THE ART OF DISCOURSE AND CONTEMPORARY LAW [1]

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Abstract
The art of discourse was (and it should still be) one of the main strengths of law professionals alongside with solid specialty knowledge, patience, perseverance, quick and logical thinking, openness to anything new.
Obviously, a successful discourse is based on elements related to psychology, anthropology, sociology, all these favourably intermingled to generate a register that is common both to the sender and to the receiver at the same time, and to create the premises of a feedback. Moreover, any legal speech cannot be a convincing one if we resort strictly to technical, specialty terminology.
The article herein is intended to demonstrate how the evolution of Romanian law from the last decades in conjunction with the turmoil in the area of legal practise have led to a change in mentality (to our point of view) with regards to the generation and structuring of the discourse as well as presenting it before interested auditorium.
Key words: *Discourse, speech, law, oratory, lawyer.*

1. Introduction

Communication resembles a "thick cloud" that is endlessly "blown away and shredded to bits" by the winds and that "floats above almost all sciences" [2],[3] the field of legal studies is also directly connected to anything meant by communication, speech art, message (be it verbal or nonverbal).

As for the contemporary speech of a legal specialist – lawyer, judge, prosecutor or counsellor – does it really presuppose prior training and preparation, research, struggling to write the finest phrases possible, reviewing the text, etc?

Once with the drafting of this material, I had the opportunity to apply certain questionnaires to people of various professional training and belonging to different environments (students, MA students, legal advisers or lawyers) and I was able to find out at least part of the reason why after centuries of training in the art of oratory and after the foundation of (since early Antiquity) major schools of oratory, common people, including those specialized in legal studies, are afraid to speak publicly and find is difficult to structure and present a public discourse.

Of course that such fright may be explained by various reasons, some of which may be considered ridiculous or even childish. However, according to recent research, due to a genuine “epidemics” of specialized information, it is difficult to find the path towards a legal discourse that is precise, coherent and to the point.

At a first glance, my research enabled me to note that people, in general, are afraid of the ridiculous. And sometimes this fear is so powerful that, paradoxically, it is compared to nothing less than the fear of death! Furthermore, such ridiculousness is becoming stronger and stronger depending on the sort of the “public”, namely a specialised one with solid knowledge of the terminology or of the issue under discussion, the speakers have to present their discourse to.

In one of the works studied for the material herein, namely Adrian Toni Neacşu – Convinge judecătorul! Tehnica şi arta convingerii instanţei (trad. Persuade the judge! The technique and the art of persuading the Court of Law),[4] in the third part entitled “Speak to persuade the judge” the author created a genuine set of rules that are worth being applied by the lawyers while supporting their closing arguments so that they are both as effective as possible and to pleasantly surprise the judge, to attract his or her attention to the case and the solutions suggested by X, considering that the judge is overcrowded and tries to equitably divide his or her attention to all the cases heard in a particular session. “Speaking before the Court of Law is mainly an issue of communication”, he would point out. It is a matter of efficiency not of verbal mastery. Just like any other method, the judicial communication that I am thus advancing, has its own set of rules, techniques and specific instruments. Its fundamental values are pragmatism, realism, minimalism, efficiency and disambiguation” [4].

Starting from the question “Why do you think people (including legal professionals) are afraid to speak in public?” I received the following arguments (from different students, MA students or legal advisers in 2019, generally people between 19-55 year old):

- not trusting oneself and one’s abilities;
- under appreciation;
- innate traits (shyness, emotivism);
- considering own discourse as being dull, lacking value or persuasive;

- inconsistency in own thoughts or opinions;
- lack of solid professional training;
- lack of experience (in case of interns);
- insufficient documentation, lack of solid knowledge;
- fear of not offering wrong data or that may be misinterpreted;

"Making the simple complicated is commonplace; making the complicated simple, awesomely simple, that's creative." would say Charles Mingus.

Following Pythagoras in his ascetic programme: "Be silent or let thy words be worth more than silence. Soon throw a pearl at hazard than an idle or useless word; and do not say a little in many words, but a great deal in a few" [5],[6],[7].

Other reasons would be:

- the overwhelming fear of failure, of losing the case/ clients due to subjective reasons, related to the nature of the discourse or the way information was exposed (closing statement);
- the fear of losing the interest of the public (it is important to remember that the "target" of our interest in the case of closing statements that are presented in spoken form, should be the judge and not the public!); the speech of a legal specialist needs to be as spectacular as possible; however, on should avoid turning it into a cheap show meant to attract potential clients who have no knowledge of the legal regulations and are temporarily delighted of the lawyer's theatrical representation; the speech must not have the unfortunate role of losing the attention of the magistrate;
- limited vocabulary; a prodigiously technical vocabulary that is yet limited to specialty matters may bore anyone, therefore the best instance is that when the technical and legal registers are intermingled with carefully chosen humorous phrases and why not references to literature or even life experiences that are finely presented and strictly related to the case on trial;
- the fear of not being erroneously "labelled" as a result of a oratorical failure.

"It is evident that speakers are framed into their own era and are regarded taking into account the specificity of that particular period alongside with the evolution of the language (i.e. Latin) as a means of expression". For instance, Cicero considered "D. Brutus was a man who spoke wonderfully for his age, while Cato's speeches, despite

being exceptional and also characterised by perceptiveness and finesse in choosing, as well as gravity and sobriety in exposing arguments, acerbity in criticism, ponderousness in eulogies, they were disadvantaged by the asperities characterised by the language at that time" [8], [9],[10].

2. What makes a legal specialist's message/ speech valuable?

Cicero would note in his works De oratore....and Brutus... that "the orator needs to be able to be neat and clear in stating the nature of his subject, warm and forcible in moving passions. He needs to have a profound and perspicacious spirit so that he may identify the heart of the matter, elegant diction, faithful memory, so that the speeches are finely articulated, without reiterations or inconsistencies, so that any attack from the adversaries may be counterattacked" [11], [9, pp.167-168].

Approximately two thousand years later, after having observed the oratorical impediments experienced by our legal specialists, we ask ourselves what makes a legal speech credible and what makes the speaker interesting?

Some specialists [12] would lay an emphasis on:

- the speaker's character, the expressiveness of the speech;
- the logic of the discourse;
- the quality of the information, its being to the point;
- the combination of specialised information with illustrations derived from literature or even the media;
- the impact of the on line environment and its influence on the discourse;
- other characteristics: the speaker being also a good listener, building his or her own credibility by adapting to the environment/ public, finding and using other trustworthy data (the quality of the information),
- managing the anxiety related to speaking in public [13].

Others considered that the extent to which a message may be considered original, is given by the type of used data. From a quantitative point of view, information may be measured both when it is issued as well as when it is received, so that one may accurately measure to what extent a message contains more information that another. With the intention of making sure that the message is accurate, the sender may be

preoccupied by issuing more information that would be required. Redundancy thus emerges, “the selective excess of signs to those that would be enough in order to convey the same quantity of originality” [14],[15],[3, pp.6].

It is important to remember that the rhetoric speech is present in areas of communication that aims at imposing opinions and ideas, chancing or keeping attitudes or behaviours: advertising campaigns, PR campaigns, elections, the Court of Law, managing the masses, education etc. furthermore, taking account of its wide sue, the rhetoric speech is mainly characterised by efficiency. A rhetoric speech may only reach its goal, that is to influence the public, it needs to fulfil three qualities: “ to please, to instruct, to assume” [16],[17].

Alongside with the formal characteristics, the power of persuasion also depends on the ethical involvement of the user. From this perspective, the speciality literature identified six “powerful weapons” that are successfully used in persuasion: sympathy (people offer credibility to those who sympathise with them); reciprocity (people usually respond with the same attitude); social proof (people respond in an affirmative way to the argument of the majority); commitment (people seek to o keep their promises); authority (people accept arguments based on authority – people of the law); rarity (people grant more attention to exceptions and arguments based on concluding examples) [18][,17, pp. 295].

2.a. The qualities/ traits of a remarkable legal speech as revealed by respondents:

The contents and the manner chosen to communicate are influenced by the context. Its evaluation also implies the analysis of certain contextual dimensions: physical, temporal, cultural, social and psychological. The receiver’s capacity of comprehension must never be ignored and the message needs to be carefully constructed. The intelligibility of a message is given not only by the amount of new information in terms of contents and form, but also but the structure that may be either excessively elaborated or to common and predictable. [3, pp. 7].

2.b. We consider that the following aspects related to the legal speech will turn it into a speech that is either of an exceptional quality one or at least up to standard:

- the grammatical accuracy of the sentence, its precision;
- the logical placement of the arguments in the presentation;

- flow, fluency, usually required in a free presentation (not read!);
- avoiding excess negations, attacks on the person;
- the technical information should be combined with the appeal to concrete cases (briefly, at the beginning of the discourse related to the case itself, but avoiding the emphasis on the case, already well known by the judge);
- presenting information to the point, avoiding deviations from the core of the problem;

That is why we have an opening argument:

a) "The topic is related to the theory of your case. You will have to combine the relevant facts that give the right of the party you defend to a favourable verdict. It has to be general" [19].

b) The trial consists of a series of small fables, and the fable has to focus on people, not the problem;

c) An effective opening argument is not very long but includes all the essential elements [19, pp. 10-11].

Then, in the end we have a closing argument :

a) The closing argument is exactly about the argumentation, not the reopening of the case in all its complexity, or the resumption of evidence and the tedious reading of the witness statements;

b) The time factor must be efficiently dosed in the closing argument [19, pp. 41-44] – an excessively ample closing argument is not necessarily a very valuable one, as the conclusions can be submitted in writing, so that in the final speech the lawyer should focus on the details that he thinks would confer strength to his case.

Other aspects that make a valuable speech could also be :

- intonation / tone (I saw lawy valuable ers who bothered by too much tone or by an exaggerated emphasis, although their speech was correct and well-grounded);
- the sense of humour / the call to small humorous tricks designed to relieve the tensions and to get "captatio benevolentiae" (concrete case: "God has endowed the defendant today with an impressive physical appearance, but unfortunately ..... God stopped here")[20];

- relevant research of the necessary aspects for the defence (plans, technical documentation, details from the experts - even if the lawyer is not a specialist, he must seriously lean on these details and master them);
- providing novelty elements strictly related to the exposed issue (jurisprudential, doctrinal, etc.);
- avoiding the excessive use of strictly theoretical references to the value of jurisprudence, although it is not recognized as a source of law);
- avoiding too long quotes [4, pp. 137].“There are rules about how to speak and there are rules about not to say! ”Those who persist in saying irrelevant things after a rallying by the judge risk punishment for contempt, and thus it is no exaggeration to describe a trial as a place people run the risk of imprisonment for saying things that a government official, a judge, believes to be unrelated to the matter at hand” [21].

We can also give other example, such as:
- not to make reference to evidence that has not yet been administered [4, pp.238];
- visual contact with the Court [22] (many speakers avoid making visual contact either because they are too shy or for fear of not observing the judge disapproving them);
- the ab initio understanding of the fact that the judge is not necessarily "a passive interpreter of the legal norm, under the absolute authority of the legal regulations / the law “[23];
- the lawyer must understand, in order to win the case or at least, to ensure a decent presentation of the conclusions, that "communication also relates to the power relations existing between the participants" and that "it involves the necessity of accommodating and adjusting behaviours”[3, pp.6].

3. Conclusions

One of the strengths of a good lawyer / legal counsellor is his speech - a real business card that indicates from the very beginning relevant aspects about his / her training and the way he or she approaches matters.

Of what was observed in practice (observed "in court"), the current era is no longer an era of theatricality and emphatic discourse, which once conquered both the audience and the judges. Although nowadays we may observe a different, more concise style,

based on the precise details considered relevant to the case, I think that most cases lost the charm of the ample, consistent and carefully prepared speeches of the type specific to the interwar period, when such a plea was prepared for months, becoming a real page of literature (for example Deleavrancea [24] in the case Caion–Caragiale-press defaimation):“ *Gentlemen, a Caion has well become aware of his littleness in addition to the monstrosity of the accusation. And not from his youthfulness, but from the cold account of his early pervasiveness, he understood that in order to hurt a Caragiale he needed some palpable appearances, some evidence that escaped from the usual arguments. Even before calumny he committed another crime, he invented an author and prepared some sheets. Well, gentlemen, this Caion has calumniated Caragiale. He invented an author, invented a translator, plastered a few pages he printed in Kirillic letters, and tried, armed with material evidence, to shatter and destroy a national pride. And yet why did you say that you have not judged such a case, in which not only a sore calumny, but also a startling fake, is punished! A perverse, moved by the abject hatred, seeks revenge against an opponent. He would want to involve him in a theft. It needs an inconvertible proof. And he does not find anything more appropriate to his hate than to imitate his writing and signature”* [25].

As finely observed by Istrate Micescu, the illustrious man of law who dominated the Romanian legal scene in the interwar period, unlike the other sciences that "are satisfied to conclude what it is and to express what it finds, the Legal Sciences are remarkable, the Legal Sciences have an extra claim: after having found, after having noticed, after breaking off the relationships as they are, they needs to judge them taking account of the moral values and, instead of looking with resignation to what it is, to impose with authority what must be” [26],[27].

It is certain that a lawyer's concluding argument should not reach the sensitivity of a motivational speech, nor fall into the ridiculous and banal of a talk of a worthy scandal television by appealing to person attacks or a tantalizing tone towards the party -or worse, the advocate of the adverse party.

Finally, following all the technical matters presented above, we emphasize that, since in all cultures the tone makes music and the beautiful words are crystal, while silence is diamond (ancient wisdom), it would be desirable that a pleasant and civilized

argument to represent the fortunate combination of serious and documented moments of argumentation with small moments of humour of good taste or wise silence.

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