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SOCIOLINGUISTIC, INTERPRETING AND POLITICAL DIMENSIONS OF ENGLISH-LANGUAGE COURT DISCOURSE OF 21ST CENTURY

The article outlines aspects of the English language use in court discourse in English-speaking countries and in European countries where English is becoming a working language of legal proceedings, though it officially remains a foreign language. The purpose of the research is to assess linguistic aspect of the modern courtroom discourse, to characterize the role of legal English in non-English-speaking countries and the problems that accompany its introduction as a language of legal proceedings. The novelty of the research lies in that it views peculiarities of English language use in court discourse as markers or triggers of social or political processes.

The analysis has revealed that in the English-speaking UK and the USA language may be an obstacle to effective communication in the courtroom due to social fragmentation into subcultures. Since social groups often develop sociolects unintelligible to outsiders and the courtroom brings together people from different strata and of different backgrounds, their slang may affect judges and jurors' understanding. The research points out that semantic opacity of slang lexemes is clarified with the help of crowdsourced online dictionaries as they record slang fast and reflect their genuine users' interpretation.

Another language-related problem in American and British courts is the increasing demand for interpreting. Court interpreters are challenged not only to be precise with facts but also to be accurate in preserving stylistic features of interpreted speech as these details inform the court of the party's personality, intentions, emotional state, etc.

The experience of English-language courts established in non-English-speaking European countries highlights the linguistic complexity of the switch between languages in court proceedings. The switch takes place in at least five stages. Admitting English as a litigation language raises the issues of equality, linguistic discrimination and democratic transparency.

The research concludes that English in courtroom discourse of the 21st century reflects the multidirectional tendencies to linguistic diversification and unification and, therefore, requires an interdisciplinary approach that combines sociolinguistics, translation, law and political studies.

Key words: *court discourse, sociolect, court interpreting, legal translation, linguistic discrimination, language policy.*

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СОЦІОЛІНГВІСТИЧНИЙ, ПЕРЕКЛАДОЗНАВЧИЙ І ПОЛІТИЧНИЙ ВИМІРИ АНГЛОМОВНОГО СУДОВОГО ДИСКУРСУ ХХІ СТОЛІТТЯ

У статті аналізуються аспекти використання англійської мови в судовому дискурсі англомовних і європейських країн, де англійська стає робочою мовою судочинства, залишаючись офіційно іноземною мовою. Метою дослідження є лінгвістичний аспект сучасного судового дискурсу, охарактеризувати роль юридичної англійської мови в неангломовних країнах, а також проблеми, які виникають у результаті запровадження англійської як мови судочинства. Новизна роботи полягає в тому, що особливості використання англійської мови в судовому дискурсі розглядаються в соціальному та політичному контекстах.

За результатами дослідження, мова є перешкодою для ефективної комунікації в судовій залі Об'єднаного Королівства чи Сполучених Штатів Америки через фрагментацію суспільства на субкультури. Оскільки в соціальних групах часто виникають соціолекти, незрозумілі для сторонніх, а судова зала – арена для зустрічі різних соціальних прошарків, сленг учасників може завадити розумінню суддів і присяжних. У сучасних умовах семантична розпливчатість сленгової лексики усувається за допомогою Інтернет-словників, створених користувачами, оскільки ці словники швидко оновлюються та відбивають інтерпретацію лексики, надану їй самими представниками соціолекту.

Інша мовна проблема в американських і британських судах – зростання попиту на послуги перекладу. Судові перекладачі мають бути точними не лише в перекладі фактичної інформації, а й у збереженні стилістичних властивостей мовлення, оскільки ці деталі створюють уявлення суду про особистість, наміри, емоційний стан сторін.

Досвід англомовних судів, заснованих у неангломовних європейських країнах, свідчить про лінгвістичну складність зміни мовного коду в судочинстві. Перехід відбувається принаймні в п'ять етапів, викликаючи в суспільстві занепокоєння щодо рівності, мовної дискримінації та прозорості.

Таким чином, у ХХІ столітті англійська в судовому дискурсі відбиває різноспрямовані тенденції як до мовної диверсифікації, так і до мовної уніфікації. Отже, її вивчення вимагає застосування міждисциплінарного підходу, що поєднує соціолінгвістику, перекладознавство, правознавство та політичні студії.

***Ключові слова:** судовий дискурс, соціолект, судовий і юридичний переклад, мовна дискримінація, мовна політика.*

Urgency of the problem. By the end of the 20th century, the English language had become the lingua franca. In 1999, British linguist David Crystal listed the numerous factors that had made English a world language: politics, economics, the press, advertising, broadcasting, motion pictures, popular music, international travel and safety, education and communications. Within the 20 years that followed, the world has changed significantly: the importance of some factors from Crystal's list has decreased (e.g., TV and radio broadcasting) or has been severely affected by the 2020 pandemic (e.g., travel), while others have become significant as a result of their rapid development and diversification (e.g., social media platforms like WhatsApp, Skype, etc.). Nevertheless, none of the recent developments has disturbed the global significance of English. On the contrary, though some processes could threaten its leading position (for example, China's ever increasing economic dominance or the UK's withdrawal from the EU), English seems to have permeated numerous spheres of human life all over the world: it remains the language of politics, international business, mass culture as well as the language of science and is likely to become the language of higher education.

Globalization of industry, trade, communication and politics brings up the question whether a similar process has been developing in the law sphere. And if

it has, then what phenomena accompany this process. Hence, **the purpose** of the article lies in exploring the place and the role of English in courtrooms of the UK and the USA as well as in highlighting linguistic challenges the use of English poses in the English-speaking countries and the EU.

Literature Review. The courtroom is a place where language may acquire life-saving or fatal power. A court decision depends significantly on effective strategy and, consequently, on lexical and syntactic choices of litigants and it is forensic linguistics that studies legal vocabulary, variation of legal genres and diachronic comparative research (Coulthard, Johnson & Wright, 2016; Mooney, 2014).

Another, more interaction-focused, linguistic approach focuses on courtroom discourse and draws primarily on works by Foucault (1980), Gumperz (1982) and Fairclough (1989) who develop the idea that language is the "primary medium of social control and power" (Fairclough, 1989, p. 3). The courtroom interactions where participants play pre-determined roles within a rigid hierarchical system and where communicative behavior may be crucial for the outcome (see, for example, (Cheng & Wagner, 2011; Cheng & Sin, 2011; Wodak, 1980) provide the best material to examine language as a tool of dominance.

Another linguistic aspect of court discourse is interpreting. Studies into court interpreting were ini-

tiated in 1990 by the ground-breaking publication by Berk-Seligson who used hours of taped court hearings to reveal the extent to which court interpreters affected whether defendants were found guilty or not guilty. Since then, publications by Hale (2004), Dingfelder Stone (2018) and many others have looked into nuances of court interpreting. For example, they analyze interpreters' reproduction of stylistic features in participants' speech as well the importance of interpreting markers of power, hesitation, politeness, etc.

A relatively new area to explore the English language as a factor in legal proceedings has been created by the attempts of some EU states to introduce English-speaking commercial courts that would deal with international disputes. These courts are meant to become an alternative to British or USA courts. Their emergence is a step-by-step process of overcoming both law-related and linguistic obstacles (see, for example, (Biard, 2019; Kern, 2012)).

This article offers an overview of linguistically sensitive issues when language interferes with intelligibility and clarity in court discourse in the English-speaking UK and the USA and in non-English speaking EU states.

Presentation of the main material. Language-related problems in the legal sphere belongs to three areas: unintelligibility of sociolects, court interpreting and English-language courts in non-English speaking countries.

Sociolects in court. Assumptions of language homogeneity were refuted by sociolinguistic studies in the 1970s (e.g., (Labov, 1972)). Today, subcultures in English-speaking societies have produced numerous sociolects, each serving the needs of a particular social group (e.g., so-called hip-hop sociolect, Valspeak, surfer slang, etc.) and the courtroom remains a venue where four language varieties meet: formal spoken legal language, formal standard English, colloquial English and subcultural sociolects (O'Barr, 1982).

It is next to impossible for lexicographers to catch up with the diversity of sociolects. Today, the Internet offers assistance of so-called 'crowd-sourced' websites such as Urban Dictionary, Wikipedia, Wiktionary, etc. For the first time Wikipedia was used in court in 2004, in *Bourgeois v. Peters*, when the American court in Georgia used a Wikipedia report on the three-year-long yellow alert status in the state (FindLaw, n.d.). Since then, Wikipedia has been suitable whenever the court's target is understanding 'the wisdom of the crowd', i.e., "consensus definitions of words and phrases", for example, how the average consumer would interpret a term because modern people operate with medical, economic, technical terms in everyday communication. However, a com-

moner and a specialist may invest terms with different meanings, which may entail different behaviors and, in the long run, different consequences. Thus, courts turn to Wikipedia when the objective is to understand 'the consensus wisdom', when "typical sources, such as a dictionary, are unhelpful because the common, crowd-consensus understanding is at issue" (Miller & Murray, 2010: 647).

As for Wiktionary and Urban Dictionary, it is important to underline the difference between the two. Wiktionary is a more regulated, 'formalized' source since it follows guidelines and its content is checked by moderators and editors. Urban Dictionary, created as a parody of Dictionary.com in 1999 and containing now more than 2.5 million definitions for more than 1.6 million words and phrases, is not liable to any control other than votes of 'editors' (and anybody may become an editor in one click), that is why its content is at times politically incorrect, vague or inaccurate.

Remarkably, there is a low percentage of overlapping: 72% of words on Urban Dictionary do not appear on Wiktionary (Emerging Technology from the arXiv, 2018). Moreover, if the two dictionaries do share an entry, some of meanings may be recorded only on Urban Dictionary. Thus, *phased* appears in both, yet besides the meaning "*done bit by bit – in phases*", Urban Dictionary also offers two more slang meanings: "*a word that is used when your asking if someone wants to fight*" and "*to be buzzed, when you arent drunk, but arent sober*" (Urban Dictionary, n.d.).

Since courtrooms are settings where different social classes come into contact, witnesses and defendants may make vocabulary choices whose meanings are obscure to lawyers and jurors and this is when Urban Dictionary helps to clarify slang lexemes (Kaufman, 2013; Miller & Murray, 2010: 653). Yet, the dictionary is not the ultimate solution since slang lexemes are often polysemantic, as the following quote shows for *kicks*: "*I sat on a jury, aggravated battery case. The witness said the confrontation was over kicks. I found out later this meant shoes. At the time, I thought they said kicks, as in for fun. I think if I'd known during the trial, I would've been able to render a better opinion during deliberations*" (Conan, 2013).

English and court interpreting in the USA and the UK. According to Article 14 (3) (f) of the International Covenant on Civil and Political Rights (1966), "in the determination of any criminal charge against him, everyone shall be entitled... to have the free assistance of an interpreter if he cannot understand or speak the language used in court". In *English Worldwide*, David Crystal (2006) claimed that there were 400 million native speakers of English, 400 million people speak English as a second lan-

guage and 600–700 million as a foreign language. The spread of English has definitely not slowed down since 2006. Yet, in California, non-English-speaking families doubled in number from 1980 to 2018 and reached 45%, in New Jersey the data were 16% in 1980 and 32% in 2018. The same trend is observed in other states, the only difference being the rate of the increase: in Maryland, for example, the number of households with a language other than English tripled (from 6% to 19%) within the same period (The 2020 Language Need and Interpreter Use Study Report to the Legislature, 2020: 42).

To realize the extent to which language issues interfere with legal proceedings, it is necessary to mention that the number of cases when a court interpreter was required in, for example, California increased overall in 2014–2018. On average, language access need varied from one out of every 5 to one out of every 6 cases filed (The 2020 Language Need and Interpreter Use Study Report to the Legislature, 2020: 23). California counts as the most multilingual state and a real draw for immigrants, yet as we have seen above, the tendency to multilingualism is observed in other American states as well.

The United Kingdom statistics on court interpreting record similar trends: there was a 7% increase in the demand for interpreters in criminal cases in January – March, 2019 (Criminal Court Statistics Quarterly: January to March 2019), which went up further by 5% in January – March, 2020 (Criminal Court Statistics Quarterly: January to March 2020).

Communication between the court and the defendant mediated by an interpreter is aggravated by many factors. First, the defendant may resort to a sociolect in their native language and use slang, which requires the interpreter to come up with an English slang equivalent so as to preserve the original style. Another challenge may be the defendant's use of a dialectal or slang lexeme unfamiliar to the interpreter. One of the strategies to cope with this situation may be literal translation: *"I just had no idea what the person really meant because, again, from, different nationalities, they may use different slang... What I did there was I actually just literally interpreted it, literally translated it so that the lawyer could then ask well, what did you mean by that? And then I could ask that again back into Spanish because I had no idea, and I certainly didn't want to flavor it with my – with what I though it meant"* (Conan, 2013).

Accurate court interpreting consists not only of delivering factual information but also in conveying multiple nuances of the defendant's communicative behavior. These are the use hedges, degree of politeness, logical connectors, hesitation markers,

pause fillers, etc. (Cheng & Sin, 2011: 16). Adding or withholding these features may distort the judge and jurors' perception of the defendant's personality and entail fallacious rulings.

English in courts of non-English-speaking countries. English as the language of globalization encourages business partners to write contracts in English, even though the partners operate within one and the same European country where English is neither the official language nor a language of everyday communication. In case of any disagreements, the place of arbitration is an English-speaking country that exercises English or Anglo-American law, which is rather costly for the litigants and which leaves aside European continental courts.

It is not surprising, therefore, that in 2018, European states such as Germany and France established English-speaking commercial courts in anticipation of Brexit that drove 35% of businesses to seek justice in EU courts (Hyde, 2018). Thus, these courts are the Chamber for International Commercial Disputes in Frankfurt am Main, Germany, and the International Commercial Chamber at the Paris Court of Appeal (ICCP-CA) in France. Alongside purely judicial complications, opening of these institutions also had a linguistic dimension.

First, the process of switching to English takes place in stages and English may penetrate court proceedings of a non-English-speaking country to different degrees. Kern (2012) distinguishes between five stages: 1) courts may accept documents in English without official translation; 2) court may admit written communication with court and among each other in English; 3) court may allow oral communication with the court, each other, witnesses and experts in English; 4) the 'complete file' measure requires the entire file, i.e., any official forms, to be in English; 5) at the final stage, the 'complete file' contains decisions of the court put in English (pp. 192–193).

The projects to conduct the litigation in English in non-English-speaking countries are economically motivated: among other things, parties spare expenses for translators and interpreters and rely on their own command of English. At the same time, the mere language switch sparks inequality concerns. First of all, it entails linguistic discrimination because it enhances the position of native English speakers in European courts and also puts at a disadvantage those law professionals who lack the knowledge of English, unlike US- or UK-based lawyers or those who earned their LLM in English-speaking countries. Second, some legal terms are not translatable into English due to the specificity of national legal systems. Third, making English a language of

legal proceedings falls within the sphere of language politics and this particular policy weakens a country's official language. Finally, using a foreign language hinders the transparency of the proceedings to the public and national mass media.

Conclusions and perspectives of further research. Since one cannot seek and dispense justice without resorting to language, linguistics is among the branches that study legal processes. The research explores the three linguistically challenging aspects of legal proceedings: the use of sociolects in the courtroom, court interpreting and English as working language in legal systems of non-English-speaking countries. To cope with these problems caused by social,

economic, demographic and political processes of the 21st century, legal professionals turn to crowdsourced online dictionaries as authority to clarify words and phrases, peculiar to sociolects, court interpreting is becoming ever widespread in English-speaking countries marked for their multilingualism, non-English-speaking states launch English-language courts. The research opens up a number of potential areas for further interdisciplinary investigations into sociolinguistic, multilingual and political aspects of the modern courtroom discourse, into the controversies of the 'native speaker' concept, the status of English in the modern world as well as its legal, political and educational consequences.

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