DISCOURSE STUDIES AND FUNCTIONAL COMPREHENSIBILITY OF LEGAL TEXTS

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У статті досліджено дискурсні особливості юридичних текстів. Проаналізовано основні типи юридичного дискурсу: законодавчий та судовий. Обидва жанри послуговуються спорідненою термінологією, спільними є учасники комунікативної ситуації, які перебувають у постійній взаємодії в ході юридичного процесу. Ситуація спілкування зумовлює комунікативну настанову будь-якого типу юридичного дискурсу. Виділено мовні засоби досягнення однозначності інтерпретації юридичних текстів.

Ключові слова: дискурс, дискурс-аналіз, законодавчий дискурс, судовий дискурс, законодавчий текст, однозначність трактування.

В статье исследуются дискурсные особенности юридических текстов. Проанализированы основные типы юридического дискурса: законодательный и судебный. Активное использование общей терминологии, наличие участников коммуникативной ситуации, которые постоянно взаимодействуют в ходе юридического процесса, наряду с ситуацией общения способствуют реализации коммуникативной цели любого типа юридического дискурса. Представлены лингвистические средства для достижения однозначности интерпретации юридических текстов.

Ключевые слова: дискурс, дискурс-анализ, законодательный дискурс, судебный дискурс, законодательный текст.

The article focuses on the problem of discoursal peculiarities of legal texts. Two closely related written types of legal discourse: legislative and judicial were analyzed. The two genres are related in terms of the settings in which they are used, the participants taking part in these professional communicative activities, in the way both are validly used as legal authority in the negotiation of justice and the way they encode and represent legal processes. The effective linguistic means of achieving disambiguation in the legal context are defined.

Key words: discourse, discourse analysis, legislative discourse, judicial discourse, legislative text, legal cases, disambiguation.

There are many reasons as to why linguists should be interested in legal language. The study of authentic speech situations and other contexts of language use over the last few years have revealed the enormous range of variation in a language. The impact of the study of variation in language use is reflected in stylistics. New terms such as register, special language, sublanguage and languages of the professions were introduced into discussions of style. Language does not function in a vacuum, but has a complex network of intra- and extralinguistic ties with the context in which it is used. The **object** of the research are legal cases and court judgements as types of written legal English. Its subject comprises investigation of discoursal peculiarities of legal texts.

The **purpose** of this work is to examine some characteristics of legal English at the level of discourse. The inter-sentence dependencies characteristic of more neutral varieties of language play a less important role in legal discourse. Still such relationships do occur and will have to be considered. Naturally, all levels of language are interconnected with and interdependent on, each other. The description of the discoursal style markers of legal English is a basic **task** of our research.

One feature characteristic of legal English on the level of discourse must be discussed, is the almost total lack of conventional intersentence cohesive ties, essential for most well-formed texts. The fact that they are so sparsely used in laws is one factor setting this genre in a category of its own. The reason for the non-use of cohesive ties is the independent and context-free status of the sentence in law language, which makes it possible to refer to a subsection and cite it as a coherent whole without having to make the reader aware of either what precedes or follows it. The cohesive ties that do occur are practically limited to lexical cohesion, more precisely repetition.

There is an inherent element of vagueness in natural languages, but the law sets extremely strict demands on the language it uses. How such properties of text as specificity, exactness and clarity are achieved is a linguistic problem. Considering that language is so crucial for law, it is astonishing that linguists have become seriously interested in the topic only quite recently.

It is natural that the choice of themes should depend on what has been done and what remains to be done. For this reason, some aspects that ought to be included in a historical account of legal English have been left aside, while others, which may perhaps be regarded as more marginal, have been included, because they have not been discussed elsewhere. One of the most interesting questions is the history of legal English, which has mostly been studied only in terms of loanwords, whether Norse, Latin or French. The present study will try to extend this picture by considering some of the structures. In spite of the restrictions in the scope of the study, it is hoped that the problems of legal English will receive a sufficiently broad-based treatment to facilitate an understanding both of the socio-historical and sociolinguistic development of the genre and of its present-day features and problems.

The word discourse has experienced a relatively sudden rush of fashionability in the past couple of decades in a number of different academic and intellectual fields. Unfortunately, however, the term's popularity in a range of different academic disciplines means that frustrating differences of usage can be encountered. Mey Jay describes discourse as one of the most loosely used terms of our time [8, p. 26]. Despite these contrary and shifting usages, discourse remains the best term to denote the level on which the object of this enquiry is located, that being a corpus of more or less loosely interwoven arguments, metaphors, assertions, and prejudices that cohere more associatively than logically in any strict sense of the term. Discourse in this usage is explicitly derived from the Latin "discurrere", which means a running around in all directions.

In Linguistics a renewed reliance upon the term is related to the growth in importance of pragmatics; discourse is language in use, not language as an abstract system. According to the OALD, discourse as a noun can mean communication of thought by speech. Interestingly, the use of the noun to mean "talk" or "conversation" is described as archaic. But even within Linguistics there are varieties of meaning. Michael Stubbs comments on the use of the terms text and discourse, and states that this is often ambiguous and confusing. He suggests that the latter term often implies greater length than does the former, and that discourse may or may not imply interaction. Thus if we take an academic seminar, for some linguists the whole process of verbal interaction would constitute a discourse, whereas for others an extended statement by one participant would qualify as a discourse. Yet others would be prepared to accept even short statements by individuals as discourses. Moreover, for some linguists discourse is uncountable, for others it is not, and for yet others it appears to be countable at some times but not at others. If discourse is countable, the next problem is to decide what constitutes the defining borders of a single discourse: Michael Stubbs notes that the unity of a particular discourse can be defined in either structural, semantic or functional ways [10, p. 9].

The text, like the sentence, is "a structured sentence of linguistic expressions forming a unitary whole", in contrast with discourse which is a far broader "structured event manifested in linguistic (and other) behaviour" [3, p. 23].

These definitions are not entirely adequate for a number of reasons – for example "text" and "discourse" are used interchangeably by some linguists, while others reserve the first for written documents and the second for speech. So we would accept the definition of the following kind – discourse is a communicative event which draws on the meaning potential of the language (and other systems of communication) to carry communicative value (the illocutionary force) of speech acts through utterances which are linked by means of coherence [4, p. 26].

In its broad meaning, discourse is a complex unity of speech form, meaning and action, which would be best characterized as a communication act. According to this definition, violating all the intuitional and linguistic approaches, discourse exceeds the limits of concrete speech utterance, that is the limits of text or dialogue. This can be very vividly proved by the analysis of conversation: the speaker and the listener, their personal and social characteristics doubtlessly belong to this speech act. In this regard, a conversation, a meeting, a hearing in court, a lesson at school may be called complex communication acts. They can be divided into smaller communication acts, such as a story in the conversation in court, an explanation of a lesson by the teacher. Some of these occurrences, for instance, stories or discussions, may have the qualities peculiar of communication acts and discourses of other social background.

In written or printed types of discourse such interactive nature is less apparent: the writer, the text, the reader are in a less close interaction within the limits of one situation of the definite time and place. But still these texts should be, analyzed from the point of view of dynamic nature of their production and perception. For example, the analysis of the meaning of discourse, which seems very important to us, may be postponed up to a certain moment and be restricted by only a distant description of the meaning of the text itself, but empirically it would be appropriate to talk about the meanings expressed by the utterance itself, or about the meanings that appeared in the process of publication, or about the meanings attributed to the text or derived from it by the readers. In this case, when defining the meaning of discourse, the available for the participants of the communication meaning, such as knowledge of the language, knowledge of the universe, other setting and representations should be taken into account. We should add that the writers create forms and meanings which are clear to the reader or which can be explicitly addressed to him, which arouse reaction, and these that are orientated towards the receiver, as it is in the conversation. In case of written communication the writers and the readers are involved in the process of sociocultural interaction.

This view of the beginning of discourse analysis as a science consisting of several fields of study (tightly connected with their initial disciplines) gives only a partial view of the research work in the field. In linguistics, probably, much more study is dedicated to the speech acts than in philosophy, a discipline which was first to work the theory of the speech acts. In other words the new discipline may be considered from the point of view of the problems it studies, the objects of its analysis, which may necessitate exceeding the bounds of the initial disciplines.

There are also differences between, what may be approximately called, types of discourse analysis in different countries. For instance, the English research on discourse analysis differs from the present concepts of discourse analysis in the Roman languages speaking countries in the peculiarities of construction of the new theory, research and description procedures, as well as in their differences of philosophical and political views, despite the increasing number of borrowings by constant influence on the part of structural linguistics, cognitive psychology, microsociology. The philosophical aspect prevails in the discourse analysis of some of the French schools referring to ideological, historical, psychoanalytical works, especially in the field of literature analysis.

There is a very rough description of tine differences between the trends. For example, in the English tradition we must distinguish between the scientists working strictly in the field of speech communication research and those studying other types of discourse, the former keeping closer to traditional microsociological methods originating from phenomenological sociology, and the latter more freely operating with the methods of speech communication analysis, linguistics, psychology, other social sciences. Despite the differences between approaches, theories, methods, schools of the discourse analysis and even the individualities of separate scientists, their integrating element is the general structure of description.

The new approach is based on recent interdisciplinary studies of discourse. The main idea of this approach is this it aims at studying the essence of the mass communication process, namely verbal announcements. According to the approach the verbal announcements are analyzed not only on the basis of the peculiarities of the information source or the conditions of lawmaking – on the one hand, the characteristics of the consumers and the influence on them – on the other hand. Apart from that, all kinds of mass communication texts, particularly the legislative documents need to be studied as a special type of texts referring to a specific social and cultural activity.

First of all this means that mass communication texts should be analyzed from the point of view of their structure on different levels of description. Such structural analysis does not confine itself to the linguistic description of phonological, morphological, syntactical or syntactical or semantically structures of isolated words, word combinations or sentences as it is accepted in structural linguistics. The texts are defined by more complex, higher level characteristics, such as coherence between the sentences, the general theme structure, schema structure and of stylistic, rhetorical parameters. In this approach mass communication texts, presented either in oral or written form or in the form of monologue and dialogue, get overall description of the general structure, as well as their specific features. Furthermore, the study of discourse is not confined to explicit description of the discourse structures themselves. The discourse studies in the field of the disciplines like theory of communication, cognitive psychology, social psychology, microsociology, ethnography proved that discourse is not just an isolated text or dialogue structure. It is rather a complex phenomenon of communication which includes social context bearing information about the speaker's characteristics as well as about the lawmaking process and perception of utterances.

The principle of information coherence of the text also proved that discourse semantics is not autonomous, which means that it is not enough to know the lexical meaning of words or their combinations. We need general knowledge of the world, therefore a cognitive and social analysis of the speakers' knowledge within the limits of a certain culture is required, the analysis of how they use this knowledge in the process of discourse interpretation in general and particularly in the establishment of text coherence. The acknowledgement of importance of these factors assisted that cognitive psychology and artificial intelligence play an important role in the study of discourse interpretation processes. Accordingly, the analysis of organizing and usage of knowledge and beliefs, kept in the memory, becomes as important as the description of the role the discourse structures play in text understanding. The analysis proved that this knowledge should be organized into separate clusters, the so called scenarios which include all the available information about a definite stereotype variant of an episode [4].

Bearing in mind the diachronic perspective, we turn to the synchronic aspects of legal English. There are many alternatives open for investigation: for example, oral or written legal language. The study of oral discourse has attracted increasing attention in linguistics generally, and this interest is also reflected in the domain of legal language [1, 2, 3, 5]. There are studies of lawyer-client interaction and courtroom interaction, where the linguistic strategies of the parties are investigated, to name only a couple of examples. The problem of how well legal language is understood in different contexts is also a challenging and important branch of the study of legal discourse.

The term legal language, as V. J. Bhatia indicates, encompasses several usefully distinguishable genres depending upon the communicative purposes they tend to fulfil, the settings or contexts in which they are used, the communicative events or activities they are associated with, the social or professional relationship between the participants taking part in such activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors [2, p.100] . He identifies several genres used in a variety of legal settings. Some of these are cases and judgements in written form used in juridical settings; lawyer-client consultation, counsel-witness examination in spoken form and legislation,

contracts, agreements etc. in written form used in various professional settings. In this research work, we have taken up two genres from the written medium, namely legislation and legal cases for an in-depth genre analysis.

Legal cases form the most significant part of a law specialist's reading list whether he is a law student or a practising lawyer. Cases assume importance because law courts follow their previous judgments within more or less well-defined limits. This means that cases are generally decided the same way if the material facts are the same. But this does not mean that all the facts of the case must recur in order for an earlier judgment to become relevant to the subsequent ones. Legal cases are abridged versions of court judgments, which are very elaborate and detailed. These cases are summarized by various case writers for the benefit of specialists. There may be a large variety of versions written by various authors for different purposes; some can be very detailed and others very brief, but most are written to serve a definite purpose. Let's see the example :

"The cases put it on the ground for an implied contract; and by this is not meant, as the defendants counsel seems to suppose, an actual contract, – that is, an actual meeting of the minds of the parties, an actual, mutual understanding, to be informed from language, acts and circumstances, by the jury, – but a contract and promise, said to be implied by the law, where in point of fact, there was no contract, no mutual understanding, and so no promise" (12, p. 50).

Legal cases are used in the law classroom, the lawyer's office and in the courtroom as well. They are essential tools used in the law classroom to train students in the skills of legal reasoning, argumentation and decision-making. Cases represent the complexity of relationship between the facts of the world outsider on the one hand, and the model world of rights and obligations, permissions and prohibitions, on the other.

The cases, therefore, represent the most potent instrument to train the learner of law in legal reasoning, argumentation and decision-making. In the lawyer's study, these cases act as guides as to what line of reasoning a lawyer should take and also as appropriate authorities either in favour of or against that line of reasoning. In the courtroom, cases function as legal authorities along with legislative provisions. They can be used both ways, to argue for a particular conclusion or against it. However, one thing that is common to all the three situations is the important role of cases in the negotiation of justice as well as in legal education. Cases in legal contexts serve four major communicative purposes:

1. In their full form (also referred to as legal judgments), as in Law Reports, cases serve as authentic records of past judgments. In this form they are taken as faithful records of all the facts of the case, the arguments of the judge, his reasoning, the judgment he arrives at and the way he does it, the kind of authority and evidence he uses and the way he distinguishes the present case from others cited as evidence either by him or by the opposing lawyers.

2. Legal judgments (including legal cases) also serve another important function. The judgments and the rule of law (ratio decidendi, in legal terminology) derived are meant to serve as precedents for subsequent cases, and are generally used as evidence in favour of or against a particular line of argument or decision. For example:

"<…> Jugenfield(the judge), in this view, constitute a sufficient consideration. Such a consideration has been recodniz.ed in a number of cases: Munroe v. Perkins, 9 Pick.305; Holmes v. Doan, 9 Cush.135; Lattimore v. Harsen, 14 Johns.330; Peck v. Requa, 13 Grey, 408" (12, p. 401).

(5) *"<…> The defendant, upon the agreement and payment to Hubbard, took no further steps to obtain relief under the bankrupt law. It was accordingly held that <…>. The same ruling was made in Dawson v. Beall, 68 Ga. 328. And in Curtiss v. Martin, 20 Ill. 557,558; Engbretson v. Seiberling, 122 Iowa, 522, 98 N.W. 319, 64 .L.R.A. 75, 101 Am. St. Rep. 279, and Rice v. London, etc., Mortage Co70 Minn. 77, 72 N.W. 826, the courts went farther and held that<…>"* (12, p. 415).

3. Cases, as reported in some casebooks are meant to serve as reminders to legal experts, who use them in their arguments in the classroom or in the court of law. These versions are generally very brief and contain nothing more than the essential material facts and the decision of the judge.

4. Cases also serve as illustrations of certain points of law. Such cases are carefully selected and appropriately abridged. They form an important part of a law student's bibliography. They are generally abridged in casebooks and are also used prominently in law textbooks in support of or against a particular point of view. Law students learn the law from such cases.

The general function of this legislative writing is directive, to impose obligations and to confer rights. As legal draftsmen are well aware of the age-old human capacity to wriggle out of obligations and to stretch rights to unexpected limits, they attempt to guard against such eventualities, by defining their model world of obligations and rights, permissions and prohibitions as precisely, clearly and unambiguously as linguistic resources permit. A further complication is the fact that they deal with a universe of human behaviour which is unrestricted, in the sense that it is impossible to predict exactly what may happen within it. Nevertheless, they attempt to refer to every conceivable contingency within their model world and this gives their writing its second key characteristic of being all-inclusive.

Legislative writing differs significantly from most other varieties of English, not only in terms of the communicative purpose it is designed to fulfil, but also in the way it is created. In most other written varieties, the author is both the originator and the writer of what he creates, whereas in legislative provisions, the parliamentary draftsman is only the writer of the legislative act, which originates from the deliberations of a parliament in which he is never present. Similarly, in most varieties, the reader and the recipient for whom the document is meant are the same person, whereas in the case of legislative provisions, the document is meant for ordinary citizens but the real readers are lawyers and judges, who are responsible for interpreting these provisions for ordinary citizens. The result of this unique contextual factor is that the parliamentary draftsman finds his loyalties divided. On the one hand, he has to acknowledge his loyalty to the will of government and on the other hand he must use linguistic and discoursal strategies to help the intended readership. In other words, he is required to use linguistic resources and discoursal strategies to do justice to the intent of Congress and, at the same time, to facilitate comprehension of the unfolding text for ordinary readership. This is generally achieved by making the provision clear, precise and unambiguous.

The purpose of legislative writing, on which we have been concentrating, is to impose obligations and to confer rights, which means that it is highly directive. The various obligations, rights, permissions and prohibitions must be expressed as precisely, clearly and unambiguously as possible. On the other hand, legislative writing ought to be inclusive enough to cover a maximally wide variety of different circumstances. Since court decisions depend on the clarity of legislation, it is understandable that there must be a deliberate aim at disambiguation in legal English, especially because natural language can be said to be a breeding ground of ambiguity.

Our purpose in this context is to pay attention to some aspects of legal English by which disambiguation can be achieved. Dictionaries usually define ambiguity in terms of vagueness or uncertainty of meaning, equivocal expression or statement that may be interpreted in more than one way. Ambiguity can be phonological, lexical or syntactic. Examples of ambiguities are naturally difficult to find in legislative language, because deliberate measures are taken to avoid them; and in any case, ambiguity is likely to arise only when there is a particular context, a case, to which the provisions of the law are applied. Some ambiguity avoidance techniques are briefly reviewed below.

Disambiguation in the vocabulary

The range of the vocabulary in legal English is extremely wide, since almost anything may become the subject of legislation. In the wide range of vocabulary there are common words with uncommon meanings, as well as words going back to Old and Middle English, Latin, Old French

and Anglo-Norman. One characteristic is the use of terms of art (technical terms). Lawyers prefer these because they are specific and serve as a kind of shorthand in legal communication. From the legal terminology, where they were first defined, many words have been adopted into more general use (e. g. *alibi, appeal, bail, defendant* and many others).

In trying to achieve precision and inclusiveness at the same time legislative language also uses, in addition to technical terms, words such as all, *none, never, unavoidable, uniform, whoever, whenever and the like.* The use of such "absolutes" is one reflection of the directivity of statutory language in lexis.

Syntax: clauses and sentence complexity

One of the most important measures of a document's comprehensibility by readers is the complexity of the sentences in the document. While readability formulas typically count sentence length, sentence complexity is a more accurate measure of likely reader difficulty. Linguists are likely to prefer methods that count the number of clauses embedded into a tingle sentence, comparing that document to other types of documents as well as comparing if to spoken conversation. As we know, the more clauses a sentence has, the more difficult it is for readers to comprehend and the longer it takes to do so. Psycholinguistic researchers established as early as the 1970s that processing time increased with each clause embedded into a sentence. The advanced degree of specificity in legal texts (both legislative and legal cases) is, to a great extent, due to the elaborate sentence structure with its numerous supporting clauses. Among the most important of them are relative and adverbial clauses. Indirectly they serve the purpose of disambiguation by defining and qualifying various sentence elements. Examples of adverbial clauses occur in almost every sentence and their high frequency is one of the characteristic features of the genres.

"<…> *The local law of the issuer's jurisdiction as specified in Section governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.*

(3) *The local law of the securities intermediary's jurisdiction as specified in Section governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.*<…>" (14, Section 9-305).

Adverbial clauses are naturally less bound by syntactic position than relative clauses, and the primary concern is clarity of legal documents. Adverbial clauses, like adverbials in legislative texts in general, are placed where they best serve this purpose. The following examples are quite typical of initial and medial adverbial clauses:

"<…> *Before asking the accused under subsection (3) above where he consents to be tried summarily, the court shall in ordinary language – (a) explain* <…>" (13, Section 25.4.)

"<…> *The alternate court may, on remanding the accused in custody, require him to be brought before the court which made the order at the end of the period …*<….>" (13, Section 41.4.)

Such examples, besides illustrating the mobility of adverbial phrases are indicative of some of their functional roles, referring outside the provision and clarifying its scope.

The consistency and logic of legal language is one of its strengths, but it would not be possible without a clear, pre-established form, which allows for the stretching of the limits of the sentence far beyond the conventional. The discussion of legal discourse, based on a selection of a few criteria, indicated some of the manifold connections between form, content and function.

In this article we have looked at two closely related written types of legal discourse. The two genres are related in terms of the settings in which they are used, the participants taking part in these professional communicative activities, in the way both are validly used as legal authority in the negotiation of justice and more importantly, the way they encode and represent legal processes. As stated earlier, no legislative provision is of universal application. It becomes operative only in a specific set of circumstances, which represents a selection of contexts from the model world

of rights and obligations, permissions and prohibitions created by the legislative writer. This selection of facts from the model world is used as a basis to create definite legal relationship between two parties. Legal cases represent the other side of the picture. They represent the legal process by which legislative rules are applied to the facts of the real world. In order to understand the true nature and function of legislative rules, it is important to understand not simply the way the facts of the model world are identified and used to create specific legal relationships but also to appreciate how such legislative rules are applied to a selection of relevant facts from the world of reality. There has been some effort in this direction in the past few years, but much more needs to be done.

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