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LEXICAL MARKING OF EPISTEMIC MODALITY IN LEGAL TEXTS: FOCUSES ON ECHR SUMMERIES OF JUDGEMENTS

Abstract

This paper aims at establishing a set of criteria that could contribute to the identification of modal meanings in lexical items typical of the summaries of the European Court of Human Rights judgments.

Key words: propositional modality, subsystems of judgments, evidentials, exponents of modality

1. Introduction

Over the last two decades, the issue of relationship between language and law has received increasing attention from legal scholars and linguists who have, most often, analysed the phenomenon from the perspectives of genre and discourse analysis, forensic linguistics, argumentation theory and modality (Bhatia 1993; Kurzon 1986; Gibbons 2003; Mazzi 2007; Gotti and Dossena 2001). Previous research on modality in legal settings has, predominantly, been oriented towards exploring grammatical means of expressing modality in legislative writing (Williams 2007: 75-

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143; Foley 2001: 185-195). However, another line of research into this phenomenon seems to be gaining ground by being oriented towards the examining of lexical exponents of modality. Our motivation behind the decision to embark upon this line of research was originally generated by an observation that:

questions concerning modality are central to the analysis of specialized discourse, as the choice and use of its various elements often represent a signal of markedness typical of a specific text type or of a particular discipline, and often constitutes one of the characterizing conventions on which a certain specialized genre is based (Gotti and Dossena 2001: 13).

Accordingly, our aim has been to draw attention to linguistic units which, we believe, may qualify as both exponents of modality and indicators of one particular legal genre.

2. Corpus

Our hypotheses will be tested on a corpus comprising the written material found in the AIRE Centre Human Rights Legal Bulletin- an authoritative source of information for judges and other legal professionals, providing summaries of the European Court of Human Rights' judgments. Relying on Bocquet's tripartite system of classifying legal texts into 1) primarily prescriptive; 2) primarily descriptive but also prescriptive; and 3) purely descriptive (in Šarčević 2000: 11), it should be noted that this study deals with texts whose communicative function is primarily descriptive. Nevertheless, it could be argued that such texts might have an indirect impact on the law as well, given the fact that their primary audience is composed of judges and legal professionals responsible for the integration of the European Convention of Human Rights into the jurisprudence of Serbia and Montenegro.

The summaries of judgments comprising our corpus are divided into three parts: a) Principal facts (the part of the text in which the facts are established- the nature of the issue and the parties are introduced); b) Decision of the Court (the argumentative part of the text presenting premises and interpretations of legal principle underlying the Court's final decision; c) Comment (description of the case being judged).

3. Aim and scope

Taking into account the fact that *ratio decidendi*, i.e. the rationale for the decision represents the most important part of judgments, our aim is to identify lexical means of expressing propositional modality in the summaries of judgments, and classify them as exponents of subsystems of judgments and evidentials.

Furthermore, this paper will tempt to explore semantic domains, syntactic patterns and pragmatic functions of linguistic units which may qualify as exponents of modality to be associated with judicial rhetoric.

4. Theoretical background

It has been recognized in the literature that modality represents a concept which notoriously resists clear delineation. Its semantic complexity is, perhaps, best reflected in van der Auwera and Plungian's claim that there is no one correct way to define modality and its types (1998: 80). The reason for such a state of affairs lies in the fact that the term modality covers a variety of concepts, giving rise to a range of parameters that authors can choose from when defining modality. These include speaker's attitude and judgments, factuality (Palmer 2001: 8, among others), dichotomy of possibility and necessity (van der Auwera and Plungian 1998: 80), subjectivity and performativity (Palmer 2001: 33; Lyons 1977: 797-809). The aim of this paper is not to offer a definition of modality, but to establish a set of criteria that may contribute to the identification of semantic components which enable the linguistic means under investigation to modalize a proposition. More specifically, proceeding from the notions of the most influential theories of modality, we argue that certain lexical verbs and analytic constructions, which the Court's argumentation is typically centered upon, may qualify as expressions pertaining to the realm of epistemic modality. Before we turn to characterizing the semantic domain of lexical exponents in question, we shall introduce some basic characteristics of legal argumentation, believing that it is legal reasoning that provides the framework for bringing out modal interpretations.

In the literature on legal argumentation, one comes across claims that it represents an interdisciplinary field of research which generates interest among scholars with different backgrounds (Feteris and Kloosterhuis

2009: 307). Having its origin in legal logic, theory and philosophy, legal argumentation makes a challenging field due to its multifaceted nature, which is reflected in various research components framing the study of legal argumentation. Feteris and Kloosterhuis point to, what seem to be, two central research areas within legal argumentation-standards of legal soundness and evaluation of the argumentation (2009: 308). In fact, these research topics correspond to what is known as normative and descriptive dimension of legal argumentation, the former being associated with developing models of acceptable argumentation, and the latter comprising the identification, interpretation and the analysis of argumentation, as well as the establishment of criteria used for the evaluation of argumentation. Such state of affairs contributes to the existence of different approaches to the study of legal argumentation, where logical, rhetorical, dialogical and pragma-dialectical perspective have come to be recognized as the bases of the most influential theories of legal reasoning. The four approaches differ in terms of which aspects are taken into account when dwelling on the acceptability of legal justification.

In what follows, we will present some of the concepts in argumentation theory that influenced the analysis of linguistic data in the present study.

In dealing with the scalar values of lexical exponents of modality, we take into account Anscombe and Ducrot's notion of argumentative weight (in Mazzi 2007: 78). Accordingly, our aim is to test the validity of the claim that lexical verbs as exponents of epistemic judgment are quite vague regarding the strength of the qualification expressed (Nuyts 2001a: 111). Given the fact that such verbs introduce statements which have an "argumentative force" (Anscombe and Ducrot: 1988 in: Mazzi 2007: 76) being directed, in this case, towards setting the stage for the final judgment, we pose the following question: do inferences supported by knowledge-based evidence represent arguments that, as suggested in the literature, inherently "reflect... less certainty and more probability" (Willet 1988: 86-88 in: Sanders and Spooren 1996: 257)? Or is it the choice of certain lexical verbs within argumentative patterns that modifies argumentative force, resulting in a varying commitment to the truth-value of the proposition? Even though it is an undisputable fact that the Court bases its arguments on legally relevant facts, which, by default, should lead to the qualification of claims as necessarily factual, it is intuitively felt that a validity scale could be established, based on the verbs employed to introduce the voice of the Court. Our position seems to accord with Sanders

and Spooren's suggestions that it is not the factuality of the evidence that varies, but the strength of connection between claim and evidence (1996: 243).

The notion of evidence is a crucial notion in both accounts of modality and argumentation theories. A relevant insight from the theory of legal argumentation is provided by Walton (2002: 205). According to the author:

legal argumentation should be explained by means of a theory of evidence, where evidence is considered as a chain of argumentation made up of a sequence of inferences, based on some premises that are supposed facts of some sort, like those that could be obtained by testimony. The probative weight of plausibility of the premises moves forward over the chain, transferring an increased (or decreased) probative weight onto the ultimate conclusion in the chain (Mazzi 2007: 95).

Accordingly, the aim of this paper is to analyse, through the prism of modality, linguistic elements which have their role in constructing the argumentative chain in the summaries of judgments. In our analysis we proceed from the hypothesis that Court's decision rests on inferences, supported by evidence in the form of the facts of the case, parties' submissions, and other forms of documentary evidence. All these elements constitute the domain of informational premises leading to the final conclusion.

5. Semantic notions

In characterizing the semantic domain of lexical exponents of epistemic modality we rely on the notions of possibility, probability and necessity, which underline a number of theoretical accounts of modality. These central notions of modal logic traditionally provide the basis for scholars to decode modal meanings, establish typologies and the scale of speaker's commitment to the truth-value of the proposition. Still, another line of thought which suggests that it is force-dynamics system that provides a valid basis for the analysis of epistemic modality seems to be gaining momentum. Sweetser puts forward the idea that metaphorical extension allows for drawing the parallel between our epistemic world of reasoning and sociophysical world, owing to the fact we generally apply the language

of the external world to the internal mental world (1990: 50). Viewed in terms of sociophysical concepts of forces and barriers, premises in the mental world, thus, have the force of constraining the hearer/reader toward certain conclusions (Marin-Arrese 2011: 790). Indeed, Sweetser's paraphrases of epistemic modals indicate that it is the logical "force" of premises and evidence that gives rise to different degrees of certainty within our belief system. This relation between epistemic gradient and strength of evidence has been widely acknowledged. Such position is, among others, supported by Sanders and Spooren (1996: 242) who relate the degree of certainty to the strength of evidence. Their analysis of Dutch epistemic modals shows that intuitively three degrees of certainty could be established based on the degree of evidential certainty. In other words, strong epistemic modals such as *moeten* 'must' combine with strong evidence only, and present the information as certain. *Schijnen* 'seem/look' and *kunnen* 'may/can', which allow for weaker evidence, seem to express uncertainty, i.e. the lowest degree of certainty, whereas *lijken* 'seem' and *dunken* 'be of the opinion/consider' express a lower degree of certainty (Sanders and Spooren 1996: 243).

A related issue concerns the source of evidence. Hence, a distinction is to be made between knowledge-based evidence and observational evidence. Even though the two types differ in terms of their defining features — knowledge-based evidence being concerned with "the speaker's reasoning based on knowledge about a situation" and observational evidence being "directly manifest, based on observation", authors note that observation figures as their shared component by claiming that "knowledge-based reasoning is merely an extension of observation: reasoning based on knowledge of a (repeated) observation" (Sanders and Spooren 1996: 245). As suggested by a number of authors, observational evidence, being recognized as preferred type of evidence (Palmer 2001: 51), is in correlation with a high degree of certainty, whereas reasoning-motivated indirect evidence (Plungian 2001: 354) is perceived as expressing less certainty. Along this line of thought is Palmer's discussion of three most common categories in propositional modality. As Palmer comments, the three types of judgment — speculative, deductive and assumptive — contrast with respect to the strength of conclusion they encode, varying from a possible, the only possible to a reasonable conclusion (2001: 25). The scale the author establishes reflects different degrees of commitment the speaker ascribes with respect to the truth-value of the proposition. The variation

in the degree of speaker's commitment, in turn, depends on the type of evidence available. Thus, deductive MUST presupposes a stronger judgment based on inference from observable evidence, whereas assumptive WILL presupposes a weaker judgment based on inference from experience or general knowledge. Adhering by the view that legal reasoning is about mental processing of available informational premises, we hypothesize that lexical items under consideration in this paper imply a certain degree of necessity depending on the type and source of evidence from which inferences are drawn. Proceeding from this hypothesis, verbs such as *consider, observe, find, hold, conclude, doubt, etc.* will be located on a scale of speaker's commitment to the truth-value of the proposition, which could be said to range from 'high' over 'medium' to 'low' value. Furthermore, it will be explored what is it that these verbs have semantically in common with modal verbs that will give validity to the proposed epistemic gradient.

The literature on modality sees the speaker's evidence being associated not only with the degree of speaker's commitment to the truth-value of the proposition, but subjectivity as well. Nuyts, for example, links subjectivity to "the quality and/or nature of the evidence one has for an epistemic judgment" (2001b: 386), thus placing it within the evidential domain. This is to say that the difference in terms of the accessibility of the evidence — evidence being accessible or known to the speaker only or to a larger group of people — leads to the distinction between subjectivity and intersubjectivity. Subjectivity indicates speaker's personal responsibility for the evaluation of the evidence and conclusions resulting from it, whereas intersubjectivity is defined in terms of shared responsibility among those who have access to the evidence and accept the conclusions from it (Nuyts 2001b: 393). Nuyts' interpretation of subjectivity in terms of the availability of evidence and conclusions drawn from it is just one of the positions authors adopt with respect to this notion. Others, like Sanders and Spooren, define subjectivity in terms of the type of evidence, from which they derive the subjectivity scale. The subjectivity scale, as suggested by Sanders and Spooren (1996: 246), includes three degrees of subjectivity, with "nonsubjective" epistemic modifiers presupposing observational evidence, "semisubjective" modifies reflecting knowledge-based evidence and "I-embeddings" being classified as subjective epistemic modifiers. These authors caution against the relativity of terms "semisubjective" and "nonsubjective" as they both encode subjectivity, but differ in terms of the degree of foregrounding the speaker, and conclude, in the spirit of Palmer's

analysis, that all epistemic modifiers are essentially subjective (Sanders and Spooren 1996: 245-246).

The view that epistemic modality is characterized by its subjective nature is common among a number of linguists. Palmer argues that epistemic modality is subjective as it concerns epistemic judgments, i.e. inferences and conclusions, which rest with the speaker (1990: 51). Consequently, Palmer points out to the restrictions with respect to the past time marking, since, as the author suggests, “an epistemic modal makes a (performative) judgment at the time of speaking” (Palmer 1990: 44). Still, it is possible to use past time forms in a context of indirect speech, where the source of the judgment is some sort of reported speaker or thinker (Depraetere and Reed 2008: 285; Palmer 2001: 33; Verstraete 2001: 1524). In characterizing epistemic modals as essentially subjective and performative, Palmer takes into account Lyons’ theory of modality. In fact, for many linguists Lyons’ theory has been a starting point in developing their own views of modality. Thus, the aforementioned notions of subjectivity/ intersubjectivity were introduced as an alternative for Lyons’ subjective and objective modality (Nuyts 2001a: 35). An additional example would be Verstraete’s characterization of epistemic modals as being always subjective- the author’s view resulting from the questioning of Lyons’ idea of two kinds of epistemic modality — objective and subjective, associated with reliable or vague evidence respectively (Lyons 1977: 797).

Since the present study addresses specialized discourse the question which naturally arises is the following one: what makes the surfacing of its subjective strand possible? Legal discourse or, more specifically, judicial decisions, have traditionally been characterized in terms of objectivity, impartiality and neutrality (Mazzi 2007: 94). Still, some authors emphasize the pseudo-objectivity of judgments by noting that they represent the result of the interpretative effort of an individual or a group of individuals (Goodrich: 1987 in Mazzi 2007: 94). This is to say that judge’s decisions, even though based on legal argumentation, remain personal decisions (Perelman: 1980 in Mazzi 2007: 94). Mazzi puts forward the idea that judicial texts reveal a high degree of authorial involvement (Mazzi 2007: 94), which transpires in different argumentative voices that judicial texts are built on. In such a polyphonic setting, the Court develops its own standpoint based on what Mazzi refers to as “reported argumentation”, i.e. the voice of other courts and parties in dispute. Of importance for the present context are Mazzi’s conclusions regarding the lexical items that

reveal argumentativity of judicial texts. The verbs, such as *consider*, *think*, *observe*, *conclude*, etc., which the author analyses in terms of the various kinds of argumentative voice they introduce, will be analysed through the prism of modality, as it is believed that they encode subjectivity by “bringing into existence a particular position of commitment with respect to the propositional content of the utterance” (Verstraete 2001: 1518).

Furthermore, it could be argued that, with respect to our corpus, subjectivity surfaces through the lexical choice of modal expressions, which signals that “what is being said is personal and subjective” (Vass 2004: 131) even though “expressed behind the apparently impersonal and abstract entity of the Court” (Mazzi 2007: 384). At the same time, the notion of hedging surfaces here since the avoidance of “categorical assertions of claims” (Hyland 1996: 435) and impersonal subjects reflect some of the hedging strategies that authors of legal texts generally resort to in an attempt to meet micro- and macro- level expectations of legal discourse community. It will be shown later in the paper that the use of hedging devices at micro- level has the following aims: a) to secure readers’ confidence in the legitimacy of the Court’s decisions by strengthening the illocutionary force of the Court’s utterances; b) to mitigate full commitment to the truth-value of the expressed proposition. At macro-level, they could be said to reflect orderliness in the presentation of evidence in the same way as the use of hedges in scientific writing, as suggested by Markkanen and Schroder (1997: 11), demonstrates orderliness in the presentation of knowledge. This allows the reader to get the impression that the judgment is reached objectively, by weighing relevant evidence and applying existing rules and regulations.

Finally, this study also takes into account performativity as one of the defining features of epistemically modalized utterances (Lyons 1977: 805; Palmer 1990: 11).

In traditional accounts of modality, performativity is explained in terms of speech act theory, which as a consequence has the claims about the incompatibility of English epistemic modals and speaker’s past judgments (Palmer 1990: 44). Nuyts’ analysis sees a departure from this view by making a distinction between a verbal act toward the listener and a mental act of evaluation of a state of affairs. The former is performed through the utterance and the latter results from a process of reflection, which could be of two types. The so-called performative evaluations bring together “speaker’s own current evaluation of a state of affairs”... and his/her commitment to the qualification at the moment of speaking”, while

descriptive evaluations encompass reporting on “another person’s evaluation of the state of affairs... without involving speaker commitment to it at the moment of speaking”, as well as reporting on an “epistemic evaluation of the state of affairs to which the speaker was committed sometime in the past, but leaves open whether (s)he still is at the moment of speaking” (Nuyts 2001a: 39). Such an interpretation of the term performativity accords with the definition of modality, where the speaker features as the source which provides evaluation of the likelihood of a certain state of affairs or reports on someone else’s evaluation. Still, the author observes that the evaluator is prototypically the speaker him/herself and views the performative uses of epistemic expressions as default ones.

Since one of the questions this paper addresses concerns the way the semantics of analysed lexical items is shaped, the lines that follow will outline different positions on the relation between evidentiality and epistemic modality. Although evidentiality and judgments appear as two distinct categories in Palmer’s account, the author himself recognizes that the borderline between the two is not always clear-cut, suggesting that evidentiality could be subsumed under the domain of epistemic modality (2001: 8). Sanders and Spooren hold the view that “epistemic modals are evidential in the sense that they presuppose some evidence on which the speaker’s epistemically modified statement is based” (1996: 255). In a similar vein, Plungian posits that “an evidential supplement can always be seen in an epistemic marker” (2001: 354). Nuyts notes the close relationship between epistemic modality and evidentiality in that it is the nature of the speaker’s evidence that influences the outcome of his/her epistemic modal evaluation of a state of affairs (2001a: 27). Van der Auwera and Plungian (1998: 85) argue that the overlapping of the two domains is possible in terms of inferential evidentiality- inferential evidentials involve reasoning processes and are interpretable in terms of epistemic necessity. On the other hand, De Haan (1999: 85) claims that there is a semantic distinction between the two domains, emphasizing that an evidential marks the source of the evidence for the speaker’s utterance, whereas evaluation of evidence and assigning of the confidence measure to the speaker’s utterance belong to the realm of epistemic modality. In our analysis we shall adopt the position that evidentiality and epistemic modality are interrelated categories since they contribute to the definition of semantic characteristics of verbal lexemes used by the Court when presenting its inferences and delivering judgments.

Given the fact that this paper focuses on lexical items which could be classified as belonging to the category of mental state predicates (Nuyts 2001a: 107), we will now turn to commenting upon the treatment of mental state predicates in the literature on modality. According to Nuyts, some members of this category, such as *know*, *think* and *doubt* clearly imply different positions on the epistemic gradient. This, however, seems to apply to specific contexts only, whereas in neutral situations, mental state predicates such as *think*, *believe*, *suppose*, etc. are “quite vague regarding the strength of the qualification expressed” (Nuyts 2001a: 110). When it comes to their semantic properties, they are said to include both evidential and epistemic dimensions, whereby evidential components seem to be present in varying degrees. The author contrasts his hypothesis with other views of mental state predicates as either epistemic or evidential expressions. Syntactically, mental state predicates encoding modal meanings are identified as occurring in two syntactic patterns, i.e. that-clauses and parenthetical structures. Having this in mind, the aim of the present analysis is to test if the claims about syntactic structures, epistemic scale and evidential-epistemic interaction would prove to be relevant to our context.

6. Corpus Study

It is hypothesized in this paper that two factors influence the presence of modal values in analyzed lexical items. These include textual dimension and syntactic environment. When it comes to textual dimension, we believe that Marques- Aguado’s framework (2009: 100) could readily be extended to judicial settings. Namely, the author’s standpoint on the surfacing of modality when furthering an argumentation proves to be relevant for the present context in the light of the fact that analyzed lexical items are not only modal markers, but are also “markers of argumentative moves” (Cornillie and Pietrandrea 2012: 2112). Consequently, we believe that it is the distribution of analyzed lexical units within text segments that influences their classification and interpretation. Hence, our analysis will include the following: a) stating the function each section-*Principal facts*, *Decision of the Court*, *Comment* – has in the summaries of judgments; b) identification of the type of voices they introduce; c) classification of lexical items as exponents of epistemic modality or evidentiality; d) their analysis in terms of the semantic, pragmatic and syntactic criteria discussed earlier in the paper.

6.1. Principal facts

This section serves the following functions:

- a) introducing the parties in dispute;
- b) stating what underlines the conflict between the parties in dispute;
- c) outlining the legal procedure that has been followed;
- d) making references to judgments of lower courts.

Therefore, in this part we find lexical items which, in Mazzi's terminology, have the role of constructing reported argumentation, which includes legal facts, parties' submissions and references to previous judgments. Consequently, such lexical items will be classified as evidentials since they have the role of framing different forms of evidence that the Court relies on while shaping the reasoning for its final judgment. Following Mazzi (2007: 135), we shall now turn to introducing the lexical items which have their role in constructing the reported argumentation.

ALLEGE/CLAIM. These verbs have the function of introducing the arguments of the applicants (1-3):

1. Simultaneously in December, Ms Eremia requested a criminal investigation to be initiated into A.'s acts of violence. She **alleged** that she was pressured by police officers to withdraw her criminal complaint about A., as if he lost his job, this would have a negative impact on their daughters' educational and career prospects.
2. The applicant **alleged** that, in the last stages of labour, she was asked whether she wanted to have more children and told that, if she did have any more, either she or the baby would die.
3. On 23 February 1999 he brought proceedings for compensation against the state public road maintenance company. He **claimed** that, due to the increased freight traffic in his street, the walls of his house had cracked.

STATE. The corpus shows that in addition to performing the same function as the verbs discussed above (4), **STATE** serves the purpose of reporting witnesses (5) or experts' submissions (6).

4. He further **stated** in particular that the water inspector was favouritising two private water companies in their bid to develop additional water sources...

5. Basing his evidence on eye-witness accounts, his brother **stated** that he was driving a minibus at about 8.30 p.m. on 24 August 2003 when it “came under a barrage of bullets”...
6. Almost two years later, in April 2004, the regional prosecutor quashed that decision and ordered an additional investigation, which included a report by forensic medical experts and the questioning of witnesses, among them a medical assistant, who **stated** that Mr Preminin had behaved aggressively towards other inmates.

INFORM/ARGUE/ SUBMIT. The examples in the corpus show that these verbs introduce the voice of applicants (7, 9, 11) and relevant bodies (8, 10, 12).

7. In 2008, Mr Milanović further **informed** the judge in a preliminary investigation that he believed to have seen one of his attackers in the street, wearing a shirt with a reference to another far-right organisation.
8. In May 2002, the ICTY **informed** the first instance court in Podgorica that it had no information whatsoever concerning the journalist who started the proceedings about Mr Koprivica’s article.
9. Here the applicants **argued** that the royal decree was incompatible with Community law...
10. The prosecution **argued** that the soldiers had suspected the four youths of looting and forced them into the river to “teach them a lesson”.
11. The applicant, György Deés, is a Hungarian national who was born in 1950 and lives in Hungary. Mr Deés **submitted** that, in order to avoid a toll introduced in early 1997 on a privatized motorway, many trucks chose alternative routes including the street (on a section of a national road) in which he lived.
12. The Government **submitted** that the number of detainees had not exceeded the number of places in each cell and that the cells were well ventilated and lit, and cold water was constantly supplied.

The corpus also records certain lexical units which will be given a passing reference because of their infrequent occurrences. The examples show that verbs and constructions such as *cite*, *maintain*, *make allegations*,

make statement, make oral submissions, report, reiterate, say share the properties of the lexical units discussed above.

Turning now to the lexical units that introduce the voice of lower courts in *Principal facts*, it should be noted that even though some of them notionally belong to epistemic domain since they denote the opinion of courts, they will be classified as evidentials. This is due to the fact that judgments of lower courts constitute the body of evidence that the Court proceeds from in forming its standpoint, and such lexical units will, accordingly, be classified as exponents of evidentiality. However, the analysis will show that some of the lexical units we will discuss in the lines to follow will be interpreted as markers of epistemic modality, when used in the text segment devoted to providing the rationale for the Court's final judgment. This movement from presenting different forms of evidence assessed by the Court (*Principal facts*) to introducing the European Court of Human Right's inferences and final judgment (*Decision of the Court*) provides the basis for different interpretations of the same lexical units.

According to the data, the voice of lower courts is introduced by **FIND**, **HOLD** and **CONCLUDE** (13-15).

13. The court **found** that there had been a breach of the investigative duty under Articles 2 and 3 of the Convention concerning Baha Mousa since, by July 2004, some 10 months after the killing, the results of the investigation were unknown and inconclusive.
14. In April 2010, the Constitutional Court **held** that the impugned decision was unconstitutional.
15. The court **concluded** that the applicant company could not be protected against liability and ordered it and Mr M. to pay approximately 9000 EUR and approximately 1800 EUR, respectively, in compensation.

The data also show that the opinion of lower courts tends to be supported by arguments introduced by **NOTE** (16), **CONSIDER** (17) and **INDICATE** (18):

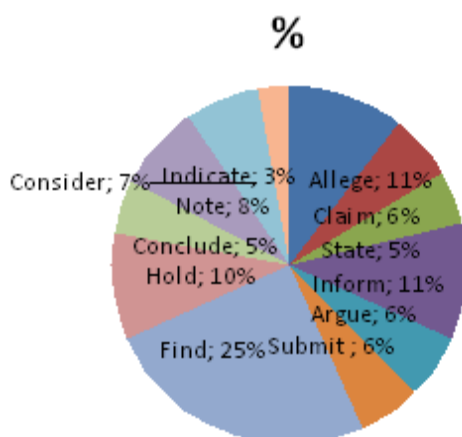
16. Tribunal **concluded** that application of the relevant domestic law (Article 20(5) of the Law of 5 May 2006), which provides that the decision to examine an application for refugee status under an accelerated procedure is not open to appeal, gave rise to questions concerning the interpretation of Article 39 of Directive 2005/85. The Tribunal **noted** that the effect of the decision to deal with Mr. Diouf's

application for refugee status under the accelerated procedure was to reduce the time limit for bringing an action from one month to 15 days and limit the proceedings to a single level of jurisdiction.

17. On 9 January 2009 the Guimaraes Court of Appeal found, on the contrary, that the child had been kept in Portugal illegally but, having regard to European Council Regulation EC 2201/2003..., **considered** that it was in the best interests of the child that he should stay in Portugal. The judgment **concluded** that changing the child's surroundings and taking him away from his great grandmother, who had become his reference person, might upset his mental balance.
18. However, on 6 December 1995 the Court of Cassation ruled that in the absence of specific legislation, the freedom to join a trade union and to bargain collectively could not be exercised. It **indicated** that, at the time the union was founded, the Turkish legislation in force did not permit civil servants to form trade unions. It **concluded** that Tüm Bel Sen had never enjoyed legal personality, since its foundation, and therefore did not have the capacity to take or defend court proceedings.

Principal facts

Table 1. Lexical exponents of modality (%)



6.2. Decision of the Court

This section aims at presenting the rationale behind the Court's judgment with respect to the alleged violations of the Convention. Therefore, in this section we find inferences and the final judgment of the Court, references to the case-law, applicable laws, legal documents and parties' submissions. When it comes to the Court's judgment with respect to the alleged violations of the Convention **HOLD** (19), **FIND** (21) and **CONCLUDE** (22) feature as its verbal markers. Furthermore, the corpus reveals that there is a tendency to use the verb *hold* to announce the decision on the damages to be paid by the unsuccessful party (20):

19. Accordingly, the Court **held** that the profound and persistent judicial uncertainty, which had not been remedied satisfactorily by the Supreme Court, infringed Article 6 §1.
20. The Court **held** that Denmark was to pay the applicant EUR 15,000 in respect of non pecuniary damage and EUR 6,000 in respect of costs and expenses.
21. As that was incompatible with the principles of legal certainty and protection from arbitrariness, the Court **found** that there had been a violation of Article 5 § 1.
22. As no other exceptions under Article 5 had been shown to apply in the case, the Court **concluded** that the two boys had been detained arbitrarily, in violation of Article 5 § 1.

The research data also reveal that the Court prefaces its decision with inferences introduced by the verbs such as **CONSIDER** (23-24), **OBSERVE** (25-26), **NOTE** (27-28) and **DOUBT** (29). These verbs will be classified as exponents of inferential evidentiality in the sense in which van der Auwera and Plungian (1998: 85) use this term. They argue that inferential evidentials, identifying the evidence as based upon reasoning, amount to epistemic modality. In a similar vein, Guimier (1986: 256 in: Celle 2009: 277) notes that inference drawn from evidence allows the speaker to form an epistemic judgment:

23. The Court **considered** that treating religiously motivated violence on an equal footing with cases that had no such overtones meant turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. ... The Court therefore held that there had been a violation of Article 14 taken together with Article 3.

24. Given the Court's findings that the domestic courts in this case lacked the requisite independence and impartiality, it **considered** that no "fair balance" was struck between the demands of the public interest and the need to protect the company's right to the peaceful enjoyment of its possessions. There had accordingly been a violation of Article 1 of Protocol No. 1.
25. The Court **observed** that, where a question concerning the interpretation of the Treaty establishing the European Community was raised in proceedings before a national court or tribunal against whose decisions there was no judicial remedy (in this case the Court of Cassation and the Conseil d'Etat), the court in question was obliged under Article 234 of the Treaty (Article 267 of the Treaty on the functioning of the EU) to refer the question to the Court of Justice for a preliminary ruling.
26. The Court **observed** that the domestic Human Rights Chamber had found in the case of Ms Pašalić that, as someone who had returned from the Republika Srpska to the Federation, she had been discriminated against, compared to pensioners who had remained in the Federation during the war.
27. On that basis and, **noting** that the existence of two separate detention orders had created legal uncertainty, the Court concluded that Mr M. had been detained in violation of Article 5 § 1.
28. The Court **noted** that Mr Kharchenko's pre-trial detention had lasted for two years, three months and 15 days, and that no other grounds than the risk of his absconding had been advanced at any time for keeping him in detention, in violation of Article 5 § 3.
29. Finally, the Court **doubted** whether the initial shortcomings of the investigation could now be redressed, as with the passage of time it was impossible to collect certain evidence or question the individual implicated by the applicants in the death of their relative as, in the meantime, he had moved abroad.

Additionally, in support of the Court's decision we find inferences introduced by the verb **FIND (30)**:

30. The Court **found** that the Supreme Administrative Court had not examined properly the police declaration that Mr M. posed a threat to national security. Neither had the national court considered, with the required rigorousness required under the Convention, Mr M.'s complaint that he risked ill-treatment or death if deported to

Afghanistan. ... Accordingly, the Court concluded that Bulgarian law and practice in relation to remedies against deportation orders was in violation of Article 13.

Based on the examples (23-30), we advance the hypothesis that the semantics of the verbs *consider*, *observe*, *note*, *doubt* and *find* in the examples above is shaped by the interaction of evidential and epistemic components, whereby evidential components seem to be more prominent with the verbs that encode the idea of “stronger evidence”, by recalling applicable laws, case-law, previous judgments or findings of the relevant institutions and bodies. *Note*, *find* and *observe*, which involve “metaphorical meaning shift from perception to speaker’s knowledge and beliefs” (Marin-Arrese 2009: 248), seem to embody this idea, whereas *consider* and *doubt* are interpreted as lexical units with more prominent epistemic dimension. Thus, we noted that the verb *consider* tends to be used when tentatively advancing the Court’s own findings in support of its final decision. At pragmatic level, these verbs act as hedging devices that allow the Court to “reason towards a conclusion” (Tessuto 2011: 300), with the aim of persuading the readers in the legitimacy of its decision and saving face by mitigating full commitment to the truth value of the proposition, in case the opposing views are provided. Simultaneously, the examples employing these lexical items seem to substantiate Walton’s claim about the probative weight of plausibility of the premises being moved forward over the chain of premises as legal argumentation unfolds (Walton 2002: 205):

31. Despite the fact that he was kept in detention for a relatively short period of time, the Court **considered** that the conditions of detention experienced by the applicant in the holding centre had been unacceptable. It **found** that, taken together, the feeling of arbitrariness, inferiority and anxiety he must have experienced, as well as the profound effect such detention conditions indubitably had on a person’s dignity, constituted degrading treatment. In addition, as an asylum seeker he was particularly vulnerable, because of his migration and the traumatic experiences he was likely to have endured. The Court **concluded** that there had been a violation of Article 3.
32. The Court **observed** that the prosecution authorities had been particularly slow in opening a criminal investigation into the alleged ill-treatment... The Court was also not convinced that, once instituted, the proceedings were conducted in a diligent manner.

The Court **concluded** that there had been a violation of Article 3 in respect of the ineffective investigation into Mr Preminin's allegations of systematic ill-treatment by other inmates.

We believe that the examples presented so far provide the grounds for establishing the following scale of validity within this category:

Low: *doubt*

Medium: *consider*

High: *find, note, observe*

Among the evidential markers identified in the corpus we also find hedging devices that have the function of boosting the Court's arguments (Vass 2004: 137), implying high validity:

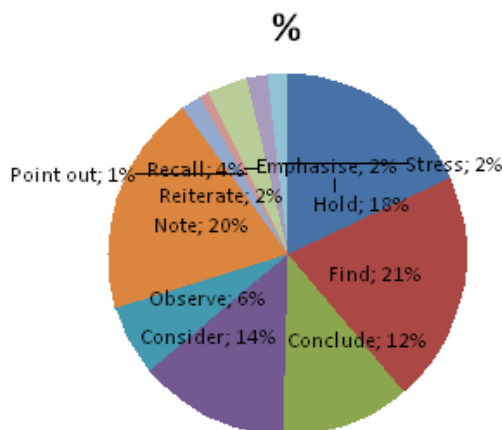
33. The Court also **reiterated** that proceedings in this field should be dealt with promptly as the passage of time could have irremediable consequences for the child's relationship with the remote parent.
34. The Court **pointed out** that Article 8 could not be interpreted as imposing an obligation on the State to recognise religious marriage; nor did it require the State to establish a special regime for a particular category of unmarried couples.
35. The Court **recalled** the general principle, well-established in its case law, that an applicant might lose their victim status if the authorities had acknowledged a breach of the Convention and if they had eliminated its negative consequences for the applicant.
36. The Court, bearing in mind the difficulties involved in policing modern societies, **emphasised** that the authorities should have trained their law enforcement officials so as to ensure that no one was ill-treated as a result of their actions.
37. The Court **stressed** that if the exercise of the right to peaceful assembly and association by a minority group were conditional on its acceptance by the majority, that would be incompatible with the values of the Convention.

Given the fact that the lexical items discussed so far introduce the arguments which set the stage for the Court's final decision, it could be argued with all reason that the verbs such as *hold, find* and *conclude* encode the defining feature of *must*, i.e. the notion that no other conclusion was possible given the evidence available. In the spirit of Sweetser's analysis it could be said that it is the force of evidence that directs the Court towards

a certain judgment expressed by *hold*, *find* and *conclude*. Turning now to the criteria for modality established earlier in this paper, we could say that these lexical units meet all the criteria as they involve the already mentioned degree of commitment and interaction between epistemic and evidential dimensions, as well as subjectivity and performativity. They are believed to be subjective as they express the judgment which rests with a group of individuals behind the conventional use of the phrase “the Court”. When it comes to performativity, it should be noted that we opted for the interpretation of the term in the sense in which Nuyts (2001a: 39) uses it. Therefore, we could say that the data reveal only descriptive uses of the lexical items, which is to say that their use is limited to introducing the judgment of reported thinker. Syntactically, they tend to be followed by that-clauses. The same comments apply to other verbs discussed in this paper except for the fact that they express intersubjectivity in the sense in which Nuyts uses the term (2001a: 35-36), given the fact that they introduce the evidence and inferences the Court shares with potential readers. At syntactic level, only the verb *doubt* shows departure from the established syntactic pattern. Since the verb *doubt* has only one occurrence in the corpus, we could argue that lexical modals in the corpus typically take that-clauses as their syntactic complements.

Decision of the Court

Table 2. Lexical exponents of modality (%)



7. Concluding remarks

In this paper we have proposed a set of criteria which, we believe, provide a good basis for the identification of modal and evidential values of the analyzed lexical verbs, typically used in this type of legal genre. The established criteria include the degree of commitment to the truth-value of the proposition, subjectivity, performativity and the interaction between epistemic and evidential domains.

The degree of commitment to the truth-value of the proposition has been characterized in terms of the type and source of evidence from which inferences are drawn. These proved to be relevant for locating verbs such as *find*, *note*, *observe*, *consider*, *doubt*, etc. on a scale of speaker's commitment to the truth-value of the proposition, ranging from 'high' over 'medium' to 'low' value.

Subjectivity has been conceived as surfacing through different argumentative voices that judicial texts are built on. In such a polyphonic setting, lexical exponents of modality have the function of developing the standpoint of the parties in dispute. In other words, the analyzed lexical units are believed to be subjective when they express the judgment which rests with a group of individuals behind the conventional use of the phrase the "Court". Still, when used to introduce the evidence and inferences the Court shares with potential readers, the analyzed lexical units have been identified as expressing intersubjectivity in the sense in which Nuyts (2001a: 35-36) uses it.

When it comes to performativity, it should be noted that we opted for the interpretation of the term in the sense in which Nuyts (2001a: 39) uses it, making thus a distinction between performative and descriptive uses of epistemic expressions. Our corpus analysis reveals only descriptive uses of the analyzed lexical items, which suggests that their use is limited to introducing the judgment of reported thinker.

The criterion which presupposes evidential-epistemic interaction was established with the aim of determining whether the semantic properties of the analyzed lexical verbs could be said to include both evidential and epistemic dimensions. The corpus data show that the semantics of the verbs *consider*, *observe*, *note*, *doubt* and *find* seems to be shaped by the interaction of evidential and epistemic components, whereby evidential components seem to be more prominent with the verbs that encode the idea of "stronger evidence", by recalling applicable laws, case-law, previous judgments or findings of the relevant institutions and bodies. *Note*, *find* and *observe*,

seem to embody this idea, whereas *consider* and *doubt* are interpreted as lexical units with more prominent epistemic dimension.

We have also tried to show that it is the process of legal reasoning that brings out modal meanings of the examined lexical units. They, in turn, seem to be classified and interpreted as either evidential or epistemic markers depending on their distribution within text segments.

In future work we plan to apply this set of criteria to lexical expressions other than verbs, as it is believed that we will find other candidates for lexical markers of modality. As the focus in this paper was on the lexical items employed in the construction of legal argumentation, we decided not to include in the present paper the analysis of the text segment devoted to the author's comment on the cases presented. This could also be the scope of the future work.

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ЛЕКСИЧКО ОБИЉЕЖАВАЊЕ ЕПИСТЕМИЧКЕ МОДАЛНОСТИ
У ПРАВНИМ ТЕКСТОВИМА: ФОКУС НА РЕЗИМЕИМА ПРЕСУДА ЕСЉП-а
(ЕВРОПСКОГ СУДА ЗА ЉУДСКА ПРАВА)

Сажетак

Циљ овог рада је успостављање критеријума који могу допринети препознавању модалног и евиденцијалног потенцијала одређених лексичких јединица које се сматрају типичним обележјима резимеа пресуда Европског суда за људска права. Полазећи од појмова на којима се заснивају најутицајније теорије модалности, истраживали смо семантички домен идентификованих лексичких средства за изражавање пропозиционе модалности у оквиру датог жанра.

Кључне речи: пропозициона модалност, модални и евиденцијални потенцијал лексичких јединица