

## COHESIVE DEVICES IN LEGAL DISCOURSE

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**Abstract.** *This paper is concerned with cohesive devices in written legal discourse, which is a differentiated language variety with a number of prominent features. The ways in which coherence and cohesion are formed in written legal discourse are explained, as well as the ways in which cohesive devices in legal texts contribute to coherence. Cohesive devices are first theoretically explicated and afterward they are analyzed on the basis of examples taken from references and the corpus. The corpus is created from legal documents of the European Union.*

**Key words:** *legal discourse, coherence, cohesion, cohesive devices, reference.*

### 1. INTRODUCTION

Language plays a highly important role in law. Not only would law be meaningless without language: it also largely depends on language. Therefore our understanding of legal rules stems from the very language in which those rules have been written.

A number of authors have written about the relationship between language and law, just to mention a few: Garner (1986, 2002), Hiltunen (1990), Solan (1993), De Groot (1998), Tiersma (1999), Haigh (2004), Williams (2004), Butt and Castle (2006), Schane (2006), Coulthard and Johnson (2007), Stanojević (2011). They have written about the general features of legal language and changes it underwent. A predominantly pragmatic approach to legal language was taken into account by Danet (1980, 1985) and Trosborg (1992, 1997), whose analysis of legal discourse marked the shift in legal language research from syntax and vocabulary to the realm of pragmatics. As pragmatic meaning is based on the extralinguistic meaning of linguistic units, Yule (2010: 128) outlines that pragmatics is the study of 'invisible' meaning or what is meant even when it isn't said or written, which depends on shared assumptions and expectations in written and spoken communication. Pragmatics studies meaning in context, especially social and professional, and therefore legal English, as the language of legal profession, can be analyzed from a pragmatic perspective.

Discourse, which can be either written or spoken, represents any linguistic unit of writing longer than a sentence or segments of connected speech larger than a sentence. The linguistic relations, forms and structures in discourse are explored by means of discourse analysis, which, as a part of stylistic analysis, is concerned with the study of speech and writing. Discourse analysis has interdisciplinary character because it is dependent on linguistic, social, psychological, cultural and other elements.

However, discourses are not simply arbitrary collections of utterances because they must meet a rather strong criterion of being coherent (Kehler 2004: 241).

The subject of the present paper is legal discourse, which is also investigated as legal register or studied as English for Legal Purposes, depending on the terminology used by different authors (Trosborg 1992). It is also known as legal English or English for law. Nowadays the term legal discourse covers not only the language of Common Law (as opposed to Civil Law, which is the legal system of the European Continent), but also the language of international legal English (as the language of international conventions and international courts) and the language of the European Union Law as supranational law. Thus, there are terminological differences in the use of the language of Common Law in the strict sense and the language of the European Union Law. Emphasizing the differences in legal systems, Kocbek (2007) claims that "due to the United Kingdom's involvement in the EU, Euro-English terms, i.e. English translations of European concepts will have to be adopted by and included into the vocabulary of the native-speakers of English as well."

The main objective in the paper is to thoroughly explicate cohesive devices as pragmatic categories, which is achieved by means of introducing the theoretical framework for the notions of coherence and cohesion, and then to investigate their use by providing examples of cohesive devices from the selected corpus which consists of legal documents of the European Union. The need for simplification of some of those devices will also be stressed. In this respect the differences between the language of Common Law and the language of the European Union Law are going to be underlined.

## 2. COHERENCE AND COHESION

Coherence is a semantic and pragmatic property of a text that makes it meaningful and prompts its comprehension. When there is a logical order of text elements and they are functionally linked, such a text can be regarded as coherent.

Coherence is mostly achieved by the use of cohesive syntactic elements, such as deictic and anaphoric features or presuppositions. Nevertheless, linguistic elements used in order to make a text coherent do not necessarily attain this goal, since arguments are required to be in logical succession and other circumstances in the world have to be coherent, as well. The perception of the recipients of the text is of utmost importance since discourse interpretations are created by language users. Yule (2010: 144) confirms that it is people who make sense of what we perceive in the world. This way coherence is related to general world knowledge of language users and it is concerned with relations between text parts which are subject to interpretation by readers or listeners.

Berzlanovich (2008: 3) emphasizes that there are two main approaches pertaining to coherence. According to the former approach coherence is a property of a text, regarding the formal criteria that distinguish texts from non-texts, while the latter regards coherence

as a discourse processing concept in which the coherence of a text arises from the processes of text production and comprehension.

On the other hand, cohesion is a linguistic property rooted in the language system itself. It is an overtly semantic category which contributes to the coherence of a text. Cohesion is the property that implies grammatical and lexical ties and relations of meaning that hold the elements of a text together in a meaningful unity. Being a linguistic category, cohesion can be lexical or grammatical.

Thus, cohesion makes written or spoken discourse coherent. The elements within a text are interconnected, so one element is dependent on another one and cannot be decoded without its relation to the element it presupposes. However, there have been positions asking whether cohesion is necessary for discourse organization. Cohesion is a necessary, but not sufficient criterion of coherence (Halliday and Hasan 1976). Berzlanovich (2008: 4) highlights that apparently both cohesion and coherence are relevant in a text and they both contribute to discourse organization, "cohesion being at the surface level of the text, whereas coherence being an underlying phenomenon in the text". Since their role in discourse organization is genre-dependent, cohesion is dominant in certain genres, whereas in other genres coherence might be more dominant in the organization of discourse.

Furthermore, the relation of cohesion is more than the reference established between two elements, because it has to be in harmony with the process of interpretation.

The correct cohesion depends on the concept of schemata, which refers to the mental representations of communicators. Hence, coherence is dependent upon each individual's content and formal schemata. Schemata are the ways in which the world is organized in our minds or mental frameworks for organizing information about the world. Schemata are complex knowledge structures that participate in the organization and interpretation of experience (Brown and Yule 1983: 247).

### 3. LEGAL DISCOURSE COHERENCE AND COHESION

Legal discourse is dominated by repetitions, archaic words and phrases, technical terms, binomial and multinomial expressions, long sentences containing several clauses, unusual propositional phrases and the use of nominalization. It creates an impression that receivers' schemata are not taken into account in legal writing and drafting. Thus the problem that arises in legal discourse - that laymen are hardly able to follow it. Remnants of old formulaic expressions further complicate its analysis and hinder comprehension. This is especially true of the language of Common Law.

The calls for clarification of written legal discourse have resulted in the passing of laws written in plain English and creation of documents dealing with rights and obligations of citizens. In addition, simplification mostly affected loan contracts, insurance policies, leases and similar types of documents dealing with commerce, banking or insurance, while in other types of legal instruments ancient formulas recur and preserved patterns remain intact. Garner (2002: 191) claims that "most of the circumlocutions, formal words, and archaisms that characterize lawyers' speech and writing are easily simplified to good effect."

The objective of the urgent reform of legal English is to make legal writing and drafting more effective and efficient, inclusive of promoting economy in it without affecting the accuracy of meaning in any respect or deteriorating the clarity and precision of legal thought.

Dámová (2007: 22) remarks that legal discourse coherence is lacking clear sentence boundaries. Garner (2002: 65) notices the importance of cohesive devices in terms of paragraphing by giving the following piece of advice to legal writers and drafters: "Paragraphing should also show the progression from one idea to the next. At the outset of each paragraph, orient the reader with a transitional connective or signpost. We have three means of providing such a transition: (1) the transitional words and phrases commonly used for this purpose, (2) pointing words (such as *this* or *that*), and (3) echo links (words and phrases that refer notionally to what has preceded). Often these techniques work in combination. Among the standard words used for transitional purposes are *but*, *and*, *besides*, *hereinafter*, *hereto*, *thereto* even *so*, *further*, *moreover*, *nevertheless*, *still*, *therefore*, *thus*, *yet*." Thus, legal English also uses archaic expressions which contribute to cohesion.

#### 4. COHESIVE DEVICES

Cohesive devices, along with the interpretation of readers, are used to make a text more coherent. General cohesion devices in a legal text are: reference, conjunctions, substitution, ellipsis and lexical cohesion.

##### 4.1. Reference

There is a referential relationship between new concepts and terms referring back to them, where the referring expression is called anaphora (Yule 2010: 132). Referencing or supplying reference to a word, especially a noun, is the main cohesive device. As it may be achieved by virtue of anaphora, this reference is called anaphoric. Anaphoric reference is aimed to link back to someone or something previously identified in a bid to avoid repetition. The typical instance of anaphoric reference is a pronoun, and it is a part of speech which exclusively expresses anaphoric reference.

Cann et al. (2009: 137) explain that anaphora is concerned with expressions like pronouns which 'stand in' for semantic content that identifies who or what is being spoken about, and its interpretation entirely depends on the entities in the discourse context, which are "either linguistically given or physically and mentally salient."

However, the use of anaphora is constantly eschewed in legal English. It is regarded as the safest means for avoiding ambiguity, because when it comes to anaphoric reference it is not always clear which word in the text a pronoun or determiner refers to.

Anaphora may lead to ambiguity, which is not tolerated by legal drafters, and therefore the common position is that it would be more appropriate to repeat a particular word or expression instead of using, for example, a personal pronoun, determiner or other types of anaphora that create ambiguity. Legal drafters usually resort to repetition which, in turn, makes the language artificial. In addition, the repetition of a lexical unit can occasionally become obsessive. Williams (2004:113), for instance, presents an example of the obsessive use of nouns *chair* and *vice-chair*.

On the other hand, one type of anaphoric reference, aimed to refer back to something previously mentioned or something that precedes the reference, is used in legal discourse as a prominent feature. It is the archaic use of *said*, *such* and *same*, which frequently occur in legal texts as determiners. Yet proponents of writing in plain language think that the use of *said*, *such* and *same* cannot be justified in legal contexts.

Solan (1993: 128-129) mentions that the word *said* is derived from *aforsaid* and has a peculiar purpose to restrict the denotation by narrowing the class of possible referents to a noun phrase. At times, it may seem anomalous, because "while said does have the effect of limiting the reference to something mentioned earlier in the discourse, it does nothing else." Moreover, Garner (1986: 778) reiterates that 'said' should be eschewed as a substitute for *the*, *that*, *this* or any other deictic word (deictics are words that cannot be interpreted without the context of the utterance, e.g. *here*, *there*, *this*, *that*, *now*, *then*, *today* and personal pronouns).

#### 4.2. Conjunctions

A conjunction sets up a relationship between two clauses or sentences in a discourse. The aim is to create a logically articulated discourse. A conjunction can be implicit and deduced by means of text interpretation. Dámová (2007: 22) claims that the most cohesive conjunctions are *therefore* and *so*, while the least cohesive one is *and*.

The potential for ambiguity is inherent in conjunctions *and* and *or*. There have been cases in which *and* was not conjunctive, and *or* was not disjunctive. Therefore, courts, whose function is to interpret laws, are sometimes obliged to interpret the language of those laws.

#### 4.3. Substitution

Substitution is an instance of one word replaced by another, more general one, such as the pronoun *one*, to eschew repetition. It is deemed as scarce in legal discourse, which ought to be clear, complete and unambiguous.

#### 4.4. Ellipsis

Context plays a crucial role in interpreting elliptic utterances. Ellipsis occurs when syntactic structures of an utterance are omitted in a text. Certain elements that have been previously mentioned or understood are deleted. Ellipsis can also affect a few compound lexemes.

Ellipsis is context-dependent since the interpretation of elliptical fragments depends on what the context provides. The interpretation can be recovered from the following elements of the context: triggering a bare noun phrase, a presented subject plus bare auxiliary, or a sequence of such fragments (Cann et al. 2009: 210).

Ellipsis is virtually non-existent in written legal documents. Since precision is one of the principal objectives of legal English writing, there are no elliptic sentences in it. The endeavour is to leave no room for ambiguity and ensure accuracy of legal expressions.

However, the example of ellipsis can be found in the use of whiz-deletion, which is the omission of the *wh*-forms and some forms of the verb *to be*. This characteristic can be seen in the following example: *agreement... (which is) herein contained or implied* (Danet 1980).

#### 4.5. Lexical cohesion

In contrast to grammatical cohesion, which studies the grammatical rules of a text or utterance, lexical cohesion identifies the semantic relations of words that make up a text or utterance. Thus, lexical cohesion is concerned with connections among lexical items and cases where the cohesive effect is achieved by the selection of lexis. There are the

following cohesive relations: repetition (also known as reiteration), systematic semantic relations (synonymy) and non-systematic semantic relations (collocation).

Repetition is the identical recurrence of a preceding lexical item which establishes a cohesive tie between lexical items as a referential link. A lexical item coheres with a preceding occurrence.

Synonymy is the identity of senses of two or more lexical items. In the case of synonymy, lexical cohesion results from the choice of a lexical item that is synonymous with a preceding one (Halliday and Hasan 1976: 331). In semantics it is important that the synonyms have the same or nearly the same sense while they may or may not have the same referent.

Collocation, as the tendency of at least two lexical items to co-occur in a language, can serve as a source of lexical cohesion since collocational relationship is one of the factors on which we build our expectations of what is to come next (Halliday and Hasan 1976: 333). The cohesive effect of collocation depends on proximity and closeness of lexical items in the text. Some of the well-known collocations in legal English are the following: *assign rights*, *authorised representative*, *binding contract*, *binding obligation*, *cancel an order*, *contractual breach*, etc.

The vocabulary of legal discourse abounds in synonyms. It is rife with synonyms because it springs from three lexical sources: English, Latin and French, so a number of synonyms refer to the same legal concept. They can be considered cognitive synonyms, as the notion of non-existence of real or absolute synonyms is widely accepted. Lexical synonymy in legal lexis is seen as a sense relation that holds between two or more lexical units with the same sense in the given contexts in which they are interchangeable. The synonymous lexical units also share the same conceptual meaning.

The following synonyms in legal English were presented by Haigh (2004: 40):

*Assign – transfer*

*Breach – violation*

*Clause – provision – paragraph – article*

*Contract – agreement*

*Default – failure*

*Lessee – tenant*

*Promise – assurance – undertaking*

*Void – invalid – ineffective*

However, lawyers are generally reluctant to replace one word with another, and the same goes for synonyms even if they have the same conceptual meaning. Williams (2004: 119) notices that "any change in lexis must be counterbalanced by the certainty that ambiguity will not ensue, for one advantage of rarely used words is precisely the fact that they generally cannot be confused in meaning, whereas commonly used words may often have several different meanings attached to them."

Since there is a tendency to repeat words in order to avoid the use of pronouns, synonyms are not used to replace one previously mentioned word in the same text. However, the unjustified use of synonyms from different or the same lexical source is a prominent feature of binomial and multinomial expressions, as types of legal idioms. Garner (1986: 40) labelled them *doublets*, *triplets* and *synonym-strings*.

Binomials consist of native and French or Latin terms (*breaking and entering*, *goods and chattels*, *last will and testament*, *order and condition*), where, as a rule, one term explains or complements the other, in a belief that all the alternatives forming the binomial

contribute to the clarity of meaning. However, Butt and Castle (2006: 22) provide instances of binomials containing words that originate from the same linguistic source (*hold and keep, aid and comfort*). These idioms are redundant as they reflect wordiness and rhetorics of legal drafters. Binomial and multinomial expressions are nowadays regarded as old traditional patterns, and there are growing calls for their simplification so that a single word could be used instead.

## 5. CORPUS-BASED ANALYSIS

For the purpose of this study selected legal documents of the European Union are examined. The corpus contains three documents with approximately 113,000 words (Table 1). These legal documents have been randomly selected and three official sites from which they have been downloaded are presented.

**Table 1.** Composition of the corpus

Document	Web address	Word count
1. TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND RELATED ACTS	<a href="http://eur-lex.europa.eu/en/treaties/dat/11997E/htm/11997E.html#0143010069">http://eur-lex.europa.eu/en/treaties/dat/11997E/htm/11997E.html#0143010069</a>	104,635
2. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION	<a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF</a>	3,887
3. EUROPEAN CONVENTION ON NATIONALITY	<a href="http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm</a>	4,283

In this study the selected documents are going to be referred to as D1, D2, D3 representing the first, second and third document, respectively.

Reference is illustrated by *said* and *same* which have the same archaic meaning, i.e. being the one previously mentioned or indicated, and their synonym is *aforsaid*. The following examples (1), (2), (3) and (4) demonstrate the referential use of *said* and *aforsaid*.

- (1) Member States which intend to establish closer cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and the Treaty establishing the European Community provided that the cooperation:
- (a) is aimed at furthering the objectives of the Union and at protecting and serving its interests;
  - (b) respects the principles of the *said* Treaties and the single institutional framework of the Union;
  - (c) is only used as a last resort, where the objectives of the *said* Treaties could not be attained by applying the relevant procedures laid down therein; (D1)
- (2) (...) after the new paragraphs 1 and 2, there shall be inserted the text of Article 3(1) of the *aforsaid* Act as paragraph 3; the new paragraph 3 shall read as follows

(3) (a) in the place of paragraphs 1 and 2, which lapsed in accordance with Article 14 of the Act concerning the election of the representatives of the European Parliament, there shall be inserted the text of Articles 1 and 2 of the *said* Act as paragraphs 1 and 2; the new paragraphs 1 and 2 shall read as follows: (...) (D2)

(4) In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the *said* Convention. (D1)

Only one instance of *same* which has the meaning of *this* or *that* was found, whereas no instances of the archaic use of *such* were found in the corpus.

(5) From the date of entry into force of the Treaty of Amsterdam, the Schengen acquis, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted before this date, shall immediately apply to the thirteen Member States referred to in Article 1, without prejudice to the provisions of paragraph 2 of this Article. From *the same* date, the Council will substitute itself for the said Executive Committee. (D1)

When it comes to the repetition of nouns, it is usually introduced instead of personal pronouns in order to avoid ambiguity which is allegedly likely to arise when it is not obvious which word in the text a pronoun refers to. Our corpus provided the instance (6) in which the lexical item State Party is used repeatedly.

(6) Article 17 – Rights and duties related to multiple nationality

Nationals of a *State Party* in possession of another nationality shall have, in the territory of that *State Party* in which they reside, the same rights and duties as other nationals of that *State Party*. (D3)

The repetition of lexical items is demonstrated in (7) and it can be explained as identical recurrence of a preceding lexical item which establishes a cohesive tie between lexical items as a referential link. Nevertheless, a cohesive tie is also achieved by the use of a pronoun or adjective (*they, their*). There lies the difference between the use of anaphora in Common Law (where it is scarce) and EU Law (where the use of personal pronouns as anaphoric reference is justified).

(7) Article J.4

1. The Council shall adopt joint actions. *Joint actions* shall address specific situations where operational action by the Union is deemed to be required. *They* shall lay down their objectives, scope, the means to be made available to the Union, if necessary *their* duration, and the conditions for *their* implementation.

2. If there is a change in circumstances having a substantial effect on a question subject to *joint action*, the Council shall review the principles and objectives of that *action* and take the necessary decisions. As long as the Council has not acted, the *joint action* shall stand.

3. *Joint actions* shall commit the Member States in the positions *they* adopt and in the conduct of *their* activity. (D1)

In the following cases conjunctions *and* and *or* are presented.

(8) Article B

The Union shall set itself the following objectives:

- to promote economic *and* social progress *and* a high level of employment *and* to achieve balanced *and* sustainable development, in particular through the creation of



an area without internal frontiers, through the strengthening of economic *and* social cohesion *and* through the establishment of economic *and* monetary union, ultimately including a single currency in accordance with the provisions of this Treaty; (D1)

In (8) *and* is conjunctive, which is its main cohesive function.

**(9) Article 53**

Level of protection

Nothing in this Charter shall be interpreted as restricting *or* adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law *and* international law *and* by international agreements to which the Union *or* all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, *and* by the Member States' constitutions. (D3)

In (9) bolded conjunctions *and* and *or* are both disjunctive. As the disjunctive function of *and* is not typical and may lead to ambiguity, it is the task of the courts to interpret legal documents and find the intended meaning set by the legislator. Similar cases can also be found in Common Law. In the following instance *and* was treated as disjunctive and regarded as 'or' by the Privy Council.

*[The property] shall be held by my trustees in trust for such charitable benevolent religious and educational institutions societies associations and objects as they in their uncontrolled discretion shall select.* (Butt and Castle, 2006: 159)

Even though synonymy is one of the main lexical features of Common Law, only synonymy as a means for attaining lexical cohesion should be taken into consideration. Such cases of synonymy, where one word would be replaced with its synonym in the given paragraph, were not found in our corpus.

In addition, instances of *herein* in whiz-deletion that illustrates ellipsis were not found in our corpus.

## 6. CONCLUSION

This paper has considered cohesive devices of legal discourse. It has introduced a general overview of cohesive devices as pragmatic properties which showed how legal English is connected with extralinguistic elements of meaning. Therefore, the bulk of the paper has centered on the theoretical framework of cohesive devices in legal discourse and the results of the corpus-based study are outlined and elaborated.

We explored the selected corpus in order to demonstrate the repetition of lexical items and instances of *said* used as a referent. The conjunctions *and* and *or* can be both conjunctive and disjunctive, which may cause ambiguity, and our corpus provided examples for these phenomena. The conclusion can be drawn that cohesive devices ought to be carefully selected by legal writers and drafters in a bid to prevent ambiguity in legal texts.

As legal discourse is seen by many as a particular type of discourse in need of a reform, such a reform could also affect cohesive devices. However, a well-established drafting policy in prescriptive texts is yet to be established (Williams, 2004: 119). If it was established, it would certainly solve plenty of problematic or debatable issues, to the benefit of both legal experts and general public.

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## KOHEZIVNA SREDSTVA U PRAVNOM DISKURSU

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*U radu se obrađuju kohezivna sredstva u pisanom pravnom diskursu, koji predstavljaju diferencirani jezički varijetet sa više istaknutih odlika. Objašnjava se kako se koherentnost i kohezija formiraju u pisanom pravnom diskursu i na koji način kohezivna sredstva u pravnim tekstovima doprinose koherentnosti. Kohezivna sredstva su najpre teorijski objašnjena, a zatim se analiziraju na primerima iz literature i primerima iz korpusa. Korpus je sačinjen od pravnih dokumenata Evropske unije.*

*Ključne reči: pravni diskurs, koherentnost, kohezija, kohezivna sredstva, referencija*