

MORPHO-SYNTACTIC FEATURES OF LEGAL LANGUAGE. SYNTACTIC COMPLEXITY AND SYNTACTIC DISCONTINUITY IN LEGAL TRANSLATIONS

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Until recently, linguists have paid relatively little attention to professional jargons, possibly because they shared the common belief that the primary differences between professional jargons and ordinary usage were purely lexical.

In the last few years, we have begun to recognize that professional sublanguages – such as medical language, scientific language and legal language – in fact, have important distinctive features, beyond the lexical level. The most readily apparent differences may indeed be lexical, but there may also be syntactic and discourse features that are equally important. This is especially true in the case of legal language (Charrow et al 1982: 175).

Studies undertaken of the structural properties of the register of legal English have labeled the style as “frozen” due to formulaic structures which seem old fashioned in modern language use. Furthermore, the legal register is characterized by long sentences and by an impersonal style with many formulaic expressions and typical legal vocabulary.

Syntactic complexity accounts for many of the difficulties lay persons are confronted with in comprehending legal English. Sentence length and sentence complexity seem to go together.

This paper tries to investigate a few morpho-syntactic features of legal language and some problems concerning the translation of legal texts from the syntactic perspective.

1. Impersonal constructions

The law tends to be phrased in a highly impersonal manner. An illustration of this impersonal style is the tendency to steer clear of first and second person pronouns. Rather than beginning an argument to judges by saying *May it please you*, a lawyer typically starts with *May it please the court*, addressing the judge or judges in the third person, and using a noun instead of a pronoun.

Legal documents are almost always in the third person. One reason for using the third person in documents like statutes is that they are meant to be of general applicability and address several audiences at once.

The third person also promotes an aura of objectivity, greatly desired by lawmakers. Judges are reluctant to say that *I find* something to be the case; such a finding seems too personal and vulnerable. An alternative is the **editorial we**, which is often used in formal or scientific writing by a single individual. The construction *we find* seems more impressive and objective, but it resembles the plural of majesty and may appear pompous. Thus, many judges prefer the third person: *this court finds*. It appears as an objective and powerful finding, made not by one frail human being, but endorsed by a venerable and powerful

institution. This usage helps legitimate the judicial system by making it appear to be above the fray of human emotions and biases (Tiersma 1999: 68).

We can conclude that the law, in general, has a propensity to be expressed in an exceptionally impersonal way.

Passives and nominalizations are other features that reinforce the impersonal and sometimes incomprehensible style of legal language.

2. Strategies for precision and imprecision in legal language

Much of the linguistic behaviour of the legal profession is geared towards speaking and writing as clearly and precisely as possible. Thus, the need for precision is offered as a justification for the many peculiarities of legal language.

One of the salient ways in which lawyers try to enhance precision is by avoiding pronouns. Lawyers prefer to repeat nouns, hoping to avoid ambiguity, rather than using the pronouns that are common in ordinary speech. Combined with what we have already mentioned when dealing with the impersonal style, this means that in legal language pronouns are a rare species.

Since pronouns can have ambiguous reference, the legal profession tends to shy away from them. At least in written legal language, lawyers are inclined to repeat a name or a full noun over and over. Consequently, lawyers use pronouns only where the antecedent is very evident, and even then, may decide to use the name or a noun instead (Tiersma 1999: 71).

Avoiding pronouns makes sense in documents such as contracts, where it is essential to carefully distinguish the rights and obligations of two or more parties.

The reluctance of lawyers to use pronouns does, indeed, make their language more precise.

Unfortunately, there are other characteristics of legal English that undermine or even contradict this goal.

Another feature of legal language does little to enhance precision, and could even sow confusion. This is the penchant for declaring that one morphological category will include another. For instance, statutes commonly declare that the masculine gender will include the feminine and the neuter. Thus, the pronoun *he* includes *she* and *it*, and *man* presumably includes *woman*. But, although the masculine can include the feminine, the opposite is not normally true. Thus, a pension plan providing a benefit to *widows* was held inapplicable to *widowers* (Tiersma 1999: 73).

Women have argued that using the masculine to refer to people in general, perpetuates sexism, and the better practice these days is to avoid such constructions. Nonetheless, California now encourages its judges to use gender neutral language in all local rules and court documents.

Along these same lines, legal documents and statutes often declare that the present tense shall include the future, and sometimes the past, and that the singular shall include the plural, and vice versa.

Despite claims about the precision of legal language, some of its attributes are deliberately imprecise. For example, passives and nominalizations often obscure the identity of the actor.

Legal language is often excoriated for over reliance on passive constructions. In an active sentence, the grammatical subject is also the actor. In contrast, the grammatical subject of a passive sentence is the *object* of the action, rather than being the actor.

Undoubtedly, the possibility of leaving out the actor explains much of the profession's affection for the passive constructions.

Of course, passives can occur for more legitimate reasons as well. The function of de-emphasizing the actor may explain why passives are common in statutes and court orders.

Legislators and judges want their commands to appear maximally objective, to give them the greatest possible rhetorical force. For legislators to state *we shall punish those who skateboard on sidewalks* seems too personal, perhaps even vindictive. A passive sounds more authoritative: *Those who skateboard on sidewalks shall be punished* (Tiersma 1999: 76). The same is true for court orders. To appear as authoritative as possible and to avoid the first person, judges, typically start an order not with *I order.....*, but with *It is ordered, adjudged and decreed*.

Passives seem less common in contracts, where the drafters are very concerned with specifying as precisely as possible who can or should do what, and hence need to emphasize the actor. For example, in a standard publishing agreement, virtually all of the verbs, which mostly deal with rights and duties of the parties, are in the active voice:

The Author shall prepare and deliver

The Publisher shall publish/ shall pay

On the other hand, when the contract deals with the choice of law to govern the contract, it does so in the passive: *This Agreement shall be interpreted and governed by the federal laws*. Because of uncertainty at the time of making the contract as to who will be doing the interpreting (i.e., the actor is uncertain), use of a passive makes sense here.

Another syntactic device, like passive constructions, can also have the effect of de-emphasizing or obscuring the identity of the actor. This is the phenomenon of **nominalization**. At least historically, a nominalization is a noun derived from another word class, usually a verb. For example, the nominalized form of the verb *construct* is *construction*. Other examples of nominalizations:

Verb	Nominalizations
demonstrate	demonstration
judge	judgment
injure	injury
insure	insurance
try	trial

Many nominalizations were created by the addition of the suffix *-al* to the verb (*propose- proposal*) or by the suffix *-er*. Nouns can also be created from verbs by adding the suffix *-ing* to the verb, thus forming a gerund: *Injuring the girl was unforgivable*.

Like passive constructions, nominalized verbs allow the speaker to omit reference to the actor. Rather than having to admit that *the defendant injured the woman in the street*, the defendant's attorney can write that *the woman's injury happened in the street*. In fact, the lawyer can depersonalize the incident even more by leaving out mention of the woman entirely: *injury happened in the street*.

These are examples of strategic imprecision.

A more legitimate reason for nominalizations is that by allowing the actor to be omitted, they enable drafter to cover the possibility of *anyone* doing a specified act. This permits laws to be stated as broadly as possible.

3. Modal verbs

Clear communication generally requires using ordinary modal verbs where appropriate.

Instead of *shall*, which has an archaic and legalistic feel to it, language directed at the public should mostly use *must*. Yet, *shall* does have the virtue of signaling that something is an enforceable legal obligation, not just an informal rule or unenforceable agreement. At the same time, because *shall* is little used outside the legal world, we should avoid it when the audience is the lay public.

Similarly, the archaic use of *do* (as in *I do decide*) is almost always unnecessary in legal language and may falsely suggest emphasis to someone untrained in the law field. If the writer needs to unambiguously indicate performativity, *hereby* is quite sufficient (Tiersma 1999: 207).

Personal pronouns followed by an ordinary modal verb, like *you must* or *you can*, are actually more clear and intelligible than longer impersonal expressions like *it is necessary (for you)* or *it is your duty*.

4. Syntactic discontinuity in legal language

Syntactic discontinuity is a relatively frequent result of a deliberate manner of formulation in legislative writing. It occurs if two elements of the same phrase, e.g. a noun phrase, which would normally be situated beside each other in the sentence structure, are formally separated by another expression or clause being inserted in between them. As a result of this, the two elements, which are both semantically and structurally related, may end up distanced from each other in the structure of the sentence and the close semantic or structural relation between them may become less obvious.

This phenomenon does not occur in legislative documents without reason. In fact, the reason for syntactic discontinuity in legal language is obvious – it is connected with the frequent use of the so – called qualifications in legislative provisions (Bhatia 1993). These adverbial constructions are an essential part of legislative provisions, as their function is to establish the scope of application of legislative rules. The problem arises if there are too many such expressions to be inserted within the bounds of a single sentence. As Bhatia (1993: 147-148) points out, if qualifications on the one hand make the main provisional clause more precise and clear, they can also promote ambiguity if they are not placed judiciously. That is the main reason why legal draftsmen try to insert qualifications right next to the word they are meant to qualify. The result of all this effort is that these qualifications are inserted at various points where they create syntactic discontinuities rarely encountered in any other genre.

The reasons for syntactic discontinuities in general English are nevertheless different from the reasons for syntactic discontinuities in legislative writing. In legal language syntactic discontinuity helps safeguard precision and rule out ambiguity. However, in non-specialist language, syntactic discontinuity is used to harmonize the structure of the sentence, i.e. the word order, with the semantics of the sentence.

Quirk et al (1985: 1398) identify two motives for using syntactic discontinuity in English sentences. The first one is to achieve a stylistically well – balanced sentence in accordance with the norms of English structure; in particular to achieve END – WEIGHT.

The other reason regarded by Quirk et al as essential for the existence of syntactic discontinuity in English sentences is the need to achieve an information climax with END – FOCUS. This is connected with the theory of functional sentence perspective and the division of the sentence into the theme, the transition and the rheme. There is a tendency to place the information focus towards the end of the sentence to achieve the information climax.

Generally speaking, syntactic discontinuity is more common in formal language than in informal one. An exception to this rule would be unprepared spoken discourse, where a syntactic discontinuity is a sign of spontaneity and impromptu formulation. The main difference between the occurrence of syntactic discontinuity in legislative writing on the one hand, and the so – called general English on the other is evident. Whereas in the so – called general English syntactic discontinuity appears to be a peripheral feature of the syntax, in legislative writing it is one of the prominent and, therefore, central syntactic features of the text.

Mackinlay (2002) offers the following example of a discontinuous noun phrase in legislative documents:

*Nothing in Parts I to V of this Act applies in relation to **any information** held by a publicly – owned company **which** is excluded information in relation to that company. (Freedom of Information Act, 2000, s.7 7)*

The example shows a syntactic discontinuity between the object and its post-modifying relative clause. As the relative pronoun *which* has the potential of being ambiguous if it is not attached immediately to its antecedent, the relative clause includes a reiteration of the antecedent, i.e. *information....which is excluded information*. This makes it impossible to relate *which* to the immediately preceding element *company*.

The same author also gives an instance of discontinuous verb phrase:

*Either Chief Inspector **may** in exercising her functions under this section with respect to a registered inspector, **have** regard to any action taken by the other chief Inspector with respect to that registered inspector (Education Schools) Act, 1992, s. 1(4).*

The syntactic discontinuity in the example above affects the operator and the predication, which are separated by a relatively long adverbial expression. Strangely enough, syntactic discontinuity in a verb phrase is not mentioned in Quirk et al (1985).

Another type of syntactic discontinuity is a discontinuous coordinate construction, an example of which is presented in the following sentence:

*An appeal under this section may be brought only **with the leave of the Immigration Appeal Tribunal or, if such leave is refused, with the leave of the appropriate appeal court.** (Asylum and Immigration Appeals Act, 1993, s 912)*

Syntactic discontinuity can also be traced in adjective phrases, as the following example suggests: *The goods are **free**, and will remain **free** until the time when the property is to pass **from** any charge or encumbrance not disclosed or known to the buyer before the contract is made.....(Sale of Goods Act, 1979,s.12(2) (a).*

Syntactic discontinuity always tends to make the structure more complicated and impede comprehensibility to some extent. This is valid even if there is only one instance of discontinuity in a sentence.

5. Adverbial phrases

One of the characteristics of legal language is the common use of compound adverbs with *here-, where-, there-: hereby, hereinafter, therefore, hereunder, whereto*. These are considered archaic.

In modern legal English there are some adverbs which are only used in European and British legislation. An example may be the use of the adverb *whereas* which occurs in the introductory part of the legal documents.

In legal English adverbs may be placed between the indefinite article and the noun. And this word order can be especially found in European directives, e.g. *indirect discrimination shall be taken to occur where an **apparently** neutral provision, criterion or practice...*

Another specific pattern is *adverb + participle*. In the Continental legal drafting we may find an inverted word order, as for example: *hereby provided*, while in the Common Law style the word order is different, as for example: *mentioned herein*.

Critics argued that legal English is full of archaic words, like those mentioned above. Especially European legal texts make use of such adverbs. This indicates the fact that the European style has taken over some old features of the British style, maybe for making the language sound more authoritative.

Adverbs or adverbial clauses are often inserted in a sentence. The frequency of the adverbial clauses is one of the characteristics of legal English. Their traditional position is the

initial position, this being a typical feature for British legal texts, because in European legislation most of the sentences begin with a noun phrase:

*If the prisoner is eligible to be considered for automatic release, the Secretary of State **must**, on recalling him, consider **whether** he is suitable for automatic release.*

In British statutes the Conditional Adverbial Clauses are preferred, while in European directives the Adverbials of Place are frequently used.

6. Coordination and subordination in legislative documents

A salient syntactic characteristic of legal English is the length of the cohesive chains.

The most frequently used coordinative conjunctions in both European and British legal texts are *and* and *or*.

And / or is archaic and was criticized especially by judges. This expression was first introduced and used by the British legal writers. The European directives do not avoid the use of this archaic expression:

*The competent authorities shall provide each other with all **essential and / or relevant** information.*

This expression implies two terms at the same time: *essential and relevant*. Many drafters consider that the use of *and / or* is more efficient than the expression *or both*.

Correlative conjunctions: *either...or*, *neither...nor*, *both ...and* are very common in European legal texts.

In legal texts the following subordinate conjunctions are used to specify the circumstance stipulated in the provisions: *when*, *where* and *if*. *If* is one of the most frequent conjunctions used in British acts, while *where* is preferred in European directives.

The use of these subordinating conjunctions increase coherence and is a specific feature of this genre.

Relative clauses are also very common in legal language. Those introduced by *that* are the most frequently used in both British and European legal texts.

7. Syntactic complexity and syntactic discontinuity in legal translations

A general characteristic of the Romanian translations of the EU documents is certainly represented by their complex syntactic structure. This complexity is manifested at all levels analysis. Thus, on the one hand, it is present at the level of the sentence, which is generally made up of more than one clause, and which often includes elements corresponding to English clause or even phrase constituents. On the other hand, the syntactic complexity is realized at the clause level, where Attributes and different Adverbial Modifiers play a major part. Nominal and verbal phrases are also complex and often contain a great number of constituents. Although there is no perfect correspondence between the sentence, the clause, and the phrase constituents of the English texts and their translations, it is obvious, as Cozma (2006) notices, that the structural complexity characterizing the original EU documents, has turned, as a result of the translation process, into one of the most important syntactic features of the Romanian documents in this category, too.

The sentence and clause complexity is supported by the use of a wide range of linking devices. In Romanian, these connectors are represented by complex conjunctions and prepositional phrases; this use is required by the need for clarity, usually expected from the documents in question, and indicates, at the same time, the text translator's care for an elevated style.

Syntactic discontinuities are sometimes preserved in the Romanian variants of the English texts. Unfortunately, the various types of discontinuous constituents present the danger of turning the EU document into a text rather difficult to be processed, especially for the non-specialist recipients.

The nominal character generally displayed by the legal language (cf Crystal and Davy 1969, Danet 1985, Bhatia 1993, Tiersma 1999, Stoichițoiu-Ichim 2001) is also present in the translated texts. Actually the Romanian variants of the EU documents make use of even more nouns than their English counter-parts, because the translator resorts to this type of solution not only for source text elements with the same morphological status, but also for some non-finite forms of the verbs. The multitude and the complexity of the noun phrases, as well as the nominalizations frequently present in the Romanian EU texts, highlight the abstract and the impersonal character of this type of discourse (Cozma 2006: 157).

The same impersonal tone of the Romanian EU texts is also achieved at the level of the verbal phrases, where the verbs which render the obligatory character of the legal provisions are typically used in the Present Tense of the Indicative Mood, the third person singular. The Romanian texts present an alternation of the passive voice with the reflexive verb forms which creates an overall impression of objectivity.

Cozma (2006: 152) gives some illustrative examples :

ST: *Blood-grouping reagents shall be made available to the other Contracting Parties.*

TT: Reactivii de determinare a grupelor sanguine **sunt puși** la dispoziția celorlalte părți contractante.

ST: The NCBs shall ensure that banknotes of other participating Member States can be either **exchanged** against euro banknotes and coins or **credited** to an account.

TT: *Băncile centrale naționale asigură faptul că bancnotele altor state membre participante pot fi schimbate în bancnote și monede euro sau ...înscrise în creditul unui cont.*

In both languages, post-modifiers are often represented by Relative clauses, which contribute to the complexity of the sentence, and represent, at the same time, an important means of ensuring its clarity.

The Romanian EU documents contain more Relative Clauses than their sources.

Cozma (2006: 145) gives the following example, in which the resulting Romanian text contains two Relative Clauses:

ST: *Outsourcing should, moreover, be subject to a cost-benefit analysis taking account of a number of factors such as identification of the tasks justifying outsourcing, a cost-benefit analysis which includes the costs of coordination and checks, the impact on human resources, efficiency and flexibility in the implementation of outsourced tasks.*

TT: *Externatilizarea trebuie, în plus, să facă obiectul unei analize costuri-beneficii care să ia în considerare mai mulți factori, cum ar fi identificarea sarcinilor pentru care se justifică externalizarea, o analiză costuri-beneficii care include costurile de conducere și control, impactul asupra resurselor umane, eficiența și flexibilitatea îndeplinirii sarcinilor externalizate.*

We can conclude that English and Romanian EU documents present significant similarities, but also a number of differences. They differ, especially, with regard to the specific manner of realizing and manifesting these features. The differences between the syntactic norms of the source texts and these of their translations represent some of the reasons why the English documents are characterized by a more condensed and synthetic type of expression, while their Romanian counterparts are more elaborate and more explicit.

References

- Bhatia, V.K. (1993) *Analyzing Genre: Language Use in Professional Settings*, London: Longman
- Charrow, W. R. et al (1982) "Characteristics and Functions of Legal Language" in *Sublanguage. Studies of Language in Restricted Semantic Domain*, R.Kittredge and John Lehrbergh (eds), New York: de Gruyter
- Cozma, M. (2006) *Translating Legal-Administrative Discourse*, Timișoara: Editura Universitatea de Vest
- Crystal, D. and D. Davy (1969) *Investigating English Style*, London: Longman

- Danet, B. (1985) "Legal Discourse," in T.A.van Dijk (ed), *Handbook Discourse Analysis vol I: Disciplines of Discourse*, London: Academic Press – Harcourt Brace Jovanovich Publishers, pp 273-291
- Quirk, R. et al (1985) *A Comprehensive Grammar of the English Language*, London and New York: Longman
- Stoichițoiu-Ichim, A. (2001). *Semiotica discursului juridic*, București: Editura Universității București.
- Tiersma, P. (1993) *Legal Language*. Chicago: The University of Chicago Press
- Trosberg, A. (1997) *Rhetorical Strategies in Legal Language: Discourse Analysis of Statutes and Contracts*, Tübingen: Gunter Narr

Electronic Sources

- Mackinlay, J. (2002) *Syntactic Discontinuity in the Language of U.K. and E. U. Legislation*, www.esp-world.info/articles
- Schneidereit, G. (2004) *Legal Language as a Special Language: Structural Features of Legal English*, www.grin.com
- The official site of the European Union, <http://europa.eu.int>; EUR-LEX, the portal to EU law, <http://europa.eu.int/eur-lex/lex/en/index.htm>
- Translations from the European legislation, <http://www.ier.ro>