DISCOURSE AT THE CROSSROADS OF LANGUAGE AND LAW

Seda Gasparyan[*]
https://orcid.org/0000-0003-1170-4989
Zara Hayrapetyan[**]
https://orcid.org/0009-0001-9127-3391
Yerevan State University

The present article is part of a larger project that is aimed at exploring the peculiar features of language use in the legal domain against the background of the interaction of language and law. The investigation of the intersection of linguistics and legal studies is of paramount importance. Legal regulations, qualified legal assistance, knowledge of linguistic requirements for legal formulations, etc. have nowadays become an indispensable part of human life. Focusing on the results achieved by our predecessors that will help understand the nature and the complexity of the legal system and law, and divulging the specificities of legal discourse at large and the one exercised in the courtroom in particular are of paramount importance. The desire to engross this field has stimulated the study of a wide range of books, articles and works of prominent scholars which, in one way or another, refer to the mentioned questions. Applying the methodology of discourse analysis and description of the relevant literature, we come to the conclusion that an integrated and coherent analysis from a linguistic standpoint proves to be an inevitable step in the process of revealing the concept of legal discourse.

Keywords: *legal discourse, legal field, law discourse, forensic linguistics, discourse analysis.*

Introduction

It has been established that language is one of the most important factors influencing the accomplishment of a variety of functions in the course of one's life. When we speak about language use, we first and foremost mean the

[*] sedagasparyan@ysu.am
[**] zarahayrapetyan1996@gmail.com

utterance made for others to understand us. Anything that we say or write is a discourse. Thus, we agree with our predecessors that approaching the problem of discourse from a linguistic viewpoint presupposes utmost attention to speech patterns and the way language is employed in discourse (Almufadda, n.d., 22; Brown & Yule, 1983; Halliday, 1985; Widowson, 1979; Kurzon, 1994; Goodrich, 1987; Wang, 2019). Investigations show that discourse is not merely a description of things, but rather the action of those things. The varieties of all types of communication, spoken interactions, written texts are covered by the notion of discourse (Potter &Wetherell 1987, p. 6).

Having in mind Saussure's standpoint of differentiating language and speech, van Dijk (1982) defines discourse as a unit of speech, i.e. an *uttered text*, whereas text for him is the abstract grammatical structure of the uttered, materializing the language system.

In his attempt to define discourse, Gee (1999) interprets it in two different ways. He believes that there are many different ways of introducing oneself beyond plain simple language. Very often the way one acts in different situations, the choice of clothing, the way one introduces himself/herself in different contexts and places, can say a lot about the person. One's language, mannerisms and demeanor differ from place to place, from person to person and from atmosphere to atmosphere. All these are ways of presenting oneself in society. Hence, Gee employs the term *Discourse* with the capital *D* for defining one's own identity through such presentations, and *discourse*, with the lowercase *d*, when he wants to mean "language-in-use or just stretches of language" (Gee, 1999, p. 17).

Thus, it is clear that the notion of discourse is associated with the application of language in action, i.e. the way language is socially executed in a variety of contexts and areas. In other words, the study of discourse is the study of language in action, the way language behaves in relation to certain social situations. The fact that language is connected to almost everything that goes on in the world, explains the central role of discourse analysis to disciplines of the humanities and social sciences, such as anthropology, sociology, philosophy, psychology, etc. (Hyland 2013, p. 1).

In order to consider language and discourse correlation, we should differentiate between language as a system and language as a process. McCarthy and Clancy (2019) identify language as a system with its three main components: *substance, form and meaning*. The first component is related to

the phonetic substance of the given language (vowels, consonants) and the graphic substance (symbols used in the writing of the given language). *Form* is displayed in the following major aspects of the given language: phonology, lexis and grammar. Phonology provides the appropriate forms of pronunciation, the application of the stress, the correct intonation patterns, etc. The component of lexis is responsible for the semantic aspect which is achieved by the correct combinations of forms with substance signifying different grammatical, semantic and prosodic phenomena. The component of grammar deals with sentences, the organization of words and phrases making up the sentence (Hoque, 2015, pp. 4-10; McCarthy & Clancy, 2018, p. 2). Thus, it is not difficult to see that the component of lexis reflects the *what* or, otherwise, what the speaker intends to say, whereas form indicates the *how*, i.e. the choice of the words, grammatical patterns, etc., or in other words, the way the speaker or the writer presents the *what*.

Language as a process refers to discourse, which is a social phenomenon and includes the processes of speech production and interpretation. Arutyunova's (1990) definition of discourse as a piece of speech immersed in the vortex of life brings us to the conviction that in fact discourse is the text with its situational concepts and all its linguistic and extra-linguistic factors (cultural, psychological, functional, etc.). Considering phenomena such as language, text, written text, dynamic and static characteristics of text and discourse, text can be defined as a product, an outcome of the text generation process, or as a resource for the understanding procedure. Text can be considered as an object, and be documented as a book, a video, a photograph, a tape recording of a conversation, a trial transcript, etc., whereas discourse refers to communication, and social interaction, of which a text makes up only one part. Discourse studies the process of creation and interpretation, through which we will be able to examine the relationship between the form and the situation, i.e. in Fairclough's (1989) term, the immediate social conditions. Any text can be interpreted as discourse, whether written or uttered and be put into action (Taylor et al., 1996, p. 7).

Discourse and its analysis

The foundation for carrying out effective analysis of discourse lies in understanding the context, the language used, the type of discourse, particularly essential for comprehending complex structures and meanings within specific

domains such as legal discourse. Legal discourse being the target type of discourse in the current paper has a complex and compound structure as mentioned prior. Discourse analysis is important specifically for legal discourse to attempt to decode the complex structures and meanings of the field. Without understanding how to analyze the legal domain, we will not be able to interpret legal cases correctly and completely. Discourse analysis is crucial for revealing a deeper understanding of diverse forms of discourse. This is particularly evident in the realm of legal discourse, where the complexity of its structure presents challenges that demand the application of discourse analysis to disclose its subtle complexities. Without a solid grasp of the methods, to analyze the legal domain, achieving precise and thorough interpretations of legal cases, becomes difficult to attain.

Discourse analysis studies language units that are bigger than the sentence (McMenamin 2002, p. 74). It has been established that discourse analysis is employed to interpret the functions of language in everyday human interactions, which enables us to engulf ourselves in the social, economic, political and all other aspects of life, that result in shaping our mindset, mentality and horizon (Hyland, 2013, p. 1; Kamalu & Osisanwo, 2015, pp. 169-170). Hence, Parker's (1997) idea that discourse analysis studies the functions of language in a variety of settings is quite convincing. In fact, it regards the language with its versatility and inconsistency against the background of some constant and permanent features of the language use (Cf. Parker, 1997, p. 480), i.e. it helps us regard any type of discourse by considering its different forms and contexts, rather than concentrating on one area.

Proceeding from a variety of approaches by different scholars, Ussher and Perz (2014) single out different components of discourse analysis: *reading,* which is the very first step in any kind of analysis, is one of them, and its role is paramount, for without taking the first step (reading) and going through transcripts or listening to interview recordings, it would be impossible to understand what data are included in the text and what the text is about in general. It is due to reading and re-reading of the data that it becomes possible to take the next step and develop a frame of *coding,* into the structure of which the selected data should be included and organized by certain computer software. Later, by reading and interpreting the coded data, by analyzing the functional aspects of the discourse, the construction of subjects and objects in

sentences comprising the text, by studying the discursive context in which the narration is constructed, as well as revealing the contradictions and variabilities present in the text, we, in fact, can accomplish one of the most important steps in the analysis. *Discursive psychology* is another significant component of discourse analysis, for it is due to this tool that the manufactured realities are identified in the text, and special attention is paid to the use of the terminology, the grammatical and stylistic preferences, as well as the general orientation of the text. Of particular interest and importance is the *Foucauldian discourse analysis,* which is aimed at examining the social, psychological and physical influence on its readers, the way the discourse is imbedded in the given culture and is associated with wider cultural discourses. In the case of genealogical analysis, it also presupposes an investigation of the historical aspect of the discourse in order to achieve an insight into similar discourses and discourse practices in the given culture. Within the scope of the *Foucauldian discourse analysis* the function of certain constructions, the positioning of the subjects and the construction of the objects in the text, and last but not least, the opportunities opened up or closed down for action in the discourse are also paid great attention to. Finally, to complete the analysis, the component of *writing* is employed, which requires the conceptualization of the research on the basis of the adopted theoretical and methodological details, all while keeping the central research question in focus. The representation of the already observed and identified discursive features and the discursive strategies finally bring to an identification of the discourse as a whole. This is usually followed by a conclusion drawn from the generalized results of the research and the possibly inclusive implications of the theories for the further development of the research (Ussher& Perz, 2014, p. 226; cf. also Arribas-Ayllon & Walkerdine, 2017; Buchanan, 2008).

Another interesting aspect of discourse analysis is to identify where the situation is taking place, what the gender of the participants is, how the certain elements are being interpreted, etc. Gee (1999) argues that conducting a discourse analysis entails inquiring about how language is employed in a particular time and location to interpret the elements of the situation network as manifested in that time and location. Furthermore, it involves examining how the elements of the situation network concurrently give significance to that language (Gee, 1999, p. 92). Since we discussed and explained what discourse and discourse analysis are, we should now proceed and talk about legal

discourse. Legal discourse is of particular importance, and our goal in the present article is to delve into the sphere and understand its peculiarities.

Legal discourse

Debating the current status of discourse theory and discourse analysis brings out the necessity to comprehend the essence of legal discourse and the noteworthy observations made by earlier scholars in this domain. It is worth mentioning from the very start that law and legal notions exist only in language and through language (Grossfield, 1985, p. 793).[1] Interest in legal language is not new in linguistics; moreover, prime importance has been attached to language as an instrument working in a certain situation and as being at the center of the career of professionals in the legal field. The employment of language in legal discourse, both for the operation of any legal system and the administration of law, is indispensable. Lawyers, and those dealing with law in general, have to fathom the connection between language and the law system, to see how language is used to interpret court proceedings, investigations, communication between lawyers and clients, etc. (Udina, 2017, p. 1338).

The concepts of *law* and *legal discourse* as multi-layered and multi-dimensional units have been studied by different scholars from different theoretical standpoints. However, before embarking on the study of different approaches, it seems essential to emphasize the dictionary definitions highlighting the basic conceptual meaning of these terms. First and foremost, it is worth mentioning that the notion of *law* is largely determined by the concept *legal*, which is described as "the discipline and profession concerned with the customs, practices, and rules of conduct of a community that are recognized as binding by the community, as well as controlling authority" according to Britannica ("Law" n.d -a). As far as the Oxford dictionary is concerned, it interprets *law* as not only "a rule that deals with a particular crime, agreement, etc.", but also as a "system of rules that everyone in a country or society must obey" ("Law" n.d.-b). In accordance with the Merriam-Webster dictionary, it is seen as "a binding custom or practice of a community", "a rule or order that is advisable or obligatory to observe", "control, authority", "a rule of construction or procedure", "legal knowledge", etc. ("Law" n.d.-c). Referring to the Cambridge dictionary, we notice that *law* as a rule, "is made by a government that states how people may and may not behave in society, in business, etc." On the other hand, *law* is also defined as "the area of knowledge or work that

involves studying or working with the law", "a general rule that states what always happens when the same conditions exist" ("Law" n.d.-d).

It is obvious that dictionary definitions vary from simple to complex; however, most of them imply the meaning of "knowledge, authority, rules, disciplines". We are inclined to observe that law is the combination of the mentioned definitions, intertwined into one conceptual dimension, to which we have to obey as individuals.

Our further observations reveal a close correlation between the terms *law* and *legal*. However, some additional shades of meaning can be found in the dictionary entry of *legal* in the Merriam-Webster and Cambridge dictionaries ("of or relating to law", "established by law", "recognized or made effective by a court of law as distinguished from a court of equity" ("Legal" n.d.-a); and "connected with the law", "allowed by the law" accordingly ("Legal" n.d.-b).

Thus, we can see from what has been adduced above, that the interpretations given to the words *law* and *legal* vary in different dictionaries. However, all of them are very close in their meaning or phrasing, and it can be deduced that without language, the existence of law is impossible since it is through language that we are capable of grasping the world – the surroundings and the environment we live in. It is language that enables us to create laws, rules and legislation, communicate in courts, discuss legality, etc. Without language we will lack the ability to make ourselves understandable. Without communication, attorneys and lawyers would not have a chance to defend their clients or give proof to any evidence, nor would they be able to make any statements whatsoever. Language is employed for any type of communication that takes place between speakers in general and in a legal setting in particular.

The term *law* refers to a norm that applies uniformly to all activities. It is a theoretical system to which activities should comply. *Law* refers to a broad collection of rules and regulations formed by a conventional and common jurisdiction developed by congressmen or members of Parliament to control people's activities. *Law* refers to the whole procedure of organizing and developing rules and regulations to establish and maintain a lawful country and people (Meaning of Law, 2020). Raymond Wacks (2008, pp. 2-3) considers that there are two views concerning the concept of law. According to one of them, law is made up of a number of universal moral rules based on nature, while the second interpretation considers law as merely a set of rules to follow

and abide without any morality inherent to it. However, Wacks believes that the concept of law covers the protection of human rights and equality as well.

Through the prism of legal discourse, a whole variety of legal phenomena, ranging from written (legislation, legal texts, legal documents) to spoken (courtroom interaction, lawyer-client communication), as well as non-verbal (evidence and the courtroom setting) can be described. Many scholars have taken an interest in legal discourse and attempted to study its different aspects (Aldosari, 2022; Bhatia et al., 2004; Cheng & Danesi, 2019; Johnson, 2014; Zhenhua, 2019). The observations illustrate that legal discourse is a form of communication that, owing to its distinct vocabulary and terminology, is prevalent within the legal system, and language plays a decisive role in this procedure. It should be added that albeit the paramount importance of language in legal communication has been confirmed, the study of legal discourse cannot be confined to language use only, for its roots are deeply connected with social reality. Hence, the societal aspect of its examination should not be ignored (Zariski, 2014).

In legal discourse, there are many different subtypes, which include the language employed in communication between the attorney or lawyer and client; the language in courtroom settings, which is mainly oral; in writing legal reports, documents or texts; the language of legal papers, etc. Hence, it is important to distinguish between *legal language* and *the language of the law* because these two cover different aspects of legal discourse: the former is concerned with discourse on descriptive and prescriptive legal matters, while the latter refers to the prescriptive legal discourse only (Berūkštienė, 2016; Williams, 2005).

For Kurzon, the difference between *legal language* and *language of the law* consists in using legal language, when people are speaking about the law, lawyers and attorneys are making statements in the courtroom, judges hold speeches, etc., whereas the language of law is employed in legal documents, bills, legal writings, etc. Kurzon goes even farther and tries to single out *law talk* as a subtype of legal language, which, to his mind, is the language of impromptu speeches when the lawyers are questioning the witnesses, or the jury is addressed by the judge (Kurzon, 1997, pp. 120).[2]

As S. Gasparyan et al. mention: "Legal language is considered to be a substyle of official style, and like other styles of language, it has a definite communicative aim and its own system of interrelated language and stylistic

means" (Gasparyan et al., 2019, p. 16). The legal style of language is unique and peculiar in its exaction and precision, without leaving room for ambiguity or vagueness, since it presupposes legal documents and texts, which, if not written very clearly, will leave many questions and empty positions. The legal system represents itself as an autonomous entity requiring a special and peculiar vocabulary typical only to law, which people employ when talking about concepts and ideas in that genre (Zariski, 2014). This means that legal language is a strict discipline where colloquial or vernacular speech must be avoided at all cost. It should also be mentioned that as in every other field, in law also attorneys have their own jargon that they apply in their speech during professional interaction with colleagues.

Since we mentioned the importance of following special protocol in using legal language by keeping it on professional level, we should consider some linguistic elements through which we are able to maintain it. One of the ways legal speech retains its exactness and accuracy is via the use of nouns instead of pronouns. For instance, the repetition of the proper noun *Marcus* in the example *Marcus says that Marcus saw the defendant stealing the money* is meant to render the information about the robbery committed by the defendant as clearly and understandably for the audience as possible. According to Tiersma's (1999, pp. 6-7) observations, the usage of pronouns may result in ambiguity and vagueness, arousing misunderstanding and misinterpretation of the legal document. Besides, the lack of pronouns can also avoid a reference to gender. Another characteristic feature of legal language is nominalization, which is meant to emphasize the occurrence of the action rather than the actor. This is aimed at stating the law objectively. Similarly, the use of passive constructions, which often for strategic purposes occur in lawyers' speeches to the courtroom, help the lawyers sound objective and authoritative and distract the listeners' attention from the actor. Thus, this deliberately chosen linguistic tactic is employed when lawyers seek not to be too precise and accurate, whereas when they feel the need to be accurate and exact, active constructions are preferred.

We should hasten to add that legal texts are not only accessible to the people in law but also to laymen, who need to grasp and interpret the meaning of legal documents. Meanwhile, complex and compound sentences and word structures, often used in legal documents, complicate perception and interpretation. Thus, this kind of document will not be easily intelligible by

ordinary people, who have little to no knowledge whatsoever in the legal field. Moreover, it is an accepted notion for lawyers and attorneys to employ a redundant and complex language, rich in phraseological elements, which, due to this, sound rather pompous and provide an air of authority (ibid: pp. 4-5). It should be borne in mind that legal discourse of a complex nature, with its own legal vocabulary, phraseology, grammar, etc., can cause difficulties in understanding and grasping the meaning of the uttered or written text (Goźdź-Roszkowski & Pontrandolfo, 2015, pp. 130).

Of the two obviously distinguishable types of legal discourse, written and oral, the former is constant as it is fixed on paper and cannot be erased or deleted unless the paper is torn. Legislations fall in written legal discourse, since they are put to paper by members of Parliament or Congress. The words used for making laws and passing bills can be very different in meaning from those used in other genres or types of texts. The specificity of legal discourse depends on the phrasing and the organization of the drafted laws. Research has shown that laws and rules are phrased and worded in such a way that the latter can mean one thing in one field of law and another thing in another field of law. Hence, it is essential that the special vocabulary of law can be mastered, and the ambiguity of words can be interpreted correctly if the possibilities availed by the context[3]are not ignored, for the intended possible meaning is always inferred from the context (Solan & Tiersma, 2005, p. 23). Legislative texts are the most important in the legal genre since they serve to control the society, expressing the dominant goals and norms in a particular legal culture. Their style is dense with words that are easily identified, owing to their standardized form. As a result, they are quite intriguing for both terminological and stylistic contrastive investigations (Whittaker, 2014). As far as oral legal discourse is concerned, it is provisional, for when it is uttered it fades away immediately, and one cannot either have it on paper or prove its accuracy. Usually, oral language is employed by the attorneys in courtroom settings while defending their client's or state's rights, or presenting facts when they are communicating with the judges and jurors.

Communication plays a very vital and essential role in law discourse, since it breaks down the misunderstandings between the lawyer and the client, the lawyer and another lawyer, the judge and the lawyer. All of them employ the same genre of language: to understand one another without difficulty (Legazpi, 2022). In other words, the implementation of a shared code is a must.

Forensic linguistics

Very closely connected with legal discourse and law is the so-called *forensic linguistics* – a sphere of legal linguistics which we will try to outline in the present section. First and foremost, before trying to give any definitions or explanations regarding forensic linguistics, we have to point out that the term was introduced by Jan Svartvik (1967) in his analysis of several cases of murder. In whatever is described as forensic linguistics, primary attention is given to everything connected with the written text, i.e. the usage of the vocabulary, as well as the grammar and the punctuation that can create difficulties for readers. As far as the spoken language of the legal process is concerned, the main task here is to analyze the detective's questioning of the suspects, problems that can possibly be encountered by some witnesses, difficulties that can arise in connection with language barriers in court, etc. Questions related to the authenticity and validity of the documents, the peculiar features of the language used in documents, are also covered by forensic linguistics (Coulthard, 2010, pp. 16-17). The goal of forensic linguistics is to cover areas such as: the language of legal documents; the language of the police and law enforcement; courtroom interaction; linguistic evidence and expert witness testimony in courtrooms; authorship attribution and plagiarism; forensic phonetics and speaker identification (Coulthard & Johnson, 2007, p. 5).

Being a sub-branch of legal discourse study, the basic task of forensic linguistics is the accurate and precise interpretation of written or recorded language, speeches delivered in connection with criminal cases, disputes within legislative institutions, police interviews, cross-examinations carried out by lawyers with witnesses, and in general, anything spoken or written that can shed light on a criminal case (Cf. Ali, 2020, p. 42; Coulthard & Johnson, 2007; Danielewicz-Betz, 2012, p. 93; Grant & Perkins, 2013; Olsson, 2008; Toghuj 2022; Umiyati, 2020).

We should take into consideration the speaker's deliberate meaning which takes us to pragmatics, and plays a vital role in forensic linguistics. We, as linguists, are supposed to study and unveil the actual meaning from the uttered, as people do not always convey their intention directly without any covert sense (McMenamin, 2002, p. 74).

Another important factor worthy of mention is that the events are more vivid than the spoken words uttered during those events. Thus, when trying to come to a fair decision in court about any matter, it is the events rather than the

exact words that should receive utmost attention. However, if the words or statements of the events are at hand, firstly, we need to try to understand them by providing the definitions of those words, though we cannot confine our understanding and interpretation of legal discourse to only definitions, for the latter cannot be accurate enough to stimulate our understanding, conditioned by the fact that English words are so rich in meanings and additional shades of meanings acquired in the context that this linguistic factor should necessarily be considered (Solan & Tiersma, 2005, pp. 20-22).

Conclusion

The overview of different approaches to the study of texts in the legal domain allows to highlight the strong connection between language and the law. To fully comprehend any legal case, it is crucial to understand how language and the legal system are closely intertwined. Legal discourse analysis depends on specific rules and principles unique to legal communication, which are essential for accurately understanding court proceedings. Discourse analysis is a key tool in making sense of the intricacies found in legal discussions. The utilization of appropriate linguistic elements, the nuances of the vocabulary employed in the legal discourse, its morphological and syntactic properties as well as the use of punctuation marks play a decisive role in creating and conveying the legal information, thus enhancing the effectiveness of the discourse. Moreover, our research confirms that there is a strong link between legal discourse and forensic linguistics. Forensic linguistics becomes valuable for examining the way language is used in legal contexts, helping to unravel the complexities and ensuring an accurate understanding of the legal discourse. As unlawful actions and wrongdoings continue to take place on daily bases, the role of language and its thorough analysis becomes increasingly vital in the pursuit of justice and the fair resolution of legal cases.

Notes

1. However, the firm belief that "customary law is often not expressed in words but expresses itself in particular situations" allows to put forward the statement that law can also exist outside language (Fuller 1968).

2. We are inclined to think that *law talk* could be covered by legal language, since the latter refers to the language employed by everyone who speaks about law or even within the legal settings.

3. When we are discussing discourse and context, we should go deep into the situation the discourse is taking place, pay attention to the participants, their background, their knowledge and education. All this affects constructing the notion of context (Arvaja 2008; Gee and Green 1998).

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Սեղա Գասպարյան
Զարա Հայրապետյան

Սույն հոդվածը ավելի մեծ նախագծի մաս է, որի նպատակն է ուսումնասիրել լեզվի կիրառման առանձնահատկությունները իրավական ոլորտում՝ լեզվի և իրավունքի փոխազդեցության տեսանկյունից: Լեզվաբանության և իրավական խնդիրների փոխհատման քննությունը առաջնային նշանակություն ունի, քանի որ իրավական կարգավորումները, որակյալ իրավաբանական օգնությունը, իրավական ձևակերպումների լեզվական պահանջների իմացությունը և այլն, մեր օրերում դարձել են մարդկային կյանքի անբաժանելի մաս, և լեզվական տարրերով արտահայտված տարաբնույթ իրավական իմաստների մեկնաբանումը առանձնահատուկ կարևորություն է ստացել: Իրավական դիսկուրսի բնութագրական գծերի բացահայտումը հնարավորություն կտա հասկանալու, թե դրանք ինչպես են կիրառվում ընդհանուր առմամբ և դատարանի դահլիճում մասնավորապես: Այս ոլորտում մեր հետաքրքրությունների համար կարևոր խթանիչ հանգամանք է եղել հանրահայտ գիտնականների գրքերի, հոդվածների և այլ աշխատությունների լայն շրջանակի ուսումնասիրությունը, որոնք այս կամ այն կերպ վերաբերում են նշված հարցերին: Առաջնորդվելով դիսկուրսի վերլուծության մեթոդի ընձեռած հնարավորություններով և հենվելով համապատասխան գրականության քննական վերլուծության վրա՝ հանգում ենք այն եզրակացության, որ լեզվական միջոցների փոխպայմանավորված կիրառության համակողմանի քննությունը կարևոր և անխուսափելի քայլ է *իրավական դիսկուրս* հասկացության էությունը բացահայտելու գործընթացում:

Բանալի բառեր՝ *իրավական դիսկուրս, իրավական դաշտ, իրավունքի դիսկուրս, դատական լեզվաբանություն, դիսկուրսի վերլուծություն:*