CHAPTER 8

Context and genre in judicial argumentation

A case-study

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This chapter takes into consideration the role of context in the production of judicial texts, focusing on judgements as a genre which displays special argumentative and textual characters. The purpose of the research, hinged on a case study, is to investigate how deeply and in which ways some features of the professional community generating an argumentative text – namely, the legal system and the traditional rules typical of the judicial community in the Italian tradition – influence both the logic and the linguistic structure.

The case study combines quantitative and qualitative analysis. Frequency lists and concordance lines produced with the Wordsmith Tools software are analysed and compared with data emerging from qualitative investigation in a discourse-based perspective, focusing on the actual use of argumentation. The analysis shows how the judge develops the argumentative line, taking a stand in the interlocutive dimension, and thus complying with legislative and discursive norms typical of the Italian judicial context.

1. Introduction

This chapter focuses on the argumentation in the juridical context, and in particular on judgements in the Italian tradition. To sketch the framework of the analysis, it is useful to start from a very general notion, namely the idea that – despite the conviction of some researchers suggesting that every instance of discourse has an argumentative component (Plantin, 1996; Amossy, 2009) – some discourse communities are inherently argumentative and there are some discourse genres in which the argumentative type is more systematically represented. In this perspective, legal discourse has an obvious argumentative component, which has been recognised in the development of rhetoric and argumentation studies.

Within the legal sector, argumentation plays a crucial role in judiciary texts – which in the case of judgements has been recognised as a fundamental principle, avoiding groundless and arbitrary decisions. Beyond this universal agreement,

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however, some features of the professional community generating the argumentative texts – namely, the legal system and the traditional rules typical of a given culture and language area – can influence both the logic and the linguistic structure of texts produced in the realm of a stable and highly recognisable genre.

The aim of this research is to ascertain how deeply the legal context influences the production of judgements in the Italian legal and judicial tradition, in which generic norms – including marked linguistic choices and typical logic structures – play a very important role. In Section 2, the interconnection between argumentation and legal discourse will be briefly sketched (2.1); then, the role of context in argumentation studies will be taken into consideration (2.2), with special attention for judgements in Italy (2.3). This discussion will introduce the case study investigated in Section 3: on the basis of a recent judgement dealing with language policy, it will be shown how the arguments (and counterarguments) put forth by the parties are exploited and evaluated by the judge. In this respect, the analysis of the case study will highlight the importance of textual strategies adopted to take a stand in the interlocutive dimension. In the conclusions (4), the special nature of judicial argumentation in Italian judgements will be emphasised, showing the crucially discursive and dialogic character of argumentation in this generic context.

2. Argumentation and the judicial context

2.1 Historical background

As mentioned above, the relevance of argumentation in the legal sector is particularly evident in the judicial context, as can be easily proved not only in a descriptive synchronic perspective but also in historical terms. The very origin of rhetoric – which implied the persuasive use of arguments – is linked to the judiciary context, in 5th century b.C. Sicily; moreover, one the three genres of rhetoric discourse codified by Aristotle (and later adopted also in Rome) is the *judicial*.

The theoretical relevance of judicial argumentation is confirmed by the wide corpus of fundamental texts produced in this area, both in the ancient world and in modern times. The works of famous rhetoricians – Cicero in the first place – are linked to their judicial activity, and have become prototypical examples of argumentative practice. The re-birth of rhetoric in the 20th century is also intertwined with juridical theory and legal activity. Suffice to remember that Ch. Perelman, the founder of New Rhetoric (Perelman & Olbrechts-Tytecha, 1958), started his research in the legal sector and published a seminal work totally devoted to juridical argumentation (Perelman, 1976). Perelman's ideas in this field are frequently cited, and have been

the starting point for further theoretical elaboration as well as practical application to different contexts (Golden & Pilotta, 1986; Haarscher, 1993).

Also within the pragma-dialectical framework, which has played a fundamental role in the development of argumentation theory, legal argumentation has been devoted special attention (Feteris, 1999; Dahlman & Feteris, 2012). Despite the purely theoretical approach which initially characterized the reconstruction of a *critical discussion*, the field of law has been one of the first actual contexts to be analysed with a view to emphasising the possible application of ideas developed in argumentation theory. Feteris (2001) gives a very useful survey of previous research, starting from a rhetorical approach based on the acceptability of arguments and on their effectiveness for the audience to which they are addressed, and then describing the "dialogical approach", in which argumentation is considered from the perspective of a discussion procedure, as "a form of rational communication for reaching a rational consensus by means of discussion" (Feteris, 2001, p. 206). According to the author, in a research program of legal argumentation, different components should be taken into consideration, namely the philosophical, the theoretical, the analytical, the empirical and the practical components. This implies that, beyond the normative foundation of a theory of legal argumentation (philosophical component), the structure of arguments, criteria for their acceptability and fallacies should be investigated (theoretical component). Moreover, the analytical component shows how to reconstruct legal argumentation, emphasising a dialogical approach and focusing on analogy and *e contrario* in the first place. In the field of law, however, analyses based on theoretical assumptions and models are integrated by empirical research, which investigates actual legal practice and, focusing on case studies, shows how argumentation procedures in real life correspond to or conflict with theoretical standpoints. Research both in theoretical and empirical aspects is the prerequisite for a practical approach, which offers recommendations to improve the argumentative skills in legal education. These observations confirm that in the pragma-dialectical framework legal argumentation has been a clear example of the crucial importance of context: the abstract model of a critical discussion in itself can be insufficient to understand (and produce) texts, and research in the field of law has certainly increased the awareness of contextual factors, thus contributing to the evolution of the original model. It is therefore crucial to examine how context has been incorporated in argumentation studies, in order to explore the possibility of applying current models to judicial genres and texts.

2.2 Contextual levels and genres

The study of context has traditionally played no role in a purely formal approach to argumentation, and has been given limited importance whenever the analysis of arguments has been strongly focused on theoretical models. Even in pragmadialectics – which from its origin explicitly aimed to incorporate the *pragmatic* aspects of argumentative texts into dialectical analysis – the role played by context has been systematically investigated only in recent years. The title of a paper published by van Eemeren in 2011 (*In Context. Giving Contextualization its Rightful Place in the Study of Argumentation*) is a clear example of this new course: it emphasizes that in argumentation studies any reconstructive process can include various sources beyond the text – context in the first place. Van Eemeren (2011, p. 144) distinguishes four different levels of contextual analysis: the *micro-context* (or linguistic context); the *meso-context* (or situation); the *macro-context* (or "communicative activity type" of the speech event) and the *intertextual* or *interdiscursive context*.

A refined analysis of different contextual levels is certainly useful to single out crucial elements that influence both the production and the reception of argumentative discourse. However, a rigid distinction between the different levels can generate difficulties in the application of the model to actual circumstances. In my opinion, it is necessary to emphasize that it is impossible to draw a sharp line between different levels, as the elements considered in making a distinction can play different roles in different circumstances. For instance, the border between linguistic and situational levels can be blurred, as the textual instances considered for the analysis of the former necessarily occur in the context of the latter, and, on the other hand, in some cases the situation is basically the result of a process of textual production.

Moreover, when considering the crucial role of the macro-context in institutionalized communication, van Eemeren (2011, pp. 148–151) focuses on "communicative activity types" as expression of different "genres of communicative activity" (i.e. adjudication, deliberation, mediation, negotiation, etc.). In this perspective, the notion of genre echoes the Aristotelian distinction, and singles out "the institutional point" of the communicative practice (van Eemeren, 2011, p. 148). This use of the word *genre* differs significantly from the notion usually adopted for the analysis of contextual factors not only in linguistics and literature but also in text and discourse analysis (cf., among others: Friedman & Medway, 1994; Maingueneau, 2007). In these disciplines, genres are not described in mere terms of wide categories of text or discourse organization with special aims, as they are always linked to actual historical contexts and are characterized by the adoption of communicative, textual and linguistic norms. The analysis of the argumentative aspects of texts belonging to a certain genre could contribute to the identification of argumentative norms

typical of that genre, in the actual circumstances of production, which include all the levels of context – texts, situation, institutional activity, interdiscourse.

These observations are specially relevant when considering argumentation in the judicial context. Not only is the law based on texts, actually it is *made of* texts, and all legal activities consist in the production and interpretation of texts. In trials, facts become relevant only when the parties bring them to the attention of the Court through the production of documents, the words of witnesses as well as the opinions of experts have to be transformed into written records, and even when cases are discussed orally, both the claimant and the defendant base their speeches on written briefs which have to be deposited in advance.

Arguments in the judicial context are put forth in the micro-context of a text which belongs to a genre produced in the wider context (or meso-context) of a trial. The trial develops according to the law and norms of procedure in force in the relevant legal system, which obviously vary according to place and time. This is the macro-context of the institutional activity, which profoundly influences the choice of arguments, their presentation and even the language structures used. In this respect the interdiscursive dimension is also relevant: a text can be compared with similar texts belonging to the same genre, or with different texts produced within the same situation or institutional context. In this way the special *value* (in semiotic-structural sense) of a text can be determined. Thus, the fourth level of context analysis takes us back to the first, proving that the textual level can be fully understood only against the background of the whole context in which it was produced.

Our attention will now focus on judgements, which are certainly the most interesting text genre produced in a trial, both for their practical judicial function and for their textual and argumentative structure, focusing in particular on this genre within the Italian legal system.

2.3 Judgements in the Italian judicial tradition

In the Italian context – as noted by Mantovani (2008) – legal texts have been initially analysed in the dimension of language variation, as instances of a specialized variety with its own distinctive features, which obviously concern the lexicon but are also crucial at the syntactical and textual levels (among others: Fiorelli, 1994; Cortelazzo, 1997). The pragmatic point of view – prerequisite for a more genuinely argumentative investigation – has been later adopted, with a sharp focus on situational text production and analysis of the most representative genres (Mortara Garavelli, 2001; Bellucci, 2002). Judgments have attracted special attention, as they are considered the textual "climax" of a trial, the end to which all judicial activity is directed. In

this respect, research has been carried out also in the diachronic perspective, in intercultural contexts and with a cross-generic approach (Santulli, 2008; Mazzi, 2007, 2008; Preite, 2008; Antelmi & Santulli, 2012; Sala, 2012).

In Italy, the judicial activity is based on a civil law system, and a judgment is the final text in which the judge summarizes the facts ascertained by the Court (the history of the case, or *fatto*) and illustrates the arguments for the applications of norms to the case (a section usually described as *diritto* or 'law foundations') before pronouncing the decision. As decisions must be motivated with reference to legislation, the argumentative section cannot be omitted and is crucial to illustrate the reasons for the decision, which in their turn must be taken into consideration in case of appeal.

The principle of motivation, which – according to Perelman (1976) – is the starting point of the modern approach to the problem of equity, has therefore direct consequences on the nature and structure of judgments as texts. This principle is clearly affirmed in the Italian Constitution (art. 111), which provides for the necessity of explicit motivation in all judicial decisions. More concretely, the general dispositions that precede the Civil Code of Procedure include an article (art. 118, disposizioni attutative c.p.c.) that prescribes the basic structure of a judgment as described above: facts, reasons and decision.[1]

Argumentation is obviously meant for the audience (Perelman & Olbrechts-Tyteca, 1958): judgments are written for the parties in the first place, but they are also addressed to the judicial community as a whole. Besides its institutional function, argumentation in judgements has also a practical aim, as in case of appeal the reasoning must stand to scrutiny, and convince the higher Court. Under this perspective, the basic relationship with the audience opens up a dialogic perspective, which emphasises the discursive character of argumentation (Grize, 1990, p. 41). Furthermore, dialogism is crucial in judgements as they are the final step in the sequence of acts making up a trial. The judge often makes explicit reference both to legislation and to the opinions of the parties, establishing a dialogue with his/her co-enunciators (interlocutive dialogism) or with other enunciations in the interdiscourse (interdiscursive dialogism; cf. Bres & Nowakowska, 2005).

1. Legislation regulates also other textual aspects of a judgement, which include identification of the parties and of the judge, date, signature. Moreover, a judgement is pronounced "on behalf of the Italian people", and the lack of this formula can compromise its legal value, as explicitly affirmed in art. 132 of the code of procedure for civil cases and art. 125 of the code of procedure for criminal cases. These peri-textual aspects are of the utmost importance for the formal validity of a judgment, yet they are not particularly interesting in the linguistic and argumentative perspective, as they are reproduced verbatim and leave no room for variation. However, they have generic relevance and make a text immediately recognisable as a judgement, functioning as stereotyped formulas.

In the following section, the argumentative structure of a judgment will be analysed as a case study, with special attention for its contextual and dialogical implications. The investigation aims to verify how arguments are organised, and how far the decision of the judge stems from previous judicial documents. In particular, it will consider the arguments and counter-arguments put forth by the parties in their conclusive written declarations, trying to highlight their role in the decisional process and their contribution to the final formulation of the judge. This case study will show how far the micro-contextual argumentative organization primarily depends on the meso-context of the trial, besides being deeply influenced by the macro-context of legislative and judicial norms. Thus, it will shed light on context and generic norms on the one side, while allowing on the other detailed analysis of argumentative structures and language choices typical of judgements in Italian juridical discourse.

3. A case study

3.1 Background, texts and analytical approach

The case selected for the analysis has triggered a heated debate in Italy, far outside the courtroom where it was discussed. Actually, the judicial action came after a rather long period of discussion in institutional as well as in public contexts. Here are the main facts.

In December 2012 the Academic Senate of the Politecnico di Milano (PoliMi) approved a 3-year strategic plan based on internationalization, and implying – among other things – that starting from 2014 all MA programmes and PhD courses would be taught in English. The decision gave rise to sharp reactions on behalf of language scholars and societies, animating a public debate which involved not only institutions (universities, the Ministry for Education, etc.) and experts of Italian philology but also columnists and laypeople (Maraschio & De Martino, 2012). Within PoliMi itself the decision turned out to be controversial, so that in May 2012 a group of professors and researchers submitted a petition to the governance, asking for a revision of the strategic plan to cancel the imposition of English. The petition was officially discussed during a meeting of the PoliMi Academic Senate, which however confirmed the original decision with a majority vote. A group of 100 professors contested the decision and summoned the University before the Local Administrative Court (TAR). One year later the Court ruled in favour of the claimants.

The analysis will focus on the judgement, which was officially published on May 23rd 2013.[2] However, in order to highlight how the judge came to the conclusions illustrated in the text, the main documents produced by the parties will be taken into consideration, i.e. both the claim which was initially presented by the plaintiff and the final statement of defence presented by PoliMi.

Preliminarily, a quantitative analysis has been carried out using Wordsmith Tools (Scott 2008). Separate frequency lists and search for keywords make it possible to highlight similarities and differences among the texts. Concordance lines, on the other hand, are useful for investigating the special use of crucial words or expressions. Quantitative analysis is obviously insufficient to study argumentation – and may even be considered totally useless. However, research on small but highly specialised corpora has shown that the integration of Corpus Linguistics into a discursive perspective can give interesting results (among others: Bonnafous and Tourier, 1995; Hardt-Mautner, 1995; Partington *et al.*, 2004; Reed, 2006; Degano, 2008). Frequency lists and other quantitative tools can be useful for an initial approach to argumentative analysis, to single out special structures and schemes, such as dissociation, presupposition or concession (Degano, 2007); they have been applied to the study of legal texts, also with the aim of investigating argumentative lexicon and structures (Mazzi, 2007; Santulli, 2008; Degano, 2010).

The choice and organization of arguments can however be studied in depth only through qualitative analysis, which does not neglect global textual aspects as well as minute linguistic features. In this respect, among the contemporary approaches to argumentation – which range from the formal to the informal perspective as well as rhetoric-oriented studies – pragma-dialectics presents significant affinity with discourse analysis, insofar as it applies theory to actual use of arguments trying to reconcile the purely logic component with persuasive aims (Degano, 2012, p. 28).[3] In the French tradition, on the other hand, the study of argumentation has been extended from the perspective of *langue*-based analysis to discourse (Amossy, 2006), thus shifting the focus from theoretical schemes to actual use in context.

In this section, the analysis of the texts will try to integrate the argumentative perspective into a discourse analytical framework, prompted by the conviction that the study of linguistic structures and pragmatic devices associated with argumentation can shed light both on the intentions of the arguer and on the possible reactions of the addressees. In particular, the textual presentation of arguments in

2. Full text available at the following address (quotations are my translation): https://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/DocumentViewer/index.html?ddocname=5MDFHZECNHN4RR7YUFJQPYH5KQ&q= (accessed 18.1.2017)

3. The effort to be effectively persuasive without abandoning reasonableness has been described as "strategic maneuvering" (van Eemeren & Houtlosser, 2006).

the judgement and their dialogic positioning in the macro-context of the trial is considered to be an essential component of their effectiveness in a wider, inter-discursive and genre-oriented perspective.

3.2 Quantitative data

Frequency lists have been produced for the three texts,[4] which are not homogeneous in length. However, the type/token ratio, which is an index of lexical variation, is very similar for the three texts: 20.55 for the judgement (J), 21.65 for the plaintiff's claim (P), 20.80 for the defendant's statement (D). A different value, i.e. 14.14, is obtained when considering the three texts together, thus indicating that among them variation is more represented.

However, when considering the keyness index – which singles out words occurring with significantly different frequency in each single text when compared with the whole corpus – there is only one item which qualifies as a "key word" for J, namely the adjective *italiana*, which has 0.91% frequency in J, 0.23% in P, 0.30% in D. In P and D, the adjective co-occurs almost exclusively with the noun *lingua* (in the phrase *lingua italiana* 'Italian language')[5]: there is only one exception in P ('Italian Republic') and one in D ('Italian University'). On the contrary, in J there are 9 different collocations (3 with *università* 'University', 3 with *didattica* 'didactics' and 3 with *cultura* 'culture'), thus revealing that the judge mentions other aspects linked to the use of the Italian language. The expression *didattica italiana* ('Italian teaching methods') is particularly interesting, as it refers to a special approach to teaching that is considered to be typical of the Italian academic contexts (the judge mentions *la specificità della didattica italiana*). No key words are indicated for P and D.

The frequency lists have been compared manually, and it has been noted that the most frequent lexical word is always *lingua* ('language'), though with a slightly different percentage in J (1.92%, compared with 1.13% in P and 1.11% in D). As for the 10 most frequent lexical items, there are similarities among the three texts: *inglese* 'English' and *corsi* 'courses' are in the top group in the three lists, and there are also other words with similar meaning referring to the academic context (*docenti, insegnamento, professori,* etc). However, it is interesting to note that in P the 5th frequent

4. Before starting quantitative analysis, the portion of each text containing reference to the parties and other peri-textual information has been eliminated, in order to avoid any influence on the results, as the list of the claimants and their personal data (which were not equally reproduced in the three examined documents) represented a non-negligible share of text.

5. The number of actual occurrences of the phrase *lingua italiana* has to be added to the co-occurrences with the demonstrative pronoun *quella*, which has the same reference (in phrases like: "la lingua inglese e *quella* italiana", 'the English language and *the* Italian').

word is *costituzionale* ('consitutional') and the 7th *Costituzione* ('Consitution'), indicating that the claimants often refer to the Italian Consitution and to the fundamental principles and rights it guarantees, as confirmed by the frequent use of *violazione* ('violation') and *libertà* ('freedom'), ranking 9th and 10th respectively.

On the other hand, the connector *perché* ('as / because') has 32 occurrences in J, corresponding to 0.40% (as compared to 0.03% in both P and D), thus ranking among the most frequent words. This indicates that the judge often gives reasons for his statements, as confirmed by a close examination of the concordance lines. On the contrary, no single item of meta-argumentative lexicon – chosen among the most frequent in Italian judgements (Strati, 2002; Santulli, 2008) – displays a significant number of occurrences in J, with a dispersion that is an index of variation in the language used in the text. Actually, the most frequent of the considered items is the root *fond* (occurring in *(in)fondato/a, fondamento, (in)fondatezza* – adjectives and abstracts nouns indicating the 'foundation' of an argument), with 9 occurrences (or 0.11%). The judge takes a stand in a dialogical perspective, stating the validity of the arguments put forth by the parties. Words belonging to this lemma are much rarer in P (0.04%), while they are even more frequent in D (0.16%), confirming that the defendant systematically examines and refutes the arguments of the plaintiff (considering them *non fondati/infondati*).

The results offered by this general quantitative analysis will now be compared with data emerging from qualitative investigation. From the methodological point of view, however, it is worth remembering that the results emerging from the latter may raise new questions to be answered against the background of further measurements, and in particular through the analysis of concordance lines.

3.3 Structure and main arguments in the judgement

As usual in the Italian tradition, the judgement is divided into three main parts: narrative (*Fatto*), legal foundation (*Diritto*) and pronouncement (introduced by the acronym *P.Q.M.* standing for *per questi motivi* 'for these reasons'). The first part has its own title (*Fatto*), but it is very short, and merely refers to the main documents produced during the trial. The narrative actually extends into the second part (title: *Diritto*), in which the first paragraph summarizes the sequence of events as well as the main elements of the petition initially presented by the claimants to PoliMi's Senate (the meso-context).[6]

6. It is worth mentioning that the first paragraph of the *Diritto* section starts with a sub-heading: "1) sul piano fattuale va osservato che:", or 'considering facts, the following points have to be mentioned:'.

The argumentative section proper starts with the second paragraph: it is devoted to procedural questions, which had been raised by the defendant and are rejected by the Court. The actual motivation of the decision is contained in the third, longer paragraph, which is divided into two sub-sections marking the different steps in the argumentation line.

The discussion opens with explicit reference to the motives indicated by the plaintiff. As a matter of fact, in P the arguments were subsumed under different headings, with reference to the norms that had allegedly been violated. In J, the writer affirms that they can be discussed together, as they can be subsumed under the concept of a contrast between the compulsory use of English in teaching imposed by PoliMi and the principle of "supremacy" of the Italian language, with the consequences deriving from the imposition of the English language both for teachers and students. Both in 3.1 (aiming to establish whether the exclusive use of English is legitimate) and in 3.2 (focused on the measures adopted by PoliMi to enhance internationalization and their legitimacy), the judge makes continuous, and often explicit reference to the observations of the parties, accepting or refuting them.

In 3.1, the line of reasoning starts from a preliminary point: it is necessary to establish which is the role of the Italian language in the context of Italian legislation.

(1) È pacifico che le norme della Costituzione non contengono una diretta affermazione dell'ufficialità della lingua italiana, tuttavia tale carattere è chiaramente percepibile in via indiretta dall'art. 6 Cost., che prevede la tutela della minoranze linguistiche [It is well known that the Constitution does not explicitly state the official character of the Italian Language. However, this official character indirectly emerges in art. 6 of the Constitution itself, which provides for the protection of minority languages].

Although the Constitution does not explicitly mention its supremacy, Italian indirectly qualifies as "official language" because of the constitutional norms providing for the protection of minority languages. This argument had been put forth (and amply discussed) in P, with reference to both national and local legislation. The judge makes use of this argument without mentioning the source, but explicitly refutes a counter-argument of the defendant, adopting a concessive pattern: as put forth in D, the protection of minority languages is linked to special historical and cultural situation, *but* the need for protection itself stems from the supremacy of the Italian language, which could be detrimental to preserving local differences. In this way, the preeminent role of Italian is recognised as a condition pre-supposed by actual legislation. Furthermore, the judge quotes some decisions taken by the Constitutional Court, which emphasise the role of Italian in relation to minority languages, mentioned also in P, concluding with an analogy: if the Constitutional

Court aims to guarantee that the Italian language does not play a marginal role in relation to minority languages, the more so this principle applies in relation to a foreign languages which is not protected by Italian legislation.

(2) A maggior ragione, una volta chiarito che il principio del primato della lingua italiana ha portata generale, come precisato dalla Corte Costitutionale, sussiste la necessità di garantire che la lingua italiana non subisca trattamenti deteriori anche quando il rapporto non sia con lingue minoritarie tutelate, ma con lingue straniere rispetto alle quali non sussistano specifiche norme di tutela [Once it has been made clear that the supremacy of the Italian language is a general principle, as stated by the Constitutional Court, it is necessary to guarantee that the Italian language is not penalized also when it relates not with a protected minority language but with a foreign language which is not the object of special protection norms].

This argument had been put forth in P. The position of the judges on this point emerges in a dialogical perspective which takes into account the legislative and judicial macro-context as well as the claims and counter-claims put forth in the meso-context of the trial by the parties.

The role of the Italian language has then to be examined in the context of internationalization policies, which have become a priority for academic institutions and are encouraged in recent legislation. In D, the emphasis is on a contradiction between two sets of norms, which leads the defendant to argue that the more recent provisions concerning internationalization implicitly abrogate previous norms concerning the role of the Italian language. The judge explicitly refutes this argumentation ("La tesi, pur se diffusamente argomentata, non può essere condivisa" [The thesis, though supported by ample argumentation, cannot be accepted]), affirming that there is no incompatibility, as internationalization can (and should be) pursued while respecting the supremacy of the Italian language. In other words, the use of a foreign language in teaching is legitimate if it occurs *beside* the use of Italian, while, on the other hand, the process of internationalization cannot be reduced to the adoption of a foreign language, but implies different forms of action, as for example the promotion of exchange programmes.

This is actually the core of the whole argumentation, which extends into paragraph 3.2, aimed to establish:

(3) se le modalità con le quali il Politecnico ha valorizzato l'uso delle lingue straniere nell'ottica dell'internazionalizzazione sia coerente con il quadro normativo appena esaminato [whether the measures adopted by PoliMi to enhance the use of foreign languages in view of internationalization comply with legislative provisions, as described and interpreted in the previous paragraph].

In this respect, the controversy focuses on the concept of "exclusive" use of the English language, which implies exclusion of Italian from some areas of teaching. In P, the emphasis is on this point: insofar as all MA and PhD courses are taught in English, the Italian language is excluded from a large share of academic education, irrespective of the subjects involved, with detrimental consequences for both professors and students, who are limited in their freedom of choice. D offers a different interpretation, highlighting that English is not meant to replace Italian in all courses, but the two languages would stand "side by side". Under this perspective, the right of professors to continue teaching in Italian is saved, as they could "move" their courses to the BA level. In this way, the defendant tries to boil down the whole question to marginal and negligible problems concerning the distribution of courses and explicitly affirms:

(4) Come è ovvio, le delibere adottate dal Politecnico di Milano non intendono affatto smentire il primato della lingua italiana come lingua ufficiale della Repubblica. Né si comprende come e perché un Ateneo prestigioso come il Politecnico, che da sempre opera al servizio e nell'interesse del Paese e dei suoi studenti, avrebbe mai potuto (o dovuto) intraprendere un cammino a tal punto insensato" [obviously, the measures adopted by PoliMi do not aim to deny the supremacy of the Italian language as official language of the Republic. Nor is it possible to understand why PoliMi, which is a prestigious university working in the interest of the country and of its students, could (or should) take such an illogic stance].

However, in D there are no arguments to prove this (and similar) statements. In the context of these opposite positions, the judge accepts the argument of the plaintiff, and refutes the interpretation of *affiancamento* ('standing side by side') put forth in D, repeatedly emphasising the concept of "exclusive" use (in MA and PhD courses). In this respect, concordance lines for esclusiv* show 14 occurrences (or 0.17%) in J, while both in P and D there are only 4 occurrences.[7]

The acceptance of the main argument of the plaintiff extends to the point that the judge uses various observations, including some general statements, contained in P, namely the cultural role of language as a vehicle of identity, as well as the necessity to avoid that internationalization is interpreted as Anglicization.

On the other hand, refutation of the counter-arguments put forth in D is divided into different points, and refers also to the interpretation of legislation concerning the organization of courses in state universities. According to the judge, the argument in D is unacceptable, because it does not consider the whole scope of the norm, which allows the institution of courses in a foreign language only if they are

7. exclusiv* selects both the adjective (*esclusivo/a*) and the noun (*esclusività*).

parallel to courses in Italian.[8] In this case, the judge is not making an exception to a legal rule (Feteris, 2009), but is nevertheless taking the burden to prove that the norm mentioned in D does not apply, not at least *in the way* indicated by PoliMi.

The final considerations concern the argument of "proportionality of the measures adopted to the ends to be pursued", which subsumes the main thesis of the plaintiff. In his discussion, the judge makes use of the points put forth in P, and accepts the confutation of the pragmatic argument on which PoliMi founds its whole language policy, namely the idea that the exclusive use of English will favour internationalization and lead to a wider diffusion of PoliMi cultural heritage (in terms of knowledge, research, teaching methods etc.). Accepting the plaintiff's point of view, the judge affirms that this relation is by no means actually proved; rather, Anglicization is an obstacle to the creation of an authentically multicultural environment, so a 'useless' measure, which is also detrimental to the freedom and the interests of both professors and students. In synthesis:

(5) Le scelte compiute dal Senato accademico con le delibere impugnate si rivelano sproporzionate, sia perché non favoriscono l'internazionalizzazione dell'Ateneo, ma ne indirizzano la didattica verso una particolare lingua e verso i valori culturali di cui quella lingua è portatrice, sia perché comprimono in modo non necessario le libertà, costitutionalmente riconosciute, di cui sono portatori tanto i docenti quanto gli studenti [The measures adopted by the Academic Senate through the contested resolutions are excessive, as on the one hand they do not favour internationalization of the University but merely lead to the adoption of one single language and the cultural values transmitted in that language, while, on the other, they unnecessarily limit the constitutionally acknowledged freedom of both teachers and students].

The close inspection of J, parallel to the analysis of P and D, makes it immediately evident how the judge takes a stand in the interlocutive dimension. As hinted by quantitative data, he expresses a form of evaluation, stating whether an argument is valid or not (in Italian, *(in)fondato*). He actually does not put forth *new* arguments: rather, he examines the initial claims and the means used by the defendant to contrast them.

In this process, however, he displays a different attitude towards P and D. He refers explicitly to P in the narrative part of the text, but then he hardly mentions the claimants, and presents most of their statements as his own. Obviously, in his

8. "La norma consente in via derogatoria la istituzione di nuovi corsi in lingua straniera, ma a condizione che corrispondano a dei corsi già esistenti in lingua italiana" [The norm does allow the institution of courses in a foreign language, but only if they correspond to existing courses taught in Italian"].

exposition the judge emphasises some points: the *Italian* culture, for example, is explicitly mentioned as well as the special character of *Italian* teaching methods, as shown in concordance lines. On the other hand, reference to *constitutional* provisions and rights is less frequent than in P., as the judge more technically refers to norms, avoiding emphasis on fundamental rights that have a more emotional impact.

On the contrary, the judge explicitly refers to the (counter)arguments in D, reporting them and marking their evaluation with an argumentative formula, as typical in Italian judgements (Santulli, 2013) (e.g.: the argument is not persuasive, the deduction is not acceptable, etc.); in this context he uses also the word *(in) fondato* (e.g.: the argument is not founded/unfounded) mentioned above (3.2). In other words, it seems necessary to rebut clearly and systematically the arguments that are not accepted, while in case of acceptance a general reference is sufficient, and the judge can speak with his own voice.

4. Conclusion

In light of the above discussion and of the findings that have emerged in the case study, it can be confirmed that genre is an essential component of context and influences argumentative choices. In judicial argumentation, in particular, legal procedures, traditions and routines play a crucial role, and the institutional macro-context is closely intertwined with discursive and textual norms.

In particular, here the focus has been on the Italian judicial context, where tradition, shared behaviour as well as legislation highly contribute to determine the organisation of texts, the choice of structures and even the wording, encouraging the use of formulaic expressions. The analysis has shown that generic norms extend to the argumentative aspects of judicial documents, judgements in the first place, and this confirms their character as highly argumentative texts, with a special dialogic organization.

The case study has involved the analysis of a judgement (in which the court ruled in favour of the plaintiff), in close connection with the main documents produced by the parties. It has shown that the judgment displays a canonical macro-structure, while the argumentative line develops in steps corresponding to the claims put forth by the plaintiff and – within this scheme – examines the (counter)arguments of the defendant. In a dialogical discourse analytical perspective, the voice of the plaintiff is not shown (but accepted), while the voice of the defendant is reported (and rejected). In the judgement there are no new arguments, but the judge examines and evaluates previous arguments, in a sort of second-level argumentation, thus producing a *meta-argumentative* text.

This attitude is rather common for Italian judgements, as confirmed by the use of argumentative formulas, used to synthesise the position of the judge on individual claims and counterclaims of the parties. Reading a few texts is sufficient to identify this basic mechanism, reinforced by the obligation of the judge to stick to the points brought to his/her attention by the parties. Further research is necessary to verify how the scheme can be developed, to shed light on the discursive strategies adopted by a judge to motivate his/her decision – through acceptance and rejection of previously produced argumentation.

The position of the judge as a 'referee' has fundamental theoretical implications, concerning the role of inquiry in the search for judicial truth (Haack, 2004; Tuzet, 2013). These questions lie outside the scope of my research. It is worth pointing out, however, that the effort to provide a justification for a decision on the basis of elements and arguments debated in the trial is a reasonable way to test the logic governing the application of the law and the single steps taken to move from premises to conclusions – in other words, a reasonable way to pursue justice.

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