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The Construction of Argumentation in Judicial Texts: Combining a Genre and a Corpus Perspective

In the last two decades, research on legal discourse has developed according to a twofold perspective. On the one hand, Anglophone scholars have dealt with legal language from a genuinely genre-based viewpoint (see, for instance, O’Barr and Conley 1990, Bhatia 1993, Kurzon 2001 and Gibbons 2003); on the other hand, French studies have focused on argumentation in judicial texts, by considering the forms of reasoning involved in it (Mathieu-Izorche 2001 and Vannier 2001) as well as its linguistic constituents (Bourcier and Bruxelles 1984 and 1995). This paper aims at providing the missing link between the two traditions, by carrying out an analysis based on a sub-corpus of 40 authentic texts (425,502 words) drawn from a larger corpus (1,646,182 words) of judgments by three Supreme Courts – Court of Justice of the European Communities, House of Lords and Ireland’s Supreme Court.

First of all, taking Bhatia (1993) as a reference, the genre structure of the judgments will be investigated. The comparative approach adopted will show the differences between European and Anglo-Irish judgments, above all in so far as the move “*deriving ratio decidendi*” is concerned.

Secondly, a corpus-based analysis will concentrate on one of the most frequently used auxiliary argumentative lexical items (Stati 2002), namely *To Hold*. A study of its concordances (Sinclair 1991 and Stubbs 2001) will suggest that it is most widely used in all three sub-genres as a meta-argumentative operator followed by a *-that* clause and signalling either an authoritative stance taken by the Court – as is the case in 75 per cent of its occurrences in European judgments – or an equally authoritative reported argumentation of another judge or court – as in 90.7 per cent and 92.8 per cent of occurrences in English and Irish judgments respectively. On the one hand, in fact, EC judgments are more inspired by the Continental legal tradition, in which courts attribute authoritative statements to their own reasoning past or present rather than to the specific voice of a judge in a precedent. On the other hand, since English and Irish judgments belong to the Common Law, they are based on precedents, and this may explain why *to hold* is so often used in order to introduce an influential statement by the judge of a past case.

References:

- Bhatia, V. 1993. *Analysing Genre. Language Use in Professional Settings*. London: Longman.
- Bourcier, D. and S. Bruxelles 1984. *Interprétation et Formes Linguistiques. L’Emploi de Notamment*. Paper presented at the conference « Les Modes de raisonnement », Paris 25-27 April 1984.
- Bourcier, D. and S. Bruxelles 1995. *Une Approche Sémantique de l’Argumentation Juridique. Dire et C’est-à-dire. Revue Française de Sociologie*, 36 (1), 35-57.
- Gibbons, J. 2003. *Forensic Linguistics. An Introduction to Language in the Justice System*. Oxford: Blackwell.
- Kurzon, D. 2001. The Politeness of Judges: American and English Judicial Behaviour. *Journal of Pragmatics*, 33, 61-85.
- Mathieu-Izorche, M.-L. 2001. *Le Raisonnement Juridique. Initiation à la Logique et à l’Argumentation*. Paris: PUF.
- O’Barr, W. and J.M. Conley 1990. Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives. In J.N. Levi & A.G. Walker eds. 1990. *Language in the Judicial Process*. New York: Plenum Press, 97-131.
- Sinclair, J. (1991). *Corpus, Concordance, Collocation*. Oxford: OUP.
- Stati, S. (2002). *Principi di Analisi Argomentativa*. Bologna: Pàtron.
- Stubbs, M. (2001). *Words and Phrases: Corpus Studies on Lexical Semantics*. Oxford: Blackwell.
- Vannier, G. (2001). *Argumentation et Droit. Introduction à la Nouvelle Rhétorique de Perelman*. Paris: PUF.