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"In Other Words, …": A Corpus-based Study of Reformulation in Judicial Discourse

Abstract

The language of the law has been a favourite subject of investigation for both legal professionals and linguists for more than a decade now. Linguists, for instance, have paid increasing attention to the interplay of precise and flexible terms in legal drafting, and language variation across the genres of legal discourse. Among the latter, judgments have been discussed as a case in point by argumentation scholars, although the linguistic components of judicial argumentative discourse have often been overlooked. In the light of this, the aim of this paper is to carry out a corpus-based analysis of the open-ended category of reformulation markers as outstanding discursive items of judicial discourse in two comparable corpora of authentic judgments issued by two different courts of last resort, namely the Court of Justice of the European Communities and Ireland's Supreme Court. By combining a qualitative with a quantitative analysis, the study shows that reformulation markers tend to activate a variety of discursive configurations across the two courts. Hence, data reveal that reformulation strengthens the quality of both judicial narrative, as it were – as is clear from its deployment in clarifying the normative background and specifying the factual framework of disputes – and at once judicial argument, when judges characterise, refine or grade reported arguments/interpretations or they wish to make their reasoning more solid and convincing.

1. Introduction

The language of the law has been a favourite subject of investigation for more than a decade now. What is it that fascinates lawyers about language and linguists about the law? As far as the legal profession is concerned, one almost inevitably goes back to the early 1960s, when Mellinkoff (1963: vi) straightforwardly argued that "the law is a profession of words". He was willing to emphasise that the actual substance of legal norms lies in the linguistic formulation they eventually take: the binding nature of legal rules is inextricably linked with the wording of norms and the related interpretation.

Roughly ten years later, Scarpelli (1976: 425-430) stressed the primary importance of the linguistic dimension entailed by the study of judicial argumentation, by distinguishing between the two pivotal functions of language in the adjudicating process: descriptive, as regards the assertion of facts and their interconnections, and prescriptive, when it comes to the regulation of behaviours. On a similar note, Bobbio (1976: 307) proposed a reading of jurisprudence in terms of the linguistic effort jurists are invited to make with the aim of "purifying", "completing" and "ordering" the legislator's language whenever the latter is not rigorous, exhaustive and systematic respectively.

More recently, Mantovani (2008) called for a deeper interdisciplinary integration of legal and linguistic insights in the analysis of legal communication. He draws a captivating parallel between Grice's Co-operative Principle and the phrasing of contracts. Accordingly, he proposes an original descriptive framework, whereby he tackles the distinctive traits of these legal documents, by investigating whether the conclusion of contracts may border with the main conversational maxims.

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From the linguists' perspective, the law has been an intriguing field of study for a variety of reasons. First of all, the law represents a challenging domain of language use by virtue of its lexico-grammatical complexity: archaic terms, terms of art, and a whole legal argot (see Mellinkoff 1963; Gibbons 2003), the well-rooted practice of employing common words with uncommon technical meanings (Morrison 1989), the high lexical density of sentences and the insertion of qualifications increasing the technical skills required to approach the legal text (Bhatia 1993, 1994) are only a few examples of the attractive potential the law has constantly offered to linguists as an object of study.

In second place, browsing through applied linguistics studies, it appears that scholars have often been concerned with a number of paradoxes instantiated by legal textuality. To begin with, drafting practices are increasingly taking account of the need to reduce the remarkably high average of sentence length; on the other hand, the attempt to condense as much information as possible into single terms to avoid unnecessary verbosity has led to the abundant use of nominalizations (Crystal/Davy 1969; Levi 1990), which sometimes increase the opacity of legal text. Additionally, the pursuit of extreme precision to achieve maximum legal certainty, achieved through the skilful insertion of unambiguous terms – e.g. *irrevocable* – is in some cases more than compensated by the occurrence of fairly vague terms – e.g. *reasonable* – allowing the legislator to include a wide range of factual circumstances into the scope of law, and judges to exert discretion in interpreting the law before a dispute to be settled (Maley 1994).

Thirdly, linguists have become increasingly interested in language variation across the genres of legal discourse. Rather than conceiving of legal communication as a monolith, linguists have paid more and more attention to the rhetorical specificity of each genre (Swales 1990; Bhatia 2004) of legal discourse. Therefore, they focussed on structural and, at a deeper level, lexico-grammatical peculiarities characterising specific legal text types: Trosborg (1997) brings illuminating insights on contracts; Bowles (2002) deals with the discursive management of legal dissent among judges in judicial texts; Gibbons (2003) and Williams (2009) delve into legislative practices by referring to some of the key-guidelines of the Plain Language Movement in Australian and Scottish contexts respectively.

The focus of this paper is also restricted to a specific genre, i.e. judgments. These received a well-deserved consideration from legal theorists (see McCormick/Summers 1997) and argumentation scholars (see Feteris 1999, 2002) by reason of their status of 'ultimate aims', as it were, of judicial activity, the apex of judicial proceedings envisaging the application of legislative norms. In particular, argumentation as a constitutive aspect of judgments has been pointed out by several scholars: Perelman (1976) singles out the historical evolution of judicial discourse, by illustrating that the obligation to motivate decisions, as established in the aftermath of the French Revolution, began to be intertwined with the pressing need to ground the interpretation of norms as equitably as possible after World War II, when it was clear that strict adherence to the letter of legal norms could produce even criminal results.

Nonetheless, in spite of the wide recognition awarded to the increasing specificity of judicial argumentation, only in recent years have linguists been undertaking a much desirable groundwork to explore the linguistic constituents of judicial argumentative discourse. In the light of this, this paper is aimed at carrying out a corpus-based analysis of the open-ended category of reformulation markers in two comparable corpora of judgments issued by two different courts, namely the Court of Justice of the European Communities and Ireland's Supreme Court. Reformulation is defined by Cuenca (2003: 1071-1072) as a basic "discourse function by which the speaker re-elaborates an idea in order to be more specific" and thereby facilitates the hearer's comprehension; what is more, reformulation often implies "more than a strict paraphrase", and notably "discourse values such as explanation, specification, generalization, implication, gloss or summary". In other words, reformulation, analysed by Nigoević (2009) in legal settings, appears to be a crucial component of legal discourse, where it may play a key-role in clarifying the scope of normative texts

as well as to make judicial argumentation explicit, easier to follow in its development and hence more convincing in legitimating the judge's reasoning.

The paper is therefore intended to explore the main textual uses of frequent reformulation markers as signals of the diversified functions elicited earlier on in their most extensive concept. As such, analysis will focus both on items traditionally associated with reformulation following Cuenca (2003), e.g. *in other words* or *namely*, but also on other elements that Lo Cascio (2009: 201-208) includes among his illocutionary markers corresponding to homogeneous functions. More specifically, these items may be aimed at precising arguments or opinions – as with *first* (*of all*) – thereby bearing the denomination "precisers" (Lo Cascio 2009: 201); alternatively, they may serve to better grade thoughts as well as assertions related to arguments and theses – e.g. *instead*, *rather* and *even* – thus being labelled as "graders" (Lo Cascio 2009: 204). The methodological premises of the study are illustrated in Section 2, whereas corpus findings are presented in Section 3 and discussed in Section 4.

2. Materials and methods

In an attempt to render analysis as reliable and rigorous as possible, the paper concentrates on a single genre within the broader area of legal discourse, i.e. judgments. The notion of 'genre' is taken from the scholarly contributions of Swales (1990, 2004) and Bhatia (2004), where the authors point to the opportunity to design more narrowly-focussed studies on genres as classes of homogeneous communicative events sharing a number of properties, i.e. communicative purpose as established by a parent discourse community, structure, style, content and intended audience. In the light of this paramount acquisition of applied linguistics studies, this investigation is less a broader surface-level exploration of legal language than a more specific examination of a distinctive feature, i.e. reformulation, of such a specific rhetorical entity within legal discourse as judicial documents.

In order to provide analysis with a representative empirical basis, corpus linguistics tools were utilised. Corpora are defined as large collections of authentic texts gathered in electronic form according to a specific set of criteria (Bowker/Pearson 2002; Hunston 2002), and they are generally used to enrich the qualitative textual remarks with sufficient quantitative support (Stubbs 2001). As far as this paper is concerned, two comparable corpora were built. The first one is comprised of 148 judgments issued by the Court of Justice of the European Communities (henceforward 'ECJ'), whereas the second corpus includes 34 judgments by Ireland's Supreme Court (hereinafter 'ISC'). The ECJ corpus amounts to 764,110 words, while the ISC corpus consists in 319,955 words. European judgments outnumber those by the ISC, but this does not heavily threaten the internal balance of the corpus with regard to the distribution of the number of words, because on average Irish judgments are much wordier than those by the Community Court[1].

The criteria for corpus design were twofold. First of all, the comparability of sources: texts were collected from the jurisprudence of two courts of last resort. This is intended to prevent the analysis from being arbitrary, because if judgments had been chosen regardless of the court formulating them, one might rightly argue that the language of a court varies depending on whether it is a court of first or of last instance. Thus, for example, the language of a decision pronounced by a court of first instance may be shaped in a way reflecting its attempt to successfully persuade courts higher up in the hierarchy of the legal system of the grounds on which the ruling itself rests. This aspect is obviously far from occurring in judgments issued by a court of last resort, which has the last word in saying what the law is. The choice of two supreme courts, therefore, undermines criticism due to failure to take account of features such as the one mentioned. One second crite-

1 The reasons why European judgments more than double those by Ireland's Supreme Court are various: among others, it may be that the EC Court is called upon to settle disputes from areas which we do not normally expect to come across at a national level; for instance, we would hardly believe free movement of goods, persons and capitals to be an issue on which the jurisprudence of a national court such as Ireland's Supreme Court will centre, because it may be taken for granted that Irish citizens are allowed to move freely within the boundaries of their own State.

rion for corpus building was the homogeneous time span, within which judgments were selected: the two corpora are composed of all judgments delivered by ECJ and ISC between 1st January and 30th of June 2003.

No other criteria were set out for compiling the corpus. As a result, the jurisprudential area of judgments was not taken into account, in order not to reduce the reliability of the analysis, which would otherwise be biased owing to an unjustifiably arbitrary choice of judgments related to one or more specific fields (say industrial and intellectual property)[2].

As regards methodology, corpora were studied through the main tools offered by the linguistic software package *WordSmith Tools 5.0* (Scott 2007). As a preliminary step, reformulation markers as defined in Section 1 above were concordanced: Concordance is an outstanding on-screen function of *WordSmith* enabling one to have all occurrences of a certain word or phrase displayed at once with their most immediate yet expandable context. Thus, concordance lines were generated for the reformulation markers retrieved following Cuenca (2003) – as was the case with *in other words*, *namely*, *that is*, *notably*, *i.e.* and *this means* – and Lo Cascio (2009) – i.e. the "preciser" *first* and the "graders" *rather*, *instead* and *even*. The choice of these items is not meant to be representative of all possible reformulation markers; still, if we bear in mind that other elements suggested by the authors whose framework is adopted – e.g. *as a matter of fact* and *to put things in a different way* – are not attested in any of the two corpora, the range of items selected for the investigation may represent a good starting point.

The systematic study of concordance lines allowed to identify some major textual functions performed by reformulation markers in context. Therefore, by observing the larger textual patterns they occur within and/or their specific collocational environments (Sinclair 1996)[3], it was possible to combine both a qualitative and a quantitative analysis. Qualitatively, the main discursive operations performed by ECJ and ISC judges in reformulation were classified and exemplified: normative clarification, disambiguation and specification at a more general level (Section 3.1), and consolidation of judicial argumentation (Section 3.2) more specifically. In quantitative terms, the statistical prominence of those discourse functions across the two corpora was calculated. The main findings of both qualitative and quantitative analysis are presented in the upcoming section.

3. Results

Reformulation markers – as in the comprehensive view illustrated earlier on (see Section 1) – considered for concordance-based analysis are reported in Table 1 below with the related raw frequency:

2 The criteria for corpus design mentioned in this section do not refer to the somewhat crucial issue of language, with special reference to the framework of EU jurisprudence. The judgments selected for the ECJ all correspond to the English version of those judicial documents. However, English is by no means the only official language of the Court: rather, the language of proceedings and that of the first draft of judgments is the working language of the parties (cf. Berteloot 1999). Whenever, therefore, the parties in the dispute are not British or Irish, the judgment is only subsequently transposed into every other Community language including English. Nevertheless, as argued in Rega (1997) and later on in Mazzi (2007), it is apparent that the draft of judgments follows a pre-determined pattern, a kind of template ensuring the homogeneity of judicial texts regardless of the original source language. Indeed, if one browsed through the text of ECJ judgments without knowing the parties' name, one could not tell texts written in from those translated into English.

3 Sinclair (1996) defines 'collocation' as the regular co-occurence of words, i.e. the tendency of words to go together with more than random probability.

Reformulation marker	Frequency		Reformulation marker	Frequency	
	ECJ	ISC		ECJ	ISC
First	1788	386	*Instead*	21	9
Even	324	186	*In other words*	13	16
That is	234	119	*Notably*	2	3
Namely	156	16	*I.e.*	1	41
Rather	65	65	*This means*	2	1

Table 1. Reformulation markers and related corpus frequency (ECJ and ISC)

Obviously enough, not all corpus occurrences of the items listed in Table 1 above share the function of reformulation markers; put differently, 'reformulation marker' is not the only pragmatic category through which those elements could be classified. For instance, *rather* would hardly be perceived as reformulating anything in entries such as "in a rather vague manner" (ECJ, Germany v. Commission), where the item fulfils the function of simple adjectival qualification in pre-modifying position. Therefore, it should not come as a surprise that percentage values expressed for the various discourse functions of items in this section seldom amount to 100%.

Furthermore, in the case of outstandingly frequent markers like *first* (1788 entries in the ECJ corpus alone), *even* and *that is*, concordance analysis was restricted to a sample of 150 hits[4], accordingly following Hunston (2002) who postulates that the basis for quantitative corpus analysis lies in a step-by-step study of sets of 50-100 occurrences at a time, provided one notes no striking differences between each set of examined concordance lines. This means that corpus entries of those items were retrieved in completely randomised order; then, the first 50 occurrences were analysed in order to identify any regularities in terms of the incidence of the reformulating function displayed by the item; finally, the operation was reiterated for a second as well as a third set of 50 entries, thereby coming to an end since no quantitative alterations were observed between the three concordance samples examined. As a result, for instance, percentage values expressed later on for *first* refer to the sample considered, rather than to the whole range of nearly 2,000 tokens for it in the ECJ corpus, whereas all percentage figures referring to other items were calculated out of the full numbers reported in Table 1 above.

For the sake of clarity, this section was divided into two different sub-sections: first of all, the general pragmatic dimensions of reformulation are illustrated in 3.1; secondly, the more chiefly argumentative functions of markers are documented in 3.2.

3.1. An overview of reformulation: from normative clarification to plain specification

Corpus evidence suggests that reformulation is not a univocal entity; rather, it appears to take a variety of pragmatic configurations: from normative clarification and disambiguation, located at the more specialised end of the discursive spectrum, to the more general discourse function of specification. Each of these contexts associated with the expression of reformulation in judgments is reviewed here.

To begin with, reformulation primarily corresponds to the judges' attempt to clarify the normative context involved by the case. This operation is of paramount importance, because the more transparent the relevant law to be interpreted, the more effective and convincing judicial reasoning is likely to be. Normative clarification is mostly realised through *that is* and *namely*, but also – and notably for Ireland's Supreme Court – by means of *i.e.* and *in other words*. In the case of *that is*, normative clarification concerns 48.7% of reformulating passages attested for the item in ECJ judgments, and 27.7% of its parallel occurrences in ISC texts. In addition, normative clarifi-

4 The only exception is represented by the 119 ISC tokens of *that is*, which were analysed in full because they quantitatively fall short of the 150-threshold taken as a benchmark.

cation may be retrieved in 46% and 32.3% of the occurrences of *namely* within ECJ and ISC judicial texts respectively. In order to see normative clarification at work, the following two examples are illustrative:[5]

(1) As regards the second method for calculating the entry price, Article 5(1)(b) of Regulation No 3223/94 expressly provides that the entry price is to correspond to the customs value calculated in accordance with Article 30(2)(c) of the Community Customs Code, **that is to say** the unit price at which the imported goods or identical or similar imported goods are sold within the Community. (ECJ, Capespan v. Commissioners of Customs)

(2) Counsel for the Minister had argued in the High Court that in cases coming under section 5 of the Act upon notice of an award being given by the Tribunal claimants had three options and were obliged to exercise one of these in writing within one month **namely**: 1. to accept the award 2. to reject the award or 3. to appeal the award, all three options being mutually exclusive of each other. (ISC, D.B. v. Minister for Health)

In (1), the ECJ judge intends to give a thorough explanation of the calculation methods for the 'entry price' of goods prescribed by the normative framework of Regulation 3223/94, which in turn links up with Article 30 of the Customs Code. In this respect, *that is* (*to say*) fulfils the function of making the meaning of the clause preceding it – 'the entry price is to correspond to *the customs value calculated in accordance with Article 30(2)(c) of the Community Customs Code*' – more transparent and explicit. As such, the reader promptly understands that establishing the price pursuant to the letter of the Customs Code is equivalent to considering the 'unit price' at which the relevant goods are sold in the EU territory.

Similarly, the Irish judge in (2) expatiates on the arguments put forward by the Counsel for the Minister as the case had been submitted to the High Court's attention at a previous stage of the history of proceedings. More specifically, the judge goes back to the Counsel's reasoning in so far as it referred to 'section 5' of relevant legislation, whereby it is provided that claimants have to choose among three different 'options'. The latter are both enumerated and extensively listed after the reformulation signal *namely*.

Despite their somewhat restricted number of occurrences, the same discourse function can be identified for *i.e.* and *in other words* – 41.3% and 81.25% of the respective entries in ISC judgments. It does not necessarily follow from this that ECJ texts bear no trace of such a use of those two elements; as it happens, however, no significant quantitative estimates can be made for European judgements, where *i.e.* occurs just once and *in other words* exclusively corresponds to the next function explored in this sub-section, namely plain specification. In (3) and (4) below, an example for *i.e.* and *in other words* drawn from the ISC corpus is provided. In the first one, the judge sets out the key-passages of Section 26 of the legislation in question in great detail; by contrast, in extract (4) he/she uses *in other words* to fully explore the arguments of one of the parties, namely the 'plaintiffs', whose representatives alleged that the challenged interpretation of the Aliens Act was unconstitutional, a view the judge him/herself eventually refutes:

(3) Under the provisions of S.26, that was an executive function, and remained an executive function, vested in the manager. The passing of the resolution constituted a valid direction by the elected members which obliged the manager to perform a particular act which he was empowered to do, **i.e.**, the making of a decision to grant permission for the development in question. Where an application for permission was made under S.26 of the 1963 Act then, unless the manager decided to refuse the application, there followed of necessity, in a case where no appeal was brought to An Bord Pleanala, the exercise by him of two executive functions, the first under subsection (1), **i.e.**, a decision to grant the permission and the second under subsection (9)(a)(i), **i.e.**, the grant of the permission. (ISC, County Kerry v. Lovet)

(4) Mr. Gaffney SC submitted on behalf of the plaintiffs that because of the very entrenched provisions

5 For each and every example, the court and the name of the case it was taken from are reported in brackets at the end of selected passages. In addition, the reformulation marker whose use is examined is in bold.

> of the family rights in the Constitution, these could not be trenched upon, in any way, by the State and, in particular, by the Aliens Order. He went so far as to answer a question I put, to say that if an alien landed in the State on one day and married the next day to an Irish citizen in the State, the State was required, by the Constitution, to safeguard the rights which were given to the family, and these could not be taken away by the Aliens Act 1935. **In other words**, the order made under the Aliens Act 1935 was unconstitutional. I cannot accept that view. (ISC, Lobe at al. v Minister for Justice)

The clarification of normative contexts seems to go hand in hand with the crucial discourse function of legal disambiguation, even with a fair degree of tentativeness. As we observed in the introductory section, legal drafters all too often avail themselves of fairly generic or – to account for their esoteric point of view – all-inclusive terms reflecting their attempt to foresee as many legal circumstances as they possibly can. From this point of view, disambiguation, i.e. the greatest possible care placed in avoiding an overlap of purported all-inclusiveness with exceeding obscurity, would definitely need to be encouraged as a sound drafting practice in the judicial interpretive process too.

As far as our corpora are concerned, disambiguation generally accompanies the articulation of admittedly opaque terms such as 'legitimate aims', 'true importance' and 'force majeure' for ECJ judgments, and 'right to liberty' as well as 'public interest' in ISC judicial texts. Data indicate that disambiguation is connected with *that is* (8.5% and 22.2% of reformulation occurrences for ECJ and ISC respectively), *namely* (11.7% and 6.8%) and, albeit in ISC texts only, *i.e.* (7.3%) along with the single occurrence of *this means*. Disambiguation can be observed at work in (5)-(7) below:

(5) In that action, which is still extant, the Appellant contests the validity of what she calls her "suspension," which is clearly a reference to the decision placing her on "administrative leave." She alleges, as she puts it in the Statement of Claim in the present action, that her purported suspension was and is contrived, unlawful and mala fide and an abuse of the provisions of [her] Consultancy Contract and that it was effected for an unlawful purpose, **that is** [her] permanent exclusion from the ... Hospital at the behest of the Master, Dr Sean Daly. (ISC, Traynor v. Ryan)

(6) With respect, in the second place, to the cases of force majeure relied on by the City and SERS, **namely** the failure of the first call for tenders for the structural work, the default of certain undertakings, the closure of roads because of bad weather and the setting up of road barriers in thaw conditions, and the strike which affected the site, it must be recalled that under French law, which applies to the framework contract, the concept of force majeure is characterised by three constituent elements, **namely** that it must be external, unforeseeable and irresistible. Whether the facts relied on constitute force majeure must therefore be determined by reference to those three criteria. (ECJ, Parliament v. SERS)

(7) Finally, Lord Goff questioned whether Lord Lloyd was justified in omitting from the test in the case of a primary victim what might be described as the "reasonable fortitude" factor, **i.e.**, whether the defendant, in a case such as Page -v- Smith, ought reasonably to have foreseen that the plaintiff would have suffered a particular psychiatric reaction which would not have followed in the case of a person endowed with "normal fortitude" or "ordinary phlegm". (ISC, Fletcher v. Commissioners of Public Works)

The three instances reported above suggest why disambiguation is sometimes controversial, or, as we rather cryptically put it, tentative. In (5), one has a general impression that disambiguation is fully achieved: in resuming the main arguments upheld by the appellant, the ISC judge firstly introduces complex terms such as 'unlawful purpose' and 'mala fide'. Yet he/she immediately proceeds to disambiguating the most relevant of the two, namely 'unlawful purpose', the haziness of which is dissipated by the occurrence of *that is* leading to an overt reformulation of the notion with reference to the facts of the case: the unlawful purpose at stake is the 'permanent exclusion' from the hospital.

In (6) and (7), conversely, a few doubts could be harboured as to the felicitous completion of the disambiguating process: in the first passage, collected from an ECJ judgment, the earlier occurrence of *namely* actually clarifies what the 'City and SERS' decided to adduce as cases of

'force majeure', i.e. 'the failure of…the default of…the closure of roads…the setting up of…and the strike…'. Nonetheless, with the aim of relating those specific issues to the more abstract notion of 'force majeure' as a legal concept, the judge arguably illustrates its constitutive aspects by resorting to equally ambiguous terms: 'external' and most of all 'unforeseeable' and 'irresistible'. This is not to say that the judge cunningly pretends to be disambiguating, since the nature itself of 'force majeure' may *per se* imply such a degree of generality and discretionary application that it cannot be effectively disclosed once and for all.

This may hold true for (7) too: the Irish judge raises the question of the most sensible interpretation of 'reasonable fortitude'. On the one hand, the notion is safely anchored to a precedent – *Page v. Smith* – which would invite the reader to believe that he/she is substantiating its reading with the inherently factual dimension provided by a case. On the other hand, however, the judge relates the 'reasonable fortitude factor' to the defendant's capability or duty to 'reasonably foresee' a psychic reaction that would not have arisen for a person exhibiting 'normal fortitude' or 'ordinary phlegm'. In other words, what ends up reducing the disambiguating effort, here, is that the judge construes his view of the notion of 'reasonable fortitude' though its association with other cognate, not immediately transparent, legal constructs – e.g. ordinary phlegm.

The two discourse functions of normative clarification and disambiguation tend to share a common trait of reformulation in judicial contexts, i.e. the specification of the scope of a given norm or notion. Matching these highly specialised uses of reformulation signals together, however, provides evidence of the discourse function of specification judicial discourse has in common with ordinary language. By specification, we mean here the transition from general to specific in the various passages of the judge's argument. This aspect of reformulation arises for *that is*, *namely* and *in other words*, where it regards a fairly high rate of occurrences – 41.5% and 50% for *that is* in ECJ and ISC judgments respectively; 45.1% and 58.6% respectively for *namely*; and 100% (ECJ) as opposed to 18.7% (ISC) for *in other words*. In (8)-(10) below, plain specification, as we might call it, is illustrated in practice:

(8) The Läkemedelsverket gave as the reason for its decision the fact that the capsules and the tablets had to be considered as two distinct medicinal products, both because the production methods differed and because the active ingredient, **that is to say**, omeprazole acid, of the capsules, had been replaced by another active ingredient in the tablets, **that is to say**, magnesium salt of omeprazole acid. (ECJ, Paranova et al. v. Läkemedelsverket)

(9) He [the learned judge] reviewed in some detail the events that passed between 16th December and 15th March. He concluded that DEKRA were aware by 16th December of the three issues that became of concern to them, **namely** the re-test fee, the location of tests centres and the conflict of interest issue. (ISC, Dekra v. Minister for the Environment)

(10) In a letter of 20 December 1994, SERS replied to the criticisms in that opinion, stating in particular that it had been agreed since August 1994, **in other words** before the invitation to tender for the contract for the structural work, that the undertakings for the structural work could have been designated by the beginning of January 1995 and that the reopening of consultations entailed a delay making it possible to stay well within the time-limits provided for in the framework contract, since the margin allowed for by SERS in relation to the objective of the contract was not used up and was still largely available. (ECJ, Parliament v. SERS)

In (8), the ECJ judge is summarising the main tenets of the argumentation submitted by the 'Läkemedelsverket' – the Swedish Medical Products Agency involved in the dispute. In particular, the Agency avers that its contested decision was motivated by the distinction between capsules and tablets by virtue of differing production methods and the replacement of one active ingredient with another. In that context, the double occurrence of *that is (to say)* serves the purpose of prospectively alerting the reader that the specific name of active ingredients themselves will be stated. In other words, the reformulation signal marks the textual shift from a general category (active ingredients) to a specific element (e.g. omeprazole acid).

In (9), similarly, the Irish judge reviews the cornerstones of the reasoning elaborated by a colleague from a lower degree of the jurisdiction. More specifically, we are told that the conclusion he arrived at was that DEKRA, i.e. one of the parties, must have become aware of three main 'issues' concerning it: the specificity of the issues – 'the re-test fee, the location of tests centres and the conflict of interest' – is introduced by *namely.* Even more so in (10), the judge narrows a key-stage in the background to the case, i.e. August 1994, down to the factual significance it had in the unfolding of the controversy itself. Thus, what looks like a mere temporal expression is transformed by the judge's discourse reformulating it into a more detailed chronological clue – 'before the invitation to tender…'.

In principle, one may observe that the pragmatic boundary between legal clarification and disambiguation on the one hand, and general specification on the other, is not so clear-cut. To a certain extent, there is a point in this claim, but as was specified earlier on, the difference mainly rests in the specialised nature of the first two functions and the ordinary function of the other, arguably shared with ordinary, non-judicial language too. However, it is interesting to note that the various forms of reformulation reviewed in this section may all find their place either in the judge's reconstruction of the facts of the case or, even more frequently, in the combined effort to specify the relevant legal background and to argue the case through a balanced combination of the parties' arguments and the judges' own voice. The next sub-section is devoted to exploring the more inherently argumentative contexts in which reformulation appears to operate in judicial reasoning across the two courts.

3.2. Reformulation in argumentation

The presence of reformulation in the argumentative passages of judgments often coincides with the use of such illocution markers as the "graders" (Lo Cascio 2009: 204) *rather* and *instead*. These items generally follow another component of argumentative text – typically a reported argument/interpretation – which they characterise, precise or grade. As regards *rather*, this can be noted in 46.2% of attested ECJ occurrences, and 49.3% of ISC entries:

(11) However, as the Advocate General noted in point 24 of his Opinion, the question in this case is not whether the Netherlands legislation guarantees greater protection for workers than that offered by the Directive but **rather** whether or not that legislation runs counter to the requirements of that Directive, including the order of priority given to the two alternatives provided for in Article 7. (ECJ, Commission v. Netherlands)

(12) While the Gardaí may have been satisfied in their own minds that their belief that they saw the applicant getting out of a stolen car in the early hours of the morning, attempting to leave to scene and ultimately assaulting the Gardaí was sufficient to obtain a conviction, I would strongly emphasise that that is not the test. The question is not whether the Gardaí might want to use any available evidence, or might wish to assist the Director of Public Prosecutions by producing it, but **rather** whether this evidence, even if it is not to be used by the prosecution, could be of assistance to the defence. (ISC, McKeown v. Judges of the Dublin District Court et al.)

In both (11) and (12), judges take up the core of a reported statement about the interpretation of the issue to be settled in order to precise its scope. In (11), the ECJ judge aligns him/herself with the core of the Advocate General's opinion in that the actual question to be tackled is 'whether or not' a specific piece of legislation is incompatible with the requirements of a directive: this interpretation is introduced as a reformulation of what would be a misleading reading of the case – 'whether the Netherlands legislation guarantees…' – by means of *rather.* In (12), the case seems to revolve around factual evidence to be used in proceedings: the ISC judge redresses a somewhat inadequate conclusion drawn from the Gardai's investigative remarks ('…their belief that…was sufficient to obtain conviction'), notably that they may be legitimately willing to use available evidence. As a result, he/she expresses the purportedly correct interpretation of the issue as a reformulation of that inference, realised through *rather* (…'but rather whether this evidence…could be of assistance to the defence').

The use of *instead* in terms of this reformulation strategy can be observed in 14.3% and 55.5% of ECJ and ISC occurrences respectively. A more assertive role is played by both *rather* and *instead* in so far as the two 'graders' are employed to rectify reported argumentation by introducing an allegedly better argument advanced by the judge. This is less a reformulation of the points of the question – see (11) and (12) – than an overall dialogic reversal of the argumentative orientation of discourse: in other words, what judges do in this case is to use 'graders' to signal that an argument is being refuted and replaced by another supported by judges themselves. This may be noted for 24.6% and 35.4% of ECJ and ISC occurrences of *rather* as well as for 28.6% and 22.2% of ECJ and ISC occurrences of *instead*:

(13) A child has a personal right to the society and nurture of his parents. The latter have no personal right to reside in this State. The ordinary consequence of these facts is that the parents will rear and nurture the child elsewhere. Does the fact that a child, alone of his family, is an Irish citizen alter that position? The answer depends on whether the child's right to the Society and nurture of his family is a right to enjoy these things in Ireland. The applicants submission seems to me to assume, **rather** than to establish, that it is. Decisions as to nurture and rearing are normally matters for the parents, to be taken within the scope of their abilities, resources and entitlements. The State's right to restrict the exercise of family rights within the State by the deportation of a non-national parent of an Irish born child has already been affirmed in Osheku and Pok Sun Shun: these cases have not been overruled. Accordingly it seems to me that the existence of an Irish born child does not fundamentally transform the rights of the parents, though it requires the specific consideration of the Minister who must reasonably be satisfied of the existence of a grave and substantial reason favouring deportation. (ISC, Lobe at al. v Minister for Justice)

(14) The contribution is not charged on the product solely because it crosses the border as such. That factor constitutes the essential feature of a charge having an effect equivalent to a customs duty which distinguishes it from an internal tax within the meaning of Article 95 of the Treaty […] 43. **Instead**, the contribution forms part of a general system of taxation which, in principle, is applied uniformly, in particular in respect of the rate and chargeable event thereof, to Greek agricultural products alone, whether they are intended for the domestic market or for export, and which is used to fund a public body responsible for the prevention of, and compensation for, damage caused to Greek agricultural holdings by natural risks […] In the light of the foregoing, the answer to the question must be that Community law on the free movement of goods, in particular Articles 9, 12, 16 and 95 of the Treaty does not preclude a quasi-fiscal charge such as the contribution. (ECJ, Freskot v. Elliniko Dimosio)

In (13), the Irish judge is taking the applicant's submissions into account. The critical standpoint adopted by the judge becomes evident as he openly questions the acceptability of the applicant's argument by pointing out that they merely assume a particular state of things, rather than concretely establishing it ('The applicants submission seems to me to assume, *rather* than to establish, that it is'). In this respect, *rather* is the signal that marks the textual transition to the opposing argumentation formulated in the upcoming propositions and leading to the conclusion introduced by the inferential connective *accordingly* ('Accordingly, it seems to me that…').

In (14), the ECJ is addressing part of the line of argument chosen by one of the parties. Here again, the Court expresses a negative evaluation about that: linguistically, this is done first of all through negation in the verb phrase – 'the contribution *is not charged*…' – and secondly by way of a straightforward counter-argumentation prefaced by *instead*. Therefore, the 'grader' serves the purpose of opening up the Court's argumentation – '…the contribution forms part…' – in view of the forthcoming conclusion that the disputed contribution is not precluded by the framework of EC legislation ('In the light of the foregoing, the answer to the first question must be…').

The introduction of the judge's/Court's argumentation is frequently intertwined with its discursive consolidation operated mainly by *even* and, to a lesser extent, *first*. There is strong evidence that *even* strengthens the judge's reasoning in three main respects. First of all, the item can be used to assert the judicial interpretation provided for a set of relevant norms (44% and 35% of ECJ and ISC occurrences); in second place, *even* may consolidate the judge's argumentation by pushing it to its extreme consequences (31% and 33% in ECJ and ISC respectively); finally, *even* also

appears to be used in order to take a significant counter-argument into account, before the judge dismantles it (25% and 20% in ECJ and ISC corpus respectively). These three key argumentative uses of *even* are respectively illustrated in (15)-(18) below:

(15) It follows that any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and is not a customs duty in the strict sense constitutes a charge having an equivalent effect to a customs duty within the meaning of Articles 23 EC and 25 EC, **even** if it is not imposed on behalf of the State (see, inter alia, Case 158/82 Commission v Denmark [1983] ECR 3573, paragraph 18; and Case 18/87 Commission v Germany [1988] ECR 5427, paragraph 5). (ECJ, Commission v. Germany)

(16) **Even** if I came to the conclusion that the relevant question in this case was not was there a duty of care to prevent the kind of damage claimed but rather was damage of that kind recoverable for breach of such a duty of care, I would still be of opinion that the respondents in this case would not be able to rely to any great extent on Page v. Smith. (ISC, Fletcher v. Commissioners of Public Works)

(17) As is clear from my judgment I take the view that D.B. was precluded from appealing once he accepted the award and that, therefore, the question of extension of time does not arise. I also take the view that **even** if I were wrong about that and that there was a right of appeal it could not be brought because there was a statutory time limit and the claimant brought his appeal outside of that time limit. Finally, I would be of the view for the reasons which I have given that the Tribunal did have locus standi. I would, therefore, allow the appeal on all three grounds. (ISC, D.B. v. Minister for Health)

In (15), the Court decides to cite its influential case law – 'see, inter alia, Case…' – in order to ground its conclusion – 'It follows that…' – bearing on the interpretation of Articles 23 and 25 of the EC Treaty applied to the case in question. *Even* reinforces the interpretation advocated by the Court, since the view that 'any pecuniary charge' imposed on goods crossing borders is equivalent to a customs duty is even extended to the case where it is not 'imposed on behalf of the State'.

In (16), the Irish judge asserts the validity of his/her conclusion, by asseverating that should he take his/her reasoning to the extreme circumstance that the 'relevant question' of the case had in fact been another – 'even if I came to the conclusion that…' – he/she would still retain the opinion that the respondent was not entitled to rely on Page v. Smith as a relevant precedent. In (17), finally, the judge temporarily takes account of the competing argument that he/she might have been wrong and therefore there could have been 'a right of appeal'; he/she then refutes it on the grounds that there is a statutory time limit in force, and the claimant did not comply with that requirement in his/her attempt to bring the appeal beyond the legal deadline. Once again, *even* is skilfully used by the judge, who consolidates his/her argumentation by showing that he/she is perfectly aware of the objections and counter-arguments that may be addressed to his decision. He thus lays emphasis on the conclusion he reached, because the latter seems to have arisen out of a careful balance of the various factors at play in the adjudicating process.

Finally, corpus data indicate that the consolidation of the judge's argumentation is also related to some of the countless occurrences of *first*. Among those where the item is not used to introduce simple enumerations, *first* serves to bring the strongholds of judicial arguments to the forefront. This was observed in 36.8% of non-enumerative occurrences of *first* in ECJ judgments, and 4.4 % of its total entries in ISC texts. Quite interestingly, *first* mainly collocates with meta-argumentative verbs (Stati 2002) such as *argue*, *observe*, *hold*, *note* and *submit* in both corpora:

(18) In those circumstances, the Commission brought the present proceedings. Substance. It should be noted **first** of all that under the system established by the Regulation all the competent authorities to which notification of a proposed shipment of waste is addressed must check that the classification by the notifier is consistent with the provisions of the Regulation and object to a shipment which is incorrectly classified (Case C-6/00 ASA [2002] ECR I-1961, paragraph 40). If the competent authority of dispatch considers that the purpose of a shipment has been incorrectly classified in the notification, the ground for its objection to the shipment must be the classification error itself, without reference to one of the specific provisions of the Regulation setting out the objections

> which the Member States may make to a shipment of waste (ASA, cited above, paragraph 47). (Commission v. Luxembourg)

Example (18) above shows that *first* is typically embedded in the formula *first of all* as it performs the discourse function introduced above. In the central passage reproduced in the example, the Court discusses the substance of the case after recalling the arguments advanced by the parties, in particular the Commission. It is significant that the Court constructs its own reasoning on the basis of a legal principle derived from case law, notably 'Case C-6/00': in order to highlight that that is the turning point from which its argumentation will unfold, the Court prefaces its remark through the combination of *it should be noted* and *first of all* as an intensifier making it clear that the following propositional material accounts for the starting point of the argumentative device set into motion.

4. Conclusions

The findings presented in Section 3 bring concrete insights as to the important role played by reformulation in the unfolding of legal discourse within judicial settings. Data reveal that far from being a mono-dimensional undifferentiated aspect of judgments, reformulation deserves to be considered as a central component of judicial language; this is by virtue of the variety of discursive configurations that reformulation markers may be observed to activate. Accordingly, it is interesting to note that in spite of differences pertaining to frequency *tout-court* – e.g. 156 occurrences of *namely* in ECJ texts as opposed to the 16 entries attested for it in ISC judgments – and the related correspondent percentage discrepancies – 100% of, say, a dozen occurrences is only apparently higher than 18.7% derived from a set of approximately two hundred corpus entries – there is essential homogeneity between the two courts in terms of the discourse functions performed by reformulation signals.

In this respect, both corpora indicate that the range of selected markers analysed here converges around a hub of key-functions stretching on a cline between the more specialised ones – notably normative clarification and disambiguation – to more borderline cases overlapping with plain language such as specification (Section 3.1). As we could see, reformulation acts as a turning point for the judge's attempts to make the relevant legislative background alongside the facts of the case explicit. Moreover, there is convincing evidence that reformulation is intertwined with the development of judicial argumentation, thereby embellishing the rhetoric of judges with considerable care placed on pushing argument to its extreme consequences and/or taking concurring let alone competing arguments into account (Section 3.2). What emerges is therefore that reformulation strengthens the quality of both judicial narrative – as is clear from its deployment in clarifying the normative background and specifying the factual framework of disputes – and at once judicial argument, when judges characterise, refine or grade reported arguments/interpretations or they wish to make their reasoning more solid and convincing.

A sound integration of the empirical study designed in the paper would be represented by a round of consultations between linguists and operators from the field (see Bhatia 1993, 2004). The aim would be to verify to what extent judges and drafters are actually aware of the discursive potential brought about by full mastery of reformulation strategies at all the levels identified in the paper. On the one hand, it could be hypothesised that there must be increased sensitivity about issues like reformulation, because one of the tenets of the Plain Language Movement (Gibbons 2003; Williams 2009) has been to narrow the gap between the specialised concerns of the legal profession and ordinary, laymen language, as it were. On the other hand, there is more than a hunch that judges do not entirely exploit the room for improved clarity and explicitness offered by reformulation, as was evident from the remarks in Section 3.1 on disambiguation. In some cases, it appears that the disambiguating effort does not produce satisfactory results, because it merely appears to relate somewhat opaque legal notions to one another, and it therefore reduces the accessibility of the judicial text.

A question worth asking legal professionals is how they would see enriching the legal training law students receive at Universities, particularly at a post-graduate level, with a language programme specifically tailored on the profile they intend to take on as legal operators, whether lawyers or judges. As regards judges, language workshops and seminars could be organised in order to enhance more systematic knowledge of the importance of issues like reformulation, the typology of reformulation markers and, most notably, the contexts in which these are used in the narrative or argumentative steps of judicial text.

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