Studies of Legal English and Legal Romanian: 
an Overview

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Abstract

The paper presents a brief overview of the English and Romanian studies of legal language. It deals with the terminology used in this area of research and reviews the most pertinent studies, highlighting the need for the research of spoken legal Romanian as this is still an unexplored territory.

Introduction

Both lawyers and linguists agree that the law ‘is an overwhelmingly linguistic institution’ (Gibbons, 2003: 1 *apud* Kurzon, forthcoming). In 1963, Mellinkoff claimed that ‘the law is a profession of words’, but explained that ‘yet in a vast legal literature the portion devoted to the language of the law is a single grain of sand at the bottom of a great sea’ (1963: VII). Since 1963, things have changed. Legal language is now an important and continuously growing area of study where legal professionals and linguists join forces to expand their knowledge.

Yon Maley considers that ‘Language is medium, process and product in the various arenas of the law where legal texts, spoken or written, are generated in the service of regulating social behaviour. Once norms and proceedings are recorded, standardised and institutionalised, a special legal language develops,

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There is a considerable body of works available and the literature is still growing. Most research has been carried out in the United States and Britain, but in other European countries such as Sweden (Adelswärd et al., 1987; Ilic, 1994; Martinovský, 2001), Finland (Hiltunen, 2002), Germany, Austria, Italy, Spain, the Czech Republic (Vystrčilová, 2000), or the Netherlands (Komter, 1998) legal language has also been studied.

Interest in this field of study has also touched other parts of the world such as South Africa (Moeketsi, 1999; De Klerk, 2003); Malaysia (Burhanudeen, 2002; David, 2003), China, New Zealand (Innes, 2001) and Australia (Eades, 1994). In Romania, a few studies have appeared so far (Stoichiţoiu-Ichim, 2002; Zafiu, 2003), all of them focusing on different aspects of the written language of the law.

This paper starts by surveying the terminology related to the language of the law. Then, it reviews some English and Romanian studies carried out throughout the time, highlighting the need for the investigation of spoken legal language.

**Terminology**

Researchers use a lot of terms for what Danet (1980) calls *language in the legal process*. Peter Tiersma (1999) uses the terms *legal language* and *language of the law* interchangeably to denote both the spoken and the written types. When referring to the spoken language of the law, many scholars (Antieau, 1998; Moeketsi, 1999; Kurzon, 2005, etc.) use the terms *language in the courtroom* or *language of the courtroom proceedings* or as opposed to the legal texts which are written.

It should be noted that the broad field of language and the law is sometimes called *forensic linguistics*. Peter Trudgill establishes it within the context of applied linguistics and considers that *forensic linguistics* is

'the application of linguistic research - in sociolinguistic areas such as discourse analysis, dialectology, linguistic variation and stylistics, and other core linguistic areas - to different societal issues connected with the law' (2003: vi, preface to John Gibbons's *Forensic Linguistics: An Introduction to Language in the Justice System, apud Conley and O'Barr, 2005, ch. 10).
For John Gibbons, the term *forensic linguistics* has a narrow and a broad meaning. In the narrow sense, it means linguistic evidence used in and by the law while in the broad sense, it covers all the law and language topics such as:

1. The language of the law, including both the written language used in legal documents and the language spoken in legal fora;
2. Legal translation and interpretation;
3. Efforts to alleviate linguistic disadvantages resulting from the language of the law;
4. Linguistic evidence provided by experts in court; and
5. Linguistic expertise applied to problems of legal drafting and interpretation.'

(Gibbons, 2003: 12, *apud* Conley and O'Barr, 2005, ch. 10)

Levi makes the distinction between research on *language in the judicial process* which includes 'analysis of language spoken in legal settings, the language written for legal purposes as well as laws which are about language' and *forensic linguistics* which includes 'contributions of linguists and other language scientists to the resolution of actual legal cases' (Levi, 1991, *apud* Martinovsky, 2001: 9).

However, as Martinovsky (2001: 9) points out, this difference is not present in all the works: in some cases forensic linguistics is the broad term, in others, the opposite, and there are still others in which both fields share points of view.

Maley, on the other hand, divides the analysis of language and the law according to the discourse situation:

- legislation - statutes, contracts, etc.
- courtroom discourse - interactive language, ritual courtesies, etc.

Legal language has been called an *argot, a cant* (Phillips, 1982), a *register* (Trosborg, 1997), a *style*, and even a *separate language or dialect* (O'Barr, 1981; Charrow and Crandall, 1978). Trosborg (1997) talks about a *legal register* (language of the law) that is formed of different genres (e.g. legislative texts, contracts, judge/lawyer interchanges, lawyer/witness interchanges, etc.). Tiersma (1999) argues that it should be better described with the relatively new term *sublanguage* which has its own specialized
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English Studies

According to Martinovsky (2001: 8), the academic field of language and the law emerged in the 1980s after a conference called 'Language in the Judicial Process' held in 1985 at Georgetown University. At that time, there were few studies in this field, but as the interest of researchers grew bigger, a considerable amount of works have appeared ever since. The most important sub-field for research has been spoken language interaction in courtrooms.

Danet (1980: 450-463) argues that the emergence of such a new field is the result of the public criticism of the language of professions (which are too mystified for the lay people) and of the developments in the twentieth century linguistics (shift from langue to parole, emergence of sociolinguistics, psycholinguistics, pragmatics, etc.).

Research into legal language appeared in the second part of the 20th century, being carried out mainly on written texts.

In 1969, in chapter 8 on 'The Language of Legal Documents' of their book, Investigating English Style, David Crystal and Derek Davy dealt with the style of the language of contracts, which is a very complicated and syntactically complex one, created in order to avoid misinterpretations and to convey all the relevant points. Syntactic properties of the legislative language were described by Marita Gustafsson (a Finnish scholar) in 1975.

In the 1990s, research (Danet and Bogoch, 1994) was still being carried out on legislative texts, on contracts and on wills, but - as Kurzon (forthcoming: 728-731) notes - from a discourse and pragmatic perspective rather than from a structural one. He also observes that in the United States interest in the law and language came initially more from a sociological and anthropological than a linguistic perspective.

The study of the spoken language in courtrooms appeared in the late 70s due to a growing awareness of the importance of human communication and to the development of more efficient recording equipment. Brenda Danet's overview called Language in the Legal Process (1980) sets the cornerstone for future research in this field.

Pragmaticists' interest in legal language gave rise to pragmatic studies that tackle different topics such as the formulaic language in texts such as the witness's oath, the adjacency pair of question/answer in witness testimony.
Romanian Studies

Studies which analyse the Romanian legal language from a linguistic perspective are not numerous in our country. A comprehensive bibliography has been compiled by Adriana Stoichiţoiu-Ichim (2002), who distinguishes three perspectives on the analysis of the Romanian field of the written language and the law: a linguistic, a legal, and an interdisciplinary one.

1. Linguistic Perspective

Diachronic studies

According to Stoichiţoiu-Ichim (2002), most of the Romanian linguistic studies are theoretical and have focused on diachronic research, presenting the formation and evolution of legal language (Dimiu, 1939; Giosu, 1963; Gheţie, 1978, etc.). Other researchers have done terminological studies, terminology being considered by many as the most salient feature of this language type (Brâncuşi, 1955; Barborică, 1969).

Synchronic studies

These studies contain analyses of the legal language using traditional linguistic, stylistic, sociolinguistic, discourse analysis, etc. approaches, e.g. legal semantics studies, syntactic studies of the normative texts (Pana-Dindelegan, 1977), text-discourse relationship and text structure studies (Stoichiţoiu, 1981).

In her book, *Diversitate stilisticii în româna actuală* (2003), Rodica Zafiu briefly touches on the subject of the style of a Romanian written legal text. According to her, some of the stylistic features of such a text are: repetitions, impersonalization, abstractness, nominal constructions as well as artificial, difficult and sometimes pleonastic constructions that are coined as specific legal formulae.

2. Legal Perspective

The studies done from a legal perspective are mainly practical and concern the improvement of the legislative techniques (Nicolcioiu, 1972) and the legal texts understanding by laypeople (Ghimpu, 1978).
3. Interdisciplinary Perspective

Stoichițoiu-Ichim states that the interdisciplinary perspective on language and the law led to the emergence of two new research fields of study, i.e., Romanian legal linguistics and legal semiotics. Romanian legal linguistics first appeared as a field of study in a book written for legal professionals (Berceanu, 1981). Berceanu considers that the role of legal linguistics is to study the legal terminology in order to find the best terms and their best scientific explanation as well as to compile legal dictionaries (apud Stoichițoiu-Ichim, 2002, chapter 1). The first semiotic model that was applied to the legal discourse was presented by Mihai (1982, apud Stoichițoiu-Ichim, 2002) in a study regarding legal argumentation.

As one can see, all these Romanian studies have investigated only the written legal language without paying attention to its legal counterpart, the spoken one.

Conclusion

This paper has set out to present an overview of the research done into the English and Romanian language in legal settings throughout the years. We have first examined the terminology for referring to the language of the law and then some of the first insights into it as an academic area of study.

We have tried to underline that attempts into this kind of research have been made by some Romanian legal professionals and linguists, but there still remain a number of areas and topics which can be investigated in the future.

We consider that studies of spoken language in institutional contexts like the courtroom are extremely necessary in Romanian since this is still an unexplored territory.

Our ongoing PhD thesis research called Language in the Courtroom: A Comparative Study between English and Romanian Criminal Trials will hopefully mark the beginning of the studies on the spoken Romanian legal language and will present some important differences between legal English and legal Romanian.

References


