning of publicity). “Advertising” is considered “an unpaid form of advertising, component and first tool of public relations” (Ban 2020, 125).

The term “publicity” is also used to denote the notion of “(im)movable publicity,” which is translated sometimes as “real estate advertising” or “property advertising” from the legal field. Thus, we will use the translation “(im)movable publicity” and not “real estate” to denote publicity of rights, juridical acts, or juridical facts, when we refer to the specific operations of (im)movable publicity, the cadastre and the land register (Marin and Popescu 2014, 358-363).

2.2. The notion of “publicity” in the legal sense

The notion of “publicity” in the field of law has several applications, both in the field of material law and procedural law. The intention of the analysis of the notion of “publicity” in the legal field had in mind, as a central idea, the notion of “publicity of legal rights, juridical acts, and juridical facts” and, in particular, the notions of “immovable publicity” (“real estate publicity”) and “movable publicity.”

In this context, “publicity” was determined by knowing the exact situation of goods in general and real estate in particular. This presupposes the existence of a rigorously regulated record system, which includes the identification elements of the respective goods but also the legal aspects regarding the goods, documents, and legal facts that refer to them.

3. The areas of law in which we find the notion of “publicity”

3.1. Movable publicity and immovable publicity

By delimiting the goods according to one of their classification criteria into immovable goods and movable goods, a different legal regime of the way to inform the interested parties of the legal situation of the two categories of goods is differentiated (Baias 2014). In this context, depending on the types of goods, we encounter a different record of rights, legal acts, and legal facts that concern these categories of goods.

With regard to immovable property, an important place is occupied by the owners of the right of ownership, the transfer of the goods which have as its object the goods to which I referred, the dismemberment of the right of ownership, as well as the existence of burdens that encumber these rights. The same attention is paid to legal operations through which rights or obligations relating to goods are transferred. This aims to recognize and protect the patrimonial rights that have been validly acquired from the date it was brought to the attention of third parties (Mîneran 2012, 8) and until their extinction/termination. The transfer of such rights and obligations which remain known only to the parties between whom the transactions operate cannot be opposed by other persons/third parties.

Taking all this information, we will define publicity from a legal point of view as “the set of means or methods by which certain acts, facts or economic, legal or other operations are brought to the knowledge of the public or, as the case may be, carried out in public places, with or without his participation” (Nicolae 2006, 128). At the same time, the purpose of advertising is to bring to the attention of third parties interested in certain legal situations or operations, but it can also constitute a means of acquiring or preserving certain legal situations or operations that are in the process of being established or consolidated.

Movable publicity is a record of rights, legal acts, and legal facts related to movable property. In order to be able to keep a record of the owners or ownership of movable property, of the rights, legal acts, and legal facts that refer to movable property, Romanian legislation did not have strict regulation.

The record of this category of goods cannot be organized in the form of a general advertising system. There are special regulations for these, from the former Electronic Archive of Real Estate Securities (which became the National Register of Movable Publicity since Law no. 297/2018) to the “estimated state.”

The estimated statement is the document or statement made in a donation contract that includes the description of each donated asset, including its value, and can be included both in the verification document of the donation contract and in a separate document (attached to the main contract).

3.2. The notion of "publicity" in family law

In the field of family law, Romanian legislation currently regulates three types of publicity, respectively: publicity of the declaration of marriage (art. 283 Civil Code), publicity of the matrimonial agreement (art. 334 Civil Code), and publicity formalities (art. 344 Civil Code). In order to form an opinion on these legal regulations, we will briefly present the legal provisions mentioned above together with some comments.

“Publicity of declaration of marriage” refers to one of the stages of the conclusion of marriage and is part of the section entitled “Formalities for the conclusion of the marriage.” The Romanian legislator has regulated in the content of this article which are the legal acts that must be brought to the attention of the persons who have the status of a third party to the legal act of marriage. This information that is the subject of advertising is: extract from the marriage declaration, the place where this document is displayed, the content of the extract, the civil status data of the future spouses, the consent of the parents or the guardian (when the law requires this), as well as the information according to which any person can oppose the marriage, within 10 days from the date of publication.

“Publicity of the matrimonial agreement” is regulated in the current Romanian civil code and is part of the chapter “The rights and patrimonial obligations of the spouses,” the section of common provisions regarding the choice of the matrimonial regime. This article regulates the conditions under which a matrimonial agreement, as the will of the spouses regarding their assets, can be disclosed to third parties. In this sense, reference is made to the National Notarial Register of Matrimonial Regimes organized according to Romanian legislation, a register in which the respective conventions must be entered, as well as to other specialized registers (such as the land register, the commercial register, etc.).

Also, the Romanian legislator regulated the form conditions of matrimonial agreements so that they could be correctly entered in the previously mentioned registers and produce full legal effects. In addition, Romanian law recognizes the right of each of the spouses to request the fulfillment of the publicity formalities.

“Publicity formalities” can also be found in the chapter “Equity rights and obligations of spouses,” but the section “Regime of the legal community” regulates the possibility of any of the spouses to ask to be mentioned in the land register or as the case may be, in other registers of publicity provided by law about the belonging of an asset to the community that divides the family's assets/patrimony.

a. The publicity in the field of administrative law

In administrative law, we encounter another situation where we talk about publicity, namely the publicity of the administrative act. This type of publicity presumes some particularities, being a branch of public law.

Publicity in administrative law involves two situations (the rule and the exception): bringing that act to the attention of the interested taxpayers (the rule) or communicating the administrative acts to the interested persons when these acts are addressed to them directly and personally (exception). The two situations are very well defined in theory and practice because each refers to different circumstances.

b. Publicity and orality of court hearings

Publicity and orality of court hearings concern procedural law and are regulated in Romanian legislation by the fundamental law (art. 127 of the Romanian Constitution) and the Code of Civil Procedure (art. 17). The two normative acts fully preserve the regulation in their contents, specifying as follows: “Court hearings are public, except in cases provided by law.”

Through this regulation, the Romanian legislator considered the following procedural aspects that are public: the trial of cases, which involves the hearing of the parties, the

administration of evidence and (sometimes) the pronouncement of judgments can be public, if there is no reason to limit the information in the report with third parties, persons outside the court. Public access to the physical file, to the documents that belong to the file and to the execution of court decisions is limited.

The solutions pronounced in the files, which may represent examples of jurisprudence, can be made available to those interested only by protecting the personal data of the persons whose data are registered in the respective files. As a rule, this information, generically called "case solutions", can be found in the summary, in some jurisprudence collections or on court websites, where personal data is protected.

4. The publicity/advertising right

In the context of our work, we looked at the notion of "publicity" through the lens of legal approaches (public law, private law), then socio-economic approaches (marketing, economy, communication). After presenting the fields in which "publicity" can be found, I considered that we must also dwell on a too little analyzed notion, namely "advertising/publicity law," which I consider a bridge between the field of law and the socio-economic one.

When we talk about the right of publicity, we can think of a form of "lawful communication" or "communication within the limits of the law," but we can also think of a set of legal rules/provisions that govern the manner of bringing, for the attention of those interested in the information. Sometimes this information relates to rights, legal acts, or legal facts. Other times, the information is intended to promote a product or service. In any of the situations, we have rules that we must respect in a civilized society based on norms (regardless of whether they are social, moral, or legal norms).

And because we have chosen two approaches to the law of publicity, I think it is necessary to outline each of these ideas so as to give the opportunity to those interested in this subject to know it, deepen it, and even develop it.

As the first option, I stated that the right of publicity could be seen as a way of legal communication. Some authors expressed themselves in support of this opinion (Greco et al., 2016), which presented and analyzed the regulation of commercial communication (national and European legislation), the authorities that have powers in the field of advertising, types of advertising/publicity, the right to one's own image, copyright in advertising, as well as brand-brand-publicity (Zaif 2016, 213-214).

From this perspective, the right of publicity can be considered a way of legal communication, which includes the communication options, the applicable legislation, and the well-known particularities of the field of communication.

In the second variant, the advertising/publicity law could represent an interdisciplinary creation, which includes all the normative acts that regulate the field of "publicity," regardless of the approach or the scope of application. In the latter sense, I believe that the notion of "publicity" can have a unitary, complete regulation and can help to correctly apply the rules specific to "publicity," regardless of the field of activity in which we find this notion.

Of the two options presented, I lean towards the second, aiming at the interdisciplinary approach to the notion of "advertisement" and, at the same time, the identification of a set of legal norms that can regulate the widest possible field of this field: "publicity" (sometimes, can be even "advertising").

5. Definition of the „publicity”

After a review of all the fields in which we encounter the notion of "publicity," we should also identify a complete, concise definition that captures all these fields, as well as the correct and complete meaning of the analyzed notion. Thus, we will consider the legal field, the economic

field and that of communication and we will take the first step towards a right of publicity in the sense of those analyzed previously.

The “publicity,” in a broad sense (*lato sensu*), means:

1) promotion of goods, services, companies, and ideas, especially through paid messages (economic field can have “advertising” sense);

2) unpaid form of information transmission and belongs to the field of public relations (communication, also as “advertising”);

3) the set of means or ways by which certain rights, legal acts, legal facts, or legal operations are brought to the attention of the public or third parties in relation to the said act, fact, or legal operation (legal domain -the sense of “publicity”).

As forms of the notion of “advertisement” or “publicity” viewed in a narrow sense, we encounter the following situations:

1) direct advertising or direct marketing, which is specific to the field of sales promotion techniques and consists of sending a direct message (outside the mass media) and sometimes personalized to the customer (Ban 2020, 90);

2) immovable publicity (sometimes known as “real estate advertising”/“real estate publicity”) represents a set of rules and legal means which ensure evidence, safety, and opposability in relation to third parties of the legal documents through which real estate rights are established, transferred or extinguished;

3) movable publicity as a guarantee is a system for recording the priority of movable mortgages and advertising, structured by persons and goods, which ensures the registration of operations regarding movable mortgages, operations assimilated to them, other rights provided by law, as well as publicity of legal operations provided by law.

The definition that seems to encompass all the ideas previously expressed and to respect the elements and characteristics of a definition can be considered as follows:

“Publicity represents the set of means or ways by which certain acts, facts or economic, legal or other operations are brought to the attention of the public or, as the case may be, carried out in public places, with or without its participation.”

As we said from the beginning of this paper, we began to analyze the notion of “publicity” in the legal field, trying not to omit any of its meanings. Also, in order to include as many characteristics of the defined notion as possible, we also resorted to the interdisciplinary approach.

We do not claim to have included all aspects of the notion of “publicity”, but we are pleased to have brought to those interested as much information as possible about how this notion can be defined and used. There is certainly room for in-depth research on “publicity,” and this work can be considered important support for future scientific endeavors.

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