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Preface

This volume of *Comparative Legilinguistics* contains four articles. The first one titled *Legislative History as an Interpretative Tool in Uni- and multilingual Legal Systems (Based on the Example of Poland and the UE)* is written by Agnieszka BIELSKA-BRODZIAK (Poland) and Karolina PALUSZEK (Poland) who analyse and compare the interpretative function of legislative history in the judicial activity of the European Court of Justice and Polish courts. The authors have analysed judgments of the respective courts, focusing on the role of legislative history in their argumentation.

Mateusz ZEIFERT (Poland) (*Grammatical Issues in Judicial Interpretation – Does Legal Practice Needs Linguistic Theory? Based On Polish Courts' Decisions*) deals with interpretational problems caused in Polish courts by grammar (namely: syntax and inflexion) of legal provisions. The author discusses five main sources of grammatical issues in judicial interpretation of law: syntax of a sentence (i.e. order of words), conjunctive words (i.e. *i*, *lub*), punctuation marks (i.e. comma, semicolon, dash), nominal grammatical categories (i.e. number, gender), verbal grammatical categories (i. e. aspect, tense, mood). He observes that the traditional Polish canons of interpretation are very general and offer no clues on how to deal with such issues.

Olena VELYKODSKA (Ukraine) in her article titled *Legal Discourse: Text Analysis and Translation Strategies* discusses the problem of defining the object and theoretical basis of legal translation. Her analysis reveals that the requirements of professional translators include the knowledge of lexical and grammatical peculiarities of both languages in legal spheres, deep understanding of the concepts employed by specialists in a particular field and the specialist terms used to express these concepts and their relationships in the source and target languages.

The last text in this volume is an article of Paweł BIELAWSKI (Germany) entitled *Zur Verständlichkeit von Übersetzungen Deutscher und Polnischer Gerichtsbenennungen* which focuses on the translation of German and Polish court names. The author analyses terms used in legal literature and dictionaries and concludes that the court names are often being translated in a way that makes it impossible for the reader to correctly identify the institution in question. He compares the court systems of Germany and Poland and identifies, on the basis of the comparative law theory, the meaning features essential for both legal communication and legal translation. Finally, three comprehensive translation techniques are proposed for the translation of the

court names so that the institution at issue is instantly recognizable in the target text.

The editors hope that this volume of our journal will be of interest to its readers.

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LEGISLATIVE HISTORY AS AN INTERPRETATIVE TOOL IN UNI- AND MULTINLINGUAL LEGAL SYSTEMS (BASED ON THE EXAMPLE OF POLAND AND THE UE)

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Abstract: The paper aims to analyse and compare the interpretative function of legislative history in the judicial activity of the European Court of Justice and Polish courts.
The authors have analysed judgments of the respective courts, focusing on the role of legislative history in their argumentation. In the Polish and European doctrine, the usefulness of *travaux preparatoires* has been underestimated. Nevertheless, legislative history may provide arguments important in judicial reasoning both in uni- and multilingual legal systems. However, its importance and functions in Polish and European cases examined herein are different. The research conducted enables a better understanding of the interpretative value of legislative history in legal interpretation and can result in more frequent use of this tool in the judicial activity of national and European courts.

Keywords: legislative history, legal interpretation, multilingual law

„HISTORIA LEGISLACYJNA" JAKO NARZĘDZIE WYKŁADNI JEDNO I WIELOJĘZYKOWYCH SYSTEMÓW PRAWNYCH (NA PRZYKŁADZIE POLSKI I EU)

Abstrakt: Celem pracy jest analiza i porównanie interpretacyjnego znaczenia historii legislacyjnej w działalności orzeczniczej Europejskiego Trybunału Sprawiedliwości i sądów polskich.

Autorki analizują orzeczenia sądów, koncentrując się na roli historii legislacyjnej w używanej przez sądy argumentacji. W doktrynie polskiej i europejskiej użyteczność *travaux preparatoires* nie jest dostatecznie doceniana. Niemniej jednak historia legislacyjna może dostarczyć w procesie wykładni tekstu prawnego istotnych argumentów i to zarówno w jednojęzycznych, jak i wielojęzycznych systemach prawnych. Jednak jej znaczenie i funkcje w obu badanych jurysdykcjach są odmienne. Przeprowadzone badania pozwalają na lepsze zrozumienie wartości interpretacyjnej materiałów legislacyjnych w interpretacji prawniczej i mogą przyczynić się do zwiększenia użyć tego narzędzia w działalności sądowej sądów krajowych i europejskich.

Słowa klucze: historia legislacyjna, wykładnia prawa, wielojęzyczność prawa

1. What is legislative history? Several remarks on its position in legal interpretation around the world, including arguments in favour of and against legislative history usage[1]

The legal interpretive discourse offers tools which are significant in some of the legal systems and are at the same time undervalued in others. An excellent corroboration of this thesis can be found in legislative materials, a set of documents drawn up in the process of creating a piece of legislation, making up the so-called legislative history of a piece of legislation. Legislative materials, treated as a potential tool in the interpretation of the law, have arguably been one of the most discussed issues in worldwide legal theory over the past few years. The discussion on ways of using legislative materials and the role they play or should play in the interpretation of the law is taking place in numerous countries across Europe (Germany, Sweden, Great Britain, France, Spain), but also outside the European culture (in the United States, which not only started this discussion, but in fact continues to keep it on a very high level, as well as in Australia, Canada, New Zealand, or Asian countries)[2]. The ongoing debate, which involves not just interpreters, but also the legislatures[3], is a trigger for discussions on the value of legislative materials for interpretation of the law. Legislative materials (also referred to as preparatory materials or *travaux preparatoires*) usually appear in the context of interpretation of the law under the name **legislative history.** The term was coined in English language literature, where its use is widespread[4]. Conventionally understood, legislative history is a set of materials – drawn up in the form of documents – produced by the legislator or

[1] Project financed by the Polish National Science Centre under grant no. DEC-2011/03/D/HS5/02493.

[2] I discuss this in more detail in monograph A. Bielska – Brodziak, *Śladami prawodawcy faktycznego. Materiały legislacyjne jako narzędzie wykładni,* Warsaw 2017.

[3] See e.g. a comprehensive and detailed study conducted in the legislative circles, described in a two-part work by A. R. Gluck, L. S. Bressman (2013: 901-1025 and 2014: 725-801).

[4] *Legislative history* is a highly popular term in English language literature – cf. e.g Popkin 2007: 160–183; also Eskridge Jr, Frickey and Garrett 2006: 303.

commissioned by the legislator in the course of drafting and passing of a piece of legislation, with documents deriving from the parliamentary stage of the law-making process being the most important for the process of interpretation of the law. Legislative history is used in the process of interpretation with the interpreter accessing draft acts, explanatory statements, or parliamentary debate records in order to develop, accept, or reject interpretative hypotheses.

2. Poland

2.1. Types of legislative materials and the evolution of their value resulting from improved access to legislative history (the Internet)

Legislative materials can be divided into three categories, reflecting the stages of the law-making process: materials created before submitting the draft legislation to the parliament, materials created during the parliamentary phase, and presidential veto (which is rarely and marginally important for the interpretation process). Materials of the pre-parliamentary phase (naturally, with the exception of the draft itself and the explanatory statement) have so far had rather limited significance for interpretation, which is not to say that it should be like that. Especially in case of drafts authored by the government, the knowledge of legislative circumstances that emerged during the work on the draft can be invaluable for the interpretation process. The use of legislative materials generated before the draft had been referred to the parliament, ought to increase not just because the information included therein is useful, but also because it is readily available.

Some of the most useful and most frequently used legislative materials are documents drawn up in the course of work of the Sejm and Senate, namely:

1. explanatory statements to bills

2. amendments submitted in the course of the legislative works (both those which resulted in modification of the draft and those which were rejected) by the Sejm and Senate committees

3. committee and subcommittee reports being updated versions of the bill (approved by vote in the various stages of the subsequent stages of the legislative procedure)

4. stenographic records of debates held as part of committee or subcommittee works, or as part of plenary sessions of the legislative body

5. opinions on the draft.

All these materials are currently readily available for interpreters in the public space. More detailed issues, important for the interpreter and related to the various types of legislative materials, will not be discussed herein given the assumed framework of this article[5].

It must be emphasised that over the past few years the conditions of using legislative materials have significantly improved due to free, relatively easy, and convenient access via the Internet. Poland currently has several official databases which offer on-line access to legislative materials.

2.2. Ways of using legislative materials in decisions of Polish courts

Two areas should be distinguished here. The first one is reasons for using legislative history in the process of interpretation (what is the interpreter trying to find?), whereas the second one is specific interpretation situations (interpretation problems), wherein legislative materials prove useful (what problem is the interpreter trying to solve?).

[5] I have discussed these in my monograph (Bielska-Brodziak, 2017) so I encourage the Readers to refer to the book.

2.3.1. Reasons for using legislative materials in interpretation of the law (what are we trying to find?)

Regardless of what problem the interpreter is working on, the legislative history can be used either to find information on the legislator's objective or on the meaning (of a particular word/phrase used in the wording of a provision of the law)[6]. In the first case, explanatory statements to bills will mostly be used, as this type of documents includes an explanation of the motives behind the legislator's law-making activity. It is worth noting that determination of the objective is the prevailing reason for referring to legislative materials in decision-making practice. Using legislative history in this way also appears to be in accordance with the legal intuition: analysis of the comprehensive background for a bill and conditions of the debate that precedes its entry into force, all of which can be extracted from legislative history, offers an opportunity to understand the context behind the legislator's activity and the objectives of the actual legislator (Breyer 1992: 848).

On the other hand, legislative materials can also be used as a dictionary, which the interpreter uses to look up the meaning of a certain word or phrase used in an act. Identification of the meaning of a specific word or phrase calls for using different types of parliamentary documents. In this case, the best way to obtain information is through the observation of changes in a provision of the law resulting from amendments adopted, and through an analysis of amendments rejected (which, in turn, reveal what the legislator did not want). This will involve both draft modifications implemented through amendments (elimination of certain wording, introduction of other modifications to the existing wording of the draft), as well as explanatory statements to the amendments. Moreover, information can be found in opinions on the draft, including the reaction of the Sejm bodies to these opinions (whether they have been taken into account or ignored). It is worth adding that when looking for information on the meaning of a particular word of expression used by the legislator, a single legislative material

[6] Numerous publications in the English language highlight the two aforementioned reasons for using legislative materials. See e.g. Nourse (2014: 1644); Jellum (2008: 169). Similar distinctions are made in the German literature – see Übelacker (1993: 14–17).

is seldom used. Instead, interpreters usually carry out more comprehensive analyses of numerous documents.

2.3.2. Problems (interpretation situations) solved with the help of legislative history

The second sphere in which legislative history is used for interpretation purposes is connected with its usefulness for solving specific situations or interpretation problems (ambiguity, vagueness, silence on the part of the legislator, etc.). Legislative materials are used in interpretation of the law in five interpretation situations: choosing from among several interpretation hypotheses, confirming a specific interpretation, supplementing the meaning of the interpreted phrase, interpretation against the wording, and silence on the part of the legislator[7].

To start with, argument from legislative materials is invoked as a justification of choice from among several possible interpretations of a text. This usage will be characteristic for solving the problem of ambiguity of legal texts: "Since the linguistic interpretation of this phrase does not lead to an unambiguous meaning, the *ratio legis* of the amended provision under interpretation must be determined (...)."[8]

Using legislative history in order to choose from among several interpretation hypotheses appears to be the least controversial usage of this tool[9]. The choice has to be made when the interpreter is dealing with ambiguous wording of a provision of law[10] or with the so-called

[7] This has been discussed more broadly in Bielska – Brodziak 2017: chapter 5.

[8] The Supreme Court further used the explanatory statement to the governmental draft of the bill, see Cf. Supreme Court resolution of 26 April 2017, I KZP 7/07, OSNKW 2007/5/38. See also Solan (2005: 484).

[9] That said, the scholars are not unanimous even about the admissibility of this usage – see a comparison of views held by Scalia and Breyer on the acceptable ways of using legislative history in the interpretation of law described by Mammen (2002: 155 et seq., 169 et seq.)

[10] A frequent problem when a choice has to be made is a conflict between the so-called "plain" meanings, inferred from the general ("colloquial") language, "In a case where various provisions of the text suggest two completely different «plain» meanings, a tie-breaking device is necessary. Legislative history can be such a device (…)" – Zeppos

classification[11]. Whenever this is the case, referring to legislative materials makes it possible to select one of several meanings of a legal text and reject the other ones.

Secondly, legislative history is often employed to confirm a line of interpretation[12]. In many judgments, this argument merely serves to strengthen and provide a better justification for an interpretation hypothesis, or to ensure that it is correct[13]. Nevertheless, the confirming function of parliamentary documents is not limited to merely strengthening argumentation for a specific, previously selected interpretation hypothesis. In fact, it frequently becomes a litmus paper for clarity as in many cases a *prima facie* unambiguous text, once it has been analysed in the context of its legislative history, loses its clarity[14].

The third way of using legislative materials is the so-called supplementation. The justification for this function of legislative materials is the conviction that the legislator has included in them a number of hints for the interpreters – for instance hints on how to construe details which have not been expressly set out in the text – and so they can be treated as a vehicle for conveying these additional details (Gluck and Bressman 2013: 973). In order to correctly interpret a text, one sometimes needs to simply supplement it with these details. The most recognised category of problems where interpreters recourse to

(1990:1328). In Polish literature on ambiguity in law see Gizbert-Studnicki 1978. More recently, important observations, from an intentionalist position, have been presented by Tobor (2013: 153-189).

[11] This is an interpretation situation in which the interpreter must decide whether a case is an element of a specific legal category (e.g. the famous American case, where it had to be determined whether a tomato is a vegetable or a fruit, and the decision was important for the level of taxation to be applied). Naturally, this decision entails that certain effects, as provided for by the law, will or will not be applied. On classification as a separate type of interpretation situations, see Tobor (2013: 213-223); Grabowski 1997: 85-89. In foreign literature, see MacCormick (1978: 95-97 and 147-148).

[12] The confirmatory function of legislative materials has been analysed in Brudney (2011: 901 et seq).

[13] Judgment of the Voivodeship Administrative Court in Krakow of 28 November 2013, I SA/Kr 1222/13, LEX No. 1485017. Other examples of judgments: judgment of the Voivodeship Administrative Court in Krakow of 6 June 2013, I SA/Kr 1903/12, LEX No. 1333935; judgment of the Supreme Administrative Court in Warsaw of 26 February 2013, I FSK 491/12, LEX No. 1354026.

[14] On how a text's clarity and ambiguity depends on the context see Mammen (2002: 33-37); Nourse (2014: 1650 et seq).

legislative history in order to "supplement" the meaning is vagueness[15]. The job of the interpreter is then to decide whether a case he or she is considering can be qualified as a vague expression (in other words, whether it falls within the meaning of vagueness)[16].

The fourth situation where lawyers recourse to legislative materials is when they interpret against the wording. This encompasses cases when the linguistic meaning of a legal text is clear, however the interpreter rejects it, and decides in defiance of it (in such cases decisions are taken based on a meaning which contradicts the wording of a provision, and which does not follow from the letter of the law). Interpretation against the wording is in fact correcting, amending, and refining the text of an act through interpretation. Therefore, the interpreter accepts fiction and decides as if the wording of the act was different. The justification for the need to break from the literal meaning is usually the conviction that the legislator made a mistake when drawing up the act, as a result of which following the linguistic meaning would lead to absurd, flagrantly unjust or otherwise unacceptable consequences. One of the judgments reads as follows:

> an unintentional legislative error took place, causing a gap in the provision (...) as a result of which application of the norm derived from the literal wording of the provision is unacceptable as it manifestly contradicts the principle of reasonableness and equity.[17]

This is arguably the most interesting category of uses of legislative materials. Derogations from the linguistic meaning are the most controversial interpretation situations and, considering the uncertainty that they entail, raise concerns among the addressees of the decision implementing the law[18]. In the light of the deeply ingrained

[15] Given that there is an extensive literature on vagueness, I shall only refer to selected publications: Greenawalt (2001: 433 et seq.); Edincott (2011: 14-30); Jónsson (2009: 193-214).

[16] For instance, whether a case of negligence can be considered as "gross", or whether some remuneration can be considered as "excessive", etc. For more details on this, Łętowska (201: 17).

[17] Cf. Supreme Court resolution of 25 February 2009, I KZP 39/08

[18] This is especially the case when breaking from the literal meaning causes negative consequences for the citizen.

belief that the limits of the law are defined by "the four corners of a sheet of paper"[19], such manifest cases of derogating from the letter of the law attract attention of both interpretation practitioners and legal scholars specialising in interpretation[20]. If breaking from the literal meaning is inevitable, it appears that legislative materials ought to provide the strongest justification for the decision to do so: the context created by legislative history, which comes directly from the legislator, seems to best justify departing from the imperfect language of the act.

It is also worth adding that legislative materials are used in case of silence on the part of the legislator. The legislator's silence, or the absence of a clear wording of an issue in a legal act, is always performative and entails interpretation consequences. Legislative materials are used to determine whether the legislator purposefully or accidently did not include some wording in the text of an act, and as a result, to attribute meaning to this silence[21].

2.3. The role of legislative materials in Polish interpretative paradigm in Polish literature and decision-making practice

Poland has not introduced, either statutorily or through established interpretation directives, any rules for using legislative materials. Therefore, there are no directives requiring or prohibiting using them. As a general rule, the Polish legal tradition has allowed the use of any and all materials which may prove useful in the course of interpretation of the law, although it is obvious that some interpretation tools will be more culturally valued and recommended than others. The use of

[19] Z. Tobor (2013: 232) indicates, however, that "contemporary textualists have given up the conviction that meaning can be determined *within the four corners* of a legal text". See also C. Nelson (2005: 368-369).

[20] Opponents of breaking from the literal wording of an act maintain that acts ought to be construed in line with their plain or conventional meanings, and – in the event of a conflict of meanings – the plain, linguistic meaning ought to prevail over other possible interpretations – B. Bix (1996: 132).

[21] A number of highly interesting cases illustrating different situations where legislative materials were used have been described in my monograph (Bielska-Brodziak 2017). The Readers may want to look them up.

travaux preparatoires in the process of interpretation of the law has, until recently, only received marginal interest in the Polish literature, and yet – as shown by the analyses conducted above – their popularity in judicial decision making surprises by its scale. It is beyond any doubt that legislative materials are currently an important and increasingly used interpretation tool. It should be emphasised that this is partly due to the fact that over the past few years the conditions of using legislative materials have significantly improved owing to free, relatively easy and convenient access via the Internet.

3. Interpretation of EU law

3.1 Introduction – specificities of EU legal order influencing the courts' approach towards legislative history[22]

As was the case with Poland, the role of legislative history in the EU context did not attract the attention of a vast majority of legal scholars. The usefulness of various tools of historical interpretation (proposals and drafts of legal acts, minutes from consultation proceedings, but also amendments and changes to the enacted legislation) for interpretation of European law context tends to be questioned, without a comprehensive analysis of the issue. Several reasons for the marginal importance of historical interpretation have been pointed out by N. Reich (2004: 26-27):

1. The complexity and length of the EU legislation procedure;
2. Rich diversity of national legal traditions in the EU.

[22] The research presented in this paper is part of the project: "Linguistic comparison as an interpretative tool of the Court of Justice of the European Union", financed by the Polish National Science Centre (agreement no. UMO-2014/13/N/HS5/01278). A more complex analysis of linguistic comparison within historical interpretation has been presented as part of doctoral thesis of K. Paluszek, written in Polish, entitled "Komparatystyka językowa jako narzędzie interpretacyjne Trybunału Sprawiedliwości Unii Europejskiej), Katowice 2017, yet unpublished (see chapter IV)

Prohibition of using declarations of the Commission or Council in interpretation against the wording of the interpreted provision, derived from the EU case law The marginal use of historical interpretation remains in line with the ECJ case law, according to which the use of historical interpretation, and above all legislative materials, is subject to significant limitations[23]. The Court points out that the reference to the course of the legislative process cannot lead to an interpretation which is contrary to the wording of the interpreted provision[24]. Although the acceptance of such "linguistic borders" of interpretation raises serious doubts[25] (especially with regard to the extensive advocacy for the adoption of the principle of dynamic interpretation, which assumes a widespread use of non-textual directives of interpretation), it should be admitted that the usage of the legislative history does not play a crucial role in the judicial practice of the CJEU. However, the growing importance of historical arguments has been noticed in literature - K. Lenaerts and J.A. Gutiérrez-Fons (2013: 24), S. Schønberg and K. Frick (2003: 149) as well as S. Miettinen and M. Kettunen (2005). S. Schønberg and K. Frick (2003: 149) distinguish different reasons for the change of attitude of the CJEU towards *travaux preparatoires* (influence of national legal traditions of member states, complex and technical nature of interpreted acts, improving quality and accessibility of legislative materials).

This article does not aim to present a comprehensive analysis of the use of historical arguments by the Court of Justice. Instead, it focuses on displaying some original features of the EU law (in comparison with national, often monolingual legislation) that can contribute to a greater usefulness of legislative materials in the process of its interpretation.

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[23] Judgment of the Court of 23.02. 1988 r. in case 429/85 Commission v Italy, Rec. p. 843, point. 9 and Judgment of the Court of 10.01.2006 in case C- 402/03 Skov Æg v Bilka Lavprisvarehus A/S and Bilka Lavprisvarehus A/S v Jette Mikkelsen and Michael Due Nielsen (ECLI:EU:C:2006:6) point 42. Such position remains also in accordance with the legal culture of common law countries – see Bielska-Brodziak (2012: 144-154).

[24] Judgment of the Court of **26.02.1991r. in case c-292/89 The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen (**ECLI:EU:C:1991:80), point 18

[25] It has been stated that such "linguistic borders" of the interpretation do not exist - see A. Bielska-Brodziak 2006, Spyra 2006, Tobor (2010: 194-201).

a. The lawmakers' participation in proceedings before the CJEU

Unlike by national legislation, the reconstruction of the course of legislative works in case of the EU law is facilitated by the fact that the EU legislative bodies have the right to participate in proceedings before the Court. In most direct action proceedings, the EU institutions (including its legislative bodies and the Commission, which owns the legislative initiative) are parties. Additionally, in preliminary proceedings, under Art. 23 of the Statute of the CJEU, an institution, body, office or agency of the Union which adopted an act the validity or interpretation of which is in dispute (as well as the Commission), shall be entitled to submit to the Court written pleadings or written observations[26]. A similar provision is contained in the Rules of Procedure of the Court (Article 96§1), according to which the institution which issued the act, validity or interpretation of which is the subject of the dispute, may also be involved in the preliminary ruling proceedings.

Therefore, it is possible to confront various views on the course of legislative work and the presumed intentions of the legislator with the view of the institutions that actually worked on the interpreted act (both at the proposal stage and on the finally adopted project). As regards the interpretation of primary law, it should be noted that unlike the secondary EU legislation, primary law includes international agreements concluded between the Member States. Consequently, not only the EU Institutions but also the Member States are involved in the process of drafting and changing them. Thus, in the case of primary legislation, there are more entities involved in the legislative process. Member States are also involved in proceedings before the Court (where they can act as parties or intervene on a similar basis as EU institutions). Nevertheless, the multiplicity of actors involved in the adoption and amendment of primary legislation, as well as the

[26] Consolidated text annexed to the Treaties of the Protocol (No 3) on the Statute of the Court of Justice of the European Union, as amended by Regulation (EU, Euratom) of the European Parliament and of the Council No 741/2012 of 11 August 2012 (OJ L 1) and Article 9 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ L112 of 24.4.2012 21).

differences in the interests they represent, make it more difficult (in comparison to secondary legislation) to obtain clear information about the course of the legislative process and the intention of the lawmaker in proceedings before the ECJ. Using arguments based on the legislative history in the interpretation of primary law is further complicated by the fact that initially the preparatory works were not preserved. This was pointed out by Advocate General Kokott in her opinion in case C-583/11, where she noted a significant turning point in recourse to historical directives in the interpretation process:

> **Drafting history in particular has not played a role thus far in the interpretation** of primary law, because the 'travaux préparatoires' for the founding Treaties were largely not available. However, the practice of using conventions to prepare Treaty amendments, like the practice of publishing the mandates of intergovernmental conferences, has led to a fundamental change in this area. **The greater transparency in the preparations for Treaty amendments opens up new possibilities for interpreting the Treaties which should be utilised as supplementary means of interpretation if, as in the present case, the meaning of a provision is still unclear having regard to its wording, the regulatory context and the objectives pursued.** [27]

As is clear from this passage, reference to the course of the legislative process may be relevant in situations where the interpretative problem concerns primary law. A similar role of legislative materials can be observed in the interpretation of secondary law. Even accepting the prohibition of an interpretation contrary to the wording (which is significantly weakened by multilingualism) does not mean that legislative materials cannot be used at all in the course of interpretation, for example initiating the process or supporting the result obtained by other interpretative methods.

[27] Opinion of Advocate general J. Kokott delivered on 17.01.2013 in case C-583/11 P Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union (ECLI:EU:C:2013:21) point 32

b. Multilingualism – a new chance for historical arguments

Multilingualism is a feature of the EU law which has a significant impact on how the traditional interpretative methods and directives are used. Linguistic comparison comprises an analysis and collation of the wording of the contested provision of law in the official languages of the EU. It is often regarded as a part of textual analysis of the wording of contested provision (Wróbel 2010: 329, Kalisz 2007: 158, Barcik and Wentkowska 2014: 310, Kalisz 2011: 197)[28]. It reveals divergences between various language versions that have to be reconciled by non-textual methods of interpretation (first of all teleological and systemic). Historical interpretation has not been mentioned as useful in solving problems resulting from multilingualism. However, the multilingual nature of the EU law opens new possibilities for using this underestimated interpretative tool. Additionally, linguistic comparison, combined with historical arguments, may not only be regarded as a source of interpretative doubts, but also as a valuable instrument in finding a solution.

The link between historical interpretation and multilingualism is evident in the comparison of the multilingual wording of the historical versions of the interpreted legal act or related regulations, as well as in the use of the chronology of the formation of individual language versions in the course of interpretation. As previously shown, the Court has formulated a prohibition on using the course of the legislative process for interpretation contrary to the wording of the provision, which constitutes the limit to the use of historical arguments in the interpretation (albeit raises the previously stated doubts). Moreover, multilingualism of the EU law can also seriously limit the possibility of interpretation "contrary to the wording". Thus, in case of as many as 24 available language versions, the inconsistency of the interpretation with one version does not necessarily conflict with the other versions.

In addition, multilingualism makes it possible to compare the wording of proposals as well as the successive changes of interpreted

[28] However, M. Zirk-Sadowski (2012: 371) classifies "linguistic comparison" as a systemic directive of interpretation.

provisions in different language versions of proposals or already enacted legal acts, which constitutes another valuable material used in the interpretation of the EU law alongside other interpretative tools. In the context of multilingualism, there is a particular argument that can be included in the broadly understood history of legislation. While legislative work can be carried out parallel in many languages, so that it is impossible to distinguish between drafting and translation of law (co-drafting)[29], it is important to realise that this only applies to language versions authentic at the time of legislative work. However, the number of official languages of the EU, and thus the authentic languages of its legislation, is constantly changing (it has grown so far as with each EU enlargement, and could now hypothetically decrease as a result of the planned Brexit).

Consequently, in spite of accepted fictions, as described in literature (Doczekalska 2009: 359), and first of all despite treating all versions as equal originals, some language versions are inevitably secondary – resulting from the increase in the number of official languages of the EU as an effect of subsequent enlargements. It has been stated in the doctrine that the Court actually takes also those "subsequent" versions into consideration, ignoring the chronology of drafting particular versions[30]. Nevertheless, this statement does not seem to be illustrative of a general rule of rejection of chronology in the CJEU. On the contrary, the recent case law does not confirm the existence of obstacles in using the chronological arguments in cases decided by the CJEU. Consequently, in the course of proceedings a party, advocate general or the Court can refer to the wording of the "original language versions" existing at the time of the adoption or entry into force of the interpreted act. And although it is fair to believe that referring to the chronological priority of the language versions is contrary to the accepted principle of equal authenticity of all language versions, and above all the theory of original texts (according to which

[29] A. Doczekalska (2009: 359), referring to works of T. Gallas and M. Guggeis points out that the term "co-drafting" has been used in description of legislative proposal's verification conducted by lawyer-linguists (Doczekalska 2009: 359). The same author analyses various *co-drafting techniques* (2009*:* 116-135).

[30] A. Doczekalska (2006: 19) provides an example of Judgment of the Court of 24.10.1996 in case C-72/95 Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland.

all versions are treated as equal originals, and should be considered in course of interpretation even if they did not exist at the time of passing the interpreted act), this specific kind of historical considerations actually takes place in the CJEU adjudication process.

It should be emphasised that not only the wording of the judgment in a particular case matters for understanding the process of interpretation of the EU law, but also the advocate general's opinion, containing an analysis of the case and a proposal of the solution with a comprehensive justification prepared by a judge-like member of the Court. The final decision often remains in line with the opinion, but the justification is rather shorter and focuses on the main arguments, whereas others are summarized or passed over in silence. Therefore, also the opinions should be regarded as a valuable source of argumentation for the interpretative choices of the Court.

3.2.Ways of using legislative materials by the Court of Justice

Both aforementioned specific features of the EU law and adjudication process imply the different role of historical arguments in the course of interpretation (in comparison to the national legal system, where it is rather impossible to deal with more than twenty equally authentic language versions and to have the lawmaker represented in the proceedings). Therefore, it can be difficult to classify the roles that legislative history can play in categories proposed for the Polish law. As the purposive approach plays a crucial role in EU legal interpretation, we rather look for the lawmaker's intent instead of sticking to the meaning of particular words (especially dealing with many inequivalent words in different languages). However, the lawmaker's aim is usually articulated in the recitals to the legal act (rarely found in national legal acts), so it may be unnecessary to look into the act's proposal or its justification.

Of course in some cases the advocate general's opinion or the judgment contains references to the intention derived from *travaux*

preparatoires[31] – in such cases their use does not differ much from how they are used in Poland.

Additionally, the lawmaker's attendance at the Court proceedings gives him the chance to explain his intent – as to what the lawmaker wanted to say and to achieve – and it may lead to reference to legislative history. In this way participants make use of the explanatory value of *travaux preparatoires*. For example, in case C-193/11 the Commission stated that the text of the French language version to the interpreted directive was actually discussed and accepted by all member States[32]. It should be emphasised that, unlike in national settings, the core issue in raising such arguments is not the aim of the lawmaker or explaining the meaning of a specific unclear term, but rather the way to persuade the Court to reconcile the divergences between various authentic language versions in favour of the informal original. Similarly, the Court or advocate general do not search for the explanation of meaning of particular words in the way that national courts do. They rather try to determine which language versions and which words have been used in the course of the legislative procedure. This is a pre-step taking place before considerations of the meaning of disputed provision. It aims to identify what was originally said before the process of multiple translations started.

3.3 Interpretative situations, the role of historical arguments and their value for the final solution

The interpretative situations in legal interpretation are similar regardless of the legal system. However, in a multilingual setting, one additional feature must be considered that is the diverging language versions, often containing expressions of different meaning and scope. Therefore, the most important issue is the comparative analysis of

[31] See for example interesting considerations on the lawmaker's intention based on an analysis of *travaux preparatoires* (comparison of proposal and final text of the interpreted directive), presented by Advocate General P. Mengozzi in his opinion from 24.10.2012 in case c-409/11 Csonka and others v. Magyar Állam (ECLI:EU:C:2012:660), pp. 30-32

[32] Judgment of the Court from 26.09.2013 in case C-193/11 European Commission against Republic of Poland (ECLI:EU:C:2013:608, point 15)

different wordings that are supposed to mean the same thing. The single expressions may be ambiguous or vague, but they must be considered as constituting the same, equal legal provision. This issue of inconsistency might be recognised as a specific type of ambiguity or classification problem (as the particular versions often contain words of different scope). The situation of vagueness is less common.

The next function of legislative history arguments observed in Polish judgments, namely interpretation contrary to the wording is not so obvious to determine, as we deal with more than one text. As has already been stated, the legal interpretation of multilingual law requires taking into consideration different language versions of the interpreted act. In case of the EU law, we rather deal with inconsistent language versions than with interpretation contrary to the wording (that must consequently have been contrary to all, often diverging language versions). And even if such use of legislative history could be considered (with the aforementioned limitations), the stable position of the CJEU presented at the beginning suggests a rather weak chance for success of such argumentation.

The function of legislative history also differs from categories distinguished for the Polish adjudication process. The similar feature is that in many cases legislative history does not serve as the only or key interpretative tool but rather supports other arguments. But as has already been explained, legislative history serves rather at the beginning of the process of interpretation to limit the scope of further analysis and provide supplementary arguments than to verify the results of other interpretative methods[33].

For instance, the time of origin of each language version influenced the range of linguistic comparison (number of versions tested) conducted by advocate general in case c-359/12 Timmel. In her opinion in Case c-359/12 Timmel, Advocate General E. Sharpston stated:

At the time when the Prospectus Directive entered into force (on 31 December 2003) there were 15 Member States and 11 official languages. In 10 of those languages the word 'and' is used in Article

[33] Nevertheless, such verifying role can sometimes be observed, see opinion of advocate general P. Cruz Villalón from 06.10.2015 in joined cases c-443/14 and C-444/14 Kreis Warendorf v. Ibrahim Alo and Amir Osso v. Region Hannover (ECLI:EU:C:2015:665), point 49.

14(2)(b) of the Prospectus Directive. The word 'or' is used only in the German version of the text.[34]

Surprisingly, after that short analysis (reported only in the footnote), the advocate general made reference to the need to compare all language versions (confirmed in the CJEU case law). The quoted passage shows that the moment of entry into force of the interpreted Directive has been used to limit the scope of linguistic comparison. Only versions existing in December 2013 have been examined, despite indications by the Advocate General, that all the language versions should be considered. In addition to the quantitative argument (interpretation in accordance with most language versions), the Advocate General referred to the scheme and purpose of the legislation at issue.

The Court shared the conclusions of Advocate General, stressing her teleological considerations[35]. However, in justification of the final decision, the Court did not refer to linguistic comparison and did not use quantitative arguments nor chronology of the formation of the various language versions.

In some disputes the chronology of the formation of the various language versions has been used both in the opinion of the Advocate General and in the Court's judgment. In case Confédération paysanne[36] Advocate General J. Kokott had analyzed the meaning of all 11 original language versions of the interpreted Regulation, indicating the interpretation possibilities arising from the various versions. It should be emphasised that the opinion was written in May 2013, when the EU had 23 official languages - and all 23 versions of the interpreted act were equally authentic. However, the AG based her arguments only on the 11 versions, existing at the time of adoption of the interpreted act. She showed similarity of all examined language versions (despite the use of different formulations), with the exception of one. The observed similarity of all the original versions (except the French) then gave rise

[34] Opinion of Advocate General E. Sharpston delivered on 26.11.2013 in case c-359/12 Michael Timmel v Aviso Zeta AG (ECLI:EU:C:2013:783), footnote 50.

[35] Judgment of the Court of 15.05.2014 in case c-359/12 Michael Timmel v Aviso Zeta AG (ECLI:EU:C:2014:325), point 63.

[36] Opinion of Advocate General J. Kokott delivered on 16.05.2013 in case C-298/12 Confédération paysanne v Ministre de l'alimentation, de l'agriculture et de la pêche (ECLI:EU:C:2013:319).

to searching for traces of the intentions of the legislator in legislative materials, systematics, and aim of the regulation. Analysing the course of the legislative process, the Advocate General pointed out that the discrepancies in the language already existed at the proposal stage (in the Commission). Consequently, the legislative materials, although they did not resolve doubts, provided an indication of the legislator's intent. Further teleological and axiological considerations[37] led the Advocate General to the formulation of proposals for resolving the dispute. The Court shared the conclusions of the AG, conducting an even more detailed analysis of the legislative work, systematics and the preamble to the contested regulation[38]. Therefore, the historical argument served in the initial phase and was further supported by other means of interpretation. Together with the quantitative argument it might be seen as a valuable help to choose from different interpretative possibilities, similar to the previously explained national practice.

4. Conclusions

The usage of legislative history in interpretation of the EU and Polish national law differs significantly.

1. In Polish judgments two different roles of historical arguments can be distinguished – sometimes they are used to determine the lawmaker's intent and in other cases they serve to explain the meaning of particular expressions. In contrast, in the CJEU legislative history is often employed to establish the language version that has been subject to legislative works and negotiations or to distinguish between unofficial originals and subsequent language versions.
2. Moreover, in interpretation of the EU legislation the *travaux preparatoires* serve rather at the beginning of the whole process,

[37] Opinion of Advocate General J. Kokott delivered on 16.05.2013 in case C-298/12 Confédération paysanne v Ministre de l'alimentation, de l'agriculture et de la pêche (ECLI:EU:C:2013:319), points 25-34

[38] Judgment of the Court of 3.10.2013 in case C-298/12 Confédération paysanne v Ministre de l'Alimentation, de l'Agriculture et de la Pêche (ECLI:EU:C:2013:630), points 21-34

determining the scope of further linguistic analyses and supporting other argumentation, whereas in Poland they can play five different roles, from verifying and supplementing other arguments up to decisive function in cases of interpretation against the wording. The latter is less possible in the multilingual EU reality, where the existence of many language versions of the interpreted act significantly weakens the possibility of achieving interpretation incompatible with the wording (due to the multiplicity of alternative understandings of the disputed expression, consistent with at least one authentic language version).

3. The analysis of the relation between linguistic comparison and arguments based on history of legislation shows that multilingualism of EU law implies the increasing interest of the Court of Justice in historical method of interpretation.
4. Changes in the number of official EU languages imply the possibility to refer to the chronology of the formation of following language versions of the interpreted act, which in some cases leads to a limitation of the scope of the linguistic comparison. In other cases the compatibility of chosen interpretation with the original language versions serves as an argument in favour of the final decision.

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GRAMMATICAL ISSUES IN JUDICIAL INTERPRETATION – DOES LEGAL PRACTICE NEEDS LINGUISTIC THEORY? BASED ON POLISH COURTS' DECISIONS

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Most interpretational problems in law pertain to the meaning of words. However, in this paper I address problems caused in Polish courts by grammar (namely: syntax and inflexion) of legal provisions. One can distinguish five main sources of grammatical issues in judicial interpretation of law: syntax of a sentence (i.e. order of words), conjunctive words (i.e. *i*, *lub*), punctuation marks (i.e. comma, semicolon, dash), nominal grammatical categories (i.e. number, gender), verbal grammatical categories (i. e. aspect, tense, mood). Traditional Polish canons of interpretation offer no clues on how to deal with such issues, stating only that statutes should be construed in accordance with the rules of grammar. In fact, cases in which such interpretational issues occur, are decided in a highly incoherent manner. The courts tend to feel a tension between grammatical form of a provision and its purpose, function, or other extra-linguistic values. I think the main reason of such controversy is a very

limited vision of grammar shared by the courts, stemmed from primary school rather than contemporary linguistic theories.

Keywords: legal interpretation, judiciary, grammar, syntax, ambiguity

GRAMATYCZNE PROBLEMY INTERPRETACJI PRAWA – CZY PRAKTYKA PRAWNICZA POTRZEBUJE TEORII LINGWISTYCZNEJ? ANALIZA ORZECZNICTWA POLSKICH SĄDÓW

Większość problemów w interpretacji prawa tyczy się znaczenia słów zawartych w przepisach. W niniejszym tekście chciałbym poruszyć jednak problemy, które są powodowane przez gramatykę przepisów. Można wyróżnić pięć głównych źródeł tego rodzaju problemów: budowa składniowa zdania (np. szyk wyrazów), spójniki (np. *i, lub*), interpunkcja (np. przecinek, średnik, myślnik), deklinacyjne kategorie gramatyczne wyrazów (np. liczba, rodzaj), koniugacyjne kategorie gramatyczne wyrazów (np. aspekt, czas, tryb). Tradycyjne polskie dyrektywy wykładni nie oferują niemal żadnych wskazówek co do radzenia sobie z tego typu problemami. Co najwyżej można spotkać się z banalnym zaleceniem, by przepisy prawa interpretować zgodnie z regułami gramatyki języka polskiego. W praktyce tego typu sprawy są rozstrzygane w sposób wysoce niekonsekwentny. Sądy często dostrzegają sprzeczność pomiędzy formą gramatyczną przepisu, a jego celem, funkcją czy innymi pozajęzykowymi wartościami. W moim przekonaniu wynika to w dużej mierze z faktu, iż wizja gramatyki, jaką dysponują jest bardzo ograniczona – wywodzi się raczej z programu szkoły podstawowej niż ze współczesnych teorii lingwistycznych.

Słowa klucze: interpretacja prawa, orzecznictwo, gramatyka, składnia, wieloznaczność

Introduction: aim of the study, methodology and definitions

In the act of interpreting statutes, one can encounter various linguistic problems. Most of them pertain to the meaning of words. For instance, there are ambiguity and vagueness, amongst other phenomena, that draw the attention of both legal theory and legal practice (see: Endicott 2001, Solan 2010: 48, Tobor 2013). As Lawrence Solan puts it:

'Because so many of the interpretive problems in the law are lexical, legal scholars have tended to think of meaning, and even language, as dealing almost exclusively with the meanings of words' (Solan 2001: 245). However, there is also the grammatical aspect of language. And accordingly, there are grammatical issues of statutory interpretation. In this paper, my aim is to identify these issues, categorize them, show how they are dealt with and ask a question about the usefulness of linguistic theory for legal practice.

The following analysis is based on a quasi-empirical research of the decisions in which Polish courts deal with grammatical problems of interpretation. Let me briefly present employed methodology. First, using one of the available legal databases (Lex Omega by Wolters Kluwer), I selected judicial decisions featuring keywords related to grammar (like *grammar, grammatical, syntax, syntactical, case, number, gender, aspect, mood, tense,* etc.). I restricted my research to the decisions of the highest courts in Polish legal system, namely the Supreme Court (Sąd Najwyższy) and the Supreme Administrative Court (Naczelny Sąd Administracyjny), although it should be noted that I made several exceptions for the decisions of lesser courts that I found particularly interesting. Then I read all of the selected decisions and I eliminated those in which the keywords happened to have nothing to do with statutory interpretation. Finally I eliminated those which were repeated or otherwise uninteresting. This left me with a sample of over two hundreds judicial decisions. Of course said procedure cannot be fully considered 'empirical' and it does not allow me to make any quantitative claims. However I think that it gives a pretty good picture of grammatical problems that occur in Polish practice of statutory interpretation.

To begin my analysis, I need to introduce definitions for two pivotal terms that will be extensively used. The first term is 'grammar'. I accept a very traditional sense of grammar, namely that it is a set of rules governing creation of words, their modification according to different grammatical categories and combining them into compound expressions, like clauses, phrases and sentences. In other words I define grammar as the rules of word-formation, inflection and syntax. This is indeed kind of a school-like approach to grammar. I am aware of more modern approaches and they will be briefly discussed in my conclusions. However, this traditional sense of grammar is exactly the

one shared by Polish courts, or actually Polish judges, and therefore it is appropriate for my purposes in this paper.

The second pivotal term is 'statutory interpretation' (henceforth referred to as simply 'interpretation'). The definition of interpretation is a controversial issue in legal theory. There are competing theories for both descriptive (what it is), as well as normative (how it should be done) nature. The definition that I accept stems from the work of Jerzy Wróblewski (see: Wróblewski 1990, Opałek i Wróblewski 1991) and was accepted by many influential contemporary scholars (MacCormick i Summers 1991: 12). It is particularly suitable for discussing problems of legal practice. According to this definition 'interpretation' is not just any process of ascribing meaning, but a process of ascribing meaning to a legal text in which some argumentation is involved in order to justify the way it is understood. Such concept of interpretation is sometimes referred to as interpretation *sensu stricto* as opposed to interpretation *sensu largo*, which might correspond better with linguists' intuitions (Wróblewski 1990: 55–9).

Summing up, according to two previously mentioned definitions, a grammatical issue of judicial interpretation would be a situation in which a grammatical feature of a provision causes uncertainty of how it should be understood and it is explicitly discussed by court deciding the case. Therefore it is restricted to the cases in which the question of grammar becomes a part of the argumentation.

Classification of grammatical issues

Having clarified two crucial notions we are now ready to start the analysis. My research has shown that from a linguistic point of view grammatical issues in judicial interpretation can be divided into two main categories. The first category is problems of syntax. It groups problems caused by ambiguity of syntactic relations between words in sentences. Most of the time, such problems are resolved automatically and unreflectively – linguistic or extralinguistic context solves them entirely and we do not even notice them (Solan 2010: 31–3). Yet every once in a while the context does not suffice and interpretative problems emerge. These can be further divided into problems with sentence

structure, problems with conjunctive words and problems with punctuation marks. The second category is problems of meaning, or more specifically, problems of reference. They are caused by indeterminacy of relations between grammatical categories of words and extralinguistic reality. These can be viewed as a special case of the legal acts' open-texture (Hart 1961: 171-186). They can also be subdivided into problems with nominal and verbal grammatical categories. Below, I will elaborate on each of these categories and provide examples taken from Polish judicial decisions.

Sentence structure

Problems with the sentence structure are instances of typical syntactic ambiguity, the one that Noam Chomsky made so famous with his example: 'Flying planes can be dangerous' (Chomsky 1965: 41–2). Interestingly, in American literature an analogous case was noted (Farell 2008: 37–41). The insurance policy at issue excluded from coverage any loss caused directly or indirectly by '[f]lood, surface water, waves, tides, tidal waves, overflowing of any body of water, or their spray, all whether driven by wind or not.' The interpretative problem was whether the word 'overflowing' is a gerund or a participle. In other words, does the rule excludes only flood, tides etc. *that overflow* or the *overflowing* itself.

Polish language is morphologically different and therefore it is impossible to find exactly the same kind of problem in Polish case law. However, the most common syntactic problems with sentence structure also have to do with so called enumerative provisions –provisions which include an enumeration of objects, features, conditions etc. Such enumerations often include an expression modifying other expressions (called *a modifier* – usually an adjective or a relative clause). Sometimes it is not clear whether a modifier refers to all elements of the enumeration or only to the element directly next to it.

In one of the Polish tax statutes, there is a provision providing tax relief for 'expenses incurred for (…) the purchase of individual equipment, devices and technical tools necessary for rehabilitation and

facilitating life activities'[1]. The interpretative problem that was raised over and over again upon this provision goes like this: does the adjective 'individual' refer only to 'equipment' or to the whole phrase: 'equipment, devices and technical tools'? It is an important practical question. Imagine yourself being a disabled person and buying a cell phone. Is this purchase tax-free? No doubts that it would facilitate your life activities. On the other hand it is no equipment, rather a device (at least as long as the semantics of Polish language is concerned). And it is surely not individual – it has no individual features. So, must devices and technical tools also be individual in order to be tax-free? Not surprisingly, administration institutions tend to decide that they must (for then they are not tax-free), but administrative courts regularly overrule they decisions recognizing that only equipment needs to be individual, whereas devices and technical tools do not. What is quite confusing is that both institutions and courts argue that their decisions are determined purely by the rules of grammar.

Conjuctions

Next subcategory of syntactic issues consists of problems caused by conjunctive words – words that join other words and phrases. In English legal language there are generally two problematic words of this type: *and* and *or*[2]. In some states of America their meaning was fixed by the legislature itself in an interpretation act (Scott 2010: 360), but generally courts (and scholars) are left to deal with them on their own. Their analyses are very interesting as they include numerous linguistic and extralinguistic factors, like in example: sentence structure, grammatical

[1] „wydatki poniesione na (…) zakup i naprawę indywidualnego sprzętu, urządzeń i narzędzi technicznych niezbędnych w rehabilitacji oraz ułatwiających wykonywanie czynności życiowych", art. 26 ust. 7a pkt 3 ustawy z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych (Dz.U.2016.2032 j.t.).

[2] There is also the infamous hybrid word *and/or* that was characterized in a 1935 court decision as 'that befuddling nameless thing, that Janus-faced verbal monstrosity, neither word nor phrase, the child of a brain of someone too lazy or too dull to know what he did mean' (Employers Mutual Liability Insurance Co. v. Tollefson, 263 N.W. 376 at 377 (1935).

number, type of provision, punctuation, articles, sentence context etc. (see: Kirk 1970-1971: 242–6, Adams i Kaye 2007: 1167–9).

Polish language includes more conjunctive words, though most of them can be roughly translated as *and* (*i, oraz, a, a także, jak również,* etc.) or *or* (*lub, albo, bądź*). As Polish legal culture is heavily influenced by formal logic, courts tend to interpret them with reference to logicians' conventions rather than linguistics. There is an established assumption that words *i* and *oraz* represent the relation of conjuction, while words *lub* and *albo* represent the relation of alternative (see: Malinowski 2008: 66–7). Still, that leaves a lot of space for controversies. Logical relations are obviously very precise and rigid. At the same time these words have also ordinary meaning which is similar, but less precise, more diversified, subtle and context-dependent. In the end courts are often left with the choice between logical and ordinary meaning of conjuctions, not to mention that both in formal logic and in ordinary language these conjunctive words may also be ambiguous. Let us now discuss one of such examples.

The provision prohibits 'storage and carrying of arms and ammunition in such a way as to allow unauthorized persons to have access to them"[3]. The defendant was caught carrying two cartridges for a hunting rifle and no rifle. Did he commit this crime? The answer depends on how we interpret the word 'and' (pol. *i*). If it formulates a logical relation of conjunction – the answer would be 'no', because he met only one of its two necessary conditions. If we interpret it more liberally, we can say that the rule is violated regardless of which of its two conditions is met.

In his defense the defendant insisted that word *and* used in the provision represents logical relation of conjuction, and therefore to be found guilty of this crime, an offender must carried *both* a firearm *and* ammunition. As a proof he pointed to other provisions of the statute where words 'arms' and 'ammunition' are joined by the word 'or' (pol. *lub*) instead of 'and'. Supreme Court rejected the defendant's argumentation and ruled that the statute is offended even if the offender carried only ammunition (or only a firearm). The court noted that the

[3] „Tej samej karze podlega, kto: (…) przechowuje oraz nosi broń i amunicję w sposób umożliwiający dostęp do nich osób nieuprawnionych…", art. 51 ust. 2 pkt 7 ustawy z dnia 21 maja 1999 r. o broni i amunicji (Dz.U.2012.576 j.t.).

word *and* (pol. *i*) is often used not to introduce conjunction, but simply to enumerate things. That is certainly true. However, the court did little to prove that this was the case. It mostly relied on a purposive argumentation and called the defendant's interpretation absurd, and yet it did not really bothered about the purpose of the statute and failed to show what is exactly absurd about *not* construing an ambiguous criminal statute against the defendant.

There are many similar examples in which Polish courts struggle with conjunctive words. Other than *i* and *oraz* (eng. *and*), the most problematic words would be *lub* and *albo* (eng. *or*), usually considered to be representing logical relation of alternative. Logicians, however, distinguish two kinds of alternative: inclusive and exclusive, which is something hard to represent in ordinary language. In the end, words like *lub* are construed in many different ways: sometimes as a conjunction, sometimes as an inclusive alternative and sometimes as an exclusive alternative.

Punctuation marks

The last subcategory of syntactic issues refers to the use of punctuation marks in legal provisions. Strictly speaking, punctuation is *not* a part of grammar – it is barely a graphic notation of intonation, accent and other prosodic factors (Jodłowski 2002: 22–3). However in many languages, including Polish, the function of punctuation is mostly syntactic, and that is what justifies its inclusion in my analysis. Apparently, other legal scholars also tend to treat punctuation as a part of grammatical aspect of language (Scalia i Garner 2012: 160, Jellum 2008: 81).

In the Anglo-American legal world, punctuation in statutory language is generally treated with distrust. There is a historical rationale behind it. In England, marginal notes like punctuation were for centuries not considered to be part of a statute because they were inserted by a clerk only *after* the statute had been enacted by Parliament. Punctuation was something that was not voted on and courts acknowledged that. Things changed in the middle of the nineteenth century, but the theory of statutory interpretation did not. American courts at first followed strictly the English tradition, in spite of different

legislative environment. In some States this tradition has even become codified in interpretation acts (Scott 2010: 360–1). However, since the beginning of the twentieth century, this suspicious attitude towards punctuation started to change. Nowadays many influential scholars from both intentionalist and textualist camps approve resorting to statute's punctuation as an acceptable indicator of meaning (Marcin 1977: 245, Jellum 2008: 81, Scalia i Garner 2012: 162).

In Polish legal culture this subject has never drawn much attention, despite challenging legal practice from time to time. There are at least ten punctuation marks used in Polish language, but it seems that interpretative problems are caused only by some: semicolon (;), hyphen (-), brackets (()) and – most of all – comma (,). Actually comma is infamous for being highly problematic in everyday language too. This is mostly due to its multifunctional character. It can be used to construct enumerations, to substitute different conjunctive words, to divide independent phrases in sentences, to separate main and additional information, as well as for purely orthographical, or rhythmic, reasons. And on top of all that, there is always the risk that a comma was placed erroneously due to a scrivener's error. Let me present one of such examples.

Probably the most famous example of a problematic comma in Polish legislation was from the Penal code, enacted in 1997. There was an obvious scrivener's error in one of the provisions. The promulgated version stated that 'whoever causes (…) severe illness that is incurable or prolonged illness that is life-threatening (…) shall be punished…'[4]. What it missed was a lone comma after the word 'prolonged'. In result, according to the promulgated version there were two categories of illnesses: severe illness that is incurable and prolonged illness that is life-threatening, whereas there should be three: severe illness that is incurable, severe illness that is prolonged, and: illness that is life-threatening. That slight change in punctuation had serious consequences, because it restricted the scope of the rule. As you may imagine it is much harder to cause a prolonged illness that is life-

[4] „Kto powoduje ciężki uszczerbek na zdrowiu w postaci (…) ciężkiej choroby nieuleczalnej lub długotrwałej choroby realnie zagrażającej życiu", art. 156 § 1 pkt 2 ustawy z dnia 6 czerwca 1997 r. Kodeks karny (Dz.U.2016.1137 j.t.).

threatening than it is to cause an illness that is life-threatening, but not necessarily prolonged. The legislative history was somewhat ambiguous on this issue, because the error went unnoticed up until the final stages of legislative procedure. However the factual drafters' intention was clear enough. And yet courts – faithful to their expected role in a statutory law country such as Poland – refused to amend this error on their own. They found the way out, though. Namely they started to interpret the word 'prolonged' in a very peculiar manner, for example stating that a 'prolonged' illness does not really need to last long. In the end, the lawmaker's intention was respected, only it was the word-meaning, not the punctuation, that suffered.

Nominal grammatical categories

Let us now move to the problems of different nature. It is often unclear whether a given statutory word – due to its grammatical category – does refer to a certain factual situation or not. Such controversy has nothing to do with syntax of a provision. It can rather be viewed as a problem of 'classification' (Tobor 2013: 215) or 'fact-oriented interpretation' (Guastini 2006: 143). Therefore I label this kind of problems semantic or – more precisely – referential. One subcategory of such problems is caused by nominal grammatical categories, mostly number[5].

In Polish language – just as in English – there are generally two forms of words: singular and plural. A common question is: does a noun in singular form refers also to plural objects in extralinguistic reality? And *vice versa* – does a plural noun refers also to a single object? In many Common Law systems such issues are regulated by an interpretation act (see: Irish Interpretation Act 2005, Canadian Interpretation Act 1985, British Interpretation Act 1978, Scott 2010: 369–71). This problem is not a new one. Jeremy Betham, a famous English lawyer and philosopher of the nineteenth century, discussed the crime of 'stealing horses'. He insisted that somebody who stole only one horse did not commit this crime, because of the rule of lenity –

[5] Due to inflexional nature of Polish language, other nominal categories like gender or case may rather cause a syntactic ambiguity which has been already discussed.

stating that ambiguities in criminal law should be resolved in favor of a defendant (Scalia i Garner 2012: 131). On the other hand, a contemporary French legal scholar claims that the crime of 'kidnapping juveniles' is commited even if only one juvenile was kidnapped. The opposite interpretation he calls absurd (Rabault 1997: 58).

The same problem occurs also in Polish law. There is an illustrative example of a criminal rule: "Whoever breeds or keeps greyhounds (…) without permission shall be punished…"[6]. Note that the word 'greyhounds' is used in plural form. The defendant had a single greyhound without permission and the obvious question was: did he commit the crime? On the one hand – there is the literal meaning of the statute, coupled with the rule of lenity, or rather its latin equivalents known in Poland: *Nullum crimen sine lege* and *In dubio pro reo*. On the another hand, there is the common sense and the purpose of the statute, namely the protection of wild animals. Polish Supreme Court decided that a plural form of a noun in a provision does not limit its scope to plural objects only. As a proof the court discussed dozen or so examples from other criminal statutes in which plural nouns obviously refer to single objects and their form is dictated purely by stylistic reasons. It also adhered to the statute's purpose which would undoubtedly be breached should the defendant's interpretation prevailed. The argumentation was smart and convincing, nevertheless the decision raised a lot of controversy among criminal law scholars.

Verbal Grammatical categories

Another subcategory of referential issues groups problems caused by verbal grammatical categories, like tense, aspect, mood, voice, etc. In American literature verbs are said to be 'probably the most important words in the English language and are most likely to affect the outcome of a legal case'; the most common verbal categories to have legal consequences being mood and voice (Farell 2008: 2). Polish language

[6] „Kto hoduje lub utrzymuje bez zezwolenia charty rasowe lub ich mieszańce podlega karze…", art. 52 pkt 4 ustawy z dnia 13 października 1995 r. Prawo łowieckie (Dz.U.2015.2168 j.t.).

differs much from English in the grammar of verbs, and therefore those issues are a little difficult to discuss. Mood and voice hardly ever cause any interpretative problems and the most problematic are tense (past, present, future) and aspect[7]. The following example includes the question of tense.

The provision stipulates that a prisoner who 'will not return' to prison on a certain date, shall be punished[8]. The question was: when exactly is this crime committed? On that particular day when he should have returned and he did not? Or maybe during the whole period between that day and the moment he was finally caught, which would make the crime a continued one (a notion well-known in Polish criminal law doctrine)? It was a very important question, because there was a new statute coming into force on a certain day and the offender had a chance of not being punished at all. The answer, however, was not easy. The appellate court claimed that 'will not return' has a different meaning than 'does not return' and therefore the crime is committed only on a particular day. This decision was overruled by the Supreme Court, who stated: 'will not return' has a different meaning than 'did not return' and therefore the crime is committed during a period of time. The conclusion of Supreme Court's opinion sounds somewhat funny, because it involved all possible tenses: '"Will not return" should be understood as "did not return and is still not returning"'. Once again we can see that different courts draw different conclusion from the same grammatical feature of a provision and claim that their decision is dictated purely by the grammar of the statutory language.

[7] There are two aspects in Polish: perfective and imperfective. Yet it should be noted that they differ from their English equivalents both in terms of meaning and form (i.e. they are usually introduced on a morphological level).

[8] „nie powróci…", art. 242 § 3 ustawy z dnia 6 czerwca 1997 r. Kodeks karny (Dz.U.2016.1137 j.t.).

What about linguistic theory?

Those five cases discussed above are barely a few examples. I have chosen them based on their illustrative value and ease of translation. They certainly do not cover the whole range of the subject matter. The research as a whole, though, allows me to draw some conclusions.

First, I must admit that Polish judges generally make a good use of grammatical terminology. In my research I have encountered only a few instances of mistakes regarding the use of grammatical terms, two of the most common being: confusing the verbal category of tense with the category of aspect and mistaking a gerund for a verb. Such mistakes rarely affect the power of courts' argumentation, not to mention the outcome of cases. Admittedly, Polish judges know the necessary grammatical terminology.

And yet cases featuring grammatical arguments happen to be decided in a highly incoherent manner. It is not uncommon for a lower court (or an administration institution) and a higher court to disagree upon a given case, while claiming that both their interpretations are dictated by the rules of grammar. In fact one may go as far as quote Karl Llewelyn that 'there are two opposing canons on almost every point' (Llewelyn 1950: 401). Below I present a list of opposing directives of interpretation used by Polish courts in 'grammar cases', inspired by his famous 'thrust-but-parry' canons of construction list (Llewelyn 1950: 401–6).

1A. A modifier at the end (beginning) of an enumeration refers only to the last (first) element of such enumeration.	1B. A modifier at the end (beginning) of an enumeration refers to all elements of such enumeration.
2A. The word *and* requires that all conditions joined by it be realized altogether (conjunctive meaning).	2B. Word *and* does not require that all conditions joined by it be realized altogether (enumerative meaning).

3A. The word *lub* (English: *or*) has a different meaning than the word *albo* (English: *or*).	3B. Words *lub* (English: *or*) and *albo* (English: *or*) have identical meaning.
4A. In absence of a proper conjunctive words, a comma dividing elements of an enumeration has enumerative meaning.	4B. In absence of a proper conjunctive words, a comma dividing elements of an enumeration has conjunctive meaning.
5A. Singular and plural noun forms have different meanings.	5B. Singular and plural noun forms have identical meaning.
6A. A singular noun form indicates a general quantifier (i.e. *every*).	6B. A singular noun form indicates a existential quantifier (i.e. *any*).
7A. An imperfective aspect of a verb form means that the denoted action has an iterative character.	7B. An imperfective aspect of a verb form does not mean that the denoted action has an iterative character.
8A. A future tense of a verb form means that the denoted action should occur in the future.	8B. A future tense of a verb form does not mean that the denoted action should occur in the future.

How is that possible? My impression is that judges are sometimes deceived by the rules of grammar. They resort to them in search for precision and certainty, when they are not to be found there. Solan is absolutely right claiming that '[m]ost battles over legal interpretation are battles about the meanings of words. Grammatical rules typically remain in the background unnoticed' (Solan 2001: 244). Yet every once in a while, when they *are* noticed, it is usually because of their limitations. First, there is syntactic ambiguity, resulting from sentence structure, conjunctive words, or punctuation. In case of syntactic ambiguity the rules of grammar offer no solution, because – by definition – their allow more than one legitimate interpretation. In other words – they say too much. Second, there is referential

indeterminacy, resulting from nominal or verbal grammatical categories. In case of referential indeterminacy the rules of grammar offer no solution, because grammatical categories do not represent extralinguistic reality in one-to-one relation. Their relation to reality is more or less indirect, even metaphorical (Langacker 2008: 698–702, Taylor 2002: 472). It other words – they say too little.

Judges do not often recognize this aspect of grammar. This is probably due to the understanding of grammar they share – this traditional, school-like notion that I have defined at the beginning of this paper. They tend to think of grammar as a complete set of very precise, rigid rules, on pair with the rules of formal logic. That is why the feel restricted by them so much and keep arguing that their decisions are dictated by the rules of grammar even in the cases of syntactic ambiguity or referential indeterminacy.

In the end it is not grammatical terminology, but rather a particular notion of grammar that judges lack. I would advocate for a less formal, more functional approach to grammar that would extend the scope of interpretative possibilities rather than narrowing it, and that would embrace the role of other meaningful factors, like word-meaning, linguistic and extralinguistic context, purpose of the statute, etc. Traditional approach, instead, tends to conflict with them and creates an unhealthy tension between 'form' and 'spirit' of statutory language. It is this tension that is responsible for the incoherence of decisions in 'grammar cases'.

The approach I am advocating for can be found, amongst others theories, in the field of cognitive linguistics. Cognitive linguistics is currently regarded the dominant linguistic theory in the academic world. Actually, it is not a single theory, but rather a group o theories, including cognitive grammar (Ronald Langacker), conceptual metaphor (George Lakoff, Mark Johnson), prototype semantics (Eleanor Rosch, John Taylor), mental spaces and conceptual blending (Gilles Fauconnier, Mark Turner) and many others. Their common denominator is the idea that language is not an abstract phenomena of social nature (Saussure's claim), nor an autonomous faculty of human mind (Chomsky's claim), but a part of human cognitive system, and thus based on more rudimentary capacities of human brain such as perception, categorization and memory. Meaning is therefore grounded in our sensual experience. And it is this embodied meaning, not form,

that is primary in language and that motivates various linguistic phenomena, including grammar.

It is quite unfortunate that legal scholars, so obsessed with language and twentieth century's philosophy of language, have been almost completely ignoring the development of modern linguistics. While the ground-breaking works of Ferdinand de Saussure or Noam Chomsky arguably did not offer much in terms of legal theory, the work of Langacker, Lakoff and others, obviously do. Some of them in fact have addressed this issue directly (see: Lakoff 1989, Johnson 2002, 2007, Turner 2013). They also inspired several legal scholars, who successfully applied concepts like conceptual metaphor, prototype semantics or radial categories to the problems of legal theory and even legal dogmatics (see: Winter 2001, Solan 2001 (red.), Berger 2004, Schane 2006, Dyer 2007, Osenga 2011, Manzanares 2014). Still, I believe cognitive linguistics have much more to offer to legal theory and the theory of statutory interpretation in particular. A fresh, more functional and flexible approach to the grammar of legal texts is just one example.

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LEGAL DISCOURSE: TEXT ANALYSIS AND TRANSLATION STRATEGIES

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Abstract: The article deals with basic requirements to the translation for specific purposes, namely legal translation. The problem posed here is defining object and theoretical basis of legal translation. The question of the necessity of information search as an integral part of translation strategy has been raised. Detailed analysis revealed that the requirements of professional translators include knowledge of lexical and grammatical peculiarities of both languages in legal sphere; deep understanding of the concepts employed by specialists in particular field and the specialist terms used to express these concepts and their relationships in the source and target languages. It is recommended that evaluation of the translation may be done on the following principles: communicative pragmatic norms of translation; equivalent norms of translation; absence of contextual, cultural, functional, lexico-grammatical mistakes.

Key words: legal translation, transformations, adequacy, deviations, terminology

ПРАВОВИЙ ДИСКУРС: АНАЛІЗ ТЕКСТУ ТА ЗАСТОСУВАННЯ ПЕРЕКЛАДАЦЬКИХ СТРАТЕГІЙ

Abstract: У статті розглядаються об'єкт, теоретичні засади та основні вимоги, які висуваються до перекладу текстів для спеціальних цілей, а саме правової та юридичної сфери. Підкреслюється необхідність інформаційно-пошукової діяльності як невід'ємної складової поняття перекладацька стратегія. Визначено, що до професійних вимог до перекладача відносяться знання лексики і граматики обох мов; знання предметної галузі, а саме правової сфери, до якої відноситься текст перекладу і вміння користуватись словниками і іншими джерелами інформації. Слід відзначити, що аналіз зовнішніх і внутрішніх параметрів тексту оригіналу і визначення адекватної перекладацької стратегії на основі доперекладацького аналізу є запорукою вірного перекладацького розуміння тексту. Оцінювання перекладу може базуватись на критеріях пов'язаних з прагматичною нормою перекладу, нормою еквівалентності перекладу і відсутність у перекладі функціонально – змістових, функціонально-нормативних і культурологічних помилок, включаючи їх підвиди.

Key words: переклад текстів правової та юридичної сфери, перекладацькі стратегії, адекватність, трансформації

DYSKURS PRAWNY: ANALIZA TEKSTU I STRATEGIE TRANSLATORSKIE

Abstrakt: Artykuł koncentruje się na zagadnieniach związanych z tłumaczeniem prawnym, jego podstawami teoretycznymi i wymaganiami, jakie wiążą się z tego typu tłumaczeniem. Autorka zwraca uwagę na konieczność wyszukiwania informacji jako integralnej części strategii tłumaczeniowej. Stwierdzona się, że wymagania dotyczące zawodowych tłumaczy obejmują znajomość słownictwa i gramatyki obu języków, dogłębne zrozumienie pojęć używanych przez specjalistów z danej dziedziny oraz znajomość specjalistycznych terminów używanych do wyrażania tych pojęć oraz ich związków w języku źródłowym i docelowym. Zaleca się, aby ocena tłumaczenia odbywała się z uwzględnieniem norm związanych z pragmatyką przekładu i ekwiwalencją, a także zwróceniem uwagi na błędy kontekstowe, funkcjonalne i leksykalno-gramatyczne (abstrakt w języku polskim został przygotowany przez redakcję).

Słowa klucze: tłumaczenie prawne, strategie tłumaczeniowe, transformacje, terminologia

The purpose of translation theory is to reach an understanding of the processes undertaken in the act of translation and, to provide a set of norms for reaching the adequate translation. Translation Studies is a scientific discipline investigating the process of translation, attempting to clarify the question of adequacy and to examine what constitutes meaning within this process. But nowhere is there a theory that pretends to be normative, the goal of the discipline suggests that a comprehensive theory might also be used as a guideline for producing translations, this is a longway from suggesting that the purpose of translation theory is to be proscriptive (Velykodska 2015: 54). Translation Studies which applies to the whole "complex of problems clustered round the phenomenon of translation relations" (Jacobson 1959: 67).

R. Jakobson distinguishes three types of translation:

1. Intralingual translation, or rewording (an interpretation of verbal signs by means of other signs in the same language).
2. Interlingual translation or translation proper (an interpretation of verbal signs by means of some other language).
3. Intersemiotic translation or transmutation (an interpretation of verbal signs by means of signs of nonverbal sign systems).

Having established these three types, R. Jakobson goes on immediately to point to the central problem in all types: that while messages may serve as adequate interpretations of code units or messages, there is ordinarily no full equivalence through translation (Selivanova 2011: 232-239).

It's important to clarify the interconnection between translation equivalents and adequacy. Adequacy of translation means quality of translation. It's worth mentioning the notion of exactness, which has nothing to do with simple copy of the original text by means of target language, even more, text style, exactness; genre are adequate translation features.

Three components are important to define adequacy:

- The most possible exact and full rendering of the original text
- Rendering of the language form of the original text
- Following target language norms

Equivalent translation is a translation done one of the levels of adequacy. The choice of the translation levels is, actually, a strategy of written translation which is fulfilled while analyzing the text.

We are quite definite about the fact that translational process has 3-structured form:

- comprehension and understanding of the original text; analysis of the source text, situation and background information;
- translation itself; synthesis of the translation model, and
- editing and result analysis of translation; verification of the model against the source and target context (semantic, grammatical, stylistic), situation, and background information resulting in the generation of the final target text (Velykodska 2015: 58).

Each stage highlight special discourse features in order to facilitate understanding of specialized texts. Active reading to fully understand the text, especially those parts which may be difficult from the grammatical, lexical, stylistic or pragmatic point of view, make necessary research. Pre-translation stage includes reading for comprehension, identifying main ideas, target audience, translators problems (difficulties): terminology and grammar peculiarities. Pre-translation analysis of the text: a) documentary research — study of any valuable extra-linguistic information; b) comprehending the writer's intention and main message; c) text organization analysis (logical connectives, cause and effect relations); d) search of translation equivalents; e) focus on the stylistic aspects of the text (genre, register, stylistic devices); 1) deciphering and adaptation of units of measure, abbreviations, proper names (Burak 2002: 11-13).

In the translation theory we distinguish two global concepts – understanding on the meaning and on the level of sense. Because of these two concepts we consider translation analyses as a main factor of understanding the sense and so as the just right condition to do adequate translation. Translation involves the rendering of a source language (SL) text into the target language (TL) so as to ensure that (1) the surface meaning of the two will be approximately similar and (2) the structures of the SL will be preserved as closely as possible but not so closely that the TL structures will be seriously distorted. The instructor can then hope to measure the students' linguistic competence, by means of the TL product. The stress throughout is on understanding the syntax

of the language being studied and on using translation as a means of demonstrating that understanding (Bidasyuk 2011: 12-13).

Nevertheless, despite the diversity of methods and approaches, one common feature of much of the research in Translation Studies is an emphasis on cultural aspects of translation, on the contexts within which translation occurs. Once seen as a sub-branch of linguistics, translation today is perceived as an inter-disciplinary field of study and the indissoluble connection between language and way of life has become a focal point of scholarly attention. Of special interest are not only theoretical, methodological, descriptive and applied problems within contrastive linguistics and translation studies in isolation, but also questions concerning their relationships. Every descriptive study of translated texts involves the description translation decisions. The analysing techniques and translation strategies include the syntactic and semantic analysis of the source language sentence with evaluation of the translation difficulties and elimination of those difficulties by means of transformations.

However, in the 21st century, with the rapid development of the text linguistics, communicative linguistics (pragmatics, pragmalinguistics) and discourse analysis, new approaches to viewing functional styles of languages appeared on the agenda. Thus, O.O. Selivanova (Selivanova 2006: 582-583, Selivanova 2011: 695) mentions the traditional approach, according to which the following functional styles of language are distinguished: the official and business style, the publicistic style, the scientific style, the colloquial style, the style of belles-letters. (As we see O.O. Selivanova combines classifications of Galperin and Kozhina into one). Following further ideas O.O. Selivanova and other scholars, we believe that text can be analyzed today on the grounds of the most common features they share – namely on the grounds of the spheres of communication or types of discourse to which certain text belongs. Nowadays it is worthwhile to single out the following types of discourse (spheres of communication): political, legal, scientific, mass media, pedagogical, advertising, religious, everyday, business, fictional, sports and military. It is obvious that this list may be extended further on, moreover within each kind of discourse it is possible to single out "subdiscourses".

We gave several approaches to the notion of discourse. In the most general terms discourse is defined as a complex communicative

phenomenon, which includes, besides the text itself, other factors of interaction, such as shared knowledge, communicative goals, cognitive systems of participants, their cultural competence, etc. i.e. all that is necessary for successful production and adequate interpretation (comprehension and translation) of the text. We also stressed that for translators it is important to remember is that text is a "macro sign" component of discourse and that discourse is materialized in speech on the basis of the relevant texts.

So the notion of discourse is closely linked to the language in use, to speech interaction or, as Larry Marks writes, to the "totality of codified linguistic usages attached to a given type of social practice (e.g. legal discourse, medical discourse, religious discourse, etc)" (A Little Glossary of Semantics).

We shall come to understand that as an object of linguistic study translation is a complex entity consisting of the following interrelated components: elements and structures of the source texts; elements and structures of the target language; systems of the languages involved in translation; transformation rules to transform the elements and structures of the source texts into those of the target text; conceptual content and organization of the source text; conceptual content and organization of the target text.

Scientists differ in their approaches to the definitions of such notions as "text" and "discourse". Thus, O.O. Selivanova defines "text" as an integral (coherent) semiotic form of lingual, psychological and mental activity of its author (writer or speaker) (Selivanova 2004: 332; Selivanova 2011: 715-718). Text is conceptually and structurally integrated into the objective reality and serves as pragmatic vehicle of communication and is embedded into the semiotic universe of the relevant culture. Michael Hoey writes that firstly the term "text" refers to a piece of continuous language from a single source that is available for linguistic analysis (Hoey 1991: 269).

Similarly there exist many definitions of "discourse", starting with "narrow" and ending up with "broad" ones treating this category in various ways. V. Z. Demyankov describes discourse as a text fragment, which focuses around certain concept. Discourse make up a certain context, which describes relevant participants, objects, conditions, time, etc. the initial structure of discourse may be viewed as a sequence of propositions, connected by logical relations of

conjunction and disjunction and its basic elements are events, participants of these events and performative information as well as conditions in which events take place, relevant background information, evaluative elements, etc (Demyankov 1982: 7). This approach treats discourse as a specific language (or, more broadly, semiotic) category having relevant texts as macro components of each particular discourse.

According to O.O. Selivanova there are four major approaches to treatment discourse:

1. Coherent text in the contexts of various accompanying factors – ontological, social, cultural, psychological, i.e. "text embedded into life";
2. Integral communicative situation (event), which included its participants and text and which is conditioned by various factors, such as social, cultural, ethnic ones, etc.;
3. Sublanguage (style) of speech communication;
4. Pattern of speech communication in a certain social environment that is characterized by specific lingual means. In this respect we may single out legal, administrative, business, scientific, mass media, political, fictional, colloquial, etc. types of discourse (Selivanova 2004: 319; Selivanova 2011: 120-123).

Verbal interaction (communication) either written or oral, always takes place in a certain context or communicative situation. This situation in its turn is embedded into the macro-context of interaction: cultural, social, economic political, historical, etc. In linguistics many scholars express different points of view, but most of them agree that oral and written texts function in a certain discourse. Thus, it is possible to treat discourse as a combination of a text (written or oral) and extra-linguistic factors.

Next theoretical point to be given attention to is classification of styles and genres. One of the most general classifications of styles is the following: scientific, official, business, publicistic, belle-letters. Some scholars prefer using the terms of legal discourse, administrative discourse, political discourse, legal discourse etc. depending on their approach while analyzing this or that linguistic problem. Each style can be then divided into sub-styles which in their turn are divided into genres.

For written translation it is of the main importance which genre this or that text belongs to, communicative tasks awareness, macrostructures and language peculiarities of each particular genre. Text translation needs rendering those genre peculiarities of the original that play the key role in this particular genre.

Any genre has its own structural laws, rules of prohibition and allowance. Such regulations in some genres are strict enough, in others, the whole group of texts, so to say, dictates the specific features. Furthermore, genre theory translation supports the idea of joining the general theory of translation with the problems (approach) of individual style of both the author and the translator. It should also be underlined that we can sometimes encounter incorrect translation of the text because of the ignoring genre and style peculiarities which can be caused either by lack of knowledge of extra linguistics factors or specific knowledge of translation of texts belonging to different genres and styles. To reach the adequate translation of any text it is of vital importance the notion of 'genre and style dominant' (GSD) (Kyiak 2007: 282-284). GSD is the invariant or nucleus of one genre that is presented (realized) in the style of a set of particular texts belonging to this genre. In other words, GSD is the nucleus, the characteristic features that are important for each genre and they create this genre (Bidasyuk 2011: 1-24).

However, whatever the definition may be, what is important for translators to remember is that text is a "macro sign" component of discourse and, on the other hand, discourse is materialized in speech on the basis of the relevant texts. Therefore text is embedded into discourse and both of them function in a communicative situation, which, in its turn, is embedded into the macro-context of interaction: cultural, social, legal, economic, political, historical, religious, etc. The following diagram may graphically represent all the assumptions about levels of linguistic structure that were made above (Holmes 1988: 213).

While teaching students to depict the idea of the original texts it is worth underlining that there are texts belonging to some more regulated genres and this factor presupposes that the depicting of the main idea of such texts must be more regulated as well, while those original texts belonging to more 'flexible' genres could have more variations in the translation that means allowing more freedom for the translation.

And we completely share the opinion by Burak A.L. who states that to translate scientific and technical texts one has to have high level of translator's informational capacity. Levels of translator's informational capacity are the following:

1. The translator is able to associate a word-sense with a certain very wide class of things.
2. The translator is able to refer the word-sense to particular genus of things or ideas.
3. The translator is able to refer the word-sense to particular species of things or ideas.
4. The translator possesses encyclopedic details of the phenomenon described by the concept in question.
5. The translator possesses a scientific knowledge of the concept in question.

The translator's informational capacity is tightly connected with levels of translation approximations or equivalents. These levels are the following: close approximations (equivalents), adequate approximations (near equivalents), functional-communicative analogues, interpretations or descriptive definitions/translations, loan translations, phonetic transcriptions/transliterations and reproductions of words in their original script (Burak 2002: 95- 102). This can be fully applied to the process of translation of legal texts.

To translate legal texts one has to have high level of translator's informational capacity. Levels of translator's informational capacity are the following:

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One and the same term may have different meanings in different branches of science. T.R. Kyiak, a well-known researcher of scientific and technical translation, gives recommendations for translating terminology, among them: if the original has some terms not registered in any specialized dictionary and not translated previously, the translator has the responsibility to offer his/her own translation (using reference materials and consulting with experts to define the meaning of it) (Kulezneva and Kolomietz 2012: 282-284).

J.C.Catford's short study tackled the problem of linguistic untranslatability and suggested that in translation, there is substitution of TL meanings for SL meanings: not transference of TL meanings into the SL In transference there is an implantation of SL meanings into the TL text. These two processes must be clearly differentiated in any theory of translation (Catford 1965: 32-37).

One common feature of such of the research in Translation Studies is an emphasis on cultural aspects of translation, on the contexts within which translation occurs. Translation strategies are considered with translation studies emphasis on the main concepts of the translation process and adequacy. Of special interest are not only theoretical, methodological, descriptive and applied problems within contrastive linguistics and translation studies in isolation, but also questions concerning their relationships. Every descriptive study of translated texts involves the description translation decisions. Each translation stage (comprehension and understanding of the original text, translation itself, editing and result analysis of translation) highlight special discourse features in order to facilitate understanding of specialized texts. Pre-translation stage are analysed: reading for comprehension, identifying main ideas, target audience, translators problems (difficulties): terminology and grammar peculiarities.

Conclusion

In conclusion we are to emphasize the importance of combining theoretical fundamentals and practices while delivering written translation courses of legal texts may be of the following structure: tasks to speak on the topic of the text; words/terms study which are the stem of the text; key words to understand the parts and whole text; tasks to understand the main idea; tasks to read the text in the following order: word, sentence, paragraph, text; after text tasks include detailed lexical analysis, grammatical difficulties. Evaluation of the translation may be done on the following principles: communicative pragmatic norms of translation; equivalent norms of translation; absence of contextual, cultural, functional, lexical-grammatical mistakes. Detailed analysis revealed that the requirements of professional translators include knowledge of lexical and grammatical peculiarities of both languages in legal sphere; deep understanding of the concepts employed by specialists in particular field and the specialist terms used to express these concepts and their relationships in the source and target languages. It is recommended that evaluation of the translation may be done on the following principles: communicative pragmatic norms of translation; equivalent norms of translation; absence of contextual, cultural, functional, lexico-grammatical mistakes. A frequency analysis legal terminology was conducted for identifying their patterns of use during translation depending on stylistic and genre features of texts and simultaneously correlation of the interpretation of legal terms.

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ZUR VERSTÄNDLICHKEIT VON ÜBERSETZUNGEN DEUTSCHER UND POLNISCHER GERICHTSBENENNUNGEN

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Abstract: Im Fokus des vorliegenden Textes liegt das Problem des Übersetzens deutscher und polnischer Gerichtsbenennungen. Aufgrund einer Analyse der in der rechtswissenschaftlichen Literatur und in den Rechtswörterbüchern gängigen Übersetzungsformen stellt der Autor fest, dass die Übersetzungen der deutschen und der polnischen Gerichtsbenennungen den Empfängern in vielen Fällen nicht ermöglichen, die entsprechende Institution zu erkennen, was die Verständlichkeit der Zieltexte deutlich beeinträchtigt.

Unter Hinweis auf bestehende Divergenzen zwischen den deutschen und den polnischen Gerichten überlegt der Autor, ob Unterschiede, die zwischen zwei Institutionen verschiedener Rechtssysteme bestehen, in der Übersetzung immer signalisiert werden sollen. In Anlehnung an die Theorie der Rechtsvergleichung werden diejenigen Bedeutungsmerkmale festgestellt, die in der Rechtskommunikation und somit auch in der Rechtsübersetzung wesentlich sind. Vor diesem Hintergrund versucht der Autor die Frage zu

beantworten, wie Gerichtsbezeichnungen übertragen werden können, und vielleicht sollen, damit der Zieltext an Verständlichkeit nicht verliert. Diesbezüglich werden drei Übersetzungsverfahren vorgeschlagen und in einer analytischen Übertragung der deutschen und der polnischen Gerichtsbenennungen angewendet.
Es wird hier das Ziel verfolgt, zur Verständlichkeit der Übersetzungen juristischer Texte beizutragen und zugleich eine Alternative für umschreibende Übersetzungen der Gerichtsbezeichnungen vorgeschlagen.

Schlagwörter: Rechtsübersetzung, Rechtskommunikation, Gerichtsbarkeit, Gerichtsbenennungen, kontrastive Fachsprachenforschung

TOWARDS COMPREHENSIBILITY IN THE TRANSLATION OF GERMAN AND POLISH COURT NAMES

Abstract: The focus of this paper is centered on the translation of German and Polish court names. Based on a thorough analysis of the translation terms used in legal literature and dictionaries, the author concludes that the court names are often being translated in a way that makes it impossible for the reader to correctly identify the institution in question, thus undermining the comprehensibility of the target texts significantly.
Pointing to the differences between the court systems of Germany and Poland, the author contemplates whether the dissimilarities between two institutions from different legal systems need always to be marked in the translation. On the basis of the comparative law theory, the meaning features essential for both legal communication and legal translation are identified and presented.
In the next part, the author examines how to translate the court names so that the institution at issue is instantly recognizable in the target text. As a result, three comprehensive translation techniques are proposed.
The presented translation techniques shall contribute to improving the comprehensibility of legal texts, and constitute an alternative to the descriptive translation of these institutions.

Key words: legal translation, legal communication, court names, jurisdiction, languages for special purposes, contrastive linguistics

PROBLEM CZYTELNOŚCI TŁUMACZEŃ NIEMIECKICH I POLSKICH NAZW SĄDÓW

Abstrakt: W niniejszym tekście podjęty został problem przekładu nazw niemieckich oraz polskich nazw sądów. Na podstawie analizy używanych form

tłumaczeń w literaturze prawniczej oraz w słownikach autor stwierdza, że przekłady te są często na tyle nieczytelne, że nie pozwalają one odbiorcom określić ani instytucji kraju języka wyjściowego, ani tej języka docelowego, co w znacznym stopniu ogranicza zrozumiałość tekstów docelowych.
Wskazując na różnice istniejące pomiędzy sądami niemieckimi i polskimi, autor zastanawia się, czy w przekładzie należy zaznaczać każdego rodzaju dywergencje, występujące między instytucjami dwóch różnych systemów prawnych. W oparciu o teorię komparatystyki prawniczej wskazane zostają te elementy znaczeniowe, które odgrywają istotną rolę w komunikacji prawniczej oraz przekładzie tekstów tego rodzaju. W dalszej części autor zastanawia się, w jaki sposób nazwy sądów mogą, albo powinny być przetłumaczone, aby instytucja kraju języka wyjściowego i decelowego były w translacie rozpoznawalne. W odpowiedzi na to pytanie zaproponowane zostają trzy techniki, których zastosowanie zostaje w tekście przedstawione w analitycznym przekładzie niemieckich i polskich nazw sądów.
Przedstawione techniki tłumaczeniowe mają umożliwić poprawę czytelności przekładów prawniczych, a ponadto mają one stanowić alternatywę dla często stosowanego przekładu opisowego nazw sądów.

Słowa klucze: przekład prawniczy, komunikacja prawnicza, sądownictwo, lingwistyka kontrastywna, języki specjalistyczne

1. Einführung

Schwierigkeiten, die mit dem Übersetzen von Gerichtsbenennungen verbunden sind, resultieren aus einem allgemeineren Problem, das mit dem Übersetzen juristischer Texte und aller Rechtstexte schlechthin einhergeht. Dieses Problem besteht darin, dass es zwischen den Rechtssystemen einzelner Staaten größere oder kleinere Divergenzen gibt. Das Recht, welches in jedem Staat gilt, wird durch historische, soziale und politische Faktoren bedingt, und weil diese Faktoren in jedem Staat anders sind, entwickelt sich in jedem Staat ein eigenartiges Rechtssystem mit einem spezifischen Begriffssystem. In jedem Staat gibt es auch Institutionen, die im Kontext derselben Faktoren entstehen und die Rechtsprobleme nach den eigenartigen Rechtsvorschriften wahrnehmen.

Unterschiede zwischen den einzelnen Rechtssystemen bereiten

offensichtlich Probleme den Übersetzern, den Übersetzungstheoretikern, den Leksikografen, aber auch den Rechtswissenschaftlern, die über ein fremdes Recht in ihrer Muttersprache bzw. über ihr eigenes Recht in einer Fremdsprache schreiben, was an wissenschaftlichen Publikationen und Rechtswörterbüchern sichtbar ist.

Artur Dariusz Kubacki, Mitglied der Staatlichen Prüfungskommission für beeidigte Übersetzer und Dolmetscher in Polen, der sich ebenfalls mit Übersetzungsproblemen deutscher und polnischer Gerichtsbenennungen befasste, geht davon aus, dass man sich beim Rechtsübersetzen auf Rechtswörterbücher, Terminologie-Datenbanken europäischer Institutionen und, beim Übersetzen deutscher Gerichtsbenennungen, auf ein Glossar des Auswärtigen Amtes der BRD (weiter zitiert als: GdAA) stützen kann; zugleich bemerkt er jedoch, dass Übersetzungen in diesen Quellen weder übereinstimmend noch immer zutreffend sind (vgl. Kubacki 2008: 59-63).

Dass die Gerichtsbenennungen verschieden übersetzt werden, ergibt sich aus der Tatsache, dass keine der Übersetzungsformen von oben kommt, d.h. keine von ihnen rechtlich festgesetzt wurde. Übersetzter, Übersetzungstheoretiker, Lexikografen und Rechtswissenschaftler versuchen also auf ihre eigene Art und Weise die Ungleichheiten zwischen Rechtssystemen und Institutionen anzudeuten.

In diesem Zusammenhang stellen sich zwei Fragen, auf die hier versucht wird zu antworten. Diese Fragen lauten wie folgt:

1. Sind Unterschiede zwischen zwei Institutionen, in unserem Fall zwischen zwei Gerichtsinstitutionen in der Übersetzung immer zu signalisieren?

2. Wie sollen bestehende Unterschiede in der Übersetzung signalisiert werden, damit der Zieltext an Verständlichkeit nicht verliert?

Antwort auf die erste Frage lautet vorerst: Es kommt darauf an, wie groß und welcher Art diese Unterschiede sind.

Eine Methode, mit der Abweichungen verschiedener Rechtssysteme festgestellt werden können, ist Vergleich. Von den

Rechtswissenschaftlern Konrad Zweigert und Hein Kötz, die auf dem Gebiet der Rechtsvergleichung geforscht hatten, wissen wir, dass im Recht nur das vergleichbar ist, „was dieselbe Aufgabe, dieselbe Funktion erfüllt" (Zweigert/Kötz 1996: 33).

In unserem Beispiel ist es nicht schwierig festzustellen, was womit zu vergleichen ist, weil es sowohl in Polen als auch in Deutschland fünf Gerichtsstufen gibt.[1]

2. Zum Wesen der Bedeutungsmerkmale der Gerichte

Das Rechtsübersetzen setzt Kenntnisse über Rechtssysteme der Staaten der Ausgangssprache und der Zielsprache voraus, weil Rechtstermini und Benennungen rechtlicher Institutionen als Vertreter bestimmter Inhalte übersetzt werden (vgl. Sandrini 2009: 151; Pieńkos 1999: 131). Um also potentielle Entsprechungen in der Zielsprache finden zu können, muss der Übersetzer das konzeptuelle System beider Rechtssysteme kennen (vgl. Sandrini 1996: 344). Auch um wesentliche Bedeutungsmerkmale einer Gerichtsbenennung feststellen zu können, muss vorher das Wesen dieser Institution analysiert werden. Von einer detaillierten Beschreibung des deutschen und des polnischen Gerichtswesens sehe ich hier ab und beschränke mich nur auf Darstellung einiger Merkmale der deutschen und der polnischen Gerichtsbarkeit bei der Analyse der in der Rechtsliteratur und in den Wörterbüchern gängig verwendeten Übersetzungsformen der Gerichtsbezeichnungen. Zu einer genaueren Lektüre zum deutschen und zum polnischen Rechtswesen verweise auf die einschlägige Literatur – zum deutschen Rechtswesen bzw. Gerichtswesen vgl. Zippelius/Würtenberger 2018, Battis/Gusy 2018, Simon/Funk-Baker 2017, Muszyńska/Hambura/Muszyński 2002, *Gerichtsverfassungsgesetz* (GVG), und zum polnischen Rechtswesen bzw. Gerichtswesen vgl. Garlicki 2018, Górecki Hg. 2015, Banaszak/Milej 2009, Liebscher/Zoll 2005, *Ustawa o ustroju sądów*

[1] Die Stufen sind mit den Instanzen nicht zu verwechseln. Die fünf Gerichtsstufen widerspiegeln somit nicht den Instanzenzug, sondern die Hierarchie im Gerichtswesen Polens und Deutschlands.

powszechnych, Ustawa o Sądzie Najwyższym.

Zwischen den entsprechenden deutschen und polnischen Gerichten bestehen neben Unterschieden auch gewisse Gemeinsamkeiten. Ob zwei Ausdrücke als Äquivalente oder Entsprechungen gelten, entscheidet nach meiner Meinung jedoch nicht das Übergewicht der Gemeinsamkeiten gegenüber den Unterschieden, weil nicht alle Merkmale eines Ausdrucks für seine Bedeutung genauso wichtig sind. Im Recht scheint der pragmatische Aspekt am wichtigsten zu sein, was auch durch die von Zweigert und Kötz formulierte Voraussetzung der Vergleichbarkeit untermauert wird. Von all den Merkmalen, die anhand einer Analyse der einzelnen Gerichtsstufen feststellbar sind, erweisen sich demzufolge diejenigen als wesentlich, die einen handlungs- bzw. geschehensbezogenen Charakter haben. In unserem Fall sind das drei Merkmale: die sachliche Zuständigkeit, die territoriale Zuständigkeit und die Folgen der richterlichen Entscheidung. Die Folgen der Entscheidungen, denn es ist von Belang, was Handlungen einer betreffenden Institution mit sich bringen; die sachliche Zuständigkeit, denn diese definiert, erstens, Situationen und Sachprobleme, bei denen eine betreffende Institution agiert und, zweitens, Kompetenzen und Aufgaben, die diese Institution hat bzw. erfüllt; und das dritte Merkmal - die territoriale Zuständigkeit, weil diese den territorialen Spielraum einer Institution bestimmt, und dadurch einen quasi handlungsbezogen Charakter gewinnt. Die sonstigen Merkmale scheinen dagegen zweitrangig zu sein, denn es ist für die juristische Praxis belanglos, welche Anforderungen zum Richteramt oder zum Schöffenamt gelten, welche Organe an der Spitze des Gerichts stehen, durch wie viele Richter gewisse Sachverhalte verhandelt und entschieden werden, und wie das Gericht aufgebaut ist, also ob und in wie viele Abteilungen oder Senate es geteilt ist.

Es liegt die Vermutung nahe, dass Begriffsmerkmale, die in der juristischen Praxis als zweitrangig und unwesentlich gelten, ebenfalls in der Rechtskommunikation als unerheblich zu werten sind. Daraus ist ebenfalls zu schlussfolgern, dass nicht alle Unterschiede zwischen den Institutionen in der Übersetzung signalisiert werden müssen - und damit wurde die erste Frage beantwortet. Anhand der angestellten Analyseergebnisse werden im Folgenden die Gerichtsbezeichnungen analytisch übersetzt.

3. Übersetzung deutscher Gerichtsbenennungen ins Polnische und der polnischen ins Deutsche

Beim Vergleich der drei handlungsbezogenen aber auch der sonstigen Merkmale der entsprechenden Gerichtsstufen wurden zu große Unterschiede festgestellt, als dass man sie in der Übersetzung nicht signalisiert. Es stellt sich jetzt die Frage, wie diese Abweichungen dem Empfänger in der Übersetzung angedeutet werden können, ohne dass der Zieltext dabei an Verständlichkeit verliert.

Radegundis Stolze schlägt diesbezüglich eine Methode des explikativen Übersetzens vor, nach der „das Begriffswort möglichst wörtlich beschreibend … übertragen [wird], auch wenn dann zielsprachlich eine Formulierung entsteht, die dort [im Land der Rechtszielsprache] z.B. nicht rechts- oder verwaltungssprachlich verankert, dafür aber gemeinsprachlich verständlich ist. Von dieser Verständlichkeit her kann sie dann auch von den Empfängern wieder in deren Rechtssystem eingeordnet werden" (Stolze 1992: 226).

Möglicherweise diesem Postulat zufolge werden die Gerichtsbezeichnungen meistens wörtlich übertragen, ohne dass dabei den Empfängern immer ermöglicht wird, die betreffende Gerichtsbezeichnung in ihrem Rechtssystem richtig einzuordnen.

Die polnische Bezeichnung des Gerichts der ersten Stufe *sąd rejonowy* wird ins Deutsche vorwiegend übersetzt als "Rayonsgericht" (Banaszak 2005b), "Rayongericht" (Liebscher/Zoll 2005: 460, de Vries 2004: 12, 17-18) oder als "Kreisgericht" (Jakowczyk 2008: 49). Diese Übersetzungen stellen für den deutschen Empfänger jedoch, wie ich meine, ein irreführendes, und manchmal gar kein bedeutungsweisendes Signal dar: Die zwei ersteren, weil mit der Benennung *Rayon* früher ein Bereich bezeichnet war, der zu Verteidigungszwecken diente (vgl. Creifelds 2017, *Rayon → Schutzbereich*: 1059, 1169), die letztere, weil in Deutschland der Benennung *Kreis* (auch *Landkreis*) eine öffentlich-rechtliche Gebietskörperschaft entspricht (Creifelds 2017, *Kreis*: 809). Im polnischen Gerichtswesen dagegen umfasst jedes *sąd rejonowy* eine oder mehrere Gemeinden, wo insgesamt mindestens 50 000 Einwohner angemeldet sind, oder wo es dem Gericht mindestens 5 000 Sachverhalte pro Jahr zum Prüfen vorgelegt werden (Art. 10 §§ 1-1b PL-GVG). Kein Konsens besteht ebenfalls darüber, wie die deutsche

Gerichtsbezeichnung *Amtsgericht* ins Polnische übertragen werden soll. Sie wird demnach je nach Textsorte entweder mit den Umschreibungen "sąd powszechny najniższego szczebla" [wörtlich: das ordentliche Gericht der niedrigsten Stufe] (Kilian/Kilian 2014a) bzw. "sąd najniższej instancji" [wörtlich: Gericht der niedrigsten Instanz] (Banaszak 2005a) oder als "sąd grodzki" (Muszyńska/Hambura/Muszyński 2002: 17) übersetzt. Mit keiner dieser Übersetzungen, ausgenommen die Umschreibungen, wird dem Empfänger der Inhalt der Ausgangssprache verständlich vermittelt.

Ich gehe hierzu also davon aus, dass im Zieltext diejenige Benennung verwendet werden kann, und vielleicht soll, die der Empfänger kennt und die sich mit dem AS-Begriff in funktionaler Hinsicht gewissermaßen überschneidet; auf eventuelle Unterschiede kann dagegen mit einem Adjektiv hingewiesen werden, das aus dem Namen eines betreffenden Staates gebildet wird. Demnach können die Bezeichnungen der ersten Gerichtsstufe *sąd rejonowy* und *Amtsgericht* als, entsprechend, *polnisches Amtsgericht* und *niemiecki sąd rejonowy* übersetzt werden. Mit den Adjektiven *polnisches* und *niemiecki* [deutsch] wird dem Leser in beiden Fällen signalisiert, dass es keine völlige Übereinstimmung zwischen den beiden Institutionen gibt. Diese Lösung ist meiner Ansicht nach angemessen beim Übersetzen wissenschaftlicher Rechtsliteratur, beim Übersetzen juristischer Dokumente, wie etwa Urteile, erweist sich dieses Verfahren etwas problematisch, weil in Deutschland und in Polen der volle Name des Gerichts eine Information über die örtliche Zuständigkeit enthält. Nach unserer bisherigen Vorgehensweise würde der Ausdruck *Amtsgericht Leipzig* ins Polnische übersetzt als "Niemiecki Sąd Rejonowy w Lipsku", und die Bezeichnung *Sąd Rejonowy we Wrocławiu* - als "Polnisches Amtsgericht Wrocław". Beide Übersetzungen sind jedoch pleonastisch. Wenn dagegen das Adjektiv ausgelassen wird, entstehen die Übersetzungen *Sąd Rejonowy w Lipsku* und *Amtsgericht Wrocław*, wodurch ein Eindruck der Identität zwischen beiden Institutionen erweckt werden kann. Der Vorteil einer solchen Übersetzung besteht jedoch darin, dass dadurch dem Empfänger eindeutig signalisiert wird, mit welcher Gerichtsstufe er zu tun hat. Es scheint demnach nicht

verfehlt zu sein, an dieser Übersetzung festzuhalten.[2] Damit aber kein Eindruck der Identität zwischen beiden Institutionen entsteht, sollen bestehende Unterschiede etwa in der Fußnote angedeutet werden - bei der Übersetzung ins Deutsche beispielsweise in der Form von „Gericht der niedrigsten Stufe in Polen, das sich von den deutschen Amtsgerichten (deutlich) unterscheidet".

Die zweite Stufe der Gerichtsbarkeit vertreten in Polen sądy okręgowe, und in Deutschland - die Landgerichte. Die Bezeichnung *sąd okręgowy* wird ins Deutsche am häufigsten als *Bezirksgericht* übersetzt. Dies kann wohl als eine Entlehnung aus dem DDR-Recht gesehen werden, wo Gerichte der zweiten Stufe eben *Bezirksgerichte* genannt waren. Es liegt dennoch die Vermutung nahe, dass diese Lösung (die Entlehnung) für deutsche Empfänger insgesamt wenig aufschlussreich ist; für österreichische und schweizerische Empfänger wäre eine solche Übersetzung sogar irreführend, weil in Österreich und in den meisten Kantonen der Schweiz mit *Bezirksgericht* Gerichte der niedrigsten Stufe benannt werden.

Die deutsche Benennung *Landgericht* wird ins Polnische hingegen ausschließlich wörtlich als *sąd krajowy* übersetzt - auch das deutsche Auswärtige Amt empfiehlt diese Übersetzungsform (vgl. GdAA). Auf diese Weise wird dem Empfänger zwar signalisiert, dass es Diskrepanzen zwischen beiden Institutionen gibt, aber anhand dieser Übersetzung lässt sich die entsprechende Gerichtsstufe nicht erkennen. Darüber hinaus kann dadurch ein falscher Eindruck erweckt werden, dass es sich um ein Gericht in Deutschland handelt, in dessen Zuständigkeit Angelegenheiten eines ganzen Bundeslandes fielen, was der Wirklichkeit nicht entspricht.

Vor diesem Hintergrund scheint es nicht unangemessen zu sein, die deutsche Bezeichnung *Landgericht* ins Polnische als *niemiecki sąd okręgowy*, und die polnische Benennung *sąd okręgowy* ins Deutsche als *polnisches Landgericht* zu übersetzten. Die Tatsache, dass Polen nicht in Länder, sondern in Woiwodschaften gegliedert ist, stellt hierzu kein Gegenargument dar, weil mit der Zusammensetzung *Landgericht*, wie schon erwähnt, kein Gericht in Deutschland bezeichnet wird, das für

[2] Nebenbei bemerkt, empfiehlt auch das deutsche Auswärtige Amt die Gerichtebenennung *Amtsgericht* ins Polnische als *sąd rejonowy* zu übersetzen (vgl. das einschlägige Glossar auf der Internetseite des Auswärtigen Amtes der BRD).

Angelegenheiten im ganzen Bundesland zuständig wäre. Darüber hinaus wird durch Verwendung der Adjektivattribute *niemiecki* und *polnisches*, meiner Ansicht nach, deutlich betont, dass zwischen beiden Institutionen eine Ungleichheit besteht.

Beim Übersetzen der Textsorte *Urteil* gehen wir genauso vor, wie im Fall der ersten Gerichtsstufe.

Das Vorgehen, welches wir beim Übersetzen der Gerichtsbezeichnungen der ersten zwei Stufen verwendet haben, war möglich, weil die Ausdrucksseite der polnischen Gerichtsbenennungen über die bezeichneten Institutionen nur vage etwas sagen - betreffend den Gerichtsbezirk, und die deutschen Benennungen ziemlich willkürlich zu sein scheinen; willkürlich, weil sie mit ihrer Ausdrucksseite über die bezeichnete Institution nichts besagen. Anders verhält es sich mit Bezeichnungen der dritten Gerichtsstufe. Mit der Benennung *sąd apelacyjny* wird die beinahe einzige sachliche Zuständigkeit des polnischen Gerichts ausgedrückt (vgl. Art. 26 PL-StPO). Die deutsche Bezeichnung *Oberlandesgericht* bezeichnet tatsächlich die territoriale Zuständigkeit, denn das Oberlandesgericht gilt als die höchste Instanz auf der Landesebene. Weil polnische Gerichte der dritten Stufe fast ausschließlich über Rechtsmittel verhandeln und die sachliche Zuständigkeit der deutschen Oberlandesgerichte sich über die Sachen bezüglich der Rechtsmittel weit erstreckt, wäre es eine Wirklichkeitsentstellung, wenn wir die Bezeichnungen *Oberlandesgericht* und *sąd apelacyjny* als, respektive, "niemiecki sąd apelacyjny" und "polnisches Oberlandesgericht" übersetzen würden. Weil die Ausdrucksseite sowohl der deutschen als auch der polnischen Bezeichnung etwas über die Institutionen aussagen und damit ihren Inhalt durchscheinen lassen, scheint es angemessen zu sein, beide Benennungen wörtlich zu übersetzen, und zwar als, entsprechend, *Wyższy Sąd Krajowy* und *Appellationsgericht*.[3] Die Übersetzung *Appellationsgericht* erscheint dem deutschsprachigen Empfänger nicht unnatürlich, denn der Terminus *Appellation* kommt in der Zielrechtssprache vor und wird nach dem Rechtswörterbuch als eine „Anrufung eines höheren Gerichts“ definiert (Creifelds 2017,

[3] Die Übersetzung von *Oberlandesgericht* ins Polnische als "Wyższy Sąd Krajowy" wird auch durch das deutsche Auswärtige Amt empfohlen (s. das entsprechende Glossar).

Appellation: 74). Die Zusammensetzung *Appellationsgericht* bezeichnet somit ein Gericht, das insgesamt hauptsächlich Entscheidungen untergeordneter Gerichte überprüft.

Höher in der Hierarchie des Gerichtswesens liegt in Deutschland der *Bundesgerichtshof*, und in Polen - *Sąd Najwyższy*. In beiden Staaten haben beide Institutionen gewissermaßen ähnliche Aufgaben und Zuständigkeiten. Demnach steht dem nichts entgegen, die deutsche Bezeichnung ins Polnische als *Sąd Najwyższy Republiki Federalnej Niemiec, Sąd Najwyższy Niemiec* oder als *Niemiecki Sąd Najwyższy* zu übertragen. Diese Übersetzungen finde ich aufschlussreicher als die wörtliche Übersetzung *Trybunał Federalny* (Kilian/Kilian 2014a: 182; GdAA), an der die entsprechende Gerichtsstufe nicht erkennbar ist.

Beim Übersetzen der polnischen Bezeichnung ins Deutsche können wir nicht analogisch vorgehen und *Sąd Najwyższy* als "Polnischer Bundesgerichtshof" oder "Bundesgerichtshof Polens" übersetzen - der Grund liegt darin, dass Polen kein Bund ist. In einer solchen Situation kann versucht werden, sich der Definition eines funktional gleichwertigen Begriffs der Zielrechtssprache zu bedienen. Im Rechtswörterbuch ist der *Bundesgerichtshof* definiert als „der oberste Gerichtshof des Bundes“ (Creifelds 2017, *Bundesgerichtshof*: 261). Demnach scheint die Übersetzung *der Oberste Gerichtshof der Republik Polen* oder *der Oberste Gerichtshof Polen(s)* in funktionaler und formaler Hinsicht angemessen und richtig zu sein. Die Übersetzung *das Oberste Gericht*, die am häufigsten verwendet wird, ist im Grunde genommen nicht schlecht, sie kann aber möglicherweise etwas weniger Akzeptabilität erhalten, weil sie in der Zielrechtssprache, außer als eine Umschreibung, nicht vorkommt.

Die fünfte und höchste Stufe der Gerichtsbarkeit vertritt in Deutschland das Bundesverfassungsgericht, und in Polen - Trybunał Konstytucyjny. Die funktionale Überschneidung zwischen den beiden Organen ist erkennbar an der Hauptzuständigkeit beider Gerichte, und diese stellt die Überprüfung der Verfassungsbeschwerden dar. Wie es beim Übersetzen der sonstigen Gerichtsbezeichnungen der Fall war, kann auch beim Übersetzen dieser Bezeichnung auf bestehende Unterschiede zwischen beiden Institutionen mit einem Adjektivattribut oder mit einem Genitivattribut hingewiesen werden. Die deutsche Bezeichnung kann mithin ins Polnische als *Trybunał Konstytucyjny*

Republiki Federalnej Niemiec, Trybunał Konstytucyjny Niemiec, Niemiecki Trybunał Konstytucyjny oder eventuell als *Federalny Trybunał Konstytucyjny* übersetzt werden. So wie es beim Übersetzen der Bezeichnung *Sąd Najwyższy* war, können wir die Benennung *Trybunał Konstytucyjny* als "Polnisches Bundesverfassungsgericht" oder als "Bundesverfassungsgericht der Republik Polen" nicht übertragen, weil Polen kein Bund ist. Beim Übersetzen der Bezeichnung der vierten Gerichtsstufe haben wir uns der Definition eines funktional gleichwertigen Begriffs der Zielrechtssprache bedient. Die Definition erweist sich jedoch nicht immer als hilfreich und so ist es auch beim Übersetzen der polnischen Bezeichnung *Trybunał Konstytucyjny* ins Deutsche. Im Rechtswörterbuch wird das *Bundesverfassungsgericht* als „ein allen übrigen Verfassungsorganen gegenüber selbständiger und unabhängiger Gerichtshof des Bundes“ definiert (Creifelds 2017, *Bundesverfassungsgericht* nach § 1 Abs. 1 BVerfGG). Wenn wir hier analogisch zu dem obigen Beispiel vorgehen, kommt im Ergebnis die Übersetzung "Gerichtshof der Republik Polen" oder "Gerichtshof Polen(s)". Eine grundsätzliche Unzulänglichkeit dieser Übersetzung besteht jedoch darin, dass mit ihr nicht signalisiert wird, dass es sich um ein Verfassungsgericht handelt. Deshalb scheint vielmehr die Übersetzung *Verfassungsgerichtshof der Republik Polen* oder *Verfassungsgerichtshof Polen(s)* informativer und akzeptabler zu sein, zumal die Bezeichnung des betreffenden Organs in Österreich eben *Verfassungsgerichtshof Österreich* lautet.

Angenommen, dass der Zieltext nicht für österreichische, sondern für deutsche Empfänger bestimmt ist, kommt noch eine andere Möglichkeit infrage. Wenn wir nicht das Definiens, sondern das Definiendum eines funktional gleichwertigen Begriffs der Zielrechtssprache näher betrachten, stellen wir fest, dass das Kompositum *Bundesverfassungsgericht* aus drei Konstituenten besteht: *Bund* (federacja), *Verfassung* (konstytucja) und *Gericht* (sąd). Der Ausdruck *Bundesverfassungsgericht* bedeutet somit seiner Form nach *das Verfassungsgericht des Bundes* bzw. *das Verfassungsgericht Deutschland(s)*[4]. Weil die Zusammensetzung *Verfassungsgericht* in der

[4] Österreich ist zwar auch ein Bund, das betreffende Organ wird dort jedoch als *Der Österreichische Verfassungsgerichtshof* bzw. *Verfassungsgerichtshof Österreich* genannt. Die Schweiz kommt in unserem Beispiel nicht infrage, weil es in der Schweiz kein entsprechendes Organ gibt.

Bezeichnung des deutschen Organs vorkommt (Bundes**verfassungsgericht**), scheint die Übersetzung *Verfassungsgericht der Republik Polen* oder *Verfassungsgericht Polen(s)* für deutsche Empfänger natürlicher zu sein als *Verfassungsgerichtshof Polen(s)*, was zugleich die Akzeptabilität des Zieltextes wohl steigert.

Anhand der angestellten Überlegungen wurden im Ergebnis folgende Übersetzungen erbracht:

a) Übersetzungen der polnischen Gerichtsbenennungen ins Deutsche:

Gerichtsbenennung	**Vorschlag**	**Die häufigsten Übersetzungsformen**
sąd rejonowy (wiss. Literatur);	polnisches Amtsgericht (wiss. Literatur);	Rayongericht, Rayonsgericht, Kreisgericht, Amtsgericht
Sąd Rejonowy we Wrocławiu (Urteil)	Amtsgericht Wrocław [Fußnote: Gericht der niedrigsten Stufe in Polen, das sich von den deutschen Amtsgerichten (deutlich) unterscheidet] - (Urteil)	
sąd okręgowy (wiss. Literatur);	polnisches Landgericht (wiss. Literatur);	Bezirksgericht, Kreisgericht
Sąd Okręgowy we Wrocławiu (Urteil)	Landgericht Wrocław [Fußnote: Gericht der zweiten Stufe in Polen, das sich von	

	den deutschen Landgerichten (deutlich) unterscheidet] - (Urteil)	
sąd apelacyjny (wiss. Literatur) Sąd Apelacyjny we Wrocławiu (Urteil)	Appellationsgericht (wiss. Literatur) Appellationsgericht Wrocław [Fußnote: Gericht der dritten Stufe in Polen, das sich von den deutschen Oberlandesgerichten (deutlich) unterscheidet] - (Urteil)	Appellationsgericht, Berufungsgericht
Sąd Najwyższy	der Oberste Gerichtshof der Republik Polen, der Oberste Gerichtshof Polen(s), (das Oberste Gericht der Republik Polen, das Oberste Gericht Polen(s), das Polnische Oberste Gericht)[5]	das Oberste Gericht Polens
Trybunał	Verfassungsgericht	Verfassungsgericht

[5] Die Übersetzungen in Klammern erhalten etwas weniger Akzeptabilität, weil sie in der deutschen Rechtssprache nicht vorkommen.

Konstytucyjny	der Republik Polen, Verfassungsgericht Polen(s)	Polens

b) Übersetzungen der deutschen Gerichtsbenennungen ins Polnische:

Gerichtsbenennung	**Vorschlag**	**die häufigsten Übersetzungsformen**
Amtsgericht (wiss. Literatur) Amtsgericht Leipzig (Urteil)	niemiecki sąd rejonowy (wiss. Literatur); Sąd Rejonowy w Lipsku [Fußnote: sąd najniższego szczebla w Niemczech różniący się (znacznie) od polskich sądów rejonowych] (Urteil)	sąd powszechny najniższego szczebla, sąd najniższej instancji, sąd grodzki,
Landgericht (wiss. Literatur); Landgericht Leipzig (Urteil)	niemiecki sąd okręgowy; Sąd Okręgowy w Lipsku [Fußnote: sąd drugiego szczebla w Niemczech różniący się (znacznie) od polskich sądów okręgowych] (Urteil)	sąd krajowy
Oberlandesgericht (wiss. Literatur); Oberlandesgericht Dresden (Urteil)	Wyższy Sąd Krajowy (wiss. Literatur) Wyższy Sąd Krajowy w Dreźnie	Wyższy Sąd Krajowy

	[Fußnote: sąd trzeciego szczebla w Niemczech różniący się (znacznie) od polskich sądów apelacyjnych] (Urteil)	
Bundesgerichtshof	Sąd Najwyższy Republiki Federalnej Niemiec, Sąd Najwyższy Niemiec, Niemiecki Sąd Najwyższy, (Federalny Sąd Najwyższy)	Trybunał Federalny
Bundesverfassungs-gericht	Trybunał Konstytucyjny Republiki Federalnej Niemiec, Trybunał Konstytucyjny Niemiec, Niemiecki Trybunał Konstytucyjny, (Federalny Trybunał Konstytucyjny)	Federalny Trybunał Konstytucyjny

4. Abschliessende Bemerkungen

Zusammenfassend kann festgehalten werden, dass, erstens, beim Übersetzen juristischer Texte nur wesentliche, also die den pragmatischen Aspekt betreffenden Unterschiede zwischen Institutionen verschiedener Rechtssysteme in der Übersetzung signalisiert werden sollen; zweitens, dass mit der Methode des wörtlichen Übersetzens von Gerichtsbenennungen nur dann aufschlussreiche Übersetzungen erbracht werden können, wenn die Ausdrucksseite der AS-Bezeichnung etwas relevantes über die bezeichnete Institution besagt; und drittens, dass beim Übersetzen von Gerichtsbenennungen der Zieltext an Verständlichkeit nicht verliert, wenn eine der drei vorgeschlagenen Übersetzungsverfahren[6] angewendet wird - also entweder durch:

1. Verwendung einer zielsprachlichen Bezeichnung mit einem Hinweis auf Unterschiede in Form eines Adjektivattributs, eines Genitivattributs oder einer Anmerkung in der Fußnote, oder durch
2. Abstellung auf die rechtliche Definition eines funktional gleichwertigen Begriffs der Zielrechtssprache, oder durch
3. Abstellung auf das Definiendum der ZS-Bezeichnung eines funktional gleichwertigen Begriffs der Zielrechtssprache.

Auswahl eines der Übersetzungsverfahren hängt ab, erstens, von der Form der AS-Bezeichnung, d.h. davon ob ihre Ausdrucksseite etwas wesentliches über die bezeichnete Institution sagt (dann ist die wörtliche Übersetzung möglich, vgl.

[6] Unter Übersetzungsverfahren werden hier nach Wotjak „Techniken der Übersetzung" verstanden (Wotjak 1985). Im Unterschied zu einer Übersetzungsmethode - von Hans G. Hönig und Paul Kußmaul als „Strategie der Übersetzung" bezeichnet (vgl. Hönig/Kußmaul 1982) -, die sich grundsätzlich auf den ganzen Text bezieht und vom Texttyp bzw. vom Übersetzungszweck abhängt, werden Übersetzungsverfahren auf kleinere Texteinheiten (Teiltexte, Textabschnitte, Überschriften) angewendet und durch die Übersetzungsmethode beeinflusst (vgl. Schreiber 1993: 54-55). Die hier vorgeschlagenen Übersetzungsverfahren (Übersetzungstechniken) sind demnach als „Lösungsmöglichkeiten für konkrete Übersetzungsprobleme" anzusehen, „die nur auf einzelne Übersetzungseinheiten anwendbar sind" (Schreiber 2017: 50), und als solche Übersetzungseinheiten gelten in unserem Fall die Gerichtsbenennungen.

Übersetzungsformen von Gerichtsbezeichnungen der dritten Stufe) und zweitens von der Art und Größe der bestehenden Unterschiede zwischen zwei betreffenden Gerichtsinstitutionen und Rechtssystemen. Zuletzt sei noch zu bemerken, dass die vorgeschlagenen Verfahren für Übersetzung von Gerichtsbenennungen gedacht sind, nicht aber für Namen der Institutionen, die als Eigennamen gelten (etwa *Sejm*) und, im Unterschied zu Gerichtsbezeichnungen, unübersetzt bleiben können.

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