

**“ALEXANDRU IOAN CUZA” UNIVERSITY OF IAȘI
FACULTY OF LETTERS**

**LEXICAL, MORPHO-SYNTACTIC AND PRAGMATIC
FEATURES OF THE JUDICIAL DISCOURSE IN ROMANIAN
AND ITALIAN. A COMPARATIVE APPROACH**

DOCTORAL DISSERTATION

ABSTRACT

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Iași, 2015

The present dissertation *Lexical, morpho-syntactic and pragmatic features of the Judicial discourse in Romanian and Italian. A comparative approach*. compares and contrasts the Romanian and Italian judicial discourses, being included in the domain of judicial linguistics from a theoretical and methodological points of view.

In order to analyze the concept of 'judicial discourse' and the corresponding typology, the judicial approach, which explains how law comes into force, was doubled by the linguistic approach which envisaged identifying those words judicially relevant for an appropriate judicial interpretation and law enforcement.

The dissertation is descriptive-applicative and it is divided into six relevant chapters preceded by an **Introduction** and followed by **Conclusions**, **Appendices** and **Bibliographic References**.

The **methodology** envisaged includes the synchronic linguistic description of the judicial discourse, the pragmatic-related explanation of the linguistic features as conditioned by the real situations in which the judicial discourse/text functions and by the semantic-related analysis of the judicial terminology. Representative studies were consulted in order to explore relevant theories in the field envisaged and specific linguistic aspects characteristic of Romanian and Italian legislation and civil/ criminal sentences were analyzed.

The **Bibliographic references** include a significant number of relevant sources for the Romanian and Italian linguistic and judicial domains, as well as a substantial corpus selected from national laws, judicial documents, dictionaries and from terminology-related theoretical and practical studies.

The **purpose** of this dissertation is represented by the pragmatic approach to the judicial vocabulary in order to identify and analyze the features of the judicial texts and the difficulties which arise in translating such texts from Romanian into Italian. In order to achieve this purpose, the following aims were taken into consideration:

- defining the term and concept of 'judicial discourse';
- analyzing the lexical, morpho-syntactic and pragmatic features of judicial texts;
- equivalence and adequacy in various communication instances (translation);
- studying the judicial terminology which envisages writing domain-specific dictionaries.

The **Corpus** is mainly made up of examples selected from legislation, from collections of judicial practices in criminal matters (cases from court ruling) and from theoretical studies of researchers such as Ilariu Mrejeru, Umberto Scarpelli, Eugeniu Coșeriu, Ion Coteanu, Dumitru Irimia, Simina Măstăcan, Michele Cortelazzo. Romanian judicial dictionaries were also used in order to explain the domain-specific terms and to further compare the information obtained with that provided by the Italian general and judicial dictionaries and with the information extracted from the Romanian and Italian criminal proceedings texts.

The **premises** of this research on the judicial vocabulary are represented by my special interest in the domain-specific languages and by my activity, i.e. professional translator from and into Italian and Spanish. Considering the fact that the judicial domain has gained more and more ground lately and there are always new specific linguistic structures to be explored and analyzed, the present dissertation may represent a useful theoretical and practical tool for the translators of domain-specific texts. The general aim of this research is that of analysing frequent linguistic phenomena and ways of communicating which lead to the use of specific linguistic patterns with a view to create a Romanian – Italian glossary of judicial terms clearly explained for their appropriate use.

Chapter I makes a presentation of the judicial domain historical background by pointing out a series of aspects regarding judicial systems, in general, and the Romanian and Italian judicial systems, in particular.

Chapter II provides a series of possible definitions for the concept of 'judicial discourse', the theories which explain the general tendency in the evolution of the judicial discourse, the Romanian and Italian linguistic approaches to the judicial discourse, and a brief history regarding judicial documents in Romanian and Italian. Since the judicial discourse represents a vast research domain, our approach is not meant to be exhaustive, but rather limited to two closely related aspects, i.e. the *judicial/legal discourse* and the *jurisdictional discourse*, in other words the *law* and the *judicial decision*.

Chapter III analyzes the linguistic interferences between Romanian and Italian in the process of translation, special attention being paid to judicial translation. The chapter is divided into two subchapters: the former presents the theoretical background regarding the judicial translation (translation specificity, the principles of judicial translation), whereas the latter

focusses on the difficulties arising in translating judicial texts from the perspective of linguistic, dynamic and pragmatic equivalence. The aspect clearly pointed out throughout this chapter is that the judicial language is quite complex and its analysis makes it essential that the judicial domain and concepts should be well-known and appropriately used.

Chapter IV and *Chapter V* examine the three levels of analysis envisaged, i.e. *lexical*, *morpho-syntactic* and *pragmatic* in Romanian and Italian: *lexical*, by studying the terminology adopted for the judicial notions discussed, *morpho-syntactic*, which enlarges on the specific structure of phrases and clauses, since the writing and enforcement of laws are essential to the specialists in the field who have to both understand and interpret judicial texts as correctly as possible, and *pragmatic* which takes into consideration the performative aspect due to the fact that every linguistic act conditions the enforcement of any judicial act.

Chapter VI represents the practical part of this dissertation and envisages a comparative linguistic approach by highlighting the main similarities and dissimilarities existing between the Romanian and Italian judicial discourses in the two judicial systems. Our analysis aims at pointing out a series of linguistic phenomena traceable at different levels.

Regarding the **lexical level**, the general characteristics of the Romanian and Italian judicial systems are traceable in the domain-specific vocabulary, the specific judicial terms being part and parcel of law, and being used in order to make specific judicial statements.

The **lexical features** of the Romanian judicial vocabulary are represented by: **double-origin terms** which were the result of either internal polisemy, the term being used in one or more legal areas, e.g. *apărare, înscris, probă, acțiune*; or external polisemy, this being the case when general words turned into judicial terms: e.g. *calitate, categoric, a executat, intenție*.

On the other hand, the **lexical features** of the Italian judicial vocabulary are represented by: **collateral domain-specific words** borrowed from the religious vocabulary, e.g.: *celebrare un processo; rigettare un ricorso*, and specific prepositions (*avverso* instead of *contro*; *avanti* which is used as a synonym of *davanti* without always replacing it e.g. "*nel ricorso pendente avanti il Giudice dell'esecuzione*").

Among the **common lexical fetures** of the Romanian and Italian judicial vocabulary mention can be made of: **specific judicial terms** such as: *casație, recidivă, infracțiune* in Romanian and *istruttoria, litisconsorte, sinallagma* in Italian; **Latin words and expressions**, e.g. *in solidum* („cu toate bunurile”), *ope legis* („potrivit ordinului legii”), *in dubio pro reo* („de îndoială profită infractorul”), **foreign terms**, borrowed mostly from English, e.g. *leasing*, used in Romanian and *Home Office* (Ministerul de Interne din Regatul Unit), *Authority* (Autoritatea de Supraveghere a Lucrărilor Publice) used in Italian; **archaisms** such as: *împricinat, osândă, pârător, pricină*, in Romanian and *cagionare* instead of *causare*, and *addì, previo, uopo* (used in expressions e.g. *all’uopo, d’uopo*) in Italian .

A useful conclusion drawn from the comparative analysis we made is that the judicial discourse has a series of features which are common to most legal systems, irrespective of their origins.

From a **morpho-syntactic** point of view the specificity of Romanian judicial texts given by: **the use of specific words as subjects**: „*curtea*”, „*instanța*”, „*parchetul*”; the presence of **typical noun phrases**: „*expunere de motive*”; „*nerespectarea cerințelor procesului*”; the selection of **impersonal passive constructions**: „*s-a dispus*”, „*s-a impus*”, „*se decide*”; the use of **verbs in the gerund**: „*constatând îndeplinite condițiile legale...*”, „*deliberând, instanța decide...*” or of **reflexive verb phrases** marked for the **future** and used with imperative impersonal meaning: „*se va proceda*”, „*se va ține*”; the **absence of an animate subject** which is most often replaced by the noun *law* or by some legal authority: „*Legea dispune/impune următoarele...*”; and the use of **the long infinitive**: „*Instanța va începe cu ascultarea inculpaților, audierea martorilor*”.

As far as the **morpho-syntactic** specificity of the Italian judicial text is concerned, it is given by: **synthetic constructions** made up of „modal verb + infinitive” -*si* (*possono applicarsi, trovarsi*); the use of **prepositional verbs** (*stare per, inziare a*), of **present participle** especially in normative texts where it may have a **verbal function** and it is followed by a direct object (e.g. *atti eccedenti*) or an indirect object (e.g. *diritti spettanti a*), an **adjectival function** (e.g. *affittuario uscente, disposizioni seguenti, disposizioni concernenti*) or a **nominal** one (*l’acquirente, l’adottante, l’agente* and *diritto prevalente, giudizio pendente, norma vigente*); the use of the so-called **’imperfectul narativ’** (*imperfetto narrativo*) in order to describe facts/events: e.g. „*La Corte rilevava che [...]*”; „*il Giudice di appello qualificava i fatti*”; the

frequent use of **abbreviations**, in writing sentences: e.g. P.Q.M. – P.T.M. - *per tali motivi/per questi motivi* (pentru aceste motive); p.e.p - *previsto e punito* (prevăzut și pedepsit); L.c.s. – *letto, confermato, sottoscritto* (citit, confirmat și semnat); P.M. – *pubblico ministero* (ministerul public); *S.V.* – *Signoria Vostra* (Domnia Voastră); *u.s.* – *ultimo scorso* (ultima dată);

Out of the **morpho-syntactic** features common to the two judicial languages mention can be made of: **article omission** which gives the text a high degree of formality: *ordonanță, dispoziție, lege, (la) pena detentiva, (la) prova adeguata; (la) sentenza secondo grado; (la) sentenza della Cassazione*; **linguistic stereotypes** specific to the legal and jurisdictional texts: „*în conformitate cu..., prin sentința civilă nr. ..., în numele legii decide..., în cazurile prevăzute în art. ..., în temeiul legii...*; *ai sensi dell'articolo, considerato che, a pena di, a mezzo di, in merito a* etc.; **anaphoric elements** making reference to something previously mentioned in the linguistic context, e.g. *numitul, numita, părțile citate*, in Romanian and *tale, detto, suddetto, predetto, sottoscritto, sotto indicato, succittato* instead of *questo*, and the emphatic adjective *medesimo, stesso*, in Italian; **the intertextual character**, there being numerous direct and indirect references, many linguistic patterns constantly using the same terms and reference to laws and judicial contexts which is essential to the judicial discourse; **the impersonal character**, especially in normative texts, by means of negative or indefinite pronouns in Romanian *altul, fiecare, oricare, toți, orice*; and by indefinite pronouns in Italian *chi, chiunque, qualunque, ciascuno*; **the use of specific collocations**: *competență jurisdicțională, atribuții jurisdicționale, immune da vizi, prestare il consenso, rinvio a giudizio, citare a giudizio*; the use of **connectors**: e.g. *de asemenea, tot astfel, dacă* in Romanian, and *orbene, altresì, di talché, invero* in Italian and of **deixis**, which may be **a. social**, expressed by polite pronominal forms such as: *dumneata, dumnealui, dumneavoastră*, or by polite formulas used in addressing judicial representatives: *domnule judecător, domnule președinte, onorata instanță, domnule procuror*; **b. personal**, envisaging the people involved in the process of communication (the first person expresses subjectivity, including the speaker, the second person includes the receiver, and the third person excluding both the speaker and the receiver); **c. temporal**, indicating the moment or interval of time when the action takes place and being expressed by adverbs such as: *acum, apoi, ieri, anul acesta, atunci, or dopo, ieri, oggi*; **d. spatial**, indicating, by means of adverbs, something which is close or distant („prossimale” or „distale” in Italian): *aici, acolo, or qui, davanti* etc. (e.g. „*qui, in questa sede*”); **e. textual** making reference to a certain section in the discourse: e.g. *alineatul următor, articolul 1, il primo capoverso, l’art.2, comma 1, lettera a.*

The **pragmatic** features specific to judicial texts are illustrated by the **performative** and **implicit** character of such texts. The **pragmatic** dimension is a characteristic of both the Romanian and Italian judicial texts because every linguistic act conditions the corresponding judicial act. The **implicit** character is obvious when the message cannot be deduced directly from the linguistic structure of the statement.

The **performative** character of judicial texts is given by: **assertive statements**, e.g.: *atest, confirm, apreciez, and confermo, descrivo, informo*; **directive statements** which express, by means of verbs, a decision in favour or not to a series of actions: e.g. *a solicita, a permite, a îngădui, and decreto che, autorizzo a, nomino quale*; **verdictive statements** which imply using verbs meant to express judicial actions: *a achita, a declara nevinovat, a se califică, a amnistia, dar și, condanno, assolvo, riconosco colpevole/innocente.*; and **comissive statements**, when the person envisaged promises to take future actions: e.g. *a promite, a (se) angaja, a propune, and mi obbligo a, mi impegno a, rigettare.*

Finally, **the implicit** character of judicial texts may result or may be understood from the context. The implicit is made use of when there is not enough evidence to prove a fact or when we hesitate making certain statements (e.g. *Nu am declarat/menționat acest lucru*).

The results of the theoretical and practical research are included in the final chapter of the present dissertation: **Conclusions**.

The judicial experience results not from a written text, but from a fact which is repeated in time. The judicial discourse represents, in each and every culture, a way of thinking, being conditioned by the political and socio-cultural contexts in which it is used and linguistically illustrates all the changes in a society by means of the corresponding legal system. Moreover, the judicial discourse is not reflected only by means of the terms and expressions specific to a given judicial system, but also by means of the ways in which they are used in context. It is characterized by clarity and exactity in order to ensure the correct enforcement of judicial norms and of law. Since the judicial discourse uses the language as a means of communication, any judicial statement expressed by laws, sentences, decisions has its own judicial style to express a judicial idea.

In analyzing the judicial discourse a specific language was identified, namely that of logics and findings, a language determined by the judicial technicality and tradition. The clause

structure is formal, just as the principles according to which it functions and the law which it enforces. Judicial documents, in the general sense, resemble each other by means of their clause structure and by their purpose.

The lexical, morpho-syntactic and pragmatic features of the Romanian and Italian judicial discourses may be described from a historical-cultural perspective based on different judicial models and different evolution of social contexts.

Last, but not least, the fact should be pointed out that the research on the judicial discourse creates numerous practical problems to both non-specialists and specialists. This is due to the fact that non-specialists tend to use general language in the interpreting judicial documents and this type of language may alter the appropriate understanding and interpretation of the message by the specialists.

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