УДК 811.112.2’276.6:351.752.2

DISCOURSAL PECULIARITIES OF LEGAL DOCUMENTS

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У статті досліджуються дискурсні особливості текстів судових документів. Проаналізовано основні підтипи судового дискурса. Ситуація спілкування зумовлює комунікативну настанову будь-якого типу юридичного дискурса. Доведено, що інтегральною ознакою судового дискурса виступає ситуація спілкування в юридичній сфері, яка разом з екстралінгвістичними чинниками визначає його диференційні мовні ознаки.

Ключові слова: *дискурс, дискурс-аналіз, судовий дискурс, судові справи, однозначність трактування.*

Коваль Н. Е. Дискурсивные особенности судебных документов. *В статье исследуются дискурсные особенности текстов судебних документов. Проанализировано основные подтипы судебного дискурса. Ситуация общения способствует реализации коммуникативной цели любого типа юридического дискурса. Доказано, что интегральным признаком судебного дискурса выступает ситуация общения в юридической сфере, которая наряду с экстралингвистическими факторами определяет его дифференциальные языковые признаки.*

Ключевые слова: *дискурс, дискурс-анализ, судебный дискурс, судебное дело, однозначность трактования.*

Koval N. Y. Discoursal Peculiarities of Legal Documents. *The article focuses on the problem of discoursal peculiarities of judicial documents. The basic subtypes of judicial discourse were analyzed. It was proved that the situation of communication in the legal sphere is the integral feature of judicial discourse, which along with extralinguistic factors determines its differential linguistic features.*

Key words: *discourse, discourse analysis, judicial discourse, legal cases, disambiguation.*

Introduction. The main function of the law is to regulate social behavior in a rational and reasonable manner in the society. The law is a very important social institution, which depends on the language and whose operations therefore also have a linguistic dimension. Legal language tends to be quite conservative; besides, the law imposes extremely strict demands on the language it uses. Many of the linguistic problems of written legal discourse are quite well understood today. How to achieve such properties of legal text as exactness, clarity, specificity and to avoid ambiguity is a linguistic problem. New theories and approaches (i. e. sociolinguistic approach and the research connected with the simplification of legal discourse), introduced into linguistics have made the impact on the study of legal language. The main reason as to why linguists should be interested in legal language is created by a basic conflict between the functions of law and language.

Discussion. In view of the importance of law in society, it is no surprise that scholars in many disciplines have taken an interest in legal language, trying to discover its characteristics through the methodologies of their own special fields. In addition to representatives of the legal profession itself, there are studies of law language by, for example, sociologists, psychologists, anthropologists and linguists [2; 3; 4; 5; 8; 9]. The sociologists and psychologists have been interested in the use of language in trial situations, where they have studied, for instance, the correlation between the social

background of the parties involved and their use of language [7; 9]. The studies where the factors affecting, and contributing to particular impressions of testimonials, as well as those where men's and women's language at court have been compared, are also very interesting [3]. To this list we could further add the work of anthropologists, who have made occasional observations of the language while studying the functions of the law in different societies.

The **object** of the research is legal cases and court judgements as types of written legal English. Its **subject** comprises investigation of discoursal peculiarities of legal documents.

The **purpose** of this work is to examine some characteristics of legal English at the level of discourse. In the case of legal written language the study of texts has come into the foreground from the point of view of the interaction between structure and function. It is due to the re-evaluation of linguistic methodology. The importance of such branches of language study as pragmatics, psycholinguistics and discourse analysis are taken for granted today. All the levels of language are interconnected with and interdependent on each other. They are also relevant, because they may throw further light on some peculiarities of the judicial discourse.

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.

Investigation. 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 semantic 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.

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 [3; 5]. The problem of how well legal language is understood in different contexts is also a challenging and important branch of the study of oral legal discourse. Another possibility, which is the one we will explore here, is the study of the written variety. More specifically, we will be concerned with some of the structural aspects of modern English legal language. This line of study is of relatively recent origin.

Legal discourse is a very special kind of communication. In the American context, the text is drafted by only a few draftsmen, often just by one or two specially trained experts. They try to give a verbal expression to the will of Government by formulating the text in such a way that all conceivable considerations will be taken into account in the drafting process. The actual sender of the message (i.e. Congress or Senate) will impose certain basic requirements on the text, e.g. by taking for granted that the area in question is adequately covered by the text, and that the text is clear, consistent and prescriptive. Also, the law must simultaneously be both general and specific. Fulfilling such strict criteria demands not only a thorough knowledge of the principles of drafting but also considerable verbal skills. The overall requirements are reflected also in the language, where they take priority over considerations of readability, comprehension, elegance or fluency.

In this communication process where the law text constitutes the message, the receiving role is also atypical, for the text is written by one expert for another. Risto Hiltunen states "that legal language represents specialist-to-specialist communication will be obvious even to the layman as soon as he becomes involved with law. He will usually have to resort to the help of an interpreter (e.g. a lawyer) quite soon" [5, 66]. The "translation" works both ways: "interpreters" translate a client's business (e.g. a document in a business transaction) into the legal code; and vice versa, they explain to the client what the law is and how it should, or could, be interpreted in a given situation. In legal communication not only are the sender and receiver, but also, and above all, the message itself is special.

One feature characteristic of legal English on the level of discourse must be discussed, 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 are very few references beyond the sentence boundaries, being confined to references to other sections or subsections in the same law or some other laws. Such references are, however, important in themselves, and give an idea of the network character of American legislation. Tracing up such references may take the reader far outside the law he is consulting. As already indicated, lexical repetition is very much preferred to substitution even within the sentence. Anaphoric reference is introduced only when repetition is not possible and when there is no risk of confusion. Even a long constituent may be repeated several times so as not to risk the unambiguity of the text.

The active research in the area of spoken language has shown how different the two media, the spoken and written, are and can be. The differences are crystallized in the case of law language. "Spoken legal English" is not just a spoken variant of the written text, but a different genre, where the connection between what is said (when, why, how;) and the speech situation of the utterance is very close indeed. The written variant is at the other extreme; it is stable, constant and almost context-free.

The term legal language, as V. K. 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, 101].

We support the classification worked out by V. K. Bhatia and Risto Hiltunen and identify several genres used in a variety of legal settings taking into consideration the communicative purposes they tend to fulfil. Some of them 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 different professional settings [2, 103; 5, 65]. In this article, we take up legal documents, which function in the court room and serve as authentic records of some legal cases, for an in-depth 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, 50).

Legal cases represent the complexity of relationship between the facts of the world outside and the model world of rights, obligations, permissions and prohibitions. Legal cases are used in different communicative situations and contexts: the lawyer's office, the law classroom, and in the courtroom as well. They are essential tools used to train students in the skills of legal reasoning, argumentation and decision-making.

The cases represent the most powerful 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 [2, 119]. As we have stated in the previous researches, cases in legal contexts serve four major communicative purposes:

1. The original judgments, as reported in the in Law Reports, are very detailed and include several pages. In their full form (also referred to as legal judgments), cases serve as authentic records of past judgments. On most occasions they consist of some judgments delivered by several judges. In such 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) 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. The part of the case which is said to possess authority is known *ratio decidendi,* which was defined by Glanville Williams, a well-known legal writer, as " the material facts of the case plus the decision thereon " [2 , 175]. 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, 401).

"<…>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, 415).

3. Legal cases, as reported in some casebooks are meant to serve as reminders to legal experts who tend to use them in their arguments in the court of law. These versions of legal documents are generally very brief and inform the reader about the description of the case by mentioning the most important, what in legal terminology is known the *material facts* of the case. The document contains only the essential material facts and the verdict given by the judge. For example:

*"**The court held** that in the case of the contract here involved performance exactly on time was not a condition precedent, and the judgment of the lower court was reversed"* (12, 676);

*"**The court held** that the Government should pay plaintiff the value of the ship, and ordered a trial to determine the value" (*BCL: 7);

*"<…> **Held,** that this evidence was properly admitted <…>"* (12, 131).

As we can see, this version of the case is very brief, highlighting the main points of the individual cases.

4. There are variants of legal cases which serve as illustrations of certain issues of law. Such legal cases are carefully selected and accurately abridged. They form an important part of a law student's bibliography. They are generally abridged in casebooks and are also used in law textbooks in support of against a particular point of view. Law students are required to study legal cases because legal decisions are based on the doctrine of precedent. It means that courts follow previous decisions. So, students obtain some knowledge and experience, and study the law from such cases.

"<…> This legislative history is dealt with in detail in Sullivan v. Visconti, 1952, 68 N.J.L. 543, 53A. 598" (12, 504);

"<…> Defendant cites as authority for its position the case of Kimball v. N. Y. Life Ins. Co., 96 Vt. 19, 116 A. 119; Id., 98 Vt. 192, 126A. 553 <…> "(12, 223).

A major concern of law students when reading legal cases is not simply to understand them, but to appreciate which facts of the case are legally material and to distinguish them from those that are legally immaterial, or whether an earlier decision or a rule of law is relevant, whether a particular case is distinguishable from others, and to deduce the *ratio decidendi* of the case.

All these types of legal documents differ not so much in the type of information incorporated, as in the detailing of the information given and structure of the legal texts. 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 indicated some of the manifold connections between form, content and function.

Conclusion and perspective. In the article we have identified some types of professional legal discourses which are associated with the same communicative context but have different communicative purposes. Legal texts in general present specific linguistic, cultural, socio- and psycholinguistic problems in the process of functioning and comprehension. However, it is possible to make such documents more readable without simplifying their content or form. Simplification is the most complicated process involving not only revision of the language structure, but taking into consideration the psycholinguistic aspects of processing and comprehension. Research in these fields will in time give us valuable information that can be applied in interpreting complex texts into simpler ones. There has been some effort in this direction in the past few years, but much more needs to be done.

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