

A) EL LLENGUATGE ADMINISTRATIU I JURÍDIC

VERB TENSE DISTRIBUTION AND PRAGMATIC FUNCTIONS IN ITALIAN COURT JUDGMENTS*

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El resum és al final de l'article.

Resumen al final del artículo.

Le résumé se trouve à la fin de l'article.

A text-linguistic approach proves suitable for investigating legal language, the formal traits of which tend to vary greatly depending on text types. After an overview of the classifications of legal text types provided by both jurists and linguists, the principles of systemic-functional linguistics and genre analysis are combined to analyse a corpus of Italian judgments and identify their genre according to their pragmatic function as macro-speech acts. Judgments fulfil an overall normative function, although they include descriptive, expositive, narrative and argumentative sections, as shown by the variation in the distribution of the dominant verb tenses within the text. However, the sequence order of text components is not determined by contextual factors and does not mirror the chronological steps leading to the drafting of judgments. Rather, it is the result of a historical development and the influence of models perceived as prestigious within the community of legal experts.

Keywords: judgments, text linguistics, text genres, pragmatics, verb tenses.

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1. Methodological aspects

Pragmalinguistic principles and criteria are paramount for the purpose of text classification, given that taxonomy exclusively based on component signs seems bound to failure (Schmidt, 1977: 256). The evolution of text linguistics has been marked by a gradual shift from grammar to pragmatics (Bertinetto, 1981) ever since researchers accepted that the linguistic structures contributing to cohesion and coherence are unable on their own to postulate and identify typological units exceeding sentence boundaries. However, the lack of terminological consistency in this field has been repeatedly noted (Lavinio, 1998), starting with the preliminary distinction which ought to be made between approaches aimed at accounting for text cohesion and texture and studies aimed at identifying text types. Consequently, depending on the author, 'text type' has been used as a label to refer to different discourse modes (e.g. newspaper articles, advertisements), contents (e.g. political texts, scientific texts), cognitive and pragmatic functions (e.g. narrative texts, argumentative texts), generic structures (e.g. fables), channels (oral *vs.* written texts) or other factors affecting the utterance (e.g. monologues, dialogues, etc.). As was rightly pointed out (Mortara Garavelli, 1988), the problem does not lie in structuring a taxonomy but in establishing a typology; in other words, rather than focussing on how to fill the cells of a table, the key task is to provide an exhaustive description of actual texts according to a range of traits established in advance.

This article identifies and provides a description of a class of texts generally referred to as *sentenze penali* (criminal court judgments). The classification is mainly based on the systemic-functional model (Halliday, 1977 and 1979) and the concept of text genre as developed by Swales (1990) combining both theoretical approaches in order to overcome their respective shortcomings¹.

1. The systemic-functional model is open to criticism because the textual function does not play a

Consistent with the approach proposed by genre analysis, a brief overview will be provided of the proposals put forward by legal experts and linguists, so as to ensure a broader view of the issues at stake, in line with the concept of ‘cultural horizon’ proposed by Sabatini (1990). Subsequently, the various factors contributing to define the contextual configuration (CC) of judgments will be illustrated —i.e. the abstract model of the situation-type in which judgments occur as texts (Halliday-Hasan, 1989) according to specific formal requirements (generic structure potential — GSP)². This article seeks primarily to answer the following questions:

- Do Italian judgments define a specific text genre or do they instantiate a pre-genre, and should one go down the taxonomical hierarchy to distinguish ‘trial judgments’, ‘judgments on a procedural point’, ‘judgments for plaintiff’, etc., so as to account for functionally distinct text types?
- Can the different functions fulfilled by judgments be included in one single macro speech-act (Van Dijk 1977a, 1977b and 1984), i.e. a dominant pragmatic objective compatible with the cognitive and functional classifications implemented in text linguistics?

2. Classification proposals

Among researchers who have dealt with legal Italian, Bice Mortara Garavelli (2001: 22) proposed a classification based on contents and non-linguistic criteria depending on the basic goals pursued by legal texts, i.e. setting norms, interpreting the law and enforcing it in specific cases. The latter two obviously tend to overlap, at least partially. For example, through their judgments Italian courts undoubtedly enforce pre-existing laws, but before that they interpret them in order to establish their application to the case at hand (Casasino, 1987: 46). Furthermore, although the doctrine of precedents does not

dominant role as compared to the other metafunctions while the notions of register and genre are sometimes used interchangeably. This prevents one from establishing the admissible delicacy level and forces the analyst to refer to historically determined conventional text-forms (Hasan, 1977). On the other hand, the pre-eminence of the functional aspects of texts in genre analysis is excessive. For example, it seems reasonable that if the addressee fails to grasp the parodistic intent of a mock-text, a linguist should not be too concerned, unless the parody makes its function apparent at surface level, as is the case in the ‘pretend genre’ (Halliday-Hasan, 1989). Moreover, irresolvable difficulties are of course bound to emerge in defining certain discourse communities, for example with reference to literary texts.

2. A similar theoretical approach was used by Mazzi (2008) to analyse a corpus of judgments written in English.

apply to civil law, the role of judges as ‘law-makers’ is a frequently debated question in the relevant literature (Carriò, 1976; Luzzati, 1990: 118 and following pages), especially in the case of the *Corte di Cassazione* (the Italian court of last instance). Similar to other languages for specific purposes, legal Italian is characterised by a variety of users and registers (Cortelazzo, 1990) and the functions of texts vary according to their potential addressees.

From a different perspective, Sabatini’s classification is based on the binding strength of texts over the reader’s interpretation. Sabatini (1999: 148) includes judgments among strongly binding texts (*testi costrittivi*), as opposed to purely theoretical studies in legal matters. However, the Italian law explicitly states that any judgment must illustrate the reasons for the decision so that either party may file an appeal and the public may exercise democratic control over judges. Since this requirement seems to imply that a court decision may be at least partially controvertible and disputable, one might ask whether judgments should be more correctly included among less binding texts.

Veronesi and Cavagnoli (1997) resort to the expertise of legal professionals to develop a richly articulated classification of legal texts³. However, when jurists are charged with the classification of text-types, linguists tend to voice their doubts about the implementation of criteria that are not strictly linguistic (Cortelazzo, 1997). Trusting ‘expert professionals’ and using the civil and criminal codes along with the codes of civil and criminal procedure as drafting manuals may be a solution, but a preliminary investigation is necessary in order to distinguish between those linguistic and textual features explicitly prescribed by the law and those governed by customary habits or which derive from the informal and unsystematic training of young professionals (Cortelazzo, 2000 and 2003). Generally, binding provisions mainly deal with content, whereas little information is supplied about the actual wording and structuring of legal texts.

The available textbooks on the Italian criminal procedure show that the principles underlying any possible classification of judgments tend to vary. A preliminary distinction is possible between judgments produced by criminal or civil courts; additional criteria include procedural aspects (judgments delivered after the pre-trial stage, judgments delivered in the absence of a public hearing), the final outcome (acquittal, discharge, conviction), the contents

3. A detailed classification of judgments is also provided by Santulli (2008, 211).

(judgments settling conflicts of jurisdiction), etc. In addition, the Italian jurisprudence also allows for declaratory judgments (*sentenze dichiarative* or *di cognizione*) and judgments *in rem* (*sentenze costitutive* (Ferrajoli, 1994; Carcatera, 1994). More specifically, the distinction between judgments on procedural grounds (e.g. judgments of inadmissibility or lack of jurisdiction) and on the substance of the case also implies that these judgments are delivered by different courts and fulfil different functions. The judgments of the courts of first instance either acquit or convict the defendant, whereas those of appellate courts uphold or quash the judgments of the courts below. The role of the court of last resort (*Corte di Cassazione*) is to ensure the exact observance and uniform interpretation of the law and it decides only on points of law, although complaints have been voiced since many appeals actually deal with questions of merit (Tamburrino, 1988; Nappi, 2000: 714 and following pages). Albeit not binding for the decisions of other judges in analogous cases, the judgments of the *Cassazione* have an authoritative and exemplary value for all courts in the system. As a result, the distinction between texts setting the norms and texts enforcing the law is blurred to some extent. Furthermore, when analysing judgments on points of law, three aspects need to be taken into account. First of all, the hierarchy of receivers changes within the communicative situation: although judgments of last instance obviously affect the defendants, given their exemplary value, they mainly address legal experts. Secondly, when it comes to the actual wording, Virgilio (1987) noted that judgments of last instance are more apodictic in style since they are meant neither to comment upon all the arguments of both sides nor to deal with the questions of fact. Finally, from a pragmatic perspective, the exercitive speech acts performed by the *Corte di Cassazione* are not included in the class of utterances defined by Kurzon (1986) as ‘reversible performatives’. As correctly pointed out by Oppenheim (1994: 48), certain incorrect or unlawful laws or judgments cannot be repealed because they have been delivered by authorities whose decisions are considered final and cannot be revised by any other institution.

3. Judgments as macro-speech acts

The formal requirements of the provisions delivered by judges are prescribed by art. 125 of the Italian Civil Code; however, distinguishing between judgments (*sentenze*), orders (*ordinanze*) and decrees (*decreti*) is not an easy task, since the law does not expand on their particular traits (Nappi, 2000: 141-149).

However, Italian legal theory deems it useful to define a judgment as the conclusive document of a trial. The judgement of an Italian criminal court has been defined as the decision terminating the criminal action, or at least one of its stages (Del Giudice, 2001) and is considered an instrument that determines the liability of a subject who has (or has not) committed a crime (Marotta, 1997: XIII). Nevertheless, the very same generic label is also used to refer to decisions dealing with the jurisdiction of the court or the legality of the proceedings and there are trials ending with court rulings other than judgments.

It seems clear that whereas legal professionals may be satisfied with a definition based on procedural aspects (a judgment is the conclusive instrument of a trial or one of its stages), linguists may not, since this approach does not shed much light on the actual linguistic construction of the text. In this respect, the resources of text linguistics are worth deploying in order to attempt a classification of judgments. To begin with, the dominant function of the text should be identified, since it becomes immediately apparent that judgments virtually fulfil all the functions envisaged in Bühler's *Organonmodell* (Caruso, 1997: 13 and following pages). Different text types co-exist in a judgment: the narrative type emerges in the section reporting the facts and narrating the proceedings; the descriptive type is provided by legal citations and jurisprudence references that help to frame the fact. Then, those narrative and descriptive passages are mutually connected according to a logical sequence leading to the final decision, thus fulfilling the argumentative function, since in this section the judge wants to prove that his/her reasoning is correct and convince the addressees of the text. Finally, the operative section closing the judgment is a very obvious instance of the performative use of language. Conclusively, a judgment fulfils no less than four pragmatic functions —unfortunately, however, legal professionals are not in full agreement about which is to be considered dominant.

For clarity's sake, three main approaches may be distinguished: the function of a judgment may be said to be argumentative, expositive or prescriptive. Many Italian jurists seem to believe that the main concern of judges is to justify their decisions and argue in favour thereof. This stance is effectively summarised by Borrelli (1994: 139), who claims that a judgment is the discourse by which judges illustrate the reasoning that led them to make a particular decision. Although this opinion is clearly reductive, the importance of the argumentative component within the textual profile of judgments is un-

questionable. The grounds for the decision are a relatively recent achievement (they were introduced during the Enlightenment) and today their mandatory presence is one of the basic tenets of the accountability of the law before all citizens. Article 111 of the Italian Constitution stipulates that the grounds for all jurisdictional instruments must be stated; however, since this article was approved rather swiftly, it remains unclear whether the lawmaker meant the grounds for the decision to address the community of legal experts (for example, to allow them to file an appeal) or the general public (to ensure democratic control). Nevertheless, if different addressees are envisaged, then judgments should also vary in terms of both form and content: the general public clearly needs plain language and an exhaustive illustration of the whole trial (Mossini, 1976), whereas an audience exclusively composed of legal experts requires concision and technical terminology (Montesano, 1988). Furthermore, the grounds for jurisdictional instruments are also the means by which the judiciary can justify the exercise of an ‘undemocratic’ power: since judges are not elected by the people, they are constantly called upon to justify their conduct before the ultimate source of their power (Roselli, 1986: 16).

Legal experts do agree that the grounds for the decision are obligatory, but their nature remains unclear: do they account for the logical process followed by the judge or can they be seen as an *ex post* justification? Do they constitute a rational reasoning based on the principles of formal logic and Cartesian rationalism or a persuasive rhetorical exercise aimed at achieving consensus thanks to the strategies developed by the ‘new rhetoric’ (Saitta, 1996)? Even though the traditional textual development of Italian judgments (*phrase unique*) mirrors the straightforward structure of a syllogism, more complex and elusive arguments come into play. Three main structural steps may be identified (Bologna, 1986): a single fact is included in a class of events; a legal norm is identified including the class above; the single fact is included in the norm above. In this sense, it can be said that judgments aim to illustrate and facilitate the comprehension of concepts and, according to Werlich’s approach (1982), they can therefore be assigned to the expositive type. However, the vast majority of the available literature is based on the assumption that every legal utterance is prescriptive in nature, since in the final analysis it is intended to impose a given conduct. Ultimately, the function of the discourse of the judge is to establish a persuasive connection between a fact and a legal norm, thus leading to a concrete prescription (Bologna, 1986: 40).

4. Contextual configuration and generic structure potential

According to the systemic linguistic model the social activity (field) that judgments contribute to conduct is the jurisdiction, i.e. the power of the state to interpret and apply the law. The sender of the message is the judge, who in civil law tradition is considered a bureaucrat charged with the mere impersonal and objective enforcement of the law (*bouche de loi*). As mentioned above, the judge addresses different receivers, which complicates the analysis of the tenor of discourse. As far as the mode of discourse is concerned, although it may be claimed that a judgment is a written document notified and published according to the law (Caruso, 1997: 65), the latest reform of the Italian code of criminal procedure attributes greater importance to oral discourse during the adversarial process (Pajardi, 1993: 123). Furthermore, during the proceedings, the judge can consult a number of documents which have been produced orally and then transcribed (Gulotta, 1993: 155); consequently, spoken language is likely to have a certain impact on the drafting of a judgment, i.e. a text genre that is well known to be characterised by marked intertextuality (Nappi, 1989: 1323). Going back to the field of discourse, although distinct stages may be identified during the proceedings fulfilling different functions, in the light of the conclusive jurisprudential performatives (the illocutionary force of which derives from highly conventionalised linguistic patterns and the authority of the sender), a judgment should be considered a performative macro-utterance whose outcome is a juridical fact. Its main purpose is modifying the juridical reality, rather than describing or illustrating juridical concepts: pre-eminence ought to be assigned to the normative function⁴.

4. The identification of an overall function enables us to avoid the 'problem of the letter' as posed by Swales (1990: 61): while the unspecific function of communicating at a distance is insufficient to consider the letter a text genre, this is not the case with judgments. A judgment has a specific macro-function, although it is composed of sub-acts. According to Van Dijk (1977b: 232), macro (or global) speech acts account for the 'global, overall structure of communicative interaction', i.e. the modes of communication among groups of individuals and institutions which are identified within society according to their knowledge of the world. In the case of a judgment —any concrete instantiation of judgements as texts— the topic of activity may be summarised in statements such as 'the court has acquitted or convicted the defendant' or 'has upheld or reversed the judgment of the court below'. Of course, at a higher level of abstraction, it may be claimed that 'the court has ended the trial' or 'the court has restored justice', but in such cases the overall result achieved by the judges may not be derived from the component acts in the text. Moreover, statements like 'the court has illustrated the grounds for the decision' or 'has narrated the fact' are certainly relevant but fail to define the judgment as a whole (see the notion of 'point' or 'purpose' proposed by Van Dijk). The pre-eminence of the performative contained in the operative part derives from the power of the court to influence reality —at least institutional reality (Searle, 1969). From this perspective, the operative part may be considered a thetic performative statement (Conte, 1994), i.e. capable of creating an

In the light of the functional steps of a judgment, Caruso (1997: 31) defined its GSP as follows:

NF[^]M[^]D

where NF means *narrazione del fatto* (narration of the fact), M *motivazione* (grounds for the decision) and D, of course, stands for the conclusive decision (*dispositivo*). The symbol [^] means that the sequential order of the text components is mandatory. In fact, the functional sequence illustrated above does not fully mirror the structure traditionally assigned to judgments —often confirmed by paratextual indications— envisaging the narration of the proceedings, the grounds for the decision and the operative part (Snel Trampus 1989: 185 and following pages). The narration of the proceedings has a broader meaning than the ‘narration of the fact’ referred to above: since it is meant to report the procedural stages preceding the final decision, this structural component mainly addresses receivers who have not participated in the court proceedings (*funzione extraprocessuale*). Furthermore, the syllogistic structure of Italian judgments is not strictly necessary in terms of the social activity being carried out: decisions can be easily made before their grounds are illustrated. The truth is that the GSP proposed above does not mirror the chain of events taking place in the communicative situation by which a judgment is produced in Italian courts. Article 545 of the Italian code of criminal procedure clearly stipulates that the operative part of the judgment is read aloud by the president or one of the members of a collegiate court before the grounds for the decision or a summary thereof. At this stage of the proceedings, the grounds for the decision may be absent altogether: article 544 allows for their drafting to be postponed and paragraph 1 makes it clear that it always follows the drafting and signing of the operative part by the president of the court. Conclusively, the sequence of the various stages of the proceedings does not match the sequence of the textual steps of the document filed in the court clerk’s office (art. 548), as confirmed by some of the forms proposed by Italian criminal procedure style manuals, where the identification of the court and the parties and the illustration of the conclusions of the parties are immediately followed by the operative part, whereas the grounds for the decision are provided as the last text component (Guarda, 2000).

institutional situation. In this sense, the juridical reality changes because the status of the defendant may turn from ‘person accused’ to ‘person found guilty (or not guilty) of a crime’ (whereas the enforcement of the sentence is a responsibility of different institutional players and will take place at a later stage).

Consequently, the juridical syllogism of Italian judgments need to be explained with reference to a broader cultural context than the communicative situation in the strict sense of the term. In this regard, Gorla (1967: 318-319) focused on the common traits shared by Italian and French judgments from a historical perspective. The four-stage structure in terms of contents was imposed by law during the French Revolution and —although the reasons remain unclear— at the same time the syllogistic style based on introductory clauses such as *attendu que* or *considérant que* emerged with the establishment of the *Court de Cassation* and the mandatory introduction of the grounds for the decision (1790-91). In the early 1900s, Italian judgments were not characterised by the *attendue ques*: such structure and wording appeared only after the Napoleonic conquest. However, despite the formal imitation of the introductory clauses, as a whole a judgment is not composed of a *phrase unique* because the text is articulated in a number of complex sentences: it is a mere formal tribute paid to the underlying French model which was maintained during the 19th century and abandoned —albeit not completely— in the 1920s. In the light of the prestigious role assigned to the *Corte di Cassazione* and the function of its judgments as reference models to be imitated, it may be concluded that the syllogistic sequence emerging from the GSP is the result of stylistic choices imposed by a long cultural tradition and maintained —at least partly— as a formal tribute to models considered prestigious in the past and of which only certain aspects still survive today. As stated by Nanini (1978), stylistic choices need to be explained with reference to the historical and cultural evolution of any given legal system. Only from this perspective may certain solutions be considered correct or compliant with concrete communicative needs.

5. Generic structure and verb tense distribution

For the purpose of the present study, a corpus was assembled comprising 63 judgments delivered by the Courts of all three instances envisaged by the Italian judicial system between 1990 and 1999 over the course of 21 trials of which the court of first instance was based in Trieste or Turin. The analysis of the corpus allowed us to substantiate the remarks made above through punctual linguistic observations and identify the following GSP:

<i>Provisions of art. 546, paragraph 1</i>	<i>Structural element</i>	<i>Dominant pragmatic function and sub-components</i>	<i>Dominant verb tenses⁵</i>	
Items a, b, c	[Introduction]	Normative	CP	
	NSP	Narrative	NIPF	
Items d, e	M	Argumentative	Descriptive	PRE
			Narrative	SP and PC
			Prescriptive	PRE
Items f, g	D	Normative	PRE	

The following elements are necessary in order to construct the text-sequence: introduction, narration of the proceedings (*narrazione dello svolgimento del processo* - NSP); grounds for the decision (*motivazione* - M) and operative part (*dispositivo* - D). The order of the elements is fixed and none may be repeated. The NSP and reconstruction of the fact within M should not be confused: in the latter case a narrative, descriptive and possibly prescriptive section may be repeated for each defendant or arraignment (if there are more defendants and charges), thus leading to an alternation of three sub-components which causes the well known and often criticised confusion between issues in fact and law in Italian judgments. By contrast, the initial narrative section cannot be repeated: it deals with one trial only, although it may report on more than one defendant accused of more than one criminal offence. Similarly, claiming that section D is repeated for each one of the defendants or charges seems a useless complication: the text segment is functionally homogeneous, even though it involves several performative statements.

As regards the procedure leading to the actual delivery of a judgment by Italian courts, the chronological sequence is as follows: conclusions of the parties—reading of the operative part— drafting of the grounds for decision (even if drafted and read at the end of the trial, they still follow the reading of the operative part). By contrast, the verb tense patterns in the text presuppose a reported speech whose speech point coincides with the instant that ‘shifts’ from one illocutionary PRE to the next (the court being the subject of the

5. The tenses of the indicative mood will be referred to using the following abbreviations: PRE=present; CP=compound past; SP=simple past; NIPF=narrative imperfect. The terminology used to describe the use of verbs is that proposed by Bertinetto and Delfitto (2000).

verbs) until it reaches the operative part. The introductory section introduces the reported speech and presupposes a speech point probably corresponding to the filing date (*deposito*) of the judgment, i.e. certainly subsequent to the time when the judgement was officially published by reading the operative part, as confirmed by the past localisation of the event conveyed by the CP⁶. Similarly, the speech point of the NSP section may be localised after the moment when the operative part was read aloud, as made clear by occasional references to the operative part itself (e.g.: *il Pretore decideva come da dispositivo letto in udienza*).

The most apparent consequence of the interaction between the actual communicative situation on one hand and the legal tradition and relevant norms on the other is the paradox of a text stating that it includes itself⁷. Just like one of Escher's pictures, as is sometimes signalled explicitly in the paratext, a text officially classified as a judgment claims it contains a second text, which is also referred to by means of the label '*sentenza*' (i.e. judgment), which was produced during a time interval preceding the speech point of the textual frame that contains it. In strictly legal terms, none of those texts is actually a judgment: the former lacks the conclusions of the parties, the grounds for the decision and the operative part; the latter lacks the mandatory information aimed at identifying the participants in the communicative exchange taking place during a trial.

The function that may be assigned to the introductory section is unclear. The narrative function seems questionable because its main purpose is not to arrange different events in chronological order but to establish (and confirm)

6. The narrative frame may not have explicit performative strength because it pivots on a third person verb form in the past tense (Fava, 1995: 27), e.g. *la Corte in data x ha pronunciato la seguente sentenza* can only be a description of what has occurred.

7. The following example is taken from a judgment delivered in Trieste:

TRIBUNALE CIVILE E PENALE DI TRIESTE
SENTENZA
(artt. 544 e segg. c.p.p.)
REPUBBLICA ITALIANA
IN NOME DEL POPOLO ITALIANO

innanzi al Tribunale di Trieste – Sezione Penale, composto da:

{...}

alla pubblica udienza del 19 dicembre 1995 ha pronunciato e pubblicato mediante lettura del dispositivo la seguente

SENTENZA

nei confronti di

{...} nato a{...} il{...}residente a{...} - attualmente detenuto c/o la Casa Circondariale di Udine

that the judgement was delivered and make its identification possible. In this sense, in order to avoid unnecessary terminology, reference can be made to the ‘normative’ function.

As was mentioned above, the first pragmatic ‘step’ of a judgment is provided by the narration of the facts, i.e. the necessary premise of a syllogism aimed at applying general and abstract norms to a specific case at hand. However, it is worth noting in this respect that art. 546 of the Italian code of criminal procedure does not explicitly envisage a narrative section dealing with the facts: what is required is a concise exposition of the factual grounds («*motivi di fatto*»; paragraph 1e), i.e. the recovery —within the section devoted to the grounds for the decision— of factual information relevant for the decision. This section of the text immediately follows the conclusions of the parties, is easily identifiable thanks to the almost constant use of the NIPF⁸ and mainly reports on the various stages of the proceedings (*svolgimento del processo*). The analysis of the corpus showed that the chronological order (narration of the facts —narration of the proceedings— grounds for the decision) is rarely adopted within the textual segment signalled by sub-headings such as *in fatto e in diritto, fatto e diritto, motivi della decisione*. Generally, the judge starts by reporting the main events of the proceedings and then goes back to the details of the crime under discussion. The transition between those two components may be signalled by a deontic or constative structure with present tense verbs (e.g.: *l’accezione è infondata e va respinta (...)*) and by a change in the dominant tense from the NIPF to the SP and CP reporting past events⁹. The narration of the fact may expand and include the details of the crime as reconstructed during the police investigations and court hearings; however, this is not the most common choice and in any case this approach is mainly opted for by judges of first instance: the reconstruction of the fact becomes less important in the judgments of the court of appeal and —even less so— in those of the court of last resort. One might wonder if this is also a formal tribute paid to prestigious models. The *Corte di Cassazione* clearly needs to account for the main steps and results of the previous instances and a short summary of the

8. For a detailed analysis of the use of the NIPF in Italian judgments, see Ondelli, 2008. The following example is taken from a judgment delivered in Trieste: *All’udienza del 21.3.1995 (...) venivano esaminati i testi del P.M. ed acquisita la documentazione prodotta dalle parti. Il Pretore decideva con lettura del dispositivo in pubblica udienza.*

9. E.g.: *Fu altresì esibita (...) una procura speciale, asseritamente rilasciata da un notaio che tuttavia disconobbe l’avvenuta formazione dell’atto. (...) Nel corso dell’istruttoria dibattimentale sono stati sentiti (...) gli agenti che si erano recati dal (...). È infatti emerso che l’odierno imputato, con fare rapidissimo, sollevò da terra con il braccio sinistro il bimbo (...).*

proceedings of the lower courts is always provided with homogenous stylistic traits (i.e. dominant NIPF). After this section, the grounds for appeal are analysed (and the dominant verb tense changes). The lower courts experience some difficulties in maintaining such a homogenous distribution: in the best cases the judge may simply provide redundant information (e.g. that the defendant was absent, the parties have notified their conclusions, the court has made a decision, etc.); otherwise, the same stylistic choices are maintained to report all the information on the fact (i.e. a full narration is made through the NIPF)¹⁰. However, in the most complex cases, the problem clearly emerges of how to provide stylistic unity for the wide array of materials obtained from a large number of different documents.

The *narratio*, i.e. the narration of uncontested factual issues upon which the judges need not voice their opinions (Gorla, 1968: 371), should deal with facts that do not need to be justified because they are indisputably true. In other words, the strictly narrative section of an Italian judgment is not the part where the judge recounts how the fact has actually taken place (which, incidentally, is not part of the responsibilities of the members of the *corte di cassazione*); rather, it may be defined as the part of the text where the main stages of the whole trial are reported: although it may include information related to the case to be discussed, at this stage the judge does not express an opinion on the correctness of the procedure or the truth of facts: it is merely a neutral report, free from any comment or assessment. The dominant narrative function emerges explicitly through different linguistic strategies (dates; sequential time adverbs such as *poi*, *quindi*, *in seguito*, *in esito a*; the overexploitation of past participles).

In partial contradiction with the sub-headings introducing the various sections of the judgment (if any), the actual *motivazione* begins after the narrative part, as shown by the dominant role played by the PRE and the insertion of statements signalling this functional transition (e.g.: *Questi fatti consentono con evidenza di affermare la penale responsabilità del (...)*). Of course, this argumentative component does not rule out the recovery of past information referring to the crime or the judicial proceedings; however, it is a 'recovery' and not a 'narration' of past information in a sense very similar to that proposed by Weinrich (1978: 74). Although narrative passages at micro-textual level may emerge, it should be remembered that the dominant function of this section

10. E.g.: *In data 5/6/89 veniva intercettata una telefonata (...). Il giorno dopo si recavano presso la sede centrale delle Poste (...) gli agenti (...) e (...).*

of the text is the argumentative function. The co-occurrence of different text-types (narrative, descriptive, prescriptive) contributing to the superordinate text function (argumentative) in all likelihood points to the conclusion that argumentation is in itself more complex than the other functions considered in all cognitive approaches to text linguistics. In other words, any argumentation seems to involve a greater number of complex operations than a narration or description (Lo Cascio, 1991: chapter 2).

6. Conclusion

The following conclusions may be drawn from the analysis conducted above:

- The generic structure potential of Italian judgments is not determined by the immediate contextual configuration: rather, it is the outcome of the historical evolution of an approach that is still implemented, especially in the judgments of the *Corte di Cassazione*, and has been —at least partly— regulated by art. 546 of the Italian code of criminal procedure.
- The traditional generic model is responsible for the selection of certain stylistic traits and the arrangement of contents, even though they are not always justified from a functional viewpoint. In particular, in the judgments of the lower courts, the account of the proceedings tends to overlap with the narration/reconstruction of the facts, with the ensuing inconsistencies in the use of verb tenses: the narrative context conventionally shaped through the NIPF may interfere with the argumentative comments involving the previous stages of the proceedings, the applicable laws and the relevant documents included in the trial record (PRE, SP, CP).
- The impact of the immediate contextual configuration is clearly discernible in the use of verb tenses: a sharp divide emerges between an argumentative-performative section pivoting on the exercitive PRE of the operative part of the judgment and a section localising the events at a time interval preceding the speech point identified above. The latter section is meant to provide unity for text components which in reality have been drafted in different time periods.

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Resum

Distribució dels temps verbals i les funcions pragmàtiques en les sentències judicials d'Itàlia

Stefano Ondelli

La lingüística textual permet un enfocament apropiat a l'hora d'investigar el llenguatge jurídic, els trets formals del qual tendeixen a variar molt segons el tipus de text. Després d'una visió general de les classificacions dels tipus de textos jurídics ofertes tant per juristes com per lingüistes, els principis de la lingüística sistèmica i funcional i l'anàlisi de gènere es combinen per analitzar un corpus de resolucions judicials italianes i identificar-ne la tipologia, d'acord amb la seva funció pragmàtica com a actes de macrodiscurs. Les resolucions judicials compleixen una funció

normativa general, tot i que inclouen seccions descriptives, narratives, expositives i argumentatives, com es mostra per la variació en la distribució dels temps verbals que dominen dins del text. No obstant això, l'ordre de la seqüència dels components de text no està determinat per factors contextuals i no reflecteix els passos cronològics que condueixen a la redacció de les sentències. Més aviat, és el resultat d'un desenvolupament històric i de la influència dels models percebuts com a més prestigiosos dins de la comunitat d'experts jurídics.

Paraules clau: sentències, la lingüística textual, gèneres textuais, la pragmàtica, els temps verbals.

Resumen

Distribución de los tiempos verbales y las funciones pragmáticas en las sentencias judiciales de Italia

Stefano Ondelli

La lingüística textual permite un enfoque apropiado a la hora de investigar el lenguaje jurídico, cuyos rasgos formales tienden a variar mucho según el tipo de texto. Después de una visión general de las clasificaciones de los tipos de textos jurídicos ofrecidas tanto por juristas como por lingüistas, los principios de la lingüística sistémico funcional y el análisis de género se combinan para analizar un corpus de resoluciones judiciales italianas e identificar la tipología, de acuerdo con su función pragmática como actos de macrodiscurso. Las resoluciones judiciales cumplen una función

normativa general, aunque incluyen secciones descriptivas, narrativas, expositivas y argumentativas, como se demuestra en la variación en la distribución de los tiempos verbales que dominan dentro del texto. No obstante, el orden de la secuencia de los componentes del texto no está determinado por factores contextuales y no refleja los pasos cronológicos que conducen a la redacción de las sentencias. Más bien, es el resultado de un desarrollo histórico y de la influencia de los modelos percibidos como los de mayor prestigio dentro de la comunidad de expertos jurídicos.

Palabras clave: sentencias, la lingüística textual, géneros textuales, la pragmática, los tiempos verbales.

Résumé

Distribution des temps verbaux et fonctions pragmatiques dans les jugements de la cour italienne

Stefano Ondelli

L'approche linguistique textuelle montre son efficacité pour ce qui est de l'analyse du langage légal, dont les traits formels tendent à varier considérablement en fonction des types de textes. Après un survol des classifications des différents types de textes légaux fournis aussi bien par des juristes que par des linguistes, les principes de la linguistique systémique fonctionnelle ainsi que l'analyse de genres sont combinés afin d'analyser un corpus de jugements italiens et d'identifier leur genre conformément à leur fonction pragmatique comme actes de macro-discours. Les jugements remplissent une fonction normative

globale, tout en comprenant des sections de description, d'exposition, de narration et d'argumentation, comme le montre la variation dans la distribution des temps verbaux dominants au sein du texte. Toutefois, l'ordre séquentiel des composantes de ces textes n'est point déterminé par des facteurs contextuels et ne reflète nullement les étapes chronologiques menant au brouillon des jugements. Il s'agit plutôt du résultat d'un développement historique et de l'influence de modèles perçus comme prestigieux au sein de la communauté des experts légaux.

Mots-clés: jugements, texte linguistique, texte de genre, pragmatique, temps verbaux