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HOW LINGUISTICS CAN ASSIST IN THE COURT OF LAW

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Abstract

The thesis defines selected key areas of judicial practice in which linguistics can be beneficial. These areas include trial discourse, using language analysis as evidence, interviewing child witnesses, and court interpreting. There are several linguistic subfields and theories which can be used in the court of law in these specific cases. The specific subfields and theories are mentioned and described while putting emphasis on the way they can be used in practice. The thesis also aims to mention concrete cases from the court of law and show how it is possible to apply linguistics and what is its contribution to improving the practice of the court of law.

Key words: linguistics, the court of law, discourse, language analysis

Anotace

Práce vytyčuje vybrané klíčové oblasti soudní praxe, ve kterých může být lingvistika přínosná. Mezi tyto oblasti patří diskurs soudních procesů, použití jazykové analýzy v procesu dokazování, výslech dětí jako svědků a tlumočení u soudu. Každý z těchto případů soudní praxe má k dispozici několik lingvistických oblastí a teorií, které jsou konkrétně uvedeny a popsány s důrazem na to, jakým způsobem mohou být v praxi využity. Práce se zároveň zaměřuje na uvedení konkrétních příkladů ze soudní praxe, na nichž je ukázáno, jak je možné lingvistiku aplikovat a jaký je její přínos pro zlepšení soudního postupu.

Klíčová slova: lingvistika, soudní praxe, diskurs, jazyková analýza

Contents

1. Introduction

Linguistics is a study which has the ability to uncover or put into different perspective issues and problems in other academic disciplines which we would not be able to decipher or even come to realise without its help. However, it is not only academic disciplines which can benefit from linguistic analysis, the same can be said about the institutions that create our social order. It is important to realise that each institution has its own way how it uses language and it can be very helpful to analyse it from the linguistic point of view to gain new understanding of what role language plays in the particular institution.

One of the most important institutions in our society must be the court of law as it guards our rights and has the power to enforce the law. Therefore, being able to understand how it operates can undoubtedly bring many benefits. Linguistics has the potential to analyse court proceedings as a discourse and describe them as more than a series of legal procedures. It can bring a fresh perspective into the regular way we see legal practice in court. Moreover, linguistics can also contribute to rightful decision making in the court of law. Language can often serve as evidence and it is also substantial in other forms.

Because of the undeniable importance of the court and the fact that language is integral to it, the aim of this thesis is to describe how linguistics can assist in the court of law. In particular, it describes in which specific areas linguistics can assist and which subfields and theories of linguistics can be used in such instances while putting emphasis on the way they can be applied in practice. The practical use of various linguistic subfields and theories is shown on concrete cases from the court of law in which the assistance of linguistics can contribute to improving legal practice.

Firstly, the thesis focuses on trial discourse since trials are highly ritualised events in terms of its language use. Thus, linguistic analysis of various language practices during trial can be easily done and it can help with understanding trials more from other than the legal point of view. The second chapter consists of three instances in which language is used as evidence – plagiarism, false confessions, and hate speech. In each of these areas, linguistic analysis can be used to decipher their true nature. Moreover, utilising linguistic concepts and findings as much as possible can potentially only improve the process of court decision making. The next chapter deals with interviewing child witnesses – the main focus is how to interview children and then assess their statements

and testimonies based on their language abilities since it is important to adjust the approach in each case. Lastly, the thesis explains how linguistics can contribute in the area of court interpreting. The knowledge of linguistic theory is immensely significant while interpreting and it needs to be taken into account.

The thesis mainly works with linguistic publications. Some of them focus specifically on forensic linguistics and how to utilise linguistics in the court of law but others deal with linguistic subfields, theories and problems in general. The thesis builds on these general ideas and shows how they can be applied to assist the court of law. In terms of specific legal cases, the main source is the database of cases from the European Court of Human Rights, which will be referred to as the ECHR in the thesis. The ECHR has been chosen as a source because of its immense importance, large and high-quality database, and the fact that it deals with various cases in terms of their focus.

Lastly, it should be pointed out that this thesis shows that language has a significant role in the court of law and is quite essential to it. Law is language and people who practise law need to command language at a great level. With that said, judges and lawyers might know how to use language in a brilliant way and to their advantage, yet their area of expertise remains to be law, not language. Hence, it is important to refer to linguistics and let it take a closer look at the way the court of law operates so it can assist in a very significant manner.

2. Methodology

The thesis investigates the question of how linguistics can assist in the court of law. It focuses on various legal areas which can benefit either by applying general knowledge of linguistic theories and phenomena to describe the legal processes and provide a new approach to those legal issues, or by including a linguistic analysis in expert testimony. Therefore, linguistic fields and theories are put in a specific legal context in which their possible application in legal practice is presented, and it is also shown why it is important to recognise that linguistics can be of great assistance to the court. The application in practice is then emphasised by examining legal cases which are taken from the database of the ECHR.

2.1. Chosen Legal Areas

The first criterion was that the legal areas included in the thesis were chosen based on the potential assistance that can be provided by linguistic fields and theories. In most of these areas, linguistics is not considered by jurists as a science which can provide substantial help or new insights, at least it is not reflected or even mentioned in legal cases. However, the opposite is true, these areas can significantly benefit if we apply linguistic knowledge.

The second criterion was based on the fact that the thesis aims to include various applications of linguistic fields and theories that will also cover important aspects of the court. Therefore, the first legal area that was chosen is rather broad in terms of its application: it is the trial discourse, in which we can observe how discourse analysis can describe and make sense of court procedures. The next legal areas which were chosen then require the application of linguistic theory which lies in providing expert testimony and including linguistic analyses in the body of evidence. Specifically, plagiarism, false confessions, and hate speech were chosen as it is valuable to show the application both in public and private law. While plagiarism is the matter of private law and false confessions belong more to the area of public law, hate speech has aspects of both public and private law. Finally, the last two legal areas that were chosen, interviewing child witnesses and court interpreting, are court and legal procedures, which should be performed properly and in accordance with the right to a fair trial. Linguistic findings and knowledge can assist in assessing whether the required standards in these areas were met.

2.2. Linguistic Fields and Theories

The linguistic fields and theories which are included in this thesis were selected in each case to suit the legal area in question. Moreover, the focus was also on highlighting those linguistic phenomena which may not be obvious to jurists as they have probably never heard of them and if they have, they did not connect the phenomena with the ability to assist in the court of law. Therefore, the thesis often concentrates on fields such as pragmatics, stylistics, sociolinguistics, discourse analysis, or the study of language competence since these are the linguistic areas which are neglected in court practice but integral to various linguistic findings, which can then be applied to numerous legal areas and provide a new perspective on them. Even when the thesis mentions linguistic fields which are more commonly known to jurists, such as syntax or semantics, it offers a more detailed description of how exactly these fields are applicable and significant, which jurists generally do not tend to realise. Overall, the aim of the thesis is to put the included linguistic theories and phenomena associated with these fields into a new context, a context in which they can substantially contribute to enhancing the quality of legal procedures.

2.3. The European Court of Human Rights

The most significant role of the ECHR is that it evaluates complaints in which individuals, who submit the complaints after exhausting domestic legal remedies, claim that their government has violated a provision of the European Convention for the Protection of Human Rights and Fundamental Cases, which is supposed to be followed by the countries which are members of the Council of Europe (Voeten 418). Therefore, the ECHR deals with various legal cases which are of immense importance as they concern basic human rights and freedoms. That is one of the reasons the ECHR was chosen for the purpose of this thesis. Furthermore, as the ECHR aims to ensure that human rights and freedoms are not breached, it should use all accessible means to do so and consequently encourage individual countries to do the same. Nevertheless, linguistic fields and theories are means which are not sufficiently utilised, as can be seen in the chosen ECHR legal cases. Therefore, it is important to demonstrate the potential of linguistics and its assistance in the ECHR.

The last reason for choosing the ECHR is that its database is rather large owing to its wide scope of legal areas and cases. It also offers full text search, meaning it easier to look for the selected topic, in the case of this thesis for specific crimes and legal procedures. Another advantage is that all cases are assessible in English and even include English translation of excerpts which were taken from domestic court files. Overall, all of these qualities make the ECHR database very suitable for the purpose of this thesis.

The ECHR legal cases taken from the database are always summarised in the respective subchapters. Since the legal cases are rather long and detailed, the thesis only includes one case as an attachment to illustrate the form of the ECHR legal cases. In particular, it is the case of Hasan Yazici v. Turkey, which deals with plagiarism and is examined in the second subchapter of the fourth chapter in the thesis. The remaining cases which are included in the thesis can then be accessed through links listed in the works cited section.

3. Trial Discourse

From the linguistic point of view, it is possible to perceive and examine the court as institutional discourse, meaning a discourse that occurs within professional or work-based settings within an institution, which has specific needs and goals (Coulthard et al. 21). Pursuing its goals and needs, an institution creates its own use of different aspects of language. We can find this characteristic language use in every institution, but the court is a very specific setting in terms of its importance.

3.1. The Court as Institutional Discourse

The court has had to develop a very precise and organised way how it uses language because it is its responsibility to ensure that each person whose future is decided in a courtroom gets the same treatment as all the others. Therefore, to provide the same practice and procedure in each case, language used in the courtroom needs to be highly ritualised. Many studies of courtroom language prove that there are conventionalised discourse roles, or rather participants, which are all part of the ritual during trial and affect the nature of communication (McGroarty 321).

The highest status belongs to the judge – firstly, they have the power to intervene at any point in the discourse, and secondly, they have the final say in all or most decisions, depending on the trial type, made in court. However, attorneys are the most active participants of a trial. Their role is to adhere to the institutional discourse while trying to find their own way how to steer the narrative to suit their own purposes. Finally, there are members of the public – plaintiffs, defendants, and witnesses. These participants, except for expert witnesses, usually lack detailed knowledge of trial discourse but nevertheless play an important part in it.

3.2. The Importance of Trial Discourse Analysis

As mentioned above, trial discourse is an institutional discourse that is highly ritualised, which means that one must be familiar with it to understand it completely. It is often the case that members of the public do not have legal awareness. Legal language is a register complex enough to challenge the abilities of native speakers, and it can often pose problems in terms of fully comprehending what is being said (McGroarty 321).

In that case, linguistics can naturally contribute by creating special monolingual dictionaries, but that is not its most significant contribution.

Linguistics can do more than simply create a list of unfamiliar words for laypeople involved in legal proceedings – linguistics is able to provide a basic description and knowledge of trial as discourse. This is especially important since laypeople often fail to grasp the extent of roles and narratives in the court once they are there as litigants or witnesses (Crystal 406). Therefore, by examining trial discourse and explaining the way it works from the linguistic point of view, linguistics can raise legal awareness and help people understand the segments and constituents of legal proceedings.

However, it is not only laypeople, the court itself can also benefit from the linguistic knowledge and examination of trial discourse. Judges, for instance, can acquire more understanding of the way the discourse works and capitalise on that insight in the interpretation of arguments from different parties. Arguments in court are, in the end, not only of legal nature, they are always uttered as a part of a narrative. It is important to realise that to be able to see the arguments in their complexity.

3.3. Relevant Linguistic Theory

Trials form a specific, complex genre in which it is possible to identify highly ordered speech events with a distinctive treatment of language. There are many such events which take place during trials, some of them more essential than others. The two which impact trials the most and form a large part of the whole discourse are the question-answer pattern and narrative.

The question-answer pattern takes place during the examination of witnesses and litigants. In this case linguistic theory can assist by doing a thorough analysis of the pattern. The focus should mainly be on the manner in which attorneys control the topic of the examination – by examining topic connections, topic marking, and summarising in attorneys' questions (Coulthard et al. 99), it is possible to describe the general strategies they use to elicit a certain reaction or answer from witnesses. Moreover, conversation analysis approach to discourse, which considers the way participants in a conversation construct some type of a system (Schiffrin 273), can assist by analysing typical patterns of turn-taking and commonly employed adjacency pairs. This type of analysis shows how attorneys interact with witnesses and how they try to

distribute the conversation in a certain way. Employing that collected knowledge, the participants who are being interviewed can then affect the typical question-answer pattern by challenging the linguistic constraints which are present in attorneys' inquiries (McGroarty 321), and they are more prepared for the interaction between them and an attorney. Therefore, these participants, who are often laypeople, understand the trial at a similar level as attorneys, and attorneys are less likely to completely control the topic of the examination.

The second important discourse type, *narrative*, is particularly used by prosecution and defence in their opening and closing statements, in which they construct their own narrative framework and evaluate witnesses' testimonies and evidence (Coulthard et al. 112). Attention should be paid to the fact that these narratives are fictional, which is significant for two reasons: first, they do not recount facts and second, they are goal oriented (Stein 302). Therefore, trial narratives should be analysed while bearing in mind that attorneys narrate a story that serves the goal they have in mind (winning the case for the people they represent). The approach to the analysis should thus consist of examining how each component of the narrative is constructed to support the final resolution. In other words, it is possible to show how attorneys use certain evidence to serve their purpose by dissecting the narrative and then comparing each component to the facts or statements uttered or presented during other parts of the trial. This analysis is very beneficial for judges, who can see the statements made by attorneys not only as a sequence of legal arguments but also as a goal-oriented narrative utilising particular factual information in a specific manner.

3.4. Conclusion to Trial Discourse

This chapter introduced the court as institutional discourse with a highly ritualised use of language and specific discourse roles. It emphasised that the significance of linguistic assistance lies in the ability to describe trial discourse in a way that will help laypeople comprehend the intricate and often confusing court procedure as well as offer a different perspective for judges. The chapter then presented two speech events which are relevant to trial discourse, the question-answer pattern and the narrative.

The next chapter deals with three specific crimes in which language plays a big part, and it is therefore appropriate and advisable to include linguistic analysis as

a component of evidence. Various linguistic fields and theories which are relevant to the crimes are introduced, and it is described how they can be utilised.

4. Language as Evidence

Hearing the word crime, most people imagine an illegal act which is mostly physical and often violent in nature. Nevertheless, it is not unusual for crimes to be committed by speech or in writing. Language crimes create a substantial part of cases the court deals with on a daily basis. Most of these can only benefit if a thorough linguistic analysis by an expert witness is included as a component of evidence. That is, however, not always the case as the court tends to overlook many applicable linguistic fields and theories.

4.1. The Potential of Linguistic Analysis

The court practice is that linguistic testimony and the general assistance of linguistic theory and findings are often seen as controversial and their role is mostly reduced to assessing comprehensibility of texts and help in transcription (Tiersma, Solan 221). While these are quite important and necessary tasks, there is a much wider area of knowledge that can be utilised in court. Especially stylistics and the study of language comprehension and production can enrich the way texts are dealt with in specific criminal and civil cases if qualified and competent linguists are involved. To achieve this level of involvement, it is pivotal to present a unified idea of what kind of help can be provided for the court. Widely accepted methods as well as a collection of samples and intelligible theoretic foundation undeniably enhance the credibility of linguistics from the point of view of the court.

This thesis focuses on three types of illegal acts in which a comprehensive linguistic analysis can serve as evidence (being an integral part of expert testimony) and shows that there is a great potential for improving the court practice by offering a different viewpoint, one that has not been considered as much so far. The chosen illegal acts are: plagiarism, false confessions, and hate speech. All these hold significance in their own way. Plagiarism focuses more on interpersonal issues and the question of intellectual property, protecting individuals in their public endeavours. The punishment of false confessions protects individuals as well, but it mostly secures that law enforcement of a given country operates fairly and constitutionally. And last but not least, hate speech then similarly deals with constitutions as it explores the issue of human rights and the public sphere.

4.2. Plagiarism

The most elementary definition of plagiarism is that it consists in presenting someone else's work as one's own writing. It can appear in many different shapes and forms, ranging from copying text to adopting ideas, without giving credit to its originator (Alzahrani et al. 133). Mostly, it is seen as an academic issue, especially since it has been in the spotlight in numerous instances when people in the public sphere and their academic writings were scrutinised for committing plagiarism. We can then also observe plagiarism in journalism, where there is a lot of disagreement over attributional standards, with journalists often regarding attribution to their colleagues as optional (Norman, Zhong 148). While plagiarism in general may not be considered as serious as perhaps copyright infringement, it is still an intellectual theft and a great breach of property rights.

Contemporarily, the important thing to note about plagiarism is that as the technological development (which has continuously provided more and more readily available information) has made it easier for students to pass off someone else's work as their own, the response of computer scientists and computational linguists has been corresponding with this fact: the universities now have excess of plagiarism detection software packages at their disposal (Sousa-Silva 33). As beneficial and invaluable as this type of software is, this thesis will not examine it. It will however focus on the types of linguistic methods which can be applied by a linguist if there is a need to determine more precisely and comprehensively whether a text can be considered a case of plagiarism.

4.2.1. Relevant Linguistic Theory

In order to distinguish cases of plagiarism, the most prominent linguistic branch which can be applied is *stylistics*. There is a linguistic theory which says that every native speaker has their own individual version of the language, their idiolect. By examining the speaker's distinctive choices in speech, we can identify that individual as the author – that is sometimes called a theory of linguistic fingerprinting (Coulthard et al. 161). Firstly, it is necessary to consider the integral theoretical hypotheses linguistic fingerprinting works with, and then it is possible to focus on specific features which can be detected from any text.

There are three general fundamental assumptions which serve as a basis for linguistic fingerprinting: most word sequences are unlikely to be arranged in the same way by two individuals, extended sequences are even more indicative of its author, and the nature of the content should be situationally appropriate (Johnson, Woolls 112). Based on these principles, the first objective is to collect enough samples of the author's texts, from which it is possible to extract a small corpus of word sequences and larger passages. In this corpus it is then accessible to observe distinctive patterns and compare them with the supposed plagiarism. All that is performed while simultaneously keeping in mind the significance of context. The writer makes their stylistic choices based on the situation, which for instance includes the level of formality or intended audience. Therefore, it is always assessed whether a certain case of writing shows signs of being inappropriate or unconventional in terms of context.

The sense of inappropriateness is not necessarily always contextual. For instance, it is often the case that people who commit plagiarism choose a thesaural equivalent for certain words, which might seem near identical (Johnson, Woools 116). However, an equivalent often causes a shift in meaning, which then appears unnatural or unsuitable in a given text. Similarly, a change in structure can also affect or even completely disrupt the semantics of a sentence. These disruptive or inappropriate sequences, especially when contrasted with the rest of the text, can serve as a great indicator that the text is actually taken and altered from different origin.

To approach it more concretely, the linguist's work consists in selecting the linguistic features that function as idiosyncratic style makers – these are similarities or differences, such as spelling, grammatical forms and errors, word choices, and also formatting (Chaski 193). Therefore, the distinctive choices that every author makes are not only selections of specific words but also ways how a particular speaker connects words and forms sentences from them. Moreover, we can detect differences which are not entirely lexical, such as punctuation, style of abbreviation, or a level of cohesion. Finally, as we collect the style makers with the help of lexicology, semantics, syntax, and other linguistic branches, we can observe several groups of patterns, which we mark as unique to the particular idiolect. That collection of patterns can then be contrasted with any text to examine what common patterns are detectable.

4.2.2. Case of Hasan Yazici v. Turkey

The case of Hasan Yazici v. Turkey essentially deals with an article in which the applicant, a well-known journalist, accused Professor Dr I.D. of plagiarism by drawing attention to the similarities between his book, *Mother's Book*, and another book, *Baby and Childcare*. The applicant also brought his accusations to the attention of the Turkish Academy of Sciences by submitting a report, but no action was taken against the professor. Professor Dr I.D. then brought a civil action for compensation because he considered the journalist's actions to be an attack on his personality rights. Since Turkish courts had ruled that the professor should be compensated, the applicant brought the case to the ECHR. This thesis will now focus only on the aspects of the case which are linguistically relevant.

The Turkish courts decided that Professor Dr I.D. should receive compensation because the two major reports which were ordered by the court concluded that there had been no plagiarism, which meant that the applicant had tried to tarnish the professor's reputation based on a lie. The applicant objected to these reports because the experts who were appointed either worked closely with a person close to the professor or were employees of the same university as the professor. However, from the linguistic point of view, it is more relevant that the first report was carried out by two professor of paediatrics and a lawyer and the second then by two other professors of paediatrics and a professor of English language and literature. There is no mention in the case that an expert linguist was involved, and while it is commendable that the second report included a professor of English, the report's findings do not suggest that a linguistic analysis was performed or even considered, which will later be more specified.

As for the contents of the reports, the first report simply stated that it was natural for the two books in question to resemble each other as they are both handbooks, deal with the same topic, and neither contained any list of bibliography. The second report provided more details, especially in reaction to another independent analysis made by a professor of English literature and comparative literature, who claimed that some paragraphs and sentences were copied by way of word-for-word translation and by using other methods. The court ordered report however did not find that the professor's book was a word-for-word translation or citation and pointed out two things: that the professor referred to *Baby and Childcare* as regards his methodology and that the similar parts

consisted of information known to all paediatricians. The summaries of these reports clearly show, at least from the linguistic point of view, that they were insufficient in their endeavour to determine whether the professor plagiarised.

Firstly, it is necessary to address the inadequate nature of the second report's argument which states that is not problematic for some parts to be similar since they contain knowledge which is common in the specific field. While it is not unnatural for them to be similar if we consider their content, it is more than suspicious when the form is similar as well. Any matching extensive word sequences are dubious, no matter how common or universal their content is. Hence, it is apparent that the reports should have focused more on the syntax of the textual parts rather than solely on their semantics. General stylistics could also play a role, but since both texts were handbooks, their style and level of formality would supposedly be rather similar and would not play any substantial role in the linguistic analysis.

Secondly, as the independent analysis accused the text of being a word-for-word translation, the court ordered reports should have paid more attention to it. The second report simply stated that it is not a case of word-for-word translation, presumably only comparing the texts content-wise. However, it is advisable to also consider whether the text which was accused of being a translation included some obvious results of translation, such as any expressions or structures which might be considered unnatural or unsuitable in the native language of the author or any semantic shift compared to the supposed original text. A linguistic analysis is then more than necessary in determining whether these elements appear in the text.

Finally, there was no indication that the reports took into consideration any texts other than the two in question. The best possible approach is to collect samples of Professor Dr I.D.'s texts, optimally samples from texts of the same or similar style (i.e. handbooks, articles which are not academic) and the same topic (i.e. paediatrics) as the text in question, and derive a selection of patterns of various style markers from them, especially focusing on word choices and the level and style of cohesion, possibly also on punctuation. This selection should then be contrasted with the questionable parts in *Mother's Book* to see if the patterns are similar. If it is found that there is no obvious similarity or if the findings are ambiguous, the next step is to carry out a similar comparison with the style patters derived from *Baby and Childcare*, possibly with style

patterns from other texts belonging to the author. If those are found similar to or corresponding with the text of *Mother's Book*, it is deemed plagiaristic.

4.3. False Confessions

The term false confessions stands for situations in which admission of guilt in a crime one did not commit is induced, for instance through coercion or incompetency of the accused. This is a complex case of questioning authorship – there is often no dispute about the text being written or spoken by a particular speaker, yet the authorship seems doubtful (Coulthard 17). The judges and potentially juries need to consider whether a statement was made voluntarily or under coercion and also whether a suspect was of sound mind at the time the statement was given (Kassin, Kiechel 125).

Mostly, it is a psychological assessment that determines the conditions under which a confession was given, which might appear fairly satisfactory. Nevertheless, in these cases a linguistic analysis can be of great assistance as an addition to a mandatory psychological evaluation. In particular, a suspect who was coerced into a confession might be too scared of possible consequences to come forward and admit the true nature of their confession, or they can even internalise the contents of their confession in extreme cases. Afterall, interrogation is an interaction led by an authority figure often with a strong conviction about the crime, who makes their superiority blatantly obvious (Kassin 31). Most individuals succumb to this approach and start to believe that there is no way out of the conviction. While psychological evaluation might detect some indications of such behaviour, linguistic analysis is able to confirm the potential suspicion by examining the suspect's statement thoroughly.

4.3.1. Relevant Linguistic Theory

Firstly, the areas which should be examined more closely when it comes to detecting false confessions are the theories of *idiolects and register features*. As outlined above in the chapter about plagiarism, linguists are able to recognise individual peculiarities by analysing speaker's other utterances or the usual context of utterances which are similar to the ones in questions. These individual characteristics form speaker's distinctive idiolect, i.e. their way of creating texts (for instance, their lexical or syntactic choices). On the other hand, register is a conventional use of language that is appropriate in

a specific context, in this case a context which can be identified as occupational and situational at the same time (Yule 259). Owing to their profession, police officers and other law enforcement personnel develop a specific way of using language and are accustomed to the common register used in law enforcement. Therefore, various specifics of the register might get into the suspect's confession even if the officer in question tries to avoid it. By deliberately looking for these register features and highlighting them, linguistics can provide at least a reasonable doubt concerning the voluntary nature of a confession.

Secondly, it is *pragmatics*, especially Grice's Cooperative Principle, which can be of great value as well. In his theory Grice suggested that there is an underlying principle which determines how language is used effectively to achieve efficient communication; this principle, called the Cooperative Principle, is then subdivided into four categories of maxims (Huang 25). In practice, if we consider, for instance, the maxim of quantity, it is possible to observe that fabricators tend to break it. When speakers make their statements, they try to be as informative as necessary, depending on the situation they find themselves in. Considering that the specific situation is an investigation, it can be inferred that it is unlikely they would withhold any information once they agree and are determined to confess. Law enforcement officers, who are the fabricators in this case, are, on the other hand, more likely to make the statement less informative as they have only one goal in mind: to get to the confession itself. Moreover, this is also connected to the maxim of manner, which tells speakers to be as clear as possible. In many situations it is more than natural to break this maxim, especially in a stressful and uncomfortable setting, such as in a police station. However, it is very probable that a law enforcement officer would dictate a confession to a suspect in such a way that would avoid ambiguity and mostly follow the maxim of manner since it is their goal to obtain a clear confession that would stand in court.

Finally, the last significant linguistic branch for detecting false confessions consist of *language production and comprehension*. Defendants can argue that an utterance could not have been produced by them on the grounds of their general or temporary level of language production, or they can claim that their language competence was not adequate at the time they were questioned (Coulthard et al. 150). As for native speakers, the cases mostly involve children, mentally disabled individuals, or interviewees under

the influence of alcohol or drugs. While examining a confession, a linguist can assess which parts of the text (e.g. complex sentences, specific formulations) were unlikely to be produced by an individual whose language production abilities are lowered or not yet fully developed. This suspicion can be confirmed by collecting samples of texts originating from the supposed author and then comparing them to the confession. Furthermore, there is also the issue of non-native speakers. It is often the case that we can find unnatural and uncommon expressions in the speech of most non-native speakers. If nothing of that sort can be detected in their confession, it is advisable to examine their use of language more closely and then perhaps question whether it could have been them creating the confession in such a manner.

4.3.2. Case of Brennan v. the United Kingdom

The case of Brennan v. the United Kingdom presents a situation where the applicant was arrested by police officers who were investigating a murder. After being transported to the special holding centre, he allegedly admitted his involvement in the murder and later signed a statement in this affect. The applicant then claimed that he had not volunteered the statement freely, but it had been extracted by ill-treatment and various threats, which was denied by the police. There was no direct evidence as the applicant's solicitor was not present to the interviews nor were the interviews recorded in any way. Later in court the applicant also presented independent medical evidence. The evidence stated that he was on the borderline of mental retardation, his reading ability was equivalent to that of an average 10-year-old child, and he had a high level of compliance. Both applicant's allegations were rejected by the judge, and the applicant was found guilty. As his appeal had been dismissed by the British courts, he turned to the ECHR. The court file neither says nor implies that a linguistic analysis was ordered or even considered by the court. While it might seem pointless to jurists, it is necessary to maintain that linguistic theory and findings can be of much assistance in this case.

Firstly, the applicant's intelligence and reading ability were only assessed from the medical point of view. Moreover, his reading ability does not bare much relevance in the case. What should rather be evaluated is his level of language production and competence. In particular, it should be determined whether he was capable of producing the statement in question. It is entirely possible that he gave the statement himself after being coerced by the police, but there is a possibility that the police officers created some

parts of the statement themselves as the applicant was not cooperating or they needed more fabricated details, which the applicant did not provide. Therefore, the content and style of the applicant's statement should be examined in detail with a special focus on the word and syntactic choices which may stand out as unusual compared to the rest of the text or simply appear too unexpected for a person with a lower intelligence quotient, such as formal expressions or a lack of grammatical errors and irregularities.

Secondly, it should be investigated whether some other suspects who were interviewed by the police officers in question made similar accusations. If that was the case, the statements should be collected and compared by looking for correspondences and parallels, with a special focus on the part where the interviewees confessed their alleged crimes. Potential similarities, especially in larger sequences, suggest that there is a high probability of the same origin. Furthermore, it is appropriate to perform a similar analysis even if there were no such prior accusations. In that case the text of the statement is contrasted with the police officers' written police reports. The most significant patterns include word choices related to admissions of guilt and descriptions of the conduct elements of crime (especially noun phrases and verb phrases, possibly even unusual adverbs) and syntactic peculiarities in simple and compound sentences (it can be assumed that the police officers would not use a large number of complex sentences so as to avoid suspicion after interviewing the suspect in this case). Other aspects to look for in the applicant's statement are then elements typical for the register of law enforcement officers, particularly word choices related to the arrest and procedural methods. Although these elements might be inconspicuous at first, it is necessary to take them into consideration, primarily in cases with mentally challenged individuals such as this one.

Finally, the applicant's statement should be checked for breaking the maxim of quantity and the maxim of manner. Since the applicant was clearly in an environment that must have been very stressful for him and since he has an intellectual disability, it is highly unlikely that he provided a confession that was clear and coherent. Therefore, it is probable that his statement (which is supposed to be recorded if not word by word then in detail in order to be credible) includes a number of hesitations, a lot of backtracking and repetition, frequent pauses, and syntactic ambiguities or even errors. No instances of these elements will only cause suspicion as to the nature of the interview in question and

the origin of the text. Additionally, it should also be considered how informative the statement is. It was stated in the independent medical examination that the applicant's behaviour indicated a high level of compliance. Based on this assessment, it is only natural to assume that once he had decided to confess to his crime he cooperated and provided sufficient information to the police officers. Thus, if it is found that the statement shows contrary characteristics, it indicates that there is a possibility that the text was not originated by the applicant.

4.4. Hate Speech

The term hate speech in the broadest sense of the word may apply to any text expressing hate. However, for it to constitute a type of illegal behaviour, it is necessary to narrow the definition: hate speech is a public speech expressing hatred towards a group or a member of a group because of some characteristic trait, and this kind of speech is intended to intimidate, offend, and also provoke more hatred (Klein 4). In the current political climate, most would associate hate speech with statements uttered against religious and racial groups, but the scope is considerably much wider, targeted groups are, for instance, often connected to sexual orientation, gender identity, or even gender itself. The character of the group or its member which hate speech targets is however not the most important or relevant. What must be primarily examined and proven is the intent to offend a certain group or its member and to spread hatred, for there is no criminal behaviour without this intent.

Before we begin to explore the phenomenon of hate speech from the linguistic point of view, it is necessary to address free speech as well. The term free speech refers to the right to freedom of expression, meaning that individuals are free to express their thoughts and share these thoughts with others (Howard 96). One can immediately observe the issue presented here: the idea of free speech necessarily collides with the unlawful nature of hate speech. The legal custom dictates that one's freedom prevails until it breaches someone else's rights or freedoms in an unreasonable and severe manner. That is the reason why it is crucial to prove speaker's intent to be hateful and offensive, and linguistic theory has many tools which can assist in providing the proof.

4.4.1. Relevant Linguistic Theory

Firstly, the area of *pragmatics* should be consulted, in particular the Speech Act Theory. The theory focuses on how utterances produce speech acts, especially given their illocutionary force and relevant context. Specifically, the term indirect speech acts becomes significant in the case of hate speech as it is defined as an utterance in which an illocutionary act (i.e. the intended effect of an utterance) is performed by the way of another, literal act (Schiffrin 59). For instance, a speech act with an illocutionary force which can be described as a threatening or warning might be performed in a typical frame of a simple statement or even a promise (e.g. in political campaigns). It is then necessary to distinguish between the structure of a statement and an opinion. A statement should state a fact, information having objective reality, something that has a quality of being actual (Shuy 443). On the other hand, an opinion expresses a judgement, which is often indicated by e.g. using the future tense, conditional modals, or expressions signalling the performance of an opinion (e.g. "I think that…"). To conclude the significance of the Speech Act Theory, its power lies in the fact that it can detect where in a supposed statement we can find underlying opinions. If these opinions can be described as malevolent or hateful in nature, they support the idea that the utterance was intended to be threatening, in our case to a specific group or a member of such a group, and hence the utterance becomes an illegal act of hate speech.

Another pragmatic linguistic phenomenon which complements the Speech Act Theory and which can be applied to assess a particular level of verbal hurtfulness is politeness (Carney 335). The term politeness can be defined as displaying consideration of another person's face, i.e. their public self-image, and if politeness is not followed and the speaker's words threaten somebody else's face, it is called a face-threatening act (Thomas 169). Accordingly, it is possible to say that hate speech is an exemplary instance of a face-threatening act. To distinguish such an act from the rest of the text, it is necessary to look for specific signals. Most of these signals deliberately aim to change the social relationship between the speaker (who simultaneously tries to make their audience identify with the relationship) and another person or group. The speaker presents themselves as having more social power and may directly try to increase the threat level of a person or a group. To do so, they can use any form of exploitation of the address system (i.e. inappropriate forms of addressing a group of people or an individual) or

perhaps an improper or unseemly directness in their speech. Therefore, if we can detect these signals, the speaker's utterance is very likely to be considered an instance of hate speech.

After pragmatics the second applicable branch of linguistics is *semantics*. Semantics can be used whenever linguists deal with and examine any type of text in any context, but it is particularly important to acknowledge it in the case of hate speech because it is necessary to pay special attention to having lexical meaning assessed correctly. The words in question can range from lexemes typical in everyday use to special vocabulary, e.g. slag or jargon typical for a specific group of individuals. However, more often than not linguists have to deal with lexical relations rather than lexical meaning of one word in itself. These relations include cases of polysemy, homonymy, or wordplay, and then it is the linguist's job to determine whether they could have influenced the overall meaning of the text. Last but not least, collocations also represent a significant phenomenon. By using certain words, a speaker can make various associations and allusions to other words or phrases which frequently occur together with the uttered lexemes. That way the utterance achieves the speaker's intended effect implicitly.

Finally, it is *syntax* that can provide adequate linguistic assistance. The most elementary yet indispensable tools of syntax are the constituent structure trees. They can provide more clarity as to the meaning of a sentence, especially in complex and larger texts but also with spoken texts whose overall meaning might be harder to detect because of frequent pauses or hesitations and the excess of filler words. Another issue can lie in syntactic ambiguity, i.e. the ambiguity arising because it is difficult to discern which words group together to form a phrase (Tallerman 116). The ability to correctly determine the scope of a noun phrase or perhaps the scope of negation has a considerable impact on how a person understands the text in question. Thus, it is clearly crucial to contact a linguist who has proper knowledge of these complex syntactic issues and can provide an analysis of various structures and scopes.

4.4.2. Case of Balsyté-Lideikiené v. Lithuania

Balsyté-Lideikiené v. Lithuania presents a case in which an owner of a Lithuanian publishing company, the applicant in the ECHR case file, who published Lithuanian

calendar, a yearly calendar with notes describing various historic dates from the perspective of its authors, was accused of hate speech. A member of the Lithuanian Parliament announced publicly that *Lithuanian Calendar 2000* insulted persons of Polish, Russian, and Jewish origin. A committee formed by the Parliament consequently investigated it, examining whether it contained elements of violations of ethnic and racial equality. The committee, which included a professor of history and a professor of political science, concluded that the calendar did not directly incite violence against any group even though it did contain xenophobic and offensive statements. The court however found, referencing conclusions of experts in the fields of history and psychology, that the text promoted ethnic hatred but the applicant's actions had not been deliberate, only reckless, which resulted in lower administrative penalty. The Supreme Administrative Court dismissed the applicant's appeal, and the case was later submitted to the ECHR, which found that the freedom of speech was not breached.

Overall, the reports deciding whether the text could constitute hate speech depended only on the fields of history, political science, and psychology. While there is a considerable merit to employing each of these sciences, linguistics should not be omitted as it can provide more evidence as to the nature of the text. The obvious use of linguistics can be seen in a syntactic and semantic analysis. That is useful mainly if the meaning of the text is being questioned or if it is ambiguous or incomprehensible, which does not appear to be the problem in this case, at least it was never implied or questioned. Another possibility is then to utilise semantic analysis and its knowledge of collocations and wordplay if the text is seen as indirect or suggestive. That is however not the case with the text in question, which appears to be direct and explicit. Therefore, it is understandable that no linguistic analysis was employed by the court of law as jurists see syntactic and semantic analyses as the main if not the only possible contributions of linguistics. Naturally, the linguistic point of view is completely different from that conviction.

Firstly, it is the Speech Act Theory which can contribute. The Lithuanian calendar generally consists of statements concerning various historic events, which are described from the point of view of the authors. The fact that a specific point of view is employed does not necessarily mean that they are problematic and should no longer be considered statements. However, if the supposed statement has characteristics typical for opinions

and appears to be malevolent or hateful, it falls into a different category of speech acts. To elaborate this point, here are some relevant excerpts from the Lithuanian Calendar 2000:

(1) "(…) Pilsudski's army, drank and danced their ghastly dance on the freshly spilled blood of Lithuanians whose whole village had been murdered."

(2) "Through the blood of our ancestors to the worldwide community of the Jews"

(3) "The Lithuanian nation will only survive by being a nationalist nation – no other way exists!"

(4) "The Jews were managing the Parliament; from the tribune of the Parliament the Jews were insulting and scolding the Lithuanian nation, asking for Lithuanian blood and Lithuanian property. The majority of the ruling Conservative party (...) greeted the swearing Jews with standing ovations."

In general, the text consists mostly of sentences framed as statements which describe various events (the accuracy and factuality of these events should be left to history and political science). There are no obvious, explicit markers which would imply otherwise – no performative expressions as well as expressions signalising opinions are employed, and most of the text is in the past tense. Nonetheless, there are exceptions which can be observed in the above quoted excerpts. First of all, the excerpt (3) clearly presents an opinion which is signalised by the use of future tense and the supplied phrase "no other way exists". As for the Speech Act Theory, it can be defined as an appeal or even a command since it incites readers to adopt a clear stance, i.e. to be nationalistic and to condemn Polish, Russian, and Jewish minorities (this condemnation is implied but rather obvious given the rest of the text). Other excerpts then include expressions which prompt readers to form negative opinions on the actors present in the events that are described, such as (1) "ghastly", "freshly spilled blood", (2) "blood of our ancestors", (4) "insulting and scolding", "blood", "swearing Jews", "with standing ovations". These expressions are emotionally charged and, in most cases, do not contribute to the factuality of the excerpts (and even if they do, they carry a very negative and expressive undertone). Therefore, they represent an opinion which is used to influence others. It is highly unlikely that the choice of these expressions and the overall style of the chosen excerpts are accidental, the author or authors used them deliberately to achieve a certain effect on the readers.

Furthermore, this analysis also relates to the phenomenon of politeness. The text is undoubtedly nationalistic and aims to present the Lithuanian nationality as superior and the targeted minorities (Jewish, Russian, Polish) as threatening to the nation. Here are some other excerpts which support the presented threat level of the minorities:

(5) The new Lithuanian government (...) puts on trial the Lithuanian nation for the extermination of the Jews (...) but is not interested in the genocide of the Lithuanians and dances Jewish foxtrots to the music of the Wiesenthals and Zurroffs."

(6) "The soviet occupying power, with the help of the communist collaborators, among whom, in particular, were many Jews, for half a century ferociously carried out the genocide and colonisation of the Lithuanian nation."

(7) "(…) Polish Krajova Army killed 12 Lithuanians for the sole reason that they were Lithuanians."

(8) "(…) who took power started new executions against the Lithuanians and the Lithuanian nation, carrying out pro-Jewish politics."

While these statements might be based on real events, it is necessary to notice that they almost exclusively target the selected groups or their collaborators. This fact in itself does not constitute hate speech, but when it is connected with the previous findings as to the speech acts, it proves that the text's objective is to incite negative reactions to the minorities, in particular hatred and fear. Another aspect of politeness which also supports this assessment is the level of directness. To fully evaluate the level of directness employed in this text, it would be necessary to consult somebody with an expertise in Lithuanian culture and customs. Nevertheless, it is possible to observe that the text is in general rather direct and explicit, which can be seen as improper since it makes serious accusations and should therefore adopt a more considerate and indirect approach.

4.5. Conclusion to Language as Evidence

The chapter focused on illegal acts in which language can be used as evidence. It emphasised that there is a great potential when it comes to linguistic analysis, which is essentially untapped since the court practice does not seem to recognise the potential

utilisation of linguistic theory. The chapter then took a closer look at plagiarism, false confessions, and hate speech, introducing relevant linguistic theory and demonstrating how it can contribute to informed court decision making in each case.

The next chapter addresses the complex issue of interviewing child witnesses. It emphasises that it is crucial to adopt a different approach compared to interviewing adults, both during the process of an interview and while assessing children's statements.

5. Interviewing Child Witnesses

It is necessary to recognise how complex witness interviews can be as verbal interactions. Their success depends on effective communication, which can be hard to achieve as witnesses need to initiate a number of socially and verbally demanding processes to respond to questions and provide information about their experience. The demanding nature of answering interviewer's questions is even more apparent in the case of child witnesses, whose language comprehension and production skills are rather limited.

5.1. Basic Principles for Interviewing Child Witnesses

From the linguistic point of view, there are three basic principles that should always be followed when interviewing child witnesses. Firstly, a child's language development must be correctly assessed. This assessment gives us an idea about what expectations we can have regarding the level of detail and character of facts in a given child's statements. Secondly, it is necessary to be accordingly sensitive to the level of language development. It is absolutely vital to prevent any suggestibility and to make interviewed children feel as relaxed as possible. Furthermore, the interviewer should not ask them questions as if they were adults because they will try to answer even if they do not fully understand, which can consequently taint their witness statement or even undermine their credibility (Saywitz, Camparo 826). Finally, it is the concrete phrasing of questions that needs to be altered to match a child's language development, in particular a lot attention should be paid to vocabulary and linguistic complexity.

Overall, it is essential not to ask complex questions and not to communicate in an overly aggressive manner or excessively pressure the children who are interviewed. Linguist's assistance should then lie in the assessment of unfairness or inappropriateness of the questions asked, considering their complexity or intimidating nature, and in examining whether the overall approach to children witnesses reflected their stage of language acquisition.

5.2. Relevant Linguistic Theory

First language acquisition, the language development in the case of native speakers, and the study of *language production* clearly represent the areas of linguistics which should be consulted here. One of the significant facts we need to address first is that language is

shaped by experience. To be more precise, children's experience, which is reflected in their behaviour, and their language competence are interrelated. Therefore, we look at what children do and how they behave as a glimpse into their knowledge of language (Graziano-King, Cairns 208). If we then want to assess children's experience and consequently their level of language performance, our first clue is observing how they relate to their surrounding and interact with it. However, this dost not mean that we have to secure a complex psychological behavioural evaluation, even though it might be unavoidable in some cases (e.g. with abused and traumatised children). It should be simply kept in mind that paying attention to children's behaviour may steer us into the correct direction as for the assessment of their language competence.

The next focus should then be some common characteristics in children's statements which are ordinarily viewed negatively but require a different approach and evaluation in the case of children. Firstly, inconsistency in children's statements should not be seen as something suspicious or incriminating. Linguistically, it is regarded as an ordinary constituent of the development process. There are two main reasons why it is so: children are very sensitive to their surroundings and under different circumstances (e.g. a different interviewer or setting) may react differently, and it is typical of children to be very cooperative in communication, which means that they very easily latch on various suggestions and let themselves be led by their conversational partner towards the partner's communicative goal. Moreover, it is children's pausing that should not be regarded as disruptive but rather as productive. Children require more time to process questions, and it needs to be respected. Pressuring a child to answer faster as well as systematically treating their pauses as if they are indicative of something negative or evasive is only counterproductive.

There are also other characteristics of children's statements which should be concentrated on to some extent. One that is probably the most essential is that children are very literal in their approach to language, meaning that their ability to move from the general to the particular and vice-versa is not quite fully developed due to their lack of experience with language (Graffam 11). Interviewers should be aware of this fact, otherwise they can misinterpret children's statements and considerably jeopardise the legitimacy of the whole questioning. Furthermore, interviewers should also keep in mind that children struggle at attending to more ideas at once. This makes multi-part

questions extremely unfit for interviewing children, and their potential usage will only indicate interviewers' lack of consideration for the special nature of dealing with children. Finally, it should be remembered that children's responses to questions do not necessarily equal answers to questions, especially if the questions are ambiguous (Graffam 17). It is possible that the interviewed child has problems with understanding the questions, but they do not come forward and say so because they want to be cooperative or simply do not recognise their own failure to discern the meaning properly. Thus, when a child's response appears to be out of place or perhaps insufficiently informative, it is imperative to ask follow-up questions.

Last but not least, we should recognise that children's statements are essentially narratives and these narratives need to be treated with regard to children's specific language production. There is a consensus that non-focused, open-ended questions should be used to let children tell their own version of the event or situation at their own pace, without being interrupted, and in the form of a free narrative account (Wright, Powell 317). Allowing children to form their statement as a free narrative account gives them the much needed flexibility to express their own genuine views and recall experiences the way they actually happened from the children's point of view. It also helps them to maintain conversational topics on which they decide to concentrate in their response to non-focused questions without necessarily taking the perspective of their conversational partner (Graziano-King, Cairns 216). Additionally, there are some issues children have compared to adults when it comes to narratives, which should be addressed. For instance, reference can be quite cognitively demanding for young children as both their language competence and memory retention are still developing (Berman 326). Therefore, interviewers should be patient and respectful if a child struggles with providing non-redundant information or does not properly recognise what could be considered mutual knowledge at a certain point in a conversation. Children's language performance is also not at a level where they are able to fully employ narrative temporality or connectivity in their narrative accounts. Possible misunderstandings which can stem from this issue should however be anticipated and treated with understanding and patience.

5.3. Case of S.N. v. Sweden

In the case of S.N. v. Sweden, a schoolteacher contacted the social council on account of a suspicion that one of her pupils, at the time aged 10, had been sexually abused by

the applicant of this case. It was reported to the police, and the child was interviewed. Later the applicant requested a second interview because he thought that further information was necessary with regard to specific dates, the number of occasions, and the sites of the alleged acts. The first instance court found the applicant guilty, noting that the outcome was entirely dependent on the credibility of the child's statements. The applicant appealed, and the court of appeal stated that the child's statements were too uncertain and vague and thus did not constitute sufficient evidence, but it still found the applicant guilty, only lowering the charges against him. The applicant then appealed to the Supreme Court, criticising the manner in which the child had been interviewed and claiming that the child's statements were vague and contradictory. His appeal was refused, and the case then submitted to the ECHR. The case file neither explicitly states nor implies that any form of linguistic analysis was ordered by any of the courts involved even though linguistic theory can provide valuable assessment of the child's statements.

Firstly, one of the stated problems with the child's statements was that the information given by him was vague as he was not able to give details and described only in more general terms what kind of sexual contact occurred. While it is true that children tend to be more literal in their approach to language, once they find themselves in an area of which they have general and limited knowledge or about which they are used to communicate in general terms, it is difficult for them to move from the general to the particular. Moreover, the child's language production is interrelated with his experience with the world. 10-year-old children do not generally have detailed knowledge of sexual activities, and if they see them or experience them performed, the activities might easily confuse them as the children do not know how to interpret them. Their ability to later describe the sexual behaviour is then also not sufficient as they cannot express something they do not understand with words. It is only natural to use general terms and not be able to fully recollect details of the situations in question and describe them. Therefore, from the linguistic point of view, it is rather excessive and arbitrary that the child's inability to provide a detailed description of the sexual contact was basically held against him and consequently contributed to lowering the applicant's charges.

Another issue which was found with the child's statements was that they appeared uncertain and contradictory. These characteristics are, however, not seen as exclusively negative from the linguistic point of view. First of all, it is completely natural if

the statements contained pausing or hesitations. Children need more time than adults to process questions and also to form their answers as their cognitive and language competence skills are still developing, even at the age of 10. It is even more important to recognise it in this case since the child in question experienced something very traumatic and it must have been undoubtedly very hard for him to recall and describe what had happened to him. Moreover, he must have experienced difficulty while creating the narratives. At his age children are better equipped to form narratives, yet it is still demanding for them to maintain temporality and connectivity as they want to make themselves understood. Once again, it must have been even more taxing for the child in this case as he was severely traumatised. Second of all, it should be addressed that the fact that the statements contained some contradictions is perfectly normal. That is especially true since there were two interviews conducted and they happened in two different settings: at the police station and in the child's home. As children tend to be sensitive to their surroundings, they can give slightly contrasting statements in a place where they feel comfortable compared to an unfamiliar, terrifying place.

It is also an important piece of information that some of the questions asked by the interviewer were considered by the court to be leading. Since we can presume that the child tried to be cooperative, the questions could have easily influenced him and consequently cause some inconsistencies in his testimony. Furthermore, the leading questions have probably also contributed to the uncertainty in the child's statement. Children need to be asked non-focused questions if we want them to maintain conversational topics and also provide their own perspective. The interviewer's leading questions could have confused the child and made him lose focus, which he then had to regain, and that caused him to appear uncertain or distracted. Therefore, it is apparent that the interviewer's involvement should have been taken into consideration more than it was and that some of the negatively viewed characteristics of the child's statements should not have been seen as a reason for lowering charges against the applicant.

5.4. Conclusion to Interviewing Child Witnesses

The chapter described basic principles for interviewing child witnesses, emphasising sensitivity to children's language development and phrasing of interviewers' questions. Relevant linguistic theory was then introduced to outline common characteristics of children's language competence which need to be taken into account while interviewing

children and analysing their testimonies. The chapter also showed that it is important not to penalise children or disregard their statements because they do not meet the standard for statements made by adults.

The next chapter focuses on court interpreting. It explains why court interpreters need to gain the knowledge of linguistic theory in order to provide efficient interpretations. It then also highlights relevant linguistic fields and phenomena which should be studied by court interpreters.

6. Court Interpreting

Interpreting in itself is a very complex task which requires a lot of proficiency and skills on the part of interpreters. Any interpreter can benefit from acquiring linguistic knowledge by learning about linguistic fields and theories and their relevance to interpreting. However, it is especially crucial for an interpreter to have this knowledge while interpreting in a court setting since the way they interpret given utterances can considerably affect the result of a trial and consequently the fate of the person who is being convicted. This chapter shows the importance of linguistic approach to court interpreting and the relevant linguistic findings of which any court interpreter should be aware.

6.1. Linguistic Approach to Court Interpreting

The thing that should be addressed regarding court interpreting is that a considerable degree of ambiguity arises when interpreting is set in the judicial context. While jurists find the concept of interpretation rather close to translation, linguists consider such an approach inappropriate on the grounds that translation is mostly an objective and transparent process whereas interpreting is about attempting to convey interpreter's understanding of what the speaker means and intents in their speech, with the emphasis on the word attempting (Morris 26). It is unreasonable to expect a verbatim translation or suppose that it is enough for the interpreter to focus on the referential use of language. From the linguistic point of view, interpreting is a communicative process in which the interpreter should take on an active, involved role. This role allows the interpreter to approach interpreting in a more flexible manner, which consequently contributes to a more accurate and appropriate process of conveying the speaker's original utterance.

As it was mentioned, efficient interpreting requires more than getting the lexical equivalent right. Since the task can in general be described as converting speech into the nearest equivalent in the target language, an interpreter should be able to convey a specific speech variety as well (Berk-Selingson 16). Hence, interpreters should be aware of linguistic registers of utterances, i.e. have knowledge of pragmatics, sociolinguistics, and other linguistic phenomena. With this knowledge they can provide a productive and suitable interpretation, reduce misunderstandings and inaccuracy, and ensure that standards for a fair trial are met. It might be rather challenging to explain this fact to

jurists, but it is imperative to prevail and strive for a high level of interpreting, which cannot be achieved without understanding linguistic phenomena.

6.2. Relevant Linguistic Theory

Firstly, it is the knowledge of *pragmatics* that is important in interpreting. After all, it is not only what a person says that counts but also how they say it. Any change in pragmatic force can inevitably impact any speech event. Interpreters should therefore aim to maintain the illocutionary force that is in accordance with speakers' intentions. There are two types of behaviour interpreters should avoid in order to do so: interpreters should interpret accurately even if they consider speakers' statements irrelevant or not properly responsive (i.e. they should not omit any supposedly excessive or insignificant information), and they should never try to polish witnesses' answers (i.e. convert a hesitant or repetitive reaction to a direct and coherent one) in any way (Morris 37–38). It is very counterproductive to simply look for the content of the statement while ignoring the manner in which it is delivered. Interpreters need to recognise this fact and learning about the Speech Act Theory, illocutionary force, and pragmatics in general can help them with that.

Specifically, one of the relevant linguistic pragmatic phenomena is indirectness. While it may seem that being indirect is not something desirable in court, which can accordingly lead the interpreter to avoid it, indirectness can in fact increase the force of the speaker's message (i.e. express emotion or the level of personal involvement) and also make the message more compelling. Another pragmatic phenomenon or rather branch is dynamic pragmatics. Dynamic pragmatics focuses on the fact that assigning meaning is a dynamic procedure, which means that meaning is constructed by the hearer in a process consisting of hypothesis-formation and testing and then is arrived at on the basis of likelihood and probability (Thomas 203). Interpreters should recognise that meaning is not something given and anything they say or do not say can affect the meaning of any utterance in the minds of people present in court as they as hearers continuously try to discern it.

The next linguistic fields, which are closely related to pragmatics, are discourse analysis and sociolinguistics. *Discourse analysis* provides the knowledge of phenomena such as hesitations, repetitions, fillers, backtracking, or hedges. All of these relate to

the fact that the speaker is not exactly sure what to say or how to say it or wants to correct or alter their previous statements. Hedges, in particular, are types of expressions used to show that the speaker is not entirely confident that what they are saying is sufficiently correct or complete, e.g. kind of, sort of (Yule 148). It is essential to include these while interpreting even if they might seem inconsequential because they say a lot about the approach of the speaker.

Sociolinguistics then offers a much needed insight into language and its social variations and into how language relates to culture. Notably, it is worth for an interpreter to learn about social dialects and registers. While it is not necessary, and also quite impossible, to be an expert on all kinds of social dialects or registers, what counts is the awareness that some expressions are used in various ways by various groups of people. Moreover, it can only be helpful to try to learn prior to the court hearing whether the person whose speech is to be interpreted might use some social language variety. If so, it is advisable to consult the speaker or perhaps their friends or relatives about the appropriate approach which should be taken regarding this (Mikkelson 136).

Finally, it is *cross-cultural differences* in interactions that matter a lot in interpreting. Since they relate to language comprehension and how the use of language is perceived, there are many possible misunderstandings and misinterpretations which can arise from these differences. Cultural characteristics can then be of any nature, ranging from pragmatic phenomena, such as approaches to politeness or indirectness, to how a cultural group relates to various concepts (ideas, objects, ideals, etc.). Emotions are also culture-related as every culture has its own emotion lexicon, i.e. a framework through which individuals categorise, understand, and interpret emotions (Goddard 96). Therefore, if a speaker describes their emotions in one way, the description directly translated to the target language might not correspond accurately and might have a slightly changed undertone. Frankly speaking, it is essentially impossible to be acquainted with all culture-related characteristics of emotions. However, this issue must be kept in mind, and if the interpreter is not exactly sure how to proceed when interpreting some emotion or if the speaker's description of their emotions seems odd, follow-up questions should be asked. The same can then be said about any cross-cultural differences which may appear in court.

6.3. Case of Cuscani v. the United Kingdom

The applicant in the case of Cuscani v. the United Kingdom was arrested and later charged with various offences of fraudulently evading VAT. In the preliminary hearings neither the applicant nor his legal team requested the provision of an interpreter nor suggested that he required the services of one. During the trial the defence counsel informed the court that the applicant had considerable difficulty in communicating in English, except for very simple concepts. The counsel then invited the court to direct that an interpreter should be present at the next hearing. That however did not happen, and the trial judge asked if anyone in the court who knew the applicant was fluent in both English and Italian and could provide interpretation. The defence counsel pointed out the applicant's brother, who was therefore requested to interpret. The defendant was found guilty during this hearing. After his leave to appeal had been refused, the applicant complained that his counsel had not secured him the services of an interpreter, that his brother, who had been told to interpret, was not fluent in English, and that he had not understood the charges or the legal process. The criminal case review commission reviewed his case and was dissatisfied with the trial process but did not consider there was a possibility of another outcome. The case was later submitted to the ECHR, which found that the applicant's right to a fair trial was violated.

The court correctly found that the brother's assistance was not adequate and that an interpreter should have been present. From the linguistic point of view, it is necessary to specify that an interpreter with sufficient knowledge of relevant linguistic phenomena, which are mentioned in the subchapter above, would have ensured that the applicant's right to a fair trial was not breached in any way, at least as to the interpreting process. Moreover, it is also possible to consult linguists if an expert assessment is required regarding the reason why the court procedure adopted in this case was inadequate.

The nature of the evidence and charges against the applicant was too complex (there were multiple charges, financial evaluations and reports, etc.) for the applicant's language comprehension skills, yet it was necessary for the applicant to understand them so that he could make an informed decision to plead guilty, which he did. However, the British courts found that it was not relevant, supposedly because the applicant must have been able to comprehend at least the essence of the preliminary hearings and trial. Even if we consider that accurate, it is not sufficient. The allegedly excessive and

insignificant information or statements which the applicant missed contributed to the meaning of what was said (both explicitly and implicitly, i.e. they signalised the approach of the people involved to the case and its potential result) and could have been significant for the applicant's decision whether or not to plead guilty. Furthermore, it was virtually impossible for the applicant to understand the standard register which is used in court and also by his counsel, with whom he communicated without the presence of an interpreter in spite of the fact that the applicant's English skills were limited and the counsel neither spoke nor understood Italian.

6.4. Conclusion to Court Interpreting

The chapter described the linguistic approach to court interpreting, which is characterised by seeing interpretation as a communicative process in which an interpreter attempts to convey their understanding of a speaker's statements, and emphasised the importance of this approach. It then outlined which linguistic fields and phenomena are relevant to ensure that interpreters provide efficient interpretations which do not merely focus on the content but also properly reflect speakers' intentions and the manner in which they utter their statements.

7. Conclusion

The stated aim of this thesis was to describe how linguistics can assist in the court of law since the language and the court of law are significantly interrelated in many aspects. Generally, it was found that there are many linguistic branches, theories, and phenomena which can be applied to improve the legal process. However, the thesis also showed by examining a number of cases from the ECHR that a linguistic analysis is almost never requested to be a part of expert evidence (at least not in a way which linguists would find sufficient) and that linguistic theory is not considered as being able to provide a different point of view on the subject and nature of the cases in question.

As for the trial discourse, it was not found that linguistic theory is considered as a key to understanding and following the trial process even though it can provide much knowledge in the area. Particularly, its benefit can be seen in the ability to increase legal awareness among people who did not receive legal education. A thorough analysis of various roles, narratives, and patterns can make the interaction in court more comprehensible to them and therefore allow them to protect their rights. Not only that, the discourse analysis can also improve judges' grasp of the trial and its process by showing how attorneys create goal-oriented narratives based on factual information.

The next legal area, using language as evidence, confirmed that linguistic testimony and general assistance are often seen as controversial and they are clearly not sufficiently utilised. In the specific court case of plagiarism, there was no analysis carried out by an expert linguist even though it could have compensated for the shortcomings of the reports which were submitted to the court. The reports failed to take into account that similar parts of two texts can be similar in content but should not be similar as for syntactic and stylistic choices and that attention should be paid to inaccuracies and unnatural elements which could have resulted from the alleged translation. The reports also did not consider working with authors' texts other than with those in question, which is a natural approach of linguistics.

Another specific case then involved an alleged false confession. Linguistically speaking, the insufficiency of the court's approach lay in not assessing the speaker's language competence and subsequently not focusing on elements which would be unnatural for a person with a lower intelligence quotient or elements that could relate to the police officers' idiolects or register. The court also never considered whether

the manner of the statement corresponded with the situation and the speaker's language competence. The last specific case connected to using language as evidence dealt with hate speech. No linguistic analysis, in particular a syntactic or semantic analysis, was requested since the text did not seem ambiguous, incomprehensible, or indirect. While that was justifiable in that case, a linguistic analysis could have provided a valuable insight by employing the Speech Act Theory and other pragmatic phenomena. It would have found that the text included not only statements but other speech acts which expressed the author's opinion and tried to affect and incite readers. Moreover, the author clearly targeted certain minority groups, threatened the groups' public self-image, and presented their own group as superior.

The legal area of interviewing child witnesses showed that there is generally a lot of consideration for child witnesses. The specific court case which concerned interviewing child witnesses and assessing their statements and testimony however proved that there is a lot of room for improvement, at least as far as linguistics is concerned. In the case the child's testimony was seen as insufficient to some extent because the child was vague and unable to give details, appeared uncertain, and there were some inconsistencies in his statements. All these features of the testimony can be easily explained by linguistic theory as characteristic of children's language competence and therefore completely natural. Furthermore, the occurrence of leading questions in the interview is seen as more significant by linguistic theory than it was by the court as it must have contributed to some of the features mentioned above.

The last legal phenomenon, which was court interpreting, called attention to the fact that jurists' and linguists' views on interpreting differ. While jurists see interpreting as a simple translation, linguists regard it as a communicative process which requires at least basic understanding of linguistic phenomena to be effective. Interpreters should be aware that it is counterproductive to disregard the manner of speech acts or seemingly excessive or insignificant elements in speech as they all contribute to the overall meaning of utterances. Interpreters should also try to educate themselves in social dialects, registers, and cross-cultural differences and take the possibility of their occurrence into consideration while interpreting.

To conclude, many areas of linguistic study have something to offer, whether it is the assessment of evidence connected to language or understanding how courts work or

should work. There are some subfields which are more popular with courts than others. In general, the trend seems to be that the subfields which can give some real and concrete results, such as semantics or syntax, are more sought-after. However, there are other subfields which are even more significant from the linguistic point of view. Overall, linguistic theory and findings have great potential to become helpful to the court. It is unfortunate that this potential has not been fully utilised yet. Therefore, it is up to linguists to try and showcase the potential of linguistics by educating jurists on possible contributions and advantages.

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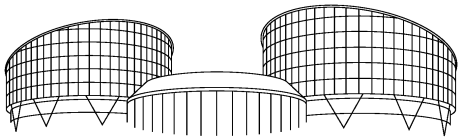
Attachments



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HASAN YAZICI v. TURKEY

(Application no. 40877/07)

JUDGMENT

STRASBOURG

15 April 2014

FINAL

15/07/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hasan Yazıcı v. Turkey,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 18 March 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 40877/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Hasan Yazıcı ("the applicant"), on 12 September 2007.

2. The applicant was represented by Mr A. Aybay and Mr H. Yazıcı, lawyers practising in İstanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 12 May 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, a professor of medicine, was born in 1945 and lives in Istanbul.

A. Background of the case

5. On 29 November 1981 a well-known journalist/columnist published an article in the daily newspaper *Cumhuriyet* in which he drew attention to the

similarities between the books *Mother's Book*[1], written by Professor Dr I.D., a prominent academic and president of the Higher Education Council between 1981 and 1992, and that of Dr Benjamin Spock entitled *Baby and Childcare*[2]. It mentioned, humorously, that the latter must have copied from Professor Dr I.D.'s book.

6. On 14 December 1997 the applicant brought to the attention of the members of the Turkish Academy of Sciences the allegation that Professor Dr I.D. had committed plagiarism in respect of the above-mentioned book.

7. On 9 January 1998 the applicant, acting as the head of the Ethics Committee of the Turkish Academy of Sciences, together with two other members of the Committee, submitted a two-page report in which they took the view that Professor Dr I.D. had committed plagiarism in his book entitled *Mother's Book*. They gave five examples in this connection. They asked the Council of the Academy of Sciences to take various actions in this regard. It appears, however, that no action was taken.

8. Similar allegations were also made by Professor Dr M.T.H. in his book *The History of the University in Turkey*, 2nd edition, 2000.

9. In December 2000 an article written by the applicant entitled 'Ethics of Science and plagiarism' was published in the Turkish Journal of Physical Medicine and Rehabilitation. In this article the applicant renewed his claim that Professor Dr I.D. had committed plagiarism in his book entitled *Mother's Book*.

B. The newspaper article

10. In the meantime, on 15 November 2000, a daily newspaper, *Milliyet*, had published a shortened version of the article that was to be published in the Turkish Journal of Physical Medicine and Rehabilitation. The headline read, in small type, "the YÖK[3] is establishing an ethics committee to examine the ethics of science of docent[4] candidates", and in larger type "D. should first be reprimanded". A photograph of Professor Dr I.D. accompanied the article.

11. In this article the applicant stated, *inter alia*, that there were many ways to deviate from the ethics of science, but that the most primitive and dangerous way was to present the work of others as one's own, that "plagiarism" was, unlike in Turkey, an action frowned upon in Western culture, and those who committed it were seen as common criminals, that such actions were punished by the laws on copyright, and that in developing

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1. The book was first published in 1952. The latest edition was published in 2000.
2. The book was first published in 1946.
3. Higher Education Council.
4. An academic appointment equivalent to associate professor.

countries like Turkey creative ideas and their products had not yet reached the sacred untouchable status they had in developed countries. In this connection, the applicant noted that the YÖK had decided to create an ethics committee to examine the publications of docent candidates. He maintained that plagiarism was so common that the YÖK's decision was well-founded, and proposed that the latter should approach its founder, I.D., and ask him to apologise for the plagiarisms he had committed. In this part of the article the applicant claimed that Professor Dr I.D.'s book *Mother's Book* was plagiarised from Dr Benjamin Spock's book *Baby and Childcare*. The applicant congratulated YÖK for the initiative of the ethics committee, but considered that it was not possible to correct "our ethics of science*"* without first dealing with this issue. Later in the article the applicant criticised the application of the statute of limitations to plagiarism and the lack of flexibility of the applicable sanction.

In a small box next to the article the applicant gave an account of his unsuccessful attempt to deal with plagiarism while head of the ethics committee at the Turkish Academy of Sciences. In this connection, he referred to the ethics committee's above-mentioned opinion regarding I.D. and the resistance it had encountered in that respect, prompting the resignation of committee members.

12. On 18 November 2000 the General Assembly of the Turkish Paediatrics Association condemned the above article published in *Milliyet*, considering it an attack on Professor Dr I.D.

C. Compensation proceedings

13. On 29 November 2000 Professor Dr I.D. ("the plaintiff") brought a civil action for compensation against the applicant before the Ankara Civil Court of First Instance on the ground, inter alia, that the applicant's assertion that the book written by the plaintiff entitled Mother's Book was plagiarised from Benjamin Spock's Baby and Childcare constituted an attack on his personality rights.

14. On an unspecified date the applicant brought a civil action for compensation against Professor Dr I.D. on the ground that some of the remarks made by the plaintiff constituted an attack on his own personality rights.

15. In the course of the proceedings before the Ankara Civil Court of First Instance that court decided to obtain an expert report with a view to establishing the veracity of the applicant's assertion that the plaintiff had committed plagiarism. It appointed two professors of paediatrics and one lawyer.

16. On an unspecified date the applicant objected to the appointment of the two professors of paediatrics on the ground that they both had close links with the plaintiff. In this connection, he stated that one of them currently

worked and the other one had worked prior to his retirement at Hacettepe University, which had been established by the plaintiff, and that they were members of the Turkish Paediatrics Association, which was also headed by the plaintiff.

17. On 18 September 2001 the expert report, which concluded that there had been no plagiarism, was submitted to the first-instance court. It held, in brief, that the content of Professor Dr I.D.'s book was "anonymous" information regarding child health and care which organisations such as WHO or UNICEF sought to have disseminated, that the plaintiff in the introduction to the book stated that the book had been compiled on the basis of questions asked by parents and conclusions reached from scientific research and experience of experts in the field, that it was natural for the two books to resemble each other – they were handbooks, and neither of them contained any bibliography or sources. In this connection, it pointed out similarities which existed in other similar handbooks, such as Mayo Clinic Family Health Book and John Hopkins Family Health Book. The experts also noted that the book in question was not a scientific publication. The report also assessed the merits of the complaint, holding that in the present case the plaintiff's personality rights had been violated.

18. On 25 October 2001 the Ankara Civil Court of First Instance (11th Division), relying on the conclusions reached by the expert report of 18 September 2001, held, inter alia, that the applicant's assertion was neither true nor topical. It ordered the applicant to pay compensation to Professor Dr I.D. in the amount of 10,000,000,000 Turkish liras (TRL), plus interest at the statutory rate applicable from the date of the impugned publication. Counterclaims by the applicant were dismissed, and those decisions subsequently became final, as the applicant did not lodge an appeal in this respect.

19. In his appeal to the Court of Cassation the applicant argued, inter alia, that two of the experts had close ties with the plaintiff and that therefore the expert report was biased. In this connection, the applicant submitted that the first expert was the plaintiff's student and that the second expert was a student of the first expert and that they were both members of the Turkish Paediatrics Association, which had already voiced its opinion on this subject. He maintained that experts should not be chosen from Bilkent University and Hacettepe University, because those universities had been set up by the plaintiff.

The applicant further argued, inter alia, that the domestic court had based its decision on the conclusions of an inadequate and biased report which contained praise for the plaintiff and that the applicant's comments were true, as had been attested to by witness and documentary evidence included in the case file, including a report dated 24 January 2001 and written by Professor Dr J.P., Professor of English Literature and Comparative Literature at Bogazici University. (This report compares the 1968 edition of *Mother's*

Book with that of Dr Spock and concludes, *inter alia*, that a number of paragraphs and sentences in the plaintiff's book were copied from Dr Spock's book by way of word-by-word translation and by using other methods considered as plagiarism. The report contains an annex with some examples.) The applicant further argued, by referring to various examples such as legal changes in domestic law provisions, that the issue of plagiarism was a topical subject.

20. On 14 May 2002 the Court of Cassation (4th Division) held a hearing and quashed the judgment of the first-instance court. In its decision it held that the first-instance court should first determine whether the allegations of plagiarism were well-founded. In this connection the court, inter alia, found the experts' report inadequate and not in compliance with the rules prescribed in Article 276 of the Civil Code of Procedure.

21. On 11 November 2002 the Court of Cassation dismissed the plaintiff's request for rectification of its decision.

22. When the case was remitted back to the first-instance court, the latter appointed as experts Professor Y.A., professor of paediatrics, Professor S.D., professor of paediatrics, and Professor Dr A.E., professor of English. These appointments were made on 4 February 2003. All these experts worked at Gazi University.

23. On 21 April 2003 the experts' report, which concluded that there had been no plagiarism, was submitted to the first-instance court. The experts compared the plaintiff's book with that of Dr Spock as translated into Turkish by Zuhal Avci, and noted, *inter alia*, that there was no similarity between the manner in which the two books were conceptualised and shaped, namely the number of pages, picture on the cover, and section headings. Underlining the differences in each section of the book, the experts also concluded that there were no similarities as regards the contents of the book. The experts noted that it was natural for certain information such as Apgar scales or symptoms of various childhood illnesses to be similar. In this connection, they held that these were not the "original views" of Dr Spock.

24. In the course of the proceedings the applicant objected to the report, particularly on the ground that the first two experts worked with a person close to the plaintiff and that they were themselves members of the Turkish Paediatrics Association.

25. Following objections to the report by the applicant, on 1 October 2003 the first-instance court appointed three new experts for a second report.

26. On various dates two of the court-appointed experts, namely Professor Dr D.B. and Professor Dr B.E., both professors of English language and literature at Hacettepe University, resigned because of a potential conflict of interest.

27. On 22 December 2003 the experts' report prepared by Professor Dr N.A., professor of paediatrics at the Ankara University School of Medicine, Professor Dr S.A., professor of paediatrics at the Ankara

University School of Medicine, and Professor Dr G.C., professor of English language and literature at Atılım University, was submitted to the court[1].

28. In this report, the experts submitted that they had compared the first edition of the plaintiff's book, published in 1952, with a copy of Dr Spock's book as originally published. In sum, the experts held that the plaintiff's book was a popular health book, that it was not a word-for-word translation or citation from Dr Spock's book, that in the first edition of his book the plaintiff referred at the end of his book to Dr Spock and J.H. Kenyon as regards the methodology he had followed, that there were sections in the book which did not exist in Dr Spock's book, and that the plaintiff's book contained national-specific matters and various laws and customs, but that in certain parts of the book there were paragraphs where the translation method had been used and which were similar to Dr Spock. As regards this last point the experts considered that these parts did not concern scientific information but anonymous information known to all paediatricians, and that following these paragraphs the plaintiff had referred to national- specific matters. They further considered that certain conditions required for scientific books, such as citation of sources, were not required for books published at that time, and that an acknowledgement only in the form of thanks sufficed.

The experts concluded that the book written by the plaintiff was a popular health book, that in its first edition he had thanked those whose books had inspired him, and that the book was in conformity with the rules of the time of its publication. In this connection, they noted that even today reference by full citation was mostly applicable only to scientific and academic books, and that even if such ethical rules should be held to be applicable to popular health books a book written in 1952 should not be judged by current standards.

29. On 29 December 2003 the applicant lodged a criminal complaint with the Ankara public prosecutor's office, claiming that the transcript of the court decision of 1 October 2003 regarding the appointment of experts, namely Professor Dr G.C., had been tampered with.

30. On 25 February 2004 the Ankara Civil Court of First Instance (11th Division) ordered the applicant to pay compensation to Professor Dr I.D. in the amount of 10,000,000,000 Turkish liras (TRL), plus interest at the statutory rate applicable from the date of the impugned publication.

In its decision, the court began by stating that, after the parties had asked the court to appoint experts, it had requested a list of qualified experts from all universities in Ankara and that it had appointed experts who had not taken part in the academic debate between the parties. It further added that

[1]. In the expert report Prof. Dr. G.C. represents herself as professor of English language and literature at Atılım University. However, it seems she was also working at Hacettepe University at the material time, as attested to by the official document submitted by that University suggesting her to the first-instance court.

following the applicant's objection to the first report the court had commissioned a second expert's report.

The court, referring to the evidence in the case file, held that the book written by the plaintiff was not a copy of the book written by Dr Spock, that it was a genuine publication, and that therefore the applicant's assertion was not correct. It found therefore that there had been an unlawful attack on the plaintiff's personality rights and scientific career.

31. The applicant appealed, complaining, inter alia, that one of the experts, Professor Dr G.C., was working at Hacettepe University, which gave rise to concerns as to her impartiality.

32. On 19 October 2004 the Court of Cassation (4th Division) held a hearing and quashed the judgment of the first-instance court. The court, after referring to the importance of citation of sources in publications, especially scientific publications, held, relying on the information provided in the experts' report, that a mere reference to Dr Spock, as regards the methodology followed in the book, in the original edition, was not sufficient to consider that the plaintiff had made a proper reference and that, in addition, in subsequent editions there was no such reference in the book in question. It therefore found no unlawfulness in the applicant's remarks and held that the case should be dismissed.

33. On 8 November 2005 the Ankara Civil Court of First Instance (11th Division) decided not to abide by the decision of the Court of Cassation, and ordered the applicant to pay compensation to Professor Dr I.D. in the amount of 10,000,000,000 Turkish liras (TRL), plus interest at the statutory rate applicable from the date of the impugned publication. In its decision, it held, inter alia, that experts had been appointed in accordance with the previous decision of the Court of Cassation, that these experts had concluded that there had been no plagiarism, and that the court could not draw conclusions which were contrary to the assessment of the experts. The court held that the applicant had suggested that the plaintiff had committed plagiarism, which under the disciplinary regulation of the YÖK required the heavy sanction of expulsion from the university. It underlined in this connection that everyone had the right to criticise a person exercising a public function. However, criticism which overstepped objective boundaries and became unjust vilification or belittling in bad faith was unlawful. In the circumstances of the present case, the court considered that the plaintiff's personality rights had been infringed.

34. In his appeal to the Plenary Session of the Court of Cassation, the applicant underlined, *inter alia*, that the first-instance court had failed to properly assess the decision of the Court of Cassation. In particular, the court had failed to address the fact that there were parts of the book which were translations, and that a reference to Dr Spock in the first edition, which in any event does not figure in later editions, could not be considered a proper citation. In this connection, the applicant underlined that using a methodology

adopted in another book and repeating the same words and paragraphs cannot be considered provision of anonymous information, and that there was no scientific basis for the first-instance court's view that plagiarism only applied to original ideas.

The applicant repeated, *inter alia*, that there was no unlawfulness in his assertion that the plaintiff had in his book plagiarised from Dr Spock's book by way of translation and quotations without providing proper references, that this fact was already known by the public as such allegations had been previously made by others and the plaintiff had failed to sue them, and that the voicing of this fact was in the public interest.

The applicant further criticised the wording of the decision, in particular the use of capital letters to emphasise certain words, and others.

35. On 10 May 2006 the Court of Cassation (plenary session), by a majority, upheld the judgment of the first-instance court. In its decision, the court held, *inter alia*, that all the experts' reports included in the case file since the beginning had insistently underlined that both books were handbooks, that they contained anonymous information and not original ideas developed by the authors, and that therefore it was not necessary to provide references therein. It further considered that, contrary to the experts' reports, the applicant had since 1998 brought similar criticisms against the plaintiff, leading sometimes, as in the present case, to unlawful attacks on the plaintiff's personality rights. In the present case the applicant in the article in question had insulted the plaintiff and attacked his personality rights instead of assessing the establishment of the ethics committee by the YÖK. The court considered that there was not even the smallest connection between the subject of the article and the plaintiff. It therefore found that the subject was not topical. The court maintained that there was no reason why the applicant would include the plaintiff in this subject. It therefore held that the incident, as established by experts' reports, was not only false but also not topical.

The court further noted that when it had first quashed the decision of the first-instance court, the Court of Cassation (4th Division) had held that the veracity of the allegation was to be established by a report written by experts on the subject and that the first-instance court should make its decision on the basis of that report. It therefore held that if the report concluded that there had been no plagiarism, the applicant's article - as it was not topical - would constitute an attack on personality rights and an award of compensation would be required.

It considered that since the first-instance court had decided to abide by the above decision of the Court of Cassation there was an acquired procedural right in favour of the plaintiff. It considered, however, that the 4th Division, in its second decision to quash the first-instance court judgment, had revised its view and, contrary to the experts' report, had taken the view that the book was a scientific publication. In this connection, the court referred to its case-law in which it had previously held that where an issue required expertise

judges could not rule on it on the basis of their own personal views and opinions. It underlined that this case-law was also applicable to the Court of Cassation. Otherwise, the acquired procedural right would be violated.

The court underlined the conditions that must be met for compensation to be awarded for an attack on personality rights in the press: unlawfulness, fault, damage and interconnectedness between reason and conclusion. It further held that for a published criticism or news item to be held unlawful there must be a violation under one of the following criteria: truthfulness, topicality, public interest, public good and interconnectedness between the subject, form and idea.

The court noted that in the present case, according to experts' reports, the article published in *Milliyet* was not true, that the article was not topical, and the opinions expressed in the article exceeded the limits of criticism and insulted the plaintiff.

It further found that the 4th Division's assessment referred to above was contrary to its case-law regarding the assessment of experts' reports.

The court therefore found that the first-instance court's decision to resist the 4th Division's judgment was justified. It transferred the case back to the 4th Division of the Court of Cassation for determination of the amount of compensation.

Two dissenting members (judges sitting on the bench of the 4th Division) considered, *inter alia*, that in the instant case the conditions of public interest, topicality and veracity had been met, and that the form and the words used by the applicant in his criticism of an important public figure and academic was not contrary to law.

36. On 27 September 2006 the Court of Cassation (plenary session) dismissed a request by the applicant for rectification of its decision.

37. On 16 November 2006 the Court of Cassation (4th Division), finding the amount awarded to the plaintiff excessive, reduced the amount of compensation to 2,500 new Turkish liras (TRY).

38. On 14 March 2007 the Court of Cassation (4th Division) dismissed the parties' request for rectification of its decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. A description of the relevant domestic law at the material time can be found in *Sapan v. Turkey*, no. 44102/04, §§ 24-25, 8 June 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6, 10 AND 14 OF THE CONVENTION

40. The applicant complained that there had been an unjustified interference with his freedom of expression, in breach of Article 10 of the Convention. In addition, in the application form, the applicant made lengthy and detailed submissions criticising the manner in which the proceedings had been conducted before the first-instance court, especially the appointment of experts and admission of evidence and the manner in which the first-instance court and the Court of Cassation had assessed the evidence and the applicable procedural rules. In this connection, the applicant emphasised what he described as the inappropriate way in which the domestic courts had praised the plaintiff in their decisions. In his view these flaws in the proceedings demonstrated that the domestic courts lacked the requisite impartiality *vis-à-vis* the plaintiff, and that they had been unduly influenced by his status. He claimed a violation of his rights under Articles 6 and 14 of the Convention.

41. The Court considers that the applicant's complaints should be examined under Article 10 alone, the relevant parts of which read:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ..."

A. Admissibility

42. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The Government maintained that there had been no breach of the applicant's right to freedom of expression in the instant case. In this connection, they submitted that interference with the exercise of the applicant's right to freedom of expression had been in accordance with the second paragraph of Article 10. The Government submitted that the

impugned interference had been based on Article 24 of the Civil Code and pursued the legitimate aim of protecting the reputation and rights of others. They referred to various passages of the domestic court decisions to underline that the applicant had made a serious accusation against a public official and that this accusation had been examined by the domestic courts and found to be unfounded. The outcome of the proceedings was therefore necessary and proportionate to the legitimate aim pursued, including the amount of compensation awarded.

44. The applicant maintained his allegations. In particular, by referring to a number of Court judgments, notably *Sorguç v. Turkey* (no. 17089/03, § 35, 23 June 2009), *Başkaya and Okçuoğlu v. Turkey* ([GC], nos. 23536/94 and 24408/94, § 65, ECHR 1999-IV), *Oberschlick v. Austria* (no. 1) (23May 1991, § 57, Series A no. 204) and *Lingens v. Austria* (8 July 1986, §§ 41-42, Series A no. 103), he underlined that he was an academic who had exercised his freedom of expression in the area of freedom of the press, and that he was acting in the public interest by informing the public about a public figure. In this connection, the applicant emphasised that the plaintiff had been the founder of the Turkish Paediatrics Association and the Higher Education Council, and that his accusations had previously been brought to the attention of the public by a prominent journalist and confirmed by the Ethics Committee of the Turkish Academy of Sciences, which had been headed by the applicant. In addition, he submitted that the book contained outdated information on baby sleeping positions (Dr Spock had updated this part in his 1998 edition but the plaintiff had not) which demonstrated that plagiarism, apart from being unethical, also constituted a public threat. The applicant asserted the truthfulness of his accusation regarding plagiarism and considered that he had not been given the opportunity to prove it because of the biased expert reports. He further criticised the domestic courts' assessment that citations were not necessary as the book was a handbook, and lamented that the domestic courts had sacrificed his freedom of expression for the sake of protecting the plaintiff's reputation.

2. The Court's assessment

45. The Court considers that the final judgment given in the compensation case brought by Mr I.D. for the protection of his personal rights interfered with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

a) Prescribed by law and legitimate aim

46. It accepts that the interference in question was prescribed by law, namely, Article 24 of the Civil Code, and that it pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2.

b) Necessary in a democratic society

47. In the present case what is in issue is whether the interference was "necessary in a democratic society".

48. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among others, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and the references cited therein).

49. The test of "necessary in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, for example, *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 41, 21 February 2012).

50. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts, but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued". In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV, and *Mengi v. Turkey*, nos. 13471/05, and 38787/07, § 48, 27 November 2012).

51. In this connection, the Court reiterates that in order to assess the justification of an impugned statement, a distinction needs to be made between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts.

However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (see, for example, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI).

52. Moreover, when called upon to examine the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8 (see *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011).

53. Various factors, such as the contribution made by the article to a debate of general interest, how well known the person is and the subject of the publication, the previous conduct of the person concerned, the content, form and consequences of the publication, and the severity of the sanction imposed, are taken into account by the Court in its balancing exercise (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 89-95, 7 February 2012, and *Mengi*, cited above, § 52).

54. Finally, the Court reiterates that the procedural guarantees afforded to the defendants in defamation proceedings are among the factors to be taken into account in assessing the proportionality of the interference under Article 10. In particular, it is important that the defendant is afforded a realistic chance to prove that the factual basis for his allegations was true. A lack of procedural fairness and equality may give rise to a breach of Article 10 (see, for example, *Andrushko v. Russia*, no. 4260/04, § 53, 14 October 2010, and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II).

55. Turning to the facts of the case, the Court notes that the applicant was an academic who was also the former head of the ethics committee of the Turkish Academy of Sciences. The subject of plagiarism therefore was of particular interest to him, and, as his previous attempts before the Turkish Academy of Sciences attest, the applicant firmly believed that the plaintiff has committed plagiarism in his book *Mother's Book* (see paragraphs 6 and 7 above). In this connection, the Court underlines the importance of academic freedom, which enshrines academics' freedom to freely express their opinion about the institution or system in which they work, and freedom to distribute knowledge and truth without restriction (see *Sorguç v. Turkey*, no. 17089/03, § 35, 23 June 2009).

56. It observes that the plaintiff in question was a highly renowned academic who had assumed an important public function in the field of education by heading the Higher Education Council between 1981 and 1992 and had set up two important universities in Turkey. Therefore, at the time of the publication of the article he was well known as a public figure. He was

thus expected to tolerate a greater degree of public scrutiny which may have a negative impact on his honour and reputation, particularly within the context of the subject matter at issue, than any private individual.

57. The applicant was ordered to pay damages for defamation on account of an article published in *Milliyet* on 15 November 2000 in which he had alleged that the plaintiff had committed plagiarism in his book entitled *Mother's Book*. The allegation in question was raised by the applicant in the course of the debate regarding the introduction of an ethics committee by the Higher Education Council. The Court finds that the subject matter of the article in question, including the applicant's view that the efforts of the Higher Education Council would be fruitless if they did not tackle the plagiarism committed by its former head, concerned important issues in a democratic society which the public had a legitimate interest in being informed about and in particular having regard to the position of the plaintiff vis-à-vis the institution concerned, the Court finds that the applicant's allegation of plagiarism committed by him was of public interest. In this connection, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on debate on questions of public interest (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 102, ECHR 2013 (extracts)).

58. The Court notes that, in the course of the domestic proceedings, the first-instance court repeatedly found that there had been an unlawful attack on the plaintiff's personality rights. In this connection, it emphasised that the applicant's allegation was untrue (see paragraphs 18, 30 and 33 above). Conversely, in its decision on 19 October 2004, the 4th Division of the Court of Cassation quashed the first-instance court judgment on the ground that the remarks made by the applicant in the article in question were not unlawful (see paragraph 32 above). The issue was examined by the Plenary Session of the Court of Cassation, which concluded that the applicant's allegations in the article published by *Milliyet* were untrue and that the article was not topical, and that the opinions expressed in the article exceeded the limits of criticism and amounted to insult (see paragraph 35 above).

59. At the outset, the Court observes that the Plenary Session of the Court of Cassation did not, in its analysis, attach any importance to the applicant's right to freedom of expression, nor did it balance it in any considered way against the plaintiff's right to reputation. In particular, the court did not distinguish statements of fact from value judgments, nor did it give any proper consideration as to the public interest in the publication of the article in question, including the allegation of plagiarism directed at the plaintiff. Other considerations, such as the impact of the article on the plaintiff's personal and private life and the fact that similar allegations akin to the one voiced by the applicant had already been made in the public domain, were also absent from the reasoning of the judgment of the Plenary Session of the Court of Cassation.

60. Rather, the Court notes that the central issue before the Plenary Session of the Court of Cassation was the truthfulness of the applicant's allegation of plagiarism and whether this allegation was topical.

61. As regards the first issue the Court notes that the statements made by the applicant so far as they concerned the allegation that the plaintiff had plagiarised in his book *Mother's Book* from Dr Spock's book *Baby and Childcare* were clearly allegations of fact and not value judgments, and as such susceptible to proof. This is not contested by the parties. In fact, the applicant complains that he was not given the opportunity to prove the truth of his statements because of biased expert reports.

62. The Court reiterates that people prosecuted as a result of comments they make about a topic of general interest must have an opportunity to absolve themselves of liability by establishing that they acted in good faith and, in the case of factual allegations, by proving they are true (see *Mamère v. France*, no. 12697/03, § 23, ECHR 2006-XIII, and the cases referred to therein).

63. In this connection, the Court notes that, in various contexts, it has held that a lack of neutrality on the part of a court-appointed expert may in certain circumstances give rise to a breach of the principle of equality of arms inherent in the concept of a fair trial (see, for example the Court's considerations under Article 6 in *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47 et seq, 5 July 2007; under Article 8 in *Lashin v. Russia*, no. 33117/02, § 87 et seq, 22 January 2013; and under Article 2 in *Bajić v. Croatia*, no. 41108/10, § 95 et seq, 13 November 2012). Likewise, it considers that where the opinion of an expert is likely to play a decisive role in the proceedings the expert's neutrality becomes an important requirement which should be given due consideration in the Court's assessment as to the procedural guarantees afforded under Article 10 to defendants in defamation proceedings.

64. In the present case, there is no doubt that the domestic courts relied exclusively on court-appointed experts' opinions, the neutrality of which was challenged by the applicant, when deciding on the truthfulness of the applicant's allegations.

65. The Court notes that, in the course of the proceedings, the first-instance court commissioned three expert reports. As regards the first experts' report the Court underlines that both the composition of the panel and the quality of the report were criticised by the Court of Cassation and this led to the quashing of the first-instance court's decision on 14 May 2002 (see paragraph 20 above). As regards the second expert report, it was set aside by the first-instance court following objections from the applicant (see paragraph 25 above). Despite the above, the Court observes that the Plenary Session of the Court of Cassation relied on the conclusions of those reports in its judgment (see paragraph 35 above).

66. As regards the third expert report, the first-instance court ended up appointing a staff member from Hacettepe University, one of the universities founded by the plaintiff (see paragraph 31 above), and this following the resignation of two previously appointed experts both working at the same university (see paragraph 26 above). The Court observes that this report found that various parts of the book were translated parts of Dr Spock's book. However, the Plenary Session of the Court of Cassation failed to assess whether this fact, namely that certain parts of the book were translated from Dr Spock's book was sufficient for the purposes of establishing the applicant's good faith or truthfulness of his assertion. It underlines, in this respect, that it is not the Court's task to rule on the issue of the veracity of the applicant's allegations of plagiarism. Rather, its examination of the issue is essentially from the standpoint of the relevance and sufficiency of the reasons given by the domestic courts in the proceedings in question and whether the standards applied, including procedural guarantees, were in conformity with the principles embodied in Article 10. For the Court, there is a lack of clarity in the decision of the Plenary Session of the Court of Cassation as to what is considered as plagiarism under domestic law and practice and the standard of proof the domestic courts require under Turkish law to prove such allegations before the domestic courts.

67. In this connection, the Court also takes note that the evidence submitted by the applicant with a view to proving his allegations, in particular the private expert report (see paragraph 19 above), was not assessed by the Plenary Session of the Court of Cassation, and no reason was provided as to why this was so.

68. In so far as the Plenary Session of the Court of Cassation attached some importance in its examination to the question of whether the applicant's statements were topical, the Court observes that undue weight was given to the fact that the applicant had previously voiced similar allegations against the plaintiff. In its opinion this cannot alter the fact that the applicant's allegation, that the former head of the Higher Education Council had committed plagiarism in one of his books, was closely linked to the subject matter of the article, namely the establishment of an ethics committee by the Higher Education Council in order to tackle plagiarism in academia, and was thus topical.

69. In the light of the above considerations, and notwithstanding the national authorities' margin of appreciation, the Court, given the disregard by the Plenary Session of the Court of Cassation of elements that should be taken into account in the balancing exercise in a case which involves a conflict between the right to freedom of expression and the protection of the reputation or rights of others, as well as the lack of procedural guarantees, considers that the interference with the applicant's freedom of expression was not based on sufficient reasons to show that the interference complained of was necessary in a democratic society for the protection of the reputation and

rights of others. This finding makes it unnecessary for the Court to pursue an examination in order to determine whether the amount of compensation which the applicant was ordered to pay was proportionate to the aim pursued. It follows that there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

70. The applicant further complained that the length of the compensation proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

71. The Court observes, at the outset, that a new domestic remedy has been established in Turkey since the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). The Court observes that in its decision in the case of *Turgut and Others v. Turkey* (no. 4860/09, 26 March 2013), it declared a new application inadmissible on the ground that the applicants had failed to exhaust the domestic remedies, as a new domestic remedy had been set up. In so doing, the Court in particular considered that this new remedy was, *a priori,* accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

72. The Court further notes that in its decision in the case of *Ümmühan Kaplan* (cited above, § 77) it stressed that it could pursue the examination of applications of this type which have already been communicated to the Government. It further notes that in the present case the Government did not raise an objection in respect of the new domestic remedy.

73. In view of the above, the Court decides to pursue the examination of the present application. However, it notes that this conclusion is without prejudice to an exception that may ultimately be raised by the Government in the context of other communicated applications (see *İbrahim Güler v. Turkey*, no. 1942/08, § 39, 15 October 2013).

74. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

75. The Government claimed that the proceedings in question started on 25 October 2001 and ended on 14 March 2007, and thus lasted five years and five months. In particular, they argued that the case was a complex one, concerning accusations of plagiarism from a medical book written in English, and required meticulous examination by the domestic courts. In this connection, they submitted that a certain amount of time had elapsed when the panel of experts was being set up, especially as the applicant had contested the composition of that panel. The Government considered that there was no period of inactivity attributable to the domestic courts.

76. The applicant maintained his allegations. In particular, he underlined that the proceedings had lasted for six years and five months, and that the main reason for its length had been the attitude of the first-instance court in favour of the plaintiff, and not the complex nature of the case claimed by the Government.

2. The Court's assessment

a) Period to be taken into consideration

77. The Court considers that the period to be taken into consideration in determining whether the proceedings satisfied the "reasonable time" requirement laid down by Article 6 § 1 began on 29 November 2000, when Mr I.D. lodged an action for compensation against the applicant before the Ankara Civil Court of First Instance, and ended on 14 March 2007, when the Court of Cassation dismissed the applicant's request for rectification of its judgment. They therefore lasted approximately six years and a little over three months at two levels of jurisdiction, which examined the case several times each.

b) Reasonableness of the length of the proceedings

78. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Oyal v. Turkey*, no. 4864/05, § 85, 23 March 2010, and the cases referred to therein).

79. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, in particular, *Ümmühan Kaplan* (cited above, §§ 46-48)).

80. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the

length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

81. There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

83. The applicant claimed to have suffered pecuniary damage. In this connection, he submitted that he had paid 8,365 Turkish liras (TRY) (approximately 4,682 Euros (EUR)) to the plaintiff, and that he had been deprived of legal interest on this amount since that time. The applicant further claimed TRY 15,000 (approximately EUR 6,886) in respect of non-pecuniary damage.

84. The Government contested the claims. In particular, they considered that there was no causal link between the pecuniary damage claimed and the alleged violation of the Convention. The Government further found the amount claimed in respect of non-pecuniary damage exorbitant.

85. The Court is satisfied that there is a causal link between the pecuniary damage referred to by the applicant and the violation of the Convention found above. Therefore, the Court finds that the reimbursement by the Government of the compensation paid by the applicant, plus the statutory interest applicable under domestic law, running from the date when the applicant paid it, would satisfy his claim in respect of pecuniary damage (see *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 57, 21 February 2012).

86. It further accepts that the applicant suffered distress and frustration as a result of the violations of the Convention which cannot be adequately compensated by the findings in this respect. Making an assessment on an equitable basis, the Court awards the applicant 6,500 euros (EUR) under this head.

B. Costs and expenses

87. The applicant also claimed TRY 4,199.039 (approximately EUR 1,928) for costs and expenses incurred before the domestic courts. This sum included court expenses, postage fees and travelling expenses. Relevant receipts have been provided to the Court. The applicant made no specific claims for costs and expenses incurred before the Court.

88. The Government contested the claims. In particular, they considered that there was no evidence to demonstrate that the travel expenses claimed were incurred in connection with the case.

89. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for costs and expenses in the domestic proceedings.

90. It makes no award, in the absence of any specific claim or supporting documents, in respect of costs and expenses incurred before the Court.

C. Default interest

91. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by 6 votes to 1, that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the compensation paid by him, plus the statutory interest applicable under domestic law, running from the date of that payment, and to pay the applicant within the same period EUR 6,500 (six thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable on these amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge R. Spano is annexed to this judgment.

G.R.A.
S.H.N.

PARTLY DISSENTING OPINION OF JUDGE SPANO

I.

1. I agree with the Court that the applicant's right to freedom of expression under Article 10 has been violated on the facts of this case. However, as regards his complaint under Article 6 § 1, that the length of the domestic proceedings was unreasonable, I respectfully dissent.

2. According to the well-established case-law of the Court, when examining complaints of this kind under Article 6 § 1, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France*, [GC], 30979/96, § 43, 27 June 2000).

3. In many cases dealt with by the Court, it is evident right at the outset that the length of proceedings at domestic level has been excessive and no reasonable justification can be provided by the respondent Government. This applies especially in those contracting States where the Court has previously found systemic and structural problems within the judicial systems in relation to the length of proceedings (see paragraph 79 of the judgment and the case cited therein). In such cases, the Court is justified in applying the *Frydlender* criteria in a way that takes account of the effective and expeditious use of the Court's limited resources, thus limiting somewhat its reasoning in the light of the particular facts of the case.

4. However, the Court must, in my view, always be mindful that the test to be applied under Article 6 § 1 demands, in principle, a case-by-case approach. If the Government can, in a particular case, provide plausible justifications for the length of the proceedings in question, it is incumbent on the Court to examine on the basis of the above-mentioned criteria (see paragraph 2 above) whether there has been a violation of Article 6 § 1 on the facts. This applies, at least, where the total period to be taken into consideration does not, *prima facie*, lead to the conclusion that it is evident that the length of the domestic proceedings has been excessive. Hence, a more in-depth examination of the facts is warranted.

In my view, this is such a case.

II.

5. The Court correctly concludes (see paragraph 77) that the proceedings in this case lasted approximately six years and a little over three months. As can be inferred from the lack of reasoning in paragraph 79, the Court held that this time frame, in and of itself, warranted the conclusion that an Article 6 § 1 violation had occurred, taking into account similar cases previously decided involving complaints of this type against the respondent Government.

6. The time-line of the judicial proceedings in this case is described in detail in paragraphs 13-38. In my view, the following chronological summary of events will demonstrate that if one examines the facts on the basis of the *Frydlender* criteria, as mentioned in paragraph 2 above, one should conclude that the length of the proceedings, examined in their entirety and in context, was *reasonable* within the meaning of Article 6 § 1 of the Convention.

III.

7. The plaintiff in this case brought a civil action against the applicant for compensation on 29 November 2000. In examining the length of the ensuing proceedings it is important under the applicable test to note that in the present case the plaintiff's personality rights and the applicant's freedom of expression were implicated. It was therefore clearly justified for the domestic courts to pursue the matter in a comprehensive and diligent manner. In the course of the proceedings the first-instance court thus obtained experts' reports, but the applicant objected to the appointment of the experts in question and his actions in this regard undoubtedly had some effect on the timely progress of the proceedings.

8. On 25 October 2001, eleven months after the civil action was brought, the first-instance court gave judgment in the case, finding for the plaintiff.

9. The applicant appealed on an unspecified date. Just under seven months after the judgment of the first-instance court, the Fourth Division of the Court of Cassation gave judgment, quashing the lower court judgment. The plaintiff sought rectification of that judgment, which was rejected on 11 November 2002, just under seven months from the appellate judgment on the merits.

10. Three months later, on 4 February 2003, the first-instance court appointed new experts in the light of the judgment of the Fourth Division of the Court of Cassation, and on 21 April 2003, just over two and a half months later, a new experts' report was submitted to the Court. The applicant again objected to the report and the appointment of the experts. Thus, on 1 October 2003, just over five months after the submission of the second experts' report, the first-instance court appointed three new experts. Just over one month later, on 22 December 2003, the new experts' report was submitted. Two months later, on 25 February 2004, the first-instance court gave judgment again.

11. The applicant appealed again. Just over seven months later, on 19 October 2004, the Fourth Division of the Court of Cassation gave judgment a second time and, again, quashed the judgment of the first-instance court, in the applicant's favour. Just over a year later, on 8 November 2005, the first-instance court decided to disregard the judgment of the Fourth Division of the Court of Cassation and ordered the applicant to pay compensation.

12. Naturally, the applicant appealed a third time to the Court of Cassation, his appeal, according to domestic law, coming before the Plenary Session of the Court of Cassation. The Plenary Session gave judgment against the applicant on 10 May 2006, just over a year and a half after the first-instance court had disregarded the judgment of the Fourth Division. However, it is of some significance in this respect that the date of the applicant's appeal to the Plenary Session is unspecified in the documents provided to the Court, nor is there any information on whether and when observations were submitted by the parties before the Plenary Session.

13. The applicant then requested the rectification of the judgment of the Plenary Session, which rejected his plea on 27 September 2006, just over four months after giving judgment in May of the same year. Just over two months later, on 16 November 2007, the Plenary Session decided, however, to reduce the amount of compensation. Lastly, four months later, on 14 March 2007, the Plenary Session rejected a request from both parties to rectify its judgment.

IV.

14. The length of the proceedings in the present case was, viewed objectively, rather long. However, the applicable test under the Court's case law requires an examination on whether delays that may be attributed to the State were the predominant cause or whether other factors were at play. In my view, it is clear that taking into account the complexity of the factual and legal questions at stake, the need to obtain experts' reports and the objections made by the applicant in that regard, the difficulty of the issue of plagiarism in the Turkish legal system and its ramifications within the academic environment, and, lastly, the issues involved for both parties, the Government have adequately demonstrated that the length of the proceedings was, taken in its entirety and in context, justified.

In sum, I am of the opinion that there has been no violation of Article 6 § 1 in the present case.