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Frame-analysis of argumentation in court opinion texts: empirical research

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The article focuses on practical experiment on perception of argumentative nature of court opinions by non-native speakers. Several argumentative frames most frequently used in the texts of court opinions are identified and described in the article. The article also aims at analyzing the distribution characteristics of the identified frames. Text of court opinion not only performs informative and performative functions, but also reflects the socio-pragmatic setup of the author. A definite set of communicative senses is reflected in the respective modus functions forming a specific meta-category of modus in the judicial discourse. The function of this meta-category is to specify facts through the synthesis of the objective (that is, legally justified) and subjective (which include the position of the court, or of the judge) components of argumentative frame.

Key words: Meta-language, argumentative frames, distribution of frames, judicial discourse.

INTRODUCTION

Discourse as an object of research has undergone a difficult way of development, but so far has no complete, exhaustive definition of discourse have been worked out. Discourse, as an interdisciplinary phenomenon is treated from different methodological positions in various scientific systems which allows to highlighting certain aspects of this complicated phenomenon.

However, there are two main areas of research within which the concept of discourse can be defined: formal "language above sentence level" (Schiffirin, 1994) and functional "situational language in use" (Brown and Yule 1983). The discourse, considered as a form of language use, deals with the study of linguistic structures and components, distribution of these structures in the dynamics of discourse unfolding, models and principles

of their incorporation into larger constructs. "Structural descriptions characterize discourse at several levels or dimensions of analysis in terms of many different units, categories, schematic patterns, or relations" (van Dijk, 1985). Description discourse from structural perspective can help identify different relationships and modalities determining the discursivity of sentence sequence or other constructs, their internal relationships and principles governing their compounds.

The present article focuses on a specific type of discourse – argumentative judicial discourse, and on argumentation perception analysis from the perspective of cognitive approach and frame analysis. In this issue the authors will understand the judicial discourse as text (communicative product) related to the field of court

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proceedings, in the dynamics of its generation, perception and interpretation (Feteris and Prakken 2000).

In the dynamics of its formation judicial discourse, like any other type of discourse, represents a sequence of discursive frames (Goffman, 1975; van Dijk, 2006). This study will adhere to the frame analysis approach as the basic approach to the judicial discourse study; a frame will be understood as a cognitive prototype serving as a constitutive unit of description, constructing, and modeling the discourse and its specific genre variety. It should be mentioned that the linguistic content of frames varies depending on the intentional settings of the communicants.

The article basically focuses on identification of argumentation in the text of court opinion and on its interpretation. As Feteris and Kloosterhuis (2009) points out "critical reader must first *identify* argumentation as such. That means that he (critical reader) must establish which parts of the decision constitute the argumentation and what function this argumentation fulfills. Second, he must *interpret* the argumentation.

The research into this disputable field seems topical and relevant, as it allows to study the process of understanding and producing of speech units in the act of reasoning in context of professionally-oriented communication; it also allows to explore cognitive structures of expert knowledge representation in terms of the argumentation aspect; to identify specificity of these structures, taking into account the characteristic features of the language system and tradition of a concrete professional community.

MATERIALS AND METHODS

According to researches (Ashley 1990, Yin 2009) problem-solving or case studies approaches are widely used in empirical research focused on specific aspects of linguistic phenomena. The present paper considers theoretical aspects of argumentation in judicial discourse, thus, methodological basis for the analysis is the anthropocentric approach, which allowed the use of a combination of cognitive, linguistic, and functional-semantic analyses to identify and provide integral description of argumentative structures in the text of the court opinion. The basic method of linguistic description used in this article is frame-analysis as this approach allows interpretation of the concealed information embedded in the text.

To conduct the research, this study has selected 37 texts of court opinions made by the US Court of Appeals for the seventh circuit. All texts belong to the sphere of criminal law; tried cases concerned drugs crimes. The study decided to stick to one criminal law topic to achieve greater conformity of the results.

Focus of the research

In the texts of court opinions (which we believe to be argumentative by their nature), the study identified argumentation frames that provide discourse dynamics. The study also tried to analyze the linguistic representation of frame slots in the terms of "dictum" and "modus" function to see what linguistic means contribute to creation of "argumentation". Discussing sustainable discursive structures, the study call them functions of discourse semantics, and in the

wake of N. Chomsky's (1980) research, the study make the assumption that these functions can be both informative (dictum) and operational (Modus), the latter providing the discourse dynamics. In this study opinion, argumentation frame of judicial discourse may represent clusters of the above mentioned functions.

HYPOTHESIS

1. The most frequent frames to indicate the main part of the court opinion are the following:

Presentation of the fact - classification of the fact;
Fact - limits of verification.

Variants of the same frames are used to indicate a new micro topic, although the submitted list may be supplemented by such frames as:

Fact – competence of the fact's source;
Presentation of the fact - competence of the fact's source;
Fact - the statement of a goal.

2. Frames that are at the beginning of the argumentative part of the court opinion or open up a new micro topic are the most loaded in argumentative terms. However, this does not mean that the rest of the frames are not argumentatively loaded, as they all provide the dynamics of judicial discourse. The appearance of modus elements is due to the presence of modal verbs, emotively coloured vocabulary in the linguistic representation of a frame, as well as due to the presence of references to the case law, which is a specific form to express a high degree of confidence for the discourse of this type.

RESEARCH AND ANALYSIS

As part of this study experiment, a survey was conducted among: students of the third and fourth year of law school, studying the module "translator in the field of professional communication (law)" and having an average rating in the disciplines of language unit "excellent"; professional translators working with the English language (for whom English is not native), and who have an extensive experience (at least 6 years) in the translation of legal documents, including judicial records. The study prepared a list of questions (interview protocol) which was the same for both categories of our respondents. The interview protocol for the survey is as follows:

- Which of the below listed discursive fragments you think more argumentatively loaded than others?
- Which of these structures would you use to indicate the beginning of the main part of the court opinion?
- Which of these structures would you use to indicate a new semantic section (micro topic) in the texts of the court opinion?

Discourse fragments are the following:

- Mr. Gonzales had the burden of proving to the district court that his role in the offence is minor in comparison to

that of others involved in the same offence.

2. Bolivar argues that the district court erroneously admitted his post-arrest statement to the police because, he insists, that statement about his knowledge of drugs arriving from Mexico only served to prove his propensity to commit bad acts. See *Fed. R. Evid. 404(b)*.

3. The Sentencing Guidelines allow a defendant's offence level to be reduced by two levels when the defendant is a "minor participant" in the offence. *United States v. Emerson*, 501 F.3d 804, 815 (7th Cir. 2007).

4. We will reverse a district court's findings on witness credibility only if the testimony is "incredible as a matter of law", meaning that "it must have been physically impossible for the witness to observe that he or she claims occurred, or impossible under the laws of nature for the occurrence to have taken place at all". *Ortiz*, 431 F.3d at 1039.

5. We certainly have jurisdiction to consider whether a district court is required to reevaluate the section 3553 sentencing factors and, more particularly, to consider the potential for sentencing disparities when granting a sentence reduction under Rule 35(b).

6. To the extent that the defendants contend that the district court's consideration of their criminal histories and the nature of their crimes was improper because those factors already had been considered at the initial sentencing hearing, we have jurisdiction to consider their claim.

7. We review for clear error a district court's finding of fact regarding a defendant's level of participation in an offence. *United States v. Olivas-Ramirez*, 487 F.3d 512, 516 (7th Cir. 2007).

8. This court reviews a district court's denial of a motion to withdraw a plea of guilty for an abuse of discretion.

9. This argument is a nonstarter. As long as the sentencing judge gives an adequate justification, the judge may impose a sentence above the guidelines range if he believes the range is too lenient. See *Gall v. United States*, 552 U.S. 38, 49-50 (2007); *United States v. Perez-Molina*, 627 F.3d 1049, 1050-1051 (7th Cir.2010), *United States v. McIntyre*, 531 F.3d 481, 483-84 (7th Cir. 2008); *United States v. McKinney*, 543 F.3d 911, 913-14 (7th Cir. 2008).

10. Arguments may not be raised for the first time in a reply brief; this submission therefore is waived. *United States v. Dabney*, 489 F.3d 455, 460 (7th Cir. 2007); *United States v. Harris*, 394 F.3d 543, 559 (7th Cir. 2005).

11. Section 3742 does not grant appellate court jurisdiction to review a district court's exercise of its discretion under Rule 35(b). See *McGee*, 508 F.3d at 444-45 ("Our jurisdiction mandate is limited and does not extend to a district court's discretionary decisions regarding sentencing").

12. Finally, we turn to Bowlin's argument that the Government is barred from alleging drug quantities in the indictment that can later serve as grounds for enhancing a defendant's sentence.

13. This court reviews a district court's denial of a motion

to withdraw a plea of guilty for an abuse of discretion.

14. Baily cites our holding in *United States v. Baker*, 499 F.2d 845, 848 (7th Cir. 1974) to support his proposition that Baily was simply "along for a ride", but his argument misses the mark.

(All text fragments were taken from court opinions of the Court of Appeal for the seventh circuit, USA)

The research data reveal that almost all respondents (94%), responding to the first question of the survey ("Which of the below listed discursive fragments you think more argumentatively loaded than others?") chose the frames "Fact - limits of verification + (m)"¹ and "Presentation of the fact - classification of the fact + (m)." Fewer numbers of respondents (73%), were mostly professional translators, also pointed to the discourse fragments corresponding to frames "Presentation of the fact - competence of the fact's source + (m)" and "Fact - the statement of a goal + (m)." Only 8% of respondents as the most argumentatively loaded discourse fragments indicated those corresponding to the frame "Fact - competence of the fact's source + (m)".

Essentially, the same statistics were obtained in response to the second and third questions ("Which of these structures would you use to indicate the beginning of the main part of the court opinion?" and "Which of these structures would you use to indicate a new semantic section (micro topic) in the texts of the court opinion?").

It should be noted, that students choosing the discourse fragments to indicate the main part of the court opinion and new micro topic have largely picked frames "" Fact - limits of verification + (m)" and "Presentation of the fact - classification of the fact + (m)". Range of responses of professional translators is broader and includes all of the frames listed in the hypothesis. The study wisum up the research results in Table 1.

In the course of the research, respondents were also asked to answer the question: What text fragments reflect the confidence of the author in what is being reported/ stated? What linguistic means are used? Answering this question, both groups of respondents picked out the frames containing emotive-colored vocabulary (simply, certainly, incredible), modal verbs with simple infinitive (may not, had to) and past infinitive forms (must have been), focus particles (only).

As a specific means of expression the confidence in the author's statements 81% of respondents identified the reference to precedent.

However, it should be noted that 17% of students-respondents identified terminological phrases (example, burden of proving) as emotively coloured lexis. This research hold the point of view that a legal term caught in the "fabric" of discourse carries an extra-linguistic meaning and has no modus.

¹(m)-modus function

Table 1. Research results.

Frames/ Questions	Most argumentatively loaded frames	Frames to indicate the beginning of the main part of the court opinion (%)	Frames to indicate a new micro topic in the texts of the court opinion (%)
Fact - limits of verification	94	91	89
Presentation of the fact – classification of the fact	94	80	81
Fact – competence of the fact's source	8	67	69
Presentation of the fact - competence of the fact's source	73	53	49
Fact - the statement of a goal	71	24	25

DISCUSSION

This study provides theoretical background, and gives some examples of the analysis of argumentative frames. The study did not mark distinction between text and discourse; judicial discourse was understood as a text (communicative product) related to the field of law, in the dynamics of its generation, perception and interpretation. This understanding is based on the fact that a text of court opinion is one of the most important components of judicial discourse. Text of court opinion not only performs informative and performative functions, but also reflects the socio-pragmatic setup of the author.

Judicial discourse is characterized by such properties as institutionality, argumentation, evidentiality and intertextuality. Property of argumentativity is pragmatic specifics of the judicial discourse. Argumentative discourse, as noted by many researchers, is distinguished by rather rigid framework of its structuring, in which consequence, the implicit elements can be restored. Creating argumentative discourse, argumentator can resort to the use of complex forms of logical reasoning, and the structure of the argumentation will not necessarily coincide with the structure of the text, which is built on its basis.

Legal reasoning mainly refers to the work of judges, aimed at justifying the decision. US researchers have defined the legal argumentation as "a thought and speech act aimed at the neutral, objective, inexpressive explanation and justification of the decision» (Fletcher and Sheppard 2005). Legal reasoning and communication use specific type of argumentation – argumentation by definitions which should be distinguished from the dictionary ones. This kind of argumentation involves creation of statements - actualized proposals. US Constitution can be referred to as an example of the result of this argumentation type.

"A legal case has various aspects, each with its own modes of reasoning" (Prakken and Sartor, 2015): the present article examines legal argumentation in the text of court opinion viewed as a communicative product of judicial discourse.

In this article we hold to the point of view that the legal

text is argumentative by its virtue. The type of texts we are dealing with is an opinion made by the court of appeals for the lawsuit; this kind of texts cannot be void of argumentative nature. Such texts have certain communicative communication-related functions:

Locution – that is, the text itself;

Illocution - some form of suggestion, the evidence presented in a certain way in the text;

Perlocution – an impact on a person perceiving the text;

This triad in essence represents what the study call communication-related functions. The recipient receives a communicative product, familiarizes with it, and coordinates his actions with it, because this type of communicative product is prescriptive, that is, binding, otherwise it may be appealed in accordance with the established procedure. As the study has pointed out earlier, this study do not distinguish between the concepts of text and discourse, and the text of the court opinion was understood as a complete communicative product.

However, it should be noted that the study regard the discourse as a form of language use that contains certain components and structures, and that allows investigating the distribution of these structures in the dynamics of discourse, as well as models and principles of their incorporation into larger constructs. The study also shares to an extent some scholars' understanding of discourse as a non-discrete process, which has no specific completion, but can be fragmented into elements, the largest of which is a communicative event. From this point of view, the text of the court opinion can be considered as verbal representation of a fragment of a judicial discourse, that is, communicative product.

Discursive frames are represented by certain linguistic structures, which recipient interprets that is, on the one hand, these structures are decoded by the recipient of these structures at the level of meaning (in other words, at the level of the linguistic form), and on the other hand, it should be understood that these meanings provide basis for actual senses, including extralinguistic ones, thus, the interpretation occurs in a particular context.

Like any coherent written text, the court opinion is a

complete product with a certain communicative structure. This type of a document pertains to a discourse of institutional type, it is inherently argumentative, characterized by a high degree of rituality and as a result, subject to very little structural variability. Knowledge of the text structure can be presented in the form of a specific meta-language, that is, a system of terms and categories. Application of meta-language in text description allows identifying the structural frames of this text.

The study understand the dictum function as a function of providing objective information that does not depend on the evaluation or interpretation, that is, this function performs the presentation of facts in the text of court opinion. Modus function will be understood as a certain way of "fixing" the objective content of a particular communicative situation, that is, here this study is talking about actualization. The relation of the actual discourse content to a given moment of speech and to the participants of the communication is characterized by these actualizing modus categories.

A definite set of communicative senses is reflected in the respective modus functions forming a specific meta-category of modus in the judicial discourse. The function of this meta-category is to specify facts through the synthesis of the objective (that is, legally justified) and subjective (which include the position of the court, or of the judge) components of argumentative frame.

It seems that the judicial discourse is basically a certain distribution of clusters of these functions interspersed with elements of assessment, that is, here the study is talking about frames and frame slots. It should be noted that the concept of dictum and modus are associated with the concepts of subjectivization or authorization of statements which is essential for the text of court opinion. The subjectivity aspect is of particular importance to the texts of this type due to the possibility to choose a strategy of argumentation development.

As some researchers point out (Morra, 2010), traditional approach to interpretation involves the necessity of considering the figurative sense of an expression being recognized only after this one has been 'literally' processed.

As we have pointed out before the study of judicial discourse is closely connected with the problem of interpretation. According to Condor (2013) "the study of legal interpretation is necessarily a study in hermeneutics, the art and science of text interpretation" i.e., an operational aspect of the interpretation of the legal text, in the present case, the text of the court opinion. In this regard, the problem of developing meta-language description of the judicial discourse comes to the fore.

According to Trosborg (Trosborg, 1995) the category of meta-language includes the general notion of "language of people talking about the law", that is lawyer-client interactions, lawyer-to-lawyer conversations and language of textbooks.

Meta-language in our article is understood as a terminological framework, correlating with the conceptual apparatus of certain linguistic theory.

In the development of the meta-language, we proceeded from the fact that the judicial discourse is an argumentative discourse which, on the one hand, has such a property as intertextuality, and on the other - is based on verifiable dictum statements.

Following N. Chomsky information embedded in the text of the court opinion can be divided into three levels: context-free information (pure dictum); context-related information and the semantic level of information that has an assessment (i.e., modus). Accordingly, the function of discourse semantics can be purely informative (dictum) and operational (meta-modus), providing discursive dynamics.

The text of the court opinion (as a genre of argumentative discourse) is characterized by the combination of Dictum and Modus functions into clusters, forming slots of argumentative frames interspersed with elements of assessment. From this perspective, we understand the frame as a conceptual representation of the linguistic competence of the speakers at the discourse level in the form of quasi-syntactic structures to express communicative meanings.

On the test material we were able to identify and describe some characteristic features of variation of language representations in the most frequent frames. At a given scale of accuracy, we have identified eight basic frames, although we admit the possibility of identification of other frames:

- 1 Fact - classification of the fact
- 2 Presentation of the fact - classification of the fact
- 3 Fact – conditions for the fact's existence
- 4 Fact – competence of the fact's source
- 5 Presentation of the fact - competence of the fact's source
- 6 Fact - limits of verification
- 7 Fact - the statement of a goal
- 8 Fact - the presence / absence of the possibility of the existence of the fact.

Below we will provide examples of the argumentative frames analysis, picked from Research and Analysis part (N 2, 3, 9, 14). All examples correspond to different frames.

Frame: fact - the statement of a goal
Baily cites our holding in *United States v. Baker*, 499 F.2d 845, 848 (7th Cir. 1974) to support his proposition that Baily was simply "along for a ride", but his argument misses the mark.

In this text fragment the modus function of having a goal is clearly expressed, represented by the verb "to support". Predicate referent in this example is the accused himself, and we can observe a sufficiently large evaluation Modus. To create the assessment function the

author uses the citation of the testimony of the accused with the adverb “simply”, which in itself has certain assessment semantics, and used in preposition, enhances the modus. Using discourse marker “to miss the mark” (without merit) also serves to create a negative assessment of the facts. This purpose is also achieved by the use of lexeme “proposition” - a statement the truth of which needs to be verified.

Frame: fact - classification of the fact

This argument is a nonstarter. As long as the sentencing judge gives an adequate justification, the judge may impose a sentence above the guidelines range if he believes the range is too lenient. See *Gall v. United States*, 552 U.S. 38, 49-50 (2007); *United States v. Perez-Molina*, 627 F.3d 1049, 1050-1051 (7th Cir.2010), *United States v. McIntyre*, 531 F.3d 481, 483-84 (7th Cir. 2008); *United States v. McKinney*, 543 F.3d 911, 913-14 (7th Cir. 2008).

The representation of Modus function "classification of facts" uses the noun “nonstarter” - something doomed to failure, hopeless; that is, the lexis used in linguistic representation of this frame slot contains an evaluation component. Since the frame itself "representation of fact-classification of fact" is in the argumentative part of the court decision on appeal and it opens up the consideration of the arguments of the accused, the use of such language is designed to create an additional sense that this argument is not going to be accepted by the court.

The high degree of author’s confidence is created by using a reference to precedent. American texts of court decisions (Precedent system) are generally characterized by reference to the precedent as a specific way of expressing a high degree of confidence in what is being stated.

Frame: presentation of the fact - classification of the fact

Finally, Bolivar argues that the district court erroneously admitted his post-arrest statement to the police because, he insists, that statement about his knowledge of drugs arriving from Mexico only served to prove his propensity to commit bad acts. See *Fed. R. Evid. 404(b)*.

In this example, the function "presentation of fact" is expressed by Modus predicate “argue”. The "classification of facts" function contained in the subordinate clause with propositional “that” is expressed with an adverb predicative group “erroneously”. In this example the semantics of adverb “erroneously” contains a marked evaluation component. Strong assessment component is also conveyed by use of predicative group “he insists”; and a focal marker “only”, which in this case can be regarded as an evaluation by the criterion significance / insignificance.

Reference to precedent also serves as a way to implement Modus function of a high degree of confidence. The use of the sequence marker “finally” signals the

transition to a new argumentative micro topic.

Frame: fact - the presence / absence of the possibility of the existence of the fact

The Sentencing Guidelines allow a defendant’s offence level to be reduced by two levels when the defendant is a “minor participant” in the offence. *United States v. Emerson*, 501 F.3d 804, 815 (7th Cir. 2007).

In this example, the function of the "fact" in terms of the formal syntax is in the main clause, and it is expressed with a secondary objective predication. Dictum function here is introduced by a causative functor, represented by verb “to allow”, which also helps set the modal frame of the discourse fragment.

The "conditions for the fact’s existence" function is concentrated in a subordinate clause introduced with “when”, and is expressed with existential predicate in the form of simple tense and the term "minor participant", which is given in the form of a citation.

In this example, the expression of “conditions for the fact’s existence” function is similar to that of "a classification of fact" function, but the use of a temporal conjunction determines a different sense of the statements, i.e. there is a possibility of fact’s existence, provided that the defendant can be classified as a “minor participant” in the case. The same meaning is supported by reference in kataphora.

With regard to distribution of frames, we shall point out that their sequence in the text of the document is determined by the selected argumentative strategy. Strictly speaking these are two: a strategy in which the starting point is the argument of the appealing party and the second one is the strategy, where the argument of the court serves as the starting points. Within the chosen strategy there is a slight variation in distribution of frames.

Conclusion

The conducted experiment verifies the hypothesis, and the data obtained in the course of the research. The respondents indeed perceived the given discourse fragments as argumentative, and were able to distinguish different degree of “argumentative intensity” of the proposed fragments, which basically corresponded to their position in the text of court opinion.

1. Frames that open the argumentative part of court opinion or introduce a new micro topic tend to be more argumentatively loaded than others.
2. The argumentativity of these frames is achieved through the use of various linguistic means including syntax structuring, emotively coloured and evaluative lexis, use of references and citations.
3. Analyzing the material, the authors also came to conclusion that the use of numerous references to precedents is specific for American judicial discourse way

of creating high degree of author's confidence in what is being stated. This apparently happens as a result of the necessity to build the judicial discourse on verified statements in Anglo-Saxon legal system characterized by use of precedent in court practice.

The identified types of argumentative frames are by no means exhaustive, and this list can be expanded under more precise scale of delicacy. The study only aimed to demonstrate that the method of meta-language application for frame description works. The described linguistic means of discursive frames' manifestation as well as the developed meta-language can find its further application in linguo-didactic modeling of the professional legal discourse.

Conflict of Interests

The authors have not declared any conflict of interests.

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