

Judicial Dialogue - Graphic Narrative Perspective (Computing Environments and ICT Law / Conflict Resolution in Virtual Locations)

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Abstract

The lack of legal knowledge and the complexity of legal language, along with the complexity inherent in the legal and administrative proceedings of the courts are identified as the most relevant constraints to the dialogue between citizens and judicial systems. This paper presents an innovative knowledge representation model to promote the judicial dialogue. The proposed model adopts an intersemiotic transformation for the judicial dialogue, through graphic narrative. The graphic narrative, as a form of intersemiotic representation, is directly related to the construction of communication structures, facilitating knowledge transfer in the legal context, using a simple and natural technique for concept organization and communication.

1. Introduction

The citizens' right of access to Justice has become an important issue in the context of comprehensive reforms where the relationship between citizens and judicial systems became mediated by information technology [1]. In many European countries, this strategy reflects the prospect of reform and modernization for the whole public sector, a general movement that became known as e-Government REF.

E-Government is seen as a promoter for better governance, placing information technology (IT) in the centre of the reform and modernization of public administration. Most often, IT-centred projects trigger the modernisation of organisational structures, adoption of process orientation and process support, more accountable regulatory frameworks, and efficient management of existing human resources in public administration [2].

Over the last two decades, a set of national projects has been specifically developed in various European countries (MCO-Money Claims Online, England and Wales; Tuomas/Santra, Finland; e-Barret, France; Procedure Civile Telematico, Italy; Citius, Portugal; ERV/WebERV, Austria) to modernise judicial systems, a movement known as e-Justice. Two key characteristics of these projects is using electronic media with the aim of improving two-way communication with citizens and radically changing the document management infrastructure. Of course such changes have significant impacts in the European legal frameworks, which have necessarily been adjusted [3, 4].

Very often e-Justice tends to be reduced to the domain of public administration reform, as a way of exploiting IT in the organization of judicial systems and their institutions towards more efficient public services [5]. However, we seek to expand the e-Justice concept towards improving direct access of citizens to Justice. Our research is guided by a vision of giving any person the right to defend themselves (disintermediation), as referred in the European Convention of Human Rights, and also allowing the resolution of judicial processes to be performed through the system (virtualization), minimizing the number of visits to the “traditional” court.

However, the lack of legal knowledge and the complexity of legal language, along with the complexity inherent in the legal and administrative proceedings of the courts, are identified as the most relevant constraints to disintermediation and virtualization [1, 6].

Modern judicial systems are enormous constructs of administrative and legal instruments. The body of judicial proceedings, legislation and specialized literature, which are linked to each other in many different ways, only serve those who have sufficient background to understand the legal language and the nature of the legal order. Anyone without legal education will get lost in the multitude, high number and complexity of formal sources of law. Such situation cannot be changed by simply making legal sources accessible through the Internet, because the problem is not the on-line/off-line dichotomy but instead the inadequate support to non-legal professionals [6]. For instance, legal language practice includes the use of complex grammatical structures, Latin and archaic phrases. These are common as a form of legal jargon but do not take into consideration the readability for non-lawyers. Many legal terms also have a constructed meaning, sometimes having hardly any relationships with the “common sense” meaning of the same term [6, 7, 8, 9]. In order to foster disintermediation and virtualization, we should develop e-Justice systems providing access to justice, guaranteeing the freedom and the will of self-representation, and using a clear and accessible language. Quoting Velicogna [10], “paradoxically, in some cases, a system of e-Justice, instead of reducing the intermediation and promote openness and ease of access to the courts, restricting their access to certain professional groups and reduce it to a restricted set of specific procedures”.

The main contribution of this research includes an innovative knowledge representation model for the resolution of simple judicial processes, which adopts an intersemiotic transformation of the judicial dialogue through graphic narrative. The graphic narrative, as a form of intersemiotic representation, is directly related to the construction of communication structures, facilitating knowledge transfer in the legal context, and using a simple and natural technique for concept organization and communication.

2. Evidence - The Complexity of the Legal Language

Understandability is one of the key aspects that should be considered when discussing the fundamental right of access to Justice [11]. If the law intends to regulate human conduct and be an institutional headquarter for conflict resolution within a community, it necessarily has to know how to communicate in a language that is understandable by the community [8]. According to Carmo [11], we should reflect on one aspect of great importance—not always recognized in the functioning of the Justice system and its relationship with citizens—the understandability of judiciary discourse. The recipients of judicial acts are not only magistrates and other elements of the legal domain, but also ordinary citizens, subject to Justice, who have to know, understand and comply with it. The concept of clear language means using a style of language appropriate to the literary

skills of the recipients of the information, explaining the more complex terms and conveying the text to make its structure noticeable. A document is considered “plain” when it enables its reader to find what she is looking for and using that information to achieve the intended goals [12].

For Rodrigues [9], legal language is an obstacle for effective communication in the court. Although the courts are a social phenomenon, their language does not appear to be organized to be socially understandable. In this sense, legal language gets, from the common citizen, always the same assessment: difficult to understand, hermetic, opaque, complex and codified. For Aguiar e Silva [8], it is the written language of the law (judicial decisions, jurisprudence and legislation) that receives more negative reactions from common citizens, who feel that such language does not serve as a means of understanding the law, but rather as an obstacle to the understanding of the law. In this sense, it is arguable that reading legal documents raises from common citizens the broadest questions relatively to their meaning and scope.

Access to legal information in plain language might seem a trivial principle, but it is not. The simplification of the written language of the law, or its understandability, poses in practice some issues that are hard to solve. For instance, many stakeholders in the judicial system defend the need to maintain legal accuracy and normative rigour, minimizing the existence of alternative readings and loopholes in the content of judicial texts [13].

Aguiar e Silva [8] says that it is precisely these interests that lead to the differences between legal discourse and everyday language. In our view, the resolution of this “discontinuity”—between the requirement for understanding judicial information and the requirements for accuracy and normative rigour—urges for the emergence of a process of mediation between the legal domain and the ordinary domain. We seek to build a communication platform that brings together different linguistic practices, objectives and cultures. We are mainly interested in building new forms of representation for judicial proceedings, making them more understandable to their recipients but without prejudice to accuracy and normative rigour.

Research in the e-Justice domain is expected to bring a new vision on how disputes may be managed and resolved [5]. The communication procedures implemented in these systems generally reproduce the traditional written and oral forms of communication. The use of other forms of representation, such as pictures and graphics, has not yet been explored.

We hypothesise that pictures may improve the understandability of legal knowledge while at the same time retaining sufficient accuracy and the legal rules found in current judicial information representation.

3. Relevance - The Judicial Process as Narrative and Linguistic Intermediation

The judicial process is, as first instance, a process of building a factual story, founded on the basis of a set of arguments that are arranged in a temporal order [8, 14]. The statement of claim and the statement of defense are examples of this. The judicial process is, as second instance, identified as a linguistic intermediation process [6, 8]. This process of transposition of a language expressed in any particular semiotic system into another semiotic system happens, for instance, in the various stages of a judicial process.

Law practice lives on narrative [14]. Without the universe of narratives there is no access to human experience. The narrative is materialized in the form of stories, descriptions, and reports communicating the events of everyday life, the real experiences. Narrative began to acquire some importance in the judicial universe since the seminal article of Delgado [15], in which he explores the ideas of using the potential of narrative to understand Law and as a tool available to ordinary citizens, traditionally relegated to the periphery of Justice systems.

A judicial process is always started from a narrative of concrete situations, involving people and real facts, located in time and space. Since the facts cannot speak for themselves, a narrative becomes necessary for the elicitation and reconstruction of events, from the past to the present. From this perspective, the judicial process can be understood as a process seeking to “tell the various stories” [8]. Amsterdam and Bruner [14] point out that “Clients tell stories to lawyers, who must figure out what to make of what they hear. As clients and lawyers talk, a client’s story gets

recast into plights and prospects, plots and pilgrimages into possible worlds. [...] the lawyers retell their clients' stories in the form of pleas and arguments to judges [...]. Next, judges retell the stories in the form of instructions, deliberations, a verdict, a set of findings, or an opinion. [...] This endless telling and retelling, casting and recasting is essential to the conduct of the law. It is how law's actors comprehend whatever series of events they make the subject of their legal actions. It is how they try to make their actions comprehensible again within some larger series of events they take to constitute the legal system".

The last quote illustrates that the essence of a judicial process is a two-way language translation through which one must move from common language to legal language and from legal language to common language. The transformation from a source, defined in a representation system, towards a target defined in any other representation system is conditioned by the appropriateness of the target to the new context. The source can be translated in various ways, adapted to a target context, which depends on the desired function and field of arrival [6, 16]. What is important to consider is that the target is functional for those intended. For Aguiar e Silva [8], considering the scope of translation is critical to address numerous difficulties encountered by those seeking to communicate across different periods of time, social classes, cultural sensibilities and professional groups.

Jakobson [17] distinguishes three types of translation: (1) between different languages, which is an interpretation of verbal signs by means of another language; (2) translation into the language itself, or rewording; and (3) intersemiotic translation (or transmutation), which is an interpretation of verbal signs by signs that belong to non-verbal signification systems (and vice versa). For Jakobson [17], intersemiotic translation allows the transposition between several communication formats, such as text that is transformed into drawings and drawings that are transformed into text. Our research adopts the intersemiotic approach to model judicial dialogue.

4. Innovation - The Judicial Process as Graphic Narrative

We consider the construction of judicial dialogue using two simple techniques: narrative (story-telling) and graphical narrative. Admittedly, the distinctions between these two techniques are somewhat arbitrary. The basic principles of narrative are the same, whether a story is written or drawn [18]. Unlike pure narratives, graphical narratives deal with two major communication devices, words and pictures. They are derivatives of a single origin and mutually complementary. Their juxtaposition has been experimented with from earliest times [19]. In this case it is not just a question of complementarity, but of mutual reinforcement. Many studies on the psychology of learning show that understanding and retention of information improves if pictures and text are used simultaneously [20]. In writing with words alone, the author directs the reader's imagination but the reader always does mental imaging. In graphical narratives most mental imaging is done for the reader, which leaves less latitude for imagination. A mental image once drawn becomes a precise statement that brings little or no further interpretation. When the two are "mixed", words become connected to mental image and no longer serve to construct a representation but rather to provide dialogue, connecting narrative and mental image description [19]. In this perspective, graphical narrative meets the need of legal rigour, minimizing the emergence of alternative readings, and the need of common citizens that pleaded for a change that responds to a greater proximity between citizens and the law.

Usually, the use of pictures serves to situate the action of words, to better explain concepts and procedures, which words alone could leave to imagination. One example of this is the instructional form of graphical narrative. Here, the communication medium serves to teach something specific and there are two forms of graphical narrative: technical and attitudinal [19]. The technical graphic narrative, in which the procedure to be learned is shown from a reader's point of view, gives precise instructions about a set of tasks generally associated with such things as assembling a product, testing a product, and using a product.

Another instructional function of the graphical narrative is conditioning an attitude towards a task. The relationship and identification evoked by a dramatization consisting of a sequence of figures

is in itself instructional. People learn by imitation and the reader, in this instance, can easily supply the intermediate or connecting actions from her own experience necessary to reach the final goals. Broad generalization permits exaggeration, which can more quickly make the point and influence the reader [19]. There are also examples of practical use of graphical narrative in teaching [21], in the practice of medicine [22], in teaching Enterprise Management [23], in Business Process Management [24, 25], in the development of human-computer interaction systems [26, 27], and in Software Requirements specification [28, 29].

However, graphical narrative as a form of communication does not have yet any practical significance in the judicial domain. There is no scientific documentation referring to the use of graphical narratives in judicial systems. For Boehme-Neßler [20], it is their informal nature that explains the conceptual gaps between the notion of justice and mental imaging through pictures, and justifies much resistance to use in the judicial universe. Writing and text have for long been considered the basis of a judicial system. Writing and text are stable and perceived to create stability.

However, for Boehme-Neßler [20], pictures are necessary in the law because visual communication can be more comprehensive than text-based communication, including substantially more aspects, types of information and factual contents. Pictures can transmit mental images which simply cannot be transmitted using text. For instance, pictures can be extremely helpful with spatial thought. The human ability to visualise spatial information is limited. Sometimes legal arguments depend on spatial elements and relationships, and therefore fairly often use pictures. A good example is given by law cases related to traffic accidents [20].

Besides, in low literacy communities, pictures may have an important complementary function by illustrating, clarifying, simplifying, and reinforcing words. They appear as a supplement to oral and written information. They make the subject and intentions of what is being said or written more understandable and so significantly strengthen the communicative effect [20, 30, 31].

5. Graphic Narrative Composition

Our graphical narrative approach to judicial dialogue is inspired by previous research on humanistic business process modeling [24, 25]. The humanistic business process model proposed by Simões et al. [24] and Antunes et al. [25] is organized around stories and assumes that a business process can be described as a story with several scenes describing recurrent situations and activities (e.g. a meeting and signing a document). A library with generic scenes is at the core of story composition, since most modeling work consists exactly in selecting scenes from the library and configuring them to convey the story being developed. It is assumed that users are responsible for configuring scenes towards a meaningful story, grounding generic pictures in reality through dialog lines and annotations.

This model of “generic scenes” fits in the definition of patterns given by Fowler [32] and stereotypes given by Eisner [18]. Fowler [32] defines pattern as an idea that has been useful in one practical context and will probably be useful in other contexts. Fowler [32] uses the term “idea” to highlight the fact that a pattern can be anything. The term “practical context” reflects the fact that patterns are developed from experience gained in the analysis of real cases. The use of stereotypes to characterize different characters accelerates the understanding of readers and gives the “narrator” an excellent tool to explain the form of acting of its characters [18]. To facilitate mental imaging, in the context of graphical narratives, pictures should be based on minimalist forms of representation, which are limited to the presentation of what is strictly necessary.

In this sense, a generic scene describes a recurring problem facilitating, through a common representation, communication and learning. A generic scene defines the actions and relationships that exist between the various elements represented there, without specifying the details involved. The detail for a particular case can be defined in the text component (bubbles/balloons and annotations) and reinforce the representation of the set of generic figures. In the judicial dialog model, we use bubbles (or balloons) and annotations panels as a standard form to report speech or thought. The bubble is the space in which most of the verbal dialogue text is contained. Unlike the bubble, the annotations panel is not positioned inside the figure, but is always a separate entity

(for example, at the bottom side). Its function is to add information to the dialogues contained in the figure [33].

From this perspective, the informal reality offered to the common citizen is symbolically transformed, reorganized and decoded, in the opposite way of the formal reality offered to the common citizen in “traditional” judicial processes, which was symbolically transformed, organized and codified, in relation to the universe of common citizens. What is fundamental, and what dominates this whole process of representation, consists of resigning not to describe everything, not to retain everything, picking out the most important aspects, and being able to convey that contents through a language functional to its recipients.

6. Example

For elucidation purposes, the following example use graphic narrative as a way for the common citizen to engage in dialogue with the court. The example is related to a car accident which, not having the parts involved reached an agreement, concerning the concept of public way, had to be resolved in the Portuguese courts (Tribunais Cíveis de Primeira Instância), being in question the correct interpretation of articles 1, 29, 30 and 31 of the Portuguese road traffic regulations. The example is made up of six graphics, correlating to the Author’s description of the accident, in the making of her statement of claim, to the court.

The Author, based on a group of scenes, describes, in space and time, using plain language, her version of the occurrence. She adds a set of “dialog bubbles” and annotations for each of the scenes, in which she explains her interpretation of the accident. She begins by placing the accident in time and space (Figure 1). Next, she put into context the special circumstances of the accident, describing the type of access way to the car parking, and the slope of the way (Figure 2 and Figure 3).

With these two graphics, she aims to show that the way the car was using to access Infanta street was a place for parking and that, as such, the defendant should have stopped before entering Infanta street. She concludes her narrative with the description of the collision and the damage caused to her car (Figure 4, Figure 5 and Figure 6). It should be notes that the Author does not explicitly mention the legislation.

However, these pictures are reusable in the context of the other intervenient narrative in the judicial process – the defendant’s, in the statement of defense. Based on the same scenes, the defendant may build his version of the accident, placing in the scenes’ “dialog bubbles” and annotations his narrative. For example, he may with scene 3 tell that, him coming from a public access way and not having any sort of stop, or priority loss signal, the Author was obligated to give him priority.

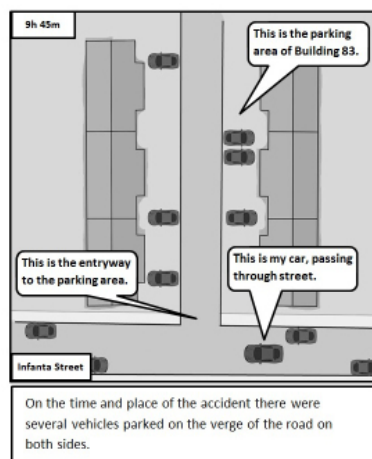


Figure 1. The accident in time and space.

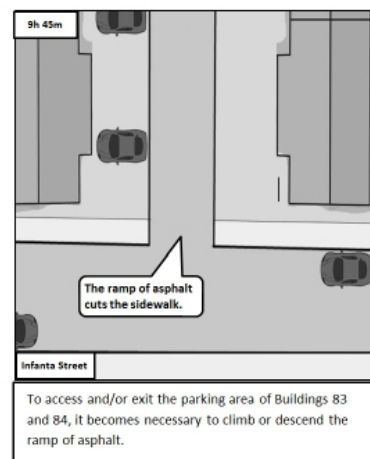


Figure 2. Access way to the parking/street.

7. Next Steps

The model explained in this article will form the basis for further research into judicial dialogue methods. Important research lines concern: (1) making explicit, by graphic narrative, the implicit sources of the law, usually based on more abstract concepts; (2) identifying which metadata for the figures are relevant in the legal context; (3) defining a Document Type Definition (DTD) that structures the information that appears in the figures.

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