Complementing other studies on judicial discourse, this book investigates previously unexplored areas, focusing on the realisation of Concession in the genre of judgment. In addition to providing a review of approaches to concessivity as well as legal and linguistic perspectives on argumentation, the analysis draws on genre studies and follows a genre-based view of legal language. It shows the way in which the Concessive relation is deployed by last-instance courts, as revealed by an examination of EU and Polish judgments. In what constitutes a pioneering attempt to identify tripartite Concessive patterns in written data, the author breaks away from the traditional view of written legal discourse seen as static and monologic communication. Instead, she offers insights into the linguistic construction of judicial argumentation, seen as a “mute dialogue” with the addressee, highlighting recurrent argumentative schemata and related discourse signals and functions. Combining quantitative and qualitative approaches, the analysis demonstrates that the dialogic model of Concession, designed as a tool for an examination of talk-in-interaction, can be successfully applied in an investigation of written data. The book is aimed at students and researchers with interests in legal discourse, genre analysis and argumentation studies.
The Realisation of Concession in the Discourse of Judges
The Realisation of Concession in the Discourse of Judges

A Genre Perspective

Magdalena Szczyrbak

Jagiellonian University Press
[...] for literary reasons I have avoided too many expressions of hesitancy and uncertainty, but nothing in what follows pretends to be final, and I shall have fulfilled my purpose if my results are found suggestive.

S.E. Toulmin *The uses of argument*
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Introduction

While it would be untrue to claim that research on the discourse of judges – and in particular judicial argumentation – is *terra incognita*, the fact remains that, until recently, it had attracted mostly legal scholars and philosophers. Indeed, there is a plethora of works dealing with judicial deductive processes and legitimisation of judicial decision-making as seen by legal positivism or natural-law doctrines. On the other hand, studies dealing with the linguistic construction of judicial argumentation, intended as channels through which courts resolve disputes and justify their decisions, also offer interesting insights into the “judicial” nature of the discourse of judges, and as such they may be of interest to linguists and legal scholars alike. Analysing the language of judgments from a discourse-pragmatic perspective, language-oriented accounts of judicial reasoning aim, on the one hand, to reveal what linguistic devices courts employ in order to establish and reinforce their authority and, on the other, to determine what contextual factors affect the choice of particular linguistic constituents.

Highlighting the interface between linguistics and the law, this book aims to provide a discourse-pragmatic perspective on judicial argumentation and, more specifically, to attempt an explanation of how and why judges rely on a certain discourse relation in the argumentative portion of judgments. Unsurprisingly, the said relation of Concession, once referred to as “the most interesting achievement of human intellect” (Rudolph 1996: 385), is widely used not only in everyday argumentative exchanges, but also in specialised written discourse, including that produced by seasoned arguers such as judges. Needless to add, it is a useful strategic tool enabling courts to position favoured arguments with respect to dispreferred ones, with a view to resolving the case pending before them.

The concept of concessivity itself, with the figure of admittance – Greek *paromologia* or Latin *concessio* – as its predecessor, has long been the subject of numerous investigations. Naturally, the understanding of this phenomenon has evolved, as have linguistic theories and conceptual paradigms. Following a more general trend towards analyses of naturally occurring data rather than idealised and decontextualised examples, recent studies on Concession account for contextual factors and stress the dialogic and interactional nature of this language phenomenon. Yet, despite the profusion of publications dealing with linguistic variation, also across legal genres, the realisation of Concession in judicial dis-
course has not been attended to and, further, to date no research highlighting the role of this relation in the language of judges has been undertaken.¹

Given the foregoing, the current investigation occupies a niche left by researchers studying the importance of linguistic factors in judicial settings and, in particular, it complements other explorations focusing on markers of judicial stance in general. To this end, the goal of the present study is to provide a fuller picture of judicial discourse and, selecting the notion of concessivity in its discourse-pragmatic dimension as tertium comparationis, to describe the realisation of Concession from a contrastive perspective. More specifically, the research raises questions as to whether judgments written in two Indo-European languages such as English and Polish follow the same argumentative schemata and employ the same discourse-pragmatic means to mark it, and whether Concession performs similar functions in the two subcorpora analysed. In addition, the study is intended as a point of departure for further investigations centred around linguistic variation, especially that observed in the judicial varieties of English and Polish, respectively.

The book is composed of two major components: Part I presenting theoretical considerations and Part II reporting the results of an empirical study, followed by Conclusions summarising the findings and suggesting their applications.

Part I consists of three chapters. Chapter One constitutes an overview of approaches to the study of concessivity. It starts with a survey of traditional definitions of concessive connection, especially as seen by English, Polish and German researchers working within the semantic-syntactic paradigm. Against this background, the definition of CONCESSION advanced by Rhetorical Structure Theory scholars is presented, with emphasis placed on the role of this rhetorical relation in the structuring of monologic texts. Adopted as the analytical framework for the current study, the discourse-pragmatic concept of Concession is, on the other hand, described in the third subchapter, addressing in particular: the understanding of Concession as an interactional sequence of moves, identification of the moves themselves as well as various configurations of the moves in the form of Concessive schemata identifiable in spoken and written discourse. The said subchapter also sheds light on the pragmatic signalling of Concession, with a distinction made into syndetic and asyndetic linking and attention drawn to stance markers subsuming truth-evaluating elements.

Chapter Two is, in turn, devoted to argumentation theories, with prominence given to frameworks designed for an analysis of judicial argumentation. As this chapter offers both legal and language-oriented perspectives, to provide a sufficient background, it begins with the description of the subject matter of argumentative studies and sketches a general outline of the historical roots of argumentative discourse studies. Next, the notion of legal argumentation is discussed and attention is drawn especially to its judicial component. In this context, assumptions underlying various theories of legal argumentation are explained.

¹ To the best of my knowledge.
starting with the historical perspective and finishing with the pragma-dialectical model. The latter, combining rhetorical and dialectical aspects, is situated as a framework applied in the field of general argumentation theory as well as a tool used to analyse and evaluate legal argumentation from the point of view of a rational critical discussion.

Chapter Three, resting upon the postulates of Swales’ (1990) genre theory as well as referring to earlier concepts of genre across various traditions and disciplines, provides theoretical premises for an analysis of the genre of judgment. Its first three subchapters are devoted to the notions of discourse, discourse community and genre, as seen by various scholars. In this context, the distinction into register, genre and style is also brought into focus. The following subchapter of Chapter Three, in turn, reviews genre-based accounts of legal discourse and presents a survey of oral and written legal genres, both in common-law and statutory-law cultures. Finally, the last subchapter offers an examination of the genre of judgment, situated within the broad category of court rulings. A comparison is made between the macrostructures of judgments drafted in English and Polish, and Bhatia’s (1993) four-move model of legal cases, viewed as a standard reference, is presented. Note is also taken of the special nature of the sub-genre of last-instance court judgments and their rhetorical segments.

Importantly, all of the above-mentioned theoretical perspectives presented in Chapters One, Two and Three, respectively, are traceable in Part II constituting the empirical portion of the book: they intersect and complement each other, thus providing an eclectic methodological background for the examination of the corpus data. Accordingly, Part II, including Chapters Four and Five, reports the results of an empirical genre-based study into the realisation of Concession in the discourse of judges in judgments issued by the Court of Justice of the European Union and the Polish Constitutional Court. To this end, Chapter Four outlines the objectives of the study, raises the main research questions and explains the procedure used in the collection of data. Further, it explains the corpus design and refers to the source of data as well as provides a contextual analysis of the genre of judgment. Chapter Five, in turn, provides an examination of Concessive schemata, moves and signals as well as the recurrent metafunctions associated with Concessive moves. In addition, the data are viewed against previous findings and conclusions are drawn with regard to the lexico-grammatical signalling of Concession reported in the sets of data referred to in the concluding section of Part II. At the same time, more general conclusions pertaining to the realisation of Concession in the two subcorpora analysed are attempted in Conclusions, summarising the findings, pointing to the limitations of the study and suggesting applications of the results obtained.


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