

SIGN CHARACTER OF THE EXPONENTS OF MODALITY IN A LEGAL TEXT

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Abstract: The thesis of this article is that the texts of legislative acts represent the most natural speech. Legal language becomes complete in depicting the world as well as in expressing the will of a legislator and his attitude to what is said by him, both on deictic and symbolic level. Informality in legal language is a desired feature – working on the assumption that an ordinary ethnic language is correctly interpreted.

Abstrakt: W artykule stawia autorka tezę, że model języka aktów normatywnych ma charakter naturalny. Wychodząc od Bühlerowskiej teorii konstrukcji świata w płaszczyznach deiktycznej i symbolicznej etnicznego języka potocznego twierdzi, że zarówno deiktyczny świat przedstawień, jak i symboliczny świat woli ustawodawcy, są wpisane w potoczny model komunikacji językowej, a ustawodawca wskazuje w akcie stanowienia normy prawnej – jak w sytuacjach dnia codziennego z pozycji egocentrycznej – status obowiązków adresata i zarazem uprawnień recipienta działania ustanowionej normą wysłowioną w przepisach prawnych. Metatekstowa rama („ustanawiam”) konstruuje obraz świata norm prawnych z pozycji psychologicznego źródła wypowiedzi („ja”) organizującego podstawową (pierwotną) funkcję adresatywną sfery odniesienia przestrzennego („to” – „ten” – „tamten”) i organizuje relację należności i powinności, które rządzą konstrukcją ustanowionej normy. Wypowiedź ustawodawcy symbolizuje wskazane podmioty oraz wskazany przedmiot regulacji prawnej i jest modalizowana deontycznie, jak w art. 356 § 1 k.c. – np. *wierzyciel* („tamten”) *może żądać* (orzeczenie modalne) *osobistego świadczenia* („to”) *dłużnika* („ten”), co odczytuje się także, że dłużnik („ten”) powinien świadczyć (orzeczenie modalne) osobiście na żądanie („to”) wierzyciela („tamten”). Autorka uzasadnia, że błędne jest twierdzenie, jakoby system języka dopuszczał nieprecyzyjne wysłowienie intencji ustawodawcy. W systemowym odniesieniu znaków językowych wypowiedź prawna nie różni się od wypowiedzi potocznej i uwzględnia eliptyczny charakter języka etnicznego. Tekst aktu prawnego może być natomiast nieprecyzyjnie rozumiany lub różnie interpretowany – podobnie jak wypowiedzi potoczne – gdyż naturalną jego właściwością jest eliptyczność wypowiedzi wymagająca interpolacji brakujących składników w odbiorze i redundantność znaków języka, których referencje zapewnia nadawca tekstu.

Object world in colloquial and in legal language

According to the theory of Karl Bühler the structure of the world in language shows itself on two levels: deictic and symbolic. The imperfection of language, according to this psychologist and philosopher, lies in the fact that one word is used to depict several things. Multiplicity of depictions allows one in return to see or to imagine some things from different points of view.

Language skills are realised through statements, questions and commands due to a speaker's will and the perceptive ability of a recipient. Change in language efficiency always includes a particular change of a depiction of the world understood as a whole, signalised through individual attitudes of the speakers. Language is not only an organ of cognition - Bühler states further on - but also provides us with an impulse to several actions, stands between reality and people, distorts and reshapes the heart of the matter.

The world of depictions, according to K. Bühler's theory of language, is an intentional use of language signs, which serve as a symptom from the position of a speaker, as a signal from the position of a receiver and as a symbol from the position of the phenomena of the outside world. The real world - objects, actions and relations between them - is depicted deictically and symbolically with the use of two categories of signs in an ordinary language, namely a dictionary and a grammar. Grammatical rules of an ordinary ethnic language as well as specialised vocabulary of a legislatively regulated branch of science or technology are the means to create an object notion in the world of law. Language of legislative acts is, by genre, a legislative and specialised language and this is what singles it out as a functional variety of an ordinary language, which is stylistically marked.

Deictic world of depictions

Deixis is a demonstrative expression from the point of view of a speaker, which is an inherent part of the model of language communication. An analysis of a utterance requires considering

contexts, in which demonstrative words act as signals. Keeping in mind the psychological rudiments of types of demonstrative utterances typical for the languages belonging to the European culture, Bühler assumes four categories of *deixis*: the first - "ja" ("I"), the second - "ty" ("you"), the third - ten ("this")/"to" ("it"), the forth - "tamten" ("that"). These types of demonstrative utterances create a system - realised in a text in various ways. Positional values of language categories introduced in situational context give an ordinary depiction of a reference for the perceptive purposes in primary use - the so-called dramatic utterance, different from the epic utterance in narrating happenings of the past. In situations of every-day, "I" and "you" indicate agents of different roles in the process of speaking; "this" indicates a person in the area of surrounding environment; "that" in an opposition to "I" and "this" considers the area beyond the borderline, beyond a zone which is psychologically perceived as a dividing line.

According to K. Bühler, deictic expressions are signals and also symbols with regard to sensually perceivable components of situations. Communication which is poor in vocabulary is not primitive, but it constitutes a "refined elliptic speech", which specifies and defines words with the use of positional values of syntactic structures.

In the language of law the world is seen from the perspective of human actions, which are regulated by a legislator through socially authorised legislative acts. With relation to the object world, communicated and perceived in every-day language behaviour, it is much more limited. Language signs are assigned to objects and states of things not in the object world, but in the virtual world of relations and legal, thetical norms. This world is constructed both of an egocentric world of always the same person,

a legislator, and the outside world of objects and states of things within social relations created only on account of norms constituted by legislative bodies of a state. It lacks the deictic category “ty” (“you”) because legal articles in the text of an act are directed not to someone, but for someone. A meta-textual framework fundamentally changing the sense of a utterance – verbalised or only intentionally transmitted by the author of a text – transforms the heart of the matter in an act of communication. “To” (“it”) indicates the object of regulation; “ten” (“this”) – is always the recipient of a norm verbalised in a legal text; “tamten” (“that”) – is a recipient of an action constituted by a legal article, someone absent, but also present within the scope of awareness.

Legal articles are verbalisations of instructions and circumstances of the period when an article is legally binding. While the intention of a legislator is constituting the law, in ordinary language a communicative intention could be – depending on a situational context – a statement, a command, a question, etc. The world of a text becomes fulfilled on three levels: of depiction, of expression given from the point of view of the speaker, and of an appeal from the point of view of a recipient of the text. In a situational context the positional values of the categories give an ordinary depiction of references only in performative dramatic speech. Similar composition is typical of quasi-legal ordinary utterances.

The symbolic world of will

Entirely symbolic is the second level of a utterance. This level in ordinary ethnic language presents the subject of cognition. In the language of law, it presents mainly the subject of regulating people’s deeds. Therefore, it intermediates in a different way between reality and people, it transforms the reality and provides an impulse to act.

Ordinary way of reference introduces symbolic language signs into the situational contexts of so very different acts of speech. Their meta-textual framework constructs a depiction of the world signified through disparate attitudes of the speakers. Symbolic value of deictic expressions becomes intensified when their syntactic position in a statement is taken by naming expressions: proper names or common names, eg.: “ja” (“I”) – a teacher; “ty” (“you”) or “ten” (“this”) – Jack, a student; “tamten” (“that”) – Charles, a colleague; “to” (“it”) – a book. These expressions, inscribed in a situational context from the point of view of a speaker, arrange themselves in the following syntactic pattern: [=Ja mówię, że] ten daje tamtemu to – tamten bierze to od tego. / [= I say, that] this gives it to that – that takes it from this. This pattern indicates the agents in the process of speaking:

- (1) [Opowiadam / twierdzę, że:] Jacek dał Karolowi książkę, a Karol wziął książkę od Jacka.

[I say / claim, that:] Jack gave Charles a book, and Charles took a book from Jack.

- [Opowiadam / twierdzę, że:] Uczeń dał koledze książkę, a tamten kolega wziął książkę od tego ucznia.

[I say / claim, that:] A student gave a colleague a book, and that colleague took a book from this student.

- (2) [Pytam, czy:] Ty dałeś koledze książkę, a tamten kolega wziął książkę od ciebie?

[I ask if:] You gave this colleague a book, and that colleague took a book from you?

- (3) [Nakazuję:] Ty daj koledze książkę, a tamten kolega niech weźmie tę książkę od ciebie.
[I order:] You give this colleague a book, and let that colleague take this book from you.
- (4) [Ja, nauczyciel, postanawiam:] Uczeń może dać koledze książkę, a tamten kolega niech bierze książkę od tego ucznia.
[I, the teacher, decide:] A student can give a colleague a book, and let that colleague take a book from this student.

Examples 1-4 show a structure of the object world inscribed into the model of language communication taking into account an entire system of reference in a concrete text realisation. Yet they present artificial syntactic creations. In every-day use of language a speaker is required to apply syntactic ellipsis, which results in utterances logically incomplete and a recipient has to guess the missing components, drawing on his own knowledge and communicative competence.

A meta-textual framework classifies a utterance as a narrative or a statement being the epic utterance (1) or as a question, an order or a decision being the dramatic utterance (2-4). A special type of an act of speech is the performative use of language (4), in which a speaker with the use of words constitutes the state of binding of that, what has been said. A performative act of speech is of a creative nature with relation to extra-textual reality through an authorised person.

It is not difficult to notice that a legal utterance differs from an ordinary utterance exactly in that, that its meta-textual framework is always performative. Since in this type of a utterance a personal diacrisis directs the attention of a recipient to an individual signal of a speaker, understood as an attribute of legal authorities, eg.:

Wierzyciel może żądać osobistego świadczenia dłużnika tylko wtedy, gdy to wynika z treści czynności prawnej, z ustawy albo z właściwości świadczenia. (art. 356 § 1 k.c.)

A creditor can demand a personal testimony from a debtor only when it results from the contents of legal measures, from a legal act or from the property of a benefit.

This legal act should be read with a supplement:

[*Ja, ustawodawca, stanowią:] Wierzyciel może żądać osobistego świadczenia dłużnika tylko wtedy, gdy to wynika z treści czynności prawnej, z ustawy albo z właściwości świadczenia.

[*I, the legislator, decide:] A creditor can demand a personal testimony from a debtor only when it results from the contents of legal measures, from a legal act or from the property of a benefit.

Signified by a performative framework the psychological source of a utterance (“ja”, ang. “I”) organises the primary addressive function of its spatial reference (“to”, ang. “it” – “ten”, ang. “this” – “tamten”, ang. “that”). Through a personal attitude to that, what is verbalised in a text, organises also the relationship of responsibilities and obligations, which govern the construction of a constituted world of norms verbalised in a

text. Since the subject of regulations is an authorisation (“to” – *osobiste doświadczenie*, ang. “it” – *a personal experience*) reserved for a recipient (“tamten” – *wierzyciel*, ang. “that” – *a creditor*) and at the same time on this account in the proceedings also an obligation of the addressee (“ten” – *dłużnik*, ang. “this” – *a debtor*). Actions of both these subjects of a legal norm are modalised deontically through lexical exponents *może – powinien*, ang. *can – should*, or their textual equivalents, such as *ma prawo żądać – świadczy*, ang. *has the right to demand – testifies*, and the like.

A speaker, a recipient and a subject of communication determine the background of a utterance – a situation of constituting and binding of that, what is constituted as a relationship of right and obligation. If on this background appear names (*a creditor, a debtor, a personal benefit*) – they are significant names – they symbolise signified subjects and a signified object.

In a type of a legal text the intension to constitute does not come from the contents of words. A text allows one to draw conclusions about the will, the power and the competence of a legislator from the fact that it is announced in certain media (eg. in “*Dziennik Ustaw*”/“*Journal of Law of the Republic of Poland*” or in “*Dziennik Urzędowy*”/“*Official Journal*”). It informs indirectly about the speaker, but it does not announce him. It is a symptom of a cultural activity which links a legal body with every recipient, even the one who does not necessarily understands the contents of a text. A psychological reaction of a recipient is to receive the characteristic of the text as legally binding.

Deontic modality

Deictic and symbolic world of depictions does not determine particularity of a legal text. What differentiates the legal functional style is restricting the performativeness of a utterance to the power to constitute legal thetical norms as well as restricting deontic modality to classification of proceedings, which a legal article directs to an addressee of a norm and to a recipient of an action constituted by this article – proceedings being relatively a subject of obligation and entitlement in the world of virtual legal relations. Legal articles are deontic sentences, communicating that a given person is obligated to carry out a given action in given circumstances, and another person is allowed to keep indifferent to this action.

Modal predicate is the centre of a legal utterance, but this centre is inscribed into the background of a deictic plane. Utterances communicate a certain attitude of a legislator to the expressed contents of a text, namely the attitude to the relation of duty – obligation in legal relations through assigning a modal qualification of duty of an addressee of a norm and an entitlement of its recipient, therefore if:

Wierzyciel może żądać osobistego świadчення dłużnika,
A creditor can demand a personal testimony of a debtor,

it also means, that:

- *Dłużnik powinien świadczyć osobiście na żądanie wierzyciela.
- *A debtor should testify in person on demand of a creditor.

Modal expression in legal text does not differ in interpretation from an expression in ordinary language, if we consider the systematic reference of signs. The exponent of modality in a full situational context is specified similarly, through the use of the *deixis* category “tamten” – “ten”, ang. “that” – “this”, like *wierzyciel – dłużnik*, ang. *creditor – debtor*. A symbolic sign consisting of an auxiliary verb (*może*, ang. *can*) and an infinitive (*żądać*, ang. *to demand*) is a connotation of a real subject of a legal regulation “to” (*osobiste świadczenie*), ang. “it” (*personal testimony*), is also a connotation of not only the subject in his own environment (*wierzyciel*, ang. *creditor*), who has the right to a supposed action (*może żądać*, ang. *can demand*), but at the same time it is a connotation of an absent, omitted on the principle of ellipsis, an obligated subject (*dłużnik*, ang. *debtor*), who must carry out that supposed action (*powinien świadczyć osobiście*, ang. *should testify in person*). In the elliptic form of the article of course only a part of this communication is verbalised.

Redundancy of the signs of legal modality

It is a misconception that in legal language the verbal signs which determine the attitude of a legislator to what he constitutes are not precise – they are only misunderstood because of the lack of knowledge and understanding of the deictic system of an ordinary language, and less often imprecisely communicated. The attitude of a legislator to what is being constituted is being expressed in the aspect of actions, states of things and phenomena in terms of a method in which they must or can exist in a language communication pattern which takes into consideration systematic categories of *deixis*. Full information would require a legislator to indicate two subjects of a legal norm and at the same time a real object of a legal regulation, from the point of view of obligations and entitlements of the subjects, as well as from the point of view of a necessity of action by one subject and a possibility of indifference to this action by the other of the two subjects. Therefore information is given in several articles complementing one another, see: an analysis of examples from the legal act Prawo prasowe (ang. Press legislation), in which the stylistic varieties of modal predicates would be possible:

Art. 11. 1. Dziennikarz jest uprawniony do uzyskiwania informacji w zakresie, o którym mowa w art. 4.

dziennikarz jest uprawniony do uzyskiwania informacji }
może/ma prawo uzyskać informację } equivalent utterances
[= dziennikarz może uzyskać informację z racji swojego uprawnienia i zarazem obowiązku innej osoby]

Art. 15. 1. Autorowi materiału prasowego przysługuje prawo zachowania w tajemnicy swego nazwiska.

autorowi przysługuje prawo zachowania }
autor może zachować } equivalent utterances
ma prawo zachować }

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[= autor może zachować (to w tajemnicy) ze względu na prawo, które mu przysługuje z racji jego uprawnienia i zarazem obowiązku innej osoby]

Art. 15. 2. Dziennikarz ma obowiązek zachowania w tajemnicy:

1) danych umożliwiających identyfikację autora materiału prasowego...

dziennikarz ma obowiązek zachowania }
powinien zachować } equivalent utterances
zachowuje }

[= dziennikarz powinien mieć obowiązek zachowania (tego w tajemnicy) z racji uprawnienia do zachowania (tego w tajemnicy), które to uprawnienie przysługuje innej osobie]

Art. 11. 1. A journalist is entitled to obtain information within the scope defined in art. 4.

a journalist is entitled to obtain information }
can/has the right to obtain information } equivalent utterances

[= a journalist can obtain information due to his entitlement as well as due to another person's obligation]

Art. 15. 1. An author of a press material is entitled to keep the right to maintain confidentiality of his name.

*an author is entitled to keep the right to maintain }
an author can maintain } equivalent utterances
has the right to maintain }

[= an author may keep (it confidential) because of the right which he is entitled to due to his entitlement as well as due to another person's obligation]

Art. 15. 2. A journalist is obligated to keep confidentiality of:

1) any information which would allow to identify an author of press material...

a journalist is obligated to keep }
should keep } equivalent utterances
keeps }

[= a journalist should be obligated to keep (this confidential) due to the right which he is entitled to, to keep (it confidential), which is the right of another person]

In formulating a legal norm it would seem logical to use every time all deictic exponents and modal predicates applied to them. But it does not happen in this way because of a language custom which implies omitting redundant information – a text of a legal act which would list all objects would be artificial as well as absolutely incorrect and incomprehensible. In whatever manner a legal article is formulated, it always communicates the necessity of an obligatory action of an addressee of a norm, as well as an indifferent action of a recipient and at the same time the predispositions of both the subjects to the particular action. Moreover, a legislator most often specifies only one thing – and this also following different rules of an ordinary language.

Words examined within the syntactic framework of a sentence symbolise the attitude of a legislator to the constituted subject, or to the person of an addressee of a norm verbalised in a text, or to its recipient. Therefore predicates *powinien / może czynić*, ang. *should / may act* pronounce the modality of an action of a subject (“to”, ang. “it”), which is a problem to be resolved on the basis of a norm verbalised through a legal article – at the same time indicating an addressee of a norm (“ten”, ang. “this”) or a recipient (“tamten”, ang. “that”). Whereas predicate *ma obowiązek czynić*, ang. *he is obligated to act* pronounces the predisposition of an addressee of a norm (“ten”, ang. “this”), and predicate *jest uprawniony (do czegoś)*, ang. *is entitled (to something)* pronounces the predisposition of a recipient (“tamten”, ang. “that”).

Deontic modality organises the reference of language signs used by an author who composed a legal act. The way of depicting and communicating through words and through context fulfils the goal of influence of a legal text on interpretation and evaluation of actions by an addressee of a norm and by its recipient. The words of a text have the power of assigning only two things to actions and states of the subjects – the status of necessary obligations and at the same of possible entitlements.