SIMPLIFICATION OF LEGAL LANGUAGE AS A WAY TO EXPAND SOCIETY'S ACCESS TO JUSTICE

Márcio Jean Malheiros Mendes
Mestrando em Práticas Socioculturais e Desenvolvimento Social pela UNICRUZ – Universidade de Cruz Alta – RS. Bolsista CAPES. E-mail – marciojmmendesadv@gmail.com.

Amanda Karoline Schmitz Mendes
Bacharela em Direito pela UNICRUZ – Universidade de Cruz Alta – RS. Bolsista CAPES. E-mail – amandaschimitz@hotmail.com.

Antonio Escandiel de Souza
Doutor em Letras pela Universidade Federal do Rio Grande do Sul, docente da Universidade de Cruz Alta – UNICRUZ. E-mail – asouza@unicruz.edu.br.

Fábio César Junges
Doutor em Teologia pela Faculdade EST, estágio pós-doutoral da Universidade de Cruz Alta – RS. E-mail – fjunges@unicruz.edu.br.

Ana Cristina Mendes
Mestranda em Práticas Socioculturais e Desenvolvimento Social pela UNICRUZ – Universidade de Cruz Alta – RS. E-mail – anacrismendes.adv@gmail.com.

Laura Zimmermann de Souza
Discente do curso de Direito pela UNICRUZ – Universidade de Cruz Alta – RS. E-mail – laura.zimmermann2@gmail.com.

Abstract

This article, of a bibliographic nature, discusses the relationship between Law and language, with the purpose of highlighting the simplification of legal language as a way of expanding society's access to justice, especially lay society, which does not dominate the linguistic resources employed in the legal field. Understanding the content expressed through legal language is one of the conditions for guaranteeing access and effective fundamental rights for all citizens. To this end, it is necessary to adopt measures that enable the lay citizen to exercise citizenship through access to justice. Finally, it is understood that promoting reflection on the simplification of legal language is a way of bringing Law closer to society and fundamentally a way of democratizing access to justice.

Keywords: Language. Communication. Society. Law.

1. INTRODUCTION

Currently, it is noticed the excessive use of professional languages that are constituted from the use, in excess, of the technical terms inherent to the professions. In the legal context there is the so-called juridical, in which verbal communication is full of elaborate terms and also concepts in Latin, which makes it difficult for citizens to understand this language, who are unaware of the characteristics of the linguistic game employed in the legal area, generating a distance between Law and society.

Access to justice is the most basic of human rights and must be guaranteed to all citizens. Thus, the referred Law is treated by the indoctrinators as an essential right, which guarantees the effectiveness of any and all norms, since society is responsible for the movement of the Judiciary. It is known that formalities are necessary for the legal procedure, what is questioned, however, is the elaboration and the linguistic formalism prevalent in the elaboration of the legal discourse, which ends up affecting the communication between lawyers and society.

As for the purpose of communication, understood as a process of interaction between people, where the speaker sends the message and the interlocutor receives and understands it, it must be considered that a portion of the population is alien to the legal discourses, since the far-fetched terms, as well as those quoted in Latin, are difficult to understand for those who do not master the technical language of law. In this way, it is noticed that the communication loses its purpose, since when a party does not understand what is being transmitted it means that there was a failure in the communication. In this perspective, this text aims to reflect on linguistic formalism and its consequences for lay society, with regard to access to justice.

For an attempt to change the current scenario, in which the legal language is a barrier to access to justice, it is necessary, initially, that it be seen as a problem to be solved, which has already been discussed by the Association of Magistrates of Brazil (AMB) who, on August 11, 2005, launched a campaign that led magistrates, members of the Public Prosecutor's Office and other legal operators to reflect on the need to simplify the language used by these professionals, with the objective of democratizing the Judiciary and expanding society's access to Justice (AMB, 2005).

The proposed measure for an attempt to solve the above problem is based on a reflection on the possibility of simplifying the legal language, protecting the constitutional right of access to justice, guaranteed by the Federal Constitution of 1988. This discussion demonstrates the magistrates' awareness of the need to simplify the legal language, since the professionals involved understand that the democratization of access to justice by simplifying the legal language can establish a greater approximation between the law and civil society.

Thus, this article addresses the relationship between language and law and its effects on the communication process, so that citizens' access to justice can be guaranteed by simplifying the legal language. It is a discussion that presupposes the principle of Human Rights, in the sense that it deals with the constitutional guarantee of access of the lay citizen to justice.

2. LANGUAGE, LAW AND COMMUNICATION

It is possible to observe that, in the legal sphere, the incomprehensible language is solidified in the

discourse, since the institution of Law itself implies a hierarchy between "who knows and who does not know (to write)", according to the provisions of Lima (2014). In this same perspective, Maturana (2012) highlights that the custom of making communication difficult does not exist only between judges, but also among other professionals in the legal area. However, advocacy for clear, concise and objective texts has grown significantly.

The language has multiple functions, with communication as one of the main ones. It must be clear and concise in order to reach the large group and not just part of it, which happens in the legal universe, where the language is shaped so that only the operators of the Law understand it. Language as communication is only one of the multiple functions it performs. Limiting the function of language to the communicational process constitutes a simplified notion of understanding, since it does not account for the factors that are involved in the use of language. In the strategies employed in the legal discourse, language, in general, is shaped and ornamented in such a way that it becomes understandable only for a limited group that dominates the linguistic universe of the legal scope (LIMA, 2010).

It is through language that the willingness for legal acts to be promoted and conventions or contracts to be formalized occurs, and it is in these discourses that legal terms become a challenge for the knowledge of the laity, who are obliged to translate the expressions used by lawyers, with doubts remaining in relation to what is being discussed or determined. At this point, a distinction between language and discourse is important. The language consists of a set of signs that allows communication between subjects involved in the communicational process (LIMA, 2010). The discourse, in turn, is characterized by different strategies and ways of using the language, so that the lawyer is a hermeneut of the legal language.

The discourse "is not a narrow surface of contact, or of confrontation, between a reality and a language, the intricacy between a lexicon and an experience" (FOUCAULT, 2010, p. 64). It is rather a practice that forms the listed objects than the mere representation of an object by a word. Discourse is constituted as a practice capable of producing certain knowledge and not another. The discourse, in this sense, "is not the majestically developed manifestation of a subject who thinks, knows and says: it is, on the contrary, a set in which the dispersion of the subject and its discontinuity with itself can be determined" (FOUCAULT, 2010, p. 70).

Thus conceived, there is the autonomy of discourse. The statement relates to other statements and not exactly to things, concepts or ideas. Nor can it be referred to a subject that could be taken as its origin. The discourse, in this way, does not admit any external sovereignty, neither that of a subject that would be its source and its origin, nor that of a world of things of which it would be a secondary representation. In Foucault's perspective, certain systems of speech control are involved in the legal discourse, according to the interests of the subjects involved. There are control mechanisms that appear in the order of the discourse and others by the institution of a doctrinal idea of the discourse. It should be noted that, according to Foucault (2010), there are three systems of speech exclusion: external (interdiction), internal (comment, author, theoretical disciplines) and exclusion of speaking subjects (word rituals, speech societies, doctrines).

Thus, the power of discourse is not in an individual, group or social class over others, but circulates in a chain and is exercised in a network. For this very reason, the discourse is not unitary and homogeneous, but marked by heterogeneity and in constant transformation. It constitutes a set of social practices that, in

turn, presupposes different points and places in the social context. With regard to legal discourse, in order for it to be constituted as a revolutionary, there must be a claiming action by the subjects involved, who must actively participate in the decision-making processes. Foucault (2010, p. 16) emphasizes that "the truth must be understood as a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements". Since the discourse is more than a form of struggle of the systems of domination, the simplification of the legal language is one of the ways of ensuring the rights of citizens and, by extension, of legitimizing the Law itself.

In this sense, the complexity of the communicative act that extends to the legal instance is evidenced, which implies the selection of linguistic resources appropriate to the specific context and, in this perspective, the choices must be cautious and that meet the needs of the client citizen who uses the services of the judiciary. When addressing the issue of legal language, Herder (apud BIDERMAN, 2001, p. 125) highlights some aspects that involve the complexity of the communicative act:

> [...] language is not only an instrument of communication, but also the very thought of the act. Knowledge does not separate itself from the linguistic form in which it is expressed, and for this reason language also constitutes the limit, although mobile, of thought. Language is not organized only according to rational principles. Words radiate the ability to communicate to the broader realms of life and the forces that integrate it, modify it and express it.

Along the same lines, Petri (2008) states that language functions as an element of interaction between the individual and the society in which he operates and it is through it that reality is transformed into signs, with the association of signifiers with meanings, by which linguistic communication takes place. Law and language, according to Nunes (2006), are confused. In the author's view, it is through written and spoken language that doctrinal knowledge is absorbed, that court pronouncements are published in the official press and procedural acts and terms are performed.

Bearing in mind that communication must occur with the purpose of interaction between individual and society, when elaborating the speech with this purpose, the choices of resources that the language offers us must be accessible to the interlocutor. When it comes to the legal context, the language must meet the needs of the citizen.

The legal activity is addressed to the citizen and permeates all sectors of society. When understanding that the intention of language, legal or not, is to communicate something, the need to adapt it to different contexts must be considered and, therefore, adapt the language in a way that can be understood what is being transmitted, in order to that the citizen involved can interact more safely in the fulfillment of their duties and in the conquest of their rights.

Language is the medium used to convey ideas, and the better its simplification, the better its effectiveness. In the legal field, communication needs to be effective in order to achieve its objectives, that is, to achieve justice. Although the referential function of language is only one among others, it occupies a fundamental place. For Gnerre (1998, p. 5),

> Language is not only used to convey information, that is, the referential function of language is but one among others; among these, it occupies a central position, the function of communicating to the listener the position that the speaker actually occupies or thinks he occupies in the society in which he lives. People speak to be heard, sometimes respected and also to exert some influence on the environment in which they perform their linguistic acts.

The need to share information occurred in remote times, with the need to create a code for the development of communication, and the code created was the language. Therefore, communication has been with human beings since birth, being processed at all times, regardless of form or location. However, it is noted that the success of each and every professional activity is an effective communication, that is, clear and accessible to all the subjects involved in the process.

In this sense, language is one of the forms of communication that humanity has devised to resolve its differences without the use of brute force. Instead of wars or duels, public debates; instead of weapons, ideas and arguments. For the English philosopher Hobbes (apud STRECK, 2009), "language is the fundamental instrument for human communication", since "[...] without language there would be no man between the State, society, nor contract, nor peace, just as they do not exist among lions, bears and wolves". In other words, it is the language that differentiates humans from animals through their communication. Language is the instrument that makes human relations possible, considering that through it the parties' will is made perfect, which is impaired when one of the parties does not understand the shared message.

For the language to fulfill its social function, that is, the receiver receives and understands what is being said by the sender, it is necessary that, while formal, the dialogue is clear and concise. In defending a clearer and less elaborate language, Rosa says that the clearer the language, the more useful and effective it is, so that it will be fulfilling its purpose. "Hence, the clearer it is, the more useful and effective it will be in fulfilling its purpose. Anyone who is obscure expresses, at the outset, either the desire to not be easily understood, or the inability to communicate" (ROSA, 2003 apud SOUZA, 2011, p. 27).

It is possible to perceive, then, that the legal language, in several situations, is not reaching the basic objective of each and every form of language: communication. The excessively technical and operational way that some professionals insist on using fulfills only the function of removing citizens from the law. Currently, the language adopted in legal texts is essentially formal, rigid, difficult to understand and, therefore, distant from the large portion of citizens who use the Judiciary.

Just as communication and natural language adapt to the social context and culture of the place, legal discourse, according to Bittar (2010), as a form of communication between professionals in the Law class, must also be contextualized, molding itself to the recipient of the legal message. The linguistic formalism used by legal operators has distanced lay society from the effective exercise of its rights in the face of access to justice, since it is not possible to understand, many times, the language used by jurists due to the excess of technical refinement employed.

The legal language is, in the perspective of (SYTIA, 2002), a mediator between social power and people. Therefore, the models of behavior to be followed must be faithfully expressed, thus avoiding distortions in the application of the law. Technical words and language need to play the role of contributing

to the understanding of law and to the effectiveness of the act of legal communication. However, this is not what has happened, considering that the language used in the scope of the judiciary does not contribute to the understanding of the law, causing a distance between civil society and the judiciary.

As already pointed out, language must strive for clarity and objectivity to achieve its communicational objective. As Jakobson points out (apud FIORIN, 2002, p. 28):

> [...] in the wake of studies on information, there is in the communication a sender who sends the message to a recipient, and that message, to be effective, requires a context (or a "referent") to which it refers, apprehensible by the sender and the recipient, a code totally or partially common to both, and a contact, that is, a physical channel and a psychological connection between the sender and the recipient, that enable them to enter and remain in the communication.

For the communication process to actually take place, the concepts used in a given message sent by the sender must also be common to the recipient, since, deliberately or involuntarily, the subjects involved in the communication process need common words to achieve human communication. Therefore, the language does not need to be complex to be rich, but rather clear and accessible, making the receiver receive and understand what is being said by the sender, thus fulfilling its social function.

3. GUARANTEE OF ACCESS TO JUSTICE BY SIMPLIFYING LEGAL LANGUAGE

Legal language, in order to fulfill its social function, should not be understood as a barrier to access to justice. The mechanism used for citizen communication with the legal context must meet, in addition to constitutional principles (BRASIL, 1988), its social function. It should be noted that the Judiciary must be accessible to all and that the so-called legal person must not prevent the recipient from understanding the content of the message.

About this, the Federal Constitution (BRAZIL, 1988) in its article 5, item XIV, assures the citizen the full right to information, which is not respected on a daily basis when legal knowledge is limited due to formal excess to the detriment of effective communication through more accessible language. The realization of a true Democratic State of Law depends on the fulfillment of social functions assigned to the State itself and, therefore, social exclusion must not occur due to the lack of understanding of the legal language. Legal language should be seen as a bridge capable of bringing citizens closer to the legal sphere, regardless of their level of education and education.

Among the rights of the human being, access to justice is fundamental to be effectively guaranteed to all citizens, since, through its effectiveness, the others can be achieved. The American Convention on Human Rights - San José Pact of Costa Rica, in its article 8 - judicial guarantees - provides that every individual has a fundamental right to the provision of jurisdiction, and that access to justice is essential to the exercise of citizenship. Similarly, using the Brazilian Federal Constitution as a reference, Cappelletti (1988) claims that access to the just legal order is not only a fundamental social right, which is increasingly

recognized: “it is also, necessarily, the central point of modern proceduralism. Its study presupposes a broadening and deepening of the objectives and methods of modern legal science”.

Canotilho (1999) refers to access to justice as a “[...] realization of the structuring principle of the Rule of Law”. And this guarantee, or the guarantee that the jurisdiction is unfasteable, has exactly this magnitude: an institutional guarantee. Access to justice must be treated as a fundamental requirement, the most basic of human rights, of a modern and egalitarian system that aims to guarantee and not just proclaim the rights of all. When addressing specifically the guarantee of access to justice, taking into account Portuguese law, Duarte (2007) highlights the essentiality of the principle of non-avoidability of jurisdiction (access to justice), as all other rights, including fundamental ones, depend on it, to become effective.

> It seems to us to be extreme of any doubts that the right of access to justice (where, therefore, the right of access to the courts and to fair process is understood) is not just based on the dignity of the human person, but that he is endowed with qualified relevance, to the exact extent that ensures the realization of other fundamental rights. In other words, without access to justice, as already said elsewhere, coercive repression (or reparation) of fundamental rights offenses is unthinkable. The lack of such a guarantee, the subjective rights and interests (all of them, it should be noted) are lacking in any condition of practicality, becoming mere formal proclamations, completely devoid of content (DUARTE, 2007, p. 86).

Access to justice faces many obstacles, the main one being the excess of linguistic formalism used by legal practitioners. This obstacle is the reason for a distance between civil society and the law. As Lubke explains (2014), what is condemned in the legal language is the excess of formalism, which makes the language practically incomprehensible to those who do not master this technical modality.

If, on the one hand, the legal language is beautiful and formal, on the other, it often becomes obscure (LUBKE, 2014). With this, the popularization of the legal language used is not defended, which must be maintained in the cultured standard of the language, nor is it stipulated the disuse of technical terms necessary to its context. The idea is to combat a series of excesses, which would facilitate understanding and bring citizens closer to legal language and access to justice effectively, which today does not always happen.

Lima (2014), in this sense, argues that an effective way to reduce the comprehension problem is based on the simplification of the legal language, as it will facilitate the understanding of the language adopted by the Law operators, since knowing how to use it is having skill to communicate in a clear, concise and objective way. It cannot be denied that there are profound differences between a person with a degree in law and another who did not have access to this specific training. This difference, however, cannot prevent access to justice for those who do not master the legal language. For this reason, the adoption of a more accessible language, with a view to respecting less favored citizens with regard to knowledge, is necessary.

> To provide access to justice, it is necessary to allow this ordinary citizen to become less dominated and more respected, since there are profound differences between the two actors. In

> this way, it can be said that the simplification in the communication process must occur clearly (LIMA, 2014, p. 112).

However, it is known that the simplification of the legal language is not yet a consensus among legal professionals. On August 11, 2005, the Association of Magistrates of Brazil (AMB) launched a campaign that led magistrates, members of the Public Prosecutor's Office and other legal operators to reflect on the need to simplify the language used by these professionals. The campaign aims to democratize the Judiciary and expand society's access to Justice. Even so, a good number of professionals still resist this simplification, insisting on maintaining a vocabulary that is overly elaborate and difficult to understand.

On the other hand, the Special Courts Law is cited, which aims at a faster and easier access process for people with little financial conditions, since the referred law processes actions of up to 60 (sixty) minimum wages, exempting the parts of the procedural costs. No less important, it has to be said that this simpler procedure has awakened in the judges and many professionals of the Direto the exercise of a more understandable dialogue, not using a technical language with practically indecipherable linguistic resources, thus making Justice closer to the citizens.

Finally, we highlight the growing number of professionals in the legal context who defend the approach of the lay citizen to justice through the simplification of language, so that they have guaranteed their rights.

4. FINAL CONSIDERATIONS

The approach carried out in the present study had the purpose of highlighting the importance of simplifying the legal language, in order to understand not only the content of the message transmitted, but as a condition for guaranteeing citizens' rights. In this perspective, the language must be clear and accessible to those who do not have specific knowledge in the legal area, so that it does not become a barrier to access to justice.

It was evidenced that, in the legal scope, there is a certain inefficacy in the receipt of messages by lay citizens, since the language that has been used by Law operators is too complex for citizens who do not master the specific code of speech legal. Although it is recognized the importance of using legal documents to make the text richer and more precise, its use ends up making it difficult for lay citizens to access justice. Still, the language, in general, does not necessarily need to be complex to be rich, but rather clear and objective, because the complexity of the terms used can lead to ambiguity and misunderstanding.

What is condemned in the legal language, therefore, is the excess of formalism, the elaboration of texts, which make the language practically incomprehensible to lay citizens. While formal legal discourse is beautiful, it is obscure. In this sense, the simplification of the legal language as a way of bringing civil society closer to the legal world is a measure already adopted and defended by several doctrines. The movement organized by the Association of Magistrates of Brazil (AMB) reveals the importance and the need for the implementation of new forms of language that meet the desires of the population, especially those who do not master the discursive strategies employed in the legal sphere.

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