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COGNITION AND CONTEXT OF LEGAL TEXTS: SPANISH AND ENGLISH JUDGMENTS COMPARED

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Abstract: *In this study I have analysed a selection of judgments of courts of appellate jurisdiction of the Spanish and English legal systems. The aim is to trace the main discourse and rhetorical similarities and differences that may be appreciated in this textual genre in the two cultures concerned. The reasons why I have focused on this genre have to do with its recurrence and importance in the most important branches of the legal system, and also with the fact that judgments of appellate courts necessarily involve references to other previous legal documents. At the same time, the Spanish and the English legal systems stand for representative instances of two very different models –the continental model, inheritor of the Roman tradition, on the one hand, and on the other hand, the common-law system. The paper will explore the ways in which these judgments illustrate the main features of Spanish or English legal language, respectively, and will analyse how impersonal and interpersonal aspects are covered in the judgments issued in each of these legal systems.*

Key words*: cognition, context, discourse genres, text types, argumentative texts, judgments (Spanish – British English), purpose, cultural contrasts, linguistic contrasts.*

1. INTRODUCTION

One of the fields of research within the area of Languages for Specific Purposes (LSP) is specialised texts and their genres (Nekvapil 2006). The notion of genre, as defined by authors such as Swales (1990) or Bhatia (1993), has certainly been acknowledged as a key concept for the understanding and the translation of specialised texts, and among these, legal texts (Alcaraz and Hughes 2002a; Borja Albi 2000). A 'genre' or 'text type' corresponds to a specific class of text that is used by a scientific community, professional group or discourse community, so as to fulfil a definite purpose. Each genre may be distinguished by certain peculiar traits, such as a particular format, a definite purpose, and specific lexical, morphologic, syntactic and discourse features.

Among legal texts, judgments are probably one of the commonest and most widely used text-types in several branches or areas of law, such as civil and criminal law. They stand for a representative kind of argumentative texts. Many authors (such as Maley 1985 or Borja Albi 2000) pointed at impersonality as a trait of Spanish judgments, which contrasts with a much more personal tone of English judgments. More recently, Vázquez Orta (2010) has dwelt on the role of *interpersonality* and *intersubjectivity* of judgments, and also upon those connections of *intertextuality* that judgments establish with both previous and also with forthcoming judicial decisions.

In this sense, this paper sets out to analyse a selection of recent judgements, of several representative courts of Spain and Britain. This is done with a view to characterising Spanish and British judgments. It is hoped that such a study may be helpful for legal and cultural studies, as well as for translation.

The paper will briefly characterise the English and the Spanish legal systems, and will cope with the role of judgments within these systems. A linguistic analysis of the judgments will follow, so as to trace and characterise judgments in each of them. Such analysis will not only be restricted to the levels of lexis and semantics, or morphology and syntax. It will also cover the reasons why such structures are used. In order to do so, rhetorical, discourse and textual aspects will be explored. Among these, features such as the following will be dealt with: the genre of the text; the discourse community to whom it is addressed; the communicative purposes and functions to be fulfilled; the rhetorical functions used in order to achieve such purposes; or how information is organised, structured and presented.

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1.1. The legal systems

The Spanish legal system is an instance of the continental model, representative of the paradigm of written or coded legislation (civil-law countries). This is perhaps the main difference with the English legal system, a common-law country (Alcaraz *et al.* 2002: 44, footnote 40). The principal sources of Spanish law are first, the written law arising out of the Spanish Constitution, the National Parliament and the Autonomic or regional Parliaments. Second, custom also plays a role in the system, although it is mainly a subsidiary source, in the sense that it is only meant to cover those aspects not contemplated in the written sources. In the third place come the general principles of law, such as the equality of all citizens before the legal system. The fourth main source is jurisprudence, most importantly, that arising out of the judgments of the Supreme Court [Tribunal Supremo]. The Legislation of the European Union also holds in the Spanish legal context.

The main sources of English law are common law, case law, equity, legislation, European Union Law, and the European Convention on Human Rights. Common law, or judge-made law, as defined by the Oxford English Dictionary, is "the unwritten law of England, administered by the King's Courts, which purports to be derived from ancient and universal usage" (apud Alcaraz and Hughes 2002a: 49). Case law is based on the decisions adopted by higher courts, binding for lower courts, which therefore must enforce or adopt the same decisions in similar cases or processes. Equity was initially the justice administered by the King and the Lord Chancellor as the "keeper of the king's conscience" (Alcaraz and Hughes 2002a: 50). It was a means to soften the occasionally excessive rigour of common law, through a series of principles based on natural justice. In cases of conflict between common law and equity, the latter was to prevail. Written legislation or Statute Law embraces the law created by a legislature, most importantly, Acts of Parliament. European Union Law takes precedence over British law.

In the United Kingdom, the *Supreme Court* has only recently been established as the final court of appeal in the UK for civil cases, and for criminal cases from England, Wales and Northern Ireland. It has been intended to hear cases of the greatest public interest or constitutional importance affecting the whole population. Still, the analysis undertaken in the paper will focus on the High Court, because of the still very recent character of the Supreme Court in Britain, which only started ruling in October 2009. It appears to be more accurate for the purposes of the paper to deal with courts which may have had a similar time-span in the development and performance of their functions. A comparative study of the rulings, decisions and judgments provided by the High Court of Justice and the Supreme Court in England, on the one hand, and of these with the Spanish legal system will be covered in forthcoming items of research.

Strictly speaking, English law is the legal system applied in England and Wales, and has also become one of the sources and main basis of the common law system that also holds in countries such as Ireland, most Commonwealth countries and also in the United States. As far as Scotland is concerned, its main legal system is Scots law, which has its own sources and institutions. Scots law embraces four main sources of law: legislation, legal precedent, specific academic writings and custom. Legislation affecting Scotland may be passed by both the Scottish Parliament and the United Kingdom Parliament. As with all other countries of the European Union, decisions adopted by the European Parliament and the Council of the European Union are also applicable. Some legislation passed by the pre-1707 Parliament of Scotland is still also valid.

As for the American system, the main difference with the British legal system is that there is a written Constitution –in fact, the oldest written and most long-standing Constitution, adopted in 1789–, which is, therefore, the main source of law. In 1791 the Bill of Rights, which contains the first ten amendments to the Constitution, was ratified. The U.S. Supreme Court has four main jurisdictions: a court of first instance –that is, the trial court which initially hears a case–; a court of appeal for the decisions adopted by lower courts, this standing for the greatest bulk of its action (appellate jurisdiction); a court of judicial review of last resort, indeed, the highest court of the United States; and finally, it is endowed with rule-making power, conferred by the Congress, especially to prescribe the rules of procedure that lower courts must abide by. There are two levels of political sovereignty –namely, the federal or national judicial system, which stems from the Constitution and whose scope spreads all over the country; and that of each of the fifty States of the Union, also named as the state judicial system. All this complex organisation of the American legal system shows that US federal law tends to a greater systematisation and codification than its British counterpart. In fact, since 1925, it has been organised in the form of the United States Code, which compiles all the relevant statutes under fifty titles. Moreover, it is supplemented annually by new additions, and recoded and updated every six years (Alcaraz and Hughes 2002a: 48).

There is a fundamental separation of the three essential powers or branches of government, the legislative, the executive and the judiciary, as also occurs in Britain, in Spain, and in most democratic countries of the Western world. Together with the American Constitution, and in this sense, similarly to Britain, the main sources of American law are common law, equity and statutory law.

1.2. Main features of Legal Spanish and Legal British English

In every culture, legal language presents a high degree of institutionalisation, as it is deeply entrenched in the societal practices that characterise the organisation and structure of a cultural group or civilisation. Therefore, legal language presents specific features in every social, political, economic and historical setting. This paper sets out to analyse a concrete genre, widely used in legal contexts, as is the case of judgments. The study will be contextualised in two different cultural environments –namely, the Spanish and the English legal systems, respectively.

Within the increasing interest in contemporary research in the study of particular professional languages or *lects*, the characterisation of the legal registers corresponding to each of these systems has been widely covered in recent times. Thus, English legal language was firstly described by authors such as Mellinkoff (1963), Poor (1971), or Goodrich (1990, 1987, 1986). More recently, its study has been approached either as an autonomous field of research –by authors like Alcaraz (1994/2001), Garner (1991), Borja Albi (2000), for British legal English–, or in connection with translation –by authors such as Álvarez Calleja (1994), San Ginés and Ortega (1996), Borja Albi (2000), or Alcaraz and Hughes (2002a), to refer only to those authors that have approached the translation of English legal texts into Spanish. American legal language and Spanish legal language have also been covered by Alcaraz *et al.* (2001) and Alcaraz and Hughes (2002b), respectively.

As a restricted variety of language, meant to be understood practically only by experts, –and despite the fact that anybody may be faced with legal texts at some time–, many legal texts are characterised by their opacity, or even obscurity, and lack of spontaneity or naturalness. This is so on account of both lexical and semantic features –since legal texts make use of formulaic expressions, over-elaborate and ornate lexis– as well as the syntax of texts, which is excessively and unnecessarily complex. In this sense, Gibbons (2003/2005) has made reference to what he calls as *the two audience dilemma*, that is, the fact that many times speakers in the legal context must simultaneously address both experts and lay-people in legal matters. As he puts it, "there is, therefore, an underlying tension between the language appropriate to the lay jury audience, and the language appropriate to the specialist legal audience". (2003/2005: 174) On the one hand, the speaker, particularly the judge, has to attempt to be understood by everybody, but on the other hand, this may result in inaccuracy, which, in turn, may substantiate further appeals to higher courts. Gibbons also shows that these processing problems may be greater in spoken contexts, where there may not be time available for addressees to go over what they are told element by element.

According to Alcaraz and Hughes (2002b), the main lexical and semantic features of Spanish legal texts are the following: first, the preference for high-flown and archaic words; second, the extensive use of stereotyped formulae and relational words; third, certain boldness in the creation of new words; fourth, expressive lexical redundancy; and fifth, the tendency to nominalisations and relexicalisation.

Besides, in each on these languages, the terminology employed in legal texts can be classified into three main types: first, *monosemy* and *univocity* are defining traits of *technical vocabulary*; second, *semi-technical* vocabulary refers to those words which, no matter if found in everyday speech, acquire specific meanings within the branch of knowledge in which they are used. Finally, in every legal text words used in the general language will also be found, which, in contrast to semi-technical terms, preserve the meanings that they have in everyday language use.

As any other *lect* or variety of language used for professional and academic purposes, legal language may be characterised not only by lexical and semantic features. On the contrary, it also shows distinctive morphological and syntactic traits which refer both to the use of forms and constructions not commonly used elsewhere, and to the peculiar or more abundant use of other constructions.

The main constructions typically used in the language of the Spanish law are the following (Alcaraz and Hughes 2002b): the use of the imperfect future of the subjunctive (*e.g., si los hubiere)*, as an example of a morphological archaism; the use of the absolute clause, also known as ablative absolute; the excessive use of the gerund, which may result in ungrammatical constructions; the use of long noun phrases; the qualifying adjectivisation in long noun phrases; or the use of passive constructions, especially the so-called "pasiva refleja" (reflexive passive, formed with the pronoun *se* followed by a verb in the active voice, as in *se requerirán más pruebas adicionales,* that is, *further evidence will be required*).

In turn, the main lexical and semantic features of legal English have to do with the following aspects (Alcaraz and Hughes 2002a; Alcaraz 1994): the use of Latinisms; the existence of terms of French or Norman origin; formal register and archaic diction; the selection of certain archaic adverbs and prepositional phrases; redundancy, by using doublets and triplets; the frequent appearance of performative verbs and verbs of an empirical meaning; the preference for certain euphemisms instead of more literal expressions; the use of certain colloquial words and phrases; the presence of abbreviated forms of language; the ascription of a semi-technical meaning to certain adjectives when used in a legal context; or the use of nominalisations.

Following Alcaraz and Hughes (2002a) and Alcaraz (1994), as well as Borja Albi (2000), some of the main features of the morphology and syntax of legal English may be summarised as follows: first, unusually long sentences; second, the anfractuosity of English legal syntax; third, an abundant use of the passive voice, including constructions not frequently found elsewhere; fourth, conditionals and hypothetical formulations; fifth, the simple syntax of plain judicial narrative; sixth, the use of the suffixes *–er (or)* and *–ee* to refer to the active and the passive parties in legal relationships; seventh, the frequency of gerundive constructions; eighth, a somehow peculiar use of the conjunction *that*; ninth, the scarcity of connectives; tenth, the repetition of certain words and syntactic constructions that are avoided in Spanish; eleventh, insufficient and even inadequate punctuation. Other features highlighted by Borja Albi (2000) are the following: the abundant number of nominalisations followed by postmodifications; the use of special determiners with premodification; certain peculiar verbal groups; and the appearance of certain adverbs in an initial position as connectives.

As noted by Gibbons (2003/2005), many of these lexico-semantic and morpho-syntactic characteristics make legal language acquire a great deal of complexity, and therefore, difficulties in comprehension and in information processing may be expected to arise. As a result, this register fails to be easily understood by lay-people, who are otherwise likely to be involved in legal matters. This author also makes reference to textual and discourse aspects, particularly, *legal genres*, with which non-lawyers may not necessarily be familiar, and which, if inaccurately drafted by legal experts, may cause important comprehension problems. Another understanding problem may emerge due to the lack of shared knowledge schemas between lawyers and the common public.

Finally, even though many recurrent traits between British and American legal English may be expected, there are certain peculiarities in the United States, which will likewise appear as some distinct features. These are, according to Alcaraz *el al.* (2001), the following: first, the double system of sovereignty existing in the States at federal and State level–; second, the greater importance of codified law in the United States, as opposed to the common law system, characteristic of England and Wales; and third, the creative contribution both in language as well as in legal concepts, especially in Administrative and in Commercial Law.

Legal language is one of the particular branches of specialisation that may be addressed within the study of languages for specific purposes (LSP). In this sense, Nekvapil (2006) has referred to the main areas of research that are commonly addressed in this field. These are, namely, the following: terminology; the different linguistic aspects of the text which are meant to fulfil different functions; specialised texts and their genres; and specialised communication. It must be noted that these areas are connected with one another and may perhaps be approached in a comprehensive manner.

From the very beginning of the development of the study of professional communication, in the nineteen sixties and seventies, translation and the cross-cultural dimension of this form of discourse has become a field of interest for researchers (Gunnarsson, 2008). In our view, an adequate coverage of specialised translation and contrastive textology of legal discourse must take into consideration a prior analysis of the text. This must include all aspects of linguistic analysis –namely, terminology and lexico-semantic aspects, morphological and syntactic features, textual and discourse facets. The analysis of these features will be oriented to tracing the communicative purposes and functions that the text, on the basis of its genre and also the community to whom it is addressed, seeks to fulfil. This is an aspect commonly emphasised by researchers in Languages for Specific Purposes (LSP), such as Trimble (1985), Swales (1990), Bhatia (1993) or Nekvapil (2006). Nekvapil (2006), particularly, has related this emphasis on purpose or function to the Prague School of Linguistics. For him, it is within this framework that it is suggested that a special language is not to be approached exclusively from the point of view of lexis and semantics; on the other hand, as he notes, "they urged that the special-purpose discourse and texts should be investigated as a whole" (2006: 2223). Besides, variations from one culture to another may be expected. As he notes, "identical communicative needs can be satisfied by different language means and varieties" (2006: 2224).

In this sense, I will argue that a contrastive analysis of the manifestations of a certain genre or text-type within different cultural environments may be helpful and accomplish several purposes: it may contribute to a better understanding of texts intrinsically and within the same linguistic system; it may also underline the similarities and differences between different cultural environments; and it may also provide tools and resources for the translation of that particular textual genre.

A further level of the comprehension of legal texts is that they may be differently understood and approached differently by lay readers and by scholars, respectively. In fact, legal texts are generally considered to be complex for lay-people. However, everyone may be involved in legal matters. As noted by Gunnarsson (2008), non-specialists and professionals are likely to face these texts differently, and as a result, asymmetries in reading comprehension may arise. Therefore, psycholinguistic and cognitive-oriented studies may shed light on these aspects.

1.3. The judgment as a legal genre

Judgments fulfil the requirements that characterise genres according to authors such as Swales (1990) or Bhatia (1993): namely, they embrace a class of communicative events; the members or actants involved in them share some definite communicative purposes, which in turn are recognised as such by the experts that form a part of the discourse community who may be expected to use this genre. As will be seen below, judgments will also present a definite rhetorical structure, and will present certain constraints in terms of content, style and register.

Together with the *characteristic* elements of judgments as genres, certain *optional strategies* that authors may employ to organise their texts can also be found. These may go beyond the generic constraints, and be employed by authors even for creative or innovative purposes (Bhatia 1993: 25).

In 1987, Bhatia examined the language of the Law in detail. Judgments develop within a legal or judicial setting (apart from it, Bhatia has also referred to the pedagogic setting, the academic setting and the legislative setting).

Borja Albi (2000) underlines the crucial importance of judgments, particularly in the Anglo-Saxon legal systems, as all of them stand for binding precedents (jurisprudence) that judges must bear in mind when issuing their judgments, following the doctrine of *stare decisis*. This author approaches judgments as essentially argumentative texts, precisely on the grounds that judges base their decisions on the construction of previous judgments.

Regarding the text type that judgments would be ascribed to, in terms of their pre-eminent discourse function, Borja (2000) defines them as *argumentative,* in so far as the judge or judges must explain and ground their decision. However, other functions are also present, such as the *instructive* function.

Borja (2000) also characterises both Spanish and British English judgments as communicative events. Thus, the aspects shared by the two are the following. Firstly, the addressor and the addressee in both cases are either the Administration of Justice or citizens. As for their textual mode, they are texts written to be spoken or to be read (2000, 99). Judgments are regarded as very formal texts in both cultures. One of their pre-eminent contextual foci is instructive: in both cultures, judgments are used for purposes such as to initiate legal processes or their follow-up, or so as to command the fulfilment of an order. Secondly, they are also regarded as argumentative and as expositive texts. In both cultures, judgments –together with other legal texts– are used to establish communication between citizens and the Administration of Justice.

As for the structure of Spanish judgments, they usually start with a *preamble (preámbulo)*. This is followed by the exposition of the *precedents (antecedentes de hecho)*, which give an account of the history that has been followed in the process of the case. Next the account of facts proven (*hechos probados*) can be found. After the *legal grounds (fundamentos de derecho)*, the *judicial decision or ruling (fallo)* usually closes the judgment. How far this structure is usually followed will be examined on the basis of the documents of our *corpus*.

In fact, the structure of Spanish judgments is laid down in the *Act of Civil Proceedings* (*[Ley de Enjuiciamiento Civil*, art. 209]; *apud* Alcaraz and Hughes 2002b: 252), which establishes the four main sections making up the macrostructure of a judgment: first, the *heading* [*encabezamiento*], where reference is made to the parties involved and also to the object of the legal process; second, the *facts as found* or *findings of fact* [*antecedentes de hecho*], where a narrative account of the legal procedures that have been performed are provided, as well as the claims of each of the parties, the data on which these are sustained or the proofs and evidence to be brought forward, and, if applicable, the facts that may have been proven; third, *the points of law or legal reasons for the decision [fundamentos de Derecho*], where Alcaraz and Hughes draw on the didactic purpose that judgments may have. This section may be sub-divided into two parts, namely, the so-called *ratio decidendi* –which includes the facts that have been proven, as well as the legal motivation for the judgment, and which explain the judgment and may give way, if applicable, to legal precedents– and the *obiter dicta* –or incidental comments which contribute to providing the judgment with internal coherence, and also to making the social context that surrounds the decision clear. The text ends with the judgment proper, where the decision on the matter in dispute or the outcome of the litigation, that is, the decision, ruling or finding is stated [*el fallo*].

The main structural elements of British English judgments will also be identified in the corpus considered. The structure of English judgments has been described by authors such as Enright (1983), Maley (1985), Bhatia (1987), or Alcaraz and Hughes (2002a). They usually start with an *Introduction* which makes reference to the nature of the case at stake and also to the parties involved and their legal relationship. This is followed by a section headed *The Facts*, where the Judge refers to the main matters of fact assumed, admitted or proven. Alcaraz and Hughes note that this section may be expected to be the most difficult to handle for linguists and translators, as it may involve very technical aspects. Next, certain separate sections follow, dealing with the description and comment upon the

parties' contentions, based on these facts and on what they regard as the relevant law applicable (*a summary of pleadings*). Finally, the court's *conclusions* and the *final decision* can be found.[1]

In a more concise format, other authors (Vázquez Orta, 2010) have signalled four main moves or to a four-staged schema, whose main phases are the following: first, identifying the case; second, establishing the facts of the case; third, arguing the case –with three optional sub-moves: detailing the history of the case; presenting arguments and deriving *ratio decidendi* (that is to say, the principle of law which is deducible from the case description)–; and fourth, pronouncing judgment. This author claims that there seems to be an underlying motivation in such an arrangement, in so far as it may contribute to the pragmatic success of the communicative purpose of the judgment as a genre. Thus, in this way, the resolutions adopted may be perceived as springing from common-sense logic, as socially acceptable ways of thinking.

Still, a third possible way to approach the structure of judgments may be the following, as a three-staged macrostructure (Vázquez Orta, 2010), which would also correspond to the expository and argumentative text-types noted above by Borja Albi (2000). Thus, first of all the reference to the discovery of the facts being considered (*who* did *what*, *where*, and *when*) can be found: the scene-setting sequence, which would comprise *descriptive* and *narrative* elements, into an overall expository function. Secondly, these facts will be brought into the umbrella of *rules, precedents* and *laws*. At the same time, the *reasoning process* unfolds, in a pre-eminently *argumentative* ground, which seeks to establish the rationale of facts (rule-based), together with the case-based or legal precedents. The third stage refers to the conclusions, with a compressed argumentation leading to the explicitation of the judgment or verdict (instruction). This third stage may be preceded by a pre-closing stage, often developed by a ordering sequence, which is mainly argumentative, since it selects and makes reference to those facts that the judge regards as of overriding importance to sustain his decision.

As Vázquez Orta (2010) notes, judgments go beyond their intrinsically legal or judicial nature, in so far as they are manifestations of the resolution of legal disputes. At the same time, they also provide addressees with evidence of the *reasoning processes* used by judges. This author claims that key concepts to understand judgments are those of *dialogue* with previous texts as well as with forthcoming texts –which is particularly important in the case of the Anglo-Saxon legal system, grounded on common law and case law, which is by definition adversarial– and of *negotiation*. It is here, therefore, that differences between Spanish judgments, on the one hand, and British and American ones, on the other hand can be expected. The Anglo-Saxon basic legal procedure is adversarial or accusatorial, so that the accused or defendant –in criminal or civil proceedings, respectively– may, to the same extent as the victim or the plaintiff, freely put forward his arguments in court. In contrast, the Spanish –and most of the Continental legal systems as well– is based on an inquisitorial procedure, and therefore, it is the judge who supervises and monitors the evidence to be presented, who interrogates the witnesses and the accused (Alcaraz and Hughes 1993/2007).

One particular type of judgment that has been studied in depth is *appellate judgments* (Vázquez Orta 2010, Maley 1985). Following Halliday's approach, Maley (1985) focuses on them from the perspective of the peculiar features of the English common-law legal system, and shows that whereas some of their constitutive elements are obligatory, some others may be optional. He claims that an appellate judgment has, ultimately, a problem-solving structure, and two main legal functions: declaratory and justificatory, so that the judge decides which is the correct applicable law and also justifies this decision. Maley has already drawn on the highly individualistic enterprise of judges in the common-law system, which also extends to the United States and many countries of the Commonwealth, and which, in his view, has no counterpart or correspondence in the continental legal systems, where judgments tend to be much more stereotyped. It is one of the aims of this paper to test whether this is still the case, in more recent judgments. Perhaps a significant difference may be grounded upon the fact that legal reasoning in common law countries tends to proceed by analogy.

Authors such as Maley (1985) or Levi (1949) have claimed that legal reasoning tends to follow this kind of logical proceeding. It may be claimed, however, that this may be grounded on the fact that in this legal system the binding precedents play a major role in the judge's decision. In contrast, in continental law, where judges may be expected to reach their judgments on the basis of codified law, perhaps other logical processes may be pre-eminent in their reasoning path.

Vázquez Orta (2010) draws on the fact that in the common law system, judgments of appellate courts become a source of law, and, as Maley (1985) also showed, they provide a public account of the judge's reasoning process. At the same time, however, this author claims that legal reasoning springs from a much more social process: "Legal reasoning is an exercise in *intersubjective* positioning and making *choices*, although not totally unrestricted choices" (Vázquez Orta 2010: 264, my italics). Key terms introduced by this author to cope with appellate court

[1] Graphically enough, Maley (1985: 161) claims that each of the structural units of a judgment provides an answer to the question "What is the judge doing (with language) now?" In turn, the answers to the question "Why is he doing it, and in this way?" are to be sought "in the institution of the common law legal system, in its social functions, its history and its philosophy".

judgments are *dialogue* and *negotiation*. His approach is likewise *intertextual,* as for him judgments stand for the reconstruction and recontextualisation of the facts being tried, and, at the same time, the judgment reached will leave traces in subsequent arguments and decisions. This certainly is of a crucial importance in common law systems.

Vázquez Orta's central claim is that "all structural elements of a judgment are highly *dialogic*" (2010: 269), and that they are socially and intertextually constructed: "What this means is that a variety of external texts are introduced into the writer's text" (2010: 270). Such an interdiscursive, intertextual approach is applied by Vázquez Orta to the structural elements of the judgment noted by Maley: facts, issue, reasoning and conclusion and order/ finding.

A basic aspect of such *interdiscursivity* concerns the way in which facts of the real world become issues or legal categories, so that the issue "is a link in a chain, of previous texts and the judge's reasoning that follows (…) between the problems in the 'real' world and the solution of the law" (Vázquez Orta 2010: 273). In the case of *appellate courts*, where the issue is a consequence of the decision of lower courts, it also becomes a link to the discursive history of the case, and it will relate these to the decision finally adopted by the judge. It is also the place where real-life events "translate" into legal matters. In turn, in the reasoning section, the decision adopted by the judge is inserted into the corpus of the existing body of law which may in turn become a precedent for later processes. It is here also that the writer or the judge attempts to appear as objective and impersonal as possible. Finally, Vázquez Orta shows that the conclusion, order or finding, is also highly *dialogic*, despite being the judge's responsibility, in so far as this links the judgment to previous texts, to previous decisions, and therefore there is intertextual positioning.

Vázquez Orta also draws attention to the fact that modality and first person perspective may be found in expressions of judgments such as I *would allow the appeal*, or *we would dismiss the appeal*. He rightly interprets such references as follows: "What is at issue here is the writer positioning himself in relation to his colleagues who may have arrived at a different Conclusion and Order, and acknowledging this divergence" (2010: 281). At the same time, in the Conclusion, a reference to all the previous aspects dealt with in the judgment may be found, which leads Vázquez Orta to claim that there is also intratextual dialogue. In his conclusion, this author points at the importance of intersubjectivity in a system based on common law: "Those resources for intersubjective positioning also provide the common law with the flexibility it requires to deal with new situations for which no direct authority exists" (2010: 283).

In sum, in this study, based on a corpus of Spanish and British English appellate judgments solved by the higher courts of each of these countries, I shall attempt to cope with the following aspects: first, whether these judgments present any differences concerning their structure, their textual-discourse functions, or in their morphologic, syntactic and lexico-semantic features; second, whether they show an individualistic or personal tone (as claimed by Maley 1985; or Borja 2000) or rather, intersubjective (as claimed by Vázquez Orta 2010), and whether any significant differences can be appreciated between Britain and Spain in this respect; third, which reasoning processes are followed in each culture, particularly, whether analogy processes (or else other reasoning processes) can be traced in Spanish judgments (as a representative instance of Continental countries); fourth, how far this kind of judgment is dialogic in the legal cultures considered; fifth, whether any departures from the pre-eminently very formal style can be appreciated in judgments of any of the two cultures, and for what purposes; and sixth, whether any differences in rhetorical structure and functions of the Spanish and the British English judgments can be appreciated.

2. DATA

The analysis will be undertaken on the basis of a selection of judgments of some of the most important courts and tribunals in Spain and in Britain, namely, the "Tribunal Supremo" [Supreme Court] in Spain, and the High Court of Justice in Britain. Twenty judgments have been selected from each of these Courts. These judgments correspond to very recent cases, so as to provide updated results that may help characterise the legal registers involved nowadays. A variety of legal matters has been covered with the corpus, corresponding to the most significant branches of law.

Basically, I have selected judgments of the higher courts, for two main reasons: first, because they are usually courts of last-resort, so that, among their functions, they try appellate cases; and second, because not only have they been studied in detail, but because they also seem to be most adequate to test our hypotheses. A further reason concerns the availability of these kinds of judgments.

Borja Albi (2000) has drawn a contrast between judgments of English courts, on the one hand, and on the other hand, those judgments issued by Spanish judges, in the sense that English judgments tend to show a much more

personal tone, which contrasts with the *impersonality* of Spanish judgments. In this sense, Alcaraz and Hughes (2002a) note that a consequence of this more personal tone of English judgments is that they present a style that is touched with the personality of their maker, that is, the judge, to the extent that flashes of verbal wit, irony or even sarcasm, and also of other literary or rhetorical figures can be found.

It is therefore common to find that judgments are written in Britain in the first person singular, when it comes to providing opinions, whereas the use of the first person plural generally corresponds to those occasions on which there is more than one judge, or else it expresses not the judge's own personal opinion, but rather the collective awareness of the whole court: "A single judge sitting alone will never say «we» when «I» is meant", Alcaraz and Hughes claim (2002a: 115).

Finally, these authors point out that, despite the pre-eminently very formal style of legal register, addressors should be ready to find slight departures from it, which must have been meant for purposes such as the following: "to temper the severity of the law, to make the opinion sound more humane and to create an impression of reader-friendliness suited to the democratic tone of our times" (2002a: 116). Whether any of these aspects can also be traced in Spanish judgments will be explored.

Another main difference concerns the rhetorical structure of Spanish and English judgments. This is likely to be a crucial difference, in so far as it springs from the different conceptualisation of the whole legal system in either culture. Thus, whereas the Spanish legal system is codified, in contrast, the English legal system is based upon common law, it is a judge made law. When this applies to judgments, on the one hand, the English judge is likely to make reference in his judgment to a bulk of previous cases that are binding precedents and on the basis of which he will utter his judgment. On the other hand, the Spanish judge is bound to make reference to the coded legislation that he will apply in each particular case. These aspects will be explored in this paper.

3. ANALYSIS, RESULTS AND DISCUSSION

It was expected the corpus selected would provide adequate and representative enough evidence of the discourse and genre features that characterise judgments in the Spanish and English settings. A contrastive study of the features that characterise judgments in each of these cultural contexts should provide analytic tools for the translation of this legal genre.

3.1. Spanish judgments

Three clear parts can be distinguished in the structure of Spanish judgments, after a brief introduction that contextualises the whole of the case: first, the so-called "antecedentes de hecho" ["facts as found" or "findings of fact"]; second, the "fundamentos de derecho"; and a third part, which is the ruling proper, which is usually introduced by formulae such as "fallamos" [we rule; we decide].

In the case of Spanish judgments, those judges signing the judgments tend to refer to themselves by using formulae or expressions such as "*Esta Sala*" [This Court/ this Chamber]: "*A juicio de la Sala no hay tal infracción* (…) [In the Chamber's view there is no such offense]; "*La Sala entiende que* (…) [The Chamber understands that]"; "*La Sala verifica* (…) [The Chamber verifies that]"; "*La Sala (…) ha visto* (…)" [The Chamber (…) has seen that (…)]. Likewise, when referring to previous rulings that have motivated the one being issued, or the actions of other courts, the tendency is either to use impersonal constructions, or else refer to the bodies, institution or legal actor concerned: *"El Procurador (…) formuló demanda …"* [The Attorney (…) lodged a claim (…)]; *"La Sección Primera de la Audiencia Provincial* (…)" [The First Section of the Provincial Court (…)]. Other times, the reference is to the legal document and not to those who signed it: *"El citado Auto del Juzgado de Primera Instancia había estimado* (…)" [The above mentioned Order of the Court of First Instance had found that (…)], so that it is the action or the result that is given pre-eminence over that instance that uttered the corresponding legal clause, or undertook the legal action at stake.

The quotations introduced in the first section, ANTECEDENTES DE HECHO, are usually taken from previous judgments and usually correspond to the ruling made manifest in the latter. As a matter of fact, this is explicitly referred to, in expressions such as the following, which has been found to recur in most of the judgments analysed: *"…dictó sentencia en la que consta la siguiente parte dispositiva*"; [… delivered a judgment which includes the following provisions]. Apart from this, other elements of legal phraseology have also been found, such as: *"Con fecha (…) el Juzgado (…) dictó sentencia, en la que se declararon probados los siguientes hechos*:" [On (…) the Court (…) rendered a verdict, in which the following facts were declared to be proven].

This section, termed as "facts as found" or "findings of fact", [corresponding to the ANTECEDENTES DE HECHO] therefore, is usually a report and a reference to the previous judgments that provide the basis of the appeal. Frequent direct quotations from the directive part of these judgments have been found [parte dispositiva]; therefore, this part is rich in intertextual references. This section is a narrative account of the legal procedure that has been followed so far. Therefore, it is usually formulated in the third person singular of the preterite indicative [*formuló, suplicó (lodged/ stated, pleaded)*], or else through impersonal constructions [*se personó, se admitió (appeared in court, it was admitted that)*].

In this part, it is frequent to find that the third person singular in the indefinite preterite tense refers to the previous rulings of lower courts, as in "El Auto dictado en 29 de abril por la Sección Primera de la Audiencia Provincial de Palencia *estimó* el recurso de apelación" [The Order issued on April 29th by the First Section of the Provincial Court of Palencia *allowed* the appeal]. The mention to the particular court concerned may be included, as in the previous example, even though the result is emphasised over that person or those people who pronounced it.

Basically, the same kinds of references and also features of legal texts that appear in the following sections, "FUNDAMENTOS DE DERECHO" or exposition of the legal grounds, and also the final ruling, can be found here. This is so because this section often includes quotations and references to these sections of the other judgments which have been appealed and are therefore being considered by the higher courts which hear the corresponding appeal.

All in all, the intertextual references found in this section have to do with the rulings of lower courts that have to be examined; in particular, the aspects that will have to be revised and amended. It is important that these references are accurate, so that the whole of the judicial process may be traced. It is frequent, as noted above, to find quoted references to the aspects that will be discussed by the judgment of the higher court.

It is in the section devoted to the exposition of the legal grounds [FUNDAMENTOS DE DERECHO] where *intertextual references* to the previous judgments, and also to the legal doctrine applicable in the case under consideration, can be found. Sometimes, these are references to particular judgments as in "*Sustanciada la apelación*" [Proceedings for the appeal having been conducted]; at other times, however, they concern more general expressions, such as: "*La doctrina jurisprudencial (…) ha partido siempre de (…)*" [The case law (…) has always regarded (…)], which emphasises that binding precedents also play an important role in this legal system. In fact, much more direct references to a particular judgment, which judges recall for a particular reason, such as coherence and consistency with previous rulings, have also been traced: *"Como recordábamos en la sentencia de 19 de febrero de 2009* (…) [As we re recalled in our judgment ordered on February 19th, 2009 (…)]".

Here, not only is there a certain abundance of logical connectives, but, more generally, also of references to *structures* of cause and effect or result, such as "*evidencian que* (…) [show that (…)]"; "*Y es así porque* (…) [And this is so because (…)]; "*De lo expuesto hasta aquí es fácil deducir que* (…) [From what has been put forward so far, it is ease to conclude that (…)]; "*razonando al respecto que*" [finding about this that]; "*hay que concluir que efectivamente se ha producido* (…) [we should effectively conclude that x has occurred]; etc.; together with hypothetical-deductive constructions, such as: "*Esto debería haber llevado a…* [This should have led x to …]".

On the whole, very few personal references throughout this section in the corpus analysed have been traced, whether in the first singular or in the first person plural; instead, expressions such as: "*Esta Sala ha venido sosteniendo que* (…) [This Chamber has been sustaining that (…)]", so that the criteria of individual judges are placed in the background, and it is emphasised that decisions are adopted in a collective manner, as members of the court or decision-making panel. This may be due to the necessity to refer to facts in the most neutral and objective possible way. This is reflected even in the conditional constructions used, which sometimes also avoid the use of personal pronouns: "*que de estimarse, llevaría consigo …*" [which, if allowed, would amount to considering that (…); "*en el supuesto de que se establezca un régimen de custodia compartida* … [in the case of establishing a system of joint custody]". In general terms, the use of passive and impersonal constructions is also very frequent: "*ha sido referido* [has been referred to]", "*se dirige*" [is addressed], "*no puede estimarse*" [it cannot be concluded that], "*se articula*" [is articulated], "*se pretende* [it is intended]". The use of the present tense refers in many occasions to definitions, or to non-temporal references that are connected with a gnomic present: "*La maquinación fraudulenta exige una irrefutable demostración* (…)" [The fraudulent conspiracy calls for irrefutable evidence that (…)].

It is frequent to find that the reference to the points to be amended by the ruling of the Supreme Court is introduced in the conditional form: "*El primero de los errores consistiría* …" [The first of the errors would involve …]; "*El segundo de tales errores radicaría en que* …" [The second of such errors would lie in …]. With such forms, these are presented as hypotheses, over which the Court refuses to have absolute authority. In contrast, these legal precedents that judges refer to as the basis of what will constitute their own ruling most often appear in the present tense, to be understood as having a general, non-temporal reference, and frequently being related

to the interpretation of the legal doctrine applicable: *"El artículo 540.1 LEC exige que …*" [Article 540.1 of the Act of Criminal Proceedings requests that (…); "*Dice el artículo 92.8 del CC (…)" [Código Civil]* [Article 92.8 of the Civil Code states that …]. Such applicable doctrine may be expressed in the form of indirect or reported speech, as in the examples just provided, or else be introduced through direct quotations, as in *"Por su parte, el artículo 81.2 del Código Civil establece que «Se decretará judicialmente la separación, cualquiera que sea la celebración del matrimonio:* (…)»" [Furthermore, Act 81.2 of the Civil Code states that «Separation will be judicially ruled, whichever form of marriage»]. Terms which are supposed to be well-known and frequently used may be introduced in their full form the first time they are referred to, and then in an abbreviated manner (*CC*, for instance, referring in the judgment just quoted to "*Código Civil*" [Civil Code]. Interestingly enough, this correspondence full form – abbreviation may not necessarily be made explicit.

Within this section, an anticipation or foretaste of the final ruling adopted by the Court may also be found, which may be referred to for the sake of clarity, and with the wish to enhance the whole of the judgment with greater internal consistency: "*Procede la estimación del recurso* (…)" [It is proper to uphold the appeal]. This may not come as a surprise, since in legal documents, as in other kind of specialised and complex texts, it is frequent to find the *repetition* of the most important ideas, and the ruling is certainly the most important one of the whole of the judgment as a text type or legal document.

Infrequently, but at times *metatextual or metadiscursive comments*, related to the aspects to be dealt with next, have also been traced. This is intended to facilitate the reader's grasping of the main structural and thematic aspects of the text. This has been the case of expressions such as: "*Los hechos sucedidos se resumen a continuación para mejor comprensión de los razonamientos que seguirán*" [The events that occurred are summarised next so for better understanding of the arguments that will follow].

The final ruling is introduced and connected to the previous section by means of legal *formulae* such as "*Por lo expuesto, en nombre del Rey y por la autoridad conferida por el pueblo español*" [In accordance with the foregoing arguments, in the name of the King and on behalf of the authority bestowed by the Spanish people (…),]. It is only in the final ruling that the use of the first person plural to refer to judges, regardless of whether the court is individual or formed by several members, has mostly been found. The tendency has been to find doublets or triplets, of the kind: *"FALLAMOS: Que debemos declarar y declaramos …"* [WE RULE: That we must declare and so we declare]; *"Debemos revocar y revocamos"* [We must overrule and so we overrule]; *"Debo declarar y declaro"* [I must declare and therefore declare / I testify and declare]. It is significant, in my view, that the first member of the doublet makes explicit reference to the *obligation* of judges to abide by the law. After the explicitation of the ruling, another formula has been recurrently found: "*lo pronunciamos, mandamos y firmamos*" [We pronounce, order and sign]. There is also an explicit reference to the fact that the ruling will be mandatory for further similar issues to be tried; in other words, that the judgment establishes a binding precedent: *"…esta nuestra sentencia, que se insertará en la COLECCIÓN LEGISLATIVA …"* [This our ruling, which will be inserted in the LEGISLATIVE COLLECTION …].The use of these collective personal forms may be understood to allude to the consensus reached on the applicability of the ruling as a principle of law. Slight formal variations may be found in the expression of the whole phrase, with no difference in meaning: *"Así por esta nuestra sentencia, que se insertará en la COLECCIÓN LEGISLATIVA pasándose al efecto las copias necesarias, lo pronunciamos, mandamos y firmamos",* [So under our judgment, which will be inserted in the LEGISLATIVE COLLECTION, and to that effect the necessary copies are distributed, we pronounce, order and sign] or *"Así por nuestra sentencia, definitivamente juzgando, lo pronunciamos, mandamos y firmamos"* [So under our judgment, being the issue definitely tried, we pronounce, order and sign].

Another possibility is to find this part written in the first person singular with doublets accompanied by gerunds or by verbal periphrases of obligation, as in the following: "*Que estimando com estimo la demanda …"; "debo declarar y declaro*" [That as I allow and uphold the appeal (…); I must declare and therefore I declare]. This has been found particularly in the case of judgments of the lower courts which are introduced as facts as found" or "findings of fact" [ANTECEDENTES DE HECHO] of the judgment of the Supreme Court.

Some aspects are significant because of the fact that they may have been regarded as somewhat unexpected: this has been the case of some grammatical or orthographic errors: '*ésto* es' [that is; where the Spanish demonstrative pronoun has been orthographically accented, which is incorrect]; or "Como quiera que no se somete o debate la sola voluntad de despedir de la empresa, de la que pudo ser manifestación la presentación a la forma del finiquito, *sinó* el valor liberatorio del mismo (…)". [However that does not submit or debate the sole discretion of the company to dismiss, which could be presenting manifestation of the way of the settlement, but the value of the same discharge (…)]. In my view, these are probably due to the often rapid drafting of legal documents, which may even be urgent on certain circumstances.

On the other hand, other typographic devices which are intended to clarify or facilitate the reading of these texts may also be highlighted. Thus, a consistent tendency to reproduce those fragments that are quoted or reproduced

from former legal texts in italics has been found; in particular, this has been so if they refer to the case under study, and more specifically, to the decisions of the lower courts that are brought to the attention of the Supreme Court.

All in all, the texts analysed follow the general traits of legal language that have been signalled in the definition of each of the legal lects, namely, Legal Spanish. Apart from these traits, reference may be made to the following aspect: the use of words not found frequently in any other register (or which may have been regarded as incorrect), despite the fact that their root or lexeme may be commonly used, and therefore, their meaning is easily inferable from context: *inadmitir; inaplicación; inobservancia.* In our view, terms such as these may be regarded as legal technical terms.

3.2. English judgments

In the judgments selected the tendency has been to find an explicit *structure* of the judgment into an introduction, and then several sections termed in the following way: *factual background*, where a narrative account of the history of the process is provided; this is followed by the application and decision previously made by the lower courts; afterwards, the grounds of challenge of such former decision are specified; a discussion section continues; and finally, the conclusion closes the judgment. Sometimes, this structure has not been found in an explicit manner into separate epigraphs, but these elements are present. Other times, judges have incorporated different epigraphs, but basically they correspond to the same types of information. Among those, we have found the following structure: introduction – the dispute: overview – the issues that divide the parties – general principles – the governing law – the applicable law [under English Private International Law] – the significance of English law. The latter aspect is then connected to the reasoning of the actual rule or finding.

As regards the *lexical and semantic* aspects, the first remarkable point has to do with the *scarcity or even total absence of Latinisms* and terms of *Greek origin*. However, in other legal documents, like recent Acts, Latinisms are still present. This may be due to the search for clarity, and perhaps more importantly, to the fact that anybody may be involved in legal matters, so that at least some of the potential addressees may not necessarily be familiar with legalese or legal terminology. Some of the Latin words or expressions that have been found are words such as *prima facie*, or *forum conveniens.* Other archaisms have been found, however, such as the use of complex adverbs, formed by combinations of adverb and preposition: *therein, thereof, thereunder, forthwith,* etc. What is more, in some judgments certain colloquial expressions have even been found, such as "Everyone in the case overlooked the fact that (...) *did not cross the radar* until I drew it to their attention."; "it appears *to tie the hands* of the judge who has to re-hear the matter and there is the danger that he may come to different conclusions (…)".

In the expression of opinions, and of the use of *personal and impersonal references*, the aspects worth commenting upon are the following. In judgments of appellate courts, an aspect worth commenting upon concerns the *attitude* shown by the courts towards the judgments of lower courts that are submitted for revision. This attitude has been found to be respectful in general terms, even though certain aspects can be significant. Some judges stress the shortcomings they have found in those decisions, and they use expressions such as: *"Everyone in the case overlooked the fact that …"; "Section 2 of the Law Reform (Miscellaneous Provisions) Act 1970 did not cross the radar until I drew it to their attention (…)"; "Thus the court did not consider, but ought to have considered (…)"; "I regret to say I find this unsatisfactory. Once again it behoved the Recorder to make a decision about this dispute."; "The Recorder ought to have decided, but failed to decide, (…)".* Sometimes, this is qualified with expressions denoting that the judge is putting forward his own standpoint: *"In my view, the judgment is seriously flawed"*. On the other hand, judges may also show their agreement with previously held opinions, and they also tend to do so in a polite manner, as in *"I respectfully agree with …".*

Another aspect related to the expression of impersonality, on the one hand, or the involvement of the speaker, on the other hand, crucially concerns the way the judge refers to himself, and the responsibility he expresses. On the basis on the corpus, in general terms, the references seem to be more personal when the question at stake may be perceived as more controversial, and therefore, the judge feels it necessary to admit his responsibility in the standpoint that he expresses: "*For those reasons I would allow the appeal. (…) It is therefore with great regret that I have to conclude that the only proper way to dispose of this appeal is to remit the matter to the County Court, to a different judge, for re-hearing".* In instances such as the one just quoted, judges recognise that theirs is not the most appropriate jurisdiction and that the case should be heard somewhere else, in a lower court. But this seems to be further applicable to all those aspects that the judge feels that he must assume responsibility for: *"These were not the only provisions of the agreement referred to in argument, but they seem to me to be the material ones"; "It seems to me that, in the absence of fraud, that reasoning does not apply".*

Judges also express their assessment of the evidence presented to them. When they do so, they have been generally found to speak in the first person singular. They may simply refer to it in a neutral way, as in: *"I, also, bear in mind that the issue (…)"*. They may express their overt rejection of a particular point: *"I reject the submission of Mr. Dougherty that it would be an error of principle to take this approach because (…)"*. They may qualify the

relevance of what they are presented with, as in: *"I do not regard it as significant that …"; "I do not regard this as a circumstance which is of any significance by itself";* or *"There is nothing sufficiently special in the circumstance that (…)".* Sometimes, their assessment is based on the likelihood or probability of something to occur: *"But I do not consider it likely that it would be very great"; "…but this seems to me unlikely"; "This prospect, which seems to me possible but not very likely, (…).*

Judges also assess the agreement of the agents involved: *"I do not know what response (…)"; "…there appears to be no dispute (…)".* They may even indirectly express their complaint towards the information received in the judgment and which they have been requested to assess: *"The question of construction I am asked to decide is (somewhat unhelpfully) not defined in the order directing the trial of the issue, (…)"; "… which does not shed any light on the issue I have to decide".* In turn, they have to infer what might have been intended by the parties in the former judgment, and express this by using impersonal constructions: *"It is clear both from the evidence and the contemporaneous correspondence that what the parties had in mind was …".*

Judges also employ *impersonal constructions* when it comes to expressing the conclusion that they have reached on the evidence available, although they may also introduce in these constructions their own perception of facts: *"What is evident from that is that …"; "If, as the Seller alleges, the Buyer was told of a break-in and of the possibility of further damage, it does not seem to me that it can be said that …This is an unknown".*

In contrast, the judge adopts full responsibility, expressed in the first person singular, when it comes to specifying what he is actually referring to and to pointing at the decision that he will have to adopt: *"When I refer here to the Seller, I am referring to its agents, who conducted all negotiations"; "In my judgment, it is only if the answer is the same whichever version of the facts is accepted that I can proceed to determine this issue"; "… and I am bound by the decision of the majority unless constrained by higher or subsequent authority to depart from it".* However, he retakes the third person singular in the passive voice when he wants to provide his intended addressee with orientations, thus admitting implicitly that his is not the last word: *"If resolution of the disputed factual issues is needed, then directions will have to be given for pleadings and oral evidence and (possibly) disclosure as well".*

The first person singular has also been used by judges when they admit their limitations when it comes to deciding on some particular aspect, and also when they have to assume their own responsibility for the decision made: *"I cannot resolve this dispute. Nevertheless, (…) I must presently proceed on the basis that (…)".* It is also used when the judge wants to make it clear that he is providing his own interpretation, instead of referring to objective facts or data: *"In my judgment, on that basis, …"; "I have reached this conclusion (…); "Nor, on my then understanding of both versions (…) was I persuaded that such a case was sustainable"; "I did not understand him to be saying (…)".* It has also been used when the judge wants to make it clear that he has provided his intended audience with indications on how a particular aspect must be construed: *"I indicated that my draft judgment should be regarded as provisional and subject to revision in the light of any further argument on the draft pleading".*

Other judges prefer a more objective wording, as in: *"The Judge erred in finding that (…)"*; or in *"The Judge decided the benefit (…) on the wrong basis".* Sometimes, these straightforward claims are not undertaken by the judge speaking himself, but are attributed rather to somebody else, and the judgment is limited to reflecting this opinion: *"The Appellant submits that the Judge was not applying the principle correctly"*. However, no matter if these expressions obviously stand for a gain in clarity, they may also represent a decrease in politeness. Perhaps to achieve such politeness the references are sometimes made to the judgment or the decision, as in: *"The decision suggested, correctly, that (…)"; "The decision suggested that (…)"; "The decision drew attention to the absence of (…)"; "This passage did not consider (…) and did not address the issue"; "However, the decision contains four serious errors (…)"; "The decision did not give any consideration as to whether there had been, or might have been, a denial of justice in this case (…)".*

As argued by Alcaraz (1994/2002), the tendency seems to be that when judges employ the first person plural, this is because the court is formed by more than one judge. Still, judges tend to express their views in a qualified manner, and it is not infrequent to find the use of *upgraders* and *downtoners*. Examples are: *"More importantly"; "There is in our judgment no need to cloud the issue in this case by reference to fiscal neutrality (…)"*. As this last example shows, we may find the use of metaphors, so that the addressees may acquire clearer insight of what is going on. Some further instances of downtoners and aspects related to the humility of the speaker, or in general, expressions through which the speaker qualifies his utterance are the following: *"In my view, the judgment is seriously flawed"* [referring to the judgment that the Court of Appeal is examining]; *"We unhesitatingly accept the submissions of the Respondent".*

Sometimes, judges may refer to the court they form a part of in the third person, basically due to considerations of politeness: *"To determine whether a defendant has benefited from his criminal conduct the court must look at what property he has obtained as a result of or in connection with the conduct (…)"; "… this Court has discovered (…)";*

Still another possibility is that the use of first person plural pronouns and impersonal forms may be found in the same context, as in: *"To test our conclusion one could remind oneself that (…)*"; or in *"For the purposes of our decision it is not necessary to set out the table since the mathematics of this appeal are not in issue"*. This would be motivated by a shift from what the judges regard as well-known to what they consider to be hypotheses, or assumptions in the hypothetical-deductive reasoning process followed.

Some judges admit their own limitations, as in: *"If –and I do not know the answer (…)"*, or in *"The intention lying behind this payment is unclear. (…) It may have been contemplated by the defendant that (…) but I am unable to find that (…)".* The above contrasts to the assuredness shown, logically enough, in their verdict, as in: *"We reject this appeal".* However, even though the judge is in a position of authority, he may use conditional forms, as if he were proposing the judgment, as illustrated by formulae such as *"For these reasons I would allow the appeal", "I would allow the appeal accordingly", "I would limit the reconsideration accordingly",* or *"I would grant a stay of execution of the order (…)".* This formula has been found particularly if the court is a collegiate body formed by more than one judge. In such a case, the other judges tend to express their agreement with their colleague, through formulas such as *"I agree"* or *"I also agree".* Sometimes, they ground such agreement and contribute their point of view: *"It seems to me right that the court on that re-trial should be able to address that issue".*

It has also been found that some judges use the first person singular when they want to substantiate their own decisions and put them in the clearest possible way: *"However, I reject that claim"; "However, I reject the Claimant's evidence in this respect".* It has also been found in those cases –if only scarce in the corpus– that the judge wants to put forward a hypothetical situation: *"However, even if I were told that there was a procedural impropriety (…); "I would not have minded to accept such an argument"*. This first person may also be used when the judge wants to make clear his own attitude towards facts or evidence being considered: *"This aspect of the claim has given me some concern. It seems to me plain that (…)"*.

I referred above to judges' admission of their own limitations. However, such deficiencies may lie in external aspects, such as in the evidence they are presented with, and which is, in fact, the basis on which they ground their decision:

> Had there been no other deficiency in the recorder's judgment, I would not have regarded this point by itself as sufficient to justify allowing the appeal. However, given that his reasoning on aspects of the case to which this point is relevant is such as to require remission for a limited re-trial, (…) it seems to me right that the court on that re-trial should be able to address that issue.

Another context in which the use of the first person singular has been found is the following:

> This case cries out for a realistic assessment, I emphasise by each party, of the likely outcome. It is, therefore, a paradigm case for mediation. It would be foolish indeed to spend another four days in the County Court.

Sometimes, as in the examples just quoted, the first person singular is accompanied by impersonal constructions and third-person references, as if the judge wanted to establish boundaries between what corresponds to him, in the exercise of his own jurisdiction, on the one hand, and on the other hand, what in his view corresponds to other courts or other agents involved in the case. Another example is the following: *"…upon the first claim that I have dismissed. It seems to me that (…)"*

Furthermore, the first person singular appears to be specially indicated when the judge wants to draw the audience's attention to some particular aspects of the situation or the case being tried, as in the former paragraph with the expression: *"I emphasise by each party"*, or equivalent expressions that we have found in other judgments: *"I stress that these matters were evidenced by (…)".*

The first person singular has also been used by some judges in order to indicate the reasoning process that they have followed in some particular aspects of the trial in which they are involved: *"There is therefore in this matter a clear conflict of evidence and I have to decide (…)"; "In this context I must bear in mind that (…)"; "Furthermore, as I have indicated, (…)"; "There was, therefore, (…)"; "On the other hand I found (…)"; "In relation to this incident, therefore, having heard the witnesses in each side I have no hesitation whatsoever in accepting the evidence of (…)".* Such reasoning process may also be worded in their conclusion, which is none other than the ruling of the judgment: *"For these reasons I find no substance in any of the claims made by the Claimant and accordingly I dismiss his claims".*

A particular case of appeal judgment that we have found is by a judge who argues for and justifies his own previous decision: *"This is an application made by Sandoz Limited ("Sandoz") pursuant to CPR r.40.12, also known as the 'slip rule', to correct what is said to be an accidental slip or omission in an order which I made in this action on 2nd June 2009".* Here, in this particular case of judgment there are, on the one hand, passive and third-person

references to the series of actions undertaken in the previous case, as in: *"Again, in the general case, interest runs from the date on which the cause of action arose".* On the other hand, the concrete steps undertaken by the judge are reflected in the first person singular: *"In the light of my decision to stay the injunction, (…) I directed the parties to draw a minute of order to be lodged".*

In this case, the judge, Mr. Justice Floyd, is contrasting his own view of the way events developed, against the standpoint held by other participants: *"Leo's counsel replied by saying that Leo did not agree that I made no order as to damages or delivery up, but that I had stayed the order in relation to those matters. (…) This is of course a contentious way of putting the matter. (…) Sandoz's appeal to the Court of Appeal was dismissed by an order dated 17th November 2009, leaving my order in place."*

The intention to justify his own decisions leads the judge to employ *rhetorical questions* that he takes care to answer himself: *"Should I view the matter differently because of the mistakes suggested in Mr Rose's evidence and by counsel? Nothing in the evidence of Mr Rose persuades me that I should do".*

Logically enough, the judge's report of the facts that form the subject matter being tried are generally referred to by using third person pronominal forms, either corresponding to the singular or to the plural. These forms can be found either in the active or in the passive voice. This has to be accounted for on the basis of the search for the necessary *impartiality* and *objectivity*. Some examples are: *"The material terms of the policy are as follows"; "The dispute between the parties relates to the Claimant's failure to pay the sums said to be due to OMEX (…)"; "The Conditions clause also incorporated a Claims-Corporation Clause in the following terms:".*

Sometimes the internal structure of the judgment is not reflected by a division into different sections, and it is judges that make reference to the aspects that they will be dealing with at each particular moment: "*The factual background is as follows"; "The first issue in these proceedings is as follows"; "The next issue in the claim is as follows";* and similar or related expressions.

Another aspect worth mentioning concerns the references made in judgments to the applicable legislation and which is therefore binding for the case concerned. These quotations from relevant law or precedents may be made at some length. This is an obvious consequence of the fact that English legislation is case law, or judgment-made law. On the whole, evidence such as that has been just quoted shows that this aspect seems to be governed, at least to some extent, by considerations of politeness.

4. CONCLUSIONS

In general terms, it may be claimed that the corpus selected has made it possible to find sufficient and representative evidence of the discourse and genre features that characterise judgments in the Spanish and English settings. The paper has set out to undertake a contrastive study of the features that characterise judgments in each of these cultural contexts. This should provide analytic tools for the translation of this legal genre.

Spanish and British English judgments have been characterised in terms of certain aspects: first, to what extent recent ones may have been said to follow the features that characterise legal language in these cultures; second, these judgments have also been analysed in terms of the representation of impersonal and interpersonal communicative aspects.

The paper has shown that, precisely on the grounds of the intrinsic features of judgments of appellate courts, and as pointed out by authors such as Vázquez Orta (2010), a substantial number of intertextual references may be found. Both Spanish and English judgments of the higher courts usually spring as a reaction, or an appeal, to those decisions reached by lower courts. This means that they both have to rely, on the one hand, on these decisions, and, on the other hand, on binding precedents reached in former decisions in similar cases. This also means that in the two cases logical processes of analogy are important. These logical reasoning processes are not the only ones found, however: much of the decision is usually grounded on logical or reasoning processes such as deductions or inferences; or cause and consequence.

This makes it possible that –as Vázquez Orta (2010) has claimed– these judgments show important *intertextual connections* with previous decisions, and also with the legislation applicable. Moreover, it seems to be the case as well that judges also have to establish a negotiation process with all the other actors involved, no matter if the final decision is ultimately theirs.

With regard to the (im)personal tone of these judgments, the study has drawn certain interesting tendencies in both Spanish and English judgments. To a certain extent, there may be an element of stylistic choice –for instance in the use either of the first plural person, or else expressions such as *Esta Sala [This Court]* followed by a third

person singular in Spanish judgments. In general terms, the judge or judges that form the court have been found to use a much more personal style if the matter at stake is perceived as more controversial, or if they want to provide their audience with indications regarding the way in which a particular point has been approached.

Another aspect has to do with the *attitude* shown by the judge to those rulings of the lower courts which he is examining. Such an attitude is generally marked by an attitude of respect. However, significant differences have been found regarding the degree of (in)directness or politeness –in Brown and Levinson's 1978/1987 sense– that the judge has intended to use when referring to such decisions in both the Spanish and the British courts.

Certain differences in the use of pronominal forms concern the actual part of the structure of the judgment. Thus, in the *facts as found* or *findings of fact* [antecedentes de hecho], which is mostly a narrative section, the tendency has been to find the use of third person singular and third person plural, usually in the indefinite preterite or simple past, which may be grounded mainly for the sake of clarity and objectivity. This is also the part in which the most important *intertextual* references to previous judgments or to the legislation applicable have been found. These references may be made in reported speech, or include quotations from the relevant applicable law.

The actual proposal or ruling in Spanish judgments put forward by judges may also follow different wordings, most importantly, impersonal constructions, and first person plural forms. This has been found to be so regardless of whether the court is formed by one or more than one judges, even though individual courts may otherwise employ singular forms.

Also with reference to Spanish judgments, and in connection with the features of this register, a striking feature has been the scarcity or even absence of Latinisms. This may be grounded on the recommendations issued by the Committee for the Updating of Legal Language of the Spanish Ministry of Justice [Comisión para la Modernización del Lenguaje Jurídico].

This Committee had been requested by the Ministry to submit to the Council of Ministers of the Spanish Government a report of recommendations on the language used by the legal profession, in order to make it clear and more understandable for citizens. This was done on account of the fact that the surveys that, since the beginning of democracy, have been performed in Spain on the state of the legal system, have consistently shown that citizens rely on its rigor and quality but at the same time, they do not understand what is involved in legal procedures or, at best, they do so with difficulty.

On the issue of Latinisms, this is what this Committee recommended: "However, we believe that an effort can be made to avoid the use of lexical items or expressions that are difficult to understand (Latinisms, for example), or which are considered to be anachronistic, provided that with a different lexical selection the same clarity and precision are achieved" (p. 141; our translation)[2].

As in the case of Spanish judgments, the presence of Latinisms and terms of Greek origin has been remarkably scarce in the English texts, and the underlying reasons may be said to have been basically the same –namely, the search for clarity, whenever their substitution does not entail any loss of precision and accuracy. In the case of the English legal system, this and other changes may have been fostered by the so-called *The Plain English Campaign*, which aims to bring legal language closer to the lay users who may be involved in legal matters, and which seems to have been more successful in morphologic and syntactic aspects than in the lexical and semantic counterparts.

The structure of Spanish judgments has generally been found to be somehow strict, or at least with a much greater tendency to find the different parts that make them up explicit. In contrast, no matter if the underlying logical and rhetorical structure is similar, British judges seem not to follow such strict conventions in the *headings* of these sections.

All in all, it may be argued that legal language, no matter if much more slowly than other varieties and uses of language, is subject to change. In a sense, this means that the conclusions reached in this paper are necessarily provisional, and that further studies in this field as well as the evolution that legal language and the legal systems concerned may bring forward different and equally valuable and valid results.

[2] "Con todo, estimamos que sí puede hacerse un esfuerzo por evitar el uso de unidades léxicas o de expresiones que resultan difíciles de comprender (latinismos, por ejemplo), o que se sienten ya anacrónicas, cuando con una selección léxica distinta se consigue la misma claridad y precisión". (p. 141).

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