

Argumentation of a Czech criminal court in a case concerning anarchism

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Abstract

This paper is based on an analysis of a court case of the Municipal Court in Prague of 2016, when an anarchist activist of Russian origin and a student of Charles University in Prague was sentenced to two years of expulsion from the territory of the Czech Republic. The crime was supporting and encouraging others in spraying anarchist slogans onto a prison wall. I analyse the court judgement from the viewpoint of the disciplines of linguistics (critical discourse analysis) and law (socio-legal research). I work within the framework of the discourse-historical approach (Reisigl and Wodak, 2009: 87-121) and identify the argumentation strategies (Reisigl and Wodak, 2001: 31-90) employed by the judge in the written text of the verdict. It is concluded that the sentence of punishment might have been influenced by another (unproven) accusation dealt with by the court: Shevtsov was also suspected of throwing a Molotov onto the family house of the Czech Minister of Defence, but he was acquitted of this charge. The court's simultaneous dealing with the two charges has probably discursively reinforced the view on the accused as guilty of both crimes.

Key words

Argumentation strategies, criminal verdict, critical discourse analysis, Czech law

1. Introduction

This paper employs the theoretical and methodological framework of critical discourse analysis, and particularly the discourse-historical approach (DHA) on the analysis of the language of a criminal court judgement and interrelated texts (courtroom speeches, media coverage). The purpose of this contribution is to show how can discourse analysis be employed from the perspective of law, as part of socio-legal analysis.

The study investigates the discursive strategies employed in the criminal verdict on the criminal case of Igor Shevtsov, a student of a Czech University Igor Shevtsov in 2016 in Czechia. The alleged offender is a Russian citizen and a student of Charles University in Prague. He was accused of two offences: firstly, throwing a Molotov onto the family house of the Czech Minister of Defence ('crime 1' hereinafter), and secondly, supporting anarchists in spraying anarchist slogans on a state prison wall ('crime 2' hereinafter).

The first accusation was not confirmed by the verdict of the court of the first instance. For the second charge, Shevtsov was sentenced by the first instance court to two years of expulsion from the

territory of the Czech Republic. Shevtsov appealed against the judgement and the second-instance court mitigated the punishment to three years of prohibition of entering cultural activities and gatherings, including anarchist demonstrations. Finally, the Supreme Court of the Czech Republic freed Shevtsov of the charge completely and Shevtsov received monetary compensation from the state for being criminally persecuted on an unjust cause.

The purpose of this article is to identify the inaccurate argumentation of the court of the first instance and investigate into the explanations for the unjust judgement and even for some of the unlawful procedures of Czech criminal authorities.

I analyse the court judgement from the point of view of law (socio-legal analysis) and linguistics (critical discourse analysis). In particular, I work within the framework of the discourse-historical approach (Reisigl and Wodak, 2009: 87-121). The inquiry is based on the texts of the court decisions and on the texts of the most important criminal laws in the Czech Republic: the Czech Criminal Code (Act No 40/2009 Coll.) and the Czech Code of Criminal Procedure (Act No 41/1961 Coll.). I identify the argumentation strategies (Reisigl and Wodak, 2001, pp. 31-90) employed by the judge in the text of the verdict and in the text of the reasoning for the verdict. These include, for instance, the *topoi* (and fallacies) of recidivism, pro-Russian activism and anti-Americanism. It is demonstrated that the sentence of punishment for the second accusation was influenced and aggravated by the first (unproven) accusation.

2. Theoretical and methodological framework

Critical discourse analysis (CDA), is an approach to the study of language, which distinguishes itself from 'non-critical' discourse analysis by focusing on the role of language in society (Breeze, 2011: 497). According to Breeze (2011), it contains two essential elements. Firstly, it is concerned with ideology and power and their role in politics and secondly, it is interested in how language 'perpetuates and reveals these workings' (493-495).

Out of the various approaches in CDA, my research follows the discourse-historical approach (DHA), which is particularly fitting for this research project, because it sees the social context of language also as historically influenced (Wodak and Meyer, 2009: 26). DHA follows the principle of 'triangulation': it takes into consideration lots of data, empirical observations and theories (Reisigl and Wodak, 2009, p. 89, emphasis mine) from different genres and public spheres.

For the purposes of the DHA, I use Reisigl and Wodak's (2009) specific definition of the term 'discourse' as:

- a cluster of context dependent semiotic practices that are situated within specific fields of social action
- socially constituted and socially constitutive
- related to a macro-topic
- linked to the argumentation about validity claims such as truth and normative validity involving several social actors who have different points of view

(p. 89)

Macro-topic relatedness is herein viewed as the connection between the topics of immigration, criminality, anarchism and terrorism. Pluri-perspectivity means the inclusion of the points of view of various interested parties in the process: the Minister of Defence whose house was attacked, his wife

who is a famous actress, other witnesses, such as anarchist friends of the accused, the accused and his solicitor, the judge, and the wording of law.

I demonstrate how representation, identity, belonging and non-belonging are understood from a discourse perspective within my particular discipline of law. I focus on the identity of the accused and his discursive construction as guilty or innocent.

The principle of 'triangulation' (Reisigl and Wodak, 2009: 89) is followed and therefore, the text of the court judgement is assessed on the background of related data from several 'genres' (Fairclough, 1995: 14). The interrelated texts are the statements of the judge, of the accused and of his attorney during the proceedings, the wording of the Czech Criminal Code and the Czech Code of Criminal Procedure, and the coverage of the issue by both mainstream and anarchist media. The DHA is three-dimensional: firstly, contents and topics are assessed, secondly, discursive strategies are identified, and thirdly, their linguistic realizations are investigated (Reisigl and Wodak, 2009: 93).

The discursive strategies herein examined are those of argumentation - constructing condensed arguments (*topoi*) which lead to certain conclusion rules (Reisigl and Wodak, 2001: 31-90). The examination is based on identifying 'patterns in the choice of words' (Mautner, 2008: 38).

The 'triangulatory approach' (Reisigl and Wodak, 2009: 93) takes into account four levels of context: the immediate text-internal context of each assessed linguistic element (context within the structure of the court judgement), the context of other genres (the courtroom speeches and media comments), and the broader socio-political and historical context (the public perception of anarchist and left-wing activism in Czechia, the position of foreign students in the Czech society, and the perception of Russian citizens by Czech public).

As part of the three-dimensional analysis in DHA (Reisigl and Wodak, 2009: 93-94), I firstly identify the specific contents and topics of the specific discourse. These include two essential categories:

1. Representations of Shevtsov as guilty and the discursive strategies supporting these representations. These include argumentation strategies in the court's verdict, the reasoning for the verdict and comments made in the court room, all of which are based on the wording of the essential Czech criminal law
2. Shevtsov's self-presentations as innocent and the interconnected argumentation strategies employed by other parties, who heard as witnesses in the court proceedings: his university teachers, his attorney, other anarchists, anarchist media, and mainstream media.

In the second and third steps of my DHA analysis, I identify the discursive strategies and their linguistic realizations. In my understanding of 'discursive strategy' I adhere to the definition set forth by Wodak and Reisigl (2003: 386): '[A] more or less accurate and more or less intentional plan of practices (including discursive practices) adopted to achieve a certain social, political, psychological, or linguistic aim.' Discursive strategies are therein further defined as 'systematic ways of using language' (*ibid.*). These types of discursive strategies are normally differentiated:

1. Referential strategies, which pose answers to the question of 'How are persons named and referred to linguistically?' (Wodak and Reisigl, 2003: 385)
2. Predication strategies, responding to the questions of 'Which traits, characteristics, qualities and features are attributed to them?' (*ibid.*)
3. Argumentation strategies, which provide 'justification and questioning of claims of truth and normative rightness' (Reisigl and Wodak, 2009: 94)
4. Perspectivation and framing strategies, which position 'the speaker's or writer's point of view' and express 'involvement or distance' (*ibid.*)

5. Intensification and mitigation strategies which modify the 'epistemic and deontic status of utterances' (*ibid.*).

My analysis focuses on how Shevtsov was discursively constructed as guilty or not-guilty through the employment of discursive strategies of argumentation in the text of the court verdict and in the interrelated texts of courtroom speeches.

I do not question the accuracy of the court's assessment of the case. Rather, I inspect how the unproven accusation of crime 1 might have possibly contributed to the severity of Shevtsov's punishment for crime 2 and to the equation of the identity of 'the accused' with the identity of being 'the guilty'.

3. Data analysis – the identified argumentation strategies

3.1 The accused is a foreign citizen

The reference to Shevtsov as 'the citizen of Russian Federation' would be neutral in the general use of the term, however, in the context of the trial, it contributes to the overall impression of him as the 'dangerous other' (Stoegner and Wodak, 2015: 193). Such view on the accused is further reinforced by some of the comments of the judge made both during the trial and in the official text of the verdict. Such references are interconnected with the mentions of the fact that foreign citizens are entitled to studying without paying tuition fees at Czech Universities and Shevtsov has obviously been benefiting from such legal arrangement:

Therefore, there is no doubt that the accused deeply despises the state system of the Czech Republic through his life views, he does not respect the law of the Czech Republic, because he does not feel to be bound by it based on his way of thinking, and he supposes that the democratic country which is enabling him to study for free at Czech higher education institutions, allows him, in addition to criticism, to take actions against the executive branch of the state power, including with violent means.

(Municipal Court in Prague, 2016: 5)

3.2 The accused is an anarchist

Some of the argumentation strategies employed by the judge in the verdict are those connecting Shevtsov with anarchist movements. While this is used as a negative quality in Shevtsov's portrayal by the judge in the first instance, it is used by his defenders whose testimonies are included in the official text of the verdict, as a fact which proves that Shevtsov is a mild, non-violent and decent person.

The first instance court states in the text of the judgement that Shevtsov was filming others while spraying the prison wall as part of a demonstration held to support 'anarchist prisoners' (Municipal Court in Prague, 2016: 1) and the inscriptions that were made are specified: 'THE DESIRE FOR FREEDOM WILL NOT BE STOPPED BY REPRESSION' and 'DEATH TO THE STATE' (*ibid.*).

Because this crime was legally qualified as a 'damage to a thing of another', i.e. as a purely possession-harming crime, any arguments referring to its political significance should be irrelevant.

Such view on the act as political, in spite of its legal qualification as an economic crime, is further developed in the explanatory part of the verdict: 'the accused is a member of the anarchist movement which fights against right-wing oriented governments, market economy, the so-called capitalist system and the pro-American politics' (*ibid.*, p. 4).

Some of the witnesses who spoke in Shevtsov's favour in the court hearing and who are also anarchist activists, mentioned that they perceived Shevtsov as having a mild personality and, rather contradictorily, as an anarchist activist who is not interested in politics. Such was the testimony of 'witness B': 'She assumes that the accused would not be able to attack the house of the family of the minister S , because he was not interested in politics' (Municipal Court in Prague, 2016: 7).

Similarly, the reasoning of the court verdict mentions that the witnesses (who are also anarchists) 'regard the accused Shevtsov as a decent person, who abstains from alcohol, and who would not be able to commit the violent act which he was accused of by point-I of the indictment' (*ibid.*). However, it needs to be mentioned that the court is listing these testimonies in its assessment of the accusation of crime 2, while they are only relevant to crime 1.

3.3 Political importance of the alleged crimes

The main argumentation strategies employed by the court of the first instance include reasoning stressing the political importance of the alleged crimes. However, the only crime which was proved to have been committed by Shevtsov was not classified as political, but rather as an economical deed: a 'damage to a thing of another'. Therefore, any political arguments should be irrelevant.

During the court proceedings, Shevtsov was asked on multiple occasions for the explanations of some of the details of crime 2. This is contrary to the principle that 'nobody should be forced to prove his/her innocence' which is explicitly stated in the Czech Code of Criminal Procedure.

In the detailed reasoning for the court decision, the judge lists the arguments and testimonies related to crime 1 (unproven) even in the first part, which should be solely devoted to crime 2. Similarly, during the court hearing, in her conclusions, she explicitly expressed her doubt about Shevtsov's innocence in crime 1 and draw connections between the two deeds, even though only one had been proven to have been committed by Shevtsov.

The perspectivation and framing strategies employed by the judge in the case are comments on Shevtsov's political views and life-style preferences, which are used to point out Shevtsov's alleged indecency and the aggravated seriousness of the examined deeds, only some of which were provably committed by Shevtsov. These include comments on 'numerous tattoos on his body' (Municipal Court in Prague, 2016: 5) and the presence of beer bottles in his dormitory room:

Based on the protocol of the search warrant [...] of the dorm room of the accused [...] the court has found that in spite of the proclaimed alcohol-abstinence of the accused, there was a significant number of beer bottles stored in the room, out of which at least two are of an identical type as those which were, after a proper adjustment, used for the arson.

(Municipal Court in Prague 2016: 17)

3.4 Presence of friends of the accused in the court room

The judge mentions in the verdict the presence of Shevtsov's friends in the court room as a circumstance contributing to the graveness of the examined deeds, while by law, almost all criminal proceedings are public and the accused person is not responsible for the structure of the general-public audience who decides to attend. The reasoning for the court verdict states:

The accused does not deny his political orientation, he proudly declares to be of such orientation and he attempted to demonstrate his anarchist views even during the main court proceedings, during the presence of the public, which was mainly constituting of similarly oriented sympathisers (some of which were pictured in the photographs of public meetings which had not been reported to authorities in advance).

(Municipal Court in Prague, 2016: 4-5)

3.5 The gravity of the alleged crimes

The fifth kind of argumentation strategies employed by the judge in the verdict included references to the gravity of the alleged crimes. In the assessment of the unproven crime 1, the court did not focus on the possible political importance of the attempted crime, the fact that the target was the house of the Minister of Defense was not pointed out in the court decision, nor the reasoning. Rather, the court focused on the danger to human health and property: 'danger of death or of severe injury to health, or damage to property on a large scale by causing fire' (Municipal Court in Prague, 2016: 3).

4. Conclusions

Crime 1 was classified by the court as 'Public Menace' (section 272 of the Czech Criminal Code), crime 2 as 'Damage to a Thing of Another' (*ibid.*, section 228). The acts were not legally qualified as 'crimes against order in public matters' (*ibid.*, sections 323-368) nor as 'criminal offences against the Czech Republic, foreign states and international organizations' (sections 309-322). Thus, the possible political importance of the acts was not reflected in their qualification, even though mentions of politics appeared frequently in the court judgement and during the proceedings.

The topics identified in the analysed text include anarchism, foreign students in Czechia, left-wing activism, and indecent lifestyle. The discovered discursive strategies of argumentation could be summarized under three *topoi*:

1. The *topos* of utilitarianism, i.e. the claim that Shevtsov only understands and obeys Czech law when this serves his profit,
2. The *topos* of anti-Americanism, i.e. the belief that Shevtsov is a Russian citizen and therefore disagrees with the pro-Western politics of the Czech Minister of Foreign Affairs and
3. The *topos* of recidivism, i.e. Shevtsov had previously been punished in Russia for activism against the Russian government and therefore does not regard highly any state system, including the one in the Czech Republic.

The principle of presumption of innocence, together with the rule *in dubio pro reo* (i.e. in case of doubt, the decision which is more favourable to the accused should be made), should be inherent to every legal system, whether it is explicitly mentioned or whether it is only implicitly present. While these principles are overtly proclaimed in the Czech Code of Criminal Procedure, it can be speculated whether the court has really honestly obeyed them in Shevtsov's case.

The court's argumentation in the verdict violated the principle of presumption of innocence and thus put a stigma of a crime on the accused. Shevtsov's presence during others' vandalism (spraying anarchist slogans onto a prison wall) was evaluated in the light of crime 1, of which he was, however, acquitted; and crime 2 was evaluated as aggravated by its possible political underline:

Based on the examined evidence, it is not possible to accept the argumentation of the defence that the social harmfulness of the actions of the accused Shevtsov was so insignificant that it would be more appropriate to use [administrative law and punish him by fine] instead. On the contrary, the social harmfulness of the actions of the accused, as compared to the description of actions in section 228, paragraph 2 of the Criminal Code is aggravated by the fact that the action was not simply 'scratching on a wall', rather, it was a manifestation of organized resistance

(Municipal Court in Prague, 2016: 8)

There is no clear-cut borderline between law, morality and ethics. The guilt of crime 1 is implied by the judge in the text of the verdict, even though, technically speaking, the accused is being acquitted of this charge. Such implications are performed through the thorough description of the act 1 in the verdict for crime which contributed to the discursive construction of Shevtsov as being guilty, even though, strictly legally speaking, he was cleared of the charge for crime 1.

The text of the verdict does not provide enough information on whether Shevtsov was innocent. However, the principle of presumption of innocence – *ei incumbit probatio qui dicit, non qui negat* (UN's Universal Declaration of Human Rights, Article 11) – should be observed in any case. The case of Igor Shevtsov is an example of how the wording of judicial decisions and the language used by prosecutors, judges and barristers can contribute to the formation and discursive construction of the accused as guilty even though there is not enough evidence. The discursive relationship between language and the social reality is dialectical – public discourse is formed by court proceedings and can have real impact on further rights and court decisions.

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