

Speech Acts in Legal Language

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Introduction

Pragmatics, which as a discipline emerged in the 1960s and 1970s, has brought about a significant change in both the views on language and language use. Pragmatics regards language as one of the forms of social action, and investigates the principles and procedures constituting the basis of the interactive use of language. In theory, we are free to say what we want but in practice, we formulate our ideas depending on the actual situation and select the proper language devices from our mental lexicon accordingly.

Pragmatics investigates linguistic problems in their *social embeddedness*, examining language from the aspects of use, communication and context. Among others, due to this, nowadays the results of pragmatics are indispensable in several forms of multidisciplinary research targeted at the investigation of the communication activities of society, including legal, clinical, business, political, media, classroom, mediator, intra-family etc, discourse.

1. Pragmatics in professional languages

The research of professional languages and pragmatics have become gradually intertwined. In the early period of professional language research, when investigations were primarily and in many cases limited to professional vocabulary and terminology, pragmatics did not play a significant role in the description of professional languages. The functional stylistic and syntactic investigations of the 1960s did not lead to such a progress in professional language research, either, which would have created an opportunity for the use of the results of emerging pragmatics. A change was brought about by the *communicative-pragmatic* turn in linguistics, which exerted its influence in professional language research in the 1970s and 1980s, when experts' attention turned increasingly towards the specification of the circumstances and conditions of successful professional communication (see Hoffmann 1988, Baumann 1994, Lalouschek–Menz–Wodak 1990, Redder–Wiese 1994, Szabó–Varga 2000).

The past few decades have witnessed the gaining ground of pragmatic investigations in professional language research. This, naturally, does not mean pushing traditional fields of research into the background. Quite to the contrary: it can be seen that pragmatics finds its way to lexical and syntactic investigations bringing with it its special approach and methods of analysis and making the former significantly more varied.

2. Legal pragmatics

The inner structure of legal language (see Karcsay 1981, 325-338, Szabó 2002, 116) as well as the existence and distinguishability of its written and oral version make it necessary to apply the methods of linguistic research in a subtle way. As pragmatic research is targeted at the various aspects of interactive language use, the approach of pragmatics can be successfully applied in the investigation of the language use of law enforcement, centred on spoken discourse.

According to Crystal, in the courtroom, language plays the most important role as with respect to its structure, a criminal trial hardly differs from an extremely long narrative which has a beginning (represented by the opening speeches), a main part (presentation of evidences) and a closing (closing speeches, passing the sentence). However, he points out that a significant difference is that this narrative is related by several people including two 'professional' narrators (the representatives of defence and prosecution) and exists in at least two conflicting versions. The dissolution of this conflict or discrepancy completely depends of the language skills of the participants involved. (Crystal 1998, 482)

Foreign, primarily English and German publications testify that the pragmatic approach to legal language research has become more and more popular in recent years (see Reitemeier 1985, Nussbaumer 1997, Hoffmann-Kalverkämper-Wiegand 1998, 24-118, 409-523). Within the framework of the pragmatic research of professional languages, there arose *legal pragmatics*, which set the objective to investigate legal language in operation, in a well-defined legal environment and embedded in a concrete *framework of professional validity* (e.g. during police interrogations or court trials).

The principles, rules and methods adopted by pragmatics are involved in the analysis of the language use of legal procedure in several ways. This way, for example the specification of the role of legal performatives and constatives, the characterisation of the different illocutionary acts, the frequency of the occurrence of conversational implicatures, the question of the necessity of their explication, the rate of occurrence of direct and indirect speech acts, the extent and causes of the adherence to the cooperative principle, the compliance with or violation of conversational maxims, the choice and application of the different strategies of asking questions are all aspects of pragmatic research which can be applied in the exploration of the characteristics of the language use of law enforcement with the hope of success.

3. Constatives and performatives in the language use of law enforcement

One of the potential theoretical frameworks for the pragmatic research of legal language is provided by *speech act theory*, initiated by Austin (1962) and further developed by his disciple, Searle (1976, 11-23). According to the basic principles of speech act theory, our utterances do not only serve to describe the world around us but are also capable of performing certain actions. English philosopher John L. Austin was the first to point out that a large number of our utterances do not convey information but have the value of action. When a person says *I promise* or *I swear*, these utterances result in a new psychological or social state of affairs, so in such cases, *saying* is equivalent to *doing*.

According to Austin's theory (1990, 31-68), *constatives* describe the world around us, asserting or saying something about it, and are verifiable so they may either be true or false (e.g. There are a lot of stars in the sky. Tree leaves are green.) *Legal constatives* have similar characteristics with the restriction that they do not assert something about the world in general but only about the world of law, and can be verified in a given legislation and under specific social circumstances: The public prosecutor represents society. – The public prosecutor makes the indictment, the defence counsel makes a speech for the defence. – Criminal procedure starts with an investigation phase. – Prosecution, defence and administration of justice are separated in criminal procedure. – The task of courts is the administration of justice.

According to Austin, in contrast to constatives, performatives do not describe or assert anything, do not report anything and thus cannot be true or false (1990, 32-33). Therefore, if, for example, under the proper circumstances you make utterances like *I appeal*, *resign* or *promise*, the utterance of these expressions is equivalent to the act of appeal, resignation or making a promise itself. The essence of performativity is the equivalence of utterance and act, or in other words, the fact that certain utterances are, at the same time, acts in themselves. This is illustrated by Austin's classical example: if a person says 'yes' in front of the altar or in the presence of the registrar, he/she does not report the marriage service but is a participant of it and is contracting marriage. If a person says to his/her child: 'Look round before you cross the street,' he/she does not describe the world in terms of traffic conditions but performs an act, namely that of *warning*. Therefore, uttering this sentence is not a description of what can be said about what the person is doing when he/she is saying this, nor is it the confirmation of what he/she is doing but the performance of the act itself. (Austin 1990, 33)

Similar utterances can also be found in legal language. For example, if the public prosecutor makes the utterance: 'On the basis of the above facts, I accuse the culprits of committing the criminal offence of theft as accomplices,' he / she does not describe legal acts but performs an act: he/she *lays an indictment* against the culprits. The declarative speech act (*I accuse*) included in the speech for the prosecution also has the value of an act by virtue of its illocutionary force.

As it is well-known, in the field of law, language is not only used to describe facts (legal constatives) but often language itself creates facts. Beyond their value of act, performatives also possess legal effects and legal consequences as with the performative utterances used in proper legal contexts, rights and obligations are created and eliminated (Szabó 2001, 104-105).

In Austin's opinion, performatives are mainly verbs in first person singular the utterance of which involves the performance by the speaker of the act denoted by the verb. However, research later proved that the formal requirement set by Austin is not exclusive as there exist performative utterances which do not include verbs in the first person singular. One of the fields where such formally non-bound performatives frequently occur is precisely law enforcement and within it, the language use of court trials as it is not the judge or the public prosecutor in first person singular but the court itself that *concludes, imposes penalty or obliges* etc. a person to perform a particular act.

On the basis of the abovementioned, it can be concluded that legal performatives are distinguished from verifiable legal constatives including allegations or conveying information through their act value manifested in their legal effect or legal consequence. The objective of the performative speech acts characteristic of courtroom discourse is not to report the court trial but to exert an influence on its progress and change the legal capacity and role of the participants (e.g. the accused is indicted, sentenced or acquitted, etc.) Consequently, legal performative speech acts do not describe reality but change it.

4. Explicit performative speech acts in courtroom communication

One of the basic forms of the pragmatic analysis of legal language use is the investigation of legal utterances as *illocutionary* acts. Of the acts of communication behaviour, that is, locutionary, illocutionary and perlocutionary acts (see Austin 1990, 102-122, Searle 2000, 138-139, 2009, 35-38, 41-46, 50-60, 170, 225, Szili 2004, 76-77), the research of the language of law enforcement also focusses on illocutionary acts similarly to the investigation of everyday language use. Illocutionary acts are acts linked to and embodying the speaker's intentions (e.g. promise, order, demand, etc.) which consist of two components:

the indicator of illocutionary force and the indicator of propositional content (see Searle 2000, 139). In the next section, two examples are used to illustrate the role of the indicator of illocutionary force (illocutionary force, for short) in the expression of the speaker's intentions.

In the utterance 'I admit having made a false statement', the verb *admit* fulfils the role of illocutionary force indicator while the proposition is given in the following part, i.e. in the content of the assertion. This example, taken from the transcription of a court trial, could have also been said in the following way: 'I have made a false statement'. In the first case, the culprit admitted committing a criminal offence with an explicit performative utterance while in the second case, he/she did so with an implicit performative utterance.

The following explicit performative utterance of the judge can similarly be broken up into parts: 'I conclude that there is no obstacle to holding a continuous trial.' In it, the verb *conclude* fulfils the role of illocutionary force indicator while the proposition is given in the following part, i.e. in the content of the assertion. This example could also have been formulated in the following way: 'There is no obstacle to holding a continuous trial.' Thus, in the first case, the judge fulfilled his/her obligation to examine the conditions of holding the trial and as a part of opening the trial, to declare whether the trial could be held or not with an explicit performative utterance while in the second case, he/she used an implicit performative utterance for the same purpose [Section (1), Art. 281 of Act No XIX of 1998 on criminal procedure]

As it can be seen the omission of the illocutionary force indicator does not involve a change in or disappearance of the illocutionary force of the utterance but in some cases, may result in ambiguity, uncertainty or misunderstandability (e.g. the utterance 'You are under no obligation to make a statement.' may likewise be interpreted as a statement of facts, as calling attention or as a warning).

It is a well-known fact that the language of law enforcement is determined by the effort to express the legal idea precisely and unambiguously therefore courtroom communication is characterised by a frequent use of explicit performatives. The following examples also illustrate that the explicit character of the utterance makes clear the illocutionary force of the given performative and thus the purpose of the utterance and the speaker's intention: 'I warn you that your right to defence will be lost the moment you falsely accuse another person of committing a criminal offence.'

5. Illocutionary acts characteristic of courtroom communication

As we know, the number of verbal acts is practically infinite therefore it is impossible to specify the number of illocutionary acts. In spite of this, one of the major endeavours of pragmatics is to categorise and group illocutionary acts in some way. On the basis of Searle's criteria (the point of illocutionary act, direction of fit between the words and the world, the psychological state expressed by the speech act), publications in pragmatics put illocutionary acts into the following five groups: assertives, directives, commissives, expressives and declaratives (for details, see Searle 1976, 11-23, Szili 2004).

Legal language use is characterised by the occurrence of all the five types of speech acts with differences in the frequency of the occurrence of the specific illocutionary acts. The investigation of the recordings made at court trials reveal that due to the nature of legal procedure, *assertive* speech acts occur most frequently in trials. Assertive legal speech acts express the relation of the speaker to the truth content of the propositions, and therefore, assertives may be either true or false (e.g. 'At the agreed time, we met and got into the car in which, as I remember, there were 2 screwdrivers and a pair of nippers. We left the car on the road and went to the vineyard on foot. When we were looking around in the vineyard, H. saw the aluminum shed and suggested that we take it into parts.')

Court trials should reveal whether the allegations made (assertives) really correspond to the events of reality constituting the starting-point of legal procedure. In this pragmatic approach, the objective of the trial is to find out whether the court shares the standpoint of culprit and defence counsel concerning the propositional content of utterances, that is, whether the court accepts the culprit's allegations and the defence counsel's speech as true.

With the help of *directive* legal speech acts, the speaker wishes to get the listener to perform some kind of action (e.g. the speaker requests or instructs the listener, calls upon him/her or orders him/her to do something, expresses his/her wish for some action, etc.) The defence counsel usually formulates his/her directive speech acts in the form of requests, asking the court to impose the minimum punishment on his/her client (e.g. I request the court to regard these in this sense as mitigating circumstances, and if the cumulative punishment in the indictment is imposed, I request the court to show mercy on culprit and impose the minimum punishment.) In contrast, the public prosecutor, representing prosecution, makes motions concerning what punishment the court should impose in a much more determined way, with demands and instructions (e.g. I move that the Town Court conclude that culprit XY has committed the criminal

offence of theft as accomplice, and place him on probation.) The judge's utterances include directive speech acts in those phases of the trial when following from his/her general and specific tasks, the judge provides for the organisation and direction of courtroom discourse and the order of trial (Stand up, please., Stand facing me., Do not interrupt the trial or you will be expelled from the courtroom., Leave the courtroom, please, the court is going to pass its ruling., Stay near the courtroom. etc).

A special type of directive legal speech acts is represented by *directive* speech acts of *declarative character*, mostly typical of the public prosecutor's speech (e.g. In case of culprit XY, I move that he/she be sentenced to imprisonment.)

Through the use of *commissive* legal speech acts, the speaker commits him/herself to some extent to the performance or occurrence of a certain act (e.g. I uphold the charge with respect to all the four culprits both in relation to the history of the case and the assessment thereof with unchanged content. Culprit and defence counsel understand sentence.)

With *expressive* legal speech acts, the speaker expresses his/her relation to a particular state of affairs (e.g. the speaker expresses his/her thanks, regret or gladness, etc.) These speech acts are relatively rare in legal language (e.g. (to public prosecutor) Thank you, Madam. Accused of the second order may be accompanied back, thank you.)

The utterance of *declarative* legal speech acts results in a change in the legal status of an object or person or in the conditions of the legal situation. In courtroom trials, a central role is played by every declarative legal speech act as these constitute an essential part in both the indictment and the sentence: 'On the basis of the above state of affairs, I accuse culprits of committing the criminal offence of theft as accomplices. On the basis of the above state of affairs, the public prosecutor accuses culprits of committing the criminal offence of rioting, and XY of committing the criminal offence of non-grievous bodily harm in cumulation.'

6. Speech act structure of courtroom trials

The trial is opened by the judge, specifying the charge. Then the judge warns the audience to maintain silence and order reminding them of the consequences of creating disturbances. After this, the judge examines who are present, names those present, and concludes whether the trial may be held or not. Following from the duties listed, at the beginning of the trial, the utterances of the judge are mainly characterised by assertive speech acts, in which the judge presents states of affairs as conclusions or simple allegations on the one hand, and

expresses his/her relation to the truth content of the proposition on the other (e.g. The court starts trial and concludes that all the persons summoned are present.) The direction of fit is word to world, that is, the judge selects his/her words depending on the states of affairs in the world (or on the courtroom situation as the case may be). The determination of the order of warning the audience, directing trial and procedural acts (for example, calling upon the public prosecutor to present indictment) is performed with the help of directive speech acts of declarative character (e.g. Take a seat, please., Please, wait in the corridor., Culprits, please, leave the courtroom., Please, lead accused of the third order back to courtroom., Public prosecutor presents indictment No.... Please, start.) The phase of evidence starts with the hearing of culprit with the judge asking culprit questions. (Searle also categorizes questions as directives because the purpose of asking most of these questions is to get the communication partner to answer. See Searle 1976). It is characteristic of the judge's utterances that directives are often formulated as explicit performative utterances (e.g. 'I warn you that..., I request you to..., I call your attention to it that...') In the announcement of sentence or ruling, the judge's utterances include declaratives (e.g. the judge imposes a fine, sentences culprit to imprisonment or imposes a warning) in addition to assertive speech acts (e.g. culprit has committed the offence of false accusation, culprit has entered a plea of guilty). Commissive and expressive speech acts are not characteristic of the judge's utterances, which, of course, does not mean that such speech acts do not occur at all in them. For example, for the sake of the protection of the prestige, order and proper tone of the court, several expressive speech acts may be used at the beginning and end of the judge's speech moves (e.g. Thank you for your participation., (to public prosecutor) Thank you, Madam.)

The public prosecutor brings the indictment, represents the prosecuting authority at the trial and it is his/her duty in every phase of the procedure to take into account both the aggravating and extenuating circumstances as well as any circumstances aggravating or mitigating criminal liability. In his/her speech, the public prosecutor presents the facts and circumstances on the basis of which the guiltiness of the culprit may be concluded, and then makes a move as to on the basis of which facts the court should pronounce culprit guilty of what kind of criminal offences, what punishment the court should impose and what other rulings the court should make. Any facts and circumstances relevant to the criminal procedure are always past events which appear in the form of various allegations, recollections and assumptions. The public prosecutor summarises these facts with a series of assertive speech acts (e.g. he committed, admitted, took it away), and at the end of the speech, he/

she formulates the charge with declarative speech acts (e.g. I uphold charge, I accuse). The public prosecutor puts forward his/her indictment with directive speech acts (e.g. I move that imprisonment be imposed, if the court concludes culprits being guilty, I move that the court oblige them to...). Commissives and expressives are not typical of the prosecutor's utterances.

An attorney may act as defence counsel. In his/her speech, the defence counsel puts forward arguments in the culprit's defence. Similarly to the utterances of the judge and the public prosecutor, the description of the act triggering criminal procedure is done with assertive speech acts (e.g. They took the aluminum sheets away but it was not them who forced these sheets to come off). The formulation of the intention of defence is expressed with a specific complex assertive-declarative speech act characteristic of legal discourse. The speech of defence counsel abounds in directive speech acts with which defence counsel intends to persuade the court to pass a judgement favourable for culprit (e.g. attention should be paid to the fact that.., I request the court to acquit culprit, I request the court to appreciate..., I request the court to show mercy, to impose minimum punishment).

On the basis of the abovementioned, it can be concluded that following from the general and specific duties of the judge, the utterances of the judge primarily consist of the assertive and directive speech acts generally characteristic of legal discourse while the judge's intentions are mostly expressed in assertive speech acts of a declarative character. In the speech act structure of the public prosecutor's speech, assertive, declarative and directive speech acts dominate with the latter expressing demands while the defence counsel's speech is dominated by assertive and directive illocutionary force with the latter expressing requests.

Conclusion

Nowadays, more and more research fields emerge which continuously increase the number of contact points between professional language research and pragmatics. In today's world, there is not only demand that the languages of the different professional fields be described with grammatical categories and characterised from different linguistic and professional aspects but most importantly, it is required to investigate professional languages in operation, embedded in concrete social situations (e.g. legal procedure, business meeting, medical consultation etc). Such investigations of professional languages are made possible by pragmatics.

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