EDITORIAL ASTREA

*Plain language as a requisite for an effective access to justice**

By María Victoria Feito Torrez

"*No defendant should face the kafkaesque specter of an incomprehensible ritual which may terminate in punishment*" ("Carrion vs. The United States")

1. Introduction

There is this scene in Victor Hugo's *The Hunchback of Notre Dame*, where La Esmeralda is taken to be judged for the murder of the man she loved. The scene develops as follows: La Esmeralda, after being tortured to force her to confess to the murder, and after actually confessing as a means to escape the torture, now sits before the judges. The courtroom is full, the noise is constant. The judges discuss with each other: they talk *about* the gipsy girl, but not *to* her. She cannot comprehend what they are saying, and they would not listen to her version of the events.

At this point, the man she was being judged for murdering, having healed satisfactorily from his wounds, and being now in perfect health, enters the courtroom. He had heard a trial was going to take place, but did not know the matter of the conflict was his death. The judges see him walk into the room, and briefly discuss whether they should close the case or carry on with it. At last, they decide that Justice was above the facts, and condemn La Esmeralda to be hung.

Victor Hugo wrote this novel –and this scene– to make a point about Medieval justice: If governments of any type exercise their power detached from the people, such exercise will lead to absurdities. This was one of the claims of the French Revolution, the context in which Hugo wrote *The Hunchback*. And even though our current social and political situation is different from that of the times before the Revolution, the scene in the novel is not completely foreign to us. More often than not, people who approach Justice to find a solution to their conflicts find instead that the first conflict they need to face is not understanding what Justice is telling them.

2. The need for a plainer legal language

a. What do we mean by "plain language"?

This work[1] points toward a need for a plainer legal language: a legal language that is not a wall between those seeking justice and justice itself. We, as Law

* Bibliografía recomendada.

[1] This work stems from another work on the subject I have written which, although in spanish and from a different perspective, also points toward a need for a plainer language in the legal field. See: *La violencia implícita del lenguaje jurídico: un obstáculo en el acceso a la justicia*, "Revista Pensamiento Penal", 2019, www.pensamientopenal.com.ar/doctrina/48053-violencia-implicita-del-lenguaje-juridico-obstaculo-camino-al-acceso-justicia.

professionals, have become increasingly comfortable with a type of technical language that excludes those who have not entered the classrooms of Law Schools. And we often fail to find a problem with the fact that non-professionals need a "translator" –a lawyer– to explain the contents of the rules and laws to them.

However, in order to understand how we can knock down this linguistic wall between justice seekers and justice, we must understand what we mean by "plain language". "Plain language" refers to at least two things: a way of wording and structuring language, and an international association that supports the use of this language. The second will not be dealt with here, but a short Internet search will provide the reader with more than enough references.

Regarding the first, we are in presence of plain language when the discourse created is put in clear words and clear structures. It is evident that a legal text that states, for example:

> "Petitioners and, to a greater extent, their amici exhibit a different concern. They suggest that recognition of a screening role for the judge that allows for the exclusion of 'invalid'; evidence will sanction a stifling and repressive scientific orthodoxy, and will be inimical to the search for truth"[2].

It is not put in clear words and does not use a clear structure. The justice seeker for whom this sentence was written cannot be expected to understand what it decides, and consequently cannot (by themselves) be used to satisfy their needs. Put in others words, if the Judiciary branch (or the Legislative branch, for that matter) use these ways of making their decisions be heard, we cannot talk of an effective access to Justice.

It follows that effective access to Justice does not only mean understanding the language used by judicial professionals. Mere comprehension does not translate in involvement with the Law. An effective access to Justice means that users of the Law can find in it what they need, understand what they find, and use it to satisfy their needs[3]. In *Notas sobre derecho y lenguaje*[4] [Notes on Law and Language], Carrió refers to this practical perspective of comprehension:

> "Rules and laws are composed of words with typical features of natural languages, or are defined in their terms, in that they authorize, prohibit or render certain human actions compulsory, and in that they give subjects and authorities behavioral standards… The current social function of Law would be extensively compromised if these norms were formulated in such manner that only a small group of initiated could comprehend them".

This means that if users of the Law could not act according to the contents of the Law, there would be no legality, but rather a mere appearance of legality an empty shell.

This effective access is not a construction deduced from a doubtful interpretation of legal rules: it has bases on a number of rules. In Argentina, article 16 of the

[2] US Supreme Court "Daubert V. Merrell Dow Pharmaceuticals", Inc., 509 US 579 (1993) 509 US 579 William Daubert, et ux., Etc., et al., Petitioners V. Merrell Dow Pharmaceuticals, Inc. Certiorari to the United States Court Of Appeals For The Ninth Circuit n° 92-102, 1993.

[3] "Federal Plain Language Guidelines", www.plainlanguage.gov/guidelines.

[4] Carrió, *Notas sobre derecho y lenguaje*.

Constitution establishes that all inhabitants are equal before the Law. A well-known idiom applies here: “If others do not have the rights I have, they are not rights, but privileges”. If, then, only some people can understand legal language, and some (or most) people cannot, there is no equality before the Law, but privileges in favor of those who can understand it.

Article 18 of the Argentinean Constitution states the inviolability of rights and defense in trial. Not understanding general rules that safeguard rights, not understanding that which is being said during a trial, and not understanding the particular norm the judge created for me is, as it will be shown in the development of this work, violating my rights and my defense in trial.

b. Origins and bases for the complexion of legal language

When we look into legal language under the light of the effects the Law has in society, we understand that some degree of “technification”[5] is necessary. The reason behind this is that natural language, the one we use for our every-day activities and conversations, has several semantic and syntactic problems. We often find ourselves asking or giving further explanations as a result of a vague or ambiguous expression. The Law regulates important aspects of the lives of human beings, and hence it is expected to do so with the least amount of misunderstandings or misinterpretations. There is, then, a necessity for a language which uses terms whose meanings are well delimited. Delimited terms are not typical of natural languages, but of technical languages, therefore the necessity of some degree of *technification* in the field of Law.

In spite of this level of *technification*, language should remain accesible for justice seekers. However, practice has proven that in most cases, this technical language does more against justice seekers than in their benefit. It is often the case that the language used by some law professionals is not only difficult to understand for lay people, but also for other law professionals. This completely contradicts the basis of technification. Muñoz Machado (2017, 11) explains it as follows:

> “The result of all these stylistic features crystalizes in texts which turn out strange not only for the citizen for whom they are made, but also [turn out] difficult to follow for professionals, even with a cautious reading. This incomprehensible and hermetic character results contradictory to its goal. If legal rules affect every sphere of the individual and social lives of citizens, it would be expectable that they are, at least, intelligible. An incomprehensible Justice cannot enjoy prestige, nor fulfill its function”.

If the basis of technification behind legal language is that it produces les uncertainty regarding rights and obligations of those under the Law, but in practice it constitutes a wall between them and Justice, why do we insist in using it? Muñoz Machado

[5] I will use this term here as the equivalent of its spanish counterpart tecnificación, which refers to terms taken from natural language, but artificially delimitated in their meaning to reduce the potential semantic problems they could bear. It should be noted that a “technified” term is not a synonym of an artificial term, for example the terms used in formal languages, in that its meaning does not operate in a binary fashion (i.e.: “belongs”, “does not belong”, “is”, “is not”, etc.) but with a wider range of signification, although not as wide as that of a term of natural language. It is, in sum, neither a term from natural language nor a term from formal language but a bit of both.

seems to draft the beginning of an answer in the last sentence of the quote: Justice enjoys prestige, a prestige given to it by its professionals.

Maybe the confusion stems from believing that Justice is the most prestigious when it is the furthest from comprehension; the more exclusive of those who are not Law professionals, the better. More prestige, more power; and as Norman Fairclough[6] states, language is the arena of social power struggle. It makes sense, then, that this pretention of prestige and power materializes in the use of an inaccessible language: placing legal language far from the reach of certain people deprives them of a means to exercise their social power.

c. Features of legal language that make it unnecessarily complicated

We have discussed the necessity for legal terms to have more delimited meanings than the terms in natural language. The consequence is that what we mean when we use a word in daily conversation does not mean exactly the same in a legal context. Take, for example, the word “agree”. In everyday conversation, agreeing means simply concurring with someone, even if we do not share their viewpoint. Often we agree with what a person says as an act of politeness, but only sometimes our agreement implies concurrence and consent. In legal language, “agree” always implies consent, and this assumption has such weight that it modifies the liability between the persons involved.

Something similar happens with the word “notice”. In everyday speech, we say we “notice” something even when we are not fully aware of what we are encountering. We say, for example, that we notice something from the corner of our eyes. It can hardly be sustained that, in this way, noticing involves an act of willingness: a fully thought-out action. Yet, in legal language, to notice something means the person noticing made a voluntary effort to know the contents (and sometimes even the consequences) of that which is being noticed. Evidently, this affects the liability of the person.

Those justice seekers who approach the Law to solve their conflicts Will often find such use of terms confusing. As I have mentioned, some of this delimitation of terms is necessary, and in benefit of justice seekers. This does not liberate Law professionals from explaining the meaning and extent of terms when justice seekers may find them confusing.

Another feature of legal language is the use of Latin terms. In most judgments, a person can find Latin terms such as “per curiam”, “in dubios pro reo”, “certiorari”, “ut supra”, “ad hoc”, “mens rea”, “obiter dictum”, “ratio decidendi”, “in rem”, “ex post facto”, and so on. Law professionals are very much used to these terms, to the point they forget they once struggled to understand them, and had to study and learn them. The problem is, justice seekers do not spend enough time in contact in the Judiciary to justify learning (and using) these Latin terms, and therefore need clarifications when they are used. Some of the times, the use of these terms is justifiable, i.e.: when there is no equivalent in English, or when using a phrase to replace them would cause confusion. However, most of the times they can be paraphrased in plainer terms, or at least clarified between brackets.

[6] Fairclough, *Language and Power*, p. 3, 68 a 76.

Other features of legal language that render it unnecessarily complicated refer to the type of syntax used. It is common to find an extensive amount of passive voice ("The motion for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted", "the judgment affirming his conviction is reversed", "the case is remanded to the District Court"[7]). As a rule, active voice is easier to process than passive voice[8], and even though passive voice is sometimes necessary (i.e., when there is a need to suppress the agent of the action), whenever possible, active voice should be used.

Within the syntactic features, there is also a tendency to write long paragraphs composed of many subordinate clauses:

> "It is, therefore, by the Court *considered*, *ordered*, and *adjudged* that the prayer of the plaintiff for specific performance of the award of arbitrator, Robert A. Leflar, directing the reinstatement without loss of seniority of the employee Raymond Rigdon and further directing that the said Rigdon be paid back pay for the period commencing January 1, 1961, and running up to the day on which he is recalled to work, at the rate of his average earnings for a forty-hour week during the three months immediately preceding his discharge, be, and it hereby is, granted, and that the defendant, Virco Manufacturing Corporation be, and it hereby is, directed to abide by, perform, and carry out said award, and within ten days reinstate or offer to reinstate the said Rigdon in his employment without loss of seniority"[9].

It is evident that the clarity of such paragraphs is dubious. A plainer legal language should be written in shorter sentences. Accordingly, paragraphs should contain only one idea each.

Finally, some other complex (even archaic) features of legal language include the extensive use of modal verbs such as "may", "might" and "shall", and the use of gerunds as nouns ("the findings", "the understanding", "the proceedings", "the resulting", etc.).

3. The normative source: national and international bases for a plain language

a. The necessity for plain language in the Universal Declaration of Human Rights

We can find, within the international legal system, and within the Human Rights instruments recognized in the Argentinean Constitution as hierarchically equal to itself, articles 1 and 2 of the Universal Declaration of Human Rights[10].

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[7] All these examples were taken from "Dusky vs. the United States".

[8] Proof of this is that children's stories hardly ever use passive voice sentences. This is not to say that legal language should be "childish"; it should simply be more understandable.

[9] United Furniture Workers of America, AFL-CIO, local n° 395, plaintiff, v. Virco MFG. Corporation, Defendant n° LR-61-C-96. United States District Court E. D. Arkansas, W. D. 9/3/62. To be fair, this paragraph alone serves as example of all the features of legal language I have mentioned so far.

[10] Art. 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Art. 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such

Article 1 states that dignity and rights have to be recognized for all human beings equally. If those with more formal instruction, or more economic resources have more access to Justice, and these advantages result in that they can seek and find in the Law that which they need and use it for their benefit while others cannot, we cannot talk about *equal* dignity and rights. There will be true equality when every person, regardless of their social, economic, educational, conditions has access to Justice. And for this, it is necessary a legal language every person can understand.

Likewise, article 2 points out that there cannot be distinctions before the Law regarding conditions inherent to a person. However, in the impossibility of accessing Justice by themselves, there is an implicit distinction between those who can and those who cannot understand legal language.

b. The necessity for plain language in the international covenant on civil and political and rights

Article 14 paragraph 3 subparagraphs *a*, *d*, *e* and *f* of the ICCPR[11] goes even further, and sustains that a person accused of criminal charges has the right to be informed why they are being charged and for which crime, in a way they can understand it, even in detail. Evidently, merely informing this to them in their mother tongue is not enough. If the Law professional said, for example:

> "The certified point of law is whether the Court of Appeal may order a re-trial having quashed a conviction on the grounds of serious executive or prosecutorial misconduct, and, if so, in what circumstances. There is no doubt about the answer to the first part of the question since section 7(1) of the Criminal Appeal Act 1968 gives a discretion to the Court of Appeal to order a re-trial 'if it appears to the Court that the interests of justice so require'" (Maxwell, R. v., 2010)

One could hardly say that the person receiving this sentence was "informed promptly and in detail" about their case[12]. Subparagraph *d* states that the person charged is entitled to defend themselves personally. In this same sense, subparagraph adds that the person should be able to examine witnesses. Both activities would be hard –if not impossible– if the accused could not understand the charges against them

as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

[11] Art. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: *a*) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; *d*) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; *e*) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; *f*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

[12] I am somewhat vexed at the fact that I did not need to read several sentences to find a hard-to-comprehend passage. This extract actually comes from the very first sentence I found.

in the first place: the technical terms of legal language leave a person as defenseless as la Esmeralda.

Subparagraph *f* grants the accused the right to an interpreter, in case of not understanding the language spoken in the Court. In my opinion, this rule can be interpreted in two senses: Strictly speaking, a person being charged of a crime must be assisted by a sworn translator when they cannot understand the language spoken in the place (country, state, area, etc.) where the Court is. In a broader sense, it grants the accused the right to be assisted by an "interpreter" able to explain to them in plain words what the Court says. If the aim of this rule is the right to a legal defense, and the legal defense includes and implies fully understanding every step of the process, both interpretations are equally acceptable.

c. The necessity for plain language in the covenant on economic, social and cultural rights

Similar to what is established in the ICCPR, article 1, paragraph 3 and article 2, paragraph 2 of the CESCR[13] highlight the self-determination and non-discrimination granted to human beings. Non-discrimination has been discussed above.

Regarding self-determination, a person cannot choose freely if they do not have a complete understanding of that which they are choosing. This has direct impact in the exercise of rights: one cannot choose how exercise one's rights if one cannot understand the language in which they are written. One cannot choose *whether* to exercise a right at all, if one cannot understand the contents of that right. And the contents are expressed in language.

d. The necessity for plain language in the Inter American Convention on Human Rights

Article 8, paragraph 2, subparagraphs *a*, *c*, and *d* of the IACHR[14] reproduce what is stated in the ICCPR, about the necessity of being assisted by an interpreter and to defend themselves and communicate freely with an attorney. However, subparagraph *c* adds that the accused is guaranteed adequate means for the preparation of

[13] Art. 1.3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Art. 2.2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[14] Art. 8, inc. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: *a*) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; *c*) adequate time and means for the preparation of his defense; *d*) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel.

their defense. These “adequate means” include the comprehension of legal language, and for these means, such comprehension is essential.

e. The necessity for plain language in the Convention on the Elimination of all Forms of Discrimination against Women

Finally, the recitals of the CEDAW state that women have –in relation to men– more obstacles in the exercise of their rights. This conveys that all of what has been said so far proves harder if the person against whom the charges are being pressed is a woman. Article 15, paragraphs 1 and 2[15] point out that women must, in every sense, be equal to men before the Law. The fact that an international covenant has to make this point explicit and clear shows that the inequality between men and women exists around the world, and that it must be eradicated[16].

f. The necessity for plain language in other rules and laws

Some local and international laws addressed specifically to judges highlight the importance or writing their decisions in plain language. Article 19 of the Iberoamerican Code of Judicial Ethics states that judges should express “in an ordered and clear manner, legally valid reasons, appropriate for justifying the decision”. Article 27 further adds: “Grounds should be expressed in a clear and concise style, without making use of unnecessary technical details and with a conciseness which is compatible with the full comprehension of the reasons explained”.

Similarly, the Consultative Council of European Judges, in its “Framework for Global Action: Plan for Judges in Europe”[17], has included an appendix for “Main Action Areas for the Purposes of Establishing Priorities within The Global Action Programme”. Section V paragraph *d* points out that a practical application of the Rule of Law involves “accessibility, simplification and clarity of the language used by the courts in proceedings and decisions”.

Likewise, the Recommendation of the Committee of Ministers to Member States on Judges, regarding independence, efficiency and responsibilities, in its Chapter VII “Duties and Responsibilities”, paragraph 63 states that “*judges should give clear reasons for their judgments in language which is clear and comprehensible*”. The Committee has also referred to the necessity for judges to make their decisions nown in a clear manner in the Recommendation R (87)[18], concerning the simplification of

[15] Art. 15.1. States Parties shall accord to women equality with men before the law. 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

[16] This conclusion can be deduced from a rule of legislative economy: It would not make sense to order a solution for a problem if the problem did not exist in the first place.

[17] Council of Europe, CCJE 24, Strasbourg, 12/2/01, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680657eee.

[18] See, for example, Andruet, *Lenguaje claro y motivaciones morales en las sentencias*, “Comercio y Justicia”, 26/7/17, https://comercioyjusticia.info/blog/opinion/lenguaje-claro-y-motivaciones-

Criminal Justice. Here, section II, subsection *c* paragraph 2, regarding penal orders, mandates that judges inform the accused in a "clear and definite manner". Section III subsection *d* of the same document, in its paragraph 3 determines that the judge must explain to the jury members as clearly as possible the issues for decision and the law relevant to the case.

In Argentina, the efforts toward the use of clear language in the Judiciary and the Legislative are still timid. Article 3 of the Argentinean Civil and Commercial Code instructs judges to solve the controversies brought to them through a "reasonably based" decision. The term "reasonable" is vague enough to admit a potentially infinite number of bases. Some jurists have understood that reasonability includes clarity 18. Article 42 of the National Constitution, referring to the rights of consumers, states that they should be offered "adequate and true information". Clearly, if the Constituent believed this was necessary in the legal relation between sellers and consumers (i.e., parties in a private Law relation), it should be all the more necessary in the relations between subjects and the Judiciary. Article 36, paragraph 6 of the National Civil and Commercial Procedure Code specifies that judges must "clarify obscure concepts". This implies that there should not be obscure concepts in the first place. Finally, in September of 2019, the Buenos Aires Supreme Court adhered to the Plain Language Network[19], which should influence not only the sentences of the Court but also the formation of future law professionals.

This rather long list of laws, rules, and treaties is meant to show that the local and international legal orders point toward an application of justice that includes plain language. Put differently, when we assume that legislators are rational, we assume as well that the legal system they create has certain features: unity, hierarchy, cohesion, non-redundancy, among others. Cohesion implies two senses of the term: that rules and laws do not contradict each other[20], and that rules and laws –individually– do no contradict the general spirit of the legal order. This last sense is a bit more difficult to identify: it could happen that an individual rule does not contradict any other rules, but goes against the aims of the others. It could happen, for example, that all the rules and laws of the system point toward "consolidating peace" (an order given in the Preamble of the Argentinean Constitution), but a single, isolated rule aims at confronting two groups of people. From the harmonious interaction of these rules and norms, it can be deduced that access and understanding of the language used in legal contexts is necessary, and in accordance with the goals of the system. A language that guarantees the transparency of the public functions, the right to a defense, and the compliance of judicial decisions Will bring justice seekers closer to justice.

The principle that transversally links all the cited rules is favor debilis, "in favor of the weakest". The Law is not blind to the social power differentials among people. Judges and legislators know that those with more social power are better placed before the Law. This principle constrains law professionals to find ways of balancing this maladjustment, and giving more tools to those with less power.

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morales-en-las-sentencias; and González Zurro, *Sentencias en lenguaje claro*, "Pensamiento Civil", 31/12/18, www.pensamientocivil.com.ar/doctrina/3990-sentencias-lenguaje-claro.

[19] *Adhesión a la red de lenguaje claro*, 3/9/19, www.scba.gov.ar/institucional/notayfotos.asp?expre=Adhesi%F3n%20a%20la%20Red%20de%20Lenguaje%20Claro&veradjuntos=no.

[20] This means that two rules or laws assign the same behavior opposite deontic characters.

4. Case source. Bases for plain language written by judges

a. About the obligation of providing a translator for assistance

Evidently, if the need for a plain language can be concluded from the interplay of rules and laws, there will be sentences where judges will stress this necessity. It is fairly easy to find sentences where judges have declared the nullity of an act or decision based on the fact that the accused did not understand the language spoken by the Court, and no translator was appointed to assist them. These cases highlight the accused's right to a fair trial and, as the international treaties mentioned state, to participate in the process.

One paradigmatic case in this sense was Negrón v. New York. Rogelio Negrón was a Puerto Rican immigrant with no understanding of English. He was charged for the murder of a fellow worker in 1970. Most of the trial developed in English, with rare occurrences of Spanish. Negron's court appointed lawyer did not speak Spanish. He was convicted for second-degree murder, but the Court of Appeals overturned the decision, based on Negrón's right to a fair trial.

The assertions made by the Court of Appeals about Negrón not understanding the language describe as well the lack of understanding that comes from not knowing legal language as a law professional. The Court found that to Negrón, and without the aid of a translator, "most of the trial must have been a babble of voices"[21], and that he "deserved more than to sit in total incomprehension as the trial proceeded"[22]. As mentioned above, what the Court essentially found is that the lack of knowledge of the English language put Negrón in a situation of disadvantage, and that this disadvantage should have forced the judges in the original cause to apply the principle *favor debilis*, and give Negrón some sort of "leverage" (through the aid of a translator) to better exercise his rights.

This was also found by the Court of Appeals in the case Reina Maraz[23], in Argentina. Reina Maraz is an immigrant from a small town in Bolivia. Her mother tongue is Kichwa, and by the time of the events, in 2010, she understood very little Spanish. The first part of the trial developed without an assisting translator: the Supreme Court in Buenos Aires has a list of oficial translators, but mostly for European languages, such as English, Italian, Portuguese and German. This list did not include translators in aboriginal languages, and the Court took over a year to appoint a translator in Kichwa. Reina Maraz spent this year (and a half) in prison, not sure of what charge was being held against her. When the translator was finally assigned, the first words Reina said to her were "I don't understand anything"[24].

The First Instance Tribunal convicted Reina for aggravated murder. The sentence was appealed, and in 2016, the Criminal Appealing Court found that the trial in First Instance had violated Reina's right to a fair trial. In its sentence, the Court referred

[21] US Court of Appeals, Second Circuit, United States ex Rel. Negrón v. State of N.Y, 434 F.2d 386, 2d Cir. 1970, decided 15/10/70, p. 2.

[22] Íbid., p. 3.

[23] TCasPen Bs. As., Sala 6, 29/12/16, "M. B., R. s/recurso de casación".

[24] Cecci, *Sin intérprete y en manos de la justicia*, "Página/12", www.pagina12.com.ar/diario/sociedad/3-231199-2013-10-14.html.

to the Human Rights international instruments, and provided a defining aspect of discrimination: "this logically implies that discrimination is not putting in context the particular circumstances of a certain person whose conception and socio-cultural formation is completely different to the main one in the sphere we occupy".

This means that judges have an obligation –arising from international instruments hierarchically equal to the Argentinean Constitution– of applying the principle *favor debilis*, considering with special emphasis personal circumstances that put justice seekers in disadvantage before Justice. Not considering Reina's lack of understanding, as well as Negrón's lack of understanding, constitutes discrimination by omission.

b. Similarities with cases referring the need to understand legal language

All of the grounds for the decisions described above apply to the situation of not understanding legal English, in spite of speaking the language used by the Court. In the case Dusky vs. the United States, the Court of Appeals for the Eighth Circuit remanded the case to the District Court. The reason was that the judge's findings about Dusky's competency to stand trial lacked sufficient grounds of support. The District judge had based his decision in the fact that Dusky was well oriented time-and-space wise, and remembered some of the events. According to the Court of Appeals, this is not enough to prove Dusky's competency to stand the trial. The District judge should have proven "*whether he [Dusky] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him*"[25]. The understanding of the proceedings is essential for the rights to adequate defense and fair trial. Evidently, the exercise of such rights would not be possible without a full understanding of that which was said to him.

The Argentinean Supreme Court has found in a similar way in the case "José María Orgeira"[26]. Mr. Orgeira had had a sentence deciding against his petition in First Instance. Given that the grounds for the decision were difficult to understand, he appealed the sentence. The decision made by the Court of Appeals was even more difficult to understand. Orgeira then files for a Recurso Extraordinario Federal (similar to a petition for Writ of Certiorati) before the Court of Appeals. The Court denied it, and Orgeira filed a motion for reconsideration of dismissal of petition. After all this Kafkaesque journey, the Argentinean Supreme Court analyzed the sentences, and especially the language used by the judges of the Court of Appeals. The Court concluded that such sentence threatened Orgeira's right to defense:

> "Accordingly, the sentence not permitting to know the motives leading the a quo tribunal to dispose the dismissal with prejudice must be revoked. The use of terms not existing in Spanish, added to a syntax that conspires against a clear understanding of the arguments, fail to minimally ground the decision".

[25] "Dusky v. United States", On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit n° 504, Misc. Decided 18/4/60.

[26] CSJN, "José María Orgeira", vol. 1/92.

The Court goes on to cite some examples of the problematic sentence[27]:

> "After reflections that cannot be considered grounds for the decision, the tribunal concluded that 'it results diaphanous that continuing the inquiry described this picture of situation, it does not only not query a finality useful for investigation, but rather it is not observed under which signs it could come to architectate (sic) the legal impression axis of the analysis, given that it is desirable that the inquisitive pretention does not reveal a motive as turbid as that which the impugnee comments about the background of the relations between the different branches of the Goyenas'".

The Court found that Orgeira could not defend himself of such assertions, and revoked the sentence.

c. Some examples of sentences in plain language

All of what has been said here so far, about the disadvantages resulting from a strict legal language, does not mean that law professionals should use either technical legal language or natural language. A fair golden mean should be possible, and some judges begin to understand this.

In Argentina, there have been, even though still very few, some sentences where judges have reserved a section to talk to those for whom the sentence is meant in a plain language. This is a valuable tool to accomplish both goals: a clear and efficient communication between law professionals and a way of bringing the justice seeker actually closer to Justice.

Judge María Laura Dumpe, in charge of the Family Court n° 7 in Viedma, Province of Río Negro, wrote a sentence[28] containing a clause in plain language, with a simple explanation for the father of the child to understand his duties:

> *8*) "Next, and to facilitate the comprehension of what has been set forth here to C.N.P, I will dedicate this item to explain him in a simple way the decision made. This must be transcript in the court notice in bold characters and underlined, to facilitate its reading and comprehension".
>
> "Mr. P, an amount for child support has been established here in favor of your daughter, L.N.P. It consists of a monthly deposit of 30% of all your monthly earnings for any paid activity you carry on in a free of charge bank account opened in this file… To arrive to this amount, I have taken into account that you neglected L., not only regarding the amount of money

[27] The translation into English was done by me. The paragraph cited by the Supreme Court has been particularly painstaking to translate, since it does not make much sense in Spanish, thus the feeling that it does not make much sense in English. I have tried to translate it as closely as possible to the original. For reference, the original states: "resulta diáfano que continuar la encuesta descripto este cuadro de situación, no sólo no consulta una finalidad útil de pesquisa, sino que no se observa bajo qué signos se pueda llegar a arquitectar (sic) el cuño legal eje del análisis, ya que es de desear que la pretensión inquisitiva no revele un motivo tan turbio como el que el impugnante comenta acerca del trasfondo de las relaciones entre las distintas ramas de los Goyena".

[28] Since sentences on family matters are not public in Argentina, I cannot provide a reference for this text. It was given to me by a judge who knows my interest for plain language.

> the law orders you to pay, but also regarding giving her affection, walking her to school, helping her with her homework, attending to her health. In sum, you neglected her as a daughter, and that has an economic cost, since your attitude overcharges her mother (Ms. C.)… It must be clear to you that if Ms. C. files an appearance in this file and reports that you are not paying the amount fixed in this sentence, I can take different measures to make sure you pay the fee".

This example shows a section of a sentence written to make it clear to the father of the girl what his obligations are. The clause is written in a plain enough language for the father not to object that he could not understand what was expected of him. Likewise, the language is plain enough for the mother to understand what her daughter's rights are, and how to exercise them. In this sentence, the mother of the girl could find in it what she was looking for, understand it, and use it for her needs. She could, in other words, have an effective access to Justice, without a wall in-between.

Another example, but from the Criminal Law field, was written by Dora Analia Antinori Asis, Criminal Sentence Enforcement judge at the Juzgado de Ejecución Penal de la Séptima Circunscripción Judicial con asiento en la ciudad de Cruz del Eje [Criminal Sentence Enforcement Court, 7th Judiciary Circuit, on the City of Cruz del Eje]. This sentence, addressed to a man who had been in prison and had served part of his conviction, explains that the man can continue serving his sentence at home, and the conditions under which this home arrest is granted:

> "Good morning, Mr. A. I have been Reading all the papers sent by the Penitentiary Service. Considering that you have been behaving well, you will be allowed to leave prison under assisted liberty. For you to remain in liberty, you will have to fulfill the following conditions: *1*) Live in your mom's house in… If you want to move, you will have to ask the Court for permission first; *2*) You have to find a job; *3*) You can't use drugs nor get drunk; *4*) You can't be arrested again".

These are only samples showing that it is possible for Justice to express itself in a language that does not exclude those who do not understand it, and that allows it to listen to those who do not speak it.

5. Conclusions and recommendations

It is possible for law professionals to communicate in ways that do not isolate justice seekers; that do not give them the feeling that they are not Heard (like it happened to La Esmeralda) and that do not harm their defense. Justice has ways of communicating with citizens in a comprehensible fashion. This accessibility does not necessarily neglect the precision and effectiveness the Law requires to reach its goals.

The difficult features of legal language –archaisms, Latin phrases, complex sentences, excess of passive voice, modal auxiliaries, strange words, etc.– can be worked out and replaced by plainer features. This is not only a matter of style; it is not only a way of writing: this is an order that can be deduced from rules, laws, and general principles of the legal order.

It is only partially true that the features of legal language are necessary to guarantee a more effective Justice. Languages are rich enough to always find new ways of expression: to further elaborate expressions to be inclusive not only of Law professionals but also of justice seekers and, by extension, of all the community.

The first step we should take, as professionals, toward a plain language in Law is eradicate from our minds that a complex legal language gives the legal profession prestige. It does not. Nothing in this world can be simultaneously incomprehensible and prestigious.

The second step is refraining ourselves from writing documents in "automatic" mode, and being conscious of the information we are trying to convey. It would be useful here to ask ourselves, "Will the justice seeker understand this?" "Would I have understood this before Law school?" and if not, "How can I write this in a way that justice seekers –and the community– can use it for their needs?" Oftentimes the answer is a change in the vocabulary, some other times, a simpler syntax. And some other times, it is necessary –as we have seen above– to write a clause exclusively for them.

One third step would be taking this initiative to institutional contexts: Training court clerks and employees on how to write documents in plain language, and organizing classes and forums in bar associations, research institutes, and even within Courts. It is also necessary to teach new generations of lawyers –at Law schools– this perspective of legal language, and practicing with them the drafting of documents in plain language.

We should bear in mind that the legal system does not only have rules and laws, but also general principles, which are generic orders to achieve the most of something: the most of freedom, the most of equality, the most of justice.

Principles keep the legal order together by orientating the aim of rules and decisions and, this way, maintaining cohesion as much as possible. General principles, those that can be concluded from the Constitution and the international treaties, make it clear that rules and decisions must be made in a language that is clear for justice seekers. An exclusively technical language means impeding the community from effectively accessing justice, but effectively accessing justice was the reason the Law was created in the first place.

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