

RHETORIC IN LAW, ITS IMPORTANCE AND DEVELOPMENT

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Abstract: Rhetoric is the art of speaking effectively, with the aim of convincing others using words and arguments. Not all people are good orators and not all have good persuasive skills because rhetoric has to do with the use of a rich, constructive, logical and informative vocabulary. Rhetoric as an art also includes the legal field. Nowadays, when communication is a very big force and while the world is always more dynamic with its rules and changes, legal rhetoric has taken on a new importance. Legal rhetoric has taken on a new importance. even the sophists who studied and practiced rhetoric were lawyers and its practice in a democratic society is essential.

Legal rhetoric helps lawyers and not only criticize the law, rules, ethics and standards. Therefore, according to legal rhetoric, it is not only a system of rules, but together with rhetoric, they make the law a rhetorical art that regulates and manages society in a more efficient way. Courtroom rhetorical allows jurors to be more persuasive in the courtroom by using rhetorical skills, while people who study the field of law interpret the law to the audience. In this paper, the definition of rhetoric, its origins and the importance it has in today's society, mainly in the legal field, will be determined.

Materials and methods from legal institutions, universities, scientific researches on the art of speech and law were used for this work. Someone said that rhetoric as an art was not learned nor was it born in law schools, but as an art of communication in society, then we must first look at the rhetoric of Ancient Greece and Rome to understand the importance of using it in legal practice.

Legal rhetoric is more important in the last decade because laws and quasi-practices have taken on greater importance. A good lawyer needs to possess a good rhetoric which he will build on the basis of evidence, logical argument and the law.

Keywords: Legal practice, rhetoric, courtroom, law, arguments.

1. INTRODUCTION

Law is a discipline and a profession that deals with the practice of rules for the organization and management of a society or community. Laws belong to the political system, and therefore the law is also an ideology. Ideologies are different because the ways in which the legal and political systems have changed have been different. The link between ideology and law can be rhetoric and inform a new approach to apply the rules that the law imposes.

Rhetoric is the art of speech and communication that was born in Ancient Greece and Rome in the 5th century BCE, for which Plato, the sophists, Cicero, Aristotle, etc. were noted, and consists of argument, eloquence and effective information. Initially it was born as a need to protect citizens in court cases. The rhetoric of the sophists was criticized and studied by Plato and other philosophers, turning it into a separate school. Aristotle and Socrates in Ancient Greece and Cicero in Rome continued to study classical rhetoric, which would be used not only in court but also by politicians or influential people in society to convince the people. (Barnwell, 2014)

In legislative rhetoric, speaking or writing is based on making a decision by influencing others for what the making of this idea or decision brings. While legal rhetoric deals with the study of justice or injustice that happened in the present but based on past cases. This rhetoric is used more by lawyers and judges who evaluate the law and legal cases. In today's politics, politicians and people with different functions use rhetoric to communicate with the audience and to convince them about the decisions made, political events, to propagate, to justify actions or legal violations. Therefore, legal rhetoric has received more attention in recent years.

We also encounter rhetoric in everyday life because we all discuss different issues. The one who is able to give more convincing arguments and emerge victorious from a conflict situation or discussion, then this person is a good orator and rhetoric is his strong point. We try to influence others for different purposes, we discuss with friends our favorite movie, faith, political directions, decisions made in society, fashion trends, football matches, etc., so rhetoric protects the energy, goals and power, based on persuasive words. Rhetoric defends the rules and the law, but it can fight against them as well. (Sarat & Kearns, 1994)

The democracy of the 21st century is lobbied like every other time through new rhetoric. Democracy is about justice and justice is the law, so in this form rhetoric is connected to the law, because the law needs to be recognized and protected. Therefore, rhetoric in law has its importance and with social and political development it is being studied as a separate concept.

2. MATERIAL AND METHODS

The purpose of this study is to verify the role of rhetoric in court and the way it is developing in recent years. Knowing the importance of law in society and the political system and the massive use of rhetoric since the creation of the first political systems, this paper aims to study this importance in relation to the development of judicial systems and the role of the lawyer. For this paper, materials related to the study of rhetoric as a discipline and its development, legal literature, scientific publications and judicial practices were used.

As a methodology for this work, judicial practices and different comparisons that were made in different periods were studied. Also, to confirm the role of legal rhetoric, some examples of television programs or real court cases were taken. Also, to better understand legal rhetoric, the attitudes of people who created rhetoric such as Aristotle, Plato, and the Sophists have been studied. The way a lawyer should speak in a courtroom, starting from the launch of rhetoric, the case he defends, arguments, evidence, etc. are some of the reasons he studies legal rhetoric.

According to Cicero, there are 5 steps of rhetoric that are necessary in every field, but even more so in legal rhetoric. They are invention, arrangement, style, memory and delivery. Invention is the process where the person who will hold the rhetoric gathers materials, ideas, and information to write his text, so he decides on the issue and the ideas he will present. Arrangement is placing the material or text in a certain order by choosing which topic to place at the beginning and at the end, according to their importance or preference. Style is one of the most important steps because it is what makes a rhetoric interesting for the listener. Each person has his own style in the way he communicates something, and this makes him more special for the listener, but also more persuasive. Here you can use the way of speaking, intonation, telling different examples, using sarcasm or irony, etc. Memory is one of the steps that is not practiced in writing, but in speaking. The person who will speak in front of the audience must first memorize his material so as not to lose the order of arguments or forget important details. In the case of legal rhetoric, a good lawyer must be a good memorizer because details in this case are very influential. Delivery is the process of communication or speaking where the speaker shows the prepared material. This moment is essential because his rhetoric will convince the audience and this depends on his ability to interact with the listeners, to attract their interest, with the right intonation, the right voice and material and the focus to transmit confidence. Lawyers in court must be calm, convey truth and logic with their attitude, determination and logic of evidence. (White, 2016)

3. RESULTS

Rhetoric is very important in the legal field, in the academic field and in any other social field. This is what we understand through this study, where we noticed its use and the law. According to Aristotle, even people who have enough information about a certain subject must have the necessary rhetorical skills to convince the audience of their truth. This is what makes rhetoric an art and a science, because to get the attention and interest of the audience you must know the language of the audience and know your purpose. Rhetoric has to do with the right words, eloquence, but also body language because communication always has an audience and a speaker who seeks to influence the opinion of others.

In the courtroom, lawyers use all techniques for successful communication, then he can convince the listeners, but especially the judges, for the facts and the truth that he defends. A good lawyer knows that it is ideologies, communication, and ideas that push and supply the world and not facts. According to Aristotle, a lawyer must have three elements in his rhetoric, logos, ethos and pathos, to possess persuasive arguments and must also know the audience, because the rhetoric used always changes according to the audience to which it is addressed.

Nowadays, rhetoric in law is always more important and equally difficult to practice. Lawyers have always been known as people who hide the truth very well, or otherwise “professional liars”. This is not only because of the image of the lawyer itself but also because of the role that rhetoric had at the time of its use by Aristotle, Sophists, Plato, etc., so as a way to convince what should be believed.

4. DISCUSSION

About rhetoric and its importance as an art, there are many different theories, arguments, and approaches from early and modern philosophers. Legal rhetoric is as old as the general rhetoric that has developed in politics and society, but it has existed for as long as the state, court, justice, rules, and the sense of justification have existed.

The theory of legal reasoning according to Perelman is a development of the general theory of rhetoric. Like general rhetoric, the goal of legal rhetoric is to keep the audience focused rather than focused on subjective truths, and this is through the proper ordering of topics. According to Perelman, audience study is very important in legal rhetoric because the lawyer can tailor arguments based on the audience. It happens that some arguments may be right, but not acceptable and understandable to one audience and not so much to another audience. But this element is important for his success in winning the case. (Balkin, 1996)

In recent years, legal rhetoric is studied as a special and necessary discipline for a future lawyer or lawyer.

A professor who uses rhetoric to analyze an issue or law, makes students better understand the object of the issue, the structure, and order of argumentation and also interpret the law because knowledge of the law helps to create convincing arguments and enrich the vocabulary of rhetoric. (Green, 2022)

One way to make the rhetoric of a lawyer more convincing and successful is by first mentioning the weak points of the opposing party and then continuing with the strong points of his client. Thus, he can point out the possible fault of the opposing party before the other party deals with his client. At the end of it, he can close it with a more emotional speech, including the human and sensitive side that exists in every court case to make the speech more believable and not mechanical.

What makes legal rhetoric more special and difficult than ordinary rhetoric is the fact that in this rhetoric lawyers must follow certain rules, because their rhetoric aims to protect court cases and the truth of their client. The law contains a procedure and its statuses, therefore lawyers must have a clear idea of what they defend in court and argumentative logic because this will make them credible to the judges. (MacCormick, 2009)

Apart from legal rhetoric, in recent years the field of written legal rhetoric is developing at the same pace and is being practiced as a discipline and special field of law. Professors follow the form of rhetoric to explain and interpret legal lectures to students. Also written rhetoric functions through academic journals, newspapers, literature and various books that refresh legal changes, interpret laws, bring to mind court cases and inform about legal fields as a whole. Written legal rhetoric helps in the professional growth of professors, the proper education of students, but also the development of legal rhetoric because lawyers must always be informed with accurate information. (Berger, Edwards, Pollman, (2018)

5. CONCLUSION

At the end of this paper, we come to the conclusion that legal rhetoric is very important in the legal field and in recent years it is receiving a lot of attention in judicial practice. Rhetoric is an art that has to do with the use of arguments on a certain thesis and the aim to convince others about this thesis. Rhetoric was born in Ancient Greece and ancient Rome by famous philosophers such as Aristotle, Plato, Cicero, and Sophists. Logical rhetoric was also born in these countries, even though it was not known as a separate discipline.

The law is a content of rules that aims to regulate the social order and preserve justice. In democratic systems, the law aims to preserve democratic principles, but since democracy is connected to the law and rhetoric is part of democracy because it was born from it. Rhetoric also takes place in legal practice, because lawyers have to convince of the truth of the case they defend, and this requires not only professional skills and rhetoric but also the following of certain rules. (Condello, 2020)

In recent years, legal rhetoric has been practiced more and more and is being studied as a special discipline in law schools. The use of rhetoric by lawyers in court hearings makes them more successful and more persuasive to judges and audiences.

Legal rhetoric has also become part of academic studies and legal texts. It is used by professors, academics, and law interpreters. I think that as an academic and lawyer, legal rhetoric will develop even more as a discipline in the future because laws change more often due to social and political dynamism. Professional legal ability is becoming and will become even more necessary in legal practice.

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