

University of Szeged
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*Complex linguistic analysis of court hearings within
Hungarian criminal proceedings*

SUMMARY

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1. Introduction: The aim and structure of the thesis

The testimony of the witness and the accused are two important means of evidence, both have a significant role in jurisprudence. The testimony is realized through interrogation; therefore the knowledge, which generates impact of questions on the responses and by this on the testifying, is extremely important. There is a widespread consensus in the literature regarding the way in which a question is put to a witness having a strong influence on the quality of the answer (Loftus 1979: 90–91, Hale 2004: 34). This may be the reason why researchers of courtroom interrogations typically focus on the possibilities of influencing with questioning (Harris 1984, Walker 1987, Dobos 2014, Liao 2017). Influencing testimony by questioning is a popular research topic in the cross-examination procedure (e.g. Anglo-American), in which the opposing parties try to confuse the other party's witness and attack their credibility with varied strategies in order to weaken the position taken by the other party (Fedor 2014: 451). This may be the reason why researchers so far have paid much attention to the so called presiding judge lawsuits, where the presiding judge's role is to interrogate witnesses and defendants impartially. As Elek (2008) has highlighted, there is a lot of possibility to influence with questions, although there is no chance for the interrogator to stay quiet and just listen to the story of the interrogated, so therefore many legally relevant facts would remain undetected which could result in the unfoundedness of the cases. So the main objective of the thesis as I determined is to use empirical and qualitative methods to map those judicial interrogation strategies which facilitate the testimonies to be as correct as possible, unambiguous and uninfluenced. I claim in the dissertation that these strategies could be arranged in **questioning patterns**. The questioning patterns are organized by the formal characteristics of the questions and the context, and within the latter the aim of the questioner, the previous discourse context, the evidences of the context, and the impact on the hearers have a special function.

The thesis is organized as follows. Firstly I present the theoretical background of the thesis in Chapter 2, which involves the outline of the Linguistic Adaptation Theory which fits in the interdisciplinary view of the research, I overview the formal and functional characteristics of questions, the context of judicial interrogations, then I examine the phenomenon of verbal influence in the pragmatical literature and I determine the concept of the non-intentional verbal influence, eventually, within the framework of conversation analysis, I determine the unit of the magnitude in which the pairs of questions and answers in the corpus could be analyzed. In the third chapter I deal with the possible influences hidden in

the questions and the strategies used by judges to reduce this influence. In the fourth part I present the typology of judicial questioning by function with the questioning strategies which are connected to them. In this part I examine the questions asking for information, the questions aimed to check the understanding, and the questions directed to resolve inconsistencies. In the last part of this chapter I deal with the interpersonal aspects of judicial communication and the impression management strategies, which play an important role within the selection of linguistic and language use strategies, and which could facilitate the cooperation with witnesses. In the fifth Chapter I outline the questioning patterns that appear the most during judicial interrogations within the examination of the corpus, and in the sixth Chapter I summarize the results of the thesis.

2. The hypothesis and research questions of the thesis

The examination is based on five hypothesis and two research questions. My first two assumptions are connected to the phenomenon of verbal influence. Beside the intentional verbal influence that has been investigated in detail by pragmatic literature (Árvay 2003, De Saussure 2005, Németh T. 2013a, 2013b, 2015, 2020, Kamil–Fareed 2017), I assume that the hearer could be also influenced even if the speaker does not have the intention to influence him/her. The influence realized through language use has extreme significance in judicial interrogations, regardless of whether it is realized intentionally or unintentionally; that is why I also assume that judges make an attempt on avoiding the effect to the answers of the interrogated by their questioning. These assumptions will be presented in my (I)-(II) hypothesis.

(I) Hypothesis

Judges try to minimize the influencing properties of linguistic elements, which could be recognized in the usage of certain linguistic elements.

(II) Hypothesis

Judges try to minimize the influencing properties of linguistic elements.

The third hypothesis will be mentioned during the examination of the mutual understanding of explicit and implicit meaning. I assume that judges with years' of experience can in an implicit way gain the knowledge how to ask questions without any misunderstanding, and to know what kind of information is crucial to gain correct and unambiguous information, so

the bare linguistic meaning could be consciously available for the judges during the interrogation. This assumption was presented in the (III) hypothesis.

(III) Hypothesis

Bare linguistic meaning can be consciously available for judges during the legal proceedings.

The fourth and the fifth hypotheses are connected to the interpersonal aspects of interrogations. International researches (Sanderson 1995, Harris 2011) have pointed out that interpersonal strategies have an especially significant role in judicial interrogations, because strategies used by the interrogator could soften the coercive and discommoding characteristic of judicial interrogations. In my view, these strategies could actually be used to facilitate the cooperation with the person being interrogated. From the standpoint of the interrogated person I assume that defendants, compared to the witnesses, use more varied impression management strategies due to their stronger impression management motivation. These assumptions are presented in the (IV)-(V) hypotheses.

(IV) Hypothesis

Judges use strategies to protect and help maintain the positive impression of the person being interrogated in order to facilitate cooperation.

(V) Hypothesis

Defendants generally use more types of linguistic impression management strategies than witnesses, due to their stronger impression motivation.

Beside the above hypotheses, while I examining the questioning strategies, I formulated two research questions regarding the reliability of the witnesses' memory. Namely, the witnesses' memory could be potentially influenced by verbal effects before the judicial interrogation which could affect their remembrance and therefore their testifying. In the thesis, I investigate the types of false memories caused by verbal information potentially influencing the witness's testimony in the courtroom. These will be showed in the (I)–(II) research questions.

(I) Research question

What kind of verbal effects causing false memories could influence the witnesses' memory before their judicial interrogation, which can therefore affect their testifying in the courtroom?

(II) Research question

Are there any questioning strategies which are suited to explore whether the witnesses recall a memory of some true experience (and if it so, to what extent could their memory be seen as correct), or if they only show their supposition, conclusion, the additionally gained information?

Following the summary of the hypotheses and the research questions of the thesis, I turn to the exposition of the research corpus and methodology.

3. The corpus and methods of the thesis

The thesis is based on the analysis of eight criminal trials. The criminal cases involve felony of aggravated battery, budget fraud, money laundering and negligent homicide. Regarding to my research permit at the Regional Court of Szeged (2017.EI.XI.F.9/5.), I was allowed to observe the proceedings personally and record these trials with a voice recorder (Olympus WS-831), and also write notes on non-verbal communication in the courtroom. The records were recorded in 2017 during the trials of two judges (presiding judges). The excerpts from these trials have been anonymized and transcribed using the Conversation Analysis method (Jefferson 1984). Because of the Secrecy Obligation, the ten trials are described generally below, and I will only present data which are relevant from the perspective of linguistic analysis. The corpus examined in the thesis and including 7 hours audio materials contains the following:

1. Interrogations of two defendants: six from eight defendants refused to testify, but all of them were cooperative in answering questions about their personal circumstances (e.g. marital status, public duties, financial circumstances etc.). The other two defendants did not refuse to testify; therefore they also answered the substantial questions connected to the criminal offence.
2. Testimonies of twelve witnesses: if there is no obstacle to the testimony, the presiding judge questions the witness. All of these twelve witnesses had to answer the questions put to them.

The complexity of the research is presented in two ways. On the first hand, the research is strongly related to many areas of linguistics, such as pragmatics, semantics, and conversation analysis. The characteristics of the investigation require a pragmatic approach, but due to its connection to semantics, the researches which on the borderline between pragmatics and semantics have a significant role in the dissertation. This characteristic will be relevant primary in the implicit and explicit meaning generation (Carston 2004, Recanati 2004, Hansen 2008, Ariel 2008, Sternau et al. 2015), and in the examination of the types of questions (Sadock–Zwicky 1985, Groenendijk–Stokhof 1997, Schirm 2007, Maleczki 2007, Illie 2015, De Ruiter 2015, Sudo 2013, Gyuris 2017). The tools of conversation analysis are also necessary, because they enable to transcript correctly and analyze what has been said during the trials, the length of pause, the intonation and the speech tempo (Schegloff–Sacks 1973, Jefferson 1984, Hayano 2012).

On the other hand, beside linguistics psychology, law and criminalistics have also been used in the analysis of courtroom interrogations. Despite this, the research's primary area is linguistics, because the main objective is to explore the strategies of language and language use of courtroom interrogations. Linguistic expressions however cannot be separated from the speakers themselves. Their real aims and intentions cannot always be seen taken apart from the linguistic expressions, they should be derived from linguistic forms and interactions of the given judicial context, while the physical context, the social context and the background knowledge should also be considered. Pragmatical tools are needed to explore the underlying intentions, strategies and objectives (Sperber–Wilson 1986/1995, Verschueren 1999, 2008, Árvay 2003, Kamil–Fareed 2017). The language use is also influenced by factors like the personal characteristics of individuals and human remembrance, which belong to the discipline of psychology. Since the personal characteristics and memory process leave a trace in the language use, the psychological and pragmatical methods should be mixed in this area (Loftus–Palmer 1974, Ost et al. 2013, Roediger–DeSoto 2015, Laney–Loftus 2016, Reyna et al. 2016). Additionally, the research also falls in the domain of law, since communication strategies depend on the legal system and legal regulation, consequently, the legal system should always be considered during the analysis of judicial language use (Elek 2008, Vinnai 2017). Finally, the results of the discipline of criminalistics, connected to the interrogation methods of courts of first instance, should also be considered (Bócz 2008).

The approaches mentioned above are different from each other, although together, completing each other, they facilitate a complex analysis. The complexity of dissertation could be easily handled in the Continental European perspective view of pragmatics, in which

pragmatics is defined as a functional perspective on language, and it is the interdisciplinary science of language use (Verschueren 2008: 15). However, in the parts of the dissertation, where other pragmatic approaches offer a more in-depth analysis of the linguistic and language use, I will apply those theories (pl. Sperber–Wilson 1986/1995, Árvay 2003, Németh T. 2013ab, Carston 2004, Ariel 2008).

4. The results of the thesis

The main results of the thesis could be summarized by the following points:

1. I stressed out that to be influenced by someone is not necessary connected to the influential intention of the speaker, by this I highlighted a broader interpretational option of the phenomenon of verbal influence. From the perspective of interrogation strategies this is an essential statement, because the avoidance of the non-intentional influential effect could be also extremely significant in the judicial questioning.
2. Through the analyses I presented that in a given context any linguistic element (for example a verb or a question word) is suitable to influence, even without the speaker's intention. Based on these results the first hypothesis of the thesis has been verified, which stated that linguistic elements could result non-intentional influence.
3. I explored those judicial questioning strategies which help judges avoid the basic influential characteristics of questions. This is manifested in the choice of verbs, in the effort to ignore premises, in keeping the logical order of questions, and by avoiding the expression of epistemic partiality, that's why the second hypothesis has been also verified by the data of the corpus.
4. I established a complex judicial question typology, and I explored language and language use strategies connected to this typology:
 - (i) I determined strategies which facilitate gaining new information in the frame of information-seeking questions. This is especially significant because judicial interrogation shouldn't be just the formal reiteration of the testimony which was made during the investigation. I stressed out that those questioning is also relevant to explore the legally relevant facts, beside giving chance to the witness to present his/her story in an informal way, which makes significant restriction in the set of possible answers, at the same time the usage of strategies to avoid influence is extremely important in these questions.

- (ii) Dealing with the questioning which is aimed to check the understanding/comprehension, I explored those strategies by which the judges ensure that the interrogated understands what was said during the trial, and I also presented the strategies by which judges check that they understand correctly what was said by the interrogated. By these strategies, the judges firstly try to avoid misunderstanding and to gain as correct information as possible, and secondly they make it mutually manifest to themselves and to those who take part in the trial what was said by the interrogated, so they increase the mutual knowledge of the participants.
 - (iii) In the case of the questioning which checks the reliability of the information I determined questioning strategies aimed to the possible partiality or interest of witnesses, to the determination of the degree of the alcoholic influence during the perception of the actions, and to the exploration of false memories.
 - (iv) In the case of framework of questioning aimed to resolve inconsistencies I explored those questioning strategies which are used by judges when they perceive a contradiction between the testimony made by the witness in the court procedure and the testimony made in the investigation period.
5. The analysis emphasizes that bare linguistic meaning could be consciously available in the social interaction. Namely, regular misunderstandings during the many years of hearing experience have led the judges to the implicit knowledge of which questioning techniques cause the least misunderstanding and which linguistic elements should be observed. This result has verified the third hypothesis.
6. I determined those verbal influences which could create false memories. False information could be generated in two significant ways during police interrogation. Firstly, when the witness hasn't got the chance to be the first to present the actions with his/her own words. Then the language use of the interrogator could induce spontaneous false memories, because the investigated hears the actions in a new way of expression. Secondly, when the questioning includes information which can influence remembrance, it specially applies to polar questions and open questions. Eventually in the case of the perception of the event the words (for example which belong to a cognitive schema) that are semantically connected to each other or the individual's own conclusions are the most suited to create false memories.
7. I explored the significant role of source-monitoring questions, by which judges ask questions dealing with the source of the memory.

8. I pointed out that impression management strategies used by judges greatly determine the atmosphere of the trial, and in the case of the witnesses, strategies denying responsibility could be suitable to facilitate cooperation. At the same time I haven't find in the corpus an impression management strategy that would have been used by judges during the interrogation of defendants, which could be caused by the regulation that defendants can deny answering anytime, and they are not obliged to cooperate. That's why the fourth hypothesis has been only partially verified. At the same time, the fifth hypothesis has been verified by the data, so defendants use significantly more impression management strategies compared to witnesses, which could be possibly traced back to their higher degree of impression motivation.
9. I presented the judicial questioning patterns which are the most suited to an impartial, correct and detailed interrogation of the interrogated in the framework of questions.

The results of the thesis are also relevant to linguistics and jurisprudence. To linguistics they are relevant because judicial discourse is an institutionalized form of language use, which shows special characteristics that differs from the everyday language use. In the case of jurisprudence, conscious usage of the special characteristics explored by linguistic analysis could help the work of judicial professionals.

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