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THEORETICAL OVERVIEW OF ARGUMENTATION IN COURT DISCOURSE

The article analyzes the notion of court discourse, its correlation with legal discourse, the linguistic structure of argumentation as implemented by the participants of the trial, used in the US Supreme Court, Washington, D.C. It discusses various interpretations of argumentation according to different scholarly approaches and the ways of application in the American court proceedings. It deals with certain linguistic properties of argumentation with the focus on its interaction with Argumentation theory. The complex phenomenon of court discourse has been studied, its functions and relationship with legal discourse. It outlines the function of court discourse within other types of discourse. The interaction between law and language within argumentation has been provided. The article proves that logical and accurate linguistic argumentation is a key component in court discourse and is successfully implemented by lawyers while arguing in the US Supreme Court. Argumentation has formed its style and the language used in the American Supreme Court is different from other styles. It has been shown that argumentation in court discourse goes formal style, including such main features as conventionality of expression, total or partial emotiveness, precision, conciseness. Its function is to cause the effect of persuasion, complexity and frequently emotiveness. The article reveals that the court is a type of social environment, where legal, linguistic, psychological and social aspects are interconnected and can successfully interact together only. If one of them is excluded the effect, influence, power and the ultimate aim could not be achieved at all. Lawyers need to follow the rules of proper argumentation, which include the correct structural, rhetorical organization, relevant lexical, syntactic features and colourful stylistic means. All those notions are revealed in written legal texts through their syntax, vocabulary, grammar and stylistic features. The interdisciplinary nature is manifested through the interaction between law and language within argumentation. The outcome of the research is that argumentation may be successful only when law and language correlate logically.

Key words: *linguistic argumentation, court discourse, legal discourse, theory of argumentation, the US Supreme court case transcripts.*

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ТЕОРЕТИЧНИЙ ОГЛЯД АРГУМЕНТАЦІЇ В СУДОВОМУ ДИСКУРСІ

У статті проаналізовано поняття судового дискурсу, виокремлено його функції, показано взаємозв'язок із правовим дискурсом. Розглянуто лінгвістичну структуру аргументації, яку застосовують учасники судового процесу, зокрема у Верховному Суді США у Вашингтоні. Висвітлено різноманітні наукові підходи до окреслення поняття аргументації, а також способи її застосування під час американських судових засідань. З'ясовано окремі лінгвістичні особливості аргументації, показано взаємодію права та мови в межах цієї аргументації. Виявлено, що логічна і правильна лінгвістична аргументація є ключовим компонентом у судовому дискурсі, яку успішно реалізують правники у Верховному Суді США. Доведено, що аргументація сформувала свій стиль, а мова, якою користуються в Американському Верховному Суді, суттєво відрізняється від інших. Зазначено, що аргументації в судовому дискурсі властивий офіційний стиль, який містить такі головні особливості, як умовність вираження, повну або часткову емоційність, точність, стислість. Її функцією є створення ефекту переконання, складності та частково емоційності. Доведено, що суд є окремим соціальним середовищем, в якому правові, лінгвістичні, психологічні та соціальні особливості тісно взаємопов'язані та можуть використовуватися лише тоді, коли функціонують одночасно. Якщо один з елементів відсутній, то ефект, вплив, повнота та кінцева мета можуть взагалі бути не реалізованими. Правники повинні дотримуватися правил аргументації, яка містить чітку структуру, риторичну організацію, відповідні лексичні, синтаксичні особливості та яскраві стилістичні засоби. Усі ці поняття було виявлено в письмових правничих текстах через синтаксис, лексику, граматику та стилістичні засоби.

Запропонований міждисциплінарний аспект дослідження проявляється через взаємодію права та мови в межах аргументації і успішно реалізується, коли використання цих категорій є логічно пов'язаними.

Ключові слова: лінгвістична аргументація, судовий дискурс, правовий дискурс, теорія аргументації, скрипти судових справ Верховного Суду США.

Throughout its history, development and investigation, argumentation has become an important interdisciplinary field of interest. The investigation of argumentation in legal discourse is a priority for the second millennium linguistics. Nowadays, it has become so popular, that we may assume that it is definitely something like to our way of human being (Bermejo-Luque, 2011). Argumentation can be successfully implemented in court discourse following logical and well-organized structure. The efficiency of accurate argumentation is of an utmost importance, because it aids to accept or refute someone's standpoint and in the end to achieve the desirable final decision in court discourse. Learning more about argumentation within the interaction between law and language in written court discourse will help to identify and analyze its typical features on three linguistic levels. For instance, the implementation of argumentation is most vivid on syntactic and stylistic levels. However, lexical level is of importance as well.

Modern linguistics studies include huge amount of works concerning **the wide range of problems** of language and law interaction within court discourse. An argument is a key notion for court discourse. The courtroom is a perfect place for arguments to be presented. It is a so-called "close society" where law, language, psychological and social factors are interconnected and can successfully interact together only. If one of these components is excluded, its effect, influence and primary aim could not be achieved completely. It is undeniable that lawyers need to follow the rules of proper argumentation, which include proper structural organization, specific syntactic and grammar constructions, semantically appropriate vocabulary, variety of stylistic expressions and tropes to make their message accurate, powerful and persuasive. In modern linguistics it is crucial to conduct further studies that will contribute to understanding of argumentation realization in different spheres of human interaction

and will help to perceive what are the components of successful argumentation.

Research analysis. The interdisciplinary studies have become of crucial importance in recent years. The argumentation within linguistics specifically in court discourse was investigated both by national and foreign scholars. T. Antonenko, M. Alekseev, L. Baum, A. Baranov, H. Beliaeva, V. Kaliuzna, E. Derdi, T. Hubaeva, N. Ivakina, O. Zaruma-Panskykh, N. Koval, S. Kravchenko, I. Krukolovskyi, I. Lisna, S. Maksymov, P. Sierhievich, T. Skuratovska, H. Fedorchenko, A. Tokarska, L. Vedenska, M. Vlasenko, I. Vasylianova, A. Aarine, R. Alexy, L. Bermejo-Luque, V. Bhatia, C. Brooks, J. Cotteril, O. Ducroit, D. Ehninger, F.-A. Haase, L. Haruki, N. MacCormik, E. S. H. Mattila, L. Olbrechts-Tyneca, R. Perelman, A. Peczenich, S. Toulmin, R. P. Warren, J. Wróblewski and others. W. O'Barr, Sh. Bryant, R. Butters, J. Gibbons, A. Johnson, H. Kniffka, R. Lakoff, G. R. McMenamin, O. Melikoff et al, P. Tiesma were engaged in the investigation of forensic linguistics. We also discuss a new theory, which overtook two stages in its development and is known as Argumentation theory. R. Amossy, A. Baranov, H. Beliaeva, L. Bermejo-Luque, F. H. van Eemeren, M. Galdia, R. Grootendorst, F. A. Haase, N. Koval, L. Riapolova, T. Skuratovska, I. Vasylianova, R. Perelman, S. Toulmin and others have been influential scholars of this issue.

The purpose of the research is to investigate linguistic argumentation and its implementation in court discourse.

Presenting main material. At first glance, argumentation is nothing special. It seems that any layman can quite normally operate it and there is no need of special requirements to understand its structure and correct application. Argumentation exists no matter in what sphere of human interaction. It can be just a coffee/tea break or a complicated political discussion, a complex business plan explanation or the presentation of the chosen topic at the scientific conference. Consequently, argumentation is closely connected with the peculiarities of human language, especially its reflexivity (Koval, 2007: 16; Vasylianova, 2007: 14).

The concept "argumentation" comes from Latin "argumentum", "arguo", which means "an explanation", "to explain". It is an interdisciplinary phenomenon, which studies how conclusions can be reached using arguments for persuasion, statements, reasoning or dialogues. An argument is one of the basic concepts in court discourse and in legal discourse globally (Koval, 2007: 4). I. Vasylianova states that argumentation is the activity aimed at reaching the goal by both parties satisfaction or by

dominance of one of them. The argumentation in court discourse is a process where two parties who did not resolve the dispute, engage the third one (the court) to rule the communicative situation and change it (Vasylianova, 2007: 3). It is a system of cognitive statements gained to accept or refute one's opinion (Fedorchenko, 2013: 276). R. Mochales and F.-M. Moens suggest that as the plaintiff, the defendant or the factfinder (the judge) can produce the argument. According to this approach, arguments are divided into two groups: reported and non-reported. Arguments constructed by the defendant are previously filed to the judge. They cannot be attacked by the current process and are written in present tense. Non-reported arguments are active participants of the current process and are written in past tense (Mochales&Moens, 2008: 10). D. Ehninger, a famous American linguist and communication scholar, believes that argument is used to practice our correction skills and unilaterality, coerciveness, corrector's attitude toward the rule he is enforcing, social and physical risks. He states that its aim is not to extend the knowledge, but to reform and purify it. Apart from this, he assumes that because of the correctee's active participation and his/her attitude in the correction process, an argument is bilateral. According to his approach, argumentation should be valid, coherent and cognitive. An argument is indecisive by its nature, because it has no built-in stage of resolution in direction it follows (Ehninger, 1970: 103). F.- A. Haase mentions in her works that argumentation in linguistics is not a consecutive element in communication, but the structure of linguistic features, which is implemented in the sentence (F.-A. Haase, 2010: 17). In cooperation with exposition, description and narration, argumentation in court discourse works as a very complicated phenomenon (Galsia, 2009: 159). O. Ducroit defines argumentation as a linking of utterances leading to a conclusion and its meaning is orienting (Amossy, 2009). It is a complex speech act with the purpose of resolving contradictory views. Apart from being a reason and a logical inference of a conclusion from one or more premises, it denotes a discussion and a quarrel as well (Eemeren & Grootendorst, 1999: 20).

Argumentation on linguistic level is realized in different ways. Syntactic level includes the use of sentences complex syntactic and grammar constructions. Lexical level comprises issues of specific units, lexical borrowings (mostly Latin and French), terms and semi-terms, multiword phrases and idioms. Argumentation in stylistics is demonstrated through various stylistic expressions and tropes (Stanojević, 2011: 66; Galdia, 2009: 11).

Argumentation exists from the beginning of the 19th century. It is emphasized that since that time it has been an important phenomenon in society. This trend has evolved over the history of the earliest beginnings in ancient rhetoric, logic, philosophy and dialectics (Eemeren & Grootendorst, 1999: 12).

There were two stages in the development of Argumentation Theory as an independent field. Until the 1950s, the ability to argue aimed at persuasion was basically the matter of rhetoric and logic. Between 1960s and 1970s, the study of argumentation was dominated by the influential contributions of R. Perelman and S. Toulmin. R. Perelman (1970) attempted to find a description of argumentative techniques used by people to obtain the approval of their ideas. S. Toulmin (1968) developed his theory to explain the argumentation implementation in the natural process of an everyday argument and summarized its model in his influential work called "The uses of argument", where he proposed such interrelated components for analyzing arguments as claim, data, warrant, backing, rebuttal and qualifier (Eemeren & Grootendorst, 1999; Haase, 2010). In cooperation with the Belgian scholar, L. Olbrechts-Teneca, they studied the existence of argumentation within linguistics (Haase, 2010: 15; Koval, 2007: 5).

Legal argumentation has become an important interdisciplinary field of interest in the last thirty years. The study of legal argumentation is closely connected with such disciplines as legal theory, legal philosophy, logics, argumentation theory, rhetoric, linguistics (namely Forensic and Legal linguistics), philosophy, sociology and artificial intelligence (Eemeren & Grootendorst, 1999: 20; Mochales & Moens, 2008: 9; Feteris & Kloosterhuis, 2009: 321; Haase, 2010: 11).

Court decisions must be justified in a rational way. If they are productive and complete, the reader or listener is able to identify, interpret and analyze their structure (Feteris & Kloosterhuis, 2009: 308). In court discourse Argumentation theory interacts with Legal argumentation theory, whose objective is to demonstrate how arguments can be analyzed and evaluated adequately. Legal argumentation distinguishes such components as philosophical, which characterizes normative foundation of the theory, theoretical, which emphasized norms and rules for argument-acceptability formulation, empirical which discovers the structure and evaluation of arguments in actual legal practice and, finally the practical one which shows how all the above mentioned components could be implemented in legal practice (Eemeren & Grootendorst, 1999: 10). Legal argumentation theory is studied taking into consideration the logical approach,

which points out that argumentation requires rationality and logical language, the rhetorical approach, which analyses the content of arguments and the context-dependent aspects of acceptability and the dialectical approach, which supposes that the rationality of the argument depends on the existence of formal and material standards of acceptability (Eemeren & Grootendorst, 1999: 10; Feteris & Kloosterhuis, 2009: 309).

F.-A. Haase (2010) claims that one needs to distinguish between the classical model of argumentation, where we have discursive rhetoric elements and the linguistic model which considers argumentation as a linguistic feature. She believes that Argumentation in linguistics is the structure of linguistic features, which is realized in the sentence and possibly in the form of chains (F.-A. Haase, 2010: 309). We may discuss micro area of argumentation in a linguistic syntactic unit, the one that deals with linguistic theory (linguistic aspects, syntax, morphology, semantics, lexical structures and phonetics) and macro area which refers to the linguistic unit as an element in an argumentation process and includes linguistic settings. They embrace a proper linguistic setting (literary structure, semiotics, rhetoric and logic), post-linguistic setting (media, performance and techniques) and medial setting (communication). Other linguistic theories use argumentation to indicate linguistic phenomena of words, phrases, and sentences (Haase, 2010: 11). The linguistic structure of syntax is based on the accurate implementation of linguistic structures and rules (Haase, 2010: 12). The essence of practical value of Argumentation theory is in the adequate model of argumentative situation. It assumes that the persuasion and discussion process is not a monologue but a dialogue (Eemeren&Grootendorst, 1999: 12; Bermejo-Luque, 2011: 271).

The problem of discourse typology has become central in modern linguistics. Court discourse is a new phenomenon implemented not only in linguistics but in other fields related to it. It should be taken into consideration that there is still no clear and exact definition of what might we understand under «court discourse» in linguistics. It is formed due to the development of relationships between law and language, legal sphere of communication, studies in communicative and pragmatic analysis of speech acts, its stylistic and interactive models, linguistic means of gaining efficiency in various types of communication, etc., and is demonstrated in legal institutions (Koval, 2007: 6). The court discourse is a component of functional style communication and is realized in courtrooms at all stages – before, while and after the court proceedings (Galdia, 2009: 186).

Argumentation is considered to be a part of global discourse about law or as it is defined by lawyers and linguists legal discourse. The court discourse is characterized by a fixed social “role-play” situation known as “subordinate chief”. From this perspective we might argue that court discourse reveals features similar to authoritarian discourse. The judges have an exclusive power and legal force to decide: to justify or convict the accused (Koval, 2007: 4; Mochles & Moens, 2008: 10). Argumentation is an indispensable element within court discourse. As far as the research examines a specific institution, the U. S. Supreme Court, its complex linguistic activity within argumentation is produced in institutional discourse (Koval, 2007: 5; Galdia, 2009: 190). The argumentative discourse is a sub-type of the court discourse, where parties aim at winning the dispute rather than finding a final solution (McMenamin, 2002: 105). Court discourse appears in a set of related types of legal discourse. It is a sub-type of global legal discourse.

In modern world to know the law is not enough to perform it successfully in the trial. An accurate and stylistically correct command of language is crucially important too (Vogel, 2009: 27; Galdia, 2009: 158; Matilla, 2014: 404).

Legal Linguistics investigates Legal language. It studies the development, typical features and its sphere of interaction. It is a new field, where the language of the law is examined. Legal English depends on the situation in which it is used. According to Mattila and other outstanding scholars, legal language may contain the language both in spoken and written forms. It may be the language of courtrooms and judge’s final decisions, lawyer-client communication, police interviews and even the so-called “illegal” language (Mattila, 2013: 405). G. Grewendorf and M. Rathert claim that law is closely connected with linguistics. There would be no law without language. They believe that law is mediated through language, partially through the spoken language and partially through the written one (Grewendorf & Rathert, 2009: 2). The interaction between law and language is intimately linked and the same could be assumed about linguistics and jurisprudence.

Legal language is grammatically complex, sparsely punctuated and over-lexicalized (Coulthard & Johnson, 2007: 49). When judges conduct a court case, they appeal directly to linguistic princi-

ples of interpretation, especially while justifying their arguments and final decisions. The rules of interpretation include ambiguities of syntax and semantics, e.g. the two words may be used interchangeably (Vogel, 2009: 27). Syntax in legal language is obscure, complex, including multi-clause sentences, particularly with the subordinate clauses (Koval, 2007: 11; Coulthard & Johnson, 2007: 37; Galdia, 2009: 190; Mattila, 2013: 404). Sentences are long, usually written in the passive voice, comprise several clauses and contain a lot of repetitive words. In court discourse, repetition (morphemic, lexical and syntactic) is used to intensify the expressive effect and performs to implement the author’s message (Koval, 2007: 12). Simple sentences are rare in law. Passive voice is inherent in legal language. Lexically, Legal language includes terms, semi-terms, non-terms, technical terms or the terms of art, obscure words derived from Latin and French, binomials, multiword phrases, idioms, etc. (Coulthard & Johnson, 2007: 36; Galdia, 2009: 162; Mattila, 2013: 407). D. Halliday (1994) assumes that such language is difficult to understand because of its specific structure (The language of the law). The legal language is less perfect than our plain language (Galdia, 2009: 176). Only a small number of the words in any written legal document will have legal definition, which evidences that plain language must be interpreted in the legal context too (Grewendorf & Rathert, 2009: 2).

Forensic linguistics is a new research direction and one of the fastest growing fields in applied linguistics. It deals with the application of linguistics to legal issues what makes it interesting and crucially important area. Forensic linguistics is a scientific study of language applied in forensic purposes and contexts. It investigates the relationship among language, law and crime (McMenamin, 2002: 92).

Conclusion. In the article we have discussed new trends and phenomena in modern linguistics, we have analyzed and summarized various approaches to the definitions of both “court discourse” and “argumentation”, revealed the relationship between legal and court discourses, examined the interaction between law and language within argumentation, investigated development and implementation of Argumentation theory in linguistics. This interdisciplinary study shows that argumentation is an irreplaceable component used in the proceedings of the U. S. Supreme Court.

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