

# LAWS, COMMUNICATION AND PUBLICATION

BY

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It is a fundamental legal principle that statutory law must be made known. Use of secret laws is not acceptable in civilized and democratic societies. It is significant that one of the features of the radical changes in Eastern Europe taking place at the moment is that the use of secret laws, previously widespread and in some cases even conceived as state secrets, has been substantially reduced and will probably soon be a mere historic phenomenon.

The necessity of publication is felt very strongly today as the number of legal sources has become enormous and the legal system so complicated that to a certain extent it is beyond human comprehension. Although questions of legal communication today have gained special significance, the need for publication has always existed; and it can accordingly be useful for the understanding of today's problems to take a look at historic developments. This will be done briefly at the beginning of this article, whose main theme is that of developments within Scandinavian law in respect to communication of legal rules at a time when computer technology can provide professionals and ordinary citizens with a basis for improvements in legal communication.

## HISTORIC DEVELOPMENTS

It is appropriate to start this description of historical developments at the time when written law was introduced. The use of written law established a distance between sender and receiver of legal information, leading to a need for organized legal communication. Should knowledge of law be the privilege of a small proportion of the population, maybe only the producers of legal rules, or should the rules be diffused to citizens in general? The answer to this question still depends on the political system a society has developed.

It is significant here that in Europe it was in democratic Athens that the first attempts to spread rules to the population were made.<sup>1</sup> The purpose was to enable citizens to monitor the application of law by the

<sup>1</sup> See Peter Blume, *Fra tale til data*, Copenhagen, 1989, pp. 22–23.

courts. In 621 BC when Dracon was nomothete (law-giver), his infamous homicide laws were published on wooden tablets, axones, that could rotate. Later, stone tablets, Kyrbeis, were also used. These were placed in temples and in market places where they were likely to be seen. The method was probably fairly effective as the citizens of Athens at this time were literate.<sup>2</sup> It is in Greek law that we find the origins of the common publication of legal rules, and not in Roman law whence the concept *publicatio legis* derives. It is also worth noting that under Greek law publication was believed to be necessary for the validity of the rules, while such a notion first became part of Roman law at the time of Justinian (527–565).<sup>3</sup>

Before about 1850, most citizens were illiterate and the spread of rules in written/printed form had to be combined with oral proclamation. It is worth noting that the inability to read rules is still a major obstacle for the spread of legal knowledge. Although the present focus is upon the information system, it must be remembered that the problems of legal illiteracy, due among other things to legal language, are still unsolved. Consequently even the best information system cannot provide ideal legal communication.

In the Scandinavian countries legal rules were originally enacted at local meeting places, the Ting, which among other things also functioned as courts. Since in principle all free men participated, there was no necessity for any special form of communication. In Sweden, Norway and Iceland, and perhaps also in Denmark, there were certain men who were responsible for announcing rules and who at a later stage when rule making was centralized, communicated the rules to local citizens. Centralization began in the 11th century in a different form in each country. In Denmark, which will be used as the main example, rules were issued by the King who, until the advent of absolutism in 1660, needed sanction. These central rules were proclaimed orally at the Ting and this was probably a necessary condition of validity. Besides the Ting, churches were also used for the communication of rules. As will be discussed below, churches played an important role until the middle of the 19th century in the communication of legal rules to ordinary citizens.

From the beginning it was regarded as important that the citizens should be able to know the law. This was firmly stated in the preamble to

<sup>2</sup> See Michael Stubbs, *Language and Literacy*, London, 1980, pp. 27–28.

<sup>3</sup> See Alan Watson, *Sources of Law, Legal Change and Ambiguity*, Philadelphia, 1984, p.16.

the Jutlandic Code of 1241, which is conceived as Denmark's first constitution. In the preamble it is stated that the law must be honest and just and so clear that all men can understand and know what the law is. In the 16th and 17th centuries many compilations of legislation were enacted. One of the main purposes of these compilations, stated in different preambles, was that it would be easier to find and comprehend the current law. Finally, this trend resulted in the Danish Code of 1683, which to a large degree also served an informatic purpose. There is, accordingly, in Danish law a long tradition of laws being communicated to ordinary citizens.

Rules were distributed originally in written form, and from about 1660 generally in printed form. The first Danish rules to be issued originally in printed form are from 1521,<sup>4</sup> but it was not until the end of that century that this technology was fully implemented.

The Danish Code of 1683 contains the first enactment of a formal rule concerning announcement. The rule followed the principles established through the practice described above. In 1-3-7 of the Code it was stated that laws sent to the Ting should be proclaimed. In practice, all central statutes except those within public law were announced, which illustrates that the rules proclaimed were those that could be applied in court proceedings.<sup>5</sup>

Besides the formal announcement, many laws (see also 2-4-13) provided that they should be read out at church services, although this reading had no legal consequence. The underlying reason for such provisions was the recognition that only very few citizens actually witnessed the formal proclamation, and although there were printed editions of most laws, legal ignorance was widespread, particularly due to illiteracy. Although also other methods were used, such a proclamation in the streets, the church constituted an efficient forum as most citizens gathered there. Also, the priest would admonish the congregation to respect the rules. Therefore, it was common that the laws had to be read out several times a year. This was particularly the case concerning laws aimed at the common man (see the circular of 22 April 1740). This practice, however, became so widespread that the religious spirit of church service was severely disturbed and it was accordingly decided in a

<sup>4</sup> This is a decree by Christian the Second concerning wreckage. It was published in several thousand copies but none of these exist today.

<sup>5</sup> An interesting example is the Crown law of 14 November 1665. This new Constitution was not at any time proclaimed. It was kept a state secret until 1709, when it was printed. The reason for printing was partly the fear that the two original copies would disappear and partly that absolute monarchy was secure at that time.

law of 8 October 1824 it must stop with respect to most laws. There is, thus, a long tradition in Danish law for communication of laws besides the formal proclamation.

It was not clear from the Code whether announcement was absolutely necessary for application of a law or whether other forms of communication would be sufficient. The problem became acute in connection with the state bankruptcy in 1813 when a change of currency took place. This was regulated in a law of 5 January 1813 which, in private relationships, had consequences for both creditors and debtors. The economically important question was how existing debts could be paid with the old currency. In Copenhagen the law was known on 13 January but was first announced on 18 January and of course many transactions took place during this period. A solution had to be found as to whether actual knowledge of the law was sufficient to make it binding on citizens or whether it first became binding from the time of the formal announcement.<sup>6</sup>

The question was considered in the Ministry of Justice where the main participant was one of Denmark's most famous jurists, A.S. Ørsted. In his opinion, announcement was not necessary.<sup>7</sup> A law is a proclamation of the will of the sovereign and all citizens are obliged to respect this will as soon as they become aware of it. No special form is required for expressing this. Although opinion differed in the Ministry, this view prevailed and a Royal decree issued on 27 May 1813 stated in very firm language that any form of knowledge of a law made it binding upon citizens. It was made clear that the question concerned *jura majestatica* and could not be disputed in courts. Formal announcement only meant that knowledge could not be disputed. Ignorance of a proclaimed law was not a legal excuse.<sup>8</sup> This opinion was confirmed in a law of 8 October 1824 and was accepted until, as we shall see, a gazette was introduced in 1871.

It can be concluded from general assessment of early developments that oral proclamation of laws in local courts did not spread knowledge of the rules. In Sweden, where proclamation took place in churches, the

<sup>6</sup> In English law it is well known that announcement was not necessary and that until 1793 laws came into force from the day they were enacted by Parliament. As explained by Thorpe in 1366 the reason was that "so soon as Parliament has concluded anything the law presumes that all know it, since Parliament represents the whole body of the Kingdom" (quoted from W.S. Holdsworth, *Sources and Literature of English Law*, Oxford, 1925, p. 55).

<sup>7</sup> The deliberations are kept at the Record Office. See especially Danske Kancelli 2. dep. *Brevsager* 1813 nr. 2134.

<sup>8</sup> Cf. the discussion below on mistake of law and the information system.

situation was a little better but far from ideal. Many other deficiencies were attached to local proclamation. It was very difficult to check whether a law had actually been proclaimed. For the central administration, the necessity of supervising proclamation was a heavy burden. It was also expensive as copies of each law had to be sent to the individual jurisdictions. From a legal point of view, oral proclamation meant that laws came into force at a different time in each jurisdiction, which was not satisfactory. Under such circumstances a uniform legal system was difficult to maintain. All in all it was necessary to find another method of announcement: this was to be the law gazette.

### THE GAZETTE METHOD

Law gazettes were introduced in Sweden in 1825, Denmark in 1871 and in Norway in 1876. Although Sweden was first with a journal for promulgated laws, it was not until 1894 that the Swedish Gazette, by a law of 1 June 1894, was used for announcements; while the Gazette played this role from the very beginning in the other countries. The idea originated with the French revolution<sup>9</sup> and spread to many of the German states and later to Scandinavia. In Denmark, Ørsted had as early as 1817<sup>10</sup> suggested this method, but as long as absolutism was the government no reform was practically possible.

In 1849 the political system changed with the introduction of the first Danish Constitution and a parliamentary democracy. Section 29 (now 22) stated that acts of Parliament and (though this is not clear from the text and opinion differs within constitutional law) statutory instruments should be announced. However, the method of announcement was not fixed in the Constitution. In the long run this has proved fortunate as it provides freedom to choose the most suitable machinery without having to go through the difficult procedure of amending the Constitution.<sup>11</sup> However, at first this mode of regulation was not so fortunate. Due to a currently unsettled constitutional situation, a printed Gazette was first introduced in 1871.

<sup>9</sup> *Loi sur le mode de gouvernement provisoire et révolutionnaire* 4/12 1793. See also sec. 1 of the Code Civil.

<sup>10</sup> In an article in *Eunomia* part 2 p. 241.

<sup>11</sup> In Danish law, where the last amendment took place in 1953, this is particularly difficult. According to sec. 88 a new Constitution first has to be passed in Parliament, then after a general election passed again and finally approved in a referendum, where a majority consisting of at least 40 percent of all citizens entitled to vote must support the amendment.

In the parliamentary debates preceding the Gazette Act of 15 June 1870 (today consolidated as no. 617, 16 September 1986) the main emphasis was put upon improving ways of spreading knowledge of laws to citizens. Although the purely legal benefits of a gazette were recognized, the information aspect was stressed, many members of parliament believing that a gazette would be read and used by many citizens. In retrospect it is especially interesting that it was the newest information technology that was implemented, and that the delay in introducing this change in the form of announcement was criticized. This aspect will be dealt with in more detail below.

Before discussing some of the legal aspects of announcement it is accordingly important to consider how the Gazette has fulfilled its informational purpose. Here, the hopes of parliament have been shattered. Ordinary citizens do not use the Gazette, and many are probably unaware of its existence. There are about 5,000 subscribers and although the number of readers is higher this is all in all a very low percentage of users. Thus in practice the Gazette serves only legal purposes. With the recognition that knowledge of law is not diffused by the Gazette, the problems of constitutional law discussed below assume somewhat minor importance. Even so, legal solutions must aim at giving the best possibilities of providing knowledge of current legal rules. The problems should not be viewed as purely academic.

Both legally and informationally, it is important to establish whether announcement of a statutory rule is a necessary condition for its application. The Constitution gives no answer, and before the Gazette Act the assumption regarding actual knowledge was accepted. This can partly be explained by the general acknowledgement that oral proclamation was inadequate. The Act gives no answer either, although the question was discussed in Parliament before it was passed. As already noted, Danish constitutional theory contains differing opinions regarding this fundamental problem.<sup>12</sup>

Against the necessity of announcement, it has been argued that such a rule would be very formalistic since important social considerations can necessitate the implementation of laws at an earlier stage. It has also been argued that as retroactive rules are not prohibited in Danish law (see below) it would be inconsistent to conceive of announcement as absolutely necessary. This line of thought is tempting but it confuses two

<sup>12</sup> The main opponents are Alf Ross, *Dansk statsforfatningsret* 3rd. ed. Copenhagen, 1980, pp. 342–343, who argues that announcement is necessary and Henrik Zahle, *Dansk forfatningsret* I, Copenhagen, 1989, pp. 289–297, who finds that this is not always the case.

parameters. The fact that a rule can apply to actions that have taken place before the rule was announced does not presuppose or make it logical that the same rule can be imposed on citizens before they know of its existence. In Norway where article 97 of the Constitution prohibits retroactive rules this does not mean that announcement, about which the Norwegian constitution is silent, must precede application. Although not a constitutional necessity, announcement before application is a general principle in Norwegian law.

There are independent arguments for announcement being necessary. The main consideration is the legal protection of citizens who must have a possibility of knowing the rules they are obliged to respect. General principles of equality strongly favour announcement as a necessity. Also, announcement constitutes the moment when a statutory rule becomes part of current law, something which, however, is mainly a theoretical argument.

There is no decisive court practice with regard to the problem. The existing decisions are contradictory and a supreme court precedent does not exist.<sup>13</sup>

Although legal sources provide no answer, announcement is most likely necessary in all situations. If exceptions are allowed it becomes difficult to draw an exact line and a general uncertainty is induced in the legal system. This conclusion also provides a fruitful starting point for attempts to combine informatic and legal diffusion of statutory law.

The ordinary medium for announcement is the Gazette. As an ordinary statute the Gazette Act can be dispensed with *in an act*; but this only occurs in very extraordinary circumstances where a quick announcement is necessary and proclamation via e.g. radio is used. It can be assumed that all acts *can be found* in the gazette. However, this is not now the case with regard to statutory instruments, although the Gazette Act originally provided that all binding rules should be announced therein: citizens should only have one place to look for such rules. For economic reasons, this was changed in 1923 (Act no. 467 of 14 Dec.) when it became possible to state in a Royal decree that instruments concerning certain topics would be announced in another way. This fundamental amendment passed through Parliament with no real debate, which is quite disturbing. It demonstrates the importance of economic consider-

<sup>13</sup> The most discussed supreme court decision is printed in 1923 UfR 995 but close reading of this decision, which has been given many interpretations, shows that in reality it does not face the problem but concerns the question of how ignorance of law should be judged.

ations in this field of law. Today a vast number of statutory instruments are announced outside the Gazette, in many different ways. It is often difficult for citizens to find these rules: the situation is not satisfactory. Reinstatement of the original system would double the Gazette and increase state expenses by about 10 million DKR per year. Given the low information value of the Gazette, this is not a feasible solution. A better alternative is to utilize the legal database, and this will be discussed below.

As mentioned above, the Danish Constitution contains no prohibition against retroactive laws. This is in contrast to Norway, where sec. 97 of the constitution prohibits all laws with retroactive force. In Sweden the constitution (Regeringsformen 2:10) prohibits retroactive penal laws and to a certain extent also such tax laws. Denmark has ratified the European Convention on Human Rights of 1950, article 7 subsection 1 of which prohibits retroactive penal laws. Rules to this effect can be found in secs. 3 and 4 in the Danish criminal code.

Informationally, retroactive rules are unfortunate as the concept retroactivity here must be understood to cover rules applied to facts occurring before announcement in contrast to enactment or assent. As retroactive laws in general are also conceived as unjust, the Danish constitution should perhaps be amended. On the other hand, such rules may in certain circumstances be necessary in the common interest. Experience in Norway demonstrates that in many cases, especially within civil law, it is difficult to determine whether a rule is retroactive. This is so even when the concept is confined to situations where new legal consequences are attached to previous definite actions, e.g. when a certain type of contract is made illegal.

A total prohibition would, accordingly, not be fortunate. Instead, retroactive penal laws, which are easy to determine, should be made unconstitutional and a rule on tax laws such as the Swedish one, where Parliament in special situations can enact such laws, should also be considered.

The question of retroactivity demonstrates that other considerations than the spread of knowledge of the law can be more important when the legal framework is drafted, and that a balanced solution is needed.

## LEGAL PROTECTION AND LEGAL IGNORANCE

A principal purpose of the legal system in a civilized society is that the rights and obligations imposed on the citizens become known so that the

citizens can organize their lives accordingly. Although it is not possible today to know all rules, the system must be organized in a way that makes it possible for a citizen to acquire knowledge of relevant rules. The publication of law is therefore of primary importance for the legal protection of the citizens.

Against this background it is interesting to consider the concept of mistake of law and the role of the legal information system. It is a common notion of most legal systems that mistake or ignorance of the law does not free a citizen from responsibility. This notion derives from Roman law—*ignorantia juris semper nocet* or *ignorantia legis neminem excusat*—where the legal system was much simpler (see below). The main reason for this principle is that it is necessary for the efficiency of the legal system.

It is interesting to note that the reason for a mistake in law in many cases can be traced to defects in the information system. Some examples of this may be mentioned.

The rule was not announced at all at the time the legal action took place. As mentioned above, under Danish law such a rule will not be binding for the citizens. It is announcement which constitutes the precondition for the fiction that citizens know about the rules.

The rule was not announced in the gazette. It could be argued that the less informatic value of alternative forms of announcement should be taken into consideration, but this aspect is not relevant according to Danish court practice.

Announcement has taken place so close to the time of action that it was practically impossible to know about the law. This aspect can in practice be taken into account and in particular it is important with respect to laws that are enacted unexpectedly for the citizens.

The mode of announcement is not adequate. In practice this argument is of little value in the same way that it is well known that the information value of the gazette is very low.

A rule is systematically misplaced so that it is difficult to find. Nor is this argument seldom taken into account.

The wording of the statute is such that it is incomprehensible to ordinary citizens. There is no doubt that the special legal language is an important cause for mistakes of law.<sup>14</sup>

All in all it can be safely concluded that the legal information system plays a major role in the occurrence of mistakes of law.

<sup>14</sup> The nature and functions of legal language is a theme for a thesis in itself. The need for a reform is obvious, but this cannot be discussed here.

The requirement that the citizens know the law is not limited to legal rules, they are required to know all legal norms that are derived from relevant legal sources. This again presupposes that the citizen is able to use the whole legal library.<sup>15</sup> This is clearly not realistic. One must furthermore take into account the fact that in court practice the norms are constantly changed.<sup>16</sup> The citizen is required to find the exact norm that is applied at the time of judgement. Even a clever lawyer can make mistakes at this point. Finally, it should be added that the internationalization of the legal system is a further complication that makes the notion of mistake of law even more absurd.

The legal notion of mistake of law can be confronted with the actual situation in society today. Research has clearly demonstrated that there exists widespread legal ignorance.<sup>17</sup> It seems reasonable to make a distinction between knowledge of actual rules and knowledge of general norms<sup>18</sup>—for example it is sufficient to know that homicide is unlawful and not necessary to know that this rule can be found in sec. 237 of the Danish Penal Code. This being the case, the situation is still not generally acceptable. It can even be argued that the legal system to some extent is based on the presumption that the citizens do not know the law.<sup>19</sup> This might be suspected e.g. in respect of social welfare law where high pick up rate might endanger the funding of the various welfare programmes; a system of applications serves as a screen.

Probably most citizens do not know the law and their lives are governed by rules they do not comprehend. In a democratic society this is problematic,<sup>20</sup> and underlines the necessity of distribution of knowledge of law by other means than formal announcement. Using other media such as leaflets distributed for instance by way of public libraries, advertisements in newspapers, in radio and television programmes is important and certainly a public service that should be given a high priority. Although citizens have a right not to be informed, which is also important in an information society, they must be given real possibilities of acquiring knowledge of relevant rules.

<sup>15</sup> See Glanville Williams, *Textbook of Criminal Law*, 2nd. ed., London, 1983, p.451.

<sup>16</sup> See Folke Schmidt, 1 *Sc.St.L.* (1957), p. 192.

<sup>17</sup> See Jon T. Johnsen, *Retten til juridisk bistand*, Oslo, 1987, p.381.

<sup>18</sup> Berl Kutschinsky in Adam Podgorzecki (ed.), *Knowledge and Opinion about Law*, London, 1983, pp.134–135, note 3, distinguishes between “law awareness” and “law acquaintance”.

<sup>19</sup> See Francis Bennion, *Statutory Interpretation*, London, 1984, p. 18.

<sup>20</sup> Francis Bennion puts it this way. “It is strange that free societies should thus arrive at a situation where their members are governed from cradle to grave by texts they cannot comprehend.” *Statute Law*, 2nd.ed., London, 1983, p 8.

An increase in information activities faces a dilemma. There is a clear tendency towards such information being primarily to the advantage of the well informed and therefore increases the gap the “know and the know-nots”. In particular, when such tendencies are taken into account it is important that all citizens should have better possibilities of comprehending legal rules. One of the main reasons for legal ignorance is insufficient education. It is disturbing to note that although legal regulation plays an important role in society it is no part of the curriculum in schools. One of the purposes of basic education is to prepare the pupils for ordinary life in a democratic society. This purpose is not fulfilled when legal education is neglected. It is an important aspect of a legal information policy to introduce law in the curriculum, particularly subjects such as the organization and principles of the legal system, legal language and methods of legal information retrieval.

Publication of laws plays an important role for the legal protection of the citizens. This applies both to formal announcement and to alternative information systems. In a discussion of changes in the mode of announcement the needs of ordinary citizens must be given a high priority. It is against this background that the use of legal databases is discussed in the following section.

### LEGAL DATABASES

Starting in the USA, legal databases have been used for distributing legal information since 1961.<sup>21</sup> In the Scandinavian countries, legal databases emerged as publicly used information systems in the 1980s. The Swedish system, *Rättsbanken*, was first, the legal database *Rättsdata* being opened to the public on 1 January 1981. Next was Norway, where *Lovdata* became on-line searchable in May 1983. In Denmark, *Retsinformation* (RI) opened its first section on 1 February 1986. In the databases, all current laws can be retrieved.

Although the number of users is quite low, it is likely that before the turn of the century use will be widespread, partly due to the indexing of other legal sources and partly as the use of computer technology becomes more common and natural. Possible alternatives to traditional on-line retrievable databases are discussed below.

With this background, it is appropriate to consider whether the

<sup>21</sup> The first system was LITE. On this system see Jon Bing (ed.) *Handbook of Legal Information Retrieval*, Amsterdam, 1984, pp. 473–476.

database can fulfil legal purposes, e.g. as a substitute for the Gazette. This question will be discussed in regard to RI, but the results can apply also to other legal databases.

First a few remarks on the contents and structure of RI. As mentioned above, all current laws have been retrievable from April 1989. This means that the database has a broader scope than the Gazette as it contains all statutory instruments. RI is a full text system meaning that the whole text of all laws is indexed. Information can be searched in free text i.e. all words in the database can be used as search arguments. Words can be combined with the help of Booleian logic.<sup>22</sup> This form of retrieval is founded on the single assumption that in the relevant texts there will be words representing the problem which is the reason for using the information system. This is often the case but one problem is that concepts, e.g. culpa, can seldom be used as search arguments. The ideal form of retrieval has not yet been developed.<sup>23</sup>

RI is structured like an umbrella containing many part-bases owned by the different information producers. The bases consisting of statutory law are owned by the different ministries who are responsible for indexing their laws and keeping their database up to date under the supervision of a special Ministry of Justice secretariat. Under each ministry, laws are divided into three bases, acts, statutory instruments and circulars. Theoretically, this permits very precise searches, but it also presupposes prior knowledge of where to find the relevant laws. The structure is accordingly most suitable for professional users of legal information.

For considerations concerning the legal aspects of RI, its public ownership is important, as this is a primary condition for official use of the system. It is a fundamental condition that an information system must be objective. This favours a distinction between producers of information and ownership of the information system. For this reason the Norwegian state does not own *Lovdata*.<sup>24</sup> As no selection takes place with regard to laws, and as major decisions concerning the development

<sup>22</sup> The logic was developed by George Boole in the middle of the 19th century. Experience shows that many jurists have great difficulties in applying the operators "and, or, not". See Jon Bing, 79 *Law Library Journal* (1987) pp. 187–202.

<sup>23</sup> It falls outside this article to discuss technical questions. It is generally hoped that advanced knowledge of technology will solve the problems.

<sup>24</sup> This is partly due to the system emerging from the foundation that publishes the law book, *Norges Lover*, which is owned by the Law Faculty of the University of Oslo.—See Knut S. Selmer, *The Lawdata Papers*, *Complex* 7/81 (Oslo 1981).

of the system are taken in public, the Danish solution seems best and most suitable for legal use of the database.

As mentioned above a main reason for introducing the gazette model in Scandinavian law was to use the newest information technology, printing, to improve the spread of knowledge of legal rules. With this background it is appropriate to consider whether the time has come to use the legal database for official announcement of laws. Although databases of today are not perfect it is generally agreed that computer technology provides more efficient information systems than manual systems, and accordingly there can be a possibility of combining the informatic and legal aspects of rule distribution. This question was addressed by The Legal Information Council in its Report 1001/1984, with the conclusion that it was too early to make such a change in the mode of announcement. This is still a valid conclusion, but before long the situation will be ripe for such a reform. A primary condition is that all citizens have real access to the database and that it is natural for citizens to use this technology. If legal sources, e.g. laws, are to be published in the original and maybe even exclusively in electronic form it is necessary for the legal protection of citizens that such publication will be used in practice and that there is easy access. This is not the case today but probably in the next century computer technology will be as natural as telephones are today.

The main problem is whether a database designed like RI will be suitable for all citizens, i.e. not only for professionals. As mentioned above, free text retrieval founded on Boolean logic raises many problems and, for one thing, presupposes some knowledge of legal terminology. It is necessary for the user to identify suitable words which will be presented in the relevant texts. Even when a user-friendly interface—as for example SIR in the Norwegian system—is applied, ignorance of legal terminology is a major obstacle for ordinary citizens.

Hence it must be considered whether a simpler mode of computerized representation can be developed. This could be the videotex format,<sup>25</sup> and the Teletel system in France could be taken as a model. By free distribution of the Minitel terminals this system is very widespread. The information society is in many ways more fully developed in France. Among other things, laws announced in the *Journal Officiel* can be retrieved in the system. However, there are many problems attached to

<sup>25</sup> Videotex was developed in England in the 1970s. See Roger Woolfe, *Videotex*, London, 1980.

distribution of large amounts of information in videotex<sup>26</sup> and this might not be the ideal solution. It is mentioned here again to emphasize that citizens without legal knowledge must be able to find laws without difficulty.

Even before such a development has taken place it can be considered whether RI can be strengthened legally. This could be done by attaching negative validity to indexing of laws in RI, i.e. as a condition for the application of a law, it must be available in RI. Official announcement will still take place in the Gazette but it will be presupposed that all laws are also in RI. Such a principle, which could be stated in the Gazette Act, would have special importance for the statutory instruments that are not announced in the Gazette today. It would be the first step towards giving an announcement function to RI.

Even if it probably in the future will be possible to use legal databases as a means of announcement, and even if it seems likely that such databases will have more users than the gazette, there are additional problems which have to be considered in this respect. These concern the position of the ordinary citizen.

The economic conditions for the use of an electronic information system are different from those of traditional manual systems. It is common that the user pays for the time he actually uses the database and this price tends to be substantially higher than the price for a subscription to the gazette. In RI the price is 500 DKK per hour, which means that use of the database for one hour and 15 minutes is equivalent to the price of the gazette. This is a problem for ordinary citizens for whom time saved by quick retrieval cannot, as for professional users, compensate for increased costs. As the price must be paid by all users, including public libraries, there is a risk that a new financial barrier will be created. It seems very important that in the future legal information is not treated as a commodity<sup>27</sup> and that new ways of payment are developed so that the costs for using the legal database are not prohibitive for ordinary citizens.

Another very important change concerns the way in which access to the information system is acquired. In order to use the database it is necessary to sign a user contract which is normally a standard form contract which is not subject to negotiations. This means that access has become contractual and it is therefore necessary to evaluate the various

<sup>26</sup> Indexing is very expensive and retrieval very slow.

<sup>27</sup> See Werner Svoboda, *Users of Legal Information Systems in Europe*, München, 1981, p. 110.

clauses of the contract so that they do not in an unsound way limit the possibilities of using the retrieved legal information. It is also important in the future to consider whether another form of relationship between user and database producer than contract can be implemented.

Before ending this section it must be considered whether use of permanent electronic storage, e.g. CD-ROM, can in the future be a substitute for on-line retrieval and even increase the use of electronic legal information, which is fairly low today. It is of course always difficult to make predictions, but although CD-ROM systems are already used today, they appear to have some deficiencies, especially with regard to legal information, which is constantly updated. There is a risk that that this technology either will not have sufficient quality or that it will be too expensive. During the autumn of 1989 a user survey about the potential market for CD-ROM systems was carried out by RI. The survey showed that there was very little interest in such systems as far as enactments were concerned, while as regards other legal sources, e.g. court decisions, there was some interest. It seems likely that this evaluation will be valid also in the near future and that on-line retrievable databases will remain the most important electronic legal information system.

#### A NEW GAZETTE ACT

The Danish Gazette Act is from 1870, and even disregarding technological advances it is appropriate to consider amending it. This could take place at the same time as an amendment to the Constitution, where it would be made clear that announcement is a legal necessity for application of laws. However, a new act does not have to await such an amendment. The principle of necessity should be part of a new act. There should also be a limitation in the possibility of exempting statutory instruments from announcement in the Gazette, as this should presuppose authority in an act. Although for practical reasons it is necessary to separate production and distribution of laws, Parliament should take an interest in the question of announcement. This would be a recognition of the growing importance of the distribution of legal information.

## CONCLUSIONS

Adequate distribution of legal information has always been a major problem for the legal system. Today when the number of legal rules is so enormous and the legal system so complicated and internationalized, the scope of the problem has increased. It becomes still more necessary to have sufficient legal knowledge, and the State is faced with a major task in fulfilling its obligation to distribute its rules. In a representative democracy this is also a politically vital problem because this kind of democracy can in the long run only function when the population has real possibilities for acquiring knowledge of the laws their representatives enact. In a larger perspective adequate announcement and distribution is necessary for the survival of the democratic system.

The first attempts to solve the problem originate from democratic Athens, and this can be the guiding star for future initiatives and developments within this field of law.