

Syntactic Properties of Legal Language in English and Albanian

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Abstract

Being the primary means of communication worldwide, English has become a career tool for all categories of professionals, including lawyers, as it allows them to communicate internationally. English Legal documents are one of the objects of a lawyer's routine since they write and interpret English-based contracts and other important documents, which may be complex and also include technical vocabulary. Legal terminology and grammar for non-native speakers of English language may bring difficulties. This article is a cross-linguistic study which describes the typical linguistic features of legal English, focusing on syntactic constructions, and aims to make it more comprehensible not only to those studying it, but to teacher of legal English at the same time. It will mainly deal with the pragmatic aspect of language in a synchronic approach. Such characteristics will be presented using a comparative descriptive perspective, between English and Albanian language. We will mainly focus on grammatical features of instructional language used in English legal documents such as the use of performative verbs and speech acts, performative utterances, verb form, finite verbs, passive forms, subjects and objects etc., comparing them to the Albanian equivalent ones.

Keywords: *linguistic features, legal English, legal documents, English and Albanian language, grammar, etc.*

1. Introduction

Being the primary means of communication worldwide, English has become a career tool for all categories of professionals, including lawyers, as it allows them to communicate internationally. A lot of scholars have already emphasized the role of "the language of law" as an important one not only in the context of law, but also in "everyday situations" (Gibbons, 2003). However, it is especially valuable to lawyers and law practitioners in general since English Legal documents are one of the objects of a lawyer's routine since they write and interpret English-based contracts and other important documents, which may be complex and also include technical vocabulary. Legal terminology and grammar for non-native speakers of English language may bring difficulties. Such hardships can be even more complicated when non-lawyers need to interpret the law, or use legal language for various purposes such as making a notary statement, entering a contract or agreement, issuing a power of attorney, or any other deeds. This type of language is known as *legalese*. (Asprey, 2003)

This article is a cross-linguistic study which describes the typical linguistic features of legal English, focusing on syntactic constructions, and aims to make it more comprehensible not only to those studying it, non-lawyers and common people, and last but not least, to teachers of legal English. It will mainly focus on the pragmatic aspect of language in a synchronic approach. Such characteristics will be presented using a comparative descriptive perspective, between English and Albanian language. It is believed that such a study would be of interest since nowadays many Albanians use English at proficiency level while using it in an academic context, formal documents, or translation, can turn out to be more complicated than using communicative English in colloquial context. The term "legalese" is used to refer to written forms of legal English and it is mainly characterized by verbosity, Latin expressions, nominalizations, embedded clauses, passive verbs, and lengthy sentences.

All in all, this article is going to deal with both the grammatical and lexical features of legalese with a special focus on such elements such as the use of new terminology, archaic vocabulary, performative verbs and speech acts, performative utterances, verb form, finite verbs, passive forms, subjects and objects etc., comparing them to the Albanian equivalent ones.

The concept of semantic fields (Lyons, 1995) categorizes legal languages under the semantic field of law. Such words have special features lexical and grammatical properties.

Since language is under constant change because the needs of speakers do change all the time, and new words emerge due to developments in technology, new products, and new concepts experiences doo also generate new vocabulary (Aitcheson, 1991). Similarly, legal terminology is enriched and legal translators need to be updated with both Albanian and English new legal terms. It was after the communist period that in Albanian new law terms were introduced such as: *dypalësh (bilateral)*, *shumëpalësh (multilateral)*, *Parlamenti (parliament)*, *implementoj (implement)*, *artikull (article)* (Ajazi, 2014).

It is evident that the use of archaic words, complex syntactic structures, Latin and French words, etc. makes legal English language very complicated and difficult to understand. Attempts have been made to make it more simple and in the UK, "The Plain English Campaign" (Felsenfeld, 1981) was run in order to simplify legal language, not just aiming to make it simpler but more comprehensive and easier to perceive. This campaign resulted in a list of words to avoid, providing alternative terms with such pairs as "*in excess of more than*", "*should you wish-if you want*", "*terminate-end*", "*whilst-while*", etc. (Williams, 2004).

The concept of the explicitness as a property of discourse and text was analysed by Biber (1988) and such a property is expressed through a number of linguistic means such as wide use of pre-modifying nouns, e.g. "sales contract" instead of "a contract of sale". As the preceding example demonstrates, grammatical changes occur in such transformations, namely the noun "sale" from singular was changed into plural "sales". The reverse may also occur, such as "law enforcement" instead of "enforcement of laws". Thus, speakers of English as a foreign language need to be aware of them and use such phrases with caution.

2. Lexica-semantic and Grammatical Properties of Legal English and implications with Albanian translation

Lexical-semantic features are related to the meaning and use of words, vocabulary, semantic fields, shades of meaning, etc, while grammatical properties include both the syntax and morphology of language.

2.1 Lexical-semantic features

As far as lexical characteristics are concerned, there are three predominant one, borrowings from Latin and French, archaisms and technical words. An interesting feature of legal language is the use of foreign words, with a predominance of Latin and French, such as *actus reus* (the act or acts that constitute physical elements of a crime), *bona fides* (evidence or proof that someone has sincere feelings or is who they claim to be), *de jure* (legally), *de jure* (legally accepted), *stare decisis* (a principle of the case law by which judges have to follow earlier decisions called precedents in certain situations meaning 'stand by the decisions'), *en banc* (on the bench, all judges of an appellate court sitting together to hear a case) etc. (Macmillan Dictionary, online). In such cases, ambiguity can arise between pairs of synonyms from borrowing and English words such as "fit/proper", "will/testament", etc. (Butt, Castle, 2001).

The use of archaic words is another typical feature legalese, especially adverbs such as: *whereof*, *whereby*, *thereunto*, *hereof*, *hereinafter*, *hereunder*, *thereof*, *therein*, *thereto*, *thereunder*, etc. and prepositional phrases such as: *pursuant to*, *without prejudice to*, *subject to*, *at the instance of*, *notwithstanding*, etc. Other archaic forms include verbs such as *arraign*; nouns such as *surrejoinder*, and adjectives such as *aforesaid* anterior to, *pursuant to* (under, in accordance with), *prior to* (before), *subsequent to* (after), *vel non* (or not, or the lack of it) (Garner, 1986; Williams, 2004). Attempts have been made to avoid using such archaisms and use the simple equivalents of the synonymous pairs instead, such as "*hereinafter /below*", "*hereinbefore/ above*", "*hereto/ to this Agreement*", "*prior to/before*" etc. (Rylance 1994).

The bulk of words used in the semantic field of law is sometimes categorized into common and technical terminology (Haigh, 2004). In comparing and contrasting technical terms and everyday ones, Cruse (2000) highlights the implication arising due to such a gap. While translating, such implications may bring changes in the meaning of the legal terms from both Albanian to English and the other way around. It means that some of the words used in legal texts are widely used in everyday language (e.g. *appear*, *answer*, *arraignment*, *assume*, *case*, *hear*, etc.) while others are typically legal (legalese e.g. *bail*, *bankruptcy*, *de facto*, *de jure*, *felony*, *habeas corpus*, *lien*, *litigation*, etc.). there is one more category of law



terms which includes words which look like common words, but they have a legal connotation, and when translated to Albanian, a different term is used. To illustrate, when translated to Albanian, the word “prejudice” in the context “the payment was made without any prejudice to her rights” meaning “without detriment to any existing right or claim” (Google Online Dictionary), shall not be equivalent to “pa paragjykim” but “pa cënuar apo prekur” (Albrahimi, 2014). Similarly, the words “instrument” and “qualified” in the context “...whose name is subscribed to the annexed original instrument has been commissioned and qualified as NOTARY PUBLIC” (a document issued by the county clerk in the County of New York, Form 1, No. 533629) shall not be translated as “instrument” and “kualifikuar” but respectively “dokument” and “i njohur”. Other such examples include words such as: *office* (detyrë jo zyrë), *act* (ligj jo akt), *article* (ligj jo artikull), *capacity* (zotësi jo kapacitet), *under* (sipas jo poshtë), *in that respect* (në lidhje me të jo respekt), *concerning* (në lidhje me jo që shqetëson), etc.

Some terms, which are culturally specific, such as “common law” do not have an Albanian equivalent form. Therefore, when translators come across such terms, they prefer to use the English one since it is not appropriate to write a long description of the meaning of such word. This way, using the English word, with the passing of time, such words are expected to be engraved and widely understood by the Albanian people despite being used in a foreign language. Other terms, which cannot be translated, due to the differences in culture and politics, and is simply omitted during the translation or adapted to the Albanian government system is the case of “Crown” in “the Crown prosecutor” since Albania is not a kingdom but a republic. This term can either be omitted or translated with the meaning of the word “state” (i shtetit).

Other interesting examples to illustrate the implications of translating law terms from English to Albanian or the other way around would be English phrases which have a one-word equivalent in Albanian such as: *Power of Attorney* (prokurë), *Notary Public* (noter), *Attorney at Law* (avokat), *cross examination* (ripyetje), *examination-in-chief* (ekzaminimi), *over-rule* (anuloj), *prosecutor’s office* (prokurori), *Attorney General* (kryeprokuror), etc.

Another group of law terms which can be regarded as specific when it comes to translation of legal documents are such sets of words falling under the same semantic field but having specific shades of meaning which have just one equivalent in Albanian. This means that although there some sets of words such as “solicitor, barrister, lawyer” in Albanian they all refer to “avokat”. Other examples include “petitioner, claimant, plaintiff, litigant, pleader, complainant, applicant” in Albanian would refer to “paditës” or “article, act, law” would refer to “ligj” or even examples of grammatical differences in English which have no counterparts in Albanian such as “shall, will” which do not have two equivalents but just one “do të”.

2.2 Grammatical Features

When discussing about the grammatic features of legalese, both the syntactical and morphological properties are considered and analysed in the perspective of comparing Albanian and English legal language.

2.2.1 Syntactic and Morphologic Features

One of the most significant syntactic properties of legalese is the length and complexity of sentences. This complexity arises due to the wide use of complex syntactic structures such as subordinate clauses, conditional sentences and passive voice. Rylance (1994) is one of the linguists who studied the problems of lengthy sentences highlighting that of repetition and word order. To illustrate, the following examples are given:

e.g. “The parties **agree** that **if** any portion of this contract **is found** to be void or unenforceable, it **shall** be struck from the record **and** the remaining provisions will retain their full force and effect.”

(employee-contract-template)

In the example presented above, some words have been marked in bold, to identify such structures as conditionals (if...), passive voice (is found), use of “shall” instead of “will”, subordinate linking words (and).

As we mentioned above, attempts were made to simplify legal texts, such as the movement known as Plain English Movement (Felsenfeld, 1981) which increased awareness of the lawyers regarding the problem of long sentences and insisted on keeping only that information which is necessary, leaving out unnecessary words and phrases. However, when extra words are needed to maintain clarity, and

when long sentences arise as a result, a possible solution is to utilize *tabulated sentences* (Rylance, 1994).

Legal language is also characterized by impersonal style, avoiding personal pronouns and using passive instead of active voice (Williams, 2004). These texts concentrate more on the action rather than the doer. However, there are cases when active is essential in order to stress who or what caused the action. The absence of pronouns makes the text more objective rather than subjective, a typical feature of formal style. It was noticed that more often first and second person are omitted, while the third person is more frequent in use.

In addition, in legal texts it is noticed that frequently nouns are used instead of verbs such as “*to be in agreement*” instead of “*to agree*”, “*to give recognition to*” instead of “*to recognize*”, “*to give consideration to*” instead of “*consider*”, etc. Scholars have pointed out the idea that it is better to avoid such nominalizations since they result in run-ons, or long sentences (Haigh 2004). This is not the case with Albanian legal language, where verbs are preferred to noun phrases.

The abundant use of proper nouns is another feature of the language of law (Bázlik & Ambruz, 2009). Most of them stand for names of institutions, state bodies, titles, etc such as State of New York, County of New York, Supreme Court, Deputy Secretary of State, European Union, etc. These belong to the category “international institutional terms” (Newmark, 1981). In most cases, such words have official translations in Albanian language. However, there are some terms which are capitalised in English but not in Albanian, such as *Notary Public (notere)*, *May (maj)*, *In Witness Whereof (Sa më sipër)*, *I (unë)*, *County (rrethi)*, *Attorney General (kryeprokuror)*, *Special Power of Attorney (prokurë e posaçme)* etc. It is interesting to mention the capitalization of common nouns in legal documents, but in Albanian and English, in order to put emphasis on them such as “I DO HEREBY CERTIFY that The Principal has executed this Power of Attorney ... Fixed my seal of Office this ...”(Bernard R. Porter, Notary Public, Special Power of Attorney, 15th day of March 2019).

When considering properties of English and Albanian language in translating legal documents, the word order of modifiers is controversial. To explain, in a modifying noun phrase such as “law enforcement” would be translated in the opposite word order “*zbatimi i ligjit*”.

With regard to grammatical differences, it is interesting how the definite article “*the*” is incorporated in the word through the various endings in Albanian such as “*-a, -i, -at, -të*”. (Gramatika e gjuhës shqipe, 2002)

In terms of verb tenses, it is suggested that legal texts be written in the present integrated with future forms with “*shall*”. (Rutledge, 2012) also, modal verbs result to be quite common in legal texts. To illustrate, an extract from an employment contract is presented below, marking in bold the present simple verb forms, both in active and passive, modal verbs, future forms with “*shall*”:

“*The Employee **agree** that he or she **is fully authorized** to work in [country name] and **can provide** proof of this with legal documentation.”*

“*Following the probationary period, the Employee **shall be eligible** for the following paid time off:...*”

(employee-contract-template)

3. Conclusion

All in all, legal language both in Albanian and English language is characterised by the widespread use of passive, present simple and future forms, modal verbs, the capitalization of common nouns in order to emphasize, impersonal style, run-on sentences, conditionals, etc. on the other hand, there are some controversies when taking into account word order, the position of modifiers, capitalization, word forms, culture-bound terms, use of the definite article, technical terms, translation etc.

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