



CHAPTER 56

Legal-digital communication in the context of COVID-19 and the visual law proposal

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ABSTRACT

The present work investigates the reflexes of the adoption of digital communication tools by the Law

operator during the Covid-19 pandemic, questioning itself: how does innovation affect the relationship between society and Law institutions? Moreover, it is proposed the adoption of the Visual Law tool, which makes technical information more understandable, meeting the demand of simplifying the legal language and promoting the right of access to Justice.

Keywords: Digital Communication, Law and Innovation, Covid-19, Justice System, Legal Language and Visual Law.

1 INTRODUCTION

The debate about innovation is not recent in Law, however, in the last decade, and especially since the beginning of the Covid-19 pandemic, in March 2020, the topic has been widely theorized; and the implementation of digital tools for remote work, public attendance through phone calls, e-mails, meetings in digital platforms, and other procedures that have the virtual environment as a space, has been accelerated.

Considering the exceptionality of the moment and the urgent measures adopted, this paper investigates the consequences of the adoption of Digital Communication tools by the Law operator, based on the question: How does innovation affect the relationship between Law and society?

In order to answer this question, this research analyzes the transformations related to information technology, through which the Justice System has gone through, resuming innovation milestones of the last decade, but having as main cut of time the Covid-19 pandemic, seeking to indicate from the bibliographic review and documentary research the resources adopted, that is, which digital communication tools became part of the daily life of the Justice System in this period.

In addition, it discusses how its implementation was carried out, which stages followed and what the transformations were since the adoption of the digital communication tools until the present moment, taking into account the strategies and processes of installation, adaptation and effectiveness of these tools in the Justice System.

This is a research that has been developed in the Professional Master's Degree in Law, at the State University of Ponta Grossa (UEPG), of qualitative nature, carrying out the bibliographic and documental review pertinent to the theme, including productions that discuss the Justice System, Innovation and Law, and the democratization of access to Justice institutions.

We tried to combine the classic readings of Administrative Law and Public Law with other more current publications, making use of the filters of research tools and banks such as Scielo, CAPES Periodicals, and Google Scholar.

Also, based on the translational perspective, also adopted by the Graduate Program at UEPG, the data and notes start mainly from the recent experience of adopting digital communication tools, and will extend in the monitoring of its activities performed remotely and in person in the period after the Covid-19 pandemic. This is characterized by an inductive research method, in which data from the professional practice in the Attorney General's Office of the State of Paraná (PGE/PR), the changes experienced, and observations made, lead to general propositions (RICHARDSON, 1999).

Also, the survey of information about the resources and paths adopted is done from academic and official publications, bulletins and other documents that have recorded the instruments chosen and the strategies put in place for the implementation of digital communication tools during the Covid-19 pandemic.

The organization of the Public Power is foreseen and guaranteed in the Constitution. Its adaptation to the virtual world was mainly due to the concern with the functioning of the public machine, in order to achieve the final services and functions, which often could not be provided without physical contact, this, which was limited by restrictive measures at the municipal, state and federal levels, since March 2020.

Currently, there are several demands that must be met daily and the expansion of the use of digital communication tools will be essential to improve the provision of services practiced by the Justice System.

In this work, which is part of the studies for the dissertation, the investigation of experiences in the use of digital communication will indicate if there are already standard procedures being adopted, or if it is necessary to look into its elaboration, understanding that its effectiveness depends on a professional and institutional investment of reinvention of the Justice System, which must follow the demands of its people and the characteristics of its time.

2 THE COVID-19 PANDEMIC AND THE INTENSIFICATION OF THE USE OF TECHNOLOGY IN THE JUSTICE SYSTEM

Within a year, the whole society had to adapt to a new reality with the measures of social isolation and distance; and since then, digital communication tools have been of great value, and information technology has been able to supply the most different demands, making it possible to maintain activities in different areas through the virtual environment.

In 2020 and 2021, the use of technology for communication purposes has been enhanced, since social distancing as a health protection measure has brought to light the difficulty of adapting to daily tasks without physical contact.

The virtualization and digitalization of processes and procedures, which have already been a reality since the last decade, were enhanced, and the role assumed by digital platforms as a communication

environment was fundamental for the population to access public services, realizing fundamental rights provided for in the Constitution (MILANI; CUNHA, 2021).

Examples of this transformation are found in the recent, and increasingly common, service through phone calls and e-mails; in the holding of meetings and gatherings based on platforms in virtual environments; in the intensive use of online messaging applications and cloud-based file-sharing software, as well as other procedures that have the virtual environment as their space.

If the transformations sustained in the advances of information technology are already reflected in the System of Justice Administration, it is intended that the present research, concerned with the implementation and improvement of digital communication tools that facilitate access to the organization, structure and legal language may contribute to the guarantee of the fundamental right of access to Law and Justice.

In this sense, in the field of Law and digital communication, debates are arising that seek appropriate ways to improve services, in view of the development of information technologies and tools that facilitate access, that promote dialogue, and that reduce costs and time invested by the Public Power.

One of the alternatives suggested is Visual Law, a transdisciplinary approach that combines Law, Design, and Technology to make legal language accessible to those who resort to it.

It is in the understanding that Law has been adopting and should expand, in the coming years, the use of information technology, that the innovative approach to the Justice System, its applicability and effectiveness is explored.

3 THE JUSTICE SYSTEM AND INNOVATION: THE MATURING OF THE RELATIONSHIP ARISING FROM COVID-19

It is considered a punctual aspect for the proposed analysis: the scope of the discussion understands the access to the Justice System, not only in its physical materiality, but also in its structure and organization, especially regarding the technical language widely adopted in Law.

The transformations resulting from the Covid-19 pandemic in the organization of the Justice System have provided an experience, and there are already evaluations about it (FARIAS, 2021; MILANI, CUNHA, 2021), that allows innovative proposals to take space and be implemented, with theoretical and practical accumulations of its operation, functionality, reception by operators and users of Law, and results.

In this scope, Administrative Law is understood as the administrator of public and social interests, which, under the light of the Constitution, architects the operation and structure of the State and its legal order (MOREIRA NETO, 2014).

Moreira Neto (2003) addressed the Administrative Law of the 21st century as an instrument for the realization of substantive democracy, and expressed his hope in the transformation of the configurations of social organization:

Thus it is that the expectation of 21st century democracy is not only to maintain and improve its formal aspect, of electoral suffrage, but also to add new forms of citizen participation in public choices, of innovation in the substantive aspect, with the establishment of conditions and axiological limits to give legitimacy to any of these choices - both of people and political actions - in both cases, under the mark of the growing submission of the exercise of politics to the law (MOREIRA NETO, 2003, p. 16 - emphasis added).

It is by following a theoretical path similar to that of the jurist, and proposing that society can make itself present in the spaces of Justice and access the structure, organization and legal language through new forms of participation, that this work intends to investigate how innovation has been reconfiguring the relationship between society and Law, and the reflexes of these transformations in the System of Justice Administration.

The ponderation between the benefits and weaknesses of the innovation discourse in the legal area has already been made by Mendonça (2017), the author indicates that it is necessary for institutions to advance without moving away from the real world.

When talking about Law and innovation, it is necessary to contextualize how and where the Justice System, its agents and the citizens who make use of it are located. A recent concept that has been debated in Brazil is that of smart cities. Smart cities are a phenomenon linked to urban organization in contemporary times, which is related to the insertion of people in the city space and its growing demand for adequate and effective services, whether in health, education, transportation, and also in Law (GUIMARÃES; XAVIER, 2016).

Of the common bases of smart cities, the triad stands out: attention to issues related to sustainability; intensive use of technology; and concern with human and social development, having in the coexistence in the city space the expression of collectivity (GUIMARÃES; XAVIER, 2016).

Considering, then, the reality and the demands of smart cities, the work is justified in the construction and defense of proposals for the adaptation of the Law, starting from the fundamentals that govern this new spatial configuration, which dialog with the concern presented in this work.

The growing use of digital communication tools, in the context of smart cities (GUIMARÃES; XAVIER, 2016) directs us to the adoption of these new approaches for serving the public and promoting access to Justice, in Law.

If this research was mainly in the theoretical field, it ended up being tested in advance in the context of the Covid-19 pandemic: in 2020 and 2021, restrictive measures such as isolation, social distancing, and lockdown adopted by several cities in the country potentiated the use of technology for communication purposes.

4 LAW, TECHNOLOGY AND LANGUAGE

In Law, several efforts have been made to keep the Public Power in operation and to update it: the remote work regime; the attendance via telephone and internet; and the realization of hearings and trial sessions through digital platforms have been configuring a new model of access to Justice (FARIAS, 2020).

It is possible to identify, since the beginning of the 21st century, innovations. There is the performance of the Judiciary: in 2004, the Creta system was created with the purpose of procedural follow-up; in 2009, this tool is developed with the Creta Expansion (CNJ, 2020). Still at that time, initiatives supported by the advancement of information technology arose "favoring the adoption of technological strategies that would allow the use of the software [Creta Expansion] in all court procedures in a configurable and flexible way, considering the peculiar characteristics of the procedural process of each branch of Justice" (CNJ, 2020, s/ p.).

In 2010, through technical cooperation agreement 43/2010 signed between the CNJ (National Council of Justice) and the State Courts of Justice, the Electronic Judicial Process (PJe) was created. Since then the system has been improved.

In addition, the Justice System already had other technological instruments, such as search tools and applications used for different purposes, among them communication.

This familiarity with information technology and digital communication even before the Covid-19 pandemic facilitated the transition necessary for the reorganization of work in this last period (FARIAS, 2020).

The technical knowledge and the constant use and improvement of these tools were fundamental for the continuity of the operation of the Justice System, as well as the maintenance of the provision of other public services, thus concretizing fundamental rights provided in the Constitution.

When addressing the transformations in the Justice System, one must consider that this is a path that has already been explored: technology is already present in Law, this reality was intensified in the years 2020 and 2021 and who knows, a key point of its theoretical and empirical investigation has been reached with the experience derived from the Covid-19 pandemic:

[...] The health of its staff was preserved, which was placed in a remote work regime, a model that was already very common in the Judiciary a few years ago and ended up becoming the predominant system during the pandemic.

All this concern to keep the Judiciary functioning during the pandemic, through the expanded use of digital tools that allow remote service, led to a clear reconfiguration of the model of access to justice (FARIAS, 2020, p. 100).

And being face to face with this new model, some considerations should be made: the first relates to the actual conditions of access to digital tools, i.e., the internet; and the second deals with the scope of the structure and organization, especially the legal language in relation to people who have, or will come into contact with Law.

According to the survey conducted in 2019 by the Regional Center for the Development of Studies on the Information Society, linked to the Internet Steering Committee in Brazil, at least 74% of the Brazilian population accessed the internet at least once in the 3 months prior to the survey. In this group, 90% reported accessing it daily (AGÊNCIA BRASIL, 2019).

As much as these data indicate an increase - according to the survey, of 3.3% per year since 2010 (AGÊNCIA BRASIL, 2019) - in the portion of the population that has access to the internet, the Judicial System cannot ignore that there are still representative 26% that could not count on digital tools in the service by the Judiciary.

The elderly population, for example, whose access to the Internet is somewhat distant, should be taken as an example. According to the survey "Elderly in Brazil: Experiences, Challenges and Expectations in Senior Age" (AGÊNCIA BRASIL, 2020), despite the increase in the number of people over 60 who said they knew about the term Internet (63% in 2006 and 81% in 2020), only 19% of the elderly make effective use of the network. The study also says that 72% of the elderly population has never used an application, and 62% have never used social networks. Thus, it is necessary to ensure the digital inclusion of this portion of the population, in order to realize the fundamental right of access to justice, as also provided by the Elderly Statute.

Thus, it is noteworthy that the research that has been discussing the remote services and the use of the internet by the Justice System during the Covid-19 Pandemic (FARIAS, 2020; and MILANI; CUNHA, 2021) do not annul the continuity of face-to-face services, nor does this work.

Digital communication should be adopted in those cases where it is feasible and beneficial to Law and Society, not limiting the continuity of public service and provision of in-person services, considering the lack of conditions to access the internet for part of the population. As Mendonça (2017) argues, innovation must go hand in hand with reality.

The second aspect highlighted refers to the scope of the structure and organization of the Justice System, with emphasis on the technical language adopted in the legal field, in relation to the people who have, or will come to have contact with Law.

This debate has been carried out by the most diverse areas of knowledge, whether in the Philosophy of Law, or in Sociology and Legal Anthropology; here, the topic is approached from the understanding of access to Law as a human right to understanding, and subsequently, dialogue is established with the fields of Language, Design, and Technology in the search for effective communication.

Democratic states must guarantee access to law and justice. This is expressed constitutionally in item XXXV of Article 5 of the Federal Constitution of 1988; and also in other guiding documents of substantive democracy, such as the Universal Declaration of Human Rights, of 1948; the Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950; and the World Charter of the Right to the City, more recent, of 2005.

We have tried to discuss the current reality and new possibilities of access to the physical materiality of the Law, by means of the effective assistance and applicable procedures. We will now consider the obstacles that, even after accessing the Justice System, the person who seeks legal support may face.

If, on one hand, the visible face of the law are the legal norms, on the other hand, the meanings that run through them are embedded with invisible meanings; in the space of the court, the rituals create the boundaries of space, transforming the ordinary into the extraordinary; for those who can perceive the meaning/significance there is the possibility of access, while others must continue on the 'other side of the line', which separates the accessible from the inaccessible; for the trained ear, the sound of law is quite (or at least relatively) harmonious, for those who do not understand its discourse there is the sound barrier, which gives way either to silence or noise (BRANCO, 2008, p. 7).

This silence is the incomprehension, the noise, the partial understanding. And if the communication barrier prevents full access, either to legal norms or to legal language (BRANCO, 2008), it is necessary to investigate where the limitations are and circumvent them in a propositional way.

In December 2019, the results of the "Study of the Image of the Brazilian Judiciary" were published, conducted by the Institute for Social, Political and Economic Research (IPESPE, 2019), in partnership with the Association of Brazilian Magistrates and the Getúlio Vargas Foundation.

Among the most perceived problems, the survey addresses the negative concepts about the Judiciary and indicates that, for 69% of the population, justice does not have a modern functioning; added to this is the perception that the legal language is barely understandable for 87% of the population (IPESPE, 2019).

Legal formalism is characterized by the exacerbated use of "archaisms, bureaucratic terms, hyper-specialization of terms, excessive remissions" (SLAIBI, 2017) and adopts an unobjective style.

Proposals to simplify legal language have been made by law researchers (BRANCO, 2008; RODRIGUEZ, 2015; SLAIBI, 2017; GUIMARÃES, 2019) under the argument that "law and its operators do not speak only for themselves. They speak for a wider audience, society. And therefore, it is a public language that should be accessible to all" (GUIMARÃES, 2019, p. 32-33).

One of the possibilities that technological advances and the interdisciplinarity of Law presents us with is Visual Law, a tool aimed at simplifying jargon and legal language, which seeks communicative effectiveness and efficiency between society and the Justice System.

5 VISUAL LAW: AN INNOVATIVE PROPOSAL

The transformations in the Justice Administration System driven by innovation promote greater access to the institutions and language of Law.

The transdisciplinary approach finds support in other areas of knowledge to improve legal practices, following some paths more familiar to Legal Sciences, in the intersection with Language, for example; and others of recent approach, by proposing dialogue with Technology and Design.

In this context, there is a tool that makes it possible to make legal information and procedures more understandable and intuitive. This tool, which has been called Visual Law and has recently entered the debates on Law and innovation in Brazil, is based on three axes: Design, Technology, and Law (HAGAN, 2017).

Design would make information more attractive and understandable; technology would make people's actions occur more effectively; and Law would be responsible for promoting a fairer society and empowering people. At the intersection of these elements is Visual Law (HAGAN, 2017).

For Hagan (2017), Law, and any other legal dealings, should adopt the tool to the extent that they communicate complex concepts, produce technical [written and oral] texts, and, as other scholars have pointed out: legal discourse needs to be accessible, with the meaning received by the one listening or reading Law matters being the same as the one that was intended to be produced.

There are different instruments and methodologies that this tool uses to make legal language accessible to society: images, charts, flowcharts, key words, glossary, comparisons, metaphors, summaries, reinforcement questions and highlights are examples that illustrate its communicability potential.

The application of Visual Law is not limited to virtual environments, so it can be adopted by the Justice System widely, in the medium - in person or virtual - as it best suits it.

And if, especially during the years 2020 and 2021, virtual environments and digital communication tools have already been developed and incorporated into daily life, the extension of this use must occur, improving it and seeking to diagnose where its weaknesses lie.

We resume what is proposed by Mendonça (2017), who indicates that innovation in Law follows a dynamic of progress and regression. Therefore, innovative means and forms should be tested, measured, revisited, and regulated as their applicability and effectiveness are presented to the Justice System.

6 FINAL CONSIDERATIONS

The present study has as its research problem the reflexes of the adoption of digital communication tools by the Law operator and asks: how does innovation affect the relationship between society and Law institutions?

The pandemic context has enhanced the use of digital communication tools in Law. What was already being done slowly, was accelerated with the restrictive measures enacted throughout the country, and the online work was adopted by Law agents, involving from their office work, which began to be done at home, or in a system of interspersed work; to the holding of meetings and attending to the public, which took place remotely. This transformation allows the impacts on the daily life of both the Justice System and the citizens who seek this service to be measured.

Through investigations already done by other authors it was possible to identify the adoption of meeting platforms and meetings in a virtual environment, online message exchange applications and cloud-based file sharing software.

This implementation occurred gradually, and was guided by local and regional demands and possibilities; a protocol that aims at its maintenance or continuity after the pandemic has not yet been established.

Thus, it is indicated the need to systematize the work from these new environments, which make use of the digital communication tools mentioned above; as well as local and regional evaluations that gather data on demand, access to the Internet and other technologies, the effectiveness of services already provided remotely and virtually, and qualitative information about the need to maintain face-to-face activities.

With the consolidation of these practices, the development and investment of time and budget in technologies that can further improve service and seek to guarantee society's constitutional right of access to justice, the discussion about legal language also allows alternatives to the technical and not very understandable discourse of Law to be proposed, one of which is Visual Law.

This tool, which has recently appeared in the field of Law studies and Brazilian Innovation, is capable of simplifying legal information and procedures that, for those who are familiar with them, are everyday; but that are received with strangeness and difficulty of understanding by people who are not directly involved or have little contact with legal language.

Furthermore, the broad use of Visual Law by Law operators meets the expectation of modernizing justice, through the transdisciplinary approach and communicative potential.

Finally, it is considered that, through the complementary adoption of digital communication and the maintenance of face-to-face services, to the extent of the limitations of internet use by the population; and the implementation of the Visual Law tool; or similar communication strategies, legal services and communication become more effective.

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