

ФИЛОЛОГИЯ*(специальность: 10.02.19)*

УДК 81

Elena Yu. Pishkova, Sveta M. Lalayan*Southern federal university**Rostov-on-Don, Russian Federation**pishkova@yandex.ru***JUDICIAL VERDICTS AS A FORM OF IMPLEMENTATION
OF LEGAL DISCOURSE****[Е.Ю. Пишкова, С.М. Лалаян К вопросу о судебных постановлениях
как форме реализации юридического дискурса]**

The article deals with judicial verdicts being considered as the form of implementation of legal discourse. The comprehensive approach helps to analyze court decrees from the point of view of Sociolinguistics, Pragmalinguistics and Cognitive science. Our research focuses on genre, style, language and composition peculiarities of verdicts as the key components in the process of comparative analysis of the Russian and American judicial verdicts.

Key words: legal discourse, judicial verdicts, linguistic approaches, pragmalinguistics, sociolinguistics.

Judicial power is the independent branch of the state authority which is to resolve conflicts in society. Court's basic function is the delivery of a verdict, that is a text with special organization possessing its own peculiarities in genre, style, and this text correlates with many sociocultural factors influencing the order of sentences and its final interpretation. In this research we aim to define court decrees as a form of legal discourse from the point of view of three linguistic approaches and we also differentiate the peculiarities of the Russian and the US judicial verdicts based on the genre, style and language composition.

It should be mentioned that the understanding of the notion 'discourse' has passed through several stages. The first phase was marked by the elaboration of 'text linguistics', which only viewed a text message from one individual to another, consequently the researchers were immensely interested in a sentence, but not in a text. On the next stage, following the 19th century, linguists studied the group of syntagms. This scientific pioneering resulted in introducing the concept of 'discourse'.

Regardless of the common acceptance of this term among linguists, it should be stated that different countries were guided by different connotation of ‘discourse’. The latter comes from a French word (*discours – speech*), that is why this leads to Western European cultures, namely Germany and Austria understanding ‘discourse’ as oral, not textual, representation of a particular social experience based on a nation’s mentality. Meanwhile, we are witnessing that ‘discourse’ is closely associated with ‘text’ in the Russian linguistics; this idea is proved by the ‘Concise dictionary of text linguistics definitions’ edited by T. M. Nikolaeva.

The emergence of discourse theory has triggered the development of language studies and this very fact made the scientists elaborate the new definition for this term. In the course of time ‘discourse’ acquired numerous connotative shades of meaning resulting in differentiation of discourse to two phenomena, including ‘text’ and ‘discourse’. This idea was firstly expressed in the works of the European linguists in the 70’s, so the notion of discourse was viewed as ‘text plus situation’, and text as ‘discourse minus situation’. Consequently, discourse presupposes some certain situation that is specific for a person’s practice.

Discourse is a snippet of a text including more than one sentence [2]. In the majority of cases discourse is determined by a certain concept. This linguistic phenomenon possesses a range of items: 1. circumstances following the ongoing event; 2. background or some kind of explanatory information; 3. the assessment of the members participating in the event; 4. the information that connects discourse with the ongoing event.

According to the presented information, we can conclude that judicial verdicts follow all the requirements needed for the notion ‘discourse’, because for delivering a court decree one needs certain circumstances (fact of a crime), background information (motives), the assessment of the members participating in the event (court hearings), and also some information connecting the discourse with the events (evidence brought by a barrister and a prosecutor.)

While considering ‘discourse’ from the sociolinguistic approach, it seems necessary to pay attention to the following items having been highlighted by V.I. Karasik [7]:

1. the participants of the conversation (the characteristics of their statuses, roles, way of communicating);
2. communication conditions (presupposition, sphere of communication, chronotype and communicative environment);

3. organization of communication (motives, aims, strategies and variety of communicative means);
4. methods of communication (channel, mode, style, and genre of communication.)

If we consider genre, we are to be guided by a number of features giving descriptions to the members of the legal discourse; those may include status characteristics, the cause of the emerging of the situation leading to the court hearing, etc. This interdependence is based on the certain role models that the members of the discourse must possess. Court hearings meet all these requirements, thus resulting in verdicts that are rested in particular constitutional provisions, and the latter rely on the cultural values and idea of justice in a given culture. Taken together, all these regulatory norms present legal discourse as an interactive phenomenon.

The legal discourse stands out for its subject of the communication to be independent. The person engaged in the legal discourse has to accept and follow all the instructions given for having the opportunity to participate in the given part of the communication. I.V. Palashevskaya [10, p. 28 – 31] believes the interaction between subjects of legal framework and rules of law to form steady and institutionalized story sequence. A vivid example here is the article 198 of the Russian Civil Code that contains several items: 1) introductory part (place, time description, name of the judge, jury, etc.); 2) descriptive part (claimant's demands, defendant's objections and testimonies of other witnesses); 3) motivation part (circumstances of a case and evidences); 4. resolute part (court decree.) Analyzing the given information, we can here conclude that judicial verdicts are strictly regulated, however, the oral arguments can change the outcome of the hearings. Thus, court decrees are static in the form, but their context is dynamic, and it correlates with the given situation.

Language is known to exist in oral and written forms. Verdicts, apparently, are the form of the written language, but, however, it should be emphasized that speech uttered has far more impact on the listeners due to the great range of non-verbal and paraverbal means in the speaker's arsenal. American linguists J. Brown and G. Yule [1, p. 304] believe that an author can more precisely express ideas via a written text, as he will be able to review the written text, add new shades of meaning to realize his intentions. Moreover, there is a clearly defined form of expressing information in the legal discourse, and it helps the author present all the required facts and evidence.

Thus, from the point of view of pragmalinguistics, discourse is a dynamic process that occurs among the members of communication in different spheres, where their main motive is the transmission of information. Under this approach text can be seen as a static object that results from language activity and aims to share information and influence the readers.

In our research we were analyzing judicial verdicts from the cognitive approach. One interesting idea has been elaborated by the American linguist W. Chafe, who has developed an innovative idea named 'information flow', aiming at the reconstruction of a man's mental processes during a communication act. The scientist conducted research, with examinees being offered to watch a short film where a boy was gathering pears. The people had to retell the story; their answers were saved and transcribed. This experiment was carried out among people of different ages, social statuses and income, and this very fact helped in identifying their speech features and the choice of language. The subsequent analysis showed the human consciousness to be dynamic and interactive, and, moreover, the results highlighted the differences in cultural background and cognitive aims among the members of the research. Thus, it could be said that a person can realize his cognitive intentions either in the course of oral communication or in the written form, where the man unconsciously reveals the information about the mentality of his country, upbringing and worldview. Despite apparent formality and regimentation of court decrees, cognitive analysis will help identify features peculiar to both an author, and the country where he had been nurtured, because cognitive approach is based on the inseparability of language and human consciousness.

It seems as if there is no genre diversity in legal discourse, but I. V. Palashevskaya [10] suggests an interesting interpretation considering 'genre' from the perspective of discursive unit, that is a stereotypical communicative construction, role model of interaction possessing a certain degree of automatization. Consequently, the legal discourse does not have a variety of genres, legal discourse is an institutional one, that means the inability to express ideas and thoughts in unique and new forms. For example, a judicial verdict has to follow certain paragraphs, clichéd expressions that only require the change of people's names. However, it should be stated that court decrees are some kind of 'terminal product' of many elements within legal discourse, consequently, they can include several genres, helping in the full expression of the ongoing situation and conclusion

done. Every single sentence in verdicts is a single genre with a clearly defined idea. For instance, court decrees are a compound genre containing several constituent parts: interrogation, testimonies, providing evidence, pleadings, closing arguments and delivering a verdict.

For considering a judgement the author has to analyze and classify the acquired information, nevertheless, the author is restricted with the frames of the genre, that is why there is a certain order, according to which it is possible to transmit the information and draw the conclusion. In the research presented we have studied and compared two samples of verdicts delivered in Russia and in the USA.

The distinctive features:

1. the name of the country is not given, only the state, then the city in the American verdict, opposing to the Russian one where the second word starts with the phrase «именем Российской Федерации»;
2. the American court decree lacks the headlines, whereas the syndetic words help in connecting the ideas. At the same time the Russian verdict has well defined headlines;
3. the Russian decree has the name of the city on the top right, the American one has it in the center of the page;
4. the verdict of the USA does not contain the name of the secretary, while in the Russian decree a reader can see the names of all public officials participating in the court hearings;
5. in the American sample there is a special space for claimant and defendant's names, opposing to the Russian verdict where the names are given right below the names of the public officials;
6. graphic signs: there are no subscripts signs in the Russian sample;
7. different prints.

The similarities:

1. all the circumstances of the cases are clearly structured and represented in the texts;
2. formal language representation;
3. the accurate dating with all necessary applications.

The comparative analysis showed all the peculiar features of the verdicts in two countries; however, the most interesting fact, in our opinion, was the lack of headiness in the America court decree. I. G. Galperin supposes that separability

of texts should be treated as a category in the language. In his interpretation the linguist marked the dual character of the separability. On the one hand, it is subjective, as it correlates with the author's intentions and it is interpreted by different readers. On the other hand, separability of a text is objective in its nature, because it aims to represent the reality. I. G. Galperin has also led the classification of separability, and he explained it by the person's ability 'to realize the perceived information without any loss':

1. pragmatic separability. Pieces of text are given in the consecutive order;
2. variative separability. The text is full of numerous types of presenting certain information, it has different forms and composition.

According to the given classification, the verdicts of the US can be referred to the first type and the Russian court decree relates to the second type of the classification. It should be noted that variative separability maintains objectivity to a larger extent than pragmatic one, as the author has relative freedom in choosing lexical means.

Legal texts pursue two aims: cognitive and imperative (that is also true for judicial verdicts). For successful implementation of these aims, the special terms are needed. For instance, *subpoena – повестка в суд, a witness – свидетель, arbitral – арбитраж, an injunction – судебный запрет, judicial testimony – свидетельские показания, etc.*

Another feature of a legal text lies in the wide use of clichéd phrases and collocations and these prevent the author from expressing the subjective point of view. For example, *to award a contract* - получить право заключения договора, *to file documents* – подать документы, *to take minutes* – вести протокол, *jointly and severally* – солидарно. The peculiarity of these phrases and word combinations is their neutral connotation and some defining syntactical features (there are numerous homogeneous parts in the sentences of legal texts.)

Another salient characteristic of legal texts, namely judicial verdicts, is the usage of pronominal adverbs. For example: *hereinafter* – ниже; в дальнейшем; *hereto* – к тому, к этому; *thereof* – из того, из этого; *whereas* – принимая во внимание, поскольку, etc.

The carried out comparative analysis has determined the following:

1. negative forms are often used in the verdicts;
2. third person is predominately used;
3. the authors opt for refusal of pronouns in the texts, as the latter can shift the focus from the controlling idea;

4. the usage of great number of impersonal sentences;
5. future forms are substituted by present.

Formal language is used while writing court decrees, as it does not give an author the opportunity of expressing subjective point of view. It should be also noted that the analysis of language means must be conducted only with the subsequent research of the culture and the mentality, as every country is unique, that is why the chosen approaches should not be unified.

Thus, the research has helped in considering judicial verdicts as the form of the legal discourse, that possesses certain degree of language regimentation. However, it cannot go without mentioning that despite mere formality and abundance of clichéd phrases, court decrees remain interesting material for further studies, as the composition of texts differs from country to country, and there are three main reasons for that: mentality of the given culture, legal norms, the author's personality and worldview.

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10 марта 2020 г.
