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LEGAL STYLE MARKERS AND THEIR TRANSLATION IN WRITTEN PLEADINGS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

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ABSTRACT

This corpus-based study investigates language use in the *occluded genre* of written pleadings before the European Court of Human Rights through the paradigms of legal phraseology and Translation Studies. The analysis is carried out on three subcorpora of authentic texts: (a) pleadings translated from Russian into English, (b) pleadings translated from Italian into English and (c) pleadings originally drafted in English.

Legal language is intricate and formulaic, and frequently makes recourse to prefabricated patterns and routines. Legal phraseology is a major challenge for professional legal translators, and yet its translation has not received much scholarly attention until recently. Legal phraseological units are prefabricated patterns that form the matrix of legal texts and reveal interesting information about both the language and structure of the genre of written pleadings.

Over the last thirty years, linguistic deviations occurring in the translation process have constituted one of the main areas within Translation Studies. It has been postulated that translated language has distinctive linguistic characteristics. Legal translation, in addition to linguistic factors, is conditioned by the tension between the legal systems involved, which can result in peculiar language dynamics in the translation of legal texts. This study draws inspiration from Toury's (1995) and Chesterman's (2004a) works to describe the different dynamics of translated language, applying a combination of translation norms and universals to identify and describe regularities in translated pleadings.

This work is carried out using both linguistic and translational insights in order to demonstrate empirically how written pleadings can be characterised in terms of their phraseological content and how translated pleadings differ from non-translated pleadings. Distributional patterns of recurrent and anomalous legal phraseological units are compared across the corpora and analysed for typicality of frequencies and patterning as well as for quantity and quality of linguistic variation. The results contain a list of legal style markers typical of this genre, obtained in a translational and phraseological perspective. The list supplements the rather scant information about the language of written pleadings at the European Court of Human Rights. The analysis also provides confirmatory evidence of the differences between translated and non-translated texts, specifically, proving the co-existence of two opposite tendencies in translation: *conventionalisation* (translation of source text textemes with conventional repertoremes of the target environment) and *discourse transfer* (introduction of prefabricated patterns from the source language).

The results may also be of some use and applicability for Russian-to-English and Italian-to-English translators, helping them avoid interference, use of unnatural or overly conservative patterns.

Keywords: legal phraseology, legal translation, discourse transfer, interference, conventionalisation, written pleadings, ECtHR.

ABSTRACT

Questo lavoro è una ricerca *corpus-based* che indaga l'utilizzo del linguaggio all'interno dell'*occluded genre* delle osservazioni scritte davanti alla Corte Europea dei Diritti dell'Uomo attraverso i paradigmi della fraseologia giuridica e della traduttologia. L'analisi è effettuata su tre sottocorpora di testi autentici: (a) le osservazioni tradotte dal russo all'inglese, (b) le osservazioni tradotte dall'italiano all'inglese e (c) le osservazioni originariamente redatte in lingua inglese.

Il linguaggio giuridico è intricato e formulaico, facendo spesso ricorso a modelli e routine prefabbricati. La fraseologia giuridica costituisce una grande sfida per i traduttori giuridici professionali; tuttavia essa non ha ricevuto molta attenzione accademica dal punto di vista traduttivo e traduttologico fino a non molto tempo fa. I fraseologismi giuridici sono le strutture prefabbricate che costituiscono la matrice dei testi giuridici, rivelando informazioni interessanti sia per quanto concerne gli aspetti linguistici, sia sulle caratteristiche strutturali delle osservazioni scritte.

Negli ultimi trent'anni, fra le principali direzioni di ricerca gli studi traduttologici hanno posto lo studio della deviazione linguistica che emerge durante il processo della traduzione. È stato postulato che il linguaggio tradotto possiede delle peculiarità linguistiche distintive. La traduzione giuridica, oltre ai fattori linguistici, è condizionata anche dalla tensione tra i sistemi giuridici, che può portare all'insorgere di dinamiche linguistiche peculiari dei testi tradotti. Questo studio è ispirato ai lavori di Toury (1995) e Chesterman (2004a) per la descrizione delle diverse dinamiche della lingua tradotta e applica una combinazione di strumenti analitici basati sui concetti di norme traduttive e di universali traduttivi per descrivere le regolarità osservabili nel genere delle osservazioni tradotte.

Questo lavoro è stato sviluppato utilizzando un'impostazione linguistica e traduttologica al fine di dimostrare, in modo empirico, come le osservazioni scritte possano essere caratterizzate dal contenuto fraseologico e come quelle tradotte si differenzino da quelle non tradotte. La distribuzione di fraseologismi ricorrenti e anomali viene confrontata fra i tre corpora e analizzata in base alla tipicità delle frequenze e del *patterning*, nonché con riferimento alla quantità e alla qualità della variazione linguistica. I risultati contengono un elenco di marche dello stile giuridico tipiche di questo genere contribuendo ad ovviare la carenza di studi sul linguaggio delle osservazioni scritte presso la Corte Europea dei Diritti dell'Uomo attraverso la lente fraseologica e traduttologica. L'analisi fornisce anche conferma delle differenze fra i testi tradotti e non tradotti, in particolare dimostrando la coesistenza di due opposte tendenze nella traduzione: la *convenzionalizzazione* (traduzione dei testemi di partenza con i repertoremi convenzionali dell'ambiente di arrivo) e il *trasferimento discorsivo* (introduzione di modelli prefabbricati dalla lingua di partenza).

I risultati possono avere una valenza applicativa anche per i traduttori dal russo e dall'italiano all'inglese, aiutandoli a evitare l'interferenza linguistica e l'utilizzo di strutture innaturali o troppo conservative.

Parole chiave: fraseologia giuridica, traduzione giuridica, convenzionalizzazione, trasferimento discorsivo, interferenza, osservazioni scritte, CEDU.

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CHAPTER 1

INTRODUCTION

1.1. Background

Proceedings before the Strasbourg-based European Court of Human Rights ("ECtHR") have acquired a certain notoriety in the countries of the Council of Europe. From the linguistic point of view, besides the European Convention on Human Rights and the national laws that codify and implement it, most people are familiar with the language of human rights as expressed by the case-law, i.e. decisions and judgments, of the ECtHR. However, the standard procedure before this important supranational court is written and is realised through the so-called *written pleadings* (Rule 38 of the Rules of Court), i.e. the exchange of submissions and observations between the parties and the Court. Although proceedings at the ECtHR are open, written pleadings are not available to the general public unlike the decisions and judgments of the ECtHR or national legislation codifying the values of the European Convention. As a result, even though written pleadings play an important role for procedures at the ECtHR, they have not received much scholarly attention from legal or linguistic community, at least to my knowledge, and remain until now a rather "occluded genre" (Swales 1996), because "[o]n the one hand, they are typically formal documents which remain on file; on the other, they are rarely part of the public record", operating "out of sight" of general public (Swales 1996: 46). I am grateful to the ECtHR Registry staff who provided me with access to a limited number of authentic written pleadings, lying at the basis of this research, thus allowing me to shed some light on these largely occluded documents.

The ECtHR operates with only two official languages, English and French, in contrast to the European Court of Justice ("ECJ"), with which it is frequently confused. This linguistic regime means that written proceedings with the parties coming from one or several of the 47 Member States of the Council of Europe have to be translated into one of the ECtHR's official languages. Another striking difference with the ECJ concerns the fact that written pleadings, which lie at the core of judicial proceedings in Strasbourg, are typically translated by the parties and not by the translation department of the Court. Consequently, the translations do not undergo any known quality assessment checks, which leaves the highest standing European Court, often called the "Constitutional Court of Europe" (de Salvia and Remus 2011: 5; Zorkin 2012: 14-15; Harries *et al*. 2014: 40), in a situation where it has to rely on the services provided by unknown translators without any quality guarantees.

Consequently, this genre excites additional interest because it is typically realised through translation. Translated language has been frequently referred to as a "third code" (Frawley 1984: 168) or a "third space" (Rutherford 1990; Bhabha 1995), which forms part of the language *diasystem* and has distinctive linguistic peculiarities (Garzone 2015: 61). Toury (1980: 75) argues that "the language used in translation tends to be interlanguage (sometimes designated "translationese"), or that a translation is, as it were, an 'inter-text' by definition". Legal translation has to overcome additional challenges arising out of the nature of legal language and language in general, and non-commensurability of languages and legal systems (Ainsworth 2014: 43-44).

This work operates within the field of Legal Translation Studies. It is posited that among the challenges of legal translation a significant place is allocated to the translation of legal phraseology (Hatim and Mason 1997: 190; Šarčević 1997: 117; Gouadec 2007: 23; Garzone 2007: 218-219; Prieto Ramos 2014: 16). Mastery in the use of the prefabricated lexico-grammatical patterns and the respective parallel phraseological competence is crucial for a legal translator (Garzone 2007: 218). The difficulty of translating phraseology concerns its combinatorial nature, because collocational patterns differ across languages and are relatively subjective (cf. Baker 1992: 48) and often cannot

be translated literally, but instead the translator has to look for TL functional equivalents with a similar degree of conventionality as in the SL (Scarpa *et al*. 2014: 74). However, unlike in the case of terminological doubts which can be resolved by consultation of numerous focused resources, there are few or incomplete resources that could help the translators sail through the challenging waters of legal phraseology. Typically, legal translators have to look up parallel texts in order to find functional and stylistic equivalents to render the SL phraseological unit.

The asymmetric collocability patterns, which distinguish different languages, may lead to "strange strings" (Mauranen 2000) or "untypical patterns" (Jantunen 2001, 2004) in translation that "lack phraseological rigour" (Biel 2014b: 190) or are perceived as odd (Baker 1992: 55). At the same time, phraseological units at the level of lexicogrammar are generally "more distinctive of legal English […] and certainly account for more of the difficulties of lay persons in comprehending it" (Danet 1985: 281). Consequently, the paradigm of legal phraseology seems to be highly appropriate for the study of the generic peculiarities of written pleadings and the analysis of their translated nature.

1.2. Research questions, goal and enabling objectives

This study aims at filling in a gap on the language and genre of written pleadings and their phraseological peculiarities that become a challenging issue in translation. Given the background of this study and the significance of the factors overviewed in the previous section, the following *main research questions* are formulated:

Question 1: What phraseological legal style markers are typical of the genre of written pleadings?
Question 2: Are there differences between translated and non-translated pleadings?
Question 3: Do these differences depend on the language-pair?

This study does not aim at an exhaustive description but rather at signalling the distributional tendencies in the phraseological continuum of translated and non-translated pleadings. The project design follows two *main goals*:

- To describe the genre and language of written pleadings in terms of their phraseological content;
- To compare translated and non-translated written pleadings.

The underlying idea is to compare the degree of conventionality and creativity, as it is felt that the unbalanced or inconsistent use of legal phraseology may adversely affect the overall communicative potential of a legal text or even invalidate it in the extreme cases (Kjær 1990: 26).

The rationale underlying research Questions 2 and 3 is to look into the widespread hypothesis about the existence of the so-called *translation universals* or *laws of translation*, i.e. phenomena that are inherent in the translation process and explain the differences between translated and non-translated texts independently of the language pair involved. In the original contextualisation of translation universals, Baker (1993: 243) posits that they "are not the result of interference from specific linguistic systems". Ever since, the extreme version of the hypothesis insists on the universal character of such phenomena and their independence from the language pair or genre, often leaving the phenomenon of interference from the source language at the fringe of research or beyond its limits. I feel that the phenomenon of interference, which is language-pair dependant, should not be excluded from research on the language of translations. In addition, there is an important overlap between translation norms and translation universals (see 3.5) as both are observable through distributional deviations and recurrent linguistic patterns, and it is often unclear whether a translational shift occurred under the influence of a universal, a norm or both. Bearing in mind this peculiarity, I built my corpus including two translated subcorpora from different languages, to verify whether the language pair exerts any "gravitation pull" (Halverson 2003) and whether there are similarities between translations. The source languages of the translation corpora belong to different language

families: Romance (Italian) and Slavic (Russian) languages, which are translated into a Germanic language (English). As at the corpus design stage I had to address the challenge of limited access to texts, which are not available to general public, the study had to become a pragmatic compromise between the limited availability of pleadings and feasible representativeness/balance of texts belonging to the "occluded" and hitherto unresearched genre. The corpus collected contributes to the study of text genres in legal domain.

In addition to the main theoretical research goals, this study pursues also several *complementary goals* of an applied nature.

- To provide a contrastive overview of legal style markers and their distribution in written pleadings that could be of use for Russian-to-English and Italian-to-English translators;
- To test the corpus linguistics method for the study of phraseological units in a translation perspective, specifically, the evaluation of the typicality of patterning, typicality of frequencies and proportions.

The following *enabling objectives* are set in order to reach these goals:

- to collect a corpus of authentic written pleadings, consisting of (a) non-translated pleadings produced in the UK and (b) pleadings translated from two different languages (Russian and Italian), a difficult and time-consuming task, because of the limited retrievability of authentic texts, but I managed to accomplish it successfully; the relatively small size of the corpus obtained required that methodology be realistically adapted, taking account of corpus size;
- to apply genre theories in order to contextualise written pleadings, their communicative purpose, participants and institutional context;
- to overview the general characteristics of legal English (target language) and the two source languages (Russian and Italian) as well as legal translation;
- to study works on legal phraseology and to define the phraseological continuum for further analysis;
- to acquire software for quantitative analysis.

1.3. Outline of chapters

This study is divided into seven chapters, with further subdivisions. The second-level divisions (e.g. 2.6 or 3.3) are called "sections", the third-level divisions (e.g. 2.5.4 or 3.1.2) are called "subsections" and the occasional fourth-level divisions (e.g. 2.5.4.1 or 6.1.3.1) are called "paragraphs". The work starts from the description and discussions of the theoretical framework (Chapters 2 and 3), presentation of the materials and methodology in Chapter 4 and findings in Chapters 5 and 6. Chapter 7 contains synthesis of results and conclusions.

The general theme of *Chapter 2* is legal language. It addresses the special status of legal discourse and overviews typical traits of legal language in a contrastive perspective, analysing convergent and divergent traits in three national manifestations of legal language – legal English, legal Russian and legal Italian. The identified common traits are contextualised in terms of their candidacy for being defined as "markers" or "features" of legal language. Next, the notions of style, discipline, register and genre are dealt with, contextualising legal genres in general and the genre of written pleadings in particular. Finally, the chapter presents the issues of legal phraseology as the chosen paradigm for the analysis of legal style markers.

Chapter 3 is labelled "Translation Studies and Legal Translation". It provides a general overview of legal translation, its interdisciplinary character and frequent research trends, as well as discusses the constraints and expectations of legal translation. Due attention is dedicated to the influence of legal English on the language of human rights and to the linguistic regime of communication through translation with the European Court of Human Rights. Then I operationalise the concept of translation norms and universals and argue the importance of their combined interface for the study of translations. This chapter also deals with an ever-increasing reality of the modern globalised world –

L2 translation, with specific regard to legal L2 translation. As I analyse phraseological units in near-synonymous sets, the topic of synonymy and translation is also discussed, forming a bridge to the insight into legal phraseology in translation.

Chapter 4 "Corpus Description and Research Methodology" addresses first the textual material, its collection and elaboration process. The corpus methodology was a rather evident choice for the systematic analysis of a set of pleadings, although some methodological concessions were made to cater for the limited amount of material. First, a brief general overview of corpus linguistics methods is provided, including the operational subdivisions within this methodology. Then the specific methodological framework used in this work is presented, describing in particular the phraseological continuum underlying the operational steps. Next, I describe extraction algorithms utilised for different types of legal phraseological units and present a description model used for qualitative analysis of findings.

Chapter 5 is the first of two chapters containing findings of this work. It focuses on complex prepositions as a recurrent feature of legal language. First, it defines complex prepositions in comparison with simple prepositions and contextualises the status of the former in current research. Next complex prepositions are discussed in terms of their phraseological properties as opposed to free expressions, followed by their analysis. The chapter contains a section formulating specific research questions and a section providing a synthesis of results.

Chapter 6 contains the analysis of a range of phraseological units identified in the Three-Part Corpus. It starts from the analysis of formulaic patterns, including binomials and multinomials, phraseological units with archaic words or word forms and routine formulae. Next, term-related units are discussed, including multi-word terms and verbal collocations with a term. Finally, section 6.3 deals with the grammatical patterns which express modality. Each subsection formulates specific research questions and ends with a paragraph providing a synthetic overview of the respective findings.

Chapter 7 offers a synthesis and interpretation of quantitative data as well as draws conclusions concerning the differences between translated and non-translated texts, limitations of the study, its practical applications and formulates directions for further research.

CHAPTER 2

LEGAL LANGUAGE

The interaction between law and language is very close, as words used in the world of law can produce tangible legal effects and, vice versa, there is no law but for the language of law. As Gibbons (1999: 156) notes, "Law is language", however, what language is law is a question that has stimulated the minds of both linguists and lawyers over a long time. Such questions as whether one can talk about legal language or legal languages and the special status of legal discourse are briefly overviewed at the beginning of this chapter (2.1).

Next, typical traits of legal language are described adopting a contrastive perspective (2.2) and describing three national manifestations of legal language – legal English (2.2.1), legal Russian (2.2.2) and legal Italian (2.2.3), with their common traits summarised in 2.2.4. The identified common traits are contextualised in terms their of candidacy for being defined as "markers" or "features" of legal language in 2.3, with separate subsections dedicated to the identified candidates for the analysis.

Legal language is often described using the notions of style, discipline, register and genre, which are presented in 2.4, with a separate subsection dedicated to legal genres (2.4.2). Next, the specific textual focus of this work is dealt with by describing the genre of written pleadings (2.5) in terms of their general genre characteristics (2.5.1), the institutional context of the European Court of Human Rights (2.5.2), addressing the issue of the communicative purposes and the participants of written pleadings (2.5.3) as well as their structure (2.5.4).

Finally, Section 2.6 describes the issues of legal phraseology as the chosen paradigm for the analysis of legal style markers.

2.1. Legal language

As Williams (2007: 23) fairly notes, academic works that deal with language and law "tend to include expressions such as *legal language*, *the language of the law* or (less commonly) *the language of legal documents*" (original italics). Some of the most influential books on this topic feature such expressions in their titles as *The Language of the Law* (Mellinkoff 1963), *Legal Language* (Tiersma 1999), *The Language of Judges* (Solan 1993), *Lawtalk* (Clapp *et al*. 2011), etc.

Often we deal just with different labels for the same phenomenon, as Mellinkoff (1963: 3-4) acknowledges in his milestone book:

> The language of the law is a convenient label for a speech pattern with a separate identity. Law language is sometimes used here as a shortener; law words for individual words in the language of the law. These expressions are preferred to legal parlance, legal English, and legal language, for the reason that legal is so frequently and properly used to mean lawful as to cause confusion at the outset.

However, some scholars differentiate between the expressions above applying the criterion of prescriptivity to the analysed texts. According to Trosborg (1995: 32), "legal language" may be used with reference to any type of legal discourse, while "the language of the law" is restricted to the legislative writing and contracts and deeds. What emerges from an overview of various studies of legal language is well summarised by Charrow (1982: 84), who notes that the label "legal language" really denotes a scale ranging "from almost 'normal' formal usage to highly complex varieties that differ substantially from normal formal usage". In a similar vein, Maley (1994: 13) posits the existence not of a single legal language, but of "a set of related legal discourses. Each has a characteristic flavour but each differs according to the situation in which it is used". Tiersma (1999: 141) also advances a similar thought, "Clearly, legal language is not monolithic. Even if we limit ourselves to the written variety, there is substantial variation among different genres of documents."

The heterogeneous character of legal language is reflected in a number of classifications proposed by most scholars who study the intricate relationship between the language and the law. These classifications often use slightly different, and at times overlapping, terminology to refer to the same concept. Maley (1994: 12-13) distinguishes between *judicial discourse* (both spoken and written judicial decisions), *courtroom discourse* (language used by all persons involved in a courtroom), *the language of legal documents* (legislative writing, contracts, deeds and wills) and *the discourse of legal consultation* (that occurs between a lawyer and a client or among lawyers). It becomes evident that Maley calls "the language of legal documents" the same variety that is called "the language of the law" by Trosborg (1997).

This tripartite division goes in line with the classification established by Bhatia (1983: 2) on the basis of the communicative function of legal writing. He differentiates between *legislative or statutory writing*, *academic legal writing* and *juridical writing*, with the latter including judgments, law reports and case-law. Tiersma (1999) provides another tripartite taxonomy, dividing legal language into *operative legal documents* (that generate or modify legal relations such as petitions, statutes, contracts and wills), *expository documents* (analytical judicial opinions) and *persuasive documents* (briefs or memoranda). As for the language thereof, Tiersma notes that "operative documents have by far the most legalese, as compared to persuasive and expository documents" (Tiersma 1999: 141).

Cappa (2008: xviii-xix) makes similar distinctions with regard to the terms used to describe the phenomenon in Italian, where the term *linguaggio giuridico* may confusingly lead to consider both the language of the legislator and the language of the legal professionals, while these are distinct, even though complementary, phenomena. The former is the vertical communication of the legislative power, while the latter may be classified further into the language of judges, the language of the doctrine and the language of the legal professionals (attorneys, in-house lawyers and notaries). Similarly, Mantovani (2008: 33) proposes to treat the notion of *lingua giuridica* as a general comprehensive term that includes *la lingua del diritto*, i.e. the language of the law (normative prescriptive language or legislative writing), and *la lingua dei giuristi*, i.e. the language of lawyers (other legal communications including judgments and legal doctrine).

The Russian reality is also confronted with terminology-related considerations about legal language. Pigolkin (1990) implicitly differentiates between such notions as *the language of the law* (*язык права*), *legislative language* (*язык закона/законодательства*) and *legal language* (*юридический язык*). Although he fails to propose a separate classification and focuses only on the so-called *legislative language* (*язык закона/законодательства*), he admits the existence of a more general notion of *legal language* (*юридический язык*) or the *language of the law* (*язык права*) when contextualising the legislative language and analysing theories by other scholars in the context of Slavic languages (1990: 16-17). More recent studies of legal language in Russia also include similar divisions into legal "substyles". Isakov (2000: 65)[1] distinguishes between the *legislative language*, *the language of legal acts*, *the language of legal doctrine*, *the language of legal education* and *the language of legal journalism*. In addition to these classical distinctions, Šepelev (2002: 14)[2] proposes a new category *the language of contracts* (as distinguished from *the language of laws*, *the language of legal doctrine*, *professional discourse of lawyers* and *the language of procedural acts*). A slightly different taxonomy is proposed by Golev (2004: 43-62)[3]. He defines legal language in terms of

[1] язык законодательства; язык подзаконных правовых актов; язык правоприменительной практики; язык юридической науки; язык юридического образования; язык юридической журналистики (Исаков 2000: 65) [jazyk zakonodatel'stva; jazyk podzakonnykh pravovykh aktov; jazyk pravoprimenitel'noj praktiki; jazyk juridičeskoj nauki; jazyk juridičeskogo obrazovanija; jazyk juridičeskoj žurnalistiki (Isakov 2000: 65)].

[2] Язык закона; язык правовой доктрины; профессиональная речь юристов; язык процессуальных актов; язык договоров (Шепелев 2002: 14) [Jazyk zakona; jazyk pravovoj doktriny; professional'naja reč' juristov; jazyk processual'nykh aktov; jazyk dogovorov (Šepelev 2002: 14)].

[3] язык как объект правового регулирования; язык как средство законодательной деятельности; язык как средство правоприменительной деятельности; язык как средство юридической науки (Голев 2004: 43-62) [jazyk kak ob"jekt

interaction between law and language and, thus, suggests a four-tier classification: *language as object of legal regulation, language as means of legislative activity, language as means of administration of law* and *language as means of jurisprudence*. It seems that Šepelev's (2012: 218) affirmation with regard to the completeness in the definition of legal language truthfully reflects the state-of-the-art situation.

> The notion of legal language, due to the multifaceted character of its components (language and law), different approaches to its perception (by lawyers and by linguists), the confluence of different notions (legal language, the language of the law, the language of jurisprudence, the language of lawyers), has not yet been completely formed (Šepelev 2012: 218, my translation).

A similar observation is found in Goźdź-Roszkowski (2011: 11) within his analysis of variation in American legal English.

> […] what is routinely referred to simply as "legal language", represents an extremely complex discourse embedded in the highly varied institutional space of a particular legal system and its respective legal culture. The designation "legal language" tends to emphasize the subject matter, the domain in which language is used, i.e. law, at the expense of the linguistic element.

In this regard, Klinck's question (1992: 134) comes to my mind: "If on the one hand we justify our use of the term 'legal language' by saying that it is a distinctive sublanguage of English, and on the other, we recognize further diversity within 'legal language' itself, should we not be talking about legal languages?". This statement is applicable to the entire field of domain-specific languages, which are characterised by a high degree of internal variation due to a range of subject-matter specialisations. The nature of languages for special or specific purposes (LSP) is widely debated in the relevant literature, starting from a lexicalised perception of LSPs in 1970s-1980s (e.g. Widdowson 1979: 24; Morrison 1989: 275) to a more recent reanalysis of LSPs that covers aspects other than specialised terminology. With regard to the domain of law, it has been stated of recent that legal language cannot be reduced just to a formal written language "peppered with specialist or technical vocabulary" (Finegan 2015: 48), because terminology, although an essential part of legal texts, does not exhaust their characterisation (Chromá 2008: 311, also 2011: 36; Stein 2015: 51). The diversity within legal language is also extensively addressed from the genre perspective, according to which legal language is composed of a range of interrelated genres each having distinct if often similar lexicogrammar and organisation (see 2.4.1).

This study acknowledges that legal language, whatever the label, is a heterogeneous phenomenon. The term *legal language* is used here as an umbrella term that includes all the above classifications of various written legal sublanguages. Although Mellinkoff (1963: 3-4) advocates against the use of the term *legal* "for the reason that *legal* is so frequently and properly used to mean *lawful* as to cause confusion at the outset", it is preferred in this study due to its general and rather all-encompassing character. In addition, while linguistics generally treats the notions of *language* and *discourse* as conceptually distinct, for the purposes of my work these distinctions are not entirely relevant. Here, the terms *legal language* and/or *legal discourse* are used as umbrella terms referring to the general phenomenon of language use in the legal domain, with the latter term specifically focusing on the text in context following Halliday (1985). As a justification for such an all-encompassing labelling, it must be said that the texts under analysis are the so-called *hybrid texts* (Šarčević 2000: 11) in terms of their prescriptivity as opposed to purely prescriptive legislative writing and purely descriptive texts produced by legal scholars. They may be placed in several categories and present linguistic traits that are typical of several subtypes of legal language; hence, it is appropriate to use the superordinate term *legal language* to refer to the analysed variety in general.

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pravovogo regulirovanija; jazyk kak sredstvo zakonodatel'noj dejatel'nosti; jazyk kak sredstvo pravoprimenitel'noj dejatel'nosti; jazyk kak sredstvo juridičeskoj nauki (Golev 2004: 43-62)].

2.2. Contrastive overview of typical traits of legal language

Most scholars who have researched over the years the relationship between language and law have listed a number of features peculiar of legal language. However, it has been postulated that legal language maintains its national character more than other special languages. Cortelazzo (1997: 37) asserts:

> Legal language seems to be one of the most "national" special languages. The international homogenisation of legal language, and especially of its text types, even in similar nations from the viewpoint of their legal systems, is much more scarce than in most of the other special languages, where, perhaps also due to the recognition of a unique language of prestige and international communication, the differences between the various national realisations have weakened (my translation[4]).

It remains to be verified whether the alleged "national" specificity of legal language concerns, besides the mentioned macrolevel of text types, the microlevel of the textual matrix. It seems logical to presume that, apart from terminological differences deriving from the systemic dichotomy between common law and civil law systems, there ought to be traits that derive from the universal nature of law, i.e. its precision and accuracy, information load, all-inclusiveness, vagueness, neutrality, formulaic character, etc[5]. As the law expresses commonly accepted ideas, they may be expressed through similar logico-organisational patterns. Consequently, their contrastive study may be specifically useful in legal translation and in the training of legal translators.

2.2.1. Salient traits of legal English

Probably, the most influential work on the historical development of legal English is the book by David Mellinkoff published in 1963. Although not a linguist, Mellinkoff (1963: 11-29) highlights the most significant linguistic features in the language of the law both at a more general level (e.g. attempts at extreme precision and at the same time deliberate flexibility of meanings) and at a more specific level (e.g. frequent use of archaic and Latin words and phrases, mannerisms, formal words and expressions).

The first extensive linguistic study of the language of the law belongs to David Crystal and Derek Davy in their book *Investigating English style* (Crystal and Davy 1969), where in the chapter on legal language, the authors analyse the style of contracts, pointing out syntactic complexity and attempts at all-inclusiveness. The focus of their analysis concerns the conditional structures, extensive modification and the use of non-finite clauses as post-modifiers along with a certain absence of explicit connectives between the sentences of a legal document in favour of lexical repetition.

More recently, Peter Tiersma (1999) proposed another comprehensive study of the historical development of legal English. Being both a lawyer and a linguist, Tiersma comments extensively on such linguistic peculiarities of legal English as wordiness, redundancy and specialised vocabulary as well as lengthy and complex syntactic structures typical of legal English. In his later work Tiersma (2015 [2006]: 27-28) summarises Mellinkoff's classification (1963: 13) joining it with his own (1999: 203-210) and makes a list of "the most commonly cited linguistic features of legal language". This list includes both lexical (technical vocabulary, archaic, formal and unusual terminology) and

[4] La lingua giuridica pare essere una delle lingue speciali più "nazionali" che esistano. L'omogeneizzazione internazionale della lingua giuridica, e soprattutto delle sue tipologie testuali, anche in nazioni simili dal punto di vista del sistema giuridico, è molto più scarsa che in gran parte delle altre lingue speciali, dove, forse anche per il riconoscimento di un'unica lingua di prestigio e di comunicazione internazionale, le differenze tra le diverse realizzazioni nazionali si sono molto attenuate.

[5] See Mattila (2006a: 65-103) for a detailed overview of universal characteristics of legal language.

syntactic traits (nominalisations, negation, passive constructions, long and complex sentences and wordiness and redundancy), which reflects also a similar list proposed by Maley (1985: 25)[6].

Alcaraz Varò and Hughes (2002a) focus on legal translation (cf. Chapter 3), which is inevitably conditioned by the language material with which the translators work, so the authors provide at the beginning of their book an overview of major characteristics of legal English (2002a: 4 – 14)[7], which includes also some lexicogrammatical features.

Although much of early work on LSP concentrated only on the lexical component, it has been postulated that "syntactic features are probably more distinctive of legal English than are lexical ones, and certainly account for more of the difficulties of lay persons in comprehending it" (Danet 1985: 281). Bhatia (1993: 105-113) proposes a separate classification of syntactic features of legal English that include above-average sentence length; nominal character; complex prepositional phrases; binomial and multinomial expressions; initial case descriptions; qualifications in legislative writing; syntactic discontinuities. The syntactic traits of legal English are also thoroughly addressed by Hiltunen (1990: 69-87)[8].

In light of the above classifications, legal English can be characterised on two levels, syntactical and lexical. The resulting description of typical traits of legal English (based on Mellinkoff 1963; Crystal and Davy 1969; Tiersma 1999 and 2015 [2006]; Maley 1985; Hiltunen 1990; Bhatia 1993; Alcaraz Varó and Hughes 2002) may be summarised as follows.

- Lexis
  - Legal terms
  - Common words with uncommon meanings
  - Archaic words and expressions
  - Stable cliché expressions and mannerisms
  - Terms of French and Norman origin
  - Latin words and expressions
  - Frequent use of performative verbs
- Syntax
  - Above-average sentence length
  - Initial case descriptions
  - Negation
  - Passive constructions
  - Impersonal constructions
  - Syntactic discontinuities
  - Qualifications in legislative writing
  - Binomials and multinomials
  - Complex prepositions
  - Nominal character
  - Archaic adverbials

The resulting complexity is characteristic for much of legal discourse (Hiltunen 1990: 28), which led to the insurgence of various plain language movements that criticise textual conventions of the

[6] Maley (1985: 25) mentions among the typical traits the inclusion of archaic or rarely used words and expressions; the inclusion of foreign words and expressions, especially from Latin; the frequent repetition of particular words, expressions and syntactic structures; long, complex sentences, with intricate patterns of coordination and subordination; the frequent use of passive constructions, and a highly impersonal style of writing.

[7] Latinisms; terms of French or Norman origin; formal register and archaic diction; archaic adverbs and prepositional phrases; redundancy ("doublets" and "triplets"); frequency of performative verbs; changing registers: Euphemism and contemporary colloquialism.

[8] Hiltunen includes as syntactical legal style markers patterns of coordination (clausal and phrasal) and subordination (including patterns of embedding), mentions the frequency of the verb phrase and the noun phrase as well as patterns aimed at disambiguation (anaphoric references, relative and adverbial phrases, prepositional phrases) (Hiltunen 1990: 69-87).

legal profession. Beginning in 1970s in the USA, these movements aimed at the simplification of the language used in legislation and by the legal professionals, soon spread to other English-speaking jurisdictions: Australia (Federal Plain Language Guidelines, 2011), New Zealand (the New Zealand Parliamentary Counsel Office, 2009), South Africa, Canada, the UK (Drafting Techniques Group 2008; Garner 2013). Similar movements appeared also in the new European legal order (European Commission, *How to write clearly*; the "Fight the Fog" campaign).

In general, the aim of plain language movements is to eliminate "those elements of 'legalese' that make legal English appear old-fashioned, convoluted, and hard for non-experts to understand" (Williams 2011: 139). Williams (2011) observes great progress with regard to simplification of legal English in the UK and the US, where after initial reform proposals no substantive changes occurred until 2004. However, he notes that introducing changes in drafting style in monolingual jurisdictions is easier than reforming multilingual international and supranational legal orders, where "it is a far more complex task to modernize the style of just one language without this having unforeseeable consequences on some or all of the other languages" (Williams 2011: 149).

2.2.2. Salient traits of legal Russian

It has been stated that Russian studies of legal language, in contrast to the situation in other states, are rather recent, if not underdeveloped (Goletiani 2011: 243-244, Šepelev 2012: 217). Goletiani (2011: 243-244) ascribes the delayed start of legal language studies in a comparative perspective in Slavistics to a certain block in the period of the Soviet Union that favoured other research directions. Yet she rightfully claims that the modern legal linguistics in Russia developed on a solid ground laid by the functional stylistics that already in the 1970s tackled some of the linguistic features inherent to the language of the law.

Legal language is traditionally classified in functional stylistics as one of the substyles of the official style (Krysin 2003; Rusakova and Ljubeznova 2015)[9]. However, in the last several decades, the language of the law received attention in the Russian academic community not only as a manifestation of official style, but also as a special language from an interdisciplinary perspective born at the crossroads of jurisprudence and linguistics. In fact, the most frequent term to denote the field that studies *legal language* in the respective literature in Russian is *legal linguistics/ jurilinguistics* (*юридическая* or *правовая лингвистика/ юрислингвистика*) (Mattila 2006a: 8). In general, Russian legal linguistics is based primarily – or at least was based in the late 1990s – on the linguistic and legal research carried out in the Russian language (Vlasenko 1997: 7).

The important heritage of functional styles prevails in the classification attempts in Russian literature on legal language. Against traditional viewpoint that legal language is a substyle of official-bureaucratic style (Solganik 2001: 191), some alternative definitions are advanced. Šepelev (2006: 124-128; 2012: 218) believes that legal language is a separate and independent functional style, derived from the development of the legal science. Ušakov (2008: 224-225) amplifies Šepelev's approach and advocates, in a quite innovative way, that legislative functional style lies at the foundation of official-bureaucratic style, therefore, the language of state bodies and official documents is a substyle of the legislative functional style, which is a better term for the category in a broader sense. The vast majority of scholars acknowledge a close relationship if not equality between legal language and official-bureaucratic style, which "serves" legal purposes. Consequently, it is appropriate to describe salient features of legal Russian relying on the works in the field of Russian functional stylistics.

[9] There are several classifications of functional styles that are greatly convergent. Under traditional viewpoint in functional stylistics there are five styles: official (and business), scientific, publicistic, oral (incl. colloquial) and literary style (Maksimova 2002: 29). Another traditional taxonomy is proposed by Galperin (1958) who distinguishes between the following styles: the belles-lettres style, the publicistic style, the newspaper style, the scientific prose style, and the style of official documents.

Among the dominant features of legal Russian, Rusakova and Ljubeznova (2015: 25-26) list precision, standardisation, laconicism, logical and structured narration, objectivity and prescriptivism and lack of expressivity (cf. the so-called "zero style", *nulevoj stil'* (*нулевой стиль*) in Vlasenko (1997: 19)). They provide the following linguistic description of these traits (2015: 26-27, my translation):

- On the lexical level
    - Functional vocabulary, words typical of bureaucratese that are not used outside of this domain
    - Stable phraseological units and collocations
    - Neutral vocabulary
    - Shortenings and abbreviations (cf. initialisations in Vlasenko 1997: 126-127)
    - No emotionally coloured expressions
    - Direct sense of words
- On the morphological level
    - Nominalisation (predominant use of nouns)
    - Lack of 1st and 2nd person pronouns and respective verb forms, with the exception of orders
    - Frequent use of infinite verbal structures
    - Frequent use of 3rd person verbs in the Present tense
    - Use of constructions with the Dative case and preposition *no*
    - Use of derivative prepositions and complex prepositions
    - Use of male forms to indicate female professions
    - Placing initial letters of name and patronymic after the surname (would be the other way round in other functional styles)
    - Obligatory use of capital You (*Вы*) when referring to an interlocutory
- On the syntactic level
    - Use of complex constructions with many subordinate and explanatory clauses, parenthetic words and constructions;
    - Nominal chains in the Genitive case;
    - Use of expanded sentences with similar parts often organised in a list;
    - Frequent use of impersonal sentences and constructions with the meaning of necessity, order and prescription.

It is not surprising that legal Russian, similarly to legal English, has received its share of criticism. Mamedov (2014: 166-167) highlights some critical points of the lexical level:

- polysemy: when the same term denotes different notions;
- lack of clear definitions;
- use of expressive language;
- abuse of foreign terminology, esp. English;
- recourse to colloquialisms.

As for the reform proposals, these mainly concerned the legal terminology in the ideological context. First, when Russia ceased being an empire and became a socialist republic, all "bourgeois" terminology was rejected and new socialist-friendly legal terms were coined. Again, after the collapse of the Soviet Union much of the pre-socialist terms were restored (for a more detailed overview see Pigolkin 1990: 49-50, Vlasenko 1997: 83; Mattila 2006a: 94-96 and Mattila 2006b: 10). No other language reform proposals, aimed at matters other than terminology, were introduced, at least to my knowledge.

2.2.3. Salient traits of legal Italian

In the late 1990s, Cortelazzo (1997) bemoaned the lack of linguistic attention to the study of legal Italian, which was most often undertaken by lawyers and not linguists, and quite frequently was done through the prism of the philosophy of law. In the meanwhile, there have been multiple later studies that have reconciled this alleged dichotomy and addressed the issue from a purely linguistic point of view (e.g. Mortara Garavelli 2001; Bellucci 2002; Serianni 2003; Ondelli 2007). Most of these studies implicitly or explicitly tackle the issue of what can be considered as typical traits of legal Italian.

Mortara Garavelli (2001: 10-18), in her classification of the terminology used in legal language, differentiates between three categories on the lexical level:

- Specific technical terms that are not used beyond the specialised language;
- Common words that undergo redefinitions, definitions, specialisations and extensions of meaning towards a specialised sense;
- Collateral technical terms (*tecnicismi collaterali*) that mark the belonging to a certain professional community (see below).

In general, Mortara Garavelli (2001: 172) describes legal Italian as marked by the use of abstract forms and nominalisation. In a critical tone, she makes a further distinction based on the level of necessity of terminology used in legal language and divides it into "necessary" and "superfluous" (Mortara Garavelli 2001: 176-183), listing under the latter category:

- Nominalisations with abstract nouns that replace standard SVO structures, often including cases of negation;
- Multi-word expressions, including among them "adverbs, multi-word conjunctions and other types of expression that are not exclusive of legal writing but are preferred here owing to their flavour of sophistication: *in allora, altresì, di talché, di guisa che, atteso che*..." (Mortara Garavelli 2001: 178, my translation[10])
- Bureaucratic stereotypes (e.g. *in ordine a, al fine di*) that are characterised as collateral technical terms (*tecnicismi collaterali*);
- "Inevitable" legal technical terms, including under this category stable collocations (e.g. *rogito notarile*) and binominals (*dittologie*: e.g. *patti e condizioni, dichiara e garantisce*)
- Latin quotations, which include "inevitable occurrences of Latinisms consecrated by tradition" and "formulas that are not specifically legal, but of which legal drafters seem to be particularly fond" (Mortara Garavelli 2001: 184, my translation[11]).

The scholar's description of lexical peculiarities runs in parallel to the descriptions of lexical features of legal English. Although the exact metaphor of "collateral" technicalities is not used in any of the works on English legal discourse and style (cf. "technicality" in Crystal and Davy 1969: 210), it is very close to the much criticised notion of "legalese".

With regard to the syntactic level, Mortara Garavelli identifies multiple peculiarities that she summarises as follows (adopted from Mortara Garavelli 2001: 156, my translation)[12]:

a) Preference for synthetic constructions;
b) Verbs placed before subjects in main clauses;
c) Adjectives placed before nouns;

[10] avverbi, congiunzioni polirematiche, e altri modi di esprimersi non esclusivi delle scritture giuridiche, sono preferiti in queste per una certa patina di ricercatezza.

[11] Accanto alle occorrenze inevitabili dei latinismi consacrati dalla tradizione (il latino delle massime, dei brocardi, delle citazioni del diritto romano) ricorrono formule che non sono specificamente giuridiche, ma alle quali chi redige testi giuridici sembra particolarmente affezionato.

[12] Preferenza per costrutti sintetici: a_1) Enclisi del *–si* con l'infinito retto da un verbo modale; a_2) Sovraestensioni dell'infinito e in frase completiva; a_3) Uso di completive con l'infinito e di "frasi ridotte principali"; Anteposizione del verbo al soggetto in frasi principali; Anteposizione dell'aggettivo al nome; Abbondanza di participi presenti; Frequenza e posizione degli avverbiali strumentali; Uso dell'imperfetto narrativo

d) Frequent use of present participles;
e) Frequent use and position of instrumental adverbials;
f) Use of the imperfect tense for narration.

Certain syntactic traits are irrelevant in the translation perspective as they are marked only in Italian – for instance, the flexible word order is not a possibility in English, and the adjective is also traditionally placed before the noun, so it is not a marked position. Other traits can be comparable with legal English (cf. Section 2.2.4.), for example the use of adverbials.

Another taxonomy of typical features of legal Italian is proposed by Serianni (2003: 107-119). In general, it is developed along similar to Mortara Garavelli's lines and includes both lexical and grammatical traits.

- Nominalisation;
- Specialised terminology;
- Collateral technical terms (CT, *tecnicismi collaterali*):
    - General nouns with a specific meaning (cf. "vocaboli comuni tecnicizzati" Ondelli 2007: 116);
    - Stable expressions that express technical notions not exclusive of the legal domain;
    - Technical terms created as synonyms of higher register in comparison with common language;
    - Micro-syntactical CT, in particular complex prepositions;
- Latinisms and foreign words, esp. English;
- Complex grammar and syntax:
    - Subjunctive in the subordinate clauses in comparison to the indicative in general language;
    - Present participle with a verbal value;
    - Frequent antepositions of the past participle (and of the adjective);
    - Omission of the article.

As emerges from the above lists, this characterisation is very similar to descriptions of legal English, with few traits that would not function in English due to grammatical restrictions.

In addition to the enumerations above, it is also postulated in the relevant literature that legal Italian, similarly to its English counterpart (Alcaraz Varò and Hughes 2002a: 9), is inclined towards formulaic and archaic expressions that raise the general level of legal texts to a higher register. Serianni (2003: 118) ascribes the general archaic flavour of legal Italian to the use of Latin expressions: "the legal lexicon, characterized by a slight archaic coat, clearly brings out this its appearance whenever it uses single words and phrases in Latin […]"[13].

Ondelli (2007) also comments upon the intentionality of archaic and formulaic diction in legal Italian that becomes a "unifying and prestigious stereotype" (2007: 117) in that "dignifying and archaic choices sometimes derive from the typical conservatism of legal provisions, but elsewhere occur due to mere register considerations and result from the desire to distinguish the text as a product of a professional caste" (2007: 116, my translation[14])

Arguing against the use of certain lexico-grammatical choices evident in "collateral technical terms" (*tecnicismi collaterali*), Garavelli (2001: 17) postulates that the intertwining of syntax and lexis becomes evident "especially in the use of connectives and generally of 'expressions of transition' between the nodal points of discourse"[15], which brings this category to the fore and makes it a candidate for analysis under the perspective of translation studies.

[13] il lessico giuridico caratterizzato da una leggera patina arcaica, accentua nettamente questa sua fisionomia ogni volta che ricorre a parole e a single frasi in latino (Serianni 2003: 118).
[14] Più peculiari risultano le scelte aulicizzanti e arcaizzanti, talvolta riconducibili al conservatorismo tipico del dettato normativo, ma altrove imputabili a mere scelte di registro e risultato della volontà di contraddistinguere il testo come prodotto di una casta professionale […] (Ondelli 2007: 116).
[15] specialmente nell'uso dei connettivi e in genere delle espressioni 'di passaggio' tra gli snodi del discorso.

2.2.4. Comparison of legal English, legal Russian and legal Italian

The overview of typical linguistic traits of national legal languages in Sections 2.2.1-2.2.3 sheds light on the remarkable similarities and, not less remarkable, differences, schematically summarised in Table 2.1.

Feature	Legal English	Legal Russian	Legal Italian
Cliché expressions, mannerisms	+	+	+
Archaic expressions	+	-	+
Latin expressions	+	-	+
Foreign terms	+	+	+
Complex/multi-word connectives	+	+	+
Nominalisation	+	+	+
Binomials and multinomials	+	-	+
Complex grammar and syntax	+	+	+
Specialised terms	+	+	+
Common terms with special meanings	+	+	+
Negation	+	+	+

Table 2.1: *Comparison of lexico-grammatical features in legal English, legal Russian and legal Italian.*

The formulaic nature of legal language is reflected in all three languages under analysis in the use of repeated patterns, mannerisms and cliché expressions. In addition to general mannerisms, legal English and legal Italian abound in archaic expressions, with a subtle difference. While in legal English archaic expressions are typically inherited from Old English and run in parallel to Latinisms, in legal Italian the archaic flavour is associated with Latin. This recourse to "fossilised" expressions is in a stark contrast with legal Russian, which does not feature either Old Slavonic phrases[16], nor Latinisms. Although legal Latin is an integral part of the education of legal professionals in Russia, it does not seem to be part of their active everyday practice, neither it is preferred by the judiciary or the legislator. Even though Mattila (2006: 138) claims that Latin is regaining its force in legal Russian after the USSR collapse based on the publishing of new Latin dictionaries for legal purposes, there is no evidence of its use in the everyday practice of Russian legal professionals. Mkrtchyan (2012: 208) in his contrastive study of the judgments rendered by the US Supreme Court and the Russian Supreme court highlights that

> The first and foremost difference is the use of Latin formulae in the judgments of the US Supreme Court. It is noteworthy that the Russian Supreme Court uses in its judgments exclusively standard written Russian (Mkrtchyan 2012: 208, my translation).

Nevertheless, all three languages recur to foreign words, with the significant difference that in legal Russian and in legal Italian these are predominantly English borrowings, and in legal English these are old borrowings from French.

A striking feature that was highlighted in all three languages under analysis is the predominant position of complex multi-word connectives that include complex prepositions, complex adverbs and conjunctions. This trait supports and is supported by a general nominal style of legal writing, with prevalence of abstract noun phrases and nominal strings. It must be said, however, that lengthy

[16] Mattila (2006a: 93) tentatively extends the understanding of archaic character in modern legal Russian to the use of ideologically coloured terms dating back to the Soviet period, based on the quote from Vlasenko (1997: 24). I reject this interpretation of the archaism, as legal Russian uses a number of terms that go well before the Soviet period and were introduced under the French influence in the 18th century. From the chronological point of view, these terms would be more archaic and yet they remain unmarked. Consequently, equalling archaisms to ideologically coloured soviet terms is not logical.

nominal structures are more frequent in legal Italian and legal Russian and less frequent, although still typical, in legal English. Nominalisation is to a certain extent linked to the standardised co-occurrence of terms in doublets or triplets. Although the so-called binomials and multinomials are absent from the descriptions of legal Russian, it features semi-fixed or *ad hoc* nominal strings of near-synonyms that can be addressed under this profile (see 2.3.4).

All the above categories refer to the more general level of linguistic patterning and legal phraseology in a broad sense (see 2.6) and are addressed in more detail in Section 2.3.

Other features that occur in legal English, in legal Russian and in legal Italian include the complexity of syntax and grammar and the use of both specialised vocabulary and common words with special meanings. These significant traits would be problematic for the analysis with an untagged corpus (see Chapter 4). In addition, the terminology might be culture-bound, or to be more precise, system-bound (common law vs. civil law), and thus it is less comparable.

The identified common features and patterns are interesting to look at also in terms of their alleged ability to obscure legal texts and make them incomprehensible for lay people as reiterated by the Plain Language Movement. Williams (2011: 140) summarises proposals to write law in plain English as follows.

- eliminating archaic and Latin expressions;
- removing all unnecessary words;
- ensuring the text can be understood by someone 'of average intelligence';
- including a 'purposive' clause at the start of the text;
- reducing the use of the passive;
- reducing nominalization, for example, favouring verb phrases rather than noun phrases, such as *in exercising the right* instead of *in the exercise of the right* so as to reduce the number of words and make the sentence less abstract;
- replacing *shall* with *must* or the semi-modal *is/are to* construction (as in *There is to be a body corporate*) or the present simple;
- ensuring the text is gender-neutral.

This list suggests another candidate for the analysis of legal style markers: the modal auxiliary *shall*, which is added to the range of candidates for cross-corpora analysis. It emerges, in general, that many linguistic markers traditionally associated with legal English are to be eliminated because of their unnecessary or reader-unfriendly character. The question remains whether these markers will remain distinctive features of legal English in written pleadings before the ECtHR or not and whether this perceived peculiarity should and/or will be maintained or eliminated in L2 translations. The next section addresses in more detail each candidate for the investigation.

2.3. Legal style markers

The previous section overviewed a number of studies of the three national legal languages under analysis – English, Russian and Italian – and identified a number of linguistic phenomena with a potential to occur in legal texts drafted in English or translated from Russian or Italian into English.

These features may be classified as *positive* markers of legal language, where I use the term "positive" in Biber's (1995: 113-114) interpretation as referring to items that occur frequently in a given variety as opposed to "negative" markers, which are less frequent or absent and, thus, characterising a corpus text in terms of their low-frequency or absence. Biber (1995: 28) distinguishes between *register markers* ("distinctive linguistic features found only in particular registers", for example lexical choices and grammatical routines) or *register features* ("differing quantitative distributions of core linguistic features", for example, nouns, pronouns, subordinate clauses"). According to Biber (1995: 29), *register markers* are not truly distinctive of a particular register. However, a part of legal terminology consisting of terms used exclusively in legal contexts would qualify as legal register markers. Legal register markers would include terms and co-occurrences specific of legal language, for instance, "written pleadings", "lodge an application", "compensation", "contracting party", "fair trial", etc.

Register features, on the contrary, "are core lexical and grammatical characteristics found to some extent in almost all texts and registers" and are indicative of register "because there are often large differences in their relative distributions" (Biber 1995: 29). Biber concludes that the mere frequency or infrequency of certain linguistic features is indeed often an indicator of register (Biber 1995: 29). While most traditional research on legal language identified legal register markers on the basis of a mere presence of certain items, register features have to be analysed using quantitative methods of corpus linguistics in order to define their relative frequency. In fact, when Tiersma (2015 [2006]: 29) writes that "all the features attributed to legal language are also 'characteristic of formal written prose'", he refers mostly to their occurrence and not to their distributional patterns, thus making them closer to the notion of register markers.

The following subsections provide brief summaries of linguistic markers with a high potential of being also linguistic features recurring in written pleadings, which here are referred to collectively as "legal style markers". These categories constitute the starting point of the analysis in this study and are addressed from the distributional perspective presented in Chapter 4 by means of corpus linguistics in order to verify whether they qualify as register features in the genre of written pleadings before the ECtHR.

2.3.1. Complex prepositions

Complex prepositions have been identified as a peculiar marker of the language of law acknowledged by many scholars (e.g. for English – Mellinkoff 1963; Tiersma 1999, 2015; Maley 1994; Bhatia, Engberg, Gotti and Heller 2008; Paunio 2013; for Italian, Spanish and English – Potrandolfo 2013; for English and Polish – Biel 2014; for Russian – Vlasenko 1997; Rusakova and Ljubeznova 2015). Bhatia (1993: 107) defines complex prepositions a "striking syntactic feature of the legislative writing" stating that

> The use of complex prepositions rather that the simple ones, for example, 'by virtue of' instead of 'by', 'for the purpose of' in place of 'for', and 'in accordance with' or 'in pursuance of' instead of a simple preposition 'under' is rather preferred in legislative writing simply because the specialist community claims, with some justification, of course (see Swales and Bhatia, 1983), that the simple ones tend to promote ambiguity and lack of clarity.

Quirk *et al*. (1985: 672) also note that "Legal English is notable for complex prepositions, the following being among those found mainly in legalistic or bureaucratic usage: *in case of, in default of, in lieu of, in pursuance of, in respect of, on pain of*." More recently, Hoffmann (2005: 99) confirms

that "genres pertaining to official and legal contexts clearly favour the use of complex prepositions". Along similar lines but from a distinct perspective of the Plain Language Movement, Garner (2001: 39-42) recognises in complex prepositions, especially those composed with *of*, a feature of legalese to be avoided if one wants to write in plain English.

A similar currency of thought is found in the literature on Italian legal discourse. Some Italian scholars of legal language define complex prepositions (*locuzioni preposizionali* or *locuzioni prepositive*) as stereotypical expressions and clichés that aggravate and obscure the style of legal writing (Mortara Garavelli 2001: 179; Serianni 2003: 116-117; Bellucci 2005: 84). However, they are undoubtedly recognized as emblematic parts (*estilemas*) of legal writing style (Pontrandolfo 2013: 193) as being the preferred pattern over the simple prepositions (Serianni 2003: 116).

Legal Russian is also notorious for its reliance on complex prepositions, or the so-called "derivative prepositions" (Rusakova and Ljubeznova 2015: 26-27). Contrary to its English counterpart, legal Russian seems not to be facing simplification reforms, and complex prepositions remain a salient feature of the official bureaucratic and legal style (Blokhina *et al*. 2010: 150). Consequently, as complex prepositions are peculiar to legal language in all three languages under analysis, this category is particularly suitable for cross-corpora analysis.

2.3.2. Adverbials

Adverbs have been defined as "the most nebulous and puzzling of the word classes" because of their heterogeneity (Quirk et al. 1985: 438). Of course, not all adverbs as a class qualify to be analysed in terms of their legal markedness. With regard to adverbials as legal style markers, this study will focus on archaic compound adverbs (e.g. *hereby*, *notwithstanding*) and occasionally deal with multi-word adverb phrases (e.g. *in this regard*, *for these purposes*).

Compound adverbs with archaic flavour represent the essence of the "fossilized language" of the law (Alcaraz Varó and Hughes 2002: 9). These are based on the simple deictics *here-*, *there-* or *where-* merged with prepositions. They are normally used to refer to the document(s) or its specific parts (e.g. *hereinafter* = after this place in this document; *therein* = in that [document/ source]) or to abbreviate long phrases and avoid repetition (e.g. *hereby* = by means / as a result of this [action / declaration, etc], *thereof* = of that [document]). Disregarding the fact that these archaic adverbs have been the object of criticism by the plain language advocates, their occurrence in English legal texts during the period under analysis (2002-2010) is referred to be "massive" (Williams 2011: 141).

Adverbials are characterised by a wide range of syntactic forms, functions, positions and semantic roles (Biber *et al*. 1999: 762-763). Syntactically, adverbials can be realised by a variety of linguistic constructions including prepositional phrases, closed-class items, open-class adverbs and adverb phrases, non-finite and verbless clauses and noun phrases (Quirk et al. 1985: 489).

Semantically, adverbials perform a vast and varied range of semantic roles, stretching from the classical *space*, *time*, *process* and *degree* to the more specialised *respect*, *contingency* and *modality* (Quirk e*t al.* 1985: 479-485) that take on a particularly prominent role in legal language. Other classifications group adverbials into *circumstance adverbials*, *stance adverbials* and *linking adverbials* (Biber *et al.* 1999: 763), the latter being typical of academic prose (Biber *et al*. 1999: 767) and, by extension, of legal writing as they are used to convey logical coherence and build arguments.

Negation adverbials (*nevertheless*, *under no circumstances*) and, specifically, those occurring in double or multiple negation strings (*not unreasonably*), are also peculiar of legal language (Mellinkoff 1963; Solan 1993; Tiersma 1999; Mortara Garavelli 2001; Goźdź-Roszkowski 2011; Ondelli and Pontrandolfo 2014). The so-called multiple negation has become the object of attempts to simplify legal language under the Plain Language Movement in various English-speaking countries[17] as well as in Italy (Mortara Garavelli 2001: 149; Serianni 2007: 130; Ondelli and

[17] In the English-speaking countries, notably, in Australia (*Federal Plain Language Guidelines* March 2011; http://www.plainlanguage.gov/index.cfm), in the USA (Flesch 1979; Wydick 2005; Charrow *et al.* 2013), in the UK (Garner 2013). On the European level, multiple negation has also been criticised (Agerbeek 2013: *The Essential Guide*

Pontrandolfo 2014: 155). It is worth noting that the Russian normative grammar prescribes the use of double negation in certain cases with negative adverbs, pronouns and particles (Dunn and Khairov 2009: 309), hence its presence in texts translated from Russian may be somewhat expected under the profile of possible linguistic interference.

2.3.3. Nominalisation

Nominalisation is listed by most studies on legal language as its distinctive trait (cf. Mellinkoff 1963; Crystal and Davy 1969; Tiersma 1999; 2015 [2006]; Mattila 2006a). Nominalisation is understood as "preference for nouns and nominalisations (nouns derived from verbs, such as 'consideration' or 'injury') over verbs ('consider' or 'injure')" (Tiersma 2015 [2006]: 28). It must be said, however, that the tendency to nominal style is common for most languages for special purposes (Serianni 2003: 107) and goes in line with the modern developments of the English language and, in particular, with that of specialist discourses (Leech *et al.* 2009: 215), where the number of noun phrases has reportedly increased over the twentieth century. Analysing British English and American English corpora and focusing on juxtaposed nouns separated in writing by a space, Leech *et al*. (2009: 215) note that "It is easy to find examples in the corpora not only of N+N but of longer sequences (within a single noun phrase) in which N+N sequences are multiply combined". This phenomenon is linked to a general tendency towards linguistic complexity and condensation of information (Biber 2001: 219; Leech *et al.* 2009: 216). Even though more than eight nouns can occur in a single phrase; these are mostly "combinations of overlapping two-noun sequences" (Leech *et al.* 2009: 217).

Goźdź-Roszkowski in his study of variation in legal American posits that nominalisation is "a matter of degree" (2011: 186) and occurs more frequently in certain legal genres, especially in legal definitions. Generally, nominalisation in legal language is caused by "the dense packaging of information" and occurs in discourses that "strive to achieve maximum precision and accuracy of expression" (Goźdź-Roszkowski 2011: 186).

2.3.4. Binomials and multinomials

Malkiel (1959: 113) defines binomials and multinomials as "[…] the sequence of two words pertaining to the same form-class, placed on an identical level of syntactic hierarchy, and ordinarily connected by some kind of lexical link". Similarly, Bhatia defines these constructions as "a sequence of two or more words or phrases belonging to the same grammatical category having some semantic relationship and joined by some syntactic device such as 'and' or 'or'" (1993: 108), for example, "rights and freedoms". However, the co-occurrence criterion is associated with a certain cline of fixedness. The traditional irreversible and fixed binomials or trinomials have to be distinguished from *synonymical chains* (Chromà 2011), created *ad hoc* by legal drafters, on the basis of their semantic and functional unity (Goźdź-Roszkowski 2013: 97). In his book Malkiel (1959), however, referred to the whole class of coordinated word pairs, including both irreversible and reversible binomials. The former are also referred to as "freezes" (cf. Cooper and Ross 1975) and represent a subclass of binomials (Mollin 2014: 8). In addition, Mollin (2014: 8) proposes to extend the classical definition to "sequences of coordinated lexemes, to account for binomials including lexical elements that are made up of more than [one] orthographic word", for instance: "fair and public hearing".

This study also looks at cases of trinomials, or "triplets" (Alcaraz Varó and Hughes 2002a), which consist of three elements, for instance, "moral, cultural or religious [conceptions]" [ITTC], "strong, clear and concordant [information]", "serious, precise and credible [evidence]" [RUTC]. Multinomials are generally understood as extended binomials with "an enumerative sequence" and "may contain several members" of the same word class (Gustafsson 1975: 17), as in "illegal carrying, keeping, purchase, manufacture or selling of weapons, ammunition or explosives" [RUTC].

to Drafting Commission Documents on EU Competition Law; European Commission, *How to write clearly*) (adapted from Ondelli and Pontrandolfo 2014: 169).

However, it has been pointed out that the constituent elements may not belong to the same word class (Norrick 1988: 73-74) as in "torture, inhuman and degrading treatment", "investigation and making decisions" [RUTC].

Binomials are generally associated with formulaic character of legal language (Mellinkoff 1963; Gustafsson 1984; Danet 1985; Maley 1994, Hiltunen 1990; Bhatia 1993; Frade 2005; Kopaczyk 2013). Gustafsson (1984: 123) asserts than in legal English "binomials are 4-5 times more common than in other prose texts, and they are definitely a style marker in law language". She states that usually binomials pay tribute to the long-standing tradition of legal English and are used to make legal texts more precise and unambiguous, however, sometimes "doubling-up serves no specific purpose" (Gustafsson 1984: 123). Mollin (2014: 13) also defines the frequency of binomials as "the result of a striving for precision as well as a trademark of the [legal] profession".

Finally, these legal style markers are interesting to look at from the translation perspective because the same bi-/multinomials can be fixed and irreversible in the source language and non-fixed in the target language and vice-versa, or follow the reversed order. Malkiel (1959: 143) illustrates this point by the example in English *East and West* vs. German *West und Ost*. It is also challenging for budding translators, who have to translate a binomial and forego the doubled structure, when the target language does not require a binomial, for instance "terms and conditions" has to be rendered only as *termini* in Italian (cf. 3.7.5).

2.3.5. Modal auxiliary *shall*

Legal language attributes a significant role to modal verbs that "contribute crucially to the realisation of the speech acts that constitute a legal text's pragmatic force and legal validity" (Garzone 2013: 68) in addition to classical functions of *modalisation* (probability) and *modulation* (inclination and obligation) (Eggins 2005: 178-179) or, respectively, *epistemic* and *deontic* or *root* types of modality (see e.g. Coates 1983; Palmer 1990), or *agent-oriented* modality (Bybee and Fleischman 1995), including studies on *performativity* (Conte 1994; Garzone 1996, 1999, 2001, 2008).

Modality in general is "a sensitive issue" in legal language (Garzone 2013: 68). This sensitivity of modality is very well represented by probably the most significant modal marker of legal English – the modal auxiliary *shall*. It has been extensively studied both by lawyers and by linguists (cf. e.g. Coates 1983; Palmer 1990; Garner 2001; Gotti 2001; Garzone 2001, 2013; Williams 2005, 2009, 2011), who recognise its vague and changing nature. The traditional interpretation of *shall* is explained concisely by Robinson (1973: 39): "the use of '*shall*' indicates that the legal subject is under obligation to act in accordance with the terms of the provision [...] it does not indicate something in relation to the future". Besides the classical interpretation of obligation, *shall* has multiple meanings, which made this modal auxiliary an object of keen debates, to the point when the US Government's Plain Language initiative expressly advises against its use[18] and the UK Drafting Techniques Group suggests alternatives to *shall* (Drafting Techniques Group 2008, online), leading to reform proposals and even "a modal revolution" (Williams 2009). And yet,

> […] legal drafters use *shall* incessantly. They learn it by osmosis in law school, and the lesson is fortified in law practice. Ask a drafter what *shall* means, and you'll hear that it's a mandatory word—opposed to the permissive *may*. Although this isn't a lie, it's a gross inaccuracy. And it's not a lie only because the vast majority of drafters don't know how shifty the word is. Often, it's true, *shall* is mandatory. […] Yet the word frequently bears other meanings—sometimes even masquerading as a synonym of *may*. […] In just about every jurisdiction, courts have held that *shall* can mean not just *must* and *may*, but also *will* and *is* (Garner 2001: 105).

[18] http://www.plainlanguage.gov/howto/wordsuggestions/shallmust.cfm

Garner in the above quote well defines the fluctuations in the interpretation of legal *shall*. It becomes clear that *shall* may be used in a variety of contexts and the risk of its misuse is rather high, and yet it has "survived and flourished in legal English for hundreds of years" (Williams 2005: 201) up to the point of being rightfully defined as "the most important word in the world of legal drafting" (Kimble 1992: 61), a "token of legalese […] a stylistic marker" (Foley 2001:185, 194; Bowers 1989: 294).

It is particularly stimulating to verify whether this much attacked modal auxiliary remains frequent in legal writing in English (as applied to the reference corpus of written pleadings drafted in the UK) and whether it qualifies as a recurrent feature in pleadings translated from Italian and Russian, where traditionally prescriptive and performative concepts are expressed through the present indicative (Garzone 2008: 63, 69; Williams 2009: 203; Levitan 2011; Rusakova and Ljubeznova 2015: 26).

2.3.6. Latin expressions

Over the years, Latin expressions have permeated legal English as has been widely documented elsewhere (e.g. Mellinkoff 1963; Crystal and Davy 1969; Tiersma 1999; Maley 1994; Alcaraz Varó and Hughes 2002a; Mattila 2006a). Such Latinate expressions as, for example, *ex aequo et bono, de jure, de facto, ipso iure, ergo omnes, ex officio* have invaded the writing style of common law legal professionals. In addition, "words and phrases such as *subpoena* (under penalty), *habeas corpus* (lawful detention), *quid pro quo* (a reciprocal arrangement), and *nolo contendere* (a plea of no contest)" spot the sentences of legal professionals who encounter in their daily operation these expressions of an apparently dead language (Stone 1999: vii).

Latin expressions have also been the object of reforms proposed by the plain language supporters as observed in a number of studies (e.g. Cutts 1995; Hunt 2002; Butt and Castle 2006).

On the flipside, Kjær (2007: 509) defines Latin expressions as multi-word terms, peculiar of legal English. Mattila also (2006a: 4) acknowledges that "legal authors employ a good deal of scholarly vocabulary, notably Latin words and sayings". While the status of certain Latin expressions as markers of legal language is doubtless, it remains to be clarified whether they qualify as recurrent features in written pleadings before the ECtHR, which belong to a new legal order at a supranational level and thus, hypothetically, may be less bound to use conservative Latin expressions.

2.4. Legal language, style, register, discipline and genre considerations

2.4.1. On the intersection of style, register, discipline and genre

While most scholars acknowledge the heterogeneity of legal language and there is generally a significant consensus concerning the topics included under this designation, there is a considerable amount of terminological uncertainty as to the linguistic and extralinguistic notions to operate with when describing legal language. Tiersma (1999: 139) asserts that "there is great variation in legal language, depending on geographical location, degree of *formality*, speaking versus writing, and related factors. The *language* and *style* of lawyers also differs substantially from one *genre* of writing to another" (my emphasis). In fact, notions of *style*, *genre* and *register* are often interconnected when analysing legal language. In general studies of language variation the borders between these distinct yet related concepts are sometimes blurred even in the works by the same authors, as Biber's (1995: 9-10, original emphasis) quote below illustrates.

> In my own previous studies, I have used the term *genre* as a general cover term, similar to my use of *register* in the present book. In Biber (1988: 68), I describe *genres* as "text categorizations made on the basis of external criteria relating to author/speaker purpose" and "the text categories readily distinguished by mature speakers of a language; for example … novels, newspaper articles, editorials, academic articles, public speeches, radio broadcasts, and everyday conversations. These categories are defined primarily on the basis of external format" (Biber 1989: 5-6). In practical terms, these categories are adopted because of their widespread use in computerized language corpora. The use of the term *register* corresponds closely to *genre* in these earlier studies.

In legal language studies these concepts have been consistently conceptualised by Bhatia (1993; 1994; 1997; 2014 [2004]). In one of his more recent works Bhatia (2014 [2004]: 35) notes that *register*, *discipline* and *genre* have been at the core of linguistic variation analysis at different times. He advises caution in relation to the first two terms as they are not synonymous regardless of some significant overlaps. To Bhatia *discipline* "represents the content", and *register* represents "the language associated with it", while *genres* are able to "cut across disciplines" (Bhatia (2014 [2004]: 35), and, by extension, can be associated with different registers.

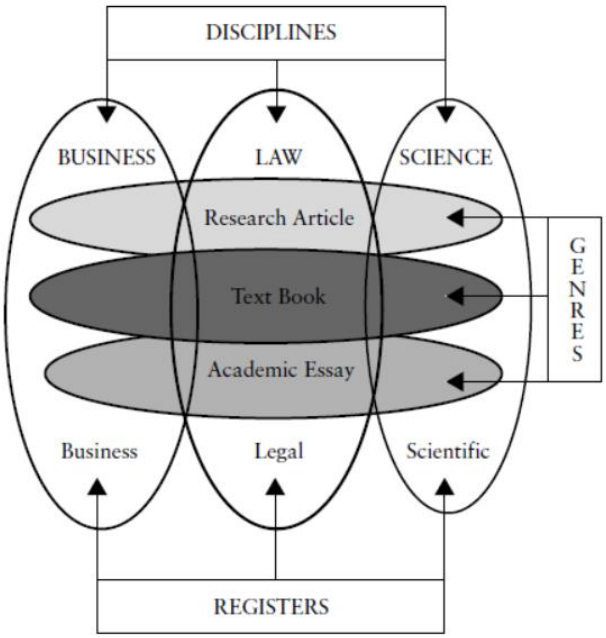


Figure 2.1: *Bhatia's (2014 [2004]: 36) distinction between registers, genres and disciplines in academic discourse.*

Bhatia (2014 [2004]: 36) comments that early studies of English for special purposes typically focused on "field-dominated registers […] in terms of specialist lexis and some surface-level syntactic features alone". For the scholar disciplinary perspective is to be preferred because disciplines

> […] in spite of the overlap with registers, have their typical characteristics, and are primarily understood in terms of the specific knowledge, methodologies and shared practices of their community members, especially their ways of thinking, constructing and consuming knowledge, their specific norms and epistemologies and, above all, their typical goals and disciplinary practices to achieve those goals (Bhatia (2014 [2004]: 36).

Some scholars have interpreted Bhatia's reconstruction of the concept of register as evoking a hierarchical relationship between registers and genres, "whereby 'legal register' represents some vague superordinate term covering various types of legal texts (genres) and being practically synonymous with the notoriously imprecise notion of 'legal language'" (Goźdź-Roszkowski 2011: 20). It must be said that Bhatia's work (1987; 1993; 2014 [2004]) in general deliberately leaves the more general concept of register and adopts a more specific genre-based approach, aiming at a more functional perspective on genres.

Biber and Conrad (2009) propose another interesting taxonomy and use *register*, *genre* and *style* to designate different "approaches or perspectives for analyzing text varieties, *not* as different kinds of texts or different varieties" (Biber and Conrad 2009: 15, original italics).

Defining characteristic	**Register**	**Genre**	**Style**
Textual focus	sample of text excerpts	complete texts	sample of text excerpts
Linguistic characteristics	any lexico-grammatical feature	specialized expressions, rhetorical organization, formatting	any lexico-grammatical feature
Distribution of linguistic characteristics	frequent and pervasive in texts from the variety	usually once-occurring in the text, in a particular place in the text	frequent and pervasive in texts from the variety
Interpretation	features serve important communicative functions in the register	features are conventionally associated with the genre: the expected format, but often not functional	features are not directly functional; they are preferred because they are aesthetically valued

Table 2.2: *Distinction between register, style and genre as adapted from Biber and Conrad (2009: 16).*

As it emerges from the table, the focus of register-oriented studies is understandably wider than the focus of genre-oriented studies. In the latter, the emphasis is placed on the linguistic characteristics that structure complete texts. At the same time, both the register perspective and the style perspective analyse the pervasive linguistic characteristics of representative text excerpts from a given variety. The register perspective additionally emphasises the functional links of these features to the situational context of the variety (Biber and Conrad 2009: 16), thus interrelating this construction of register, to some extent, to Bhatia's notion of discipline.

It is also evident that *register* has multiple overlaps with *style*. When Crystal and Davy described legal English in 1969, they talked about the *style* of legal documents (specifically, contracts) from a purely linguistic point of view, as "a selection of language habits" restricted to a specific social context (1969: 9-10). Similarly, *style* is widely applied in sociolinguistics to mark various types of linguistic variation. Following Trudgill's (1983) distinction, there is a tendency to use *style* "as the more general term, reserving *register* for the specialized language that occurs when certain topics are discussed by people with shared background knowledge and shared assumptions about those topics,

particularly when related to their occupation or profession" (Goźdź-Roszkowski 2011: 18). However, such a link to occupation or profession in LSP studies is implicit, and thus, the demarcation line between style and register based on this criterion becomes somewhat blurred.

Style is also a preferred perspective in Russian studies on legal language. Pigolkin (1990), in line with long-existing Russian tradition of functional styles suggests classifying *язык законодательства* (legislative language) as an "independent style of literary language that is characterised by specific social purposes of the law, specific ways to present its subject" and that "demonstrates peculiar compositional and stylistic means as well as a particular vocabulary used to express the legislator's writing" (Pigolkin 1990: 14, my translation). It appears that the understanding of the *functional style* in Russian studies is closer to the interpretation of the term *register* in Anglophone studies because it deals with features, which serve functional goals. In fact, it is commonly defined as

> a system of interrelated language means, which serves a definite aim in communication. Each style is recognised as an independent whole. The peculiar choice of language means is primarily dependent on the aim of the communication, on the *function* the style performs (Afanasyeva and Senjuškina 2005: 5, original italics).

The general focus of this study is on *legal register* in Biber and Conrad's interpretaion or *legal style* in the understanding of functional stylistics. However, this study does not aim at treating legal language as a monolithic phenomenon. While according to Goźdź-Roszkowski, there is no detailed study with "an explicit description of linguistic variation within legal language or a description of variation between legal language and other specialised languages" (2011: 16), it is virtually certain that traditional lexico-grammatical features associated with legal language as a general phenomenon, cannot hold true for all legal genres. In fact, legal language differs from genre to genre and according to a particular discourse community. Consequently, in line with a number of taxonomies mentioned in the beginning of this chapter, it is possible to distinguish among "the language of *legal authors*, *legislators* (laws and regulations), *judges* and *administrators*, as well as *advocates*" (Mattila 2006a: 4). These general discrimination criteria of genre and professional community have to be integrated by the description of institutional settings, as "[s]ocial institutions and text types are mutually defining" (Stubbs 1996: 8). Hence, the narrow focus of this study is on a specific textual manifestation of legal language in a restricted context: written pleadings before the European Court of Human Rights. It is to be noted, however, that the genre perspective is employed to contextualise the documents in the corpus, while the main linguistic attention lies closer to the register perspective as defined by Biber and Conrad (2009: 16) in that it focuses on distinctive lexico-grammatical choices rather than social implications or structural building blocks[19]. Given the importance of legal genres, the next section briefly outlines this notion linking it where possible to the genre of written pleadings, expressly described in 2.5.

2.4.2. Legal genres

"*Instruments* of knowledge are what we call 'texts', and the *encasements* for those texts are what are called 'genres'", claims Rappaport (2014: 197, original emphasis). *Genre* as a specific knowledge encasement tool is probably one of the most established and discussed concepts among those mentioned at the beginning of this section. Genres are often defined as "ways of recognizing, responding to, acting meaningfully within, and helping to reproduce recurrent situations" (Bawarshi and Reiff 2010: 3). Genre as a functional way to categorise knowledge "transcends cultures and environments" (Rappaport 2014: 219) and cuts across disciplines (Bhatia 2014 [2004]: 35). The genre perspective revolves around their communicative purposes, the settings or contexts, the social or

[19] Structural building blocks are perfunctorily addressed in 6.1.3.

professional relationship between the participants, the background knowledge of the participants, etc. (Bhatia 1987: 227; also 1993: 101). Bhatia (1993: 13) defines genre as

> [a] recognizable communicative event characterized by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalized with constraints on allowable contributions in terms of their intent, positioning, form and functional value. These constraints, however, are often exploited by the expert members of the discourse community to achieve private intentions within the framework of socially recognized purpose(s). (Bhatia 1993: 13)

Relying on the famous Victor Hugo quote – "life is a theatre set in which there are but few practicable entrances"[20] – Rappaport (2014: 204) compares legal writing to a theatre set, claiming that all legal writing has its own performers, a script and an audience, and the genre plays the role of the most practicable and essential entrance. Legal language is generally perceived as a set of "several usefully distinguishable genres" (Bhatia 1987: 227), each having specific, if often related, features (Williams 2004: 111).

Legal genres are manifestations of text types belonging to a certain professional community and institutional setting, such as statutes, contracts, courtroom documents, academic essays, and others. As overviewed in 2.1.1, speaking of legal language is speaking about legal genres. On the macrolevel, legal discourse can be divided according to the community where it occurs into, for instance, *judicial discourse*, *courtroom discourse*, *the language of legal documents* and *the discourse of legal consultation* (Maley 1994: 12-13) or *legislative or statutory writing*, *academic legal writing* and *juridical writing* (Bhatia 1983: 2). Alternatively, it may be divided according to the professional figure who produces legal discourse into the language of *legal authors*, *legislators*, *judges*, *administrators* and *advocates* (Mattila 2006a: 4). On the microlevel, each macrocategory consists of separate genres. For instance, academic legal writing includes legal textbooks, essays and journal articles.

The intertwined branching and complex relations between various genres lead different scholars to different genre placement, descriptions and categorisations. From a more general perspective of genre studies, Bazerman (1994) distinguishes between the hierarchical concepts of *the genre set* and *the system of genres*. The former represents "only the work of one side of a multiple person interaction" (1994: 98), while the latter stands for "the interrelated genres that interact with each other in specific settings" (1998: 97). The system of genres typically includes genres from multiple genre sets. Bhatia (2014 [2004]: 62-63) adds to these categories a third, vaster, level of *domain-specific disciplinary genres*, which in the case of legal domain refer to "a larger set of professional legal genres" in use by the legal professionals in general. Bhatia (2014 [2004]: 63) summarises this three-tier system as follows

> 'Genre set' incorporates a class of typical professional genres that a particular professional engages in as part of his or her routine professional activity (Devitt 1991). 'Genre system' represents a complete set of discursive forms that are invoked by all the participants involved in a professional activity. 'Disciplinary genres' extend such a system to include all those discursive forms that are invoked in all professional practices associated with a particular disciplinary or professional domain.

Following Bazerman (1994), in a more recent work (2006) Bhatia elaborates on the concept of legal genres as a system and allocates the most central and dominant position to the legislative genre, which he defines *the primary genre*. On the next level, Bhatia places the so-called *secondary*, or *derived*, and *target genres*. The *derived secondary genres* are designed "to negotiate, document, and report judicial processes and decisions, which are based on appropriate interpretations of legislative

[20] Hugo, Victor. "Chapter IV: The Back Room of Café Musain", *Les Misérables*. http://www.cartage.org.lb/en/themes/BookLibrary/books/bibliographie/H/Hugovictor/LesMiserables/VolumeIII-Marius/book4/ch4.htm (last visited Oct. 19, 2013).

intentions" (2006: 6). These are such written genres as judgments and cases and the oral courtroom interaction (direct and cross-examination). The peculiar feature of derived genres is their high degree of 'intertextuality' and 'interdiscursivity' (cf. Bhatia 2014 [2004]). The *target genres* are both the products and the instruments of legal practice, including specific professional genres such as property conveyance documents, contracts and agreements, court case documents and affidavits. Finally, Bhatia (2006: 6-7) identifies a set of *enabling genres* that are limited to the academic settings and are typically used for training and educational purposes.

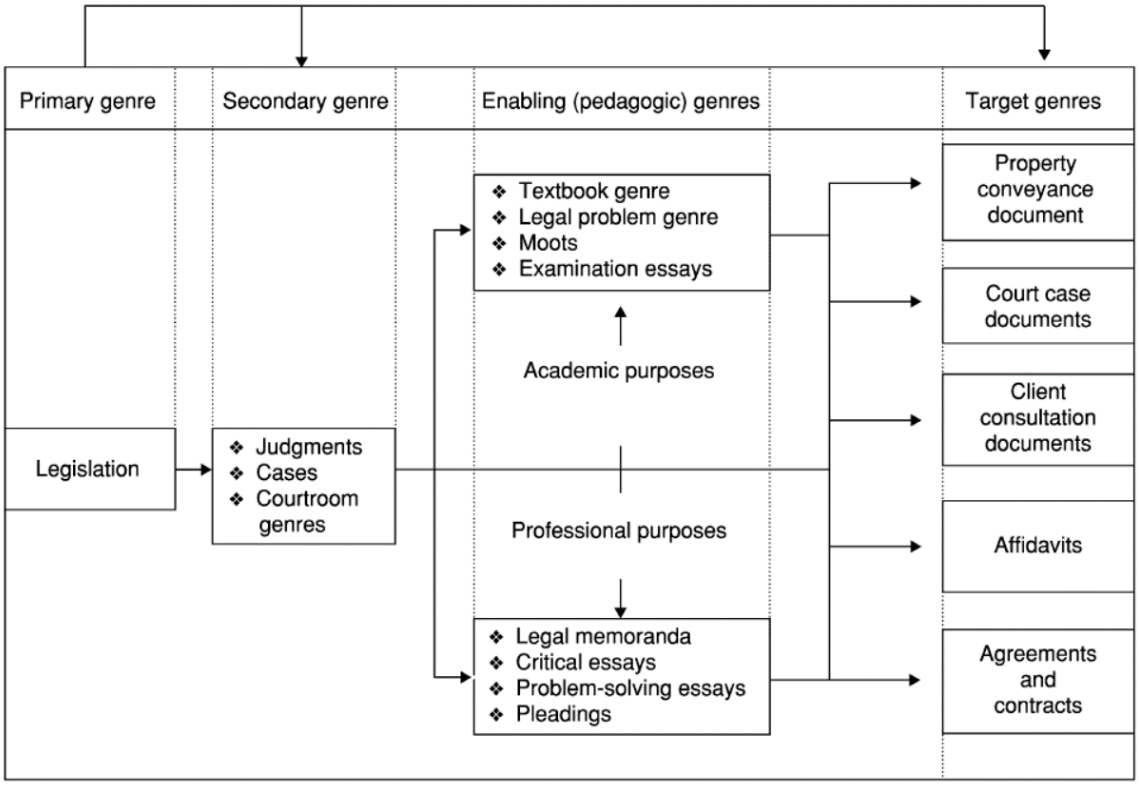


Figure 2.2: *Genre systems in law, from Bhatia (2006: 7).*

With regard to legal genres, Rappaport's (2014) recent work has to be quoted. Drawing on Sinding's (2002) tripartite frame model, which positioned genres as a series of mutually embedded frames[21], Rappaport (2014: 222-223) compares legal genres to Russian nesting dolls from a sociocognitive perspective. In his model, graphically represented below in concentric circles rather than dolls, the outermost doll (or circle) is the generic frame (Sociocognitive Action) "thinking like a lawyer", i.e. the cultural, educational and systemic legal background of legal professionals. The middle doll is the type of law (Rhetorical Situation), for instance, criminal law, divorce law or human rights law, and the inner doll (Discourse Structure) represents the most specific genre, i.e. the actual documents, such as divorce decrees, applications or written pleadings (Rappaport 2014: 222-223).

[21] Sinding (2002: 196-197) organises genres in three mutually embedded frames, ranging from the most general level of sociocognitive action frame (occasion, communicative purpose, social action context, including other genres), passing through rhetorical situation frame (setting, speaker, audience, medium) up to the most specific discourse structure frame (including both extraliterary (e.g. speech act type, form, style, etc) and literary (e.g. narration) features).

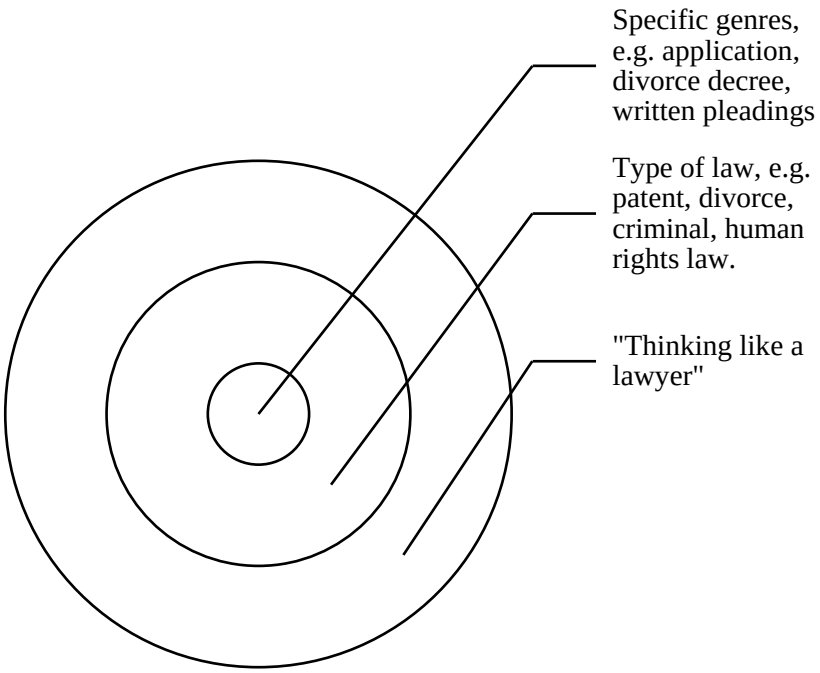


Figure 2.3: *Graphic representation of Rappaport's (2014) legal genres placement.*

The next section describes the genre of written pleadings before the ECtHR in more detail, bearing in mind the theoretical points identified in this subsection.

2.5. Written pleadings before the ECtHR

Many scholars researching genre theory evoke the concept of shared characteristics and communicative purposes (e.g. Swales 1990; Bhatia 1993, 2014 [2004]) that create a sort of textual prototype that is to be respected and reproduced with minor variations. While using different approaches to genre description – rhetorics, sociocognitive approach, systemic functional linguistics, ESP, genre analysis – these definitions have quite a number of elements in common.

Bhatia (2014 [2004]: 27) summarises several previous studies in genre theory from a variety of perspectives and defines genre as follows (my emphasis).

> Genre essentially refers to language use in a *conventionalized communicative setting* in order to give expression to a *specific set of communicative goals* of a disciplinary or social institution, which give rise to *stable structural forms* by imposing constrains on the use of lexico-grammatical as well as discoursal resources.

My description of written pleading will follow the above definition and theories outlined in 2.4 and characterise this genre in terms of:

(2.5.1) Position of written pleadings as a genre
(2.5.2) Institutional context of written pleadings
(2.5.3) Communicative purpose and participants
(2.5.4) Structure of a written pleading

The terms *written pleadings* and *written observations* are used interchangeably in this study in accordance with their usage by the Rules of the ECtHR, the English version of which utilises the former for titling and the latter generally in the text. The French version of the Rules uses only the term *observations écrites*, under the influence of which the Registry lawyers are inclined to use the term *written observations* in English, too.

2.5.1. Position of written pleadings

I refer to written pleadings as a genre, and not sub-genre, to avoid terminological confusions, although its non-primary nature is clear. On the most general level of disciplinary genres, written pleadings belong to the level of "thinking as a lawyer", i.e. to the language of the law. This level presumes intertextual references to various genres belonging to the discipline of law. For instance, written pleadings may quote court judgments or articles of legislation and thus have intradisciplinary links with other genres.

On a slightly more specific level, written pleadings may be defined as belonging to the language of advocates (Mattila 2006a), courtroom discourse (Maley 1994), persuasive documents (Tiersma 1999), juridical writing (Bhatia 1983), professional discourse of lawyers / the language of procedural acts (Šepelev 2012). They occur in the supranational court system between legal professionals, thus are inserted in a highly specialised system of genres (along with other legal genres).

Finally, at the level of genre sets, written pleadings before the ECtHR belong to procedural court documents along with other typical documents used in court proceedings, such as initial applications, memoranda, briefs, submissions, etc.

Pleadings are usually studied in their more classical oral form, as "a parallel genre related to written judgment" through negotiation of justice in the courtroom (Bhatia 2006: 5). However, as their name suggests, written pleadings are documents used within the written procedure, which is the default procedure before the ECtHR[22]. In fact, oral pleadings and hearings are more of an exception than a

[22] *European Court of Human Rights: The ECHR in 50 questions* (online), question 30, reads as follows: "The Court basically has a written procedure but occasionally decides to hold public hearings in specific cases."

rule, and may happen at the stage of the procedure before a Chamber[23] (Rule 55.5, Rules of Court): "the Chamber may decide, either at the request of a party or of its own motion, to hold a hearing if it considers that the discharge of its functions under the Convention so requires" or a Grand Chamber (Rule 71, Rules of Court). Consequently, given the written character of the ECtHR procedure, this genre may be placed in-between the secondary genres and target genres in Bhatia's (2006) classification.

Although proceedings at the ECtHR are open, written pleadings do not get into the public eye unlike the decisions and judgments of the ECtHR or national legislation codifying the values of the European Convention. As a result, even though written pleadings play an important role for procedures at the ECtHR, they have not received much academic attention from legal or linguistic community, at least to my knowledge, and remain until now an "occluded genre" (Swales 1996) that operates "out of sight" of general public (Swales 1996: 46). Although in his original categorisation of occluded genres Swales referred to academic genres, his description is applicable to the legal domain, too.

> There are, in fact, quite large numbers of genres that operate to support and validate the manufacture of knowledge, directly as part of the publishing process itself, or indirectly by underpinning the academic administrative processes of hiring, promotion and departmental review. Some of these genres are spoken, such as telephone conversations between editors and authors, interviews and "job talks", but most are written. These latter have some interesting characteristics. On the one hand, *they are typically formal documents which remain on file; on the other, they are rarely part of the public record*. They are written for specific individual or small-group audiences, and yet may also be seriously invested with demonstrated scholarship and seriously concerned with representing their authors in a favourable professional light. More importantly, however, *exemplars of these genres are typically hidden, "out of sight" or "occluded" from the public gaze by a veil of confidentiality*. (Swales 1996: 46, my emphasis).

Following Swales' definition above, written observations can be considered a typical case of an occluded genre, as they are integral part of the case-file and unavailable to public, although invested with significant legal value.

Written pleadings may be requested under Rule 54.2 by a Committee, a Chamber or a Grand Chamber:

> 2. Alternatively, the Chamber or the President of the Section may decide to
> (a) request the parties to submit any factual information, documents or other material considered by the Chamber or its President to be relevant;
> (b) give notice of the application or part of the application to the respondent Contracting Party and invite that Party to submit written observations thereon and, upon receipt thereof, invite the applicant to submit observations in reply;
> (c) invite the parties to submit further observations in writing.

As the written procedure relies heavily on the information provided in the written pleadings, their role in the negotiation of justice within the European mechanism of human rights protection is indisputable. Essentially, written pleadings may be requested at any stage of the procedure before the ECtHR (see Figure 2.4 below), starting from the initial analysis and examination of the admissibility merits to the stage of referral to the Grand Chamber.

[23] A case may be examined by a single judge (Rule 53), who rules mostly on questions of admissibility, by a Committee (Rule 54), by one of five Chambers of equal standing (Rule 55) and in exceptional cases it may be relinquished in favour of (Rule 72) or referred to (Rule 73) a Grand Chamber.

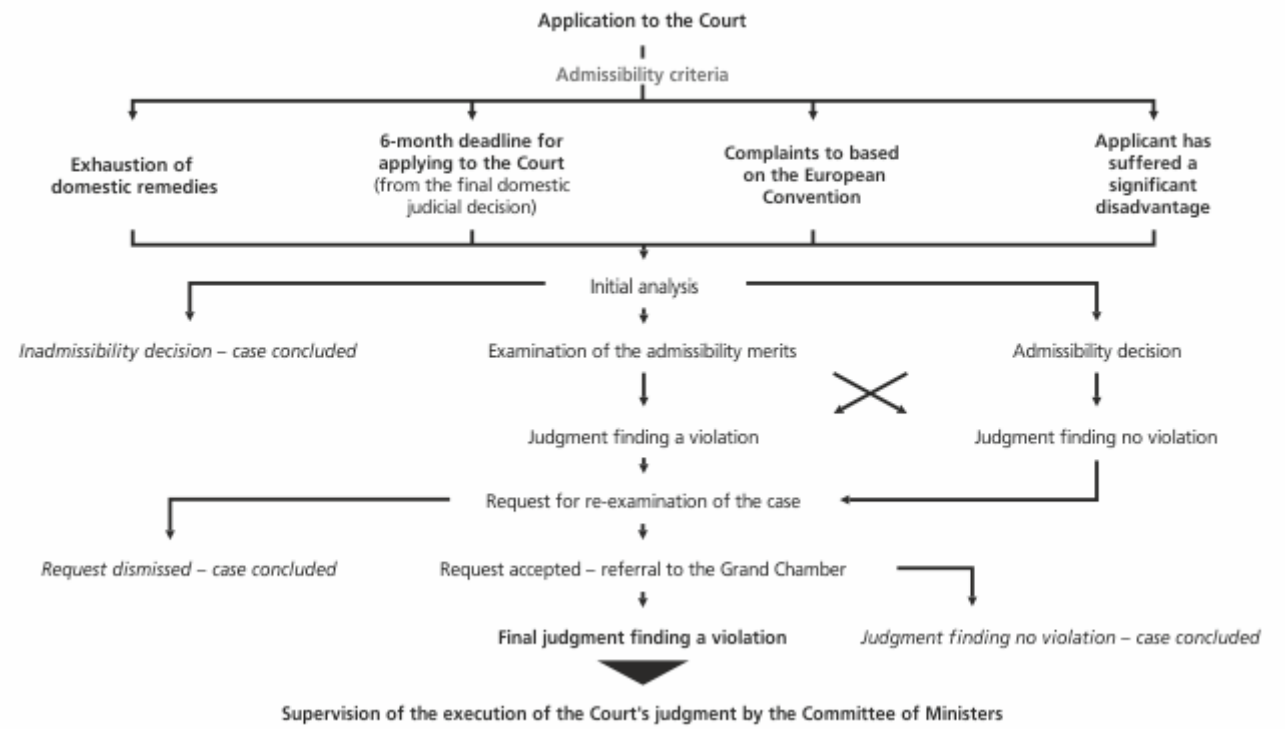


Figure 2.4: *Procedure before the ECtHR*[24].

In general, written pleadings bear important similarities both to judgments and to cases. On the one hand, they have links to the formal legal world, represented by such genres as the legal judgment and legislative provision. On the other hand, they relate to the facts and events of the real world reported in the narrative part of the pleading. This double connection is mediated through legal reasoning within the legal framework of human rights.

2.5.2. Institutional context of the European Court of Human Rights

The European Court of Human Rights ("ECtHR" or "Court") is a supranational court within the context of the Council of Europe ("CoE") that implements the European mechanism of human rights protection, based on the rights and freedoms set out in the European Convention on Human Rights ("ECHR" or "Convention"). The purpose of the Convention initially was not to offer individual remedies but to create a collective human rights protection mechanism by "requiring the national law of the contracting parties to be kept within certain bounds" (Harris *et al*. 2014: 37) and, thus, by limiting their sovereign powers (Frigo 2012: 38). However, over almost 70 years of its existence, the ECHR has evolved and is still evolving. In fact, it is often referred to as "a living legal order" (Frigo 2012: 42) after the famous statement of the case *Tyrer v. UK* (1978, para 31) that the Convention is "a living instrument which […] must be interpreted in the light of present-day conditions", which reflects a common metaphor for the description of constitutional courts (Letsas 2013: 106). In the course of its evolution, "the individual has been brought more to the centre of the stage also by allowing him the right of audience before the Court and by making the right of individual petition compulsory" (Harris *et al*. 2014: 37). Article 34 of the ECHR sets forth the right of individual petition, and in today's interpretation of the Convention the ECtHR may rule on and receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the rights guaranteed in the Convention or the protocols thereto.

[24] From "Legal Protection of Human Rights" (2012). In *Compass: Manual for Human Rights Education with Young People* [online] Available at the official website of the Council of Europe at http://www.coe.int/en/web/compass/legal-protection-of-human-rights, last accessed on May 9, 2017.

In contrast to the European Court of Justice (Luxemburg) and similarly to the International Court of Justice (The Hague), with which it is often confused, the ECtHR's operation is carried out only in two official languages: English and French. Nevertheless, initial applications of alleged violations of the Convention can be lodged in any national language of the 47 CoE Member States of the extended Europe. Rule 59 sets forth that "once an application made under Article 34 of the Convention has been declared admissible, the Chamber or its President may invite the parties to submit further evidence and written observations". Generally, at this stage all the communication is to be held in one of the official languages of the ECtHR (Rule 34, Rules of Court). This entails the need for the parties to translate these sensitive written pleadings in a limited amount of time.

Belonging to the legal domain, these documents, as any legal texts, are drafted in the "language of the law" (Mellinkoff 1963: 3). However, as discussed by Maley (1994: 13), instead of a single language of the law, there are a number of interconnected yet distinct varieties of legal language. Indeed, the legal tradition of a country has undoubtedly a significant impact on legal drafting. Texts produced in civil law and common law systems differ in the underlying approach. According to Gotti (2011: 27), civil law texts tend to generality, while common law texts move towards particularity, which has roots in their different historical development and underlying principles. As Bhatia (1993: 137) puts it, "the civil code draftsman is eager to be widely understood by the ordinary readership, whereas the common law draftsman seems to be more worried about not being misunderstood by the specialist community".

The supranational context of a community of 47 CoE Member States with different legal systems calls for a particular approach in the operation of the ECtHR, which takes account of the existing diversity between civil and common law systems (Harris *et al*. 2014: 12). Traditionally, the approach of the ECtHR is closer to the classic common law system in that it relies on case law (de Salvia and Remus 2011: xii). At the same time, it is not a pure common law approach because the law of precedent is not binding on the Court, which can rule on a case in a different manner than in its previous judgment, however, for the sake of legal certainty it tends to be consistent in its rulings (Harris *et al*. 2014: 20-21).

In addition, the Court strives to "respect the rich diversity of law and the legal systems of the contracting parties" (Harris *et al*. 2014: 38). In fact, modern jurisprudence often considers it to be a common European constitutional court (Harries *et al*. 2014: 40; de Salvia and Remus 2011: 5; Zorkin 2012: 14-15). From the legal standpoint, the ECtHR system pertains to a new legal order (Kjær 2007: 509). Consequently, from the linguistic standpoint, communication within this system belongs to a new variety of legal language carried out predominantly through translation or L2 production in English or French. Therefore, written observations may be classified as "hybrid texts", to quote Trosborg (1997a: 145-146), "produced in a supranational multicultural discourse community where there is no linguistically neutral ground". It seems, thus, reasonable to look into language usage in this specific form of communication through translation or, in Šarčević's terms, on translation as "an act of communication in the mechanism of law" (1997: 55).

2.5.3. Communicative purpose and participants of written pleadings

The communicative purpose of written observations under Rule 38 (Rules of Court) is to clarify the Court's questions, by providing their description / restatement of the facts or a commentary, expressing their legal arguments, by replying to the other party's observations, if necessary, and to the Court's questions, where applicable (cf. 2.5.4). The question-answer organisation resembles the oral courtroom interaction. Likewise, in written pleadings some legally material facts are established through the Parties' answers.

In contrast to initial applications, which can indeed be filed by the applicants themselves, without a legal representative, written pleadings are drafted exclusively by legal professionals, who represent the parties to the dispute. These pleadings are received and processed by lawyers of the ECtHR Registry. Although inter-State applications are possible under the ECHR, they are not very common

in the ECtHR's practice. This study focuses entirely on written pleadings arising out of individual applications, where the parties are the Applicants, represented by their advocates (Rule 36, Rules of Court), and the respondent Government, represented by their Agent (Rule 35, Rules of Court). While there is no obligation on the representative of the Applicant to be a national of the same State as the Applicant or Respondent (Rule 36.4.(a)), in most cases and in the cases analysed in thus study their nationality is the same, as confirmed by their personal information indicated in the pleadings.

It is worth noting that the written pleadings are generally received and processed by the Registry lawyers who share the same nationality or mother tongue with the drafting party. Normally, the Registry Division that deals with applications against a particular State employs its nationals, whose mother tongue would be the same as that of the parties and who would be familiar with their general cultural and legal backgrounds. In other words, most lawyers who work in the Russian Division of the Registry speak Russian and are normally legal professionals who have studied in Russia and/or Russian law; and most lawyers of the Italian division are Italian nationals, who speak Italian and are familiar with Italy's legal system. In light of communication theory, according to which a certain communicative act may be effective only if the receiver is able to decode the message efficiently and correctly (Sager 1993: 96), the same linguistic, cultural and legal background may be interpreted as facilitating general comprehension. Keeping in mind that in cases analysed here the exchange of pleadings in English or French occurs between a Russian party (the Applicant or the Government's Agent) with a Russian lawyer from the ECtHR Registry or between an Italian party with an Italian lawyer from the respective Registry Division, it seems reasonable to presume that this communication has all chances of success, because the receiver shares not only the language but also the knowledge of the legal system of the text producer, thus simplifying the process of legal hermeneutics. Consequently, it seems that any linguistic flaws of the translations presented by the Parties may be mentally corrected or balanced both by the knowledge of the Registry lawyers and by their understanding of possible linguistic interference patterns. It would be interesting yet impossible for the purposes of the present research to learn whether translators unconsciously rely upon this fact or not.

Another interesting aspect concerns the time when the source and the target texts are received by the Registry. Upon investigation of several short letters that accompany most pleadings in the translation corpora, it becomes clear that the source text is sent first and then, after roughly a month, the target text is forwarded, too. In other words, the translation in this case is deemed merely to present information about the ST *a posteriori*. Hence, these texts can be interpreted as "translated exclusively for information purposes […]: they are not vested with the force of law and are not binding" (Šarčević 1997: 19). It is important to note, however, that the Registry lawyers who speak a certain national language are not the only receptors of these observations. At later stages, these documents are passed to other members of the Court, who often do not have a linguistic proficiency in the source language of these translations and thus cannot "read between the lines". Then the translations are relied upon in the process of legal reasoning and, thus, assume an important role.

2.5.4. Structure of written pleadings

The structure of written pleadings (Rule 38, Rules of Court), is formally defined within the Practice Directions issued by the ECtHR Registry that set specific form and content requirements. Articles 14 and 15 of the said Practice Directions specify the content requirements as follows.

> 14. The parties' pleadings following communication of the application should include:
> (a) any comments they wish to make on the facts of the case; however,
> (i) if a party does not contest the facts as set out in the statement of facts prepared by the Registry, it should limit its observations to a brief statement to that effect;
> (ii) if a party contests only part of the facts as set out by the Registry, or wishes to supplement them, it should limit its observations to those specific points;

(iii) if a party objects to the facts or part of the facts as presented by the other party, it should state clearly which facts are uncontested and limit its observations to the points in dispute;
(b) legal arguments relating firstly to admissibility and, secondly, to the merits of the case; however,
(i) if specific questions on a factual or legal point were put to a party, it should, without prejudice to Rule 55, limit its arguments to such questions;
(ii) if a pleading replies to arguments of the other party, submissions should refer to the specific arguments in the order prescribed above.

15. (a) The parties' pleadings following the admission of the application should include:
(i) a short statement confirming a party's position on the facts of the case as established in the decision on admissibility;
(ii) legal arguments relating to the merits of the case;
(iii) a reply to any specific questions on a factual or legal point put by the Court.
(b) An applicant party submitting claims for just satisfaction at the same time should do so in the manner described in the practice direction on filing just satisfaction claims.

In terms of organisation, the written pleadings analysed in this work have a clear macrostructure consisting of three parts, where the initial and the final parts are rather crystallised, while the central part allows significant variation. In general, like cases and judgments, written pleadings after the initial formulae establish the facts in the narrative part and end with a request for a legal action.

2.5.4.1. Beginning of a written pleading

At the beginning all the pleadings contain the following elements in accordance with Practice Directions (articles 10 and 11):

- the addressee ("The European Court of Human Rights");
- a date (optional), placed under or above the address or title, included in the title ("observations … dated 2 June 2009") or visible in the headnote after the transmission via fax;
- an indication of the translated nature of the document (optional), e.g. "Translation from Russian", "Translation form Italian";
- a title indicating the nature of the content (e.g., observations on admissibility [and the merits]; reply to the Government's/the applicant's observations on admissibility [and the merits]; observations on the merits; additional observations on admissibility [and the merits]; memorial, etc.);
- the application number and the name of the case, typically consisting of the Applicant's name(s) and the name of the respondent State;
- a note / statement as to the object/purpose of the pleading, which is usually to answer either the counterpart's or the Court's questions.

English Reference Corpus	**Russian Translation Corpus**	**Italian Translation Corpus**
IN THE EUROPEAN COURT OF HUMAN RIGHTS Appln No.24089/05 BETWEEN: (1) SUE SARANDON (2) JOHN SMITH Applicants -and- UNITED KINGDOM Respondent REPLY TO OBSERVATIONS OF THE RESPONDENT	20 September 2009 10001/09 EUROPEAN COURT OF HUMAN RIGHTS MEMORANDUM Application no. 10001/09 Ivanova v. Russia	HONOURABLE EUROPEAN COURT OF HUMAN RIGHTS APPLICATION no. 38754/07 MARINI AND RODARI V ITALY COUNTERCLAIMS TO THE COMPLEMENTARY REMARKS OF THE ITALIAN GOVERNMENT AND ON THE JUST SATISFACTION

English Reference Corpus	Russian Translation Corpus	Italian Translation Corpus
This reply should be read with the full application. Since the respondent has not dealt with all the matters raised in the application on a point by point basis and it is not always clear which paragraphs of the application the respondent is alluding to, it has been necessary in this reply sometimes to re-state and expand upon what is in the application.	On 3 June 2010, the European Court of Human Rights (hereinafter – "the European Court") informed the Russian Federation authorities of application no. 10001/09 Ivanova v. Russia lodged with the European Court by a Russian national Larisa Petrovna Ivanova under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - "the Convention"), as well as invited them to submit their observations and answer the following questions.	In reply to the Italian Government's remarks of 30 May 2010, the applicant has the honour to submit the following remarks to the attention of this Honourable Court.

Table 2.3: *Beginning samples from the sanitised written pleadings in the English Reference Corpus, the Russian Translation Corpus and the Italian Translation Corpus.*

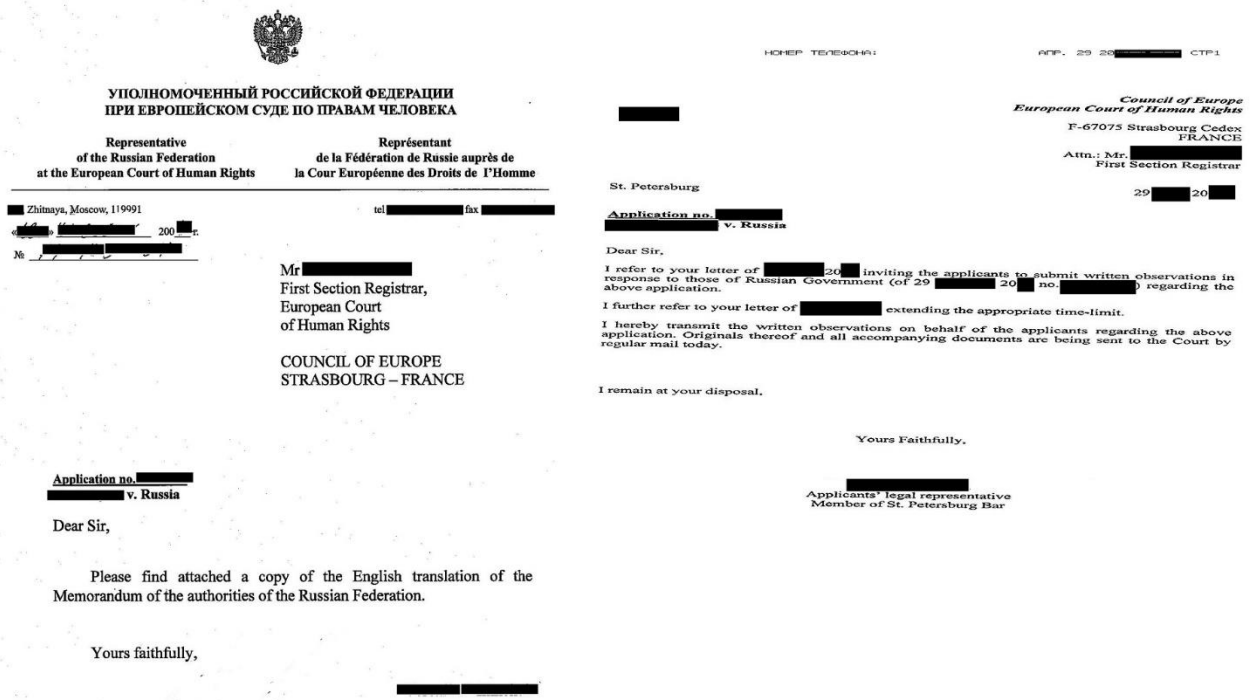
As emerges from the titles, written pleadings can be further subdivided into some subgenres – observations, additional or further observations, counterclaims and memoranda, however, the boundary between them, if any, is extremely blurred and not always clear to the legal professionals themselves. For instance, one pleading is labelled "Memorandum of the Russian Federation authorities", while in the starting phrase it is defined as "Further observations of the Russian Federation authorities". This does not correspond to the way these same documents are classified in the database of the ECtHR, where they are all referred to as "observations" ("OBS") and are divided only according to the producing party – the Government or the Applicant, generally abbreviated as "GVT OBS" or "APP OBS". The only additional element that is highlighted in the titles attributed by the ECtHR Registry is the presence of just satisfaction claims ("JS"), i.e. claims for pecuniary and non-pecuniary damages.

In addition to the above elements, the initial page often features other identification elements:

- Name, title and full address of the law firm / legal professional(s) representing the applicant(s), either added as a stamp or visible on the headed paper;
- Name, title and full address of the Agent representing the respondent Government, typically under form of letterhead;
- Name, title and full address of the person from the ECtHR Registry, who receives the pleading.

Often, a pleading has also an accompanying note that clarifies the translated nature of the following document or, however, refers to the fact that the pleading is solicited because unsolicited pleadings are generally not admitted to the case-file under Rule 38.1 of the Rules of Court.

(1) Please find attached a copy of the English translation of the Memorandum of the authorities of the Russian Federation. [RUTC]
(2) I send, on behalf of the plaintiffs, the observations concerning the above mentioned file and the attached four documents [ITTC].



УПОЛНОМОЧЕННЫЙ РОССИЙСКОЙ ФЕДЕРАЦИИ
ПРИ ЕВРОПЕЙСКОМ СУДЕ ПО ПРАВАМ ЧЕЛОВЕКА

Representative of the Russian Federation at the European Court of Human Rights

Représentant de la Fédération de Russie auprès de la Cour Européenne des Droits de l'Homme

Zhitnaya, Moscow, 119991 tel fax

Mr
First Section Registrar,
European Court
of Human Rights

COUNCIL OF EUROPE
STRASBOURG – FRANCE

Application no.
v. Russia

Dear Sir,

Please find attached a copy of the English translation of the Memorandum of the authorities of the Russian Federation.

Yours faithfully,

НОМЕР ТЕЛЕФОНА: СТР1

Council of Europe
European Court of Human Rights
F-67075 Strasbourg Cedex
FRANCE

Attn.: Mr.
First Section Registrar

St. Petersburg

Application no.
v. Russia

Dear Sir,

I refer to your letter of 20 inviting the applicants to submit written observations in response to those of Russian Government (of 29 20 no.) regarding the above application.

I further refer to your letter of extending the appropriate time-limit.

I hereby transmit the written observations on behalf of the applicants regarding the above application. Originals thereof and all accompanying documents are being sent to the Court by regular mail today.

I remain at your disposal,

Yours Faithfully,

Applicants' legal representative
Member of St. Petersburg Bar

Figure 2.5: *Samples of accompanying notes from the Russian Translation Corpus.*

For reasons of confidentiality, additional identifying information was eliminated from the quantitative analysis. When the accompanying note is structured as a separate letter as in the samples in Figure 2.5, these notes are excluded from the analysis, because they are optional, i.e. not all the texts in the corpora feature them, and they do not belong to the genre of written pleadings *strictu sensu.* Whereas if the accompanying phrase is inserted at the beginning of the pleading as in Table 2.3, it is considered an integral part of the observation and, thus, it is taken into consideration in the analysis.

2.5.4.2. Body text of a written pleading

The Practice Directions on written pleadings, issued as an integration to the Rules of Court, set out in Section 11 (f) and (g) specific requirements as to the content and form of the body part of written pleadings, which should

> (f) be divided into chapters and/or headings corresponding to the form and style of the Court's decisions and judgments ("Facts"/"Domestic law [and practice]"/"Complaints"/"Law"; the latter chapter should be followed by headings entitled "Preliminary objection on ...", "Alleged violation of Article ...", as the case may be);
> (g) place any answer to a question by the Court or to the other party's arguments under a separate heading;

Under the provisions of 11(f) and 11(g), most pleadings follow one or the other criterion, or combine both as illustrated by the tables below, which defines also their main communicative purpose.

Most documents number every single paragraph, however, there are some pleadings that omit this internal numbering and/or number only the subtitles. The numbering is usually consecutive, however, some pleadings start numbering anew at every section.

English Reference Corpus	
Government's Observations	**Applicant's Observations**

• INTRODUCTION
• [containing questions]
• PART I: THE FACTS
  o The applicant
  o The [name of the political party]
  o [name of the case]
• PART II: DOMESTIC LAW AND PRACTICE
• [subtitles referring to different sections and acts]
• PART III: THE ISSUES UNDER ARTICLE 35 OF THE CONVENTION
• PART IV: THE ISSUES UNDER ARTICLE 11 OF THE CONVENTION
• [subsections referring to specific notions of article 11]
• PART V: CONCLUSIONS
	• Introduction
	• Preamble
	• The applicants' legal advice: response to para. 3.18 of the Respondent's Observations
	• Witnesses and other evidence that the Applicants would have called: response to para. 3.15 of the Respondent's Observations
	• [with subsections]
	• Response to Respondent's summary of the facts – Part I of the Respondent's Observations
	• Relevant domestic law and practice [with subsections]
	• Substantive Issues Arising.
	• [subsections]
	• Conclusion

Italian Translation Corpus	
Government's Observations	**Applicant's Observations**

• Introduction
• Objectives of the reference to the grand chamber
• The law
  o The admissibility of the complaint alleging a violation of the reasonable time requirement
  o Substance
  o The fairness of the proceedings
  o The violation of article 1 of the first protocol (upsetting the fair balance)
• Just satisfaction
	• Receivability
	• On merit
	• Fair compensation: moral damages
	• CONCLUSIONS

Russian Translation Corpus	
Government's Observations	**Applicant's Observations**

• The circumstances of the case important for the proceedings
• Reasons why the present case should not be considered on the merits by the European Court, to the Government's opinion
• Facts
• Applicable legislation
• Analysis of grounds of the applicant and answers to questions of the European Court
• [questions, numbered and quoted entirely]
	• General Statements
	  o Application of Rule 54 A of the Rules of the Court
	  o Whether the application is well-founded and who shall carry the burden of proof
	• Applicants' position on the merits of the questions posed by the Court
	• [rephrased numbered questions, afterwards quoted entirely]

Table 2.4: *The body structure of written pleadings from the English Reference Corpus, the Italian Translation Corpus and the Russian Translation Corpus.*

The parties to the pleadings strive to achieve the most logical and coherent exposition of their points and employ a range of text-organising cohesion devices, which link the various parts of the observations.

(3) *Instead of* counterclaiming *with reference to* the *above-described* restriction *in view of* the expropriation and the white zone […] [ITTC, APPL OBS]
(4) *At the same time, although* the applicants may have "explicitly stated their wish […]" […], *that is*, to be returned to their point of departure, this fact could not, *in the Government's opinion*, be interpreted as a request for asylum. [ITTC, APPL OBS]
(5) The General Public Prosecutor's Office […] has guaranteed that criminal prosecution *in respect of* the applicant would be brought *in strict compliance with* the legislation of the Republic […]. [RUTC, GVT OBS]

(6) *First of all*, the Government of the Russian Federation consider necessary to determine the period of the applicant's deprivation of freedom *in the course of* the criminal procedure *in his regard*, which is *subject to* consideration by the European Court *from the point of view of* compliance with Article 5 § 3 of the Convention. [RUTC, GVT OBS]
(7) *For the purposes of* subsection (2)(d) "excluded conduct", *in relation to* an individual, means […]. [ENRC, GVT OBS]
(8) […] *whereby* trade unions should be able to exclude or expel at will, *provided that* they act *in accordance with* their own rules and do not cause loss of livelihood or other substantial penalty for the individual concerned […]. [ENRC, GVT OBS]

As highlighted above, these are typically complex connectives – complex prepositions (e.g. "with reference to", "in view of"), complex conjunctions (e.g. "that is", "provided that") and complex adverbs ("first of all", "from the point of view of"), which are realised by prepositional and nominal phrases resulting in a rather nominal style.

In general, the body part presents a great variety of content, depending on the case at stake. Usually, it presents both a narrative part, typically in the past tense, presenting the facts and argumentative elements aimed at explaining the propositions set forth in the final part. Frequently, at the end of each section, the pleading party presents a summary of their requests. Accordingly, these paragraphs commonly use performative utterances (e.g. with such verbal forms as "expect", "believe", "submit", see 6.2.3.3).

(9) By virtue of the consistency of the case-law of the Court and of the equal treatment of the States Parties to the Convention, the Government *expect* that the Court will apply to the present Italian case the same general principles and the same particular criteria of assessment that it employed in the […] cases referred to above; and that it will do so on the basis of the finding that the intervention of the legislature was necessary in order to meet pressing requirements of general interest and that it was therefore justified under Article 6 of the Convention, which, consequently, has not been infringed. [ITTC]
(10) Proceeding from the above mentioned, the Russian Federation authorities *believe* that, in the present case, there are no grounds for allegations about any violations of Article 2 of the Convention in its material and procedural aspects. [RUTC]
(11) On the hypothesis that the applicants have a right guaranteed by Article 6(1) to report public court proceedings (which is denied) it is *submitted* that the section 4(2) order does not contravene any such rights. [ENRC]

In light of the dialogic nature of written pleadings, their body part makes frequent recourse to different argumentative markers. It explicitly refers to the other party or the Court:

(12) Actually, *as this Honourable Court perfectly knows*, the applicants have no possibility of being compensated under national law […] [ITTC, APPL OBS]
(13) Taking note of this claim and *trusting to the Court's wisdom*, [the Government] hopes nonetheless that, in assessing the alleged "serious psychological suffering", account will be taken of the fact that the lives of all the applicants were saved through the intervention of the Italian authorities. [ITTC, GVT OBS]
(14) […] *it is, of course, for the Respondent to establish* that the policy change is relevant to this application and that it has made a difference in practice (and not just in theory) [ENRC, APPL OBS]

Every pleading, with greater or lesser elegance, deploys an array of evaluative adjectives and adverbials, as well as nouns with strong connotations expressing a certain stance on the part of the drafter, violating the alleged canon of neutrality in legal texts (cf. 2.2).

(15) Instead of counterclaiming with reference to the above-described restriction in view of the expropriation and the white zone, the Italian Government makes *the clumsy attempt of diverting the attention of this Honourable Court* from the subject of the application at issue. [ITTC, APPL OBS]

(16) From this perspective too, the application is *inadequate*. [ITTC, GVT OBS]
(17) In its application, the applicant has been *guilty of exaggerating* the effect of s. 174. [ENRC, GVT OBS]
(18) The applicants are *not correct to state* that the police officers were committing the crime of perverting the course of justice by watching the court proceedings in the RVR. [ENRC, GVT OBS]
(19) *It defies common sense for the Respondent to argue* that defamation cases such as the Applicants' are not complex. [ENRC, APPL OBS]
(20) […] it should be noted that *complete disregard* of the applicants' family life by the authorities is evidenced by their *blatantly inhumane* refusal for the first applicant to simply call the third applicant before being deported. […] *Without any reasonable justification*, simply due to indifference to one's *personal tragedy*, Russian migration officials deprived the first applicant of the opportunity to *say farewell* to *her dear one*, who was forced to inquire about the *fate* of his long-standing partner indirectly, through *much scared* minor K. [RUTC, APPL OBS]
(21) Besides, considering the absence of the body of the kidnapped A. or disclosure of *indubitable evidence* of the fact of death of the latter accepted as such, in the first place, by the domestic judicial instances, from the point of view of jurisdiction of the European Court it could have been *prematurely and inadmissible* to accept a *simple suggestion* of the applicant on death of her husband as an established fact. [RUTC, GVT OBS]

In general, the observations by the Applicants are more obvious in their use of evaluative and stance markers, also in view of the fact that they are written on behalf of natural persons by independent legal professionals. The observations by the Agents of the Government are undoubtedly less expressive and are definitely subtler in their lexical choices, as is illustrated in the examples above, yet they also demonstrate patterns expressing stance, evaluation and opinion, which confirm the dialogic nature of written pleadings.

2.5.4.3. Ending of a written pleading

The final part of the pleading is rather rigid in terms of structure and presents a variety of formulaic expressions. It typically contains ending formulae that express the position of the party and/or requests for further action based on the explanations and motivations from the body part, thus, resembling to a certain extent the textual genre of the judgment.

(22) For the reasons set out above, the Government invite the Court: to declare that the application is inadmissible for failure to exhaust domestic remedies, as required by Article 35§1 of the Convention; alternatively to declare that the application is inadmissible as being manifestly ill-founded; alternatively to decide on the merits of the case that there has been no breach of Article 11 of the Convention. [ENRC, GVT OBS]
(23) For the reasons set out above and in the applications, the applicants respectively invite the court to reject the conclusions drawn by the government at paras 4.1 and 4.2 of its observations [ENRC, APPL OBS].

The ending formula differs across the corpora. While in the English Reference Corpus it is "for the reasons set out above", the Italian Translation Corpus typically relies on a range of different expressions, such as "in the light of the foregoing [considerations]", "this being the case", "In sum … for all of the above reasons", with the former being the most widespread formula:

(24) In the light of the foregoing considerations, the Italian Government has the honour to ask the Court to dismiss the application as ill-founded. [ITTC, GVT OBS]
(25) In the light of the foregoing, the Italian Government have the honour of asking the Court to declare the application inadmissible or to dismiss it as manifestly ill-founded. [ITTC, GVT OBS]
(26) This being the case, the plaintiffs as represented and defended above, request that the European Court of Human Rights grants the following CONCLUSIONS […]. [ITTC, APPL OBS]

(27) In sum, the Government contends that […]. For all of the above reasons the Government asks that the application be dismissed.
(28) Taking into consideration the above observations, and also those on the admissibility and the merits of 9 April 2010, the Government asks the Court (a) to strike the case out of its list within the meaning of Article 37 § 1 (c) of the Convention; (b) to declare the application inadmissible or to dismiss it, in application of Article 35 § 4 of the Convention, as incompatible *ratione personae* with the provisions of the Convention, with the meaning of Article 35 § 3; (c) to dismiss the application as unfounded. [ITTC, GVT OBS]

The ending formula used by the Russian Government is more detailed and includes specific references to legal sources. In addition, it makes use of performative utterances with a verb in the 1st person singular as illustrated by examples below.

(29) *Proceeding from* the foregoing, representing the interests of the Russian Federation *in accordance with* the *Regulations* on the Representative of the Russian Federation at the European Court of Human Rights approved by Decree of the President of the Russian Federation no. 310, of 29 March 1998, I SUBMIT […], I REQUEST […]. [RUTC, GVT OBS]
(30) *By virtue of* the foregoing, representing the interests of the Russian Federation *according to* the *Provisions* on the Representative of the Russian Federation at the European Court of Human Rights, approved by *the* Decree of the President of the Russian Federation *dated* March 29, 1998 No. 310, I SUBMIT […], I ASK THE HONOURABLE COURT […]. [RUTC, GVT OBS]

Clearly, slightly divergent wording for the same specific contents of this formula may be interpreted as a sign of its translated nature.

The language of endings in various applicants' observations does not demonstrate a single fixed formula. Various formulae that are used there are generally comparable with the ending patterns in the Italian Translation Corpus.

(31) Relying on the afore-stated, the applicants respectfully request the Court to continue the consideration of their application and to adjudge and declare the violation by the Russian Federation of Articles 3, 5, 8, and 13 of the Convention and Article I of Protocol no.7 thereto in their respect, and to award just satisfaction as requested. [RUTC, APPL OBS]
(32) In light of the above, the applicants respectfully ask the European Court of Human Rights to find a violation of Articles 2, 3, 5,13 and potentially 38 of the Convention. [RUTC, APPL OBS]

Following Bhatia's (2014 [2004]: 27) definition, written observations present all the features of a specialised genre: they occur in a "conventionalised communicative setting" of the ECtHR, "give expression to a specific set of communicative goals", namely, to answer the ECtHR's questions on the admissibility and the merits of a case, and result in "stable structural forms" as prescribed by Rule 38 of the Rules of Court and the Practice Directions.

From the linguistic point of view, they use a range of prefabricated patterns and expressions, which are comparable along general lines with the traditional markers of legal language (cf. Sections 2.2 and 2.3) and deserve further investigation.

2.6. Phraseology and legal language

Legal style markers overviewed in the previous sections, apart from being all associated with the domain of law, have other striking points in common: they belong to the functional vocabulary, they are formulaic and they are predominantly multi-word units, with the exception of *shall*. However, even the latter has to be analysed in context of its collocates in order to understand its correct function in legal discourse (Garzone 1999: 139).

The recurrent and formulaic character of these markers and their multi-word composition make them perfect candidates to be analysed in the paradigm of legal phraseology (2.6.2), which has not received a lot of scholarly attention until recent (Goźdź-Roszkowski and Pontrandolfo 2015: 130; Biel 2015: 139; Kjær 2007: 506) but has been defined as particularly trying, especially for professional legal translators (Garzone 2007: 218-219). The following subsections overview general developments in phraseology (2.6.1) that paved the way for the instauration of legal phraseology (2.6.2), which is employed in this study as the analytical framework.

2.6.1. General considerations on phraseology

In their recent volume *Current Issues in Phraseology*, dedicated to the contributions of Michael Stubbs on the intersection of corpus linguistics and phraseology, Hoffmann *et al*. (2015: 1) define the latter "a clearly dynamic sub-discipline of linguistics" also because "much is still in the process of being discovered". This dynamic nature is also reflected in persisting terminological discrepancies concerning this discipline. The term *phraseology* itself can be understood in a twofold way. First, *phraseology* is a linguistic discipline that studies phraseological units (Kjær 1990b: 3; Cowie 1994: 3168). Second, phraseology also "denotes the inventory of phraseological word combinations in a specific language or sublanguage" (Kjær 1990b: 4). The underlying concept of a "phraseological word combination" (Kjær 1990b: 4) or a "unit or entity beyond the word" (Hoffmann *et al*. 2015: 1) is labelled in the relevant literature in a range of ways: "lexical bundle", "phrase", "phraseme", "cluster", "n-gram", "multi-word unit", "phraseological unit", "phraseologism", "collocation", "prefab", "pattern", "conventional expression", "set phrase", "formulae", etc[25]. In fact, Wray (2002: 9) even argues to replace the term *phraseological language* with *formulaic language* defining its object of study – *formulaic sequence* – as

> A sequence, continuous or discontinuous, or words or other meaning elements, which is, or appears to be prefabricated: that is, stored and retrieved whole from memory at the time of use, rather than being subject to generation or analysis by the language grammar (Wray 2002: 9).

This terminological inconsistency "with different terms covering the same units and the same terms used to denote quite different units" (Granger and Paquot 2008: 28), briefly exemplified above, contributes to the challenging fuzziness associated with phraseology (see below).

The foundation of phraseology as a separate branch of study is traditionally ascribed to the Russian scholar Vinogradov (1977 [1946], [1947]), who in his turn relied on Charles Bally's "Traité de stilistique française" (1909). Already in 1946 Vinogradov writes (1977 [1946]: 119, my translation) about the fledging nature of this discipline:

[25] Cowie (1998: 4) provides a list of labels used for "word-like" and "sentence-like" combinations. An overview of terms employed in the relevant literature on phraseology is also found in Wray (2002: 9) and a number of other scholars. Pontrandolfo (2013: 68) gives such an overview dividing the terms by the national context where they are used: Hispanic, Italian and Anglo-American.

> Indefiniteness of borders, goals and main categories of phraseology is an obstacle for a free and independent development of this discipline. The word "phrase" is the least appropriate to be considered a term with a stable and clear meaning. Its use in linguistics is very wide-ranging and fluctuating[26].

Seventy years later, Granger and Paquot (2008: 27) commenting on the recent ascent of phraseology "as a field in its own right" reassert Vinogradov's affirmation above in a very similar way. They claim that phraseology is a challenging field and its study is stalled by two main factors, namely "the highly variable and wide-ranging scope of the field on the one hand and on the other, the vast and confusing terminology associated with it". Likewise, Cowie (1998: 1) acknowledges that phraseology "has now become the major field of pure and applied research for Western linguists" following the long-standing tradition and research by the scholars of the former Soviet Union.

The spread of phraseology has blurred its margins, and there is a clear need for classification criteria in order to decide what can be perceived as a phraseological construct and what has to remain outside the scope of phraseology (Gries 2008: 4). In general, there are two distinct approaches to phraseology. The first is a direct descendent of the Russian phraseological tradition (Vinogradov 1946, 1947; Amosova 1963; Mel'čuk 1998), i.e. the *phraseological approach* (Nesselhauf 2004; Granger and Paquot 2008: 29), which presumes a set of linguistic criteria to define the various types of phraseological units considering their degree of transparency and variability. The phraseological approach places at the core of its attention idioms with non-transparent structure (Gläser 1998: 126), the single elements of which cannot be used to guess the general meaning following the so-called *principle of non-compositionality* (Mel'čuk 1998: 24). A more recent and rather opposite approach is based on a bottom-up inductive and corpus-driven analysis of co-occurrences and is based on Sinclair's (1987) ground-breaking lexicographic work (Granger and Paquot 2008: 29). It is labelled either *distributional approach* (Evert 2004) or *frequency-based approach* (Nesselhauf 2004). The emphasis of analysis within this approach falls upon a different variety of phraseological units, following Sinclair's *idiom principle* (1991), thus pushing the demarcation line of what can be considered a phraseological unit farther "into the zone previously thought of as free" (Cowie 1998: 20) and making the borders of phraseology even fuzzier. According to this approach, the meaning of a phraseological unit is extended in that it is set by contextual patterning and semantic preferences (Sinclair 1996). The distributional approach also takes into account matters of lexico-grammar (Granger and Paquot 2008: 34), thus making its applications more varied. In fact, modern *corpus linguistics phraseology* is commonly referred to as *frequency-driven phraseology* or *distributional phraseology* (Goźdź-Roszkowski and Pontrandolfo 2015: 131) to mark a variety of possible study directions, including but not limited to the distributional patterns, structure, functions and use of phraseological units.

In general, cross-fertilisation of phraseology and other fields has been rather successful because phraseology intertwines inputs from four disciplines: semantics, morphology, syntax and discourse as Figure 2.6 demonstrates (Granger and Paquot 2008: 30).

[26] Неопределенность границ, целей и основных категорий фразеологии мешает этой дисциплине свободно и самостоятельно развиваться. Слово «фраза» меньше всего может быть признано термином с устойчивым и ясным значением. Его применение в лингвистике очень разнообразно и текуче.

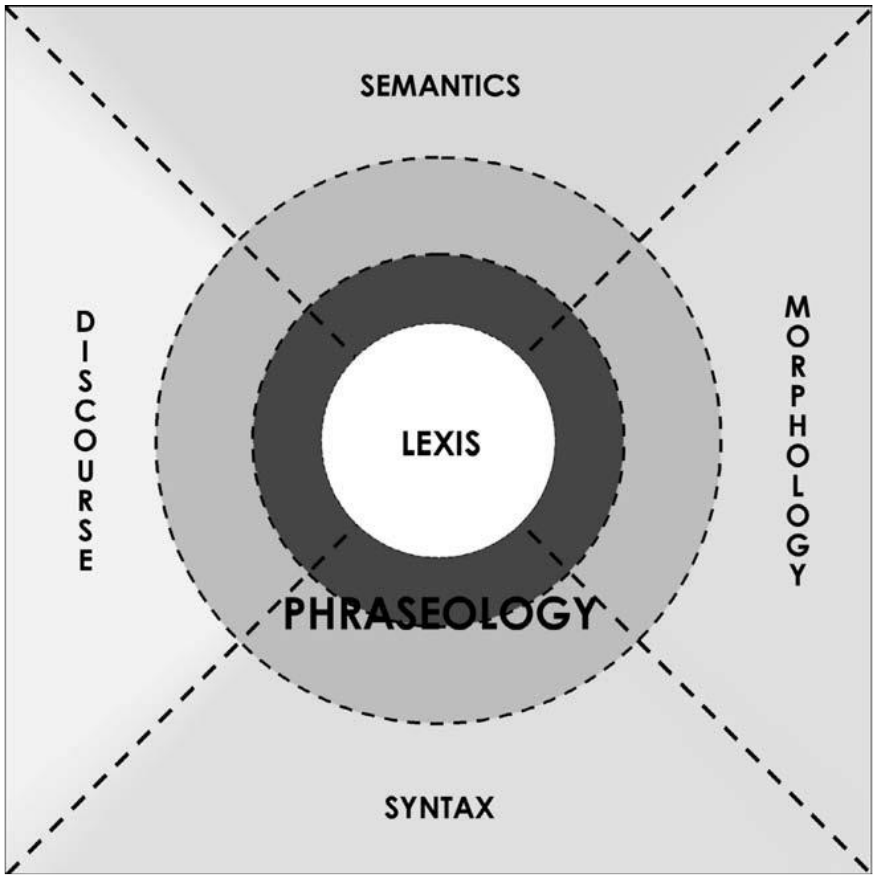


Figure 2.6: *Phraseology wide and narrow* (Granger and Paquot 2008: 30)

In fact, the early studies of phraseology by the semanticists placed the value of *meaning* at the core of this discipline. The notion of meaning remained central also after the application of corpus linguistics' methods to phraseology. Yet, the understanding of meaning has changed. Whereas the classical linguistic studies operated with such concepts as non-compositionality of meaning, based on the impossibility to infer the overall meaning from the sum of the meanings of composites, the distributional approach has extended the understanding of meaning to a contextual combination,

> […] where collocational and colligational patterning (lexical and grammatical choices respectively) are intertwined to build up a multi-word unit with a specific semantic preference, associating the formal patterning with a semantic field, and an identifiable semantic prosody, performing an attitudinal and pragmatic function in the discourse (Tognini-Bonelli 2002: 79).

As for the discursive dimension, which deals with structuring discourse in terms of larger linguistic units, there are also numerous links to phraseology. Traditionally, the emphasis is placed on the interactional character of "formulae" and "routines" (Cowie 1988; Mel'čuk 1998) and their links to pragmatics. The distributional approach studies text-organising phraseological units under this perspective, shifting the focus from pragmatics to stylistics. A number of studies underline the recurrent character of stylistically marked co-occurrences that constitute a "preferred" way of expression (Biber *et al*. 1999; Altenberg 1998; De Cock 2004). Legal routines or legal style markers identified in Section 2.3 belong to the intersection of discourse studies and phraseology in the sense brought to the fore by the distributional phraseological approach.

As for the connection to morphology, this link concerns primarily the multi-word structure of the phraseological units, which are frequently referred to as "multi-word units". Traditionally, polylexicality is considered among the essential conditions for inclusion in the phraseological inventory (Granger and Paquot 2008: 32; also Gross 1996; Mejri 2005). However, since the notion of *word* has demonstrated a margin of fuzziness, especially with regard to compounds (open,

hyphenated or solid), both morphological and phraseological approaches are exhibiting arbitrary and not always consistent taxonomies. Along with the matter of inconsistencies with regard to compounds, the categories of complex prepositions, complex adverbs and complex conjunctions present equal challenges, although these categories "are generally either totally disregarded or regarded as minor" (Granger and Paquot 2008: 32-33). Burger *et al*. (2007: xii) note that from a contrastive linguistic point of view the link between phraseology and morphology is of a particular interest, "since this relationship manifests itself in different ways from one language system to the other." Hence, the authors advocate against drawing a definite line between the two fields.

Last but not least, phraseology has important links to syntax. Vinogradov (1946, 1947) who worked on linguistic questions from a variety of angles, placed his works on phraseology among his grammatico-syntactical studies although he started from a more morphological standpoint (Kostomarov 1977: 5). In practice, a whole layer of functional phraseology, i.e. those items that are used as linking devices, depends on the valency patterns that deal with mandatory and optional arguments of words, "i.e. the syntactic constraints on the use of lexis or, to use Woolard's (2000: 45) term, the 'grammatical signatures' of words" (Granger and Paquot 2008: 33). In general terms, the problematic aspect that emerges with respect to the interaction of syntax and phraseology is the degree of fixedness and syntactic variation allowed to phraseological units. While the traditional view does not tolerate variation, recent research (Moon 1998; Svensson 2002) proves that fixedness has ceased to be a strict discriminatory yardstick and has become instead more of a recommended indicator. With regard to this study and the translational nature of the texts that are being analysed, it seems appropriate and in line with recent tendencies to admit some reasonable syntactic variation in the phraseological units under analysis.

2.6.1.1. Classifications of phraseological units in general language

Starting from the beginnings of phraseology as a discipline, scholars were coming up with different categorisations and taxonomies. Many of them are intended for lexicological or lexicographic uses (Gläser 1986; Cowie 1988; Moon 1998), although there are some designed for different purposes. The foreign language learning perspective is gaining more weight (Lewis 1993; Granger and Meunier 2008) along with the traditional combination of construction grammar and psycholinguistics (Wray 2002).

In line with multiple common points identified between phraseology and other disciplines, the classification systems of phraseological units may be grouped according to their dominating characteristic.

Most linguists who have undertaken the arduous task of phraseological classifications, distinguish between the macro-categories of "word-like" and "sentence-like" phraseological units based on the level, where these units function (adapted from Cowie 1998 and Granger and Paquot 2008). The former function at or below the sentence level and are referred to as "nominations" (Gläser 1988; 1994/1995; 1998: 126-128), "composites" (Cowie 1988), "semantic phrasemes" (Mel'čuk 1988), "composite units" (Howarth 1996), "nominatives" (Burger 1998). The latter "function pragmatically as sayings, catchphrases, and conversational formulae" (Cowie 1998: 4) and are labelled "propositions" (Gläser 1988), "functional expressions" (Cowie 1988; Howarth 1996), "pragmatemes" (Mel'čuk 1988) or "propositional" (Burger 1998) phraseological units.

The "word-like" phraseological units are subdivided into further subtypes according to their degree of opacity and fixedness. In general, these classifications are aligned with Vinogradov's classical subdivision into "fusions" (*сращения*), "unities" (*единства*) and "combinations" (*сочетания*), although Amosova (1963) and Gläser (1988) do not differentiate between the former two categories.

Author	**Semantically opaque and invariable phraseological unit**	**Phraseological unit with a partially transparent (motivated) meaning**	**Phraseologically bound unit**
Vinogradov (1946; 1947)	*Phraseological fusion*	*Phraseological unity*	*Phraseological combination*
Amosova (1963)	*Idiom*	*Idiom*	*Phraseme or phraseoloid*
Cowie (1981)	*Pure idiom*	*Figurative idiom*	*Restricted collocation*
Gläser (1988)	*Idiom*	*Idiom*	*Restricted collocation*
Howarth (1996)	*Pure idiom*	*Figurative idiom*	*Restricted collocation*
Mel'čuk (1998)	*Idiom or full phraseme*	*Quasi-idiom or quasi-phraseme*	*Collocation or semi-phraseme*

Table 2.5: *Phraseological units that function at or below the sentence level.*

Traditionally, the focus of general phraseology has been centred on the first two groups (Granger and Paquot 2008: 28), leaving the third group generally at the periphery of phraseological studies. A notable exception is Igor Mel'čuk's (1988; 1995; 1998) work on collocations within the Meaning-Text Theory. Mel'čuk (1998: 24) places collocations at the centre of his research in that they "make up the lion's share of the phraseme inventory, and thus deserve our special attention". Although he operates with the classical subdivisions described in Table 2.5, he proposes to apply the apparatus of lexical functions (cf. Mel'čuk 1998: 32) to the study of collocations to explain lexical preferences, i.e. "a very general and abstract meaning that can be expressed in a large variety of ways depending on the lexical unit to which this meaning applies" (Mel'čuk 1995: 186).

While Mel'čuk's functions are "readily amenable to a description via the concept of function in the mathematical sense" (1998: 34), Burger (1998) proposes a more linguistically-oriented functional subdivision at a macro-level consisting in *referential units*, *communicative units* and *structural units*. The referential phraseological units are subdivided into word-like (*nominative*) and sentence-like (*propositional*) phraseological units in line with the Russian phraseological tradition. The communicative units perform an interactional function and are "typically used as text controllers to initiate, maintain and close a conversation or to signal the attitude of the addressor" (Granger and Paquot 2008: 38). Although Burger (1998: 37, cf. Granger and Paquot 2008: 38) introduces a new category of structural phraseological units that express grammatical relations (e.g. "as well … as"), he generally places it at the fringe of his study.

Burger's third group, which is particularly relevant for this work and which was unfortunately largely disregarded by classical phraseological studies, received a new input with the advent of corpus linguistics and the focus on patterns, including collocations, multi-word lexical units and lexical bundles (Granger and Paquot 2008: 28-32; Biel 2015: 139). In late 2000s, Granger and Paquot (2008: 38) claim that generally the corpus-driven phraseology has not produced rigorous linguistic categorisations. For the scholars, the merit of this approach lies in the widening of the research horizon and in the application of innovative quantitative methods that can be subdivided as follows.

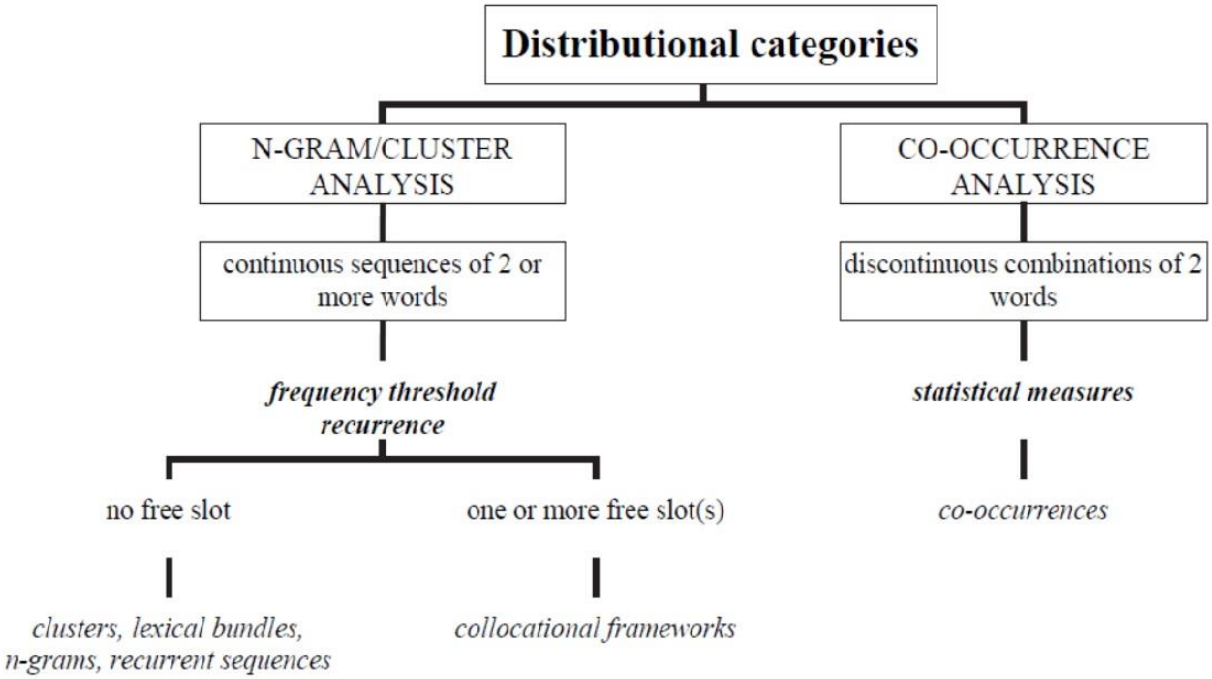


Figure 2.7: *Distributional categories as summarised by Granger and Paquot (2008: 39).*

As Figure 2.7 shows, the main distinction in the distributional approach concerns the retrieval mechanism of recurrent patterns, which is either based on n-gram/cluster software or the analysis of co-occurrences. *N-grams* or *n-clusters* are understood as uninterrupted sequences of word forms, with the higher value of *n* usually set at five (Gries 2008: 20). The subcategory of *collocational frameworks* (Renouf and Sinclair 1991:128) or *phrase-frames* (Stubbs 2007), i.e. multi-word sequences with a single or multiple free slots within, e.g. "in ? of", "with ? to", is specifically relevant for this study . *Co-occurrence* analysis studies the significant collocates of a given token, based on the set filters and statistical measures.

Within the distributional approach the phraseological, or multi-word, unit is understood as

> the co-occurrence of a form or a lemma of a lexical item and one or more additional linguistic elements of various kinds which functions as one semantic unit in a clause or sentence and whose frequency of co-occurrence is larger than expected on the basis of chance (Gries 2008: 6).

Gries further explains that such a definition covers the multi-word co-occurrence phenomena at the *syntax-lexis interface* because it imposes the presence of at least one lexical element in the unit (Gries 2008: 8).

Granger and Paquot (2008: 41) propose to reconcile the two approaches to the mutual benefit of the scholars working in each of them, with a reserve that "a clear distinction between two typologies: one for automated extraction and one for linguistic analysis" is needed.

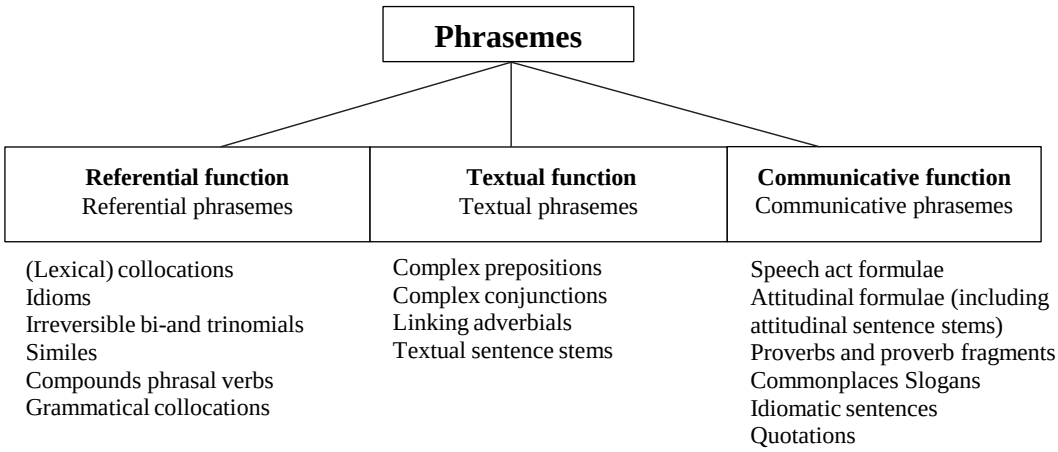


Figure 2.8: *Granger and Paquot's (2008: 42) phraseological spectrum*.

Granger and Paquot's model is an extended version of Burger's (1998) classification with division into three main categories: referential phrasemes, textual phrasemes (an extension of Burger's "structural phrasemes") and communicative phrasemes. In their classification, the scholars label *referential phrasemes* those units that convey a "content message: they refer to objects, phenomena or real-life facts". For instance, legal binomials and multinomials, such as "[freedom] of thought, conscience and religion" [ITTC], would fall under this category, although as discussed in Subsection 2.4.4, irreversibility is treated here not as a fixed benchmark but rather as a continuum.

Textual phrasemes are items that structure and organise the content providing the reader with referential information of a given text type in a specific discourse. These include grammaticalised complex connectives, such as complex prepositions and complex conjunctions, linking adverbials and textual sentence stems (Granger and Paquot 2008: 42), which are discussed in 2.4.1 and 2.4.2.

The last category, *communicative phrasemes*, are those items that are "used to express feelings or beliefs towards a propositional content or to explicitly address interlocutors, either to focus their attention, include them as discourse participants or influence them" (Granger and Paquot 2008: 42). While this category deviates from the linguistic approach towards a more rhetorical perspective here, given the explicitly dialogic nature of written pleadings (see 2.5.4) and their hybrid composition that allows stance expression, this category also deserves further attention.

2.6.2. Legal phraseology

Even though the interaction between law and language has been described by both linguists and lawyers, with enumerations of various features that are to be considered typical of the language of the law, legal phraseology until recently remained a field that received little attention (Goźdź-Roszkowski and Pontrandolfo 2015: 130; Biel 2015: 139), as most studies of legal language revolved around terminological issues. However, the terminological perspective gave an invaluable input to the development of research studies of legal phraseology launching a number of stimulating interdisciplinary studies that joined phraseology and semantics (synonymy, antonymy) for terminological purposes (Rogers and Wright 2006: 114), or included the study of grammatical and lexical collocations and maxims of law for legal terminography (Tessuto 2008: 293).

Legal phraseology is not seldom classified as a subfield of specialised phraseology in line with the affirmation that legal language is a (sub)language for special purposes. This field has been also marked by terminological fuzziness and overlaps, starting from its denomination that ranges from *LSP phraseology* (Picht 1987; Kjær 1990) to *specialised phraseology* (*fraseologia specializzata*, Lombardi 2004) and then according to the domain of specialisation, e.g. *legal phraseology*, *medical phraseology*, etc. The object of study in specialised phraseology is defined as *LSP phrase* (Picht

1987), *LSP phraseme* (Kjær 1990), *terminological phrase* (Kjær 1990, Thomas 1993), *terminological phraseme* (Meyer and Mackintosh 1996), *multi-word terminological phrase* (Bergenholtz and Tarp 1995), *tecnicismo collaterale* (Mortara Garavelli 2001; Serianni 2003).

While LSP phraseology has gained popularity in academic circles in recent years (Burger 2003: 48)[27], it is still placed at the periphery of phraseological studies (Kjær 2007: 2006) because LSP phraseological units usually figure in most general descriptions as *multi-word terms*, and are "either dismissed as not being phraseological at all (Fleischer 1997: 251) or left undescribed (Burger 2003: 165)" (Kjær 2007: 507).

2.6.2.1. Classifications in legal phraseology

The ground-breaking work in legal phraseology as a separate field of study belongs to Anne Lise Kjær and her landmark paper of 1990. Kjær (1990a) investigates legal phraseological units (although paradoxically still calling them *LSP phrasemes*) in terms of the legal effects inherent in certain formulaic patterns. According to her, violation of such patterning leads to the "invalidation of the whole text of which they form a part" (Kjær 1990a: 28). The novelty of her research concerns its focus on the correlation between the legal effects and the intrinsic restrictive impact on the choice of legal word combinations. She posits that in legal language the stability of phraseological units "is caused not by their meaning, but by language external factors such as the formal requirements relevant for legal texts, and their legal effect" (Kjær 1990a: 21). This statement echoes Crystal and Davy's observation in 1969: "Certain things must be said in certain ways for fear of seeming to misrepresent the law, and before they may be said differently the law itself must often consent" (1969: 214). Respectively, Kjær argues the existence of the following phraseological categories.

Phraseological unit	**Commentary**
prefabricated word combinations directly prescribed by law	If not employed, they lead to the invalidation of the whole document.
word combinations only indirectly prescribed by law	If varied, the whole text will not be deemed invalid but its interpretation can be compromised.
word combinations recommended for reasons of unambiguity	Based on implicit quotations from other texts, which are used to guarantee legal certainty
habitually routine phrases	Variation entail more time to process the meaning but has no legal effects.

Table 2.6: *Kjær's (1990a: 28-29) model of norm-conditioned word combinations*

Undoubtedly innovative and highly specialised, Kjær's approach was organised exclusively along the cline of legal effects and did not consider linguistic categories. Kjær's classification also has the drawback of not being applicable to the language of the law as such, comprising all legal genres.

Acknowledging the arrival of the mainstream Corpus Linguistics that paved the way for new interdisciplinary perspectives on phraseology and made "obsolete" the "centre – periphery model" described by most classical studies, shifting the core analysis from idioms to "the transparent, 'more or less' stable and 'more or less' restricted word combinations that are characteristic of LSP texts" (Kjær 2007: 508), Kjær updates her statements and advances a more general term-based typology (Kjær 2007: 509-510).

(1) multi-word terms, with the most productive pattern [Adjective + Noun];
    a. Latin multi-word terms, e.g. *ex officio*
(2) collocations with a term;

[27] Kjaer (2007: 506) gives an overview of publications concerned with different subfields of specialised phraseology: the language of medicine (Müller 1993), economics (Duhme 1991, Stolze 1994, Delplanque 1997, Gühnter 2003, Tognini-Bonelli 2002), computer science (Rothkegel 1997), science and economics (Ulfborg (forthcoming)), law (Kjær 1990a, 1991, 1992, 1994, Gautier 1999, Wirrer 2001, Eckardt 2002, Bonfort-Bernuit (2003), Seifert 2004), European law & politics (Rothkegel 1989, Cohen 2003, Gréciano 2004), and politics (Elspaß 2000).

a. LSP phrases (*Fachwendungen*): [Noun + Verb]
b. Support Verb Construction (*Funktionsverbgefge*): [(Preposition) + Noun +Verb]

(3) formulaic expressions and standard phrases, including
a. binomials ("word phrase patterns consisting of two words belonging to the same word class, connected by a conjunction") and
b. phrasemes with archaic words or word forms.

When Kjær intentionally operates with purely linguistic concepts, she stresses that they are not sufficient to understand the intricate relation between language and law. Hence she reiterates the necessity to study legal phraseology from an interdisciplinary perspective, adding a sociological and a legal viewpoint to a purely linguistic standpoint. To Kjær, the "stereotypical or routine" nature of certain legal phraseological units derives from "legal constraints bearing on language users in the field of law", while their stability is produced by "the very functioning of law as a social system", both being important norm-conditioned extra-linguistic factors to take into consideration (Kjær 2007: 511). As she did in her 1990's paper, when she introduced the four-level scale of legal constraint on the choice of words (see Kjær's 1990 model of context-conditioned word combinations), in 2007 Kjær also mentions the sociolinguistic implications of the language of the law that is an expression of a law as a system.

Drawing on both classifications advanced by Kjær (1990a; 2007), Biel (2014b: 178-182) proposes another linguistic classification, which is organised as "a phraseological continuum with fuzzy boundaries between each category" (Biel 2014b: 178).

Name of the phraseological unit	**Description / definition**	**Examples**
text-organising patterns	Repetitive global textual patterns which are often prescribed in drafting guidelines.	*THE COMMISSION OF THE EUROPEAN COMMUNITIES,* *Having regard to the Treaty,* *Having regard to …,* *(Acting in accordance with …)* *Whereas: […]* *HAS ADOPTED THIS REGULATION:*
grammatical patterns	Genre-specific recurrent grammatical patterns.	*The fishing quota allocated to the Member State …shall be deemed to be exhausted from the date set out in that Annex.*
term-forming patterns (multi-word terms)	Collocates of a generic term which form more specific multi-word terms of varying degrees of terminologicality.	*registered office* *European public limited-liability company* *cross-border merger of limited liability companies* *merger by the formation of a new company* *share exchange ratio* *common draft terms of cross-border merger* *persons acting in concert*
term-embedding collocations	Collocates of terms which embed terms in cognitive scripts and the text, evidencing combinatory properties of terms. […] They establish links between terms and elements of conceptual frames. […] Subtype-denoting collocations are often subject to terminologisation and form distinct terms.	*to hold shares* *company being dissolved without going into liquidation* *to confer the right to vote* *to vote at a general meeting* *to acquire a company* *pro-rata issue of securities* *judgment declaring a merger void* *the proper completion of the pre-merger acts and formalities*

Name of the phraseological unit	Description / definition	Examples
lexical collocations	Routine formulae at the microstructural level which are not built around terms.	*Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93* *In accordance with the procedure referred to in Article 25(2) of Regulation (EC) No 1784/2003* *Subject to this Regulation* *Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 …*

Table 2.7: *Biel's (2014b: 178-182) phraseological continuum in legal language.*

For Biel (2014b: 178) the first category of text-organising patterns includes titles, enacting, amending and closing formulae, transitions. This category would include the prefabricated opening and closing formulae in the pleadings at the ECtHR (cf. Section 2.5.4), which I repeat below with the numbering used in Section 2.5.4:

> (23) *For the reasons set out above* and in the applications, the applicants respectively invite the court to reject the conclusions drawn by the government at paras 4.1 and 4.2 of its observations [ENRC, APPL OBS].
> (24) *In the light of the foregoing* considerations, the Italian Government has the honour to ask the Court to dismiss the application as ill-founded. [ITTC, GVT OBS]
> (30) *By virtue of the foregoing*, representing the interests of the Russian Federation according to the Provisions on the Representative of the Russian Federation at the European Court of Human Rights, approved by the Decree of the President of the Russian Federation dated March 29, 1998 No. 310, I SUBMIT […]. [RUTC, GVT OBS]

The second category of grammatical patterns includes "patterns and lexical bundles which express deontic modality (*shall, must, should, may*), *if-then* mental models of legal reasoning and other conditional clauses (*if, in the event that, in case, unless, otherwise, provided that*), purpose clauses (*with a view to –ing, in order to, to this end*), the passive voice and other impersonal structures." (Biel 2014b: 179), which is also widely represented in the corpus under analysis (for a brief overview see Section 2.3 or Chapter 5 and Section 6.3).

Term-forming patterns, or multi-word terms (cf. Kjær 2007), are characterised by the compositional meaning, which is however "transparent and analysable" (Biel 2014b: 180). The most productive patterns of this category are [Adj + N] and [N + N], but more complex and lengthy structures are also frequent. This category can be represented by the multi-word terms "contracting parties", "written pleadings", "fair trial", "relinquishment of jurisdiction", etc.

Term-embedding collocations are generally organised around the prototypical structure [N_{term}+V] or in the reverse order [V+N_{term}], and denote actions that are possible to undertake with the base noun. These collocations "form the skeleton of legal rules by providing action and enabling terms to enter into relations" (Biel 2014b: 180), for instance, "to claim non-pecuniary damages", "to claim just satisfaction" [RUTC], "to hold shares", "judgment declaring a merger void" (Biel 2014b: 181), etc.

The last category of lexical collocations "include in particular inter/intratextual referential patterns, such as collocates of editing units, other recurrent patterns referred to by Bhatia as qualifications (cf. 2006: 2) and non-terminological lexical bundles" (Biel 2014b: 181). Biel focuses her research on this category, which she defines as understudied in general phraseology (2014b: 181). She posits that in contrast to other domains, lexical collocations are indexical of legal language and more system-bound (*to register articles of association* (UK) versus *to file articles of incorporation* (US), and generally are characterised by

- lower variation and synonymy than in other LSPs combined with increased stability due to institutional standardization and the prescribed hierarchy of terminological and phraseological choices imposed by higher-ranking statutes;
- fixedness of legal collocations with limited substitutability of constituents; and
- lower importance of frequency in the case of term-embedding collocations which are sanctioned by law (Biel 2014b: 182).

In terms of application of corpus linguistics to legal phraseology and a subsequent classification of legal phrasemes, contributions by Goźdź-Roszkowski (2011), Kopaczyk (2013), Pontrandolfo (2013), Breeze (2013) and Goźdź-Roszkowski and Pontrandolfo (2015) are also to be mentioned.

A remarkable classification of legal lexical bundles inspired by Biber's (2006) work is proposed by Breeze (2013). She analyses lexical bundles across four legal genres: legislation, legal academic writing, case law and legal documents and extends Biber's (2006) classification of lexical bundles in academic writing through an exploratory approach to include the investigation of content-related phrases (Breeze 2013: 234).

Type	**Subtypes**		**Examples**
Stance expressions	*Personal epistemic* (cf. "epistemic stance expressions" in Biber 2006: 150-151). i.e. those lexical bundles that establish a frame filled in by a proposition (Breeze 2013: 245)		*It seems to me* *I do not consider*
	Impersonal deontic, or *regulatives*, which "provide frames for stating obligations or commitments, expressed mainly through the modal *shall*, or for indicating permission, using *may*" (Breeze 2013: 245)		*Shall be deemed to* *Shall be entitled to* *May apply to the*
Text-organising expressions	*Discourse organisers*, i.e. those bundles that serve to introduce or clarify a topic		*If we look at* *On the other hand*
	Textual navigation expressions, i.e. those bundles that represent textual instructions.		*Contained herein is to* *As set forth in* *Except as otherwise provided*
	Conditional expressions		*If default is made* *Fails to comply with*
Referential expressions	*Content reference*	Agents (incl. people and institutions)	*secretary of the board* of *directors of the* *Company* *The board of directors* *The Court of Appeal*
		Documents (incl. legislation, contracts, sections or clauses of documents)	*The choice of law clauses* *The certificate of incorporation*
		Abstracts (consent, obligations, rights, requirements)	*Ordinary course of business* *Contractual choice of law*
		Dates (dates and times)	*Date of this agreement*
	Non-content reference	Intangible framing attributes (cf. Biber 2006: 159) "qualify or otherwise call attention to a specific aspect of the noun that follows" (Breeze 2013: 249)	*the nature of the* *the terms of the*

Table 2.8: *Breeze's (2013) classification of legal lexical bundles.*

Breeze (2013) differentiates between three large categories, in line with Biber (2006) in academic domain and Goźdź-Roszkowski (2011) in legal domain (see below). These categories include (1) *stance expressions* (including both personal epistemic and impersonal deontic phrases), (2) *text-organising expressions* (including discourse organisers, textual navigation expressions and conditional expressions) and (3) *referential expressions*, subdividing the latter into *content* and *non-content* reference phrases ("intangible framing attributes" after Biber (2006: 159), such as complex prepositions). The so-called *content phrases* (adopted after Pecorari 2009), i.e. phrases referring to the specific content of a document, were among the most statistically relevant groups of bundles across the four legal genres. These are further classified into *agents* (people, institutions), *documents* (legislation, contracts, sections or clauses of documents), *dates* (dates and times), *actions* (measures, convictions, mergers) and *abstract concepts* (consent, obligations, rights, requirements) (Breeze 2013: 235).

Goźdź-Roszkowski (2011: 117-142) also adopts Biber's (2006) classification of lexical bundles in academic prose and adapts it to legal discourse. He identifies three major categories of legal lexical bundles according to their discoursal functions: referential, textual and stance.

Type	**Definition**	**Subtypes**
Legal reference bundles	make direct reference to abstract or physical objects in the world of law: its institutions, instruments, concepts, processes, etc. (2011: 117)	• *temporal bundles* referring to particular points in time, • *location bundles* the function of which is to mark places or locations; • *attributive bundles* which describe legal entities, concepts, instruments and processes by specifying their attributes; • *participative bundles* signalling the role performed by various participants or parties in a legal process; • *institutional bundles* referring to legal instruments and entities (such as, for instance, courts, government agencies, corporations, constitutional amendments, etc.); • *domain-specific terminological bundles* denoting nominal term phraseology (e.g. *a breach of contract, right of first refusal*) and finally • *procedure-related bundles* indicating verbal expressions used to effect a particular legal act. (2011: 119)
Text-oriented bundles	signal relationships between different textual segments (2011: 117).	• bundles expressing *conditions,* • bundles related to *topic elaboration* or *clarification*, • *focus* bundles which provide overt signals to the reader that a new issue is being introduced, • bundles which *frame* arguments by specifying limiting conditions for making assertions, claims or arguments, • bundles highlighting the *results* of an analysis, • *structuring* bundles which are used to organize the text and finally, • *transition* bundles marking links between preceding and subsequent textual segments. (2011: 129)
Stance bundles	express different attitudes or assessments (2011: 117).	• *epistemic* stance bundles are used to signal writer comments on the knowledge status of the information contained in the following proposition. Such status can be expressed as certain, uncertain, probable, possible, etc. (2011: 138) • *Attitudinal* stance bundles express speaker/writer's attitudes towards the actions or events described in the following proposition (2011: 139).

Table 2.9: *Goźdź-Roszkowski's (2011: 117-142) classification of legal lexical bundles.*

The general setting of Goźdź-Roszkowski's classification, which is tailored for legal phraseology, resembles Granger and Paquot's (2008: 42) taxonomy for general phraseology as it operates with similar macro-concepts: *referential*, *textual* and *communicative* (Granger and Paquot 2008: 42) vs. *referential*, *textual* and *stance* (Goźdź-Roszkowski 2011: 139). However, while Goźdź-Roszkowski proceeds his taxonomy with further functional subdivisions, Granger and Paquot propose a mixed selection criterion distinguishing subtypes either by their morphological properties (e.g. complex prepositions, linking adverbs, complex conjunctions) or by their function (attitudinal formulae, quotations).

From the structural point of view, Goźdź-Roszkowski adopts the taxonomy model of Biber *et al*. (1999: 1002-1023) for general distributional phraseology and identifies nine most recurrent structural patterns in legal genres (2011: 113-114, original emphasis).

- **noun phrase with *of*-phrase fragment:**

e.g. *the amount of the, any portion of the, the nature of the*

- **noun phrase with other post-modifier fragment:**

e.g. *the extent to which, date on which the, summary judgment on the*

- **prepositional phrase expressions:**

e.g. *at the request of, to the benefit of, on the part of, of the parties hereto*

- **verb phrase with passive verb**

e.g. *shall be entitled to, is amended by striking, shall not be treated as, the case is remanded, this Act may be cited as,*

- **verb phrase with active verb**

e.g. *shall be in writing, does not apply to,*

- **anticipatory *it* + verb phrase (usually passive)**

e.g. *it is so ordered, it was held that,*

- **adverbial clause fragments**

e.g. *as defined in section, as provided in section, if the contract is,*

- **(verb/adjective+) *to*-clause fragment**

e.g. *to meet the requirements, to carry out the,*

- **(verb phrase +) *that*-clause fragments**

e.g. *that it is not, that there was no, that there is no, the court noted that, the court found that,*

Goźdź-Roszkowski asserts that this list is not exhaustive and additional smaller categories can emerge upon the analysis of specific legal genres. However, he traces a general tendency towards phrasal constructions. According to his cross-genre analysis, nominal and prepositional phrases "account for over 80% of all bundles" in most legal genres (2011: 114). In fact, prepositional phrases are the most recurrent structure that amounts to one third of all phraseological units, while nominal *of*-phrases account for over a quarter of all bundles (2011: 115).

The legal style markers are traditionally described by their morphological structure. However, the criterion of discoursal functions is essential for the correct understanding of their meaning and frequency. Yet, as the overview above demonstrates, there is no unanimously established terminology for the functional subdivision of legal phraseological units, which ranges from the parameters of legal effects to epistemic expressions. At the same time, morphological categories, although presenting some fuzzy cases, tend to operate with more stable category definitions. It is thus decided to adopt both criteria for the organisation of this study and classify legal phraseological units first by their morphological category and then by their discoursal functions.

2.6.3. Phraseological and related concepts in this work

Bearing in mind the vastness of material offered by phraseology and its blurred margins, some core phraseological concepts as well as related concepts underlying the status of a phraseological unit have

to be clarified as they are understood in this work. According to Gries (2008: 4-8, also in 2013: 138), there is a list of parameters that have to be respected in order to decide whether a unit can qualify as phraseological or not.

(i) the nature of the elements involved in a phraseologism;
(ii) the number of elements involved in a phraseologism;
(iii) the number of times an expression must be observed before it counts as a phraseologism;
(iv) the permissible distance between the elements involved in a phraseologism;
(v) the degree of lexical and syntactic flexibility of the elements involved;
(vi) the role that semantic unity and semantic non-compositionality / non-predictability play in the definition.

Parameter (i), i.e. the nature of the elements involved in a phraseological unit, is well-addressed in subsection 2.6.2.1 (e.g. cf. classifications by Biel 2014b; Goźdź-Roszkowski 2011). In this study, in addition to general morphological criteria, the general association of items to the legal domain is also borne in mind, when discussing the nature of the phraseological elements.

Parameter (ii), or the number of elements that compose a phraseological unit, presumes a multi-word composition, i.e. more than one element and is generally linked to a new morphological status of a phraseological multi-word unit achieved through *lexicalisation* and *grammaticalisation* (see 2.6.3.2). Going back to the general cross-disciplinary intersections of phraseology (semantics, morphology, syntax and discourse) as well as to the classifications that bring forward the communicative and interactive character of phraseological units (e.g. "communicative phrasemes" Granger and Paquot 2008; "stance bundles" Goźdź-Roszkowski 2011 and Breeze 2013; "text-organising patterns" Biel 2014a), it emerges that the theories of lexicalisation and grammaticalisation do not cover entirely this category of phraseological units, which has closer links to the discursive and pragmatic dimension. It is addressed through the concept of *pragmaticalisation* (cf. 2.6.3.1) and the interrelation between the three theories (cf. 2.6.3.2).

Parameter (iii), i.e. the frequency of phraseological units, is addressed in Biber's (1995) terms of *positive* vs. *negative* markers, where the threshold value is chosen on the basis of the count of relative frequencies across the corpora (cf. Chapter 4). This parameter is linked to the idea of linguistic *repetition* of invariants, their selection and combination, which has occupied the minds of such major linguists as Saussure and Chomsky over the years (see also Jakobson 1971: 223-224; Lyons 1977: 70-85) and has been to a certain extent translated into the concept of *routines* (Hymes 1974: 442), i.e. structured items which have "a beginning and an end, and a pattern to what comes between". Hoey (1991: 83) explores lexical repetition in terms of cohesive links between lexical items, which are highly recurrent in legal texts (Hoey 1991: 92).

For the definition of phraseological, or multi-word, units in this work, I draw on Gries's criteria and Altenberg's statement (1998) who defines phraseological units as

> recurrent word-combinations that are seldom completely fixed but can be described as "preferred" ways of saying things –more or less conventionalized building blocks that are used as convenient routines in language production. These building blocks come in all forms and sizes, from complete utterances to short snatches of words, and they display varying degrees of flexibility (Altenberg 1998: 121-122).

Consequently, a brief comment about *prefabrication* / *formulaicity* already discussed throughout this Chapter is in place. The concept of a formulaic use of language and communication is not new. Already in 1970s-1980s linguists recognised that language is "relatively prepatterned, repetitious and imitative" (Tannen 1987: 216). The inception of corpus linguistics and the innovative work by Sinclair further confirmed this realisation under the label of *the idiom principle*, according to which "a user has available to him a large number of semi-preconstructed phrases that constitute single choices, even though they might appear to be analysable into segments" (1991: 110). However, "what is a prefab to some members of a language community need not be a prefab to all members" (Erman

and Warren 2000: 33). It may be additionally observed from the point of view of *fixedness* and *indivisibility* (cf. 2.6.3.3), which covers Gries's parameters (iv) and (v).

The issue of fixedness and indivisibility (cf. Altenberg's "flexibility") has been widely addressed by phraseologists. While classical approach (e.g. Vinogradov 1946, 1947; and generally the Russian phraseological school) relied heavily on these criteria, modern studies (Moon 1998; Svensson 2002) allow deviation from fixedness. Moon (1998) overviewing phrasal lexemes claims that "corpus evidence shows that their forms are by no means as fixed as some dictionary inventories appear to suggest, and that the division between multiword and single-word items is blurred, to say the least" (1998: 81). In fact, at least 40% of phrasal lexemes that she analysed in the Hector corpus did not meet the criteria of frozenness and fixedness (Moon 1998: 92).

Hudson (1998: 1) defines fixedness as a "process whereby orthographic words group together and congeal into fixed expressions that become units in their own right". Fixedness may be defined in terms of syntactic and morphological constraints, collocational constraints, non-salient, opaque, or figurative meaning and the impossibility of analysing the parts separately (Hudson 1998: 5-10, 35) or the so-called principle of non-compositionality (cf. 2.6.1.1). However, Kopaczyk (2013: 54) notes, "fixed strings of language are not always phrasal in structure and are not a product of morphological and syntactic rules. Rather, they stretch across phrase boundaries, or constitute fixed parts within a phrase", hence the phrasal notion of fixedness should be approached with caution.

This work treats the notion of fixedness as a cline, allowing a degree of variability (Biber *et al*. 1999: 76) or as "a scale of cohesiveness" (Quirk *et al*. 1985: 671-672), where fixed, to a greater or lesser degree, phraseological units are juxtaposed to free expressions on the balance of a variety of aspects. The variability continuum is allowed here also owing to the translational nature of the analysed texts (Chapter 3), which can produce certain shifts towards a more fixed or a more free end of this continuum. Where applicable, the criterion of fixedness is commented with specific regard to the analysed categories of legal style markers within the respective sections.

Finally, the parameter (vi) or the criterion of semantic (non-)compositionality has been briefly overviewed in Subsection 2.6.1 and is not dealt with separately below, since this study does not look into the phenomenon of non-transparent idioms it is associated with.

2.6.3.1. Pragmaticalisation

Pragmaticalisation (Erman and Kotsinas 1993; Claridge and Arnovick 2010; Kopaczyk 2013) is a frequently adopted term that explains linguistic changes from a lexical to a functional status. Erman and Kotsinas (1993: 79) propose the term pragmaticalisation to denote the passage from lexical items to functional words "resulting in discourse markers mainly serving as text-structuring devices at different levels of discourse", as parallel to grammaticalisation "resulting in the creation of grammatical markers, functioning mainly sentence internally". For the scholars, these two processes differ according to the functional outcome of the item undergoing changes (Erman and Kotsinas 1993: 80), with the former relating to discoursal dimension and the latter to the grammatical dimension. Frank-Job (2006: 397) similarly defines pragmaticalisation as "the process by which a syntagma or word form, in a given context, changes its propositional meaning in favor of an essentially metacommunicative, discourse interactional meaning".

Kopaczyk (2013: 58-59) treats the process of pragmaticalisation in legal discourse as "[t]he process behind the formation of those fixed multi-word chunks, closely linked to discourse and context. […] It is another process of lexical fixing, steered by the requirements on the level of text, within specific discourse conditions".

Claridge and Arnovick (2010: 167) define as candidates for pragmaticalisation outcome such categories as pragmatic / discourse markers, hedges, interjections, swearing expressions, politeness markers and conversation / textual routines. Along similar lines, although not using expressly the term *pragmaticalisation*, Erman and Warren (2000: 36) focus on the category of *pragmatic prefabs*,

consisting in discourse markers, feedback signals, performative routines and hedges. It emerges that some of these categories are closely related to the legal style markers identified in 2.3.

Kopaczyk (2013: 59) observes that the scope of pragmaticalisation depends on the interpretation of *context*, or the set of extralinguistic factors which are conceptualised in this study through the description of the genre of written pleadings (cf. 2.5) by the specific institutional setting of the ECtHR (2.5.1.1), the communicative situation and the social characteristics of the participants (2.5.1.2 and 2.5.1.3). Kopaczyk (2013: 59) argues that "the context-driven functions of prefabricated items makes it possible to analyse longer fixed strings from a functional perspective in specialized discourse", owing to the particular contextual constraints. This interpretation brings up conceptual similarities with Kjær's (1990a, 1990b; 2007) idea about context-conditioned word combinations in legal domain (cf. 2.6.2.1), according to which phraseological choices and their lexico-grammatical realisations depend on legal constraints. Finally, there are common points with Bhatia's concept of generic competence, according to which certain genre patterns are expected in the professional community (Bhatia 2014 [2004]: 164-175) and thus are conventionalised.

2.6.3.2. Lexicalisation-grammaticalisation-pragmaticalisation interface

In light of the above considerations, Kopaczyk (2013) proposes the term *prefabrication* as an umbrella term to designate the mutual relationship between the processes of lexicalisation and pragmaticalisation in legal language. She argues, "pragmaticalization allows for structures which also answer to the criteria of lexicalization specified above (e.g. syntactic restrictions, substitution with a single lexical unit) but at the same time their appearance in communication is regulated by discourse and context requirements" (Kopaczyk 2013: 60). Kopaczyk (2013: 60) claims, "[s]uch semi-lexical, semi-pragmatic fixed elements of discourse will be characteristic of specialized domains", as for instance, legal binomials or certain legal lexical bundles are typical of legal language. She proposes thus the following model for the lexicalisation-pragmaticalisation interface, which underlines lexical fixedness, under the common term *prefabrication*.

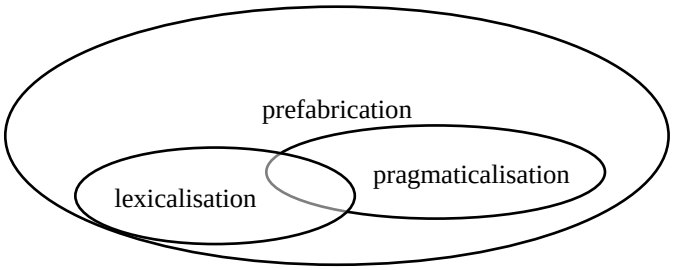


Figure 2.9: *Kopaczyk's (2013: 59) process of lexical fixedness.*

Kopaczyk (2013) does not investigate function words in her research, which explains the absence of the grammaticalisation element in her framework. I agree with this conceptual framework for the above-mentioned categories of binomials, multinomials and lexical bundles. Yet, this work looks also at the so-called legal "functional vocabulary" as defined by Alcaraz Varó and Hughes (2002a: 165): adjectival/adverbial groups, conjunctions and prepositional phrases, which also relate to the process of grammaticalisation, and call for a third element in the above-proposed schema.

I call the general interface of the three phenomena "prefabrication" drawing on Kopaczyk's (2013) work, with the difference that a third element of grammaticalisation is added to the picture. This tripartite division may be represented graphically as follows.

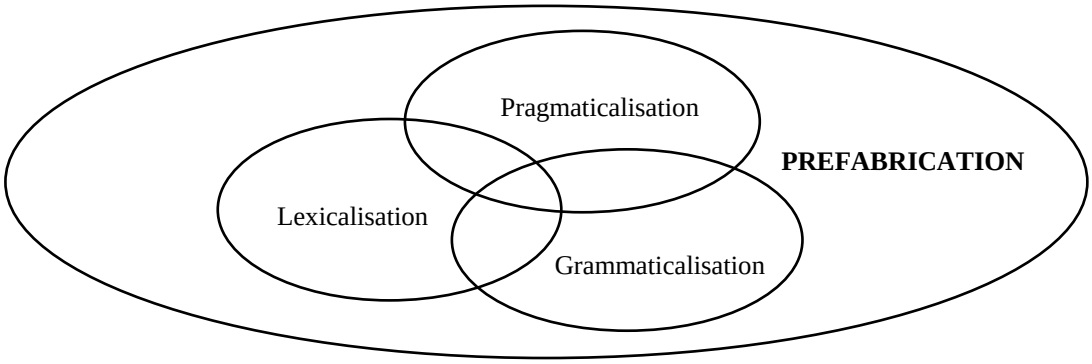


Figure 2.10: *The lexicalisation-grammaticalisation-pragmaticalisation interface (based on Kopaczyk (2013: 59) and Beijering (2015: 83)).*

Such a unified interface of the three phenomena is also proposed by Beijering (2015) who explains lexicalisation, grammaticalisation and pragmaticalisation in terms of a "composite change" (Norde and Beijering 2014: 393–394), without mentioning the "prefabrication" element.

> Lexicalization, grammaticalization and pragmaticalization are defined as composite changes that consist of (i) formal reanalysis and semantic reinterpretation, (ii) accompanying reductive and expansive primitive changes on the levels of phonology, morphology, syntax, semantics and discourse (e.g. morphological fusion versus separation), and (iii) the side effects of i and/or ii (e.g. layering or frequency effects). All these (micro-)changes collectively identify a change as either a case of grammaticalization, lexicalization or pragmaticalization (diverging properties), or, as a hybrid/tripartite case at the interface of these different types of language change (converging properties).

Subsequently, Beijering (2015: 81-83) argues that the three changes are accompanied "by a subset of correlated primitive changes" (cf. Norde 2009: 36), such as phonetic strengthening or syntactic fixation and "side effects", which are merely symptomatic of the occurred change, for example, frequency effects or obligatorification. She proposes a very clear definition of each change, which I graphically summarise in Table 2.10.

	Lexicalisation	**Grammaticalisation**	**Pragmaticalisation**
A composite type of language change whereby	(part of) a complex lexeme or (part of) a syntagm, in certain linguistic contexts, undergoes both semantic reinterpretation and formal (=constituent internal) reanalysis.	lexical or already grammaticalized items, in certain linguistic contexts, undergo both semantic reinterpretation and formal (=categorical) reanalysis.	lexical or grammatical expressions, in certain linguistic contexts, undergo both semantic reinterpretation and formal (=hierarchical) reanalysis.
The process leads to	*a lexical item*, i.e. a linguistic item belonging to a major category, with referential meaning, primary status, and which may convey the main point of linguistic message.	*a grammatical item*, i.e. a linguistic item belonging to a minor category, with relational meaning, secondary status, the prime function of which is to regulate grammatical structure and grammatical relations.	*a discourse marker*, i.e. a linguistic item with conversational meaning, extra-propositional status, the prime function of which is to organize discourse structure.

Table 2.10: *Lexicalisation, grammaticalisation and pragmaticalisation (adapted from Beijering 2015: 82-83).*

The line between the three phenomena is not rigid. For example, Huddleston (1988: 126-127) discusses complex prepositions with a [Prep1 + N + Prep2] pattern, such as *by dint of*, *by means of*, *for the sake of*, etc. as lexicalised items, as he defines lexicalisation "the process of forming lexical items (single units of vocabulary)". On the contrary, Traugott (2003: 636) views the development of complex prepositions as a "fairly uncontroversial example" of grammaticalisation (see also Tabor

and Traugott 1998: 244–253) “as they involve decategorialization of the nominal, generalization to a larger class of complements, and syntactic reanalysis as functional items, all of which are typical of grammaticalisation” (Brinton and Traugott 2005: 65). At the same time, such complex prepositions as *in pursuance of* or *in accordance with* have acquired over time a clearly legal hue, becoming the markers of legal discourse, thus being reinterpreted from the pragmatic point of view and undergoing pragmaticalisation.

These three phenomena are treated in this study as separate yet interrelated, and even overlapping in some cases as argued by Kopaczyk for instance, based on the distinctions in Table 2.9 and the respective functional outcome of the treated items.

CHAPTER 3

TRANSLATION STUDIES AND LEGAL TRANSLATION

The world as we know it today becomes increasingly multilingual and interconnected, putting translation at the core of global communication. The legal professionals take on an important role in international cooperation and business, because "[w]hen money moves, lawyers move with it" (Alcaraz Varó and Hughes 2002a: 2). Even though international communication often relies on the English language, which is comparable to a modern *lingua franca*, there is an ever increasing demand for translation and particularly specialised translation (Gotti and Šarčević 2006: 9).

The first section of this chapter describes the notion of legal translation with some general considerations about its nature (3.1.1) and interdisciplinary character (3.1.2). Then frequent trends in legal translation studies are discussed (3.1.3) and finally the profile of a legal translator is addressed in 3.1.4.

Section 3.2 observes the influence of legal English intended as an expression of a typically common law system on the language of human rights (3.2.1) and describes the linguistic regime of communication through translation with the European Court of Human Rights (3.2.2). Section 3.3 presents the concept of norms in translation, and section 3.4 deals with the phenomenon of translation universals. The combined interface of norms and translation universals is described in 3.5. Section 3.6 deals with an ever-increasing reality of the modern globalised world – L2 translation, with specific regard to legal L2 translation.

Synonymy and translation is the topic of 3.7, which describes the relationship of synonymy and equivalence in translation (3.7.1), presents an overview of studies on synonymy in translated language (3.7.2) and in legal language (3.7.3). It ends with considerations about near-synonymy in legal translation in general (3.7.4) and with specific regard to the phraseological level (3.7.5), thus serving as a linking element to the final section 3.8, which continues the topic of phraseology in translation (3.8.1) and legal translation (3.8.2).

3.1. Legal translation

3.1.1. Legal translation: general considerations

Legal language has been defined "bordering on obscurity" (Garzone 2000: 397) and characterised in terms of "abstruseness" (Alcaraz Varó 2008: 100), "syntactic anfractuosity" (Garner 2001: 57-58) and other similarly "flattering" epithets. Owing to the peculiarity of legal language(s), legal translation is "a case apart" within the framework of LSP translation (Garzone 2000: 395, see also Weston 1991: 2, Gémar 1995: 143-154), although there are authors who question its specificity (cf. Harvey 2002).

As every translation, legal translation faces a number of challenges. Some of them are common to all translation fields and other challenges, of a more elusive nature, seem to be more peculiar of legal translation. In general, as all LSP translation, legal translation requires some solid field expertise of the law in a cross-linguistic perspective, including legal systems and cultures and legal languages (see 3.1.4 for the competences of legal translators). From a more practical perspective, the challenges and specificity of legal translation can be identified on different levels, ranging from terminology to certain recurrent patterns and discursive practices, which are expected to be found in legal texts. In general, legal translation has to tackle a great amount of culture-specific concepts rather than universal components (Biel 2008: 22). It occurs also in view of the fact that legal languages on both ends of the translation chain are deeply rooted in their national dimensions (Cortelazzo 1997: 37; Mattila 2006: 9; Cao 2007: 24; Scarpa *et al.* 2014: 54) and "language-specific enclaves with their

own research traditions" (Biel and Engberg 2013: 2, cf. Section 2.4). Hence, the most often quoted challenge of legal translation is its system-boundedness, which means that the difficulty of legal translation "depends primarily on the affinity of the legal systems and only subsidiarily on the affinity of the source and target languages" (Šarčević 1997: 14, cf. de Groot 1991: 293).

The culture-bound character of legal texts is most visible on the level of terminology (see 3.1.3). Legal terms vary in their conceptual content and require a quasi-expert understanding of the law so that a legal translator is aware of potential differences in order to be able to account for them in his or her translational choices. However, terminological and notional gaps are not the only challenge of legal translators. The syntactic intricacy of legal language has often been indicated among the reasons and motives underlying various simplification attempts and reform proposals. To put it differently, legal texts are far from being syntactically simple for understanding even within one linguacultural system. Consequently, in legal translation the syntactic labyrinth of the ST has to be first recognised and comprehended and then re-expressed through understandable and acceptable syntactic moves in the TT.

Finally, legal translation has to deal with distinct patterns, which weave the fabric of legal texts. An important role is taken on here by the knowledge of discursive practices of the source and the target legal environments (cf. "generic competence" Bhatia 2014 [2004]). The discursive dimension of legal translation involves additional challenges because it fluctuates between intentional ambiguity, on the one hand, and attempts at finding a univocal interpretation on the other hand, which inevitably invites the legal translator to interpret the texts (Gémar 1995: 143; Kasirer 2000: 75), even though there are opinions that oppose interpretation attempts of legal translators (Šarčević 1997: 91-92). If legal terminology represents single threads, and their general intertwining direction is regulated by syntax, these threads interlace with each other in a specific design, which represents the level of legal phraseology and patterns. Legal translation, consequently, revolves around understanding the dynamics of the complex legal design, which involves the identification of suitable threads in the target language, their organisation in the same direction to reach the same patterns, which logically organise the fabric into a legal text.

3.1.2. Interdisciplinary nature of legal translation

In essence, all specialised translation entails some level of expertise in various fields and specific subjects (Šarčević 1997: 113). Interdisciplinarity flourishes in legal translation, which is situated at the crossroads of legal theory, language theory and translation theory (Joseph 1995: 14). Joseph (1995: 15) highlights the cross-disciplinary character of legal translation, which involves different viewpoints of legal professionals, of language theoreticians and of translation practitioners. In fact, legal translation has been studied from a variety of perspectives and methodologies: by translation scholars, terminologists, linguists and comparative lawyers, who tend to focus on different aspects (Biel and Engberg 2013: 2). Engberg (2013: 21) argues that legal translation is "a form of conveying knowledge", and a closer synergy between different research fractions along with a more communicative interpretation of legal concepts would benefit this field.

Lawyers generally tend to research the theoretical aspects of comparing legal systems and legal consequences (e.g. see Kjær 1990a and 1990b; McAuliffe 2014; Husa 2016). Along this line of inquiry, it is posited that legal translation constitutes an act of comparative law (David and Brierley 1985: 16; Wagner and Gémar 2013). For a comparative lawyer, "legal translation is tremendously important, since the flow of information between legal systems takes place through translation. So, for a comparatist legal translation lies at the heart of the matter" (Husa 2016: 2, also McAuliffe 2014: 70). According to this line of research, a legal translator "aims at introducing foreign legal worldviews into a different legal life-world. His task is to make the foreign legal text accessible for recipients with a different (legal) background" (Sieglinde 2012: 283).

Linguists tend to emphasise the semantic, syntactic, pragmatic and discursive aspects of legal translation (e.g. Bhatia 1997, 2004 on genres in translation) (Biel and Engberg 2013: 2). Linguistic

analysis commonly focuses on the final product of legal translation, i.e. translated texts. Translation scholars focus on the practical aspects of translation (e.g. Borja Albi and Prieto Ramos 2013 on the perspectives of translators and their employers or Prieto Ramos 2014 on quality assurance in legal translation). Indeed, translation is placed among "the central fields for practical work on issues of language usage (even the use of multiple languages) in the sphere of law" (Biel and Engberg 2013: 1).

3.1.3. Mainstream trends in Legal Translation Studies

Much of past and present research on legal translation revolves around terminological concerns and the inherent limits of translatability because of their system-bound nature (e.g. Joseph 1995; Šarčević 1997: 232; Fletcher 1999; Kasirer 1999; Chromà 2008; Paunio 2013; Wagner and Gémar 2014), which reflects the general inquiry lines connected with the study of legal language (e.g. Garner 1991, 1995). Tiersma (2008: 16) defines legal terminology "extremely parochial", meaning it is firmly entrenched in the jurisdiction of its origin. The system-bound nature of legal terms and their limited translatability lead to the emergence of the so-called "terminological bridges", or compensation strategies and techniques aimed at resolving cases of legal asymmetry and "establishing equivalence between terms from different legal systems" (Biel and Engberg 2013: 3).

The complexity and non-commensurability of legal system-bound terms along with somewhat limited assistance of legal dictionaries vouches against the search for "off-the-shelf, all-purpose binary 'equivalents'" in legal translation (Prieto Ramos 2014: 15). Yet, a kind of equivalence has to be reached in order to carry out a valid translation, even though the recent trend in translation studies distances from the notion of equivalence in favour of the communicative function of translation. The functional approach (e.g. Šarčević 1997; Garzone 2000; Engberg 2013) may constitute a viable solution to account for the inevitable imbalance. The working criterion is that of *functional equivalence* (Scarpa 1997: 103), referred to also as *legal equivalence* (Beaupré 1986: 179), which caters both for the content and legal effects. Examples of legal functional equivalents include the French term *hypothéque*, which is traditionally rendered as "mortgage" (Šarčević 1997: 243), "real estate" and *immeuble* (Kasirer 1999: 94), the Italian *fascicolo del pubblico ministero* and "investigative dossier" (Scarpa *et al.* 2014: 73). The notion of functional equivalence has to be processed with caution. For instance, if the *skopos* of a particular text is to convey its meaning as adequately and closely to the source as possible, the legal equivalent should be source-oriented and not target-oriented, even at the expense of naturalness, in order to preserve legal certainty (cf. Paunio 2013).

Šarčević (1997: 5) emphasises the importance of striving for a translation that realises the intended legal effects and the intended meaning in practice. Yet, in this "de-centred and polycontextual world […] there is no single privileged way of attributing or processing meaning" (Hermans 2009 [1999]: 150). It seems unlikely that translators can guarantee equivalence of legal effects or meanings, because the understanding and effects of legal texts normally depend on their interpretation (Paunio 2013: 7). In fact, legal translation involves operations of legal and linguistic interpretation and is closely linked to the concept of legal hermeneutics or interpretation of legal texts, which has been extensively studied by both lawyers and linguists (Tiersma 2008: 17). Similarly, legal interpretation is a kind of translation and thus language mediation. Consequently, "the presumption of equivalence in law in particular pushes that established translation-theory concept into new and difficult territory" (Leung 2014: 67). For instance, on the EU level, where the underlying assumption for the language policy is that different language versions are equivalent (Paunio 2013: 8), the constant quest for legal equivalence resulted in a special Eurolect, Euro-legalese or Euro-speak (Koskinen 2000: 84), i.e. a forced equivalence that covers notional gaps between the languages of the European Union. To a lesser degree, such hybridisation characterises also the language of human rights (see 3.2). By extension, European English is also understood as the variety of English used in Europe for the

translation of national legislation of the European countries into English, which functions as a European lingua franca (Scarpa *et al.* 2014: 54).

Legal translation is understood as a procedure, which "should ideally combine the approaches of both lawyers and linguists, and be based on a comparison of the source and target languages, and source and target legal systems (*pro comparatione* research)" (Chromà 2008: 310). Alcaraz Varó (2008: 102) proposes a descriptive model of legal translation, based on three components: (a) awareness of the English-American system, meaning that a translator should be aware of differences between the common law and civil law systems, (b) awareness of a bottom-up process: legal vocabulary and syntax, and (c) awareness of a top-down process: legal genres. Prieto Ramos (2014) advocates for the *holistic approach* to legal translation that takes into consideration "legal, contextual, macrotextual and microtextual variables for the definition of the translation adequacy strategy, which guides problem-solving and the rest of the translation process" (2014: 11). The holistic approach is meant to assure a high quality of translation by guiding the translator through the decision-making process and integrating the variables in competence and product evaluation.

It emerges that legal translation is a field with multiple parameters, which makes it difficult to come up with a list of strategies to apply to every possible situation because "absolute assertions about preferable techniques in legal translation are potentially flawed unless they refer to a particular problem in a specific scenario" (Prieto Ramos 2014: 20).

3.1.4. The legal translator between constraints and expectations

Literature on legal translation often contains persistent undercurrents of scepticism as to the outcome of translation, stating that (legal) "[t]ranslation always falls short of its goal of conveying the meaning and the style of a text in a new text that reads like an original composition in the second language" (Joseph 1995: 14) or "ideal legal translation – or, at least accurate and faithful translation allowing translated texts to function as truly equivalent texts – seems forever outside our grasp" (Ainsworth 2014: 47). This is what Ortega y Gasset (1993) describes as the "misery" of translation, with a seemingly impossible search for equivalence, which in legal translation is additionally hindered by the use of the specialised terminology amounting to what he calls a "pseudolanguage", on the way towards the "splendour" of translation. Apparently without being able to produce ideal legal translations, translators continue to carry out their professional activity on a daily basis. In light of the complicated nature of legal translation, it is likely "to remain an essentially human activity" (Mattila 2006a: 20). Moreover, legal translators assume the role of an important nexus for an effective international communication (Way 2016: 1009).

In intercultural legal communication, "requiring not only language mediation but heightened cultural expertise, the (human) translator (and interpreter) plays an increasingly important role, whereby he/she will take the full responsibility for the final product" (Snell-Hornby 2006: 133). The legal translator takes on the active role of intercultural mediator, who relies both on linguistic and extra-linguistic considerations (Garzone 2000: 395-396), and has to deal with heavy semiotic constraints (Garzone 2000: 397). The task of legal translators is arduous because they have to overcome significant challenges arising out of the nature of legal language and language in general, and non-commensurability of languages and legal systems (Ainsworth 2014: 43-44). As Husa (2016: 3) colourfully outlines, such factors put legal translators "in a kind of no man's land which is outside the borders of established disciplines".

Some people who have not yet worked with legal translators believe that legal translators can press a kind of magical button, which allows them instantly to reproduce the same text in another language (Way 2016: 1010). On the other hand, there are multiple descriptions of what skills a legal translator should possess. Šarčević (1997: 113-114) proposes a specific profile of the legal translator who must possess a set of interdisciplinary skills and competences. Šarčević's (1997) profile of an ideal legal translator is based on his / her

(a) presumed linguistic competence, to which

(b) basic legal competence must be added (including exhaustive knowledge of legal terminology, understanding of legal reasoning and legal problem-solving abilities, along with "ability to analyse legal texts, and to foresee how a text will be interpreted and applied by the courts" (Šarčević's (1997: 113));
(c) extensive knowledge of the target legal system and preferably of the source legal system, too;
(d) drafting skills and a basic knowledge of comparative law and comparative methods (Šarčević's 1997: 114).

At the end of this profile, Šarčević (1997: 114) cheerfully observes that such ideal translators "simply do not exist". Smith's (1995: 181) prerequisites for successful translation of legal texts seem more realistic. She identifies three factors that contribute to the success of a legal translation:

(1) basic knowledge of the legal systems, both of the source as well as of the target languages;
(2) familiarity with the relevant terminology; and
(3) competence in the specific legal writing style of the target language.

These general statements, although undoubtedly orientating, do not provide a comprehensive description of the competences that are required of legal translators. The holistic approach, proposed by Prieto Ramos (2014), along with legal, contextual, macrotextual and microtextual translation variables, deals with the competences which are necessary for a legal translator. The competences revolve around five parameters (adapted from Prieto Ramos 2014: 21):

(1) *legal and linguistic competence* (ability to carry out legal and linguistic comparative analysis);
(2) *communicative and textual competence* (including knowledge of legal style markers and legal genre conventions on both sides of the translation chain, cf. "generic competence" in Bhatia 2014 [2004]);
(3) *thematic and cultural competence* (awareness of the relevant legal traditions, sources and concepts);
(4) *instrumental competence* (CAT tools and specialised legal resources);
(5) *interpersonal and professional management competence* ("including adherence to the relevant legal framework for translation practice and awareness of ethical principles and deontological issues in legal translation").

A legal translator may be compared to an art restorer, who is supposed to be both an able artist and an able craftsman. A skilful art restorer is usually a skilful artist, who knows about different styles and genres in painting (abstract art, still life, expressionism, etc.), and how they are carried out in the source and target environments. Likewise, she or he has to select the appropriate painting media (oil, tempera, ink, etc.) and to apply the necessary tools and techniques (drybrush, pointing, etc.) and be able to work within the frame of the original piece of art.

In other words, legal translation presumes a specific set of skills and competences, which converge on the importance of linguistic, legal, cognitive and social factors. While the language of the law in general is addressed in Chapter 2, including its national manifestations, additional commentary about the specificity of the linguistic regime of human rights is in order (3.2) along with an overview of cognitive and social factors that influence the translational behaviour (3.3 and 3.4).

3.2. Language of human rights and translation

3.2.1. Legal English, translation and the language of human rights

At different times during the history of humankind, different languages dominated our lives and functioned as bridges over the linguistic gap presumably created after Babel. The twentieth century saw the rise of English as a lingua franca "in all fields, legal activities included", where legal professionals "use more and more English in all contexts of international communication" (Mattila 2014: xix). Some scholars question even whether English can be equalled to the language of modern law (Drolshammer and Vogt 2003). Although it has not been acknowledged as such officially, it plays nonetheless a crucial role in international legal settings as the language of globalisation (Scarpa *et al.* 2014: 53).

The context of international and supranational courts (apart from the European Union judicial bodies) is not an exception; rather it is trend-setting. English is becoming the most common language of communication in international and European courts (Udina and Minenkova 2014: 375). The linguistic practices of international and supranational courts are defined by their social-institutional context, including the lawyers and judges who work there and are actively involved in judicial decision-making, and the linguistic realisation of such legal processes (Willems 2016). In addition, the operation of international and supranational judicial bodies is normally based on a fundamental treaty or convention, which influences both the legal and linguistic realisations of a given justice system.

For the European Court of Human Rights ("ECtHR") such a treaty is the European Convention on Human Rights ("ECHR"), which is enacted in two official languages, English and French. The linguistic regime of the ECtHR is based on these two languages, with all judgments, decisions and other texts being published in HUDOC – the official database of the ECtHR – in one or both of these languages. With the rise of English as lingua franca, the language of human rights is more often realised in legal English, with inevitable conceptual and linguistic consequences. Fletcher (1999) overviews the ECHR and the Rome Statute that governs the International Criminal Court and highlights (1999: 62) "discrepancies" among the official translations caused by the "transplantation" of the English legal vocabulary "on foreign linguistic soil".

> Many legal systems contain terms that might profitably be translated and used on a world-wide basis. But the fact is that in the current international arena, the dominant source of new world-wide terminology is English. I make no apologies for this phenomenon but simply note that this is a fact and that we have to learn to live with the drive toward universalizing the key terms of English legal discourse (Fletcher 1999: 60).

Fletcher illustrates his point by the "untranslatable" concepts of *fairness* and *reasonableness*, which in fact, constitute cornerstone notions of the ECtHR system. One of the most productive ECHR articles in terms of its violations is Article 6 "Right to a fair trial", which features both above concepts in its text. As French is the second official language of the ECHR, these typically common-law concepts have been codified also in the French version of the Convention, although some bilingual legal professionals comment negatively on the choice of French terms as not fully reflecting the essence of the English concepts (private conversation).

The Italian and Russian versions of the Convention are not authentic, in that they have no legal force. However, as the ECHR has been incorporated into both Italian and Russian legislation, these "untranslatable" concepts have been translated and included in the national languages of these civil law systems, based on the interpretation of the translated conventional instrument. Under the linguistic and translational profile, it is interesting to observe that the Russian version is most probably translated directly from English. These two versions are syntactically parallel (see Table 3.1), with the exception of anteposition of *каждый* ("everyone"), which introduces a syntactic discontinuity (literally, "everyone, in the determination of …") immediately afterwards to respect the

style of Russian legal provisions that tend to start with a subject. The Italian version, on the contrary, is manifestly based on the French text. The phrase about the determination of civil rights, obligations and criminal charges, which in the English text (and in the Russian, too) is placed at the beginning of the sentence, is postponed to the end of the sentence in both French and Italian versions. Likewise, the atypical structure "ha diritto *a che* la sua causa sia esaminata" derives from French "a droit *à ce que* sa cause soit entendue", which hints about its French roots.

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a *fair* and public hearing within a *reasonable* time by an independent and impartial tribunal established by law. […] [ECHR ENG]	Toute personne a droit à ce que sa cause soit entendue *équitablement*, publiquement et dans un délai *raisonnable*, par un tribunal indépendant et impartial, établi par la loi, qui décidera, soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle. [ECHR FRA]
Каждый в случае спора о его гражданских правах и обязанностях или при предъявлении ему любого уголовного обвинения имеет право на *справедливое* и публичное разбирательство дела в *разумный* срок независимым и беспристрастным судом, созданным на основании закона. [ECHR RUS]	Ogni persona ha diritto a che la sua causa sia esaminata *equamente*, pubblicamente ed entro un termine *ragionevole* da un tribunale indipendente e imparziale, costituito per legge, il quale sia chiamato a pronunciarsi sulle controversie sui suoi diritti e doveri di carattere civile o sulla fondatezza di ogni accusa penale formulata nei suoi confronti. [ECHR ITA]

Table 3.1: *Beginning of Article 6 ECHR in English, French, Russian and Italian.*

Although both French and English texts of the Convention are authentic, the concepts "fair" and "reasonable" belong undoubtedly to the common law tradition, and thus are conventionally codified through English. The brief analysis above, however, seems to suggest that the common law concepts "fair" and "reasonable" have been introduced directly from English into Russian and have been mediated instead into Italian through the French version, which is linguistically closer to Italian. The linguistic proximity between French and Italian explains the current state of affairs, when most Italian applicants and government agents prefer to communicate with the Court in French.

The abovementioned terms and the underlying concepts are incorporated into the legal order of Italy[28] and Russia[29], through the respective acts, introducing them into the active vocabulary of national legal practitioners. Yet, it emerges that they are still used less often in written pleadings translated from Russian and Italian in comparison to texts originally drafted in English. In written pleadings translated from Russian ("RUTC") these terms occur twice less often than in the reference corpus of English pleadings ("ENRC"). In pleadings translated from Italian ("ITTC") these concepts occur more frequently than in the RUTC, but still 18% less frequently than in the reference texts (see Table 3.2).

[28] The term "reasonable time" (*ragionevole durata*) is codified in multiple instruments of the Italian legal system, the most famous being the Pinto law (Legge Pinto), n. 89/2001 modified by legislative degree n. 83/2012 into law n. 134/2012. For other uses of "reasonable" see, for instance, Gialuz (2014: 37-39) on the introduction of the standard of proof "beyond a reasonable doubt" into the Italian system of criminal justice.

[29] In Russia, the term "reasonable time" (*разумный срок*) is codified in Article 6.1 of the Russian Code of Criminal Procedure, in Article 6.1 of the Russian Code of Civil Procedure in Article 6.1 of the Russian Code of Arbitral (Commercial) Procedure, in Article 10 and 250-261 of the Russian Administrative Code, as well as in the federal law n. 68 of 30 April 2010 ("*О компенсации за нарушение права на судопроизводство в разумный срок или права на исполнение судебного акта в разумный срок*") and in the resolution of the Plenum of the Supreme Court n. 11 of 29 March 2016 ("*О некоторых вопросах, возникающих при рассмотрении дел о присуждении компенсации за нарушение права на судопроизводство в разумный срок или права на исполнение судебного акта в разумный срок*").

Vague word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Fair	8	-89%	76	47	-38%
Fairness	-	<	12	16	+33%
Unfair	-	<	18	2	-89%
Reasonable	67	+18%	57	60	+5%
Reasonably	7	-36%	11	8	-27%
Reasonableness	16	+220%	5	-	<
Unreasonable	8	-38%	13	22	+69%
Unreasonably	-	<	1	4	+300%
Total	**106**	**-45%**	**193**	**159**	**-18%**

Table 3.2: *Frequency of "fair" and "reasonable" (and their derivatives) across the corpora normalised to 100,000 words.*

The same situation characterises another typically common law concept, which is archetypally realised through English: *the rule of law*. Williams (2010: 77) stresses that the rule of law is conceptualised in different ways in various European states depending on their (legal) relationships and traditions. Polakiewicz and Sandvig (2016: 117) claim that despite the modern pan-European commitment to the rule of law, a clear-cut authoritative definition of this notion is nowhere to be found. The bilingual preparatory documents of the Statute for the Council of Europe ("CoE") shed light on the absence of the corresponding term in French, which initially was rendered as *respect de la loi* (literally, "respect of the (statutory) law") and only at a later stage the term *prééminence du droit* (literally, "pre-eminence of law") was introduced. However, the overview of recent ECtHR case-law demonstrates lack of consistency in applying this notion in French judgments and decisions, where it is sometimes replaced by *Etat de droit* (Polakiewicz and Sandvig 2016: 118), literally "State of law", which is the traditional way to refer to this concept in French. The concern about such inconsistent use of these terms has been officially expressed in Resolution 1594 (2007) of the Parliamentary Assembly of CoE[30] (para. 3, online).

> Despite a general commitment to this principle, the variability in terminology and understanding of the term, both within the Council of Europe and in its member states, has elicited confusion. In particular, the French expression *Etat de droit* (being perhaps the translation of the term *Rechtsstaat* known in the German legal tradition and in many others) has often been used but does not always reflect the English language notion of "rule of law" as adequately as the expression *prééminence du droit*, which is reflected in the French version of the Statute of the Council of Europe, in the preamble to the European Convention on Human Rights (ETS No. 5) and in the Strasbourg Court's case law.

The same document stresses the importance of translating "rule of law" into Russian as *верховенство права* (literally "supremacy of law"), and not as *верховенство закона* (literally "supremacy of statute law"). The confusion between these two multi-word terms seems to have originated from the fact that the English term "law" can be translated by either of near-synonymous terms *право* ("law") or *закон* ("statutory law", "act"), similarly to the French terms *loi* and *droit* with the respective meanings, which leads to terminological discrepancies and stresses the importance of correct interpretation of near-synonyms in legal translation (cf. 3.7). Although the document does not address explicitly the Italian terminology, the respective standard Italian term, similarly to the French context, is *stato di diritto* (literally, "state of law"), which can indeed be found in the relevant literature. However, it describes the notion as understood and interpreted by Italian law system for internal use. The Italian text of the Convention explicitly refers to "rule of law" as *preminenza del diritto* (literally,

[30] PACE Resolution 1594 (2007) adopted by the Standing Committee, acting on behalf of the Assembly, on 23 November 2007, available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17613&lang=en

"pre-eminence of law"). To follow the logic of PACE Resolution 1594 (2007) with regard to a similar situation in French, it would seem that *preminenza del diritto* is to be preferred in the Convention's context.

The observations above resurface the much-discussed issue of (un)translatability in legal domain, caused by the systemic and notional differences between the common law and civil law systems, leading to the conclusion that it has not yet been completely resolved even with regard to the cornerstone notions of the language of human rights. Many notions of the language of human rights seem to come from the common law tradition, and under the unifying influence of the ECtHR practice such common law notions as "fair", "reasonable" and others tend to permeate the legal reality of the 47 CoE Member States with different legal backgrounds and traditions. Such a mixed composition leads to the risk to write in "a kind of conceptual hybrid" (Mattila 2014: xx), where the transplanted common law concepts are construed in a civil law sense and civil law concepts have to be translated using the language of the common law tradition.

3.2.2. Translation and communication with the ECtHR

As already discussed in Section 2.5, the linguistic regime of communication with the Court is set forth in Rule 34 of the Rules of Court (emphasis added).

> 3. (a) *All communications with and oral and written submissions by applicants or their representatives in respect of a hearing, or after notice of an application has been given to a Contracting Party, shall be in one of the Court's official languages*, unless the President of the Chamber grants leave for the continued use of the official language of a Contracting Party.
> […]
> 4. (a) *All communications with and oral and written submissions by a Contracting Party which is a party to the case shall be in one of the Court's official languages*. The President of the Chamber may grant the Contracting Party concerned leave to use one of its official languages for its oral and written submissions.
> (b) If such leave is granted, it shall be the responsibility of the requesting Party
> (i) *to file a translation of its written submissions into one of the official languages of the Court within a time-limit* to be fixed by the President of the Chamber. Should that Party not file the translation within that time-limit, the Registrar may make the necessary arrangements for such translation, the expenses to be charged to the requesting Party;
> (ii) to bear the expenses of interpreting its oral submissions into English or French. The Registrar shall be responsible for making the necessary arrangements for such interpretation.
> (c) The President of the Chamber may direct that a Contracting Party which is a party to the case shall, within a specified time, *provide a translation into, or a summary in, English or French of all or certain annexes to its written submissions or of any other relevant document, or of extracts therefrom*.
> […]

At the stage of written pleadings, which is discussed in this study, all communication with the ECtHR has to be carried out in English or French, or accompanied by translations into one of these languages. An important note has to be made with regard to the origin of translations. The right to individual petition has generated an unstoppable flow of applications from applicants with different economic possibilities, who mistakenly have perceived the ECtHR as a fourth instance court and sought justice even for matters that fell outside of the ECtHR's jurisdiction. The zealous applications that screamed of alleged injustice overloaded the Court and forced upon it the necessity of structural and procedural reforms, for instance, the introduction of the so-called "filter sections", whose main objective is to sort out manifestly inadmissible applications. While a great number of individual applications continue to be rejected as inadmissible, many pass the initial filter, after which all the communication has to be held in one of the official languages of the ECtHR. Unfortunately, not every applicant has a possibility to engage a bilingual lawyer or a professional translator. As a consequence, some make recourse to automated translation, which produces dubious results. The "translational

overkill" by automated means tackles even the personal names, leading to such anecdotic situations as *Pesce c. Italia* becoming *Poisson c. Italie*, i.e. "Fish v. Italy". Such blatant cases of automated translation, albeit amusing to read from the outsider's point of view and reasonably less amusing for the insiders, are discarded from this analysis to maintain the high level of texts gathered for analysis. Still it is crucial to stress that the translations analysed in this study have nothing to do with the Translation and Interpreting Service of the CoE, nor with Registry lawyers. These translations are carried out autonomously by the parties to the dispute under requirements of Rule 34 (a) and 34 (b). In other words, there are no fixed institutional guidelines for translation of such written pleadings or translation quality controls, because these translations are essentially left unattended within full discretion of the parties.

3.3. Norms, conventions and expectations in legal translation

A legal translator is guided through the difficult terrain of translating between different linguistic and legal environments by a series of explicit and implicit norms and conventions that govern his/her performance. According to White (1982: 423) "the most serious obstacles to comprehensibility are not the vocabulary and sentence structure employed in law, but the unstated conventions by which language operates". In a general sense, translation norms are understood as factors conditioning the translational choices that derive from sociocultural rather than cognitive factors, with the latter being most frequently talked about in terms of translation universals (Kenny 2014 [2001]: 53, cf. Section 3.4).

The concept of norms has been widely discussed in the relevant literature in various languages, in a more or less explicit way, starting from Jiří Levý's "generative model" (Levý 1967) and Anton Popovič's (1970) overview of conventions in translation, to more specific formulations by such scholars as Nord (1991), Toury (1995), Chesterman (1993, 1997) and Hermans (2009 [1999]).

In the most general terms, translation norms are defined as "a favoured mode of behaviour" (Toury 1995: 54). For Toury norms represent a continuum with fuzzy borders, where on the one pole there are stronger rule-like norms and weaker almost idiosyncratic norms on the other pole (Toury 1995: 54). In other words, norms in translation "imply that there is a course of action which is more or less strongly preferred because it is accepted as proper or correct or appropriate" (Hermans 2012: 4263). From a sociological and psychological positions, these are "performance instructions appropriate for and applicable to particular situations, specifying what is prescribed and forbidden as well as what is tolerated and permitted in a certain behavioural dimension" (Toury 1995: 55).

As Toury observes, "[t]ranslation is a kind of activity which inevitably involves at least two languages and two cultural traditions, i.e., at least two sets of norm-systems on each level", which can be in a relation of contrast between them. The role of translation norms is to govern the translation process also in situations of conflicting or incompatible socio-cultural constraints. Toury (1995: 56) calls an *initial norm* the situation where the translator makes a binary choice in relation to "the original text, with the norms it has realized, or to the norms active in the target culture, or in that section of it which would host the end product". The former solution, more source-oriented is made to achieve "adequacy", and the latter, which is more target-oriented is aimed at "acceptability" (Toury 1995: 57). Hence, norms determine the position of a translation between adequacy, or source-orientedness, and acceptability, or target-orientedness, and they act as "the intermediating factor between the system of potential equivalence relationships and the actual performance" (Toury 1981: 24, cf. 3.5).

Toury (1995: 58-59) also distinguishes between *preliminary* and *operational* norms. *Preliminary norms* concern *translation policy*, consisting in factors that regulate the choice of texts to be translated, and the *directness of translation*, consisting in defining the tolerance degree and criteria for direct/indirect/mediated translation. *Operational norms* govern translation process and can be either *matricial*, i.e. governing the very existence of target text material, its location and segmentation (e.g. omissions, additions, and distributional patterns), or *textual-linguistic*, governing the linguistic reformulation from the source to the target text.

Nord's (1991: 100) *regulative conventions* and Chesterman's (1997: 67) *professional norms* are also explained as governing the translation process. Chesterman subdivides this type of norms into norms of accountability, communication and target-source relation (Chesterman 1997: 67-70), where the latter stands for a "relation of relevant similarity" (1997: 69), which echoes Toury's concept of the initial norm divided into the poles of adequacy and acceptability.

The second category of norms proposed by Chesterman and Nord has also some parallels. Chesterman (1993: 1; cf. also 1997: 64) defines the second category as *expectancy norms* concerning "the form of the translation product, based on the expectations of the prospective readership". Nord (1991:100) calls *constitutive conventions* such norms, which "determine what a particular culture community accepts as a *translation* (as opposed to an *adaptation* or *version* or other forms of intercultural text transfer)". This second type of norms borders on my understanding of conventions

in this study. Applied to legal translation, expectancy norms / constitutive conventions can be interpreted in several ways. They can be understood as a directive for a loyal reproduction of the ST sense, because the very sense of translation is to convey the original meaning (Catford 1965: 35), even at the expense of linguistic naturalness. At the same time, they can be interpreted as a stimulus towards a conventional, and thus expected, style of legal English, justifying the (over-)use of common cliché patterns.

The concept of norms implies also the concept of conventions. Every specialised discourse is characterised by a distinctive set of conventions that govern communication within specialised domains and by professional community. Legal discourse is not an exception. The rigid social-institutional context, different legal systems and cultures as well as the high specialisation of legal professionals undoubtedly influence the linguistic practices thereof. This type of influence is conceptualised here as conventions. Conventions refer to certain expectations regarding the features and quality of a given text type. In general, these are behavioural regularities, stemming from the sociocultural environment, which are used as a benchmark for evaluation of certain (translational) behaviour and at the same time as indicators controlling linguistic usage in communication and translation.

It is worth mentioning that scholars researching the theory of norms (and conventions) in translation acknowledge their variability, instability and overlapping, if not competing, nature (Toury 1995: 59-62; Hermans 2009 [1999]: 118). Under the methodological profile, an additional difficulty lies in the fact that norms are not directly observable (Hermans 2009 [1999]: 85), rather we are able to extract patterns and regularities using modern methods of corpus linguistics. Such regularities can be described by either sociocultural constraints and influences or cognitive processes related to translation. The latter factor is traditionally addressed by the controversial theoretical concept of Translation Universals (3.4).

3.4. Translation universals and legal translation

Translated language has been frequently referred to as "hybrid" (Schäffner and Adab 2001), a "third code" (Frawley 1984: 168) or a "third space" (Rutherford 1990; Bhabha 1995), where "all forms of cultures are continually in a process of hybridity" (Rutherford 1990: 211). Toury (1980: 75) argues that "the language used in translation tends to be interlanguage (sometimes designated "translationese"), or that a translation is, as it were, an 'inter-text' by definition". On similar grounds, translated texts have also been frequently excluded from monolingual corpora because of their alleged non-representativeness (Baker 1993: 234; 1996: 175).

The underlying idea of these currents of thought is that somehow translations differ from non-translated language and represent a distinct dimension. Garzone (2015: 59-61) extends the polysystem model developed by Even-Zohar (1990) in the literary context to the linguistic milieu and argues that translated language is a subsystem of the linguistic system. She draws on the notion of *diasystem* developed in sociolinguistics (cf. Weinreich 1974 [1953], quoted in Garzone 2015: 61) and posits that the translated texts are part of the language diasystem and have distinctive linguistic peculiarities (Garzone 2015: 61). These peculiarities are not necessarily associated with features of the source language. Instead, similarly to the notion of interlanguage in second language acquisition, all translated texts disregarding the language pair seem to share certain regularities. Such linguistic properties of translated language are usually labelled as "translation universals" (e.g. Chesterman 2000, 2004a, 2004b, Mauranen 2004) or "laws of translation" (Toury 1980, 1995). This section applies this notion to the field of legal translation, looking at how translated legal texts can differ from non-translated language, also in light of their communicative potential.

3.4.1. General considerations about translation universals

The idea of regularities marking the language of translations is not new. Gideon Toury (1980, 1995) started the search for general laws of translation within the framework of descriptive translation studies. Over the years many prominent scholars have investigated laws or universals of translation, highlighting such tendencies as *explicitation* (Blum-Kulka 1986), *disambiguation* and *simplification* (Blum-Kulka and Levenston 1983; Vanderauwera 1985), growing *grammatical conventionality* and *overrepresentation*, i.e. overuse of typical TL features (Toury 1980; Vanderauwera 1985; Shlesinger 1991), and *elimination of repetitions* from translations (Shlesinger 1991) (adapted from Mauranen and Kujamäki 2004: 1). The focus in such studies is placed on the specific patterns of translational behaviour.

The advent of corpus linguistics fuelled further research into regularities found in translations as compared to non-translated texts, shifting the focus from small contrastive studies to work on electronic corpora (Baker 1993, 1996), where the linguistic nature of translations could be compared on a large-scale basis against both their source texts and similar non-translated texts.

Baker emphasises that "the nature and pressures of the translation process must leave traces in the language that translators produce" (Baker 1996: 177). The nature of such traces is admittedly vague, probabilistic and fuzzy, and is reflected in the level of indefiniteness associated with the choice of a single term to designate this concept. Some scholars talk about "laws of translation" (Toury 1995), others prefer "universals of translation" (Baker 1993, 1996; Chesterman 2004b) or "translation universals" (Mauranen and Kujamaki 2004), "regularities of translation" (Pàpai 2004) or "universal tendencies" (Jantunen 2004). Quite frequently the term "hypothesis" is employed, e.g. "the explicitation hypothesis" (Blum-Kulka 1986) or "the simplification hypothesis" (Laviosa 2004) to dodge any categorical statements about this phenomenon as being carved in stone. There is also an interpretation of the first two terms as standing in a hierarchical relationship, with the laws of translation being a wider notion, and translation universals representing its more specific manifestations (Pym 2008: 311). In general these notions are addressed as "probabilistic statements"

(Toury 2004) or "hypotheses" (Chesterman 2004a) to underline the fact that such claims have to be tested and corroborated.

Chesterman (2004a: 3) defines translation universals as follows.

> In simple terms, we can define a translation universal as a feature that is found (or at least claimed) to characterize all translations: i.e. a feature that distinguishes them from texts that are not translations. More strictly: to qualify as a universal, a feature must remain constant when other parameters vary. In other words, a universal feature is one that is found in translations regardless of language pairs, different text-types, different kinds of translators, different historical periods, and so on.

This study draws inspiration from the hypotheses about potentially universal regularities of translation and makes references to the concept of translation universals using this term for the sake of terminological consistency. However, I acknowledge certain methodological limitations and place the emphasis of this study on the observation of the patterns rather than efforts at generalisation. After all, "[w]hat ultimately matters is perhaps not the universals, which we can never finally confirm anyway, but new knowledge of the patterns, and patterns of patterns, which helps us to make sense of what we are looking at" (Chesterman 2004a: 11).

3.4.2. The methodological tool of S-universals and T-universals

When applying the theory of translation universals to legal translation, I draw upon the two linguistic relations that are studied within the framework of translation universals: relation of *equivalence* and relation of *textual fit*. The former concerns the relation between the translated text and its source text. In other words, in this study translated written pleadings are compared to their source texts in Russian and in Italian, respectively. The *textual fit* compares "the degree to which the linguistic profile of a translation matches the linguistic profile of the relevant family of texts in the target language" (Chesterman 2004a: 6). Under this profile, translated written pleadings are compared to the reference corpus of non-translated pleadings produced by native speakers of English. The differences in equivalence / textual fit are respectively referred to as *S-universals* for the former type and *T-universals* for the latter type (Chesterman 2004a: 7).

Chesterman (2004a: 8) proposes the following list of potential S-universals and T-universals (with original comments and explanations).

Potential S-universals

– Lengthening: translations tend to be longer than their source texts (cf. Berman's expansion; also Vinay and Darbelnet 1958: 185; *et al.*)

– The law of interference (Toury 1995)

– The law of standardization (Toury 1995)

– Dialect normalization (Englund Dimitrova 1997)

– Reduction of complex narrative voices (Taivalkoski 2002)

– The explicitation hypothesis (Blum-Kulka 1986, Klaudy 1996, Øverås 1998) (e.g. there is more explicit cohesion in translations)

– Sanitization (Kenny 1998) (more conventional collocations)

– The retranslation hypothesis (later translations tend to be closer to the source text; see Palimpsestes 4, 1990)

– Reduction of repetition (Baker 1993)

Potential T-universals

– Simplification (Laviosa-Braithwaite 1996: less lexical variety, lower lexical density, more use of high-frequency items)

– Conventionalization (Baker 1993)

– Untypical lexical patterning (and less stable) (Mauranen 2000)

– Under-representation of TL-specific items (Tirkkonen-Condit 2000, 2002)

The terminological and conceptual picture of translation universals is fuzzy. Often there are discrepancies between different conceptualisations of sometimes the same phenomena or different interpretations of similar terms, which "leads to much reinventing of the wheel, and makes it hard to compare different results and claims" (Chesterman 2004a: 10). It seems reasonable to overview both the terms and the concepts, which are used in this study within the paradigm of translation universals.

I accept Chesterman's argument that in the case of S-universals, the analysis is directed at both similarities and differences, whereas in the case of T-universals, the emphasis is placed primarily on differences, because "similarities here would merely indicate naturalness, not universal indicators of translations as a distinct class of text". Yet, these two categories are also subject to interpretation and are used here as a general methodological orientation tools.

Procedurally, Chesterman's S-universals and T-universals can be paralleled to Toury's (1995: 56) parameters of adequacy and acceptability within the norm theory, because both scholars propose to compare a text against a non-translated reference text, to determine whether it is acceptable and natural or deviating, and then to a source text. In fact, Toury (1995: 70-74) suggests the method when at the initial stage a translation is checked for acceptability in the target environment (cf. T-universals), comparing its features with reference non-translated texts of the same genre, and only afterwards verifying any deviations against the source-texts (cf. S-universals). This is the procedural progression followed in this study, wherever applicable (cf. Chapter 4).

3.4.3. Translation universals: overview

Among various translation universals, *explicitation* has received probably the most significant attention in the literature (Blum-Kulka 1986; Klaudy 1996; Baker 1996; Øverås 1998). It is a "tendency to spell things out rather than leave them implicit" (Baker 1996: 180), which can be expressed both syntactically (e.g. adding more conjunctions, increasing general text length) and lexically (e.g. adding explanatory items). Another tendency that has been studied within the translation universals hypotheses is *simplification* (Laviosa-Braithwaite 1996; Baker 1996), which consists in decreased lexical variety, lower lexical density and increased use of high-frequency items. Another sign of simplification would be division of longer sentences into several shorter ones or the use of a more elaborate punctuation. Simplification is meant also to resolve ambiguity (Baker 1996: 182), which is a boggy terrain in legal texts, because they tend to be intentionally vague and indeterminate (see e.g. Joseph 1995; Bhatia *et al.* 2005; Engberg and Heller 2008). Explicitation and simplification can overlap sometimes as is acknowledged by Baker (1996: 180): "Is there a difference between the two or is it the same feature under different names?"

The third "popular" universal is the tendency to normalise translations, avoiding ungrammatical passages. *Normalisation* or *conservatism* is "a tendency to exaggerate features of the target language and to conform to its typical patterns" (Baker 1996: 183), which translates into the overuse of cliché expressions and correction of grammar errors. This phenomenon partly coincides with *the law of standardisation* (Toury 1995), *dialect normalisation* (Englund Dimitrova 1997), *sanitisation* (Kenny 1998) and *overrepresentation* (Mauranen and Kujamäki 2004, cf. 3.4.3.1).

Pym (2008: 318) argues that explicitation, simplification and normalisation have significant overlaps, which are summarised in Baker's *levelling out*: "the tendency of translated text to gravitate towards the centre of a continuum" when "the individual texts in an English translation corpus are more like each other in terms such as lexical density, type–token ratio and mean sentence length than the individual texts in a comparable corpus of original English" (Baker 1996: 184). Pym claims the existence of "some grounds for suspecting that all these universals are different aspects of the one underlying universal" (Pym 2008: 318) and asks whether there is any difference between Baker's universals and Toury's law of standardisation, evoking the similarity of constituting elements (Pym 2008: 319).

> Many elements are mentioned in both places, or can be interpreted as such: normalization ("habitual options" in Toury), simplification, disambiguation, low lexical density ("reduced structuration" for Toury), and low type/token ratio ("flattening").

In addition, Pym criticises the incorporation of explicitation among universals of translation, relating his claim to the way this concept was elaborated by Shlesinger (1991) in the context of interpreting, which disproved its universality.

The *law of interference* has not received a lot of scholarly attention within the translation universals framework. In translation, it manifests when "phenomena pertaining to the make-up of the source text tend to be transferred to the target text" (Toury 1995: 275). This kind of *discourse transfer* (Toury 1986) can be either positive, i.e. not deviating from the target language codified practices, or negative, i.e. presenting such deviations, and is "the external manifestation of a general cognitive law" (Toury 1995: 275). Although understudied within the translation universals perspective, interference – understood as the influence of one's first language and culture on second language performance in cross-cultural and cross-linguistic communication – has fascinated interlanguage researchers for decades. In translation studies, interference – understood as the influence of the source text over the translation process – has been generally taken as a fact. While early translation studies that followed a typically prescriptive approach discouraged and advised against interference, descriptive translation studies acknowledge its existence as a variant and a trait that distinguishes the translated language along with other features (Garzone 2015: 62).

In general, translation universals have elicited some critique that concerned various aspects of this notion, starting with its denomination ("universals" vs. "laws" vs. "hypothesis" vs. "tendencies", see 3.4.1), terminological overlaps and imprecisions concerning single universals (see above) as well as a degree of Anglocentrism in studies on universals, which tend to ignore non-European languages (Mauranen 2007: 45; Biel 2014a: 109). Another important factor that contributed to heated discussion is the universality of claims, which tend to exclude the influence of genre and language pair following the initial concept formulation by Baker (1993). On the methodological side, this tendency manifested itself in studies typically carried out on comparable corpora, without taking interference into account (Biel 2014b: 109). However, there is further research indicating the intertwined character of translation norms and translation universals (Kenny 2014 [2001]: 53) as well as the influence exerted by genre (Teich 2003: 147), which contradicts the initial formulation of this concept. I agree with Halverson (2003: 224) and Biel (2014a: 307) in that investigations into translation universals should include considerations of the language pair involved and of the potential interference, as well as dedicate due attention to genre contextualisation (social and institutional factors) as bearing important consequences for the outcome of translation. Consequently, I build my research on two translation universals which represent the opposite translation effects and are particularly stimulating to verify because of their interrelation with norms (cf. 3.3 and 3.4.4): *conventionalisation*, or the tendency to (over)use the standard patterns of the target language, and *interference* / *discourse transfer*, or the tendency to insert typical language patterning of the source text into the translation.

3.4.3.1. Conventionalisation

Conventionalisation is the term preferred in this study to designate the tendency to translate source text textemes as conventional repertoremes of the target environment. It is conceptualised as a manifestation of Toury's *law of growing standardisation* (1995: 267-268), formerly known as the *law of conversion* (Toury 1980, 1995), according to which

> In translation, source-text textemes tend to be converted into target-language or target-culture repertoremes. […] In translation, textual relations obtaining in the original are often modified, sometimes to the point of being totally ignored, in favour of [more] habitual options offered by a target repertoire (Toury 1995: 268).

Laviosa (2008: 124-125) explains repertoremes as "signs which belong to an institutionalized repertoire, that is a group of items which are codifications of phenomena that have semiotic value for a given community". As specialised legal nature of written pleadings lies at the heart of this discussion, the contextualisation of conventionalisation in terms of the overuse of institutionalised repertoremes seems to be particularly relevant.

Baker (1996: 176-177) calls this phenomenon *normalisation* or *conservatism*: "the tendency to conform to patterns and practices which are typical of the target language, even to the point of exaggerating them", which would include also grammaticising potential errors, although in my interpretation it does not involve any correction of grammar errors.

This phenomenon can be observed with regard to both the relation of equivalence / adequacy (S-universal plane) and textual fit / acceptability (T-universal plane):

- *Conventionalisation on the S-universal plane* manifests itself as a replacement of ST textemes with TL conventional items, which could result in the relative underrepresentation of the less conventional items. Kenny (1998: 515) conceptualises this tendency as *sanitisation*, i.e. "the suspected adaptation of a source text reality to make it more palatable for target audiences". Although she uses the term *sanitisation* and not *conventionalisation*, she describes similar translation phenomena, whose main goal is to render the target texts more acceptable.
- *Conventionalisation on the T-universal plane* can be observed through overrepresentation of typical features of the target language compared to similar non-translated texts. Toury (1980: 130) illustrates this tendency by the exaggerated use of binomials, which are typical of Hebrew, in translated texts as compared to original non-translated texts.

Malmkjær (1998) overviews a variety of English translations of the same Danish source text and comes to the conclusion that there is a shared tendency to overuse conventional target language items, addressing this issue form the standpoint of norms. In general, it seems that norms and conventions take on an important role in various conceptualisations of this phenomenon in particular and in the description of translation universals up to the point that there is no consensus whether deviations in translation are induced by norms or by translation universals (Kenny 2014 [2001]: 53).

3.4.3.2. Interference and discourse transfer

While the tendency to overuse TL specific expressions is extensively addressed both by the concepts of norms and translation universals, the reverse tendency to introduce SL patterns into translations is not so widely documented from the above perspective.

Toury's *law of interference* is formulated as follows: "[i]n translation, phenomena pertaining to the make-up of the source text tend to be transferred to the target text" (Toury 1995: 275). This phenomenon can manifest itself on various levels: lexical, syntactic, pragmatic and discursive, up to the level of *discourse transfer*. In an earlier work, Toury (1986) defines discourse transfer in relation to translation as a "permanent presence of the SL utterance during the production of a translation" (Toury 1986: 82). This term is used alongside the classical notion of *interference* to distinguish, if and where possible, between the levels where the phenomenon takes place. *Interference* is a well-established concept, which is used here in its traditional interpretation, mainly to describe cases of lexical and syntactical transfer from the ST. At the same time, the focus of this study is on a specific type of discourse – legal discourse, which invites the use of the term *discourse transfer* as proposed by Toury (1986, 1995). It is interpreted here as the introduction of higher-level discursive and linguistic patterns from the source system into the target system, sometimes at the expense of the conventional TL items, such as prefabricated patterns, text-organising formulae and routines marked as highly pragmaticalised in the SL legal discourse. Both concepts are closely interrelated, and it is often problematic to pinpoint the level of transfer, also because phraseology stands at the crossroads of semantics, morphology, syntax and discourse (Granger and Paquot 2008: 30, see 2.6.1), hence the *interference / discourse transfer* indication is sometimes used.

In general, Toury describes interference / discourse transfer as a *tendency*, which implies that this translational behaviour can vary from context to context and range from zero interference to a high level of interference depending on the level of proficiency of a translator. Discourse transfer and interference derive from the external manifestation of the translator's cognitive process combined with socio-cultural environment that conditions the cognitive process. Toury (1995: 275-276) explains that an important factor in establishing patterns of interference is to analyse the level of texts, since at a higher level of linguistic organisation interference can be often untraceable. Hence, the lower-level linguistic entities, such as text-organising formulae may be expected to be more prone to discourse transfer / interference. Toury (1995: 276) formulates the following important consideration:

> The more the make-up of a text is taken as a factor in the formulation of its translation, the more the target text can be expected to show traces of interference. […] The more a translation shows traces of interference, the more closely the make-up of the source text can be hypothesized to have been leaned upon in the translation process.

Applying this statement to legal translation and legal language, where the make-up of texts follows rigid rules, one may speculate to find instances of both interference and discourse transfer. In addition, this study places emphasis on functional phraseological elements, which would qualify as lower-level linguistic entities. Consequently, the choice of this phenomenon for a further analysis seems to be pertinent.

Toury (1995: 275) differentiates between (a) *negative transfer*, which consists in deviations from the target language codified practices, and (b) *positive transfer*, i.e. "a greater likelihood of selecting features that do exist and are used in any case" (1995: 275).

- *Negative transfer* is observable though the occurrence of the so-called "strange strings" or untypical collocations in translated language (Mauranen 2000), i.e. in the *quality* of translations. Mauranen (2000: 120) posits that translations "show unusual word combinations – collocations and multi-word strings – compared to original texts in the target language". Mauranen's research focuses on the phraseological units in academic prose, although not expressly labelling them as such. Instead, she designates them as text-reflexive expressions, which are semi-fixed "prefabs" or multi-word expressions (Mauranen 2000: 121). Her findings confirm subtle combinatorial differences and untypical patterning of such multi-word expressions, which are not characterised by anything ungrammatical and yet differ from the reference corpus. Mauranen (2000: 137) attributes such deviations to translation universals. Given a highly formulaic nature of legal language, rich in similar text-reflexive expressions, the corpus of written pleadings is also likely to show traces of discourse transfer, or "strange strings".
- *Positive transfer* can textually manifest itself in the *quantity* of certain items in translation, specifically in distributional differences observable on the T-universal plane. This phenomenon has been also addressed in terms of the underrepresentation of the TL "unique items" (Tirkkonen-Condit 2000, 2004). Tirkkonen-Condit (2004) starts her cognitive research from the hypothesis about allegedly universal overrepresentation of TL typical linguistic features in translation (see the previous paragraph on conventionalisation), from which she infers the hypothesis about underrepresentation of TL "unique" features. According to the "unique items" underrepresentation hypothesis (cf. also Kujamäki 2004), straightforward lexical equivalents of the source language stimuli replace in translation the more natural sounding "unique items" of the target language. Consequently, the phenomenon of underrepresentation (caused by interference/discourse transfer) seems to be complementary to overrepresentation (caused by conventionalisation).

Accordingly, this study focuses on linguistic interference in its traditional interpretation on the one hand, and, on the other hand, on the introduction of higher-level discursive and linguistic patterns from the source system into the target system, tentatively referred to as discourse transfer.

3.5. Translation norm/universal interface

In the absence of a clear-cut distinction between translational behaviour attributable to norms and to translation universals, as well as in light of certain criticisms concerned with an "extreme" version of translation universals (see 3.4.3), a combined framework of norms and universals is a better approach for the analysis of (deviating) patterns in the corpus. Both norms and translation universals manifest themselves through recurrent linguistic patterns that can be identified using corpus linguistics tools that establish distributional deviations. Toury (1995: 68-69) argues in favour of the distributional basis for the study of norms when frequency in shifts from "adequate" translation (cf. Chesterman's (2004a) *relation of equivalence*) to "tolerated" translation (cf. Chesterman's (2004a) *textual fit*) suggest "a more permitted (tolerated) activity, a stronger tendency, a more basic (obligatory) norm" (Toury 1995: 68-69).

The general idea is that highly recurrent phenomena in translations may be explained either in terms of norms (sociocultural factors) or universals of translational behaviour (cognitive factors), and the "distinction between shifts in translation due to the operation of norms and those that represent translation universals is not at all clear" (Kenny 2001: 53).

3.5.1. The translation norm/universal interface: between conventionality and creativity

The interaction between conventionality and creativity has been extensively studied in linguistics, and even more so since the advent of corpus linguistics. Language is traditionally described as a complex continuum, at the extremes of which stand conventionality and creativity.

Conventionality is typically understood as the standard and habitual way to express meanings, including formulaic expressions, conversational routines, conventionalised institutional settings that define crystallised and repetitive patterns of expression, as well as grammar rules and sociocultural norms. Creativity, on the other hand, typically involves some deviation from linguistic norms and rules. It can be traced in the novel and untypical use of words and word combinations, bending of word formation rules, irregular compounds or linguistic patterning. Šarčević (1997: 161) mentions that legal translators, although customarily perceived as non-creative, often have to make creative syntactical and stylistic changes, however, the extent of tolerated creativity in legal translation without endangering the uniformity of interpretation and application is not clear.

> The creative potential of language is undeniable, but the concordances to a corpus remind us forcibly that in most of our utterances we are creatures of habit, immensely predictable, rehearsing the same old platitudes and the same old clichés in almost everything we say. If it were not so, language would become unworkable. Humankind cannot bear very much creativity (Hanks 1996: 85).

As observed above by Hanks (1996: 85), the framework of conventionality and creativity is in a constant tension, where the two forces pull into the opposite directions. Applying this framework to translation, the transfer of SL conventions and patterns, which are not typical of the TL, tends to be perceived as creative because it constitutes a deviation from the TL norms and patterns. At the same time, (over)reliance on TL conventions and patterns, even in the absence of explicit ST stimuli, is perceived as (overly) conservative. These two poles most often co-occur in every translation and stand in a dialogic relationship, thus allowing the coexistence of both creative (transferred) and conventional (overrepresented) elements.

This observation relates to what Halverson, from the point of view of cognitive grammar, conceptualises as the "gravitation pull hypothesis" (Halverson 2003: 223-224), according to which prototypical (here also prefabricated) structures of the source language, because of their highly pragmaticalised cognitive salience, prompt the translator's choice, resulting in overrepresentation of certain features, whereas those TL items that do not have strong links to a SL item tend to be dispreferred in translations.

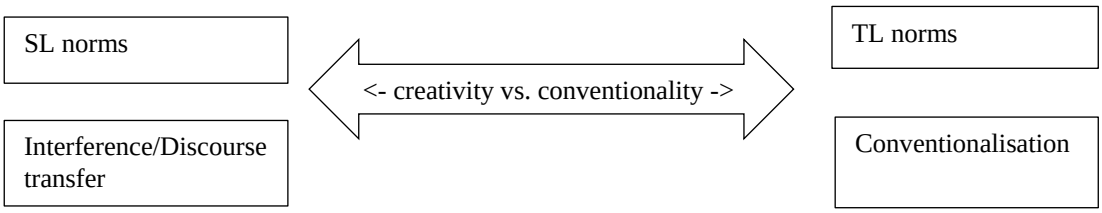


Figure 3.1: *Creativity/conventionality framework in translation.*

Conventionalisation is generally oriented towards the target language and stems from the receiving legal system norms (cf. "acceptability" in Toury 1995: 57; "textual fit" in Chesterman 2004a: 6). On the contrary, the phenomenon of interference / discourse transfer is slanted towards the source language and the norms and conventions governing the source legal system (cf. "adequacy" in Toury 1995: 57; relation of "equivalence" in Chesterman 2004a: 6). Since the tension between different legal systems is a fact established in studies of legal translation, especially, under the search for legal equivalence, linguistically this twofold orientation results in a complex interaction between TL-imposed conventionality and SL-deriving creativity if one views the translation from the target language perspective, or between SL-accepted conventionality and TL-imposed creativity if one views the translation from the source language perspective. In other words, the perception of creativity and conventionality is a matter of perspective.

Translators are referred to as "creatures of habit" (Kenny 1998: 515; Stewart 2000: 73), who, often unconsciously, follow the established standards and patterns and show reluctance to take risks (Pym 2008), thus being sometimes seen as clearly conformist and submissive (Monzó Nebot 2015: 193). Legal translation in particular "remained under the grip of tradition much longer than other areas of translation" (Šarčevič 1997: 23). The notion of habit, however, does not specify whether this is a habit with source-oriented roots or a target-oriented habit. For instance, in L2 translation (cf. 3.6) the directionality of habit is blurred. L2 translators may build upon their internal knowledge of how a legal text should look like and be subject to interference from their L1, subsequently transferring habitually SL-specific patterns into TL.

In general, it remains unclear to what extent the choice of creative or conventional expressions derives from the norms, by which the translators are conditioned, or from the universal features of translation as a process. When this study mentions conventionalisation and interference / discourse transfer, or conventionality and creativity, these phenomena are interpreted as deriving both from norms and from universal translational behaviour, making distinctions only where possible.

3.6. Translation into the second language

The controversial notion of directionality has long been on the minds of the Translation Studies scholars. There is a general distinction between *direct translation*, i.e. translation from a foreign language into one's native language, and *L2 translation*, i.e. translation from a native language into a foreign language, also referred to as "translation into a non-native language", "translation into a non-mother tongue", "inverse translation", "translation into the second language" (Palumbo 2016: 8). The mainstream perspective of Translation Studies tends to associate direct translation with the unmarked direction of translation and "to condemn L2 translation without trial" (Stewart 2000: 77), with some notable exceptions starting to appear from the mid-1990s (McAlester 1992; Pym 1992; Stewart 2000; Pokorn 2000; Adab 2005).

The traditional insistence on translation into one's mother tongue acquires an old-fashioned flavour in the era of globalisation, and becomes "unenforceable and impracticable" (Adab 2005: 227), especially with regard to English, which has become the lingua franca of the modern community. The rise of global English combined with the need to have time- and quality-efficient translation services often make L2 translation the most practical solution for both clients and translators (Rückert 2016: 55-56). Scarpa *et al.* (2014: 55) observe that "the special position of English as lingua franca of the globalised world" allows challenging traditional axioms of directionality (cf. Pokorn 2000) and leaving behind the classical approach of translation into one's language "of habitual use" advocated for in traditional manuals (e.g. Baker 1992: 65; Newmark 2003: 3).

Palumbo (2016: 8-9) notes a shift towards a more positive attitude to L2 translation, caused by the development of modern society and translation markets:

> Mistrust of L2 translation is, at any rate, no longer a generalised attitude. Even in the largest national markets, where L1 translation is still largely the norm, L2 translation ends up being the only option available for certain language pairs – a frequent outcome, for instance, in public service translation. In the same markets, L2 translation is at the order of the day for many translation graduates who find jobs as language professionals in businesses (especially small and medium enterprises) and government institutions.

Indeed, with regard to the written pleadings at the ECtHR produced by the Government Agents, it is virtually certain that the in-house translators, who are public servants and nationals of the respective government, carry out the translation. This is a common practice at government institutions. For instance, Serpentini and Iaboni (2016) overview L2 translation practice within the institutional context of the Italian Ministry of the Interior, where staff linguists (*funzionari linguistici*) "are expected to translate bi-directionally in their language combinations, regardless of their native language" (Serpentini and Iaboni 2016: 66).

In addition to practical considerations of employing the nationals of a certain state, the aspect of a highly specialised legal content, which implies perfect understanding of the source text subtleties, might put L2 translators in a more advantageous position compared to L1 translators. In fact, "the advantage of fluency in the target language that native speakers of the TL have is often counter-balanced by an insufficient knowledge of the source language and culture, which means that translations by native speakers of English are not automatically 'superior'" (Pokorn 2000: 79). Moreover,

> In very specialised fields, such as law, for example, an accurate translation can only be produced if the translator has an in-depth understanding of the subject-field and excellent source language comprehension skills. Simply being a native speaker of the target language is clearly not sufficient (Rückert 2016: 53).

On the European level such setting brings about a high level of linguistic "hybridity", "where English is at the same time the target language for non-native translators and the language expected

by an international audience", who are frequently also non-native receivers of the translations. In fact, as an alternative to the in-house translators, some government Agents in the ECtHR context opt for drafting their pleadings directly in the foreign language, or L2 production, which can be paralleled to a certain extent to L2 translation on the basis of its mediated nature (see commentary on interlanguage at the end of this subsection).

The opposite opinion generally associates L2 translation with the interference phenomenon, or some kind of linguistic deviation from the standard norms of the target language. At the same time, L2 translation is characterised by overreliance on conventional formulae of the target language inasmuch as these constitute ready and prefabricated patterns.

> In view of the inevitably reduced range of colours the L2 translator has available to splash on the TL canvas, L2 translation might reasonably be considered to rely more heavily on tried and tested language events, and thus to lean even further towards conventional formulae than translations into L1 (Stewart 2000: 78).

In fact, Stewart even proposes a cline of conventionality, where the least conventional productions are associated with the original source text, L1 translations stand in the middle and L2 translations are deemed to be the most conventional.

On the other hand, there are findings of the long-standing tradition of interlanguage scholars, who posit the unquestionable influence of L1 over the production in L2 (e.g. Carhill and Selinker 2006) and suggest higher potential creativity in L2. In an interlanguage perspective, Carhill and Selinker (2006: 144) thus define the notion of genre, which can be applicable to the genre of written pleadings:

> An internally-constructed rule-bound system, unique to each learner which captures the learner's perception of culturally-valued ways of meaning instantiated by members of the target community, namely, the learner's best guess as to ways of communicating interlanguage meaning to members of that community.

While Carhill and Selinker's model relates to language teaching, it might be in a way applicable to supranational legal communication. Here, the parties bring their previous knowledge and experience of similar communication in L1 and apply it as a blueprint upon which to construct the actual L2 content in a structurally set framework of the genre of written pleadings. While the structure of written pleadings is conditioned by the requirements set forth in the Practice Directions (see 2.2.2.4), there are no guidelines as to the language to be used in these documents. Consequently, the L2 drafters of written pleadings might as well be relying on their professional knowledge in their source legal culture and language, with regard to applicable patterns and routines, when drafting their L2 observations, and possibly transferring certain discursive and linguistic structures. In addition, all pleadings make reference to national law, which most often has not been translated into English[31], and thus involves translation of codified law by L2 legal professionals, and not legal translators. It must be said that only some of the Italian Government's Agents could have potentially drafted their pleadings directly in English (L2 drafting); the majority of written pleadings in the corpus are L2 translations as attested in the texts of the pleadings and accompanying notes. Consequently, all texts in the Russian Translation Corpus and in the Italian Translation Corpus are treated as instances of mediated language use and specifically as L2 translations (see Chapter 4 for a more detailed description).

[31] For instance, the *Italian Code of Criminal Procedure* was translated into English only in 2014 (Gialuz, Lupária and Scarpa (eds)) and the *Criminal Code of the Russian Federation* (transl. by William E. Butler) in 2008, while this corpus gathers pleadings produced between 2002 and 2010, i.e. the period largely preceding these translations.

3.7. Translation and synonymy

Translation studies inevitably deal with the basic relationship of similarity between the ST and the TT. The similarity is also a corollary point for the study of synonymy. Moreover, (near-)synonymy plays an important role in the fabric of legal texts. From the methodological perspective, this work draws on the studies of synonymy and organises the legal markers in sets of near-synonyms in order to evaluate the distribution of similar elements and to assess the degree of conventionality or creativity in terms of different frequencies of synonymous items often selected for the translation of the same expression in the source texts. In other words, the theoretical concept of synonymy is used in this study as an operational tool and a bridge towards the paradigm of legal phraseology rather than a standalone basis for analysis. This section first introduces the general notion of synonymy in relation to equivalence (3.7.1) and its use in translation (3.7.2) as well as deals with synonymy in legal language (3.7.3), legal translation (3.7.4) and on the phraseological level (3.7.5).

3.7.1. Synonymy and equivalence

The study of synonymy is consequential for the study of translation. Traditionally, the fundamental objective of translation has been to reach equivalence between the source text and the target text. Similarly, synonymy is prevalently understood in terms of degree of equivalence or similarity between different items of the same language. Linguistics has been always attracted to formulating basic relations between words and the phenomenon of synonymy has received particularly much attention in semantics. Pivotal studies in this field include Ullmann (1962), Nida (1975), Lyons (1977, 1981), Leech (1981) and Cruse (1991, 2000), for example. It appears that complete equivalence and interchangeability is nearly impossible or at least very rare, as exemplified by Jakobson (1959: 233) “every celibate is a bachelor, but not every bachelor is a celibate”.

The classic approach to synonymy in LSP research tackles the phenomenon from the onomasiological and terminological perspective, where synonyms are viewed as different terms from the same language that denote the same concept (Felber 1984: 98). Equivalents are thus defined as two or more words that denote the same concept but come from different languages. Rogers (1997) overviews the relation between synonymy and equivalence from the terminological perspective as presented in Figure 3.2.

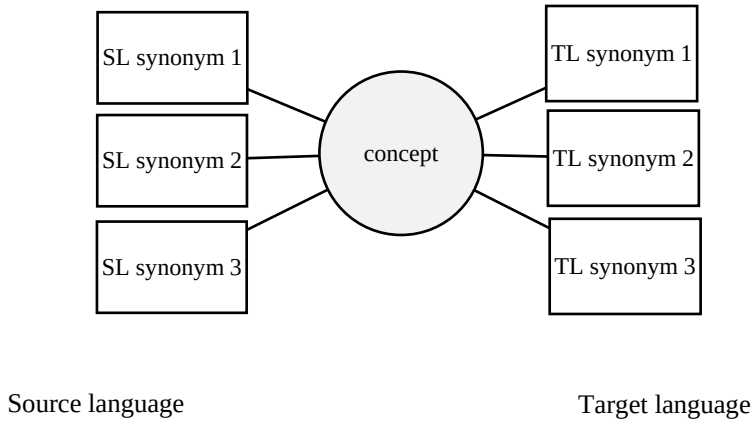


Figure 3.2: *Synonymy and equivalence from a terminological perspective (Rogers 1997: 218).*

In the semasiological perspective, on the contrary, synonymy and equivalence are interpreted as relations between lexemes which share the same denotative meaning, without the mediating role of the concept. In this approach terms are said not to have connotative meaning (Rogers 1997: 218). However, this understanding of synonymy leans closer on the concept of interchangeability and absolute synonymy (Goźdź-Roszkowski 2013: 95).

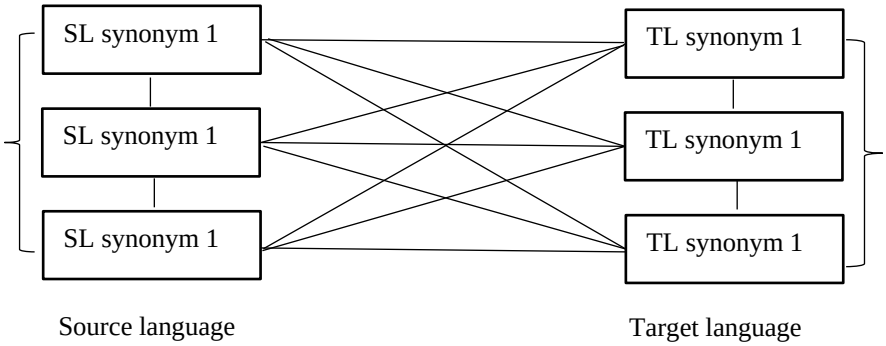


Figure 3.3: *Synonymy and equivalence from a word-based perspective (Rogers 1997: 218).*

The advent of corpus linguistics enriched both the field of Translation Studies and research of synonymy, because it has added another criterion to the definition of synonyms (and equivalents) – collocability or syntagmatic relations (Rogers 1997: 219, see also Divjak 2010; Goźdź-Roszkowski 2013), i.e. with what items different lexemes tend to be used, in order to determine the *degree* of similarity/equivalence.

In fact, both synonymy and equivalence in translation represent a continuum with various degrees[32]. Cruse (1991: 265-295; 2000: 156-160) distinguishes three categories of synonyms that are placed on a cline of similarity: *absolute synonyms*, *cognitive* or *propositional synonyms* and *plesionyms* or *near-synonyms*. *Absolute synonyms* have identical semantic mode and the same propositional, expressive and contextual features. According to Cruse (2000: 157), few synonyms would qualify as absolute, i.e. appear in exactly the same contexts. *Cognitive* or *propositional synonyms* share "central" features but have different collocational or contextual patterns. Propositional synonymy can be defined "in terms of entailment" (Cruse 2000: 158). Two propositional synonyms can be substituted in any utterance with truth-conditional properties without effect on those properties. For instance:

compliance vs. *accordance* vs. *conformity*
(1) The other cults are tolerated in *conformity* with the law. [ITTC] (+)
(1a) The other cults are tolerated in *accordance* with the law. (+)
(1b) The other cults are tolerated in *compliance* with the law. (+)

[32] Most studies on synonyms rank them according to the degree of similarity. Lyons (1981: 148-149) distinguishes between *absolute* and *complete* synonymy. Absolute synonymy occurs "if and only if they have the same distribution and are completely synonymous in all their meanings and in all their contexts of occurrence". On the other hand, complete synonymy occurs "if and only if [two items] have the same descriptive, expressive and social meaning (in the range of contexts in question)" (Lyons 1981: 148-149). In line with Lyons, most studies differentiate between two poles of synonymy, *strict* and *loose* (Jackson and Zé Amvela 2007: 107-113), *total* and *partial* (Löbner 2002: 46), *full* and *partial* (Filipec and Čermák 1985: 133), *exact* and *inexact* (*точные* and *неточные синонимы*, Apresjan 1995 [1974]: 223) or *full* and *near-synonymy* (Divjak 2010: 3). The former category typically implies that synonyms belong to the same part of speech, have fully coinciding interpretations (the same semantic expression) and the same propositional and contextual roles. The category of near-synonymy entails partially coinciding interpretations, possibility of hyperonymy and different collocability.

Traditionally, synonymy (and equivalence) is defined in terminological and linguistic research at the abstract level of the lexeme (Rogers 1997: 220), which most traditional grammarians would associate with the noun element in (1). At the same time, if the item of analysis in the same utterance is treated as a complex preposition (cf. Chapter 5), i.e. a lexicalised and grammaticalised indivisible unit, these synonyms can be treated as absolute, because their truth-conditional properties are embedded in their structure.

In compliance with vs. *in accordance with* vs. *in conformity with*
(2) The other cults are tolerated *in conformity with* the law. [ITTC] (+)
(2a) The other cults are tolerated *in accordance with* the law. (+)
(2b) The other cults are tolerated *in compliance with* the law. (+)

Finally, the least similar category of *plesionyms* or *near-synonyms* consists in cognitive synonyms, whose use in a sentence may highlight their difference and respectively deny their synonymy in a given context, e.g. "Was he murdered?" "Not exactly – but he was killed." (Cruse (1991: 286, also 2000: 159). The permissible differences between near-synonyms are either minor, or backgrounded, or both, meaning that they can differ by degree ("laugh" vs. "chuckle"), adverbial specialisations ("chuckle" vs. "giggle"), aspectual distinctions ("calm" (state) vs. "placid" (disposition)) and difference of prototype centre ("brave" (prototypically physical) vs. "courageous" (prototypically involves intellectual and moral factors)) (Cruse 2000: 160).

Similarly to the degrees of synonymy, there are also degrees of equivalence. Šarčević (1997: 238-239) differentiates three degrees of equivalence in the field of law: *near equivalence, partial equivalence* and *non-equivalence*. *Near equivalence* is the relation between SL and TL concepts, when the respective terms "share all of their essential elements and most of their accidental characteristics". *Partial equivalence* is the most common type for functional equivalence in legal translation; it occurs when SL and TL concepts "share most of their essential elements and only some of their accidental characteristics". Finally, *non-equivalence* characterises situations, when concepts in the source language and target language share only a few or none of their essential elements and no accidental characteristics.

A neat parallel between Cruse's (1991) and Šarčević (1997) classifications may be drawn, with a reserve that the third scenario in both taxonomies has enough shared characteristics in order to talk about a relation of equivalence/synonymy, excluding relation of non-equivalence and non-synonymy. In this study this continuum is understood as follows. The non-equivalence extreme is relabelled as *quasi-equivalence* and includes situations, where the amount of shared essential elements is sufficient to establish a similarity / weak equivalence, but there might be differences in minor or backgrounded characteristics. In other words, the relations presented in Figure 3.4 and Figure 3.5 (based on Šarčević's 1997: 238-239 graphs of intersection and inclusion and Cruse's (1991, 2000) division of synonyms) concern the situations within the range of synonymy and equivalence in their broad understanding and do not feature situations of non-synonymy or non-equivalence.

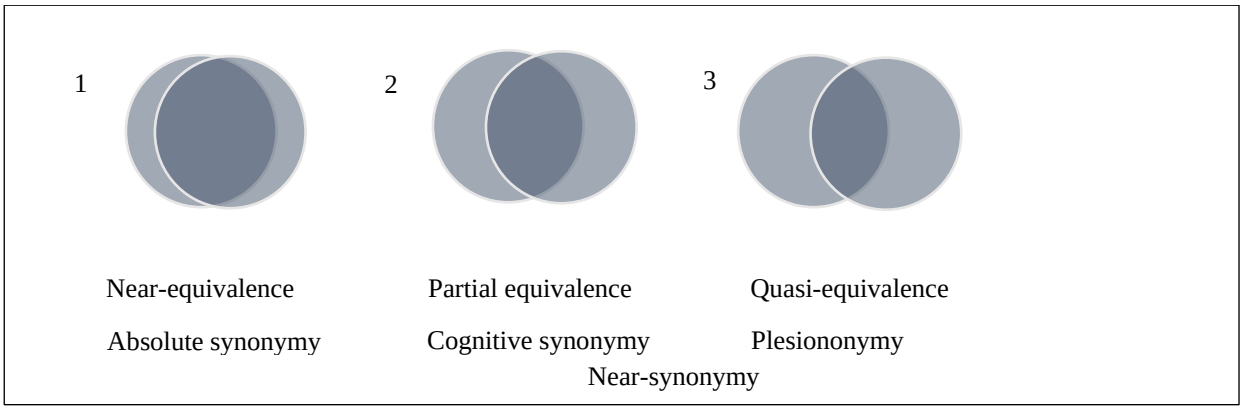


Figure 3.4: *Relation of synonymy and equivalence: intersection.*

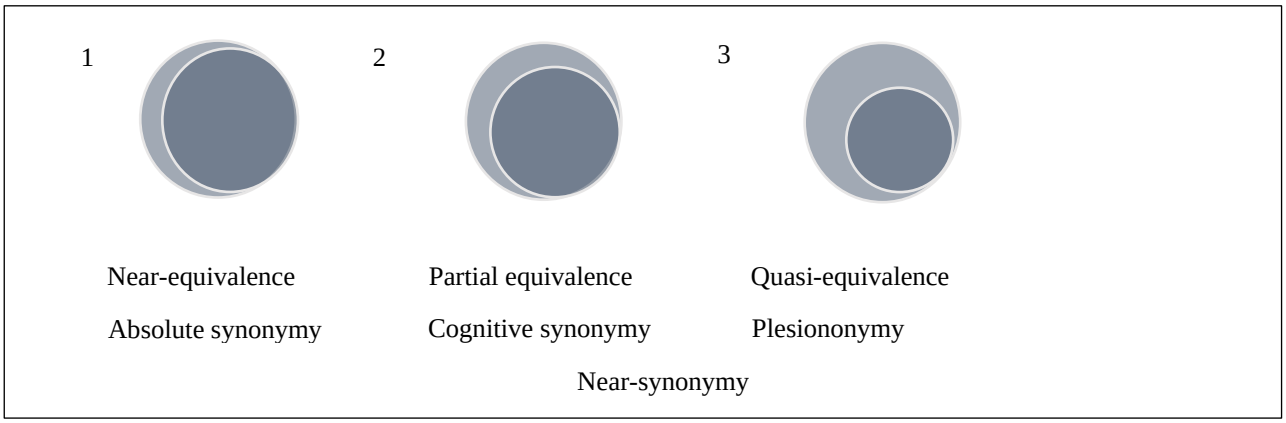


Figure 3.5: *Relation of synonymy and equivalence: inclusion.*

Two circles in each scenario represent two items, potential synonyms or equivalents. The darker elements in these figures represent the shared characteristics in the paradigm of identity and inclusion (Cruse 2000: 151): synonymy (intersection) and hyponymy (inclusion). The pole of absolute synonymy and near equivalence in the field of law is rare, especially with regard to terminology. Most legal equivalents are placed either under partial and quasi-equivalence, depending on the interpretation of their minor and backgrounded characteristics. The borderline between partial equivalence and quasi-equivalence as well as between cognitive synonymy and plesionymy in the field of law is fuzzy, context- and interpretation-dependent. It is well-known that legal interpretation is a complex process, which can produce different results for the same term depending on the context (institutional, *ad hoc*, cultural), intended meaning, linguistic, systemic and dynamic factors (Paunio 2013: 28).

Examples of legal reinterpretation of the degree of similarity can be found in the English translation of the Italian Code of Criminal Procedure, where *ad hoc* conceptual distinction was introduced between "offence" (hyperonym, to render *reato*), and its hyponyms "crime" (to render *delitto*) and "misdemeanour" (to render *contravvenzione*). This is a clear case of an *ad hoc* reinterpretation of the degree of equivalence and synonymy (Scarpa *et al.* 2014: 72-73). In England "crime" and "offence" are cognitive synonyms, bordering on absolute synonymy in a broad sense as they can be used most often interchangeably, whereas in the translated code their relation of similarity was reduced to plesionymy leaning closer to the third scenario in Figures 3.4 and 3.5.

Bearing in mind the specificity of the legal context, this study will operate only with the notion of near-synonymy as graphically represented above. In this study near-synonymous items are understood as different semantically-related lexemes that share the same or nearly the same meaning and tend to occur in similar collocational patterns and have converging semantic preferences (Stubbs 2001). In other words, on the scale of similarity near-synonyms are placed in-between Cruse's cognitive synonyms and plesionyms to cater for cases of overlap or differences attributable to the interpretation process.

3.7.2. Synonymy and translated language

The study of translated language in terms of its use of (near-) synonyms is not new. Already before the rise of corpus linguistics, Blum-Kulka and Levenston (1983: 119, 130-131) argue that the recourse to common synonyms might explain lexical simplification in translations. A similar thought is found in Laviosa-Braithwaite (1997: 533), who posits that the limited use of synonyms may be interpreted as an indicator of lexical simplification in translations.

Different preferences in L2 for nearly synonymous expressions have been already interpreted as occurring under the influence of interference in research that intersects translation studies and synonymy using corpus linguistics (Mauranen 2000; Jantunen 2001, 2004). Jantunen (2001) in his

study of amplifiers and degree modifiers finds that the variety of synonyms in translations is equal to non-translated texts and sometimes it is even wider in translations. As to the choice of the most common synonyms, Jantunen (2001) comes to the conclusion opposite to Blum-Kulka and Levenston's or Laviosa-Braithwaite's findings. According to Jantunen's findings, translators do not prefer the most frequent synonyms overlooking the other members of a synonymous set. In a later research, Jantunen (2004: 122) reiterates that "translated texts, regardless of the source language, seemed to show dissimilar collocations compared to non-translated texts", although he is reluctant to attribute this phenomenon to universals of translation only, because of a particular source language influence. In general, Jantunen claims that the study of synonymous sets is particularly fitting for tracing any untypical patterns in translation because a comparison of contextual restrictions of synonymous words across the languages may cast light on patterning deviations (2004: 103), but important methodological distinctions are to be made in order to avoid contradictory results.

> […] although overall frequencies are partly untypical in translations (*typicality of frequencies*), combinations may be typical as well as untypical (*typicality of patterning*). More interestingly, it was the proportions (*quantity*) of items that distinguished language variants in the colligation analysis, not their actual range (*quality*) (Jantunen 2004: 122).

Mauranen's (2000) findings similarly cast light on different preferences among synonymous expressions in translated and non-translated language. It seems that "a number of the differences between translations and originals [non-translations] involved different preferences in choosing between near-synonyms" (Mauranen 2000: 138), hence Mauranen posits the "strange strings hypothesis", or "untypical collocation hypothesis" (Mauranen 2006: 97). Similarly, Tirkkonen-Condit's (2004: 178) "unique items hypothesis" observes the underrepresentation of typical TL phraseological unique items, in the absence of stimuli in translation. From a practical perspective of a translation strategy for the Italian Code of Criminal Procedure, Scarpa *et al.* (2014: 76) in order to achieve major standardisation intentionally translate *a norma di* with "under [the provision of]", leaving out a range of possible equivalents (synonyms), such as "according to", "in accordance with", "in compliance with", etc. Even though Biel does not focus expressly on issues of synonymy, she analyses various phraseological units in sets of near-synonyms and finds that translated law in the EU context uses "untypical collocational patterns and is marked by a lack of phraseological rigor" (Biel 2014b: 190).

3.7.3. Synonymy in legal language

Tiersma defines rather categorically the attitude of lawyers to synonyms, stating, "the legal profession has a very schizophrenic attitude toward synonyms" (Tiersma 1999: 113). At the same time, Garner (1995: 292) notes that "amplification by synonym has long been [...] a part of the language of law". In the same vein, Serianni (2003: 109) observes that operating with "akin concepts" (*concetti affini*) and subtle semantic distinctions is a typical trait of legal language aimed at elimination of contradictions or applicability uncertainties. He explains that near-synonymous terms may entail different legal consequences. Likewise, Tiersma (1999: 182) insists that legal professionals perceive subtle differences in connotational value of seemingly similar words. In terms of studies of synonymy, these phenomena qualify as *near-synonyms*, which are defined as "typical of the legal text, more a quirk than a characteristic" (Phillip 2003: 154).

Goźdź-Roszkowski (2013) argues that the use of near-synonyms in legal language is conditioned by extralinguistic factors such as subject-specific domain (e.g. contract law, intellectual property law), and genre (e.g., statute, judgment or contract). He examines the collocational patterns of four legal terms "breach", "contravention", "infringement" and "violation" across different genres of American legal texts and finds that certain terms tend to be preferred in certain genres and to refer to certain subjects.

In addition, legal language is notorious for its use of binomials and multinomials (Malkiel 1959; Gustafsson 1984), which are sequences composed of two or more near-synonymous items, such as "null and void", "strong, clear and concordant [information]", and longer *synonymical chains* (Chromà 2011: 42), which are drafted *ad hoc* to serve a particular legal context, e.g. "illegal carrying, keeping, purchase, manufacture or selling of weapons, ammunition or explosives" [RUTC]. Organisation of legal discourse in series of synonyms linking two, three or more lexical units with the same or similar meaning pursues the goal of making the sense of the utterance as clear and unequivocal as possible and prevent any misinterpretations by all-encompassing lists. Tiersma (2008: 15) explains that the goal of such lists is to include every possibility to prevent any interpretation loops and exemplifies his point with a list used for documentary requests "any and all letters, correspondence, memoranda, notes, working papers, diaries, invoices, computations, graphs, charts, drafts".

Chromà (2011: 42-43) defines strings of near-synonyms typical of common law, but I believe that recourse to synonymical chains is not restricted to the common law systems only because it reflects the universal tendency of law to cater for precision, balancing between all-inclusiveness and indeterminacy (cf. Bhatia *et al.* 2005: 9-10). In fact, Mattila (2006a: 71) refers to the fact that similar lists are frequent in different legal systems.

3.7.4. (Near-) synonymy in legal translation

Tiersma (2008: 21) explains that the use of near-synonymous strings increases the precision of legal documents. However, in legal translation, when a translator has to choose one item among a list of near-synonyms, it often borders on a "mission impossible" type of operation. Alcaraz Varó and Hughes (2002a: 38) comment that legal translators continue to work without any bilingual or multilingual dictionaries of synonyms that would cross-reference the major concepts of the TL and SL legal systems, thus making the choice of the correct lexeme troublesome because of the existing variety of synonyms. For instance, the range of terms indicating the concept "revoke" contains such synonyms as "cancel", "annul", "dismiss", "overrule", "quash", "strike out", "recall", "reverse", "set aside" and "restore". These terms are near-synonyms, whose relation of synonymy is a matter of degree and context, which calls for a particularly alert approach to their use on translation.

Near-synonymy advises caution in legal translation because it is a frequent phenomenon and because there are not many ready linguistic aids (Alcaraz Varó and Hughes 2002a: 38; Goźdź-Roszkowski 2013: 108) that could help resolve doubts.

> The importance of the concept of near-synonymy to legal translation is well-recognised. Translators dealing with legal language inevitably face a bewildering range of synonymous or near-synonymous terms or words appearing in virtually all legal texts. (Goźdź-Roszkowski 2013: 94)

Another problem concerns strings of near-synonyms, "which smack of tautology and linguistic overkill" (Alcaraz Varó and Hughes 2002a: 39), such as "null and void" or "without let or hindrance". When such frozen overstatements occur in the source text, the translator has to decide whether to render all elements in the string or to replace the repetition and to what extent the meaning of the whole string depends on its individual components. For instance, in contract law "null and void" is translated with one term into Russian *ничтожный* and into Italian *nullo*. However, translators should be alert because often the specialised legal meaning of such multi-word expressions cannot be divided into the sum of meanings of individual words. For instance, "full faith and credit" cannot be modified as "full faith" or "full credit" because it is a fixed term in American law (Tiersma 1999: 113).

But what should a translator do in the reverse scenario, when the source text features only one word, which can be translated as a binomial? For instance, in contract law *условия* are frequently translated as either "terms", "conditions" or "terms and conditions". Should *условия* be translated as just "terms" or just "conditions" or both? Garner (1995: 872) places the binomial *terms and conditions* among the most common redundancies in legal drafting. There is, however, a subtle difference

between “terms” and “conditions” under common law. “Terms” refer to general provisions of a contract and can be subdivided into “conditions” and “warranties”. The breach of a condition can amount to a breach of contract, which makes it terminable, but breach of warranties involves merely liability for damages and cannot terminate the contract. In Russian no such distinction is made, and *условия* is a hyperonym like “terms”. Yet, out of legal language the lexeme used to render *условия* is “conditions”, e.g. *погодные условия* – “weather conditions”, *условное наклонение* – “conditional mood”. In this case, the choice of the binomial would resolve a terminological overlap in the source language as well as look conventional in the target language. Alcaraz Varó (2008: 98) mentions the so-called “paronymous temptation” among the traps for translators. In other words, translators are tempted to use the cognate words of the target language, which can often be false friends. When a translator is faced with a list of near-synonyms, the allure of choosing the closest to the source language is high (cf. the “gravitation pull” hypothesis in Halverson 2003).

Similarly, should the expression “[punishable] under [article]” be translated “adequately” as *punibile dalla [legge]* or “acceptably” by the standardised Italian expression *previsto e punito*, or *p. e p.*, literally “provided for and punishable under [article]”? The choice between the two options will inevitably tip the scale to major adequacy (creativity) or acceptability (conventionality) (cf. Subsection 3.5.1). Consequently, the choice of synonyms is also an ideological choice. In fact, the apparently arbitrary selection of alternative synonyms has been the object of study in sociolinguistics (Rogers 1997: 219, cf. Hudson 1980: 81). It is believed that synonymy in translation is motivated to a certain extent by both syntagmatic and pragmatic factors (Rogers 1997: 219).

3.7.5. Legal synonymy on the phraseological level: translation-related considerations

Most studies of legal synonymy in translation are built from the terminological perspective (e.g. Chromà 2011) with some notable exceptions that follow the phraseological approach or however focus on lexico-grammatical patterning (Jantunen 2000, 2004; Divjak 2010; Goźdź-Roszkowski 2013).

In contrast to near-synonymous terms that are highly context-dependant and rarely interchangeable, some functional phraseological units can be indeed substitutable in most legal and linguistic contexts. Among the rare cases of almost ideal interchangeability *causal link*, *causal nexus* or *causal connection* can be mentioned (Chromà 2011: 45). For instance, complex prepositions expressing the above relations, such as “in relation to”, “in reference to”, “with reference to” can be considered interchangeable, although their core lexical items are only near-synonymous.

Propositional synonymy conceptualised as paraphrase (Murphy 2008: 144) can be also studied in terms of near-synonymy. It deals with cases of synonymous syntactic units. For example, the ending formulae of written pleadings are syntactically synonymous although not all their lexical components are synonyms: “for the reasons set out above”, “in the light of the foregoing [considerations]”, “this being the case”, “In sum … for all of the above reasons”, “proceeding from the foregoing”, “by virtue of the foregoing”, etc. Bigger phrases and even sentences can qualify as propositional synonyms, although the focus of this work is primarily on lexical and lexicalised (grammaticalised and pragmaticalised, cf. Chapter 2) items and in general on synonymy between items of functional vocabulary.

In addition, lists of near-synonymous functional items can also occur in legal texts. Alcaraz Varó (2008: 104) claims that the decision whether to retain the functional doubling or tripling in the target text depends on its function. If it is a merely stylistic function, the translator can eliminate near-synonyms (1); if the string is needed for the sake of clarity, the translator can retain it and reorganise the utterance in two subordinate sentence (2).

(1) He said that the time had come for him to guarantee the future of himself and his family *if, as and when* he decided to withdraw from public life.
(1a) [...] *si* algún día decidiera retirarse de la vida pública.
(2) *When and so long* as such parties were in the throes of negotiating larger terms.

(2a) *Cuando* las partes se encuentren en pleno proceso de negociar la ampliación de los plazos, *y mientras dure esa situación* ....

On this note, having looked at phraseological synonyms it is time to zoom on the issue of phraseology in legal translation.

3.8. Translation, phraseology and legal language

3.8.1. Phraseology, translation and legal translation

Although contrastive and cross-linguistic phraseology is a well-established line of study (see e.g. Piirainen 2008), phraseology and translation is not a common research field (Colson 2008: 200). Colson mentions that only a limited amount of studies have been carried out so far (notably Roberts 1998; Sabban 1999; Poirier 2003; Rojo 2003; Koller 2007, quoted in Colson 2008: 200), and "the very concept of phraseology still seems to be largely absent from studies on translation theory or practice" (Colson 2008: 200). Yet, the situation is gradually changing and phraseological competence in translation is often addressed in terms of translation quality assessment (Gouadec 2007; Mossop 2007; Colson 2008; Prieto Ramos 2014; Biel 2014a). Indeed, phraseology "may be one of the key factors in evaluating the quality of a translation" (Colson 2008: 201). In LSP and specifically in legal domain, phraseological units tend to cluster around terms; hence phraseology and terminology are closely linked and form a continuum (Scarpa *et al.* 2014: 75). In addition, as exemplified by cases of near-synonymy in 3.7, terminology should not be studied in isolation because combinatorial preferences and restrictions addressed by the phraseological approach play in important role in meaning determination and (re-)interpretation.

Issues of phraseology in relation to legal language and legal translation have been addressed from a variety of perspectives. Most scholars limit their attention to legal phraseology by merely acknowledging the existence of fixed or prefabricated routines or markers of legal language (cf. Chapter 2). Some lines of translation-oriented research put emphasis primarily on the use of formulaic expressions in legal communication (e.g. Rega 2000) and lexicographic studies for the purposes of creation of legal dictionaries (e.g. Tessuto 2008; Buendía Castro and Faber 2015). Other studies follow the traditional phraseological approach and analyse collocations and lexico-grammatical patterns in legal language (e.g. Corpas Pastor 1996; Bhatia *et al.* 2005) and for legal translators (e.g. Lombardi 2004; Biel 2011). There are studies that adopt the framework of distributional phraseology and analyse phraseological co-occurrences in legal corpora (Mazzi 2010; Goźdź-Roszkowski 2011; Kopaczyk 2013). The manuals of legal translation (Šarčević 1997; Alcaraz Varó and Hughes 2002a and 2002b; Cao 2007) also dedicate some attention to translation of legal phraseological units, although without adopting any expressly phraseological perspective. Finally, there are studies that explicitly focus on the translation of legal phraseological units (Kjær 1990, 2007; Orozco and Sánchez-Gijón 2011; Pontrandolfo 2014; Biel 2014a, 2014b, 2015; Pontrandolfo and Goźdź-Roszkowski 2015, Monzó Nebot 2015), which is the line of research that reflects most the goal of this study. Moreover, there is a separate line of research on phraseology and "translationese", the interlanguage caused by an imperfect translation (Tirkkonen-Condit 2002), also addressed in terms of translation universals and overly conventional (Monzó Nebot 2015) or untypical (Mauranen 2000; Jantunen 2001, 2004) phraseological patterns.

3.8.2. Translation of legal phraseology

The translation of legal phraseology is a "hitherto neglected area" (Wagner *et al.* 2014: 7). Research into the translation of legal phraseology is a new and promising line of inquiry, which started receiving more scholarly attention from 2010s (see Goźdź- Roszkowski 2013; Pontrandolfo 2014; Biel 2014b).

Phraseological units are recognised as challenging in translation (Newmark 1981: 180) and specifically legal translation (Garzone 2007: 218-219; Prieto Ramos 2014: 16) and today are often placed at the centre of attention together with traditional terminological concerns (Gouadec 2007; Prieto Ramos 2014). The challenge of translating phraseology is of a combinatorial nature, because collocational patterns differ across languages and are relatively subjective (cf. Baker 1992: 48) and

often cannot be translated literally, but instead the translator has to look for TL functional equivalents with a similar degree of conventionality as in the SL (Scarpa *et al.* 2014: 74).

Needless to say, translators may confuse such collocability patterns (Baker 1992: 54; Hatim and Mason 1990: 204) and produce "strange strings" (Mauranen 2000), "untypical patterns" (Jantunen 2001, 2004) that "lack phraseological rigour" (Biel 2014b: 190) or are perceived as odd (Baker 1992: 55). Such unintentional deviations in translational behaviour infringe the commonly accepted norm of "phraseological conformity" (Gouadec 2007: 40), meaning the translator is expected to use "the collocations, set phrases, sentence patterns and paragraph organisations which are particular to the domain area or the type of document concerned or used only by a particular professional group". In other words, phraseological equivalence in translations is expected to be unmarked and domesticated (Biel 2014b: 182, cf. Hatim and Mason 1990: 205), which is a frequent strategy adopted in legal translation (see e.g. Scarpa *et al.* 2014: 73-80). Another aspect is that of consistency, i.e. one can expect that synonymous legal phrasemes be used consistently, although in reality synonymic variation is still common in LSP texts "despite the best efforts of standardising bodies" (Rogers 1997: 219).

With regard to the practice of legal translation, there are different opinions. Some scholars advocate for functional equivalence in the translation of phraseological units that may comply with the legal style in the target language (Orozco and Sánchez-Gijón 2011: 27; Scarpa *et al.* 2014: 74). On the other hand, unnatural or untypical collocations can be acceptable in certain situations (Biel 2014b: 182). Biel (2014b: 182) claims that in legal translation the main criterion for the choice between the conventional and transferred phraseological unit is the accuracy in conveying the sense; "if an unmarked TL equivalent implies a change in meaning, the translator should opt for a less typical but accurate collocation, even if it sounds awkward" (Biel 2014b: 182).

On the European level, where "translation is the official language" (Paunio 2013: 1), untypical collocational patterns seemingly thrive. Biel (2014a, 2014b) overviews EU law translated into Polish and concludes that it is marked by the decreased textual fit, or the relation of acceptability in Toury's terms (1995: 68-69), of translated law compared to non-translated law. Biel observes that the European laws translated into Polish do not use as often as it would be expected the conventional patterns. She claims that deviation from the TL phraseological conventions cannot be attributable to multilingualism-related constraints, conceptual lacunas or asymmetry between languages. Biel posits that such deviation is "unjustified" and even "confusing", and results in the reduced formulaicity of translated law, increasing the cognitive effort necessary for its processing and likely to affect negatively effectiveness of communication (Biel 2014b: 190).

To my knowledge, there is no research into phraseology in the translation of documents belonging to the domain of human rights protection, specifically procedural documents which are *not* prepared by the ECtHR Registry, the Translation and Interpreting Service of the Council of Europe or other official bodies. Yet, applications continue to be lodged before the ECtHR and written pleadings continue to be requested, increasing the need for quality translation of legal phraseology in the language of human rights. As of now, issues of translation are in full discretion of the parties, who either engage professional or budding L2 translators (at least in the translation markets under analysis) or lawyers with a sufficient knowledge of one of the ECtHR's official languages (who have to produce pleadings in L2). It would be naïve to presume that their main attention is dedicated to the issues of phraseological conformity and consistency, also because there are no linguistic tools that could help them navigate through troublesome areas, as for instance the issue of legal near-synonymy. This study might constitute a small step towards filling this gap.

CHAPTER 4

CORPUS DESCRIPTION AND RESEARCH METHODOLOGY

The descriptions of legal style markers provided in this study emerged from different research methodologies applied to a corpus of translated and non-translated legal texts belonging to the genre of written pleadings before the ECtHR, which, to my knowledge, has never been investigated before due to the limited accessibility of the data, an obstacle happily overcome by this study. This chapter describes first the textual material (4.1), how it was collected (4.1.1) and prepared (4.1.2) and gives a description of the corpus (4.1.3). Next, the research methodology is described as the application of a particular body of methods in a given theoretical context. The methodology employed for this investigation is both quantitative and qualitative. The general methodological framework for this study is that of corpus linguistics, addressed in 4.2. First a brief general overview of corpus linguistics methods is provided (4.2.1), including the operational subdivisions within this field/methodology (4.2.2). Next, the application of corpus linguistics for the study of legal language and translation is discussed (4.2.3) and for the analysis of legal phraseology (4.2.4). Then the specific methodological framework used in this work is presented (4.3), describing in particular the phraseological continuum underlying the operational steps. Next, I present extraction algorithms utilised for different types of legal phraseological units in 4.4. Finally, a description model used for qualitative analysis is outlined in 4.5.

4.1. Corpus description

4.1.1. Data collection

There is no unanimous definition of what can count as a corpus. Generally, a corpus – as discriminated from a simple collection of texts – is understood as an electronically stored collection of naturally occurring samples of texts and has to be gathered according to a number of consistent selection criteria, including authenticity of texts and their representativeness. McEnery and Wilson (1996: 87), for example, emphasise the representativeness of a corpus, which for the scholars is "a body of text which is carefully sampled to be maximally representative of a language or language variety". Another frequent assumption is that selection criteria follow a specific purpose, as different purposes call for different corpora and text typology, because the great availability of authentic texts makes it "imperative to evaluate them according to a typology" (Tognini-Bonelli 2001: 6).

For the purposes of this research, a small corpus of authentic written pleadings before the European Court of Human Rights has been collected. The corpus is divided into three distinct subcorpora: the Russian Translation Corpus ("RUTC"), the Italian Translation Corpus ("ITTC") and the English Reference Corpus ("ENRC"). The Russian Translation Corpus and the Italian Translation Corpus, as their shorthand denominations suggest, are corpora of written pleadings that have been translated into English from Russian and from Italian respectively. The English Reference Corpus gathers non-translated written pleadings that have been drafted by native speakers of English residing in the United Kingdom. Collectively the three subcorpora constitute the Three-Part Comparable Corpus of Written Pleadings ("Three-Part Corpus", see 4.1.3). It is labelled "comparable" because it gathers similar samples of texts (cf. Tognini-Bonelli 2001: 7). The Three-Part Corpus is a monolingual comparable corpus as it gathers subcorpora of both translated and non-translated texts (Baker 1995) and aims at researching the "textual fit" or "adequacy" parameter (see 3.5), i.e. how similar or different translated texts are from non-translated texts of the same genre. However, an additional cross-linguistic flavour is added by gathering a sample of the Russian and Italian source texts for

consultative purposes in order to tangentially address the issue of "relation of equivalence" or "acceptability" (see 3.5), i.e. how close are translated texts to their sources.

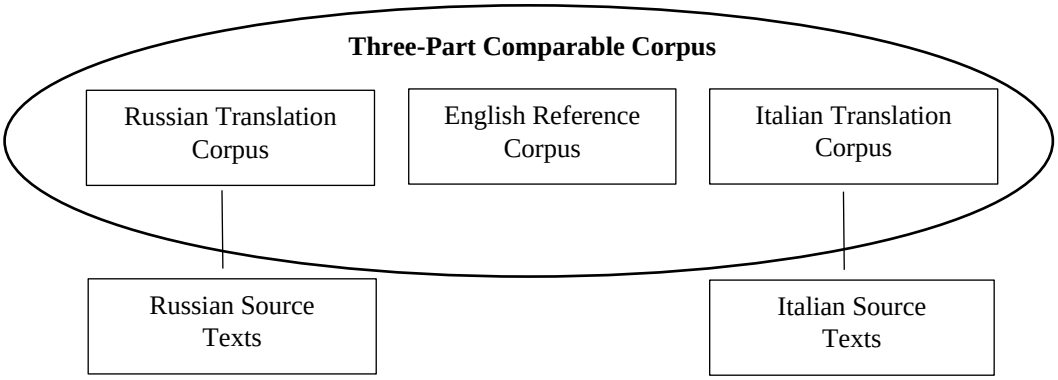


Figure 4.1: *The composition of the Three-Part Comparable Corpus of written pleadings before the ECtHR.*

The comparability means that texts are comparable in terms of genre, time of publication and, preferably, text type and text length. In order to satisfy the standard of comparability, adopting the genre perspective and the contrastive standpoint of translation studies, the following selection criteria for the collection of corpus have been chosen.

(1) *Authenticity*. All texts in the corpus are naturally occurring instances of communication with the ECtHR. The texts are solicited by the ECtHR Registry asking for additional information regarding a real case (cf. 2.2).
(2) *Identical institutional settings*. The texts concern court proceedings before the ECtHR, which implies also
    a. *Topic consistency*: violations of human rights and fundamental freedoms as established in the European Convention on Human Rights.
(3) *Genre consistency*. All texts in the Corpus belong to the genre of written pleadings before the ECtHR as described in Section 2.5 and are produced following the requirements of Rule 34 of the Rules of Court (see 2.5).
(4) *Legal professionals as drafters*. All texts are created at the stage of proceedings when only legal professionals (and not the applicants, as is possible with the initial application) carry out the communication with the ECtHR.
(5) *Timespan consistency*. All texts were produced between 2002 and 2012. Timespan consistency is a relative criterion as the pace of examination of cases at the ECtHR, and respectively the request for written pleadings, differs from State to State and according to the general workload of the Court.
(6) *English*. The texts in the corpus are in the English language.
    a. *Translated nature*. The translation corpora are composed in relation to two countries, where English is not an official language and are translated from the respective national languages (Italian and Russian).
    b. *Non-translated nature*. A reference corpus of texts drafted in the UK is collected following the same criteria.

The challenge behind working with authentic procedural documents lies in the restricted access to such texts. Although the procedure before the ECtHR is generally public, the procedural documents of the ECtHR are not available to the general public. They are accessible only to the authorised personnel of the Council of Europe, including the ECtHR Registry staff. The corpus of written pleadings that constitutes the object of this research was obtained with the kind assistance of the Registry personnel, who were informed about the criteria described in 4.1.1 for the retrieval of texts.

Three different persons kindly provided texts that were included into the Russian Translation Corpus, the Italian Translation Corpus and the English Reference Corpus. Consequently, my control over the selection of thematically aligned material was limited. The Registry personnel who provided me with pleadings chose texts that were representative of the general flux of pleadings and applications against Russia, Italy and UK. Although the size of my corpus is small, the texts that compose it were considered representative by the Registry lawyers themselves. I hope that after this pilot study I could be granted access to a greater number of texts, which would allow generalisations on a larger scale with a more saturated corpus.

The authenticity of the material acquired and its representativeness against a general benchmark of all pleadings in respect of the three States had an impact on the thematic variable. While all texts in the Three-Part Corpus deal with issues of human rights violations, they sometimes refer to different articles of the ECHR, although the typical procedural issues (such as those arising out of Art. 6 ECHR) are highly comparable. It is duly acknowledged that the Convention grants a wide protection of human rights, and this can result in different lexis typically associated with its criminal limb (e.g. "murder investigation") or civil limb (e.g. "defamation"). As I had little room for manoeuvre on the collection of texts for the inclusion in the Three-Part Corpus, a certain lack of control over the thematic variable was accepted as inevitable in favour of authenticity, since the novelty of this study lies primarily in the choice of this hitherto unresearched material, all the more so as in broad terms thematic variation in cases dealt with by the court is relatively limited.

Consequently, I had to overcome two methodological challenges: first, with regard to the small size of my corpus and, second, with regard to some thematic inequality. As concerns the size of the corpus, I rely on the information given by the text providers with regard to the representativeness of the texts. The results of this study are to be interpreted as pilot, counting on a future possibility to integrate the corpus with other pleadings, and all generalisations are based only on the textual material analysed. In connection to the thematic element, I decided to focus primarily on functional vocabulary. However, in the legal domain the phraseological continuum runs in parallel with and clusters around terminological nodes (Scarpa *et al*. 2014: 75), and it is methodologically troublesome to assess multi-word terms, lying at the crossroads of terminology and phraseology, using a slightly unbalanced corpus. Consequently, I decided to concentrate only on the nodes referring to the general procedural order of the ECtHR (e.g. "proceedings", "article", etc.), which are recurrent in all three corpora, based on the wordlists. The extraction of terminological nodes (see 6.2.1) and their further analysis takes into consideration the thematic variable to prevent any comparability-related discrepancies. Whenever a deviation could be potentially attributed to topic inconsistency, it is disclosed in the text of the analysis. As a consequence, both the small size and some topic inconsistency is not problematic for the results of this pilot study.

4.1.2. Data preparation

Under the agreement with the Registry representatives, all texts have undergone a process of sanitisation, i.e. all proper names and data have been replaced with fictitious ones in order to safeguard the confidentiality of the persons involved. Fictitious names and numbers have been chosen randomly. The texts were relabelled: each pleading was given a number, followed by an indication of the party to the dispute who drafted it (GVT = Government; APP = Applicant) and the shortening "OBS" (OBS = Observations), e.g. 1 GVT OBS or 5 APP OBS, which reflects the style of labels attributed to pleadings in the Court's database.

All texts in the Three-Part Corpus were initially static documents – scanned files transformed either in .jpg or .pdf formats, with varying degrees of image quality and readability. Consequently, the next operative step was to convert them to .doc format by means of an optical recognition programme. I used Adobe Reader. The resulting .doc files had to be cleaned and carefully proof-read because of multiple errors that occurred in the process of optical recognition. Several documents were entirely retyped because the parameters and quality of the file did not allow optical recognition.

Original mistypes that were present in the static documents have been left unchanged. After the initial correction and sanitising, the texts have been further converted from .doc/.docx to the format of .txt, ready to be analysed by a concordance software. The corpus preparation stage can be placed among the most time-consuming steps of this study as it took almost a year.

The corpora of source texts for the Russian Translation Corpus and the Italian Translation Corpus were gathered after the completion of sanitising and transformation operations for the Three-Part Corpus, again with the kind assistance of the Registry representatives. The Russian and Italian texts were gathered for consultative and not for analytical purposes, hence they were not aligned with their target texts and left in the static formats (.jpg and .pdf). Unfortunately, the internal ECtHR database does not allow an automated search for the source texts of the translations selected. In this system every document is attributed a unique number, so the identification numbers of the translations and their source texts may differ and the retrieval of the latter is highly time-consuming for the Court personnel. Consequently, not all of the source texts have been retrieved due to this technical limitation and the source text corpora are to be considered representative yet partial, which nonetheless satisfies the purposes of this study for their restricted consultative use.

4.1.3 Data description: the Three-Part Corpus

The Three-Part Corpus of written pleadings before the ECtHR amounts to nearly 240,000 tokens. Table 4.1 provides the general statistics of the Three-Part Corpus.

Corpus	Tokens	Types	Texts	Time
Russian Translation Corpus	106,294	5,277	19	2006-2011
English Reference Corpus	86,006	5,220	10	2002-2012
Italian Translation Corpus	46,300	4,478	10	2003-2012
Total	**238,600**	**-**	**49**	**2002-2012**

Table 4.1: *The Three-Part Corpus and its elements.*

As overviewed in 2.5, written pleadings in the ECtHR system are subdivided by the drafting party into Government's Observations and Applicant's Observations. The procedural organisation of case examination at the ECtHR implies that the Applicant typically lodges a detailed and structured application, which has to meet a number of formal admissibility criteria (see Figure 2.4). Only when the *prima facie* admissibility criteria are met, the case is communicated to the respective Government, which is typically the first party solicited to provide observations. Then the Applicant normally provides the reply to the Government's observations, and the Government may submit further observations in reply to the Applicant's observations. Such a procedural order implies that the government-produced pleadings are naturally occurring more frequently than the applicant's pleadings. Consequently, the proportion of government-produced pleadings in the Three-Part Corpus is higher than applicant-produced pleadings, with a ratio of 60% vs. 40% in the English Reference Corpus and in the Italian Translation Corpus, and 68% vs. 32% in the Russian Translation Corpus. This slightly umbalanced composition according to the drafting party is representative of the general situation at the ECtHR – deriving from its procedural order – and is left as such in order to maintain the authenticity.

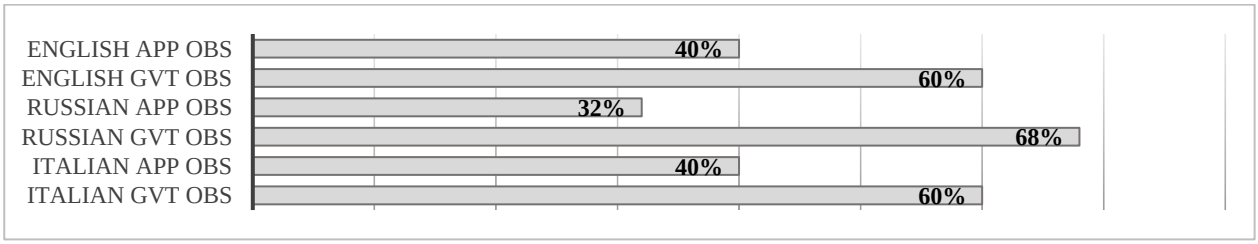


Figure 4.2: *The ratio of Government's observations and Applicant's observations across the three corpora.*

The choice of the translations from Italian and from Russian is based on both linguistic and extralinguistic considerations. The source languages of the translation corpora belong to different language families: Romance (Italian) and Slavic (Russian) languages, which are translated into a Germanic language (English). Linguistic asymmetries between these languages make the analysis of translated vs. non-translated language particularly interesting. In addition to linguistic factors, written pleadings coming from Italy and Russia are stimulating to analyse because these two States had the highest case-count before the European Court of Human Rights during the period between 2002 and 2012 according to the official statistics available on the ECtHR website, together with Turkey and Ukraine[33]. Finally, having acted as a legal interpreter at multiple trainings for national lawyers on the human rights protection mechanisms held in Strasbourg, I am familiar both with the basics of the ECtHR system and national laws of Italy and Russia. Consequently, these linguistic and extralinguistic factors have played a decisive role for the choice of pleadings coming from these two environments.

4.1.3.1 The Russian Translation Corpus

The Russian Translation Corpus ("RUTC") consists of written pleadings produced both by the Government's Agent of the Russian Federation and various applicants from this state between 2006 and 2011. There are six applicants' pleadings (32%) and thirteen Government's pleadings (68%), which correspond to 35,637 words (34%) vs. 70,657 words (66%). The average text length in the Russian Translation Corpus is 5,594 words.

All texts in this subcorpus are translations from Russian into English as is explicitly stated in the accompanying notes to the observations (see 2.5 for an overview of the structure of written pleadings). Several texts, produced by the Applicants, mention the translators' names and these are Russian nationals. It seems logical to suppose that the Government of the Russian Federation employs Russian nationals, too, for the translation of its observations. In fact, taking into account the necessity of frequent communication with the Court, these might be even in-house translators. While there are numerous applicants, there is only one office of the Agent of the Government of the Russian Federation. In addition, the Russian translation market almost exclusively uses non-native translations into English, also in consideration of the national translation rates, which are more competitive than the UK rates, for instance. It is thus certain that all translated texts are instances of L2 translation.

The parallel corpus of Russian source texts ("Russian Source Texts" or "RUST") gathers 50% of the source pleadings in Russian. In addition, many Russian pleadings extensively quote Russian legislation, which is easily consultable and available to general public even in the absence of the exact source pleading. In cases, when the statute law quoted has been amended over time and the current version differs from the previous versions, I have consulted only the version which refers to the time frame of the pleading.

Category	Texts	%	Text length	%	Year
I. Applicants' observations					
	5 APP OBS		5,080		2008
	8 APP OBS		4,815		2008
	9 APP OBS		10,967		2008
	11 APP OBS		5,538		2008
	14 APP OBS		2,226		2009
	17 APP OBS		7,011		2009
Total	**6**	**32%**	**35,637**	**34%**	**2008-2009**

[33] The exact statistics by year as well as the respective annual reports are available at http://www.echr.coe.int/Pages/home.aspx?p=reports

Category	Texts	%	Text length	%	Year
II. Government's observations					
	1 GVT OBS		2,194		2010
	2 GVT OBS		7,238		2009
	3 GVT OBS		9,155		2007
	4 GVT OBS		10,187		2007
	6 GVT OBS		10,201		2006
	7 GVT OBS		2,854		2006
	10 GVT OBS		1,478		2008
	12 GVT OBS		2,392		2008
	13 GVT OBS		2,781		2009
	15 GVT OBS		1,835		2009
	16 GVT OBS		7,415		2009
	19[34] GVT OBS		1,905		2009
	20 GVT OBS		11,022		2011
Total	**13**	**68%**	**70,657**	**66%**	**2006-2011**
Grand total	**19**	**100%**	**106,294**	**100%**	**2006-2011**

Table 4.2: *Composition of the Russian Translation Corpus.*

4.1.3.2. The Italian Translation Corpus

The Italian Translation Corpus ("ITTC") is a corpus of pleadings from Italian parties to disputes, drafted and translated between 2003 and 2012. It consists of both Government's and Applicants' Observations. There are four applicants' pleadings (40%) and six Government's pleadings (60%), which correspond to 16,226 words (35%) vs. 30,074 words (65%). The average text length in the Italian Translation Corpus is 4,630 tokens. One text – 2 GVT OBS – is significantly shorter than the others but is nonetheless included because of general lack of Italian pleadings translated into English and not into French.

Category	Texts	%	Text length	%	Year
I. Applicants' observations					
	1 APP OBS		9,973		2010
	8 APP OBS		3,266		2012
	9 APP OBS		1,673		2010
	10 APP OBS		1,314		2012
Total	**4**	**40%**	**16,226**	**35%**	**2010-2012**
II. Government's observations					
	2 GVT OBS		410		2003
	3 GVT OBS		12,058		2004
	4 GVT OBS		5,933		2005
	5 GVT OBS		2,584		2005
	6 GVT OBS		1,711		2005
	7 GVT OBS		7,378		2011
Total	**6**	**60%**	**30,074**	**65%**	**2003-2011**
Grand total	**10**	**100%**	**46,300**	**100%**	**2003-2011**

Table 4.3: *Composition of the Italian Translation Corpus.*

[34] It is worth mentioning that one text, renamed 18 APP OBS, has been discarded, and as a result 17 APP OBS is followed directly by 19 GVT OBS. 18 APP OBS is the Applicant's reply to the Government's Observations. At the stage of "manual" reading and sanitisation, I discovered obvious traces of automatic translation in 18 APP OBS. Hence, its general quality made it necessary to discard it because the difference with the rest of the texts under analysis was striking.

The parallel corpus of Italian pleadings ("Italian Source Texts" or "ITST") consists only of one source text, which is the Italian version of 8 APP OBS. Unfortunately, the other source pleadings were impossible to collect. However, as in case with the Russian Source Texts, most references to the Italian laws and statutes are accessible even in the absence of the exact source text.

4.1.3.3. The English Reference Corpus

The English Reference Corpus ("ENRC") is a corpus of authentic written pleadings drafted between 2002 and 2012 by native speakers of English residing in the United Kingdom. This subcorpus features 10 authentic texts: four Applicants' observations (40%) and six Government's observations (60%), amounting respectively to 38,612 words (45%) and 47,394 words (55%). Consequently, the English Reference Corpus is the most balanced subcorpus in the Three-Part Corpus, in terms of combination of applicants' and government's observations. The average length of the pleadings in the English Reference Corpus is 8,601 words, which is higher than the average length in the Russian Translation Corpus (5,594) and in the Italian Translation Corpus (4,630).

Category	Texts	%	Text length	%	Year
I. Applicants' observations					
	1 APP OBS		19,607		2003
	2 APP OBS		7,168		2004
	3 APP OBS		5,543		2011
	4 APP OBS		6,294		2002
Total	**4**	**40%**	**38,612**	**45%**	**2002-2011**
II. Government's observations					
	5 GVT OBS		15,332		2006
	6 GVT OBS		10,183		2006
	7 GVT OBS		7,603		2008
	8 GVT OBS		7,624		2009
	9 GVT OBS		2,332		2012
	10 GVT OBS		4,320		2012
Total	**6**	**60%**	**47,394**	**55%**	**2006-2012**
Grand total	**10**	**100%**	**86,006**	**100%**	**2002-2011**

Table 4.4: *Composition of the English Reference Corpus.*

Having observed and described the materials used for this study, I will now go on to deal with the methodology issues in the following sections.

4.2. Preliminary methodological remarks

4.2.1. Corpus linguistics methodology

The advent of corpus linguistics has invigorated many domains and research fields, such as lexicography, stylistics, grammar, language teaching, translation studies, sociolinguistics, forensic linguistics, to mention just a few. The increased number of electronically stored corpora along with new technological opportunities have greatly expanded the possibilities for linguistic research. Owing to its versatility, corpus linguistics has become a mainstream methodology, the input of which has been compared to the invention of the microscope and the telescope, which allowed scientists to observe previously unobservable phenomena (Stubbs 1996: 231-232). Although there is no unanimous opinion as to whether corpus linguistics is a discipline or a methodology (see Tognini-Bonelli 2001: 1-2; McEnery *et al*. 2006: 7-8), its contribution to the progress of a variety of research fields is doubtless.

4.2.2. Corpus-based vs. corpus-driven

Corpus linguistics is a resourceful methodology, composed of a heterogeneous "set of procedures, or methods, for studying language" (McEnery and Hardie 2012: 1). Under the procedural profile, corpus linguistics is generally distinguished into *corpus-driven* and *corpus-based* approaches to use the term originally proposed by Tognini-Bonelli (2001: 65; cf. Sinclair 2004: 47-48; Stubbs 1996: 47; McEnery and Hardie 2012: 6). McEnery and Hardie (2012: 6) explain that corpus-based studies "typically use corpus data in order to explore a theory or hypothesis, typically one established in the current literature, in order to validate it, refute it or refine it". In other words, corpus-based approach goes from theory to practice, where corpus linguistics is used as a method. On the other hand, *corpus-driven linguistics* "rejects the characterisation of corpus linguistics as a method and claims instead that the corpus *itself* should be the sole source of our hypotheses about language" (McEnery and Hardie 2012: 6). To put it simply, it goes from practice to theory, where the corpus itself represents a linguistic theory (Tognini-Bonelli 2001: 84-85).

Some linguists perceive the opposition between the two approaches as not relevant because both approaches involve a formulation of a theoretical input at a certain stage. In general, in corpus linguistics the borderline between theory and practice is blurred. Even corpus-driven research involves working within a set of rules, meaning it is not completely theory-free (cf. Sinclair 2004: 47-48).

McEnery and Hardie (2012: 6) reject the idea that corpus can have a theoretical status and propose *corpus-based* as an umbrella term for all research that works with corpora. Corpas Pastor (2008: 54) acknowledge the existence of the two poles and suggests a third, *intermediate* dimension. This study is developed along the corpus-based descriptive translation perspective. Although I define it "corpus-based" in its classical understanding, because the starting point of my research is the studies on legal style markers as established by the prominent scholarship over many years, I do not exclude corpus-driven input and do "trust the text", to quote Sinclair (2004). In fact, while the overall direction of my investigation is guided by the established markers of legal style (cf. 2.3 and 2.4), these categories are general (e.g. complex prepositions, binomials, nominalisation) and the exact linguistic content of these markers is extracted from the corpus, thus introducing elements of corpus-driven research. In addition, the general departure point from wordlists and keyword lists also is situated closer to the corpus-driven pole.

4.2.3. Corpus-based studies and legal translation

In translation studies, theoretical and descriptive corpus-based research started in 1990s from the systemic investigation of translated language in a target-oriented perspective (Baker 1993), which

covered such topics as translation universals and norms (see Sections 3.3-3.5) that are relevant for this work.

In studies of legal language and legal translation the role of corpus-based inquiries becomes an important tendency (Biel 2010; Goźdź-Roszkowski 2011; Pontrandolfo 2012). For the investigation of legal language, corpus linguistics has been used in such areas of research as forensic linguistics, legilinguistics (or jurilinguistics), contrastive and comparable linguistics. Its role as a theoretical framework and multifaceted methodology has also been attributed a high potential in legal translator training (Monzó 2008; Biel 2010).

With specific regard to legal translation, Biel (2010: 4) observes that the application of corpus linguistics tools seems to be hindered by questions of limited retrievability of authentic legal corpora, especially parallel corpora, due to copyright restrictions and confidentiality issues (see also Way 2016: 1012). This was an initial obstacle for this study, too, happily overcome. As a result of limited retrievability, much of corpus-based research on legal translation focuses on the most accessible legal genres, such as legislation and judgments (see 2.4.2). To my knowledge, no studies of written pleadings before the ECtHR have been carried out so far, although these documents constitute the basis for the written procedure before this important supranational court. In court proceedings written pleadings implement the principle of a fair trial, including the notions of equality of arms and adversarial nature of proceedings.

Traditionally, many studies of legal translation focused on the accuracy and equivalence of translations (see 3.1), leaving under-researched the relation of legal translations to non-translated legal language (Biel 2010: 13), which, however, experienced a wave of interest within the context of EU law (e.g. Biel 2014a). This study attempts to explore both relations of equivalence and textual fit combining corpus methodology, translation studies perspective and the notion of phraseology.

4.2.4. Corpus linguistics and legal phraseology

The idea that breathed life into this project was to look at the challenging world of legal phraseology in translated texts as compared to non-translated texts belonging to the same genre of written pleadings before the European Court of Human Rights. As corpus linguistics enlarges the research focus "beyond the single word as the basic semantic unit" (Teubert 2002: 212), its suitability for the study of legal phraseology in a translational perspective becomes evident, because "(c)orpora have perhaps strengthened the trend away from word-equivalence to phrasal equivalence" (Krishnamurthy 2006: 253).

With regard to corpus linguistics used in phraseology, Granger (2005: 3) distinguishes between *bottom-up approach* (cf. corpus-driven) and *top-down approach* (cf. corpus-based), claiming that "statistical multi-word units should be viewed as raw material which needs to be refined using a series of filters. […] The existence of two different approaches to phraseology is an undeniable asset for a field whose importance is now universally acknowledged". I use both approaches, for example, for the study of "collocational frameworks" (Renouf and Sinclair 1991), i.e. multi-word combinations of function words with a variable lexical slot (e.g. *in* +? + *with* or *on* + ? + *of* for the retrieval of complex prepositions). In other words, the starting point of investigation is a corpus-based preselected pattern, while the lexical elements that fill the empty slots are discovered by means of the corpus-driven approach.

The general goal of corpus linguistics is the analysis and the description of "language use, as realised in text(s)" (Tognini-Bonelli 2001: 2), where the texts represent "examples of 'real-life' language use" (McEnery and Wilson 2001: 1). The approach of corpus linguistics is placed within the Firthian framework of a *contextual theory of meaning*, where context represents an essential part of meaning determination and "the formalisation of contextual patterning of a given word or expression is assumed to be relevant to the identification of the meaning of that word or expression" (Tognini-Bonelli 2001: 4), which is particularly relevant for the phraseological perspective (cf. 2.6.2). Distributional phraseology is largely inspired by Sinclair's *idiom principle* (see 2.6.2), according to

which "words do not occur at random in a text" (Sinclair 1991: 110). In this context Sinclair interprets the Firthian concept of contextual meaning saying that words enter "into meaningful relations with other words around them" (Sinclair 2004: 25) and do not remain "perpetually independent in their patterning" (Sinclair 2004: 30). In exploiting corpus data, I combine the input of traditional phraseology in a corpus-based way with the input of distributional phraseology based on Sinclair's idiom principle through a corpus-driven approach.

4.2.5. Software for corpus analysis and its functions

The software used for corpus analysis is primarily *Wordsmith Tools 6.0* (Scott 2015) and *AntConc 3.4.4* (Anthony 2014) for supplementary searches. The value of working with a software of course depends on the parameters of its programming and the subsequent qualitative analysis of automatically extracted data, which are addressed in 4.4. However, it seems reasonable to briefly describe first the functions of the software that are relied on in this work.

Wordsmith Tools is used for a range of functions, the most salient of which are briefly listed below (based on the *Wordsmith Tools* guidelines, Scott 2015).

(1) Generation of *statistics*, such as the number of tokens (all running words) and types (only different words), the length of texts, types, sentences, type-token ratio, etc. This function has been used for the description of the Three-Part Corpus.

(2) Creation of *wordlists*, i.e. lists of the most frequent types in a given corpus. The wordlists typically start with the so-called *stopwords* or functional words (e.g. articles, pronouns, conjunctions), which are then followed by the most relevant lexical words. At the end of the wordlist one usually finds the so-called *hapax legomena*, i.e. words that occur only once in a given corpus.

(3) Generation of *keyword lists*, which are comparisons of wordlists between an analysed corpus (RUTC or ITTC) and the reference corpus (ENRC), which show what words are typical of the analysed corpus in comparison to what is typical of the reference corpus, also on the basis of expected words. The keyword lists characterise a type in terms of its *keyness*, which can be either positive (higher than expected on the basis of the reference corpus) or negative (lower than expected on the basis of the reference corpus). The keyness parameter is important to evaluate the conventionality/creativity of a given item.

(4) The *Concord* function is among the most important functions for this research for a twofold reason. First, it allows access to the collocational environment of a keyword which is the basis for a research relying on the phraseological perspective. It is also referred to as the function of *Key Words in Context* or *KWIC* (Sinclair 1991: 32-33). Second, it allows to programme multi-word searches for a specific phrase or for a pattern with an empty slot (cf. "collocational framework" above). The results can be visualised in different modes: through *concordances* (how this phrase is inserted in a text), *collocates* (what are its collocations; following Halliday (1985: 312) *collocation* is understood here as a statistical tendency of two lexical items to co-occur), *patterns* (what are its recurrent structures) and *clusters* (the groups of words).

AntConc 3.4.4 is used as a supplement for multi-word searches directly from the wordlist screen without passing through a separate function of Concord. The drawback of both *Wordsmith Tools* and *AntConc* is that these programmes do not calculate relative frequencies for the object of a multi-word search. As a consequence, I have had to normalise "manually" all the frequencies to 100,000.

4.3. Methodological framework

The general framework in this study is that of a descriptive approach to language. This study is developed using inputs from a number of theoretical perspectives at the diagnostic stage, when I overviewed the general characteristics of legal language, legal translation and the position of written pleadings within these settings. These perspectives have been already described in the previous chapters. At the prognostic stage, relying on the theoretical framework and the contextualisation of written pleadings before the ECtHR as a genre, I selected a number of legal style markers to narrow the focus of this study to the phenomena which may be collectively referred to as *phraseological* or *multi-word units*, i.e. "the co-occurrence of a form or a lemma of a lexical item and one more or additional linguistic elements of various kinds which functions as one semantic unit in a clause or sentence and whose frequency of co-occurrence is larger than expected on the basis of chance" (Gries 2008: 6).

This chapter describes the operational stage of this work. To set the parameters for quantitative, and the subsequent qualitative, analysis, I adopt the following taxonomy for the study of phraseological or multi-word units, which is largely based on classifications proposed by Kjær (1990a, 2007) and Biel (2014b) outlined in 2.6.2.

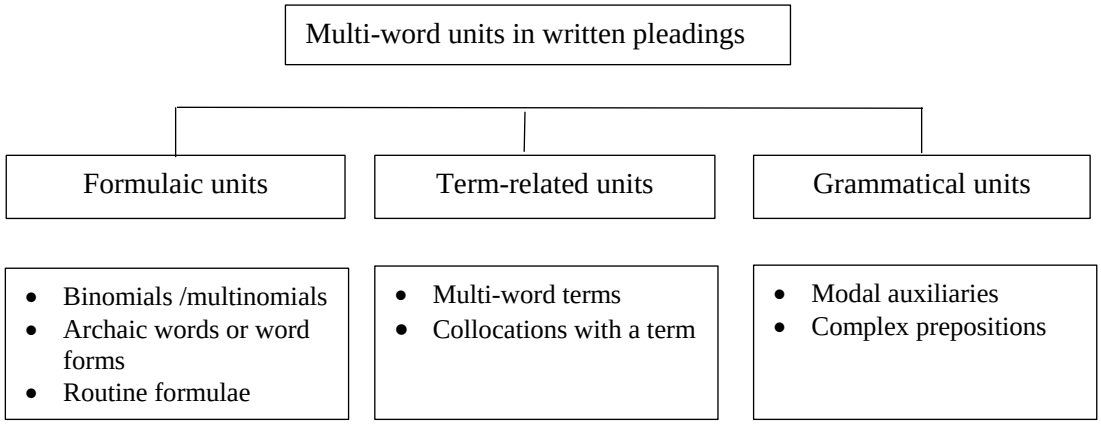


Figure 4.3: *Phraseological continuum in this study.*

This classification is to be intended as having fuzzy margins because some phraseological units can be classified under several labels. The first phraseological pillar is composed of the so-called *formulaic units*, which roughly correspond to Kjær's (2007: 510) "formulaic expressions and standard phrases". Formulaic units are multi-word units which appear to be prefabricated and, through their repeated and routine use, they confer a formulaic character on the texts (see also Wray 2000: 645 for "formulaic sequence"). Under this category I place (a) *binomials and multinomials*, i.e. coordinated sequences of one or more words or phrases, (b) *archaic words or word forms*, which are represented by the archetypal category of compound archaic adverbs based on simple deictics (such as "herein" or "thereof") and other archaic words (such as "aforesaid" or "henceforth"), which tend to have lost their linguistic functions and are often used in a ceremonial manner. The final subcategory of formulaic units is represented by the so-called *routine formulae*, i.e. larger chunks of text, which are typically used to signpost a part of the text or to transition between different parts (e.g. to signal the beginning or end of a pleading) through the use of a prefabricated pattern, which reduces the effort necessary to process information. These routines can be compared to Biel's (2014b: 178) *text-organising patterns*, "repetitive global textual patterns which are often prescribed in drafting guidelines".

The second phraseological pillar is organised around terms, multi-word terms and their collocability, as in legal domain phraseological units have a tendency to cluster around terms, forming a continuum with fuzzy borders (Scarpa *et al*. 2014: 75). Here they are called *term-related units*. For

the sake of simplicity and structured presentation of findings within the chosen methodological approach, I group two distinct categories under this umbrella term on account of the fact that both categories cluster around terms. First, there are (a) *multi-word terms* (Kjær 2007: 509), also called *term-forming patterns* in Biel (2014b: 180), i.e. terms composed of more than one element, revolving around the structures [Adj + N] or [N + N]. Second, I analyse (b) *collocations with a term* (Kjær 2007: 509) or *term-embedded patterns* (Biel 2014b: 181) of the [N + V] type.

The third pillar of this phraseological continuum includes a vast category of grammatical units, i.e. those grammatical constructions which seem to be recurrent and typical of the genre of written pleadings. This category draws inspiration from Biel's (2014b: 179) grammatical patterns, i.e. "patterns and lexical bundles which express deontic modality (*shall, must, should, may*), *if-then* mental models of legal reasoning and other conditional clauses (*if, in the event that, in case, unless, otherwise, provided that*), purpose clauses (*with a view to –ing, in order to, to this end*), the passive voice and other impersonal structures." I also include in this category the class of complex prepositions, which are units of one or several prepositions with a lexical word (usually a noun), which have undergone grammaticalisation and/or lexicalisation (see Chapter 5) and have often acquired a pragmaticalised value. For the purposes of this study, I focus only on modal auxiliaries and complex prepositions, leaving other grammatical patterns for further research.

Since complex prepositions represent a major focus of this study, their analysis is carried out separately, in Chapter 5. The other phraseological units are analysed in Chapter 6, which is divided into sections according to the types of units presented in Figure 4.3 and briefly described above. Each type is described in a more detailed way in the respective chapters and sections.

4.4. Methodology and data extraction algorithms

The identified phraseological framework includes a variety of phraseological units, which require different extraction mechanisms according to the kind of multi-word units, which are described in the respective sections here below.

On account of different subcorpora sizes, this work has to normalise all frequencies as one "can only compare corpus frequencies or use them to make statements about what is more frequent when the frequencies have been normalized" (Gries 2010: 7). I apply the standard normalisation algorithm used in descriptive statistics in line with a number of studies (see e.g. McEnery *et al*. 2006: 52-53; Gries 2010: 7; McEnery 2012: 49-50; Biel 2014a: 135-136), i.e. normalisation of raw frequencies (*observed absolute frequencies*) to a common base in order to obtain *normalised frequencies* (*observed relative frequencies*). In this study the common base of normalisation is set at 100,000 words in view of the number of words in the subcorpora.

As the software does not calculate relative observed frequencies automatically for multi-word searches, the calculations are predominantly carried out using Excel spreadsheets. Consequently, all the numbers quoted in this study, unless stated otherwise, are normalised (or relative) frequencies ("nf") calculated following the formula:

> *Nf = (number of occurrences ÷ number of tokens in the corpus) x (common base of normalisation = 100,000)*

In other words, I divide a raw frequency (number of occurrences) by the number of tokens in the corpus and multiply the result by the common base (100,000). Additionally, a single item must occur in at least 2 texts of the respective subcorpus to exclude idiosyncratic use.

Given the small size of my corpus I decided not to use the analytical instrument of statistical significance and instead I relied on the so-called "hand and eye techniques" consisting in manual inspection of concordances of a given node (also multi-word node) in line with a number of researches belonging to the neo-Firthian school (Stubbs 1995: 27-28; Sinclair 2004: 31; Hoey *et al*. 2007)[35] reporting the co-occurrences in tables throughout Chapters 5 and 6.

Stubbs (1995: 27) claims that "often, with quantitative linguistic data, no complex statistical procedures at all are necessary". He exemplifies his statement with collocates of "cause", which were "accident, alarm, concern, confusion, damage, death, delay, fire, harm, trouble" and concludes, "It is obvious to the human analyst that these words are semantically related… Such raw frequencies require no further statistical manipulation to show a semantic pattern" (Stubbs 1995: 27-28).

McEnery *et al*. (2012: 125) refer to this technique as "collocation-via-concordance", which is explained as follows:

> With this technique, it is the linguist's intuitive scanning of the concordance lines that yields up notable examples and patterns, not an algorithm or recoverable procedure. The computer's role ends with supplying the analyst with a set of (probably sorted) concordance lines. The linguist examines each line individually, identifying by eye the items and patterns which recur in proximity to the node word and reporting those that they find of note, possibly with manually compiled frequency counts but without statistical significance testing. (McEnery *et al*. 2012: 125)

On a more practical side, I relied on the default settings of *WordSmith Tools 6.0* and followed the approach described and justified by Stubbs (1995: 27-28), which consists in the manual scrutiny of concordances, also because the small size of my corpus allowed such an operation. For instance, when I analysed the concordances of *in accordance with*, I extracted and compared its co-occurrences and

[35] See McEnery *et al*. (2012: 126-127) for a more detailed overview of different researchers' preferences as to the (non-) use of statistical significance, its advantages and disadvantages.

observed that it collocates with semantically related words across the corpora and similar behaviour is observable with regard to its synonym *pursuant to*.

For example:

Node	RUTC	ENRC	ITTC
In accordance with:	article(s), (federal) law(s), legislation, Court, case-law, jurisprudence	Case-law, section, jurisprudence,	case-law, article, rules, principles, jurisprudence, criteria
Pursuant to:	Article(s), rule(s), complaint(s), case-law, order	Article, s(ection), rule jurisdiction	Article, principle, provision

Consequently, as in Stubbs' case, it was possible to perceive with a naked eye a certain pattern in use. An additional consideration that led me to this hand-and-eye option was the translated nature of texts, where deviations from norm (including some spelling deviations) could be reasonably expected.

4.4.1. Methodology for the extraction of complex prepositions

The focus of this study is on the most widespread kind of complex prepositions, which follows the three-element structure *simple preposition-noun-simple preposition* ("PNP"). The search is carried out using the Concord tool of *Wordsmith Tools 6.0* (Scott 2015). The methodology for the compilation of a list of complex prepositions is based on the notion of "collocational framework" (Renouf and Sinclair) and is inspired by Hoffmann's retrieval algorithm (2005: 23), illustrated in Figure 4.4 below.

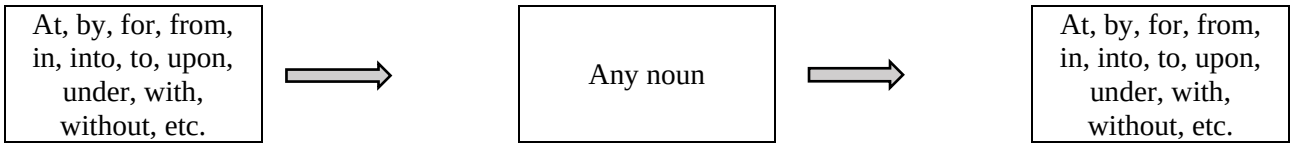


Figure 4.4: *Hoffmann's (2005) retrieval algorithm for the compilation of a list of potential complex prepositions.*

Hoffmann (2005: 23) notes that this algorithm allows retrieving "virtually all relevant PNP-constructions" because simple prepositions form a closed class. Certainly, not all PNP-constructions are complex prepositions. So, the results of the search are manually scrutinised and selected through the analysis of concordances. I take into consideration the degree of grammaticalisation / lexicalisation / pragmaticalisation (cf. 2.6.3.2) of a complex preposition, the possibility to replace it with a simple preposition (cf. "replacement test" in Chapter 5) and its relative fixedness (2.6.3).

While Hoffmann focuses exclusively on the constructions with the core noun element, this paper does not exclude the possibility to retrieve formations with a central element belonging to another word class; however, the central element in most cases is the noun. For the PNP-constructions, an additional search is carried out that takes into account a possibility of a definite/indefinite article before the noun: *simple preposition + the/a + any noun + simple preposition*. Finally, the lexical element of the PNP-construction is also checked for deviant or low-frequency co-occurrences using the Concordance Tool of *Wordsmith Tools 6.0* (Scott 2015), to interrogate unusual lexicogrammatical choices that relate to the phenomena under analysis, but do not fit into the standard search algorithm described above.

The scrutiny of concordance lines and co-occurrences is carried out by means of the tools *Collocates* and *Patterns* of *Wordsmith Tools 6.0* (Scott 2015) and through the respective tool *Clusters/N-Grams* of *AntConc 3.4.4* (Anthony 2014). The complex prepositions are arranged in sets of functional near-synonyms based on their functional and pragmatic value. They are analysed then within the defined sets to discover any preferential patterns in the translated corpora as compared to

the reference corpus. During the analysis of functional near-synonyms, to broaden the picture, I make additional searches for two-element complex prepositions as well as their synonymous simple prepositions.

4.4.2. Methodology for the extraction of binomials and multinomials

Binomials and multinomials are understood in this study as sequences of two or more words, most often but not necessarily pertaining to the same word-class, placed on the same syntactic level and connected by the conjunction "and" or "or". Consequently, for the extraction of binomials and multinomials, I use the semiautomatic method of extraction based on the known element in the binomial/multinomial formula – the conjunctions "and" and "or" – and the number of lexical elements – at least two, as illustrated below.

Empty slot (any lexical element) + "and"/ "or" + Empty slot (any lexical element)

The search is carried out by means of the *Clusters* function in the Concord tool of *Wordsmith Tools 6.0* (Scott 2015), which is programmed to search for word clusters featuring either "and" or "or" within the word span from 3 to 6 words. Frequency cut-off for a single pattern is set at 3 occurrences per 100,000 words. An additional check is carried out using the Concord tool of *Wordsmith Tools 6.0* (Scott 2015) and the Concordance Tool of *AntConc 3.4.4* (Anthony 2014). In order to cater for potential binomials and multinomials that are composed of lexemes belonging to different word classes (e.g. "manufacture or selling of weapons") or of more than one lexeme (e.g. "fair and public hearing"), to assess the order of the constituent elements, their relation of synonymy/equivalence in the translation perspective and to find potential *ad hoc* synonymical chains, I proceed with manual analysis of the concordances.

The heterogeneity of binomials allows treating some of them as phraseological units in the classical understanding (irreversible binomials), as collocations ((ir)reversible binomials with strong preferences) or as mere examples of coordination (highly reversible binomials excluding irreversibles). However, under a distributional perspective the latter case may not produce statistically relevant results in terms of recurrent clusters, because the software will calculate cases of different order of the same elements as different binomials. Due to internal order differences, such cases of coordination may not necessarily satisfy the representativeness threshold and be visualised through clusters. Consequently, an additional "manual" search of concordances is carried out to account for pairs or strings of the same elements combined in a different order. Any identified deviations from the most widespread order are reported in separate tables throughout Chapter 6.

Some multinomials follow the *ejusdem generis* principle, i.e. when a list of specific items, or particulars, is followed by a general word, which can be preceded by the so-called "vague tag" (Frade 2005: 141, see Table 4.5 below) as in "weighty, precise and coordinated conclusions *or similar incontestable presumptions of the fact*" [RUTC]. I carry out an additional search using the possible vague tags summarised below as a search request to cater for multinomials that are built using the binary structure below.

Particulars	Vague tags
P_1, P_2, P_3,…P_n	*and/or* + *other* + noun/noun phrase *and/or* + *similar other* + noun/noun phrase *and/or* + *any other* + noun/noun phrase *and/or* + *any similar* + noun/noun phrase *and/or* + *any** *and/or* + *similar* + noun/noun phrase *and/or* + *other like* + noun/noun phrase

Table 4.5*: Additional retrieval algorithm for legal multinomials (adapted from Frade 2005: 141).*

The results are grouped according to the number of elements into binomials and multinomials, which are further organised by the word class of the constituent elements into the following groups for the sake of simplicity of exposition: [V + *and/or* + V], [N + *and/or* + N], [Adj + *and/or* + Adj], [Adv + *and/or* + Adv] and a mixed category. Verbs, nouns, adjectives and adverbs are the conventional bases for binomials (see e.g. Biber *et al*. 1999). The mixed category includes cases of binomials belonging to different word classes, as well as functional combinations of pronouns, prepositions, numerals and conjunctions.

4.4.3. Methodology for the extraction of archaic adverbs and words

Methodology for the extraction of archaic adverbs is semiautomatic. I use the general search tool of *Wordsmith Tools*, which is programmed to search for archaic adverbs based on the simple deictics "here", "there" and "where", with a following wildcard (empty slot), which is indicated below as *. Consequently, the retrieval algorithm for the archaic adverbs may be summarised as follows:

*Here**, *where**, *there**

Definition of the archaic character may involve some arbitrariness, so the findings are evaluated manually in order to exclude compound adverbs with the same structure used in modern English (e.g. "therefore"). Additionally, the criterion of "legal flavour" is assessed (e.g. "whereby" may be not perceived as archaic but it has a manifestly legal colouring). These background checks are carried out using the Oxford English Dictionary (online edition) and various dictionaries of legal English.

Apart from the category of compound archaic adverbs, other archaic words or word forms are also looked at in this study. Dictionary background checks are carried out to verify their archaic status. Overview of relevant studies within the plain language movement (e.g. Cutts 1992; Garner 2001; Butt and Castle 2006) has allowed me to create a list of candidates for the archaic status including "notwithstanding", "henceforth", "forthcoming", "aforementioned" and "aforesaid", with the abbreviated form "said", to which "deem" can be added. The search is programmed using both the entire words mentioned above and their archaic parts, such as "forth", with a wildcard.

4.4.4. Methodology for the extraction of routine formulae

Routine formulae are composed of those patterns that designate different parts of a pleading (such as initial statement or closing submissions) and are used to transition between and within various parts. Often these patterns are based on the form and content requirements set forth by the Practice Directions that integrate the Rules of the European Court of Human Rights. However, their identification is not straightforward as the Practice Directions do not provide any linguistic indications other than the requirement that a pleading should bear a certain title. Consequently, an automated extraction based on the outside input provided by the official guidelines is impossible. Moreover, these routines are often composed of longer chunks of text, which under the translational profile are more likely to present minor discrepancies and thus would be troublesome to analyse using software.

As a result, the analysis of routine formulae is carried out "manually" based on the generic profile of a written pleading composed in 2.5 and using a close reading technique.

4.4.5. Methodology for the extraction of term-related units

The methodology for the analysis of multi-word terms and collocations with a term is not based on an automatic or semi-automatic search. Given the untagged nature of the corpus, it is impossible to search for [N + N], [Adj + N] or [N + V] sequences by the part of speech, hence the retrieval algorithm had to be adapted. Criteria for the selection of lexical nodes represent a combination of statistical

frequencies and conceptual analysis, commented on in more detail in the respective sections of Chapter 6.

I use the wordlists as a starting point to identify the most recurrent lexical items in each subcorpus. Next, I employ the clusters function of the Concord tool. Unless specified otherwise, the clusters tool is programmed to collect clusters between 2 and 6 words, generally within the horizon of 5 words to the left and 5 words to the rights (5L-5R) and a minimum frequency cut-off set at 3 occurrences per 100,000 words. Additionally, I look at *patterns* of the lexical nodes across the corpora. The function of patterns is chosen because of its convenient visualisation of the node's collocational environment in columns, where the node is placed in the central column and its most frequent word combinations are easily traced with a bare eye in the adjacent columns both to the right and to the left. I carry out an additional multi-word search of the recurrent combinations using the Concord search tool and the clusters function.

The resulting word combinations are compared across the corpora, with a specific attention for the near-synonymous or semantically and notionally similar expressions, with a view to evaluating the degree of their conventionality or creativity against the benchmark of the reference corpus and general assumptions about legal English described in Chapter 2. Additionally, term-related units are qualitatively evaluated in terms of their representativeness with regard to the language of human rights.

4.4.6. Methodology for the extraction of grammatical patterns with a modal verb as a node

The study of collocations with a modal auxiliary as a node starts from the comparison of different distribution values of the modal auxiliaries across the corpora. Since modal auxiliaries are a closed category, their search algorithm is based on the simple search of a given modal auxiliary, which is then analysed within its immediate collocational environment through the Concord tool of *Wordsmith Tools* (*patterns* and *clusters*).

The next methodological step involves qualitative analysis with regard to the function of the most recurrent modal auxiliaries. The meanings of modal auxiliaries in the corpora (e.g. deontic vs. epistemic) are determined based on the analysis of concordance lines. The meanings of every modal auxiliary are then compared across the corpora and within separate corpora to check a possible functional specialisation of a given modal (e.g. prevalently deontic or prevalently epistemic).

4.5. Description model

The common methodological point for the analysis of phraseological phenomena in written pleadings before the ECtHR is the Translation Studies approach. The inspiration for the "manipulation" of the corpus-extracted data came from Toury's (1995) and Chesterman's (2004a) approach to the study of differences between translations, their source texts and comparable non-translated texts. Both scholars differentiate between the relation of "acceptability" (Toury 1995: 56) or "textual fit" (Chesterman 2004a: 6), i.e. the comparison of the translated text and comparable non-translated texts, and "adequacy" (Toury 1995: 56) or the "relation of equivalence" (Chesterman 2004a: 6), i.e. the relation of the translation and its source text (see 3.4.2 and 3.4.5). Toury (1995: 70-74) proposes to check first a translation for acceptability in the target environment, and only afterwards (if at all) to verify if there are any nonconformities with the source-texts. This is the analytical progression followed for all the multi-word units that are analysed in this study. First, a comparison is made between the translated texts (RUTC and ITTC) and the non-translated parallel texts (ENRC), then the same phenomenon is tested against the source-text, or comparable texts when the authentic source texts are not available.

The model for the analysis is inspired by the model proposed by Biel (2014a: 287-289) for the analysis of textual fit of EU law translated into Polish. It operates with the concepts schematised and illustrated below.

Comparison is carried out on two levels:

1. *Textual fit / acceptability*: comparison to non-translated pleadings (T-universal plane)
2. *Equivalence / adequacy*: comparison to the source (S-universal plane)

Units of analysis are identified on the local scale, i.e. on the phraseological level described in 4.3, and organised in sets for further quantitative and qualitative analysis according to their

- *function and relation of near-synonymy* (e.g. all deontic modal auxiliaries or all complex preposition of purpose);
- *morphological properties* (e.g. all binomials of [N+N] type);
- *multiple meanings* (e.g. all meanings of legal *shall*).

Degree of comparison is understood here as a scale, where convergence and divergence stand at the opposite poles of the continuum. It is used to describe the textual fit / acceptability of translations in comparison with non-translations.

- *Convergent*: close similarity / convergence between translations and TL non-translations
- *Divergent*: low similarity / divergence between translations and TL non-translations

Translation-related phenomena that can trigger the differences in textual fit / acceptability and equivalence / adequacy.

- *Discourse transfer and interference*: transfer of discursive and linguistic patterns from the source system into the target system, such as prefabricated patterns, text-organising formulae and routines, which are perceived as creative in the target system.
    - ITA / RUS pattern → creative pattern in translated ENG.
- *Conventionalisation*: tendency to overuse and exaggerate typical TL style markers and patterns, either by converting the source text discursive and linguistic patterns into TL prefabricated units or by adding the latter at the stage of translation without any ST stimuli.
    - ITA / RUS pattern → conventional pattern in translated ENG;
    - no stimuli in the ST → conventional pattern in translated ENG.

Distance across the corpora is measured operating with the following concepts:

- *Overrepresentation* (+*x*%), i.e. the higher frequency of a pattern / multi-word unit in translations compared to non-translations;
- *Underrepresentation* (-*x*%), i.e. the lower frequency of a pattern / multi-word unit in translations compared to non-translations.

Formula for comparison:

- *(Translation corpus value – ENRC value) ÷ ENRC value*, expressed in percent and rounded to zero decimals.
    - E.g. Normalised frequency of [N+N] binomials in the RUTC = 210 and in the ENRC = 196. Comparison = (210-196) ÷ 196 = 7%.
    - The calculations are carried out using the Excel Spreadsheet. Where no numerical value is available for the reference corpus, simple mathematical symbols "more" (>) and "less" (<) are used to indicate the relation. When the difference is significant, e.g. more than 20 vs. 1, the symbols of "significantly more" (>>) and "significantly less" (<<) are used. When neither the translation corpus, nor the reference corpus have any occurrences, a (-) symbol is used to indicate the absence of data. When the value is the same, the symbol of equality is used (=).

Benchmarks for comparison are chosen following Jantunen's methodological proposal to differentiate between different statistical measures to analyse patterning deviations, adding the parameter of proportion to the study of patterns, as "it was the proportions (*quantity*) of items that distinguished language variants in the colligation analysis, not their actual range (*quality*)" (Jantunen 2004: 122).

- *Typicality of frequencies across the corpora*: comparing normalised (relative) frequencies across the corpora
    - E.g. when I analyse the morphological structure of binomials, I organise them by their structure [N+N], [V+V], etc. I compare the normalised frequency of all [N+N] binomials in the Russian Translation Corpus and in the Italian Translation Corpus to their normalised frequency in the English Reference Corpus, e.g. the normalised frequency of [N+N] binomials in the RUTC = 210, while in the ENRC it is 196, meaning that in the RUTC they are by +7% more frequent.
- *Typicality of proportion within separate corpora*: comparing distribution of different units within a given functional set in separate corpora to assess preferential patterns in terms of proportion.
    - E.g. I analyse what type of binomials is the most frequent in each corpus, e.g. [N+N] in the RUTC is 81% compared to other types of binomials, while in the English Reference Corpus they amount only to 49% out of 100%, which could be interpreted as a greater reliance on the [N+N] pattern in the Russian Translation Corpus (+32%) compared to the reference texts.

Candidacy for the status of style markers in written pleadings: the relative frequency of the whole category of phraseological units (e.g. all binomials or all complex prepositions) is quantitatively evaluated in terms of positive vs. negative markers, where I draw on Biber's (1995) work (cf. 2.3).

- *Positive style markers* are understood here as markers with high distribution values (>100 occurrences per 100,000 words);
- *Negative style markers* are items and patterns that are infrequent or absent (<100 occurrences per 100,000 words).

The parameter of high frequency is a relative concept which varies across studies with generally little consensus regarding a cut-off value. Biber (2006: 134) in his study of academic language describes as "a relatively high frequency cut-off point" the benchmark of 40 occurrences per million words, i.e >4 in 100,000 words (0.004%), Goźdź-Roszkowski (2011: 62) sets this value at >200 per 1,000,000

words, i.e. >20 per 100,000 words (0.02%), Breeze (2013: 232) indicates the value of 25 in 500,000 words as frequent, i.e. >5 in 100,000 words (0.005%) and Biel (2014a: 303) sets it at >1,000 per 1,000,000 words, i.e. >100 per 100,000 words (0.1%). In this work, the threshold to define the positive or negative value of a certain marker is also set at a more restrictive value of >100 per 100,000 words. Anything lower than 100 words is considered to be relatively infrequent and thus defined as a negative marker. A higher and more restrictive frequency cut-off point was established partly to avoid any potentially idiosyncratic elements deriving from the small size of my corpus, and partly to reduce the data to manageable quantities.

CHAPTER 5

COMPLEX PREPOSITIONS

This chapter focuses on complex prepositions as a recurrent feature of legal language. First, it defines complex prepositions in comparison with simple prepositions and contextualises the status of the former in current research (5.1). Next complex prepositions are discussed in terms of their phraseological properties as opposed to free expressions (5.2). Next, research questions for this chapter are formulated (5.3), followed by the analysis of complex prepositions (5.4).

5.1. Theoretical framework

5.1.1. Complex prepositions: nature and terminological considerations

In normative grammar, prepositions are defined as functional items that express "a relation between two entities, one being that represented by the prepositional complement, the other by another part of the sentence" (Quirk *et al.* 1985: 657). If the main word classes are compared to the "bricks that make up the substance of a wall", the prepositions are likened to "the mortar that binds the separate elements into the cohesion and unity of a single structure" (Fernald 1904: vii). While the *status quo* of simple prepositions as a separate word class does not invite a discussion, the same cannot be said about complex prepositions, which are "either totally disregarded or regarded as minor categories" (Granger and Paquot 2008: 32-33) and have generally received "little scholarly attention" (Hoffmann 2005: 1).

In most general terms, Quirk *et al.* (1985: 665) differentiate between simple prepositions and complex prepositions by the number of elements that they contain, stating that "[…] prepositions, consisting of more than one word, are called COMPLEX". The term *complex prepositions* is preferred in this study based on Quirk's compositional distinction above. Hoffmann (2005: 26) refers to this term as "of rather recent origin", stating that the grammarians in the last 150 years referred to the same structures as *group prepositions*, *phrasal prepositions* or *compound prepositions*. Although, following Saussure, labels for concepts are arbitrary, for the sake of consistency mention must also be made of the diversity of terms used in the corresponding modern literature to denote complex prepositions: *compound prepositions* (e.g. Lindstromberg 2010: 268) *compound-like prepositions* (e.g. Esseesy 2010: 76), *complex prepositional phrases* (e.g. Bhatia 1993: 107), *multiword prepositions, phrasal prepositions* and *prepositional phrases* (e.g. Alcaraz Varó and Hughes 2002a: 9). While most of these terms are used as synonyms, the latter two advise caution because *prepositional phrase* typically designates any phrase with a (simple) preposition as its head (Biber *et al*. 1999: 103-105) and not necessarily a complex preposition, although some authors use it in the latter sense (Alcaraz Varó and Hughes 2002a: 9)[36]. Hence, the term *complex preposition* and not *complex prepositional phrase* is preferred here to denote this category.

Leaving the terminological uncertainty aside, complex prepositions are understood here as a syntactic category that can function as a head of a prepositional phrase, that is as multi-word units or sequences that can "function semantically and syntactically as single prepositions" (Biber *et al*. 1999: 75).

[36] It must be said that in the Spanish version of a book by the same authors (Alcaraz Varó, Enrique, and Hughes, Brian, (2002b). *El español jurídico*. Barcelona: Ariel), these expressions are referred to as "*las locutiones prepositivas* del vocabulario relacional, uso que coadyuva a la consecución del efecto altisonante y arcaizante" (Alcaraz Varó and Hughes 2002b: 25, my emphasis) which corresponds to their affirmation in English: "A similarly archaic and solemn tone is achieved by the use of *prepositional phrases*" (Alcaraz Varó and Hughes 2002a: 9, my emphasis), after which the authors provide examples of the acknowledged complex prepositions (*pursuant to*, *without prejudice to*, etc.).

For a comprehensive corpus-based analysis of the history of complex prepositions in English, see Hoffmann (2005).

5.1.2. The formal properties of complex prepositions across the three languages analysed

According to Quirk *et al.* (1985: 669-670), complex prepositions may be composed of two or three words, with the latter being the most frequent pattern and, thus, the primary emphasis of this chapter. Both types of complex prepositions normally end in a simple preposition (Biber *et al*. 1999: 75). Three-word complex prepositions are composed of a first simple preposition, a noun and a second simple preposition and, consequently, are frequently referred to as PNP-constructions. Consequently, the structure of English complex prepositions may be summarised as follows.

(1) Lexical word + simple preposition, e.g. *apart from, owing to*
(2) Simple preposition + (article) + lexical word + simple preposition, e.g. *in comparison with, for the purposes of*

Usually, the noun has a zero determiner, however it may be predetermined by a definite or an indefinite article (Quirk *et al*. 1985: 670). Biber *et al*. (1999: 75) classify complex prepositions with an article as four-word prepositions. However, the lexical element may belong to another word class. In fact, according to a more complete definition by Granger and Paquot (2008: 44), "Complex prepositions are grammaticalized combinations of two simple prepositions with an intervening noun, adverb or adjective. Examples: *with respect to, in addition to, apart from, irrespective of*."

Italian grammarians also acknowledge that the lexical element may be an adverb or an adjective, although most attention is dedicated to the prepositions of the PNP-type (Casadei 2001: 44; Rizzi 1988). Casadei (2001: 50) asserts that the most frequent and productive pattern of complex prepositions in Italian (*locuzioni preposizionali*) is structured as follows: [Prep1P + (Article) + N + Prep2]. She distinguishes between the so-called primary prepositions (Prep1P: *a, di, per*) and secondary prepositions (Prep1S: *sotto, sopra, dietro*) and allows internal premodification by an article. Although Casadei (2001: 48) acknowledges that a multi-parameter classification is the most appropriate approach to prepositions in that it takes into analysis both their structural complexity/variety and their functional distinctions, she excludes from her analysis some of the typically bureaucratic (and legal) connectors:

> phrases with the structure *su/dietro-X-di*, in which the prepositions *su* (on) e *dietro* (behind) have the meaning "after" and X is a noun belonging to the semantic domains of communication, order / advice and the like (*su/dietro richiesta di, su/dietro sollecito di, su proposta di*); it is a relatively open set of phrases formed following a particularly productive model in bureaucratic language, and which seem to be a typical intermediate case between free prepositional phrases and complex prepositions[37] (Casadei 2001: 48, my translation).

At the same time, Casadei (2001: 53) states that the main classification difficulty lies in categorization of the lexical element X in the PXP-constructions, "when X as a noun has such a meaning which could be interpreted as bringing about its occurrence in the complex preposition, however, it appears incorrect to qualify it as a noun"[38](my translation), the same phenomenon being acknowledged also by Bottari (1985: 145). It emerges that the complex prepositions are characterised

[37] "locuzioni di struttura *su/dietro-X-di*, in cui le preposizioni *su* e *dietro* hanno il senso "in seguito a" e *X* è un nominale appartenente ai domini semantici del comunicare, dell'ordinare/consigliare e simili (*su/dietro richiesta di, su/dietro sollecito di, su proposta di*); si tratta di una serie relativamente aperta di locuzioni formate su un modello particolarmente produttivo nel linguaggio burocratico, e che mi pare siano un tipico caso intermedio tra i sintagmi preposizionali liberi e le LP".

[38] "quando X ha sì un'accezione come sostantivo cui si potrebbe ricondurre la sua occorrenza nella LP, però appare scorretto qualificarlo come sostantivo".

both by internal fuzziness and by a blurred demarcation line with other world classes, and the functional criterion proposed by Quirk *et al*. (1985), which is referred here as the replacement test (see section 5.2.1), is a valid tool to help distinguish between the complex prepositions and free expressions.

As concerns Russian grammar, the composition of complex prepositions[39] differs because of the inflectional nature of the language. Here, the lexical element may belong to the class of nouns, verbs (gerunds) or adverbs. As for the complex prepositions with a noun element, their formal structure is parallel to the English patterns NP and PNP. There is an exact compositional equivalent of the English PNP-structures, which is the main focus of this chapter, – *составные отыменные предлоги с двумя первообразными предлогами* (Švedova 1980: 706), i.e. composite denominative prepositions with two simple prepositions: e.g. *в зависимости от* + genitive, *в направлении к* + dative. Another type of complex denominative prepositions follows the pattern NP (e.g. *в качестве* + genitive, *в знак* + genitive). Complex prepositions derived from adverbs and verbs (gerunds) follow the structure *lexical element + simple preposition*. It is important to mention that most derivative prepositions require a specific case of the following noun complement, based on the case marking (*падежное маркирование*) either of the final simple preposition or of the lexical element. In terms of translation it often means that even a one-word Russian derivative preposition may be rendered by a multi-word preposition in translation in order to render the inherent case relations. Finally, Russian deverbal prepositions, i.e. those composed of a gerund or a gerund and a simple preposition, where the gerund has lost its paradigmatic relations with the verb, may be successfully compared with what Leech *et al*. (2009: 7-8) call deverbal prepositions or with what Quirk *et al*. (1985: 667) define *marginal prepositions*, e.g. "concerning", "regarding".

5.1.3. Complex prepositions and *of*-genitive in legal discourse

An important distinction is to be made between the use of the preposition *of* as part of complex prepositions and as a linking device in nominal strings that expresses inflections of the Russian genitive case. Russian legal discourse, similarly to its Italian counterpart, makes significant use of nominalisation (Levitan 2011: 25; Rusakova and Ljubeznova 2015: 27) through lengthy nominal strings in the Genitive case (Blokhina *et al*. 2010: 150). Biber *et al*. (1999: 292) define case as "a formal category of the noun which defines its relations to other units". Whereas modern English does not make use of inflections as syntactic signals, whose role "has to a large extent been taken over by word order and function words" (Biber *et al*. 1999: 292), modern Russian uses six fully operational cases: nominative, genitive, dative, accusative, instrumental and prepositional, even though some linguists add vocative and locative to this list as well as a distinction between two genitives: partitive and non-partitive (Comrie 1986: 86).

The genitive case is considered one of the salient syntactic features of the official style (Blokhina *et al*. 2010: 150), i.e. the functional style traditionally associated with legal writing (Goletiani 2011: 243-244). The resulting nominal strings may have three and more elements in them that are perceived as natural in official and, even more markedly, legal discourse. Biber *et al*. (1999: 75) note "connection between the genitive inflection and *of*-phrases in English". Indeed, in translation Russian nominal strings in the genitive case are typically rendered in modern English by the preposition *of* or, if appropriate, by the clitic *'s* (the so-called Saxon genitive) (Dunn and Khairov 2009: 74), whereas

[39] Russian grammar distinguishes between the so-called *первообразные* and *непервообразные предлоги*, which is a distinction based on their primary or derivative nature rather than on the number of components. There is a separate structural distinction based on the number of elements: *простые* (simple) and *составные* (composite). For reasons of coherence with the rest of the paper and based on the presence of a lexical element in all classifications quoted for English complex prepositions, *непервообразные предлоги* (derivative prepositions) are translated here as complex prepositions, although by their structure derivative prepositions may be both simple and composite. This term is preferred also because of the inflectional nature of the Russian language, where even a structurally simple preposition may require a specific grammatical case afterwards, which is often rendered in English translation by means of additional simple prepositions (e.g. genitive -> *of*).

noun clustering through attributive groups of nominal premodifiers frequently used in modern English for special purposes (Leech *et al*. 2009: 215-217) seems to be a dispreferred solution. As a result, many multiple *of*-structures are caused by the nominal style of pleadings as example (1) below shows[40] (see also 6.2.2.3 for a cross-corpora comparison of multiple *of*-strings).

(1) In this case persuasive burden *of* proof *of* absence *of* guilt in causing *of* harm is imposed on these bodies. [RUTC]

These nominal strings are linked by the preposition *of* that renders the SL genitival constructions expressed without any prepositions but through the exclusive use of inflections and are distinguished from complex prepositions with the final element *of*.

[40] Here and throughout this chapter, emphasis is added to highlight the elements under analysis.

5.2. Phraseological status of complex prepositions

Complex prepositions in phraseological studies have been categorised as *textual phrasemes* (Granger and Paquot 2008: 42), along with complex conjunctions, linking adverbials and textual sentence stems, and as *lexical collocations* (Biel 2014a; 2014b). Burger (1998: 37, cf. in Granger and Paquot 2008: 38) places such expressions as "as well as" under the category of structural phraseological units that express grammatical relations. In her study of EU law translated into Polish, Biel (2014a; 2014b) also identifies the category of grammatical patterns, including there such expressions as "in case", "provided that", "with a view to", but discussing complex prepositions separately under the category of lexical collocations.

In this study complex prepositions are treated as a distinct grammatical class in line with Hoffmann (2005). These are functional items that act as "the mortar" (Fernald 1904: vii) of legal discourse. Consequently, I allocate complex prepositions to the category of grammatical patterns on account of their functional distinctiveness for legal discourse (see 2.3.1).

Bhatia (2006: 3) argues that "[l]egal draftsmen are particularly suspicious of simple prepositions, as they find them potentially ambiguous in meaning, and hence often go for complex prepositions, many of which are rarely used in any other variety of professional discourse". In legal discourse in general and in written pleadings in particular complex prepositions are used as prefabricated means of discourse organisation and perform a variety of discoursal functions requested by this genre (see 5.4). Since complex prepositions tend to be indivisible prefabricated phrases carrying out specific functions and thus taking on a pragmatic value as markers of legal English, it seems appropriate to treat them as grammatical patterns. The following subsections compare complex prepositions to free expressions (5.2.1) as well as overview the issue of grammaticalisation and prefabrication of complex prepositions (5.2.2).

5.2.1. Complex prepositions vs. free expressions

There has been an inconclusive debate as to the where to trace a demarcation line between complex prepositions, especially those following the PNP-pattern, and free expressions in the form of prepositional phrases.

The main lexical criterion to understand whether a PNP-construction is a complex preposition or a free nominal phrase is functional: whether it can be replaced by a simple preposition or not (Quirk *et al*. 1985: 671-672), which is referred to here as the replacement test. Examples (2) and (2a), taken from the Russian Translation Corpus, illustrate the replacement test, especially useful for low-frequency complex prepositions. Here, the test confirms a possibility to replace a complex preposition (*in the absence of*) with a simple preposition (*without*) in that these expressions may be used interchangeably in examples (2) and (2a).

(2) […] Sergei was held in unacknowledged detention *in the absence of* the safeguards set out in Article 5 of the Convention. [RUTC]
(2a) […] S. and B. were detained *without* legal grounds for that […].[RUTC]

Already a century ago, a similar observation was made by Fernald (1904), who although not proposing a replacement test, commented both on the functional equivalence of complex prepositions and on their indivisibility as phrases.

> […] there are many prepositional phrases, which, while they may be easily separated into their elements, are yet always used as phrases, and have all the effect of compound prepositions; as, *according to, in accordance with, on account of, because of, with* or *in respect to, in consideration of, in spite of, by means of, with* or *in regard to, in default of, in consequence of, with* or *in reference to, as to*, etc. (Fernald 1904: 11-12).

As concerns indivisibility and generally on the syntactic level, complex prepositions must exhibit a certain degree of invariability (see also 2.6.3). However, "As variability is a matter of degree, it is impossible to establish a clear borderline between free combinations and complex prepositions" (Biber *et al*. 1999: 76). While Biber *et al*. (1999) do not explain the variability degree, it is thoroughly addressed in Quirk *et al*. (1985: 671-672) as "a scale of 'cohesiveness'", entire illustration of which is provided below with the authors' original examples of syntactic separateness and/or cohesion.

(a) Prep2 can be varied
on the shelf at (the door) [but not: **in spite for*]
(b) noun can be varied as between singular and plural
on the shelves by the door [but not: **in spites of*]
(c) noun can be varied in respect of determiners
on a/the shelf by; *on shelves by (the door)* [but not: **in a/the spite of*]
(d) Prep1 can be varied
under the shelf by (the door) [but not: **for spite of*]
(e) Prep_complement can be replaced by a possessive pronoun
on the surface of the table ~ on its surface
[but: *in spite of the result ~ *in its spite*]
(f) Prep2_complement can be omitted
on the shelf [but not: **in spite*]
(g) Prep2_complement can be replaced by a demonstrative
on that shelf [but not: **in that spite*]
(h) The noun can be replaced by nouns of related meaning
on the ledge by (the door) [but not: **in malice of*]
(i) The noun can be freely modified by adjectives
on the low shelf by (the door) [but not: **in evident spite of*]
(Quirk *et al*. 1985: 671–2)

The authors' commentary of the scale of cohesiveness makes it clear that an analysed expression does not have to manifest all of the indicated features. However, the more features it exhibits, the lower is its cohesion.

Since the object of this study is language use in translation, it seems relevant to look at the categorisation of complex prepositions in the two source languages: Russian and Italian. Russian normative grammar does not talk about crystallisation of complex prepositions, but rather about the paradigmatic distance between complex prepositions and the respective lexical parts of speech.

> Complex denominative prepositions are at different stages of withdrawal from the lexical words that gave rise to them. Many of these prepositions have completely lost the unity of lexical meaning, paradigmatic relations and syntactic features in common with the respective nouns. […] However, in many cases, complex denominative prepositions maintain active and strong paradigmatic and semantic *links with the corresponding nouns*, as well as some of its syntactic features. Such prepositions may be called *prepositional locutions* (sometimes referred to as *phrases that undergo prepositionisation*) (Švedova 1980: 707, my translation, original emphasis).

Next, Švedova (1980: 707-708) lists three formal properties that determine the distance between the opposite sides of the cline *complex prepositions – free expressions*, which are summarised below.

(1) Selectiveness of the animate/inanimate complement, depending on the semantics of the noun element in the complex preposition: *в порядке чего-н*. (and not *кого-н*.), *в роли кого-н*. (and not *чего-н*.). It is significant that the function of relation may overcome this distinction between the animate/inanimate complement.
(2) Modification of the noun element by an adjective. If a noun in a complex preposition takes an adjective, it reinstates its noun properties and the complex preposition loses its functional status.

(3) Replacement of the complement that follows a complex preposition by a possessive pronoun as a sign of incomplete *prepositionisation*. If the complement can be replaced by a demonstrative, the complex preposition loses its functional unity.

Whereas criterion (1) in Švedova may not be applied directly in English where there is no formal distinction between animate and inanimate nouns, it may serve as a discriminatory feature when analysing the ST phrase. Criteria (2) and (3) are convergent with points (e), (g) and (i) of Quirk *et al*.

With regard to the Italian complex prepositions, the formal distinction between complex prepositions and free expressions is discussed by Rizzi (1988) and Bottari (1985). Casadei (2001: 57) summarises their findings as follows.

(1) the nominal element is not introduced by an article;
(2) the sequence has no compositional meaning;
(3) the nominal element cannot be varied in the number (singular vs. plural);
(4) the nominal element does not appear (anymore) as a free expression;
(5) the sequence requires a nominal complement.

The Italian scholars do not claim that these criteria are absolute, rather they mention their discriminatory ability when confronting a potential complex preposition: "[…] these variables do not capture properties that structurally distinguish a complex preposition from a free word combination, and the correlation between the compositionality degree of the structure to the quantity and type of possible variations" (Casadei 2001: 58, my translation)[41]. Points (1) and (3) run in parallel with Quirk's points (b) and (c).

5.2.2. Prefabrication of complex prepositions

The dominating approach to determine whether a complex preposition is indeed a preposition and not a free expression is to analyse it in terms of grammaticalisation theory (cf. Heine *et al*. 1991; Hopper and Traugott 2003, see also 2.6.3.2), which allows and even invites a certain fuzziness and gradualism between the categories.

In this study grammaticalisation is understood as a phenomenon when lexical items lose some of their lexical properties and become of a more grammatical nature, in line with a widely accepted definition by Kuryłowicz (1975 [1965]: 52):

> Grammaticalisation consists in the increase of the range of a morpheme advancing from a lexical to a grammatical or from a less grammatical to a more grammatical status, e.g. from a derivative formant to an inflectional one.

Normally, studies of grammaticalisation tend to focus on diachronic research (Leech *et al*. 2009: 17-18), whereas the corpora under analysis are synchronic. While acknowledging a certain gradualism of grammaticalisation processes, this study relies also on the assumption that "the grammaticalization of constructions may occur by analogy; i.e. their establishment may be greatly facilitated by their formal parallelism to previously grammaticalized items" (Hoffmann 2005: 4). In his pilot study with regard to analogical extension of grammaticalisation for low-frequency complex prepositions, Hoffmann (2005) researches specifically one of the most productive patterns in complex prepositions, namely the construction [Prep1$_{in}$ + Noun + Prep2$_{of}$], demonstrating that high-frequency forms such as *in view of* have smoothed the path for such less frequent patterns as *in awe of*; *in point of*, etc. This approach of grammaticalisation by analogy is supported by other studies, for example Brems (2011: 236), in her study of nouns with a quantifying function such as *(not) a scrap/smidgen/skerrick of* that followed the lead of *bit of*. Under the perspective of translation studies, this study extends the concept of linguistic analogy to the cross-linguistic dimension: it is felt that the translated texts may import what is perceived as low-frequency complex prepositions in English from

[41] "queste variabili non colgono proprietà che distinguono strutturalmente una LP da un sintagma libero, quanto correlano il grado di locuzionalità della struttura alla quantità e al tipo di variazioni possibili".

the established high-frequency prepositions in the source languages. In other words, the frequent Russian and Italian complex prepositions might have blazed the way for some non-frequent complex prepositions in translated English of written pleadings that are created by a twofold analogy. First, by analogy with existing English complex prepositions and, second, by analogy with the ST complex prepositions, which could be tentatively labelled as *translation by prefabrication*.

Although the prevalent opinion is to consider complex prepositions through the theory of grammaticalisation, many scholars associate them with the phenomenon of lexicalisation. Lehmann (2002) posits that in case of complex prepositions in Modern Castilian, grammaticalisation is preceded by lexicalisation in a unidirectional way. For Lehmann (2002:13), it is the complex form that is accountable for lexicalization because only such a form can undergo "renunciation of its internal structure", followed by unification, when "[T]he coalescence of two grammatical morphemes must be called lexicalization". Lehmann (2002) distinguishes between grammatical and lexical members of every word class, classifying the primary prepositions within the former category and the secondary prepositions within the latter. He argues that only unified lexicalisations may then undergo grammaticalisation. On the contrary, Traugott (2003: 636) views the development of complex prepositions as a "fairly uncontroversial example" of grammaticalisation (see also Tabor and Traugott 1998: 244-253) "as they involve decategorialization of the nominal, generalization to a larger class of complements, and syntactic reanalysis as functional items, all of which are typical of grammaticalisation" (Brinton and Traugott 2005: 65).

This study perceives complex prepositions in terms of their prefabricated phraseological potential, linked to the interaction of grammaticalisation, lexicalisation and pragmaticalisation, collectively referred to as *prefabrication*, following Beijering (2015) and Kopaczyk (2013). The borders between the three phenomena are fuzzy as already discussed in 2.6.3.2. Complex prepositions are both lexicalised and grammaticalised, to which an additional step of pragmaticalisation is added in legal discourse as they act as distinct legal style markers, which differentiate legal texts from other discourse types.

5.3. Research questions

This chapter addresses several research questions. The first research question is of a more declarative nature and concerns the distribution of complex prepositions in the texts under analysis. Are complex prepositions indeed representative of legal style in written pleadings before the ECtHR? What complex prepositions are the most frequent and representative? What morphological pattern of complex prepositions is the most productive in cross-corpora perspective? What functions do they perform? Are some functional sets more salient than the others in translated vs. non-translated texts?

The second research question concerns the reasons underlying the choice of a specific complex preposition among a functional set of near-synonymous complex and simple prepositions in the translated texts. This question is analysed from several perspectives. First, in terms of their phraseological status and prefabricated properties, as I rely specifically both on the general framework of prefabrication and on the principle of grammaticalisation by analogous extension proposed by Hoffmann (2005) (see section 5.2.2), according to which high-frequency complex prepositions, specifically those established as legal discourse markers, are to be held accountable for the inception of certain low-frequency forms. Second, this chapter looks at the influence of the translation process on the choice of a specific complex preposition with particular regard to the phenomenon of L2 translation. For this purpose, I apply the combined interfaces of prefabrication and translation norms and universals to cross-corpora analysis of convergent and divergent patterns of complex prepositions.

The methodology *stricto sensu* employed for answering these questions is that of corpus linguistics, although it is acknowledged that some low-frequency utterances may adhere to the canon of representativeness only tangentially. Hoffmann (2005: 164), raising important considerations about the representativeness of low-frequency complex prepositions and the limits of corpus linguistics as a method for their analysis, claims that

> In an area where intuition must necessarily play an important role, such data can thus be employed to confirm the currency of the constructions, even though it does not stand up to the normal rigours of statistical analysis.

In this study, the item must occur in at least 20% of texts to pass the representativeness threshold. However, some low-frequency complex prepositions that present interesting translation-related phenomena are also scrutinised making notes about the frequency criteria deviation in order to test what Hoffmann (2005: 75) calls “intuition-based considerations of normalcy”.

5.4. Analysis and findings

The complex prepositions discussed in this section are obtained through the retrieval algorithm based on various combinations of two simple prepositions joined by a wildcard (*), as discussed in 4.4.1, for instance, "in" + * + "with". Given the diversity of the retrieved complex prepositions, it is felt that an approach with multiple parameters is the most appropriate method to proceed with analysis, where the first parameter is the structure, the second parameter is the function and the third parameter is the (non-)translated nature. Consequently, all complex prepositions are sorted first by their morphological structure, comparing translated and non-translated texts. Second, they are sorted by their discoursal function, comparing preferences between and within functional sets across the corpora.

The comparison of textual fit is documented in a separate column in all tables. The comparison value is calculated following the simple formula:

(Translation corpus value – ENRC value) ÷ ENRC value,

expressed in percentage and rounded to 0 decimals. The calculations are carried out using the Excel Spreadsheet. Where no numerical value is available for the reference corpus, simple mathematical symbols of more (>) and less (<) are used to indicate the comparison. When neither the translation corpus, nor the reference corpus have any occurrences, a (-) symbol is used to indicate the absence of data.

Morphological structure	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
in + (det) + N + of	378	+92%	197	140	-29%
in + (det) + N + with	206	+472%	36	76	+111%
in + (det) + N + to	69	-56%	157	152	-3%
on + (det) + N + of	78	+15%	68	95	+40%
with + (det) + N + of	19	>	0	5	>
with + (det) + N + to	22	+22%	18	44	+144%
by + N + of	19	-44%	34	36	+6%
for + (det) + N + of	14	-44%	25	24	-4%
upon + (det) + N + of	4	>	-	-	-
as + adv + as	71	+689%	9	21	+133%
as + (det) + N + of	27	+80%	15	16	+7%
at + (det) + N + of	4	>	-	-	-
Total	**911**	**+63%**	**559**	**609**	**+9**

Table 5.1: *Relative frequencies of the most productive patterns of three-element complex prepositions across the corpora.*

Table 5.1 demonstrates that the patterns with the first preposition "in" and the last preposition "of" tend to be the most productive across the corpora in absolute terms. However, this pattern is relatively more frequent (+92%) in the Russian Translation Corpus and less frequent (-29%) in the Italian Translation Corpus if a comparison is made with the English Reference Corpus. The pattern [Prep1$_{in}$ + (det) + N + Prep2$_{with}$] is significantly overrepresented in the translation corpora (RUTC: + 472%; ITTC: +111%). Remarkably, the pattern [Prep1$_{in}$ + (det) + N + Prep2$_{to}$] is underrepresented in the Russian Translation Corpus and has almost equal values in both the Italian Translation Corpus and in the English Reference Corpus. The three patterns differ by the second preposition and the divergent preferences across the corpora are interesting to address from the translation studies viewpoint. This analysis is carried out in the following paragraphs.

Morphological structure	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
in + (det) + N + of	42%	+7%	35%	23%	-8%
in + (det) + N + with	23%	+17%	6%	12%	+6%
in + (det) + N + to	8%	-20%	28%	25%	-3%
on + (det) + N + of	9%	-3%	12%	16%	+4%
with + (det) + N + of	2%	>	-	1%	>
with + (det) + N + to	2%	-1%	3%	7%	+4%
by + N + of	2%	-4%	6%	6%	=
for + (det) + N + of	1%	-4%	5%	4%	-1%
upon + (det) + N + of	0.4%	>	-	-	-
as + adv + as	8%	+6%	2%	3%	+1%
as + (det) + N + of	3%	=	3%	3%	=
at + (det) + N + of	0.4%	>	-	-	-
Total	**100%**		**100%**	**100%**	

Table 5.2: *Proportion of the most productive patterns of three-element complex prepositions within separate corpora.*

The data of Table 5.2 demonstrate that the preferences for certain morphological patterns are comparable in the English Reference Corpus and the Italian Translation Corpus, where divergence is ±8%. The proportion within the Russian Translation Corpus presents notable differences with regard to two patterns: [Prep1$_{in}$ + (det) + N + Prep2$_{with}$], which is overrepresented by +17% and [Prep1$_{in}$ + (det) + N + Prep2$_{to}$], underrepresented by -20%, and this confirms the observations already made with regard to the relative frequencies of these patterns across the corpora.

Having looked at morphological structure, now I will deal with their discoursal functions. Most of the retrieved complex prepositions are found in the respective functional sets in grammar manuals, including some relatively rare or expressly "legalistic" complex prepositions. Apart from the classical meanings of place and time traditionally associated with prepositions, legal texts usually feature prepositions with other functions that convey more abstract relations. With regard to the British Housing Act 1980, Bhatia (1998) identifies four functions of intertextual devices that are relevant for function-based subdivision of the retrieved prepositions (with Bhatia's examples): (a) signalling textual authority (*in accordance with, in pursuance of, by virtue of*); (b) providing terminological explanation (*within the meaning of*); (c) defining legal scope (*subject to*), and (d) facilitating textual mapping (*specified in section, referred to in subsection*). Bhatia's classification above is amplified by Quirk's (1985: 656) canonical taxonomy that includes prepositions with functions of (e) respect (*with respect to, with reference to, with regard to*); (f) concession (*in spite of, despite, notwithstanding*); (g) the cause/purpose spectrum (*because of, on account of*); (h) exception and addition (*in addition to, with the exception of*); (i) condition (*in case of*) and (j) the means / agentive spectrum (*by means of, by way of, on behalf of*).

Based on these taxonomies I have identified 10 functional sets of complex prepositions in the Three-Part Corpus, which are shown in Table 5.3. The first three lines belong to the umbrella category "cause / purpose" and are subdivided into smaller groups of cause / reason (5.4.1), grounds / motive (5.4.2) and purpose / destination (5.4.3). Lines 4-6 represent another macro-category that can be labelled as establishing textual authority and expressing reference/respect. This category is further subdivided into groups of legal compliance (5.4.4), respect/reference (5.4.5) and contrast / non-compliance (5.4.6). The function of respect is very close to the function of legal compliance and requires analysis of concordances for the correct placement of a complex preposition. Notwithstanding, some overlaps are inevitable. Hence, the subdivision between the subcategories of legal compliance and respect/reference is to be intended as not definitive and introduced for methodological reasons in order to simplify the analysis. Line 7 is what Quirk *et al*. (1985: 695) define the "means / agentive spectrum" (5.4.7). Finally, the last three lines are the least frequent and

are addressed together in 5.4.8. These are complex prepositions expressing concession, addition / exclusion and condition.

No	Function	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
1	*Cause*	*228*	*+121%*	*103*	*191*	*+85%*
2	Purpose	83	+20%	69	126	+83%
3	Grounds	66	+78%	37	39	+5%
4	Respect / reference	229	+16%	198	109	-45%
5	*legal compliance*	*313*	*+683%*	*40*	*172*	*+330%*
6	non-compliance	48	-9%	53	53	=
7	Means / agentive	79	-11%	89	83	-7%
8	Addition / exclusion	90	+150%	36	61	+69%
9	*Condition*	*47*	*+161%*	*18*	*12*	*-33%*
10	Concession	2	>	0	6	>
	Total	**1185**	**+84%**	**643**	**852**	**+33%**

Table 5.3: *Relative frequencies of the most frequent functional sets of complex prepositions across the corpora.*

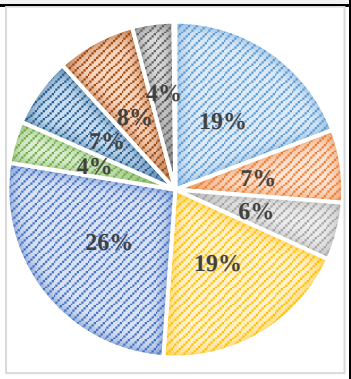
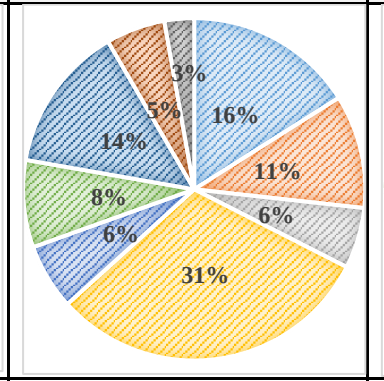
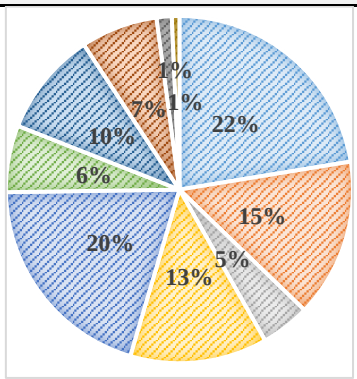
Function	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**cf. ENRC**	**ENRC**	**ITTC**	**cf. ENRC**
Cause	19%	+3%	16%	22%	+6%
Purpose	7%	-4%	11%	15%	+4%
Grounds	6%	=	6%	5%	-1%
Respect / reference	*19%*	*-12%*	*31%*	*13%*	*-18%*
legal compliance	*26%*	*+20%*	*6%*	*20%*	*+14%*
non-compliance	4%	-4%	8%	6%	-2%
Means / agentive	7%	-7%	14%	10%	-4%
Addition	8%	+3%	5%	7%	+2%
Condition	4%	+1%	3%	1%	-2%
Concession	0.2%	>	-	0.7%	>
Total	**100%**		**100%**	**100%**	

Figure 5.1: *Proportion of functional sets of complex prepositions within separate corpora.*

Table 5.3 shows that most functional sets of complex prepositions tend to be overrepresented in the translation corpora, with some being significantly overrepresented (cause, legal compliance and condition in the RUTC). At the same time, some functional sets are underrepresented (means /

agentive spectrum, respect / reference and addition / exclusion in the ITTC, non-compliance in the RUTC), and this may signal either about differences on the discourse level or about different preferences between complex and simple prepositions performing the same functions.

The proportion of different functional sets of complex prepositions is sufficiently comparable across the corpora, with the exception of respect / reference function and legal compliance function. The former is proportionally underrepresented in the translation corpora (RUTC: -12%; ITTC: -18% out of total) and the latter is proportionally overrepresented (RUTC: +20%; ITTC: +14% out of total), and this confirms some of the tendencies already identified with regard to relative frequencies of these functional sets.

The following subsections present both quantitative and qualitative findings concerning separate functional sets and single complex prepositions belonging to the set from a contrastive perspective.

5.4.1. Cause

The cause-effect relations are vested with high significance in multiple contexts. Legal language is not an exception, moreover, because of its striving towards precision and logical connections, the causal links here are of utmost importance. As Serianni claims (2003: 118, my translation[42]), "heavy connectives serve to further underline the relationship of cause and effect, which is particularly important in strongly argumentative discourse".

Ferrari (1999, cited in Mortara Garavelli 2001: 128-129) differentiates between progressive causality and regressive causality. *Progressive causality* is the causal link of consequences, i.e. an event X happened and an event Y is caused as a consequence. Findler (1990: 233) defines progressive causality in terms of "the process of finding the effects of given events". However, this type of causality is more often expressed through conjunctive adverbial phrases (examples (3) and (4)).

(3) Therefore any applications concerning participation of officials of the Russian Federation in events which are described in the application are unsubstantiated and, *hence*, unreasonable. [RUTC]
(4) In the present case the events happened in peacetime, not in the course of special operations and, *therefore*, the circumstances of the death of A.A. Griboedov are not at all similar to early cases. [RUTC]

Regressive causality is the prototypical causality, in that it occurs in situations when the circumstances of the event Y happen from the effect of the event X. It is "the process of finding the causes, given the effects" (Findler 1990: 233). This causal link is usually expressed by the synonyms of *because of*, which are the study object of this subsection.

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
on account of	2	-83%	12	31	+158%
in view of	*40*	*+567%*	6	*60*	*+900%*
in (the) light of	16	-24%	21	23	+10%
because of	33	+120%	15	22	+47%
by virtue of	6	=	6	8	+33%
by reason of	1	-90%	10	2	-80%
due to	99	+450%	18	6	-67%
owing to	4	>	-	23	>>
as a result of	27	+80%	15	16	+7%
Total	**228**	**+121%**	**103**	**191**	**+85%**

Table 5.4: *Relative frequencies of complex prepositions expressing regressive causality across the corpora.*
Legend: Single-line underlining = underrepresentation; curvy-line underlining = higher frequency just in one corpus; *italics* = higher frequency in both translation corpora.

Instances of predicative use are excluded from the calculations. For instance, such phrases as "to estimate the compensation due to the applicants", where *due to* does not act as a complex preposition.

The first conclusion arising from Table 5.4 concerns the generally higher frequencies of complex prepositions of cause in the translation corpora (RUTC: +121%; ITTC: +85%) in comparison to lower frequencies in the reference corpus. As the English Reference Corpus is less nominalised, it uses causal conjunctions *as*, *because* and *since* that are followed by a complete subordinate clause instead of nominalised choices. Secondly, *in view of* appears to be significantly overrepresented in both translation corpora (RUTC: +567%; ITTC: +900%), while *by reason of* is underrepresented (RUTC: -90%; ITTC: -80%). Thirdly, different preferences emerge in the Russian Translation Corpus and the

[42] "i connettivi pesanti hanno la funzione di sottolineare maggiormente i rapporti di causa-effetto particolarmente importanti in un discorso a forte tenuta argomentativa".

Italian Translation Corpus (also in bold in Figure 5.2). I will comment first on the textual fit of translated vs. non-translated texts (cases of over- and underrepresentation) and then deal with divergent preferences in the translated pleadings.

As already mentioned, *in view of* is significantly overrepresented in both translation corpora. Hoffmann (2005: 54) defines its function in terms of its synonymy with *on account of, due to* and *because of* and claims that as a structure it "has very little to do with an exercise of the power of vision" (Hoffmann 2005: 53), thus signalling its grammaticalisation. The Italian Translation Corpus uses it by +900% more frequently than the English Reference Corpus, and the Russian Translation Corpus uses it by +567% more frequently than the English Reference Corpus. Moreover, the close reading of the Italian Translation Corpus and the Italian Source Texts illustrates that in 87% of cases this preposition is added at the stage of translation whereas the source text does not feature any similar preposition.

(5) The restriction *in view of* the expropriation at issue originated because this land was designed to be a "VERDE PUBBLICO" (PUBLIC GREEN SPACE) […] [ITTC].
(5a) Il vincolo espropriativo di cui si tratta discende dalla destinazione a "VERDE PUBBLICO" […] [ITST].
(6) Firstly, the difference between restriction *in view of* the expropriation (vincolo *preordinato* all'esproprio) and environmental protection restriction (vincolo paesaggistico) shall be clarified.

It is interesting to observe that in these examples *in view of* stems from the Italian multi-word term *vincolo preordinato all'esproprio* (or *vincolo espropriativo* in very few cases). These Italian expression follows the structure [$N_{vincolo}$ + $Adj_{preordinato}$ + $PrepArt_{all'}$ + $N_{esproprio}$]; where the two nominal elements of this multi-word term, *vincolo* ("restriction") and *esproprio* ("expropriation"), are linked by the past participle used as an adjective *preordinato a*, which means "predetermined / pre-ordered/ organised for" and can be rephrased in Italian as *in previsione di*, i.e. "in anticipation of". In substance, however, the meaning of this term can be condensed in "restriction on/of expropriation". The peculiar choice to translate this multi-word term by means of a complex preposition *in view of* may be interpreted as a) a preference towards complex prepositions in general; b) a desire to bestow the additional meaning of anticipation, which is however marked as obsolete for *in view of* by the Oxford English Dictionary (online) and is more frequent for *with a view to* in modern English, which in its turn may suggest some interference. Finally, as *in view of* is inserted into a fixed multi-word term, its repetitiveness and consistent use in that pleading are logically explained by the fact that it is perceived as a prefabricated chunk.

In general, *in view of* is present in 27% of the Italian Translation Corpus and thus satisfies the representativeness requirement. Example (7) below, taken from another text of the Italian Translation Corpus, different from (5) or (6), clearly presumes a connective in the Italian source text, which could have been *alla luce di*, i.e. a connective with high degree of semantic and structural similarity.

(7) *In view of* the appeal court's jurisdiction, the subject-matter of its decision and the characteristics of the summary procedure, Article 6 did not require that the defendant be present in person at the appeal hearing, and the fairness of the proceedings as a whole was not affected by his absence [ITTC].

In general, from the translation standpoint, it seems that a number of complex prepositions are opted for in the translation corpora as legal style markers even in the absence of the respective SL stimuli, in order to convey an additional legal flavour. Likewise, there are cases of *in view of* in the Russian Translation Corpus, where it is introduced to render a gerundial construction with causal function and not a complex preposition.

(8) *In view of* the circumstances of this case that were described in detail in the application form and in the present observations, the applicants ask to afford the following amounts in respect of non-pecuniary damage [RUTC].

(8a) Учитывая обстоятельства данного дела, подробно изложенные в формуляре жалобы и настоящих возражениях, Заявители просят взыскать в их пользу в качестве компенсации морального вреда следующие денежные суммы [RUST].

In addition, it is peculiar that in the Russian Translation Corpus the same complex preposition occurs often together with its synonyms in complex argumentative structures. Examples (9) – (10) and (9a) – (10a) respectively illustrate that *in view of* was used interchangeably to render both the Russian causal prepositions *ввиду* and *в связи с* at the distance of several paragraphs.

(9) On 26 February 2002 *in view of* absence of both lawyers and *because* Mr Borodin did not acquaint himself with the case-file the hearing of the case was adjourned till 19 March 2002 (a copy of the minutes of the hearing is attached herewith) [RUTC].
(9a) 26 февраля 2002 г. *ввиду* неявки обоих адвокатов, а также *в связи с* тем что Бородин В.В. всё еще не ознакомился с материалами дела, судебное заседание было отложено на 19 марта 2002 г. (копия протокола судебного заседания прилагается) [RUST].
(10) On 19 March 2002 the Kuraginskiy District Court of Raduzhnetsk obtained Mr Borodin's request about changing of a measure of restraint in respect of him *in view of* his illness and *because of* groundless of changing of the measure of restraint on 24 June 2001 (in fact - 17 May 2001) [RUTC]
(10a) 19 марта 2002 г. в Курагинский районный суд г. Радужнецка поступило ходатайство Бородина В. В. об изменении ему меры пресечения *в связи с* его болезнью, а также *ввиду* необоснованности изменения ему 24 июня 2001 г. (в действительности – 17 мая 2001 г.) меры пресечения. [RUST].

In (9) *in view of* is the translation of *ввиду* and *because* is the translation of *в связи с*, while in (10) it is the opposite: *in view of* is the translation of *в связи с* and *because of* is the translation of *ввиду*. It is interesting to note that *ввиду* has the same logical origin of *in view of* as both are based on the initial concept of something being in vision ("view" is the direct equivalent of *вид*). In terms of their grammaticalisation, it seems that the underlying process is parallel in that it stretches the original literal meaning of being in visible range of something specific to the figurative compositional meaning applied to abstract situations[43]. Although the status of *in view of* as a complex preposition is not yet universally acknowledged in English (for instance, OED (online) does not list its prepositional use), there is no such doubt with regard to *ввиду*, whose orthography is a certain sign of its complete grammaticalisation in that the original nominal phrase, which gave rise to this complex preposition, was written separately [Prep$_{в}$ + N$_{виду}^{\text{Prepositional}}$]. The prefabrication of the Russian *ввиду* acting as a legal style marker might have influenced the choice of the English *in view of* at the translation stage.

In a number of other occurrences, *in view of* is the translation of the Russian *в свете* + Genitive ("in (the) light of"). In fact, *in (the) light of* is underrepresented in the Russian Translation Corpus (-24%), which reflects the overrepresentation of *in view of*. The possible reason may lie in the fact that the Russian *ввиду* is more pragmaticalised in legal discourse than *в свете*. In the Italian Translation Corpus it is overrepresented by +10%, probably under the influence of its literal Italian equivalent *alla luce di*, which has a "markedly legal-judicial" hue (Pontrandolfo 2013: 227).

It is noteworthy that *in (the) light of* is considered to be a low-frequency complex preposition in modern English, although included in a number of corpus-based grammars (e.g. Biber *et al*. 1999: 75-76), probably "because of intuition-based considerations of normalcy" (Hoffmann 2005: 163). The contrastive perspective and the perspective of translation studies cast additional light on the assumptions about "intuition-based considerations of normalcy" because similar choices and patterns are traced in several corpora. In fact, the source texts demonstrate that *in (the) light of* originated from *в свете* + Genitive and *alla luce di* in many cases. Consequently, it is tempting to conclude that these expressions might have exerted influence on the choice of a respective near-synonym in the TL in terms of discourse transfer from the respective source languages, because (a) these constructions are

[43] See Hoffmann (2005: 53-57) for a more detailed description of the grammaticalisation of *in view of*.

perceived as naturally conveying these functions in the source languages under analysis; (b) they are the closest equivalent to *in light of*.

(11) *In light of* the matters summarised at §42(1) above, the following points are made [English Reference Corpus].
(12) *In the light of* the above, the applicants urge the acceptance of their application as well as of their claim for just satisfaction [Italian Translation Corpus].
(12a) *Alla luce di* quanto sopra esposto, i ricorrenti insistono per l'accoglimento del ricorso da essi proposto nonché delle richieste di equa soddisfazione formulate [ITST].
(13) *In the light of* the first applicant's claims and the documents which have been submitted, did she face a risk of being subjected to treatment in breach of Article 3 of the Convention at the time of her deportation to China? [Russian Translation Corpus]
(13a) *В свете* обращения и документов, поданных заявительницей, имелся ли риск того, что она подвергнется обращению, которое противоречит Статье 3 Конвенции, во время депортации в Китай? [RUST]

While Hoffmann (2005) argues the hypothesis of grammaticalisation by analogy with other established complex prepositions only in one language, I think that this hypothesis can be also viewed from the contrastive standpoint. If similar collocational patterns with similar or the same conceptual mapping acquire prepositional status in different languages and their cognitive perception as a single unit is established in translation from a language A to a language B, then the established grammaticalisation in language A can be considered as supporting and clearing the way for a similar status in language B in a cross-linguistic translational perspective. Consequently, translation process is accompanied by prefabrication, which results in the production of ready-made multi-word units.

An interesting case is the distribution of *as a result of* across the corpora. While the English Reference Corpus and the Italian Translation Corpus employ it in a similar amount of cases (ITTC: +7%), the Russian Translation Corpus overrepresents it by +80%.

(14) Pursuant to the mentioned article section seven of the Code of Criminal Procedure of the Russian Federation, court, *as a result of* the inspection, shall deliver one of the following rulings: on recognition of an extradition decision illegal or unreasonable and its cancellation; 2) on dismissing of a complaint [RUTC].
(15) If one begins with those premisses, it appears that the Chamber went beyond its task by going so far as to accuse the domestic court of diverging from certain alleged European parameters, but without examining any of the elements of evaluation used by the national court to ascertain whether and to what extent damage, whether pecuniary or non-pecuniary, had arisen *as a result of* the excessive duration of the proceedings [ITTC].
(16) […]even though those damages were far beyond the means of the applicants and even though McGathings had not adduced any evidence whatsoever to show that they had lost one penny *as a result of* the applicants' support for the London Greenpeace campaign against the fast food industry [ENRC].

All the occurrences of *as a result of* in the Russian Translation Corpus originated from the Russian expressions *в результате* + genitive, which is a direct equivalent of the English connective. Both in English and in Russian, *as a result* may function either as an adverb, if it is not followed by the second preposition "of" or the complement in the genitive case, or as a preposition, if it features the second preposition "of" or is followed by a noun in the genitive. Hence, the higher number of occurrences of *as a result of* in the Russian Translation Corpus, as compared to the other two corpora, may be attributed to the perfect correspondence between the two complex prepositions, which does not invite further searches among the near-synonyms on the part of a translator.

Remarkably, *by reason of* is the only complex preposition in this set, which is decidedly underrepresented in both translation corpora (RUTC: -90%; ITTC: -80%) in favour of its other functional equivalents.

(17) The Applicant identifies the pecuniary loss suffered *by reason of* this part of the claim by reference to amount paid by it to Ms. Kenvill in respect of the success fees agreed between Ms. Kenvill and her lawyers for the first and second hearings before the House of Lords. [ENRC]
(18) The murder […] committed *by reason of* national, racial and religious hatred or enmity or blood fend […] [RUTC, quoting Art. 105. 2 (k) Criminal Code]
(19) The Court held that there had been no violation on this ground *by reason of* the nature and the purpose of proceedings in the Court of Cassation. [ITTC]

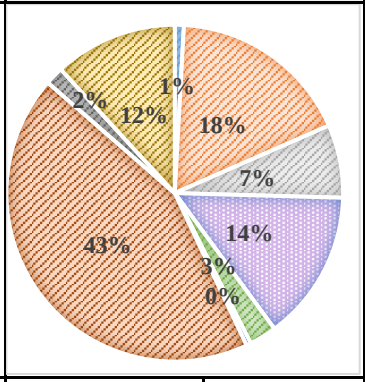
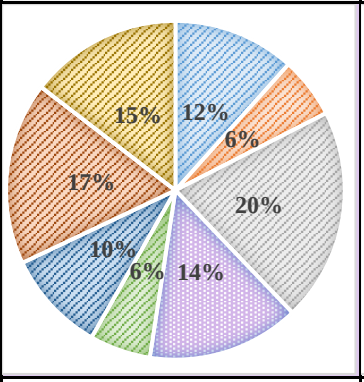
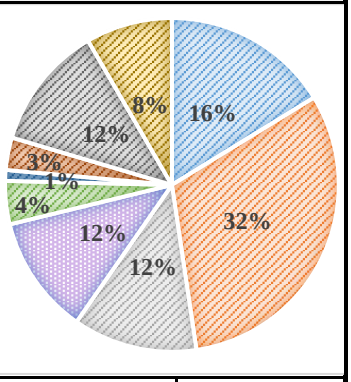
Complex preposition	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**cf. ENRC**	**ENRC**	**ITTC**	**cf. ENRC**
on account of	**1%**	-11%	12%	**16%**	+4%
in view of	18%	+12%	6%	**32%**	+26%
in (the) light of	7%	-13%	20%	12%	-8%
because of	14%	=	14%	12%	-2%
by virtue of	3%	-3%	6%	4%	-2%
by reason of	0.4%	-9.6%	10%	1%	-9%
due to	**43%**	**+26%**	17%	**3%**	**-14%**
owing to	**2%**	>	-	**12%**	>
as a result of	12%	-3%	15%	8%	-7%
Total	**100%**		**100%**	**100%**	

Figure 5.2: *Proportion of different complex prepositions expressing regressive causality within separate corpora.*

Having overviewed the different preferences between translated and non-translated texts, it is time to comment on distribution of these prepositions within the respective sets in the two translation corpora. These differences are particularly evident when one looks at proportional representation of each near-synonym in this functional set within separate corpora, observable in Figure 5.2.

While the Russian Translation Corpus overrepresents *due to* by +450%, the Italian Translation Corpus underrepresents it by -67% compared to the reference texts (see Table 5.4). In terms of proportion, *due to* is used in 43% of cases in the RUTC and only in 3% of cases in the ITTC. An opposite trend concerns *on account of* (overrepresented by +158% in the Italian Translation Corpus and underrepresented by -67% in the Russian Translation Corpus) and *owing to* (no occurrences in the reference texts). In terms of proportion, *on account of* is used in 16% of cases in the Italian Translation Corpus as opposed to 1% in the Russian Translation Corpus, and *owing to* occurs in 12% of cases in the ITTC vs. 2% in the RUTC. Consequently, it may be concluded that the Russian Translation Corpus disprefers *on account of* and *owing to* in favour of *due to*, with the reverse tendency in the Italian Translation Corpus.

Remarkably, all three complex prepositions have a formal ringing to them and introduce reasons for certain actions or omissions as examples below illustrate. OED (online) lists both *due to*[44] and *owing to*[45] as synonyms of *because of* and *on account of*. While the traditional grammarians insist on *due to* being preceded by "to be" and situated between two noun phrases or nouns, it is used as any other complex preposition also in other structures, thus confirming its prepositional status (see (20)).

(20) The Government have noted ((2), page 6 of their observations) that the delays *due to the failure to appear* of the witnesses, victims and counsels assisting the other defendants, as well as *due to the lay assessors' being on a sick leave* and the prosecutor's failure to appear were not attributable to the authorities. [RUTC]
(21) In sum, the Government contends that […], even supposing that the applicant was prevented from taking part in the appeal hearing *on account of his failure to understand the summons*, his attendance was not necessary in view of the stage in the proceedings, its purpose, the questions at issue and the limits of the court's powers [ITTC].
(22) […] the Court held unanimously […] that there had been a violation by the Italian State: (a) of Article 6.1 of the Convention, *owing to* the unreasonable length of civil proceedings brought by the applicant in order to challenge the amount of compensation for expropriation and to secure payment of that compensation [ITTC].

The source expressions that gave rise to *on account of, owing to* and *due to* are available only in Russian and nothing in their structure suggests the reason for the preferential position of *due to*:

RUST: *в связи с, ввиду, по причине, из* + *Gen*

As for the Italian prepositions, it can be hypothesised that *due to* is dispreferred in its prepositional use because it is also used to render the Italian *dovuto a* as part of complex predicates (e.g. "il fatto è dovuto a", "the fact is due to"), and other connectives that are closer to *a causa di, in quanto* and *perché* are chosen. It is, however, possible to speculate about the preference for *owing to* in the Italian Translation Corpus in comparison to *due to* in terms of the more visible formulaic properties of the former. OED (online) mentions that the use of the latter was established already in the 19th century, however it was criticised in the early 20th century "apparently beginning with H. W. Fowler *Dict. Mod. Eng. Usage* (1926), which described it as 'often used by the illiterate as though it had passed, like *owing to*, into a mere compound preposition'". It can be hypothesised, thus, that a possible reason for the preference of *on account of* and *owing to* in the Italian Translation Corpus as compared to *due to* in the Russian Translation Corpus is caused by the established formulaic use of the former and its undoubtedly prepositional nature.

[44] "due, adj. and adv." *OED Online*. Oxford University Press, March 2017. Web. 24 May 2017.
[45] "owing, adj." *OED Online*. Oxford University Press, March 2017. Web. 24 May 2017.

5.4.2. Grounds

Table 5.7 below gathers complex prepositions with the function of setting forth the grounds for an action, which bears certain similarities to the function of cause discussed in 5.4.1.

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
on the basis of	*26*	*+136%*	*11*	*37*	*236%*
on the fact of	22	>>	-	-	-
upon the fact of	4	>	-	-	-
on (the) ground(s) of	7	-73%	26	2	-92%
on suspicion of	7	>	-	-	-
Total	**66**	**+78%**	**37**	**39**	**+5%**

Table 5.5: *Relative frequencies of complex prepositions with the function of setting forth grounds for a certain legal action across the corpora.*
Legend: Single-line underlining = underrepresentation; curvy-line underlining = higher frequency just in one corpus; *italics* = higher frequency in both translation corpora.

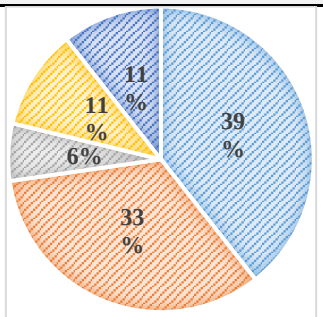
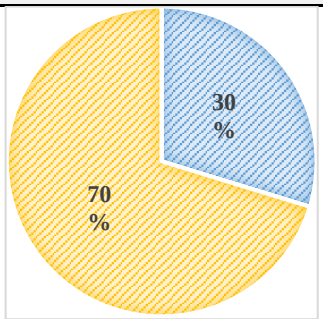
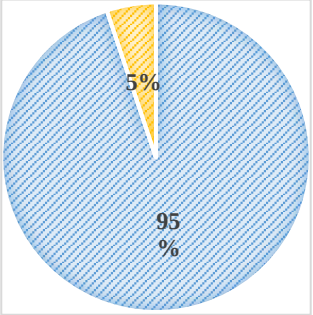
Grounds	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**Cf. ENRC**	**ENRC**	**ITTC**	**Cf. ENRC**
on the basis of	39%	+9%	30%	**95%**	+65%
on the fact of	**33%**	>>	-	-	-
upon the fact of	**6%**	>	-	-	-
on (the) ground(s) of	11%	-59%	**70%**	5%	-65%
on suspicion of	**11%**	>	-	-	-
Total	**100%**		**100%**	**100%**	

Figure 5.3: *Proportion of complex prepositions with the function of setting forth grounds for a certain legal action within separate corpora.*

Table 5.5 sheds light on a general tendency of the translated texts to prefer *on the basis of* (RUTC: +136%; ITTC: +236%) to *on (the) ground(s) of* (RUTC: -73%; ITTC: -92%) and to some strings peculiar only of the Russian Translation Corpus. The overview of proportions (Figure 5.3) shows a higher fragmentation in the Russian Translation Corpus, which makes recourse to imported connectives in 50% of cases, whereas the other two corpora show preference towards one complex preposition (ENRC: 70% *on the grounds of*; ITTC: 95% *on the basis of*). I will address first the issue of over- and underrepresentation and then deal with the "strange strings" in the Russian Translation Corpus.

With regard to the first issue, it must be said that the lexical elements underlying the two complex prepositions are near-synonymous. Semantically, both *basis* and *grounds* share the meaning of "foundation" with reference to both material objects and immaterial phenomena, i.e. "[t]hat on which

a system, work, institution, art, or condition of things, is founded" (OED, online). As to *grounds*, OED (online)[46] explains that it is

> A circumstance on which an opinion, inference, argument, statement, or claim is founded, or which has given rise to an action, procedure, or mental feeling; a reason, motive. Often with additional implication: a valid reason, justifying motive, or what is alleged as such. *on the ground of*: by reason of (some circumstance alleged in justification of a procedure).

Whereas *on the ground(s) of* has a legal ringing derived from the additional implication above, the same legal flavour is not achieved through the use of *on the basis of*. The difference is the most evident with regard to the Italian Translation Corpus. It seems thus that the Italian Translation Corpus has lost some of its potential legal colouring by choosing *on the basis of*. The collocates of these two connectives in the Italian Translation Corpus and across the corpora present regularities (e.g. "evidence", "judgments", "findings"); in fact, as exemplified below, in all cases treated these two complex prepositions are interchangeable. This means that *on the ground(s) of* could have been used more frequently in the translation corpora to express the same legal relation, yet this option was not used by the translators.

> (23) It would be impossible to change the Code of Procedure and amend or repeal procedural instruments, because any suspect could always assert that he or she had committed a criminal offence solely *on the basis of* the existence of those instruments, which had in the meantime been amended or repealed. [ITTC]
> (24) The Russian Federation authorities also attract attention to the fact that in the memorandum on the case of the Registry there are no data on termination of proceeding in the Russian Federation *on the basis of* the expressed will of the first two applicants[…] [RUTC]
> (25) The accused sought to prohibit all reporting of the appeal proceedings until their determination or, if permission for a fresh prosecution was granted, until after any retrial, *on the grounds of* substantial risk of prejudice to the administration of justice. [ENRC]

As for the reasons that could underline this choice, it seems appropriate to look at the source legal routines (in Hatim and Mason's 1990 sense). In fact, the complex prepositions *sulla base di* (+ article) and *in base a* (+ article) are frequently used in Italian to state the grounds and/or reasons, which would be an equivalent to the English *on the ground(s) of* and *on the basis of*. However, the lexical element of the Italian expression *base* ("basis") is undoubtedly closer to the English term *basis*. It would seem that the Italian Translation Corpus preference for the *on the basis of* may be at least partially accounted for by the proximity of the Italian *base* to the English *basis*, which could explain the preferential position of this connective in the Italian Translation Corpus. The respective Russian construction is *на основании* + genitive.

However, another peculiar set of constructions in the Russian Translation Corpus deserves a separate discussion. The constructions *on the fact of* and *upon the fact of* are synonymous and repeat the mannerism typical of Russian legal discourse *по факту* + genitive:

[Prep1$_{on/upon}$	+ *the fact*	+ Prep2$_{of}$	+ N$_{\text{offense type}}$]
[Prep$_{no}$	+ N$_{факту}^{Dat}$		+ N$_{\text{offense type}}^{\text{Gen}}$]

These constructions introduce the grounds, on which a certain legal action, usually an investigation, is taken as illustrated in examples below.

> (26) […] the course of investigation into the criminal case no. 46037 instituted *on the fact of* abduction of V. [RUTC]

[46] "ground, n." *OED Online*. Oxford University Press, March 2017. Web. 22 May 2017.

(27) The applicant has failed to lodge any complaints with the Russian authorities to challenge the effectiveness of investigation *upon the fact of* her husband's murder. [RUTC]

While *on suspicion of* is three times less frequent, it resembles both structurally and semantically the constructions *on the fact of* and *upon the fact of* and, thus, may be analysed together with them.

(28) According to the materials of the criminal case no. 98765, Valery Soshkafin was detained in accordance with the procedure established by Article 91 of the Russian Federation Code of Criminal Procedure *on suspicion of* commitment of murder of Head of the Administration of the Teremok District of the Chechen Republic Dirkotkin A.G. and his secretary Rybkina Z.A. [RUTC]

These complex prepositions consist of the preposition *on/upon* followed by an epistemic word indicating the relation of an action to the reality (*fact*/*suspicion*, etc.) with an adjunct preposition *of*. The complement of this connective is the name of an unlawful action (*crime* / *murder*, etc.), sometimes preceded by the term *commitment* (or its translation-induced cognates) as Table 5.8 below shows.

Complex preposition	**Russian Translation Corpus**
on the fact of	abduction, kidnapping, (the) murder, appealing, disappearance, inflicting, infliction, use of force
upon the fact of	abduction, murder
on suspicion of	commission of crime/unlawful actions, committal of crime, commitment of murder, participation in an illegal armed group, perpetration of a crime

Table 5.6: *Collocates of "on the fact of", "upon the fact of" and "on suspicion of" in the Russian Translation Corpus.*

Within a functionalist view of language change, it may be stated that these structures are undergoing grammaticalisation. The replacement test produces positive results, and in examples (26), (27) and (28) these structures can be replaced by a simple preposition *on*. Besides, they are interpreted as a single unit, which is a signal of grammaticalisation (Hoffmann 2005: 54). The fact that these mannerisms are used exclusively in legal Russian, whereas in other domains of language use they would be omitted or replaced by simple prepositions, signals their pragmaticalisation.

In terms of their prefabrication, some formal parameters can be assessed in line with Hoffmann (2005: 56), who argues:

From a formal point of view, the grammaticalisation of complex prepositions manifests itself in a number of ways. In parallel to the semantic changes described above, the nominal element of the construction over time loses the features that define its categorial status as a noun. For example, in the complex prepositional use of *in view of*, *view* cannot occur in the plural or with a determiner, nor can it be premodified by an adjective.

These parameters are easily verified when applied to the constructions at hand. Neither *fact* nor *suspicion* can occur in the plural or be premodified, which suggests that these nouns have undergone the process of decategorialisation (Hopper 1991) and their analysis as single-standing nouns would be compromised sustaining, thus, the hypothesis about their (partial) grammaticalisation. It results queer to say that "a criminal case has been opened" / *возбуждено уголовное дело*

a) "on the *facts of abduction" / *по *фактам похищения*;
b) "on *a *serious fact of murder"/ *по *серьезному факту убийства*;
c) "on *suspicions of a crime" / *по *подозрениям в преступлении*;
d) "upon *a *strong suspicion of murder" / *по *сильному подозрению в убийстве*.

It must be mentioned that the perception of (in)acceptability of these variations fluctuates. While adjectival premodification in b) is inacceptable, a) seems just uncustomary but not entirely incorrect. Likewise, it results queer to say c), while d) could work outside of this prepositional phrase but not in the context of the co-occurrences in the corpus.

With regard to another feature of prefabrication, associated with grammaticalisation – *semantic bleaching*, also known as semantic weakening, i.e. the loss of semantic properties of grammaticalised elements – it seems that (*up*)*on the fact of* has moved further along the cline of grammaticalisation than *on suspicion of*. The type *fact* does not collocate with any adjectival premodifier in the Russian Translation Corpus, whereas *suspicion*, outside of the discussed pattern, collocates with evaluative adjectives *serious* and *reasonable*, which signals about a lower degree of its delexicalisation. Actually, while *fact* does not add to the understanding of the case, *suspicion* still maintains a relevant epistemological flavour in that it introduces the element of doubt as to the reconstruction of events. In addition, the prepositional status of (*up*)*on the fact of* is further confirmed by the use of such established near-synonymous complex prepositions as *in relation to* (29) and *on account of* (30)[47] to render the same source expression *по факту* with the same collocates, at times even within the same pleading.

(29) The Government are requested to submit a copy of the entire investigation file in criminal case no. 123456 instituted *in relation to* the kidnapping of Petr Ivanov. [Russian Translation Corpus]
(30) In the instant case the Applicant is requesting the Court to find that there have been violations of Articles 2, 3, 5 and 13 of the Convention *on account of* the disappearance of S. M. following his arrest by agents of the State on 14 June 2004. [Russian Translation Corpus]

In these utterances, as in (26), (27) and (28), the complex prepositions may be easily replaced by other complex prepositions: *on the basis of* or *on the grounds of*, which seem to have paved the way for the new arrivals *on the fact of* and, to a lesser degree, *on suspicion of*, since all of the prepositions above follow the pattern [Prep1$_{on}$ + (Art$_{the}$) + N + Prep2$_{of}$]. Such a phenomenon of extension by analogy has been already dealt with in the relevant literature with regard to complex prepositions (Hoffmann 2005) and quantifiers (Brems 2011).

In the translational perspective, the fact that the expressions *on the fact of* and *on suspicion of* are entirely absent from the English Reference Corpus, as well as from the Italian Translation Corpus, may be interpreted as evidence of discourse transfer in that these complex prepositions are untypical. Without breaking any grammatical rules, the translators do not deploy here the standard arsenal of legal English routines. On the contrary, they introduce items with a high degree of pragmaticalisation as markers of Russian legal discourse. Apart from the reasons for such a transfer, it is enabled by the grammatical developments in modern English, where standard English complex prepositions, especially those frequent in legal discourse, have cleared the way for the new arrivals.

[47] *On account of*, although not corresponding entirely to the function of stating grounds but rather of providing the reason (synonymously to *because of, owing to*) is used only once in the former sense as exemplified in (30). Its primary sense of stating the reason is discussed in the respective section.

5.4.3. Purpose

The functional set of complex prepositions expressing purpose is also widely used in legal writing, especially in the argumentation parts to introduce purpose and/or destination of some action or provision.

Complex preposition	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
in order to	48	+9%	44	86	+95%
for the purpose of	6	-14%	7	12	+71%
for the purposes of	8	-56%	18	12	-33%
with the purpose of	14	>	-	-	-
with a view of	4	>	-	-	-
with a view to	2	>	-	-	-
with the aim to	1	>	-	10	>
with the aim of	-	-	-	6	>
Total	**83**	**+20%**	**69**	**126**	**+83%**

Table 5.7: *Relative frequencies of complex prepositions of purpose across the corpora.*

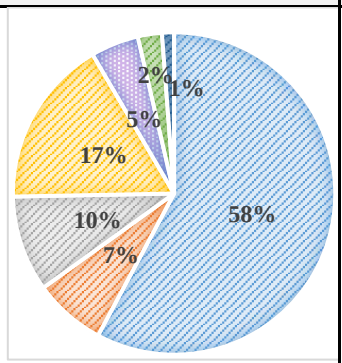
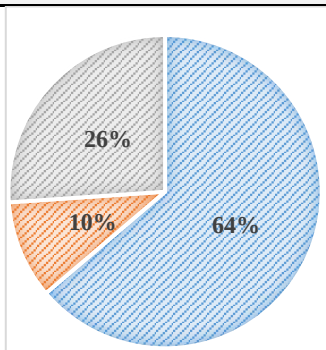
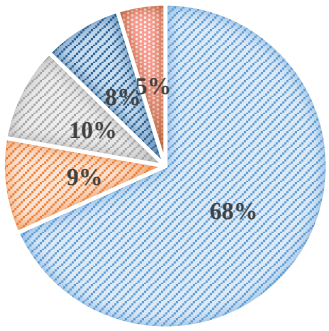
Purpose	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**Cf. ENRC**	**ENRC**	**ITTC**	**Cf. ENRC**
in order to	58%	-6%	64%	78%	+14%
for the purpose of	7%	-3%	10%	9.5%	-0.5%
for the purposes of	10%	-16%	26%	9.5%	-16.5%
with the (*) purpose of	17%	>	-	-	-
with a view of	5%	>	-	-	-
with a view to	2%	>	-	-	-
with the aim to	1%	>	-	8%	>
with the aim of	-	-	-	5%	>
total	**100%**		**100%**	**100%**	

Figure 5.4: *Proportion of complex prepositions of purpose within separate corpora.*

The most common choice for such cases is to use *in order to* (RUTC: 58%; ENRC: 64%; ITTC: 78% out of 100%), which, however, needs to be followed by a verbal construct. Instead, in order to maintain the nominal character of legal writing, other complex prepositions are used. Among the most recurrent PNP-constructions that convey purpose and are followed by nominal or gerundial constructions are *for the purpose of* (RUTC: -14%; ITTC: +71%) and *for the purposes of* (RUTC: -56%; ITTC: -33%). Both these complex prepositions are proportionally more salient in the English Reference Corpus (36%) than in the translation corpora (RUTC: 17%; ITTC: 20% out of 100%). The

three corpora seem to be consistent in the use of the definite article as there are no occurrences of *for *purposes of*, without "the".

Along with the standard complex prepositions above, the translation corpora revealed a significant degree of variation with regard to complex prepositions conveying purpose, which can be observable also through higher fragmentation. While the English Reference Corpus uses only *for the purpose of* and *for the purposes of*, the Russian Translation Corpus employs altogether 8 variants of this connective and the Italian Translation Corpus – 4 variants. These alternative constructions follow the pattern [$Prep1_{with}$ + $Article_{the/a}$ + $N_{purpose/aim/view}$ + $Prep2_{of/to}$].

In the Russian Source Texts, the expressions that gave rise to the divergent complex prepositions above are the following:

Russian prepositional pattern	**Literal English translation**
$Prep1_{с}$ + $N_{целью}^{DatSg}$	"with the purpose of"
$Prep1_{в}$ + $N_{целях}^{PrepPl}$	"in the purposes of"
$Prep1_{для}$ + $N_{целей}^{GenPl}$	"for the purposes of"

Table 5.8: *Russian prepositions that gave rise to the complex prepositions of purpose in the Russian Translation Corpus and their literal translations into English.*

It is noteworthy that the Russian source texts utilise the same lexical element *цель* ("purpose") with different first prepositions and in different case and number. *Для целей* is translated in all texts as *for the purposes of,* which renders neatly the literal sense of the expression and corresponds to the habitual translation of the respective case relations within the Russian expression as well as to the conventional legal English connector. Table 5.8 also provides a possible explanation for the deviation of the standard connector into **with the purpose of.* The variation of the first element *for -> with* is probably caused by syntactic interference from Russian, as the expression is a direct translation of the Russian connector *с целью* + Genitive, where the first element *с* is a straightforward equivalent of *with*.

$Prep1_{with}$ +	$N_{purpose/view}$ +	$Prep2_{of}$
$Prep1_{с}$ +	$N_{целью}$ +	N^{Gen}

(31) The third applicant stayed in the territory of the Russian Federation *with the purpose of* realization of labour activity. [RUTC]
(31a) Третий заявитель пребывал на территории Российской Федерации *с целью* осуществления трудовой деятельности. [RUST]

With a view of/to is a noteworthy case. While it is absent from the English Reference Corpus, both the Russian Translation Corpus and the Italian Translation Corpus feature this connective. The Russian Translation Corpus uses *with a view of* twice as many times as *with a view to*, whereas the Italian Translation Corpus uses only the latter. On the contrary, the Italian Translation Corpus recurs to *with the aim of,* while the Russian Translation Corpus features one hit of *with the aim *to*.* It seems that the Russian Translation Corpus and the Italian Translation Corpus have the opposite preferences for the second preposition in these expressions. In addition, in Russian, where the source expressions utilise the same noun *цель*, the deviation from a straightforward solution "purpose" in favour of "view" seems significant, and could have occurred under the influence of the causal connective *in view of*.

In the Italian Translation Corpus the alternative connectives *with a view to* and *with the aim of* collocate to the immediate right with gerundial expressions (e.g. "ensuring coherence", "obtaining compensation" and nouns (e.g. "the appeal hearing"), which are very similar to the collocates of *for the purpose of* and *for the purposes of* (e.g. "rendering assistance", "assessing the precise extent"). It is, thus, appropriate to look into the source expressions that could have oriented the choice between these near-synonyms. After searching through the respective ECtHR judgments/decisions and their

translations into Italian and the available in Italian written pleadings, the following connectives have been identified.

al fine di, a(llo) scopo di, con lo scopo di

In addition, the comparison between the target texts and source texts shed light on the fact that *for the purposes of* + "article" is often the translation of *ai sensi di*, where both in English and in Italian the noun is in the plural. So, it seems that the choice of the target connective was carried out based on the Italian prepositions above from *for the purpose of, with the aim of* and *with a view to*. It seems that *al fine di*, which is the most frequent connective of the kind in the respective Italian texts, corresponded to *for the purpose of,* whereas the variation of first preposition in *allo scopo di* and *con lo scopo di* produced *with the aim of* and *with a view to*, redirecting the translators' choice from a more evident Prep1$_{for}$ to Prep1$_{with}$ under the influence of the Italian Prep1$_{con}$.

5.4.4. Legal compliance

Another functional set widely represented in the texts under analysis is complex prepositions that refer to legal sources, such as acts, statutes, laws, case law and the European Convention. Bhatia's (1998) definition of these devices as "signaling textual authority" clearly reflects the fundamental idea behind this functional set, i.e. to demonstrate linguistically compliance with legal sources or near-legal sources of authority. For reasons of representativity, two-word synonymous connectors are also considered here as well as the most straightforward one-word preposition *under* that serves as a benchmark for further comparison.

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
in accordance with	107	+970%	10	25	+150%
in compliance with	21	+2000%	1	31	+3000%
in conformity with	18	+1700%	1	14	+1300%
in line with	3	-25%	4	2	-50%
in pursuance of	2	+100%	1	-	<
with accord to	1	>	-	-	<
pursuant to	50	+194%	17	8	-53%
according to	111	+1750%	6	95	+1483%
according **with*	-	-	-	2	>
Total	**313**	**+683%**	**40**	**177**	**+343%**
under	1373	-30%	1952	-37%	1233

Table 5.9: *Relative frequencies of complex prepositions with the function of reference to legal sources across the corpora.*

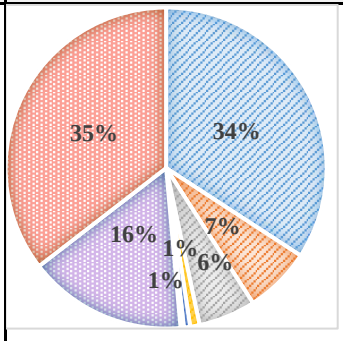
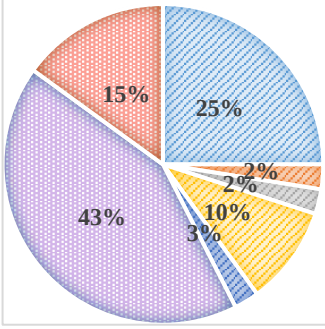
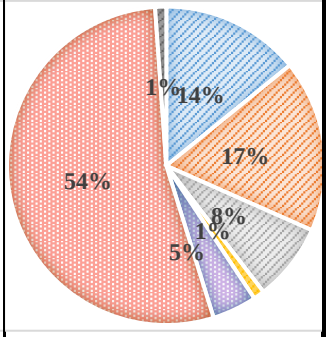
Reference	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**Cf. ENRC**	**ENRC**	**ITTC**	**Cf. ENRC**
in accordance with	**34%**	+9%	25%	14%	-9%
in compliance with	7%	+5%	2%	7%	+5%
in conformity with	6%	+4%	2%	8%	+6%
in line with	1%	-9%	10%	1%	-9%
in pursuance of	0.6%	-2.4%	3%	-	-
with accord to	0.4%	>	-	-	-
pursuant to	16%	-26%	**43%**	5%	-38%
according to	**35%**	+20%	15%	**54%**	+39%
according **with*	-	-	-	1%	>
Total	**100%**		**100%**	**100%**	

Figure 5.5: *Proportion of complex prepositions with the function of reference to legal sources within separate corpora.*

Table 5.9 gathers prepositions with the same or nearly the same function. Although legal professionals might find subtleties in the use of certain prepositions, in the vast majority of cases these items can be used interchangeably as their collocates demonstrate.

The first emerging tendency concerns the preference towards simple or complex prepositions. Whereas the translation corpora frequently operate with complex prepositions of reference (RUTC: +683%; ITTC: +343%), the UK texts undoubtedly favour the simple connective *under*, which is underrepresented in the translation corpora (RUTC: -30%; ITTC: -37%). The occurrences of the latter are circumscribed to the cases, where it is used as a synonym for "in conformity with"/ "in accordance with"/ "in compliance with", i.e. to quote legal sources or other sources of authority. Cases, where *under* is part of a composite predicate (e.g. "come under responsibility", "be under detention") and fixed expressions (e.g. "under circumstances", "under-age", "under oath") are excluded from the analysis. A supplementary check of collocates of the connectives confirms its functional equivalence to the mentioned complex prepositions. In the English Reference Corpus its collocates to the immediate right (R1-R2) are "article(s)", "rule(s)", "provision(s)", "section(s)", "sub", "domestic", "law", "Convention", "CPR", etc. This leads to the conclusion that the Russian Translation Corpus/Italian Translation Corpus and the English Reference Corpus have different preferences for structure of prepositions with the same function. Whereas the translation corpora, apart from the evident choice of *under*, also frequently make recourse to complex prepositions, the English Reference Corpus reflects a tendency to disregard possible complex synonyms and use instead the simple preposition *under* with the same collocates, which contradicts a number of descriptions of legal English as inclined towards complex prepositions.

According to occupies the leading positions in both the Russian Translation Corpus and Italian Translation Corpus, while it is strikingly underrepresented in the English Reference Corpus (RUTC: +1750%; ITTC: +1483%). Proportionally, it occurs in 35% in the RUTC, in 15% of cases in the ENRC and in 54% of cases in the ITTC, thus showing a higher concentration in the translations from Italian. At the level of its function, *according to* is used homogeneously in all the three corpora to state that a certain decision, action or statement stems from and is supported by an authoritative legal source.

(32) On 25 September 2002 *according to provisions of Article 255* of the Russian Federation Code of Criminal Procedure the Kuraginskiy District Court of Raduzhnetsk decided (a copy is attached herewith) about extension of the term of the applicant's detention for three month i.e. till 1 January 2003 on the same grounds as on 1 July 2002. [RUTC]
(33) *According to the case-law* of the Constitutional Court (judgment No. 108 of 23 April 1986), a declaration that a law which expressly repeals another law is unconstitutional entails the revival of the repealed law. [ITTC]
(34) The link between these two regimes is reinforced by s. 174(4)(b), which has the effect that an individual may not be expelled or excluded for conduct for which, *according to s. 65*, they may not be disciplined. [ENRC]

According to resembles both structurally and semantically *pursuant to* as it follows the pattern [Adv + *to*] and their collocates present regularities in that both these complex prepositions introduce lexical nodes of legal framework (see 6.2.2.2), i.e. those nouns that refer to legal instruments and sources of authority, such as "article", "law", "section", "case-law", "jurisprudence", etc.

(35) *Pursuant to article* 463 section 4 of the Code of Criminal Procedure of the Russian Federation, legality and reasonableness of an extradition decision shall be inspected by court within a month from the date of reception of the complaint by court composed of three judges in an open court hearing with the participation of a prosecutor, a person subject of the extradition decision and his counsel, if he participates in the criminal case. [RUTC]
(36) On 6 of June 2008, those proceedings were referred to the Italian State (the "Government"), in the meaning of article 54 § 2b) of the Court Rules and *pursuant to article 54A* § 1. [ITTC]

(37) In this case, disclosure was ordered *pursuant to the equitable jurisdiction* recognised by the House of Lords in Pickwick Medpro Block and Others v. Customs & Excise Commissioners [1974] A.C. [ENRC]

Notwithstanding such a similarity, *pursuant to* is used less often than *according to* in both the Russian Translation Corpus (-2.2 times) and the Italian Translation Corpus (-11 times). Only in the English Reference Corpus its use is trebled in comparison with *according to*. Proportionally (see Figure 5.5), *pursuant to* accounts for 16% in the RUTC, 43% in the ENRC and 5% in the ITTC, thus showing its higher concentration in the reference texts. OED (online)[48] marks *pursuant to* as frequently occurring in legal contexts. In fact, this connective bestows additional legal and formulaic flavour on the texts. While its use in the Russian Translation Corpus is situated in-between the legally unmarked *according to* and the marked three-word complex prepositions, which seems to suggest that the Russian translators used it being aware of its legal markedness, the Italian Translation Corpus surprisingly does not deploy enough this preposition as means of enhancing the legal nature of texts.

The next distinctive set follows the pattern [Prep1$_{in}$ + N$_{conformity}$ + Prep2$_{with}$] and comprises such connectives as *in accordance with*, *in conformity with*, *in compliance with* and *in line with*. The only variable in these expressions is the noun element. However, the nouns "accordance", "conformity" and "compliance" may be considered synonymous, and the noun "line" acquires a similar functional nature within the analysed expression. Their collocates are also the same or very alike as examples below illustrate.

(38) *In conformity with* Article 13 of the Federal law on Refugees the person whose application was dismissed, and who has no lawful bases for stay in the territory of the Russian Federation and who refuses voluntary departure, is expelled (deported) from the territory of the Russian Federation. [RUTC]
(39) The other cults are tolerated *in conformity with* the law. [ITTC]
(40) Accordingly, it is submitted that if Article 11 does confer upon the applicant a specific right to determine its own membership, the relevant provisions of s. 174 and the application of those provisions in Mr Tracey's case constituted a proportionate restriction upon that right, *in conformity with* Article 11§2. [ENRC]

In general, the collocates of *in conformity with* are legal sources or their parts and are nearly the same of *in accordance with* and *in compliance with*.

(41) *In accordance with* the requirements of Article 1 § 2 and Article 12 § 2 of the Federal Law of 7 February 2011 no. 3-FZ "On Police" investigative operations for search of the abducted persons start immediately after the receipt of the crime report, regardless of the fact of the initiation of criminal investigation. [RUTC]
(42) The environmental protection restriction does not affect the property right and is a "relative restriction", which does not prevent outright any transformation action on the territory, yet it establishes that the owner of the estate ask the permission to build on it *in accordance with* Art. 146 Legislative Decree no. 42/2004. [ITTC]
(43) If the defendant is not confident that s/he will be able to prove to the satisfaction of court, *in accordance with* rules of evidence, the truth of the allegation then his/her speech will be restricted. [ENRC]

(44) In this connection, the authorities of the Russian Federation note that, *in compliance with* the case law of the European Court, Article 5 paragraph 4 of the Convention aims at provision to detained and placed in detention persons the right to judicial control over legality of measures of restraint applied to them. [RUTC]

[48] "pursuant, n., adj., and adv." *OED Online*. Oxford University Press, March 2017. Web. 22 May 2017.

(45) For such reason, restrictions in view of the expropriation need to be compensated for their whole duration, *in compliance with* the decision of this Honourable Court, including the period in which the protective measures are in force […].[ITTC]
(46) It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and *in compliance with* the formal requirements and time-limits laid down in domestic law. [ENRC]

The collocates of *in line with* have similarities to the data above, in that *in line with* is followed by reference to legal practices, arguments and principles. However, there is an important difference. The meaning of *in line with* does not indicate a strict correspondence but just a similarity. "Article" or its synonyms, i.e. terms referring to specific and exact sources of legal authority, are not invoked after *in line with*. It denotes an important distinction with regard to the nature of consequences arising out of this connective. In contrast to the three PNP-patterns discussed above that presumed the exact compliance with the invoked legal provisions, *in line with* just sets forth the fact that some practice is oriented in the similar direction and is interpreted in the similar way, and hence its relation of near-synonymy is unstable and highly context-dependent. Owing also to the limited number of occurrences of *in line with*, it seems reasonable to proceed the analysis without this connective.

(47) Do these investigation bodies qualify as "independent" *in line with* the Court's relevant practice? [Russian Translation Corpus]
(48) This question was indeed raised, not from the standpoint of the facts but from that of the law, *in line with* the applicant's arguments summarised above. [Italian Translation Corpus]
(49) *In line with* the principle of engaging overseas residents in political rights, many other EU member states, including those with some of the largest populations in Europe, for example Italy, Spain and France whose population totals over 174 million people, allow their citizens to vote from abroad with no limitation on the length of their residence.

Given their highly comparable nature, same structure [Prep1$_{in}$ + N + Prep2$_{with}$] and interchangeability on the semantic level of *in accordance with*, *in compliance with* and *in conformity with*, a question arises as to what triggers different translation choices among this functional subset of near-synonyms. The discrepancies in the Italian Translation Corpus are not so evident (36% vs 44% vs. 20%) in comparison with the Russian Translation Corpus (73% vs. 15% vs 12%), which reflects the tendencies of the English Reference Corpus (83% vs. 9% vs. 8%).

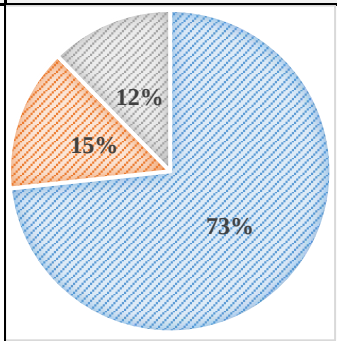
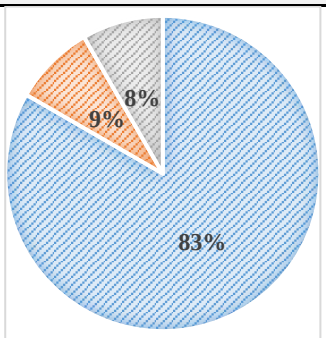
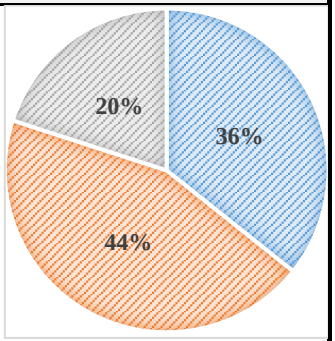
Complex preposition	**RUTC**	**ENRC**	**ITTC**
Graphic			
in accordance with	73%	83%	36%
in compliance with	15%	9%	44%
in conformity with	12%	8%	20%

Figure 5.6: *Proportion of complex prepositions "in accordance with", "in compliance with" and "in conformity with" within separate corpora.*

What strikes immediately is the undoubtedly preferred use of *in accordance with* in the Russian Translation Corpus, which is used to render the Russian complex prepositions *согласно / в соответствии с*. The pattern of the latter deserves commentary.

$Prep1_{in}$ +	$N_{accordance}$ +	$Prep2_{with}$
$Prep1_{в}$ +	$N_{соответствии}^{Prep}$ +	$Prep2_{с}$

It consists of the simple preposition *в* ("in") followed by the noun *соответствии* ("accordance^{Prepositional}") and the preposition *с* ("with"). It appears that the Russian Translation Corpus neatly follows the original pattern and the variation regards only the lexical element, where the synonyms "accordance", "conformity" and "compliance" are used. While "compliance" is the closest equivalent of *соответствие*, it is not the most popular choice. Instead, "accordance" occupies the core position. As to the reason of such preference, one may speculate that it is because of its notorious use in legal English. Bhatia (1993: 107) claims that legal drafters use "'in accordance with' or 'in pursuance of' instead of a simple preposition 'under'" to avoid ambiguity. In terms of translation universals, it may be interpreted as an instance of both discourse transfer and conventionalisation which seem to be intertwined in the functional set at hand. Furthermore, when the formal English connector corresponds structurally to the Russian source expression, it is a preferred option.

5.4.5. Reference / respect

The previous section dealt with prepositions that expressed the central legal concept of abiding the law and legal sources. Table 5.10 below gathers connectors with a similar function of "respect" that are used to refer to circumstances and events and not necessarily to legal sources. However, they may be also considered as signalling textual authority. For the sake of simplifying the analysis, these complex prepositions are subdivided by their structural composition into those that that follow the pattern [Prep1$_{in}$ + (det) + N + Prep2$_{of/to/with}$] and those that follow the pattern [Prep1$_{with}$ + (det) + N + Prep2$_{to}$]. Marginal prepositions (Quirk *et al*. 1985: 667) that "have affinities with other word classes" (such as *concerning*, *regarding* and *pertaining*) are not included in the tables. Expressions, where the prepositional use could not be established with certainty because of the premodifier (e.g. "in historical/general/the much wider context") are excluded from the analysis.

Table 5.10 illustrates several phenomena. First, it emerges that for the function of respect the English Reference Corpus makes significant use of complex prepositions in comparison to the translation corpora. This functional set is underrepresented by -42% in the Italian Translation Corpus because of complex prepositions with the pattern [Prep1$_{in}$ + (det) + N + Prep2$_{of/to/with}$] (-61%), which is not compensated by higher occurrence of the pattern [Prep1$_{with}$ + (det) + N + Prep2$_{to}$] (+300%). The Russian Translation Corpus uses +18% more of complex prepositions expressing respect than the reference texts. However, several complex prepositions are underrepresented, namely *in relation to* (-83%), *in the context of* (-56%), *in terms of* (-91%) and *with regard to* (-17%). At the same time, *in connection with*, which is the least frequent solution both in the English Reference Corpus and in the Italian Translation Corpus, is the second most frequent in the Russian Translation Corpus in this set and is overrepresented by +940% in comparison with the English Reference Corpus. The Concordance tool of *Wordsmith Tools* 6.0 (Scott 2015) shows that a third of the hits of *connection* in the Russian Translation Corpus are phrases *in this connection* (absent in the English Reference Corpus and found only once in the Italian Translation Corpus) and two thirds *in connection with.*

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
I. Complex prepositions with the pattern [Prep1$_{in}$ + (det) + N + Prep2$_{of/to/with}$]					
in respect of	136	+84%	74	16	-78%
in relation to	14	-83%	83	35	-58%
in connection with	52	+940%	5	2	-60%
in terms of	1	-91%	11	8	-27
in the context of	7	-56%	16	12	-25%
Total	**209**	**+11%**	**189**	**73**	**-61%**
II. Complex prepositions with the pattern [Prep1$_{with}$ + (det) + N + Prep2$_{to}$]					
with reference to	5	+150%	2	14	+600%
with regard to	9	+800%	1	22	+2100%
with respect to	5	-17%	6	-	<
Total	**19**	**+111%**	**9**	**36**	**+300%**
Grand total	**229**	**+16%**	**198**	**109**	**-45%**

Table 5.10: *Relative frequencies of complex prepositions with the function of respect across the corpora.*

Analysis of the concordance lines shows that the collocates of *in relation to, in respect of, in connection with* and *in the context of* present similarities. They refer to various factual circumstances and violations (e.g. applicant's disappearance or libellous publications), which refer to the "aboutness" (Scott 2015: 236) of written pleadings and procedural aspects of cases at hand (e.g. costs, judgments or damages). It is acknowledged, however, that *in the context of* conveys an additional meaning of spatial and temporal contiguity and, thus, is more restricted.

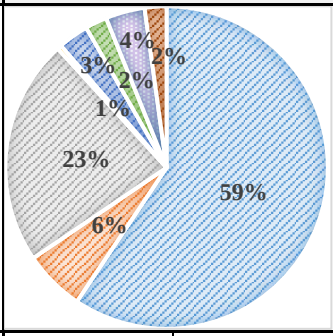
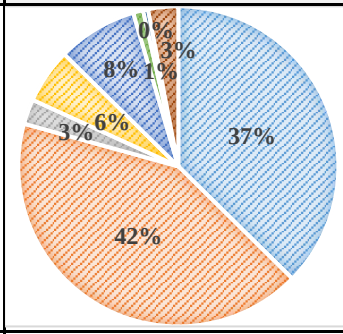
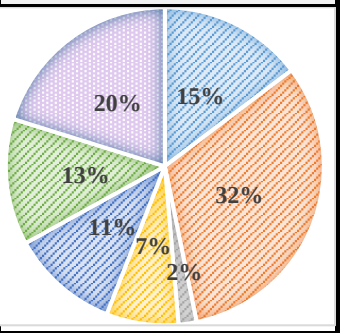
Respect	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**Cf. ENRC**	**ENRC**	**ITTC**	**Cf. ENRC**
in respect of	59%	+22%	37%	15%	-22%
in relation to	6%	-36%	42%	32%	-10%
in connection with	23%	+20%	3%	2%	-1%
in terms of	1%	-7%	8%	11%	+3%
in the context of	3%	-3%	6%	7%	+1%
with reference to	2%	+1%	1%	13%	+12%
with regard to	4%	+3.5%	0.5%	20%	+19.5%
with respect to	2%	-1%	3%	-	-
total	**100%**		**100%**	**100%**	

Figure 5.7: *Proportion of different complex prepositions of respect within separate corpora.*

Despite similar use, *in connection with* is almost absent in the English Reference Corpus (only 3% out of total) and *in respect of* nearly trebles the occurrences of *in relation to* in the Russian Translation Corpus (59% vs. 23% respectively). At the same time, *in relation to* seems to be the most popular choice in this set for the Italian Translation Corpus (32% out of total). *In terms of* is radically underrepresented in the Russian Translation Corpus (-91% in comparison to the normalised frequency of the ENRC) and proportionally amounts to 1% only. *In the context of* is among the least frequent solutions in the Russian Translation Corpus (3%), while it is distributed rather evenly in the English Reference Corpus (6%) and in the Italian Translation Corpus (7%). Prepositions with the pattern [Prep1$_{with}$ + (det) + N + Prep2$_{to}$] are the least preferred in the Russian Translation Corpus and in the English Reference Corpus, while the Italian Translation Corpus demonstrates a greater reliance on them.

It seems reasonable to look at the source texts to verify what might have originated the dissimilarity in translational choices. Examples (50) and (50a) demonstrate that the complex preposition *in connection with* is a literal translation of *в связи с*, and perfectly renders the Russian semantics and case relations of the Russian source expression. It would seem, however, that *in connection with* is a regular English connector, while *in this connection* (51) might be a direct transfer from Russian legal discourse. Indeed, if translated literally into Russian it reads *в этой связи* (51a), which is a typical sentence connector in Russian official discourse.

(50) The Russian Federation authorities understand that the applicant suffers from strong distress *in connection with* the abduction of her husband. [RUTC]
(50a) Власти Российской Федерации понимают, что заявительница испытывает сильные психологические страдания *в связи с* похищением её мужа. [RUST]
(51) *In this connection*, the Russian Federation authorities would like to emphasize that […] they support the following legal position of the European Court […].[RUTC]
(51a) *В этой связи*, власти Российской Федерации хотели бы подчеркнуть, что […] они поддерживают следующую правовую позицию Европейского Суда […]. [RUST]

It would seem that the frequency of this preposition in the Russian Translation Corpus is explained by its parallelism, both syntactic and semantic, to the source connective. *In relation to* could have successfully replaced *in connection with*, but it would slightly change the syntax perception. Moreover, "relation" is not suitable to replace "connection" in the sentence stem *in this *relation*; instead *in this regard* or similar expressions have to be introduced, thus increasing the distance from the source expression. It seems thus reasonable to sustain that the position of *in connection with* (and *in this connection*) is enhanced by the high prefabrication of the respective connector in Russian, which would explain their low frequency in the English Reference Corpus and in the Italian Translation Corpus.

As for the disfavoured position of *in relation to* (6%) in the Russian Translation Corpus, it may be better analysed by making a comparison with *in respect of* (60%). Again, the collocates of both show vivid regularities and typically denote people involved in the case or its facts; in fact, these two prepositions are used interchangeably in the vast majority of their occurrences as examples below indicate.

(52) On June 27, 2006, the Sakurniy District Court of Lunatsk rendered a judgment of conviction *in relation to* the applicant. [Russian Translation Corpus]
(53) Thus, on 11 June 2008 the prosecutor applied to the Ioshkar Ola City Court with a motion for choosing of a measure of restraint *in respect of* the applicant […].[Russian Translation Corpus]

Since on the functional level these constructions are similar and their source expressions are also aligned, it seems appropriate to look at their structure.

$Prep1_{in}$ +	$N_{respect}$ +	$Prep2_{of}$
$Prep1_{in}$ +	$N_{relation}$ +	$Prep2_{to}$

The main structural difference lies in the second preposition: *to* vs. *of*. Traditionally, the former is used to render the Russian Dative or Prepositional and the latter is used almost exclusively for the Genitive. This may explain its preferential position, because, as briefly discussed before, Russian legal discourse frequently adopts genitival constructions. Indeed, *in respect of* corresponds to a widely used Russian legal (and more generally official) connector *в отношении* that requires the Genitive case. It is noteworthy that "relation" is a closer translation of *отношение*, and yet a more distant synonym with a closer syntactic structure is chosen.

The interpretation of this preference may be twofold. On the one hand, it may be considered a case of linguistic interference and inherent discourse transfer that triggers choices closer to the pattern of the source text. On the other hand, increasing the semantic distance from the source term *отношение* in favour of a more formal and legalistic "respect" may be considered a step towards a recognised style of legal writing in English and, thus, conventionalisation. Again, it is a case when a legalistic English complex preposition that corresponds structurally to the Russian source expression is the first choice of a translator.

As for the preferential position of *in relation to* in the Italian Translation Corpus (32% out of total), it seems logical to speculate about similar reasons. In fact, the source expressions that gave rise to *in relation to* in translation are *in relazione a*.

(54) According to the Italian legal system only the formal iteration of a restriction in view of the expropriation gives entitlement to compensation and only *in relation to* the period in which the restriction was iterated. [ITTC]
(54a) In base all'ordinamento giuridico italiano solo la formale reiterazione di un vincolo preordinato all'esproprio dà il diritto a un indennizzo e solo *in relazione al* periodo in cui il vincolo è stato reiterato. [ITST]

These two expressions are perfect structural and semantic equivalents, and the prevalent position of this complex preposition in the English Reference Corpus, and thus its status as a legal style marker, might be accountable for the Italian translators' choice. Along similar lines, it is possible to speculate that *in the context of* might have originated from *nel contesto di*.

As already mentioned, the cross-corpora analysis brings to the fore a certain preference in Italian towards the pattern [Prep1$_{with}$ + (det) + N + Prep2$_{to}$] in comparison with the English Reference Corpus and the Russian Translation Corpus. It clearly emerges that the Italian Translation Corpus favours the constructions *with reference to* and *with regard to* (respectively, 13% and 20% out of total). It is noteworthy that the source expressions correspond both structurally and semantically to the chosen English connectives:

Prep1$_{with}$ +	N$_{reference/regard}$	Prep2$_{to}$
Prep1$_{con}$ +	N$_{rirerimento/riguardo}$	Prep2$_{a\ +\ art}$

(55) *With reference to* the present case it is important to highlight now that the environmental protection which the Italian Government refers to was introduced by the Piano Territoriale Paesistico Regionale (Regional Territorial Landscape Plan) […] [Italian Translation Corpus]
(55a) In ogni caso, *con riferimento alla* presente fattispecie, si fa fin d'ora osservare che il vincolo paesaggistico al quale fa riferimento il Governo italiano è stato apposto con il Piano Territoriale Paesistico Regionale […] [ITST].

The case of *with respect to* is curious as it is completely absent from the Italian Translation Corpus, even though this connective has been even accused in the relevant studies on legal English of being "the lawyer's crazy glue" (Mowat 1995/1996: 1). However, if we translated it literally into Italian following the same structure, it would come out as *con rispetto a*, which is not used in the prepositional sense. In Italian, *con rispetto a* conveys the literal sense of doing something with respect and esteem. There is, however, a complex preposition based on the same noun: *nel rispetto di*, the meaning and function of which are close to *in accordance with* as it establishes compliance with a legal provision. The twist of *nel rispetto di* concerns the fact that it has a false friend in English, *in respect of*, and generally professional translators are well-informed about false friends in their language pairs. However, knowledge about a potential false parallel structure with a complex preposition based on the noun "respect" could have led to the avoidance of this connective in the Italian Translation Corpus and thus may be construed as another instance of interference.

Finally, *in terms of* is underrepresented in both translation corpora (RUTC: -91%; ITTC: -27%).

(56) Thus, the Court comes to its own decision in each case as to whether it shall consider an application *in terms of* its admissibility and on its merits at the same time; there is no need for a case to be "cloned". [RUTC]
(57) It is by considering these rival considerations that the court determines, *in terms of* the Convention jurisprudence, whether there is a 'pressing social need' to make the order." [ENRC]
(58) This report points out that secularism, considered *in terms of* impartiality and neutrality of the State, is a tool allowing to assert everybody's freedom of religious and philosophical conscience. [ITTC]

However, the use of *in terms of* lacks legal colouring as this complex preposition has taken on the role of a "new discourse marker", especially in spoken varieties of modern English (Hoffmann 2005: 120). While it is largely nearly synonymous with *with regard to* and *with respect to*, the modern usage tends to interpret it as conveying a "looser sense of equivalence" (Hoffmann 2005: 122). OED (online) lists its sense as "by means of or in reference to (a particular concept); in the mode of expression or thought belonging to (a subject or category); (loosely) on the basis of; in relation to; as

regards"[49]. It could be hypothesised that its explicit lack of legal connotation is to be held accountable for its low frequency in translations.

5.4.6. Contrast / legal non-compliance

Complex prepositions with the function of contrast have a high frequency in legal language as they express the central notion of non-compliance with the law lying at the basis of any claim, irrespective of the factual matrix of the case. Table 5.11 gathers complex prepositions that perform such a function of legal contrast. Instances of predicative use (e.g. "he was contrary to …") are excluded from the calculations.

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
in breach of	21	+40%	15	-	<
in violation of	8	>	-	-	-
in contrast with	-	-	2	2	=
in contrast to	-	<	6	-	<
in contravention of	-	-	-	2	>
in infringement of	1	>	-	-	-
contrary to	18	-42%	32	49	+58%
Total	**48**	**-11%**	**54**	**53**	**-2%**

Table 5.11: *Relative frequencies of complex prepositions expressing non-compliance with law across the corpora.*

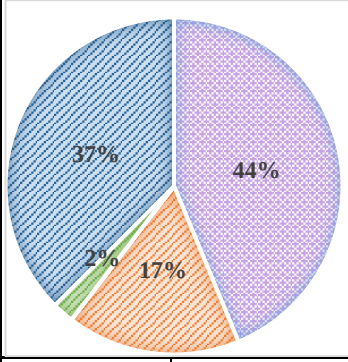
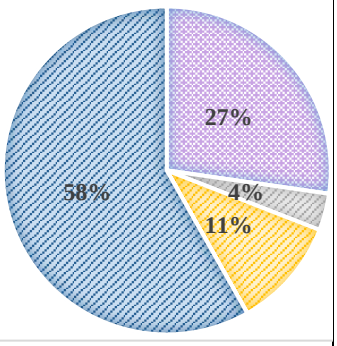
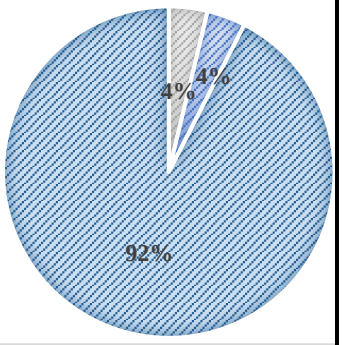
Non-compliance	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**Cf. ENRC**	**ENRC**	**ITTC**	**Cf. ENRC**
in breach of	**44%**	+16%	28%	-	-
in violation of	17%	>	-	-	-
in contrast with	-	<	4%	4%	=
in contrast to	-	<	11%	-	-
in contravention of	-	-	-	4%	>
in infringement of	2%	>	-	-	-
contrary to	37%	-20%	**57%**	**92%**	+35%
Total	**100%**		**100%**	**100%**	

Figure 5.8: *Proportion of complex prepositions expressing non-compliance with law within separate corpora.*

This functional set is relatively underrepresented in the translation corpora against a general background of its small proportion in comparison with other functional sets (see Figure 5.1 in Section

[49] "term, n." *OED Online*. Oxford University Press, March 2017. Web. 22 May 2017.

5.4). Apart from *contrary to*, the above prepositions follow the pattern [Prep1$_{in}$ + N$_{contrast/non\text{-}compliance}$ + Prep2$_{of/with/to}$]. Although the meaning of complex prepositions is based on the whole structure, it derives initially from the nominal element. Goźdź-Roszkowski (2013) analyses the near-synonymous nature of nouns that express the notion of non-compliance with law and mentions the difficulty of choice between these near-synonyms for a layperson without legal training. He focuses his analysis on the four legal terms that denote a legal contrast: *breach, infringement, violation* and *contravention* and claims that their use is genre-dependent (2013: 101).

> The information provided by the dictionary suggests that 'violation' seems to be the most general term denoting deliberate breaking of a law. It also seems that it is the most wide-ranging term which could be used with reference to various kinds of wrongdoing, even including rape. The term *contravention* is marked as having a civil law origin. As such, the scope of the term is fairly broad ranging from international law (treaty) to private law (agreement). With regard to the latter, it appears to overlap with *breach.* The terms *breach* and *infringement* seem to denote more specific concepts. The term *breach* is associated with civil law contexts related to contractual instruments, while 'infringement' appears in the legal area which deals with intellectual property rights.

Further on, however, Goźdź-Roszkowski (2013: 108) admits that "*violation* cuts across legal domains and genres and it is the most 'inclusive' of all the terms" and that *breach* and *violation* may be used interchangeably because of "their occurrence in bi- or tri-nomial expressions or even longer highly formulaic multi-word sequences".

A similar phenomenon of near-synonymy is observable in the complex prepositions gathered in Table 5.11. The distribution of these items is different across corpora, although their collocates present similarities. Most frequently they collocate to the immediate right with "article", "requirements", "convention" and "right(s)" (see also 6.2.2.2). The collocational behaviour of the complex prepositions above casts light on several phenomena. First, it emerges that in the vast majority of cases in the Russian Translation Corpus the complex prepositions *in violation of, in breach of* and *contrary to* can be used interchangeably as illustrated by examples below.

> (59) C. […] does not testify to possible threat in case of her return to China to be subjected to the treatment *in violation of* Article 3 of the Convention. [RUTC]
> (60) Would the applicant face a risk of being subjected to treatment *in breach of* Article 3 of the Convention if the extradition order was enforced? [RUTC]
> (61) The way in which the authorities dealt with the applicant's complaints constituted inhuman treatment *contrary to* Article 3. [RUTC]

Second, there are regularities in the collocational behaviour of the same complex prepositions across the corpora. This set of complex prepositions frequently co-occurs with such words as "article", "Convention", "requirements" / "provisions", "law" / "legislation", "case-law" / "principles", "submissions" / "claims", etc. The only notable variation concerns the connective *contrary to*. Whereas in the Russian Translation Corpus it is used as a propositional synonym of *in violation of* and *in breach of*, its use in the Italian Translation Corpus and English Reference Corpus is marked by an additional dialogic colouring. In fact, it is also used to rebut the other party's arguments, which is different from the function of expressing legal non-compliance. In this regard, the lack of a distinct connective expressing contrast to a legal provision (e.g. *in violation of* and *in breach of*) in the Italian Translation Corpus may be interpreted as (intentionally?) vague and deserves further commentary. The third observation stemming from the table above concerns the distribution of some complex prepositions only in one corpus. In the circumstances of the same genre and similar factual matrices, it signals about the different preferences among a set of near-synonyms, which could have been triggered by the translation process.

From the structural point of view, the PNP-items under analysis can be considered complex prepositions on the basis of their unity of meaning, internal invariability and the distinct prepositional

function. The replacement test works partially in this case, because no simple preposition can fully act as an equivalent, however, as Table 5.11 above shows, a two-word preposition *contrary to* is often used within similar utterances. In addition, Hoffmann (2005: 142) recognizes all of them but *in infringement of* as low-frequency complex prepositions in modern English. The ultimate rationale underlying the inclusion of these connectives into the numbers of complex prepositions is the mechanism of grammaticalisation by analogy. Yet, it leaves an important question of choice between the near-synonymous expressions, which may find explanation from the translation studies' viewpoint.

Interesting findings emerge from the cross-corpora examination of the two most frequent PNP-items in this list: *in breach of* and *in violation of*. Both prepositions are translations of the same Russian prepositional phrase *в нарушение* + Genitive. Here, as discussed earlier, the preposition *в* is followed by a noun in the Accusative (*нарушени<u>е</u>*) and not in the Prepositional (*нарушени<u>и</u>*) like it would have been in a free nominal phrase, which is a sign of its grammaticalisation. The variation between *in violation of* and *in breach of* for the translation of the same Russian expression may be explained by the near-synonymous nature of the lexical elements *violation* and *breach*. It has been postulated before that translations may, indeed, be accountable for "strange strings" and unusual choice among synonyms (Mauranen 2000).

5.4.7. Means / agentive spectrum

The "means / agentive spectrum" (Quirk *et al*. 1985: 698) is a medium-sized functional set in all three corpora under analysis. As its name suggests, it includes complex prepositions of means ("by means of"), manner ("by way of") and replacement ("instead of", "on behalf of"). The prepositions in Table 5.12 are not subdivided into further sets of near-synonyms on account of the limited number of occurrences and their proportional distribution is also not addressed explicitly.

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
in response to	3	-80%	15	6	-60%
in reply to	10	+900%	1	1	=
by means of	5	=	5	16	+220%
by way of	7	-46%	13	10	-23%
in the form of	27	+1250%	2	1	-50%
in favo(u)r of	4	-78%	18	8	-56%
in support of	3	-80%	15	2	-87%
on the part of	4	+100%	2	21	+950%
at the expense of	4	>	-	-	-
instead of	3	+200%	1	12	+1100%
on behalf of	9	-47%	17	4	-76%
Total	**79**	**-11%**	**89**	**83**	**-7%**

Table 5.12: *Complex prepositions of the means / agentive spectrum across the corpora*.

Table 5.12 is difficult to define in terms of general tendencies in a cross-corpora perspective. However, it is possible to observe that the translation corpora tend to underrepresent complex prepositions expressing support *in favour of* and *in support of* (respectively, RUTC: -78%; -80%; ITTC: -56%; -87%). A clear preference towards *in reply to* (+900%) over *in response to* (-80%) emerges in the Russian Translation Corpus, while the reverse tendency is true for the other two corpora. The Italian Translation Corpus also shows inclination to *on the part of* (+950%) with the agentive function of originator, while the Russian Translation Corpus is leaning on *in the form of* (+1250%), which expresses the function of identification (see Klégr 1997 for other subfunctions within this set). These peculiar choices are addressed below in more detail.

As for the first point of divergence between translated and non-translated texts, its seems that the translation corpora typically use the simple preposition *for* to express the idea of support as exemplified below.

(62) In particular, it could submit petitions for interrogation of persons which could testify *in favour of* the version of applicants. [RUTC]
(63) […] however, this does not prevent the European Court to take into account information subsequently received; it may testify *for* or against that what was followed by the High Contracting Party to evaluate reasonableness of the applicant's concerns [RUTC]
(64) In a letter of 21 October 2005, to which it continues to make reference for its main arguments *in support of* dismissal of the application, the Government asked that the case be referred to the Grand Chamber.[ITTC]
(65) Among the grounds that the Government put forward *for* the preservation of the presence of the crucifix, it referred to a political ground, expressed by a necessary compromise with the parties of Catholic leaning that represent a large part of the population, even nowadays. [ITTC]

It is worth mentioning that the respective source texts do not contain any complex preposition expressing the idea of support, which was clearly added at the stage of translation.

The English Reference Corpus along with *in support of* and *in favour of* uses also the gerundial construction *supporting* in prepositional use in contrast to the translation corpora.

(66) The applicants faced an impossible challenge to disprove the findings in the Court of Appeal, as the Court refused the applicants request for McGathing's to produce a list of transcript references of evidence *supporting* the findings.[ENRC]
(67) The Court did not make this observation *in support of* a conclusion that the "procedural safeguards provided for by Article 6 paragraph 1, and inherent in Articles 8 and 10, should be interpreted strictly" [ENRC].

Both complex prepositions *in support of* and *in favour of* as well as the marginal case of *supporting* in prepositional use collocate with words belonging to the semantic domain of evidence (e.g. "testify", "evidence", "documents"), grounds (e.g. "grounds", "findings") and arguments (e.g. "arguments", "conclusion", "position"), which can both precede the complex prepositions in question or follow them.

It is peculiar to observe different preferences for *in reply to* and *in response to* across the corpora. The former is extremely infrequent in the Italian Translation Corpus and in the English Reference Corpus, which rely on the latter. The reference texts use *in response to* 2.5 times more frequently than the ITTC. Both complex prepositions collocate with either nouns expressing the idea of written communication (e.g. "letter", "observations", "memorandum", "request") or actions (e.g. "efforts").

(68) These observations are submitted to the European Court of Human Rights ("Court") on behalf of the applicants *in reply to* the Government's memorandum of 29 February 2008 (where references are provided to the pages of this memorandum, they concern its Russian text, since it was the one initially submitted by the Government to the Court). [RUTC]
(69) The United Kingdom has implicitly recognised the inappropriate nature of its stance insofar as it has, as a result of, or at least in part *in response to*, the Applicant's efforts, instituted a system which allows […] access to records of the experiments performed on them. [ENRC]
(70) This exception is totally unfounded: *in response to* the Court's request, [the applicant's] wife and sons have demonstrated to be heirs producing the necessary documentation. [ITTC]

The preference of "reply" over "response" in the Russian Translation Corpora is probably caused by the near-synonymous nature of these words as both variants in the RUTC originated from the politeness formula *в ответ на* + Acc, frequently used in formal correspondence.

The prevalence of *on the part of* in the Italian Translation Corpus in comparison with the other two corpora also deserves a separate discussion. It performs the function of originator similarly to the simple preposition *by* when it follows a verb in the passive (e.g. "is done by the administration") as exemplified below.

(71) Such damages are constantly denied by national Courts, as for example with sentence no. 1957/2012 (doc. 21) where the Council of State claims that the "the interest in the general correct management of the procedure *on the part of* the administration", and thus a swift conclusion thereof, creates "a merely instrumental situation to safeguard a position of legitimate interest. For this reason it is not indemnifiable in itself".

The quoted judgment reads as follows (the exact citations are underlined with the Italian equivalent of *on the part of* put in italics).

(71a) A maggior ragione, il mero interesse procedimentale, l'interesse alla correttezza della complessiva gestione del procedimento da parte dell'amministrazione secondo le regole che lo governano, si pone come situazione meramente strumentale alla tutela di una posizione di interesse legittimo. Pertanto, esso non solo non è risarcibile in sé (in quanto, diversamente opinando, si costruirebbe l'interesse legittimo come generica pretesa alla legittimità dell'azione amministrativa), ma rifluisce nella più generale

considerazione dell'interesse legittimo pretensivo (al quale è strumentale), e degli strumenti di tutela per questo esperibili.

The English *on the part of* and the Italian *da parte di* are neatly aligned both semantically and syntactically, with the exception of the definite article, which would change the meaning in Italian (Casadei 2001: 65), and this parallelism makes it particularly tempting to opt for this English equivalent in translation from Italian.

Prep1$_{on}$ +	Art$_{the}$ +	N$_{part}$ +	Prep2$_{of}$
Prep1$_{da}$+		N$_{parte}$ +	Prep2$_{di\ +\ art}$

Remarkably, the English preposition is not pragmaticalised as a marker of legal discourse, although its Italian counterpart has a notable connotation of bureaucratese. Consequently, a certain insistence on this pattern in translations from Italian cannot be hypothesised to derive from the desire to abide by the canons of legal English, rather it would seem that it entered the translations as part of discourse transfer from legal Italian (see also general interference and false friends *"sentence" for *sentenza* (judgment) in (71)). It has to be noted that in 90% of its occurrences *on the part of* is used by the applicants and not by the government, which could be interpreted as a signal of lower interference in government's pleadings.

Another case of discrepancies between the corpora concerns the preposition *in the form of*. It generally is used to identify and describe a certain phenomenon or object, and in the Russian Translation Corpus, which heavily relies on this preposition (+1250%), it introduces such notions as "arrest", "detention" or similar concepts.

(72) On 23 March 2005 *a measure of restraint* *in the form of* *a written undertaking* not to leave a place of residence was chosen in respect of the applicant and at the day he was released from custody.
(72a) 23 марта 2005 г. в отношении заявителя была избрана *мера пресечения* *в виде* *подписки о невыезде*, и в тот же день он был освобожден из-под стражи.

All instances of *in the form of* in the translation form Russian originated from *в виде*, which signals a high degree of conventionalisation of this equivalent. In 92% of cases this complex preposition is inserted in a multi-word term, where the first element is "measure of restraint" (or "punishment" in some translations), followed by the linking "in the form of", which introduces the type of punishment ("arrest" and "detention" are the most common). Consequently, it can be concluded that the frequency of this complex preposition is a product of interference / discourse transfer from Russian.

5.4.8. Concession, addition/exclusion and condition

This subsection deals with the final functional sets of complex prepositions identified in the Three-Part Corpus. Out of these, complex prepositions expressing concession are the least frequent and are represented only by *in spite of*, which occurs in an insignificant number of cases in both translation corpora and does not occur at all in the reference corpus. Since the lack of certain data is as significant as the presence of data, it may be concluded that the function of concession in written pleadings is typically expressed by adverbs and conjunctions and not by complex prepositions. Although the former are not the object of this study, I quote below some statistical data for comparison.

Connector	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
In spite of	2	>	-	6	>
Some other connectors expressing concession					
Despite	9	-55%	20	8	-60%
Although	16	-69%	51	45	-12%
even though	2	-67%	6	4	-33%
Though	9	+350%	2	4	+100%
even if	8	-72%	29	8	-72%
Whereas	4	-33%	6	32	+433%
Nonetheless	1	-80%	5	8	+60%
Nevertheless	6	+20%	5	0	-100%
Total	**55**	**-56%**	**124**	**109**	**-12%**

Table 5.13: *Relative frequencies of connectors expressing concession across the corpora*.

It would seem that the translation corpora tend to make smaller recourse to concessive adverbs and conjunctions in comparison with the reference texts; however, a further qualitative analysis is necessary to assess the situation.

Complex prepositions expressing addition and exclusion identified in written pleadings under analysis are gathered below in Table 5.14.

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
I. Addition					
in addition to	4	-56%	9	25	+178%
in conjunction with	5	-67%	15	-	<
as well as	71	+689%	9	21	+133%
Total	**80**	**+142%**	**33**	**46**	**+39%**
II. Exclusion					
with the exception of	1	>	-	5	>
except for	9	+350%	2	4	+100%
apart from	-	<	1	6	+500%
Total	**10**	**+233%**	**3**	**15**	**+400%**
Grand total	**90**	**+150%**	**36**	**61**	**+69%**

Table 5.14: *Relative frequencies of complex preposition of addition and exclusion.*

This functional set is in general more salient in the translation corpora in comparison with the other two corpora. In the Russian Translation Corpus the difference is evident with regard to the most frequent preposition of the set *as well as* (+689% than in the ENRC). The same complex preposition is also the second most frequent in the Italian Translation Corpus. By contrast, *in conjunction with* is

underrepresented in both translation corpora. Complex prepositions of exclusion are generally less frequent than those of addition. The translation corpora make relatively more salient recourse to prepositions of exclusion (RUTC: +233%; ITTC: +400% compared to ENRC).

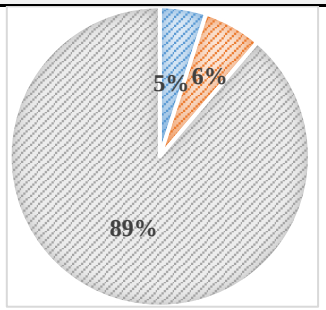
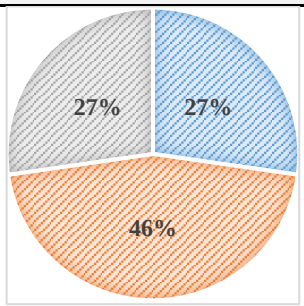
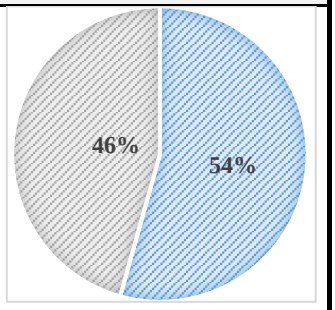
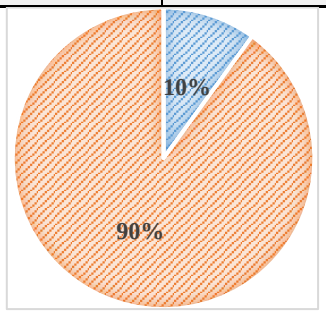
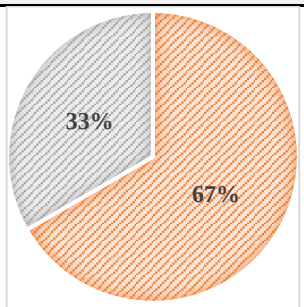
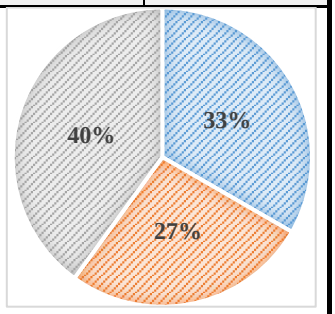
Function	**RUTC**		**ENRC**	**ITTC**	
Addition					
Legend	**RUTC**	**Cf. ENRC**	**ENRC**	**ITTC**	**Cf. ENRC**
in addition to	5%	-22%	27%	54%	+27%
in conjunction with	6%	-40%	46%	-	<
as well as	89%	+62%	27%	46%	+19%
Total	**100%**		**100%**	**100%**	
Exclusion					
with the exception of	10%	>	-	33%	>
except for	90%	+23%	67%	27%	-40%
apart from	-	<	33%	40%	+7%
Total	**100%**		**100%**	**100%**	

Figure 5.9: *Proportion of complex prepositions expressing addition and exclusion within separate corpora.*

Figure 5.9 shows different preferences among the corpora to express addition and exclusion by complex prepositions. It emerges that the Russian Translation Corpus seems to reserve these meanings to *as well as* (89%) and *except for* (90%).

The collocates of *as well as* are difficult to compare because they add a vast variety of elements, which cannot be traced to a single semantic domain. In the sentence they function as an equivalent to "and also", "besides" or "in addition to" and have close links to conjunctions. In general complex preposition of addition and exclusion are characterised by a certain *category indeterminacy* or *multifunctionality* (Martsa 2013: 69), meaning that a demarcation line between the categories is rather blurred. It has been observed that in English (complex) prepositions, adverbs and conjunctions are naturally gravitating towards such category indeterminacy (Valera 2004: 249). The examples below demonstrate this tendency to a certain extent. While in English *as well as* qualifies as a complex preposition (see e.g. Quirk et al. 1985: 708; Klégr 1997: 55), the sources of (73) and (74) use conjunctions *а также* (73a) and *nonché* (74a) and not complex prepositions.

(73) The judge and jurors, *as well as* the prosecutor, investigator, or inquiry officer shall evaluate evidence pursuant to their inner conviction resting upon the aggregate of evidence available in the criminal case, being guided at that by law and conscience. [RUTC]

(73a) Судья, присяжные заседатели, *а также* прокурор, следователь, дознаватель оценивают доказательства по своему внутреннему убеждению, основанному на совокупности имеющихся в уголовном деле доказательств, руководствуясь при этом законом и совестью.
(74) In the light of the above, the applicants urge the acceptance of their application *as well as* of their claim for just satisfaction. [ITTC]
(74a) Alla luce di quanto sopra esposto, i ricorrenti insistono per l'accoglimento del ricorso da essi proposto *nonché* delle richieste di equa soddisfazione formulate.

In conjunction with, by contrast, is an uncontroversial example of a complex preposition, which stands for "in combination with", "together with". In the English Reference Corpus and in 80% of cases in the Russian Translation Corpus it collocates with words denoting references to legal documents, such as "article" and "rule".

(75) Accordingly, these observations should be read *in conjunction with* the written application dated August 1996. [ENRC]
(76) Therefore, guarantees of the right to liberty and personal inviolability established by article 22 of the Constitution of the Russian Federation, *in conjunction with* other provisions of its chapter 2 "Human Rights and Freedoms", fully extend to criminal procedural institution of detention applied for the purpose of execution of a foreign state's request for extradition of a person for criminal prosecution. [RUTC]

Interestingly, the Russian source expression *во взаимосвязи*, literally "in mutual connection", "interconnected with" (76a), has a markedly legal connotation. Consequently, the English *in conjunction with*, also markedly legal, does not act as a legally sounding surplus but rather conveys the source connotation in a felicitous way.

(76a) Таким образом, установленные статьей 22 Конституции Российской Федерации *во взаимосвязи* с другими положениями её главы 2 «Права и свободы человека и гражданина» гарантии права на свободу и личную неприкосновенность в полной мере распространяются на уголовно-процессуальный институт заключения под стражу, применяемый в целях исполнения запроса иностранного государства о выдаче лица для уголовного преследования. [RUST]

The final subset in this section consists of complex prepositions expressing condition. The cross-corpora distribution of these prepositions is uneven, as Table 5.15 below illustrates.

Complex preposition	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
in case of	24	>>	-	2	>
in the event of	1	=	1	6	+500%
in (the) presence of	3	>	-	4	>
in (the) absence of	18	+6%	17	-	<
on condition of	1	-	-	-	-
Total	**47**	**+161%**	**18**	**12**	**-33%**
If	107	-51%	218	108	-46%

Table 5.15: *Relative frequencies of complex preposition of condition.*

While there are no occurrences of *in case of* in the English Reference Corpus, and only 2 cases in the Italian Translation Corpus, it is the most frequent preposition in the Russian Translation Corpus. The English Reference Corpus along with the Russian Translation Corpus frequently utilise *in the absence of* in the conditional sense ("when/if there is no"), whereas this complex preposition is altogether absent from the Italian translations. Proportionally, in the Russian Translation Corpus *in case of* amounts to 51% and *in the absence of* to 38%. The latter is used in 94% of cases in this functional set

in the reference texts. In general the proportions of different complex prepositions in this set signal a high degree of divergence across the corpora.

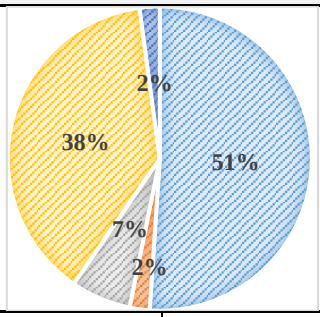
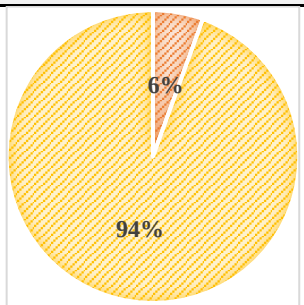
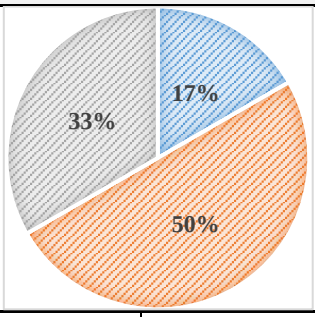
Condition	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**Cf. ENRC**	**ENRC**	**ITTC**	**Cf. ENRC**
in case of	51%	>>	-	17%	>
in the event of	2%	-4%	6%	50%	+44%
in (the) presence of	7%	>	-	33%	>>
in (the) absence of	38%	-56%	94%	-	<<
on condition of	2%	>	-	-	-
Total	**100%**		**100%**	**100%**	

Figure 5.10: *Proportion of complex prepositions expressing condition within separate corpora.*

The lack of *in case of* in the English Reference Corpus is peculiar because traditionally this complex preposition is associated with legal English (Quirk et al. 1985: 672). There is also only one occurrence of its near-synonym *in the event of*. It would seem that the reference texts use other means of expressing conditional sense, namely *if*, which is used almost twice as many times in the English Reference Corpus in comparison to the translation corpora.

The Russian Translation Corpus, on the contrary, makes frequent recourse to *in case of*. Translators might have been particularly keen to this complex preposition both because it is a marker of legal English and because it is a perfect structural and semantic equivalent of the Russian preposition *в случае*.

(77) The authorities of the Russian Federation inform that the duration of the applicant's detention is justified by objective circumstances: guarantees […] of compliance with constitutional rights of the applicant *in case of* his extradition. [RUTC]
(77a) Власти Российской Федерации сообщают, что длительность содержания заявителя под стражей обусловлена объективными обстоятельствами: проводилась проверка надёжности гарантий […] о соблюдении конституционных прав заявителя *в случае* его выдачи. [RUST]

In the presence of may be analysed together with its antonym *in (the) absence of*. The distribution of these two complex prepositions is divergent across the corpora. While the latter is utilised in both the Russian Translation Corpus and the English Reference Corpus (no hits in the ITTC), the former occurs only in the translation corpora. *In the absence of* may be replaced by the simple preposition *without* (see (78) and (79) below where these two prepositions are interchangeable).

(78) *In the absence of* any evidence to the contrary, it was therefore entirely reasonable for the domestic court to conclude that the Source's purpose was maleficent. [ENRC]
(79) *Without* any reasonable justification, simply due to indifference to one's personal tragedy, Russian migration officials deprived the first applicant of the opportunity to say farewell to her dear one. [RUTC]

By analogy with *in the absence of, in (the) presence of* should be replaceable by the preposition *with*, which is the antonym of *without*. Examples below demonstrate that such a replacement is possible, although a temporal / conditional clause ("when/if there is") renders better the idea.

(80) Through their hasty and cursory investigation, the Italian judiciary authorities have ultimately rendered ineffective the protection granted by article 3 of the Convention, which, on the contrary, imposes an adequate judiciary action not only *in presence of* intentional actions, but also *in presence of* actions (or omissions, as in this case) which unintentionally cause irrevocable damages to an individual's physical integrity. [ITTC]
(81) Thus, the above-stated analysis testifies that by the general rule by the moment of deportation there exist no more objective bases for appeal of the decision of deportation *in the presence of* dismissal in force of the complaint to refusal in granting refuge. [RUTC]

In the cases at hand, and in other examples of the same preposition, the Russian source text featured a prepositional phrase *при наличии*, meaning "with", or the noun string *в присутствии*. The latter is excluded from the analysis as it was used in the direct sense of physical presence. The Italian source texts show that *in presence of* originated from its structural and semantic equivalent *in presenza di*.

5.5. Synthesis

While it is true that multi-word prepositions enhance the so-called "flavour of the law" (Williams 2009: 33) in legal English (Bhatia 1993: 105-113), in legal Russian (Rusakova and Ljubeznova 2015: 25-26) and in legal Italian (Mortara Garavelli 2001: 17), the corpus analysis reveals a preferential pattern towards certain complex prepositions. These are analysed from several standpoints: as legal style markers, organised in near-synonymous sets, as well as from the standpoint of translation, including translation by prefabrication and grammaticalisation by analogy.

Complex prepositions that follow the most widespread structure – PNP – are more frequent in the translated texts than in the reference texts. In general, where the reference corpus uses simple prepositions moving away from the traditional wordiness of the language of the law – most probably under the influence of the Plain Language Movement – the translation corpora maintain complex prepositional structures that are associated with legal writing. However, complex prepositions qualify as positive markers of this genre both in translated and in non-translated written pleadings.

Functional set	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Cause / purpose / grounds	377	+80%	209	356	+70%
Respect / reference / (non-) compliance	590	+103%	291	334	+15%
Means / agentive / addition / condition / concession	218	+52%	143	162	+13%
Total	**1185**	**+84%**	**643**	**852**	**+33%**

Table 5.16: *Relative frequencies of macro-sets of complex prepositions across the corpora.*

Among these, certain functional sets of complex prepositions are more frequent and/or numerous in the Three-Part Corpus than the others, notably the macro-area of the *cause / purpose / grounds* spectrum and the *(non)-compliance / respect / reference* spectrum. Both are more salient in the translation corpora than in the reference corpus. The third macro-area is the *means / agentive* spectrum with complex prepositions of *addition / exclusion*, *condition* and *concession*. Proportionally, it is the smallest area in all three corpora.

The two bigger categories have a certain functional overlap because complex prepositions establishing the grounds for a legal action imply a certain referential function, whereas complex prepositions expressing reference/respect have an additional meaning shade of cause. These functional overlaps in the context of L2 translation increase the difficulty of legal translation and call for an attentive analysis of collocates.

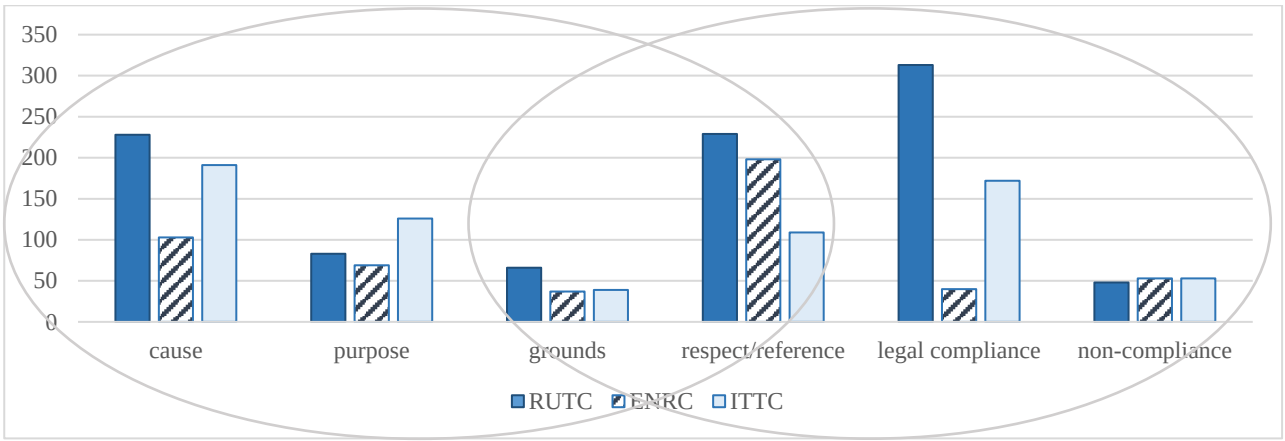


Figure 5.11: *Two biggest functional macro-areas across the corpora in terms of their relative frequencies.*

Additionally, from the standpoint of near-synonymy, apart from synonymous relations between different functional sets, the translator has to deal with the confusing relations of near-synonymy inside the functional sets. The study of collocates in certain cases did not produce satisfactory results because the same collocates repeatedly occurred with various near-synonyms within the set (e.g. the group of *in accordance with / in compliance with / in conformity with*). However, the analysis of preferences among the near-synonyms within the same functional set revealed peculiar patterns from the translation viewpoint. Specifically, the analysis shed light on two tendencies: interference (including discourse transfer) and conventionalisation.

Many analysed functional sets exhibit instances of deviation from the TL norms of legal writing towards the SL norms, with no obvious violation of the TL grammar, in what Mauranen (2004: 80) calls "dispreferred features". The extreme cases of discourse transfer concern the transfer of exact SL mannerisms into the TL (e.g. *on the fact of* and *on suspicion of*). In other instances, it transpires that the SL stimuli increase the likelihood of using similar prepositional constructions in translation. This deviation is of a twofold nature. First, it concerns the choice of first and second prepositions that are similar to the SL patterns (e.g. *with the purpose of, according with*). Second, when the overall structure is similar and the lexical element is the only variable, the tendency is to choose a noun with a closer semantics to the source expression (e.g. *on the basis of* instead of *on the grounds of* in the Italian Translation Corpus), which would confirm the "gravitation pull" hypothesis (Halverson 2003).

At the same time, both translation corpora operate with a number of traditional legal English complex prepositions disregarding more straightforward translational choices (e.g. *on account of*). Often, legal discourse markers are introduced only at the stage of translation, in the absence of the SL stimuli (e.g. *in view of*), probably in order to render the translation more legally sounding (cf. Chapter 3).

In general, it emerges that whenever the source structure can be rendered by syntactically and semantically analogous pattern in English that is also acknowledged as typical of legal English, it seems to be the preferential path for translators, reconciling paradoxically two opposite tendencies – towards general interference / discourse transfer of prefabricated legal mannerisms and conventionalisation. Training awareness of how translational choices are influenced by both the SL and the TL stimuli may become a useful skill for a modern legal translator.

CHAPTER 6

PHRASEOLOGICAL UNITS IN WRITTEN PLEADINGS

Chapter 6 overviews a range of phraseological units identified in the Three-Part Corpus. It starts from the analysis of formulaic patterns (6.1), which include binomials and multinomials (6.1.1), phraseological units with archaic words or word forms (6.1.2) and routine formulae (6.1.3). Next, term-related units are discussed (6.2), starting from the identification and selection of lexical nodes for analysis (6.2.1). First, multi-word terms are analysed (6.2.2) and then verbal collocations with a term (6.2.3). Finally, section 6.3 deals with the grammatical patterns, which express modality.

6.1. Formulaic patterns

This section deals with formulaic patterns in written pleadings, which are organised in three categories. First, binomials and multinomials are discussed (6.1.1), then archaic words and word forms (6.1.2) are dealt with. Finally, routine formulae are addressed (6.1.3).

6.1.1. Binomials and multinomials

As overviewed in 2.3.4, binomials and multinomials are linked to the formulaic character of legal language and are considered to be representative of legal English (Mellinkoff 1963; Gustafsson 1984; Danet 1985; Maley 1994, Hiltunen 1990; Bhatia 1993; Frade 2005; Kopaczyk 2013). They are defined as stable sequences of coordinated lexemes placed on the same syntactic level and typically connected by the conjunctions "and" or "or" (Malkiel 1959: 113; Bhatia 1993: 108; Mollin 2014: 8). Binomials are composed of two coordinated elements, while multinomials "may contain several members, according to the varying situation in the topic that we are talking about" (Gustafsson 1975: 17). Legal binomials are usually equalled to irreversible binomials or freezes (Cooper and Ross 1975), whose internal order cannot be changed, e.g. *law and order*, but not **order and law*. However, Malkiel (1959: 116) in his seminal work on binomials mentioned that binomials vary in reversibility. In other words, the fixed internal order in binomials is a matter of degree. Although much of research into binomials focused only on the irreversible type, there is some recent research that takes into consideration also reversible binomials (Mollin 2014). Their irreversibility is often associated with idiomaticity and, accordingly, idiomatic binomials are bestowed a prototypical status (see, for example, Čermák 2010: 209). Such considerations carry us again to the phraseological terrain and the distinction between classical phraseological studies researching mainly idioms, and distributional phraseology, which brings to the fore the notion of patterns and co-occurrences (see 2.6.1), stepping aside from the criterion of non-compositionality and acknowledging that the fixedness is perceived as a cline rather than a benchmark.

I accept Mollin's (2014: 13) statement about the high productive potential of binomials, which results in "reversible combinations that may over time freeze and acquire non-compositional meaning(s)". Consequently, this study analyses both irreversible and reversible binomials. It is particularly interesting to look at the fixedness/reversibility of legal binomials and multinomials through the translation lens (see 2.3.4 and 3.7.4), as often translators have to eliminate the doubling effect of binomials in translation (as in "terms and conditions" becoming just *termini* in Italian) or adapt the internal order (the English "East and West" becomes *West und Ost* in German (Malkiel 1959: 143)).

Crystal and Davy (1969: 208) argue that "some of the most characteristic collocations are those in which synonyms, or near-synonyms, are coordinated, sometimes in quite extensive lists, but more usually in pairs". Although the scholars do not call them explicitly binomials and multinomials, it is

clear that the coordinated pairs or lists of near-synonyms refer to these markers of legal language. In addition to the relation of near-synonymy, extensively addressed in 3.7, binomials can be based on the relation of opposition, complementation and hyponymy (Malkiel 1959: 125; Gustafsson 1975: 87). The semantic criterion for such coordination is the matching nature of its constituents with regard to form, function and meaning (Quirk et al. 1985: 971), with a certain degree of "difference in unity" (Dury 1996: 26). If there were no difference between the elements of a binomial, their coupling would be nonsensical. In fact, the most widespread semantic link between binomials, according to Gustafsson (1975: 87), is complementation.

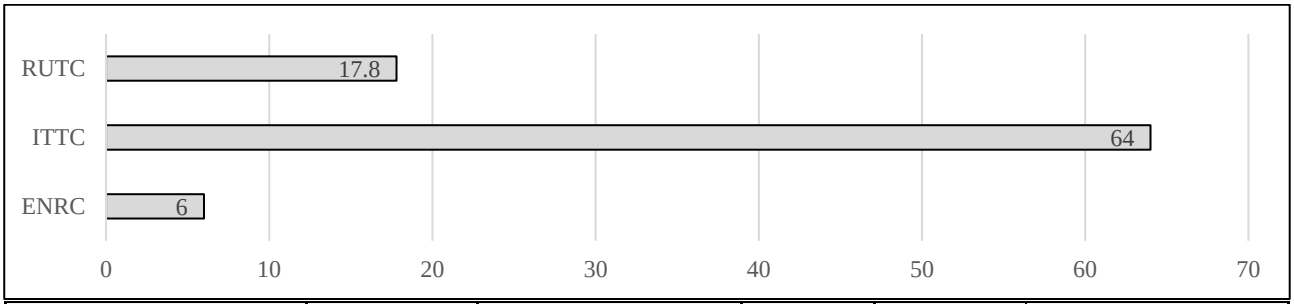
(1) A civil plaintiff shall be a physical person or a legal person, having filed a claim to compensate for pecuniary damage, if there exist reasons to believe that the damage has been caused directly by an offense. The decision to recognize a person as a civil plaintiff shall be processed as a finding of the court or a ruling by the *judge, prosecutor, investigator, or inquiry officer*. [RUTC]

Example (1) features both a binomial (underlined) and a multinomial (in italics). The binomial "a physical person or a legal person" is a translation of the respective Russian phrase *физическое или юридическое лицо*, which has been also translated elsewhere in the RUTC as "natural person or legal person", "physical person or legal entity". It is based on the complementation of the two types of persons as distinguished by law, an individual human being and a corporation. The variant quoted in (1) seems to be the preferred one as it reflects the parallel structure of the source Russian binomial, even though the conventional way to define an individual in English is "natural person" and not "physical", which is a literal translation of *физическое*. The multinomial "judge, prosecutor, investigator, or inquiry officer" lists various legal actors involved in the decision-making process within civil proceedings, and it occurs elsewhere also in different order - "inquiry officer, investigator, prosecutor, or court" or is split into binomials, e.g. "investigator or inquiry officer".

It is generally accepted that bi-/multinomials contribute to the all-inclusiveness of a legal provision (Gustafsson 1975: 100; Bhatia 1993; Mattila 2006: 112). Mattila (2006: 112) observes that near-synonymous strings (multinomials) perform an important function in contract law, being especially recurrent in common law contracts, as they allow the so-called "blanket coverage" of the semantic field intended, thus avoiding any gaps when drafting a legal provision or a clause.

6.1.1.1. Distribution of binomials and multinomials across the corpora

The quantitative analysis of binomial and multinomial structures confirms their recurrent character in written pleadings before the ECtHR. First this paragraph discusses multinomials and then binomials.



Function	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
multinomials	17.8	+197%	6	64	+965%

Figure 6.1: *Multinomials across the Three-Part Corpus.*

Multinomials occur more frequently in the translation corpora than in the reference corpus. From the statistical point of view, multinomials are most frequent in the translation corpora (64 in the Italian

Translation Corpus and 17.8 in the Russian Translation Corpus), amounting only to 6 occurrences per 100 000 words in the English Reference Corpus. The identified multinomials are structured as follows.

- [N + N + *and/or* + N] "fairness, balance and objectivity"; "friendship, partnership and cooperation"; "thought, conscience and/or religion"; "keeping, purchase, manufacture or selling"; "inquiry officer, investigator, prosecutor or court";
- [V + V + *and/or* + V] "to trace, proof and prepare";
- [Adj + Adj + *and/or* + Adj] "strong, clear and concordant";
- [N + Adj (N) + *and/or* + AdjN] "torture, inhuman or degrading treatment".

Many of the identified multinomials are quotations from legislative sources. For instance, the trinomial "inquiry officer, investigator or (the) court" is based on the Russian Code of Criminal Procedure (2), and "aircraft, vessels and other craft and installations" comes from the SAR Convention (3).

(2) The procedure of exercising the specified rights is set forth in Articles 119, 120 of the CCP RF; according to them a victim is entitled to file motions for conducting procedural actions and delivering procedural decisions. To exercise the specified right he/she can file a written (or oral - in the course of an investigation operation with his/her participation) motion with the *inquiry officer, investigator, or the court*, which, in accordance with the requirements of Articles 121, 122 of the CCP RF, are obligated to immediately resolve the presented motion, or, in case of impossibility to resolve it immediately, do it within 3 days from its submission. [RUTC][50]

(3) The SAR Convention defines rescue as: an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety; SAR services are defined as: the performance of *distress monitoring, communication, co-ordination* and search and rescue functions, including provision of *medical advice, initial medical assistance, or medical evacuation*, through the use of public and private resources including co-operating *aircraft, vessels and other craft and installations*. [ITTC]

On the contrary, multinomials in the English Reference Corpus are used as a mere rhetoric enhancement:

(4) The argument of the Applicants is not just that without legal assistance they did not fully understand what was required of them in relation to witnesses etc., but much more fundamentally that, without legal assistance, they were simply unable properly *to trace, proof and prepare* written witness statements from the witnesses they called, and those they would have liked to have called.

As multinomials in the translation corpora prevalently derive from legislative sources, the higher occurrence of these structures in the translations from Italian and Russian could be explained in terms of systemic differences between civil law and common law systems, as the latter quote prevalently judicial case-law and less often statutory laws.

In general, under a genre perspective, multinomials are not statistically relevant enough in order to be qualified as legal style markers of written pleadings before the ECtHR.

The frequency dynamics of binomials across the three corpora is different from that of multinomials (Figure 6.1). The English Reference Corpus makes recourse to binomials most frequently (399), while the translation corpora make less use of binomials (RUTC: -31%; ITTC: -43%).

[50] Unless otherwise indicated, in examples emphasis is added to increase readability.

Type	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Relative frequency of binomials	**274**	**-31%**	**399**	**226**	**-43%**
Linked with "and"	207	-14%	240	131	-46%
Linked with "or"	67	-58%	159	95	-40%
Proportion of binomials liked by "and" / "or" within separate corpora					
Linked with "and"	76%	+16%	60%	58%	-2%
Linked with "or"	24%	-16%	40%	42%	+2%

Table 6.1: *Binomials liked by "and" / "or" across the corpora.*

Table 6.1 shows relative frequencies of binomials linked by "and" (RUTC: -14%; ITTC: -46%) and by "or" (RUTC: -67%; ITTC: -40%) and demonstrates their proportional distribution within separate corpora. Both from the cross-corpora comparison and from the comparison of internal distribution of binomials linked by "or"/ "and" within separate corpora, it emerges that the most widespread type of binomials is the one linked by the conjunction "and" (RUTC: 76%; ENRC: 60%; ITTC: 58%).

The morphological structure of binomials is also more varied than the structure of the identified multinomials. Apart from the typical patterns composed of the elements belonging to the same part of speech, such as

- [N + *and/or* + N] "rights and freedoms", "act or omission";
- [V + *and/or* + V] "arrested and detained", "establish or prove";
- [Adj + *and/or* + Adj] "impartial and comprehensive", "the first and the second";
- [Adv + *and/or* + Adv] "fairly and accurately", "temporarily or permanently";
- [Ger + *and/or* + Ger] "reducing and preventing";
- [Pr + *and/or* + Pr] "he or she", "him or her",

mixed morphological structures have been identified, too. There are some binomials, which are composed of words belonging to different grammatical classes or involve phrasal constructions along with single-standing lexemes:

- [N + *and/or* + [Adj + N]] or [[Adj + N] + *and/or* + N] "torture or inhuman treatment", "liberty and personal inviolability"; "medical treatment or hospitalisation";
- [[Adj + N] + *and/or* + [Adj + N]] "human rights and fundamental freedoms";
- [[N + *of*+ N] + *and/or* + [N+$V^{inf\ as\ attribute}$] "power of attorney and authority to act";
- [V + *and/or* + [V + Prep + N]] "apprehended or kept in custody";
- [[V+ Adj]] + *and/or* + V] "to declare inadmissible or to dismiss";
- [V + [Adv + V]] "to hinder or unduly delay";
- [Adj + *and/or* + Adj + N] "civil and political rights";
- combinations of function words, such as "whether or not", "one or several", "one and the same", etc.

There are four main morphological structures of binomials [N + N], [Adj + Adj], [V + V] and [Adv + Adv], to which a mixed category is added. The category of noun-based binomials includes also binomials composed of nominal phrases. For instance, a binomial that is composed of a noun and a nominal phrase with adjectival premodification [N + [Adj+N]] or [[Adj + N] + [Adj + N]], such as "human rights and fundamental freedoms" are added to the [N + N] type. Similarly, [V + V] category includes such cases as "to declare inadmissible or to dismiss", because the adjective "inadmissible" is part of the complex predicate. Pronoun-based binomials and those composed of function words are grouped under the label "other". Finally, such binomials as "in detention or are residing" and "secret and with no public scrutiny" are also aggregated together with "other", because they are composed or multi-word elements belonging to different word classes.

Structure	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
N+N	210	+7%	196	110	-44%
V+V	9	-79%	43	4	-91%
Adj + Adj	27	-74%	104	82	-21%
Adv + Adv	-	<	21	-	<
Mixed	14	-59%	34	32	-6%

Table 6.2: *Morphological structure of binomials across the corpora expressed in relative frequencies.*

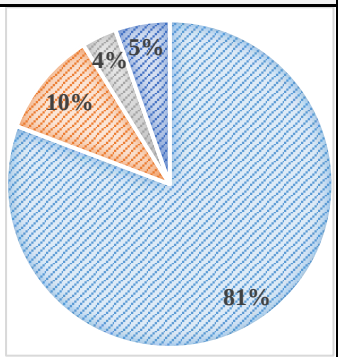
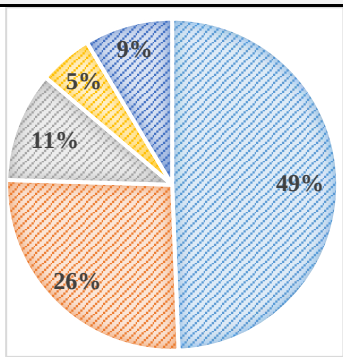
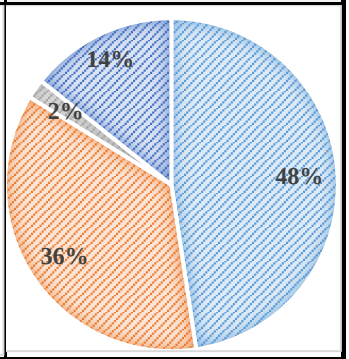
Structure	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
N+N	81%	+32%	49%	48%	-1%
V+V	4%	-7%	11%	2%	-9%
Adj + Adj	10%	-16%	26%	36%	+10%
Adv + Adv	-	<	5%	-	<
Mixed	5%	-4%	9%	14%	+5%
Total	**100%**		**100%**	**100%**	

Figure 6.2: *Proportion of morphological structure of binomials across the corpora.*

As Table 6.2 and Figure 6.2 demonstrate, from the morphological point of view binomials in the Three-Part Corpus predominantly follow the [N + N] structure (RUTC: 81%; ENRC: 49%; ITTC: 48% out of the total number of binomials). In terms of relative frequencies, the [N+N]-type binomials are more frequent in the Russian Translation Corpus (RUTC: +7%) and less frequent in the Italian Translation Corpus (ITTC: -44%) when compared to the reference texts. Nonetheless, in terms of proportional distribution within separate corpora, the tendency to prefer noun-based binomials is common to all three corpora. However, looking at other types, one immediately notices a discrepancy between values of the Russian Translation Corpus and the other two corpora. Both the Italian Translation Corpus and the English Reference Corpus make frequent recourse to adjective-based binomials (ITTC: 36%; ENRC: 26% of the total number of binomials). The Russian Translation Corpus uses this type of binomials only in 10% of all binomials (-74% if relative frequencies are compared to the ENRC). Verb-based binomials occur proportionally more frequently in the English Reference Corpus (11%) and are comparatively uncommon both in the Italian Translation Corpus (2%) and in the Russian Translation Corpus (4%). Surprisingly, only the English Reference Corpus deploys binomials of the [Adv + Adv] type (5% of all binomials used). It must be said, however, that some binomials composed of adverbial phrases realised by different linguistic means, e.g. “wholly or in large”, are listed under the label “other”, which demonstrated comparable values in the ENRC and in the ITTC, while remaining relatively uncommon in the RUTC. The reason for the apparent underrepresentation of binomials based on other parts of speech but the noun could be speculated to lie in the nominal style, peculiar of both legal Russian and legal Italian to a greater degree if compared to legal English. As discussed in Chapter 2, legal Italian and legal Russian are inclined to disprefer

verbs (and consequently adverbs which usually are bound to verbs), which could have led to considering only the noun-based binomials as conventional. Alternatively, only the noun-based binomials occur in the source texts. On the basis of binomials only, it would seem that translations from Russian are the most nominal. On the contrary, the English Reference Corpus has a more balanced distribution of binomials by part of speech, which probably can be interpreted as a confirmation of their status as markers of legal English.

6.1.1.2. Qualitative analysis of binomials

The twenty most frequent binomials in each corpus are reported in Table 6.3, with their normalised frequencies ("NF").

N	RUTC	NF	ENRC	NF	ITTC	NF
1	rights and freedoms	20	exclusion or expulsion	21	interest and revaluation	18
2	human rights and fundamental freedoms	14	whether or not	17	religious and philosophical	14
3	victims and witnesses	10	reasonable and proportionate	11	he or she	10
4	witnesses and victims	9	relevant and appropriate	11	economic and social	10
5	legality and reasonableness	8	each and every	10	neutral and impartial	6
6	inhuman or degrading	8	effective and accessible	10	admissibility and merits	6
7	treatment or punishment	8	to exclude or expel	10	civil and political rights	6
8	actions or inaction	7	necessary or proportionate	10	origin and transit	6
9	admissibility and merits	7	necessary and proportionate	9	Education and teaching	6
10	satisfactory and convincing	6	over and above	9	Religions and beliefs	6
11	counsel and witnesses	6	public interest and importance	7	Pecuniary or non-pecuniary	6
12	counsel and the advocate	6	costs and expenses	7	Pecuniary and non-pecuniary	4
13	investigator or inquiry officer	6	diet and disease	7	entity and origin	4
14	costs and expenses	5	rights and freedoms	7	research and rescue	4
15	arrest and detention	5	members and prospective members	7	human rights and fundamental freedoms	4
16	identification and punishment	5	admissibility and merits	6	search and rescue	4
17	judgment and decisions	5	disease and cancer	6	full and exclusive	4
18	actions and decisions	5	fair and accurate	6	member states and third countries	4
19	liberty and personal inviolability	4	disclosure or cross-examination	6	Illogical or contradictory	4
20	inaction and decisions	4	just satisfaction and costs	5	Arbitrary or illogical	4

Table 6.3: *Relative frequencies of 20 most frequent binomials across the corpora normalised to 100,000 words.*

The semantics of binomials across the corpora differs to reflect various issues and violations at stake. For instance, judging by the recurrence of such binomials as "arrest and detention", "victims and witnesses" and "inhuman and degrading", one can presume that the Russian Translation Corpus deals prevalently with the criminal limb of the Convention. The Italian Translation Corpus reveals some civil and social implications of the alleged violations, considering such binomials as "economic and social policy" and "civil and political rights". The most frequent binomials in the English Reference Corpus, with several exceptions, are adjectives, and thus it is difficult to arrive at any topic-related conjectures.

Table 6.3 casts light on some binomials that occur in all the three corpora. These are binomials reflecting the institutional setting of the ECtHR and its material and procedural order: "human rights and fundamental freedoms" or "rights and freedoms", "admissibility and merits" and "costs and expenses". In addition to these binomials, all three corpora make recourse to the vague notions, typical of the language of human rights, which are reflected also in binomials: "legality and reasonableness", "reasonable and proportionate", "fair and accurate", "arbitrary or illogical". It must be mentioned that many binomials are excluded from the general count because they do not occur frequently enough, even though they satisfy all formal criteria to qualify as binomials.

The findings present also several cases of different internal order within binomials, where the two elements are combined in different order, signalling their reversibility. An example of such a binomial is "witnesses and victims" vs. "victims and witnesses" from the Russian Translation Corpus, illustrated in (5) and (6) below.

(5) The court session was deferred many times through the fault/initiative of the applicant and his counsel […] due to the absence of *witnesses and victims*. [RUTC]
(6) For each case, investigators take measures to conduct additional examination of the scenes using technical means for the detection and seizure of evidence, further questionings of *victims and witnesses* were taken to check their testimonies on the scene, data of forensic and investigative records were used, molecular genetic examinations were held to identify the victims. [RUTC]

The interesting aspect concerns the fact that both variants are equally distributed, which would indicate reversibility of this binomial, even though the binomial "victims and witnesses" seems to enjoy a more established position (e.g. *The Victims and Witnesses Act* (Scotland, 2014), *The Victim and Witness Protection Act* (USA, 1982)). The Russian legislative sources[51] also seem to prefer this order, however the reversed combination is not infrequent, which could have given rise to the variation also in the RUTC. Similar reversibility is observed in "relevant and sufficient" and "sufficient and relevant" in the RUTC. In the other two corpora, only one hit of "relevant and sufficient" is identified, in the English Reference Corpus, referring to the decision of the European Court in *Sunday Times v. United Kingdom* (1979) 2 EHRR. Interestingly, reversible binomials are observable also in the non-translated texts of the English Reference Corpus, thus excluding any hypotheses about the translation-related causes of the internal order variation. For instance, "the defendant's right to *impart/receive* information" vs. "freedom to hold opinions and *to receive and impart* information". The latter version is a direct quotation of Article 10(1) of the Convention, although both variants are equally distributed, which may be a sign of a low conventionalisation of this binomial. However, the stability of binomials in the English Reference Corpus appears to be higher, with a single exception of "impart and receive", and the same word order is maintained and reproduced with cognate words. The general stability of internal order within binomials is illustrated below (all the examples come from the English Reference Corpus).

(7) It was *necessary and proportionate* to make a disclosure order to prevent the risk of recurrent breaches.
(8) The Applicants also contend that the evidence in respect of the investigations conducted by Moreandro to identify the Source was not adequate to demonstrate that the order was *necessary or proportionate*.
(9) The rule, as it was applied in the applicants' case, was *unnecessary and/or disproportionate* as it did not take into account the following important matters.
(10) These important factors in assessing the *necessity and proportionality* of the interference with the Applicants Article 10 rights were excluded from consideration by the domestic courts.

[51] See, for instance, Federal'nyj zakon ot 20 avgusta 2004 g. N 119-FZ "O gosudarstvennoj zaščite poterpevših, svidetelej i inyh učastnikov ugolovnogo sudoproizvodstva" (Федеральный закон от 20 августа 2004 г. N 119-ФЗ "О государственной защите потерпевших, свидетелей и иных участников уголовного судопроизводства")

All of the above binomials are marked as different binomials because the search was carried out on the basis of word forms. The normed rates of occurrences of the complete set of binomials composed of "necessary" and / or "proportionate" and their word forms amounts to 27. Interestingly, this frequent binomial is absent from the two translation corpora.

Binomial	**Normalised frequency**	**% within the set**
necessary and proportionate	9	33%
necessary or proportionate	10	37%
unnecessary and/or disproportionate	4	15%
necessity and proportionality	4	15%
Total	**27**	**100%**

Table 6.4: *Set of binomials expressing the idea of necessity and proportionality in the English Reference Corpus.*

Another trend, observable in the translated texts concerns the variability of binomials with regard to the internal order/reversibility and different lexical choices, which could be interpreted as another factor of their low statistical relevance. The translation-caused variability of binomials can be illustrated by a set of slightly deviating binomials in the Russian Translation Corpus. These binomials express the idea of acts and omissions, and sometimes create a clear trinomial with "decisions" from the formal point of view ("acts, omissions or decisions") or a trinomial *de facto* with one element placed in brackets ("actions (inaction) and decisions").

> actions or inaction (7); actions (omissions) (3); actions (inaction) (5); actions (omission) (2); actions (or inaction) and decisions (2) acts or omissions (3); actions (inaction) and decisions (2); act or omission (2); actions (omission) and decisions (1); acts or omission (1); acts (failure to act) and decisions (1); acts, omissions or decisions (1); acts (omission) and decisions (1); decisions, actions or omission to act (1); inaction and decisions (4).

All of the above expressions are translations of the Russian binomials *действия или бездействие* ([N_{pl} + *or* + N_{sg}], literally "actions or inaction") and *действия и решения* ([N_{pl} + *and* + N_{pl}], literally "actions and decisions"), which sometimes form a trinomial *действия, бездействие и решения* (literally, "actions, inaction and decisions"). Yet, in translation this stable binomial / trinomial structure is rendered in an inconsistent way. First, there are discrepancies between the plural forms "actions" / "acts" and the singular "act", however the singular form is infrequent, with the plural form of either "actions" or "acts" being prevalent. The Russian *действия* stands for something done or performed, deeds or conduct, which can be translated by both "actions" and "acts". Second, there are five variants to render the Russian *бездействие*: "inaction", "omission", "omissions", "failure to act" and "omission to act". The most widespread "inaction" fully reflects the morphology of the Russian source term, which is also composed of a negative prefix (*без-* vs. "in-") added to the singular form of the first term *действие* ("action"). Consequently, the recurrent doublet "actions or inaction" is a literal translation of the Russian source expression. The conventional English binomial "act(s) or omission(s)" occurs in the RUTC twice less than the literal translation, if we consider its occurrence inside the trinomials. The only invariant item in the above expressions is "decisions". In the English Reference Corpus it occurs only once (and thus is excluded from the general count) in a trinomial, "statements, acts and omissions".

An interesting case is observable also in the Italian Translation Corpus, where two equally distributed variants coexist: "search and rescue" and "research and rescue", both standing for the Italian "ricerca e salvataggio" or "ricerca e soccorso". The former, and more widespread, option is an established binomial, which gave rise also to the acronym Sar, typically used in "Sar events" or "Sar operations". Such operations represent an important reality for the Italian Southern sea areas, which deal with the arrival of immigrants by sea in precarious conditions. It would seem that the variant

"research and rescue" is created under the influence of the Italian word *ricerca*, which can mean both "search" and "research". Additionally, one can see some alliteration in this version of the doublet, which could have led the translators to opt for this creative variant, deviating from the conventional "search and rescue". Given its specificity, this binomial is not found in the ENRC or in the RUTC.

6.1.1.3. Synthesis

In general, binomials qualify as positive legal style markers of written pleadings before the ECtHR. There is a clear tendency with regard to the preferred morphological structure of binomials. While the English Reference Corpus uses all targeted types of binomials ([N + N], [Adj + Adj], [V + V], [Adv + Adv] and mixed), the translation corpora clearly favour binomials of the [N + N] type and disprefer binomials of the [V + V] type, which would suggest their stronger inclination towards nominal constructions. Binomials of the [N + N] type are the most frequent in all three corpora; however their concentration by single type is different. While in the translation corpora single types of [N + N] binomials have the highest occurrence count (see Table 6.1), in the reference corpus the most numerous clusters of binomials are of the [Adj + Adj] type. It can be speculated that the noun-based binomials are typical of the translated language of written pleadings, either because of their higher conventionality or because of the more nominalised input provided by legal Russian and legal Italian, or the combination of both.

Multinomials are not recurrent enough to be considered markers of written pleadings, neither in the reference corpus, nor in the translation corpora. Most occurrences of multinomials are quotations from legislative sources, confirming the hypothesis about their unconventionality in the genre of written pleadings.

6.1.2. Phraseological units with archaic words or word forms

Legal English is traditionally defined as "heavily dependent on the past, and unashamedly archaic" (Butt and Castle 2006: 1) as it is peppered with archaic words and phrases "of a kind that could be used by no one but lawyers" which function as "the most reliable guide […] for identifying the language of a legal document" (Crystal and Davy 1969: 207). This subsection deals with the second type of phraseological units traditionally associated with the formulaic character of legal writing – the so-called archaisms as represented by the compound archaic adverbs based on the deictics *here-*, *there-* or *where-* (6.1.2.1) and other phraseological units featuring archaic words or word forms (6.1.2.2).

6.1.2.1. Compound archaic adverbs

Alcaraz Varó and Hughes refer to archaic adverbs as a special case of the "fossilized language" of the law (2002: 9). Archaic adverbs are "useful for the kind of precise references – especially to the document or its parts, and to the contracting parties – which lawyers find it so necessary to make; but again it seems possible to see in the almost ritualistic repetitiveness more than a little reverence for tradition" (Crystal and Davy 1969: 208). These are compound adverbs based on the simple deictics *here-*, *there-* or *where-* merged with prepositions that are often used to refer to parts of the quoted documents. In terms of their phraseological potential, these are not strictly multi-word units, yet their compound nature allows treating them in this work.

The search employs the simple retrieval algorithm, where *here-*, *there-* or *where-* are followed by a wildcard (an empty slot). No frequency cut-off was set in order to collect all instances of archaic adverbs. The normalised frequencies of the resulting compound adverbs are shown in Table 6.5.

Compound adverb	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Hereafter	-	-	-	4	>
Hereby	2	>	-	6	>
Herein	-	<	1	4	+300%
Hereinafter	38	+3700%	1	-	<
Hereof	-	<	1	-	<
Hereunder	2	>	-	-	-
Herewith	64	>>	-	-	-
Thereafter	1	-80%	5	-	<
Thereby	3	-50%	6	8	+33%
Therefor	-	<	1	-	-1
Therein	3	-25%	4	2	-50%
Thereof	7	+250%	2	10	+400%
Thereto	12	>	-	10	>
Thereupon	1	>	-	-	-
Therewith	2	+50%	1	-	<
Whereas	4	-33%	6	32	+433%
Whereby	2	-67%	6	6	=
Whereof	1	>	-	-	-
Whereupon	1	>	-	-	-
Total	**143**	**+322%**	**34**	**82**	**+142%**

Table 6.5: *Relative frequencies of archaic compound adverbs across the corpora.*

"Therefore" (38 in the RUTC, 91 in the ENRC, 114 in the ITTC) and "wherever" (2 in the RUTC, 4 in the ENRC, 4 in the ITTC) are discarded because they lack the archaic flavour and/or any expressly

legal and formulaic associations. “Whereas”, although frequently accused of being a sign of legalese (Duckworth and Spyrou 1995: 92), is a borderline case because it is used in daily life, outside of the legal community, when it introduces contrast in the meaning “but on the contrary”, “while” (Butt and Castle 2006: 151). However, when “whereas” denotes “given the fact that” and is placed sentence-initially, it becomes the “archetypal legalism” (Duckworth and Spyrou 1995: 92). On these grounds, “whereas” is further assessed through the concordance lines, which show its use is equivalent with “while”/ “but on the contrary” in all occurrences in the Russian Translation Corpus and in the English Reference Corpus and in 87.5% of its occurrences in the Italian Translation Corpus.

(11) It is only the question of foreign citizens, living in the territory of this or that state on lawful bases *whereas* the first applicant stayed illegally in the territory of Russia. [RUTC]
(12) In addition, they had access to daily transcripts to assist with their on-going preparation throughout the trial, *whereas*, for the majority of the trial, the applicants could not afford to pay for this service and had to wait 25 days for the transcripts, by which time they were of limited use to them. [ENRC]
(13) In this connection, it should be said that the applicant is confusing the scope of Article 7 ECHR with that of Article 6 ECHR, *whereas* the first uses a term (infraction, criminal offence) which differs from the one used in the second (determination of any criminal charge). [ITTC]

The frequency table above shows stark dissimilarities in the use of archaic adverbs across the corpora. Even though such adverbs are listed as typical and representative of legal English in most classical works on this subject, the use of archaic adverbs in the English Reference Corpus is 4.3 times less frequent than in the Russian Translation Corpus and 2.6 times less frequent than in the Italian Translation Corpus. If “whereas” is excluded from the calculations on the grounds of its non-archaic character or non-archetypal use, the chasm among the total numbers would become even deeper, especially in the Russian Translation Corpus: RUTC 139 (+414%) vs. ENRC 27 vs. ITTC 50 (+85%). It emerges that the tendency to use archaic adverbs is the least in the English Reference Corpus and the greatest in the Russian Translation Corpus. What is peculiar is that archaic adverbs are chosen in translations from Russian in the absence of any archaic stimuli in the Russian Source Texts (“RUST”). For instance, “hereinafter” is triggered by the simple adverb of space/time *далее*, which is used in everyday modern Russian and stands for “further”.

(14) On 3 June 2010, the European Court of Human Rights (*hereinafter* – “the European Court”) informed the Russian Federation authorities of application no. 10001/09 […] [RUTC]
(14a) 3 июня 2010 г. Европейский Суд по правам человека (*далее* – «Европейский Суд») сообщил властям Российской Федерации о жалобе номер 10001/09 […] [RUST]

The English Reference Corpus in similar cases omits any adverbials and simply states the abbreviation in parenthesis and inverted commas:

(15) The applicant has for some time expressed opposition to the activities of the British National Party (“BNP”) and its predecessor organisation. [ENRC]

The Italian Translation Corpus employs a similar construction on several occasions, opting for “hereafter” and not “hereinafter”.

(16) The Italian Government (*hereafter*, the Government) claims that the plaintiffs have an internal solution at their disposal, a class action, in order to speed up the procedure aimed at acknowledging their application for access to the Transactions (*hereafter* the Applications).

It is worth noting that the most frequent archaic adverb “herewith” in 90% of cases in the Russian Translation Corpus is used as a part of a stable collocation “is/are attached herewith”, which has no adverbial stimuli whatsoever in the source texts.

(17) A copy of the report is attached herewith. [RUTC]
(17a) Копия протокола прилагается. [RUST]
(17b) A copy of the report is attached. [literal translation]

In fact, in the English Reference Corpus the same concept is expressed through a laconic "copy attached" and in the Italian Translation Corpus the formula "see list attached" is used. It would seem that the adverb "herewith" is not necessary for the functioning of the phrase expressing the idea of documentary attachments. Instead, it might have been added to increase the formulaicity of the phrase as a token of "pure legalese" (Butt and Castle 2006: 146). The above examples demonstrate that the translators added these archaic elements in spite of the lack of any linguistic stimuli in the source texts. It seems possible to hypothesise that the choice of intentionally archaic cliché words is dictated by the desire to comply with the alleged canons of legal writing in English (conventionalisation hypothesis). Already in 1969, Crystal and Davy evaluated such deliberate archaisms as nearly deprived of their linguistic function and defined them as "features comparable to the extra-linguistic realia which are usually involved in the performance of ceremonies of any kind: *hereons* become directly equitable with wigs, as it were" (Crystal and Davy 1969: 213).

The adverbs "thereto" is also interesting to look at since it is completely absent in the English Reference Corpus, and used in 12 normalised occurrences in the Russian Translation Corpus and in 10 in the Italian Translation Corpus. The concordance analysis shows that "thereto" occurs predominantly as part of the denomination "Convention and (the) Protocols thereto" (RUTC: 8; ITTC: 8) and is used outside this combination only in 4 cases in the RUTC and in 2 in the ITTC.

RUTC	**NFr**	**ITTC**	**NFr**
Convention and/or (the) protocols thereto	6	Convention and Protocols thereto	4
European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto	1	Nor convention nor the protocols thereto	2
Convention and Article 1 of Protocol no.7 thereto	1	Convention and the protocols thereto	2
Make/ file objections thereto	2	Legal acts pertaining thereto	2
Absence of any legal grounds thereto	2		

Table 6.6: *Clusters with "thereto".*

It is interesting to note that an alternative version of this denomination exists in the corpora: "Convention and/or (the) Protocol(s) (number) to the Convention" (RUTC: 10; ITTC: 12, ENRC: 1), "(the) protocol(s) (number) of the Convention" (ITTC: 6; ENRC: 3), "Convention and its protocols" (ITTC: 2). These patterns of the absence of any reference to the Convention (e.g. "Protocol No. 1") replace the archaic "protocol thereto" in the English Reference Corpus.

The adverb "hereby" is frequently blamed for being redundant and a type of a "legal surplusage" (Butt and Castle 2006: 148). It is a typical marker of a legal performative (Mellinkoff 1963: 305; Kurzon 1986: 7), often used in enactment formulas; however, it is "an optional element in a performative" (Kurzon 1986: 6).

(18) The applicants should *hereby* like to comment on the Government's answers, as well as to answer the questions put by the European Court before the Government. [RUTC]
(18a) В настоящем документе заявители считают необходимым не только представить некоторые комментарии ответов Правительства Российской Федерации, но и со своей стороны ответить на вопросы, поставленные перед властями Российской Федерации Европейским Судом по правам человека. [RUST]
(18b) In the present document the applicants consider it necessary not only to provide some comments to the answers of the Government of the Russian Federation, but also to answer questions posed to the authorities of the Russian Federation by the European Court of Human Rights.[literal translation]

(19) Moreover, with reference to the alleged applicants' "inactivity" for the period in which the Administration omitted to reorganise, *it is hereby highlighted* that the Public Administration is obliged to proceed with the reorganisation whereas no duty lies on the private individuals, as confirmed by the established case-law of the Administrative law judge.[ITTC]
(19a) In secondo luogo, quanto alla pretesa "inerzia" dei ricorrenti per il tempo in cui l'Amministrazione ha omesso di ripianificare *si ribadisce* che sussiste un vero e proprio obbligo della pubblica amministrazione di procedere alla ripianificazione mentre nessun onere grava in capo ai privati in tal senso, come confermato dalla giurisprudenza consolidata del Giudice Amministrativo. [ITST]

In example (18) taken from the Russian Translation Corpus, accompanied by the source expression in (18a), "hereby" stands for "in the present document" (*в настоящем документе*). While it undoubtedly covers the semantics of "in the present document", it also adds an additional archaic and performative flavour, absent in the source text, where the respective phrase performs a purely deictic function. The translators have reformulated the sentence to fit in the typical "hereby" structure, also abridging the underlined parts as illustrated in the literal translation in (18b), moving towards a more conventional English formula.

In example (19) taken from the Italian Translation Corpus, no sematic stimuli for "hereby" are discovered in the source text (19a), where the respective expression is *si ribadisce* (literally, "it is reiterated"). It would seem that "hereby" has been introduced for stylistic reasons without serving any legal purpose.

The corpus of written pleadings brings confirmatory evidence to the purely ornamental role of these compound archaic adverbs, which in most cases do not perform a clear linguistic function and do not reflect any (archaic) stimuli of the source texts. It may be said that archaic adverbs are evidently losing their position of "positive" markers of legal English as their low frequency in the reference texts qualifies them as negative legal style markers. On the contrary, in the Russian Translation Corpus they qualify as positive markers of written pleadings before the ECtHR. On account of the number of archaic compound adverbs in the Italian Translation Corpus these are considered to be negative markers.

6.1.2.2. Formulaic expressions with archaic words or word forms

Apart from the category of compound archaic adverbs addressed in the previous subsection, the formulaicity of legal language is also associated with the use of other archaic words or word forms, often criticised by the plain language activists as either adding no meaning or having an acceptable plain English alternative (Duckworth and Spyrou 1995: 54). A list of some of the brightest candidates for the archaic status includes "notwithstanding", "henceforth", "forthcoming", "aforementioned" and "aforesaid". I add to this list also "said" and "deem". Together with the previously discussed compound archaic adverbs, they can form phrases that may be challenging for the understanding of general public such as "notwithstanding anything to the contrary contained herein" standing for "disregard the rest of the document, this is the important bit" (Cutts 1992: 158). Although "notwithstanding" may be defined as a formal connective and not archaic, it has been criticised by the plain language supporters along with archaisms (Cutts 1992: 158; Garner 2001: xvii, 40; Butt and Castle 2006: 168) and, consequently, is also analysed in this subsection. The search is programmed using both the entire words mentioned above and their archaic parts, such as "forth" with a wildcard.

Table 6.7 demonstrates that the translation corpora use more archaic words than the reference corpus (RUTC: +163%; ITTC: +150%), signalling a greater reliance on conventional archaisms in the translation corpora.

Archaic word (form)	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Notwithstanding	11	-55%	17.1	4.3	-75%
Forthcoming	-	<	1	2.1	+110%
Henceforth	-	-	-	4.3	>
Hence	13	+220%	4	-	<
Forthwith	-	<	1	-	<
Aforementioned	7	>	-	34.5	>
Aforesaid	10	>	-	-	-
Afore-stated	1	>	-	-	-
The said	9	>	-	4.3	>
Foregoing	15	+400%	3	6	+50%
Deem/ deemed/ deeming	5		4.8	14	
Total	**71**	**+163%**	**27**	**67**	**+150%**

Table 6.7*: Relative frequencies of archaic words.*

Garner (2001: 40) suggests replacing "notwithstanding the fact that" with "although", Butts and Castle (2006: 168) propose to replace it with "despite", quoting a number of judgments[52] suggesting the same option. Having analysed the concordances of "notwithstanding" across the corpora, I have discovered that it fits into the pattern [*notwithstanding + (the)* + $N_{fact/circumstances/presumption/statements}$ (or similar)] in 7 occurrences in the RUTC, in 2 occurrences in the ITTC and in 10 occurrences in the ENRC. Alternatively, it is used within the construction [*notwithstanding + that*] in 2 occurrences in the Italian Translation Corpus and in 6 occurrences in the English Reference Corpus, with no similar occurrences in the Russian translation corpus. The Russian Translation Corpus also employs "notwithstanding" postpositively as in "this fact notwithstanding" in 4 cases with similar semantics. In all cases analysed, it could have been easily replaced by other connectives, such as "in spite of", "disregarding" or "despite".

The example of "henceforth" is interesting as this adverb is present only in the Italian Translation Corpus, although in a rather insignificant number of cases.

> (20) Therefore, it should be conceived as a symbol of freedom, equality and tolerance, or even as a symbol of secularity of our State, based on the rights of human society, which are *henceforth* a part of the social, cultural and legal heritage of Italy. [ITTC]
> (20a) […] deve essere inteso […] quale simbolo dei principi di libertà, eguaglianza e tolleranza e infine della stessa laicità dello Stato, fondanti la nostra convivenza e *ormai* acquisiti al patrimonio giuridico, sociale e culturale d'Italia. [ITST]

As shown in the source text, "henceforth" translates the Italian *ormai*, which has no archaic or poetic connotations. Moreover, *ormai* implies that something has already occurred by this time, while "henceforth" projects the idea of something that has not yet happened and will be happening from this time on. Consequently, this solution adds to the ambiguity and possible misinterpretations, and is difficult to classify as semantically adequate, which would again sustain the idea of its stylistic *raison d'être*.

Another archaic register marker is "hence". In all its occurrences in the Russian Translation Corpus it is used synonymously with "as a consequence/ result of" to translate the same semantic idea.

[52] Butts and Castle (2006: 168), note 2: *Despite* means the same as *notwithstanding the fact that*: *Attorney-General of the Commonwealth v Oates* (1999) 198 CLR 162; *Eddy Lau Constructions Pty Ltd v Transdevelopment Enterprise Pty Ltd* [2004] NSWSC 754

(21) Therefore any applications concerning participation of officials of the Russian Federation in events which are described in the application are unsubstantiated and, *hence*, unreasonable. [RUTC]
(21a) Поэтому любые заявления относительно причастности должностных лиц Российской Федерации к событиям, которые описываются в жалобе, являются бездоказательными, и, *следовательно*, необоснованными. [RUST]

As illustrated in examples (21) and (21a), the source expression intends the meaning of a consequence, but does so in a neutral way without additional legal or archaic colouring. It must be added that many expressions, which gave rise to "hence" in the RUTC, are also used to denote the cause-effect relationship in scientific discourse, e.g. in mathematics.

An emblematic case is the group of premodifiers based on the archaic word form "afore": "aforementioned", "afore-stated" and "aforesaid", with the abbreviated version of the latter "said". While the collective normalised occurrence of these adjectives amounts to 37 and 38 respectively in the Russian and in the Italian translation corpora, none of them are used in the English Reference Corpus. These adjectives modify such nouns as "complaints", "principles", "judgment", "case-law", and "factors", "violations" (RUTC); "school", "infringements", "restrictions", "judgment", "legislative decree", "lawsuit and "measures" (ITTC). From the translation point of view, it is interesting to observe that the Italian Translation Corpus uses almost exclusively "aforementioned" (88% in this near-synonymous set), while the Russian Translation Corpus distributes the same referential function between "aforesaid" (37% in this near-synonymous set), "the said" (33%), "aforementioned" (26%) and "afore-stated" (4%) demonstrating some discrepancies in terms of conventionality. "Aforesaid" is frequently placed within a closing formula:

(22) On the grounds of *aforesaid*, I request European Court of Human Rights to […] [RUTC]
(22a) На основании изложенного, прошу […] [RUST]

It is interesting to note that the archaic word form "afore" in the above compounds coexists with a more modern "above" in both translation corpora and that none of these patterns occur in the English Reference Corpus. Figure 6.3 sheds light on the recurrent nature of these patterns in the Italian Translation Corpus (striped) and on the variety of near-synonyms used in the Russian Translation Corpus (blue). Their recurrence may be interpreted as a manifestation of interference, which is corroborated by the instability of translations and calques from the source languages (e.g. "above-cited" <- *sopracitato*; "above- /afore-stated" <- *вышеизложенный*), combined with the drive towards the perceived canons of legal English, associated with "aforementioned" and the like.

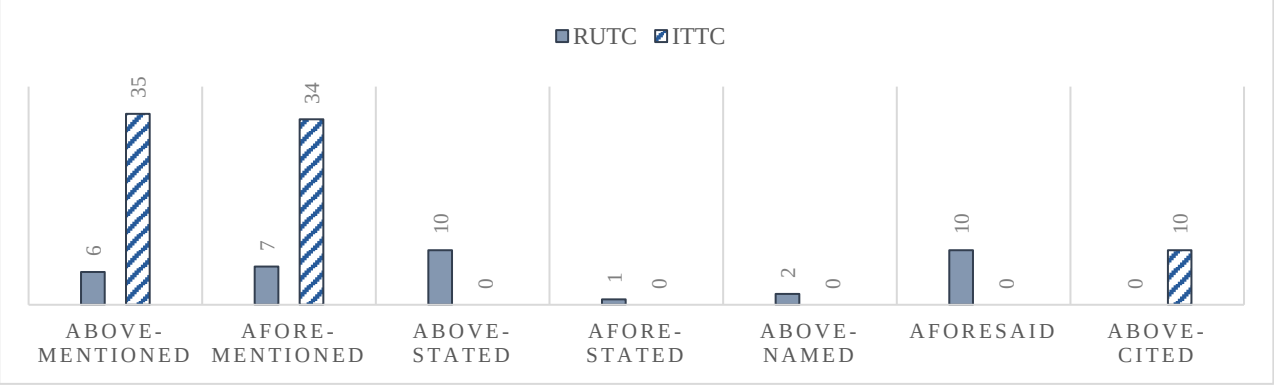


Figure 6.3: *Distribution of compounds with "afore" and "above" across the corpora*.

"Foregoing" has also some archaic notes to it if compared with its neutral near-synonym "preceding". It also occurs almost exclusively in prefabricated formulae in the translation corpora as illustrated below in (23) and (24).

(23) Having regard to the *foregoing* and pursuant to Article 36 of the Convention and Rules 74 and 75 of the Court's Rules, I ASK THE COURT […] [RUTC]
(24) In the light of the *foregoing* considerations, the Italian Government has the honour to ask the Court to dismiss the application as ill-founded. [ITTC]

Such formulae featuring "aforesaid" or "foregoing" are examined in more detail in 6.1.3, dedicated to repetitive text-organising patterns typical of written pleadings. It must be observed that in the English Reference Corpus "foregoing" is not used inside a prefabricated formula, but instead functions as a simple premodifier, which nonetheless keeps its archaic colouring.

(25) In addition to the *foregoing* practice, it is also competent for persons aggrieved by a section 4(2) order to appeal by presenting a Petition to the *nobile officium* of the High Court. [ENRC]
(26) The Government submits that there is an "appropriate appeal procedure" in Scotland, as explained in the *foregoing* observations. [ENRC]

Finally, one can observe that "deem" and its word forms are used in all three corpora, with greater recurrence in the Italian Translation Corpus. Butt and Castle (2006: 157) argue that "deeming" is artificial and impairing comprehension. They provide a Lewis-Carroll-like quote from an 1891 judgment[53] to exemplify the meaning fluctuations typical of "deemed" as standing for "considered to be", "adjudged to be" or "is".

Generally speaking, when you talk of a thing being deemed to be something, you do not mean to say that it is that which it is to be deemed to be. It is rather an admission that it is not what it is to be deemed to be, and that, notwithstanding it is not that particular thing, nevertheless ... it is to be deemed to be that thing.

Similar, and even more significant from the legal standpoint, oscillations are observable in legal *shall*, which is addressed in 6.3 along with other grammatical patterns of written pleadings.

(27) The applicants believe that the investigation into Mr. Shokkarov's death performed by the Government cannot be *deemed* effective. [RUTC]
(28) Although it cannot easily be determined how decisive each of those circumstances was, whether their simultaneous occurrence must be *deemed* absolutely necessary for a decision rejecting the complaint or whether the conclusion could have been the same if one or the other of them had been lacking, there is no difficulty in asserting that, mutatis mutandis, the situation with which we are concerned here shows the same essential features. [ITTC]
(29) The applicants were required to prove the absolute truth of each and every assertion *deemed* to be fact by the trial judge. [ENRC]

While the "is" sense can be excluded from the examples above, the dichotomy between "considered to be" and "adjudicated to be" is more troublesome. As a consequence, the use of "deem" contributes to ambiguity as well as to the perceived conventionality along with some archaic connotations.

Altogether it may be said that, similarly to compound archaic adverbs, other archaic words prevail in the translation corpora and become infrequent in the reference corpus, probably under the influence of the plain English campaign. In quantitative terms, the archaic expressions analysed in this subsection qualify as positive markers of written pleadings in the translation corpora but do not reach the threshold of 100 occurrences per 100,000 words in the English Reference Corpus, where these are "deemed" to be negative markers.

[53] *R v Norfolk County Council* (1891) 60 LJ QB 379 at 380, in Butt and Castle (2006: 154), note 58.

6.1.3. Routine formulae

The third pillar of the formulaicity of written pleadings relies on the repetitive organisational patterns, briefly addressed in 2.5.4. Such organisational patterns are qualified as *habitually routine phrases* in Kjær's 1990 model, *textual sentence stems* in Granger and Paquot's model (2008: 42) and Biel's (2014b: 178) *text-organising patterns* (see 2.6). In this category, denominated here as *routine formulae*, I include those patterns that on the one hand serve as signposts for different parts of a pleading and on the other hand are used to transition between various parts and within them. From the cognitive standpoint, these formulae reduce the effort necessary to process information because they organise information around prefabricated patterns, which derive from the form and content requirements set forth by the Practice Directions that integrate the Rules of the European Court of Human Rights. These statements are often composed of longer chunks of text. Consequently, for reasons of readability the analysis proceeds on a basis of one corpus at a time, making references to significant similarities and discrepancies across the corpora.

6.1.3.1. Opening statements

As overviewed in 2.5.4, most pleadings feature a note or a statement as to the object/purpose of the pleading, which is usually to answer either the counterpart's or the Court's questions; however, there are significant discrepancies observable in the phrasing, which can be assumed to derive from the low conventionalisation and the translational nature of written pleadings.

The opening statement in the Russian Translation Corpus is typically built around the structure summarised in (30), with minor deviations.

(30) On [date], *the European Court of Human Rights informed* [the party] of *application no*. [number, name] *lodged with* the European Court by (a Russian national) [name, patronymic, surname] *under/pursuant/in accordance with Article* [number] of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as *invited them to submit their observations and answer the following questions*.

It states that the ECtHR informed a party of a certain application, or forwarded the other party's observations or notes filed under a certain article or rule, and invited the party to submit their observations and/or to answer some questions. The final element indicated in italics in (30) is present in all but two of the written pleadings in the RUTC and is realised linguistically through the following formulae.

No	Phrase
1	invited them to submit their observations and answer the following questions
2	[invited to] provide its comments and answer the following questions
3	invited them to submit their comments and answers to the following questions
4	invited the Russian Federation authorities to submit their observations and to answer the following questions
5	inviting the Russian Federation authorities to submit further observations on the above application […] I would like to present the following further information.
6	European Court applied to Parties for additional legal arguments and facts and put several (5) questions concerning the circumstances of the case.
7	The applicants should hereby like to comment on the Government's answers, as well as to answer the questions put by the European Court before the Government.
8	invited them to submit their comments regarding information contained therein on alleged violations of rights of the applicants […] […] would like to additionally submit the following.
9	requested their comments regarding information contained therein on alleged violations of the rights of the applicant.

No	Phrase
10	invited them to present their observations and to answer the following questions.
11	and invited to submit their comments regarding the information on the alleged violation of his rights. In this connection, the authorities of the Russian Federation would like to inform the following.
12	invited it to submit its observations and replies to the following questions asked by the Court.
13	and invited them to submit further comments. In this regard, the authorities of the Russian Federation would like to submit the following.
14	invited to answer the following additional questions.

Table 6.8: *Opening routine formulae in the Russian Translation Corpus.*

Table 6.8 sheds light on the instable nature of this formula, which fluctuates between "comments" and "observations", "invited" and "requested", "to answer the questions" or "to deal with the questions" as well as "submit" and "present". Interestingly, in the Russian source texts the same formula is stable and is typically realised as *предложил (им) представить свои замечания и ответить на следующие вопросы*. The dichotomy "observations" / "comments" arises out of the fact that there was no formally established translation for the term "(written) pleadings" or "(written) observations" at the time of their translation. As I have already mentioned in Chapter 2, the English version of the Rules uses both terms. In addition, when these pleadings were drafted, there was also no official Russian translation. The Court personnel, however, has always preferred (*письменные*) *замечания*. This translation acquired a more formal status in 2016, when the Registry prepared a Russian translation of the Rules available at the ECtHR's website[54]. Outside of the legal context, *замечания* can be rendered as both "comments" and "observations", which has evidently led to some overlaps. Similarly, *представить* can mean "to produce", "to present", "to introduce", "to submit", etc. It would seem that instability arises out of uncertainty about the collocability of the term "(written) observations" with a verb.

The content of the opening statement in the remaining two pleadings (of the applicants) is nonetheless notionally close to the statements quoted above.

> (31) These observations are submitted to the European Court of Human Rights ("Court") on behalf of the applicants in reply to the Government's memorandum of 29 February 2008. [RUTC]
> (32) The applicant makes this submission at the invitation of the European Court of Human Rights in response to the Government's observations on the admissibility and merits of the case. In this submission, the applicant discusses the following issues. [RUTC]

It would seem that the applicants' observations are less prefabricated and routinized than the government's pleadings, and this is logical since the applicants' environment is decidedly less institutionalised. It is worth noticing that the formulae used by the Russian applicants reflect the tendencies observable in some pleadings by the UK Government, represented in Table 6.9 (lines 7 and 9). In the English Reference Corpus one applicant's pleading has no opening statement at all; another omits the statement at the beginning, but recaps it after a brief summary of facts following a rather prefabricated pattern (line 1).

The English Reference Corpus appears to be less conventionalised than the Russian Translation Corpus. Interestingly, some discrepancies with regard to terminology (e.g. "comments" vs. "observations" vs. "submissions" or "the government was" vs. "the government were") are present also here and cannot be hypothesised to be translation-triggered, but can be rather ascribed to the absence of any strict conventions. In terms of text-organising patterns, one structure appears to be recurrent:

[54] http://www.echr.coe.int/Documents/Rules_Court_RUS.pdf

(33) *By* (a) *letter dated* [date], the Court has invited / the Government *were invited to submit written observations* […].

Apart from the beginning referring to a letter, the invitation / request element is convergent with the formula used in the Russian Translation Corpus. The verb "invite" deserves attention, as it is a hedged form of request, with mild illocutionary value if compared to the verb "request". This aspect is addressed in more detail in 6.1.3.2.

No	Phrase
1	*For the reasons set out* in their Application dated 2nd April 2001, their Reply to the Observations of the Respondent, their Letter regarding the McVicar case dated 26.07.2002, the Letter of Mark Stephens dated 28.08.2002, their Reply to the Further Observations of the Respondent and their Just Satisfaction Claim dated 5.7.04, *the applicants submit* that their rights under Articles 6 and 10 of the ECHR have been breached
2	The Applicants reply as follows to the Respondent's Observations, dated 12 March 2003
3	*By a letter dated* 13 May 2002, *the Court communicated* the Admissibility Decision to the Applicant and *posed three questions* of the parties as follows. […] In addition, the same letter *requested* that the Applicant *make* his *submissions* on the question of just satisfaction.
4	*By letter dated* 18 September 2004, *the Court has invited* the Government *to submit written observations* on the admissibility and merits of this case. In particular, the Government has been *asked to deal with the following questions*.
5	*By letter* from the Section Registrar to the Fourth Section of the Court *dated* 10 November 2004, the *Government were invited to submit written observations* on the admissibility and merits of the application herein. The Government *were invited to deal with the following questions*.
6	*By letter* from the Fourth Section Registrar *dated* 3 April 2007 the *Government was invited to submit written observations* on the admissibility and merits of this case. The Government *was invited to deal, in particular, with the following questions.*
7	These *Observations on behalf of* the United Kingdom Government are *made in response to the Observations in Reply (dated 2 June 2009) made on behalf of* the Applicant and the Applicant's claims for just satisfaction *under* Article 41 of the Convention.
8	*Under cover of a letter* from the Section Registrar to the Fourth Section of the Court *dated* 18 January 2012, the Government *were served with a copy of the applicant's Submissions dated* 11 January 2012 and *were invited to submit their comments* on the applicant's claims for just satisfaction and *any further observations* that they wished to make.
9	The Government *makes these observations in response to further submissions* of the Applicants *of* December 2011 and January 2012. In particular it seeks to respond to the submissions made on behalf of Ms Roots who has appointed a new legal team and submitted detailed legal argument in her response.

Table 6.9: *Opening statements in the English Reference Corpus.*

As for the Italian Translation Corpus, it uses the least formulaic opening statements: only 60% of texts make recourse to any kind of initial formulae. As Table 6.10 demonstrates, the initial statements in the Italian Translation Corpus do not follow any prefabricated pattern, which signals a lower degree of conventionalisation, at least with regard to the English translations. A peculiar pattern emerges with "have/has the honour", which does not occur frequently in the other two corpora and may be interpreted as an instance of interference / discourse transfer from the Italian politeness formula *avere l'onore di*. The pattern regarding the idea of submitting applications presents variations ("has the honour to lay" / "I enclose" / "have the honour of submitting / to submit" / "submits"), however the collocation with a term "observations" [V_{submit} + $N_{observations}$] seems to be rather stable.

No	Phrase
1	With reference to the earlier correspondence regarding the above-mentioned application, and in particular your letter of 14 April 2003, *I enclose* a note from the Ministry of Justice containing *observations* on the applicant's claims for just satisfaction.
2	The Italian Government *have the honour of submitting* the following *observations* to the Court and would refer at the same time to the explanation of the facts provided by the Italian authorities and to the appended documents.
3	The Italian Government *has the honour to lay before* the Court the following supplementary *observations* answering the applicant's observations and concerning just satisfaction.
4	The Government *hereby submit their observations* within the time-limit of 10 April 2010.
5	In reply to the Italian Government's remarks of 31 May 2012, the applicant *has the honour to submit* the following remarks to the attention of this Honourable Court.
6	Responding to the Italian Government's statement, the applicant *submits the following observations* to the Court's attention.

Table 6.10: *Opening statements in the Italian Translation Corpus.*

A comparison between the recurrent opening statements across the three corpora sheds light on an interesting detail. All three corpora employ the performative verb "to submit" in these statements. Both in the Russian Translation Corpus and in the English Reference Corpus, a directive performative "to invite" hedges the verb "to submit": e.g. "the Court invited the Government to submit" (RUTC) and "the Government were invited to submit" (ENRC). No invitation element is present in the Italian Translation Corpus, where "to submit" is used in the transposed third person utterance with a performative value (Austin 1975: 57; Benveniste 1966: 271-272; Garzone 2001: 159-160).

6.1.3.2. Closing formulae

Closing formulae are another type of routine formulae frequently found in written pleadings before the European Court of Human Rights. Such sequences usually express any requests for action and summarise the position of the party.

In the Russian Translation Corpus, 74% of pleadings include such a closing formulae, which consists of two main elements (1) and (3), with a third optional element in the middle (2) used mainly by the Government.

1) ComplPrep^{cause} + *foregoing/aforesaid*
2) [*representing the interests of the Russian Federation*] + [ComplPrep^{reference} + title provisions/regulations] + [*approved by Decree of the President of the Russian Federation*] + [no. 310] *of* [date] OR other legal reference
3) *I submit + I ask / I request*

For instance:

By virtue of the foregoing, representing the interests of the Russian Federation according to the Provisions on the Representative of the Russian Federation at the European Court of Human Rights, approved by the Decree of the President of the Russian Federation dated March 29, 1998 No. 310, I SUBMIT: […] I ASK THE HONOURABLE COURT […]

Table 6.11 gathers all identified ending formulae in the Russian Translation Corpus. Element (1) is highlighted in italics and element (3) is underlined. The use of capital letters is as it is in the pleadings.

1	*Proceeding from the foregoing*, representing the interests of the Russian Federation in accordance with the Regulations on the Representative of the Russian Federation at the European Court of Human Rights approved by Decree of the President of the Russian Federation no. 310, of 29 March 1998, I SUBMIT: […] I REQUEST: […]
2	*Based on the above stated*, representing the interests of the Russian Federation in accordance with the Regulation on the Representative of the Russian Federation at the European Court of Humans Rights approved by the Decree of President of the Russian Federation dated March 29, 1998, No. 310, I SUBMIT […]
3	*Based on the foregoing*, and representing the interests of the Russian Federation in accordance with the Regulations for the Representative of the Russian Federation at the European Court of Human Rights, as approved by Ruling of the Russian Federation President No. 310 of 29 March 1998 (in edition of Ruling of the Russian Federation President of 20 March 2007, No.370), I SUBMIT:
4	*By virtue of the foregoing*, representing the interests of the Russian Federation according to the Provisions on the Representative of the Russian Federation at the European Court of Human Rights, approved by the Decree of the President of the Russian Federation dated March 29, 1998 No. 310, I SUBMIT: […] I ASK THE HONOURABLE COURT […]
5	*Relying on the afore-stated*, the applicants respectfully request the Court to […]. RESPECTFULLY SUBMITTED [signatures]
6	*Regard being had to all the above* and representing the interests of the Russian Federation in accordance with the Regulations for the Representative of the Russian Federation at the European Court of Human Rights, as approved by Decree of the Russian Federation President of 29 March 1998 no. 310, I SUBMIT […]
7	*On the grounds of aforesaid*, I request European Court of Human Rights to […]
8	*In view of the circumstances of this case that were described in detail in the application form and in the present observations*, the applicants ask […]
9	*In light of the above*, the applicants respectfully ask the European Court of Human Rights […]
10	*On the grounds of the aforesaid*, representing the interests of the Russian Federation, in accordance with the Provisions on the Representative of the Russian Federation at the European Court of Human Rights, approved by the Decree of the President of the Russian Federation of 29 March 1998 no.310 (in edition of the Decree of the President of the Russian Federation of 20 March 2007 no.370), I SUBMIT […] I KINDLY REQUEST […]
11	*In view of the foregoing*, representing the interests of the Russian Federation in accordance with the Provisions on the Representative of the Russian Federation at the European Court of Human Rights, approved by Decree of President of the Russian Federation of 29 March 1998 no.310, I SUBMIT […] I REQUEST
12	*Having regard to the foregoing* and pursuant to Article 36 of the Convention and Rules 74 and 75 of the Court's Rules, I ASK THE COURT
13	*Considering the aforesaid*, representing the interests of the Russian Federation, in accordance with the Regulations on the Representative of the Russian Federation at the European Court of Human Rights approved by Decree of the Russian Federation President no. 310 of 29 March 1998, I SUBMIT […] I REQUEST
14	*On the basis of the foregoing*, the Applicant is requesting the European Court

Table 6.11: *Ending formulae in the Russian Translation Corpus.*

Lines 1-6, 10, 11, 13 (Government's observations) present regularities and seem to follow a clearly prefabricated pattern. Yet, there are some deviations concerning the functional vocabulary level (cf. "based on the foregoing" vs. "by virtue of the foregoing" vs. "on the grounds of the aforesaid", etc). These deviations are of a clear translational nature because the respective formula in the source texts is always the same or nearly the same (the date is indicated sometimes only in numbers and sometimes the name of the month is written), see (34).

(34) *На основании изложенного*, представляя интересы Российской Федерации в соответствии с Положением об Уполномоченном Российской Федерации при Европейском Суде по правам человека, утвержденном Указом Президента Российской Федерации от 29 марта 1998 г. № 310, ПОЛАГАЮ […], ПРОШУ […].

Only the first pleading starts with another phrase: *исходя из вышеизложенного* (literally, "proceeding from the above-stated"); the other observations rely on the above formula starting with *на основании изложенного* (literally, "on the grounds of the stated"). Yet, their translations present different choices for this idea, proving that this formula is imported from Russian legal discourse and is an instance of discourse transfer. The chosen complex prepositions belong to the functional sets of near-synonyms discussed in 5.4.2 (setting the grounds) and 5.4.1 (regressive causality), the variation between which has been already discussed in Chapter 5. At the same time, the solutions chosen make recourse to archaic words and word-forms that increase their legal flavour and perceived conventionality (see previous subsection). Another discrepancy concerns the pair "ask" and "request", present in all pleadings, including also the applicants' pleadings (lines 7-9, 12, 14). While the Russian verb *полагать* is conventionally translated as "submit" in every pleading, the verb *просить* is translated either by "ask" or by its near-synonym "request". Neither of them is used in the respective formula in the English Reference Corpus (see below), which instead opts for "invite". It would seem that the request-element in this pattern is also imported through discourse transfer.

The English Reference Corpus uses a stable prefabricated formula in 50% of its pleadings. The remaining pleadings do not make recourse to an ending formula but instead use various summarising statements after each question or part of the pleading. The formula reads as follows:

(35) *For the reasons set out above* […], [the party] submit(s)/ invite(s) the court […]

The stability of this formula is remarkable and allows assessing its frequency also using software. The overall normalised frequency of "for the reasons set out above" is 9 occurrences and "for the reasons" + other postmodifier (e.g. "given", "summarised") is 17 occurrences, and it is also used in intermediary endings / summaries commonly employed in the English Reference Corpus after different parts of the pleading.

It is interesting to note that the underlying pattern is the same for the Russian Translation Corpus and for the English Reference Corpus: to use a complex connector followed by the reference to the mentioned reasons and facts.

The Italian Translation Corpus uses some ending formula in 90% of the pleadings. However, these formulae appear again to be less conventionalised and thus had to be processed manually. The results are presented in Table 6.12 below.

1	*All this having been expounded and considered, for the reasons invoked* in favour of the hereby application, the Court should
2	*In short*, the Government request the Court…
3	*For all of the above reasons* the Government asks that the application be dismissed.
4	*In the light of the foregoing*, the Italian Government have the honour of asking the Court to declare the application inadmissible or to dismiss it as manifestly ill-founded.
5	*In the light of the foregoing considerations*, the Italian Government has the honour to ask the Court to dismiss the application as ill-founded.
6	*Taking into consideration the above observations*, and also those on the admissibility and the merits of 9 April 2010, the Government asks the Court […]
7	*In the light of the above*, the applicants urge the acceptance of their application as well as of their claim for just satisfaction.
8	*Concluding*, the applicant maintains his complaints.
9	*This being the case*, the plaintiffs as represented and defended above, request that the European Court of Human Rights grants the following CONCLUSIONS […]

Table 6.12: *Ending formulae in the Italian Translation Corpus.*

As Table 6.12 shows, there are two main elements also in the ending formula in the Italian Translation Corpus: a transition indicating the reasons and the party's request. One might see a clear parallel with

the second element in the Russian Translation Corpus, which also makes recourse to the "ask" / "request" structure. Unlike the "invite" element in the English Reference Corpus, "ask" / "request" is characterised by a more direct illocutionary value. The Italian Translation Corpus also deploys once the verb "urge", which is even stronger than "ask" or "request". Moreover, the Italian Translation Corpus includes one ending formulae where the subject is directly the Court and not the party ("the Court should", line 1, Table 6.12), moving the illocutionary force of the phrase closer to the idea of obligation. In general, it appears that the English Reference Corpus uses the least direct request formula and the Italian Translation Corpus uses the most direct request type, with the Russian Translation Corpus being in the middle.

Another interesting point emerges if one looks at the subject of the second element of this formula across the corpora. Whereas the Russian Translation Corpus predominantly uses the first person singular pronoun "I", both in the English Reference Corpus and in the Italian Translation Corpus the parties refer to themselves in the third person using the respective noun – "the Applicant(s)" or "the Government". It must be said, however, that the "I" in the RUTC appears only in the ending formula or in the direct speech in the facts section. The "I" in the ending formula represents the position of the Government's Agent and not a personal identity as clearly shown by the repetitive formula "representing the interests of the Russian Federation, in accordance with the Provisions on the Representative of the Russian Federation at the European Court of Human Rights, approved by the Decree of the President of the Russian Federation" (element 3).

6.1.3.3. Intermediary summaries

As overviewed in 2.5.4, the body part of written pleadings frequently includes intermediary summaries, which recapitulate the position and / or request of the party with regard to the discussed factual or legal point. These summaries function as closing statements after different parts of the pleadings (e.g. summarising the facts or the answer about legal points; see Table 2.4 in 2.5.4 for the structure of written pleadings). Sometimes they are highlighted in bold characters, but sometimes they lack any graphical emphasis. Consequently, they have to be retrieved manually following the structure of each pleading.

It emerges that the summaries are of a varied nature and their variety does not allow an easy, quantifiable and concise exposition, however, along general lines these summaries follow the structure already identified for the closing statements. It starts with

(i) a complex preposition/ adverbial expressing the referential function (e.g. "in the light of", "having regard to"), followed by

(ii) a phrase indicating the previous paragraphs or information presented above ("the above", "the aforementioned", "the matters set out in", etc),

which is then accompanied by a statement expressing the party's position. The latter can

a) start with the already mentioned pattern [Agent + performative verb] (e.g. "I submit", "the Government submit(s)" or "the applicant submits", or in the passive (e.g. "it is submitted", "it is claimed"), followed by the request / summary of a legal/factual position;
b) merely reiterate the facts or points of law of the case as serving the writing party's plea (e.g. "the Respondent Government has not fulfilled its obligation"),
c) can be introduced by the structure [*it is* + Adjective/Participle] (see below); or
d) an indication of the recommended course of action for the Court, typically expressed by "should" (e.g. "The Applicant's attempt to use this Court as a further court of factual appeal should be rejected"), which is addressed in 6.3.

A frequent pattern, recurring in all three corpora, is the construction [*it* + *is* +$\text{Adj}^{\text{opinion/stance/evaluation}}$ + *to* / *that*], e.g. "it is clear that" or "it is important to", or [*it* + *is* + $\text{V}^{\text{perform}}$], e.g. "it is submitted", "it is recognised". Other cases, where "it is" is followed neither by a performative verb in the passive

nor by an evaluative adjective (e.g. “it is open…”, “it is for the court to”) are labelled as “other”. The relative frequencies of these patterns are reported in the Table below.

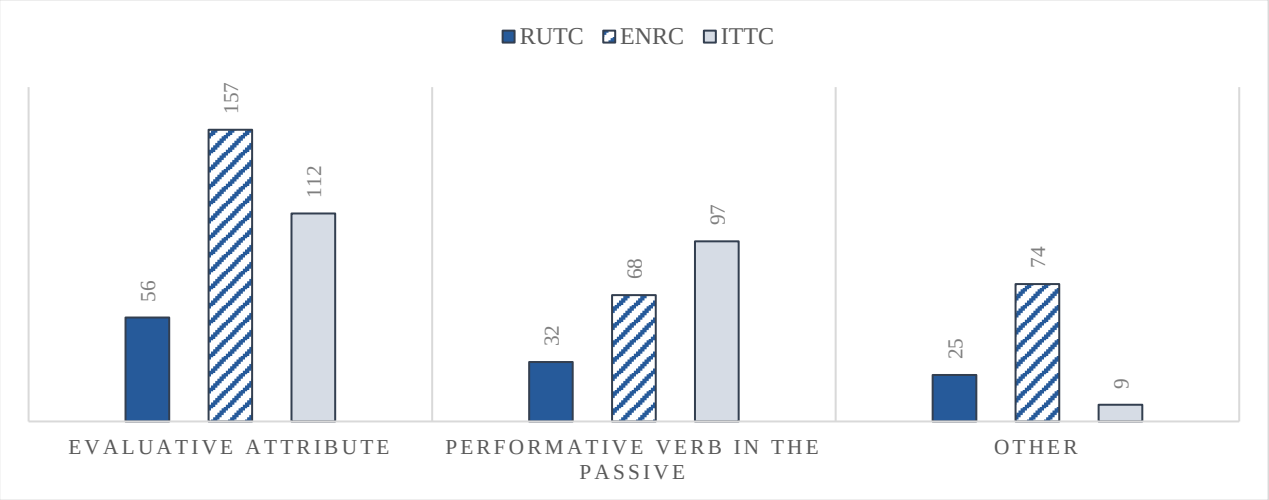


Figure 6.4: *Distribution of the “it is …” pattern across the corpora*.

While the pattern with evaluative attributes performs an argumentative function and forms part of a larger legal reasoning structure (in *italics* in (36)), the pattern with a performative performs a formulaic function and increases the level of formality and politeness (underlined in (36)).

> (36) It is respectfully submitted that the reasoning of Lord Richards is correct and should be adopted by the Court. Having regard, for example, to the matters set out at para. 98 of the Government’s Observations of 27 February 2009, *it is clear* that given the wide margin of appreciation that is to be afforded in relation to matters of social and economic policy, the approach actually adopted in the legislation is an approach properly available, consistent with the requirements of the Convention. [ENRC]

Both the underlined formula and the one in italics could have been omitted without losing the propositional context of the sentence: “the reasoning of Lord Richards is correct and should be adopted by the Court” and “given the wide margin of appreciation that is to be afforded in relation to matters of social and economic policy, the approach actually adopted in the legislation is an approach properly available”. It emerges, thus, that the use of these patterns is rather ceremonial.

The construction above is most often used in the English Reference Corpus, and this can be interpreted as evidence of a major inclination towards argumentative and formulaic sequences. The two types of “it is” pattern combined amount to 225 normed occurrences in the ENRC, which is followed closely by the ITTC with 209 occurrences in comparison with only 88 cases in the RUTC. This does not mean that the Russian Translation Corpus is less formulaic, but that the linguistic realisations of its argumentative formulaic patterns are different (e.g. additional formulae in the government’s initial statements, the increased use of archaic adverbs, direct requests with modal auxiliaries (see 6.3)).

Using the clusters tool of *Wordsmith Tools*, I have calculated the most frequent adjectives and participles after “it is” across the three corpora (range: 3-4 words; horizon: 0L – 4R; minimum normalised frequency: 3). I have also carried out an additional check of each line inserting a wildcard between “it is” and the following word to account for intensifiers.

Word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
It is + performative V / evaluative Adj	88	-65%	225	209	-7%
I. *It is* + verb with a performative value					
It is (*) submitted	3	-89%	28	-	<
It is (*) accepted	-	<	7	-	<
It is (*) noted	1	-75%	4	-	<
II. *It is* + evaluative adjective					
It is (*) necessary	20	+123%	9	19	+110%
It is (*) important	6	-33%	9	17	+90%
It is (*) clear	-	<	19	10	-47%
It is (*) (im)possible	8	+14%	7	8	+14%
It is (*) difficult	-	<	6	6	=

Table 6.13: *Most frequent clusters with "it is" followed by a verb with a performative value or an evaluative adjective across the corpora normalised to 100,000 words.*

It emerges that "it is submitted" is the most frequent type in the English Reference Corpus (-89% in the Russian Translation Corpus; no occurrences in the Italian Translation Corpus). As overviewed in the previous paragraphs, the translation corpora use more direct structures to express the idea of submission and typically use the verb "to submit" in the active form, e.g. "I submit", "the Government submit" or "the Applicant submits" (see more on the [N + V] patterns in 6.2). The same tendency to prefer the active form holds true for other performative utterances (see 6.2). The pattern "it is" + verb form with a performative value seems to be underrepresented in the translated texts.

The structures with an evaluative adjective do not seem to be either under- or overrepresented in the translation corpora, although the Italian Translation Corpus demonstrates a generally higher frequency of this structure with the most salient adjectives. Such patterns are classified as *stance bundles* by Goźdź-Roszkowski (2011: 138-139), who divides them into *epistemic bundles* (expressing the writing party's knowledge status about the propositional content as possible, probable, unlikely, true, etc., see (37) and (38)) and *attitudinal bundles* (describing the writing party's assessment of the actions of events described, see (39) and (40)). Stance bundles are not among the main objects of this study; however, it would be regrettable not to look at them briefly within the grammatical structure under analysis.

(37) *It is possible* that the latter category is even less likely to be able to integrate in their new country and more likely to retain fairly strong links with the UK, where they may have left family and property. [ENRC]

(38) *It is true* that the Court arrived at its conclusion after examining the particular circumstances of the case, notably with regard to the features of the proceedings at issue. [ITTC]

(39) *It is unclear* what the Government means when it states that "*It is difficult* to see why domestic law or the convention should be concerned with anything other than practical reality so far as evaluating the meaning and effect of a defamatory statement is concerned". [ENRC]

(40) Additionally, *it is significant* that the UNHCR has granted the applicants mandate refugee status after determining that they had a well-founded fear of being persecuted and ill-treated, if extradited to China. [RUTC]

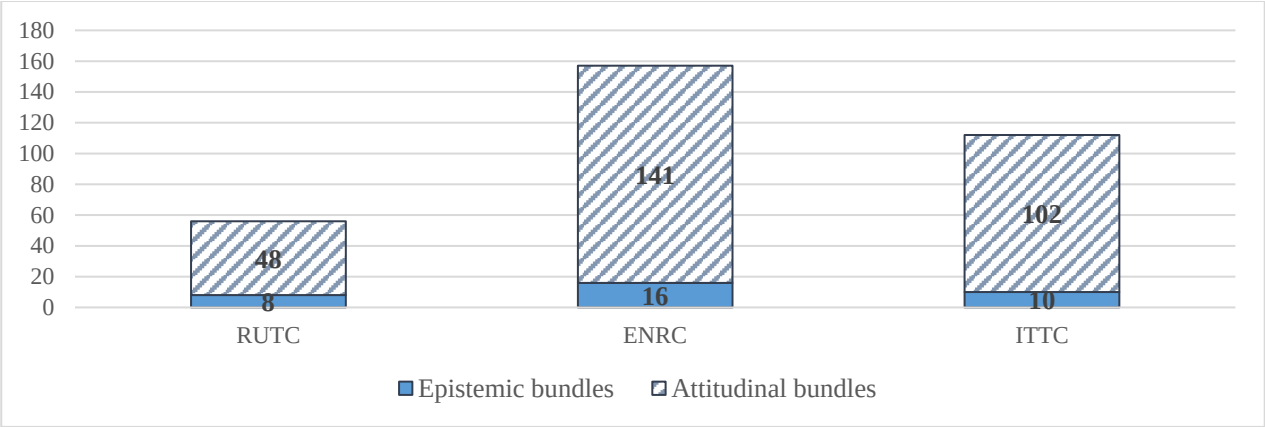


Figure 6.5: *Stance bundles with the grammatical pattern "it is".*

The epistemic bundles are less frequently introduced by the "it is" structure (RUTC: 14%; ENRC: 10%, ITTC: 9%), while attitudinal bundles seem to flourish within this grammatical pattern (RUTC: 86%; ENRC: 90%; ITTC: 91%). It is posited that a trial, and by extension written pleadings, which in the ECtHR context replace the oral procedure, "can legitimately be seen as the construction of a story or stories from at least two perspectives" (Heffer 2010: 200). Each of these perspectives – the Applicant's and the Government's – aim at convincing the Court that their position is correct and that their opponent's arguments, and ideally the application as such, should be rejected. From the analysis of intermediary summaries in written pleading, it emerges that the "it is + evaluative adjective" structure if often deployed for this goal.

One recurrent type of attitudinal bundles is "it is necessary" (NFs in RUTC: 20; ENRC: 9; ITTC: 19). This phrase acts as a phraseological substitute for deontic modal auxiliaries (see 6.3), conveying a directive sense of necessity. It can be used both with verbs with mental semantics (see 6.2.3.2) as in (41) and (43), comparable to discoursal use of some modal auxiliaries (see 6.3.2.2 and 6.3.2.3) as in (42) and (44).

(41) The Government observe that European case law and the question raised by the Court in the instant case are very clear here: *it is necessary* to consider the allegedly less favourable retrospective application of provisions in relation to the time when the offence was committed (see the issue which the Court chose to discuss in the case under consideration) and not in relation to subsequent stages. [ITTC]
(42) […] the criteria for calculation cannot merely indicate a sum per year, since other *factors must be taken into account*, among which the Government attach particular importance to what is at stake in and to the outcome of the case. [ITTC]

(43) In this connection *it is necessary* to note, that preliminary investigation on criminal case repeatedly stopped, then investigation renewed.[RUTC]
(44) *It should be noted* that the courtroom in which the trial was held was also used for other cases during adjournments and rest days. [ENRC]

A range of other evaluative adjectives are used for similar purposes: "clear", "evident" and "obvious" are used to highlight the logical reasoning of the party; "difficult" or "unlikely" – to rebut assertions of the opposite party, and "important", "notable", "significant" and "noteworthy" to focus the Court's attention on certain aspects of the party's position, along with more straightforward cases of "true" and "wrong".

(45) *It is evident* that if there were any suspicions that the Applicant could have obstruct establishment of the truth etc. in this situation they are groundless.[RUTC]
(46) *It is difficult* to imagine that an individual might also take account of criminal procedure, in other words procedural method, which is normally inherently retroactive, when deciding to commit an offence. [ITTC]

(47) *It is important* to proceed from the assumption that not every violation of the reasonable time requirement necessarily causes non-pecuniary damage. [ITTC]
(48) *It is true* that when one has to balance rights such as freedom of expression against other rights such as privacy or access to a court, there has to be, […], "an intense focus on the comparative importance of the specific rights being claimed in the individual case". [ENRC]
(49) *It is wrong* to assert that the outcome of the proceedings would have been no different had the burden of proof been on McGathings. [ENRC]

It is characteristic of such stance patterns that they are in intermediate or final position, following the report or description of the matters of fact or law which are being discussed, and are often introduced by a referential complex preposition (see Chapter 5).

6.1.3.4. Synthesis

The phenomenon of formulaic language has been addressed from a variety of perspectives over the years, including their generic use in legal discourse. Subsection 6.1.3 has looked at the linguistic patterns, which are used for structuring the genre of written pleadings: opening statements, closing statements and intermediary summaries. Several observations could be made with regard to the use of routine formulae in written pleadings before the ECtHR. It would seem that the Government's observations are more routinized and prefabricated than the Applicant's observations, which seems logical because the context of applicants is less institutionalised and formulaic than the governmental environment. The routine formulae used for opening and closing statements frequently adduce evidence of discourse transfer and interference from the source legal discourse, which is also visible through some inconsistencies at the level of near-synonymous expressions. Nonetheless, these statements, as well as intermediary summaries, make use of the same prototypical structure, composed of a reference to what has been previously said, typically preceded by a complex preposition or an adverbial, and a statement / request formula. The latter element presents a cline of request forms, ranging from a more hedged version in the passive (e.g. "it is submitted" most frequently used in the English Reference corpus), the active form of a performative verb, either in the first person singular ("I submit", most recurrent in the Russian Translation Corpus) or in the transposed third person ("The Applicant submits", frequent in all three corpora), to a direct call for action ("the Court should", more frequent in the Italian Translation Corpus). Finally, a distinct "grammatical pattern" (Biel 2014b: 179) emerges, which is frequently used in the intermediary summaries and is built around the "it is" structure, followed either by the performative passive, or by an evaluative adjective. The latter type performs an argumentative function permeating the dialogic genre of written pleadings.

6.1.4. Synthesis of formulaic units in written pleadings

This section has overviewed the frequency and distribution of three categories of formulaic multi-word units in written pleadings, namely, (1) binomials and multinomials, (2) archaisms and (3) routine formulae.

It is interesting to observe that the three corpora have different distributional tendencies for these phraseological units, which results in different genre classifications under the phraseological profile of formulaic multi-word units. The routine formulae are present in all three corpora; however, under probable influence of interference and legal discourse transfer from the respective languages, their linguistic realisation is different as already overviewed in 6.1.3. A common grammatical pattern emerges within the so-called intermediary summaries, i.e. the use of "it is" followed by evaluative and performative utterances, including its occurrence in attitudinal bundles. However, this pattern qualifies as a positive marker of written pleadings only in the Italian Translation Corpus and in the English Reference Corpus.

An interesting dichotomy concerns the use of binomials and multinomials: while the former are positive markers, the latter are negative markers, and this tendency is convergent across the three corpora. Archaisms, on the other hand, are characteristic only of the translation corpora, which signals their greater reliance on these conventional markers of legal English.

	RUTC			**ENRC**		**ITTC**		
Marker	**NF**	**Cf. ENRC**	**Marker status**	**NF**	**Marker status**	**NF**	**Cf. ENRC**	**Marker status**
binomials	274	-31%	**yes**	399	**yes**	226	-43%	**yes**
multinomials	17.8	+197%	no	6	no	64	+965%	no
archaisms	214	+251%	**yes**	61	no	149	+144%	**yes**
Opening statements	90%[55]		**yes**	90%	**yes**	60%		**yes**
Closing formulae	74%		**yes**	50%	**yes**	90%		**yes**
Intermediary summaries	n/a			n/a		n/a		
it is + evaluative / performative utterances	88	-61%	no	225	**yes**	209	-7%	**yes**
it is in attitudinal bundles	48	-66%	no	141	**yes**	102	-28%	**yes**

Table 6.14: *Synthesis of formulaic units in written pleadings*.

[55] As the opening statements and closing formulae are building blocks of a written pleading, they normally occur only once in a pleading, consequently their normalised frequency is insignificant. Yet, they are important for the characterisation of genre, thus I use the percentage of pleadings that make recourse to these building blocks to define their markedness for the genre. E.g. 90% of pleadings in the Russian Translation Corpus use opening statements. The threshold is set at ≥50% to define the positive status of a legal style marker.

6.2. Term-related units

As already observed in previous chapters, most studies of legal phraseology and translation of legal phraseology focus primarily on term-related lexical collocations and translation of multi-word terms, which are the object of this section. As their denomination already suggests, these phraseological units are centred around terms. Consequently, their analysis envisages a preliminary step of selecting the nodes (6.2.1) on the basis of the wordlists and keywords lists of the three corpora. Then the selected nodes are subdivided into smaller categories and analysed as part of multi-word terms (6.2.2) and verbal collocations with a term (6.2.3).

The first research question of this section concerns the identification of possible nodes for multi-word terms and collocations with a term. What lexical nodes are the most recurrent in written observations? Are there any similarities and differences across the corpora? The second research question concerns the patterns, which are used to build term-related units. Are there any preferential patterns in the translated and non-translated pleadings? Are these patterns divergent or convergent? Finally, with regard to [N + V] collocations, this section addresses the question of what types of verbs are most frequently used with the identified terms.

6.2.1. Identification of lexical nodes

Section 6.2 is based on the data of keywords lists and wordlists generated by *Wordsmith Tools*, which I used to extract lexical nodes for further multi-word analysis. Wordlists of 50 most frequent lexical words[56] in the Russian Translation Corpus, the English Reference Corpus and the Italian Translation have many items is common (e.g. "Court" is #1 and "case" is #3 lexical word in all three corpora). Their salience in all three corpora indicates their distinctiveness with respect to the genre of written pleadings and to legal discourse in general. At a first reading, the identified items present vivid regularities. All three corpora use words pertaining to the legal and judicial system and, in particular, answer some of the key *wh*-questions, drawing a systemic picture already in the top 15 types: "applicant", "court", "case", "law", "article", "application", "European", "government" / "authorities" as well as mention the name of the respective State. Further on, other procedural issues start to loom: "proceedings", "trial", "procedure", "legal", "information", "fact", "justice", "hearing", "file", "claim" and mention is made of "convention", "right" and "rights" as well as "violation", "damage" and "costs". The centrality of these notions for the genre of written pleadings – the main vehicle that carries out the written procedure before the ECtHR – becomes evident. Hence, the identified notions are clear candidates for the status of nodes for further phraseological analysis. Additionally, these notions pertain to the general procedural organisation of pleadings shared by all three corpora and, consequently, any specific thematic variables are not problematic for the analysis.

However, each wordlist contains also some words that do not occur in the list of 50 most frequent lexical words of the other two corpora. These are typically terms indicating text content, or the so-called "aboutness" (Scott 2015: 236), where differences are inevitable as the range of rights and freedoms protected by the Convention and treated in the pleadings is rather wide. These words are automatically identified through the Keywords function[57]. The Keywords lists make it clear that the three corpora deal with different topics, which is inevitably reflected in divergent vocabulary. The obvious thematic difference is observed through terms denoting criminal matters ("criminal",

[56] In order to create this list, I have eliminated the so-called stopwords: conjunctions, prepositions, pronouns, possessives, primary verbs "to be", "to do" and "to have" in their different forms, personal names (with the exception of names of the respective states), months and numbers.

[57] The Keywords are generated using default settings of WordSmith Tools 6.0 in different configurations: comparing the Russian Translation Corpus to the English Reference Corpus, comparing the Italian Translation Corpus to the English Reference Corpus and comparing the two translation corpora.

"investigation", "investigative") and civil matters ("trade", "religious"). It must be said that already at the sanitising stage it was observed that the Russian Translation Corpus consists of texts predominantly dealing with criminal matters (Articles 2, 3 and 5 ECHR), the English Reference Corpus mostly concerns civil issues, such as right of expression, labour rights, etc. (Article 10 ECHR), and the Italian Translation Corpus deals with both limbs of the Convention. All three corpora often concern the right to a fair trial (Article 6 ECHR). Since some thematic discrepancies are unavoidable due to the wide-ranging protection offered by the Convention, these differences are accepted without delving into any comparative notional analysis as such items do not constitute the primary object of this analysis. In addition, some typical dissimilarities between common law and civil law can be also observed. For example, the notion of *disclosure* emerges on position #38 in the English Reference Corpus, with normalised frequency of 120, in comparison with only 5 hits in the RUTC and no occurrences in the ITTC. This typically common law notion concerns the process of revealing evidence as discussed by Martin (2006: 152-154) in the *Oxford Dictionary of Law*, which under the conceptual perspective differs from the Russian or Italian reality in this field. The issue of culturally or systemically-bound terminology translation is widely addressed in the literature on legal translation (e.g. Šarčević 1997) and is not discussed in this study.

Yet, other terms, which do not cover systemic (e.g. "disclosure") or thematic (e.g. "criminal" in RUTC vs. "religious" in ITTC") differences, and occur only in one or two out of three corpora, have to be analysed as potential signs of overreliance on TL repertoremes or interference / discourse transfer. Typically these terms occur in the translation corpora without being proposed among the most frequent terms in the reference corpus, which would sustain the hypothesis about potential differences of the translated versus non-translated texts. Keywords lists also shed light on different distribution of function words, which tend to be "key indicators more of style than of *aboutness*" (Scott 2015: 236). However, this section looks at term-related units, typically built around such central parts of speech as nouns, verbs and, to a lesser degree, adjectives, and consequently does not look directly at differences identified on the functional level, with exception of paragraph 6.2.2.3, which deals with *of*-sequences.

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
I. Institutional and procedural nodes					
Court	1083	+52%	712	823	+16%
Proceedings	173	-23%	226	248	+10%
Trial	79	-74%	301	47	-84%
Hearing	108	+39%	78	125	+60%
Procedure	186	+480%	32	145	+350%
II. Agentive nodes					
Applicant	798	+37%	584	395	-32%
Applicants	263	-53%	559	186	-67%
Government	284	-11%	320	281	-12%
Authorities	434	+1700%	24	95	+300%
III. Legal framework nodes					
Convention	456	+118%	209	274	+31%
Right	117	-45%	215	168	-22%
Rights	205	-5%	216	140	-35%
Article	637	+25%	511	393	-23%
Violation	132	+256%	37	119	+222%
Observations	94	-53%	203	106	-48%

Table 6.15: *Relative frequencies of the most frequent lexical words across the corpora.*

Based on the three wordlists of 50 most frequent lexical words, with the supplement of keywords lists, I have manually sorted and categorised into three groups those nodes that appear to be typical of written pleadings before the ECtHR:

1) Institutional and procedural nodes ("court", "application", "case", "proceedings", "trial", "hearing", "procedure");
2) Agentive nodes ("Court", "Applicant", "Applicants", "Government", "authorities");
3) Legal framework nodes ("Convention", "right", "rights", "violation", "law", "observations").

The categories largely resemble those discussed by Breeze (2013) in her paper on 4-gram lexical bundles across four genres as "content phrases" (see 2.6.2). However, Breeze (2013: 235) groups together content-related bundles denoting people and institutions under the label "agents", while I decided to separate them and instead group institutional nodes with procedural ("actions" / "abstract concepts" in Breeze 2013), because the procedural order of pleadings is conditioned by the institutional context of the ECtHR. The legal framework nodes could be compared to "documents (legislation, contracts, sections or clauses of documents)" and "abstract concepts (consent, obligations, rights, requirements)" in Breeze (2013: 235).

Table 6.15 presents normalised frequencies of these nodes as well as comparison in distribution between the translated corpora and the reference corpus, expressed in per cent. The latter is calculated following the formula: *((translation corpus value) - ENRC value) ÷ ENRC value.*

The underlined words seem to be underrepresented in the translated texts, while the words indicated in *italics* are more frequent in the translated texts than in the reference corpus, which could be caused by overreliance on conventional repertoremes of legal English or interference / discourse transfer. Finally, the words underlined by a curvy line indicate their higher frequency in just one translated corpus.

The identified nodes are first analysed for their multi-word potential (6.2.2) and then for other collocations, specifically those that follow the [N + V] or [V + N] pattern (6.2.3). The agentive nodes are analysed only for collocations with a verb. The word "court" is analysed also together with agentive nodes, because it answers both the question of *where* the action is taking place and *who* takes certain decisions and actions.

6.2.2. Multi-word terms

Multi-word terms are "collocates of a generic term which form more specific multi-word terms of varying degrees of terminologicality" (Biel 2014b: 180). The prototypical structure of multi-word terms is [N + N] or [Adj + N]. The following paragraphs discuss the salient multi-word terms with the identified nodes.

6.2.2.1. Institutional and procedural multi-word terms

Institutional and procedural multi-word units are those phraseological units which refer to the institutional settings of written pleadings and to their procedural aspects.

Word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
I. Common types of courts					
Court	1083	+52%	712	823	+16%
European Court	292	+1115%	24	120	+400%
Supreme Court	42	+365%	9	30	+235%
Constitutional Court	30	>	-	75	>
Court of appeal	-	<	100	12	-88%
Domestic court	-	-	23	-	-
National court	-	-	-	37	>
II. Courts with a national specific					
House of Lords	-	<	73	-	<
High Court	-	<	55	-	<
Court of Cassation	-	-	-	45	>
District court	142	>	-	-	-
Region / regional court	31	>	-	4	>
City court / court of city	27	>	-	-	-
Court of the Republic	10	>	-	-	-

Table 6.16: *Relative frequencies of the attributes co-occurring with "court".*

The first lexical word in all three corpora is "court", which immediately places written pleadings as a genre occurring in connection with the court system (see 2.4.2 on legal genres). It is interesting to look at types of courts, which are referred to in the texts. Through the function of clusters (2-4 words) of *Wordsmith Tools* and a subsequent check through concordance lines, I have identified attributes of the type "court", represented in the table below.

It is interesting to observe that while the "European Court" occupies the leading position in both translation corpora, it is much less frequent in the English Reference Corpus (-1115% than RUTC; -400% than ITTC), evidently giving more weight to the positions of such domestic courts as the Court of Appeal (RUTC: no; ITTC: -88% than ENRC) and the High Court (NF: 55, no hits in other corpora). Other types of higher national courts are also mentioned, such as "Supreme Court" (RUTC: +365%; ITTC: +235% in comparison with the ENRC) and "Constitutional Court" (no mention in the ENRC). Naturally, the absence of "Constitutional court" and scarce presence of "supreme court" in the reference texts is attributable to the peculiarity of the UK judicial system, where there is no constitutional court and a separate supreme court was established only in 2009, thus covering only tangentially the timespan within which the reference pleadings were produced. The functional judiciary equivalent of the civil-law Supreme Court in the system of England and Wales until 2009 was the *House of Lords*, and this multi-word term's normalised frequency is 73. Obviously, different attributes describe different judicial systems. For instance, no mention of the "Court of Cassation" (typically Italian) is made in the RUTC or in the ENRC. Similarly, no mention of "court of appeal"

or "appeal court" is made in the Russian Translation Corpus, as the system of appeal courts (meaning courts of second instance) in Russia was introduced only in 2012[58].

It is remarkable that the reference corpus uses "domestic court", which is underrepresented in both translation corpora. To express the same concept the Italian Translation Corpus uses "national court" (see (50) and (51)). In general, "domestic" seems to be consistently underrepresented in the translation corpora in combination with other nodes identified (see, for example, "proceedings" below).

(50) However, this is nothing more than an attempt to appeal to this Court against the judgment reached in the *domestic court*. [ENRC]
(51) However, the Court cannot suggest a different reading of the data of the case or replace the empirical data used by the *national court* with what it considers to be better ones. [ITTC]

The Russian Translation Corpus uses for the same purposes a more elaborate taxonomic system and frequently employs the pattern "-instance court", which is realised in such multi-word terms as "first-instance court", "cassational-instance court" and is mirrored to a certain extent in the pattern with post-modification "court of [attribute] instance", as in "court of first instance", "court of supervisory instance". Additionally, one can presume a certain hierarchy of Russian courts based on the administrative-geographic area to which they are tied: "district court", "region court", "city court", "court of the republic of". Although these courts have different denominations, they are of equal standing. In fact, as described in the Russian Federation's judicial profile[59] on the Council of Europe's website in the section of the European Commission for the Efficiency of Justice, in Russia first-instance cases can be heard by a number of courts depending on the case type, so they often bear different names even though they carry out the same functions, those of a trial court.

> Republics, territories, regions, cities of federal importance, autonomous region and autonomous areas are different names for the constituent entities of the Russian Federation. Despite the different names, all the 83 constituent entities of the Russian Federation are equal in rights and the powers and the statuses of the corresponding courts are also equal (2011: 2, online).

A peculiar attribute is found in the Italian Translation Corpus: "Honourable Court". It occurs only in one pleading so can be ascribed to the idiosyncratic style of the drafter / translator, but as it clearly addresses the ECtHR in a direct way, it is a fascinating case (52), which transposes the Italian interpellation style during oral court proceedings (52a) to the written medium, making it an example of discourse transfer.

(52) Actually, as *this Honourable Court* perfectly knows, the applicants have no possibility of being compensated under national law for the restrictions in view of the expropriation and the so called "zona Bianca" (white zone). [ITTC]
(52a) In realtà, come è bene noto a *codesta On.le Corte*, i ricorrenti non hanno alcuna possibilità sul piano nazionale di essere indennizzati per i vincoli preordinato all'esproprio e di c.d. "zona bianca" [ITST]

Other possible multi-word terms with "court" are also collected using the Clusters function of *Wordsmith Tools*.

[58] Before 2012 a first-instance decision could be challenged through the so-called cassational procedure. Civil appeal procedure entered into force in 2012, see Federal Law no. 353 of 09.12.2010, while criminal appeal was introduced in 2013, see Federal law no. 433 of 29.12.2010. The judiciary system was reformed under Federal Constitutional Law n. 1 of 07.02.2011.

[59] "The court system of the Russian Federation (as of 1st January 2011)", http://www.coe.int/t/dghl/cooperation/cepej/profiles/CourtSystemRussia_en.pdf

N	RUTC	NF	ENRC	NF	ITTC	NF
1	Court hearing(s)	23	Court act	23	Court-appointed lawyer / consultant	12
2	Court decision	16	Court proceedings	9	Court itself	8
3	Court proceeding(s)	15	Court days	9	Court's jurisprudence	8
4	Rules of court	14			Court's attention	6
5	Court examination	7			Court judgment	6
6	court judgment	4			Court's examination	4
7	Court session	3			Rules of court	4

Table 6.17: *Other clusters with "court".*

In contrast with the multi-word terms included in the previous table, in these patterns "court" is a premodifier of the node [N_{court} + N^{node}]: "court proceedings", "court session", "court examination", "court judgment", "court days". The Italian Translation Corpus presents dissimilarities to the other two corpora in its use of the clitic *'s*: "court's jurisprudence", "court's examination" and "court's attention". Along with "court itself" these construction in the Saxon genitive shift the attention from court as an institutional environment to its agentive role in the proceedings as personification of judges (see 6.2.3).

Another important word referring to the procedural order is "proceedings", which tends to be slightly underrepresented in the Russian Translation Corpus (-23%) and is used 10% more often in the Italian Translation Corpus.

Word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Proceedings	173	-23%	226	248	+10%
I. Specific types of proceedings					
Criminal proceedings	78	+765%	9	8	-11%
Civil proceedings	5	=	5	4	-20%
Defamation proceedings	-	-	20	-	-
II. General types of proceedings					
Domestic proceedings	-	-	27	-	-
Legal proceedings	4	-69%	13	4	-69%
Court proceedings	12	+33%	9	-	-
Judicial proceedings	-	-	-	8	>
Proceedings before (the (*) Court / House of Lords)	5	-50%	10	12	+20%
Appeal proceedings	-	<	6	10	+67%
First-instance proceedings	-	-	-	14	>
III. Other multi-word terms with *proceedings*					
*Length of the * proceedings*	19	+852%	2	8	+300%
Duration of proceedings	1		-	18	>
Cf. length / duration of the trial	-	<	7	-	<
The course of (*) proceedings	-		6	8	+33%
Fairness of the proceedings	-		-	14	>
Participants of * proceedings	6		-	-	
Victims in criminal proceedings	4		-	-	

Table 6.18: *Clusters with "proceedings".*
Legend: Single-line underlining = underrepresentation; curvy-line underlining = higher frequency just in one corpus; *italics* = higher frequency in both translation corpora.

Table 6.18 shows multi-word terms, where "proceedings" figures as one of the elements in the range 4L – 4R, consisting of 2-6 words with a minimum threshold of 3 occurrences in different texts. I have replaced with an asterisk (*) some attributes or other specifications and taken account of the variability of article (sometimes present and sometimes absent) so that the patterns could be more visible.

With regard to multi-word terms based on "proceedings", the following items should be mentioned: "criminal proceedings" (RUTC: +465%; ITTC: -11%) as opposed to "civil proceedings" (RUTC NF = ENRC NF; ITTC: -20%) and "defamation proceedings" (only in the ENRC); with all these multi-word terms signalling the *aboutness* of pleadings. On a more general level, proceedings are also classified as "court proceedings" (only RUTC and ENRC) vs. "judicial proceedings" (only ITTC) and "legal proceedings" (RUTC: -69%; ITTC: -69%). It is interesting to observe a certain dichotomy between the multi-word terms "court proceedings" in the Russian Translation Corpus and the English Reference Corpus and "judicial proceedings" in the Italian Translation Corpus. The respective Russian term is a compound noun *судопроизводство* (coined from two nouns *суд* + *производство*) or the multi-word term *судебное разбирательство*, which follows the pattern [Adj + N]. The respective Italian term is *giudizio* (literally "trial") or *procedimento* (literally, "proceedings"), which is sometimes accompanied by the adjective *giudiziario*. It would seem that the similarly sounding *giudizio* and "judicial" tipped the translation scale to this solution instead of "court proceedings". Other types of proceedings also emerge: "judicial review proceedings", "appeal proceedings" and "first instance proceedings", which follow the term-forming pattern of [(Adj)N + N]. In addition, one may trace certain institutional indications of where the proceedings take place: "domestic proceedings" (only in the ENRC) and "proceedings before the [attribute] Court" (RUTC: -50%; ITTC: +20%). The former shows a similar trend to disprefer the adjective "domestic" in translations, already observed in combinations with "court". It would seem that this adjective tends to be underrepresented in translations (RUTC: -55%; ITTC: -90%).

The pattern "proceedings before the [attribute] Court" is a borderline case between a term-embedding collocation and a multi-word term, following the structure [$N_{proceedings}$ + $Prep_{before}$ + Art_{the} + [N_{attr}+N_{court}] or [Adj + N_{court}] or [N_{court} + $N_{postmod}$]], where two (multi-word) terms are conceptually connected by the preposition "before" and imply "that are held", creating a certain cognitive frame but at the same time denoting a particular type of institutional proceedings. A similar pattern is observable also in "written pleadings before the European Court of Human Rights". Other multi-word terms do not denote specific types of proceedings, but rather adjacent concepts, such as "participants in (the) proceedings", "victims in criminal proceedings" (RUTC) and "defendant in the proceedings" (ENRC).

All three corpora refer to the length of proceedings: "length of (the/attribute) proceedings" (RUTC: +852%; ITTC: +300%), "duration of (the/attribute) proceedings" (no hits in the ENRC), often accompanied by the attribute "excessive": "the excessive length of criminal proceedings" and "the excessive duration of proceedings". Interestingly, the English Reference Corpus employs a parallel variant "length / duration of the trial", thus shedding light on the near-synonymy between "proceedings" and "trial" and possible underrepresentation of the latter in favour of the former. The term "trial" is underrepresented both in the Russian and in the Italian translation corpora (RUTC: -68%; ITTC: -81%). The negative keyness of this term in the translation corpora cannot be explained by the dissimilarities in the legal systems or thematic components as it pertains to a procedural stage existing in all three systems with reference to either criminal or civil matters. Moreover, this term pertains to the fundamental principle of *a fair trial* set forth in Article 6 ECHR and in the case law of the ECtHR, yet the Italian Translation Corpus employs "fairness of (the) proceedings" almost as frequently as "fair trial", signalling that these two terms are perceived as synonymous. The Oxford Dictionary of Law (Martin 2006: 508-509) defines *trial* as "the hearing of a civil or criminal case before a court of competent jurisdiction", whereas *a trial court* is "a court before which trials take

place in the first instance; distinguished from an appeal court" (OED, online)[60], and a trial judge is a judge hearing a first-instance case. However, it would seem that in this second meaning "trial" is not used in the translation corpora, replaced by "proceedings" and "hearing".

Table 6.19 shows the most frequent clusters of "trial" in the three corpora, calculated through the respective function of *Wordsmith Tools* (length: 2-3, 3L – 4R, at least 3 occurrences).

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Trial	79	-74%	301	47	-84%
Trial judge	1	-98%	54	-	<
Fair trial	3	-88%	26	12	-54%
Pre-trial investigation	17	>	-	2	
Pre-trial hearing(s)	-	<	9	<	-
Trial hearing	-	-	-	8	>
Pre-trial damage	5	>	-	-	-
Pre-trial detention	4	>	-	-	-
Trial transcript day	-	<	7	-	<
Length of the trial	-	<	5	-	<
Course of the trial	-	<	5	-	<

Table 6.19: *Clusters with "trial"*.

Table 6.19 shows that most clusters with "trial" are underrepresented in the translation corpora, with the exception of a group of multi-word terms with "pre-trial" as a premodifier. As emerges from the analysis of the clusters and concordance lines, both the ITTC and the RUTC use "trial" mostly as a synonym for "hearing"/ "proceedings".

> (53) It should be re-emphasised that the applicant was charged with crimes punishable, at the time when they were committed, by life imprisonment with daytime solitary confinement and that the law then precluded *trial* for such crimes under the shortened procedure. [ITTC]
> (54) […], if holding in custody as a measure of restraint was imposed on a defendant on *trial*, the time limit of his holding in custody shall not exceed six months from the day of the entry of a criminal case in the court to the day of the rendering judgment. [RUTC]

The Russian Translation Corpus uses "trial" only in 3 cases as an attribute standing for the first instance court/judge, and the Italian Translation Corpus uses it in this sense in 4 cases. The English Reference Corpus, on the contrary, uses "trial" most frequently in a multi-word term "trial judge" (NF=54), meaning the judge who hears the case in the first instance.

A stable combination in all three corpora is "pre-trial", although the Russian Translation Corpus combines it into "pre-trial investigation", "pre-trial detention" or "pre-trial damage(s)", while it is mostly used in "pre-trial hearing(s)" in the ENRC. In the Italian Translation Corpus it collocates as "pre-trial proceedings" and "pre-trial investigation". Altogether "trial" is underrepresented in the translation corpora, which make recourse to its near-synonyms "proceedings" and "hearing". The Oxford Dictionary of Law (Martin 2006: 228) explains *hearing* as "the trial of a case before a court".

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Hearing	108	+39%	78	125	+60%
Court hearing	18	+1700%	1	-	

[60] "trial, n.1." *OED Online*. Oxford University Press, June 2017. Web. 24 July 2017.

Word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Preliminary hearing	7	>	-	4	>
Fair hearing	1	-85%	7	1	-85%
Public hearing	1	-80%	5	8	+60%
Trial hearing	-		-	8	>
Notice setting the case down for hearing	-	-	-	10	>
Appeal hearing	-	-	4	28	+600%

Table 6.20: *Multi-word terms with "hearing".*

A peculiar pattern in the Italian Translation Corpus is "trial hearing".

(55) On 25 May 2001 the hearing was adjourned till the 5 June 2001 because of failure to appear of the applicant, of his counsel and witnesses who had been informed of the date of the *court-hearing* in proper time. [RUTC]
(56) The Court considers that this case comes, above all, within the field of Article 6.3 (e) and it reiterates, in this connection, that the right, stated in this Article, to the free assistance of an interpreter applies not only to oral statements made at the *trial hearing* but also to documentary material and the pre-trial proceedings. [ENRC]

Tables 6.18-6.20 show similarities of collocability of "hearing" with "trial" and "proceedings", which corroborates its near-synonymous nature. We can compare "fairness of proceedings" with "fair hearing" and "fair trial", "appeal proceedings" with "appeal hearing", "public hearing" with "public trial" and "public [court] proceedings", etc.

(57) The purpose of a public *hearing* is to protect litigants against the administration of justice in secret and with no public scrutiny. [ENRC]
(58) The reason for that entitlement, and the purpose of a public *trial*, is to protect litigants against the administration of justice in secret and with no public scrutiny. [ENRC]
(59) Parliament also recognised that, in certain circumstances, the interests of justice would require the balance to be struck in favour of restricting publication, even of a fair and accurate report of public *court proceedings*. [ENRC]

Naturally, there are certain notional limitations, e.g. "appeal hearing" but not "appeal *trial", which reminds us of the importance of phraseological attitude towards translation of multi-word terms.

Word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Procedure	186	+480%	32	145	+350%
Criminal procedure	87	>	-	30	>
Civil procedure	13	+550%	2	-	<
Code of criminal / civil procedure	61	>>	-	24	
Judicial procedure	5	>	-	-	-
Effective and accessible procedure	-	<	6	-	<
Appropriate procedure	-	<	4	-	<
Rule 6 procedure	-	<	4	-	<
Appeal procedure	-	<	2	-	<

Shortened form of procedure	-	-	-	32	>>

Table 6.21: *Clusters with "procedure".*

Finally, Table 6.21 gathers clusters of the term "procedure". Its normalised frequency is significantly higher in the translation corpora (RUTC: +480%; ITTC: +350%), which could be interpreted as a sign of interference. However, it is not caused by the translation process, but by systemic differences between common law systems and civil law systems. The latter heavily rely on codified law, with such multi-word terms as "code of criminal procedure" and "code of civil procedure". There is also a multi-word term imported from the Italian legal system – "shortened form of procedure", which stands for *giudizio abbreviato* or *rito abbreviato*[61]. Remarkably, in the latest unofficial translation of the Italian Code of Criminal Procedure, edited by M. Gialuz, L. Luparia and F. Scarpa (2014), this multi-word term is rendered as "summary trial" (2014: 343), making recourse to the term "trial", underrepresented in the translation corpora. It is also noteworthy that the pattern with "procedure" in combination with vague adjectives ("appropriate procedure"), forming binomials ("effective and accessible procedure") and nouns acting as premodifiers ("appeal procedure") is underrepresented in the translation corpora.

6.2.2.2. Multi-word terms referring to legal framework

Multi-word terms discussed in this paragraph refer to the legal framework, where written pleadings are inserted. First of all, the type "convention" has to be discussed. The most widespread word combination with "convention" is "article [number] of the convention", where the number of the article changes according to the alleged violations, making it difficult to elaborate through the clusters function because of a variety of different numbers. Consequently, I opt for the *patterns* function, where the lexical collocations are easily identifiable with the naked eye. Then I check every word combination through the respective search requests, using wildcards where necessary. For instance, "convention" is placed in the central column and "rights" is placed in L4 column, meaning that there are two empty slots between "rights" and "convention", which I denote with two wildcards in the search request. The results are reported in the table below.

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Convention	456	+118%	209	274	+31%
Article [no] of the Convention	308	+205%	101	93	-8%
Violation(s) of the convention	8	+14%	7	10	+43%
Violation of article [no] of the convention	56	+2700%	2	2	=
Provisions of the Convention	8	>	-	8	>
European Convention	20	+122%	9	2	-78%
Convention for the protection of human rights and fundamental freedoms	14	>	-	-	-
Right(s) guaranteed / provided by the Convention	6	+20%	5	4	-20%
Convention rights	-	<	20	-	<
Convention argument	-	<	5	-	<

[61] *Giudizio abbreviato* is codified in Book VI, Title I of the Italian Code of Criminal Procedure, art. 438, 441 and 441bis. Remarkably, in the latest unofficial translation of the latter edited by M. Gialuz, L. Luparia and F. Scarpa this multi-word term is rendered as "summary trial" (2014: 343).

Argument under the convention	-	-	-	4	>

Table 6.22: *Multi-word units with "convention".*

References to the Convention are by 118% more frequent in the Russian Translation Corpus and by +31% in the Italian Translation Corpus than in the English Reference Corpus. The most recurrent in all three corpora multi-word term "article [number] of the Convention" can be also defined as a *domain-specific terminological bundle* (Goźdź-Roszkowski 2011: 119), which is a subtype of *legal reference bundles* in Goźdź-Roszkowski's taxonomy, i.e. those multi-word units, which make "direct reference to abstract or physical objects in the world of law" (2011: 117). In the Russian Translation Corpus its use is by 205% more frequent than in the reference texts. The same pattern, preceded by "violation" - "violation of article [number] of the convention" (RUTC: + 2700%) is clearly disfavoured in the other two corpora, which could be interpreted as a sign of legal discourse transfer from Russian. Remarkably, "European Convention" is not a very frequent combination because most texts use the shorthand "Convention"; and its use is + 122% more salient in the Russian Translation corpus than in the English Reference Corpus. It would seem that out of the three corpora, the Russian Translation Corpus tends to make references to legal sources in the most explicit way; it is also the only one to use the entire title of the Convention – "Convention for the protection of human rights and fundamental freedoms".

In contrast with the translation corpora, the English Reference Corpus uses "convention" also as a premodifier: "convention rights", "convention arguments", "convention system". Similar noun clusters, which are not linked by a preposition as occurs in the translation corpora, appear to be a peculiarity of specialised discourse in modern English (Leech *et al.* 2009: 215-217) (see 6.2.2.3). The cluster "convention rights" is rendered more explicit in the translation corpora: "rights guaranteed by the convention", which has a near-synonymous version in the Russian Translation Corpus "rights provided (for) by the convention". A similar tendency to a more explicit clustering is observed in the Italian Translation Corpora with "argument under the convention" as opposed to "convention argument" in the reference texts.

The same clusters are also identifiable when one looks at combinations with "rights" and "right": "rights provided (for) by" (11) and "rights guaranteed by" (9) in the Russian Translation Corpus. Table 6.23 below present multi-word terms with "rights" and "right" respectively.

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Rights	**205**	**-5%**	**216**	**140**	**-35%**
Human rights	80	+105%	39	73	+87%
European Court of Human Rights	36	+125%	16	48	+200%
Violation(s) of (*) rights	21	+320%	5	4	-20%
Breach of (*) rights	1	-90%	10	2	-80%
Rights provided (for) by	11	>	-	-	-
Rights guaranteed by	9	+80%	5	2	-60%
Rights under article	2	-87%	15	2	-87%
Convention rights	-	<	9	-	-
civil (and political) rights	3	-77%	13	6	-54%
Applicant's / applicants' rights	8	+14%	7	-	-
Protection of (*) rights	2	-66%	6	-	-
Interference with (*) rights	-	-	22	2	-91%
Enjoyment of (*) rights	-	-	4 (right)	6	+50%
Right	**117**	**-45%**	**214**	**168**	**-22%**
Right to life	22	>	-	1	>
Right to vote	-	<	31	-	-

Word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Property right	-	-	-	15	>
Applicant's / applicants' right	5	-58%	12	13	+8%
Convention right	-	-	9	-	-
Interference with (*) right	1	-86%	7	2	-72%
Protection of (*) right	7		-	-	-
Violation of (*) right	6	>	-	1	-
Breach of (*) right	1	-86%	7	-	-
Exercise of the right	-	-	-	6	>

Table 6.23: *Multi-word terms with "rights" and "right".*

Multi-word terms with "rights" and, especially, with "right" bring to the fore the object of written observations as they mention a wide range of different rights, such as "right to life", "right to vote" or "property right", which are all covered by the umbrella multi-word term "human rights" and pertain to the domain of human rights discourse. The plural form "rights" is frequently used in the binomials already discussed at the beginning of this chapter, whereas "right" is used more frequently to denote specific types of human rights. These are realised linguistically by the structure [N_{right} + $Prep_{of}$ + N], such as "right of access", or by the prevailing pattern [N_{right} + $Prep_{to}$ + N / V+N^{obj}], such as "right to life", "right to vote". The pattern [Adj + $N_{right(s)}$], such as "civil rights", "fundamental right" or "enforceable right" seems to be more frequently used for specific features of rights but not the types of human rights as set out in the Convention, with the exception of "voting right" used along with "right to vote" in the English Reference Corpus.

It also emerges that "interference with [premodifier] right(s)" is underrepresented in both translation corpora (RUTC: -96%; ITTC: -86%). The pattern "violation(s) of [premodifier] right(s)" in use in the Russian Translation Corpus seems to run in parallel with "breach of [premodifier] right(s)" in use in the English Reference Corpus, while these constructions are almost disregarded by the Italian Translation Corpus. The overall frequency of "breach" is significantly lower in the translation corpora (RUTC: -40%; ITTC: -82%), with higher values of "violation" (RUTC: +267%; ITTC: +230%), which signals underrepresentation of the former and overuse of the latter. The word "interference", which denotes an adjacent concept of meddling with someone's rights, typically by an authority, is also generally underrepresented (RUTC: -80%; ITTC: -50%).

Word	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Breach	50	-40%	84	15	-82%
Violation	132	+267%	36	119	+230%
Infringement	6	+500%	1	6	+500%
Interference	13	-80%	64	32	-50%

Table 6.24: *"Breach", "violation", "infringement" and "interference" across the corpora.*

The near-synonymous nature of "violation" and "breach" has been already discussed in Chapter 5 in relation to the use of these terms within the complex prepositions "in violation of" and "in breach of" (see also Goźdź-Roszkowski 2013). The text of the European Convention on Human Rights uses "violation" 5 times vs. 1 time of "breach" ("breach of the provisions of the Convention", Art. 33 ECHR) with reference to the behaviour non-compliant with the Convention. Goźdź-Roszkowski (2013: 108) talks about the interchangeability of "breach" and "violation", although acknowledging a more general nature of the latter. The analysis of the Three-Part Corpus confirms these observations and demonstrates that "violation" has a wider margin of collocability as it combines with

"convention", "article", "right(s)", whereas "breach" is found in combination with "right(s)", "article(s)" and "requirements", but not with "convention".

In terms of its genre-related specificity, it must be said that in the English Reference Corpus "breach" is often employed in fixed expressions, such as "breach of confidence", but the domain-specific bundle "breach of article" is used in the ENRC almost twice as often as "violation of article(s)". It would seem, consequently, that translated and non-translated written pleadings codify differently the grounds for the application to the ECtHR and the subsequent pleadings, as shown in Figure 6.6 below. The translation corpora prefer multi-word terms based on "violation", whereas the English Reference Corpus clearly favours "breach" in the same word combinations, with the exception of "violation of the convention".

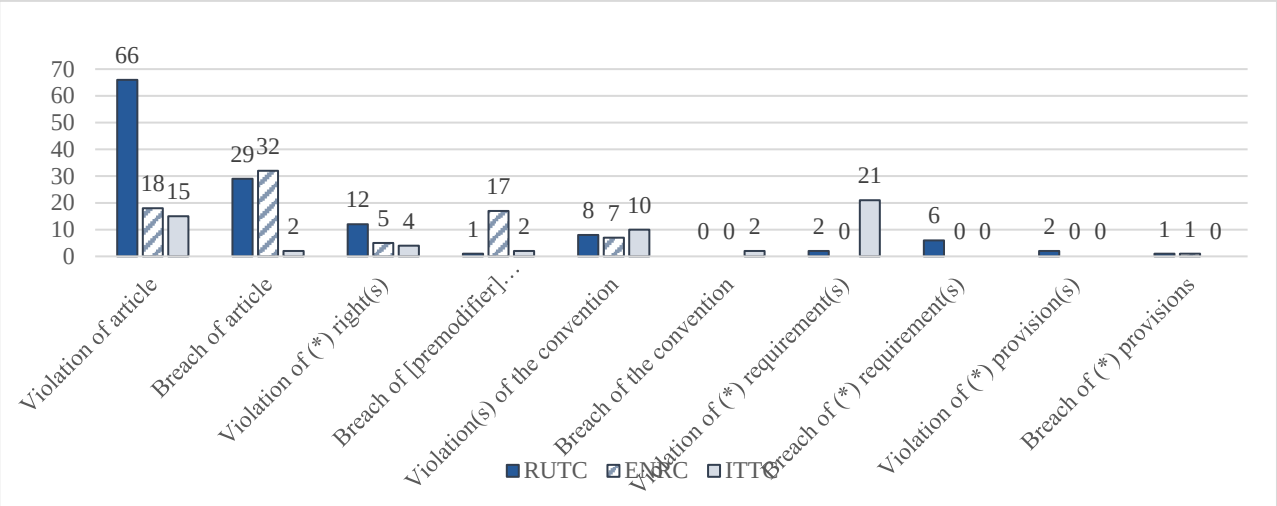


Figure 6.6: *Comparison of multi-word terms based on "violation" and "breach" across the corpora.*

Table 6.25 below gathers clusters with "article", which is also an important node of legal framework of human rights. Some of the patterns with "article" have been already dealt with in the previous discussion of "convention" and "rights" and are not repeated here. A noteworthy trend of collocability with "article" has emerged from the analysis of its clusters and patterns in *Wordsmith Tools*. If often collocates with prepositions signalling reference to legal authority (see also 5.4.4). However, while the English Reference Corpus prefers the pattern with a simple preposition - "under article", the translation corpora, especially the Russian Translation Corpus, opt for the pattern with complex prepositions ("in accordance with article", "within the meaning of article", etc).

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Article	**637**	**+25%**	**511**	**393**	**-23%**
Article [no] of the Convention	308	+205%	101	93	-8%
Article [no] rights	-	<<	38	-	<<
Requirements of article	15	+15%	13	2	-85%
Breach of article	29	-12%	33	-	<<
Violation of article	67	+319%	16	15	-6%
Application of article	1	=	1	13	+1200%
Grammatical patterns with "article"					
Within the meaning of article	15	+200%	5	15	+200%
Under article	61	-34%	93	13	-86%
Pursuant to article	20	+186%	7	4	-43%
In accordance with article	24	+2300%	1	2	+50%
According to article	13	>	-	1	>

Table 6.25: *Clusters with "article".*

Finally, it seems appropriate to comment on the use of "observations", which is included in the top-50 lexical words in the English Reference Corpus (203) and the Italian Translation Corpus (106), but surprisingly does not occur on the respective list of the Russian Translation Corpus, amounting only to 94 (-53%). These terms form part of the metadiscourse of written pleadings since they refer to the denominations of these documents as set forth by Article 10 (b) of the Practice Directions. Consequently, one may expect the term to be recurrent also in the Russian Translation Corpus. However, it appears that the latter makes parallel use of "observations" and "memorandum" (79).

As overviewed in 2.5.4, denominations in use for written pleadings before the ECtHR are not very stable, also because the Practice Directions, which set out form and content requirements for these documents, mention quite a variety of terms. For the sake of convenience, I repeat here the exact wording of Article 10 (b): "observations on admissibility [and the merits]; reply to the Government's/the applicant's observations on admissibility [and the merits]; observations on the merits; additional observations on admissibility [and the merits]; memorial, etc". The "etc" ending introduces an additional element of indeterminacy and may be interpreted as inviting to introduce further taxonomic distinctions, and this occurs in the Russian Translation Corpus with "memorandum". It appears that "memorandum" is the back translation of the Russian *меморандум*, presumably used to render the English "memorial", which does not occur at all in the RUTC. At the same time, "memorandum" is not used in the English Reference Corpus and occurs only once in the Italian Translation Corpus in the phrase "the Government's Memorandum". It can be hypothesised that the recurrence of "memorandum" in the Russian Translation Corpus is caused by interference from Russian institutional discourse. Table 6.26 below gathers multi-word units built around the term "observations" in the Three-Part Corpus.

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Observations	**94**	**-53%**	**203**	**106**	**-48%**
Government's observations	34	+21%	28	-	
Government observations	-	-	-	4	>
Observations of the (Italian) government	-	<	9	10	+11%
Respondent's observations	-	<	23	-	<
applicant's observations	12	+71%	7	2	-71%
Observations of the applicant	1	-50%	2	-	<
Observations on/for application no	3	>	-	-	-
Reply to observation	-	<	28	-	<
Observation dated [date]	-	<	16	-	<
Observations of [date]	-	-	-	28	>

Table 6.26: *Multi-word terms and collocations with "observations" across the corpora*

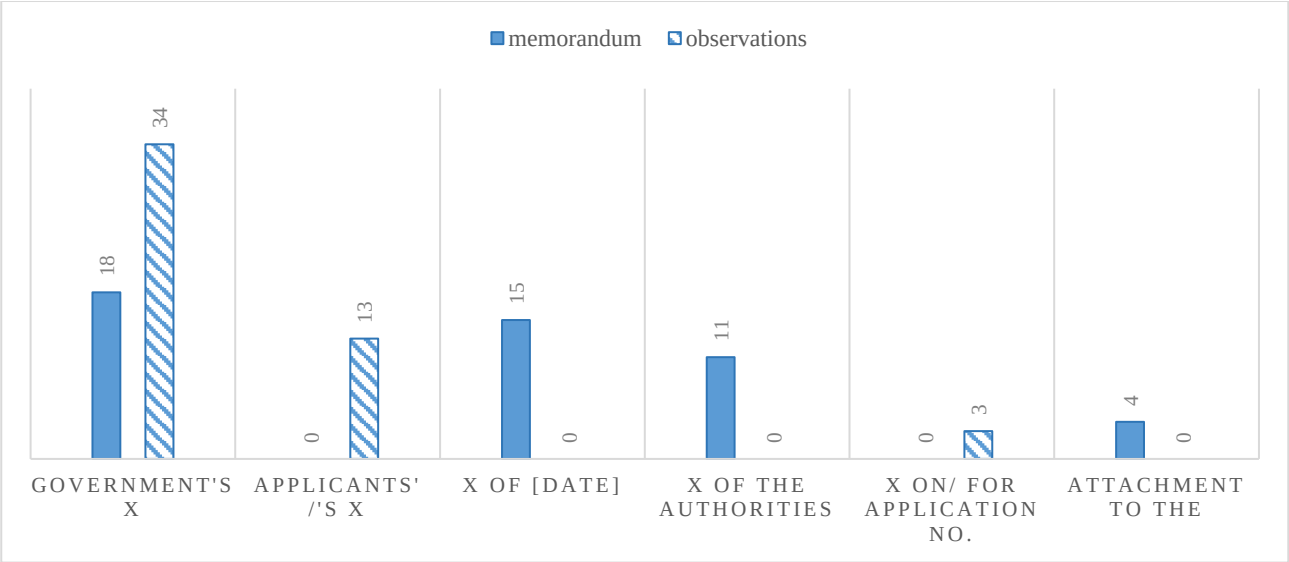


Figure 6.7: *Clusters with "observations" and "memorandum" in the Russian Translation Corpus.*

Table 6.26 and Figure 6.7 show that "memorandum" and "observations" are used as near-synonyms. However, an important distinction emerges with regard to their collocability. The word "memorandum" does not collocate with "applicant's". The latter collocates as "applicant's written observations" or "observations in reply to the Government's observations" or "applicant's reply to the government's observations". As for the choice of "memorandum" over "memorial", it seems useful to compare the definitions of these terms provided by the *Oxford English Dictionary* (online edition), marked as special or legal usage.

Memorandum[62]	**Memorial**[63]
a) The writing or document in which the terms of a transaction or contract are embodied; (spec. in marine insurance) a clause in a policy enumerating the articles in respect of which underwriters have no liability.	a) A statement of facts forming the basis of or expressed in the form of a petition or remonstrance to a person in authority, a government, etc.
b) An informal diplomatic message, esp. one summarizing the state of a question, justifying a decision, or recommending a course of action.	b) In diplomatic use: any of various informal state papers giving an account of a matter under discussion, esp. one presented by an ambassador to the state to which he or she is accredited, or by a government to one of its agents abroad. Obs.
c) A message in the form of a simple note, without the formulas and signature characteristic of a letter, and conventionally bearing the heading 'Memorandum' and the sender's name; esp. (also *internal memorandum*) such a message as communicated within an organization.	c) An abstract of the particulars of a deed, etc., serving for registration.

Table 6.27: *Definitions of "memorandum" and "memorial".*

Looking at the definitions provided above, it becomes clear that "memorial" as set forth in Art. 10(b) of the Practice Directions (see previous page) is used in its meaning (a), whereas none of the definitions of "memorandum" corresponds to the function of written pleadings. However, the Russian

[62] "memorandum, int. and n." OED Online. Oxford University Press, March 2017. Web. 22 May 2017.
[63] "memorial, adj. and n." OED Online. Oxford University Press, March 2017. Web. 22 May 2017.

definition of *меморандум* states that it is "a diplomatic document outlining the views of the government on a particular question"[64], which lacks the informal element present in the respective OED definition and is close to both definition (a) and (b) of "memorial" and definition (b) of "memorandum". It would seem that the choice of "memorandum" over "memorial" in translation could have been dictated by the so-called "paronymous temptation" (Alcaraz Varó 2008: 98), which according to Alcaraz Varó (2008: 98) explains the actions of translators, when they select the cognate or similarly sounding words of the target language to render the source text word or expression.

6.2.2.3. Clustering trends

The previous paragraphs shed light on a peculiarity of the English Reference Corpus, which seems to be dispreferred in the translation corpora, i.e. the recurrence of nominal clusters not linked by a preposition, such as "article [number] rights", "convention rights", "convention system", "appeal court", where the first noun modifies the second. The same or similar concepts in translation corpora are realised in the reversed order and use an explicit linking element, e.g. "rights guaranteed / provided for by article [number]", "rights guaranteed/ provided for by the Convention", "court of appeal". Crystal and Davy (1969: 205) define the nominal style of legal English as "one of the most striking characteristics". Legal English is rich in nominal strings, which can be long and complicated, but it seems that their linguistic realisation differs from the patterns prevalently in use in translated pleadings.

The close reading highlights another peculiarity, related to the clustering tendencies, which undoubtedly influences the general term-forming patterns adopted in the pleadings. This section has established that multi-word terms, and more generally, multi-word units are frequently linked by the preposition "of". The wordlists and keywords lists indicated an interesting difference with regard to the recourse to the preposition "of", which is used definitely more frequently in the translation corpora: RUTC: 8160 (+65%); ENRC: 4954; ITTC: 5660 (+14%). Interestingly, in the translation corpora and especially frequently in the Russian Translation Corpus, several *of*-structures may be used consecutively, arriving at such phrases as the examples below.

(60) […] due to exceeding of "limit of fullness" of cells of the remand center […]. [RUTC]
(61) These facts make it reasonably possible to rule out a risk of repatriation of certain of the applicants to their countries of origin. [ITTC]

	RUTC	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
of * of	569	+365%	123	175	+42%
of * * of	885	+193%	302	490	+62%
of * of * of	52	+5100%	1	4	+300%
of * * of * * of	144	+860%	15	37	+148%
of * of * of * of	15	>	-	-	-
of * * of * * of * * of	17	>	-	2	>

Table 6.28: *Of-sequences across the corpora.*

The seriate *of*-structures are particularly common in the Russian Translation Corpus. A simple search request, carried out by *AntConc 3.4.4* (Anthony 2014) software, retrieves co-occurrences of two and more prepositions "of" with one or two wildcards (*) in the middle, and draws an approximate picture of the distribution of this pattern across the corpora (see Table 6.28). The algorithm does not aim at

[64] «меморандум», *Bol'šoj tolkovyj slovar' russkogo jazyka* (*Большой толковый словарь русского языка*), edited by Kuznecov (2014), online edition. Available at http://gramota.ru, last accessed May 10, 2017.

retrieving all instances of multiple *of*-strings, since the empty slots between prepositions could be more than two, but rather at illustrating the distribution tendency.

The data of Table 6.28 make evident the prevalence of multiple *of*-strings in the translation corpora as compared to the reference corpus. The Italian Translation Corpus uses *of*-strings approximately 1.5 times as often as the English Reference Corpus, and the Russian Translation Corpus employs them at least three times as frequently as the reference texts, with the difference increasing progressively along with the number of elements in the string. As for the possible reasons underlying the *of*-favouritism in the translation corpora, these could lie in a highly nominal character of both legal Russian and legal Italian, already discussed in Chapter 2.

From the translation point of view, Levitan (2011: 87-88) in his practically oriented manual about English-Russian legal translation suggests translating English multi-unit attributive groups in the inverted order by explicitation of relations between single units. He exemplifies this point by proposing to render phrases similar to *London district committee* as *районный комитет Лондона*. Indeed, this solution is a very naturally sounding phrase in Russian, composed of a denominal adjective *районный* ("district[ual]") that functions as an attribute to the core element of the cluster *комитет* ("committee") and a place attribute in the Genitive case *Лондона* ("[of] London"). If one reverse-engineers this method and applies it to Russian-English translation, it may be possible to reduce the number of eye-catching *of*s. Certainly, this method should be used with caution, too, without creating incomprehensible attributive strings as several authors advise (see Sant 2012) along with simple common sense. It also goes in line with the modern developments of the English language and, in particular, with that of specialist discourses (Leech *et al.* 2009: 215), where the number of noun strings has reportedly increased over the twentieth century. Analysing British English and American English corpora and focusing on juxtaposed nouns separated in writing by a space, Leech, Hundt, Mair and Smith (2009: 215) note that "it is easy to find examples in the corpora not only of N+N but of longer sequences (within a single noun phrase) in which N+N sequences are multiply combined". The scholars link this phenomenon to a general tendency towards condensation of information (Leech *et al.* 2009: 216). They have discovered that no more than eight nouns occur in a single phrase; however, these are mostly "combinations of overlapping two-noun sequences" (Leech *et al.* 2009: 217). It would seem then that the nominal reality of English, Russian and Italian specialist discourse of human rights is convergent, yet in translation from Russian into English the Russian nominal strings tend to be recreated by means of explicit genitival relations through the preposition *of*. It looks thus that a possible solution for the Russian-English legal translation would be a recourse to several attributive groups of nominal premodifiers linked between them – and not inside a single group – by a variety of prepositions and, where possible, using also verbs. Such a transformation would not bring about a paradigmatic shift as some scholars hypothesised (see, for example, Smirnickij 1954 for a comparison with Russian) but would simply reduce the strength of interference signals perceived through the *of*-structures in that under the functional perspective the meaning will remain unchanged as illustrated by (62) and (62a)

(62) The examination of the log of weapon distribution and acceptance of the curfew company showed that there were no cases of distribution of bullets of the caliber 7.62 mm and bullets with decreased velocity. [RUTC]
(62a) The examination of weapon distribution log and the curfew company acceptance showed that there were no cases of calibre 7.62 mm and decreased velocity bullets distribution. [changed version]

In (62a) the *of*-Genitive is replaced with noun clusters significantly reducing the tedious *of*-structures without causing semantic or functional alterations. One might argue that "bullets" is unconventional as a premodifier in that it is plural. However, overviewing other studies of developments in English (see Biber *et al*. 1999: 594-596) Leech *et al*. comment on the increase in plural premodifiers (Leech *et al*. 2009: 219-220) stating that often these are similar to the Genitive case but "lack the apostrophe and are inclined to be indeterminate as to whether the *-s* signifies a possessive meaning, a plural

meaning, or both". These developments create much room for manoeuvre before the legal translators who would opt for noun clustering as a translation strategy for nominal strings.

6.2.2.4. Synthesis of multi-word terms in written pleadings

The selection of multi-word terms highlights some choices peculiar of the translation corpora, when analysed in sets of near-synonyms. For instance, "breach of article" is the preferred linguistic realisation for the concept of violation in the English Reference Corpus, while the same concept is typically realised by the more general "violation of article" in the translation corpora. The shift from "observations" to "memorandum" used synonymously in the Russian Translation Corpus is carried out under the probable influence of interference from Russian. Similarly, the term "trial" is underrepresented in the translation corpora in favour of "proceedings" and / or "hearing".

Most of the overviewed terms qualify as positive legal style markers of written pleadings, with the exception of multi-word terms based on "hearing". There are some divergent tendencies with regard to multi-word terms with "trial" (negative marker in RUTC and ITTC, positive marker in ENRC), multi-word terms with "procedure" (negative marker in ENRC and ITTC, positive marker in RUTC) and multi-word terms with "observations" (negative marker in RUTC; positive marker in ENRC and ITTC).

	RUTC			**ENRC**		**ITTC**		
Multi-word (MW) term	**NF**	**Cf. ENRC**	**MS**	**NF**	**Marker status**	**NF**	**Cf. ENRC**	**MS**
MW terms with "court"	656	+102%	**yes**	325	**yes**	371	+14%	**yes**
MW terms with "proceedings"	134	+18%	**yes**	114	**yes**	108	-5%	**yes**
MW terms with "trial"	30	-72%	no	106	**yes**	22	-79%	no
MW terms with "hearing"	27	+59%	no	17	No	59	+247%	no
MW terms with "procedure"	105	+483%	**yes**	18	No	62	+244%	no
MW terms with "convention"	420	+202%	**yes**	139	**yes**	123	-12%	**yes**
MW terms with "right(s)"	180	-10%	**yes**	201	**yes**	135	-33%	**yes**
MW terms with "article"	420	+108%	**yes**	202	**yes**	123	-39%	**yes**
MW terms with "observations"	94	-53%	no	203	**yes**	106	-48%	**yes**

Table 6.29: *Synthesis of multi-word units analysed across the corpora.*

6.2.3. Collocations with a term

This subsection discusses the findings relating to another type of legal phraseological units, which are built around a term. These are denominated *collocations with a term* by Kjær (2007) or *term-embedding collocations* by Biel (2014b: 180-181, see 2.6.2.1). As suggested by their label, these are word combinations centred on a term, or a multi-word term, which is typically realised by a noun or a noun phrase, placed within a cognitive script by means of a verb. The noun can act both as a subject [$N^{subject}$ + V] (e.g. "the Applicant submits") or as an object [V + N^{object}] (e.g. "to submit observations"). The role of the noun can be reversed if the verb is in the passive (e.g. "the observations are submitted"). The conceptual frame would usually include the clausal structure with a subject and a predicate, typically containing a verb and a direct object, comprising thus two nouns, e.g. "the applicant asks the court". The identified agentive nodes "Court", "Applicant", "Applicants", "Government" and "authorities" most often take on the grammatical role of agent, i.e. the initiator of an action, of an affected agent or of a recipient (Biber *et al*. 1999: 123).

6.2.3.1. Overview of verbal construction with agentive nodes

Having identified the agentive nodes "Court", "Applicant", "Applicants", "Government" and "authorities", I carry out a search of collocations with these terms using the clusters and patterns functions of *Wordsmith Tools*, setting the frequency cut-off at 3 and looking for clusters of 2-5 words in the horizon 5L – 5R to account both for the semantic roles of subject and object.

"Court" frequently functions both as the grammatical subject and as the object. The results of collocation with "court" being the subject are indicated in Table 6.30 below, while the results of "court" as the object typically co-occur with other agentive nodes followed by communication verbs (e.g. "the applicant asks the Court") and thus will be shown in the respective tables below. I have omitted all proper names and colligations (omitting single standing primary verbs "to do", "to have" and "to be" in various word forms but keeping the modal auxiliaries). The lexical verbs identified are additionally checked for other verb forms, e.g. not only "held" but also "has held", "did not hold", "will hold", etc. and the results are grouped together.

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Court (has) held	8	-38%	13	16	+23%
Court upheld / upholds	10	>	-	1	>
Court took / * take	11	+450%	2	8	+300%
Court should (reject / apply / confirm / refrain from)	-	<	12	8	-33%
Court must (ascertain / consider / apply)	7	=	7	6	-14%
Court considers / considered / * consider	7	-59%	17	18	+6%
Court informs / informed	8	>	-	-	
ask / request/ allow / invite / permit/ for the court to + V	28	-43%	49	17	-65%

Table 6.30: *Collocations with "court" (to the right).*

Table 6.30 groups together some essential term-embedding collocations with the pattern [N_{court} + (auxiliary) + V], such as: "court held", "court considers", etc. The English Reference Corpus, in contrast with the translation corpora, also frequently employs the construction [$V_{invite/allow/permit/lead}$ + Art_{the} + N_{court} + $V^{inf}_{to\ conclude/\ to\ consider/\ to\ reach}$] or a similar construction, where the first verb is replaced by "it is for", "it is up to" (see also 6.1.3.3 for other collocates of "it is"). The latter category of term-embedding collocations is particularly interesting for translation as it demonstrates combinatory properties of terms. In this case, it clearly emerges that the word "court" is typically followed by a

range of performative verbs that either have a merely declarative function and denote passages of legal reasoning (e.g. “consider”, “state”) or have also illocutionary force in that they also perform an action by mentioning it (e.g. “uphold”, “quash”). The issue of performative verbs is discussed later in more detail. Another possibility for “court” is to be followed by a modal verb (see 6.3), which is usually accompanied by a verb with mental semantics (e.g. “The court must consider”).

The top lines in the list of 50 most frequent lexical types in the corpora features also the parties to the dispute: “applicant”, “applicants” as well as “government”. In the Russian Translation Corpus the latter party is also denominated “authorities”, being used interchangeably with “government”. I have excluded from the count occurrences of “authorities” with reference to other state bodies, such as “investigating authorities” for example. Using the Clusters and patterns functions of *Wordsmith Tools* (length: 2-5; horizon: 5L-5R; normalised frequency: at least 3), I have identified the following clusters containing these nodes. The Italian Translation Corpus presented too few eligible combinations of “applicant” / “applicants”, so I had to adjust the frequency cut-off to 2 just to be able to look at the verbs used inside with these nodes.

Word	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Applicant	**798**	**+37%**	**584**	**395**	**-32%**
The applicant submits Cf. plural form	21	+425%	4	2	-50%
The applicant asks the court to	16	+1500%	1	-	
The applicant claims / claimed	7	-22%	9	2	-78%
The applicant seeks	-	-	9	-	-
The applicant states	7	=	7	2	-71%
The applicant contends	2	-71%	7	-	<
The applicant (has) failed to Cf. plural form	8	+700%	1	-	-
The applicant was (kept / detained / entitled / certified / provided with / charged)	85	+325%	20	26	+30%
Applicants	**263**	**-53%**	**559**	**186**	**-67%**
The applicants (*) submit Cf. singular form	5	-83%	29	-	<
The applicants maintain	12	>	-	-	-
the applicants (*) ask	6	>	-	-	-
The applicants believe	8	+700%	1	-	<
The applicants contend	-	<	7	-	-
The applicants (have) failed to Cf. singular form	-	<	13	-	<
Government	**284**	**-11%**	**320**	**281**	**-12%**
Government (has/have) failed to Cf. applicant(s)	10	+66%	6	-	-
Government submit(s) / submitted	8	-81%	43	19	-56%
Submitted by the government	8	>	-	1	>
Government (respectfully) invite(s) the court	-	<	10	-	<
Government asks the court	-	-	-	4	>
Government is wrong to suggest / it is wrong for the Government to suggest	-	<	8	-	<
Government has/have the honour of –ing/ to	-	-	-	8	>
Government refers / referred	6	+200%	2	6	+200%

Table 6.31: *Clusters of “applicant”, “applicants” and “government”.*

Verbal construction	Frequency
Authorities (do not) consider	9
Authorities failed to	7
Authorities must (act/ undertake)	6
The Russian Federation authorities believe	6
The Russian Federation authorities attract attention (of the Court) to the fact/ circumstances	5
The Russian Federation authorities (also) remark that	5
The Russian Federation authorities would like to (emphasize / claim/note)	4
The Russian Federation authorities draw (the) attention (of the European Court) to the fact/ circumstances	4

Table 6.32: *Verbal constructions with "authorities" in the Russian Translation Corpus.*

The identified [N + V] clusters show that these actors take on the role of the agent ("the applicant begun", "the government failed to") in line with what Quirk *et al*. (1985: 741) call "the most typical semantic role of a subject in a clause that has a direct object is that of the AGENTIVE participant: that is, the animate being instigating or causing, the happening denoted by the verb". These nodes can also act as the subject of a following subordinate clause ("government believe that the applicant") and co-occur with a verb in the passive as the affected subject (Biber et al. 1999: 124) ("the applicant was provided with", "the applicant was kept"), or also in a *by*-agent phrase (Quirk et al. 1985: 725) (e.g. "pecuniary loss suffered by the applicant").

Surprisingly, there are very few verbal collocates of "applicant" in the Italian Translation Corpus. Having checked the plural form "applicants", as well as personal pronouns "I", "we", "he" and "she", the overall picture does not change significantly, which suggests that the applicant does not play an active argumentative role in written pleadings translated from Italian, which makes recourse to other constructions. Consequently, these observations mostly refer to the other two corpora.

From the analysis of clusters it emerges that the words "applicant", "applicants", "government" and "authorities" collocate with the so-called *communication* or *speech act verbs* ("the applicant claims", "the government submits") and with *mental activity verbs*, including stance verbs (Biber 2006: 92) that expresses *attitude* ("the applicant argues", "the government disputes"), *intention* ("the applicant would like to") as well as with *causation* verbs ("the applicant seeks", "the applicant asks/is requesting") (see next paragraph for the statistics). These nodes collocate as well with a range of modal auxiliaries (see 6.3).

It seems interesting to discuss the types of verbs, which typically collocate with agentive nodes in written pleadings before the ECtHR.

6.2.3.2. Semantic domains of verbs co-occurring with agentive nodes

Based on the overview in the previous section, it emerges that the terms denoting actors involved in written pleadings collocate with a range of different verbs, most of which are potentially *performative* in the classical Austin's understanding (1962) in that they "do things with words" (e.g. "submit", "ask" , "invite", "argue"). The other group of verbs are the so-called *activity verbs*, i.e. those that describe an action and do not perform it at the same time. These typically take a subject with the semantic role of agent, which in the present case is the identified node. Finally, the agentive nodes collocate with an array of modal auxiliaries, which are not discussed here but instead are addressed in section 6.3.

Biber *et al*. (1999: 360) classify all verbs by the semantic domain of their core meaning into seven categories: *activity verbs, communication verbs, mental verbs, causative verbs, verbs of simple occurrence, verbs of existence or relationship,* and *aspectual verbs*. *Activity verbs* indicate actions and/or events involving a choice, such as "bring", "take" or "initiate". *Communication verbs* refer to such communication activities as speaking and writing, for instance, "declare", "submit", "state". *Mental* verbs are the most heterogeneous category proposed by Biber *et al*. (1999: 362-363). They can denote cognitive activities and states (e.g. "consider" or "know"), can have emotional meanings expressing attitude ("disagree", "accept") or express desire/intention ("want", "would like to"); other meanings include perception ("observe") and receipt of communication ("read", "hear"). *Causative verbs* signal the cause-effect relation between a person or an entity and a new state of affairs, e.g. "require", "cause", "request". *Verbs of simple occurrence* ("occurrence verbs") "primarily report events (typically physical events) that occur apart from any volitional activity. Often their subject has the semantic affected role." (Biber *et al*. 1999: 364), e.g. "become", "develop", "change". *Verbs of existence or relationship* denote a state or a relationship, e.g. "be", "seem" and "appear". The last category, *aspectual verbs*, report the progress of some other event or activity, e.g. "begin", "finish", "continue". The borders between various categories are fuzzy as the same verb may belong to more than one category (Biber *et al*. 1999: 361). Based on the above classification, I have calculated the most frequent types of verbs that co-occur with agentive nodes in the written pleadings under analysis. In border cases, I assess the meaning additionally through concordances. Whenever the type collocates with a modal auxiliary, disregarding whether it is a deontic modal (e.g. "the court must consider") or an epistemic modal (e.g. "the court must have considered"), I verify potential collocability of the agentive node with the following lexical verb, which is included in the calculations (e.g. "the court" + "consider").

The Court in this context merely receives pleadings and does not take on an active role, consequently, all collocations with the type "court" are used by the other two parties – the Applicant(s) and the Government – and not by the Court, unless these are quotations.

Type of verbs	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Activity	22	+120%	10	14	40%
communication	26	+100%	13	16	23%
Mental	43	-34%	65	46	-29%
Causative	-	-	7	2	-71%
Existence	1	=	1	6	500%

Table 6.33: *Relative frequencies of different semantic domains of verbs co-occurring with "court" across the corpora.*

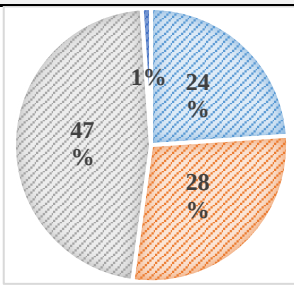
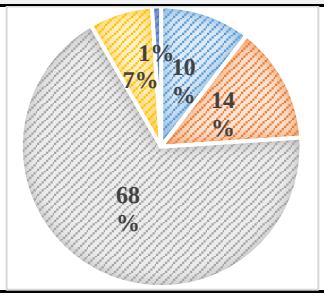
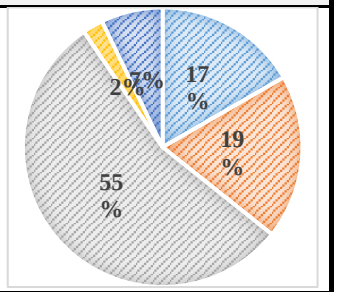
Type of verbs	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Activity	24%	+14%	10%	17%	+7%
communication	28%	+14%	14%	19%	+5%
Mental	47%	-21%	68%	55%	-13%
causative	-	<	7%	2%	-5%
existence	1%	=	1%	7%	+6%
total	**100%**		**100%**	**100%**	

Figure 6.8: *Proportion of semantic domains of verbs co-occurring with "court" within separate corpora.*

The most common verbal collocates of "court" belong to the class of mental activity verbs (RUTC: 47%; ENRC: 68%; ITTC: 55% out of the total number of verbs analysed), such as "consider", "decide" / "take a decision", "hold", "ascertain", "establish", "conclude", "weigh", "recall", etc., which logically fits into the framework of legal reasoning, where the parties rely on the findings of the court to build their argument. This class of verbs is the most frequent in all three corpora, although it is comparatively less prominent in the two translation corpora (NF: -29% in the Italian Translation Corpus and -34% in the Russian Translation Corpus). The second recurrent pattern of verbs co-occurring with "court" is composed of communication verbs, such as "note", "inform", "declare", "assert", "state" and "repeat". Verbs of this semantic domain are used by the parties to refer to their previous interaction with the court or to the court's communication in similar applicable cases. This type of verbs occurs slightly more frequently in the Russian Translation Corpus (+50% compared to ENRC) and in the Italian Translation Corpus (+33% compared to ENRC). The third category is represented by the so-called *activity verbs*, which in this case sometimes have overlaps with mental activity verbs. These are such verbs as "uphold", "extend", "quash", "interfere", "provide". These verbs are based on mental activity, yet they presume also a certain action, which happens as a result of this activity. If we compare "the court concluded that…" and "the court upheld the decision", the latter presents a stronger element of action and thus is tentatively placed here under activity verbs. There are some cases of causative verbs ("the court asked/invited") and several existence verbs ("the court will be able to"). There are no or insignificantly few aspectual verbs and occurrence verbs, which collocate with "court".

In contrast to the Court, the applicant takes on the most active role in the pleadings, which is reflected in the verbal constructions used with "applicant" and "applicants".

First, it stands out that all seven semantic domains are present in the applicants' pleadings. At the same time, the discrepancies between the various corpora, especially between the Italian Translation Corpus and the other two corpora, seem to be more evident than they are in case with "court". In the Italian Translation Corpus, the applicants are mostly receivers of actions or (affected) agents, with high recurrence of existence (36%), activity (25%) and occurrence (14%) verbs (see Figure 6.9 below), which are relatively infrequent in the other two corpora. The prevalence of existence verbs, such as *be* or *stay* points out that the topic of the applicants' pleadings concerns a certain state of things, rather than actions. It must be said, however, that the recurrence of "applicant" and "applicants" in the English Reference Corpus and the Russian Translation Corpus is generally higher than in the Italian Translation Corpus (RUTC: +36%, ENRC: +79% compared to ITTC),

consequently, the above numbers are to be interpreted in relative terms as indicating tendencies and patterns.

Type of verbs	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Activity	27	-43%	47	14	-70%
communication	58	+18%	49	4	-92%
Mental	40	-27%	55	10	-82%
causative	35	+17%	30		-100%
occurrence	-	<	17	8	-53%
existence	19	+19%	16	20	25%
aspectual	-	<	4		-100%

Table 6.34: *Relative frequencies of semantic domains of verbs co-occurring with "applicant" and "applicants" across the corpora.*

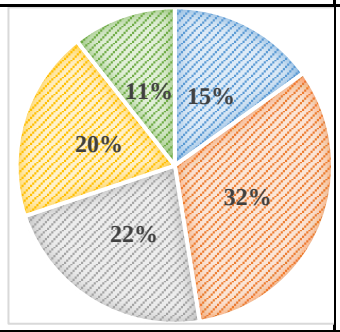
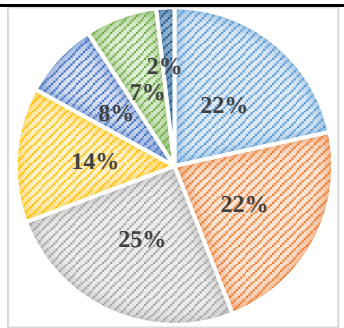
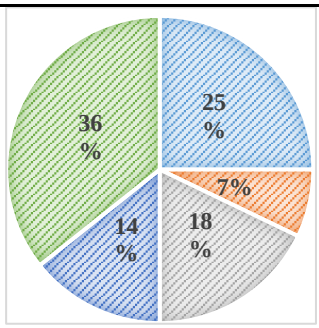
Verbs co-occurring with "applicant(s)"	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Activity	15%	-7%	22%	25%	+3%
Communication	32%	+10%	22%	7%	-15%
Mental	22%	-3%	25%	18%	-7%
Causative	20%	+6%	14%	-	-
Occurrence	-	-	8%	14%	+6%
Existence	11%	+4%	7%	36%	+29%
Aspectual	-	-	2%	-	-
total	**100%**		**100%**	**100%**	

Figure 6.9: *Proportion of semantic domains of verbs co-occurring with "applicant" and "applicants" within separate corpora.*

In the English Reference Corpus, "applicant(s)" collocate most frequently with mental verbs (25%), closely followed by communication verbs (22%) and activity verbs (22%), with a significant number of causative verbs (14%). It may be summarised in a frame "the applicants argue, agree or challenge some positions, inform the court about their own position and what actions led to it and request the court to adopt some actions".

The dynamics in the Russian Translation Corpus are slightly different, as "applicant(s)" co-occurs most often with communication verbs (32%), followed by mental verbs (22%) and causative verbs (20%), whereas activity verbs (15%) are less frequent than in the English Reference Corpus. Consequently, the summary frame becomes "the applicants inform the court of their position arguing and challenging other positions and ask the court to adopt some actions". Interestingly, occurrence verbs are lacking in the Russian Translation Corpus, along with aspectual verbs, which take "applicant(s)" as a subject.

Verbs, which take "government" or "authorities" as subject, present other distributional patterns. In general, it can be said that communication and mental verbs tend to prevail in all three corpora. A most peculiar difference emerges with regard to the use of activity verbs, which are few in the English Reference Corpus, absent in the Italian Translation Corpus and relatively abounding in the Russian Translation Corpus. It must be said, however, that many activity verbs with "government" / "authorities" in the Russian Translation Corpus follow an epistemic modal (e.g. "authorities should have conducted an effective investigation") or a deontic modal ("authorities must act"), used by the applicant party and not by the government.

Type of verbs	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Activity	35	483%	6	-	-
communication	35	-36%	55	19	-65%
Mental	37	16%	32	6	-81%
causative	19	90%	10	4	-60%
existence	-	-	-	8	>
aspectual	-	<	4	-	<
Total	**126**	**+18%**	**107**	**37**	**-65%**

Table 6.35: *Relative frequencies of semantic domains of verbs co-occurring with "government" and "authorities" across the corpora.*

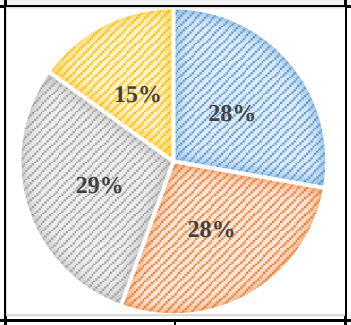
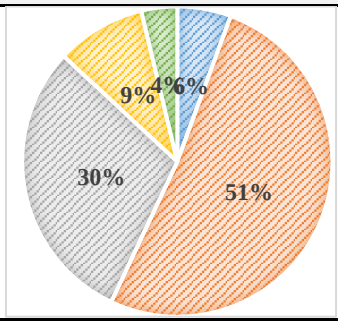
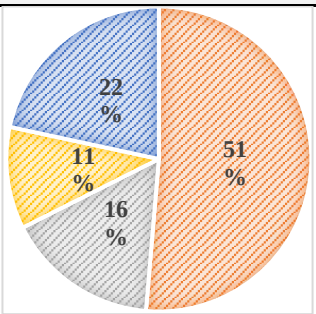
Type of verbs	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Activity	28%	+22%	6%	-	<
communication	28%	-23%	51%	51%	=
Mental	29%	-1%	30%	16%	-14%
causative	15%	+6%	9%	11%	+2%
existence	-	-	-	22%	>>
aspectual	-	<	4%	-	<
Total	**100%**		**100%**	**100%**	

Figure 6.10: *Proportion of semantic domains of verbs co-occurring with "government" and "authorities" within separate corpora.*

The Russian Translation Corpus demonstrates nearly equal values of activity (28%), communication (28%) and mental (29%) verbs, followed by causative verbs (15%). The English Reference Corpus presents a peak with regard to communication verbs (51%), followed by mental verbs (30%), with few verbs falling under the other categories. In the Italian Translation Corpus, communication verbs (51%) also prevail, although in absolute terms their frequency is much lower than in the English Reference Corpus. Remarkably, existence verbs amount to 22% out of the total number of analysed verbs in this set in stark contrast with the other corpora.

Table 6.36 presents normalised frequencies and proportional distribution of verbs that co-occur with "court", "government" / "authorities" and "applicant" / "applicants" based on the clusters and

patterns data extracted for these nodes. It sheds light on the salient semantic domains of verbs, which tend to reflect the typical communicative purposes of the genre (Biber *et al*. 1999: 371).

Type of verbs	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
activity	84	+180%	30	28	-7%
Communication	119	+2%	117	39	-67%
Mental	120	-21%	152	62	-59%
Causative	54	+15%	47	6	-87%
Occurrence	-	<	17	8	-53%
Existence	20	+18%	17	34	+100%
Aspectual	-	<	8	-	<
Total	**397**	**+2%**	**388**	**177**	**-54%**

Table 6.36: *Relative frequencies of semantic domains of verbs co-occurring with all identified agentive nodes across the corpora.*

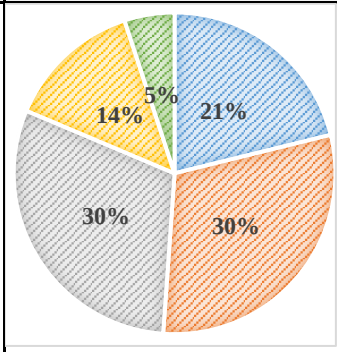
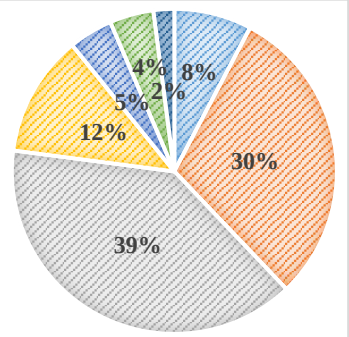
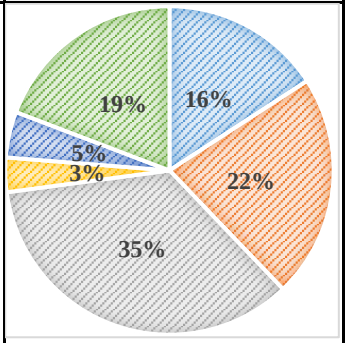
Type of verbs	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Activity	21%	+13%	8%	16%	+8%
Communication	30%	=	30%	22%	-8%
Mental	30%	-9%	39%	35%	-4%
Causative	14%	+2%	12%	3%	-9%
Occurrence	-	<	5%	5%	=
Existence	5%	+1%	4%	19%	+15%
Aspectual	-	<	2%	-	<
Total	**100%**		**100%**	**100%**	

Figure 6.11: *Proportion of semantic domains of verbs co-occurring with all identified agentive nodes within separate corpora.*

The prevailing types of verbs in the corpus, which take as a subject the most frequent lexical nouns, are the so-called communication verbs (RUTC: 30%; ENRC: 30%; ITTC: 22% out of 100%) and mental verbs (RUTC: 30%; ENRC: 39%; ITTC: 35% out of 100%). It logically reflects the purpose of written pleadings, which is to communicate the party's position on the case to the court and, in doing so, to persuade the court through legal reasoning.

6.2.3.3. Performative utterances co-occurring with agentive nodes

Both communication and mental verbs can be potentially performative and have illocutionary force. The term "performative utterances" or "performatives" originates from the theory of speech acts first proposed by Austin (1962), who focused mainly on their linguistic properties, and further elaborated by Searle (1969; 1976), who addressed them in terms of felicity conditions.

The prototypical performatives in legal discourse are defined *explicit* performatives by Austin (1962: 32) as opposed to *implicit* performatives. Further in his work, Austin (1962: 69) juxtaposes explicit performatives to *primary performatives*, which would lead to some terminological confusions. Along with some other authors (e.g. Kurzon 1986: 7), I prefer the term *implicit performatives*, to denote those performatives that are not explicit.

Explicit performatives contain a verb that denotes the illocutionary point of the utterance, which is typically associated with the first person singular present indicative active (Austin 1962: 5; 56), e.g. "I submit", "I ask".

(63) *I REQUEST* to dismiss application no. 10010/04 Krevetkin v. Russia in accordance with Article 35.4 of the Convention. [RUTC]

First person plural present indicative active can also be used to convey the explicit performative meaning, especially if the agent is a collective noun, such as "government".

(64) *We* therefore *propose* to ask the Civil Procedure Rule Committee to consider amendments to the CPR and related practice direction […].[ENRC]

In legal discourse and, more specifically, in written pleadings before the European Court of Human Rights, often the parties involved in the pleading refer to themselves in the third person, the so-called transposed third person, which would also satisfy the conditions for the verb to be adjudged explicit performative (Austin 1962: 57).

(65) *The Government submit* that this case falls to be analysed as one of interference with rights under Article 11.1, which interference must be justified by the Government pursuant to Article 11.2. [ENRC]
(66) In response to Question 2 of the questions to the parties, the *Applicant claims* that there has been a breach of his right to vote in the UK under Article 3 of Protocol No. 1 of the ECHR. [ENRC]

In addition, as overviewed in 6.1.3, the passive form of verb with a performative value after the introductory "it" – "it is submitted" occurs quite frequently in the pleadings analysed (especially in the English Reference Corpus). As Austin acknowledges, "person and voice anyway are not essential" (Austin 1957: 57).

(67) *It is respectfully submitted* that the sums claimed by Ms Swenson and Ms Roots are excessive and disproportionate, seeking high sums of costs for cases that have (at least so far) been considered on the papers. [ENRC]

Williams (2007: 59, cf. Declerck 1991: 177) observes that the progressive form is typically dissociated from performativity "because the action is conceptualized as punctual, i.e. as beginning and ending at the time of utterance or of writing". He continues on claiming that occasional cases of the progressive form with performatives are nonetheless possible in less formal contexts of legal discourse (Williams 2007: 60). No similar forms have been identified in the English Reference Corpus or in the Italian Translation Corpus, however the Russian Translation Corpus employs the progressive form in the transposed third person with a clear performative intent as it is inserted in the ending formula. In this case, the progressive form may have been triggered by translation.

(68) On the basis of the foregoing, the *Applicant is requesting* the European Court 1) to recognize the application *Tsaritsina v. Russia* as admissible on the merits; 2) to find a violation of Articles 2, 3, 5 and 13 of the Convention; 3) to award the Applicant just compensation for non-pecuniary damage, and also costs and expenses. [RUTC]

The second type of performatives, the so-called *implicit* performatives, may not contain a verb naming the illocutionary point of the utterance, but "should be reducible, or expandible, or analysable into a form with a verb in the first person singular present indicative active (grammatical)" (Austin 1962: 61-62). With regard to legal discourse it has been observed that legal "shall" can have a performative value (Garzone 2001, 2013). The issue of legal "shall" is addressed in 6.3.2.

The performativity can be verified through the so-called "hereby" test: if a verb can be preceded by "hereby", it means that it is performative (Austin 1962: 57; Benveniste 1966: 274; Kurzon 1986: 6), for instance: "I submit" and "I hereby submit"; "it is submitted" and "it is hereby submitted". However, the "hereby" is an optional element (Kurzon 1986: 6). In fact, it is not used in the English Reference Corpus at all, but occurs occasionally only in the translation corpora (see 6.1.2).

(69) The *Government hereby submit* their observations within the time-limit of 12 April 2011. [ITTC]
(70) Pursuant to Rule 62.2 of the Court's Rules, *I hereby inform* you of the applicant's position on a friendly settlement. [RUTC]

Williams (2007: 55) notes that explicit performative acts tend to be associated with the spoken language, and in written legal texts they tend to occur in a non-finite *–ing* form in recitals, whereas first-person form is frequently found in wills. Normally pleadings would be expected to occur in the oral mode at a court of law, however, at the ECtHR the proceedings are predominantly written. Consequently, as the genre has migrated from the oral mode to the written mode, one might expect a mixed use of explicit performatives, both in the first person singular or plural, in the transposed third person and in the passive with an introductory "it". Based on these criteria and taking into account Austin's observations about the past tense and historical present which exclude performativity (1962: 63-64), I calculated the general recurrence of explicit performative forms with different actors of the pleadings. The felicity conditions of performativity, overviewed by Austin (1962) and treated by Searle (1969) in more detail are applied here. The figure below gathers only cases where the potential performative verb is intended as such, i.e. it is uttered by the actor, with whose name it co-occurs and not by the opposing party referring to other party's arguments (e.g. "The applicants submit" uttered by the applicants is considered performative; "the applicants submit" uttered by the government or the court is not considered to be performative).

Agentive node	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Court	8	+167%	3	10	+233%
Government / authorities	50	-11%	56	25	-55%
Applicant / applicants	115	+55%	74	-	<<
Total	**173**	**+30%**	**133**	**35**	**-74%**

Table 6.37*: Relative frequencies of performative utterances with a verb in the present indicative co-occurring with "court", "government" / "authorities" and "applicant" / "applicants" across the corpora.*

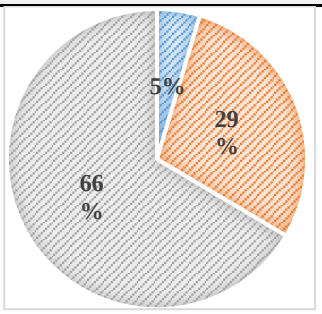
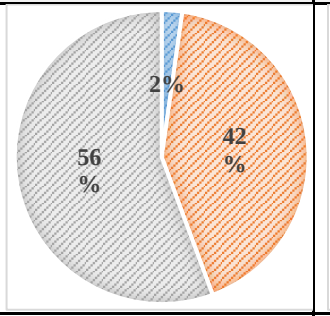
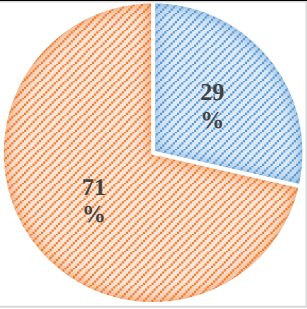
Agentive node	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Court	5%	+3%	2%	29%	+27%
Government / authorities	29%	-13%	42%	71%	+29%
Applicant / applicants	66%	+10%	56%	-	<
Total	**100%**		**100%**	**100%**	

Figure 6.12*: Proportion of performative utterances with a verb in the present indicative co-occurring with "court", "government" / "authorities" and "applicant" / "applicants" within separate corpora.*

Performatives are the least frequent with "court" (proportionally RUTC: 3%; ENRC: 2%, ITTC: 29% out of total number of occurrences), which is explained by the fact that the court merely receives written pleadings and is not an active party. Consequently, only direct quotations can be assessed for presence of potential performatives. "Government" (and "authorities" in the RUTC) take a performative verb afterwards in a comparable number of cases in the Russian Translation Corpus (-11% compared to the ENRC) and the English Reference Corpus, with twice less occurrences in the Italian Translation Corpus (-55%). Finally, "applicant(s)" most frequently collocates with performatives (RUTC: 66%; ENRC: 56% out of total), with the exception of the Italian Translation Corpus, where this pattern is not utilised. Yet, if one looks at the construction with the performative utterance in the passive form, already addressed in section 6.1.3.3 within routine formulae, it emerges that this construction is used most frequently in the Italian Translation Corpus (see Figure 6.4, repeated below for the sake of convenience).

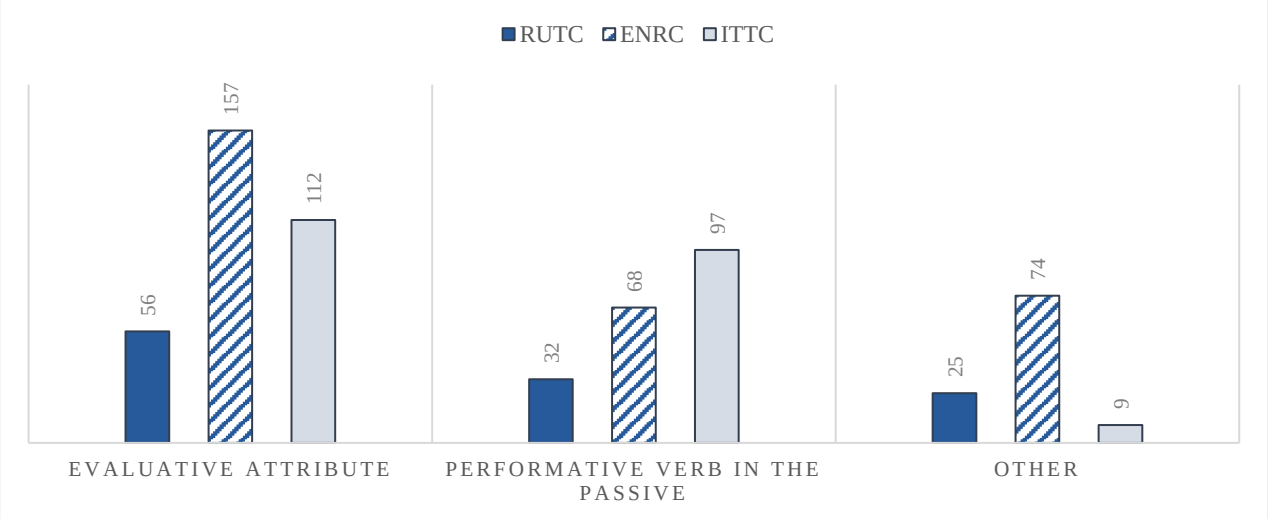


Figure 6.4: *Distribution of the "it is …" pattern across the corpora.*

In the constructions with the introductory "it" the performativity of the utterance derives from the fact that the implied subject is the writing party.

Performative forms with agentive nodes	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
Active	173	+30%	133	35	-74%
Passive	32	-53%	68	97	+43%
total	**205**	**+2%**	**201**	**132**	**-34%**

Table 6.38*: Relative frequencies of passive and active performative utterances with agentive nodes across the corpora.*

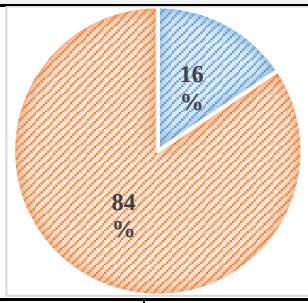
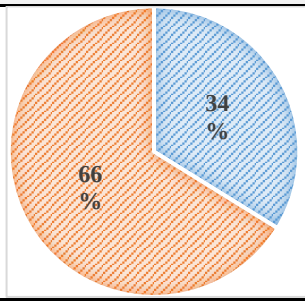
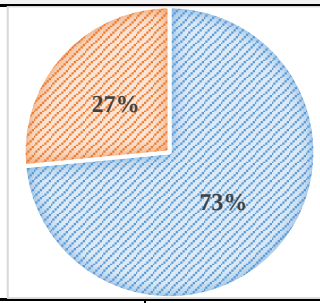
Performative forms with agentive nodes	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf ENRC**
Active	84%	+22%	66%	27%	-
Passive	16%	-17%	34%	73%	
Total	**100%**		**100%**	**100%**	

Figure 6.13*: Proportion of passive and active performative utterances with agentive nodes within different corpora.*

Table 6.38 and Figure 6.13 show a certain complementarity between passive and active performatives. In the Russian Translation Corpus passive performatives are the least frequent (16% out of 100%) but active performatives are the most frequent (84% out of 100%) if compared to the other two corpora. Similarly, passive performatives are the most frequent in the Italian Translation Corpus (73% out of 100%), which however makes the least use of active performatives (27% out of 100%). The English Reference Corpus tends to prefer active (66%) to passive performatives (34%). When both active and passive performatives are combined, the overall statistics become more comparable (RUTC: 205; ENRC: 201; ITTC: 132). These numbers refer to the occurrences of agentive nodes only, which altogether amount to RUTC: 2350; ENRC: 1930; ITTC: 1680, consequently, the slightly lower value of the Italian Translation Corpus is explainable by the general lower frequency of these types. Proportioned to the overall frequency of agentive nodes, their co-occurrence with performatives would amount to 8% in the RUTC, 10% in the ENRC and 8% in the ITTC. On account of the information above, verbs with a performative value that take parties to the pleadings as a grammatical subject, qualify as positive markers of written pleadings.

6.2.3.4. Synthesis of verbal collocations

This subsection has identified divergent tendencies with regard to the type of verbs, with which typically collocate agentive nodes in the Three-Part Corpus. While mental and communication verbs qualify as positive markers of written pleadings in the Russian Translation Corpus and in the English Reference Corpus, they do not reach this status in the Italian Translation Corpus. Similar phenomenon is observed with performative utterances. Whereas performative utterances as such are characteristic of the genre of written pleadings in general, their linguistic realisation differs across the corpora. The Russian Translation Corpus and the English Reference Corpus clearly prefer performative utterances with the active verb form (positive marker), but the Italian Translation Corpus tends to operate with passive verb forms in performative utterances, almost reaching the threshold of positive legal style markers for the passive performative form.

	RUTC			**ENRC**		**ITTC**		
Marker	**NF**	**Cf. ENRC**	**MS**	**NF**	**Marker status**	**NF**	**Cf. ENRC**	**MS**
I. Semantic domains of verbs co-occurring in term-embedding collocations								
Activity	84	+180%	no	30	no	28	-7%	no
communication	119	+2%	**yes**	117	**yes**	39	-67%	no
Mental	120	-21%	**yes**	152	**yes**	62	-59%	no
causative	54	+15%	No	47	No	6	-87%	no
occurrence	-	-	No	17	No	8	-53%	no
Existence	20	+18%	no	17	no	34	+100%	no
Aspectual	-	-	no	8	no	-	-	no
II. Collocations with performative utterances								
All performative utterances	205	+2%	**yes**	201	**yes**	132	-34%	**yes**
active performative utterances	173	+30%	**yes**	133	**yes**	35	-74%	no
passive performative utterances	32	-53%	no	68	no	97	+43%	no

Table 6.39*: Synthesis of verbal collocations across the corpora.*

6.3. Grammatical patterns

This section is dedicated to the analysis of some of the grammatical patterns, which may be typical of legal language as a register and of the language of written pleadings before the ECtHR as a genre. I adopt Biel's (2014b: 179) definition of grammatical patterns as those "patterns and lexical bundles which express deontic modality (*shall, must, should, may*), *if-then* mental models of legal reasoning and other conditional clauses (*if, in the event that, in case, unless, otherwise, provided that*), purpose clauses (*with a view to –ing, in order to, to this end*), the passive voice and other impersonal structures." Chapter 5 provides an overview of complex prepositions, which perform a variety of functions, including some conditional and purpose meanings, as well as patterns of legal referencing, and thus are classifiable as grammatical patterns. However, due to the heterogeneous character of this class, it has been decided to treat them in a separate chapter. Subsection 6.1.3 of this chapter discusses another recurrent grammatical pattern of written pleadings before the ECtHR, the construction "it is" + evaluative, necessity or possibility adjectives as well as "it is" + performative verbs inserted in larger structures of legal reasoning or formulaic sequences. This section pursues a primarily descriptive goal and addresses the question of the distribution preferences of modal auxiliaries in the texts under analysis, specifically those expressing deontic meaning. Are deontic modals representative of legal style in the written pleadings before the ECtHR? What modals are the most frequent and representative across the corpora and in what meanings? Secondly, are there differences between the translated and non-translated language with regard to the choice of certain patterns involving modal auxiliaries? These questions are addressed in the following subsections and paragraphs.

6.3.1. Modality and distribution of modals and semi-modals across the corpora

Modality in legal discourse has long fascinated scholars of legal and linguistic sciences. It expresses the speaker's attitude towards the factuality or actualisation of the situation expressed by the rest of the clause (Huddleston and Pullum 2002: 173). There are generally acknowledged two main types of modality: *epistemic modality* and *deontic modality*, to which some authors add the third type – *dynamic modality* (Palmer 1990).

Palmer (1990: 50) defines *epistemic modality* the easiest to deal with. It generally concerns "the speaker's degree of knowledge regarding a proposition and is frequently associated with the idea of possibility or probability" (Williams 2007: 83). *Deontic modality*, also denominated as *root modality* (Steele 1975; Coates 1983; Talmy 1988; Sweetser 1990)[65], typically imposes an obligation or prohibition, or grants permission or authorisation, which are of primary concern to legal texts. The underlying motive concerns the fact that "the combined expression of a particular source of authority and the notions of possibility and necessity occurs in linguistics strictly in the fields of obligation and permission" (Verplaetse 2003: 153). Deontic modality thus carries out fundamental functions of law through "speech acts with the illocutionary forces of permission (*may*), ordering (*shall*) or prohibition (*shall not*)" (Kurzon 1986: 15-16). Finally, *dynamic modality* divided into dynamic possibility and dynamic necessity by Palmer (1990), is the least easily identifiable. It primarily concerns cases of ability and disposition. For the purposes of this study, I recognise only the category of dynamic possibility, which is addressed in 6.3.3.

As ever with classifications, the boundaries between various types of modality seem to be fuzzy (Coates 1983; Williams 2007: 83-84). In fact, a decontextualised phrase featuring a potentially deontic or epistemic "may", such as "judges may wear wigs", can lead to various interpretations (Williams 2007: 84). Consequently, the phraseological approach to legal modals, which takes into account the immediate linguistic environment and co-occurrences of modals has to be supplemented

[65] There is an overlap in terminology related to the non-epistemic modality. Please, see Nuyts (2006: 6-7) for a more detailed overview.

by a larger qualitative analysis, taking into account also such extralinguistic factors as the genre where a certain utterance containing a modal is inserted as well as the conditions in which the utterance was made.

The so-called central modal auxiliaries – *will, would, shall, should, may, might, can, could* and *must* – are a closed class, consequently their retrieval is simple. To the modal auxiliaries some semi-modals can be added. Table 6.40 shows the main frequency data of modal auxiliaries across the corpora, as well as that of the semi-modals "is / are to" and "has / have to", which are also used in legislative writing to convey the sense of obligation (Biel 2014a: 159), to which I have added also "ought to", which can express a prescriptive meaning. The modal auxiliaries *will* and *would* are not addressed in this study.

No	Modal / semi-modal	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
1	Shall	172	+1334%	12	17	+42%
2	Should	72	-67%	217	172	-21%
3	Must	51	-42%	88	174	+98%
4	Is / are to	8	-83%	48	26	-46%
5	Has / have to	8	-60%	20	22	+10%
6	Ought to	7	-61%	18	6	-66%
7	May	62	-55%	137	140	+2%
8	Might	4	-93%	57	35	-38%
9	Can	53	-40%	88	110	+25%
10	Could	76	-51%	156	99	-36%
11	Will	34	-67%	103	69	-33%
12	Would	69	-76%	289	151	-48%
	Total	**616**	**-50%**	**1233**	**1021**	**-17%**

Table 6.40: *Overall frequency of modal auxiliaries and semi-modals across the corpora.*

The main focus of this study is on modals and semi-modals of deontic obligation, which are indicated in the first 6 lines of Table 6.40, and on the modals and semi-modals of deontic permission (lines 7-10). Interestingly, all but one modal auxiliary in the Russian Translation Corpus and half of modal auxiliaries in the Italian Translation Corpus are underrepresented in comparison to the English Reference Corpus. The first modal auxiliary in the Russian Translation Corpus is "shall" (172), while in the English Reference Corpus the first potentially deontic modal auxiliary is "should" (217) and in the Italian Translation Corpus it is "must" (174), clearly signalling different tendencies towards linguistic realisation of obligation. In fact, deontic modality tends to be among the most variable grammatical categories (cf. Palmer 2001). However, as mentioned in the previous section and discussed elsewhere (e.g. Garzone 2001; Williams 2007), along its deontic meaning legal "shall" can have also a performative meaning, and "should" and "must" can be used epistemically. Consequently, it is necessary to assess their use through concordances to elicit cases of deontic, performative or epistemic use. I also analyse the less frequent alternatives to the modals of obligation in the following paragraphs.

6.3.2. Obligation

6.3.2.1. *Shall*

Over the years, the modal auxiliary *shall* has been frequently addressed by both lawyers and linguists (Coates 1983; Palmer 1999; Garner 2001; Garzone 2001, 2013; Williams 2005, 2007, 2009, 2011), who recognise its vague and changing nature. It has been the object of fervid critique by the Plain Language movement, where it has been marked as archaic and overly formal, however the primary objection to *shall* is "that its use can lead to confusion" (Butt and Castle 2006: 132). In fact, it would seem that the reference texts have already embraced the so-called "modal revolution" (Williams 2009; Garzone 2013) of the *shall*-less (Garner 2001: 105) or *shall*-free (Williams 2009: 200) style, while the Russian translations seemingly remain at the *shall*-full level, following the suppressed canons of legal writing. Such a situation in the reference texts drafted between 2002 and 2012 coincides with the time-span indicated by Williams (2013) as the one, when *shall* started to finally disappear from legislative texts as "the decision to oust *shall* only became operative relatively recently, some time between 2001 and 2010".

As mentioned in the introductory subsection, the frequency of *shall* is the highest in the Russian Translation Corpus (+1334% as compared to the English Reference Corpus and +910% if compared to the Italian Translation Corpus). As a result, the findings of this paragraph refer predominantly to the Russian Translation Corpus, where *shall* is significantly more frequent than in the other two corpora.

The core meaning of *shall* in legal discourse is that of obligation, however, as Garner points out (2001: 105) "the word frequently bears other meanings—sometimes even masquerading as a synonym of *may*. […] In just about every jurisdiction, courts have held that *shall* can mean not just *must* and *may*, but also *will* and *is*". Since *shall* has a fluctuating meaning, it is useful to assess its function in the texts under analysis. In fact, the concordances of "shall" show that it is not always used in its originally intended meaning, according to Bryan Garner (2001: 105), of "has a duty to". As analysed by Garzone (1999: 139), *shall* may oscillate between deonticity and performativity according to the context. Although this study discusses a hybrid type of legal texts – laying in-between prescriptive and descriptive texts (Šarčević 1997: 11), it draws, with regard to *shall*, on authoritative research that concerns mostly prescriptive legislative texts (Garzone 2001, 2008, 2013; Conte 1994; Carcaterra 1994 [1990]; Williams 2007, 2009 and others). Theories about the prescriptive use of *shall* apply in that 67% of *shall*-usage in analysed texts derives from legislative, and thus prescriptive, sources. These are either direct or indirect quotations of national legislation and of the European Convention on Human Rights.

Function	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ITTC**
Deontic	29	+385%	6	4	-33%
Performative	113	+1780%	6	4	-33%
Mixed	6	>	-	2	>
Translation-triggered	24	>	-	2	>
Future sense	-		-	4	>
Total	**172**	**+1334%**	**12**	**17**	**+42%**

Table 6.41: *Relative frequencies of "shall".*

Interestingly, only in the Italian Translation Corpus is *shall* used purely to convey a sense of futurity (25% out of the total number of occurrences in the ITTC).

(71) On the 1 January 1948, the Constitution of the Italian Republic came into force, along with the principles of freedom of conscience and religion, equality and the guarantee of pluralism, which, as we

shall see further on, led the Italian Constitutional Court to assert that the supreme principle of secularism is constitutionally protected by the Italian legal system. [ITTC]

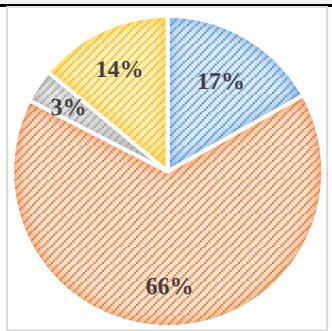
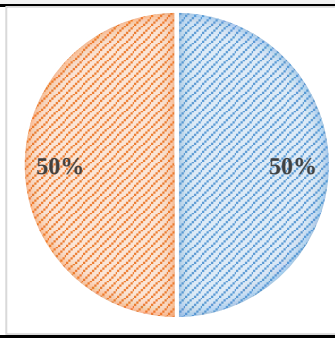
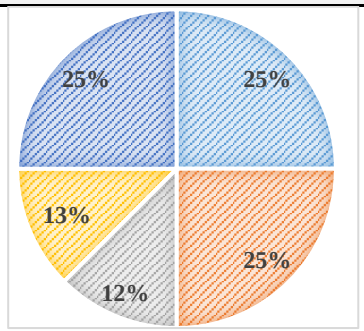
Shall	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ITTC**
Deontic	17%	-33%	50%	25%	-25%
Performative	66%	+16%	50%	25%	-25%
Mixed	3%	>	-	12%	>
Translation-triggered	14%	>	-	13%	>
Future sense	-	-	-	25%	>
Total	**100%**		**100%**	**100%**	

Figure 6.14: *Functional specialisation of "shall" within separate corpora.*

The performative and deontic meanings of *shall* are equally distributed in the English Reference Corpus (50% vs. 50%) and in the Italian Translation Corpus (25% vs. 25%), whereas in the Russian Translation Corpus *shall* is used predominantly in its performative meaning (66% vs. 17% of deontic).

The modal auxiliary *shall* is used to convey a variety of legal meanings in written pleadings (adapted from Drafting Technique Group 2008: 1; cf. Butt and Castle 2006: 131-132):

(a) to impose obligations, typically through deontic *shall* (e.g. "the registration officer shall remove the present entry from the register" [ENRC]);
(b) to create a statutory body, office, tribunal, etc, typically quotes from the respective legislation using performative *shall* (e.g. "The Prosecutor's office of the Russian Federation shall constitute the uniform federal centralized system of bodies" [RUTC]);
(c) to grant a right or set forth the content of rights, typically performative (e.g. "This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers" [ENRC]);
(d) to state provisions about application or effect, typically performative (e.g. "According to Article 20(1) of Protocol No. 14 its provisions shall apply to all applications pending before the Court." [RUTC])
(e) to give orders, directions and regulations, either deontic or performative (e.g. "the Didactic Director shall be in charge of finding an amicable solution" [ITTC]).

Consequently, provisions quoted in written pleadings most frequently require a performative *shall*, which can "bring about a new state of things or a modification" (Garzone 2001: 157), which would explain its prevalence in the Russian Translation Corpus. It is worth noting that most deontic and performative utterances in legal Russian in general and in the source texts analysed are built using the present simple indicative. Subparagraph 6.3.2.1.1 deals with performative and deontic uses of *shall*, as well as with the mixed category, whereas subparagraph 6.3.2.1.2 discusses the translation-triggered use of this modal.

6.3.2.1.1. Deontic and performative *shall*

Table 6.41 gathers different meanings of *shall* across the corpora. First, I distinguish between deontic occurrences of *shall*, which fall under Garner's intended meaning of *shall*, and adeontic occurrences, which may be classified as performative or constitutive (Garzone 2008; Carcaterra 1994 [1990]). I adopt in this study Conte's (1994: 248-249) terminology with regard to the distinction between *thetic* and *athetic* performatives. *Thetic* performatives implement a certain state of things, for instance "a victim shall have the right" [RUTC] inserted in the Russian Criminal Code performs an action by utterance but also constitutes victim's rights, while "The Applicant argues that these four factors are now outdated" [ENRC] does not implement the state of things, where the four factors are outdated, thus is classified as *athetic*. Only thetic performatives, i.e. those that along with performing an act create new state of affairs, including new legal relationships, are listed under the category of adeontic/performative uses of *shall*. Athetic performatives are listed in a separate category and are discussed in 6.3.2.1.2. Deontic meaning of *shall* is understood here as imposing an obligation, without performing it at the same time. Palmer (1990: 75) denotes as follows the deontic meaning of *shall*:

> With SHALL the speaker gives an undertaking or guarantees that the event will take place. In a sense, SHALL is stronger than MUST, in that it does not merely lay an obligation, however strong, but actually guarantees that the action will occur.

The deontic and adeontic uses are represented in examples (72) and (73) respectively.

> (72) Before the suspension of pre-trial investigation an investigator *shall* carry out all investigative actions, conducting which is possible in the absence of the defendant, and *shall* take measures for a search for him or for ascertaining identity of the person who committed the offense. [RUTC]
> (73) The conditions laid down in Rules 60 and 62 *shall* apply *mutatis mutandis*. [RUTC]

In general, the distinction between deontic and performative uses of *shall* "is not discrete, but continuous" (Garzone 2001: 165). Even in the adeontic, i.e. performative, use *shall* maintains additional shades of futurity and certain idea of an obligation (Sacerdoti Mariani 1985: 25-42 in Garzone 2008: 70).

It is thus sometimes difficult to distinguish between the deontic and adeontic use as in examples (74) and (75).

> (74) The state *shall* guarantee the victim's access to justice and compensation for damage. [RUTC]
> (75) Pursuant to article 463 section 6 of the Code of Criminal Procedure of the Russian Federation, court, in the course of the court proceedings, *shall* not consider questions of guilt of a person, who filed a complaint, limiting itself to inspection of compatibility of an extradition decision in relation of this person with the law and international treaties of the Russian Federation. [RUTC]

In example (74) it is not completely clear whether the expression is used in the prescriptive sense and the state has a duty to guarantee the victim's access to justice, or the phrase is to be interpreted in its constitutive meaning, establishing as true this statement. The fact that example (74) is a quote from the Russian Constitution, Article 52, would suggest that the meaning is closer to the axis of performativity, thus falling under the classification of prescriptive, or to use a more frequent legal term, *dispositive* norms (Carcaterra 1994 [1990]: 225). In addition, example (74) would seem to convey the core meaning of *shall* according to Palmer (1988: 141-142), i.e. that of a guarantee that a certain action will take place.

Example (75) presents a similar bipolarity in that it may be interpreted as absence of an obligation on a court, direct prohibition or as a statement establishing the court's actions and thus producing a legal effect just because the utterance has been made. Both examples (74) and (75) are constructed in the active voice, where *shall* refers to the actions of institutional agents, which according to the

doctrine would qualify as requisites for the deontic *shall*. Yet, both examples refer to legislative writing where its performative use would seem to prevail. It would appear that there is a certain overlap between the deontic and performative functions of *shall* here; thus, these and similar utterances are listed in Table 6.41 as "mixed".

Sometimes an agent is not directly indicated, yet it is textually recoverable, which allows its deontic interpretation (Garzone 2001: 166). For instance, technically the subject of (76) is "access to information", however, it is clear that the obligation lies on "the officers of the military prosecutor's offices". On the other hand, the non-animacy of the grammatical subject tips the interpretation scale towards a performative interpretation. This and similar cases are also listed under "mixed".

> (76) Access of the officers of the military prosecutor's offices to information, relevant to the case in the security agencies *shall be conducted* in accordance with the Federal Law "On Prosecutor's Office in the Russian Federation". [RUTC]

Certainly, in light of such mixed uses and overlapping senses, or even shades of meaning, a formal criterion discussed by Trosborg (1997b) has also been used in elaboration of this data. This criterion is based on the non-animacy of the subject that excludes the deontic meaning (Trosborg 1997b: 136).

Meaning of *shall*	**RUTC**	**ENRC**	**ITTC**
Deontic	**29**	**6**	**4**
Animated Subj. + Active Verb	27	5	2
Animated Subj. + Passive Verb	2	1	2
adeontic (performative)	**114**	**6**	**4**
Animated Subj. + Active Verb	35	-	2
Animated Subj. + Passive Verb	15	-	-
Non-animated Subj. + Active Verb	19	5	2
Non-animated Subj. + Passive Verb	43	1	-
Mixed	**7**	-	**2**
Animated Subj. + Active Verb	6	-	2
Non-animated + Passive Verb (textually recoverable)	1		

Table 6.42: *Deontic, performative and mixed uses of "shall" with animated and non-animated objects followed by active or passive verbs.*

Further elaboration by Garzone (2013: 74) referring to the lexical verb's *Aktionsart* has been accounted for, too, in that

> If it is true that non-animacy of subject is not compatible with deontic meaning, the reverse is not universally true, as there are cases – albeit less frequent – that are obviously performative although the subject is an animate agent; the requisite for this to be possible is that the lexical verb is stative.

Having calculated with *Wordsmith Tools* the most recurrent clusters of *shall* to its immediate right, I see that, indeed, in most cases *shall* is followed by a lexical verb in the passive voice (e.g. "be considered") or by an adjectival predicate (e.g. "be liable") that often express a stative sense. In fact, colligation "shall be" accounts for 53% out of the total amount of occurrences.

No	**Clusters with *shall***	**Frequency**
1	Shall be	91
2	Shall have the/no right	11
3	Shall not be	11
4	Shall be afforded	6
5	Shall be liable	4
6	Shall be considered	4
7	Shall be entitled to	3

Table 6.43: *Clusters with "shall" in the Russian Translation Corpus.*

Utterances with the stative *Aktionsart* of the lexical verb, as in example (77), have been calculated as performative.

(77) If a criminal case involves several victims, each of them *shall have the right* to get familiarized with those materials of the criminal case that relate to the damage caused to the victim. [RUTC]

However, constructions with the animated grammatical subject and an active verb with stative *Aktionsart* may present elements of deonticity in them as in example (78):

(78) A person *shall stay in detention* beyond the mentioned term under a court decision only and only provided that a deportation decision cannot be executed without such detention. [RUTC]

In this example it is unclear whether a person has on obligation to remain in custody under the described circumstances or this phrase merely creates a new legal relationship by guarantee that a certain state of things occurs under certain circumstances without an effective obligation imposed on the person. This example has been thus listed as "mixed". Although in the comparative perspective, it has been discovered that the translation might have altered the intended meaning.

(78a) Сверх указанного срока лицо *может оставаться задержанным* лишь по судебному решению и лишь при условии, что без такого задержания решение о выдворении не может быть исполнено. [RUST]

Example (78a) which is the source text of example (78) uses the modality of possibility with a conditional subordinate. In other words, a person *may* remain in custody only if there is a court decision and the custody is instrumental for the implementation of such a decision. Many scholars have noted that there have been cases where *may* has been construed as *shall* (Šarčević 1997: 142; Charnock 2009: 177); however, the reverse interpretation, although acknowledged (Garner 2001: 105), is less common.

These considerations lead us to the category "translation-triggered choices". This category includes the use of *shall* which does not fall under any of the above categories, or represents instances of translation errors. While some of them may seem straightforward, others need further analysis and are thus discussed in the next subparagraph.

6.3.2.1.2. Translation-triggered *shall*

In addition to deontic, performative and futurity *shall*, in more than 10% of cases in the Russian Translation Corpus this modal auxiliary is uncalled for, if not erroneous; these are placed under the label "translation-triggered".

Translation-triggered *shall*	**24**	**100%**
Inverted conditional/instead of *should*	2	8%
Future/athetic performative/ declarative verbs	4	17%
Instead of the Subjunctive/*should*	12	50%
Discoursal use (*It shall be noted*)	6	25%

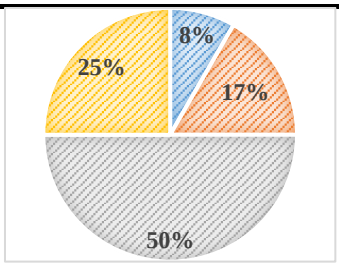


Table 6.44: *Translation-triggered "shall" in the Russian Translation Corpus.*

The "translation-triggered" category is subdivided into four subcategories: *shall* in the inverted conditionals instead of *should/were to*, *shall* instead of *should* in discoursal connectors, *shall* with

declarative verbs and athetic performatives and paraphrastic *shall* in the expressions in the subjunctive mood.

The use of *shall* instead if *should* in inverted conditionals is illustrated by example (79).

(79) *Shall* the Government refuse to conclude a friendly settlement under the above terms, the applicant asks the Court to proceed with his application.

It is an inverted conditional structure, where the modal verb conveys the meaning of the omitted *if*. This construction typically uses *should* or *were ... to.* Williams (2007: 132) notes with specific regard to prescriptive texts that *should* can be used "in the protasis of a conditional clause". Yet, *shall* in this position would not qualify as grammatically correct. The Russian source uses the conditional structure for (69), hence this shift may be interpreted as an intentional inclusion of the legal style marker and the translator's lack of language proficiency or attention.

Another subcategory features *shall* with "athetic" performatives, to follow Conte's theory (1994: 248-249). It is felt that the use of *shall* with athetic declarative performative utterances in subordinate clauses is redundant if not misleading as shown in example (80).

(80) The applicants believe that, regard being had to the above facts taken in their entirety, they *shall* conclude that their son was tortured and ill-treated. [RUTC]

In these utterances *shall* is followed by an athetic performative "conclude" in the transposed third person plural. Such performatives maintain their performativity even when not in the first person singular as widely discussed in the relevant literature (e.g. Austin 1975: 57; Garzone 2001: 159-160). Certainly, the very sense of the phrase excludes the deontic use, and the futurity function is unlikely. In order to limit the range of interpretations, the source text (80a) is consulted, with its literal translation given in (80b).

(80a) Заявители считают, что при наличии совокупности вышеперечисленных данных *можно сделать вывод о* применявшихся к сыну заявителей пытках и бесчеловечном с ним обращении. [RUST]
(80b) The applicants believe that, given the abovementioned data in their entirety, *a conclusion* about their son having been subjected to torture and inhuman treatment *may be made*. [literal translation]

As the source text shows, the original expression that gave rise to this unqualified use of *shall* is an impersonal utterance *можно сделать вывод*, where the first item is an adverb of possibility followed the infinitive "to make a conclusion". The function of the above utterance may be recapped as "we may as well conclude". In other words, it is the argumentative function of a possibility modal (cf. Miecznikowski 2011). Alternatively, it may be interpreted as emphatic "we do conclude" which would fall under the discoursal function. There is no research demonstrating that this function may be obtained using *shall*. Consequently, although leaving aside any prescriptive considerations, this *shall* may be defined as "purely ornamental" that "merely conjures up 'the flavour of the law' without actually conveying any particular meaning" (Williams 2009: 203-204; see also Bowers 1989: 294).

Along similar lines, it may be argued that the use of *shall* instead of the subjunctive may be explained by stylistic reasons.

(81) Indeed, Article 5 § 1(f) of the Convention or any other provision thereof does not *require* that the deportation decision *shall be taken* by the judge. [RUTC]

Example (81) is an instance of mandative subjunctive (Leech *et al.* 2009: 52-57). It features a propositional verb *require,* and *shall* enters the part of the argument of predicate about the state being proposed. Conventionally, in such structures a present subjunctive is normally used, its form coinciding with that of the bare infinitive ("*require* that the deportation decision *be* taken by the

judge"). Alternatively, a paraphrastic construction with *should* is acceptable ("*require* that the deportation decision *should be* taken by the judge"), while the indicative construction ("*require* that the deportation decision *is* taken by the judge") is reported to be circumscribed to British English only (Leech *et al.* 2009: 54). Huddleston and Pullum (2002: 195, note 60) claim that there is no difference between the present simple and *shall* in subordinate clauses in legal language; moreover, in such clauses *shall* performs a function similar to that of *should*. In any case, this overview does not lend support to the use of *shall* in such constructions as in (81). Bowers (1989: 294) claims that in such subordinate clauses *shall* is commonly used "as a kind of totem, to conjure up some flavour of the law". Williams (2007: 120) argues that in certain subordinate clauses *shall* cannot be considered redundant because "it expresses the function of mandatory obligation" and "the 'core' semantic function of *shall* of denoting a duty which has mandatory effect holds irrespective of whether it is found in main clauses or subordinate clauses". Yet, it is to be borne in mind that modality in English can be expressed not only by modal auxiliaries, but also "by a considerable range of grammatically and syntactically quite diverse items" (Williams 2007: 82). In fact, the propositional verb *require* belongs to the category of the so-called "lexical modals" (Huddleston and Pullum 2002: 173), thus already setting forth an obligation and making recourse to *shall* in the subordinate clause redundant.

A similar objectionable pattern is found in one applicant's pleading, where it is repeated multiple times in a parallel structure.

(82) The applicant[s] do not have means to pay legal advice and ask to afford the following amounts in respect of legal advice they received since September 2003, in proportion to the amount of work performed.
2003
[…] EUR 500 *shall* be afforded to each lawyer.
2004
EUR 300 *shall* be afforded to each of the lawyers […].
2005
EUR 500 *shall* be afforded to each of the lawyers […].
2006
EUR 300 *shall* be afforded to each of the lawyers […].
In total, the following amounts *shall* be afforded to the representatives […].
Besides, EUR 500 *shall* be afforded to jurist Irina Checheleva for having performed a legal translation of the present observations.

Interestingly, the source text does not use verbs at all for the above construction, which is allowed by the Russian normative grammar. It would seem that in the absence of any explicit verbal stimuli, "shall" has been added to make the request more "legally sounding" to the detriment of the clarity of this request.

(72a) Заявители не располагают средствами для оплаты юридической помощи и просят взыскать, в качестве компенсации за оказанные им с сентября 2003 года по настоящее время юридические услуги, в зависимости от интенсивности работы, следующие суммы: […]
2003
Всего 500 евро каждому из адвокатов.
2004
[…] 300 евро каждому адвокату и юристу.
2005
[…] 500 евро каждому адвокату и юристу.
2006
[…] 300 евро каждому адвокату и юристу.
А также юристу И. Ч. - 500 евро за юридический перевод возражений на Меморандум. [RUST]

Finally, examples (83) and (84) of what has been called a discoursal use of *shall* provide convincing evidence of the stylistic nature of this choice.

(83) *It shall be noted* that this procedure was applied only for appeal against decisions on arrest and extension of the terms of detention, passed by an agency of inquiry, an investigator and a procurator.[RUTC]
(84) In application of Boultif criteria to the circumstances of the present case, the following *shall be specifically noted*.[RUTC]

It is clear that these expressions have originated from *it is to be noted / it should be noted*, where *should* or the quasi-modal *is to* have been replaced by *shall* for stylistic reasons. These expressions render the Russian connector *следует отметить*, which is an impersonal utterance standing for "it should be noted". It has a deontic shade; however, the obligation lies on the speaker ("I must note") and not on the receiver of the message.

A similar pattern occurs once in the Italian Translation Corpus, which uses "shall be clarified" (85) to render *occorre porre in evidenza* (85a):

(85) Firstly, the difference between restriction in view of the expropriation (vincolo preordinato all'esproprio) and environmental protection restriction (vincolo paesaggistico) *shall be clarified*. [ITTC]
(85a) In primo luogo *occorre porre in evidenza* la differenza tra vincolo preordinato all'esproprio (o espropriativo) e vincolo paesaggistico. [ITST]

On the T-universal plane, without looking at the source text, "shall be clarified" can be interpreted as expressing a sense of futurity. However, even in this scenario the choice of "shall" over "will" with the introductory "it" is marked. Looking at the source text, it becomes clear that the intended meaning was that of "it should be noted". The Italian *occorre porre in evidenza* is a logical discourse organiser, which could be translated as "it is necessary to highlight", where the implied subject is the speaker ("I must highlight") who imposes a necessity on him- or herself to highlight this aspect, and not on the receiver of the message as can appear with *shall*. In other words, the obligation is self-referred. Palmer (1990: 74) denotes this function as "discourse orientation" and ascribes it typically to *must*, and not *shall*, when followed by verbs of communication:

With these there is still an element of discourse orientation; the speaker either imposes the obligation on himself and by so doing actually performs the act (*I must admit = I do admit),* or else asks his hearer to behave in a similar fashion. (Palmer 1990:74)

It results, thus, that in approximately 14% of cases in the Russian Translation Corpus and 12% in the Italian Translation Corpus *shall* can be considered to be translation-induced, presumably for stylistic purposes.

6.3.2.2. *Must, is/are to* and *has / have to*

Must is considered to be the obvious alternative to legal *shall* (Drafting Techniques Group 2008: 3), with the second place allocated to *is / are to*. Garzone (2013: 71) observes the increase in the frequency of *must* of more than seventeen times and the trebled numbers of *is /are to* in legislative writing from 1973 to 2010, most probably under the influence of the Plain Language campaign targeting the undesirable *shall* and replacing it with *must* and, less often, with *is /are to*.

Must is the most salient modal auxiliary in the Italian Translation Corpus, along with *should*, whereas the numbers of *must* in the other two corpora are significantly lower (RUTC: -71%; ENRC: -49% compared to ITTC). However, this modal auxiliary can perform both an epistemic function and a deontic function. The former expresses "the speaker's confidence in the truth of what he is saying, based on a deduction from facts known to him (which may or may not be specified)" (Coates 1983: 41), which is divided into *core* (confident inference = "I confidently infer that…") and *peripheral*

(logical necessity = "In light of what is known, it is necessarily the case that…") meanings, illustrated by (86) and (87) respectively.

(86) That being so, there being in this case strong prima facie evidence that there has been infringement, and since the defendants *must* know the names of people from whom they have obtained the records, it is in my view appropriate to make the order sought. [ENRC]
(87) As it is accepted that it is not in the public interest that criticism of governmental-type organisations be chilled, then it is submitted that the same *must be true* for an organisation like the Corporation. [ENRC]

The deontic or root *must* essentially expresses deontic necessity and / or imposes an obligation. Butt and Castle (2006: 201) comment that *must* is a widely used alternative to *shall*, when the latter is relied on to impose an obligation, with an advantage that *must* is less likely to be misinterpreted (2006: 2002). With deontic *must* there is one subtlety that "the authoritor (or deontic source) is typically the utterer or the originator of the message" (Smith and Leech 2013: 81); however, the message can be relayed or transposed (Palmer 1990: 73). Coates (1983) maintains deontic modals are placed on a cline ranging from strong obligation ("It is imperative/obligatory that…") to weak obligation ("it is important that…"), with the basic meaning of *must* being rephrased as "it is necessary for ..." (cf. Close and Aarts 2010: 173). Deontic *must* is illustrated below:

(88) Nevertheless, under this provision the State *must* ensure that a person is detained in conditions which are compatible with respect for his human dignity. [RUTC]
(89) The State has a duty to uphold confessional neutrality in public education, where school attendance is compulsory regardless of religion, and which *must* seek to inculcate in pupils the habit of critical thinking. [ITTC]
(90) To suggest that the claimant *must* quantify any loss as a precondition to obtaining Pickwick Medpro relief would be to put the cart before the horse, and would frustrate the jurisdiction's ability to achieve its intended purpose. [ENRC]

Close and Aarts (2010: 174) distinguish a third category of *must*, denoting performative modality, where *must* co-occurs with performative or speech act verbs (see 6.2.3), such as "admit", "say", etc. Although this use of *must* typically falls under root or deontic modality, it is counted separately here in line with Close and Aarts' (2010) approach, because *must* with performatives carries out a distinct discoursal function. The same felicity conditions as discussed in 6.2.3 apply here, too. Such occurrences of *must* are placed here under the label "discoursal". It can be said that discoursal *must* takes on a pragmatic value of a hedge, because in an interactional perspective of written pleadings it allows the writing party to prepare for a possible "opposition" (to use Hübler's term, 1983: 10) of the other party.

(91) However, *it must be pointed out* that, in a secular State, the feelings and credos of minority groups need to be more particularly protected, since they evolve in a somewhat unfavourable or even in some cases, a hostile social background. [ITTC]
(92) *It must be emphasized* that the civil law of the Russian Federation relies on the principle of full compensation of the incurred loss regardless of its character and the personality of the tortfeasor. [RUTC]

Finally, there are cases where it is difficult to decide whether an utterance is intended as deontic or epistemic. For Coates (1983: 47), in contrast to Palmer (1990: 113), "there is no overlap between the two fuzzy sets representing Root and Epistemic *must*" and "[c]ases where it is not possible to decide which meaning is intended are therefore ambiguous". Such occurrences of *must* are marked here as "mixed".

(93) In those circumstances, and in the absence of proof by the Respondent Government that the records relating to the Applicant were destroyed prior to the date of the lodging of the Government's declarations […], the Applicant submits that the Court *must assume* that the destruction took place after that date. [ENRC]

In (93) it is unclear whether the speaker intends "must assume" as a request or a prediction. On the one hand, the submission formula is usually followed by a request ("Please, do assume so"). On the other hand, the applicant does not have the authority to impose such an obligation on the Court, hence *must* can be construed as an interpretation of reality ("the Court most likely assumes").

Based on this distinction, I have calculated the repartition between deontic and epistemic *must* across the corpora through analysis of the concordance lines.

Must	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Deontic	43	-27%	59	136	+130%
Epistemic	2	-86%	15	15	=
Discoursal	2	-33%	3	*15*	*+400%*
Mixed	4	-64%	11	8	-27%
Total	**51**	**-42%**	**88**	**174**	**+98%**

Table 6.45: *Relative frequencies of meanings of "must" across the corpora.*

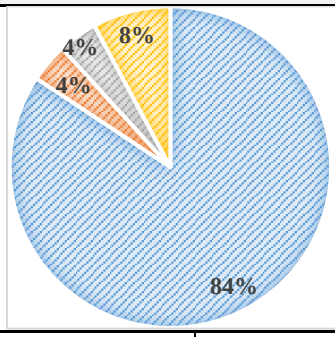
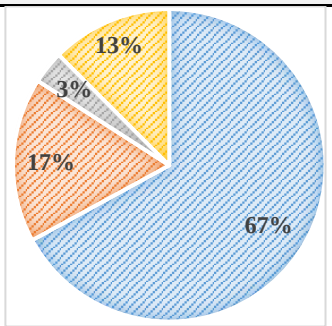
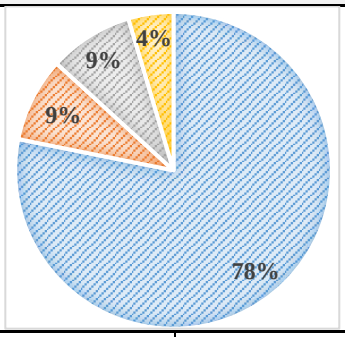
Must	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Deontic	84%	+17%	67%	78%	+11%
Epistemic	4%	-13%	17%	9%	-8%
Discoursal	4%	+1%	3%	9%	+6%
Mixed	8%	-5%	13%	4%	-9%

Figure 6.15: *Functional specialisation of "must" within separate corpora.*

It emerges that the prevalent meaning of *must* in all three corpora under analysis is deontic, with obligation / necessity meaning accounting for 84% of occurrences in the Russian Translation Corpus, 67% in the English Reference Corpus and 78% in the Italian Translation Corpus, which would suggest its higher deontic specialisation in the translation corpora. At the same time, the Italian Translation Corpus shows traces of a clear overrepresentation of *must* in its discoursal function (+400% compared to ENRC; 9% out of the total number of its occurrences). The same function of *must* in the other two corpora is the least frequent (RUTC: 4%; ENRC 3%). It also strikes that epistemic function is comparatively more frequently associated with *must* in the English Reference Corpus (17% of cases) than in the other two corpora (RUTC: 4%; ITTC: 9%).

The alternative *is / are to* is used decidedly less frequently. It is peculiar that this alternative is the most recurrent in the reference texts, with significantly underrepresented values in the translation

corpora. Its deontic use is generally less prominent than its adeontic occurrences (deontic ENRC: 33%, ITTC: 17%) or equal in the Russian Translation Corpus (deontic 50% vs. adeontic 50%).

is / are to	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Deontic	4	-75%	16	4	-75%
Adeontic	4	-87.5%	32	21	-34%
Total	**8**	**-83%**	**48**	**25**	**-48%**

Table 6.46: *Relative frequencies of meanings of "is / are to" across the corpora.*

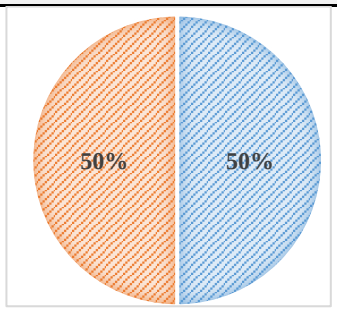
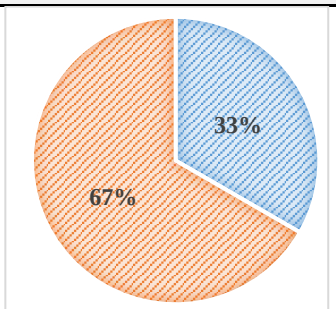
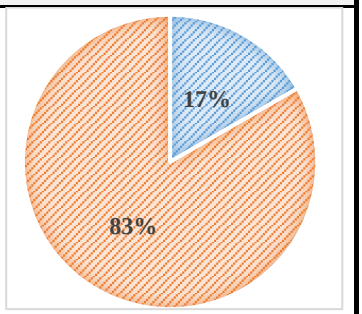
is / are to	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Deontic	50%	+17%	33%	17%	-17%
Adeontic	50%	-27%	77%	83%	+7%
Total	**100%**		**100%**	**100%**	

Figure 6.16: *Functional specialisation of "is / are to" within separate corpora.*

Finally, it is interesting to compare these numbers with a more informal deontic semi-modal *has / have to*. Smith (2003: 259), observing the changes in modern English with regard to modal verbs, argues that

> It seems probable that *must* is a casualty of a changing society where increasing emphasis is being placed on equality of power, or at least the appearance of equality of power, and the informality of discourse found in private conversation is becoming more acceptable, even usual, in official types of discourse. Just as these conditions are likely to disfavour the use of *must*, they should correspondingly favour other forms which express obligation less directly (Smith 2003: 259).

However, looking at the low frequency of the semi-modal *has / have to*, this does not seem the case in written pleadings. Only positive obligation is considered here, as the negative form "do(es) not have to" indicates absence of necessity and not prohibition.

has / have to	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Deontic	7	-42%	12	13	+8%
Epistemic	1	-75%	4	6	+50%
absence of necessity	-	<	4	2	-50%
Total	**8**	**-60%**	**20**	**21**	**+5%**

Table 6.47: *Relative frequencies of meanings of "has / have to" across the corpora.*

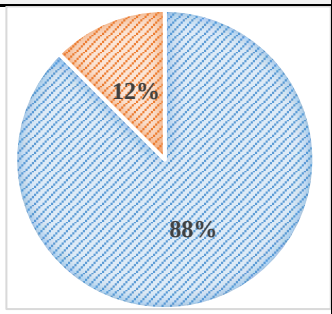
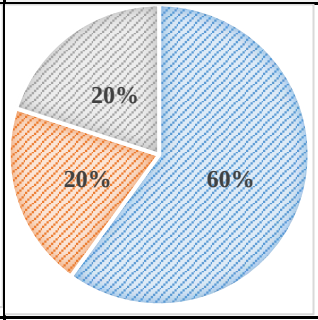
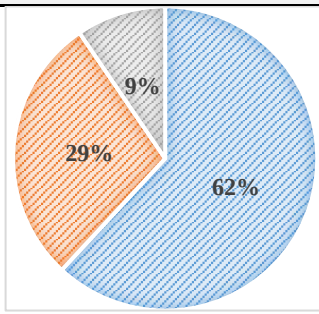
has / have to	RUTC		ENRC	ITTC	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Deontic	88%	+28%	60%	62%	+2%
Epistemic	12%	-8%	20%	29%	+9%
absence of necessity	-	<	20%	9%	-11%
Total	**100%**		**100%**	**100%**	

Figure 6.17: *Functional specialisation of "has / have to" within separate corpora.*

Looking at the overall statistics, it can be concluded that the Russian Translation Corpus uses both *shall* and *must* to express deontic meanings, whereas the Italian Translation Corpus prefers *must* for this sense. The English Reference Corpus employs both *must* and the semi-modal *is/are to* convey the deontic meaning. A less formal variant *has / have to* is relatively infrequent in its deontic meaning in all three corpora.

6.3.2.3. *Should* and *ought to*

Coates (1983) includes both *should* and *ought to* as modals expressing necessity and obligation. Palmer (1990: 70, 82) also list them as deontic based on the subject involvement in these modals. Their deontic meaning is undoubtedly of a weaker nature and denotes a mild obligation or advice. Interestingly, some recent research indicates that deontic *should* is recurrent in EU legislation, where it surprisingly runs in parallel to the traditional *shall* (see, e.g. Garzone 2013; Biel 2014a: 159; Anselmi and Seracini 2015: 48), which could reflect Smith's (2003: 259) speculations about less formal deontic variants permeating even more formal types of discourse.

Remarkably, *should* is the most salient modal in the English Reference Corpus. In the Italian Translation Corpus it also occupies the leading position along with *must*, yet it is still -21% less frequent than in the reference texts. In the Russian Translation Corpus *should* is the third most frequent modal, after *shall* and *could*, and in comparison with ENRC values it is significantly underrepresented (-67%). The frequency of *ought to* is relatively low in all three corpora, with higher numbers in the English Reference Texts (RUTC: -61%; ITTC: -66%).

Both *should* (94) and *ought to* (95) can have an epistemic meaning.

(94) However, in case the Grand Chamber *should* uphold the finding of the Chamber that there has been a violation of the Convention, the Government submit that there is no other criterion, and no other practice generally followed in Europe, on which the pecuniary harm may be quantified, even in equity but in a defendable manner. [ITTC]
(95) The Applicants' third argument is that the motives of the Source are, or ought to be, irrelevant to the exercise of the domestic court's discretion.

At the same time, these modals can also have a deontic meaning, which is of major interest to this study. Although it does not convey a mandatory obligation, it can be interpreted as directive. The latter sense may be expected to be recurrent in the genre of written pleadings, which do not lay

mandatory obligations as legislation (with the exception of quotes), but instead aim at convincing the Court of the parties' positions.

(96) This reply *should* be read with the full application. [ENRC]
(97) It is submitted that an analogy with public figures can be drawn here - just as wide comment and criticism can be made of public figures because they promote themselves publicly, so wide comment and criticism *ought to* be permitted in relation to multinationals such as McGathings who promote themselves with very aggressive marketing. [ENRC]

There are also some borderline cases, where the meaning of these modals can be interpreted either way. In (98) its is unclear whether "he should also acknowledge" is meant as a prediction ("it is likely that he acknowledges") or as an obligation ("he must acknowledge"); as well as (99) and (100) which present no clarity concerning their directive or epistemic meaning.

(98) If the applicant concedes this (as it would appear from his statement of the facts), *he should also acknowledge* that there was no retroactive application of harsher provisions of criminal law or criminal procedure than obtained at the time when the crimes were committed, and that consequently Article 7 of the Convention is inapplicable in the instant case. [ITTC]
(99) Adopting that analysis the pecuniary loss suffered by the Applicant as a result of that hearing should be assessed at zero. […] Thus any award in respect of pecuniary loss in connection with the second judgment of the House of Lords *should not exceed* £35,511.00. [ENRC]
(100) It seems to me that the principles expressed in the Pickwick Medpro case, although they have not previously been applied so far as I know to a case in which the question whether there has been a tort has not clearly been answered, *ought to be applicable* in a case such as the present. [ENRC]

Traugott (2006: 127) argues the existence of a tendency to specialise meanings of certain modals, under which *should* is predominantly used to express weak obligation. In fact, it is widely employed in combination with "Court", where the parties express through "should" the preferable course of action under the form of a mild obligation / request. Such constructions as below are frequently employed in the intermediate summaries (see 6.1.3).

(101) This Court *should* approach this application on this basis. This Court *should* afford significant respect to the full and detailed factual evaluation reached by the House of Lords. [ENRC]
(102) All this having been expounded and considered, for the reasons invoked in favour of the hereby application, the Court *should* confirm and assert […] [ITTC]

Both *should* and *ought to* can co-occur with a perfective form, however, it does not denote a past weak obligation but rather expresses a past action which did not happen, often under a form of advice or regret.

(103) In particular, the whole thrust of the Applicants' Amended Grounds of Appeal [p.37] was not that the judge below *should have ordered* a trial, but rather that the evidence adduced by Moreandro was insufficient to justify a Pickwick Medpro order being made.[ENRC]
(104) The Court considers that, given the gravity of what was at stake for the applicant, he *ought to have been able* "to defend himself in person" as required by Article 6 para. 3 (c)(art. 6-3-c).[ITTC]

It may be argued that some past forms of *should* and *ought to* can be interpreted as unreal deontic uses, such as in (105) and (106) below, which implies that it was the government's duty that was not carried out.

(105) In accordance with its obligations pursuant to the case-law of the Court, the Government *ought to have undertaken* an effective investigation into the case. [RUTC]

(106) […] the Government *should have introduced* some form of means testing which would have excluded people such as Ms. Kenvill entering into conditional fee agreements.[ENRC]

However, the unreal past component is essential to the interpretation of the phrase, whereas the deontic meaning is typically conveyed in the present and is projected towards the future. I count separately all instances of "should have" / "ought to have" followed by the past participle in my calculations, however, these could have been tentatively grouped together with epistemic uses.

Both *should* and *ought to* are employed within discourse connectors together with performative or communication verbs, as already discussed in the case with discursive *must*. These occurrences are placed under "discoursal" label.

(107) *It also ought to be recalled* that for a cruel treatment, including a punishment, to be considered in the perspective of the Convention, it should reach the minimum level. [RUTC]
(108) *It should be noted*, however, that whilst it is unusual for a successful party to appeal a court ruling, such an appeal is possible where objection is taken to the reasoning of the court and the public interest so requires. [ENRC]
(109) The applicants *should hereby like to comment* on the Government's answers, as well as to answer the questions put by the European Court before the Government. [RUTC]

Finally, there are cases when *should* is used in inverted conditionals, which are labelled as such and counted separately.

(110) The Government reserve the right to make further Observations on other matters raised by the applicant and/or by the Court at a later date, *should it be necessary to do so*.[ENRC]

Based on this distinctions, I have analysed all the concordances of *should* and *ought to* in order to count their occurrences according to the meaning.

Should	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Deontic	36	-70%	120	88	-27%
Epistemic	1	-92%	13	21	+61%
Mixed	7	-68%	22	16	-28%
should have + PP	6	-86%	42	10	-76%
Discoursal	*21*	*+40%*	*15*	*35*	*+133%*
inverted conditional	1	-80%	5	2	-60%
Total	**72**	**-67%**	**217**	**172**	**-21%**

Table 6.48: *Relative frequencies of meanings of "should" across the corpora.*

Table 6.48 and Figure 6.18 show that *should* is predominantly used in its deontic meaning in all three corpora (RUTC: 50%; ENRC: 55%; ITT: 51%), although in a cross-corpora perspective its use in the translation corpora is underrepresented (RUTC: -70%; ITTC: -27% compared to ENRC). The epistemic specialisation of *should* is the highest in the Italian Translation Corpus (12% out of total) as compared to 6% in the English Reference Corpus and 2% in the Russian Translation Corpus. From a cross-corpora viewpoint, epistemic should is overwhelmingly underrepresented in the Russian Translation Corpus (-91% compared to ENRC) and overrepresented in the Italian Translation Corpus (+61%). Interestingly, the English Reference Corpus frequently uses "should have" followed by the past participle (20% out of total), whereas the same use is unimportant in the translation corpora (RUTC: 8%; ITTC: 6% out of total).

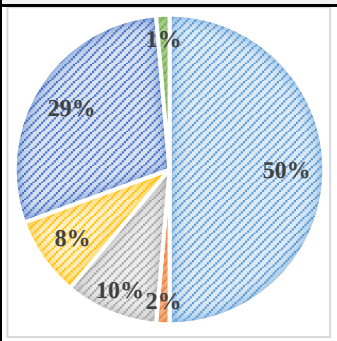
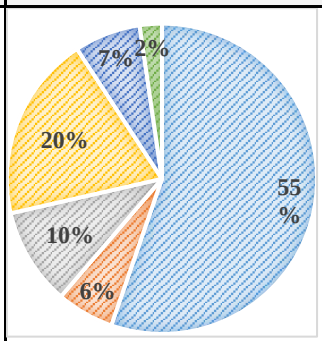
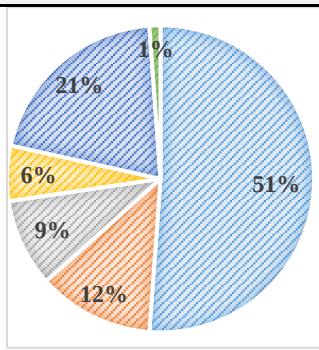
Should	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Deontic	50%	+5%	55%	51%	-4%
Epistemic	2%	-4%	6%	12%	+6%
Mixed	10%	=	10%	9%	-1%
should have + PP	8%	-12%	20%	6%	-14%
Discoursal	*29%*	*+22%*	*7%*	*21%*	*+14%*
Inverted conditional	1%	-1%	2%	1%	-1%
Total	**100%**		**100%**	**100%**	

Figure 6.18: *Functional specialisation of "should" within separate corpora.*

Another remarkable difference between the translated texts and the non-translated pleadings is the use of *should* in discourse connectors, such as "it should be noted" or "we should consider" (RUTC: +40%; ITTC: +133% compared to ENRC). The latter pattern, where "should" follows the first person plural pronoun, standing for the applicants, amounts to 52% of all discoursal occurrences of "should" in the Russian Translation Corpus. It is listed as discoursal, because in these utterances "should" functions as a pragmatic signal of the writing party's communicating their decisions (cf. with translation-triggered *shall* with athetic performatives in 6.3.2.1.2). The pattern "it should be" + communication / mental verb ("noted", "pointed out", etc) amounts to 91% of all discoursal occurrences of "should" in the Italian Translation Corpus and to 100% of all discoursal occurrences of "should" in the English Reference Corpus. In the Russian Translation Corpus and in the Italian Translation Corpus discoursal *should* is the most salient, amounting to almost 29% and 21% respectively of all *should* occurrences, whereas in the English Reference Corpus discoursal *should* makes up for only 7% of all occurrences. It seems that the discoursal use of *should* in the translation corpora has been pragmaticalised and could be perceived as an expected feature of written pleadings, which fulfil this genre's demands. Consequently, a trend emerges, according to which a) *should* is prevalently used in its deontic meaning in all three corpora with the highest statistical recurrence in the English Reference Corpus; b) *should* is frequently used in its discoursal function in the translated texts in contrast to the reference texts, where c) it is recurrent in the past form "should have" + past participle.

The alternative to *should*, *ought to*, does not occupy prominent positions in any of the three corpora, with relatively higher recurrence in the reference texts as compared to the translated texts (RUTC: -61%; ITTC: -66%). It is most frequently used either to convey a deontic sense, or with the perfective structure "ought to have" + past participle. Only the reference texts feature *ought to* in its epistemic or mixed use. In the Russian Translation Corpus it is also used once in a discoursal connector.

Ought to	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Deontic	3	-25%	4	4	=
Epistemic	-	<	1	-	<
Mixed	-	<	4	-	<
ought to have + PP	3	-70%	10	2	-80%
Discoursal	1	>	-	-	
Total	**7**	**-61%**	**18**	**6**	**-66%**

Table 6.49: *Relative frequencies of meanings of "ought to" across the corpora.*

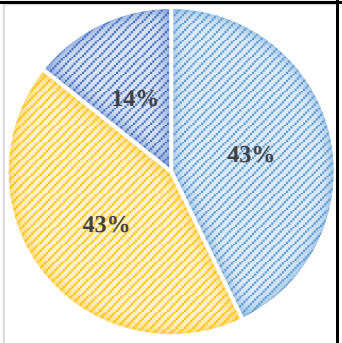
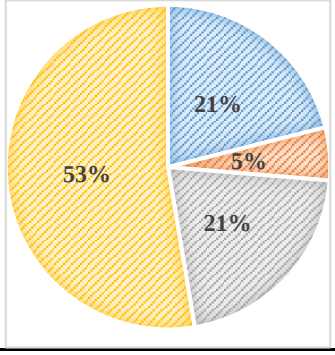
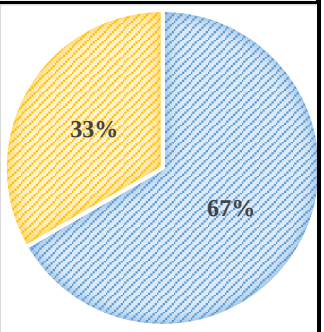
Ought to	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Deontic	43%		21%	67%	
Epistemic	-		5%	-	
Mixed	-		21%	-	
ought to have + PP	43%		53%	33%	
Discoursal	14%		-	-	
Total	**100%**		**100%**	**100%**	

Figure 6.19: *Functional specialisation of "ought to" within separate corpora.*

6.3.2.4. Synthesis of obligation modals

Having observed in the previous paragraphs a variety of meanings expressed by the discussed modals and semi-modals, it is interesting now to focus only on their meanings expressing deonticity. If only explicitly deontic meanings of the discussed obligation modals are compared, the following results emerge.

Deontic modals / semi-modals	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
shall	29	+385%	6	4	-33%
must	43	-27%	59	136	+130%
has/have to	7	-42%	12	13	+8%
is / are to	4	-75%	16	4	-75%
should	36	-70%	120	88	-27%
ought to	3	-25%	4	4	=
total	**122**	**-44%**	**217**	**249**	**+15%**

Table 6.50: *Relative frequencies of obligation modals and semi-modals across the corpora.*

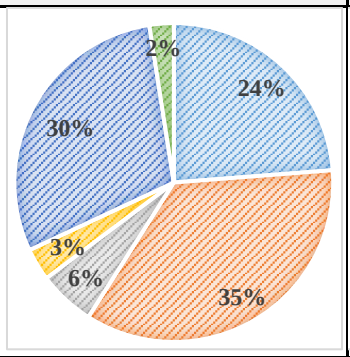
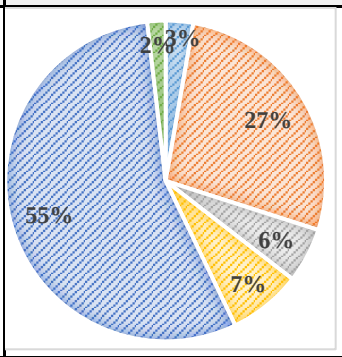
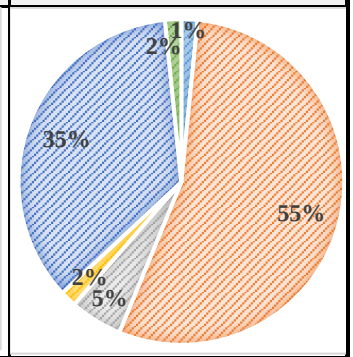
Deontic modals / semi-modals	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
shall	24%	+21%	3%	1%	-2%
must	35%	+8%	27%	55%	+28%
has/have to	6%	=	6%	5%	-1%
is / are to	3%	-4%	7%	2%	-5%
should	30%	-25%	55%	35%	-20%
ought to	2%	=	2%	2%	=
total	**100%**		**100%**	**100%**	

Figure 6.20: *Proportion of obligation modals and semi-modals within separate corpora.*

The classical modal auxiliaries *shall* (RUTC: 24%), *must* (RUTC: 35%; ENRC: 27%; ITTC: 55%) and *should* (RUTC: 30%; ENRC: 55%; ITTC: 35%) prevail over semi-modals *has / have to*, *is / are to* and *ought to* in all three corpora, where the values of the latter vary between 1%-7%. From the cross-corpora perspective, important differences are observable with regard to the former category. It appears that the Italian Translation Corpus has a clear preference for *must* to express obligation, which is used both in direct obligations (111), obligations with a textually recoverable agent (in this case by the Court) (112) and in quotations from legal provisions (113).

(111) In order to assess the existence at the period under consideration of a risk of treatment contrary to Article 3 of the Convention, *the Court must apply* strict criteria, having regard to the absolute

nature of this provision and the fact that it enshrines one of the fundamental values of democratic societies. [ITTC]

(112) […] the criteria for calculation cannot merely indicate a sum per year, since *other factors must be taken into account*, among which the Government attach particular importance to what is at stake in and to the outcome of the case.[ITTC]

(113) Article 438 of the Code of Criminal Procedure (CCP) stipulates that the "defendant" may ask to be tried under this procedure (and throughout the Code a distinction is drawn between the "defendant" and counsel); it then goes on to specify that the request *must* be made "in person" (paragraph 3) or through a representative holding a special power of attorney, signature of which *must* be legalised in accordance with certain formalities. [ITTC]

However, the same uses are observable also for *should* in the Italian Translation Corpus: a direct obligation (114), with a textually recoverable agent (115) and a quotation (116).

(114) All this having been expounded and considered, for the reasons invoked in favour of the hereby application, *the Court should confirm* and assert that the Italian State, in relation to the expounded facts, has infringed, as regards the applicant and her children, article 9 of the Convention, article 2 of Protocol no.1 and article 14 of the Convention. [ITTC]

(115) Of course, the Government leave it to the discretion of the Court, but would observe that, in these circumstances, the just satisfaction *should not take the pecuniary damage into account* or, in any event, *should be limited* to a sum calculated with the utmost produce and restraint, and certainly below that awarded by the Chamber. [ITTC]

(116) Later, the Italian Minister of Education, University and Research adopted a Directive recommending that the *school principles* [sic] *should ensure* the presence of crucifixes in classrooms. [ITTC]

Should is the most recurrent modal of obligation in the English Reference Corpus, where it is used twice as many times as *must*. The former, although marked as deontic, undoubtedly conveys a weaker obligation than the latter. In fact, although both co-occur with "court", *must* is never used to refer to the ECtHR, where the hedged version of obligation is conveyed through *should*. In (117) "court" refers to any UK court as it is a quote of the Costs Practice Direction. In (118), on the contrary, the "court" is the ECtHR, to which the party – the UK Government in this case – expresses a mild negative obligation not to interfere.

(117) In assessing whether costs claimed are reasonable and where appropriate, proportionate, *the court must consider* the amount of any success fee and ATE insurance premium separately from the base costs. [ENRC]

(118) Furthermore, there was no violation of Article 10, because the orders made in the domestic proceedings represented a proportionate balance under Article 10(2) with which *this Court should not interfere*. [ENRC]

At the same time, when the requests are formulated indirectly in the passive voice, and the implied agent is still the ECtHR, both *should* and *must* occur in the English Reference Corpus.

(119) Accordingly, the Application *should be declared inadmissible* on the grounds that the Applicants have failed to exhaust their domestic remedies. [ENRC]

(120) The decision is therefore open to a wider interpretation and if this wider interpretation is accepted the Applicant's claim in this case *must be upheld*. [ENRC]

Interestingly, the analysis of concordances shows that *should* is used in combination with "court" as a subject by the parties in both the English Reference Corpus and the Italian Translation Corpus, while in the Russian Translation Corpus same requests are less frequent and mitigated by the passive, e.g. "… should be considered by the Court", or even without mentioning explicitly that the intended agent is "court", e.g. "the application should be dismissed".

The Russian Translation Corpus is characterised by a relatively well balanced distribution between the modals of obligation, with *must* amounting to 35%, *shall* to 24% and *should* to 30%. It is interesting to note that most often *must* and *should* originate from the Russian modal *должны* (121a) and (123a), whereas *shall* is used to render the present indicative (122a), which is typically used in Russian legal texts to convey both deontic and performative senses. Consequently, *shall* reproduces in a felicitous way the source ambiguity.

(121) However, whatever mode is employed, the authorities *must* act of their own motion once the matter has come to their attention. [RUTC]
(121a) Однако, какая бы форма ни была применена, власти *должны* действовать по собственной инициативе, как только им станет известно о проблеме. [RUST]
(122) Before the suspension of pre-trial investigation an investigator *shall* carry out all investigative actions, conducting which is possible in the absence of the defendant, and shall take measures for a search for him or for ascertaining identity of the person who committed the offense. [RUTC]
(122a) До приостановления предварительного следствия следователь *выполняет* все следственные действия, производство которых возможно в отсутствие обвиняемого, и принимает меры по его розыску либо установлению лица, совершившего преступление. [RUST]
(123) Authorities *should* take the reasonable measures accessible to them for maintenance of reception of proofs on case. [RUTC]
(123a) Власти *должны* предпринимать разумные меры, доступные им, для обеспечения получения доказательств по делу. [RUST]

It has to be observed that *shall* most frequently occurs in quotations from various legislative sources, whereas *should* and *must* are used in a way that is similar to their use in the other two corpora, with the exception of direct requests to the Court, which are absent in the RUTC. As tempting as it is to generalise that *shall* in the Russian Translation Corpus is exclusively caused by reasons of conventionalisation, this statement would refer undoubtedly to cases of translation-triggered *shall* (14% out of total) and, to a certain degree to instances of performative *shall* (66% out of total), where it could have been replaced by the present indicative or "is to" alternatives, whereas deontic *shall* (17% out of total) is just one of three nearly equally distributed options to convey obligations. Yet, it is used in the Russian Translation Corpus also outside legislative quotes (124), in cases where the other corpora use *must* or *should* as illustrated in (125), (126) and in the previous examples of this paragraph.

(124) The applicants maintain that, regard being had to the circumstances of the present case, it is the Government who *shall* carry the burden of proof, for it is them who dispose of the information inaccessible to the applicants. [RUTC]
(125) The Government *must* demonstrate that such an assumption is necessary in a democratic society and proportionate. [ENRC]
(126) This Court *should* respect the domestic court's margin of appreciation in this regard. [ENRC]

Consequently, although some uses of *shall* in the Russian Translation Corpus are performing their intended function, albeit differentiating pleadings translated from Russian from the other two corpora as more traditional, other uses of *shall* could have been caused by conventionalisation.

Finally, the salience of *should* across the corpora deserves a separate commentary. It seems that in written pleadings the specialised meaning of *should* along with expressing a mild obligation, conveys a sense of a desire from the writing party that some actions take place, a certain directive twist, which puts it closer to the pole of desirability, linguistically expressed in a way "similar to that of permission and obligation" (Bybee and Fleischman 1995: 5). It goes in line with general understanding of deontic modality, well-expressed by Nuyts (2006: 4)

> *Deontic modality* is traditionally defined in terms of permission and obligation (Kratzer 1978: 111; Palmer 1986: 96–97). In more general terms, however, it may be defined as an indication of the degree of moral desirability of the state of affairs expressed in the utterance, typically, but not necessarily, on behalf of the speaker.

In fact the deontic *should* employed in written pleadings conveys this sense of moral desirability and hence is closer to the category which Bybee and Fleischman define as "agent-oriented" modality, including "all modal meanings that predicate conditions on an agent with regard to the completion of an action referred to by the main predicate, e.g. obligation, desire, ability, permission, and root possibility" (Bybee and Fleischman 1995: 6).

6.3.3. Permission

The second pillar of deontic modality are modals and semi-modals communicating permission, i.e. conferring power, privilege and rights as well as lack of prohibition (Biel 2014a: 166). Deontic permission in legal texts is typically realised by *may*. Facchinetti (2003: 301) observes

> Unlike other English modals, *may* has always enjoyed a relatively broad consensus as far as the interpretation of its present-day semantics is concerned; indeed, it is generally considered to embody the notion of "possibility", be it epistemic - as opposed to the primarily dynamic *can* - or deontic, expressing permission.

Other possible modals that can express permission are *might*, *can* and *could*, to which *need not* can be added, because "[w]ith possibility that expresses permission there is suppletion with *needn't* ('not necessary") for 'possible not' ('not possible' being expressed by *can't*)" (Palmer 2003: 10), yet its frequency is very low in the corpus (RUTC: 0; ENRC: 2; ITTC: 2).

No	Modal / semi-modal	RUTC	RUTC compared to ENRC	ENRC	ITTC	ITTC compared to ENRC
1	May	63	-54%	137	140	+2%
2	Might	4	-93%	57	35	-38%
3	Can	53	-40%	88	110	+25%
4	Could	76	-51%	156	99	-36%

Table 6.51: *Distribution of potentially deontic modals of permission.*

The primary meaning of *can* is dynamic, whereas *might* and *could* are typically used in combination with perfective forms in the corpus to convey epistemic meaning. Biber *et al*. (1999: 491-493) overviewing the use of these modals in academic prose, argue that "*could*, *may* and *might* usually express logical possibility", and "*could* and *might* are much more common expressing logical possibility than permission or ability", and that "in contrast to the typical functions of *can*, the modal *could* usually marks logical possibility in conversation, expressing a greater degree of uncertainty or tentativeness". On the basis of these considerations and statistical relevance of this set of modals, this study focuses only on *may*.

6.3.3.1. *May*

In line with Facchinetti (2003) I distinguish between epistemic, deontic and dynamic existential meanings of *may*, to which I add a mixed category and a discoursal category, which are explained below in more detail.

Epistemic *may* expresses a subjective evaluation of the proposition, as illustrated below.

(127) They are whether publication of the material pursues a legitimate aim and whether the benefits which will be achieved by its publication are proportionate to the harm that *may* be done by the interference with the right to privacy. [ENRC]

(128) […] such as, for example, the financial circumstances of the vendor, who *may* have an urgent need to realise a certain sum and therefore be happy with a price below market value. [ITTC]

(129) This makes them still hope he *may* be alive. [RUTC]

All instances of *may* followed by the perfective form are instances of epistemic use:

(130) It is scarcely necessary to point out that, even if the applicant *may have somewhat "exaggerated"* his knowledge of Italian, the official statement he made at the hearing was sufficient

to allow the authorities to arrive at the legitimate presumption that he was capable of understanding the summons to appear at the appeal hearing […]. [ITTC]

Another marker of epistemic use is *may* followed by "well", "reasonably" and similar evaluative adverbs.

(131) It cannot, for example, plan any similar activities given the concern that the same thing *may well* happen again.

Along with epistemic use, *may* conveys also a deontic meaning. It can either be expressed as a regulation or a permission, which can be rephrased as "x is allowed" or "x is authorised".

(132) A civil plaintiff *may* also file a civil suit for pecuniary compensation of moral damage. [RUTC]
(133) In any such proceedings the court *may*, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose. [ENRC]
(134) The Chamber held that an applicant who is dissatisfied with the amount of the damages awarded to him by a Court of Appeal by way of compensation for a violation of the reasonable time principle *may* bring the matter before the European Court in order to complain exclusively about the amount of the damages, without first being required to lodge an appeal on a point of law. [ITTC]

A third type of modality expressed by *may* is called here *dynamic*, following Facchinetti (2003) and Palmer (1990). This use of *may* is very close to dynamic *can* and can be rephrased as "is able to" or "it is possible for *x* to do". Dynamic possibility *may* reports an existential state of fact or affairs, which can be checked and tested against objective data and thus excludes subjective appreciation typical of epistemic *may* (Facchinetti 2003: 305).

(135) In this respect the Government's statement to the effect that "in order to guarantee the rights of the persons to be deported, Russian authorities in all circumstances abstain from the execution of decisions on deportation before they *may* be challenged to the court in due time" […] [RUTC]
(136) Having regard to the aim of the Convention, which is to protect rights that are practical and effective, it [the European Court] *may* also take into consideration the need to preserve a balance between the general interest and the fundamental rights of individuals and the notions currently prevailing in democratic States. [ITTC]

In (135), *may* can be replaced by "before it is possible for the defendant to challenge" and in (136) *may* stands for "it is possible for the European Court to consider", rather than "the Court is authorised to consider". This and similar cases are categorised as *dynamic*, because they refer to the factuality of the state of affairs, based on previous experience and facts.

There are also mixed cases, where more than one interpretation is possible. In (137) *may* could stand for the epistemic "it is possible that an unsuccessful party is required" or for the deontic "the costs which are legally allowed to be required". Example (138) can be interpreted also both deontically ("the relative is authorised to claim") or epistemically ("it is possible that a relative will claim"). However, such cases does not reflect the fuzzy nature of the modal auxiliary, but rather the reader's "ability to disambiguate the context" according to Facchinetti (2003: 312).

(137) Thus both elements of the costs which an unsuccessful party *may* be required to pay to the successful party in litigation are required to be scrutinised by the court making the order for costs. [ENRC]
(138) It is especially in respect of the latter that a relative *may* claim to be a direct victim of the authorities' conduct. [RUTC]

Finally, there is discoursal *may*, followed by performative verbs with communication or mental activity semantics, such as "summarise", "conclude", "note", etc. In these occurrences, typically realised with an introductory "it" (e.g. "it may be concluded"), the phrase can be reconstructed in the first person (e.g. "we may conclude"), which can be interpreted as an emphatic use ("we do conclude").

(139) In the light of the foregoing, *it may be concluded* that the amount of the compensation calculated in application of Article 5 bis, although not equal to the full commercial value of the plot (which is not required by the Convention: see the judgments cited at para. 55 to 57), is not derisory or symbolical and is in reasonable proportion to the value of the asset. [ITTC]

Based on the above distinction, I have calculated the meanings of *may* across the corpora, which are indicated in Table 6.52 in terms of relative frequencies and in Figure 6.21 in terms of their proportion within separate corpora.

May	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
Deontic	26	-21%	33	-10%	30
Epistemic	15	-88%	68	-28%	49
dynamic	14	-42%	24	+38%	33
mixed	4	-33%	6	-33%	4
discoursal	3	-50%	6	*+300%*	*24*
total	**62**	**-55%**	**137**	**+2%**	**140**

Table 6.52: *Relative frequencies of meanings of "may" across the corpora.*

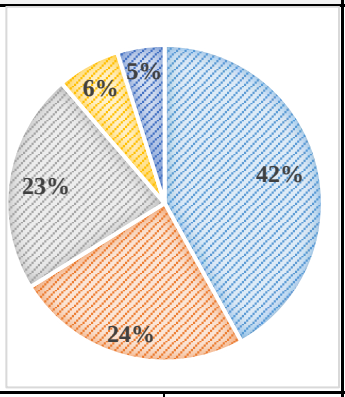
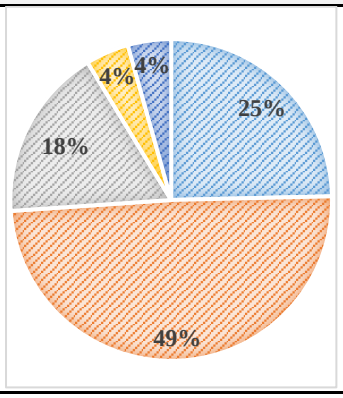
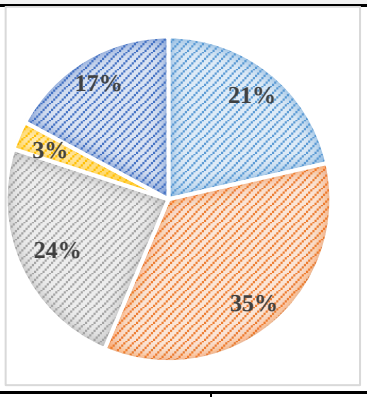
May	**RUTC**		**ENRC**	**ITTC**	
Graphic					
Legend	**RUTC**	**RUTC cf. ENRC**	**ENRC**	**ITTC**	**ITTC cf. ENRC**
Deontic	42%	+17%	25%	21%	-4%
epistemic	24%	-25%	49%	35%	-14%
dynamic	23%	+5%	18%	24%	+6%
Mixed	6%	+2%	4%	3%	-1%
discoursal	5%	+1%	4%	17%	+15%
Total	**100%**		**100%**	**100%**	

Figure 6.21: *Functional specialisation of "may" within separate corpora.*

The overall statistics of deontic *may* across the three corpora is decidedly comparable, with small deviations from the English Reference Corpus (-21% in the Russian Translation Corpus, -10% in the Italian Translation Corpus). However, as Figure 6.21 shows, the functional specialisation of this modal differs across the corpora. Deontic use is the prevalent use of *may* in the Russian Translation

Corpus (42% out of total). In the English Reference Corpus, on the contrary, epistemic *may* is the most recurrent functional meaning (49%), which confirms findings of other scholars researching this modal in general English (see, for instance, Coates 1995: 150-151; Biber *et al*. 1999: 492; Facchinetti 2003: 305-306), who argue its epistemic specialisation. A similar tendency is observed in the pleadings translated from Italian, where epistemic *may* is used in 35% of all cases as opposed to 21% of deontic *may*. It is worth noting that the Italian Translation Corpus uses the most discoursal *may* (17%), marking a stark difference from the other two corpora (RUTC: 5%; ENRC: 4%).

Cluster	**RUTC**	**RUTC compared to ENRC**	**ENRC**	**ITTC**	**ITTC compared to ENRC**
May be	32	-30%	46	63	+37%
May have	-	<	19	8	-58%
May not	-	<	17	6	-65%
May well	-	<	10	2	-80%
It may be	-	<	6	13	+117%

Table 6.53*: Clusters with "may".*

The indicators of possible differences in functional specialisation patterns are observable also in Table 6.53, which collects most frequent clusters with may across the corpora. It is clear that the absence of copular "may have" and "may well" from the Russian Translation Corpus may be interpreted as having an impact on the lower recurrence of epistemic *may*. At the same time, relatively higher numbers of "it may be" in the Italian Translation Corpus signal the discoursal use of *may* there, as it is followed by "concluded", "observed" and similar verbs.

6.3.4. Synthesis

This study records simply the trends in patterns of frequency of usage, and therefore is concerned not so much with modality as such, as with the spread of types of modality in terms of a possibly positive marker of written observations for the purpose of genre characterisation. The corpus-provided evidence confirms the fact that written pleadings before the European Court of Human Rights are a hybrid genre in terms of its prescriptive and descriptive potential. On the one hand, frequent recourse is made to legislative or judicial sources, which typically involve deontic modality of obligation (prototypically realised through *shall*, *must* and *should*) and permission (prototypically realised though *may*). On the other hand, written pleadings are constructed in a rather argumentative manner aiming at persuading the Court of the veracity of the party's position, which is linguistically realised by both deontic (typically *should* ("the court should reject")) and epistemic modals ("Government should have introduced some form of means").

	RUTC			**ENRC**		**ITTC**		
Marker	**NF**	**Cf. ENRC**	**MS**	**NF**	**Marker status**	**NF**	**Cf. ENRC**	**MS**
I. Most frequent modals with a potentially deontic meaning								
Shall	172	+1333%	**yes**	12	No	17	+42%	no
Deontic	29	+385%	no	6	No	4	-33%	no
Performative	113	+1780%	**yes**	6	No	4	-33%	no
Should	72	-67%	no	217	**yes**	172	-21%	**yes**
Deontic	34	-72%	no	120	**yes**	84	-30%	no
Epistemic	12	-88%	no	97	No	38	-61%	no
Discoursal	21	+40%	no	15	No	34	+127%	no
Must	51	-42%	no	88	No	174	+98%	**yes**
Deontic	43	-27%	no	59	No	136	+131%	**yes**
Epistemic	2	-87%	no	15	No	15	=	no
Discoursal	2	-33%	no	3	No	15	+400%	no
May	62	-55%	no	137	**yes**	140	+2%	**yes**
Deontic	26	-24%	no	34	No	30	-12%	no
Epistemic	15	-78%	no	68	No	49	-28%	no
Discoursal	3	-50%	no	6	No	24	+300%	no
II. Most recurrent meanings of all modal verbs analysed								
deontic modals and semi-modals	252	+15%	**yes**	219	**yes**	254	+16%	**yes**
modals in discoursal use	36	+50%	no	24	No	75	+213%	no
epistemic meaning	29	-83%	no	180	**yes**	102	-33%	**Yes**

Table 6.54*: Synthesis of modal verbs analysed in the Three/Part Corpus.*

Several tendencies emerge from Table 6.54 above. The first macro-tendency concerns the divergent preferences for modal auxiliaries across the corpora. While on the whole deontic modals and semi-modals can be considered positive markers of written pleadings on account of their high frequency, different corpora exhibit different preferences for modal auxiliaries and their functional specialisation.

First, there is a clear preference in the Russian Translation Corpus to choose the deontic meaning of potentially deontic modals over their epistemic meaning. Second, out of the three corpora, the English Reference Corpus uses epistemic modals more frequently (positive markers); however, they are also employed frequently enough in the Italian Translation Corpus to be considered positive markers. Third, *must* and *should* are predominantly deontic in all three corpora, and only *may* is epistemic in an overarching way in the English Reference Corpus and in the Italian Translation Corpus. With regard to linguistic realisation of obligation through modal auxiliaries, the three corpora

demonstrate deviating preferences. The English Reference Corpus uses predominantly *should* to express mild obligation with a directive hue (positive marker in this meaning); the same use is also salient in the Italian Translation Corpus, however without reaching the status of positive marker there. The Italian Translation Corpus allocates the leading position to *must* among obligation modals (positive marker in deontic meaning). The Russian Translation Corpus, as overviewed in 6.3.2.4, distributes almost equally the expression of obligation among *must*, *shall* and *should*. However, when the performative meaning of *shall* is added to the purely deontic one, on the grounds that even in its performative meaning *shall* maintains an additional shade of obligation (Sacerdoti Mariani 1985: 25-42 in Garzone 2008: 70), it becomes evident that this modal occupies a privileged position in the Russian Translation Corpus, which differentiates it from the other two corpora, where *shall* is a negative marker. It seems that the salience of *shall* in the Russian Translation Corpus derives from its past high pragmaticalisation in English legal discourse and the presumed conservatism of legal translators as well as conventional choices for the English translation of the Russian legislation that is quoted in the corpus. However, as already mentioned, in many cases *shall* just maintains the ambiguity between a potentially performative and deontic meaning already present in the source utterance, thus it would be erroneous to ascribe all instances of this modal in the Russian Translation Corpus to conventionalisation phenomenon.

In addition to epistemic subjective evaluations, all modals that have been overviewed are used within discoursal formulae with performative verbs, which are constructed either in the first person ("we must consider"), in the transposed third person ("the applicants should note") or in the passive with an introductory "it" ("it may be concluded"), which seems to be a pragmaticalised feature for the genre of written pleadings, up to the point where it is reproduced erroneously in the Russian Translation Corpus with *shall*. The pattern with an introductory "it" followed either by the present indicative ("is") or by the modal auxiliary ("should", "must", "may" and even translation-triggered "shall") in conjunction with the performative verb with mental or communication semantics can qualify as a prefabricated pattern and a positive legal style marker of written pleadings analysed in the Three-Part Corpus.

The discoursal use of modals appears to be peculiar of the translated language of written pleadings, and particularly of the Italian Translation Corpus, where discoursal occurrences of the reported modals amounts on average to 15% of the total number of modal occurrences in comparison with 10% in the Russian Translation Corpus and 5% in the English Reference Corpus. The higher recurrence of such modalised discourse connectors with an introductory "it" in the Italian Translation Corpus, as well as its heavier reliance on the "it is"-structures in general (see 6.1.3.3 and 6.2.3.3) could be hypothesised to have originated under the influence of interference / discourse transfer from Italian. Legal Italian deploys frequently the passive construction with the impersonal *si* (see 2.2.3, cf. Mortara Garavelli 2001: 156), typically rendered in English by "it is", which is used to transition between various nodes of legal reasoning (Mortara Garavelli 2001: 17).

CHAPTER 7

SYNTHESIS AND CONCLUSIONS

This chapter offers a summary of the most important findings concerning the main themes of my study and their interpretation in a broader context. First, a synthesis of quantitative data from Chapters 5 and 6 is provided to summarise what phraseological legal style markers are peculiar of written pleadings (7.1). Next, a synthesis of convergent and divergent tendencies in translated vs. non-translated pleadings follows (7.2). Then, practical applications of this study (7.3) are discussed. Finally, methodological implications and limitations of the research and directions for future investigation are presented.

7.1. Phraseological legal style markers in the genre of written pleadings

The first research question asked in this work concerns the nature and distribution of phraseological legal style markers in written pleadings before the European Court of Human Rights.

> Question 1: What phraseological legal style markers are typical of the genre of written pleadings?

The answer to this question serves the goal of describing the highly "occluded genre" (Swales 1996) of written pleadings in terms of its legal phraseology. Legal language is intricate and formulaic, and frequently makes recourse to prefabricated patterns and routines, which "the translator either knows or simply does not know" (Hatim and Mason 1997: 158), and yet translation of legal phraseology has not received much scholarly attention until recent. Legal phraseological units are invested with a high conventional and prefabricated potential, and reveal interesting information about both the language and structure of this genre.

This work has looked at three categories of phraseological units in terms of their candidacy for the status of legal style markers of written pleadings. The status is defined on the basis of the frequency of a given marker, where the high frequency threshold is set at 100 occurrences per 100,000 words[66]. Anything lower than 100 occurrences is considered to be negative, whereas multi-word units with more than 100 occurrences are adjudged to be positive legal style markers of written pleadings. As there is little academic consensus concerning the parameter of high frequency, based on the overview of relevant works (Biber 2006; Goźdź-Roszkowski 2011; Breeze 2013; Biel 2014a), I have applied the most restrictive frequency cut-off (see 4.5) to reduce any potentially idiosyncratic elements deriving from the relatively small size of my corpus. It is duly acknowledged that all generalisations are based only on the textual material analysed and a larger corpus is required to produce results that are more substantial.

The comparison of quantitative data indicates a number of convergent legal style markers that can be considered typical of written pleadings. These convergent markers are both positive (distinguishing the genre by their high occurrence) and negative (distinguishing the genre by their absence or infrequency).

The *convergent positive legal style* markers for the three corpora are

- binomials, especially of the [N+N] type;
- formulaic opening and closing statements;
- multi-word terms with "court", "proceedings", "convention", "right(s)" and "article";
- verbal collocations of agentive nodes with performative utterances;

[66] The high-frequency threshold is set at 100 occurrences per 100,000 words following Biel (2014a).

- prevalently deontic specialisation of potentially deontic modals and semi-modals;
- salience of complex prepositions in general and of complex preposition of cause and respect / reference in particular.

There are also *convergent negative legal style markers*, i.e. those markers that are infrequent in the three corpora.

- Multinomials seem to be dispreferred in this genre contrary to numerous descriptions of legal English;
- multi-word terms with "hearing" are disfavoured in comparison with those based on the near-synonymous "proceedings".
- Activity verbs, causative verbs, existence verbs, occurrence verbs and aspectual verbs co-occurring with agentive nodes (denoting actors involved in written pleadings) are also infrequent in written pleadings in favour of mental and communication verbs (see Biber *et al*. 1999: 360 for the classification of verbs). The prevalence of verbs of this semantic domain co-occurring with the parties involved in pleadings might be interpreted as reflecting the purpose of written pleadings, which is to communicate the party's position on the case to the court and, in doing so, to persuade the court through legal reasoning.
- Passive performative utterances are clearly negative markers for the Russian Translation Corpus and the English Reference Corpus, while there is a greater reliance on such passive constructions in translations from Italian, almost reaching the high-frequency threshold.
- Interestingly, although complex prepositions in general qualify as positive legal style markers of written pleadings, some functional sets are infrequent: complex prepositions expressing concession, condition and addition, those belonging to the means / agentive spectrum and those setting grounds for a legal action. Further research is required to assess other linguistic means that realise these functions, e.g. adverbial structures and (complex) conjunctions.

In addition to the above-mentioned convergent markers, there are also *points of divergence* across the corpora in terms of what qualifies as positive or negative style marker.

- The Russian Translation Corpus is the only corpus that is positively marked by
  - the use of multi-word terms with "procedure" and
  - recourse to the modal auxiliary *shall*.
- Both the Russian Translation Corpus and the Italian Translation Corpus, in contrast to the English Reference Corpus, are positively marked by
  - complex prepositions of legal compliance and
  - archaisms.
- The Russian Translation Corpus and the English Reference Corpus, in contrast to the Italian Translation Corpus, also frequently employ
  - mental and communication verbs with agentive nodes and
  - active performative utterances.
- The English Reference Corpus is the only corpus that frequently operates with
  - multi-word terms with "trial" and
  - makes relatively greater recourse to epistemic meanings of potentially deontic modals.
- The English Reference Corpus and the Italian Translation Corpus, in contrast to the Russian Translation Corpus, have also some common positive markers, namely,
  - the use of "it is" followed by evaluative and performative utterances, including "it is" in attitudinal bundles,
  - multi-word terms with "observations"
  - and frequent occurrence of "should" and "may".
- The Italian Translation Corpus is the only corpus,
  - where "must" is also a positive legal marker along with

- complex prepositions of purpose.
- The three corpora demonstrate different positive markers for the linguistic realisation of obligation. The deontic meaning of obligation and direction is prevalently expressed by "shall" in the Russian Translation Corpus, by "should" in the English Reference Corpus and by "must" in the Italian Translation Corpus, which can be interpreted as a sign of divergent textual fit.

Table 7.1 below presents a synthesis of quantitative data reported throughout Chapters 5 and 6, with an indication of the marker status (also "MS") specifically indicated in a separate column in respect of each corpus.

	RUTC			**ENRC**		**ITTC**		
Marker	**NF**	**Cf. ENRC**	**MS**	**NF**	**Marker status**	**NF**	**Cf. ENRC**	**MS**
I. Formulaic units								
Binomials	274	-31%	**yes**	399	**yes**	226	-43%	**yes**
Multinomials	17.8	+197%	no	6	no	64	+965%	no
Archaisms	214	+251%	**yes**	61	no	149	+144%	**yes**
Opening statements	90%[67]		**yes**	90%	**yes**	60%		**yes**
Closing formulae	74%		**yes**	50%	**yes**	90%		**yes**
Intermediary summaries	n/a			n/a		n/a		
it is + evaluative / performative utterances	88	-61%	no	225	**yes**	209	-7%	**yes**
it is in attitudinal bundles	48	-66%	no	141	**yes**	102	-28%	**yes**
II. Term-related units								
Multi-word terms (MW)								
MW terms with "court"	656	+102%	**yes**	325	**yes**	371	+14%	**yes**
MW terms with "proceedings"	134	+18%	**yes**	114	**yes**	108	-5%	**yes**
MW terms with "trial"	30	-72%	no	106	**yes**	22	-79%	no
MW terms with "hearing"	27	+59%	no	17	no	59	+247%	no
MW terms with "procedure"	105	+483%	**yes**	18	no	62	+244%	no
MW terms with "convention"	420	+202%	**yes**	139	**yes**	123	-12%	**yes**
MW terms with "right(s)"	180	-10%	**yes**	201	**yes**	135	-33%	**yes**
MW terms with "article"	420	+108%	**yes**	202	**yes**	123	-39%	**yes**
MW terms with "observations"	94	-53%	no	203	**yes**	106	-48%	**yes**
Collocations of agentive nodes with verbs								
Activity	84	+180%	no	30	no	28	-7%	no
Communication	119	+2%	**yes**	117	**yes**	39	-67%	no
Mental	120	-21%	**yes**	152	**yes**	62	-59%	no
Causative	54	+15%	No	47	No	6	-87%	No
Occurrence	-	<	No	17	No	8	-53%	No
Existence	20	+18%	No	17	No	34	+100%	No
Aspectual	-	<	no	8	no	-	<	no
Collocations with performative utterances								
All performative utterances	205	+2%	**yes**	201	**yes**	132	-34%	**yes**
active performative utterances	173	+30%	**yes**	133	**yes**	35	-74%	no
passive performative utterances	32	-53%	no	68	no	97	+43%	no
III. Grammatical patterns								
Modal auxiliaries								
Shall	172	+1333%	**yes**	12	No	17	+42%	no

[67] As the opening statements and closing formulae are building blocks of a written pleading, they normally occur only once in a pleading, consequently their normalised frequency is insignificant. Yet, they are important for the characterisation of genre, thus I use the percentage of pleadings that make recourse to these building blocks to define their markedness for the genre. E.g. 90% of pleadings in the Russian Translation Corpus use opening statements. The threshold is set at ≥50% to define the positive status of legal style marker.

	RUTC			ENRC		ITTC		
Marker	**NF**	**Cf. ENRC**	**MS**	**NF**	**Marker status**	**NF**	**Cf. ENRC**	**MS**
Deontic	29	+385%	no	6	No	4	-33%	no
Performative	113	+1780%	**yes**	6	No	4	-33%	no
Deontic and performative[68]	142	+915%	**yes**	12	no	8	-33%	no
Should	72	-67%	no	217	**yes**	172	-21%	**yes**
Deontic	34	-72%	no	120	**yes**	84	-30%	no
Epistemic	12	-88%	no	97	No	38	-61%	no
Discoursal	21	+40%	no	15	No	34	+127%	no
Must	51	-42%	no	88	No	174	+98%	**yes**
Deontic	43	-27%	no	59	No	136	+131%	**yes**
Epistemic	2	-87%	no	15	No	15	=	no
Discoursal	2	-33%	no	3	No	15	+400%	no
May	62	-55%	no	137	**yes**	140	+2%	**yes**
Deontic	26	-24%	no	34	No	30	-12%	no
Epistemic	15	-78%	no	68	No	49	-28%	no
Discoursal	3	-50%	no	6	No	24	+300%	no
deontic modals and semi-modals	252	+15%	**yes**	219	**yes**	254	+16%	**yes**
modals in discoursal use	36	+50%	no	24	No	75	+213%	no
epistemic meaning	29	-83%	no	180	**yes**	102	-33%	**Yes**
Complex prepositions								
All complex prepositions	1185	+84%	**yes**	643	**yes**	852	+33%	**yes**
Cause	228	+121%	**yes**	103	**yes**	191	+85%	**yes**
Purpose	83	+20%	no	69	no	126	+83%	**yes**
Grounds	66	+78%	no	37	no	39	+5%	no
respect/reference	229	+16%	**yes**	198	**yes**	109	-45%	**yes**
legal compliance	313	+683%	**yes**	40	no	172	+330%	**yes**
non-compliance	48	-9%	no	53	no	53	=	no
means/agentive	79	-11%	no	89	no	83	-7%	no
Addition	90	+150%	no	36	no	61	+69%	no
Condition	47	+161%	no	18	no	12	-33%	no
Concession	2	-	no	0	no	6	-	no

Table 7.1: *Synthesis of all phraseological units analysed in this work.*

7.2. Translated nature of written pleadings: between conventionality and creativity

Since written pleadings in the context of the European Court of Human Rights are prevalently translated from national languages of the 47 member States of the Council of Europe, this genre is particularly interesting to assess in terms of the translated language it uses. Consequently, I have formulated Questions 2 and 3.

Question 2: Are there differences between translated and non-translated pleadings?
Question 3: Do these differences depend on the language-pair?

The corpus-extracted evidence confirmed the presence of two opposite translation-related tendencies: *interference* (including *discourse transfer)* and *conventionalisation*. The former introduces prefabricated patterns from the source language (manifestation of Toury's law of interference) and pulls the target text towards the creativity pole, whereas the latter is accountable for

[68] The performative meaning of *shall* is added to the purely deontic one to show the functional specialisation of this modal in a cross-corpora persepctive, on the grounds that even in its performative meaning *shall* maintains an additional shade of obligation (Sacerdoti Mariani 1985: 25-42 in Garzone 2008: 70).

the overuse of the TL repertoremes (manifestation of Toury's law of growing standardisation), which moves the target text closer to the conventionality pole. This work has operated with concepts of overrepresentation (+%) and underrepresentation (-%) to describe the relation between the frequency parameters across the corpora and assess the distance between translated and non-translated pleadings.

As mentioned in the previous section, the number and type of positive legal style markers across the corpora differs, which already indicates divergent tendencies across the corpora. Interestingly, there are features that differentiate both translation corpora from the non-translated corpus and features that differentiate only one translation corpus.

7.2.1. Synthesis of features that differentiate both translation corpora from the reference texts irrespectively of language pair

This subsection offers a summary of common denominators of divergence between both translation corpora as opposed to the reference texts.

- *Overrepresentation of complex preposition* in the translation corpora (RUTC: +84%; ITTC: +33%). In general, where the reference corpus operates with simple prepositions moving away from the traditional wordiness of the language of the law, the translation corpora maintain complex prepositional structures that are associated with legal writing.
    - In particular, both translation corpora strongly overrepresent *complex prepositions of cause* (RUTC: +121%; ITTC: +85%), *legal compliance* (RUTC: +683%; ITTC: +330%) and *addition* (RUTC: +150%; ITTC: +169%).
    - At the same time, both translation corpora slightly underrepresent complex prepositions of the *means / agentive spectrum* (RUTC: -11%; ITTC: -7%).
    - The proportion of different functional sets of complex prepositions is sufficiently comparable across the corpora, with the exception of complex prepositions expressing *respect / reference* and complex prepositions denoting *legal compliance.* The proportions of these two categories differentiate the translation corpora from non-translated texts. While the English Reference Corpus uses the former more often (31% of total) than the latter (6%), both translation corpora proportionally underrepresented the former (RUTC: -12%; ITTC: -18% out of total) and overrepresent the latter (RUTC: +20%; ITTC: +14% out of total).
    - A reservation must be made concerning *complex prepositions of legal compliance*, i.e. those prepositions that introduce references to statutory law. As tempting as it is to ascribe the overuse of complex prepositions to conventionalisation, it is felt that a combination of factors, including both the translation process and the systemic differences (e.g. greater reliance on statutory law in both Russia and Italy) as well as idiosyncratic decisions of translators, is to be held accountable.
    - The pattern [Prep1$_{in}$ + (det) + N + Prep2$_{with}$] is significantly overrepresented in the translation corpora (RUTC: + 472%; ITTC: +111%).
- *Overrepresentation of archaisms.* Archaic expressions and word-forms were introduced at the stage of translation in the absence of any archaic ST stimuli from either Russian or Italian. It seems reasonable to conclude that the overrepresentation of archaisms in both translation corpora is a product of conventionalisation during the translation process, presumably caused by the intentional or unintentional desire of translators to abide by the traditional canons of legal English. Ironically, the lack of the much debated archaisms in the English Reference Corpus can be interpreted as a sign of change in these traditional canons.
- *Underrepresentation of [V + V], [Adj + Adj] and [Adv + Adv] binomials.* Binomials differentiate the translated texts not so much as a category on the basis of their quantity, but rather in terms of proportion of different morphological structures used. From the

morphological point of view binomials in the Three-Part Corpus predominantly follow the [N + N] structure (RUTC: 81%; ENRC: 49%; ITTC: 48% out of the total number of binomials). At the same time, both translation corpora underrepresent other types of binomials. The reason for the apparent underrepresentation of binomials based on other parts of speech but the noun could be speculated to lie in the nominal style, peculiar of both legal Russian and legal Italian to a greater degree if compared to legal English. The higher proportion of the [N + N] binomials in the Russian Translation Corpus can be interpreted as a sign of its higher nominalisation.

These common points of divergence indicate a common dimension in the translation corpora that differentiates them from the English Reference Corpus.

7.2.2. Synthesis of features that indicate divergent textual fit in translated pleadings and are language-pair dependant

Besides the common points of divergence indicated in the previous subsection, numerous other factors differentiate single translation corpora. This proves that translated and non-translated texts tend to differ, but disproves the assertion that the language pair is irrelevant. The following features are identified as indicators of divergent textual fit in translated pleadings.

- *Different distribution of adjective-based binomials*. Both the Italian Translation Corpus and the English Reference Corpus make proportionally frequent recourse to adjective-based binomials (ITTC: 36%; ENRC: 26% of the total number of binomials). The Russian Translation Corpus uses this type of binomials only in 10% of all binomials (-74% if relative frequencies are compared to the ENRC).
- *Different distribution of modal auxiliaries* to denote a deontic meaning: the Russian Translation Corpus significantly overrepresents "shall" (+915% compared to the ENRC), whereas the Italian Translation Corpus overrepresents "must" in its deontic meaning (+131% compared to the ENRC) against the preference of deontic "should" in the English Reference Corpus, which is underrepresented in the translation corpora (-72% in RUTC; -30% in ITTC). There seems to be a correlation between the overrepresentation of "shall" and "must" in the translation corpora and the respective underrepresentation of "should".
    - The salience of "shall" in the Russian Translation Corpus is peculiar as "shall" used to be highly pragmaticalised and ever-present in English legal discourse and it seems that its overuse in translations is caused by the presumed conservatism of legal translators as well as conventional choices for the English translation of the Russian legislation that is quoted in the corpus.
    - The salience of deontic "must" in the Italian Translation Corpus is also peculiar, as the Italian legal writing guides recommend avoiding the use of the respective Italian modal auxiliary (*verbo servile*) to express the deontic meaning. A possible reason for the preference of "must" in translations from Italian could lie in the popularisation of this modal by the Plain Language campaigns as the alternative for legal "shall" because it is less ambiguous.

  It seems that while Russian translators were more conservative than the UK drafters of pleadings, the Italian translators opted to be more progressive.
- *Different functional specialisation of "may"*: while in the Russian Translation Corpus its deontic meaning prevails, the Italian Translation Corpus uses it prevalently in the epistemic sense in line with the English Reference Corpus.
- *Different preferences for the morphological structure of complex prepositions*
    - The pattern [Prep1$_{in}$ + (det) + N + Prep2$_{of}$] tends to be the most productive across the corpora in absolute terms. However, this pattern is relatively more frequent (+92%) in

the Russian Translation Corpus and less frequent (-29%) in the Italian Translation Corpus in comparison with the English Reference Corpus.
    - The pattern [Prep1$_{in}$ + (det) + N + Prep2$_{to}$] is underrepresented in the Russian Translation Corpus and has almost equal values in both the Italian Translation Corpus and in the English Reference Corpus
- *Different preferences for the functional sets of complex prepositions*
    - The Russian Translation Corpus strongly overrepresents the complex prepositions expressing *grounds* (+78%) while the Italian Translation Corpus uses them only +5% more often.
    - The translation corpora have divergent preferences for the near-synonymous functional sets as the study of their proportions shows. In the macro-category of the cause-purpose spectrum, the Russian Translation Corpus uses most frequently the prepositions of cause (19% out of total), and disprefers those of purpose (7%), and grounds (6%), in contrast the Italian Translation Corpus, where the first two are both in a preferred position (22% and 15% respectively).
- *Different preferences within the same functional set of complex prepositions* (e.g. "on the fact of" in the RUTC vs. "on the grounds of" in the ENRC vs. "on the basis of" in the ITTC), which could be interpreted as occurring under the influence of interference / discourse transfer from the source language. It has been observed that when a legalistic phraseological unit in English is marked by a structural and semantic resemblance to the source expression, it tends to be the first choice of a translator, as it reconciles the divergent translational pull towards the source-imported creativity and the target-oriented conventionality (e.g. "in respect of" (*в отношении*) in the RUTC vs. "in relation to" (*in relazione a*) in the ITTC).
- *Lower standardisation of phraseological units and their increased variation*
    - The reversibility and high variation within legal binomials and multinomials in the translated texts are factors contributing to their lower statistical relevance (RUTC: -31%; ITTC: -43%). For instance, the legal bi-/trinomial "acts (decisions) and omissions" is rendered in 15 different ways in the Russian Translation Corpus, which makes its general perception of formulaicity lower and increases time necessary to process this information.
    - Although the opening and closing statements tend to follow the same cognitive script across the corpora, which is significant in terms of genre characterisation, their linguistic realisation is not homogeneous even within the same corpus. The variation in prefabricated formulaic units can be interpreted as a clear sign of their translated origin. If we compare closing formulae from the RUTC "Proceeding from the foregoing, representing the interests […]" vs. "Based on the above stated, representing the interests […]" vs. "By virtue of the foregoing, representing the interests […]" vs. "Regard being had to all the above and representing the interests […]" (see 6.1.3.2) their prefabricated nature becomes clear even without looking at the source texts. At the same time, different choices between the near-synonymous connectives placed sentence-initially reduces their prefabricated potential and increases the time necessary to process this information.
- *Introduction of creative prefabricated patterns from the source languages*. Quite a few creative patterns were introduced into the translated texts under the influence of discourse transfer (e.g. "on the fact of", "on suspicion of", "with the purpose of" in the RUTC; "on the part of", "with the aim of" in the ITTC) and several incorrect and distorted patterns were identified (e.g. the use of "shall" in discoursal function in the RUTC and in the ITTC; "according *with" and "research and rescue" in the ITTC).
- *Inconsistencies in multi-word terminology and its collocational ranges.* Apart from lexical differences that indicate the different content of pleadings (e.g. "criminal proceedings" vs.

"defamation proceedings"), the corpus-extracted data give evidence to different collocability tendencies.
    - The analysis of near-synonymous multi-word terms indicates different preferences across the corpora. For instance, "breach of article" is the preferred linguistic realisation for the concept of violation in the English Reference Corpus, while the same concept is typically realised by the more general "violation of article" in the translation corpora. At the same time, the term "trial" is underrepresented in the translation corpora in favour of "proceedings" and / or "hearing". The study of collocates also show a strong underrepresentation of all multi-word terms using the adjective "domestic" in the translation corpora.
    - There are also differences between the translation corpora, for example, a dichotomy between the synonymous multi-word terms "court proceedings" used in the Russian Translation Corpus and "judicial proceedings" used in the Italian Translation Corpus. Similarly, there is a deviation from multi-word terms built around "observations" to those based on "memorandum", as these two words are used near-synonymously in the Russian Translation Corpus under the probable influence of interference from Russian.
- *Differences in verbal collocations with a term*. Mental and communication verbs, typical of passages of legal reasoning, are recurrent in the Russian Translation Corpus and in the English Reference Corpus, although they qualify as negative markers in the Italian Translation Corpus on account of their low frequency. Similar phenomenon is observed with performative utterances, which qualify as positive markers of written pleadings in general, yet their linguistic realisation differs across the corpora. The Russian Translation Corpus and the English Reference Corpus clearly prefer performative utterances with the active verb form (positive marker), but the Italian Translation Corpus tends to operate with passive verb forms in performative utterances, almost reaching the threshold of positive legal style markers for the passive performative form.
- *Different clustering strategies.* While the English Reference Corpus frequently employs the [N + N] multi-word term pattern with nominal premodification, it tends to be underrepresented in the translation corpora in favour of the explicit linking though multiple *of*-strings. In general, the double "of * of"-type strings are +42% more frequent in the ITTC and +365% more frequent in the RUTC; the same string with two wildcards in the middle "of * * of" occurs +62% more often in the ITTC and +193% more often in the RUTC, while the triple "of * of * of"-string is overwhelmingly overrepresented in the Russian Translation Corpus (+5100%). The overuse of multiple of-strings differentiates both translation corpora; however, it is clear that the phenomenon is decidedly more significant for the Russian Translation Corpus. The explanation could be found in the inflectional nature of Russian that, as most Slavic languages, expresses case relations through inflections. As legal Russian is notorious for its use of genitival constructions, one may speculate that the abundance of multiple *of*-strings is caused by interference from Russian in combination with general structural asymmetry between Russian and English.
- *Different proportions allocated to single phraseological units within near-synonymous sets across the corpora*. The study of proportions indicated different patterning across the corpora with regard to almost all phraseological units analysed.
    - For instance, among all complex prepositions, in the English Reference Corpus the most prominent positon is occupied by complex prepositions of respect / reference (31%), in the Russian Translation Corpus the most frequent are complex prepositions of legal compliance (26%), whereas the Italian Translation Corpus operates the most with complex prepositions of cause (22%).
    - On a micro-level of near-synonymy between "in accordance with", "in compliance with" and "in conformity with", the study of proportions revealed that the dominating position of "in accordance with" in the Russian Translation Corpus (73%) is convergent

with the English Reference Corpus (83%) and presents dissimilarities from the Italian Translation Corpus (36%) although on the level of relative frequencies all three prepositions resulted as overrepresented in the translation corpora.

7.2.3. Conclusions

This study confirms the hypothesis that the translated texts have distinctive linguistic peculiarities and represent a "third code" (Frawley 1984: 168) or part of the language *diasystem* (Garzone 2015: 61). The statistical evidence gives an affirmative answer to Question 2 and shows that the translated pleadings in the Three-Part Corpus "show subtle differences of stretching the potential of the target language towards new directions in some places, while seeming to neglect its full potential in others" (Mauranen 2007: 45) confirming the so-called "strange strings" hypothesis (Mauranen 2000). However, while some differences are common for both translation corpora, other differences seem to be peculiar of the language pair (Russian – English vs. Italian – English), which would disagree with the statement about the independence of translation universals from the language pair. As a result, the answer to Question 3 is twofold: on the one hand, there are cases where translated texts share features that differentiate them from non-translated texts, but on the other hand, there are multiple other cases, which seem to derive from the specificity of separate language pairs. Consequently, the chosen combined paradigm of translation norms and universals, which takes into account both the social and cognitive factors of influence on translation (including the phenomena of interference and discourse transfer), seems to be appropriate and felicitous. Comparison of translation choices among the sets of near-synonyms seems to lend support to the "gravitation pull hypothesis" (Halverson 2003: 223-224), according to which prototypical (here also prefabricated) structures of the source language, because of their highly pragmaticalised cognitive salience, prompt the translator's choice, resulting in overrepresentation of certain features, whereas lack of a strong connection between a TL and a SL structure will result in its dispreferred position (cf. "the unique item hypothesis" Tirkkonen-Condit 2000, 2004).

This work has also confirmed the effectiveness of Jantunen's (2004: 122) proposal to study synonymous sets for tracing untypical patterns in translation also in terms of proportions, because the proportions of items analysed provided me with a different input and indicated distinct functional specialisation of such grammatical patterns as modal auxiliaries and complex prepositions.

7.3. Practical applications of the study

Research in Translation Studies is sometimes accused of being detached from translation practice (Way 2016: 1019). This work was designed following the main theoretical descriptive goals, yet being myself a translator and interpreter, I pursued also a practical goal, namely, to produce a study that may contribute to raising translators' awareness of the phraseological continuum typical of written pleadings, as it is believed that legal phraseology is among the most challenging areas for translators (Garzone 2007: 218-219; Prieto Ramos 2014: 16). On a more general level, training awareness of how both the SL and the TL stimuli affect the linguistic make-up of translations could and should become an active skill for a modern legal translator (cf. Chesterman 2004a: 11; Biel 2014a: 308 on T-universals).

As of now, issues of translation of written pleadings before the "common European Constitutional court" are left to the parties, who either engage professional or aspiring L2 translators (at least in the translation markets under analysis) or lawyers with a sufficient knowledge of one of the ECtHR's official languages (who have to produce pleadings in L2 or translate them). It would be far-fetched to expect phraseological conformity and consistency from a vast range of professional and aspiring translators, who do not have any uniform style guides or focused linguistic resources that could help them navigate through troublesome areas of translation, as for instance the issues of phraseology and legal near-synonymy. The highly occluded character of this genre and the general unavailability of

comparabale material to single translators is an additional obstacle for the already arduos task of legal translation.

This study might constitute a small step towards filling this gap. While quality assessment and control of translated written pleadings by the Translation and Interpreting Service of the Council of Europe is not feasible for a variety of reasons, including time and financial restrictions as well as confidentiality issues, a preparation of a style guide for the parties is not altogether a mission impossible. In case such a guide is created, it would help the external translators carry out more standardised translations, because increased standardisation of legal documents is not a vice but a virtue (Biel 2014a: 308). Harmonisation of language use in pleadings would reveal to be beneficial also for the ECtHR Registry in that it would organise the text in established routines and reduce the amount of time necessary to process the pleadings, potentially contributing to the general decrease of the case overload at the Court. I hope that this project may inspire further research leading to the preparation of such a guide.

7.4. Corpus methodology, limitations and ideas for future research

Since the conventions and the linguistic make-up of written pleadings before the ECtHR have not been yet analysed empirically, at least to my knowledge, the Three-Part corpus sheds some light on the state of this genre between 2002 and 2012. The data may be used as a starting point for further research, including:

- a larger study of the language of human rights, which takes into consideration also other related genres, such as ECtHR judgments, including also their translation into national languages of the CoE member states;
- diachronic research of this genre, e.g. taking into consideration pleadings drafted and translated before 2002 and after 2012;
- comparative analysis of phraseology in written pleadings in English, Russian and Italian with a potential compilation of glossaries for translators;
- analysis of other phraseological units in the perspective of Translation Studies, including clausal constructions and adverbials.
- design and analysis of larger corpora divided by the drafting party (i.e. Governments' observations and applicants' observations) to assess the influence of the institutionalised context on the linguistic make-up of pleadings.

Knowledge about the procedure at the ECtHR is generally affected by misconceptions, starting from a common confusion between the Strasbourg-based Court (Council of Europe, 47 States) and the Luxembourg-based Court (European Union, 28 States), to an incorrect understanding of the mission of the ECtHR as a fourth-instance court (see 2.5.1.1). Written pleadings constitute the core procedural genre at the ECtHR, and yet these documents have remained largely unresearched by legal or linguistic community, most probably because of the limited availability of materials. This pilot study has managed to shed some light on this previously occluded genre. I must admit, however, that as I was granted only a restricted access to some texts belonging to this genre, I had to accept some methodological concessions during the corpus design process. These concerned a relatively small size of my corpus, which raised questions of representativeness, and a slight thematic variation as the human rights protection provided by the European Convention is wide. The condition of having little room for manoeuvre in the collection of texts was accepted in favour of working with truly authentic materials. The effect of the corpus size on its representativeness was monitored, as the Registry personnel who provided me with pleadings considered them to be representative of the general flux of pleadings coming from the respective countries, both in terms of language quality and topics raised. Some thematic variation between the criminal and civil limbs of the Convention did not constitute a problem for this study because its focus was placed on functional vocabulary and on general operational concepts, which are recurrent in all three corpora, with an additional corpus-driven check

based on the wordlists. The extraction of terminological nodes (see 6.2.1) and their further analysis took account of the thematic variable to prevent any comparability-related discrepancies. Therefore, neither the small size nor some topic inconsistency were problematic for the results of this study, which are nonetheless to be interpreted as pilot and paving the way for future research on a more substantial and balanced corpus.

In general, this work unveiled the need to study other multilingual corpora to get a fuller understanding of the generic peculiarities of written pleadings and of the translation-related phenomena. It would have been interesting, yet impossible in the context of real-life translations, to compare the same translations carried out by L1 as opposed to L2 translators to assess the impact of the directionality of translation on the degree of conventionalisation / interference and a higher-level discourse transfer.

Finally, this study allowed testing the methodology of working not only with relative frequencies, but also with proportions of phraseological units organised in functional sets or in sets of near-synonyms, proving its effectiveness also in cases where the traditional canons of representativeness were somewhat stretched based on “intuition-based considerations of normalcy” (Hoffmann 2005: 75). It would be thus interesting to test this method with a different corpus.

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