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THE USE OF MODAL VERBS IN ENGLISH LEGAL TEXTS AND THEIR SERBIAN EQUIVALENTS¹

ABSTRACT: The aim of this paper is to examine and describe similarities and differences in the use and distribution of modal verbs by contrasting English and Serbian legal texts. The corpus consists of an English version of *The Convention on the Rights of the Child* and its official Serbian translation. We started from an assumption that modal verbs are more frequent in legal texts in English than in Serbian, where we expected to find examples of lexical items with modal meanings instead. In addition, we assumed that due to its specific use in legal texts of this kind, the English modal ‘shall’ will show the highest frequency of occurrence. A total of one hundred and twenty six (126) modal verbs and a semi-modal ‘need not’ were found in the source text. The results of the analysis support the initial presumption that ‘shall’ will stand out as the most frequent of all modal verbs (60% of all occurrences). Despite the high occurrence rate of the legalistic ‘shall’ in the source text, translation solutions in the target language only rarely take the form of the modal verb. Most often deontic notions of imperative directness and necessity in Serbian legislative writings are expressed by means of the present indicative. The analysis also indicates that translation solutions for the remaining English modal verbs most often take the form of a modal verb or a modal lexeme with a corresponding meaning in Serbian.

Keywords: modal verbs, legal discourse, English, Serbian

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1. INTRODUCTION

Many scholars have shown interest in the way modal verbs function and how their semantic properties change not only across various discourses but also across different languages. The aim of this paper is to examine and describe the use of modal verbs in English and Serbian written legal discourse. In the light of contrastive analysis, we will try to provide an account of similarities and differences in the use and distribution of modal verbs by comparing and contrasting English and Serbian legal texts. The analysis of modals is based on a parallel corpus. The corpus is based on the English version of *The Convention on the Rights of the Child* and its official Serbian translation.

The category of modality in English and Serbian has been the topic of a number of noteworthy research papers and monographs recently (Trbojević-Milošević 2004, Novakov 2008, Prtljaga 2008). We have chosen to analyse the discourse of law primarily because of its formulaic language and typical legal vocabulary as well as due to specific meaning and use of some of the modals in English (Trosborg 1992, 1997). Modal verbs are commonly seen as an inseparable feature of the English legal language. The knowledge and understanding of English modals becomes crucial when it comes to drafting various types of legal documents. The final outcome of the entire document will naturally depend on how competent and proficient the author is in incorporating specific meanings of some of these modals into the legal context.

We start from an assumption that modal verbs are more frequent in legal texts in English than in Serbian, where we expect to find examples of lexical items with modal meanings instead. In addition, we assume that due to its specific use in legal texts of this kind, the English modal *shall* will show the highest frequency of occurrence. Moreover, because of their dual function, the question arises as to whether *shall* and *will* are translated by a modal in Serbian or by using Serbian future tense.

2. MODALITY IN ENGLISH AND SERBIAN

Although modality is a cross-linguistic category, manifested in both English and Serbian, each language expresses the concept of modality in a different manner.

2.1. Modality in English

Modals in the English language have been traditionally treated as a separate category of verbs or the so called auxiliaries – a group of verbs quite distinct from the wide category of lexical verbs on the basis of their morphosyntactic properties. Most grammar books (Quirk et al. 1985, Thomson/Martinet 1986, Huddleston/Pullum 2002) describe modals in a similar manner. Firstly, modal verbs are defined as a closed subset of auxiliary verbs: *can*, *could*, *may*, *might*, *must*, *ought*, *shall*, *should*, *will* and *would* while *need*, *dare* and *used* are usually referred to as semi-modals. Following their definition and classification, modals are commonly discussed in terms of their specific morphosyntactic properties that distinguish them from lexical or ordinary verbs.

In most grammar books, the section dedicated to the main morphosyntactic features of modal verbs is generally followed by the typology of their essential semantic properties. Since modality refers to “the speaker’s perspective or attitude with respect to the situation or state of affairs being described” (Yule 1998: 88), we can distinguish between the use of modals to assess the situation based on what is known by the speaker (*epistemic modality*) on the one hand, and based on what the speaker perceives as social, moral or legal norms (*root or deontic modality*) on the other hand. When discussing English modals in terms of their basic meanings, most grammarians (Palmer 1990, Yule 1998, Huddleston/Pullum 2002) agree that one modal can realise several modal meanings, that is, it can express two types of modality. As Novakov (2012: 158) points out, it is important to stress the fact that the meanings of some modal verbs overlap as this may lead to semantic ambiguity which is only resolved in the context.

Epistemic uses of modal verbs are closely related to the notions of *necessity* and *possibility*, i.e. they are based on the speaker’s knowledge of

facts. On the other hand, deontic modality is based on the notions of *obligation* or *permission*, that is, the speaker can use modal verbs to mark his/her perspective of the situation by either creating an obligation or giving permission. Palmer (2003) also recognises *dynamic modality* as another kind of modality based on a different type of directive. In contrast to deontic modality where “the event is controlled by circumstances *external* to the subject of the sentence...with Dynamic modality the control is *internal* to the subject” (Palmer 2003: 7).

2.2. Modality in Serbian

Although modality is treated as a possibly universal linguistic category, its realisation differs significantly across languages. Serbian grammar books (Stevanović 1981, Stanojčić/ Popović 2002) have traditionally given little or no importance to the category of modals simply because, unlike English modals, Serbian modal verbs do not display any specific morphosyntactic properties that would set them apart from the group of ordinary or lexical verbs (they show agreement with the subject, take inflections for tense and person, have nonfinite forms). In other words, when it comes to their form, Serbian modal verbs are traditionally seen as regular verbs that take verbal complements in the form of either the infinitive or the *da*-construction (Prtljaga 2008: 13).

Mrazović and Vukadinović (2009) gave a more detailed description and definition of modal verbs as a sub-category of dependent or auxiliary verbs. These verbs require a syntactic complement in the form of the infinitive (*Ona sme trčati*) or the *da*-construction (*Ona sme da trči*), which implies that they are syntactically dependent on the main verb, while at the same time their semantic function is to modify or specify the meaning of the main verb.

In contrast to the English category of modals which forms a closed set of verbs with clear cut morphosyntactic properties, Serbian modals are usually presented in the form of an open list of either “the most important” (Stanojčić/ Popović 2002: 255) or “the most frequent ones” (Hansen 2007: 33) or “modals in the narrow sense” (Mrazović/ Vukadinović 2009: 178). Following Hansen (2007: 32), Serbian possesses a wide range of lexical and syntactic means of expressing modality other than modal verbs. These can

range from impersonal reflexive constructions (*Jede mi se čips*) across content words (*verovatno, mogućnost, umeti*, itd.) to fully fledged auxiliaries. However, for the purpose of this study we will consider the following list of fully-fledged Serbian modal verbs: *moći, morati, trebati* and *valjati*; this is based on the fact that they comply with the basic semantic and syntactic requirements for modals (set out in Hansen 2007: 36). Semantically, these modal verbs satisfy the criterion of polyfunctionality in the sense that, unlike modal content words which can only express one modal meaning, they express at least two types of modality² (*moći* 'can' expresses both 'capability' [dynamic modality] and 'permission' [deontic modality], while the modal content word *umeti* 'to be capable' refers only to 'capability').

On the other hand, from a syntactic point of view, fully-fledged modal verbs behave like auxiliaries – they combine with both animate and inanimate subjects (*Moraću da razmislim o tome / Naučni rad mora da sadrži zaključak*) unlike the modal lexeme *biti dužan* 'be obliged to' which only takes animate subjects (**Naučni rad je dužan da sadrži zaključak*); modals also combine with aivalent verbs, e.g. meteorological verbs (*Sutra može da grmi*), modal constructions allow passive transformations without change in referential meaning (*Žiri mora da nagradi najbolju glumicu / Najbolja glumica mora da bude nagrađena od strane žirija*), modals do not assign thematic roles to the subject (*Potrošač mora da zna šta kupuje* [thematic role: cognizer] / *Morao sam ponovo da potražim neki posao* [thematic role: agent]). As Hansen (2007:36) points out, if we apply the semantic and syntactic criteria listed above to Serbian modals we can see that only *morati, moći, trebati* and *valjati* behave as fully-fledged modals. Despite the fact that it satisfies the criterion of polyfunctionality, the verb *hteti* is exempt from the category of modal verbs as it does not meet the syntactic requirements mentioned above. On the other hand, *smeti* and *imati* show the syntactic properties of modals but they lack polyfunctionality as

² As Hansen (2007: 35) points out “some modals have developed functions beyond modality, i.e. post-modal grammatical meanings. This has happened with *hteti* which has adopted future meaning and with *imati* which can be used as a future in the past.”

they are both restricted to deontic modality of ‘permission’ for *smeti* and ‘strong obligation’ for *imati*. Although Hansen (2007:36) excludes *smeti* from the category of fully-fledged Serbian modals, Mrazović /Vukadinović (2009: 178) and Piper et al. (2005: 636) do not consider a lack of polyfunctionality of this verb as a mandatory criterion for exclusion and classify *smeti* as a regular Serbian modal.

3. MODAL VERBS IN LEGAL DISCOURSE

Many authors have written about the wide and complex relationship between language and law (Melinckoff 1963, Trosborg 1997, Tiersma 1999, Shuy 2000, Gibbons et al. 2004, Schane 2006, Haigh 2012) but only few have tackled this issue in Serbo-Croatian (Stanojević 2010, Knežević/Brdar 2011). Some of these studies have been concerned with providing a list of the most common lexical and syntactic characteristics of the legal register. From a lexical perspective, legal language abounds in technical terms, archaic and formulaic expressions, doublets and common terms with uncommon meanings. Syntactic properties, on the other hand, revolve around sentence length and complexity, with a high frequency of passive constructions and complex conditionals that may additionally hinder the understanding of legal language.

Despite the fact that substantial body of work has been done on modals and modality in English, there are only a few studies that have used the specific corpus of legal texts to compare and contrast English modals with other various means of expressing modality across languages (cf. Peliškova 2006, Al Mukhaini 2008, Knežević/Brdar 2011). According to Trosborg (1997: 19), the two primary functions of law are regulative and constitutive, i.e. the first one is concerned with ordering the activities which are permitted and prohibiting the ones which are not, while the second function is about creating new relations where they did not exist before. One of the ways that language is used to convey these functions is with the help of modal verbs. Bearing in mind the two-fold function of law, we can presume that the highest frequency of modal verbs in legal texts is to be found among the group of deontic modals. Knežević and Brdar (2011: 118) distinguish the two degrees of *possibility* and *necessity* in legal texts: “deontic *possibility* marked by *may* and *can* that convey *permission*, and deontic *necessity* marked by *must* and *shall* that imply *obligation*”.

The first thing that one notices about modal verbs when comparing legal documents with everyday speech in English is the specific use of *shall* and *may*. Legal language does not normally express directives by the imperative, as is the case in everyday English, but it rather uses the modal *shall* to indicate some form of necessity or legal obligation (e.g. *Every notice of the meeting of the shareholders shall state the place, date and hour*). In this sense, the modal *shall* most closely matches the meaning of *must* in general English. Another problematic aspect of the modal *shall* in legal documents is the fact that it is also frequently used to refer to a future action or state.

On the other hand, the use of *may* in legal documents is most commonly associated with permission or authorisation whereby a party is allowed to do something but without any obligation to do that thing (... *any bylaw or amendment thereto as adopted by the Board of Directors may be altered, amended or repealed by a vote of the shareholders*). This use of *may* is less frequent in everyday English, in which permission is most often expressed using the modal *can*, in the sense ‘to be able to’. Hence, as Haigh (2012: 88) claims “*may* is both more polite than *can* in non-legal usage, and more appropriate in legal texts because its emphasis is on permission and entitlement which fits in with the general emphasis of legal texts”.

4. CORPUS DESCRIPTION AND RESEARCH METHODOLOGY

The selection of texts to be included in the corpus was based on the size and the type of the legal document. We chose *the Convention on the Rights of the Child* (CROC) since it belongs to a subcategory of legal instruments known as treaties, which are commonly defined as particularly formal agreements with a strong binding force, concluded between international entities (states/countries). The binding character of this text presupposes the prominent use of markers of obligation, necessity, permission, etc. Modal verbs are normally used to express these notions and prove to be the most relevant of these markers in legal discourse. Regarding the size of the analysed texts, it amounts to approximately 14,000 words, around 7,000 words per text. Using this small corpus, we explored the similarities and differences in the form and use of modal verbs in English and Serbian written legal discourse, and we further investigated the frequency of modals in this specific type of legal text.

Our first step in examining the two parallel legal texts was to identify all the examples of modal verbs in the English text (the source text) and to list them in terms of their frequency or distribution. This was followed by a description of semantic properties and uses of modals in the source text. The next step taken was to look at the Serbian translation (the target text) in order to find translation equivalents for the identified English modals and to investigate whether the translation process caused some changes on the syntactic and semantic level. In other words, we wanted to examine whether English modals are translated as fully-fledged modals in Serbian, with or without a shift in the meaning, or if Serbian translation equivalents occur in some other form.

5. CORPUS ANALYSIS

A total of one hundred and twenty six (126) modal verbs and a semi-modal *need not* were found in the source text. The results presented in the table below support the initial presumption that *shall* will stand out as the most frequent of all modal verbs – it occurs 76 times in the text which accounts to almost 60% of all occurrences. The second ranked occurrence rate is that of the modal *may* with 21 occurrences (16.5%), while *should*, as the third ranked, numbers 6 occurrences (4.72%).

Table 1. Frequencies of modal verbs in the source text

Modal verb	occurrence	percentage
SHALL	76	59.84
SHALL NOT	10	7.87
SHOULD	6	4.72
CAN	1	0.79
CANNOT	6	4.72
COULD	1	0.79
MAY	21	16.53
MAY NOT	1	0.79
WILL	1	0.79
WOULD	2	1.57
MUST	1	0.79
NEED NOT	1	0.79
Total	127	100

Surprisingly enough, the only three instances of negative forms of modals in the source text are *shall not*, *cannot* and *may not* and a semi-modal *need not* which occur only 18 times³ (14%). The remaining modals *can*, *could*, *will*, *would* and *must* score between 0.79 and 2.36% of the modal verbs in total.

5.1. The modal *SHALL / SHALL NOT* and their Serbian equivalents

Having by far the highest rate of occurrence of all modal verbs in the corpus, the modal *shall* deserves special attention and a detailed analysis. Although its usage in everyday English is rather restricted (first person future reference, offers/suggestions), *shall* in legal documents or regulations is used quite often in its deontic sense to express command or impose obligation, e.g. *The Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months* (*The Convention on the Rights of the Child*, Part 2, Article 43 (4)).

However, despite the fact that it is the most common modal verb in legal English, many authors (Gibova 2011, Peliškova 2006, Stark 2003) believe that *shall* is also the most misused of all modals in legal language. Its misuse is supported by the fact that *shall* can take on a number of meanings. Most often, lawyers misuse the modal *shall* to impose a duty on an inanimate object, to describe a status or to refer to the future. These wrong uses of *shall* are known as the “false imperative” (Haggard, cited in Stark 2003: 16). The following examples from the source text illustrate how *shall*, functioning as the grammatical signal of imperative in legal texts, can often misbehave. In the sentences below we have cases of false imperatives where *shall* is improperly used to:

³ The source text contains a number of examples where a sentence is negated through noun phrase negation, i.e. by inserting the determiner *no* in front of the noun phrase: ‘*No restrictions* may be placed on the exercise of these rights’ / ‘*No child* shall be subjected to arbitrary or unlawful interference with his or her privacy’.

Subject an inanimate thing to an obligation instead of obligating a party to do or not to do something:

When an amendment enters into force, it shall be binding on those States Parties which have accepted it. (15)

State a legal fact or declare a legal result rather than to impose a duty on someone:

The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. (12)

Describe future actions or possibilities (instead of using *will* as a much clearer alternative in such situations):

The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. (12)

For the purpose of this analysis, we have only examined examples of *shall* from the corpus with the modal meaning of obligation and permission. As is evident from *Table 1* above, the deontic use of *shall* appears 76 times in the source text. Situations in the text in which *shall* is used as a marker of future tense or as a false imperative were not taken into consideration⁴. In order to tell whether a sentence contains the false imperative, we applied the “has a duty to” test (Tradewell 2013). In other words, we substituted the phrase “has a duty to” for “shall” and asked ourselves whether the new phrase made sense. If the resulting sentence made sense, the use of *shall* was considered proper deontic, as in the following examples from the source text:

1. a) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate

⁴ For a full list of meanings of *shall* in legal documents see Garner, B.A. (1995), in Cooper (2011:20).

assistance and protection, with a view to speedily re-establishing his or her identity. (3)

b) U slučajevima kada je dete nelegalno lišeno nekih ili svih elemenata svog identiteta, države članice *pružaju* odgovarajuću pomoć i zaštitu kako bi mu što brže bio vraćen identitet. (6)

2. a) States Parties *shall ensure* to the maximum extent possible the survival and development of the child. (3)

b) Države članice *obezbedjuju* u najvećoj mogućoj meri opstanak i razvoj deteta. (5)

It is evident from the example above that the use of *shall* here imposes a duty on the subject, implying that States Parties *are obliged to* or *have a duty to* do something. However, if we take a look at the Serbian translation of this legal document, we can see that the English modal *shall* does not have a corresponding modal verb in Serbian.

In the majority of instances *shall* is translated as a full verb in the present tense in Serbian. Although some Serbian versions of the CROC available on the Internet use future tense to translate the legal imperative *shall*, this is considered bad practice and should be avoided whenever possible because, as Šarčević (2006: 29) explains “*uporaba prezenta... za izricanje preskriptivnog stava uobičajena je praksa u mnogim kontinentalnim pravnim sustavima.. jer zakoni imaju bezvremensku funkciju*”. Moreover, as a general rule, legal documents are regarded as ‘always speaking’ and should be treated as current regardless of when they were enacted (Cooper 2011:16). Hence, the use of the present tense in drafting a legislative instrument is obligatory. However, in a smaller number of instances in the target text, the legal imperative *shall* is translated using the future tense of the corresponding verb:

3. a) States Parties *shall strive* to ensure that no child is deprived of his or her right of access to such health care services. (7)

b) Države članice *će nastojati* da ni jednom detetu ne bude uskraćeno pravo na takvu zdravstvenu zaštitu. (13)

4. a) States Parties *shall pursue* full implementation of this right. (7)

- b) Države članice će se zalagati za potpuno ostvarenje ovog prava. (13)

Although it is sometimes considered justifiable to translate the legislative *shall* using the Serbian future tense, especially when we wish to express obligations which will come up in the future, obligations in the examples above do not seem to contain elements of futurity and could have been freely translated using the verb in present tense (Države članice *nastoje* da ni jednom detetu ne bude.... / Države članice *se zalažu* za potpuno ostvarenje ovog prava).

5. a) When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing...(6)

- b) Pri razmatranju rešenja, treba obratiti dužnu pažnju i na činjenicu da je poželjan kontinuitet u podizanju deteta...(10)

6. a) The arrest, detention or imprisonment of a child shall be in conformity with the law... (10)

- b) Hapšenje, pritvor ili zatvor za dete mora biti u skladu sa zakonom...(18)

The examples above illustrate the remaining translations of the modal *shall* in the target text. There are only a couple of instances in which *shall* is translated using the modal verb in Serbian. In the first example (5b), the legal imperative *shall* is translated with the corresponding Serbian modal *trebati* which is also used to impose a duty or express objective necessity. The example (6b) employs the Serbian deontic modal *morati*, acting as another equivalent of the legalistic *shall*. *Morati* is commonly used to express obligation or necessity imposed by the speaker or some external authority. Although, by definition, the closest equivalents of *trebati* and *morati* are *should* and *must* respectively, the use of these two English modals is severely restricted in legislative texts. One of the reasons why *shall* is preferred over *must* and *should* in legal documents is because *shall* is considered less direct and more objective than *must* while at the same time the obligation expressed by *should* is more a matter of conscience or choice than a command implied by *shall*.

The negative form of *shall* (*shall not*) counts only 3 occurrences in the corpus. However, if we take into account examples from the corpus when a sentence is negated by inserting *no* in front of a noun phrase, thus leaving *shall* in its positive form but still marking the whole statement as negative, the occurrence rate of *shall not* would increase significantly (10 occurrences).

7. a) No part of the present article or article 28 *shall be construed* so as to interfere with the liberty... (9)

b) Ni jedna odredba ovog člana, kao ni člana 28. *ne sme se tumačiti* tako da se ograničava sloboda ... (16)

As is evident from the example above (7), the modal *shall not* in legal English is commonly used to express prohibition and is duly translated using the Serbian modal *smeti* in its negative form. However, in a couple of instances in the target text, the equivalent of the negative form of *shall* is *ne može* (the negative form of the Serbian modal *moći*) which can also express prohibition⁵:

8. a) No child *shall be* deprived of his or her liberty unlawfully or arbitrarily. (10)

b) Ni jedno dete *ne može* biti lišeno slobode nezakonito ili samovoljno. (18)

The remaining option for the translation of the modal *shall not* is the corresponding negated verbal form in the present tense:

9. a) A reservation incompatible with the object and purpose of the present Convention *shall not be permitted*. (15)

b) Rezerva koja nije u skladu s ciljem i namernom ove konvencije *nije dozvoljena*. (26)

⁵ “Odrično moći znači nemogućnost, ‘ne biti u stanju’i zabranu.” (Mrazović /Vukadinović 2009: 182)

5.2. The modals *MAY / MAY NOT* and their Serbian equivalents

The occurrence rate of the modal *may* is the second highest in the source text, constituting 17% of all modals. Although frequently associated with the notion of epistemic possibility in non-legal usage, *may* usually carries deontic meanings of permission/authorization and prohibition in legal documents. Most often, *may* is used in the sense ‘is entitled to’ or ‘has a discretion to’ do something (Haigh 2012: 133).

10. a) The Committee *may request* from States Parties further information relevant to the implementation of the Convention. (13)

b) Komitet *može zatražiti* od država članica dodatne informacije koje se odnose na primenu Konvencije. (23)

In the example above (10a), *may* expresses entitlement, i.e. it indicates the Committee’s right to request additional information. Serbian equivalent of the deontic *may* in this case, much like in the vast majority of instances in the target text, is the appropriate form of the modal verb *moći*. However, there are few sentences in the source text in which *may* appears in its epistemic sense (11a), to express a possibility that something may be done or that something may be the case. In such instances, *may* is dropped from the target text and substituted by a corresponding verb in the present tense (11b):

11. a) ...for the national values of the country in which the child is living, the country from which he or she *may originate*, and for civilizations different from his or her own. (9)

b) nacionalnih vrednosti zemlje u kojoj dete živi i zemlje iz koje ono *potiče*, kao i civilizacija koje su različite od njegove;

12. a) Nothing in the present Convention shall affect any provisions... which *may be contained in..* (12)

b) Ni jedna odredba ove Konvencije neće uticati na bilo koje druge odredbe ...koje *se eventualno nalaze*... (21)

In the example above (12a), the epistemic sense of possibility expressed by *may* in the source text is preserved in the target text with the

help of the Serbian modal lexeme *eventualno* (12b), meaning *possibly*. The source text also contains a couple of sentences in which *may* occurs in fixed phrases such as ‘as the case may be’ (13a) or ‘as it may consider appropriate’ (14a) indicating the possibility or uncertainty of some future occurrence. These phrases are translated by the appropriate Serbian non-verbal expressions that serve more or less the same function of denoting epistemic possibility:

13. a) Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. (5)

b) Roditelji ili, u zavisnosti od slučaja, zakoniti staratelji imaju glavnu odgovornost za podizanje i razvoj deteta. (9)

14. a) The Committee shall transmit, as it may consider appropriate, to the specialized agencies...any reports from States Parties... (14)

b) Komitet, ako smatra za shodno, dostavlja specijalizovanim agencijama... izveštaje država članica... (24)

When used with a negative element in the legal document, *may* expresses prohibition, but not as strong as that expressed by *shall not*. The only occurrence of *may* to indicate that a party does not have a right to do something is found in the following example (15a):

15. a) No restrictions may be placed on the exercise of these rights... (4)

b) Ne mogu se nametnuti nikakva ograničenja na ostvarivanje ovih prava... (8)

As noted in the example above (15b), to indicate that a subject or a party is not authorized or permitted to do something, Serbian uses the negative form of the modal verb *moći*. Although the negative of *smeti* would also fit in well in this example, it is considered more appropriate for the translation of *shall not*, which is used to express a stronger degree of prohibition than *may not*.

5.3. The modal *SHOULD* and its Serbian equivalents

The modal verb *should* numbers 6 occurrences in the source text, making up nearly 5% of all the modals. The use of *should* in the English version of *the Convention* is associated with the deontic meanings of obligation and necessity and is in this sense similar to the use of *shall/must*. However, the obligation expressed by *should* is considered more gentle compared to the one expressed by *shall* or *must*. *Should* seems to indicate a sensible action or a moral obligation and, unlike *shall*, “its use is unambiguous and poses no difficulties neither for drafters of legal documents nor for readers” (Peliškova 2006: 53).

As Šarčević (2006: 30) points out, the modal *should* lacks a clear prescriptive meaning and is hence never used in legal documents to express commands. *Should* is mainly used in preambles or introductory parts of legal documents, in the sense ‘it is recommended’:

16. a) Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. (1)

b) Svesne činjenice da dete, u cilju potpunog i skladnog razvoja ličnosti, treba da raste u porodičnoj sredini, u atmosferi sreće, ljubavi i razumevanja. (2)

17. a) The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child... (8)

b) Ove povlastice treba da budu priznate, ako to odgovara, uzimajući u obzir sredstva i uslove deteta... (14)

In all the 6 instances of the modal *should* in the target text, the expected translation solution is the Serbian modal *trebati* in the appropriate form. As already mentioned, *trebati* also occurs as an equivalent of *shall* in expressing obligation or objective necessity but, unlike *shall*, the use of

*trebati*⁶ implies the possibility of discretion. In other words, the speaker may use his free will to decide whether he does or does not want to fulfil a duty. The modal *should* is more a matter of conscience than external authority and is in this respect the closest equivalent to the Serbian modal *trebati*.

5.4. The modals CAN / CANNOT and their Serbian equivalents

Although the English modal *can* functions both in terms of deontic permission and epistemic possibility/ability, its use in legal documents is severely restricted. It comes as no surprise that the corpus of deontically-oriented legal texts used for the purpose of this study contains only seven occurrences of the modal *can* (1 positive and 6 negative forms), especially if we take into account the relatively high occurrence rate of the modal *may* in the same corpus. This can be explained by the fact that drafters of legal texts prefer the use of modal *may*, which they consider more appropriate for expressing permission and entitlement in legal usage than the less formal *can*. Consequently, *can* mainly occurs in its epistemic modalising usage in the corpus, as illustrated in the following example (18a):

18. a) Convinced that the family,...should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. (1)

b) Uverene da porodici...treba da bude pružena neophodna zaštita i pomoć kako bi mogla u potpunosti da preuzme odgovornosti u zajednici. (2)

As evidenced by the Serbian translation (18b), the equivalent of *can* in this instance is the Serbian *potencijal*, which is also used to convey possibility. When used in its negative form (*cannot*) or following a negated subject (e.g. In cases where *no parents can be...*), this modal expresses a lack of ability and is translated using the negative of the Serbian modal

⁶ „Za razliku od *trebati*, upotreba *morati* daje jasno na znanje da neispunjavanje obveza čini dotični akt, dokument ili postupak nevaljan“ (Šarčević 2006: 30).

moći. The only example in the corpus where the modal element is omitted from the target text is the following:

19. a) A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. (6)

b) Dete koje je privremeno ili trajno lišeno porodične sredine ili kome, u njegovom najboljem interesu, nije dozvoljeno da ostane u tom krugu ima pravo na posebnu zaštitu i pomoći države. (10)

In this case, the English modal *cannot* is used as a deontic modalising device to negate permission and is semantically reinforced by the modal lexeme *be allowed to* which has a strong deontic content. Instead of using a negative form of *moći* (*ne može*), the Serbian translation employs the negative form of the auxiliary *biti* (in the third person singular of the present tense) followed by the corresponding passive participle with deontic meaning *dozvoljeno*.

5.5. Other modal verbs in the corpus and their equivalents

The remaining modal verbs identified in the corpus (*will*, *would*, *could*, *must* and a semi-modal *need not*) jointly make up less than 5% of all the modal verbs in the source text and will, for this reason, be analysed together within the current section. Despite the fact that it is one of the most frequent modals in general English, *will* occurred only once in the present corpus. *Will* is used predominantly as a marker of future tense, but in legal writing it most often indicates the deontic meaning of obligation or command, as illustrated in the following example:

20. a) The best interests of the child will be their basic concern. (5)

b) Interesi deteta su njihova osnovna briga. (9)

The Serbian equivalent of deontic *will* is the corresponding form (third person plural) of the verb *biti* in the present tense, since the use of the future tense in legal documents of this type is generally frowned upon and should be avoided. The modal *would* appears only twice in the source text

and is used in sentences that express certain conditions. The Serbian equivalent in this case is the conditional (Srb. *potencijal*) of the corresponding verb:

21. a) States Parties shall ensure the implementation of these rights...in particular where the child would otherwise be stateless. (3)

b) Države članice obezbeđuju ostvarivanje ovih prava... posebno u slučajevima u kojima bi dete inače bilo apatrid. (5)

The modals *could*⁷, *must* and the semi-modal *need not* have the same insignificant occurrence rate of only 0.80% of all the modal verbs in the corpus. Interestingly, although the modal *could* in the following example (22a) is used in its epistemic sense to suggest available options, it is translated using a much stronger Serbian modal – *trebati* (22b), which usually denotes deontic necessity or command:

22. a) Such care could include, inter alia, foster placement, Kafala of Islamic law, adoption... (6)

b) Takvo staranje treba da obuhvata, između ostalog, smeštaj u drugu porodicu, kafalah prema islamskom pravu, usvojenje... (10)

The modal *must* functions both in the sense of logical necessity and obligation. However, the former use of this modal is very rare in legal texts⁸. The only occurrence of *must* in the corpus (23a) is associated with the deontic sense of imposing an obligation and is translated using the appropriate form of the Serbian equivalent *morati* (23b):

⁷ The relative absence of the modal *could* is explained by “its polysemantic nature which is not consistent with the need for precision in legal discourse”. (Gibova 2011: 5)

⁸ The low frequency of *must* in legal texts in general is largely due to the fact that its use in the sense of imposing an obligation is fulfilled by the deontic *shall* which is considered less direct and more objective. (Gibova 2011: 4)

23. a) Such determination may be necessary in a particular case such as one... where the parents are living separately and a decision must be made as to the child's place of residence. (3)

b) Takva odluka može biti neophodna u određenom slučaju, kao npr. ako roditelji...žive odvojeno pa se mora doneti odluka o mestu stanovanja deteta. (6)

The single occurrence of the semi-modal *need not* in the example (24a) is used to express absence of obligation or to state that an action is not necessary. In the target text, the translation of *need not* is fairly straightforward taking up the negative form of the modal *morati* (24b):

24. a) A State Party which has submitted a comprehensive initial report to the Committee need not ... repeat basic information previously provided. (13)

b) Država članica koja je podnela sveobuhvatan prvi izveštaj Komitetu ne mora... ponavljati osnovne informacije koje je prethodno već dala. (23)

6. FINAL REMARKS

Despite the high occurrence rate of the legalistic *shall* in the source text, translation solutions in the target language only rarely take the form of the modal verb. In the vast majority of instances *shall* is translated by means of the Serbian present simple indicative, which is commonly used to convey prescriptive meaning in legal written discourse. There are only two examples in the corpus in which *shall* is translated with Serbian deontic modals, and these are *morati* and *trebati*. It remains unclear why in certain situations which are absolutely similar to the contexts translated with Serbian present indicative, preference is given to the Serbian future tense. The modal *shall not* used to express prohibition is properly translated using the negative forms of the Serbian modal verbs *smeti* and *moći*. The deontic sense of the modal *may* is translated using the corresponding Serbian modal for expressing permission – *moći*. In the situations in which *may* expresses epistemic possibility in the source text, translation equivalents in Serbian take the form of either the present indicative or a modal lexeme (*eventualno*). When the epistemic modal *may* occurs in certain fixed phrases

in the source text, it is translated using Serbian non-verbal expressions with an epistemic value. The only instance of the negative form of *may* in the source text to express lack of permission is duly translated with the negative form of the Serbian modal *moći*.

The Serbian translation equivalents of the modal *should*, used for the purpose of expressing tentative obligations in the source text, take the form of the modal verb *trebati*. The modal *can* and its negative form *cannot*, which occur mostly as epistemic modalising devices in the source text, are translated with the appropriate form of the Serbian modal *moći* or the conditional (*potencijal*). Although primarily used as a future tense marker, the single occurrence of *will* in the source text conveys deontic meaning similar to that of *shall* and is translated using the Serbian present indicative. The modal *would* in the source text is used to introduce certain conditions and takes the form of the Serbian *potencijal* in the target text. The modal *must* and the semi-modal *need not* which are used to convey deontic obligation or absence of obligation are both translated using the appropriate form of the Serbian modal *morati*. The only slightly problematic translation is that of the modal *could* which appears to be used with an epistemic value in the source text, i.e. to suggest available options, but is translated using a much stronger Serbian modal verb *trebati* which embraces the notions of necessity and command.

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UPOTREBA MODALNIH GLAGOLA U PRAVNIM TEKSTOVIMA NA
ENGLESKOM I NJIHOVI SRPSKI EKVIVALENTI

Rezime

Cilj ovog rada je da se kontrastivnom analizom engleskog i srpskog pravnog teksta istraže i opišu sličnosti i razlike u upotrebi i učestalosti modalnih glagola u okviru pravnog funkcionalnog stila ova dva jezika. Korpus se sastoji iz engleske verzije teksta *Konvencije Ujedinjenih nacija o pravima deteta* i njenog zvaničnog prevoda na srpski. Rezultati istraživanja govore u prilog tezi da se u pravnom diskursu na engleskom modal *shall* ističe po frekvenciji u odnosu na ostale modale, ali i da se kao njegov prevodni ekvivalent na srpskom vrlo retko javlja neki modalni glagol. Najčešće se deontička značenja naredbe i dozvole ili zabrane u srpskom pravnom diskursu iskazuju prezentom indikativa. Analiza korpusa takođe pokazuje da se kao prevodni ekvivalenti ostalih engleskih modala najčešće javljaju odgovarajući srpski modali ili lekseme koje su im slične po značenju.

Ključne reči: modalni glagol, pravni diskurs, engleski, srpski