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THE BATTLE AGAINST CYBERBULLYING: A DISCURSIVE ANALYSIS OF PUBLIC POLICIES IN BRAZIL

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Abstract: This article analyses public policies about cyberbullying in Brazil starting with an Internet investigation about bills pending in National Congress, existent legislations and UNESCO's recommendations. The goal is to verify, by means of critical discourse analysis, to whom these policies are destined, which are the predominant discourses and the values and intentions that they represent. The problem found is in the absence of specific public policies to the cyberbullying phenomenon due to subdivisions made to wide legislations and the influence of international agencies. To decrease violence that is produced by virtual bullying, strategies are suggested, such as inserting education as protagonist of public policies that may be implemented, taking into account the human rights paradigm as a fundamental value.

Keywords: Cyberbullying. Public policies. Human rights. Discourse analyses.

Introduction

The goal of this paper is to approach the public policies that exist in Brazil related to the use of the Internet. More specifically, it deals with educational dispositions that fight cyberbullying using the discourse analysis from Michael Foucault, Isabela Fairclough and Norman Fairclough.

For this task, a glimpse is taken into the conception of public policies as strategies for problem resolutions related to the virtual violence theme, taken by

Rua (2009, p. 19) as “decisions and actions set related to the imperative allocation of values involving public goods.”

The goods or rights are, to Santos (2014), distributive public policies, those concerning to comprehensive sectors of society that enable access, for example, to the “Sistema Único de Saúde” (SUS). There is, to Santo’s understanding (2014), other public policies that are: redistributive, oriented to lack of sense, as the policy of racial vacancies, that enables admission to education and public office positions; regulatory, defined by the political game, as laws and decrees and the public policies that shape the State, as the Federal Constitution of 1988.

Therefore, the public policies can be directed to several areas of action of the State, such as inclusive education policies recommended by UN Convention (2008) about people with disabilities’ rights that were incorporated to the Brazilian legislation through the act n. 6,571, from December 17th 2008 (BRASIL, 2015).

In this context, it can be verified that public policies are designated to several areas of interest of the state and of public and private institutions in the engagement of the political game. Guimarães-Iosif (2009) highlights that is in the State’s political space that the strength which should be taken by society for the debate of social problems and the construction of suitable public policies is present.

Therefore, the analysis of the existence or non-existence of public policies to face the cyber bullying is necessary in a country that, according to data of the “Instituto Brasileiro de Geografia e Estatística” (IBGE), has more than 204 million people, of which 81,798,000 (eight one million seven hundred ninety eight thousand) use the world wide web, as the SaferNet indicators register, a non-profit private right association, that maintains partnerships with governmental institutions as the “Polícia Federal”, “Secretaria dos Direitos Humanos” e” Ministério Público Federal” (BRASIL, 2015).

SaferNet’s data are confirmed by United Nation Children’s Fund’s (UNICEF) research from 2013, made with 2,012 teenagers, ranging from the ages 12 to 17, about the use of internet in Brazil, comprehending the five regions in the country –

Midwest, Northeast, North, Southeast and South – with ten million children that use the network every day (BRASIL, 2015).

Taking the data in account, it can be verified that legal proposals pending in the legislative houses and other power centers do not offer specific policies to fight cyberbullying, identified by Bauman (2010). They are necessary standards to keep young people informed about everything at every time and what contributes to their interactive capacity in the virtual environment, including school. These policies must be aimed at students who remain online through their phones before, during and after classes in social networks, on chat rooms, Facebook, Instagram, Twitter and email. However, the problem focus is an evil form of communication between groups or communities, for example WhatsApp, which allows the disastrous practice of virtual bullying.

For Olweus (1993), bullying is a phenomenon in which the child or teenager is systematically assaulted, with no apparent cause, generating discrimination and suffering. Cyberbullying's format is similar to bullying's, with the difference that the aggressor uses Internet to defame the victim (LIMA, 2011; MOREIRA, 2012).

Bullying and cyberbullying show violent conducts that are characterized by putting the victim in an inferior position and establish, according to United Nation's (UN) report of 2011, a serious problem in schools (BRASIL, 2015).

Existent legislations about virtual violence and law projects that are in motion in both legislative houses are represented as a maze of scattered and fragmented documents in which education is substituted by resolution of the problem in the police and judicial framework, implicating higher incidence of cases and complaints from victims since they do not have maturity, nor interest, to appeal to the criminal justice system.

The outlook of proposals and Brazilian legislations

Consulting websites from National Congress, Deputies Chamber and Federal Senate of Brazil, bills with similar contents and proposals were found. To understand this chaotic situation, we will discuss the main and most recent propositions, from 2009 to 2015. In the virtual research, five bills related to bullying

and cyberbullying were found, besides a bill that transfers the control and intervention in public policies by a legislation that approaches issues of internet use in effect since 2014 to the Judicial Power. They are:

First, bill n. 5.369/2009, by federal deputy Vieira da Cunha, seeks to institute the Program to Combat Violence Systematic (bullying), by reassuring UNESCO's recommendations, in the form of a educational program to be implemented in schools, attached to the Ministry of Education, in federal range. It is currently in the Constitution and Justice Commission and fight against organized crime in ordinary processing system, in spite the existence of a request of priority in emergency basis. The art. 3, sole paragraph, of this bill treats cyberbullying in the same way as bullying, differing from the environment used, the web, to incite violence, depreciate victims, tamper pictures and personal data. The justification of the program is to avoid, as much as possible, punishment of who practices the conduct and integrate parents, educators and society in the ability and prevention of such practices by education, awareness and information campaigns. The text highlight's is the delegation of responsibilities to estates and counties to celebrate agreements and partnerships and the presentation of bimonthly reports to the Department of Education about the occurrences, measures taken and results obtained (BRASIL, 2015).

The second, bill n. 1011/2011, by deputy Fábio Faria, in motion in the Chamber of Deputies, intends to change article 140 of the Penal Code, decree n. 2,848, from December 7th 1940, to include the figure of intimidation from individuals or groups that act in an aggressive way, intentionally and repetitively, causing pain, anguish and suffering, offending the dignity in an educational activity or in a learning environment. The word bullying appears in the explanation of the bill, but is substituted by the expression "humiliating intimidation". In the original text, there was no prevision of cyberbullying, which included penalty of up to 6 (six) months of detention and fine to the aggressor (BRASIL, 2015).

The third, bill n.21/2013, had the same purpose of changing the penal law, with the prevision of virtual bullying that provokes mental disorder to the victim, in social networks, e-mails, websites or mobile telephones. The justification from

senator Clésio Andrade, was to acknowledge the absence of a regulation, discuss the theme and criminalize bullies, people who practice bullying, modifying the reality by exposing people's privacy. This project was filed in 2014, obeying the manifestation of senator Pedro Taques, by being object to the Draft of the Penal Code n. 236/2012 (BRASIL, 2015).

The fourth, bill n. 68/2013, follows bill n. 5,369/2009, includes other partners, as state and county's education secretariats and put educational establishments, clubs and recreational associations in charge of prevent, diagnostic and assure awareness measures to fight bullying and cyberbullying (BRASIL, 2015).

The fifth, by deputy Paulo Teixeira, is bill n. 8,058/2014, approaches the control of public policies by judicial power, which is a result of 'Centro Brasileiro de Estudos e Pesquisas Judiciais' (CEBEPEJ) - Brazilian Center for Judicial Studies and Research, in service to principles of social justice, to the common good, to the universality of public policies and balanced budget. The proposal aims to provide transparency to the control and execution of policies by the Judicial Power (BRASIL, 2015).

The sixth and last, by deputy Shéridan Estérfany Oliveira, bill n. 1671'2015, aims to institute an advertising campaign in radio and television, to fight bullying and cyberbullying on the grounds that criminalization of these practices should not be the only measure to be taken.

The ruling legislation is the law n. 12,965, from April 23th 2014, called The Civil Rights Framework for Internet, known as the Internet's constitution, that establishes principles, guaranties, rights and duties on the Internet (BRASIL, 2015). Oliveira (2014) explains that this law progressed to the possibility of exclusion, by providers such as Google, which hold personal data without authorization and to the discussion in legal means of a possible redress of moral injury. However, this law does not even include education as a preventive main figure to reduce practices of virtual violence.

In this complex scenario, the Special Secretariat for Human Rights in a joint action with the Ministry of Education, Ministry of Justice and UNESCO

developed, in 2009, the 'Plano Nacional em Direitos Humanos' (PNEDH) - National Plan on Human Rights, on the grounds of accomplish democracy, development, social justice and a peace culture. In this perspective, the main commitment of the document is to consolidate materialized human rights in governmental actions integrated to society, contemplating education in five bases: basic education, higher education, non-formal education, education of workers from the justice system and public security besides education and media.

Fragmented or generic programs related to human rights or focused to certain groups, as LGBT, that propose in a report "Brasil sem Homofobia" (Brazil without homophobia), dated to 2012, actions that aim to supervise, implement, support studies and researches about racism, homophobia and gender discrimination can be found in websites. UNESCO, however, proposed in 2013 a document called "Respostas ao Setor de Educação ao Bullying Homofóbico" (answers to the education department about homophobic bullying) that establish guidelines. Among them are: inclusion of the theme in schools, while children are growing up; involvement of all members of the school community in fighting policies and surveillance of bullying; capacity of schools and families to deal with the problem through courses and workshops; propitiation of means through which the phenomenon can be denounced in confidential systems; elaboration of folders that can be distributed to students, giving transparency and information of the school's existence policy.

However, proposals of public policies specific to cyberbullying were not found in the website of Secretariat for Human Rights, from the Ministry of Education.

The project "HumanizaRedes", from the federal government, called 'Pacto Nacional de Enfrentamento às Violações de Direitos Humanos na Internet' (National Pact to Combat to Human Rights Violations on the Internet), created by 'Portaria Interministerial' n. 3, from April 9th 2015, is based in three main axis: the first consists in fighting human rights violations receiving denounces by the telephone number 100 or by Internet and forwarding them to responsible authorities; the second, in providing security on the internet by promoting

measures such as propagating smart applications to users; and third, in promoting education of human rights in schools, aiming to spread good intentions on the internet (BRASIL, 2015).

Yet the initiative is being contested on the Deputies Chamber on the 'Projeto de Decreto Legislativo de Sustentação de Atos Normativos do Poder Executivo' (Decree of Normative Acts Legislative Support of the Executive Branch) (PDC 47/2015), by deputy Roberto Teixeira, under the grounds of a mistake of initiative from the Executive Power, of interference in the Judicial Power, of unconstitutionality vagueness in the text, besides lack of legal prediction (BRASIL, 2015).

A critical analysis of the discourse of virtual bullying public policies

After the historical path of legislation, discourse of existent and even non-existent policies will be analyzed. To Foucault (2011[1976]), it consists on shaping the idea of what is said, hiding what cannot be understood, reinforcing and appreciating the intrinsic order of idea and its distribution in society.

According to Foucault, the discourse supports the comparison in being transformed into another discourse when demystified or, in its concretion, through rituals of the written and spoken word, in societies of discourse, in doctrinaire groups and social appropriation. The educational system, the judicial system in the author's view are several models of discourse that resemble to another in the composition of a group of people represented by parts, in the maintenance of a specific point of view that constitute the discourse appropriation.

The legislative proposals analyzed here are perfectly shaped to the Legislative Power discourse that presents an incomplete discourse about the insertion of problems centralized in the justice system, without contextualization to the Federal Constitution of 1988 and human rights. The appropriations of juridical jargons are examples of expressions and words that are well accepted by society, as "penalty", "punishment", "judicial power".

Fairclough and Fairclough (2012) call social practice structural imprecise or deterministic possibilities linguistically mediated by the order of discourse, shown

on social identities, power relationships managed with social pre-conceived objects and subjects.

Fairclough and Fairclough's (2012) emphasis is conceived in the final part of discourse analysis, in the distinction between the power and the power behind the discourse on regulatory and explanatory dimensions. Bringing the critical analysis from the authors to the regulatory proposals in Brazil, it can be seen, besides the fragmentation of similar texts, the simultaneous process on the Chamber of Deputies and Federal Senate and the disconnection with the 'Plano Nacional de Educação em Direitos Humanos' (National Plan for Human Rights Education - PNDEH).

It can be understood, from Foucault (2011[1976]), the possibility of exclusion by the subject, on the procedures of discourse that cannot work in the middle of complex and restrained systems, protocols for example, as the ones that occur in courts and organs that elaborate laws, even though what of international organizations, like the project 'Educação para a Cidadania Global' (ECG) of UNESCO, represent.

Final considerations

Several legislative proposals that cannot be called public policies were found with the critical analysis of public policies of fighting cyberbullying in Brazil. The bills, in the event they are approved, in the form they are presented, will compose another infinity of criminal laws that won't be as effective as society expects.

The strategies outlined do not consider the aspects that Pereira (2014) considers convergence of actions, in which citizenship and human rights should be tuned with the virtual bullying phenomenon, including schools.

The range of the initiative will occur making those who propose the public policy conscious of making part of it. The policy should be clear, possible to be put into practice and address all of those who will appropriate it.

In the (re) invention of policies, all the subjects of education should be asked to participate, to give their opinion and also to feel parts of the discourse, that

adapted to the digital community, could be introduced to schools as efficient strategies to fight cyberbullying.

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