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THE TYPES OF INTERTEXTUAL CONNECTIONS IN THE JUDICIAL DISCOURSE

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Abstract

The article studies the correlation of such concepts as discourse, institutional discourse, legal discourse, and judicial discourse. The judicial discourse is addressed as a specific type of institutional discourse that is involved in a legal trial. Its subjects are different legal agencies of a particular state with different sets of competencies and volumes of responsibility. The types of judicial communication traditionally distinguished in science (the discourse of criminal, civil, administrative, and arbitration proceedings) are characterized by the uniformity of basic principles of creation. The research analyzes the categories that ensure the integrity of the judicial discourse, in particular coherence and intertextuality. The types of intertextual connections inherent in the judicial discourse are studied based on the judgment by the European Court of Human Rights (ECHR) in the case of Kononov vs. Latvia. The article analyses such intertextual connections as hypertextuality, architextuality, metatextuality, and intertextuality. The research determines the general properties of intertextual inclusions such as the reference to a textual source, the consideration of an addressee competence in a case, vertical and horizontal intertext. The study attempts to classify the cases of intertextuality in the form of quotations used in a judgment: quotations of the provisions of the international legal acts, quotations of the provisions of domestic laws, references to legal trials (case-law) depending on the place of a donor document in the hierarchy of legal acts.

Keywords: Legal discourse, judicial discourse, intertextuality, judgment.

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1. Introduction

The legal discourse is a type of institutional discourse and is defined as the result of human cognitive activities in the legal sphere that needs adequate interpretation related to the ability of discourse members to analyze legal norms. The judicial discourse, as an object of our research interest, is a specific type of legal discourse that is involved in a legal trial. Its subjects are different legal agencies of a particular state with different competences and responsibilities.

A legal text is the main component of the legal discourse. Its most important typological characteristics are 1) the prevalence of cognitive information; 2) the objective presentation of information; 3) the prescriptive character of information; 4) the variety and completeness of syntactic structures; 5) high structuredness; 6) compliance with the rules of formal logic; 7) lack of compressions; 8) the presence of tautological cohesion. As Tiersma (2015) notes, "wordiness and redundancy" are also the most highly quoted linguistic features of the legal language.

The importance of a court's decision in the modern world is hard to overestimate. It performs several, social, legal, and instrumental functions. The concept of a court's decision is multi-faceted. It has a lot of definitions. In the legal practice, it is worth viewing a court's decision as a document of a judicial authority containing the result of court hearings on the merit of a case. From the perspective of legal science, a decision is treated as both the activities of a court and as the result of these activities (a document), as a source of law (legal precedent), or as a legal institution or legal fact. In linguistics, a decision is considered a specific genre of legal discourse, an element of communication. The sources of decisions are professional lawyers. The recipients are, first of all, litigants, judges, and any general public interested in the text of a decision.

In this research, it is very important to distinguish between a judgment and a decision of the ECHR. According to the ECHR itself, "A decision is usually given by a single judge, a Committee or a Chamber of the Court. It concerns only admissibility and not the merits of the case. Normally, a Chamber examines the admissibility and merits of an application at the same time; it will then deliver a judgment" (ECHR, 2012). Thus, decisions are made by the ECHR concerning the admissibility and judgments are delivered on the merits of the case.

2. Problem Statement

The analysis of text categories is the most important thing in the research of a decision as a variety of legal texts. Intertextual connections, represented in a decision with such types as hypertextuality, architextuality, metatextuality, and intertextuality, form the category of intertextuality that is critical for a court's decision. The instances of intertextuality in the form of case papers, formal and informative references, as well as expanded and unexpanded quotations, acquire critical importance as they perform such basic functions as reporting on the contents of laws, clarifying the provisions of legal acts as well as advocating for significant provisions of a decision.

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3. Research Questions

Text is a result of communicative activities and a communicative unit of the highest order. It is broadly studied in modern science in a disciplinary way. The object of this research is a court's decision as a special type of judicial discourse text. The tasks of this research are: 1) analyze the correlation of the concepts of institutional, legal, and judicial types of discourse; 2) analyze the categories of coherence and intertextuality as well as the specificity of their implementation in the judicial discourse; 3) define, describe, and create a typology of intertextual connections inherent to the judicial discourse; 4) study the main functions of intertextual inclusions in the judicial discourse; 5) classify the instances of intertextuality given in the form of quotations depending on the place of a donor document in the legal hierarchy.

4. Purpose of the Study

The article aims to study the intertextual connections inherent to a court's judgment as a special type of a legal text and the types and functions of these connections. The research is based on the judgment of the ECHR in the case of Kononov vs Latvia.

5. Research Methods

The research employs the anthropocentric approach that draws attention to different types of human speech in specific communicative situations. The analysis is based on the following methods: 1) the descriptive method aimed at defining the pragmatic linguistic features that have special properties and are inherent for this type of text; 2) the context method based on the study of language in broad and narrow legal contexts; 3) the definitive method that studies the interpretation of words and concepts related to the research topic; 4) the method of linguistic analysis that integrates several techniques to perform the analysis of text and its language means used to form the knowledge about the laws of language functioning in different communication spheres.

6. Findings

The language of the law is a basic component of the social activities of people related to the implementation of legal norms. The concept of "the language of the law" is related to the legal discourse as an environment for its functioning. Scientists understand discourse as a communicative event encapsulated in written text or oral speech and performed in a particular cognitive or typological communicative environment (Chernyavskaya, 2011). The institutional discourse is built according to a particular pattern. However, the degree of the conventionality of different types and genres in this discourse is different. The legal discourse is a type of institutional discourse. It can be defined as a clichéd form of communication between people who need to communicate based on the norms in a particular society (Karasik, 2004). The legal discourse is defined as the result of human cognitive activities in the legal sphere that needs adequate interpretation related to the ability of discourse members to analyze legal norms.

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The judicial discourse, as an object of our research interest, is a specific type of institutional discourse that is involved in a legal trial. Its subjects are different legal agencies of a particular state with different competences and responsibilities. The types of judicial communication traditionally distinguished in science (the discourse of criminal, civil, administrative, and arbitration proceedings) are characterized by the uniformity of basic principles of creation. Studying the judicial discourse as a type of legal discourse, we should note the categories that ensure its integrity which consists of coherence and intertextuality. In this case, coherence means a concept which is superordinate to intertextuality. In the legal discourse, this concept represents the property of text and discourse reality, the essence of which lies in the ability of discourse to establish formal grammatical and pragmatic connections between the structures of knowledge that are present in different types of texts (Konovalova, 2008).

The category of intertextuality is of great importance for this work. The term "intertextuality" appeared in 1967. However, it is still considered controversial in both domestic and foreign linguistics. The domestic science indicates that the phenomenon of the intertext is based on the human ability to learn precedent information, choose relevant stable associations and generate new meanings. According to Boyko (2006), the intertext looks like non-linear computer hypertext where one line generates a chain reaction of infinite references to other texts. The intertextuality represents a universal property inherent to the textual and discursive reality. Its essence lies in the ability of text to reference each other borrowing formal and informative elements belonging to other texts (Konovalova, 2008) and ensure "interpretationally significant integrity of the cognitive experience" (Serebryakova, 2018).

It is interesting to present the point of view of Alexandrov (2003) who thinks that a legal text is an intertext as they obviously contain other texts "in more or less recognizable forms on different levels". It is also obvious that intertextual inclusions are one of the main means to ensure the accomplishment of the main goal of the judicial discourse – the validation of the appropriateness of a chosen position and "creating changes in the mental view of an addressee" (Ishakova, 2013). This means they are connected with psychological conviction and logical argumentation.

To classify the intertextual connections in the legal discourse we must pay close attention to the classification of Konovalova (2008). She distinguishes hypertextuality, architextuality, metatextuality, and intertextuality. The researcher defines hypertextuality as "the relationships between texts related to a particular type of the institutional discourse, unified by the joint content and function. These texts are also built according to particular linguistic rules" (Konovalova, 2008).

Let's look at a fragment from the ECHR judgment: "***The application was allocated to the former Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 20 September 2007, following a hearing on the admissibility and merits of the case (Rule 54 § 3), the application was declared partly admissible by a Chamber of that Section…"*** In this case, a professional recipient doesn't have to stop reading to check the Rules of the Court or the terms of ***admissibility***, ***merits of the case***, as he or she already knows them at a cognitive level.

In the case of architextual relations, we talk about a genre and style that characterizes a chosen genre. Borisova (2012) classifies a court's decision as the information genre as the text of a decision conveys the results of hearings on a specific legal dispute. The presence of architextual connections ensures the intertextual interaction of texts related to the same genre and style. Regarding the style of a

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court's decision, we believe it's possible to agree with scientists that classify judicial acts as belonging to the legal substyle of the official style (Milkov, Paraskevova, Ayrapetova, & Kovaleva 2009).

Metatextuality is represented by the author's comment related to the contents of a text. It's not a simple commenting but the addition of relevant information.

Besides, Konovalova (2008) classifies comments in the judicial discourse into three types: explanations (define terms mentioned in the text of the law), interpretations (convey the meaning of law from a practical perspective), mixed type (contain both explanations and interpretations).

The text of the judgment analyzed in our research contains explanations. For example, the following paragraph emplanes the concept of "law": "***When speaking of "law", Article 7 alludes to the same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises written and unwritten law…***"

There are also interpretations. For example, the paragraph "***While accepting that the principle of distinction was not an entirely straightforward matter in 1944, they maintained it was clear that the villagers of Mazie Bati were "civilians": indeed, even if persons were armed, even if they sympathised with the Nazi occupation and even if they belonged to a law enforcement organisation, they did not lose their civilian status***" conveys the meaning of the "civilians" concept from the practical perspective. Based on this, we conclude that the analyzed judgment contains both explanations and interpretations.

Konovalova (2008) describes textual inclusions that bring information from the outside. In the context of the judicial discourse, the intertextuality takes the form of ***quotations*** and ***references***.

There are several features of intertextual inclusions in the legal discourse: the reference to a textual source, the consideration of an addressee competence in a case, vertical (the interaction of two or more texts) and horizontal (the interaction of fragments in one text) intertext, the borrowing of both form and meaning from a donor text (Bogatirev, 2016). In this case, the quotation means a word-by-word replication of the fragment of a precedent text in a target text.

According to the researcher, there are two types of quotations in the legal discourse: expanded (direct quoting of law) and unexpanded. The text of the analyzed judgment contains both expanded and unexpanded quotations. Let's look at the example of an unexpanded quotation in the text of the analyzed judgment: ***"In its later Nuclear Weapons advisory opinion, the ICJ referred to the two "cardinal principles contained in the texts constituting the fabric of humanitarian law". The first, referred to above, was the principle of distinction which aimed at the "protection of the civilian population and objects" and the second was the "obligation to avoid unnecessary suffering to combatants."***

The quotation in the above example represents the necessity to convey and explain basic legal principles to be used during the war. Thus, thus citation adds new cognitive elements to the experience (Serebryakova, 2018). In this case, it performs bot informative and interpretative functions.

Characterizing the quotation, we should note that it's a reference to a formal property of a precedent text. The legal discourse contains both formal (having formal properties) and informative (being a semantic or grammatical part of a sentence) references (Konovalova, 2008).

The analysis of the ECHR judgment demonstrated the presence of

– formal references, e.g. ***"…according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24…".*** The indicated reference is a legal basis for a country to participate in court

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proceedings, i.e. it performs both informative and argumentative functions;

– informative references, e.g. "***The first Geneva Convention (later superseded) provided for minimum standards for "wounded or sick combatants" so that "to whatever nation they may belong" they had to be "collected and cared for."*** This reference explains the content of the Geneva Convention and the status of combatants, i.e. performs both informative and interpretative functions.

Prigarina (2015) defines the intertextuality of the judicial discourse as, on the one hand, the addressing to the case papers themselves and, on the other hand, as the use of fragments from other texts, in particular, reported speech, quotations, etc. This ensures the main intention of judicial discourse.

Bogatirev (2016) pays attention to the dependence of intertext on time in the context of the legal discourse. He notes that donor texts can be represented by legal acts (the adequacy of which is determined in terms of timeline, space, and the number of persons) and the materials of a particular legal trial, the relevancy of which is limited by the period of the legal trial itself. The analyzed judgment of the ECHR contains the details of the case itself and the intertextual inclusions in the form of quotations.

We believe that the classification of the instances of intertextuality in the judicial discourse offered by Dubrovskaya (2009) can be helpful in our research. It pays attention to their explicit character which is due to the area of activities. The classification divides these instances in the following way: a reference to the exact name of law (when there are no quotations of the law itself), a summary of the content of the law, relevant for particular trial as well as quoting the legal norm itself.

The analyzed judgment of the ECHR contains all three types of intertextual inclusions offered by Dubrovskaya (2009). For example, the text of the judgment contains references to the Convention for the Protection of Human Rights and Fundamental Freedoms:

"under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")";

"his conviction …violated Article 7 of the Convention", However, their content is not quoted or explained.

Another type of the intertextual inclusion used in the judgment is a short summary of a law which is used to convey briefly the contents of a specific legal act, the reference to which is necessary during the trial. The analyzed judgment contains the following reference: ***"By a decree of 6 November 1940, the Supreme Council of the Latvian SSR replaced the existing Latvian Criminal Code with the 1926 Criminal Code of Soviet Russia, which code thereby became applicable in Latvia"*** (Kononov v. Latvia Judgment, 2010). The summary of the law is necessary in this case to provide a reference to the whole legal act which put an end to one law because the other one was put into practice.

The last frequently used type of intertextual inclusions is the direct quotation of laws, especially in such sections as RELEVANT DOMESTIC LAW AND PRACTICE and RELEVANT INTERNATIONAL LAW AND PRACTICE, which, in its essence, is the intertext.

We classified these instances of intertextuality given in the form of quotations in the following way: ***the quotations of international legal acts*** (in the analyzed ECHR judgment these are the Geneva Conventions of 1864, 1906, 1929, 1949, the 1863 Liber Code, the Oxford manual of 1880, The 1929 Convention for POW Maintenance, the 1868 Petersburg declaration, the IV Hague Convention respecting the Laws and Customs of War on Land of 1907, the 1919 Versailles Treaty, the 1945 Potsdam agreement,

etc.), ***the quotations of domestic laws*** (the 1926 Criminal Code of Soviet Russia, the 1961 Criminal Code of the Latvian SSR, the 1998 Criminal Code of the Latvian SSR, etc.) and references to legal trials (***case-laws***) (The US Supreme Court's decision in R. Kvirin case of 1942, the US military courts created in relationship to the military conflict in the Philippines between 1899 and 1902, etc.).

7. Conclusion

Thus, the article established the correlation of such concepts as discourse, institutional discourse, legal discourse, and judicial discourse. The ECHR judgment was used to analyze the categories ensuring the integrity of the judicial discourse, in particular, coherence and intertextuality. The types of intertextual connections inherent to the judicial discourse are also analyzed. The article analyzed such intertextual connections as hypertextuality, architextuality, metatextuality, and intertextuality. The article also explored the author's metatextuality in the form of explanations and interpretations as well as textual inclusions (intertextuality), implemented in the judgment in the form of case papers, formal and informatory references as well as expanded and unexpanded quotations. The research determined the general properties of intertextual inclusions such as the reference to a textual source, the consideration of an addressee competence in a case, vertical and horizontal intertext. The study attempted to classify the cases of intertextuality in the form of quotations used in a judgment: quotations of the provisions of the international legal acts, quotations of the provisions of domestic laws, references to legal trials (case-law) depending on the place of a donor document in the hierarchy of legal acts. Besides, the study defined the main functions of intertextual inclusions within the judicial discourse including informative, interpretative and argumentative inclusions.

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