

# Are modal verbs a lexical characteristic of legal terminology?

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## Abstract

This article aims to examine the role of modal verbs in the language of the laws. The goal is to see whether we can say that modal verbs, like in English, are part of the terminology of the language of laws in Albanian, considering that so far, there is no research conducted in the Albanian language on this field. For this study, we established a corpus of legislative texts in both Albanian and English in a bid to analyze the ways modal verbs are translated, using applicable laws published in the official Gazette of the Republic of Kosovo. Besides, the Albanian language has a verb system that differs from that of English. In comparison, the Albanian language has only three modal verbs officially recognized and accepted by Albanian linguists and scholars: Alb. *mund* (Eng. *can*), Alb. *duhet* or *lypset* (Eng. *must*) and Alb. *do* (Eng. *must*), English has a wide pattern of expressing modal verbs. Consequently, as our research demonstrates, translators will find it difficult to translate them properly.

Correct usage of modal verbs is one of the greatest challenges of the legislator as they play a vital role in the wording. Yet, the main purpose of this research paper is to determine if there are equivalents between English and Albanian modal verbs and investigate their occurrences in legislative texts giving an account of the differences in complexity in lexical and grammatical modality.

**Key words:** modal verbs, modality, lexis, terminology, legal language, Albanian, English

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## Introduction

Many scholars share the opinion that the language of the law, “together with the language of religion, tends to be more resistant to change than practically any other genre” (Williams 2013: 353). It is described as ‘formal,’ and ‘conservative’ (Darmstadter, 2008; Tiersma, 1999), and the legal language is “perhaps the oldest of all languages for special purposes” (Mattila, 2006: 98). In many countries, various aspects of the language of law have been called into question and reforms sought, so it becomes closer to the language of everyday life (Williams, 2009)<sup>1</sup> and not of a ‘hypothetical world’ (MacCormick 1994: 104). According to Williams, legally binding documents (laws, directives, contracts or wills) are generally written with the aim of regulating existing situations for the present and the future (Williams, 2005: 84-91). The domain of modality, especially modal verbs, is one of them. The interpretation of modality in legal documents in most cases is challenging for the legal authorities, especially in the interpretation of certain lexical items, where modal verbs play a crucial role in legal documents. Due to many modalities’ patterns expressed through modal verbs, sometimes they can cause ambiguity and fuzziness in the interpretation of legal documents, especially when these documents are translated into another language. In this case, just holding the position of a translator is not sufficient without adequate knowledge on legal terminology, proper education and knowledge on the culture of the target language, which minimizes the ambiguity of modal verbs in the interpretation by the legal authorities.

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<sup>1</sup> For this paper we will study the language of the law that refers only to prescriptive texts such as laws and regulations and not legal language that is described as any type of communication coming within the legal sphere. (Williams, 2005: 23-25).

Many papers have shown that modal verbs play an important role in the language of the laws, and as such, one must really use them properly when drafting legislative texts (di Carlo, 2017). On the other hand, the way these laws are translated is another issue to be discussed in this research.

In view of the situation in Kosovo (our country, VS, VH), where according to the law on the Use of Languages that was promulgated in 2006, there are two official languages, Albanian and Serbian, entailing equal status and rights, meaning every single document shall be rendered in both languages. Nevertheless, with the presence of internationals since 1999, including but not limited to the United Nations Mission in Kosovo (UNMIK), the NATO-led Kosovo Force (KFOR), the United Nations Development Programme (UNDP), the Organization for Security and Co-operation in Europe (OSCE), EULEX – the European Union Rule of Law Mission in Kosovo, and many other organizations, all working groups of legislative agenda were composed of at least one international expert, which resulted in the translation of every single document into the English language too. Therefore, the lack of professional legal translators - as there were no training programs available for court translators - lack of legal dictionaries from English to Albanian and vice versa, as well as a lack of certified court interpreters/translators Kosovo-wide by the beginning of 2022, resulted in improper translation of laws, especially modal verbs. It is worth recalling that in the English language, modal verbs are considered to be a part of the lexis of legal terminology, whereas in Albanian legislative texts, due to many translations originating from English, such lexis is not established yet like in other languages. According to Richard (2018), legal lexis is shared by other language types, namely non-specialized language, which means that the legal lexis is necessarily homonymous.

Since this paper explores two linguistically not closely related Indo-European languages, we hypothesize with the theory of Joseph P. Calbert (1975) which/who states that there is a basic semantic modality system of the languages, “which is formally realized in a variety of ways in each language.” (Calbert, 1975: 1) Calbert understands the basic semantic system modality to be semantic types of relationships that are defined by modal verbs, the mode, by a selection of syntactic-semantic structures such as e.g., modal-free verbs (such as *verba dicendi*):

“which express various degrees of “possibility” or “necessity”, whether as the modality of the propositional content of the utterance itself, or as the modality, within the speech context, of the attitude of the speaker or somebody else toward the likelihood of the information reported in the utterance.” (Calbert, 1975: 1)

The category of modality is closely intertwined with the culture of the Target Language, and that modal verbs are found in English but not in the Albanian language. Therefore, it can be concluded that besides modal verbs such as Alb. *mund* (Eng. *can*) and Alb. *duhet* (Eng. *must*), other English modal verbs such as: *shall*, *will*, *should*, *ought*, *would*, *may*, *might*, do not have direct equivalents. Therefore, it is up to the translator to decide as which modality should be used by means of other linguistic parts of the Target Language. According to Williams (2009), there is a ‘modal revolution’ in the language of the law, which he describes as follows:

“The language of the law has commonly been portrayed – not just in English – as one of the most conservative types of discourse. And yet, as a result of deliberate drafting policy, over the last fifteen years or so, there has been something of a revolution in the choice of finite verbal constructions in

some legislative texts in certain English-speaking countries". (Williams, 2009: 199)

## **Corpus and Methodology**

The use of contrastive corpora for research analysis has increased considerably in recent years (Khojasteh & Reinders, 2013; Mukundan & Khojasteh, 2011; Gibová, 2011; Martin, 2005). The aim of this research paper is to find the best method for analyzing the two languages in terms of the translation of modal verbs. Therefore, according to Chartrand (2016), corpus-based research is one of the fastest areas in linguistics, and in order to conduct this research, it is necessary to determine what kind of grammatical information will be extracted from the corpora and how this information should be used for conducting the research paper (for more see Chartrand, 2016: 9). Therefore, a list of several examples is provided to begin the process of a contrastive analysis of the legislative texts, mainly applicable laws published in the official Gazette of the Republic of Kosovo.

In our research, we chose modals for this study for various reasons: first, they play a very important role in language learning; secondly, they are very difficult to learn by foreign language learners (Richard, 2018; Chartrand, 2016; Khojasteh & Reinders, 2013; Mukundan & Khojasteh, 2011; Nuyts, 2001, 2006, 2008). The translation of modal verbs is considered quite difficult and vague, therefore in order to highlight this, Nuyts (2006) provides the best description, "the modal verbs are semantically and structurally very hard to grasp: despite the huge number of analyses, we still have a poor understanding of them". (Nuyts, 2008: 31).

In order to further prove this, studies conducted by various authors (Khojasteh, 2013; Palmer, 2008; Kennedy, 2002) have shown that modality has often been misinterpreted in the linguistics corpora. Palmer, on the other hand, states that English has no NP arguments independent of the verb they occur with. (Palmer, 2008: 196). Furthermore, Chartrand considers modal verbs are considered among the most difficult structures to teach to foreign language learners. (Chartrand, 2016: 2)

Regarding the methodology of this paper, we rely on the analytical method of description and analysis since the nature of the paper is theoretical-research-based. The corpus selected for this paper consists of several laws of the Republic of Kosovo, namely the Law on Courts, Law on the Kosovo Judicial Council, Law on the Use of Official Languages, Law on Protection from Discrimination, Law on Child Protection, Law on Ombudsperson, Law on Access to Public Documents, Law on Civil Service, Law on Personal Data Protection, Law on Organization and Functioning of State Administration and Independent Agencies. The objective of this research paper is to determine whether there are equivalents of modals in English and Albanian, namely the way modal verbs used in these laws have been translated from Albanian into English.

Additionally, this paper presents a corpus-based approach to discourse analysis that starts with a detailed analysis of legislative texts in corpora. This approach is applied specifically to a methodology that is used to analyze and contrast modal verbs in both languages. More specifically, the main purpose of this research is to analyse modal verbs in the language of laws in Albanian in pursuit of their equivalents in English.

## **Modality and modal verbs**

The domain of modality is a very complex one, even though it has been studied widely by many linguists in different languages (Chen et al., 2020; Kolarkova & Savina, 2018; Neill et al., 2017; di Carlo, 2016; Johan & Aguilar, 2015; Garzone, 2013; Salkie et al., 2009; Kennedy, 1998, 2002). This can be seen from the research of relevant specialized linguists, including many contrastive works. (Junusbayeva et

al., 2022; Hamiti & Ismajli, 2022; Ismajli, & Hamiti, 2022; Hamiti & Hamiti, 2020; Hamiti, 2019; Sinyakin et al., 2020; Stepanova et al. 2018; Khojasteh & Reinders, 2013; Mukundan & Khojasteh, 2011; Gibová, 2011; Martin, 2005).

The focus of the study on modality was initially on modal verbs and then on mode. Later the modal particles and, finally, modal words were studied more closely. In addition to linguistics and philosophy, modal logic is related to modality, from which different divisions and notions for naming modality have been used, which have often caused confusion. One can often read that the definition and types of the modality are related to the author itself, “Modality and its types can be defined and named in various ways. There is no one correct way. The only requirement is that one makes clear how one uses one’s terms.” (van der Auwera & Plugian, 1998: 80). According to Palmer, modality “is concerned with the status of the proposition that describes the event” (Palmer, 2001: 1). Downing & Locke (2002) understand modality “as a semantic category which covers such notions as a possibility, probability, necessity, volition, obligation, and permission” (Downing & Locke, 2002: 382). On the other hand, Nuyts (2008), in his article on modality, renders the variety of its description and types of modality as follows:

“[...] the domain is usually characterized by referring to a set of more specific notions, each of which is defined separately, and which may be taken to share certain features motivating their grouping together under the label *modality*, but which differ in many other respects.” (Nuyts, 2006: 1)

From the descriptions of modality above, we can see that it is very unclear, and the right definition for modality is vague, so what it includes and excludes is still confusing.

“The difficulty with the domain of modality is that there is broad agreement about some central members of the class but disagreement about some of the candidates for inclusion. It is not possible to provide an acceptable definition with clear boundaries: instead, we need a clearly defined core but fuzzy boundaries. This suggests that a prototype approach is more promising: we should specify the criteria which demarcate the core and allow for peripheral members of the category which do not meet all the criteria. Items that meet all or most of the criteria will be said to have a high degree of modality, while those in the periphery will have a low degree.” (Salkie, 2009: 80)

The scope of the notion referred to as modality is rather broad and finds expression in many areas of the language besides mood, as several different lexical categories can express modality. According to many scholars, modality can be expressed by a great variety of formal means as the notion of modality is a linguistic term that means the expression of the speaker’s attitude towards what it conveys, in close connection with the objective reality (Huddleston et al., 2022: 69-70; Bußmann, 2008: 442; Huddleston & Pullum, 2005: 54; Lyons 2001: 287 – 290; Palmer 2001: 24; der Auwera 1985: 792; Newmark & Pifti 1982: 105). Furthermore, Huddleston & Pullum (2005) state: “Modality is a type of meaning that is characteristically associated with mood rather than tense” (Huddleston & Pullum, 2005: 46). Additionally, they argue that there is an internal connection between future time and modality (Huddleston & Pullum, 2005: 56), as there is no similar kind of knowledge about the future as there is about the past and the present.

Modal verbs in English are distinct from all other verbs as they share a syntactic property that is different from almost all other verbs as they have just primary verb

forms and do not take any secondary forms (Huddleston et al. 2022: 52). Consequently, they mainly express two different kinds of modal meanings that are referred to as *epistemic* and *deontic*. While the first one expresses meanings related to what is necessary or probable considering what we already know or believe, deontic modality expresses meanings related to what is required or permitted (Huddleston et al., 2022: 178):

- (1) *She must have been sick* (epistemic modality);
- (2) *She may take as many as she needs* (deontic modality).

According to Newmark & Prifti (1982: 179), in Albanian modal verbs are the following: Alb. *mund* (Eng. *can, could*) and Alb. *duhet* or *lipset* (Eng. *should, ought*). Similarly, a prominent Albanian linguist, Beci (2010), in his Grammar of the Albanian language distinguishes only these two modal verbs in Albanian. However, according to all others, Agalliu et al. (2002), there are three established modal verbs, such as Alb. *mund* (Eng. *can, could*), Alb. *duhet* or *lypset* (*should, ought*) and *do*<sup>2</sup>. In the Grammar of Albanian (Beci, 2010), we often encounter verb forms, which do not have a clear categorization within the verbal system. Thus, verbal constructs, such as Alb. *mund të lexojmë* (Eng. *we can read*), Alb. *duhet të lexojmë* (Eng. *we must read*), Alb. *le të lexojmë* (Eng. *let's read*), Alb. *kemi për të lexuar* (Eng. *we have to read*), in the idea of the traditional grammar, are categorized as verbs of modal value followed by a form of the subjunctive. In the part of the description of the use of verbs, Buchholz & Fiedler (1987) emphasize that the verbal system of the Albanian language, in comparison to other linguistic parts, such as vocabulary, intonation, etc., offers more pragmatic - communication means to the speaker to express it. As Breu (2009: 231- 238) claims, modal verbs in Albanian, like in other languages of the world, are conjugated and are used to express possibility, necessity and volition. As a result, Breu (2009: 238-256) considers that apart from modal verbs Alb. *mund* (Eng. *can*) and Alb. *duhet* (Eng. *must*), which forms the center of the functional category of modals, in Standard Albanian, the verb Alb. *dua* (Eng. *want*)<sup>3</sup>, which is fully inflected, constitutes modality, including also the modal particle *dot* to express negative sentences whose typical position is after the verb expressing impossibility or inability. (Agalliu et al., 2002; Buchholz & Fiedler, 1987)

- (3) a. (Alb.) Laureta nuk e gjente *dot* librin e saj.  
b. (Eng.) Laureta *could not* find her book.

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<sup>2</sup> The modal verb 'do' in Albanian language is used very rarely in linguistic and literature corpora (Hamiti, 2019). In the Albanian language, this verb is accompanied by a participle of the verb, e.g. *do lexuar*, which expresses a type of obligation to perform the action. (Agalliu et al., 2002; Buchholz & Fiedler, 1987)

<sup>3</sup> Except Breu (2009), the Albanian verb *dua* is described as the main verb in all Albanian grammar books. Breu adds *dua* to the Albanian modal verb system because of its semantic meaning of volition.

		increasing inflection (modal) →		
		main modal	alternative 1	alternative 2
↑ increasing inflection (modal)	[±POSSIBILITY]	<i>mund</i> + SBJV uninflected modal	<i>mund(em)</i> + SBJV inflected modal	<i>dot</i> only [-POSS.] modal particle
	[±NECESSITY]	<i>duhet</i> + SBJV inflected for tense	<i>duhem</i> + PST.PTCP inflected modal	<i>dua</i> + PST.PTCP inflected modal
	[±VOLITION]	<i>dua</i> + SBJV inflected modal		
FUTURE		<i>do</i> + SBJV uninflected AUX		

Table 1. The Standard Albanian modal system, according to Breu (2009: 256)

Nevertheless, in Albanian, like in English, modal verbs express modality. In English, as well as in other languages, modality is an important linguistic category with an extension even beyond it, expressing possibility, certainty, willingness, obligation, necessity or ability depending on the ways in which the main part of the content of a clause relates to the situations it is talking about by using modal verbs from being uncertain (low modality) to very certain (high modality).

### Modal verbs in the legislative texts and translation

Many academic papers have confirmed that modal verbs are a lexical characteristic of legal terminology. Their central role in the language of the law, not only in English but also in other languages, is confirmed (di Carlo, 2017; Salkie, 2009; Mattila, 2006; Williams, 2005, 2006, 2007, 2009, 2010; Tiersma, 1999; Maley, 1994; Asprey, 1992). As we have already stated, no proper research has been carried out in Albanian, exploring Albanian. For this reason, this article tries to prove that modal verbs in Albanian are a lexical characteristic of legal terminologies, like in other languages.

In the language of the law in all English-speaking countries, the most frequent modal verb is *shall*, but, according to Kimbel (1992) its role changes dramatically, losing its original status as “the most important word in the world of legal drafting” (Kimble 1992: 61). During the last century, this modal verb was the second most frequently used lexical word. Williams (2006) showed in his work that it changed and he referred to the extreme cases of Australia, South Africa and New Zealand that have switched to totally *shall-free legislation* (Williams, 2006: 238 - 239). On the other hand, in the USA and the UK *shall* is still present in their normative texts, though with variable frequency (Cooper, 2011). Other English modal verbs, such as *will*, *would*, *should*, *ought to*, *can*, *could*, *must*, *could*, *may*, *might*, are also used in the language of the law. Research on the frequencies of the use of modal verbs is largely corpus-based analyses, which are primarily electronic (di Carlo, 2017; Cooper, 2011; Williams, 2005, 2006, 2007, 2009, 2010).

Such a corpus in Kosovo is inexistent, but as already indicated above, a corpus was created for this paper, first to establish the frequency of the use of the modal verbs in Albanian and secondly to analyze the translations of the laws and find out where the problems are.

Legal translation and interpretation in a bilingual context is of fundamental importance to help protect the rights of those who do not speak or understand the language of the proceedings. Many researchers describe legal translation as “an act of intercultural communication than an act of interlingual communication” (Junusbayeva et al., 2022: 78) and as a complex with many challenges and difficulties (Junusbayeva et al., 2022; Khojasteh et al., 2020; Stepanova et al. 2018).

The right to translation and interpretation in EU countries is regulated by “Directive 2010/64/EU”<sup>4</sup> of the European Parliament and of the Council on the right to translation and interpretation in criminal proceedings. Article 2 of this Directive, among others, states:

Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. (Directive 2010/64/EU of the European Parliament and of the Council)

In addition, quality must be guaranteed, as this protects the fairness of criminal proceedings. Article 3 (p. 2) establishes the right to translation of important documents and states that the parties must be provided with a written translation of all documents that are relevant to ensure that they are able to exercise their right to defense within a reasonable timeframe.

On the other hand, such a right in Kosovo is regulated by the law on the Use of Languages<sup>5</sup>, which is applied in the bilingual judicial system where Albanian and Serbian are used. Articles 12-18 (p. 5-7) of the “Law on the Use of Languages” in court proceedings determine the equal status of official languages in the Republic of Kosovo in all judicial procedures and state that it is the right of the person involved in such a procedure to choose the language (Albanian or Serbian). After the integration of the judiciary [for many years, after 1999, when Kosovo won freedom, and even in 2008 when it declared its independence, a separate system was run by parallel Serbian structures in the north of Kosovo], this right became even more binding and the Kosovo judicial system needed to increase the number of interpreters and translators in the courts. Although English is not an official language in Kosovo, due to the presence of an international factor, which plays an important role in Kosovo, all official documents and laws have been translated into English. Besides, professional translators were working with international organizations at the time of drafting the legislative agenda, which resulted in translation errors and poor translation of legal texts. Therefore, it is presumed that they were taken from laws written in other languages, most likely originated in English.

Moreover, it is essential to emphasize the significant role of the translator and the important responsibilities and entrusted tasks associated with this role, which include ensuring a fair legal process and avoiding situations where a case needs to go back to retrial as a result of an incorrect interpretation of the law or bad translation of laws, which is then associated with delays, postponing of court hearings and a backlog. Notwithstanding, Joseph (1995) summarizes the translation of legal texts as follows:

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<sup>4</sup> Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0064>, accessed on 08 September 2022.

<sup>5</sup> Law On the Use of Official Languages, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2440>, accessed on 06 September 2022.

The translation of legal texts of any sort, from statute laws to contracts and courtroom testimony, is a practice that is at the crossroads of the three areas of theoretical inquiry: legal theory, language theory (broadly defined to include the interests not only of linguistics but of rhetorical and textual theory as well), and translation theory. [...] In a sense, these theoretical enterprises have been catching up with what working translators, lawyers, and field linguists have known for centuries: that all three of these enterprises founded in language are fundamentally indeterminate. (Joseph, 1995: 13)

Therefore, the translation of modal verbs is one of the challenges Albanian translators face, considering that Albanian grammar recognizes and consists of just three modal verbs: Alb. *duhet* or *lypset* (Eng. *should, ought*), Alb. *mund* (Eng. *can, could*) and Alb. *do* (Eng. *must*), while the English language has many ways to express modality (*will, would, shall, should, ought to, can, could, must, could, may, might*).

### Translation examples of modal verbs

As we have already stated, modal verbs are one of the most problematic issues for translation when translating from English into other languages like German and Dutch language (Nuyts, 2008: 211), especially when translating legal documents as the same modal verb can express various meanings (di Carlo, 2016: 227). Similarly, according to Newmark (1981), legal translation is considered one of the most complex types of translation cases (Sinyakin et al., 2020; Stepanova et al., 2018; Kolarkova & Savina, 2018), bearing in mind its importance to a fair trial, especially in decision-making for any party bringing a dispute to the court cases.

The following table gives an overview of how Albanian modal verbs are translated into English. Table 2. shows how Albanian modal verbs have many equivalents with/in the modal verbs in the English language. In the following chapter, this translation will be treated and analyzed closely:

Modal verb	Albanian language	English language	Text type
SHALL	Gjykatat zhvillojnë procedurat në gjuhën zyrtare apo në gjuhët zyrtare të zgjedhura nga palët në procedura. Me kërkesën e palës në procedura, pajisjet <i>duhet</i> të sigurohen për përkthim simultan, duke përfshirë dëshmitë e dhëna, nga njëra gjuhë zyrtare në tjetrën.  Rregulloret komunale si dhe aktet ndihmëse <i>duhet</i> të nxirren dhe të publikohen në gjuhët e komuniteteve të tilla, nëse atë e kërkojnë.	Courts shall conduct proceedings in the official language or official languages chosen by parties to the proceedings. At the request of any party to the proceedings, facilities <i>shall</i> be made available for simultaneous interpretation of the proceedings, including evidence given, from one official language into another.  Municipal regulations and subsidiary acts <i>shall</i> be issued and published in the	Law on the Use of Languages, Article 13, par.13.1 . p. 6

		languages of such communities if they so request.	
SHOULD	Kontrata publike nga organi publik <i>duhet</i> të shpallet e pavlefshme nga organi i cili bënë shpalljen e fituesit në ato raste ku kontraktuesi në fjalë ka shkelur ndonjë nga dispozitat e këtij Ligji.	The public contract by a public authority <i>should</i> be declared invalid by the authority which shall declare the winners in those cases where the contractor in question has violated any of the provisions of this law.	Law on Protection from Discrimination, Article 22 par. 1, p. 11.
MUST	Institucionet qendrore <i>duhet</i> të sigurojnë që mjedisi i tyre i punës të kontribuojë në përdorimin efektiv të gjuhëve zyrtare si dhe të mundësojë përdorimin e cilësdo gjuhë zyrtare nga zyrtarët dhe punëtorët e tyre.	The central institutions <i>must</i> ensure that their work environments are conducive to the effective use of the official languages and accommodate the use of any official language by their officers and employees.	Law on the Use of Languages, Article 4 par. 4.7. p. 3.
CAN NOT	Përparësia e dhënë kandidatit të grupit të nënpërfaqësuar nuk mund të jetë automatike dhe e pakushtëzuar por mund të shpërfillet nëse arsytet specifike për një kandidat individual <i>mund</i> të shkojnë në favor të tij.	Giving priority to an underrepresented group candidate cannot be automatic and unconditional but can be ignored if the specific reasons for an individual candidate <i>may</i> be in his/her favor.	Law on Protection from Discrimination, Article 7 par. 2.4, p. 5.
MAY	Avokati i Popullit <i>mund</i> të paraqitet në cilësinë e mikut të gjykatës (amicus curiae) në proceset gjyqësore që kanë të bëjnë me çështjet e barazisë dhe mbrojtjes nga diskriminimi;	The Ombudsperson <i>may</i> appear in the capacity of a friend of the court (amicus curiae) in judicial processes dealing with human rights, equality and protection from discrimination.	Law on Ombudsperson, Article 16 par. 9, p. 8.

Table 2. Modal verbs translated from Albanian into English

From the above examples, it can be noticed that there is no consistency among modal verbs used in English and Albanian languages, mainly when the modal verb *shall* is used. Other modal verbs used in the corpora are: *may*, *can* and *should* and very rarely *must* and *could*. The modal verb *shall* is sometimes used as a bearer of performative modality and, in some other cases, as a prescriptive modality use, depending on the way the sentence is constructed.

Below, we will present some examples and see the use of modal verbs in the legislative texts in both languages. Examples (4) – (7) will show how different verb forms in the Albanian language are translated with the modal verb *shall*. We will thus provide demonstrative evidence for existing problems regarding the various functions of the modal verb *shall* when translating legislative texts from Albanian into the English language.

4.
  - a. (Alb.) Përveç kësaj, një bashkësi, gjuha e së cilës me traditë është folur në një komunë, *do të ketë* statusin e gjuhës në përdorim zyrtar në atë komunë. Lidhur me këtë çështje, komunat *do të miratojnë* rregulloret të hollësishme brenda 6 muajve pas hyrjes së këtij ligji në fuqi.
  - b. (Eng.) In addition, community whose language has been traditionally spoken in a municipality *shall* also have the status a language in official use within that municipality. Pursuant to Article 35, municipalities *shall* adopt detailed regulations on this issue within six months of the promulgation of this law.
  
5.
  - a. (Alb.) Grupi i shënjestruar *duhet të jetë* i nënpërfaqësuar në pozitën përkatëse;
  - b. (Eng.) Targeted group *shall* be underrepresented in the corresponding position.
  
6.
  - a. (Alb.) Avokati i Popullit *trajton* rastet që kanë të bëjnë me diskriminimin sipas ligjit përkatës për Avokatin e Popullit.
  - b. (Eng.) The Ombudsperson *shall* handle cases related to discrimination under the relevant Law on Ombudsperson.
  
7.
  - a. (Alb.) Të dhëna të hapura - *nënkupton* të dhënat e prodhuara, pranuar, mbajtura apo kontrolluara nga institucionet publike, të cilat mund të përdoren lirisht, të modifikohen dhe shpërndahen nga çdo person, me kusht që të mbesin të hapura dhe t'i atribuohen burimit;
  - b. (Eng.) Open Data - *shall* mean the data produced, received, maintained or controlled by public institutions, which can be freely used, modified and distributed by any person, provided that they remain open and attributable to the source.

Looking closely at the examples above, we will notice how the modal verb *shall* is used for translating various verb forms of Albanian. For instance, in a couple of articles extracted from the aforementioned laws, we will notice the following: even though various grammatical forms are used in Albanian, such as time, mode, full verb forms, etc., the modal verb *shall* is used in the English version. In (4.a) the future tense in Albanian of the verb *kam* (Eng. *have*) as in the examples Alb. *do të ketë* and *do të miratojnë* (Eng. *it will have and they will adopt*) were translated as the modal verb *shall* in English. Moreover, as di Carlo (2017: 232) confirmed that the modal verb *shall* expresses a variety of meanings, such as: obligation, prohibition and futurity in the nature of legislative acts. However, in Albanian, modality is expressed by fully conjugated modal verbs. Therefore, the modal verb Alb. *dua* (Eng. *want*) expressing volition can sometimes express a strong volitional component which is secondary to the meaning of the future. (Buchholz & Fiedler, 1987:143-145)

While in (5.a) the modal verb Alb. *duhet* (Eng. *must*) expressing obligation was translated as the modal verb *shall* in English, In (6.a) and (7.a) the present tense verb Alb. *trajton* (Eng. *handles*) and Alb. *nënkupton* (Eng. *means*) were also translated in English with the modal verb as in (3.b) *shall handle* and in (4.b) *shall mean*. That is probably because the main non-modal option used in legal drafting where *shall* was used was precisely the present simple tense which has been used on an equal basis in legislative writing with *shall* as they actually perform the same function. (Garzone, 2001: 156)

Furthermore, the modal verb *shall* is primarily used to express an event which takes place in the future (Garzone, 2013: 72; Butt & Castle, 2006: 151), however, the way *shall* is used nowadays in the legislative texts is quite confusing. Yet, such confusion may be even greater when *shall* is used in a subordinate clause, as Garzone (2013: 72) claimed in her research on variation in the use of modality in legislative texts with a special focus on the modal verb *shall*. Many scholars and linguists (di Carlo, 2017: 231; Garzone, 2013: 73; Trosborg, 1997: 136) argued on the expression of *shall* in legislative texts pointing out the ambiguity in its usage and considering it complex and problematic. As Garzone stated: “[...] another critical aspect of *shall* is its allegedly complex and variable meaning, which seems to make its use, and consequently its interpretation, problematic.” (Garzone, 2013: 73)

As pointed out above, even though the lack of equal counterparts between the English and Albanian modal verbs might be the reason for confusion for the readers, qualified professional legal translators with adequate education background and experience would be able to translate properly, using their language skills and knowledge.

On the other hand, other modal verbs in the Albanian language, like *duhet* (Eng. *must*) and *mund* (Eng. *can*) have their equivalents and are translated correctly as follows:

8. a. (Alb.) Institucionet qendrore *duhet* të sigurojnë që mjedisi i tyre i punës të kontribuojë në përdorimin efektiv të gjuhëve zyrtare si dhe të mundësojë përdorimin e cilësdo gjuhë zyrtare nga zyrtarët dhe punëtorët e tyre.  
b. (Eng.) The central institutions *must* ensure that their work environments are conducive to the effective use of the official languages and accommodate the use of any official language by their officers and employees. (Law on the Use of Languages, Article 4 par. 4.7 p. 2)
9. a. (alb.) Dy (2) anëtarë i zgjedhin deputetët e Kuvendit, të cilët i mbajnë vendet e fituara gjatë ndarjes së përgjithshme të vendeve dhe të paktën njëri prej këtyre të dyve, *duhet* të jetë gjyqtar.  
b. (eng.) Two (2) members are elected by the Assembly Members, who shall hold their seats during the general allocation of seats, and at least one of them *must* be a judge. (Law on the Kosovo Judicial Council, Article 8 par.1.3 p. 45)
10. a. (Alb.) Përdorimi i gjuhës në administratën universitare përcaktohet nga universitetet përmes rregulloreve të tyre, që *duhet* t’iu përshtaten dispozitave të këtij ligji.  
b. (Eng.) The use of language in university administration is determined by universities through their own regulations, which *must* conform to the provisions of this law. (Law on the Use of Languages, Article 23 par. 23.4 p. 7)
11. a. (Alb.) Profesionistë të respektuar, *mund* të emërohen jashtë fushës ligjore dhe *mund* të përfshijnë persona me ekspertizë në menaxhim, financa, teknologji informacioni ose shkencat shoqërore;  
b. (Eng.) Respectable professionals *can* be appointed outside the legal field and *may* include persons with expertise in management, finance, information technology or social sciences. (Law on the Kosovo Judicial Council, Article 8 par.5 p. 45)
12. a. (Alb.) Gjyqtarët *nuk mund* të transferohen në cilëndo gjykatë tjetër kundër vullnetit të tyre, përveç nëse është e nevojshme për të siguruar funksionimin efikas të gjyqësorit ose për të shqiptuar masë disiplinore.

- b. (Eng.) The judges *cannot* be transferred to any other court against their will, except when it is necessary to ensure the efficient functioning of the judiciary or to sentence a disciplinary measure. (Law on Kosovo Judicial Council, Article 28 par.4 p. 55)
13. a. (Alb.) Ky ligj nuk cenon të drejtën për qasje në dokumente publike që mbahen nga institucionet publike, e të cilat *mund* të rrjedhin nga instrumentet ligjore ndërkombëtare apo aktet e institucioneve të cilat i zbatojnë ato.  
b. (Eng.) This law shall be without prejudice to the right to access public documents maintained by public institutions, which *can* derive from international legal instruments or from the acts of institutions enforcing them. (Law on Access to Public Documents, Article 2 par. 3 p. 19)
14. a. (Alb.) Diskriminimi i tërthortë konsiderohet kur, një dispozitë, kriter apo praktikë e paanshme në dukje e vë, e ka vënë apo do ta vë personin në pozitë të pabarabartë krahasuar me të tjerët, sipas një apo më shumë nga bazat e përcaktuara në nenin një (1) të këtij Ligji, përveç në rastet kur dispozita, praktika apo kriteri i tillë *mund* të arsyetohet në pikëpamje objektive me një qëllim legjitim, dhe mjetet për arritjen e qëllimit janë të përshtatshme dhe domosdoshme;  
b. (Eng.) Indirect discrimination - is considered when a provision, criterion or impartial practice in appearance has or will put the person in an unequal position compared with others, according to one or more of the grounds set out in Article 1 of this Law, unless the provision, criterion or practice *can* be objectively justified by a legitimate purpose and the means of achieving that purpose are appropriate and necessary. (Law on Protection from Discrimination, Article 4 par. 1.2, p.3)

Even though examples (8) – (14) show that equivalence between the modal verbs Alb. *duhet* (Eng. *must*) and Alb. *mund* (Eng. *can*) exists, the modal verb *shall* in English has also been used to express obligation in legislative texts corpora in Albanian, such as in the following examples:

15. a. (Alb.) Komisioni i përbërë nga tre (3) anëtarë, njëri nga të cilët *duhet* të jetë anëtar prokuror i Këshillit, dhe dy (2) të tjerë nga radhët e prokurorëve, i themeluar nga Këshilli, vendos për masat disiplinore dhe për sanksione, përfshirë pezullimin dhe shkarkimin e cilit do anëtarë të Këshillit. (Law on Kosovo Prosecutorial Council Article 19 par. 2 p. 28)  
b. (Eng.) A committee established by the Council composed of three (3) members, one of whom *shall* be a prosecutor member of the Council, and two other prosecutors, shall decide on disciplinary measures and sanctions, including suspension and dismissal of any member of the Council.
16. a. (Alb.) Nëpunësit civilë *duhet* të mos lejojnë që interesat e tyre private të bien ndesh me pozitën e tyre publike, të shmangin kryerjen e detyrave private ose publike, që bien ndesh me pozitën e tyre dhe që mund të krijojnë konflikt interes. Nëpunësit civilë veprojnë në pajtim me dispozitat e këtij ligji dhe ligjit në fuqi për shmangien e konfliktit të interesit. (Law on the Civil Service Article 5 par. 1.8 p. 3)  
b. (Eng.) Civil Servants *shall* not allow their private interest to interfere with their public position and shall abstain from performing any private or public

activities that are incompatible with their public position and might generate conflict of interest. Civil Servants shall act pursuant to the provisions of this law and the applicable law for avoiding conflict of interest.

17. a. (Alb.) Propozuesi, së bashku me projektligjin dhe deklaratat e tjera shoqëruese të kërkuara sipas ligjit, *duhet* të paraqesë në Kuvend edhe deklaratën, që arsyeton plotësimin e kushteve të përcaktuara në paragrafët 1 dhe 3 të nenit 48 të këtij ligji dhe opinionin e Auditorit të Përgjithshëm. (Law on Organization and Functioning of State Administration and Independent Agencies Article 39 par. 2 p. 44)
- b. (Eng.) The sponsor, along with the draft law and other statements as required by law, *shall* submit to the Assembly a declaration justifying conditions as provided by paragraphs 1. and 3. of Article 51 of this Law and the opinion of Auditor General.

### Modal verbs occurrences in legislative texts

In order to see the way modal verbs are used in the legislative texts, a detailed analysis using the WordSmith Tools Concordancer has been conducted so as to establish which modal verbs occurred more frequently. WordList and Concordance tool is a computer software designed by Mike Scott (1996, 1997, 1999, 2015) and is considered a very useful tool which enables identifying the frequency occurrence and keywords of the given corpora. (Chartrand, 2016; Mukundan & Khojasteh, 2011, Scott, 2001; Kennedy, 1998).

Albanian		English	
Word	Count	Word	Count
të	2867	the	1978
e	1265	of	559
në	778	to	806
për	702	data	743
dhe	590	and	591
dhënavë	581	or	544
i	540	in	500
me	502	a	404
ose	419	this	367
personale	363	personal	364
këtij	312	article	357
një	278	<i>shall</i>	330
nga	268	for	321
që	254	---	---
---	---	<i>may</i>	24
<i>mund</i>	108	<i>must</i>	20
<i>duhet</i>	67	<i>can</i>	9

Table 3. Frequency of the use of modal verbs in the ‘Law on Protection of Personal Data’ in both languages

Table 3. demonstrates that the modal verb Alb. *mund* (Eng. *can*), which expresses possibility, is used more frequently in the Albanian language. Whereas the modal verb Alb. *duhet* (Eng. *must*), which expresses obligation, is used less than the modal verb Alb. *mund* (Eng. *can*). Table 3. shows that during the translation of these two verbs from Albanian into English, even though they have their equivalents in English, the modal verb *shall* is used in a higher percentage. Likewise, the modal verb *shall* has

been used not only as a modal verb during the translation but also to convey the semantic meaning of the verb as in the following example:

18. a. (Alb.) Institucionet, në nivel qendror dhe në nivel lokal, sigurojnë burime njerëzore dhe financiare për zbatimin e politikave të nevojshme në hartimin, zbatimin dhe mbikëqyrjen lidhur me zhvillimin dhe edukimin e fëmijës në fëmijërinë e hershme në Kosovë.  
b. (Eng.) Institutions, at the central and local level, *shall* provide human and financial resources for the implementation of policies necessary in preparing, implementing and supervising the development and education of a child in early childhood in Kosovo. (Law on Child Protection, Article 63 par. 3 p.38)

If we compare the use of modal verbs Alb. *duhet* (Engl. *must*) and Alb. *mund* (Engl. *can*), we will notice a much higher percentage in the usage of these two modal verbs in Albanian rather than in English. While Alb. *duhet* (Eng. *must*) occurred only 20 times in English, in the Albanian language, it results in 67 occurrences. Similarly, the modal verb Alb. *mund* (Eng. *can*) registers 9 occurrences in English while registering 108 occurrences in Albanian.

The corpus analysis in Table 2 shows that the verb *shall* appears to be the most frequently used verb of all modal verbs in English.

The future simple constructor in Albanian is formed using *do të*, whereas in English is formed using *will* or *shall*. Furthermore, the results in the table above show that there were altogether 330 occurrences of the modal verb *shall* in the legislative document corpus. As can be seen above, there is a large frequency gap between *shall* and *can*. Meanwhile, other modal verbs were not used in this corpus.

Moreover, perhaps the biggest confusion for the readers is when they encounter the modal verb *shall*, which is considered as the biggest troublemaker in legislative texts. Many research papers (di Carlo, 2016: 237-239; Garzone 2013: 72) on modality considered the verb *shall* being the most challenging and a troublemaker in legislative drafting. If we consider the following example:

19. a. (Alb.) Komisioni *do të* miratojë rregullore të veçantë.  
b. (Eng.) The Committee *shall* adopt a special regulation.

We see that in legal drafting, the future tense verb Alb. *do të* (Eng. *will*) is used, whereas, in English, the modal verb *shall* is found. Most likely in Albanian, as Breu (2009: 239) claims, the modal verb *do* in Albanian is homonymous with the auxiliary participle expressing the volitional future<sup>6</sup>. Nevertheless, the use of *shall* in English, in this case, is irrelevant, considering that in legal texts, the expression of the future is restricted to the first person. Therefore, the prediction is unlikely to occur in this example. Steiner (1975) argues badly about when someone produces a bad translation by not justifying him by any means, as we will see in the following:

"A bad translation is one which is inadequate to its source text for reasons which can be legion and obvious. The translator has misconstrued the original through ignorance, haste, or personal limitation. He lacks the mastery of his own language required for adequate representation. He has made a stylistic or psychological blunder in choosing his text: his own

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<sup>6</sup> For more information on the modals in Albanian, see Breu (2009).

sensibility and that of the author whom he is translating are discordant, where there is a difficulty the bad translator elides or paraphrases. Where there is elevation, he inflates. Where his author offends, he smoothes. Ninety percent, no doubt, of all translation since Babel is inadequate and will continue to be so". (Steiner, 1975: 396)

Albanian		English	
<i>Word</i>	<i>Count</i>	<i>Word</i>	<i>Count</i>
të	422	The	342
në	236	Of	221
e	226	and	164
dhe	181	In	163
zyrtare	102	official	108
do	63	language	99
i	62	To	98
për	62	languages	79
nga	56	shall	62
gjuhëve	46	By	48
me	46	article	46
që	43	Their	44
tyre	41	A	41
neni	40	Or	39
...	-	...	-
<i>mund</i>	17	<i>can</i>	15
<i>duhet</i>	14	<i>must</i>	3

Table 4. Frequency of the use of modal verbs in the ‘Law on the Use of Languages’ in both languages

When looking at the frequency of modals in Table 4, we found that the verb *shall* again is the most frequently used with 62 occurrences, then *can* follows with 15 occurrences. However, if we compare the use of modal verbs in Albanian, we will see that the modal verb Alb. *mund* (Eng. *can*) is the most frequently used, followed Alb. *duhet* (Eng. *must*) with 17 occurrences.

Albanian		English	
<i>Word</i>	<i>Count</i>	<i>Word</i>	<i>Count</i>
të	472	The	701
E	320	Of	537
në	249	court	192
për	186	and	144
dhe	146	shall	132
Me	127	in	124
gjykata	125	for	112
I	116	to	97
së	107	Kosovo	90
kosovës	79	law	89
themelore	77	a	80
neni	51	basic	79
republikës	48	---	---
nga	46	may	15
---	---	should	9

<i>mund</i>	15	<i>must</i>	3
<i>duhet</i>	17	<i>can</i>	2

Table 5. Frequency of the use of modal verbs in the Law on Courts in both languages

Table 5. shows that the modal verb *shall* registers 132 occurrences. In descending order, the lowest percentage was for *can* with only 2 occurrences. On the other hand, other modal verbs like *would*, *might*, *will*, *ought*, *could*, etc., did not show any percentage in the corpus. If we compare them with the Albanian, we see that the modal verb Alb. *mund* (Eng. *can*) leads with 15 occurrences in comparison to English which counts only 2 occurrences, whereas the modal verb Alb. *duhet* (Eng. *must*) registers 17 occurrences in the Albanian corpus and only 3 occurrences in the English one.

### Discussion of the results

The goal of this research paper was to establish if modal verbs are lexical forms of the language of the laws, like in English, and if the same applies in the Albanian language when these legal documents are translated into another language. In this paper, we can conclude that modal verbs in Albanian can be recognized as a lexical characteristic of legal terminology and that the translation of legal documents affected the construction of legal terminology in the Albanian language. Law and language, according to Ralarala (2014), are inherently related, and, as such, the effective functioning of the law has a direct bearing on the appropriate use of a language. With regard to English, however, we can say that the modal verbs are considered lexical characteristics of legal terminology. (For more see Chen et al., 2020; Kolarkova & Savina, 2018; Richard, 2018; Krapivkina, 2017; Neill et al., 2017; di Carlo, 2017; Garzone, 2013; Gibová, 2011)

We can draw several conclusions from this study, each of which shall carry its implications for further research studies on the translation of modals in Albanian. This research analysis of the selected corpus for the most frequently used modal verbs in Albanian legislative texts corpora confirms our research hypothesis that modal verbs are a lexical characteristic of legal terminology in the Albanian language. The charts extracted from the corpus in Albanian and English language confirm our conclusions:

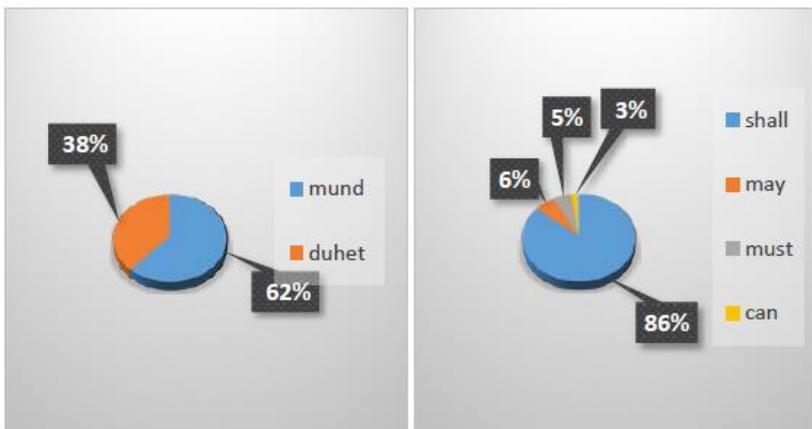


Figure 1. Frequency of the use of modal verbs in the Law on Protection of Personal

Data in both languages

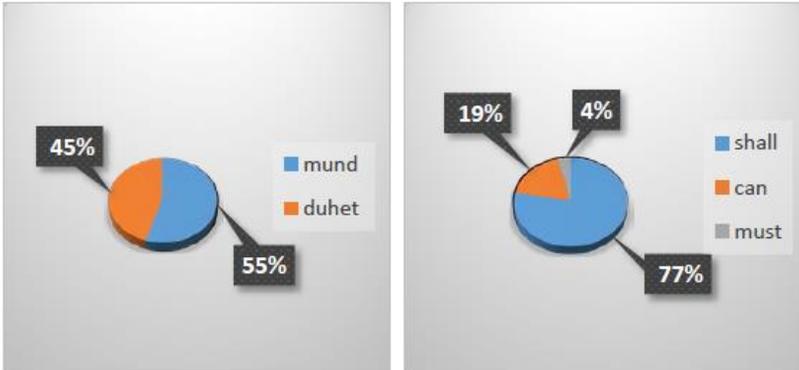


Figure 2. Frequency of the use of modal verbs in the law on the Use of Official Languages in both languages

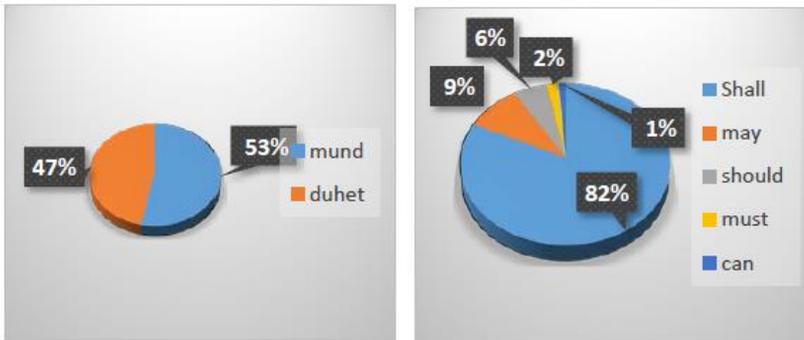


Figure 3. Frequency of the use of modal verbs in the Law on Courts in both languages

Furthermore, the main purpose of this study was to identify types of errors in translating modal verbs, difficulties in translating, and factors that influence the translators' errors in translating modal verbs. This inconsistency may also be caused by the paired tendency of the Albanian to English translators towards overuse of *shall*, on the one hand, and lack of other modal verbs, on the other.

Moreover, there is an ambiguity in using the modal verb *shall* when the laws have been translated into English, as sometimes it was used to indicate future action, and in some other cases, it was used to express obligation, necessity and volition. This was mainly noticed when a respective article referred to the Present simple tense in the Source language was translated with the modal verb *shall* in the Target language. Additionally, in translating from Albanian into English, it was also realized that the languages do not have identical modality systems. Therefore, it was not possible to find exact equivalents for each of them.

After conducting a comparison between the two languages, it is possible to establish the following:

- Modal verb *shall* in English is used for the Present simple tense in Albanian.
- Modal verb Alb. *duhet* (Eng. *must*) in Albanian has mainly been translated as *shall* in English and sometimes as *should* or very rarely as *must*.
- *Shall* is used instead of *must* to express obligation.
- *Shall* is used to express futurity in English.

As di Carlo (2017) pointed out, the modal verb *shall* "is considered ubiquitous in legal texts since it expresses a deontic modality intrinsically projected towards situations and behavior located in the future." (di Carlo, 2017: 231). On the other hand, the modals *may*, *might* and *will* are not very common in English versions. At the other extreme, the modals *shall*, *should* are very common. If we focus on the pairs of central modals, the past-time adherent is less frequent than its partner in all cases except for *should* and very rarely *could*.

Thus, *shall* is the modal verb most frequently used in English corpora. Next comes *may* followed by *can*, *could*, and then *must*. The modal verb *ought* is the least frequently used, of all modals, in this corpus.

Lack of modalisation seems to be a natural tendency for Albanian legislators. This fact would partly explain the overuse of modal verb Alb. *duhet* (Eng. *must*) and Alb. *mund* (Eng. *can*) and very rarely Alb. *lypset* (Eng. *ought*) and Alb. *do* (Eng. *must*).

Considering the aforementioned, while English has many ways of expressing modal verbs patterns having alternative forms that allow us to express modal verbs in English, the Albanian language is much narrower in this context using mainly Alb. *mund* + *lidhorja* (can + *subjunctive*); Alb. *duhet* or *lypset* + *lidhorja ose pjesorja* (Eng. *Must* + *subjunctive* or *participle*) and very rarely Alb. *do* + *pjesorja* (Eng. *must* + *participle*).

## Conclusion

The results obtained in this study showed that there are obvious differences between the use of modal verbs in the Albanian language and the way they have been translated into English.

Consequently, translators have difficulties in establishing a proper meaning when they translate into English. This is related to the discrepancy observed in the expression of meaning between some modal verbs; for instance, *shall* is used instead of *must* to express obligation. Apart from these pragmatic reasons, the overuse of *shall* has mainly been noticed in the Target Language to convey more than one meaning, as it is used with both performative and deontic values expressing necessity, obligation, futurity and permission. The modal verb Alb. *duhet* (Eng. *must*) in Albanian was mainly translated as *shall* and sometimes as *should* and very rarely as *must*. Therefore, it is not surprising why translators ignore more detailed alternatives like *may* or *might*, *would* etc. and setup a symmetrical correspondence of uses with the past form *should* and *could*.

Finally, in translating from Albanian into English, it was realized that both languages have their equivalents when translating modal verbs such as Alb. *mund* (Eng. *can*) and Alb. *duhet* (Eng. *must*). Therefore, in terms of other modal verbs, it was not possible to find exact equivalents when both corpora were compared.

Bad translation in legal proceedings may have a serious impact on decision-making, as well as significant consequences for both the party and the defendant. Finally, the issue of translation quality is of the utmost importance, however, little is known about what happens when a translator produces a bad translation.

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