

# **MODAL VALUES OF VERBAL FORMS IN THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES. A LINGUISTIC COMPARATIVE ANALYSIS OF THE ENGLISH, ITALIAN AND SPANISH VERSIONS**

**Mariangela COPPOLELLA**, PhD

G. d'Annunzio University of Chieti-Pescara, Italy  
mariangelacoppolella@yahoo.it

**Abstract:** The present paper analyses the verbal expression of deontic, epistemic and performative values in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages, a treaty of the Council of Europe which aims to protect and promote the historical regional or minority languages of Europe.

The objective of this paper is to show that Legal English, Legal Italian and Legal Spanish express in a different way the deontic, epistemic or performative values of verbal constructions, in particular recurring, or not, to modal verbs or to specific tenses.

The results of the paper reveal that Legal English frequently uses modal verbs to express deontic or epistemic modalities of verbal forms, whereas it privileges indicative tenses to express performative modality; Legal Italian prefers indicative tenses to convey deontic and performative modalities, and subjunctive tenses to convey epistemic modality; Legal Spanish privileges indicative tenses to express deontic and performative modalities, and subjunctive tenses to express epistemic modality.

**Key words:** Legal English, Legal Italian, Legal Spanish, deontic modality, epistemic modality, performative modality.

## **I VALORI MODALI DELLE FORME VERBALI NELLA CARTA EUROPEA DELLE LINGUE REGIONALI O MINORITARIE. UN'ANALISI LINGUISTICO COMPARATIVA TRA LA REDAZIONE INGLESE, ITALIANA E SPAGNOLA**

**Abstract:** Il presente studio analizza l'espressione verbale del valore deontico, epistemico e performativo nella redazione inglese, italiana e spagnola della Carta Europea delle Lingue Regionali o Minoritarie, un trattato del Consiglio d'Europa che ha lo scopo di proteggere e promuovere le lingue storiche regionali o minoritarie d'Europa.

L'obiettivo di questo lavoro è mostrare che il linguaggio giuridico inglese, italiano e spagnolo esprimono in modo differente il valore deontico, epistemico o performativo che deve essere attribuito a una costruzione verbale, in particolare ricorrendo o meno a verbi modali o a specifici tempi verbali.

I risultati dello studio rivelano che l'inglese giuridico impiega frequentemente i verbi modali per esprimere la modalità deontica o epistemica delle forme verbali, mentre impiega i tempi verbali dell'indicativo per esprimere la modalità performativa; l'italiano giuridico predilige i tempi verbali dell'indicativo per esprimere la modalità deontica e performativa, e i tempi verbali del congiuntivo per esprimere la modalità epistemica; lo spagnolo giuridico, impiega i tempi verbali dell'indicativo per esprimere la modalità deontica e performativa, e i tempi verbali del congiuntivo per esprimere la modalità epistemica.

**Parole chiave:** Inglese giuridico, Italiano giuridico, Spagnolo giuridico, modalità deontica, modalità epistemica, modalità performativa.

## **ŚRODKI WYRAŻANIA MODALNOŚCI W EUROPEJSKIEJ KARCIE JĘZYKÓW REGIONALNYCH LUB MNIejszościowych. LINGWISTYCZNA ANALIZA PORÓWNAcza WERSJI W JĘZYKU ANGIELSKIM, WŁOSKIM I HIsZPAŃSKIM**

**Abstract:** Artykuł zawiera analizę środków deontycznych, epistemicznych i performatywnych w angielskiej, włoskiej i hiszpańskiej wersji językowej Europejskiej karty języków regionalnych lub mniejszościowych, traktatu Rady Europy, który ma na celu ochronę i promocję tych języków w Europie.

Celem autorki było wykazanie, że angielski, włoski i hiszpański język prawny charakteryzują się odmiennym sposobem wyrażania modalności deontycznej, epistemicznej i performatywności. W angielskim języku prawnym wyróżnić można wiele czasowników modalnych na wyrażenie modalności deontycznej lub epistemicznej, a performatywność wyrażana jest za pomocą trybu oznajmującego. We włoskim języku prawnym na wyrażenie modalności deontycznej oraz performatywności stosuje się tryb oznajmujący, natomiast na wyrażenie modalności epistemicznej tryb łączący. Z kolei w hiszpańskim języku prawnym modalność deontyczną i performatywność wyraża się poprzez tryb oznajmujący, a modalność epistemiczną przez tryb łączący.

**Słowa kluczowe:** angielski język prawny, włoski język prawny, hiszpański język prawny, modalność deontyczna, modalność epistemiczna, performatywność.

### **1. Introduction**

At the level of verbal constructions the language of normative texts expresses itself in three main ways - deontic, epistemic and performative - in the sphere of legal regulations as normative texts are built upon pragmatic conditions, such as legislator's intentionality, receiver's acceptability and situationality of communicative settings (cf. de Beaugrande, Dressler 1981).

In a statement, deontic modality is realised when «[...] the conditioning factors are external to the relevant individual [...]»; it «[...] relates to obligation or permission, emanating from an external source [...]» and it is distinguishable in «[...] the typological categories of (Deontic) Permissive and Obligative». In general, «[...] Deontic modality stems from some kind of external authority such as rules or the law, typically and frequently the authority is the actual speaker, who gives permission to, or lays an obligation on, the addressee» (Palmer 2001, 9-10).

Epistemic modality is realised when «[...] speakers express their judgments about the factual status of the proposition [...]» and it is distinguishable in «[...] the typological categories Speculative, Deductive and Assumptive» (Palmer 2001, 8).

Finally, performative modality is realised when «[...] the issuing of the utterance is the performing of an action - it is not normally thought of as just saying something» (Austin 1967, 6-7). If a performative utterance fails, that is, if it does not have the desired effects for some reason, it is not defined false but unhappy, otherwise it is not defined true but happy (Austin 1967, 14).

The present paper analyses the verbal expressions of epistemic, deontic and performative values in the English, Italian and Spanish versions of the European Charter

for Regional or Minority Languages, a treaty of the Council of Europe which aims to protect and promote the historical regional or minority languages of Europe,<sup>1</sup> in order to compare English, Italian and Spanish expressions of those values and so making a contribution to the cross-cultural investigation of the linguistic features and the legal discourse, which is important for the understanding of the increasingly globalized legislative practices.

While the analysis is based on the English, Italian and Spanish versions of the Charter, the French version of the Charter is used as a further reference basis since it is the source text of the Italian and Spanish versions; in particular, the French version is taken into consideration to show whether or not the Italian and Spanish use of a modal or non-modal verb and of a specific tense is due to a transfer because of their fidelity in translation to the French version.

The choice of English, Italian and Spanish is based on the need to compare languages of different linguistic groups, in this case, a Germanic language and two Romance languages, and to compare States with different legal traditions, the United Kingdom belonging to the tradition of Common Law, Italy and Spain belonging to the tradition of Civil Law.

## **2. Verbal forms with deontic value**

Deontic modal value refers «[...] to a particular branch or extension of modal logic: the logic of obligation and permission» and it «[...] is concerned with the necessity or possibility of acts performed by morally responsible agents. When we impose upon someone the obligation to perform or to refrain from performing a particular act, we are clearly not describing either his present or future performance of that act». Deontic modality is connected with futurity because «the truth-value of a deontically modalized proposition is determined relative to some state of the world later than the world-state in which the obligation holds; and the world-state in which the obligation holds cannot precede, though it may be simultaneous with, the world-state in which the obligation is imposed». Furthermore, deontic modality «[...] proceeds, or derives, from some source or cause. If X recognizes that he is obliged to perform some act, then there is usually someone or something that he will acknowledge as responsible for his being under the obligation to act in this way» (Lyons 1977, 823-824).

Deontic statements are distinctive of prescriptive rules, that is of rules which produce «[...] an event exercising a pressure on someone's behaviour [...] The prescribed situations or facts are produced in an immediate way, that is they are realized through a process which includes at least two distinct and subsequent acts, the act of the one who prescribes and the decisive act of the one who performs the prescription [...]» (my translation, Carcaterra 1994, 224-225).

Prescriptive rules prevail in the Charter as its purpose is to regulate Member States' behaviour towards historical regional or minority languages.

---

<sup>1</sup> The sources of the examined versions of the Charter are the Council of Europe site for the French and Italian versions, the Foreign & Commonwealth Office site for the English version and the Official State Gazette Agency site for the Spanish version.

### *Mariangela Copolella, Modal values of verbal forms...*

In laying down in the Charter, Legal English prefers the modal auxiliary verb “shall” in 33 occurrences, non-modal verbs in the “Simple Present” in 29 occurrences, the infinitive structure “to be” and the modal auxiliary verbs “may” and “will” in two occurrences; Legal Italian uses the “Indicativo Presente” in 54 occurrences, including three with the modal auxiliary verb “dovere” and two with the modal auxiliary verb “potere”, non-modal verbs in the “Indicativo Futuro semplice” in 13 occurrences and the infinitive structure “da + infinito” in three occurrences; finally, Legal Spanish employs the “Futuro simple de Indicativo” in 40 occurrences, including five with the modal auxiliary verb “deber”, two with the modal auxiliary verb “poder” and one with the modal auxiliary verb “haber de”, and it employs non-modal verbs in the “Presente de Indicativo” in 29 occurrences.

In the majority of the cases, precisely in 27 occurrences, Legal English, Legal Italian and Legal Spanish agree with each other in using non-modal verbs in the present tense with deontic meaning; an example:

#### **Article 2, paragraph 1**

Chaque Partie s’engage à appliquer [...].

Each Party undertakes to apply [...].

Ogni Parte si impegna ad applicare [...].

Cada Parte se compromete a aplicar [...].

In contrast with the example mentioned above, which counts 26 occurrences, there is a case in which Legal English prefers a verbal construction with the modal auxiliary verb “shall”<sup>2</sup> highlighting both futurity and obligation of the undertaking given by contracting States, whereas Legal Italian and Legal Spanish, like Legal French, always use the same verb and tense, only highlighting the obligation of the undertaking given by contracting States:

#### **Article 7, paragraph 4**

[...] les Parties s’engagent à prendre en considération les besoins et les vœux [...].

[...] the Parties shall take into consideration the needs and wishes [...].

[...] le Parti si impegnano a considerare i bisogni e i desideri [...].

[...] las Partes se comprometen a tener en consideración las necesidades y los deseos [...].

Another frequent case in the expression of obligation, with 20 occurrences, consists in the use of the modal auxiliary verb “shall” by Legal English, of the “Indicativo Presente” by Legal Italian, exactly 17 occurrences with non-modal verbs (art. 7, p. 1), two occurrences with the modal auxiliary verb “dovere” (art. 15, p. 1) and one case with the modal auxiliary verb “potere” (art. 4, p. 1), and of the “Futuro simple de Indicativo” by Legal Spanish, in particular 16 occurrences with non-modal verbs (art. 7, p. 1), three occurrences with the modal auxiliary verb “deber” (art. 15, p. 1) and one case with the modal auxiliary verb “poder” (art. 4, p. 1); only in one of the described cases,

---

<sup>2</sup> According to many studies on deontic modality, the modal auxiliary verb ‘shall’ is the most frequent modal in English legal texts (Hiltunen 1990, 75; Garzone 2001, 156; Caliendo 2004, 244, Caliendo 2005, 386).

Legal Spanish differs from the French and Italian versions in that it employs the modal auxiliary verb “deber” instead of a non-modal verb (art. 3, p. 1). Therefore, in those cases, Legal English and Legal Spanish underline both futurity and obligation of the sentence, whereas Legal Italian, like the French one, only underlines the obligation of the sentence. The examples:

**Article 7, paragraph 1**

[...] les Parties fondent leur politique [...].  
[...] the Parties shall base their policies [...].  
[...] le Parti fondano la loro politica [...].  
[...] las Partes basarán su política [...].

**Article 15, paragraph 1**

[...] Le premier rapport doit être présenté dans l'année [...].  
[...] The first report shall be presented within the year [...].  
[...] Il primo rapporto deve essere presentato nell'anno [...].  
[...] El primer informe deberá ser presentado en el año siguiente [...].

**Article 4, paragraph 1**

Aucune des dispositions de la présente Charte ne peut être interprétée [...].  
Nothing in this Charter shall be construed [...].  
Nessuna disposizione della presente Carta può essere interpretata [...].  
Ninguna de las disposiciones de la presente Carta se podrá interpretar [...].

**Article 3, paragraph 1**

[...] s'appliquent les paragraphes choisis conformément au paragraphe 2 de l'article.  
[...] the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.  
[...] si applicano i paragrafi scelti conformemente all'Article 2 paragraph 2.  
[...] deberán aplicarse los párrafos elegidos de conformidad con el párrafo 2 del artículo 2.

In a smaller number of cases, in 11 occurrences, in making prescriptions all three languages employ a modal verb or a tense which express the futurity and the obligation of the action: precisely Legal English uses the modal auxiliary verb “shall”, whereas Legal Italian and Legal Spanish use, like Legal French, non-modal verbs, respectively, in the “Indicativo Futuro semplice” and in the “Futuro simple de Indicativo”; an example:

**Article 7, paragraph 5**

[...] la nature et la portée des mesures à prendre pour donner effet à la présente Charte seront déterminatées de manière souple [...].  
[...] the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner [...].  
[...] la natura e la portata delle misure da adottare per rendere effettiva la presente Carta saranno determinate in modo flessibile [...].  
[...] la naturaleza y el alcance de las medidas que se habrán de tomar para la aplicación de la presente Carta se determinarán de manera flexible [...].

In two occurrences, the English modal auxiliary verb “may” does not have its usual function of expressing permission or possibility, but it has a deontic function. The deontic function is given to “may”, in one case, through the anteposition of the adjective “no other” to the subject and, in the other case, through the pronoun “nothing” which performs the function of subject. In those two occurrences, Legal Italian employs, in one case, a modal auxiliary verb (art. 5) and, in the other case, like Legal French, an auxiliary verb (art. 21, p. 1) both in the “Indicativo Presente”, whereas Legal Spanish employs, in one case, like Legal French, a modal auxiliary verb (art. 5) and, in the other case, a non-modal verb (art. 21, p. 1) both in the “Futuro simple de Indicativo”; therefore, only Legal Spanish expresses both future and obligatory values of the statement:

#### **Article 5**

Rien dans la présente Charte ne pourra être interprété comme impliquant le droit [...].

Nothing in this Charter may be interpreted as implying any right [...].

Nella presente Carta nulla può implicare il diritto [...].

Nada en la presente Carta podrá ser interpretado en el sentido de que lleve consigo el derecho [...].

#### **Article 21, paragraph 1**

[...] Aucune autre réserve n'est admise.

[...] No other reservation may be made.

[...] Non è ammessa alcuna altra riserva.

[...] No se admitirá ninguna otra reserva.

In two occurrences, the English modal auxiliary verb ‘will’ has a deontic function, as well as the primary function of expressing future. In those two cases, Legal Italian uses an auxiliary verb, in one case, in the “Indicativo Presente” (art. 3, p. 3) and, in the other case, in the “Indicativo Futuro semplice” (art. 8, p. 1, i), whereas Legal Spanish always uses, like Legal French, non-modal verbs in the “Futuro simple de Indicativo”:

#### **Article 3, paragraph 3**

[...] et porteront les mêmes effets dès la date de leur notification.

[...] and will have the same effect as from their date of notification.

[...] e hanno gli stessi effetti a decorrere dalla data della loro notifica.

[...] y tendrán los mismos efectos a partir de la fecha de su notificación.

#### **Article 8, paragraph 1, i)**

[...] et à établir sur ces points des rapports périodiques qui seront rendus publics.

[...] and for drawing up periodic reports of their findings, which will be made public.

[...] e a redigere in merito a tali punti rapporti periodici che saranno resi pubblici.

[...] y redactar al respecto informes periódicos que se harán públicos.

In one case, Legal English and Legal Italian employ, like Legal French, a present tense to express an exhortation, whereas Legal Spanish employs a future tense,

precisely the “Futuro simple de Indicativo”, so underlining both exhortative and future values of the statement:

**Article 7, paragraph 4**

- [...] Elles sont encouragées à créer [...].
- [...] They are encouraged to establish [...].
- [...] Esse sono esortate a istituire [...].
- [...] Se las invitará a crear [...].

In contrast with the above mentioned case, there is another one in which Legal Italian and Legal Spanish express in a verbal construction, like Legal French, both values of obligation and futurity, whereas Legal English uses an auxiliary verb in the “Simple Present” only with prescriptive value:

**Article 18**

- [...] Elle sera soumise à ratification, acceptation ou approbation [...].
- [...] It is subject to ratification, acceptance or approval [...].
- [...] Essa sarà sottoposta a ratifica, accettazione o approvazione [...].
- [...] Será sometida a ratificación, aceptación o aprobación [...].

In the end, in one case, Legal English and Legal Italian employ, like Legal French, an infinitive structure with deontic value, whereas Legal Spanish employs the modal verb “haber de”, properly of formal register, in the “Futuro simple de Indicativo”:

**Article 7, paragraph 5**

- [...] des mesures à prendre pour donner effet à la présente Charte [...].
- [...] of the measures to be taken to give effect to this Charter [...].
- [...] delle misure da adottare per rendere effettiva la presente Carta [...].
- [...] de las medidas que se habrán de tomar para la aplicación de la presente Carta [...].

From this linguistic comparative analysis it emerges that the examined legal languages do not always agree with each other in expressing statements with deontic value.

As a matter of fact, in two cases, the English and Italian versions, like the French one, show statements with deontic function, whereas the Spanish version shows statements with epistemic function. More specifically, in one case, Legal English uses the modal auxiliary verb “shall” and Legal Italian uses a non-modal verb in the “Indicativo Presente”, and, in another case, Legal English employs the infinitive structure “to be” and Legal Italian employs the modal auxiliary verb “dovere” in the “Indicativo Presente”, when Legal Spanish uses a non-modal verb in the “Presente de Subjuntivo”; below the two examples in point, in which Legal French uses, in the first one, a tense different from the one employed by Legal Italian and Legal Spanish, and, in the second one, like Legal English, an infinitive structure:

**Article 17, paragraph 1**

- [...] qui seront proposées par la Partie concernée.

*Mariangela Copolella, Modal values of verbal forms...*

[...] who shall be nominated by the Party concerned.

[...] che sono proposte dalla Parte interessata.

[...] que proponga la Parte correspondiente.

**Article 15, paragraph 1**

[...] sous une forme à déterminer par le Comité des Ministres [...].

[...] in a form to be prescribed by the Committee of Ministers [...].

[...] in una forma che deve essere determinata dal Comitato di Ministri [...].

[...] en la forma que determine el Comité de Ministros [...].

Conversely, in only one case, Legal Spanish employs the modal auxiliary verb “deber” in the “Futuro simple de Indicativo” marking the obligation of the sentence, when Legal English and Legal Italian simply employ, like Legal French, a participial structure which does not mark the obligation of the sentence:

**Article 2, paragraph 2**

[...] dont au moins trois choisis dans chacun des articles [...].

[...] including at least three chosen from each of the Articles [...].

[...] di cui almeno tre scelti in ciascuno degli articoli [...].

[...] de los cuales, al menos, tres deberán ser elegidos de cada uno de los artículos

[...].

In one case, only Legal Italian and Legal Spanish highlight the deontic value of a sentence employing, respectively, the implicit structure “da + infinito” and the modal auxiliary verb “deber” in the “Futuro simple de Indicativo”, when Legal English uses a prepositional locution which does not highlight the deontic value of the sentence; observe, in the example below, that Legal French uses, like Legal Italian, an infinitive structure:

**Parte III**

Mesures en faveur [...] à prendre en conformité avec [...].

Measures to promote [...] in accordance with [...].

Misure a favore [...] da adottare conformemente [...].

Medidas que, para fomentar [...] deberán adoptarse de conformidad con [...].

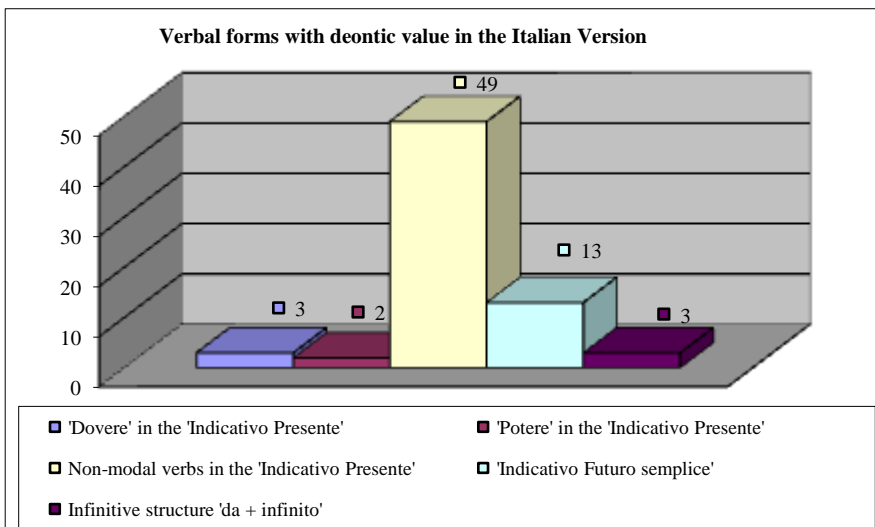
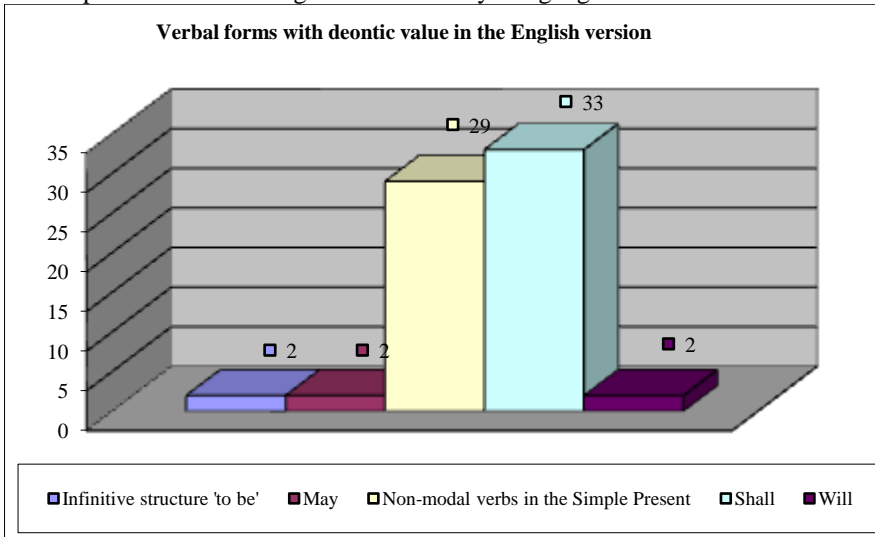
To sum up, in the expression of deontic modality in verbal constructions, the most relevant results emerging from the linguistic comparative analysis are, on the one hand, the use in 27 occurrences by Legal English, Legal Italian and Legal Spanish of non-modal verbs in the present tense and, on the other hand, the use in 20 occurrences by Legal English, Legal Italian and Legal Spanish of, respectively, the modal auxiliary verb “shall”, the “Indicativo Presente”, including 17 occurrences with non-modal verbs, two occurrences with the modal auxiliary verb “dovere” and one case with the modal auxiliary verb “potere”, and the “Futuro simple de Indicativo”, including 16 occurrences with non-modal verbs, three occurrences with the modal auxiliary verb “deber” and one case with the modal auxiliary verb “poder”. It can surely be affirmed that a concordance prevails in the expression of the deontic modality among the examined legal languages,

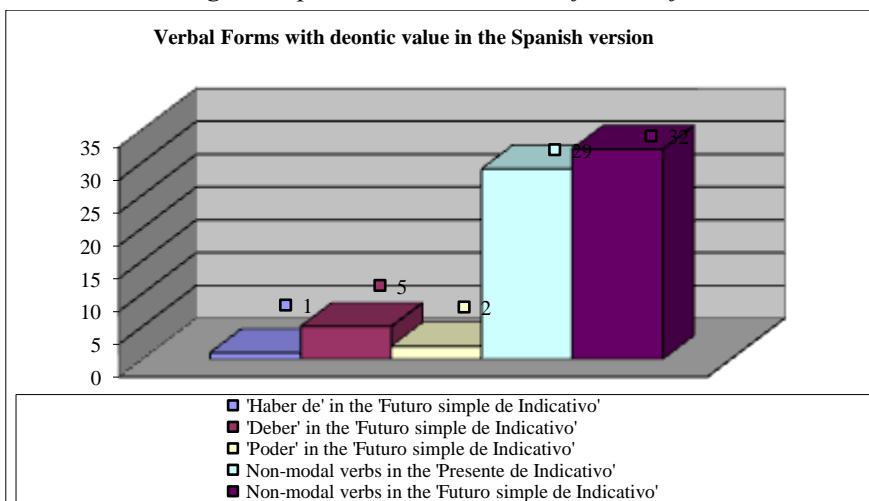


nevertheless, there are a considerable number of cases, only seven cases less compared to those of concordance, in which a discordance prevails.

Finally, it can be noticed that the use of modal auxiliary verbs is notable in the English version, whereas it is scarce in the Spanish version and even more so in the Italian version of the Charter, and that the use of future tenses is notable in the Spanish version and a little bit less in the English one, but it is scarce in the Italian version.

Graphic 1. Verbal forms with deontic value in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.





### 3. Verbal forms with epistemic value

The epistemic modal value indicates a «[...] logical structure of statements which assert or imply that a particular proposition, or set of propositions, is known or believed. Epistemic logic, in the option of some authorities, also lends itself [...] to formalization in terms of the notion of possible worlds» (Lyons 1977, 793). Epistemic modality can be objective, when it refers to reality in general, or subjective, when it refers to speakers' beliefs (Lyons 1977, 797).

In expressing epistemic modality in the Charter, Legal English prefers the modal auxiliary verbs “can” in four occurrences, “have to” in two occurrences, “may” in 18 occurrences and “should” in one case. Legal Italian uses the modal auxiliary verbs “dovere” in three occurrences, including two cases in the “Congiuntivo Presente” and one case in the “Condizionale Presente”, “potere” in 16 occurrences, including 11 occurrences in the “Indicativo Presente”, one case in the “Indicativo Futuro semplice” and four occurrences in the “Congiuntivo Presente”, and non-modal verbs in the “Congiuntivo Presente” in 32 occurrences. Finally, Legal Spanish employs the modal auxiliary verbs “deber” in the “Condicional simple” in one case, “haber de” in the “Presente de Subjuntivo” in two occurrences and “poder” in 19 occurrences, including three occurrences in the “Presente de Indicativo”, 10 occurrences in the “Futuro simple de Indicativo”, five occurrences in the “Presente de Subjuntivo” and one case in the “Pretérito imperfecto de Subjuntivo”; besides, it employs non-modal verbs in the “Presente de Subjuntivo” in 90 occurrences, in the “Pretérito imperfect de Subjuntivo” in five occurrences, in the “Pretérito perfecto de Subjuntivo” in seven occurrences, auxiliary verbs in the “Pretérito pluscuamperfecto de Subjuntivo” in one case and non-modal verbs in the “Futuro simple de Subjuntivo” in one case.

In most cases, precisely in 20 occurrences, Legal English uses the modal auxiliary verb “may”, when Legal Italian uses the modal auxiliary verb “potere” and Legal Spanish uses the modal auxiliary verb “poder”; an example:

**Article 20, paragraph 1**

[...] le Comité des Ministres du Conseil de l'Europe pourra inviter tout Etat [...].  
[...] the Committee of Ministers of the Council of Europe may invite any State [...].  
[...] il Comitato dei Ministri del Consiglio d'Europa potrà invitare ogni Stato [...].  
[...] el Comité de Ministros del Consejo de Europa podrá invitar a todo [...].

Conversely, in five occurrences, Legal English employs the modal auxiliary verb “may”, when Legal Italian and Legal Spanish do not employ, like Legal French, any modal auxiliary verb with epistemic value, but resort instead to other linguistic devices to express this modality, such as verbs in the present tense of the subjunctive (art. 9, p. 1, b, c. ii) or epistemic adverbs (art. 10, p. 4, a); some examples:

**Article 9, paragraph 1, b), sub-paragraph ii)**

[...] qu'elle s'exprime dans sa langue régionale ou minoritaire [...].  
[...] that he or she may use his or her regional or minority language [...].  
[...] che essa si esprima nella sua lingua regionale o minoritaria [...].  
[...] que se exprese en su lengua regional o minoritaria [...].

**Article 10, paragraph 4, a)**

[...] la traduction ou l'interprétation éventuellement requises;  
[...] translation or interpretation as may be required;  
[...] la traduzione o l'interpretazione eventualmente richieste;  
[...] la traducción o la interpretación eventualmente solicitadas;

In four cases, Legal English uses the modal auxiliary verb “can” and Legal Spanish uses the modal auxiliary verb “poder”, when Legal Italian uses the modal auxiliary verb “potere”, in three occurrences (art. 16, p. 2), or an auxiliary verb in the “Congiuntivo Presente”, in one case (art. 9, p. 2, b); note, in the following examples, that Legal Spanish agrees with Legal French on the use of tenses but not always on the use of modal auxiliary verbs:

**Article 16, paragraph 2**

[...] Ces organismes ou associations pourront en outre soumettre [...].  
[...] These bodies or associations can furthermore submit [...].  
[...] Tali organismi o associazioni possono inoltre sottoporre [...].  
[...] Dichos organismos o asociaciones podrán asimismo presentar [...].

**Article 9, paragraph 2, b)**

[...] et à prévoir qu'ils seront opposables [...].  
[...] and to provide that they can be invoked [...].  
[...] e a prevedere che siano opponibili [...].  
[...] y a asegurar que podrán ser invocados [...].

In one case, in expressing the epistemic value Legal English employs the modal auxiliary verb “have to” in the present tense, Legal Italian employs the modal auxiliary verb “dovere” in the “Congiuntivo Presente” and Legal Spanish employs the modal

*Mariangela Copolella, Modal values of verbal forms...*

auxiliary verb “haber de” in the “Presente de Subjuntivo”; observe, in the following example, that Legal French employs, like Legal English, a modal auxiliary verb in the present tense:

**Article 9, paragraph 1, b), sub-paragraph ii)**

à permettre, lorsqu'une partie à un litige doit comparaître [...].  
to allow, whenever a litigant has to appear [...].  
a permettere, qualora una Parte in una vertenza debba comparire [...].  
permitir, cuando una Parte en un litigio haya de comparecer [...].

Also in one instance only, Legal English uses the modal auxiliary verb “should”, Legal Italian uses the modal auxiliary verb “dovere” in the “Condizionale Presente” and Legal Spanish uses the modal auxiliary verb “deber” in the “Condicional Simple”; note, in the following example, that Legal Italian and Legal Spanish agree with Legal French in the use of the conditional mode:

**Preamble**

[...] ne devraient pas se faire au détriment [...].  
[...] should not be to the detriment [...].  
[...] non dovrebbe avvenire a scapito [...].  
[...] no deberían hacerse en detrimento [...].

Lastly, in one case, Legal English and Legal Spanish employ a verbal phrase with epistemic value which is conferred by the modal auxiliary verbs, respectively, “may” and “poder”, whereas Legal Italian, like Legal French, does not employ a verbal phrase but only a parenthetical proposition with epistemic value, which is present also in the Spanish version with the function of reinforcing the verb:

**Article 16, paragraph 4**

[...] en vue de la preparation, le cas échéant, de toute recommandation de ce dernier à une ou plusieurs Parties.  
[...] for the preparation of such recommendations of the latter body to one or more of the Parties as may be required.  
[...] in vista della preparazione e, se del caso, di qualsiasi raccomandazione di quest'ultimo a una o più Parti.  
[...] para la preparación, en su caso, de cualquier recomendación que este último pueda hacer a una o varias Partes.

From the linguistic comparative analysis it emerges that the English, Italian and Spanish versions of the Charter do not always agree with each other in expressing epistemic modality.

In two cases, Legal Italian and Legal Spanish describe, like Legal French, a hypothetical situation using, in one case, the modal auxiliary verbs, respectively, “potere” and “poder” and, in another case, the conditional conjunction, respectively, “se” and “si”, when Legal English describes an assertive situation using a non-modal verb in the “Simple Present”; an example:

**Article 17, paragraph 2**

- [...] Si un membre ne peut remplir son mandat [...].  
[...] A member who is unable to complete a term of office [...].  
[...] Se un membro non può adempiere il suo mandato [...].  
[...] Si algún miembro no puede completar su mandato [...].

As affirmed before, to express epistemic modality Legal Italian uses the “Congiuntivo Presente” in 38 occurrences (art. 9, p. 1, a), c. iv) and Legal Spanish uses the “Presente de Subjuntivo” in 97 occurrences (art. 12, p. 3); in 35 occurrences the two considered legal languages show similar choices in employing the present tense of the subjunctive (art. 13, p. 1, a). In those cases, Legal English, like Legal French, describes, like the example above, assertive situations using non-modal verbs in different tenses. The examples:

**Article 9, paragraph 1, a), sub-paragraph iv)**

- [...] n'entraînant pas de frais additionnels pour les intéressés.  
[...] involving no extra expense for the persons concerned.  
[...] che non causino spese aggiuntive per gli interessati.  
[...] sin gastos adicionales para los interesados.

**Article 12, paragraph 3**

- [...] et à la culture dont elles sont l'expression.  
[...] and the cultures they reflect.  
[...] e la cultura di cui sono l'espressione.  
[...] y a la cultura que las mismas expresen.

**Article 13, paragraph 1, a)**

- à exclure de leur législation toute disposition interdisant ou limitant [...].  
to eliminate from their legislation any provision prohibiting or limiting [...].  
a escludere dalla loro legislazione qualsiasi disposizione che proibisca o limiti [...].  
excluir de su legislación toda disposición que prohíba o limite [...].

In one case, only Legal Spanish describes a hypothetical situation employing the modal auxiliary verb “poder” in the “Presente de Subjuntivo”, whereas Legal English and Legal Italian, like Legal French, employ an infinitive structure whose epistemic value is conveyed by the presence of a consecutive proposition:

**Article 14, paragraph a)**

- [...] de façon à favoriser les contacts [...].  
[...] in such a way as to foster contacts [...].  
[...] in modo da favorire i contatti [...].  
[...] de tal modo que puedan favorecer los contactos [...].

Legal Spanish frequently employs the subjunctive mode to express epistemic modality; more specifically, the “Presente de Subjuntivo” prevails in the Charter, but also the “Pretérito imperfect de Subjuntivo” (art. 8, p. 1, e), c. iii), the “Pretérito perfecto de Subjuntivo” (art. 16, p. 3), the “Pretérito pluscuamperfecto de Subjuntivo” (art. 3, p. 2) and the “Futuro simple de Subjuntivo” (art. 11, p. 3) are employed. Some examples:

**Article 8, paragraph 1, e), sub-paragraph iii)**

- [...] ne peuvent pas être appliqués [...].
- [...] cannot be applied [...].
- [...] non possano essere applicati [...].
- [...] no pudieran aplicarse [...].

**Article 16, paragraph 3**

- [...] les Parties seront invitées à formuler et [...].
- [...] the Parties have been requested to make and [...].
- [...] le Parti sono invitate a formulare e [...].
- [...] se haya invitado a hacer a las Partes y [...].

**Article 3, paragraph 2**

- [...] tout autre paragraphe de la Charte qui n'avait pas été spécifié [...].
- [...] any other paragraph of the Charter not already specified [...].
- [...] ogni altro paragrafo della Carta, che non era stato specificato [...].
- [...] cualquier otro párrafo de la Carta que no hubiera sido especificado [...].

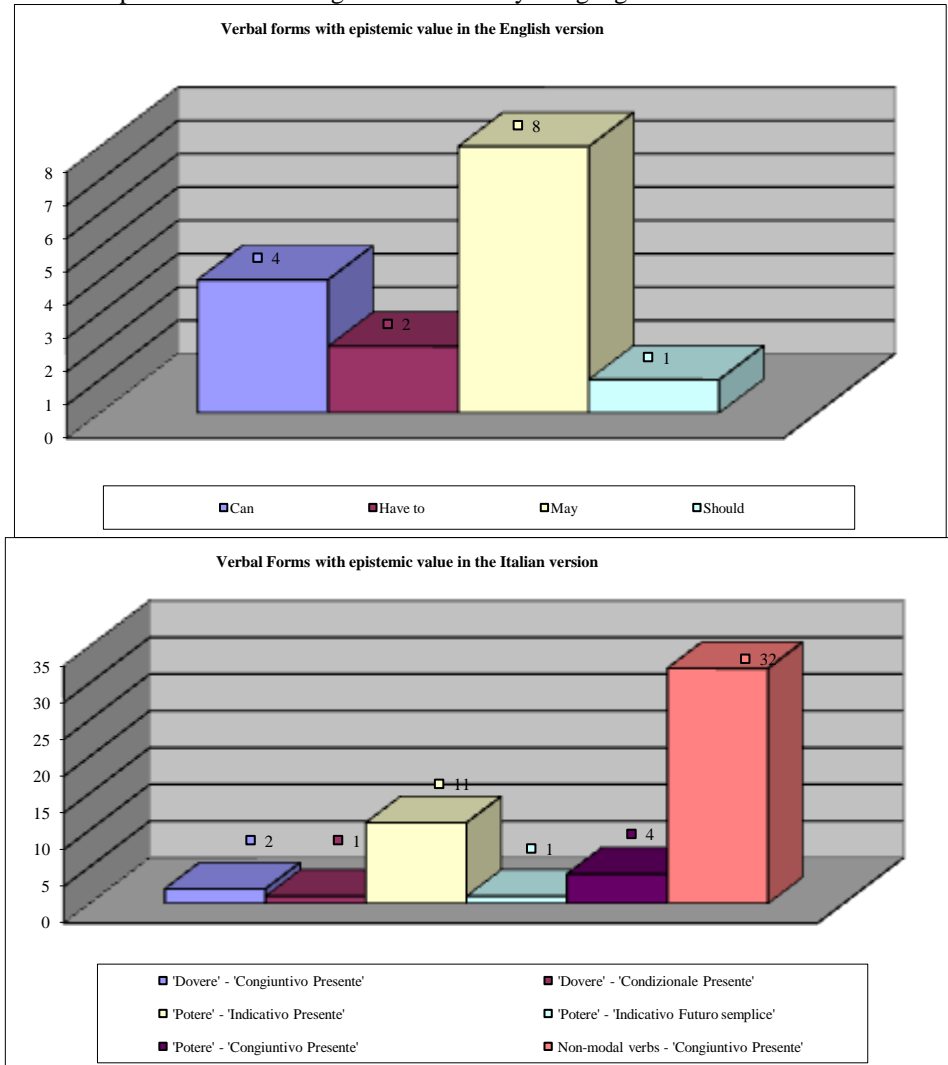
**Article 11, paragraph 3**

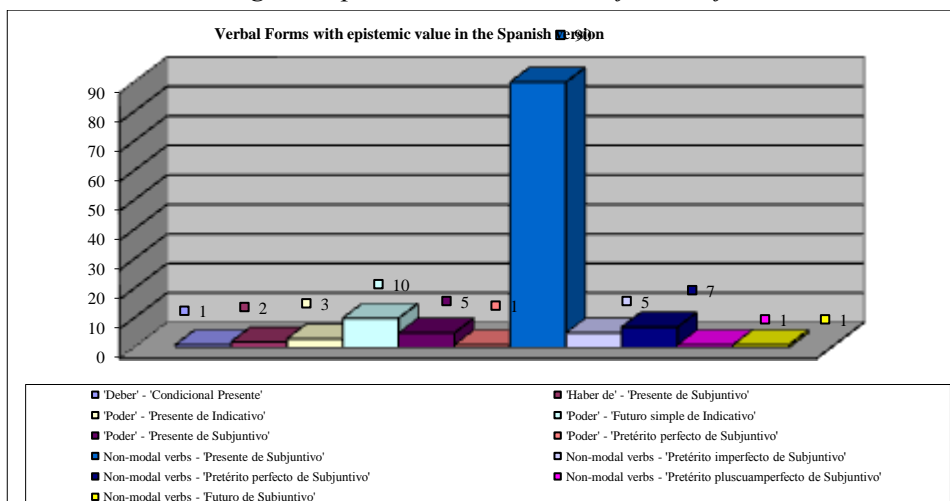
- [...] éventuellement créées conformément à la loi [...].
- [...] as may be established in accordance with the law [...].
- [...] eventualmente create in conformità con la legge [...].
- [...] que se crearen de conformidad con la ley [...].

Concluding, Legal English, Legal Italian and Legal Spanish mainly agree with each other in their use of epistemic locutions, such as, respectively, “If necessary”, “Se necessario” and “Si fuera necesario”, “As far as possible”, “Per quanto possibile” and “En la medida de lo posible”, and “As far as this is reasonably possible”, “Entro limiti ragionevoli e possibili” and “En cuanto sea razonablemente posible”; the only divergent case is in the article 16, paragraph 4, which is examined in this paragraph.

Summing up, in expressing the epistemic modality of verbal constructions, Legal English prefers the modal auxiliary verb “may”, Legal Italian prefers non-modal verbs in the “Congiuntivo Presente” and, in a smaller number of cases, the modal auxiliary verb “potere”, mainly in the “Indicativo Presente”, and, finally, Legal Spanish prefers non-modal verbs in the “Presente de Subjuntivo” and, in a smaller number of cases, the modal auxiliary verb “poder”, mainly in the “Futuro simple de Indicativo”.

Graphic 2. Verbal forms with epistemic value in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.





#### 4. Verbal forms with performative value

Statements with performative value are distinctive of constitutive or dispositive rules, that is dispositions which «[...] themselves produce the effect, which is their purpose and their content, realizing it for themselves: they constitute it - that is their characteristic - in the same moment of their entry into force [...] the established or disposed situations and facts produce themselves in an immediate way, they are intended to acquire reality merely a single act, the one (exclusively complex) with which the rule is emanated, without the need to appeal to the obedience or to the executive collaboration of someone» (my translation, Carcaterra 1994, 224-225; see also Searle 1969, 184-186).

On this point, Conte talks about 'thetic' acts, in other words sentences that simply by being stated produce a state of things (Conte 1977, 147-165).

Legislators' statements can have a performative function because they are emanated by a person to whom a specified competence has been attributed, that is the competence of disposing a state of things, and because they are expressed in an appropriate context, that is the legal context (Filipponio 1994, 218).

The constitutive or dispositive rules are not very frequent in the Charter because its purpose is to regulate contracting States' behaviour towards the historical regional or minority languages; exactly, there are five constitutive or dispositive rules in the Charter.

In constituting or disposing a state of things in the Charter, Legal English prefers the "Simple Present" in four occurrences and the modal auxiliary verb "shall" in one case; Legal Italian uses the "Indicativo Presente" in all the five occurrences; finally, Legal Spanish employs the "Futuro simple de Indicativo" in three occurrences and the "Presente de Indicativo" in two occurrences. Therefore, contrarily to the Spanish version, the present tense prevails in the English and Italian versions.<sup>3</sup>

<sup>3</sup> Mortara Garavelli states that the deictic present is the specific tense of thetic enunciations, that is of constitutive or dispositive rules (Mortara Garavelli 2001, 62).



## Comparative Legilinguistics 18/2014

In expressing the performative value, in three occurrences, Legal English and Legal Italian use a present tense, respectively, the “Simple Present” and the “Indicativo Presente”, whereas Legal Spanish uses the “Futuro simple de Indicativo”; an example:

### Article 1, paragraph c)

par «langues dépourvues de territoire», on entend les langues [...].  
"non-territorial languages" means languages [...].  
per «lingue non territoriale» si intendo le lingue [...].  
por «lenguas sin territorio» se entenderán las lenguas [...].

Conversely, in one case, Legal Spanish agrees with Legal English, Legal Italian and Legal French to employ a present tense:

### Article 1, paragraph a)

par l'expression «langues régionales ou minoritaires» [...] elle n'inclut ni les dialectes de la (des) langue(s) officielle(s) [...].  
“regional or minority languages” [...] it does not include either dialects of the official language(s) [...].  
per «lingue regionali o minoritarie» [...] questa espressione non include né i dialetti della(e) lingua(e) ufficiale(i) [...].  
por la expresión «lenguas regionales o minoritarias» [...] no incluye los dialectos de la(s) lengua(s) oficial(es) [...].

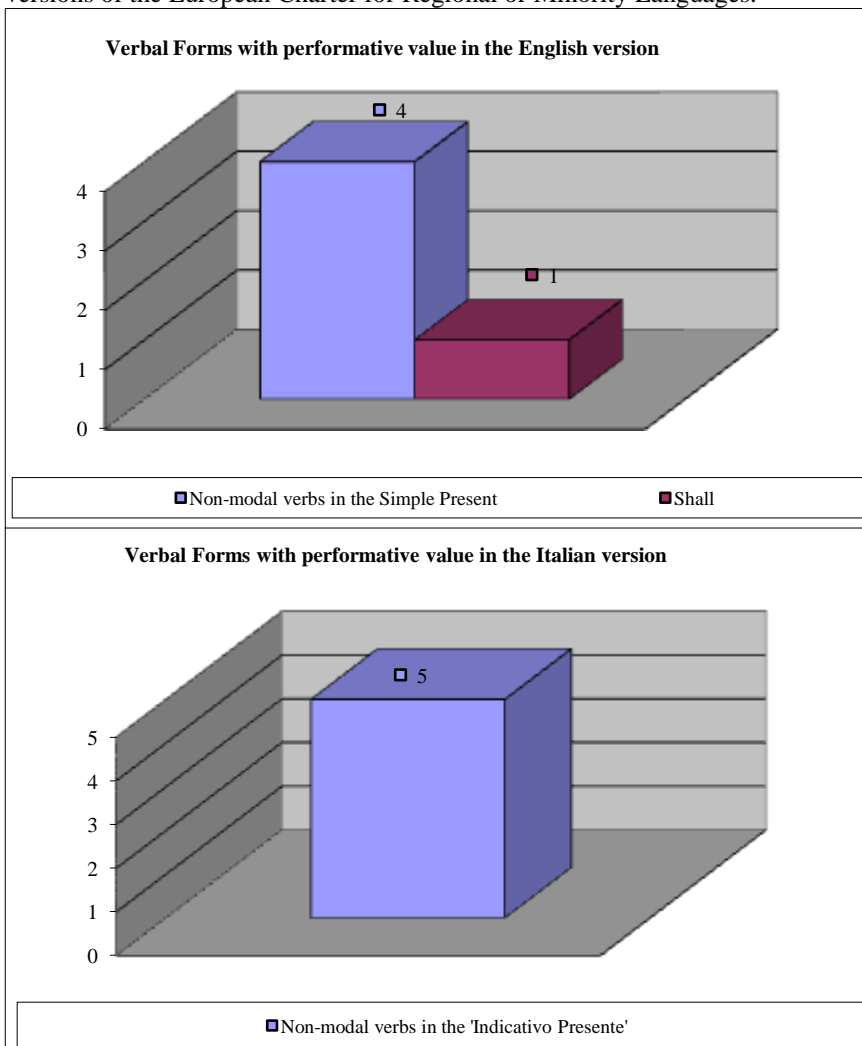
Regarding Legal English, it is important to dwell for a moment on the use of the modal auxiliary verb “shall”. The modal auxiliary verb “shall” can express performative value, as well as deontic and futurity values: it has deontic function when the rule is applied to a specified subject who has to respect it, whereas it has performative function when the rule attributes a state of things contextually at its coming into force (Garzone 2008, 70-75); nevertheless, intermediate cases may arise when one of the two functions prevails but in such cases the non-prevailing meaning is not neutralised at all. In the English version of the Charter, there is an irrefutable case where the modal auxiliary verb “shall” has performative value, precisely in the case in which the Italian and Spanish versions show, like the French one, a non-modal verb in the present tense of the indicative:

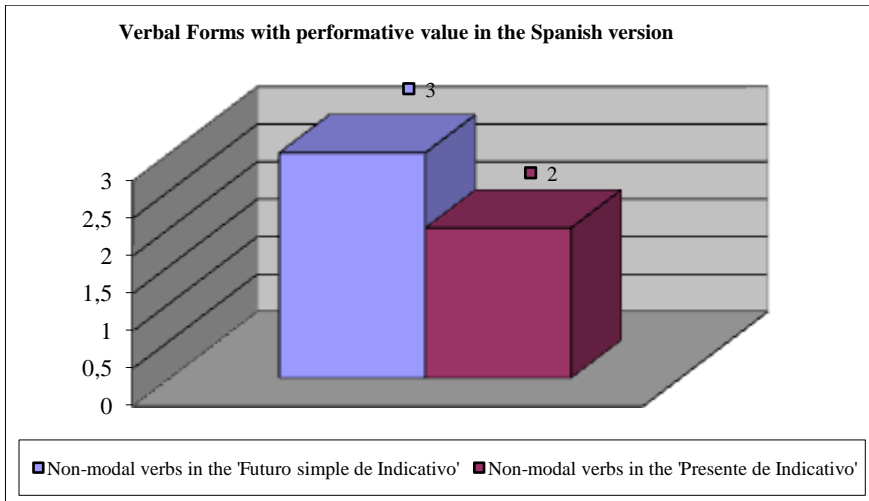
### Article 18

La présente Charte est ouverte à la signature des Etats membres [...].  
This Charter shall be open for signature by the member States [...].  
La presente Carta è aperta alla firma degli Stati membri [...].  
La presente Carta queda abierta a la firma de los Estados miembros [...].

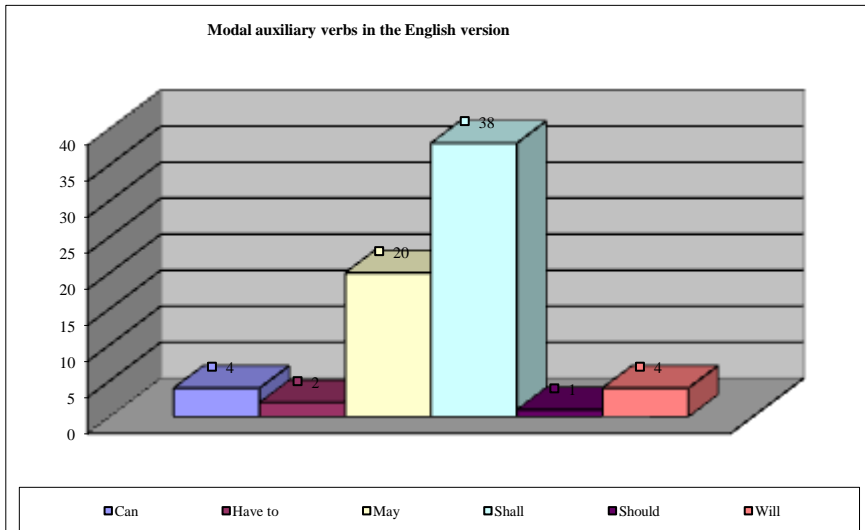
Referring to Austin’s theory, Carcaterra asserts that constitutive rules can be included in the category of performatives; that category should be added to the five categories described by Austin (Austin 1967), which are the verdictives, commissives, exercitives, behabitives and expositives ones (Carcaterra 1994, 227-228).

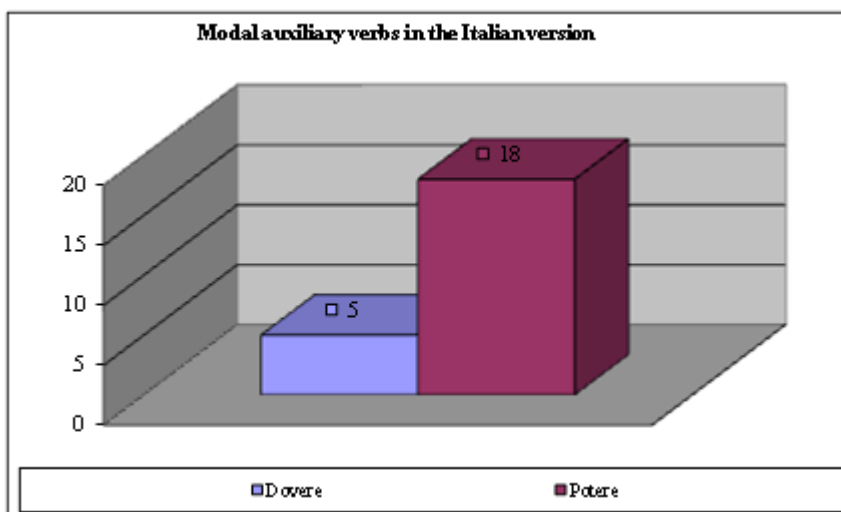
Graphic 3. Verbal forms with performative value in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.





Graphic 4. Modal auxiliary verbs in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.





## 5. Expression of temporality in the formula of promulgation and in the formula of subscription

Besides analysing the expression of deontic, epistemic or performative values in verbal constructions, it is also interesting to examine the expression of temporality in the formula of promulgation and in the formula of subscription of the Charter.

In the formula of promulgation, Legal English, Legal Italian and Legal Spanish agree with each other on the expression of temporality as they use equivalent tenses, which are, respectively, the “Present Perfect”, the “Indicativo Passato prossimo” and the “Pretérito perfecto compuesto de Indicativo”; the formula of promulgation:

### Preamble

Les Etats membres du Conseil de l'Europe<sub>2</sub> [...] Sont convenus de ce qui suit:  
The member States of the Council of Europe [...] Have agreed as follows:  
Gli Stati membri del Consiglio d'Europa [...] hanno convenuto quanto segue:  
Los Estados miembros del Consejo de Europa [...] Han convenido en lo siguiente:

In expressing the temporality in the formula of promulgation, the Italian and Spanish versions are faithful to the French version which shows the “Indicatif Passé composé”, a tense equivalent to the one employed by Legal Italian and Legal Spanish.

In the formula of subscription, Legal English and Legal Italian use the same tense of the formula of promulgation, whereas Legal Spanish varies as it uses the “Presente de Indicativo”; the formula of subscription:

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé la présente Charte. [...]  
In witness whereof the undersigned, being duly authorised thereto, have signed this Charter. [...]

In fede di che i sottoscritti, a tal fine debitamente autorizzati, hanno firmato la presente Carta. [...]

En fe de lo cual, los abajo firmantes, debitamente autorizados a tal efecto, firman la presente Carta. [...]

The difference of the English “Present Perfect”, the Italian “Indicativo Passato Prossimo” and the Spanish “Presente de Indicativo”, as well as the Spanish “Pretérito perfecto compuesto de Indiativo” and “Presente de Indicativo”, lies in the verbal aspect, precisely the former are exclusively perfective forms, they describe actions in their completeness, whereas the latter is a fundamental imperfective form, therefore it describes actions without references to their completeness. Legal French employs in the formula of subscription, like Legal English and Legal Italian, the same tense as the formula of promulgation.

## **6. Conclusions**

Summarizing the findings of the linguistic comparative analysis of the English, Italian and Spanish versions of the Charter as to the expression of deontic, epistemic and performative values of verbal forms it emerges that:

- in expressing deontic modality, Legal English prefers the modal auxiliary verb “shall” and, in a smaller number of cases, non-modal verbs in the “Simple Present”; Legal Italian prefers non-modal verbs the “Indicativo Presente”; Legal Spanish prefers non-modal verbs in the “Futuro simple de Indicativo” and, in a smaller number of cases, non-modal verbs in the “Presente de Indicativo”.
- In expressing epistemic modality, Legal English prefers the modal auxiliary verb “may”; Legal Italian prefers non-modal verbs in the “Congiuntivo Presente” and, in a smaller number of cases, the modal auxiliary verb “potere”, mainly in the “Indicativo Presente”; Legal Spanish prefers non-modal verbs in the “Presente de Subjuntivo” and, in a smaller number of cases, the modal auxiliary verb “poder”, mainly in the “Futuro simple de Indicativo”.
- In expressing performative modality, Legal English prefers non-modal verbs in the “Simple Present”; Legal Italian prefers non-modal verbs in the “Indicativo Presente”; Legal Spanish prefers non-modal verbs in the “Futuro simple de Indicativo”.

Concluding, with regards to the expression of the deontic, epistemic or performative modalities, the English version is principally characterised by the use of modal auxiliary verbs, whereas the Italian version by the use of tenses, whose alternation is not as great as that of the Spanish version. Consequently, it can be affirmed that the wide range of modal verbs is bearer of precise semantic nuances in Legal English as well as the wide range of verbal tenses is bearer of precise semantic nuances in Legal Italian and Legal Spanish.

**Bibliography**

- Alcaraz Varó Enrique, Hughes Brian. 2002. *El español jurídico*. Barcelona: Ariel Derecho.
- Austin John Langshaw. 1967. *How to do things with words*. Cambridge: Harvard University Press.
- Bhatia Vijay K. 2010. "Legal writing: specificity. Specification in legislative writing: accessibility, transparency, power and control", In *The Routledge Handbook of Forensic Linguistics*, eds. Coulthard Malcolm, Johnson Alison, 37-50. USA: Routledge.
- Bhatia Vijay K., Candlin Christopher N., Gotti Maurizio. 2003. *Legal discourse in multilingual and multicultural contexts: arbitration texts in Europe*. Bern: Peter Lang.
- Bosque Ignacio, Demonte Violeta. 1999. *Gramática descriptiva de la lengua española*, voll. I, II e III, Madrid: Espasa Calpe S. A.
- Caliendo Giuditta, 2004. "Modality and Communicative Interaction in EU Law", In *Intercultural Aspects of Specialized Communication*, eds. Candlin Christopher N., Gotti Maurizio, 241-259. Bern: Peter Lang.
- Caliendo Giuditta, Di Martino Gabriella, Venuti Marco. 2005. "Language and Discourse Features of EU Secondary Legislation", In *Identity, Community, Discourse: English in Intercultural Settings*, eds. Cortese Giuseppina, Duszak Anna, 381-404. Bern: Peter Lang.
- Carcatterra Gaetano. 1994. "Norme costitutive", In *Il linguaggio del diritto*, eds. Scarpelli Uberto, Di Lucia Paolo, 219-231. Milan: LED.
- Carter Ronald, McCarthy Michael. 2006. *Cambridge grammar of English. A comprehensive guide: spoken and written English grammar and usage*, Cambridge: Cambridge University Press.
- Conte Amedeo Giovanni. 1977. "Aspetti della semantica del linguaggio deontico", In *Logica deontica e semantica*, ed. Di Bernardo G., 147-165. Bologna: Il Mulino.
- de Beaugrande Robert Alain, Dressler Wolfgang Ulrich. 1981. *Einführung in die Textlinguistik*, Tübingen: Niemeyer.
- Filipponio Angiola, 1994. "Enunciazioni performative e linguaggio giuridico", In *Il linguaggio del diritto*, eds. Scarpelli U., Di Lucia P., 207-218. Milan: LED.
- Garzone Giuliana. 2001. "Deontic Modality and Performativity in English Legal Texts", In *Modality in Specialized Texts*, eds. Gotti M., Dossena M., 153-173. Bern: Peter Lang.
- Garzone Giuliana. 2008. "Gli enunciati performativi nel testo giuridico inglese: la prospettiva linguistica", In *Il linguaggio giuridico. Prospettive interdisciplinari*, eds. Garzone G., Santulli F., 57-87. Milan: Giuffrè.
- Hiltunen Risto. 1990. *Chapters on Legal English: Aspects Past and Present of the Language of Law*, Helsinki: Suomalainen Tiedeakatemia.
- Lyons John. 1977. *Semantics*, v. II. Cambridge: Cambridge University Press.
- Mellinkoff David. 1963. *The Language of the Law*, Boston: Little Brown & Co..
- Mortara Garavelli Bice. 2001. *Le parole e la giustizia. Divagazioni grammaticali e retoriche su testi giuridici Italiani*, Turin: Piccola Biblioteca Einaudi.

*Comparative Legilinguistics 18/2014*

- Palmer Frank Robert. 2001. *Mood and Modality*, 2<sup>nd</sup> ed. Cambridge: Cambridge University Press.
- Renzi Lorenzo (ed.), 1991. *Grande grammatica Italiana di consultazione*, vol. I, Bologna: Il Mulino.
- Renzi Lorenzo, Salvi Giampaolo (eds.), 1991. *Grande grammatica Italiana di consultazione*, vol. II. Bologna: Il Mulino.
- Renzi Lorenzo, Salvi Giampaolo, Cardinaletti Anna (eds.), 1995. *Grande grammatica Italiana di consultazione*, vol. III. Bologna: Il Mulino.
- Searle John. 1969. *Speech acts: an essay in the philosophy of language*. Cambridge: Cambridge University Press.