Volume 47/2021

Comparative Legilinguistics

International Journal
for Legal Communication

Faculty of Modern Languages and Literatures
Adam Mickiewicz University
Poznań, Poland

FACULTY OF MODERN LANGUAGES AND LITERATURES

Editorial Office
Faculty of Modern Languages and Literatures
al. Niepodległości 4, pok. 107A
61-874 Poznań, Poland
lingua.legis@gmail.com

The journal has been indexed on ERIH PLUS since 2018

The electronic version serves referential purposes.
Wersja elektroniczna jest wersją referencyjną czasopisma

ISSN 2080-5926
e-ISSN 2391-4491 (http://pressto.amu.edu.pl/index.php/cl/issue/archive)
Adam Mickiewicz University, Poznań, Poland

Table of Contents

Special issue:

When Law and Legal Linguistics Intersect

Guest edited by

Anne WAGNER

Centre de Recherche Droits et Perspectives du Droit,
équipe René Demogue
ULR 4487 Lille University, France
E-mail: valwagnerfr@yahoo.com

ORCID: http://orcid.org/0000-0001-6362-9023

&

Aleksandra MATULEWSKA

Adam Mickiewicz University,
Poznań, Poland
E-mail: aleksmat@amu.edu.pl

ORCID: https://orcid.org/0000-0002-2045-5972

Comparative Legilinguistics
vol. 47/2021
DOI: http://dx.doi.org/10.2478/cl-2021-0010

PREFACE

LAW AND LEGAL LINGUISTICS IN A CONSTANT STATE OF TRANSITION

ANNE WAGNER

University of Lille, ULR 4487 - CRDP - Centre de recherche Droits et perspectives du droit, F-59000 Lille, France
valwagnerfr@yahoo.com

ORCID: https://orcid.org/0000-0001-6362-9023

&

ALEKSANDRA MATULEWSKA

Adam Mickiewicz University, Poznań, Poland
aleksmat@amu.edu.pl

ORCID: https://orcid.org/0000-0002-2045-5972

Abstract: Legal linguistics or jurilinguistics as it has been called recently, is a relatively new field of research. The first research into the field started with analysing the content of laws (the epistemic stage). Later on, lawyers started being interested in manners of communicating laws (the heuristic stage). This Special Issue of Comparative Legilinguistics contains two texts devoted to the development of legal linguistics, legal languages and legal translation and two papers on an institutional stratification of legal linguistics. It is a continuation of research published in the same journal (Special Issue no. 45 titled "The Evil Twins and Their Silent Otherness in Law and Legal Translation") providing some insights into the problems of communication in legal settings.

Keywords: legal linguistics; jurilinguistic; legal translation; legal language.

> Il s'agit d'une représentation subjective, dont le contenu sera, au plus haut point, influencé, je dirai même déterminé, par nos conceptions morales (idées de la dignité humaine, du devoir individuel ou social), par nos sentiments intimes (sentiment d'humanité, d'équité, etc.), par notre pénétration rationnelle, plus ou moins profonde, du sens de la vie, du but de la société, de ses exigences et des besoins de l'individu (Gény 1922: 53, tome 1)

Introduction

Law is driven by a variety of influences, it incorporates mechanisms and ways of thinking that are generated by a combination of sociology, philosophy, psychology and history, amongst others. Therefore, setting up an inter-relational process of references proves to be unattainable, and the only way to clarify meaning is through a purposeful (teleological) interpretation, in which the mainstream language is applied consistently within the social and cultural context of the country. This is how the mainstream language of a country has become a skillful and intricate combination of both intrinsic and extrinsic influences, originating from cultural practices, operating in space and time and influenced by a perpetual evolution of its external relations.

> "The meaning of a representation can be nothing but a representation. In fact, it is nothing but the representation itself conceived as stripped of irrelevant clothing. But this clothing never can be completely stripped off, it is only changed for something more diaphanous. So, there is an infinite regression here. Finally, the interpretant is nothing

> but another representation to which the torch of truth is handed along; and as representation, it has its interpretant again." (Fisch 1964: 492).

Hence, Law is the result of a constant creative and innovative transformation of its cultural legacy. It is a "place of imbrication of several languages of manifestation" (Barthes 1953: 56), which are intimately bound to each other. Law is a "historical act of solidarity" (Barthes 1953: 95), which may be ambiguous, causing both "alienation from history and the dream of history" (Barthes 1953: 88). But Law is not defined in terms of references to the outside world, since it is not a neutral medium. For this reason, the principle of immanency (Kevelson 1992: 268), whereby the content is interpreted on the basis of its internal dynamics (Pottier 1991: 110); i.e., its "mirror of society" (Kevelson 1990: 125), deserves attention:

> "Le domaine de l'argumentation est celui du vraisemblable, du plausible, du probable, dans la mesure où ce dernier échappe aux certitudes de calcul." [The domain of argumentation is that of the veritable, the plausible, the probable, insofar as the latter escapes the certainties of calculation.] (Borel et al. 1983: 88).

Accordingly, Law creates alternatives in meaning within a constant state of transition, whereby

> "coordinations implicites et d'ailleurs changeantes de la vie profonde et des conceptions cachées […] constituent le ciment véritable des dispositions légales." [implicit and moreover changing coordinations of inner life and hidden conceptions [...] constitute the real cement of legal provisions.] (Ray 1926: 125).

Hence, the phenomenological approach to Law is crucial, since it is organized in two separate but complementary phases. The first stage consists in exploring its meaning through legal linguistics and Law, relying on the legislative and jurisprudential constructions. The second stage entails investigating the conceptual and interpretative interactions of the law, thereby delineating its architecture as an organized product of internal tensions. Rigor dictates that the system of decoding should not be admitted as being intrinsic to the understanding of meanings and signs. Each one has to see it as a pure instrumentalization of Law for the search of signs to be construed, and so any relevant occurrence of legal provisions, of decision-making, is supported by language interpretation. This spatio-temporal situation

determines the production of a sort of "transaction" between reality and the meanings of words under different circumstances. The outcome mostly emerges as an ambient environment and shift within the society. Consequently, this legal historical occurrence provides legal linguists, lawyer-linguists with the core of their research on the interpretation of legal discourse.

Neither is legal communication neutral nor universal. No speaker is likely to generate a language devoid of any distinctive markers. Messages are products of particular speakers and have their idiolectal features. Sometimes, a model can be constructed starting from a series of common rules, but this does not mean that all the geographical differences can be specified. As Malmberg points out:

> "La langue n'est pas une plante sauvage. C'est une plante cultivée et elle l'a toujours été même dans les sociétés sauvages." [The tongue is not a wild plant. It is a cultivated plant and it has always been so even in wild societies.] (Malmberg in Meschonnic 1997: 141).

Hence, language is the bearer of a hidden dimension (Hall 1971) that requires constant scrutiny. This internalized dimension exposes a complex chain of interactions, linking people to their cultural environment. The result is a linguistic insecurity whenever a cultural notion is to be transferred. This instability is all the more critical in that legal linguists and lawyer-linguists are confronted with diametrically opposed cultural and/or historical dimensions that are in perpetual flux.

In this Special Issue, our contributors have put forward (1) a whole process of socialization of the discourse with particular modes of interactions and (2) an institutional stratification of the legal discourse. Our Special Issue is therefore a multifaceted exploration of legal linguistics. It urges both linguistic and legal analyses. These analyses are inextricably linked, in that they trace legacy of legal linguistics. It also poses issues surrounding the interaction between history, etymology and contemporary legal translation.

Tradition and Modernity facing Legal Linguistics

Translating a legal text involves a significant proficiency in both law and linguistics. Berman believes that:

> "Une forme qui se réfléchit elle-même, thématise sa spécificité et, ainsi, produit sa méthodologie ; une forme qui non seulement produit sa méthodologie, mais cherche à fonder celle-ci sur une théorie explicite de la langue, du texte, et de la traduction." [A form which reflects itself, thematizes its specificity and, thus, produces its methodology; the form that not only produces its methodology, but seeks to base it on an explicit theory of language, text, and translation.] (Berman 1995: 45).

Legal language is seen as the bearer of both a legal legacy and a part of the historical heritage. This twofold aspect is at the core of jurilinguistics, also titled legal linguistics (Galdia 2021) or legilinguistics (Matulewska 2007; 2013). This is demonstrated by an absolute need for a socio-critical analysis, which Toury summarizes so well:

> "Comme toute autre activité comportementale, la traduction est nécessairement sujette à des contraintes de types et de degrés variés. Jouissent d'un statut spécial parmi ces contraintes les normes - ces facteurs intersubjectifs qui sont la « traduction » de valeurs ou d'idées générales partagées par un certain groupe social quant à ce qui est bien et mal, approprié ou inapproprié, en instructions opérationnelles spécifiques qui sont applicables à des situations spécifiques pourvu que ces instructions ne soient pas encore formulées comme des lois." [Like any other behavioral activity, translation is necessarily subject to constraints of various types and degrees. Among these constraints are norms – those intersubjective factors which are the 'translation' of general values or ideas shared by a certain social group as to what is right and wrong, appropriate or inappropriate, into operational instructions that are applicable to specific situations provided that these instructions are not yet formulated as laws.] (Toury in Berman 1995: 51).

The challenge is then to grasp and transfer the concept of the source language into the target language while avoiding dangers of translating tools such as:

> "One of the dangers […] is that they provide the translator with ready-made segments of text in the target language (lifted from earlier documents), making it much easier to stay on the surface of a document. And yet in our hearts we know that what was an adequate translation for the document from which the segment originated is unlikely to be as adequate for the document we have before us now." (Beeth and Fraser 1999: 76)

Inherently, the legal discourse of a country easily associates the tradition of a constantly evolving society with the development of its own legal terminology. Each and every standard formula or concepts is intricately bound to the source language and therefore inadequate for the target language. Consequently, reformulating a source discourse into a target discourse is an unstable phenomenon subject to the vagaries of a pre-determined space-time.

Marcus Galdia in his paper titled "Conceptual Origins of Legal Linguistics" provides a valuable insight into the development of the discipline, starting with its epistemic origins. He turns attention to the fact that at the very beginning the content of law was the focus of scholarly attention. The heuristic shift to the mode of communication followed much later.

> "Following their preliminary methods, the pioneers of legal linguistics such as David Mellinkoff, Gérard Cornu, Edeltraud Bülow, Heikki E.S. Mattila, and Peter M. Tiersma approached the legal language and described its characteristic features. Initially, legal linguists determined the vocabulary of law as the domain of their specific interest." (Galdia 2021).

This new field of research is interdisciplinary and therefore draws upon various methodologies. It operates as an intersection of law, linguistics, legal logic, legal semiotics, and many others. The field has developed into monolingual and multilingual branches. The methodologies of research are complex and interdisciplinary too. The paper focuses on the historical development of the field starting with the very beginnings of the discipline and ending with the modern state-of-the art. Scholars researching into the field should bear in mind that:

> "Legal-linguistic research that initially concerned some selected topics that were deemed as characteristic features of the legal language expanded into an area of knowledge covering today all socially relevant aspects of language use in law. Paradigmatically, the shift from analysing legal vocabulary to discourse analysis enabled the emergence of modern legal linguistics. This modern legal linguistics expanded its domain of research to cover all linguistically relevant operations in law. Therefore, it almost coincides with law and with legal studies. It could be also called a specific theory of law. From the legal-linguistic perspective, legal linguistics features the most relevant theory of law, i.e. the theory of the legal language. It enables description and understanding of law in broadest social contexts. It would be difficult

> to demand more from an area of knowledge." (Galdia 2021).

The paper of Tomáš Duběda titled "Direction-Asymmetric Equivalence in Legal Translation" deals with one of the most important issues in specialized (including legal) translation, that is to say the problem of providing equivalents conveying the maximum amount of meaning. The author claims that:

> "direction-asymmetric equivalence in legal translation, i.e. equivalence that does not obey the "one-to-one" principle, and which usually implies that the translator's decision-making is more difficult in one direction than in the other. This asymmetry may be triggered by intrinsic semantic characteristics of legal terms (synonymy and polysemy), by differences between legal systems (system-specific terms, the procedures used for their translation and their handling in lexicographic sources, competing legal systems, tension between cultural boundedness and neutrality), or by social factors (L1 vs. L2 translation)." (Duběda 2021).

It is impossible to disagree with the author, since the impossibility of achieving 1:1 equivalence in legal translation has long been a concern of researchers and translators. The best that can be hoped for and aimed at in interlingual communication in a legal context is the so-called sufficient degree of equivalence that, in a particular communication situation, satisfies the needs of the senders and receivers of the message and does not lead to negative legal consequences.

An Institutional Stratification of Legal Linguistics

The focal point of our reflection lies in the interconnection of meaning between the sentence construction and its institutionalization, a value carrier that is intrinsic to language. In this second part, we try to shed light on the institutionalization process by a thorough analysis of the specialized phraseology. This step enables us to define the theoretical force of common language. However, demonstrating this identity construction may lead to misinterpretations or subjective interpretations. So, in this Special Issue, the two contributors to this debate (Qing Zhang and Patrizia Giampieri) offer us a highly accurate

analytical perspective. The system under investigation can only be understood if the other components that form the message are analyzed: vocabulary, wording, meaning and deviance of the terms. These four elements form a whole system whose functional value generates a specialized language. Their enunciation articulation is not a mere random play of positioning. Their interconnectedness produces a consistent socialized unit of discourse.

The paper by Qing Zhang titled "A Comparative Study of the Rhetorical Functions and Features of Personal Pronouns in English and Chinese Legal News" focuses on the distribution of personal pronouns in newspaper articles and the function they play in texts devoted to various aspects of law. The author focuses on two types of newspaper texts that have narrative and semi-dialogic features. The author finds out the similarities and differences in the distribution of pronouns in two languages under scrutiny and finds out that:

> "there are three reasons for the uneven distribution: first, the differences between the dialogic style and the narrative style; second, the legal narrative being a story narrative; third, the specific restrictions on the use of legal rhetoric" (Zhang 2021).

The results of the research may be valuable to English-Chinese translators of such texts and to linguists who analyze the characteristics of various legal and semi-legal texts.

Patrizia Giampieri ("An Analysis of the "Right of Termination", "Right of Cancellation" and "Right of Withdrawal" in Off-Premises and Distance Contracts According to EU Directives") analyses three terms listed in the title of her paper. The author focuses on the use of these terms over several decades in the European Union communication contexts. The findings reveal that that the meaning of the terms under scrutiny are frequently blurred and their use inconsistent. The reasons for the inconsistency probably stem from the differences between the legal systems of the European Union Member States. The question arises at the institutional level as to whether it is possible and feasible to achieve any uniformity of usage in EU legal communication while respecting the national identity and heritage of the legal systems of the Member States.

Conclusion

To sum, the present Special Issue focuses on the interdisciplinary nature of legal linguistics and its various sub-fields. It provides some insight into the intricacies of the development of the field, focusing on legal communication and communication in legal settings. Nowadays, scholars more and more frequently research into the modes of efficient communication in legal contexts as the importance of precision and comprehension cannot be ignored, not only in monolingual but also multilingual contexts. The contemporary researchers investigate terminology, collocations and grammar of texts formulated in legal communication processes as all those components play some role in meaning construction. One cannot ignore the influence of semiotic factors which include the origins of legal languages, history of a given nation, geographical location of a country. Legal communication process is also significantly affected by mentality of people communicating law, thus finds reflection in sociology, philosophy, psychology and even theology. Legal language is one of the most powerful tools of communication as legislators and other law-makers are the most omnipotent language users. The norms set by them shape lives of individuals and societies. Badly formulated laws may be uncomprehensive and hard to follow. Well written laws will be more widely observed and accepted. Therefore, research into general and comparative legal linguistics has an important role to play in modern societies as it may contribute significantly to observing principles of democracy and equality of all citizens before the law.

References

Barthes, Roland. 1953. *Le degré zéro de l'écriture*. Paris: Seuil.

Beeth, Harvey, Fraser, Brook. 1999. The hidden life of translators. The Quest for the Roots of Quality. *Translation and Terminology 2*: 76-96.

Berman, Antoine. 1995. *Pour une critique des traductions*. Paris: Gallimard.

Borel, Marie-Jeanne, Miéville, Denis, Grize, Jean Blaise, Kohler-

Chesny, J., Ebel, Marianne. 1983. *Essai de logique naturelle*. London: Peter Lang.

Duběda, Tomáš. 2021. Direction-Asymmetric Equivalence in Legal Translation. *Comparative Legilinguistics* 47/2021. DOI: http://dx.doi.org/10.2478/cl-2021-0012.

Fisch, Max H. 1964. Was there a Metaphysical Club in Cambridge? In *Studies in the Philosophy of Charles Sanders Peirce*. eds. Edward C. Moore and Richard S. Robin. 3-32. Amherst: University of Massachusetts Press.

Galdia, Marcus. 2021. Conceptual Origins of Legal Linguistics. *Comparative Legilinguistics* 47/2021. DOI: http://dx.doi.org/10.2478/cl-2021-0011.

Gény, François. 1922. *Science et Technique en Droit Privé Positif. Tome 1*. Paris: Librairie de la Société du Recueil Sirey.

Giampieri, Patrizia. 2021. An Analysis of the "Right of Termination", "Right of Cancellation" and "Right of Withdrawal" in Off-Premises and Distance Contracts According to EU Directives. *Comparative Legilinguistics* 47/2021. DOI: http://dx.doi.org/10.2478/cl-2021-0014.

Hall, Edward T. 1971. *La dimension cachée*. Paris: Éditions du Seuil.

Kevelson, Roberta. 1990. *Peirce and Law*. Semiotics and the Human Sciences, Volume 1. New York: Peter Lang.

Kevelson, Roberta. 1992. *Law and the Human Science: Fifth Round Table on Law and Semiotics*. Semiotics and the Human Sciences, Volume 3. New York: Peter Lang.

Matulewska, Aleksandra. 2007. *Lingua Legis in Translation*. Frankfurt am Main: Peter Lang.

Matulewska, Aleksandra. 2013. *Legilinguistic Translatology. A Parametric Approach to Legal Translation*. Frankfurt am Main: Peter Lang.

Meschonnic, Henri. 1997. *De la langue française*. Paris: Hachette.

Ray, Jean. 1926. *Essai sur la structure logique du Code civil français*. Paris: F. Alcan.

Zhang, Qing. 2021. A Comparative Study of the Rhetorical Functions and Features of Personal Pronouns in English and Chinese Legal News. *Comparative Legilinguistics* 47/2021. DOI: http://dx.doi.org/10.2478/cl-2021-0013.

Comparative Legilinguistics
vol. 47/2021
DOI: http://dx.doi.org/10.2478/cl-2021-0011

CONCEPTUAL ORIGINS OF LEGAL LINGUISTICS

MARCUS GALDIA
Dr. phil., Dr. iur., Associate Professor of Law

International University of Monaco
14, rue Hubert Clérissi
MC 98000 Monaco
mgaldia@monaco.edu

ORCID: https://orcid.org/0000-0003-0490-5213

Abstract: This essay is a survey of methods applied and topics scrutinized in legal-linguistic studies. It starts with the elucidation of the epistemic interest that led to the emergence and to the subsequent expansion of the mainstream legal-linguistic knowledge that we dispose of today. Thus, the essay focuses upon the development of problem awareness in the emerging legal-linguistic studies as well as upon the results of research that might be perceived as the state of the art in the mainstream legal linguistics. Meanwhile, some methodologically innovative tilts and twists that enrich and inspire contemporary legal linguistics are considered as well. Essentially, this essay traces the conceptual landscape in which the paradigms of legal-linguistic studies came about. This conceptual landscape extends from the research into the isolated words of law and the style used by jurists to the scrutiny of legal

texts and legal discourses in all their socio-linguistic complexity. Within this broad frame of reference, many achievements in legal-linguistic studies are mentioned in order to sketch the consequences of processes in which legal-linguistic paradigms take shape. The author concludes upon a vision of legal linguistics called pragmatic legal linguistics as the newest stage in the intellectual enterprise that aims to pierce the language of the law and by so doing to understand law better.

Keywords: inquiries into the language of law; legal linguistics and its method; legal-linguistic topics; mainstream legal linguistics; future legal linguistics.

Introduction

The scrutiny of legal language in scholarly contexts begins with the upcoming of the epistemic interest in legal-linguistic matters. This interest could not have been satisfied in the existing areas of knowledge, and most prominently not in the legal doctrine, which focused upon the content of legal regulation and not upon the way in which this regulation was communicated. Therefore, a heuristic leap became necessary in order to create an area of knowledge in its own right in order to answer the questions that emerged when interested linguists and other social scientists approached the language of law. As so often, this new area of knowledge that is called here *legal linguistics* did not emerge all at once. It passed stages, often perceived as final yet finally proven temporary, such as the interdisciplinary *law and language studies* to reach higher and to reach wider. In order to accomplish the task to create a new area of knowledge the legal linguists needed a method. However, this method could not be purely linguistic, nor could it be purely legal as our experience teaches us that these methods do not allow to answer the most pertinent legal-linguistic questions. Hence, legal linguists needed to reach beyond the methodological fields of linguistics and of legal studies to formulate a set of methodological presuppositions that could be called *legal-linguistic*. Thus, preliminary methods were hammered out from the amalgam of different areas of knowledge and from methodological approaches that allowed the legal-linguistic research to continue in a more systematic way.

Following their preliminary methods, the pioneers of legal linguistics such as David Mellinkoff, Gérard Cornu, Edeltraud Bülow,

Heikki E.S. Mattila, and Peter M. Tiersma approached the legal language and described its characteristic features. Initially, legal linguists determined the vocabulary of law as the domain of their specific interest. Soon, however, they had to adjust their narrow concept of legal language to the results of their studies. They had to broaden their approach to legal language and cover more than the vocabulary of law that many of them determined rather strictly. This meant that a move became necessary from vocabulary that was exclusively legal, for instance *promissory estoppel*, to the words of law in broader contexts, such as *accident* that appear in legal settings, yet not exclusively. Furthermore, the initial interest in the legal style led them to consider wider linguistic units that transgress the limits of isolated vocabulary, and that consist of lexemes and syntagmas that constitute legal terms. Legal linguists discovered that legal terminology, which stroke them first, functions within broader linguistic structures and that it is better understood within them than in isolation. These broader linguistic structures were texts, written and oral. Yet legal texts proved multifaceted so that their further classification into *legal text types* became necessary to explain how the legal language works. It became also apparent that not the legal terminology, but the legal text type constitutes the main problem in the understanding of legal texts. Nowadays, in the epoch marked by the internet an unknown word in a legal text can be relatively easily elucidated by the speaker, yet textual structures in which law is expressed are more challenging because law manifests itself in systematically interrelated textual units, such as provisions in a legal code. Interrelations of textual structures are not visible in texts and therefore cause problems in their understanding. No easily available factual knowledge on the screen of a smartphone enables us to explain such structurally complex textuality of law. This discovery concerns both professionals of law and lay persons because both are able to cope with unknown words, yet they are much less expert in handling complex textual structures. What is more, legal texts are not static and preformulated. They emerge in *legal discourses* that shape legal texts, both oral and written. The understanding of processes in which law is formed and applied linguistically equals the understanding of law in legal linguistics. This, in short, is the first stage of the formation of legal-linguistic knowledge available today. In the following, I will expand the issues sketched above, then critically address some of the classical legal-linguistic findings and their deficits. I will also mention certain promising developments in contemporary

legal-linguistic research and sketch a specific area in legal-linguistic studies that integrates and broadens the discussed topics and that I call *pragmatic legal linguistics*. Meanwhile, I will not discuss the conception and the achievements of pragmatic legal linguistics in this essay, mainly due to space concerns. I will come back to it in another publication.

As far as the structure of my essay is concerned I would like to mention what follows: In footnotes to the main text, the reader will find examples of legal-linguistic reasoning and small case studies that make clearer how the legal linguist works. Throughout the text, new terms will be italicized whenever they appear for the first time. Occasionally, summaries of the state of the art concerning the specific topic in question will appear in footnotes as well. Additionally, surveys of scholarly writings that render most important research concerning the discussed topic will be treated in the footnotes to the main text. The footnotes do no aspire to exhaust the topic addressed in them, yet they enable at least the first orientation in the legal-linguistic debate about it. Finally, there is reason to mention that the author while trying to state the results of the mainstream legal-linguistic research needed to take a distance from his own point of view upon certain legal-linguistic matters. Indeed, the author does not belong, nor is he perceived in legal-linguistic writings as belonging to the mainstream legal linguistics. He represents an alternative approach to mainstream currents that might be called *pragmatic legal linguistics*, which in his works uncompromisingly appears as critical legal discourse.

Now, it is time to start discussing in more detail what was sketched in the above outline of legal-linguistic developments and focus upon the stages in which contemporary legal linguistics was formed. I propose to start with a chronologically structured overview that is based on my participation in legal-linguistic studies, first as a university student and then as a researcher, during the past forty years. Looking back, I am grateful for the unique opportunity that I had to witness some of the developments that I now describe in proximity to many eminent legal linguists.

Emergence of interest in legal-linguistic subject matters

The emergence of the area of scholarly studies called legal linguistics in the twentieth century was caused by the increased interest of linguists and legal theoreticians in the role that language plays in law.[1] Jurists,

[1] The most striking legal-linguistic issue that attracted the attention of researchers and caused the emergence of legal linguistics was semantic in nature. It concerns primarily the application of law that is perceived not only by legal linguists as the central issue in legal science and in legal linguistics. For some scholars, law appeared as a matter of words, for others as a matter of a specific style of reasoning expressed in a language build up around conceptual structures. This type of semantic interest in legal-linguistic matters is valid even today, although its consequences reach nowadays further than in the past when it was originally apprehended. Therefore, one can explain it with the help of a contemporary case. Regularly, the legal linguist will be captivated by the wording of a statute in relation to its application in a case. A typical interpretive dilemma may illustrate this problem: Police units in the U.S. frequently involve dogs when arresting suspects. What follows from the legal regulation when a police dog bites a suspect? In South Carolina, there is statutory law concerning liability for dog bites. According to the South Carolina State Statute 47-3-110, "whenever any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked." Does this provision concern our case? The arrested suspect who was bitten by a police dog would probably say yes and refer to the wording of the statutory provision. At least, he could claim, nothing in the provision's wording contradicts the assumption that police dogs are concerned by it as whatever other dogs. The police would probably say no and explain that the statutory provision does not concern police dogs acting in the line of duty. Best linguists will not be able to answer the question whether the provision concerns police dogs. The reason for this intricacy is that we do not have to do in this case with a linguistic, but with a legal-linguistic question. Judges are better qualified to answer such questions than linguists. Yet they will not be able to provide an unequivocal and generally accepted answer to our question either. Therefore, legal linguists analyse the knowledge that judges have about law and the linguistic form of expression of the knowledge that judges apply in their judgments. They are interested in the way how judges determine the meaning of such provisions and authoritatively answer questions such as the one asked in this case. Meanwhile, the task of legal linguists is not to solve the semantic question for the judge but to research meaning alternatives in legal texts and to use the results of their inquiries in order to construct the theory of the legal language. In the context of our case, legal linguists will also take into consideration that the South Carolina legislator perceived the provision in question as ambiguous. Since 2013, an amendment makes an exception for certified, on duty police dogs responding to lawful commands or otherwise acting in accordance with their training. According to the new provision, both dog and handler must follow policy and may not use excessive force. Otherwise, the police will be liable for dog bites. Furthermore, legal, and not legal-linguistic, are for instance questions such as whether

at least good jurists, were since antiquity aware of the particular role of language in law, yet they approached language intuitively or at best with the means of philosophical analysis that was impressive yet usually much too general to capture the specific features of the legal language. Historically, the main area of interest of jurists was the question of what the legal regulation says, for instance that regular speed on roads in towns is limited to fifty kilometers per hour. Questions of this sort dominate the view of many jurists upon law even today. Doubtless, jurists dealt also with communicative aspects of law, yet largely on the margin of their studies. The reason for this discrepancy seems to be that the legal science lacked a suitable method to approach law in its linguistic dress. General linguistics of the last century, starting with structuralism, generative transformational grammar, neo- and poststructuralism, and later also general semiotics, linguistic pragmatics, discourse theory, and cognitive linguistics provided more appropriate linguistic research matrices to approach the specific object of studies that was called legal language in a theoretically better founded way. Applied linguistics, with its experience in terminological research, translation, and glottodidactics contributed additional theoretical knowledge that channeled legal-linguistic interests into a form of expression that enabled the incorporation of the legal-linguistic research into broader contexts of social sciences. This channeling of intuitive and spontaneous interest of jurists and social scientists in the language of law gave rise to the abundant legal-linguistic research available today. This research has a two-fold structure that makes the form of expression in legal linguistics better understandable. Particularly, some legal linguists perceived legal linguistics as a complementary area of knowledge to the existing legal theory and to the legal doctrine that dominates the study of law. Other legal linguists reflected upon the emergence of the interest in legal-linguistic subject matters more critically and stressed the deficits of the traditional legal doctrine and the overly broad and undetermined approach to legal language in the mainstream legal theory as driving

claims for compensation in cases such as ours are usually decided by judges or whether they are practically settled out of court as well as the amount of damages paid to victims of police dog bites. The newspaper *Greenville News* reported in 2013 that out of court settlements between the South Carolina police and victims of police dog bites may amount to three hundred thousand dollars in a case. This may be an interesting piece of news for a lawyer, but it is not an information apt to attract the attention of a legal linguist.

forces behind the efforts to come to terms with the legal language. Indeed, traditional legal studies proved largely deficient in this respect as they mainly exposed the linguistic character of law, both in teaching and in research, yet were not able to interpret convincingly the issues that they discovered. In fact, law is a linguistic phenomenon because it manifests itself linguistically and in no other way. It does not make much sense to research it as something else. Meanwhile, jurists who researched law, i.e. its language, as they could not research anything else, approached the language of law using all but linguistic methods. Their methods were mainly limited to positivist doctrinal studies that reach down to the Middle Ages. It cannot surprise that such largely implicit methodology could not satisfy legal-linguistic ambitions. At this point, legal linguists emerged in their quality of scholars who were able to identify, to address, and to clarify issues discovered in doctrinal and general legal-theoretical studies. Legal linguistics was beginning to take shape. Meanwhile, already at the very inception of the legal-linguistic research activities two types of interest in legal-linguistic matters became distinctive in different sorts of legal-linguistic studies that today represents either *affirmative* or *critical positions* in the research into the legal discourse. Therefore, paradigmatically, all research into the legal language can be divided along ideological lines as either affirmative or critical of law and its institutions. Finally, in terms of heuristics, it is necessary to stress that legal linguistics due to specific conditions in which the interest in the legal-linguistic matters emerged was not a mechanical application of linguistic knowledge upon law but an attempt to create a new area of knowledge that would clarify problems discovered by inquisitive jurists and linguists. Not only in this sense, yet also in this sense, it became a truly fascinating area of intellectual exploration.

Expansion of problem awareness in legal-linguistic studies

The upcoming of the interest in legal-linguistic matters led the researchers to dealings with topics that they identified as central and therefore worthwhile accurate scrutiny. It seems that the particular *vocabulary of jurists*, perceived by some as cryptic, was the starting

point for many to deal with the language of law.[2] For others, the *legal style* was decisive for the determination of the nature of the legal language that began to emerge from the growing number of publications on both named topics since the second half of the nineteenth century, mostly in Europe.[3] Both topics corresponded to interests in issues that might have been termed linguistic in the legal positivism of the nineteenth century. Legal positivists were particularly interested in a better, which meant for them a more precise wording of statutes because they hoped that linguistically precise formulations might solve the problem of the application of law. Since antiquity, the task of the application of abstractly stated law to a case that the judge was expected to decide was perceived as cumbersome. Therefore, nineteenth century's legal positivists hoped that when the legal language, which for them consisted of legal concepts would become unequivocal, all problems of law would be solved or at least simplified. Today, we know that all these hopes were vain as language cannot be artificially predetermined and semantically frozen. Even the most precise legal concepts will always remain undetermined in a certain sense. The discussion about the *legal style* was conducted with the same positivist idea in mind. It was assumed in it that the more precise the ways of expression of law in statutes and court opinions would be, the higher would also be the degree of legal certainty in legal decisions. At this time, jurists started to write about the legal language. This type of writings, however, is not perceived by me as belonging to legal

[2] The classic of the French legal linguistics, Gérard Cornu (2005: 13; 62-65), determined the vocabulary of law as primarily consisting of terms exclusively used in law such as *antichrèse*, *nantissement*, *synallagmatique*, and *irréfragable*. Meanwhile, he had to revise and to broaden his appealing theoretical conception as he soon realized its epistemic limits. Today, the vocabulary of law may comprise whatever lexical unit that becomes relevant in a legal context, for instance *mother-in-law*, *water*, and *accident*. In contemporary legal linguistics, the language of law can be defined only functionally and contextually.

[3] Legal style, defined in early studies rather arbitrarily, interested predominantly jurists who wrote about law. Cf. Louis de Geer. 1985 (1853). *Om den juridiska stilen*, Stockholm: Rediviva; Birger Wedberg. 1928. *Lagstil. Några citat och reflektioner*. Stockholm: Norsted; Hans Dölle. 1949. *Vom Stil der Rechtssprache.* Tübingen: Mohr Verlag; Pierre Mimin. 1970. *Le style des jugements*. 4th ed. Paris: Librairies Techniques; François-Michel Schroeder. 1978. *Le nouveau style judiciaire*. Paris: Dalloz; Henry Weihofen. 1980. *Legal Writing Style*. 2nd ed. St. Paul: West Publishing Co. In terms of the legal-linguistic method, it might be perceived as controversial whether these publications belong to legal linguistics. Contemporary approaches to legal style are methodically more precise (cf. Mattila 2018: 113).

linguistics as it lacks any theoretical anchorage in linguistic methods and displays spontaneous and speculative linguistic thought. These writings are however an object of legal-linguistic studies as researchers might discover in them numerous points of anchorage that shaped the processes in which many central legal-linguistic inquiries emerged.[4] Last but not least, the intensification of research into *legal translation* and the practical needs to know this area better led legal linguists to another central traditional legal-linguistic topic. It was discovered or rather made explicit that legal translation is specific in the sense that legal languages that function communicatively in legal systems may prove conceptually incongruent when compared for translation purposes.[5] More generally, it was claimed in the more recent part of the discussion about the legal translation that the legal language did not know any uniform system of conceptual reference.[6] Therefore, the idea came up that legal translation was an impossible undertaking, at least theoretically (cf. Galdia 2017: 270-277). Meanwhile, the very existence of many usefully translated legal texts and the possibility to correct existing legal translations suggested rather the contrary theoretical option. Indeed, the *skopos-theory* developed in general translation studies proved instrumental in solving the most fundamental problem

[4] I may mention for instance: Martin Grunau. 1961. *Spiegel der Rechtssprache*. Flensburg: Verlag Kurt Gross; Fritz Schönherr. 1985. *Sprache und Recht*. *Aufsätze und Vorträge*. Wien: Manz'sche Verlags- und Universitätsbuchhandlung; Bernhard Großfeld. 1990. *Unsere Sprache*: *Die Sicht des Juristen*. Opladen: Westdeutscher Verlag. Furthermore, Bernhard Großfeld's "Sprache und Schrift als Grundlage unseres Rechts", in *Juristenzeitung* 1997/633, and his numerous other writings that emerged beyond the paradigm of linguistics became influential among jurists and marked the upcoming of the interest in legal-linguistic matters also among legal scholars dealing predominantly with doctrinal issues. Additionally, in Großfeld's writings the link to comparative law appears in a way that became later paradigmatic within comparative legal-linguistic studies. In the contemporary discussion, these issues were expanded and cover the relations between legal cultures and legal languages (cf. Husa 2015; 2020).

[5] In the way of example, for the common law term *promissory estoppel* there is no direct equivalent term in the legal languages of the civil law. In the translation of a text including this term the legal translator will have to create a new term that should best represent the original term in the target language. In the language of chemistry, such problems do not exist. Every chemical term, for instance *carbon monoxide* can be unequivocally rendered in whatever other language that disposes of chemical terminology, for instance in Chinese as 一氧化碳 (*yī yǎng huà tàn*).

[6] Using semiotic terminology, Louis Beaudoin spoke about the "absence of universal operational referents" in legal translation, cf. his Legal Translation in Canada, in *The Development of Legal Language*, ed. H.E.S. Mattila, 2002, 115-130. Helsinki: Kauppakaari.

of legal translation. It maintained that the total equivalence of the source and the target language in translation cannot be expected. Meanwhile, when the specific task facing the translator was duly determined than translation became possible, and even satisfactory. Thus, the original fundamental problem of legal translation was solved, and the theoretical objection demystified as a misunderstanding. In fact, certain theoreticians of legal translation all too often adopted a concept of equivalence that did not suit natural languages. They confused mathematical sameness (a sort of logical identity) with communicational equivalence that functions in the languages that we speak daily as well as in the legal language. Hence, the way to build up a *theory of legal translation* was laid bare through this clarification and legal translation developed into a particular area in legal linguistics that dominates the work of many legal linguists.[7] This theory characterized the nature of legal translation and developed additional topics that are discussed today, such as quality assurance and the use of translation tools.[8] This state of affairs is encouraging because legal linguistics proves in its abundant legal-translatorial research its relevance to society. On the other hand, by stressing or over-stressing the legal-translatorial component, legal linguistics might divert attention from many other, no less relevant legal-linguistic topics and problems. It is therefore necessary to maintain that legal linguistics cannot be reduced to issues of legal translation, which, in turn, should not be neglected in it either.

As a result of these developments, around the first half of the twentieth century many legal linguists had the impression that they identified the most pertinent areas of legal-linguistic scrutiny, i.e. the legal terminology and the legal style as constitutive of the legal language, and the problem of terminological equivalence in legal translation. Parts of the contemporary legal-linguistic research still displays the anchorage in this sort of problem awareness, sometimes however on a different, and higher level of abstraction. Meanwhile, the

[7] Theoretical aspects of legal translation, and especially efforts to structure the translation act were conceptualized in Aleksandra Matulewska's parametric theory of legal translation (cf. Matulewska 2013). They were further expanded in the conception of the general legilinguistic translatology (cf. Kozanecka et al. 2017).

[8] Cf. Fernando Prieto Ramos. 2015. Quality Assurance in Legal Translation: Evaluating Process, Competence and Product in the Pursuit of Adequacy, *International Journal for the Semiotics of Law* vol. 28 (1), 11-30; Marcus Galdia. 2013. Strategies and Tools for Legal Translation, *Comparative Legilinguistics* vol. 16, 13-29.

initial interest in the scrutiny of isolated legal terms that corresponded to legal concepts researched by jurists proved disappointing as the linguistic knowledge of the characteristic features of language contradicted the hopes of legal positivists. Additionally, the interest in the legal style appeared disenchanting as traditional methods of the analysis of style did not bring any results that could support the thesis of the particularity of legal language. Therefore, broader conceptualizations of topics, i.e. the expansion of the epistemic interest in the legal language from style to text had to follow suit. However, also issues concerning the structure, the scope and the aims of legal linguistics became an issue for scholarly debates. Let us now have a look at these problems that are closely related to material issues discussed above. As a matter of fact, both topics concern problems of the legal-linguistic method.

Legal linguistics is not alone

Although sometimes underestimated, the non-doctrinal interest in the language of law led more or less simultaneously to the emergence of different, not only strictly legal-linguistic approaches aiming at elucidating the language of law. Next to legal linguistics, *law and language studies* and *forensic linguistics* emerged in different epistemological and paradigmatic contexts (cf. Gibbons 2003; Salmi-Tolonen 2008). Law and language studies that are an Anglo-American specialty aimed to establish a dialogue between jurists and linguists on issues of their common interest.[9] Originally, in these studies jurists and linguists were expected to discuss issues of common interest from the

[9] Interdisciplinary law and language studies, sometimes transformed in the respective publications into 'language and law' or 'language in law' studies can be approached in: Frederick Schauer, (ed.). 1993. *Law and Language*. Aldershot/Hong Kong: Dartmouth; Peter M. Tiersma, Lawrence M. Solan (eds.). 2012. *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press; and Ekkehard Felder, Friedemann Vogel (eds.). 2017. *Handbuch Sprache im Recht*. Berlin: Walter de Gruyter. In times of expanding systematic legal-linguistic studies, traditional law and language or language and law studies are apparently losing their impact as they cannot transgress their self-imposed methodological limitations. They may be useful in rendering the state of the art in a subsegment of legal-linguistic inquiries, yet they are methodically regressive as far as the conception of the project of legal linguistics is concerned.

position of their respective methodical approaches to the discussed subject matter. Today, law and language studies are also practiced by specialists who regularly deal with issues discussed in legal linguistics. Forensic linguistics emerged as a practical area where linguists were assisting judicial institutions and the police in solving problems of these institutions while using their professional knowledge. Particularly important in it became speaker and author identification. In analogy with the law and language studies, many forensic linguists deal today also with topics created in legal linguistics, yet they maintain their interest in the practical application of linguistic knowledge in cooperation with juridical institutions. Legal linguists do not shy away from contacts with authorities and they also provide assistance to them, yet this type of assistance is not their primary concern. In fact, not every inquiry into the legal language belongs to legal linguistics. This does not mean that approaches to the legal language developed within other than legal-linguistic paradigms would be irrelevant. They are rather complementary as they show the multitude of perspectives and topics that the legal doctrine as the main representative of the legal science was inclined to deny or to neglect.

The naming issue

As was shown above, legal linguistics is not isolated among the areas of knowledge interested in the scrutiny of legal language. This is a positive trait in the development of research activities because generally, when seen from the perspective of legal linguistics, whatever sort of interest in legal language is valuable. Yet, as this interest manifests itself in different colors, it becomes urgent to deal with the issue what legal linguistics is and what it is not. The beginning of any research activity in different parts of the world and by disconnected researchers or groups of researchers may cause terminological differences that may be methodically relevant or largely negligible. This is also the case in the research into the language of law. This question concerns in legal-linguistic studies the so-called *naming issue*. The issue as such is not solved today. We can assume that the term *legal linguistics* emerged in Continental Europe. Its first users were Continental Europeans who also used the English language in their

writings. The original term was particularly productively used in France as *linguistic juridique* and in Germany as *Rechtslinguistik*, which was defined in the legal-linguistic lectures by Edeltraud Bülow. In numerous European countries, the term was used in literal translations as *правовая лингвистика* in Russian and *νομική γλωσσολογία* in Greek. In China, the term *falü yuyanxue* (法律語言學/法律语言学) is used (cf. Galdia 2017: 72-73). In Poland, next to general legal-linguistic studies called *juryslingwistyka*, the Poznań school of *legilinguistics* emerged as a specific current of general legal-linguistic studies. As of today, it parametrized the legal translation, it clarified the deontic modality in the legal language, and the general communicative aspects of law as well as its specifics stated in the plain language attempts. Scandinavian countries, following Heikki E.S. Mattila's Finnish term *oikeuslingvistiikka* coined equivalents such as the Swedish *rättslingvistik*. In his English language treatises, Mattila started to call his multilingual studies of the legal language *comparative legal linguistics*. In the English-speaking world, the term legal linguistics is also used, although law and language studies remain popular there, especially among researchers who deal only occasionally with legal-linguistic issues. It also remains in use for administrative purposes, for instance in university libraries, where European legal-linguistic research is classified as law and language studies. Yet, legal linguistics is not a matter of scattered words but a discipline that researches legal language methodically. Therefore, decisive for the naming of such activities is the methodological choice exercised by the researcher and not artistic concept creation. I assume that in the future course of the development of the discipline also its name will be terminologically consolidated. Meanwhile, the most important thing is that the research object and the method applied in its scrutiny would be clearly expressed in its name, whatever the final choice will be. Meanwhile, due to the approximation of positions in legal linguistics, law and language studies and forensic linguistics also their merger could be discussed. [10] The new consolidated discipline would be better visible among existing areas of knowledge and would become stronger in terms of its possible impact upon governmental institutions and upon society at large.

[10] Such tendency could be seen, for instance, in the publication by Friedemann Vogel (ed.). 2019. *Legal Linguistics Beyond Borders*: *Language and Law in a World of Media*, *Globalisation and Social Conflict*. Berlin: Duncker & Humblot. Cf. also Marijana Javornik-Čubrić. 2018. Što je pravna lingvistika, *Lingua Montenegrina* vol. 22, 31-37.

Retrospective upon the origins of legal-linguistic reflection

Methodological choices exercised by researchers are best understood towards the background of conceptualization efforts around the language of law. History of reflection about the role of the language in law is different from the history of the scholarly discipline called *legal linguistics*. Direct reference concerning the language of law can be made to ancient Greek orators such as Corax of Syracuse as well as to the writings of the ancient Roman jurists. What is more, Confucian writings include in 論語 *Lun Yu* (ch. XIII, 3) the doctrine of the rectification of names, (正名 *zheng ming*), which is fundamental to the Chinese reflection upon language, also in legal contexts. Later, in the Middle Ages, Thomas of Aquino shaped the medieval ideology of law for the Occidental world. It is also important to stress that judges, notably common law judges, in their legal opinions expressed thoughts that imply contemporary, much more explicit and theoretically better-founded legal-linguistic concepts. Generally, therefore, wherever in antiquity and in the Middle Ages dialectic and rhetoric issues were mentioned in contexts of the shaping or of the application of law, one may perceive such writings as belonging to the history of the legal-linguistic thought, although in different degree of immediate influence and relevance. Meanwhile, Aristotle's *Ῥητορική* (*Rhetoric*) can be called the bible of the legal linguist as it marks the beginning of the theoretical inquiry into the legal language and it also anticipates many legal-linguistic topics.

Dealing with legal-linguistic roots documented in scholarly writings is difficult because frequently the work in question does not concern primarily the legal language. For instance, the Latin treatise called *Rhetorica ad C. Herennium*, written some 80 years BOE, deals with general issues of classical rhetoric. Yet it also mentions, although marginally, issues of utmost importance for legal-linguistic studies. This situation continues until our own day. Important legal-linguistic knowledge is often mentioned on the margin of studies that deal with the legal doctrine and with general legal theory by scholars who do not call themselves legal linguists. Therefore, legal linguists have to distill legal-linguistic knowledge from these works that are only implicitly legal-linguistic. Yet these works should not be neglected because they provide valuable observations and illustrative samples of the legal

language. Therefore, when seen in the historical perspective, the intellectual frame of reference of legal linguists appears uneven, because their anchorage in linguistics and in legal studies differs considerably.[11] Meanwhile, it is possible to reconstruct a set of theoretical postulates that have their roots in some classics of legal theory, legal semiotics, and general linguistics. These postulates are fundamental to the development of a fully-fledged legal linguistics of the future. Next to these classical fundamentals, contemporary theoretical claims inspire or at least should inspire new generations of legal linguists.

Legal linguistics and legal semiotics

Studies that call themselves legal-linguistic appeared at the time of the emergence of *legal semiotics* (cf. Jackson 1985). It is therefore justified to ask in which relation legal semiotics and legal linguistics stand to each other. The answer to this question largely depends upon the view

[11] Classics of legal theory and of related areas of knowledge shaped the conception of contemporary legal linguistics in multiple ways. Certain classical works are mandatory reading for every legal linguist because they make clear the process in which legal linguistics actually emerged. They are however written mainly by scholars who did not perceive themselves as legal linguists. One may bear in mind particularly: François Gény. 1921. *Science et technique en droit privé positif*, vol. 3, Paris: Sirey (in this book the French term *linguistique juridique* was used for the first time in the history of this discipline); Georg Henrik von Wright. 1951. Deontic Logics, *Mind* vol. 60, 1-15; R.M. Hare. 1952. *The Language of Morals*. Oxford: Clarendon Press; Chaim Perelman, Lucie Olbrechts-Tyteca. 1958. *Traité de l'argumentation – La nouvelle rhétorique.* Paris: Presses Universitaires de France; H.L.A. Hart. 1961. *The Concept of Law*. Oxford: Clarendon Press; Alf Ross. 1966. *Om ret og retfærdighed. En indførelse i den analytiske retsfilosofi*. København: Nyt Nordisk Forlag K. Busck; Ronald Dworkin. 1991. *Law's Empire*. London: Fontana Press; Robert Alexy. 1983. *Theorie der juristischen Argumentation.* Frankfurt a.M.: Suhrkamp; Aulis Aarnio. 1987. *The Rational as Reasonable*: *A Treatise on Legal Argumentation*. Dordrecht: Reidel; Nelson Goodman. 1978. *Ways of Worldmaking*. Indianapolis: Hackett Publ.; John Langshaw Austin. 1962. *How to Do Things with Words?* Oxford: Oxford University Press; Jürgen Habermas. 1981. *Theorie des kommunikativen Handelns*, vol. 1 and 2, Frankfurt a.M.: Suhrkamp. Also, contemporary general legal theory is a source and a benchmark for legal-linguistic studies. It inspires legal-linguistic research that is material (i.e. based on actual analyses of the language in legal contexts) and it evaluates the legal-linguistic research towards its own, non-material, theoretical conceptions of the legal language (cf. Lizisowa 2016: 17, 20; Marmor 2014; Andruszkiewicz 2016).

of the role that legal semiotics plays in general legal studies. Some researchers perceive the legal-semiotic domain as limited to non-verbal communication, for others it concerns explicitly the fundamentals of all communication, and especially verbal communication. Due to the specifics of law, non-verbal communication is limited in it.[12] Unlike our daily communication, which may be efficient also non-verbally or where substitution of verbal communication is possible by non-verbal action, legal communication is primarily verbal communication. For instance, the French Civil Code is unimaginable in whatever other form of communication that is not a statement in words. One could therefore also assume that there is nothing to show in law. Meanwhile, law as a social phenomenon manifests itself also visually. From gestures of actors in a trial, giggling among the public during court proceedings, judges' robes or their lack, to the architecture of court buildings and custody places, law as a social phenomenon is also constituted by non-verbal elements such as those named. While there is no evidence that the visual aspects of law influence the decisions made by judges,[13] these elements make clear how law is construed by its authors and those exposed to it. We may furthermore assume that visual aspects of law influence at least non-professionals of law and may be used to intimidate and to discipline citizens, while no corresponding prove is there regarding professionals of law, especially public prosecutors and judges. Another important area of legal-semiotic inquiry in legal linguistics are issues concerning the evaluation of facts in the light of

[12] A specific case constitutes the *mute law* (*diritto muto*, a term coined by Giuseppe Benedetti. 1999. Diritto e linguaggio. Variazioni sul 'diritto muto', *Europa e diritto privato* vol. 1, 137-152). In postmodern societies, the use of language, especially in contracting, can be limited to signing preformulated contract terms or buying tickets from a machine without any possibility to negotiate verbally. The mute law is a challenge to legal linguists who primarily focus upon verbal communication.

[13] Attorneys-at-law regularly try to influence juries and judges emotionally by exposing victims of crimes and torts in all their despair and desolation (cf. Hollaris v. Jankowski, 315 Ill. App. 154, 42 N.E. 20859. In this case, the representatives of the plaintiff obliged him to testify in the trial and to stand on one leg, as the plaintiff – a small boy - lost his other leg in a car accident. The judge deciding the appeal in this classical case noticed this move and reacted to it through hardening at least the wording of his decision, if not the decision itself.).

law.[14] Meanwhile, in my view, the most important area of intersection between legal semiotics and legal linguistics is the one concerning the structure of legal signs in the perspective of meaning emergence in law. Legal semiotics that is based on general semiotics researches the signs of law. General semiotics covers all sign systems, verbal and non-verbal alike. Its main task is to explain how social communicative systems produce signs that enable orientation in society. It proceeds in analogy with the identification of signs in nature. Meanwhile, legal semiotics is

[14] A Swedish court, Uddevalla tingsrätt, had to decide a criminal case in which a 23-year old man was accused to have murdered his 17-year old girlfriend (cf. judgment B 3289-19 of 27 July 2020). The accused denied the crime altogether and refused to provide any explanations concerning the incriminated facts. The facts of this criminal case are not suitable for tender souls: The girlfriend of the accused was reported missing. Therefore, police officers also searched the apartment in which the accused and his girlfriend lived. They found the severed head of the girl concealed in the apartment and some traces of blood on the floor. Subsequently, the man was arrested and accused of murder and of desecration of a corpse. He was convicted on both accounts by the unanimous court. His conviction as such is not controversial as the severed head of the victim found in his apartment provided convincing evidence that he was the murderer notwithstanding his denial. Criminologists estimate the probability rate of criminal guilt in such cases as oscillating at ninety-five percent. Furthermore, the conviction because of the desecration of the corpse of his victim is obvious, both in law and in life, as parts of the body of a deceased person must be buried rather than being stored in premises serving other purposes. Problematic is the sentencing of the accused to lifelong imprisonment (practically this means today in Sweden circa 25 years spent in prison). Yet, according to the Swedish penal law (today amended, yet at the time of the commitment of the murder more lenient), the regular sentence to be expected for murder was between fourteen and eighteen years. According to the interpretation of the penal law given by the Swedish Supreme Court, only in cases of exceptionally brutal and cruel murders could the court sentence the accused to lifelong imprisonment. However, do the facts that are known allow the assumption that we have to do with an exceptionally brutal and cruel murder? The court in Uddevalla decided that this was the case. At this point in the case, a legal-semiotic analysis becomes urgent. It could lay bare the presuppositions made by the court based on the known facts. The only possibility we have when we try to determine the facts of the crime is to visualize the scenery. We cannot reconstruct the criminal act in question with other means because a major part of the victim's body is missing. Therefore, we cannot know how she died. Neighbors heard shouting coming from the apartment, therefore the court assumed that the victim and her aggressor were fighting, the victim lying on the floor, as there were blood traces there. The court further assumed that this struggle caused anguish in the victim to lose her life. In fact, visualization in cases where language is missing (because it cannot emerge) is dangerous in law. Unsurprisingly, the appeal of the accused followed upon the judgment. The court that decided the appeal reduced the criminal sanction to eighteen year of imprisonment due to problems with evidence concerning the above-named circumstances (cf. Hovrätten för Västra Sverige, judgment B 4402-20, October 23, 2020).

not only identifying legal signs, it also scrutinizes the procedures in which we make use of them while trying to communicate, i.e. to understand what signs in isolation or in complex structures actually mean. As the interpretation of signs is one of the central issues of general semiotics, legal semiotics is an underlying methodological layer in all legal-linguistic approaches. Whatever approach to meaning constitution is always semiotic, explicitly or implicitly. Explicit semiotic approaches in legal linguistics are rare, implicit semiotic analyses dominate the contemporary legal-linguistic research. The result of it is that such research is semiotically underdeveloped, as it provides material sources that have a strong semiotic potential, yet this potential remains underexplored in them. In this sense, every article about legal matters that belongs to legal doctrine is implicitly semiotic by the very nature of the phenomenon law that is composed of linguistic signs. Yet only the application of semiotic methods turns such research into truly semiotic exploration. Likewise, language as a set of signs is by necessity a construct that depends on semiotic operations. Therefore, linguistics is a semiotic discipline par excellence. Likewise, legal semiotics is preliminary to all legal-linguistic research. It is the propaedeutic of legal linguistics. In addition, it covers visible aspects of law or legal matters that often remain outside the mainstream interests in legal-linguistic studies.

Legal linguistics and legal logic

Language as a linguistic concept is rooted in logic. Logical and linguistic analyses are by the nature of things closely interrelated. Therefore, it seems natural to inquire into the logic of the legal language. Legal theoreticians were interested in this issue because they assumed that the act of the application of law could be described as a *syllogism* that is a logical figure representing reasoning (cf. Kalinowski 1964). Today, we know that syllogistic reasoning does not correspond to the linguistic and logical reality of decision-making processes in the area of law. *Enthymeme*, known since Aristotle, is better suited to describe the activity of judges. Legal linguists ask how logical relations and constructs are reflected in the legal language. Further aspects of logical implications in the legal language concern *deontic modality*

because the legal language is expressed in statutes in the logical form of a norm. Normativity has a specific modality in the legal language that starts with the legal *shall* or the legal *may* and covers numerous verbs and related linguistic structures which are used to express the deontic modality in law.[15] Meanwhile, legal language as a set of signs is dominated by linguistic conventions. It seems therefore that the scrutiny of legal-linguistic conventions that due to the specifics of the legal discourse are ideology-bound may render results that describe the nature of law more fully than the logical analysis of the legal language, which, doubtless, remains a valuable contribution to the clarification of its deep structure.

Logic also contributed another standing topic to legal-linguistic studies. A heritage of the multidisciplinary law and language studies is the analysis of the relation between *legal terms* and *legal concepts*. Jurists are interested in concepts because the legal doctrine is practiced since the time of the ancient Romans as conceptual creation and conceptual analysis. Linguists primarily deal with terms as terms directly reflect linguistic reality. In legal linguistics, the reflection upon the relation between legal concepts and legal terms was initiated and developed in the writings by Heikki E.S. Mattila (2012b; 2018). Mattila (2018: 130) defined the legal term as the linguistic expression of a legal concept. Later, research into *polysemy* and *synonymy* in the legal

[15] Research concerning this issue is impressive in legal linguistics. For instance, the legal *shall* and the legal *may* were scrutinized thoroughly in legal-linguistic studies. The problem concerns the specific use of *shall* and *may* in English legal texts, e.g. Art. 512 of the U.S. Digital Millennium Copyright Act: "A service provider shall not be liable for monetary relief…" (*shall* in this sample does not introduce the future tense but stresses that the service provider is not liable according to the law), or: "All rights reserved. This book, or parts thereof, may not be reproduced in any form without written permission of the publishers." In this linguistic sample, the legal *may* marks action prohibited by law and not an option (cf. Galdia 2017: 162-163). Some words, for instance verbs, which have the undeniable potential to transfer the deontic modality easily, e.g. Polish *pozwala się* (i.e. *it is allowed*), are not used for this purpose (cf. Joanna Nowak-Michalska. 2012. *Modalność deontyczna w języku prawnym na przykładzie polskiego i hiszpańskiego kodeksu cywilnego*. Poznań: Rys. Åke Frändberg (2001. Rättsordningen och rättstillämpningen, in *Svensk rätt – en översikt*. ed. Strömholm, S., 7-26. Uppsala: Justus) analysed the Swedish modal verbs *få*, *böra*, and *skola* in Swedish legal provisions. Deontic modality in legal texts is conventional and may be expressed with different linguistic means. Overall, legal linguistics is an aggregate of such detailed studies of singular problems and of broader conceptual constructs that structure the whole legal-linguistic domain in a paradigmatically more explicit way. Specific and general studies constitute the legal-linguistic research. They are interrelated like the two sides of the same coin.

language was connected to this definition. Today, these issues might be better elucidated in pragmatic approaches to the legal language where they appear in a different light.

Law and literature

Law appears primarily in texts. It shares this property with literature. I perceive the scrutiny of law in literature as part of legal linguistics. Some other researchers may see it as an independent area of knowledge that they call *law and literature*. In essence, the difference in perspective is rather of academic nature as no binding conclusions for legal-linguistic research follow from the alleged dichotomy or from the unity hypothesis. Abundant literature exists about the relation between law and literature, law in literature and the like.[16] It shows that describing and researching law in non-legal contexts is particularly valuable as this research uncovers the underexplored potentialities of law. Thus, it makes clearer the structure of legal communication that today is limited to the research of explicitly legal texts, with exception of *media discourse studies*. Legal texts, like literary texts appear in pre-defined text types.[17] There is no spontaneous legal text type as there is no spontaneous form in literary works. Statutory texts, court opinions and even witness testimonies follow patterns predefined institutionally by courts or by citizenry at large. Legal linguists study these texts types

[16] Cf. Richard Weisberg. 1992. *Poethics and Other Strategies of Law and Literature*. New York: Columbia University Press; Marta Andruszkiewicz. 2021. The Heritage of Cultural Determinants of Law and Literature: Methodological Findings, *International Journal for the Semiotics of Law* 34: 611-621; Jeanne Gaakeer. 2012. On the Study Methods of Our Time: Methodologies of Law and Literature, in *Intersections of Law and Culture*, Gisler, B., Borella, S.S., Wiedmer, C. (eds.). 133-149. UK: Palgrave Macmillan; Julia A. Shaw. 2011. The Continuing Relevance of Ars Poetica to Legal Scholarship and Modern Lawyer, *International Journal for the Semiotics of Law* vol. 25/1, 71-93. In my own writings, chapters on law and literature as part of legal-linguistic studies can be found in Galdia (2014: 265-340) and Galdia (2017: 303-314).

[17] Cf. Jan M. Broekman, 1984. Text als Institution, in *Rechtstheorie*, Supplement 6, *Recht als Sinn und Institution*, 145-167; Christer Laurén. 2002. Iconism and Special Language, in *The Development of Legal Language*. Mattila, H.E.S. (ed.), 11-20. Helsinki: Kauppakaari; Gotti, Maurizio. 2012. Text and Genre, in *The Oxford Handbook of Language and Law*. Tiersma P.M., Solan L.M. (eds.), 53-66. Oxford: Oxford University Press.

(cf. Lindroos 2015) in an area that I call *legal textology*. Legal textology is today not uniform and several typologies of legal texts were proposed to date.[18] Contemporary legal textology goes over into *legal discourse analysis* that integrates the discussed issues within a broader frame of reference that enables deeper insights.

Linguistic turn in law

The initial interest in legal-linguistic matters that was mentioned above was captured in different, interrelated approaches such as those described. It also gave rise to a more structured apprehension of the legal language. In turn, the scrutiny of the legal langue provoked a closer interest in law itself. Previously, the analysed law manifested itself mainly in form of the legal doctrine. In the legal doctrine, law was systematized under all but linguistic points of view, although law is primarily a linguistic phenomenon. As in many other areas of knowledge the *linguistic turn*, i.e. the scrutiny of the object of study in a scientific discipline from the perspective of its language was perceived as promising and finally also brought encouraging results, the same procedure was proposed to take place in legal sciences. The main task of this methodical operation can be called the *linguistic turn in law*. Until now, the legal doctrine viewed the law in a petrified form, as a set of concepts expressed in provisions where their encoded meaning had to be decoded. The biggest achievement of the attempt to implement the linguistic turn in law was the finding that law is not decoded from the legal provisions but created in numerous *legal-linguistic operations* (cf. Galdia 2017: 240-270).

[18] We may distinguish: the legislative language (statutes), legal decisions including fact description, legal-doctrinal texts, language used by jurists in professional discussions about law and in formal pleadings, language used by laypersons in legal contexts (witness testimony, comments on legal matters), and texts produced by administrative agencies (cf. Galdia 2017: 112). This area necessitates further detailed research as it may be assumed that the origin or circumstances of the use of language might not be the best criterion for distinguishing legal text types. For instance, administrative clerks may express themselves clumsily, while witnesses may use a particularly precise and elaborate language that includes legal terminology. Media language in reports about trials is particularly multifaceted, depending on the specifics of the publication organ and professional skills of journalists.

Law, which was approached in legal linguistics by linguists interested them also as an object that could widen their linguistic horizons. Yet, law proved to be an ungrateful object in terms of profitability for linguistics. It appeared to linguists initially as a *language for special purposes*, yet which area of knowledge did not develop any special terminology to speak about its object? Only in comparative legal-linguistic studies has the legal language proven somewhat special as no legal language is universal. Additionally, many legal languages are terminologically largely asymmetric. Another finding, this time maybe more spectacular yet also less influential, was the discovery of the *ordinary language dimension* in the legal language. In fact, legal language can be described today as a language for special purposes with its own terminology and its specific text types. Yet there is no intrinsic necessity in the legal language forcing it to continue this path. Legal communication could also take place in ordinary language, provided the existing legal concepts would be duly transformed and appropriate text types would be proposed to enable this type of communication. Linguists learned a bitter lesson from their scrutiny of the legal language. The initial mystery of legal constructs that fascinated them turned into a mass of obscure, often purposefully misleading statements about the exercise of power in society. No profound well of semantic creation was discovered in it but a shallow pond of capriciously tailored concepts that simply meant something else than words mean in our ordinary speech. Law that was expressed with the means of the legal doctrine simplified our world ruthlessly while decorating the brutal fight for power in society with scholarly erudition. The appropriate reaction to this discovery is not disillusion with the object of legal-linguistic studies but the adjustment of perspective upon the studied object. In fact, methodology comes first in every emerging and expanding discipline, and especially in legal linguistics. The task of legal-linguistic methodology is to provide guidelines in situations such as the one described in this paragraph. I will therefore address now some aspects of the legal-linguistic method.

Legal-linguistic methodology

The above sketched aspects of legal-semiotic and legal-logical approaches that are suitable to support the linguistic turn in law further facilitated the emergence of a more consolidated legal-linguistic method. In order to conduct *systematic research* into the legal language the legal linguist needs a method that responds to his epistemic interests and steers the steps he undertakes when trying to elucidate the legal language. However, legal linguistics cannot refer to a set of methodical rules like established sciences, for instance chemistry. Its method emerges in the doing of the legal-linguistic research towards the background of knowledge assimilated in areas that were described in above paragraphs. Therefore, the research into the legal language can be done in many ways. Particularly challenging for legal linguistics is the identification of methods apt at serving its purpose. As mentioned above, two disciplines deal already with the method for the studies of the language of law. First, interdisciplinary law and language studies use in the discussion of their topics the methods of the involved disciplines, i.e. of law or of linguistics. Forensic linguistics, a sister discipline of legal linguistics, prefers purely linguistic methods. Legal linguistics sets up a method that combines methodical approaches to language and to law in order to elucidate legal problems from its specific point of view. Therefore, it differs from the named areas of knowledge, although it does not necessarily contradict their approaches and results. It is rather methodically complementary, yet also paradigmatically more explicit as it defines more coherently its goals and methods. It also reaches beyond the limits of interdisciplinary approaches and beyond the range of issues discussed in forensic linguistics that is often determined by immediate needs of judicial institutions. It this sense, at least, legal linguistics is an innovation that should broaden and deepen our knowledge of law and of language.

Preliminaries of the legal-linguistic method include numerous choices. Researchers of the legal language will have to determine which *concept of language* they perceive as best suiting their epistemic interests. Furthermore, they need to determine the *concept of law* that underlies their studies. Such choices became necessary as neither linguistics nor legal sciences, and especially legal theory, offer us a uniform method. Legal-linguistic studies that neglect preliminary conceptual choices will not be convincing and will not further the goals

of legal linguistics. Next, the incorporation of the legal component into the legal-linguistic method that I call *juridicity* will have to take place. Juridicity (one could also call it *legalness*) comprises all legally relevant aspects of the language of law, mainly its regulation and its treatment in the legal doctrine. Furthermore, the legal-linguistic approach differs from legal approaches that focus mainly upon the legal regulation. For instance, in case of a change in the penal code of a country that abolishes the capital punishment in that country and replaces it with lifelong imprisonment, the change provoked by the amendment will be fundamental in the criminal law doctrine of the concerned country. Meanwhile, for the legal linguist this change may appear insignificant because the language of the law scarcely changes even if the amendment might manifest itself as a part of the legal discourse about law. This discourse may be quite insignificant as well. By contrast, the linguistic modernization of a civil code that does not change the regulation in it, may become a turning point in the development of the legal language of a country.[19] Therefore, central legal documents such as codes may occasionally be less important in the legal-linguistic research than certain statutes of minor practical importance that reveal legal-linguistically relevant phenomena. Furthermore, the question of legal validity of an analysed legal provision or a court decision is less significant for the legal linguist who searches in the linguistic samples the language of the law. For him, the issue whether a statute is still applicable or whether a court decision was quashed on appeal is secondary to the dominating issue whether it as a linguistic sample that, when researched, reveals a relevant aspect of the legal language. The above sketch of the legal-linguistic methodical fundamentals enables a more coherent view upon the legal language.

[19] One might think here about the recent amendments to the French civil code that mainly envisaged its linguistic, and not doctrinal, modernization. In this case, also the legislative efforts to modernize the language of the code proved largely insignificant (cf. Laurent Leveneur (ed.). 2016. *Dossier spécial*. *Code civil*. *Projet de réforme du droit des contracts, du régime général et de la preuve des obligations.* Paris: LexisNexis).

Legal language

Legal linguistics does not only research itself, i.e. its methodological fundamentals. Primarily, it is expected to research the legal language. Yet, as so often, the object of legal-linguistic studies depends on the methodological determination in the approach adapted by the researcher. The easiest way to determine it is the one by exclusion. Legal linguists generally agree that legal language is different from any natural language because its ontology is of a different sort. It is a language for special purposes, and it is used primarily in social institutions that deal with the creation and the application of law. Meanwhile, its structural background is the ordinary language. Any information expressed in the legal language could also be communicated in ordinary language, as the ordinary language is the basis of our communication. Yet, this is rarely the case in legal institutions. Therefore, today, legal language in its classical shape can be researched as a language for special purposes. Its future nature is open, as tendencies to express socially relevant contents in ordinary language gain momentum in many societies. Particularly interesting in this context is the dynamic zone of status interchange between legal language and ordinary language. On the one side, words of ordinary language acquire new, specific meaning in the legal language (cf. *property* vs. *possession*, *good faith*, *free movement of people*), on the other side, the specific terminology of the legal language infiltrates ordinary language (cf. *presumption of innocence*). What is more, the legal language is rooted regularly in another legal language, for instance the terminology of the legal French is based on legal Latin (cf. Mattila 2018: 114). Likewise, the written and the spoken varieties of the legal language influence each other, this time in analogy with spoken and written ordinary language. Meanwhile, the legal language become truly fascinating when it is researched as a tool that accomplishes the emergence of social reality. Indeed, legal language is constitutive of law as legal communication is primarily verbal communication. Unlike the daily communication that occasionally can be efficient in multiple forms of non-verbal action such as gestures, drawings, and mathematical formulae, our law becomes effective exclusively in verbal communication. What is more, in sociolinguistic terms, the legal language belongs to the elaborate code as the professional legal language demands rather advanced linguistic skills. Also, the non-

professional use of language in the area of law is related to this elaborate code, be it only indirectly. To illustrate, the witness may use ordinary language during his testimony, yet his speech will reflect the professional language of jurists, for instance in (often failed) attempts to speak like them. Legal language is an institutionalized practice and non-jurists are aware of this fact. This finding explains their attempts to adapt their non-professional language to the speech they experience in legal institutions. However, restricted codes, vulgar and grammatically incorrect language may also transfer legal messages correctly. [20] Meanwhile, the relation between legal communication in grammatically correct and incorrect language remains unexplored in legal linguistics. What is more, the linguistic nature of law does not contradict views developed in social sciences that law is a mechanism of the exercise of power in society. Doubtless, law is not a matter of mere words, but of words used to steer human action in a compulsory way. This ontological feature of law was introduced into legal linguistics by social scientists, as jurists and legal linguists who stand in the tradition of legal positivism or classical structuralism rather avoided this topic and perceived it apparently as being out of scope in legal-linguistic studies. [21] Meanwhile, more contemporary legal-linguistic studies, especially those reflecting the method of critical discourse analysis, incorporate elements of the exercise of power in society into the analysis of the legal language. They show that the mechanism of power exercise is an intrinsic structural element of the language of law. Many legal-linguistic studies do not incorporate this

[20] Cf. the series of humorous sketches on the public Swedish television SVT, *Suleyman advokat,* performed in a Swedish language spoken by immigrants, which only rudimentarily reflects the rules of the Swedish grammar (even the word *advokat* is spelled adventurously *advokatt* in the title of the series). The content of the Swedish law is rendered in the short films, which constitute the series, very correctly and comprehensibly, notwithstanding the approximate and whimsical Swedish used for the explanation of legal issues. The short films clearly ridicule this sort of language, yet they also teach a lesson about legal semantics.

[21] Jean-Louis Sourioux and Pierre Lerat (1975) stressed the political character of legal terminology, i.e. its dependence on the state ideology. Jaakko Husa (2007) mentioned in his *Kreikan oikeus ja oikeuskieli* the intrinsically political element in law that is the exercise of power with linguistic means. Heikki E.S. Mattila (2018: 117) stressed that the legal language serves the purpose of the realization of power. In Mattila's view, this feature of the legal language might be perceived as a specific function of the legal language. Systematic legal-linguistic studies of the exercise of power in law with the help of language may be based upon the concept of power worked out by Michel Foucault (cf. Galdia 2014).

finding into their methods and remain therefore less explicative in their final results.

Monolingual and comparative legal linguistics

Next to affirmative and critical legal-linguistic studies, legal linguistics is represented in two other types of research. Some researchers engage in the scrutiny of one legal language, others adopt the comparative perspective upon the legal language. Both perspectives upon the legal language brought valuable results (cf. Galdia 2020). The American legal-linguistic tradition whose most prominent representatives were David Mellinkoff (1963) and Peter M. Tiersma (1999) initiated in many parts of the world original legal-linguistic inquiries concerning other languages, although it mainly focused upon legal English, especially upon the problems of the comprehensibility of the legal English towards the background of its historical development. The French pioneers of legal-linguistic studies, Gérard Cornu (2005) as well as Pierre Lerat and Jean-Louis Sourioux (1975) dealt exclusively with legal French. Meanwhile, many of their general findings concern also the legal language as such, and not only the legal French. A group of Russian scholars under A.S. Pigolkin (1990) dealt with the fundamentals of the Russian legal language. Their findings permeate even this essay, in which the Russian legal language is otherwise not mentioned. In Poland, Maria Teresa Lizisowa (2016) developed her communicational theory of law in exclusive reference to legal Polish. Her theory could be also stated in general terms, independently of the legal Polish language. Finally, Deborah Cao (2004) authored a pioneering analysis of legal Chinese, which in its results reaches beyond the main scope of her study. Meanwhile, in a new attempt to broaden the horizon of legal-linguistic studies, Heikki E.S. Mattila (2012a; 2013) shaped the *comparative legal linguistics* in that he combined the methodology of comparative law with comparative linguistics (cf. Lundmark 2012: 51). In the background of all these efforts there is the thesis about the *ubiquitous character of the legal language*. Therefore, it appears particularly urgent to explore the assumptions of the ubiquity thesis. First, it is assumed in it that the legal language is present in every natural language. Second, it is assumed that the level of professionalism in the

legal language may differ, i.e. that one legal language may be more professional or abstract than other legal languages on the scale between doctrinally petrified language on the one side and ordinary language on the other side. Third, it is assumed that the communicative tasks are equal in all legal languages. Comparative legal-linguistic research indicates that the ubiquity thesis is a correct epistemic assumption. Monolingual legal-linguistic research did not provide any results that might contradict the main assumptions of the ubiquity thesis. The ubiquity thesis is central to all attempts to generalize legal-linguistic findings. Furthermore, in terms of method, research into a specific legal language may appear easier than a comparative study. Meanwhile, there is no general method of description for all legal languages as their description depends also on some characteristic features or developments that concern the described language. For instance, in the description of the legal Greek, the historical controversy about the use of *καθαρεύουσα* (katharevusa) or *δημοτική* (dimotiki) deserves special attention of researchers, while there is no such problem in the description of the legal Polish (cf. Galdia 2021). Therefore, a uniform approach to the description of singular legal languages may prove counterproductive and sterile. In comparative linguistics, descriptive approaches are generalized, yet their application comes at a price. This methodological intricacy might also be the reason why some singular legal languages such as legal English or legal Chinese were researched both in the monolingual and in the comparative perspectives. In fact, most great legal languages have been researched in both perspectives and both research perspectives have contributed valuable results. I will now treat some of these results in more detail limiting my efforts to the mainstream current of legal linguistics.

Mainstream legal linguistics, its results and limits

I call mainstream legal linguistics the dominating current in legal-linguistic studies that constitutes the subject of teaching and the object for further research in academic institutions. Mainstream knowledge is beneficial as it forms the basis for professionalism in every area of studies. However, its most unpleasant feature is that it has the tendency to suppress criticism on established knowledge. By so doing, it prevents

the emergence of alternative intellectual currents that reshape the existing knowledge and propose paradigmatic changes in an area of knowledge. The matter is not a legal-linguistic particularity, yet a scientific regularity and it is mentioned here as such and not as a criticism on the existing currents in the mainstream legal linguistics, mainly because such criticism might be premature. Today, the contours of legal-linguistic methods and topics are clearer than ever. Yet, too many fundamental legal-linguistic issues remain open (cf. Engberg, Kjaer 2011). Is it possible to answer today the question whether there is bad or useless legal linguistics? Are some conceptions of legal linguistics better than others? I would answer in the affirmative, yet also this answer might be perceived as premature in the light of developments in our appreciation of the legal language. At least, I assume that the better an approach to the legal language allows us the apprehend the totality of our speech about law, the higher is its usefulness and also its standing among the existing legal-linguistic approaches. I perceive this finding as a conclusive remark on the relation between mainstream legal-linguistic and alternative approaches to the legal language. Meanwhile, on the more positive side, what did legal linguists find out? What can they profess today as established knowledge about the legal language? First, legal linguistics arrived at the determination of the legal language and its characteristic features that reaches beyond daily experience of professional and non-professional speakers of the legal language. We may count among them: precision, informational overload, obscurity, schematized language, formal vocabulary, archaism and solemnity, arcane language, redundant terms, and abbreviations (cf. Galdia 2017: 135-142). Heikki E.S. Mattila (2018: 122-127) perceived as characteristic of the language of law: the frequency of definitions, tautology, information density, abstraction, hypothetical nature (i.e. the timelessness of law that regulates also future factual constellations), neutrality, frequency of references, organized text structure and formalism, frequency of abbreviations, and sentence complexity. Today, all these characteristic features of the legal language may be exposed to further critical scrutiny. First of all, it seems expedient to distinguish between the ideal language of law defined by jurists where precision and timelessness should reign and the reality of the use of language in the area of law where ambiguity, vagueness, and underdetermination of meaning are omnipresent (cf. Poscher 2012: 128-144). In most legal-linguistic studies, the legal language is determined between this dichotomy of

ideal and reality. It is important to take this dichotomy seriously in all attempts to understand the characteristic features of the legal language. Furthermore, issues of comprehensibility and legal semantics, including lexicology and lexicography were the most general concepts that inspired individual legal-linguistic research from the inception stage of legal-linguistic studies. Problems of comprehensibility of legal texts, which were analysed systematically in the American tradition of legal linguistics, initiated the *plain language* movement. Projects aiming at the increase of understandability of legal text that were developed within this movement undeniably brought some encouraging results. From the theoretical point of view, it is necessary to mention that the unclarified concept of the plain language that is a language without speakers still causes problems in legal linguistics (cf. Galdia 2017: 296-298). Furthermore, legal lexicology stressed the polysemy and the synonymy in the language of law. Additionally, within the lexicological research into great legal languages, pluricentric legal terminology gained momentum. It was noted that English, Chinese, French, German, Swedish and other legal languages dispose of different, sometimes incongruent terms due to differences among legal systems expressed in these languages.[22] Furthermore, legal etymology, especially the link between legal languages and legal Latin as well as historical developments in the most influential legal languages are well known today (cf. Mattila 2013). Overall, the best-known characteristic features of the legal language are today those connected to processes in which legal language developed as a language for specific purposes, i.e. in contradistinction to ordinary language. Particularly thoroughly scrutinized remains legal terminology that forms the focal point for legal-linguistic explorations of many researchers.

[22] Cf. for legal English Stanisław Goźdź-Roszkowski. 2011. *Patterns in Linguistic Variation in American Legal English*. *A Corpus-Based Study*. Frankfurt a.M.: P. Lang; for legal German Marcus Galdia. 1998. Lakisaksa, in *Encyclopaedia Iuridica Fennica*, vol. VI, *Kansainväliset suhteet*, 550-555. Helsinki: Suomalainen Lakimiesyhdistys; Artur Dariusz Kubacki. 2014. Pluricentryzm w niemieckim języku standardowym i specjalistycznym, *Comparative Legilinguistics* vol. 17, 163-181. For legal Chinese in Mainland China, Hong Kong and Taiwan cf. Ho-yan Chan. 两岸三地 (*Liang An San Di*), vol. 1/2014, vol. 2/2015, vol. 3/2017, Hong Kong: City University of Hong Kong Press.

Newer conceptualizations in legal linguistics

The scrutiny of the language of law in statutory acts and in court opinions brought results that can be evaluated in the positive and in the negative perspective. Positively, we may mention the discovery of several dimensions of the legal language.[23] Most important among them are the terminological, the textological, and the discursive dimension. Negatively, legal-linguistic studies made plain that the focus upon the language of legal institutions did not cover the totality of our speaking about law, as many other speakers beyond these institutions speak about law. Their speech might not represent law in terms defined institutionally in democratic states, yet it together with the speech in judicial institutions represents the totality of our speech about law.

[23] In many materials, legal language manifests itself strongly, so to say for all to see. In footnote 1 such a typical legal-linguistic case and its outer boundaries were mentioned. As a rule, it concerns the application of a legal statute or a court holding to a factual case, for instance the legal question whether legal proceedings took place 'within a reasonable time' (cf. ECHR judgment 497/17 of 20 June 2020, Chiarello v. Germany). In this court opinion, the European Court of Human Rights (ECHR) had to decide whether criminal proceedings against the defendant that lasted eight years and five months violated his rights under Art. VI of the European Convention on Human Rights (EHRC). This article says: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time." Art. VI does not further determine the formulation 'within a reasonable time'. Judges need to decide the question when applying the provision of the EHRC to the case. This is the standard legal-linguistic situation that is dealt with in mainstream legal-linguistic studies. More challenging is another question that the ECHR had to decide in the same procedure, namely the issue whether possible damages that the defendant might have suffered were compensated by the fact that in the initial trial a five month segment of the sentence was declared by the court enforced in advance due to the overlong procedure to which the defendant was exposed. This question might be perceived as a purely legal issue. A corresponding legal-factual constellation concerns the question whether a legal intern may be prohibited from wearing a headscarf as a religious symbol when representing the government in a trial (cf. German Constitutional Court's order of 14 January 2020, 2 BvR 1333/17). The prohibition might violate the trainee's constitutional right to exercise her religion freely. In previous approaches to the legal language such issues were neglected as non-linguistic and purely legal. In more contemporary approaches, court decisions concerning such questions are perceived as strictly legal-linguistic as they concern the discursive determination of meaning in law, and not only the clarification of an ambiguous word or formulation in the statutory language. Discursive approaches to legal language enable us to understand law more fully. Paradigmatically, the shift from the analysis of isolated or contextually fixed vocabulary of law to explicit discourse analysis is the fundamental step that constitutes modern legal linguistics.

Traditional legal linguistics neglected this moment while approaching and analysing the language of law. Methodically, it defined the language of law too narrowly and therefore failed in the attempt to describe it convincingly. Today, the language of non-professionals speaking about law, the language of the media reporting legal matters, the language of non-professionals in legally defined contexts, for instance in trials, etc. are scrutinized in order to render more fully the discourse about law. Furthermore, the discourse about the valid law is antagonistic, and it regularly takes place in hostile communicative landscapes. Traditional legal linguistics underestimated this problem as well and subscribed to a fiction where all involved parties aimed with rational argumentative means to reach a just solution to a legal problem. In terms of the legal-linguistic methodology supported in this essay, the traditional legal linguistics underestimated the element of juridicity (legalness) in the linguistic material that it is expected to analyse. Another weakness of the traditional legal linguistics was the approach to law without taking into consideration the element of power in it. In the past, law was regularly analysed in a splendid isolation from one of its fundamental elements, i.e. the exercise of power in society. Even today, many researchers continue to write in this vein. Judicial institutions have the tendency to minimize this aspect and they tend to stress the mechanical application of law as their professional responsibility. This argumentative constant goes back to legal positivism that imagined the judge as a professional who applies internalized legal knowledge to legal problems in the matters he had to decide. His role was defined as decoding of the encoded messages in statutory law and in legal decisions of other courts. According to this view, the better the judge knew the law, the easier it was for him to decode the encoded meaning in statutory provisions correctly and to apply it strictly, i.e. mechanically to the case he had to decide. Meanwhile, already the general legal theory signaled that the application of law is a creative act where argumentation and interpretation decide about the legal meaning within different ethical frames of reference, thus engendering differing, and often also

contradictory decisions.[24] Theoreticians of law discovered that there was no one right decision in law (cf. Aarnio 1987; Dworkin 1991). Traditional legal linguistics did not take this discovery seriously. Time has come to widen the scope of legal-linguistic studies methodically and materially. *Pragmatic legal linguistics* emerged as an answer to the deficiencies described in this paragraph. Therefore, in the follow up to this review essay I will deal with pragmatic legal linguistics.

[24] In the decision Olympic Airways v. Hussain (540 U.S. 644, 2004) the U.S. Supreme Court had to decide whether an airline was liable for wrongful death of a passenger who died on board after being refused by a flight attendant to change his seat and move to a place where cigarette smoke penetrated less invasively. The passenger suffered of asthma and booked a seat in the non-smoking section of the plane (in times when smoking was still allowed on international flights). Yet, too much smoke invaded the non-smoking section and the passenger got respiratory problems. He got support from a medical doctor but died sometime later. His widow referred in her suit to Article 17 of the Warsaw Convention and demanded damages from the airline. Article 17 of the Warsaw Convention says: "The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." It is problematic whether an *accident* happened on board the aircraft in our case. The airline says no, as nothing extraordinary happened on board, the widow says yes, as the passenger was not allowed to take another seat and died because of this refusal. The court refers for orientation to a definition of accident from a precedent (Air France v. Saks, 470 U.S. 392, 1985), saying that an accident is "an unexpected or unusual event or happening that is external to the passenger." Meanwhile, the decision of the court finally follows the policy established to further certain social goals. In fact, there is no *one right solution* to such cases, notwithstanding their meticulous linguistic analysis. We have here to do with a decision that will convince some jurists and non-professionals of law more than the contrary decision, as at least two well founded solutions are thinkable in this case. In other words, none of the two thinkable decisions appears irrational. Reasonableness of the final decision of the U.S. Supreme Court is rooted in the rationality established along ideological lines. Research into *legal argumentation* seems to be fundamental to the legal-linguistic analysis of this case, cf. Aarnio, Aulis. 1989. Das regulative Prinzip der Gesetzesauslegung. Überlegungen zum Problem der Möglichkeit der einzig richtigen Entscheidung, *Rechtstheorie* vol. 20, 409-431. Legal linguistics has to develop methods that would be able to cope with legal arguments developed along the lines of legal rationality because the legal language functions as a vehicle of legal rationality.

Friends and foes of legal linguistics

Legal linguistics is an area of professional activities. Meanwhile, it is rarely exercised by scholars who deal exclusively with legal-linguistic issues. The reason for this situation is the lack of institutional support for legal linguists. Paradoxically, as a part of the social segment of society that is committed to progress, the established academia did not always welcome the newly emerged area of legal-linguistic studies. It is a structural constant in the scientific exploration of nature and society that progress and innovation are not generally welcome, yet as a rule they cannot be prevented either. Progressive and regressive forces in the academic discourse and in academic institutions, paradigmatic continuity and discontinuity, as well as methodological twists and tilts shape the reality of intellectual exploration of man in the world. Therefore, it might have been vain to expect general enthusiasm in the moment of emergence of legal linguistics from the amalgam of legal and linguistic issues and methods. Today, legal linguistics is slightly better positioned on the scale of academic disciplines. Yet, it remains rather marginal in legal studies and in linguistics proper, although it emerged with the ambitious aim to restructure our perspective upon law through researching its language. In legal sciences, its existence is sometimes ignored, and the number of academic positions devoted to the study of legal language is minimal when compared for instance with the number of tenures in legal history or in property law. Finally, while the legal-linguistic research brought up a vast amount of valuable results, these results are at best contemplated in isolation and have no impact upon the teaching and the researching of law in law schools. Strategically, legal linguistics of the future will have to balance this structural deficiency.

Conclusions

Scholarly interest in matters related to legal language shaped a new area of knowledge called in this essay legal linguistics. Unsystematic knowledge about legal language has longer roots and reaches back to antiquity. Meanwhile, precisely formulated research programmes and

studies of the legal language emerged relatively late, only in the course of the twentieth century. They resulted in the accumulation of knowledge that enables today to teach and to research legal language systematically. Legal-linguistic research that initially concerned some selected topics that were deemed as characteristic features of the legal language expanded into an area of knowledge covering today all socially relevant aspects of language use in law. Paradigmatically, the shift from analysing legal vocabulary to discourse analysis enabled the emergence of modern legal linguistics. This modern legal linguistics expanded its domain of research to cover all linguistically relevant operations in law. Therefore, it almost coincides with law and with legal studies. It could be also called a specific theory of law. From the legal-linguistic perspective, legal linguistics features the most relevant theory of law, i.e. the theory of the legal language. It enables description and understanding of law in broadest social contexts. It would be difficult to demand more from an area of knowledge.

References

In the references, only publications concerning general aspects of legal linguistics are listed. Literature concerning specific legal-linguistic issues is provided in Additional materials mentioned in footnotes.

Aarnio, Aulis. 1987. *The Rational as Reasonable*: *A Treatise on Legal Justification*. Dordrecht: Reidel.

Andruszkiewicz, Marta. 2016. On Some of the Aspects of the Linguistic Theory of Law. *Studies in Logic, Grammar, and Rhetoric* vol. 49: 221-229.

Cao, Deborah. 2004. *Chinese Law*. *A Language Perspective*. Aldershot: Ashgate.

Cornu, Gérard. 2005. *Linguistique juridique*. 3d ed. Paris: Montchrestien.

Dworkin, Ronald. 1991. *Law's Empire*. London: Fontana Press.

Engberg, Jan, Kjaer, Anne Lise. 2011. Approaches to Language and the Law – Some Introductory Notes. *Hermes – Journal of Language and Communication Studies* vol. 46: 7-10.

Galdia, Marcus. 2014. *Legal Discourses*. Frankfurt a.M.: Peter Lang.

Galdia, Marcus. 2017. *Lectures on Legal Linguistics*. Frankfurt a.M.: Peter Lang.

Galdia, Marcus. 2020. The Comparative Element in Comparative Legal Linguistics. *Comparative Legilinguistics* vol. 43: 57-76.

Galdia, Marcus. 2021. *Legal Constructs. Reflections upon Legal-Linguistic Methodology*. Poznań: Wydawnictwo Rys.

Gibbons, John. 2003. *Forensic Linguistics*. *An Introduction to Language in the Justice System*. Oxford: Blackwell.

Husa, Jaakko. 2015. *A New Introduction to Comparative Law*. Oxford/Portland: Hart.

Husa, Jaakko. 2020. Language of Law and Invasive Legal Species – Endemic Systems, Colonisation and Viability of Mixed Law. *Global Journal of Comparative Law* vol. 9: 149-182.

Jackson, Bernard S. 1985. *Semiotics and Legal Theory*. London/Boston: Routledge & Kegan Paul.

Kalinowski, George. 1964. *Introduction à la logique juridique: éléments de sémiotique juridique, logique des normes et logique juridique*. Paris: Librairie générale de droit et de jurisprudence.

Kozanecka, Paulina, Matulewska, Aleksandra, Trzaskawka, Paula. 2017. *Methodology of Interlingual Comparison of Legal Terminology. Towards General Legilinguistic Translatology.* Poznań: Wydawnictwo Naukowe Contact.

Lindroos, Emilia. 2015. *Im Namen des Gesetzes*. *Eine vergleichende rechtslinguistische Untersuchung zur Formelhaftigkeit in deutschen und finnischen Strafurteilen*. Rovaniemi: Lapin yliopisto.

Lizisowa, Maria Teresa. 2016. *Komunikacyjna teoria języka prawnego*. Poznań: Wydawnictwo Naukowe Contact.

Lundmark, Thomas. 2012. *Charting the Divide Between Common and Civil Law*. Oxford: Oxford University Press.

Marmor, Andrei. 2014. *The Language of Law*. Oxford: Oxford University Press.

Mattila, Heikki E.S. 2002. Towards the Science of Legal Linguistics. In *The Development of Legal Language*, Mattila, H.E.S. (ed.), 167-191. Helsinki: Kauppakaari.

Mattila, Heikki E.S. 2012a. *Jurilinguistique comparée*: *Langage du droit, latin et langages modernes*. Montréal: Y. Blais.

Mattila, Heikki E.S. 2012b. Legal Vocabulary. In *The Oxford Handbook of Language and Law*, Tiersma, P.M., Solan, L.M. (eds.), 27-38. Oxford: Oxford University Press.

Mattila, Heikki E.S. 2013. *Comparative Legal Linguistics*. *Language of Law, Latin and Modern Lingua Francas*, 2nd ed. Aldershot: Ashgate.

Mattila, Heikki E.S. 2018. Legal Language. In *Languages for Special Purposes*, Humbley, J., Budin, G., Laurén, C. (eds.), 113-150. Berlin/Boston: W. de Gruyter.

Matulewska, Aleksandra. 2013. *Legilinguistic Translatology*. *A Parametric Approach to Legal Translation*. Bern: P. Lang.

Mellinkoff, David. 1963. *The Language of the Law*. Boston/Toronto: Little, Brown & Co.

Pigolkin, A. S. (ed.). 1990. *Jazyk zakona*. Moskva: Juridicheskaya literatura.

Poscher, Ralf. 2012. Ambiguity and Vagueness in Legal Interpretation. In *The Oxford Handbook of Language and Law*, Tiersma P.M., Solan L.M. (eds.), 128-144. Oxford: Oxford University Press.

Salmi-Tolonen, Tarja. 2008. *Language and the Functions of Law*. Rovaniemi: University of Lapland.

Sourioux, Jean-Louis, Lerat, Pierre. 1975. *Le langage du droit*. Paris: Presses universitaires de France.

Tiersma, Peter M. 1999. *Legal Language*. Chicago: University of Chicago Press.

Additional materials mentioned in footnotes

Aarnio, Aulis. 1989. Das regulative Prinzip der Gesetzesauslegung. Überlegungen zum Problem der Möglichkeit der einzig richtigen Entscheidung, *Rechtstheorie* vol. 20: 409-431.

Alexy, Robert. 1983. *Theorie der juristischen Argumentation.* Frankfurt a.M.: Suhrkamp.

Andruszkiewicz, Marta. 2021. The Heritage of Cultural Determinants of Law and Literature: Methodological Findings, *International Journal for the Semiotics of Law* 34: 611-621. https://doi.org/10.1007/s11196-020-09743-4.

Austin, John Langshaw.1962. *How to Do Things with Words?* Oxford: Oxford University Press.

Beaudoin, Louis. 2002. Legal Translation in Canada. In *The Development of Legal Language*, H.E.S. Mattila (ed.), 115-130. Helsinki: Kauppakaari.

Benedetti, Giuseppe. 1999. Diritto e linguaggio. Variazioni sul 'diritto muto', *Europa e diritto privato* vol. 1: 137-152.

Broekman, Jan M. 1984. Text als Institution. In *Rechtstheorie*, Supplement 6, *Recht als Sinn und Institution*, 145-167.

Chan, Ho-yan. 2014. *两岸三地* (*Liang An San Di*), vol. 1. Hong Kong: City University of Hong Kong Press.

Chan, Ho-yan. 2015. *两岸三地* (*Liang An San Di*), vol. 2. Hong Kong: City University of Hong Kong Press.

Chan, Ho-yan. 2017. *两岸三地* (*Liang An San Di*), vol. 3. Hong Kong: City University of Hong Kong Press.

Dölle, Hans. 1949. *Vom Stil der Rechtssprache*. Tübingen: Mohr.

Felder, Ekkehard, Vogel, Friedemann (eds.) 2017. *Handbuch Sprache im Recht*. Berlin: Walter de Gruyter.

Frändberg, Åke. 2001. Rättsordningen och rättstillämpningen. In *Svensk rätt – en översikt*, ed. Strömholm, S., 7-26. Uppsala: Justus.

Gaakeer, Jeanne. 2012. On the Study Methods of Our Time: Methodologies of Law and Literature. In *Intersections of Law and Culture*, Gisler, B., Borella, S.S., Wiedmer, C. (eds.), 133-149. UK: Palgrave Macmillan.

Galdia, Marcus. 1998. Lakisaksa, in: *Encyclopaedia Iuridica Fennica*, vol. VI, *Kansainväliset suhteet*. 550-555. Helsinki: Suomalainen Lakimiesyhdistys.

Galdia, Marcus. 2013. Strategies and Tools for Legal Translation. *Comparative Legilinguistics* vol. 16: 13-29.

Geer, Louis de. 1985 (1853). Om den juridiska stilen. Stockholm: Rediviva.

Gény, François. 1921. *Science et technique en droit privé positif*, vol. 3. Paris: Sirey.

Goodman, Nelson. 1978. *Ways of Worldmaking*. Indianapolis: Hackett Publ.

Gotti, Maurizio. 2012. Text and Genre. In *The Oxford Handbook of Language and Law*, Tiersma P.M., Solan L.M. (eds.), 53-66. Oxford: Oxford University Press.

Goźdź-Roszkowski, Stanisław. 2011. *Patterns in Linguistic Variation in American Legal English*. *A Corpus-Based Study*. Frankfurt a.M.: P. Lang.

Großfeld, Bernhard. 1997. Sprache und Schrift als Grundlage unseres Rechts, *Juristenzeitung* 1997/633-646.

Großfeld, Bernhard. 1990. *Unsere Sprache*: *Die Sicht des Juristen*. Opladen: Westdeutscher Verlag.

Grunau, Martin. 1961. *Spiegel der Rechtssprache*. Flensburg: Verlag Kurt Gross.

Habermas, Jürgen. 1981. *Theorie des kommunikativen Handelns*, vol. 1 and 2. Frankfurt a.M.: Suhrkamp.

Hare, R.M. 1952. *The Language of Morals*. Oxford: Clarendon Press.

Hart, H.L.A. 1961. *The Concept of Law*. Oxford: Clarendon Press.

Husa, Jaakko. 2007. *Kreikan oikeus ja oikeuskieli*. Helsinki: Suomalainen Lakimiesyhdistys.

Javornik-Čubrić, Marijana. 2018. Što je pravna lingvistika, *Lingua Montenegrina* vol. 22: 31-37.

Kubacki, Artur Dariusz. 2014. Pluricentryzm w niemieckim języku standardowym i specjalistycznym, *Comparative Legilinguistics* vol. 17: 163-181.

Laurén, Christer. 2002. Iconism and Special Language. In *The Development of Legal Language*. Mattila, H.E.S. (ed.), 11-20. Helsinki: Kauppakaari.

Leveneur, Laurent (ed.) 2016. *Dossier spécial*. *Code civil*. *Projet de réforme du droit des contracts, du régime général et de la preuve des obligations.* Paris: LexisNexis.

Mimin, Pierre. 1970. *Le style des jugements*. 4th ed. Paris: Librairies Techniques.

Nowak-Michalska, Joanna. 2012. *Modalność deontyczna w języku prawnym na przykładzie polskiego i hiszpańskiego kodeksu cywilnego*. Poznań: Wydawnictwo Rys.

Perelman, Chaim, Olbrechts-Tyteca, Lucie. 1958. *Traité de l'argumentation – La nouvelle rhétorique*. Paris: Presses Universitaires de France.

Prieto Ramos, Fernando. 2015. Quality Assurance in Legal Translation: Evaluating Process, Competence and Product in the Pursuit of Adequacy, *International Journal for the Semiotics of Law* vol. 28 (1): 11-30. https://doi.org/10.1007/s11196-014-9390-9.

Ross, Alf. 1966. *Om ret og retfærdighed*. *En indførelse i den analytiske retsfilosofi*. København: Nyt Nordisk Forlag K. Busck.

Schauer, Frederick (ed.). 1993. *Law and Language*. Aldershot/Hong Kong: Dartmouth.

Schönherr, Fritz. 1985. *Sprache und Recht*. *Aufsätze und Vorträge*. Wien: Manz'sche Verlags- und Universitätsbuchhandlung.

Schroeder, François Michel. 1978. *Le nouveau style judiciaire*. Paris: Dalloz.

Shaw, Julia A. 2011. The Continuing Relevance of Ars Poetica to Legal Scholarship and Modern Lawyer, *International Journal for the Semiotics of Law* vol. 25/1: 71-93.

Tiersma, Peter M., Solan, Lawrence M. (eds.) 2012. *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press.

Vogel, Friedemann (ed.) 2019. *Legal Linguistics Beyond Borders*: *Language and Law in a World of Media*, *Globalisation and Social Conflict*. Berlin: Duncker & Humblot.

Wedberg, Birger. 1928. *Lagstil*. *Några citat och reflektioner*. Stockholm: Norsted.

Weihofen, Henry. 1980. *Legal Writing Style*. 2nd ed. St. Paul: West Publishing Co.

Weisberg, Richard. 1992. *Poethics and Other Strategies of Law and Literature*. New York: Columbia University Press.

Wright, Georg Henrik von. 1951. Deontic Logics, *Mind* vol. 60: 1-15.

sciendo

Comparative Legilinguistics
vol. 47/2021
DOI: http://dx.doi.org/10.2478/cl-2021-0012

DIRECTION-ASYMMETRIC EQUIVALENCE IN LEGAL TRANSLATION[1]

TOMÁŠ DUBĚDA, Ph.D.

Institute of Translation Studies
Faculty of Arts, Charles University, Prague, Czech Republic
dubeda@ff.cuni.cz

ORCID: https://orcid.org/0000-0003-0609-4506

Abstract: The concept of equivalence, despite the criticism it has received in the past decades, remains a useful framework for the study of correspondence between legal terms. In the present article, I address the question of direction-asymmetric equivalence in legal translation, i.e. equivalence that does not obey the "one-to-one" principle, and which usually implies that the translator's decision-making is more difficult in one direction than in the other. This asymmetry may be triggered by intrinsic semantic characteristics of legal terms (synonymy and polysemy), by differences between legal systems (system-specific terms, the procedures used for their translation and their handling in lexicographic sources, competing legal systems, tension between cultural boundedness and neutrality), or by social factors (L1 vs. L2 translation). The

[1] Acknowledgement: This research was supported by the Charles University project Progres Q10, "Language in the shiftings of time, space, and culture".

instances of directional asymmetry discussed are illustrated with examples from French and Czech.

Keywords: legal translation; legal terminology; equivalence; translation direction; French; Czech; languages with limited diffusion.

SMĚROVĚ ASYMETRICKÁ EKVIVALENCE V PRÁVNÍM PŘEKLADU

Resumé: Pojem ekvivalence je i přes kritiku, jíž byl vystaven v posledních desetiletích, užitečným rámcem pro studium korespondence mezi právními termíny. V tomto článku se zabývám otázkou směrově asymetrické ekvivalence v právním překladu, tj. ekvivalence, která nesplňuje požadavek korespondence „jedna ku jedné“. Rozhodovací procesy jsou u tohoto typu ekvivalence obvykle v jednom směru náročnější než ve druhém. Směrová asymetrie může být vyvolána inherentními sémantickými vlastnostmi právních termínů (synonymie a polysémie), rozdíly mezi právními systémy (systémově specifické termíny, překladatelské postupy užívané k jejich překladu a jejich zpracování v lexikografických zdrojích, konkurenční právní systémy, napětí mezi kulturní vázaností a neutrálností) nebo sociálními faktory (překlad do mateřského vs. cizího jazyka). Jednotlivé typy směrové asymetrie jsou ilustrovány na příkladech z francouzštiny a češtiny.

Klíčová slova: právní překlad; právní terminologie; ekvivalence; směr překladu; francouzština; čeština; málo rozšířené jazyky.

1. The concept of equivalence and the question of directionality

In the early stages of modern translation science, equivalence was regarded as a central theoretical concept. This has to do with the fact that the discipline is rooted in applied linguistics, from which it received the initial impetus. The first major refinement of the concept of equivalence originates from Nida (1964), who, applying a functional perspective, differentiated between formal equivalence and dynamic (or functional) equivalence, the latter being defined by an “equivalent effect” on the receiver. Later on, with the shift of interest from language towards functional, social and cognitive aspects of translation, the concept of equivalence was pushed into the background, and some

authors started emphasising its problematic nature: Snell-Hornby (1988: 22) considers that the analysis of equivalence may give a false impression of symmetry between languages, Larose (1989: 78) holds that it is virtually impossible to define the "equivalent effect", and Lefevere (1992: 7) points out the risk of reducing equivalence to a word-level phenomenon.

Most of this criticism came from the field of literary translation, while in the domain of specialised translation, the concept of equivalence remained in use, partly thanks to adjacent disciplines such as lexicology or terminology. Perfect one-to-one equivalence between lexical items in two languages is rare (although it can be observed in terminological systems, and, perhaps, between closely related languages such as Serbian and Croatian, or Czech and Slovak), but this does not undermine the usefulness of the concept itself. Catford (1965: 26) gives a purely descriptive definition of the translation equivalent: "any TL [target-language] text or portion of text which is observed on a particular occasion… to be the equivalent of a given SL [source-language] text or portion of text." This approach is theoretically interesting, because it allows for different types of equivalence (e.g. formal vs. functional, lexical vs. textual, etc.), as well as different degrees of equivalence (e.g. full vs. partial). On the practical level, it should not be forgotten that the translation process is, in fact, an incessant search for optimal equivalence.

With respect to directionality, Pym (2010) differentiates between natural equivalence (one-to-one relationship between equivalents in two languages) and directional equivalence (one-to-many relationship). These two types of equivalence can be distinguished from one another by means of the back-translation test: while natural equivalence returns the original wording, directional equivalence may lead to a different rendering. It is evident that the "one-to-many" situation largely prevails in the translation process. Indeed, theoretical concepts such as formal vs. functional equivalence (Nida 1962), documentary vs. instrumental translation (Nord 2005), explicitation vs. implicitation (Klaudy 2009) and many others can only be meaningful if we admit that translation includes a choice between several options.

2. Types of equivalence in legal terminology

The discourse about equivalence in legal translation is – quite understandably – biased towards terminology. According to Cao (2007: 53), "[l]egal terminology is the most visible and striking linguistic feature of legal language as a technical language." A detailed classification of equivalent types in legal terminology, taking into account both the type and the degree of equivalence, was proposed by Šarčević (1997). This system, appreciated for its comprehensiveness, is frequently referred to by other authors writing on the subject (e.g. Cao 2007; Chromá 2014). In my own article (Duběda 2021), I attempt a critical survey of equivalence types found in literature on legal translation. The analysis reveals more than 30 different labels (e.g. natural, functional, semantic, linguistic, formal, literal, archaic, etymological, borrowing, neologism, lexical specification, etc.), some of them being synonymous or quasi-synonymous with others, and some differing in their definition across authors. I propose a detailed, multidimensional typology of legal equivalents, using four orthogonal criteria: translation procedure, degree of equivalence, conventionality and register. Translation procedures can be arranged on a scale running between function-oriented strategies and language-oriented strategies.

An additional question, briefly discussed in Duběda (2021), is that of directional symmetry vs. asymmetry of legal equivalents. It has been shown in Section 1 that this issue is not limited to legal translation, but is transversal to all translation fields. In the following section, I endeavour to apply this question to legal translation, identifying six areas where it is relevant. The common denominator of all these instances is the asymmetry of two terminological systems, usually with the implication that the translator's decision-making is more difficult in one direction than in the other and that the back-translation is less likely to result in the original term. The discussion is accompanied by illustrative examples from French and Czech.

3. Aspects of direction-asymmetric equivalence in legal translation

3.1. Synonymy and polysemy

The synonymy and polysemy of legal terms, discussed e.g. by Chromá (2011), represents probably the most obvious deviation from the "one-to-one" correspondence principle. It is interesting to note that even in such a technical and heavily regulated area as law, the matching between concepts and terms is very often not straightforward. For the translator, synonymy involves at least three specific challenges:

1. Identifying terms which are synonymous or used as synonyms: For example, the terms *vente* 'sale' and *cession* 'assignment' are often used interchangeably in French sales contracts, although the latter is a hypernym of the former, and it is preferable to translate them both into Czech by the more idiomatic term *prodej* 'sale'. A specific case of textual synonymy is represented by legal couplets such as *à ses risques et périls* 'at his/her own risk and peril'. Unlike legal English, in which these structures are notoriously common (Cao 2007: 89), they are much less frequent in legal French, and may be thus wrongly interpreted as pairs of semantically different expressions.
2. Coping with partial synonymy:
   For example, the Czech term *právo* 'right, law' is often interchangeable with *oprávnění* 'right, entitlement', except for the objective meaning 'law', where *oprávnění* can never be used.
3. Choosing the most adequate of two or more synonyms or near-synonyms with respect to register and text type:
   For example, the French family law term *adoption* 'adoption' can be translated into Czech as *osvojení* or *adopce*, the former equivalent occurring especially in statutes and judgements, and the latter being used in less formal or scientific texts. The stylistic value of legal terms is a relatively understudied phenomenon, possibly because of the assumption that terminology is stylistically neutral. This assumption turns out not to be fully true (Duběda 2021), especially in legal Czech,

whose typical feature is the co-existence of native terms and internationalisms (*účinek*/*efekt* 'effect'; *úvěr*/*kredit* 'credit'; *výklad*/*interpretace* 'interpretation').

As for polysemy, translators face several types of difficulties:

1. Distinguishing general meaning from legal meaning:
   For example, the general meaning of the French term *information* is 'information', while the legal meaning of this term in criminal law is 'investigation'.
2. Identifying field-specific meaning:
   For example, the French term *auteur* takes the meaning 'author' in copyright law, 'offender' in criminal law, and 'legal predecessor' in civil law.
3. Coping with semantic compatibility and collocability:
   For example, the Czech expression *přihláška* 'application' may translate into French in various ways, which are only partly interchangeable: *inscription, candidature, formulaire d'inscription*, *bulletin d'adhésion*, *dossier de candidature* etc. Other contextual equivalents are used in collocations: *patentová přihláška – demande de brevet* 'patent application', *přihláška pohledávky – déclaration de créance* 'claim submission'.

3.2. System-specific terms

Legal language is intimately connected with the legal system it serves (Šarčević 1997: 14). It follows from this that, when translating between two languages, one often encounters concepts that only have an authentic existence in one of the languages, and not in the other. Where no acceptable functional equivalent is available in the other language, such terms must be translated by means of other procedures (literal translation, lexical specification, borrowing, etc.). For example, the Czech concept of *vrchní soud* 'High Court' (appellate court for cases heard in first instance by Regional Courts) does not exist in French law; therefore, the term is mostly translated literally as *cour supérieure*. For a French lawyer, this term stands out as denoting a foreign concept.

With respect to translation direction, a characteristic feature of system-specific terms is that they are mostly translated out of the language to which they belong, and only sporadically in the opposite direction. Nonetheless, this latter situation does occur in translation practice: it can be illustrated, for example, by a French judicial decision containing references to Czech law that have been previously translated from Czech into French. When translating such a decision into Czech, the translator faces particular difficulties: he or she has to imagine the translation procedure used by the first translator, i.e. the one who translated Czech legal terms into French, and find the correct back-translation into Czech. Unlike in translation into French, where several target equivalents are potentially acceptable, the back-translation should ideally result in one correct equivalent. Of course, the translator's task is much facilitated if the references to Czech law are available in their original version, or if the first translator has added original Czech terms in brackets, e.g. *cour supérieure (vrchní soud)*. This is, however, not always the case.

System-specific terms also have implications for bilingual lexicography: bidirectional dictionaries of legal language are usually asymmetric in the sense that system-specific terms are only listed in one direction, i.e. they do not cover the back-translation situation described above. In her book describing the genesis of a Czech-English law dictionary, Chromá (2004: 71) presents the sources used for the constitution of the corpus of Czech headwords. It is noteworthy that she only mentions monolingual sources (Czech legislation, law textbooks, contracts, monolingual law dictionaries, etc.), but not her English-Czech dictionary, which she had published a few years earlier, and which could have served as an initial source of headwords. In the same vein, De Groot and Van Laer (2006) claim that "[r]eversing the functions of source terms and their partial equivalents, descriptions or neologisms will create false translation suggestions."

It can be reasonably argued that a reversed list of headwords and equivalents can be used as an intermediate product in the elaboration of a bidirectional dictionary, since a significant part of legal terms found in European legal systems are functional equivalents working in both directions, thus testifying to the existence of a "common core" of legal systems (Schlesinger 1980: 36). Of course, this claim is valid especially within legal families (Civil Law and Common Law), and less so across them. However, a professional legal dictionary should be free of unnecessary or misleading entries. To give one

example, the standard French-Czech and Czech-French legal dictionary (Larišová 2008) occasionally uses a simple reversal of equivalents in the Czech-French part: in the entry *státní zástupce* 'prosecuting attorney', five French equivalents are given, four corresponding to French concepts and one to a Belgian concept; some of these equivalents are specified as to the French court to which the given attorney is attached. On the other hand, Czech phrases such as *okresní státní zástupce* 'district prosecuting attorney', *nejvyšší státní zástupce* 'attorney general' etc., that a user would expect in the Czech-French part of the dictionary, are not included in this entry.

With the gradual shift from paper dictionaries towards searchable online resources (Nielsen 2014), the question of lexicographic symmetry vs. asymmetry comes to the fore in a new context. Since an electronic dictionary usually comprises a single database covering both directions, specific approaches are needed to ensure that each search will return the expected results. For instance, Nielsen (2014) describes a repository of Danish-English data connected to several interfaces, each designed for a specific task (e.g. understanding a Danish legal text, writing an English legal text, translating a legal text from English into Danish, translating a legal text from Danish into English, etc.). The French-Czech database of legal language LEGILEX-FR, while offering a single interface for searches in both directions, provides system-specific equivalents with explicit labels, e.g. *Cour de cassation* (*FR*) – *Kasační soud* 'Court of Cassation'; *tribunal cantonal* (*CH*) – *kantonální soud* 'Cantonal Court'; *katastrální úřad* (*CZ*) – *bureau du cadastre* 'Land Registry' (FR standing for French law, CH for Swiss law, and CZ for Czech law).

Both aforementioned tools also illustrate another tendency: online lexical databases tend to fulfil a larger spectrum of functions than a conventional dictionary. Because of the absence of space limitations and the possibility of adding web references, online lexicographic tools may contain definitions, references to legislation and other documents, remarks on comparative law, real-time corpus search etc. This additional information helps the translator fully understand the term in question, including its directional sensitivity, and make informed decisions both in interpreting the source text and compiling the target text.

3.3. Translation procedures used for system-specific terms

Not only are system-specific terms strongly correlated with one translation direction, but they are also distinct from other terms with respect to the translation procedures they call for. Most of the equivalence types mentioned in section 2 – with the exception of functional equivalence – are, in fact, used precisely to overcome difficulties with system-specific terms. More often than not, the translator has to choose between two or more possible translation procedures, which may yield different results as to the documentary vs. instrumental character of the target equivalent.

For instance, in the French legal system, the term *projet de loi* denotes a bill introduced by the Government, while *proposition de loi* is a bill introduced by the Parliament, and there is no simple way of expressing the meaning 'bill' without this distinction. By contrast, Czech offers such a term: *návrh zákona*. Where the distinction is to be preserved, the target term must be lexically specified by an adjective: *projet de loi – vládní návrh zákona*; *proposition de loi – parlamentní návrh zákona*. The back-translation of these terms involves a potential risk: if the translator is not conscious of the exact semantic value of *projet* and *proposition* in this context, he or she may translate *vládní návrh zákona* literally as *projet de loi gouvernemental*, which is not wrong *per se*, but somewhat less idiomatic, or as *proposition de loi gouvernementale*, which is, strictly speaking, an oxymoron. Another option for translating the term *projet de loi* is leaving out the specification, and using the more general term *návrh zákona*. This leads to a possibly more authentic equivalent, which is a good candidate especially if it can be inferred from the context that the bill was introduced by the Government. The back-translation, however, is more risky than in the previous case: the translator not only has to be familiar with the distinction *projet* vs. *proposition*, but also has to analyse the context in order to choose the right equivalent.

The translation procedures discussed in the previous paragraph – lexical specification and generalisation – are only two of the many ways equivalence can be achieved, yet they are representative of two opposing approaches. Lexical specification is a documentary procedure, which tends to render the exact lexical meaning and may lead to a less idiomatic result, while generalisation is an instrumental

procedure, which grasps the functional aspects of the term and yields better idiomacy. Documentary strategies, which also include literal translation, borrowings or calques, seem to prevail in the practice of sworn translators and translators of official texts (Mayoral Asensio 2003: 42; Franco Aixelá 2009). They are often deemed safer, because they involve less interpretation, and their use is also encouraged by law dictionaries, whose perspective is necessarily term-centred and which tend to favour periphrastic and definition-like equivalents. Instrumental strategies, on the other hand, tend to make the best of functional equivalence, be it only partial, preferring readability, intelligibility and target-language stylistic conventions. They have also acquired a place in bilingual legislation (Dullion 2007; Gémar 2015), their potential lack of precision being countered by terminological consistency and uniform interpretation of the language versions.

3.4. Competing legal systems

A special category of terminological synonymy is the coexistence of two or more terms denoting the same concept, but pertaining to different legal systems. For example, the terms *droit pénal* and *droit criminel* denote the same concept (‘criminal law’), the former being used in European legal French, and the latter in Canadian legal French. A translator working into a language used in more than one legal systems should, optimally, be aware of terminological differences between these varieties of legal language, and remain consistent in his or her terminological choices. As far as the language pair French – Czech is concerned, however, at least two complicating circumstances are worth mentioning:

1. Asymmetry due to the translator’s legal background:
   A French translator and a Swiss translator translating a Czech legal text into French in their respective countries will quite naturally use their national legal system as reference, and produce two partly different versions of this text. Czech translators, on the other hand, are mostly trained in the legal terminology used in France, and less so in the terminology of other francophone systems. Adhering to legal terminology of

French law, with its major historical role, international impact and prominent position in teaching, is thus the default practice in the Czech Republic, and also in many other European countries. This bias can be expected in translations for any kind of French speaking public.

2. Terminological hybridisation:
   Despite the prevalent use of French law as a reference system for terminology, some system-specific terms of Czech law a better translated with terms taken from other francophone systems. For example, the nearest functional equivalent of *registrované partnerství* 'registered partnership' in French law is *pacte civil de solidarité* (*PACS*). This equivalent, however, is not an ideal candidate, since it implies one major legal difference (*registrované partnerství* is defined as a same-sex partnership, while *PACS* can be concluded by both same-sex and different-sex couples), it emphasises rather specific legal aspects of the union (its contractual and civil character, and the obligation of solidarity), and is generally regarded as a French cultural phenomenon. The Swiss term *partenariat enregistré*, on the other hand, has the advantage of being a functional, literal and fairly neutral equivalent. Using a third system as a source of equivalents is one of the recognised procedures in legal translation (Šarčević 1997: 263).

3.5. Cultural boundedness vs. neutrality

As Šarčević (1997: 241) tellingly puts it, "it sometimes occurs that A can be used to translate B, but B cannot be used to translate A." In the preceding section, I discussed the Czech term *registrované partnerství* 'registered partnership', which is better translated into French by the more neutral term *partenariat enregistré* than by the specifically French term *pacte civil de solidarité*. The question arises, then, how to translate the French term *pacte civil de solidarité* into Czech. The legal dictionary (Larišová 2008) gives the literal translation *občanská smlouva o solidaritě*, which is considerably opaque to a Czech reader. By contrast, Tomaščínová (2019) renders this terms with the functional equivalent *registrované partnerství*, adding the remark

"approximately". The functional equivalent is easily interpretable, though less precise due to the aforementioned difference in legal definition. In my view, however, it is by no means wrong to translate *pacte civil de solidarité* as *registrované partnerství*, just as it is not wrong to translate *mariage* by *manželství* 'marriage', although the French concept extends to same-sex marriage, while the Czech does not. This reasoning leads to the – apparently paradoxical – conclusion that *pacte civil de solidarité* can be translated by *registrované partnerství*, but *registrované partnerství* should not be translated by *pacte civil de solidarité*. The asymmetry is, in reality, not paradoxical, because the two translation directions involve two different legal systems. In bilingual jurisdictions, of course, such discrepancies are to be avoided.

This specific instance of directional asymmetry occurs especially in situations where one of the arguments is the neutrality of an equivalent: *partenariat enregistré* and *registrované partnerství* are more neutral than *pacte civil de solidarité* and *občanská smlouva o solidaritě*, and, as a consequence, the first two terms are more likely to be used as target equivalents than the last two, which triggers directional asymmetry. Another example may be the Czech administrative unit *kraj* 'region', translated into French uniformly as *région*. On the other hand, the French administrative unit *région* is translated into Czech variably as *kraj* or *region*. The latter equivalent, having a looser link to Czech reality, is more neutral, which makes it an acceptable, and perhaps better, candidate.

3.6. L1 vs. L2 translators

In many countries whose language is a language of low diffusion, local translators are entrusted on a regular basis with non-literary translations into major international languages such as English or French (Prunč 2000; Pavlović 2007; Duběda 2018). In these countries, L2 translation (i.e. translation into the translator's foreign language) is mostly not regarded as an unprofessional practice, but rather a pragmatic response to the lack of L1 translators. L2 translation seems to be particularly frequent in the field of law: for example, the Czech Sworn Interpreters and Translators Act makes no distinction between the two translation

directions, and, as a consequence, a sworn translator working for public administration cannot refuse an assignment on the grounds that he or she is not willing to translate into a foreign language.

In a recent investigation into the quality of legal translation (Duběda et al. 2018: 78), it has been confirmed that the overall quality of L2 translations is worse than that of L1 translations. If we combine this rather obvious finding with the fact that a vast majority of legal translations from Czech into French are made by non-native translators based in the Czech Republic, we come to the somewhat worrying conclusion that the translation quality is inherently lower in one direction than in the other. With respect to equivalent choice, practice shows that L2 translation involves a higher proportion of linguistically deficient solutions, a greater propensity towards literal renderings, and a greater inter-translator variability. These features have also been observed in a survey carried out among Czech sworn translators (Duběda 2020), whose aim was to provide an insight into the way in which Czech system-specific legal terms are translated into French. However, the survey does not provide a direct comparison of L1 and L2 translations, since all participants but one were native speakers of Czech.

4. Conclusion

In the preceding paragraphs, I have developed the question of directional asymmetry in six different contexts relevant for legal translation. Some instances of this asymmetry have to do with intrinsic semantic characteristics of the terms (synonymy and polysemy), others are triggered by differences between legal systems (system-specific terms, the procedures used for their translation and their handling in lexicographic sources, competing legal systems, tension between cultural boundedness and neutrality), and yet others are socially determined (L1 vs. L2 translators).

The claim that terminology is a relatively unproblematic area of legal translation is nowadays refuted by both scholars and practitioners. The present analysis brings further evidence of the complicated nature of legal equivalence, which constitutes a challenging aspect of the translators' decision-making. The question is

particularly acute in the case of "bidirectional" translators, i.e. translators working both into their mother tongue and from it. These translators must bear in mind that strategies to achieve equivalence may be direction-sensitive, and that their lesser proficiency in the target language may have an impact on translation quality and security. Both of these caveats should also have their place in translator training.

The translation examples used in this article include French and Czech – two languages whose international diffusion differs dramatically, with all the consequences that it entails for the sociology of French-Czech and Czech-French legal translation. It goes without saying that some of the proposed conclusions also apply to other European countries whose official language is a language of low diffusion.

The purpose of this article was to shed more light on one of the problematic aspects of legal equivalence, namely its directional asymmetry. This does not mean, however, that the concept of equivalence as such is to be avoided: different types and degrees of equivalence can be achieved by different means, depending on the function of the translated text. As Cao (2007: 59) points out, "[i]t is futile to search for absolute equivalence when translating legal concepts." Notwithstanding that, it is beyond any doubt that legal translators are capable of producing translations that serve their purpose.

References

Cao, Deborah. 2007. *Translating Law*. Clevedon – Buffalo – Toronto: Multilingual Matters.

Catford, John C. 1965. *A Linguistic Theory of Translation. An Essay in Applied Linguistics*. Oxford: Oxford University Press.

Chromá, Marta. 2004. *Legal Translation and the Dictionary*. Tübingen: Max Niemeyer Verlag.

Chromá, Marta. 2011. Synonymy and Polysemy in Legal Terminology and Their Applications to Bilingual and Bijural Translation. *Research in Language* 9/1: 31-50.

Chromá, Marta. 2014. *Právní překlad v teorii a praxi. Nový občanský zákoník*. Praha: Karolinum.

De Groot, Gerard-René, and Conrad J. P. van Laer, 2006. The Dubious Quality of Legal Dictionaries. *International Journal of Legal Information* 34/1: 65-86.

Duběda, Tomáš. 2018. La traduction vers une langue étrangère : compétences, attitudes, contexte social. *Meta* 63/2: 492-509.

Duběda, Tomáš. 2020. Soudní překladatelé a terminologické nástrahy. Průzkum k překladu právních termínů z češtiny do francouzštiny. *Soudní tlumočník* 2/2020: 25-28.

Duběda, Tomáš. 2021. K typologii ekvivalentů v právním překladu. *Slovo a slovesnost* 82/2: 139-158.

Duběda, Tomáš, David Mraček, and Vanda, Obdržálková. 2018. *Překlad do nemateřského jazyka: fakta, otázky, perspektivy*. Praha: Karolinum.

Dullion, Valérie. 2007. *Traduire les lois. Un éclairage culturel. La traduction en français des codes civils allemand et suisse autour de 1900*. Cortil-Wodon: E. M. E.

Franco Aixelá, Javier. 2009. An overview of interference in scientific and technical translation. *JoSTrans*, *The Journal of Specialised Translation* 11: 75-87.

Gémar, Jean-Claude. 2015. De la traduction juridique à la jurilinguistique : la quête de l'équivalence. *Meta* 60/3: 476-493.

Klaudy, Kinga. 2009. The Asymmetry Hypothesis in Translation Research. In *Translators and their readers. In Homage to Eugene A. Nida*, eds. Rodica Dimitriu and Miriam Shlesinger, 283-303. Brussels: Les Editions du Hazard.

Larišová, Markéta. 2008. *Francouzsko-český, česko-francouzský právnický slovník*. Plzeň: Aleš Čeněk.

Larose, Robert. 1989. *Théories contemporaines de la traduction*. Québec: Presses de l'Université du Québec.

Lefevere, André. 1992. *Translating Literature: Practice and Theory in a Comparative Literature Framework*. New York: MLA.

Mayoral Asensio, Roberto. 2003. *Translating Official Documents*. London – New York: Routledge.

Nida, Eugene A. 1964. *Towards a Science of Translating: With Special Reference to Principles and Procedures Involved in Bible Translating*. Leiden: Brill.

Nielsen, Sandro. 2014. Database of Legal Terms for Communicative and Knowledge Information Tools. In *Legal Lexicography. A Comparative Perspective*, ed. Máirtín Mac Aodha, 153-175. Farnham: Ashgate.

Nord, Christiane. 2005. *Text Analysis in Translation*. Amsterdam – New York: Rodopi.

Pavlović, Nataša. 2007. Directionality in translation and interpreting practice. Report on a questionnaire survey in Croatia. *Forum* 5/2: 79-99.

Prunč, Erich. 2000. Translation in die Nicht-Muttersprache und Translationskultur. In *Translation into Non-Mother Tongues: In Professional Practice and Training*, eds. Meta Grosman, Mira Kadrić, Irena Kovačič and Mary Snell-Hornby, 5-20. Tübingen: Stauffenburg.

Pym, Anthony. 2010. *Exploring Translation Theories*. London – New York: Routledge.

Schlesinger, Rudolf. 1980. *Comparative Law: Cases – Text – Materials*. Mineola: Foundation Press.

Snell-Hornby, Mary. 1988. *Translation Studies. An Integrated Approach.* Amsterdam – Philadelphia: Benjamins.

Šarčević, Susan. 1997. *New Approach to Legal Translation*. The Hague – London – Boston: Kluwer Law International.

Tomaščínová, Jana. 2019. *Úvod do právnické francouzštiny* 1, 2. Praha: Karolinum.

Online resources

LEGILEX-FR. http://lex.ff.cuni.cz/legilex-fr/Index (accessed April 2, 2021).

Sworn Interpreters and Translators Act, Act Nr 354/2019. https://www.zakonyprolidi.cz/cs/2019-354 (accessed April 11, 2021).

sciendo

Comparative Legilinguistics
vol. 47/2021
DOI: http://dx.doi.org/10.2478/cl-2021-0013

A COMPARATIVE STUDY OF THE RHETORICAL FUNCTIONS AND FEATURES OF PERSONAL PRONOUNS IN ENGLISH AND CHINESE LEGAL NEWS[1]

QING ZHANG, PhD

China University of Political Science and Law
No. 25, Xitucheng Road, Haidian District,
Beijing 100088, China
qingzh@cupl.edu.cn

ORCID: http://orcid.org/0000-0001-5053-3428

Abstract: This paper mainly discusses the distribution and rhetorical functions of personal pronouns in English and Chinese legal news reports which is divided into two narrative types, the objective and the semi-dialogic. Through the comparative analysis of some English and Chinese legal news texts in the two types, it finds that the differences in narrative type directly affect the distribution of personal pronouns. In objective narrative, the use of

[1] Supported by the Research and Innovation Project Funding of China University of Political Science and Law (Project No. 20ZFY75003) and the Fundamental Research Funds for the Central Universities.

third person pronouns accounts for an absolute proportion, and the frequency of using first person and second person pronouns is close to zero. In semi-dialogic narrative, the use of third person pronouns is still the highest, but only slightly higher than the use of first person and second person pronouns, accounting for only a small number. After analysis, this paper holds that there are three reasons for the uneven distribution: first, the differences between the dialogic style and the narrative style; second, the legal narrative being a story narrative; third, the specific restrictions on the use of legal rhetoric.

Keywords: Legal News; Personal Pronouns; Dialogic; Narrative; Rhetoric.

人称代词在英汉法制新闻中的修辞功能与特征比较研究

摘要：本文主要探讨人称代词在中英法律新闻报道中的分布及其修辞功能。通过多篇跨国跨境英汉新闻语篇比对分析在两种叙事方式，即在客观叙事和半对话体叙事的法制新闻报道中，叙事方式上的差异直接影响到人称代词的分布，客观叙事中第三人称占绝对比例，第一二人称用例频次接近于零；而半对话体叙事中第三人称用例仍为最高，但只略高于第一二人称，仅占微弱多数。经分析，本文认为造成这种分布不均的原因有三：一是对话体和叙事体本身的差异；二是法律叙事是故事性叙事；三是法律修辞使用上的特定限制条件。

关键词：法制新闻；人称代词；对话；叙事；修辞.

Introduction

As core concept in linguistic research, referentiality which stems from ancient Greece has been the important study object and has been studied from different perspective, ranging from logic and philosophy, semantics, pragmatics, and discourse analysis (Chen 2015: 1-5). The study of personal pronouns which is the part of referentiality, mostly focuses on discussing grammatical functions and barely researching rhetoric functions in recent years, except for several papers analyzing the rhetoric function in German and Russian text. This paper probes into the rhetoric functions in English and Chinese legal news reports. According to narrative methods (Xue 2011: 12-14; 2012: 168), legal news reports can be generally divided into two types, which are the objective narrative and semi-dialogic narrative of legal news reports.

The objective narrative type of legal news reports is also called documentary reports, which are aimed at recording the whole process of cases and restoring the full picture of facts. In documentary reports, third-person pronouns are used to narrate cases and objectively show the whole picture of cases to the readership from the bystander's perspective. By doing so, the basic spirit of objectivity and justice of the law can be embodied to the greatest extent in legal news reports. Another type of legal news reports is called the semi-dialogic narrative type of legal news reports, which adopts the method of narrating and discussing to appropriately integrate the accounts of cases, psychological descriptions of the persons involved in cases, remarks made by the persons involved in cases and comments from other persons concerned. By doing so, such reports can not only tell readers what happened, but also can to some extent analyze the subjective motives of the person involved in cases when committing crimes, the confession performance of the person involved in cases after being brought to justice and the responses concerning cases from all walks of life. Therefore, apart from reporting the facts of cases, the semi-dialogic narrative type of legal news reports can also effectively publicize the warning and educational significance of cases, so as to shoulder the social responsibilities of legal news reports. By comparing the above two types of legal news reports, we can see the second type of legal news reports has two obvious advantages. One advantage is that the second type of legal news reports can guide and stimulate readers' active reading consciousness, and promote readers to have more thinking and reflection. Another advantage is that the second type of legal news reports have a better performance in achieving reporters' intended communicative purposes and receiving good social effects.

By analyzing the above two types of legal news reports, we find the two types of legal news reports differ from each other in terms of the use of personal pronouns. Legal news reports belong to legal language, so do legal provisions, judicial judgments, trial language, etc. Among the last three types of legal language, we find there are few personal pronouns. For example, few personal pronouns appear in judicial judgments. When referring back to a proper name (person's name), words such as "defendant" and "plaintiff" are often used instead of the proper name in the judgment, and personal pronouns such as "he/she", "they", are generally not used. This situation probably due to the fact that judgments require a high degree of

precision and allow no ambiguity or misreading so as to avoid any confusion arising therefrom and highlight the preciseness and deterrence of the law. However, in general discourse, there is no need using such careful wording. When using personal pronouns for anaphora, the conventional context conditions are sufficient to establish the semantic association between personal pronouns and proper nouns, and establish the unit of reference according to the needs of the context. From this perspective, we can say the use of personal pronouns in legal news reports is like that in general discourse. Based on the above classification of legal news reports, we find that personal pronouns in the first type of legal news reports are fewer than that in the second type of legal news reports, and the use of personal pronouns in the second type of legal news reports is very similar to that in general discourse.

This paper aims to make a qualitive analysis of legal news report by selecting 10 texts randomly from different official media websites in the United Kingdom, the United States, Australia, and China. In this paper, we will examine the use of personal pronouns in English and Chinese legal news reports and the important role and significance of personal pronouns in terms of rhetoric, communicative functions, etc. The comparison of distribution and rhetoric function of personal pronouns in Chinese and English legal news will distinguish the linguistic and logical differences between the two legal systems and provide guidance for bilingual practitioners.

1. Personal pronouns in legal news reports

In this paper, we only make a comparative analysis concerning the use of personal pronouns in the first and second type of English and Chinese legal news reports. Due to the limitations of space, the use of personal pronouns in other types of legal discourse will not be analyzed in this paper. Moreover, because English and Chinese personal pronouns have different referential systems, we find the performances of personal pronouns in English and Chinese legal news reports are slightly different from each other.

1.1. Distribution of personal pronouns in English legal news reports

We believe the distribution of personal pronouns in English legal news reports is significantly different from that in general discourse. The distribution here mainly refers to whether to use pronouns and how many pronouns to use. In the first type of report, this difference is obvious. The main reason is that it is restricted by two aspects. One is the restriction of legal genre itself. Preciseness and accuracy are the primary standards of legal language. Naturally, legal news reports should follow this rule and be as strict as possible in the use of pronouns. Therefore, borrowing legal words to replace the original pronouns can effectively improve the preciseness. Another restriction is that personal pronouns interact with discourse and communicative purposes. Discourse and communicative purpose restrict the use of pronouns, and the referential characteristics of pronouns also affect their distribution and frequency in discourse. In the following paragraphs, we will analyze specific examples to describe and explain the rules and characteristics of pronouns in legal discourse, namely, legal news reports.

This paper makes a qualitative analysis of six representative legal reports randomly selected from official media websites in the United Kingdom, the United States and Australia. According to the types of legal news report, three of them belong to the first type, and the other three belong to the second type. The first to third reports are of the first type, and the fourth to sixth reports are of the second type. The main criterion to distinguish the first type of report (1-3) and the second type of report (4-6) is to judge whether direct speech is used in the report. The unused report is classified as the first type, and the used report is classified as the second type.

In the first type of legal news, Report 1 is taken from BBC website, with a total of 211 words, including 12 pronouns, accounting for 5.6% of the whole report. Report 2 is 450 words from Yahoo official website, including 13 pronouns, accounting for 2.9%; Report 3 is 208 words from ABC official website, including 17 pronouns, accounting for 8.1%. The average proportion of pronouns in the three reports is 4.8% (see Table 1 for details). From Table 1, we can also see that in the three reports, the frequency of first-person pronouns and second person pronouns is zero, and the use cases of all pronouns are

third person pronouns. This can be temporarily attributed to the fact that the first person and the second person often appear in face-to-face speech or direct speech, while the third person is more suitable for reporting and indirect speech.

The following is the table of use frequency in terms of the use of personal pronouns in Reports 1,[2] 2,[3] and 3[4] (see Table 1).

Table 1. Personal pronouns use frequency in reports 1-3.

News reports / Personal Pronouns			Report 1 (media of the UK)	Report 2 (media of the US)	Report 3 (media of Aus.)	Total number	Types of personal pronouns
Singular	The nominative case	I	1	0	0	1	First person pronouns
		You	0	0	0	0	Second person pronouns
		He	3	6	5	14	Third person pronouns
		She	1	0	1	2	Third person pronouns

[2] Report 1, http://www.bbc.com/news/world-asia-china-43921567# (Last visited on August 15, 2018).
[3] Report 2, https://www.yahoo.com/news/ex-cop-charged-golden-state-killer-case-due-100327690.html (Last visited on January 31, 2021).
[4] Report 3, http://www.abc.net.au/news/2018-04-27/man-jailed-for-imprisoning-woman-in-six-day-ordeal/9705074 (Last visited on August 15, 2018).

		It	3	0	0	3	Third person pronouns
	The objective case	Me	0	0	0	0	First person pronouns
		You	0	0	0	0	Second person pronouns
		Him	0	3	0	3	Third person pronouns
		Her	0	0	4	4	Third person pronouns
	The possessive case	My	0	0	0	0	First person pronouns
		Your	0	0	0	0	Second person pronouns
		His	0	3	3	6	Third person pronouns
		Her	0	0	4	4	Third person pronouns

		Its	0	0	0	0	Third person pronouns
Plural	The nominative case	We	0	0	0	0	First person pronouns
		You	0	0	0	0	Second person pronouns
		They	1	0	0	1	Third person pronouns
	The objective case	Us	0	0	0	0	First person pronouns
		Them	2	0	0	2	Third person pronouns
	The possessive case	Our	1	0	0	1	First person pronouns
		Your	0	0	0	0	Second person pronouns
		Their	0	1	0	1	Third person pronouns

Total number	12	13	17	42	
Pronouns/ Full text	12/211= 5.6 %	13/450= 2.9%	17/208= 8.1%	42/869= 4.8%	Pronoun/ Full text
First person pronouns/Total pronouns	2/12=1.7%	0/13=0%	0/17=0%	2/42=4.3%	2/869= 0.2%
Second person pronouns/Total pronouns	0/12=0%	0/13=0%	0/17=0%	0/42=0%	0/869= 0%
Third person pronouns/Total pronouns	10/12=83%	13/13= 100%	17/17= 100%	40/42=95%	40/869= 4.6%

In the second type of legal news reports, Report 4 is still taken from BBC official website, with 276 words in total, including 12 pronouns, accounting for 4.35% of the total; Report 5 is taken from CNN official website, with 298 words in total, 22 pronouns, accounting for 7.38%; Report 6 is taken from ABC official website, with 367 words in total, 24 pronouns, accounting for 6.54% of the total.

The following is the table of frequency in terms of the use of personal pronouns in Report 4,[5]5,[6]and 6[7] (see Table 2).

[5] Report 4, http://www.bbc.com/news/uk-northern-ireland-43933800 (Last visited on August 15, 2018).
[6] Report 5, https://edition.cnn.com/2018/04/28/us/waffle-house-victim-gospel-songs-trnd/index.html (Last visited on February 1, 2021).
[7] Report 6, https://www.yahoo.com/news/ex-cop-charged-golden-state-killer-case-due-100327690.html (Last visited on February 1, 2021).

Table 2. Personal pronouns use frequency in reports 4-6.

News reports / Personal pronouns			Report 4 (media of the UK)	Report 5 (media of the US)	Report 6 (media of AUS)	Total number	Types of personal pronouns
Singular	The nominative case	I	1	4	2	7	First person pronouns
		You	0	1	4	5	Second person pronouns
		He	3	0	8	11	Third person pronouns
		She	1	2	0	3	Third person pronouns
		It	3	0	1	4	Third person pronouns
		Me	0	1	0	1	First person pronouns

	The objective case	You	0	3	0	3	Second person pronouns
		Him	0	1	3	4	Third person pronouns
		Her	0	2	0	2	Third person pronouns
	The possessive case	My	0	0	0	0	First person pronouns
		Your	0	0	0	0	Second person pronouns
		His	0	1	1	2	Third person pronouns
		Her	0	2	0	2	Third person pronouns
		Its	0	0	0	0	Third person pronouns

Plural	The nominative case	We	0	1	0	1	First person pronouns
		You	0	0	0	0	Second person pronouns
		They	1	2	1	4	Third person pronouns
	The objective case	us	0	0	0	0	First person pronouns
		Them	2	0	0	2	Third person pronouns
	The possessive case	Our	1	0	0	1	First person pronouns
		Your	0	2	1	3	Second person pronouns
		Their	0	0	3	3	Third person pronouns

Total number	12	22	24	58	
Personal pronouns/Full text	4.35%	7.38%	6.54%	6.09%	
First-person pronouns/Total pronouns	2/12=17%	6/22= 27.3%	2/24= 8.33%	10/58= 17%	10/941= 1.0%
Second-person pronouns/Total pronouns	0/12=0%	6/22= 27.3%	5/24=20.83%	11/58= 19%	11/941= 1.2%
Third-person pronouns/Total pronouns	10/12= 83%	10/22= 45.4%	17/24= 70.83%	37/58= 64%	37/941= 3.9%

The data in Table 1 shows that the average frequency of personal pronouns in the three reports is 4.8%, of which the first person pronouns and second person pronouns account for 0.2%, and the third person pronouns account for 4.6%; the data in Table 2 indicates that the average frequency of personal pronouns in the three reports is 6.09%, of which the first person pronouns and second person pronouns account for 2.2%, and the third person pronouns account for the remaining 3.9%. According to the results of Table 1 and Table 2, we get two obvious characteristics: first, the total number of pronouns in the second type of reports is slightly higher than that in the first type of reports; second, the number of third person pronouns in the two types of reports is higher than that in the first and second type of reports, and the third person pronouns in the first type and the second type of reports account for 95% and 64% of the total respectively. After analysis, we think that the first characteristic is due to the different types of reports. Because the second type contains a large amount of direct speech, the use of pronouns has increased greatly; and the second feature is also related to the type of report. Because the first type of report basically reports the event content without using any direct speech, it only uses the third person to make the necessary reference. In the second type of reports, the use of direct speech leads to the increase of the number of first and second person pronouns and the decrease of the use of third person pronouns. From this point, we think that the use of pronouns in the second type of reports is closer to the general news reports, which is in line with our expectations. Of

course, due to the small number of samples, the above data can only be regarded as preliminary conclusions, and the more general conclusions need the support of large databases.

1.2. Distribution of personal pronouns in Chinese legal news reports

We adopt the same method as above to analyze Chinese legal news reports. We select one legal news report from each of the four native Chinese speaking countries or regions. In order to keep consistent with the sample analyzed above, we still select case news reports, and do not consider other types of reports, such as case analysis, case background introduction, etc. In addition, of the four reports, two (Reports 7 and 8) do not contain direct speech and should belong to the first type; the other two (Reports 9 and 10) contain direct speech and should belong to the second type.

Report 7, belonging to the first type of legal news report, is from *Xinhuanet*, one of the official media in China. A report under the legal column of *Xinhuanet* has 462 words in total, with only 2 personal pronouns, accounting for 0.4% of the total number of words. Report 8 is taken from the legal column of the official website of *Sohu*, one of the large-scale network media in China, with 727 words in total, with 15 personal pronouns, accounting for 2% of the total number of words. Report 9 is taken from *Takungpao*, one of the major media in Hong Kong, with a total of 754 words, and 2 personal pronouns, accounting for 0.26% of the total number of words. Report 10 is taken from STNN, one of the earliest media in Hong Kong, with a total of 878 words, and 13 personal pronouns, accounting for 1.48% of the total number of words.

The following is the table of frequency in terms of the use of personal pronouns in Chinese legal news reports 7[8], 8[9], 9[10] and 10[11]

[8] Report 7, http://www.xinhuanet.com/legal/2018-04/29/c_1122763384.htm (Last visited on February 1, 2021).
[9] Report 8, http://police.news.sohu.com/20160905/n467691022.shtml (Last visited on February 1, 2021).
[10] Report 9, http://www.takungpao.com.hk/hongkong/text/2018/0429/162185.html (Last visited on February 1, 2021).

(see Table 3).

Table 3. Personal pronouns use frequency in Chinese legal news reports 7-10.

News reports / Personal pronouns			The first type	The second type	The first type	The second type	Total number	Types of personal pronouns
			Report 7 (Xinhua News Agency)	Report 8 (SOHU)	Report 9 (Ta-kung-pao)	Report 10 (STNN)		
Singular	The nominative case /The objective case	我	0	11	0	2	13	First person
		你	0	0	0	2	2	Second person
		他	0	2	2	6	10	Third person
		她	0	0	0	0	0	Third person
		它	1	0	0	0	1	Third person
	The possessive case	我的	0	0	0	0	0	Third person
		你的	0	0	0	0	0	Third person
		他/她/它的	0	0	0	1	1	Third person
		其	1	1	0	0	2	Third person
	Reflexive	自	0	1	0	2	3	Third

[11] Report 10, http://news.stnn.cc/shwx/2018/0429/543460.shtml (Last visited on August 15, 2018).

	pronouns	己						person
Plural	The nominative case / The objective case	我们	0	0	0	0	0	First person
		你们	0	0	0	0	0	Second person
		他们	0	0	0	0	0	Third person
		她们	0	0	0	0	0	Third person
		它们	0	0	0	0	0	Third person
	The possessive case	我们的	0	0	0	0	0	First person
		你们的	0	0	0	0	0	Second person
		他们/她们/它们的	0	0	0	0	0	Third person
Total number of personal pronouns			2	15	2	13	32	Ratio
The first-person pronouns / pronouns			0	11	0	2	13	42%
The second-person pronouns			0	0	0	2	2	6%
The third-person pronouns			2	4	2	9	17	55%

In these four Chinese legal news reports, we find that the use of personal pronouns in Chinese legal news reports is basically consistent with that in English legal news reports, that is, the number of personal pronouns in the first type of reports (Reports 7 and 9) is slightly lower than that in the second type of reports (Reports 8 and 10), and the use frequency of the third person is higher than that in the first and second types of reports except Report 8. The reason why Report 8 is special is that there is a self-narration made by the criminal

himself in the report, so the first person is used a lot, resulting in the special case that the frequency of first person is higher than third person, but it is not enough to overturn the second rule: in the two types of reports, the uses of the third person pronouns are more than the first person and the second person. In addition to the above two rules basically followed by English and Chinese legal news reports, we also find that the use frequency of personal pronouns in Chinese legal news reports is generally slightly lower than that in English legal news reports. In this regard, there may be at least two reasons: first, because of the different working environment of English and Chinese personal pronoun systems, the pronoun systems of the two cannot be completely equivalent. For example, "it", an English third-person pronoun in the singular, can refer to animals, events, or infants, weather, etc. while "'它" (Ta), the Chinese counterpart of "it", can only refer to animals or events. The different referential nature of English and Chinese personal pronouns will naturally affect their applicable environments. The second reason may be due to the differences between English and Chinese. Chinese is a subject shedding language, and the subject can be in zero form (Zou 2006: 5). In such a language, the pronouns that act as anaphora of the subject can often be omitted. This may be another reason why the total number of personal pronouns in Chinese legal discourse is less than that in English legal discourse.

From the above three sets of data, we can see the distribution of personal pronouns in English and Chinese legal news reports is different from that in general discourse. We believe that such difference is probably due to the restrictions coming from the stylistic features of legal language and the purposes of legal communication. Legal style is a subclass of stylistics, which belongs to the same category as other types such as literary style and news style. The legal news report has the characteristics of both legal style and news style. After the deep mixing of the two, it forms the news report with the characteristics of legal style. Another reason is that both the content and the way of communication are restricted by the purpose of communication and serve the purpose of communication. Meizhen Liao puts forward that the principle of goal can better explain conversational interactions and law-related conversational interactions than the cooperative principle and the politeness principle do (Liao 2004: 43). Driven by the goal principle, the content and form of legal news report should serve the legal purpose set by the report to achieve

the maximum social effect. Therefore, we can at least make a preliminary judgment that the distribution of personal pronouns in English and Chinese legal news reports is subject to the goal principle.

1.3. Referential features of personal pronouns in English and Chinese

According to the above analysis, the distribution of personal pronouns is restricted by the goal principle in both legal discourse and other discourse. However, the goal principle is a universal principle. Although the goal principle can partly explain the features of personal pronouns in legal contexts, it cannot fully explain the rules of personal pronouns. In other words, the inherent referential features of personal pronouns are not restricted by the goal principle. The referential features of personal pronouns are as follows.

In terms of functions, personal pronouns are mainly used for anaphora. Personal pronouns do not have semantic meanings, nor do they have specific referential units. Both the semantic meanings and references of personal pronouns depend on their antecedents. An antecedent is a definite or indefinite noun that appears before a pronoun and is usually a person or thing appearing for the first time in a discourse or a conversation, as shown in Examples 1 and 2.

Example 1:

John is seven years old. He is a schoolboy.

In Example 1, “John” is a definite noun acting as the antecedent of the third-person pronoun “he”. The word “he” is a third-person pronoun in the singular and refers back to the antecedent “John” in the preceding sentence.

Example 2:

I ate an apple. It is delicious.

In Example 2, “an apple” is an indefinite noun acting as the antecedent of the third-person pronoun “it”. The word “it” is a

third-person pronoun in the singular and refers back to the antecedent "an apple" in the preceding sentence.

The personal pronouns in Chinese refer to the antecedents in the same way as the English examples above.

In essence, personal pronouns belong to functional words, which is different from nouns belonging to notional words. The most important difference between them is that nouns can directly refer to people and things in the real world while pronouns cannot. The English counterparts of "名词"(Ming Ci) and "代名词"(Dai Ming Ci) are "nouns" and "pronouns" respectively. From names alone, we can tell the difference and connection between "名词" (nouns) and "代词" (pronouns), which is that pronouns are words used to replace nouns. Pronouns can only refer to people or things in the real world in an indirect way through referring back to nouns that act as antecedents. Pronouns don't have definite referential meanings, whose referential meanings are constrained by their antecedents. Since the referential attributes of pronouns vary with antecedents, many scholars also regard pronouns as variables.

In terms of categories, personal pronouns are contextual units. Owing to the referential features of pronouns, its referential function does not directly work within a clause, but work between two or more clauses. Generally, sentences with anaphoric relationships are two adjacent sentences, as shown in Examples 1 and 2. However, if the context allows, pronouns can also refer to antecedents in distant sentences without causing semantic confusion. Moreover, a pronoun can refer back to the same person or thing many times, and sometimes a pronoun can even refer back to different people or things. If the above situations occur, we often conduct contextual analysis to determine the semantic orientation of pronouns.

In summary, we believe that the referential nature of personal pronouns is not disturbed by the context and communicative purposes. However, the use effects and interpretation of pronouns depend largely on the context and are restricted by the goal principle.

2. Active rhetoric and personal pronouns in legal news reports

Rhetoric in English and Chinese legal news reports is active and positive. Law plays a mandatory role in regulating human behavior in human society. Any behavior that does not comply with the law or destroys the law will be punished. Establishing the solemnity of law and cultivating legal awareness are the primary conditions for citizens to observe law and disciplines. It is the legal style that shows the solemnity and sanctity of law. Jiezhen Niu and Suying Wang hold that legal English has unique register stylistic features such as complexity, accuracy, and solemnity (Niu and Wang 2010: 148). Legal language, including legal news reports, all highlights this feature without exception. The legal features in legal news reports are the result of active rhetoric. Traditional studies generally believe that such active rhetoric is mainly embodied in lexical and syntactic aspects. However, we further point out that such active rhetoric extends to relationships between sentences, which are traditionally called discourse cohesion. The living environment of personal pronouns is just between sentences and plays the role of discourse cohesion.

Meizhen Liao agrees that discourse cohesion can be realized through lexical items or syntax. At the lexical level, there are five methods: reference, substitution, ellipsis, conjunction, and lexical cohesion. At the syntactic level, discourse cohesion is manifested as structural cohesion such as parallel symmetric structures, theme, rheme, known information and unknown information (Liao 2005: 351). Personal pronouns have the referential nature, and they are one of lexical means to achieve discourse cohesion. Therefore, we can see that the reference and interpretation of personal pronouns are mostly carried out in discourse. Of course, personal pronouns can also be used within a sentence. For example, both reflexive pronouns and possessive pronouns can refer to antecedents within a sentence.

In the foregoing, we find that the distribution of personal pronouns is restricted by the legal style and legal purposes. We also notice that although the referential nature of personal pronouns is not affected by context and pragmatic purpose, their referential effect and interpretation will be affected. In the following part, we will discuss that personal pronouns are part of active rhetoric. The use of personal pronouns is restricted by the goal principle, and they actively serve the

legal pragmatic purpose together with active rhetoric.

2.1. The inertia of personal pronouns and active rhetoric in legal language

Personal pronouns have referential functions. Moreover, personal pronouns are also in an ellipsis form. By referring back to the antecedents, communicators can convey the same semantic meaning and accomplish the communicative purposes without repeating the previous nouns all the time. This approach is consistent with the "economical principle" of languages. Although personal pronouns can refer back to antecedents, their anaphoric antecedents can be transferred under the influence of context, which results in the diversity and complexity of the use of personal pronouns.

Personal pronouns are inert. They belong to the type of closed vocabulary in grammar. The number and referentiality of pronouns are invariable, which seems to be far from active rhetoric. However, personal pronouns can be ranked in the top in terms of their activeness. Pronouns can be found almost everywhere in general discourse. And even in the rigorous legal regulations and judgments, pronouns are necessarily used. Of course, pronouns in rigorous legal regulations and judgments are usually used for general reference instead of referring to a specific person.

Example 3:

> "If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obliged to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance." (Zhang 2013: 107).

In Example 3, the personal pronoun "he" refers back to the antecedent "a person". However, since the antecedent "a person" does not refer to a specific person, the personal pronoun "he" is used for general reference.

The activeness of personal pronouns in discourse is also reflected in rhetoric. Active rhetoric requires a dynamic perspective on the interaction of various aspects of the context. It emphasizes that

rhetoric is an active and dynamic process. Rhetoric is the result of interaction and cooperation with various elements of context. The degree and method of rhetoric serve the purpose of communication. The communicative purpose of legal discourse is usually to popularize the law and warn the public. Under the guidance of this principle, rhetoric is one of the most effective means to help the discourse achieve this purpose. Rhetoric is not static, and its dynamic features are reflected in the following aspects: lexical rhetoric, syntactic rhetoric, and discourse rhetoric. In legal discourse, active lexical rhetoric refers to the choice of legal words with strong interaction with readers, and it can also include legal words that make readers feel strong. Active lexical rhetoric not only requires the use of legal terms related to the law, but also pays more attention to the "illocutionary force" of lexical items. Active syntactic rhetoric means that legal news reports abandon legal syntactic structures known for lengthiness and adopt concise and understandable sentences of the news style to reach more audiences and better fulfill its publicity purposes. Active discourse rhetoric refers to the connection between sentences, which is manifested in clearer reference and more prominent new information.

The most important feature of active rhetoric is to consider the "effects of words" of information transmission, that is, to consider the feelings and reactions of the audience of legal reports. Today, due to the highly developed information technology and the huge amount of information, the obscure and reader-unfriendly information is very likely to be ignored. In this background, active rhetoric has greatly increased the publicity effects of legal news reports, and it has positive significance.

2.2. Active rhetoric of personal pronouns in English legal news reports

In English legal news reports, personal pronouns are a part of active rhetoric, which actively promote the accomplishment of communicative purposes. To begin with, personal pronouns usually appear in the following positions. Personal pronouns rely on semantic referential relations to connect independent sentences to construct discourse units. This kind of semantic relations is realized through the

corresponding relationship between individual words, which has no explicit expression in syntax, at least in English. At present, there is no clear standard on how to judge whether a pronoun is related to an antecedent. Traditionally, it is generally judged by distance. The antecedent often exists in the preceding sentence closest to the pronoun, as shown in Example 4.

Example 4:

> "DeAngelo was a police officer in two small California communities - Exeter and Auburn - during the 1970s. He was fired from the Auburn force in 1979 after being accused of shoplifting." (Report 2)

In Example 4, the pronoun "he" refers back to the subject "DeAngelo" of the preceding sentence and completes the referential task.

Example 5:

> "Judge Cotterell sentenced Guy to two years in jail, but he will only spend a further three months in prison because of the time he has already spent in custody. He will then be released on a three-year community corrections order." (Report 3)

In Example 5, all three pronouns "he" not only can refer back to the same word "Guy", but also can avoid referring back to the expression "Judge Cotterell". Here, it seems that they can still be explained by the distance. "Guy" is closer to the pronoun "he" than "Judge Cotterell" in distance, and there is no other noun between "Guy" and "he".

According to Examples 4 and 5, it seems that we can draw such a conclusion temporarily: if there is no other noun between pronoun and antecedent, there is a referential relationship between pronoun and antecedent.

However, if the linear order of antecedents and pronouns is reversed, the referential relationship between them will not exist.

Example 6:

> She asked if Mary could help her.

In Example 6, the pronoun "she" cannot refer to "Mary", nor can the pronoun "her". Therefore, we modify the above conclusion: if there is no noun between a pronoun and an antecedent in the preceding sentence, there is a referential relationship between the pronoun and the antecedent.

Moreover, the pronoun "he" acting as the subject in the subordinate clause can refer back to the subject in the main clause, as shown in Example 7.

Example 7:

> "DeAngelo, wearing orange jail garb and shackled to a wheelchair, spoke only a few words to acknowledge that he understood the charges and that he was being represented by a public defender." (Report 2)

In Example 7, both pronouns "he" acting as the subjects in the two parallel object clauses can refer back to the same subject "DeAngelo" in the main clause.

From Examples 4, 5 and 7, we can see that the positions of pronouns in syntactic structures are relatively fixed. Otherwise, an invalid reference like the one in Example 6 would occur. Therefore, only on the premise of not violating pronoun rules can active rhetoric make pronouns more active by means of certain rhetorical devices. For example, a pronoun can be repeatedly used to refer back to the same antecedent, as shown in Example 5. Such usage similar to repetition has two opposite functions. On the one hand, from the perspective of old and new information, pronouns are the old information which is not the focus or purpose of communication. The function of pronouns is only to repeat the old information and to serve as a transitional tool in the process of replacing the old information with the new information; on the other hand, because pronouns can be repeated infinitely in principle, repetition itself is a common phenomenon. As a rhetorical device, repetition can have the function of emphasizing and highlighting information. In this way, repetition will activate pronouns again, and sometimes even replace new information as the focus of communication. It can be seen that personal pronouns do not only play a passive role as traditionally believed. If appropriate rhetorical devices are used, the initiative of personal pronouns can be compared with other kinds of pronouns.

In addition, pronouns are an important medium for the connection and association between independent sentences or between the main and subordinate clauses in complex sentences. When the pronouns are used repeatedly, it is easy to form the juxtaposition in the sentence structure. As shown in Example 7, both juxtaposition and parallelism are important syntactic rhetoric devices, which can play the rhetorical role of emphasis and contrast. This can be said to be the implicit rhetorical function of pronouns.

Finally, it is because of the proper use of pronouns that legal news can take into account the preciseness and accuracy of the law as well as the timeliness and authenticity of the news. Other rhetorical devices, such as exaggeration, derogation and metaphor, are not suitable for legal news reporting. In terms of ensuring the transmission of authentic facts and maintaining the solemnity and sanctity of law, the active rhetoric function of pronouns undoubtedly plays an important role.

2.3. Active rhetoric of personal pronouns in Chinese legal news reports

Chinese personal pronouns are different from English personal pronouns in several aspects. First of all, the English pronoun "it" and the Chinese pronoun "它"(Ta) are not completely corresponding, as shown in Example 8.

Example 8:

> "For these reasons, the jury instructions here were flawed in important respects. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinions.
> It is so ordered." (Zhang and Gong 2013: 86)

In Example 8, the pronoun "it" refers back to the event mentioned in the preceding sentence rather than a specific person or thing. If we translate Example 8 into Chinese, the English personal pronoun "it" cannot be literally translated as the Chinese personal pronoun "它"(Ta). Instead, the English personal pronoun "it" should be

translated into Chinese demonstrative pronouns such as “这”(Zhe) or “那”(Na).

Moreover, Chinese personal pronouns are more complex in morphology than English pronouns. From the diachronic point of view, modern Chinese and ancient Chinese each have a set of reference system, which is not the same; from the regional distribution point of view, each dialect has its own system, which is not consistent with the reference system in Putonghua. Even if we only focus on the referential system in Putonghua, it is different from English pronouns. The obvious difference is that there are honorific forms in Chinese personal pronouns, but not in English. For example, in Chinese, the honorific form of the personal pronoun “you” (“你” Ni) is the personal pronoun “you” (“您” Nin). However, due to the specific style of legal reports, honorifics and modest words are not common in legal reports while frequently used personal pronouns such as “你” (Ni) “我” (Wo) and “他” (Ta) are common in legal reports.

Example 9:

> “有男職員介紹，其中一款售價 3000 元有座位，車速可達 40 公里，強調「上斜好力，可負重 200 磅」，不過他表明：「啲车在街踩犯法！」但又指在私家路使用就無人理，着記者自行判斷。” (Report 9)
>
> (Translation: A “男職員”(male employee) said that one of those cars was priced at 3,000 RMB and had seats. The speed of the car could reach 40 kilometers and he emphasized that [the car had good uphill power and could bear 200-pound weight]. However, “他” (he) said, [It’s against the law to drive the car on the public streets!], but it is fine to drive the car on private roads and the legality is determined by the journalist himself). (Translation provided by the author).

In Example 9, the pronoun “他” (he) refers to the antecedent “男职员” (male employee) in the preceding sentence. The position of the pronoun and its relationship with the antecedent are the same as the English pronoun “he”. Let us look at Example 10.

Example 10:

> “经查，赵某某于 1995 年至 1996 年间，其伙同他人多次实施盗窃，被盗物品价值共计 17107.87 元。同案的二人于 1997 年分别

被判处无期徒刑及有期徒刑十二年，而他却踏上了长达 20 年的逃亡之路。” (Report 8)

(Translation: According to the investigation, from 1995 to 1996, “赵某某” (Zhao XX), together with others, committed theft for many times, with a total value of 17107.87 yuan. In 1997, the two men were sentenced to life imprisonment and 12 years’ imprisonment respectively, but “他” (he) set foot on the road of escape for as long as 20 years). (Translation provided by the author).

In Example 10, the personal pronoun “他” (he) refers back to the antecedent “赵某某”(Zhao XX) in the preceding sentence. However, it is worth noting that there is a noun between the personal pronoun “他” and the antecedent “赵某某”. Because the noun “二人” (Er Ren) is a plural noun meaning two men, the noun “二人” is excluded from the possibility of being the antecedent of the singular pronoun “他”. In addition, there is already a pronoun “其” (Qi/he) in the first sentence, which can be regarded as a variant of “他” (he). In this way, in Example 10, there are actually two pronouns “他” referring to the antecedent “赵某某”. This is no different from English pronouns. Then compare Example 11.

Example 11:

“4 月 27 日，8L9720 三亚至绵阳航班到达绵阳机场后，在下客过程中，一名陈姓男子觉得机舱闷热，顺手打开了飞机左侧应急舱门，导致飞机悬梯滑出受损，其行为已违反相关法律法规，目前该男子已被绵阳机场公安分局依法行政拘留 15 天，航空公司正在研究对该旅客追讨赔偿的相关事宜。” (Report 7)

(Translation: On April 27, after the 8l9720 flight from Sanya to Mianyang arrived at Mianyang Airport, a man surnamed Chen felt the cabin was stuffy and opened the emergency cabin door on the left side of the plane, causing the aircraft’s hanging ladder to slide out and damaged. “其” (His) behavior has violated relevant laws and regulations. At present, “该男子” (the man) has been detained by Mianyang Airport Public Security Bureau for 15 days according to the law. The airline is studying matters related to the recovery of compensation from the passenger). (Translation provided by the author).

In Example 11, the pronoun "其" (Qi/he) should be understood as the possessive pronoun "他的" (his), and refers back to the antecedent "陈姓男子"(a man surnamed Chen) in the preceding sentence. It is worth noting that the subject of the predicate verb "打开"(Da Kai/opened) is originally "he", but it has been omitted. This is different from English because Chinese is a subject dropping language, so it can be omitted. And such omission of subjects is not allowed in English sentence，except in imperative sentence. In this way, in Example 11, there is only one phonetic zero form of "他" (he) (whose position is in front of the verb "打开"), which implicitly refers to the antecedent "a man surnamed Chen".

From the above Examples 9-10, it can be seen that there is not much difference in referential expression between Chinese and English, which further proves that pronouns can play an active role in discourse. However, Example 8 shows that the Chinese pronoun "它" (Ta/it) is not the same as the English pronoun "it"; in addition, Example 11 shows that the Chinese pronoun "他" (Ta/he) can refer back to the antecedent in the form of phonetic zero, but not in English.

In addition to the similarities and differences at the lexical level, Chinese pronouns cannot form juxtaposition and parallelism relationship in the syntactic structure like English after repeating many times, see Example 12.

Example 12:

"当年，因为害怕，逃跑的时候身份证、户口本什么都没带，久而久之我就成了一个'黑人'，这 20 年我一直都在比较偏僻的乡镇给人家放羊，给养鸡场喂鸡，给矿山上看场子，除了两次病得严重被人带到县城买了两次药，几乎没有再进过城。今年 3 月份，养鸡场的一个工人说，像我这样的人，国家现在有好多好政策呢，我这么大年纪了，就不用这么辛苦讨饭吃了。但是我没有身份证和户口了，所以这次我决定到公安机关自首，承认我以前干的坏事，希望能恢复我的身份，让我将来不至于死了都没个去处。" (Report 8)

(Translation: At that time, owing to fears, I fled without taking my ID card or Household Register. As time went by, I became an "unregistered resident". In the past 20 years, I have been herding sheep for others, feeding chickens in chicken farms and guarding the mines in a relatively remote town. Except for two occasions when I was seriously ill, I went to the county town with other persons to buy medicine, and I hardly ever entered the city. In March this year,

> a worker in a chicken farm said there were many good policies for people like me in the country, and people at my age don't have to work so hard to make a living. However, I have no ID card or household register, so this time I decided to turn myself in to the public security organs, admitted the bad things I had done before, and hope to restore my identity so that I will not die homeless in the future). (Translation provided by the author).

Because Example 12 is a self-narration made by the offender, the first-person pronoun "我"(I) has been repeatedly used. However, the repetition of the first-person pronoun "我" (I) does not form neat parallel sentences as the repetition of English personal pronouns does, which may be related to the great differences between English and Chinese sentence structures. Of course, this may also be related to the fact that the narrator of this paragraph is not well educated and uses colloquial style. Nevertheless, we believe the repetition of the pronoun "我" (I) is still enough to play the rhetorical role of emphasis. Therefore, we believe that Chinese pronouns also have the implicit function of active rhetoric in terms of syntactic structures as English pronouns do.

Conclusion

This paper makes a detailed analysis and comparison of the distribution and rhetorical significance of personal pronouns in English and Chinese legal news reports. The similarities lie in that the third person pronouns account for a vast majority among all personal pronouns in both English and Chinese objective narrative legal news reports. After analysis, we know that this is related to the typical characteristics of narratives. Because legal news reports are actually reports of an event, generally not the self-narration of the parties, the third person is used in the majority. Second, in English and Chinese legal news, the use of the first person and the second person in the semi-dialogic narrative type is significantly increased, which is probably related to the dialogic nature of the semi-dialogic narrative. The third person pronouns do not have this kind of self-reported communicative function, so the use cases of the third person pronouns are relatively reduced. The difference lies in the fact that the

referential functions of English and Chinese pronouns are not completely corresponding. For example, the English word "it" can refer to infants, but "它" (Ta), the Chinese counterpart of "it", cannot refer to mankind. As a result, these differences restrict the use of pronouns to some extent. Legal rhetoric, driven by its special pragmatic purpose, will promote or restrict the use of personal pronouns in varying degrees. These similarities and differences can dissolve the misunderstanding caused by the property of legal language in Chinese and English and help bilingual practitioners grasping the legal news. The true comprehension of Chinese and English legal news to some extent facilitates the spread of legal news which is good for the construction of justice and transparence of the law.

Bibliography

Chen, Ping 陈平. 2015. Yuyanxue de Yige Hexin Gainian "Zhicheng" Wenti Yanjiu 语言学的一个核心概念"指称"问题研究 [On the Referentiality – the Core Concept of Linguistics]. *Dangdai Xiucixue 当代修辞学 Contemporary Rhetoric* 3: 1-5.

Liao, Meizhen 廖美珍. 2004. Mudi Yuanze yu Fating Hudong Huayu Hezuo Wenti Yanjiu 目的原则与法庭互动话语合作问题研究 [Research on the principle of goal and the cooperation of interactive discourses in court]. *Waiyu Xuekan 外语学刊 Foreign Language Research* 5: 43-52.

Liao, Meizhen 廖美珍. 2005. Mudi Yuanze yu Yupian Lianguan Fenxi 目的原则与语篇连贯分析 [The principle of goal and analysis of discourse coherence – A new approach to the study of discourse coherence]. *Waiyu Jiaoxue yu Yanjiu 外语教学与研究 Foreign Language Teaching and Research* 5: 351-357.

Niu, Jiezhen, and Wang, Suying 牛洁珍，王素英. 2010. Falv Yingyu de Wenti Tezheng yu Fanyi Celue 法律英语的问题特征与翻译策略 [Problem characteristics and translation strategies of legal English]. *Hebei Faxue 河北法学 Hebei Law Science* 3: 148-150.

Xue, Chaofeng 薛朝凤. 2011. *Fazhi Xinwen Huayu Xushi Yanjiu 法制新闻话语叙事研究* [*Discourse Narrative Research of Legal News*]. Boshi Xuewei Lunwen 博士学位论文 PhD diss. Shanghai Waiguoyu Daxue 上海外国语大学 Shanghai Foreign Studies University.

Xue, Chaofeng 薛朝凤. 2012. Woguo Fazhi Xinwen Xushi Moshi 我国法制新闻叙事模式 [Narrative mode of legal news in China]. *Guoji Xiucixue Yanjiu 国际修辞学研究 International Rhetoric Research* 00: 168-183.

Zhang, Qing, and Gong, Mingyu 张清，宫明玉. 2013. Zhongmei Xingshi Panjueshu Qingtai Duibi Yanjiu 中美刑事判决书情态对比研究 [A comparative study of modality in America and Chinese criminal judgments]. *Shanxi Daxue Xuebao 山西大学学报 Journal of Shanxi University* 1: 82-87.

Zhang, Ruirong 张瑞嵘. 2013. Falv Yingyu zhong de Mohu Yuyan jiqi Fanyi Celue Yanjiu 法律英语中的模糊语言及其翻译策略研究 [Research on fuzzy language in legal English and its translation strategies]. *Lilun Yuekan 理论月刊 Theory Monthly* 12: 105-108.

Zou, Yuzhen 邹雨真. 2006. *Dui Hanyu Zhuyu de Shengcheng Yufa Yanjiu 对汉语主语的生成语法研究* [*A Generative Approach to Chinese Subjects*]. Shuoshi Xuewei Lunwen 硕士学位论文 Thesis. Zhongnan Daxue 中南大学 Central South University.

Comparative Legilinguistics
vol. 47/2021
DOI: http://dx.doi.org/10.2478/cl-2021-0014

AN ANALYSIS OF THE "RIGHT OF TERMINATION", "RIGHT OF CANCELLATION" AND "RIGHT OF WITHDRAWAL" IN OFF-PREMISES AND DISTANCE CONTRACTS ACCORDING TO EU DIRECTIVES

PATRIZIA GIAMPIERI, MSc.

Università degli Studi di Camerino, School of Law
Via D'Accorso, 16. 62032 Camerino (MC);
Scuola Superiore per Mediatori Linguistici "Carlo Bo"
Via Tommasetti, 6. 00161 Roma, Italy
patrizia.giampieri@unicam.it

ORCID: http://orcid.org/0000-0003-4443-1593

Abstract: Several are the European Directives dedicated to e-commerce, focussing on consumer rights, the distance marketing of consumer financial services and the protection of consumers in distance contracts. In contract law, the terms "termination", "withdrawal" and "cancellation" have peculiar and distinct meaning. Nonetheless, they tend to be misused and applied interchangeably. This article will shed light on these relevant terms in the light of EU Directives on the protection of consumer rights in off-premises

and distance contracts. To do so, it will first present instances in which the meaning and use of these terms is either clear-cut or somehow blurred. By analysing word usage and meaning in context, it will explore how EU Directives, and EU drafters in general, made (un)ambiguous distinctions. Then, it will investigate whether English-speaking drafters (such as those of the pre-Brexit UK, Ireland and Malta) made a consistent use of such terms. Finally, this paper will explore whether online conditions of sale written in English by non-English speaking sellers or traders (such as Italian and Polish) also make a consistent use of the terms. The paper findings highlight that the use and legal purpose of these terms in European Directives have not been particularly consistent over the years. Furthermore, Member States' system-specificity has weighed on the meaning, application and scope of the terms. On the other hand, at EU level the absence of a unique legal system of reference and the challenges of harmonization may have created false equivalences.

Keywords: e-commerce; consumer rights; legal terminology; near-synonyms; legal discourse; off-premises contracts.

ANALISI DEL "RIGHT OF TERMINATION", "RIGHT OF CANCELLATION" E "RIGHT OF WITHDRAWAL" IN CONTRATTI A DISTANZA E FUORI DAI LOCALI COMMERCIALI SECONDO LE DIRETTIVE EUROPEE

Riassunto: Vi sono numerose Direttive europee dedicate all'e-commerce che tutelano i diritti dei consumatori; la commercializzazione a distanza di servizi finanziari ai consumatori e la tutela dei consumatori in contratti a distanza. Nel common law, i termini "termination", "withdrawal", e "cancellation" si contraddistinguono in quanto assumono significati ben precisi. Tuttavia, sono spesso impiegati in modo errato ed usati intercambiabilmente. Il presente articolo discute la suddetta terminologia alla luce delle Direttive europee sulla tutela dei diritti dei consumatori in contratti a distanza e fuori dai locali commerciali. A tal fine, si presentano e discutono esempi in cui l'uso ed il significato di tali termini è a volte chiaro ed altre volte poco cristallino. Analizzando l'uso ed il significato dei termini nel contesto, si evidenzia se e come le Direttive europee, ed i legislatori europei più in genere, hanno stabilito chiare distinzioni. Successivamente, si analizza se i paesi madrelingua inglese (quali la Gran Bretagna pre-Brexit, l'Irlanda e Malta) hanno impiegato tali termini coerentemente con le Direttive. Infine, si esaminano i termini e le condizioni di vendita online redatti in lingua inglese da rivenditori non madrelingua inglese (quali Italiani e Polacchi) per verificare se l'impiego di tale terminologia è altrettanto coerente. L'articolo evidenzia che, nel corso del tempo, l'uso e l'ambito di applicazione di tali

termini nelle Direttive europee è stato piuttosto frammentario. Le specificità dei sistemi giuridici degli Stati Membri hanno probabilmente inficiato sul significato, sull'applicazione e sull'ambito di utilizzo dei suddetti termini. Inoltre, l'assenza a livello europeo di un unico sistema giuridico di riferimento e le difficoltà di armonizzazione, hanno probabilmente dato origine a false equivalenze.

Parole chiave: e-commerce; diritti dei consumatori; terminologia giuridica; polisemia; discorso giuridico; contratti a distanza e fuori dai locali commerciali.

1. Introduction

There are many European Directives dedicated to e-commerce. Directive 2011/83/EU, for instance, focuses on consumer rights and has recently been amended by Directive 2019/2161/EU for a better enforcement and modernisation of Union consumer protection rules. Directive 2002/65/EC addresses distance marketing of consumer financial services and Directive 97/7/EC is on the protection of consumers in distance contracts.

Hence, this section will provide a literature review on EU Directives addressing consumers' rights.

1.1. The right of withdrawal, termination and cancellation in EU Directives

The European Directive 97/7/EC on the protection of consumers in distance contracts defines "consumer" as a person who is concluding a contract for personal reasons; i.e., not for business purposes:

> 'consumer' means any natural person who, in distance contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession. [Article 2 (2)]

The same Directive defines "distance contracts" as contracts concluded at distance:

> 'distance contract' means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded. [Article 2 (1)]

Directive 2011/83 also adds the concept of "off-premises contracts" as those entered into "in a place which is not the business premises of the trader" [Article 2 (8) (a)] or, amongst others, "through any means of distance communication" [Article 2 (8) (c)].

1.1.1. Right of withdrawal

As regards distance and off-premises contracts, the European Directive 2011/83 on consumer rights and the later European Directive 2019/2161 regarding a better enforcement and modernisation of Union consumer protection rules also establish a "right of withdrawal" in order to enhance consumer protection. According to these Directives, the consumer may exercise the right to change his/her mind without providing a reason (Sánchez Abril et al. 2018: 43). In particular, according to the European Directive 2019/2161, the consumer has the right "to test the service and decide, during the 14-day period from the conclusion of the contract, whether to keep it or not" (par. 30 of the premises of Directive EU 2019/2161; see also par. 48 of the premises of Directive EU 2011/83). In addition, Annex 1 of the Directive 2011/83 contains a document named "Model instructions on withdrawal", which can be used when entering into off-premises contracts. These instructions report the following sample sentence which sellers should communicate to consumers: "[y]ou have the right to withdraw from this contract within 14 days without giving any reason".

In light of the above, the right of withdrawal is not perceived as a remedy for, e.g., breaches of contract, but it is a statutory right (Sánchez Abril et al. 2018: 44). In case of non-performance of the contract, in fact, the Directive 2011/83 gives the consumer the right of termination. The following excerpt provides an example:

> [I]f the trader fails to deliver the goods on time, the consumer should be entitled to terminate the contract immediately after the expiry of the delivery period initially agreed. [Premises, par. 52 and Article 18]

Article 18, par. 4, further entitles the consumer to obtain other remedies:

> In addition to the termination of the contract in accordance with paragraph 2, the consumer may have recourse to other remedies provided for by national law.

Therefore, the right of termination is perceived as a form of redress. This is corroborated by Directive 2019/2161. Article 11a, entitled "Redress", provides that, in case of an unfair conduct by the seller, the consumer is entitled to remedies and/or the termination of the contract:

> Consumers harmed by unfair commercial practices, shall have access to proportionate and effective remedies, including compensation for damage suffered by the consumer and, where relevant, a price reduction or the termination of the contract.

1.1.2. Right of termination

On the basis of the European Directives above-mentioned, it is apparent that the term "withdrawal" refers to an action whereby the consumer puts an end to a contract for whatsoever reason (e.g., having second thoughts and changing his/her mind), whereas "termination" is considered a remedy which the consumer is entitled to in case of damage and/or non-performance of the contract by the seller.

However, this is not so straightforward as far as ancillary contracts are concerned. Directive 2011/83 defines them as contracts related to the main contract and subordinated to it:

> Ancillary Contract: contract by which the consumer acquires goods or services related to a distance contract or an off-premises contract and where those goods are supplied or those services are provided by the trader or by a third party on the basis of an arrangement between that third party and the trader. [Article 2 (15)]

In particular, Directive 2011/83 establishes the right to terminate ancillary contracts in case of withdrawal from a distance or an off-premises contract, as this extract clearly shows:

> [I]f the consumer exercises his right of withdrawal from a distance or an off-premises contract in accordance with Articles 9 to 14 of this Directive, any ancillary contracts shall be automatically terminated. [Article 15 (1)]

From Article 15 above, it is apparent that the termination of ancillary contracts is a statutory right, not a remedy as in the other circumstances above-mentioned. In this case, it is the opinion of the author that the term "terminated" may create some confusion. In common law systems, for example, the lemma '"terminate" is used when a contract is ended for reasons other than its natural expiry (see Giampieri in press: 45-50). For this reason, the verbs "ended" or "set aside" would have been preferable.

1.1.3. Right of cancellation

Term "cancellation" raises the same issues. This term is used in Directive 97/7/EC, on the protection of consumers in respect of distance contracts, and Directive 2002/65/EC, concerning the distance marketing of consumer financial services. Directive 97/7/EC (Article 6, "Right of Withdrawal") states that

> [T]he credit agreement shall be **cancelled**, without any penalty, if the consumer exercises his right to withdraw from the contract in accordance with paragraph 1.

The paragraph 1 in question establishes as follows:

> For any distance contract the consumer shall have a period of at least seven working days in which to **withdraw** from the contract without penalty and without giving any reason.

In this case, the terms "cancel" and "withdraw" are used interchangeably to entitle the consumer to put an end to a contract because s/he changed his/her mind.

Directive 2002/65/EC, instead, establishes the following (Article 11, "Sanctions"):

> Member States shall provide for appropriate sanctions in the event of the supplier's failure to comply with national provisions adopted pursuant to this Directive. They may provide for this purpose in particular that the consumer may **cancel** the contract at any time, free of charge and without penalty.

In this case, the right to cancel a contract is perceived as a remedy in case the seller neglects national provisions. Therefore, as can be guessed, distinctions between the terms "cancel" and "withdraw" are somehow blurred.

1.1.4. Discussion

This section presents a general discussion of the analysis carried out above. Table 1 summarizes the major findings.

Table 1. "Withdrawal", "cancellation" and "termination" in the EU Directives

Source	Withdrawal; right to withdraw	Cancellation; right to cancel	Termination; right to terminate
EU Directives	Consumer's right to have second thoughts and change his/her mind (Directives 2011/83 and 2019/2161)	(1) "Ending" a contract in case of withdrawal (Directive 97/7) (2) Redress in case of supplier's failure to comply with national provisions (Directive 2002/65)	(1) Redress in case of damage suffered (Directives 2011/83 and 2019/2161) (2) "Ending" ancillary contracts in case of withdrawal from an off-premises contract (Directive 2011/83)

Table 1 above shows that according to the many EU Directives, the term "withdraw" refers to a consumer's right to end the contract because he/she changed his/her mind. The lemma "cancel" has the same meaning of "withdraw" but, in some cases, it may refer to

ending a contract in case of failure to comply with national provisions. The lemma "terminate", instead, is a form of redress in case of breach of contract and it is the term used to end ancillary contracts in case of withdrawal.

1.1.5. Considerations

As can be noted, the terms "withdraw", "terminate" and "cancel" have not always been used consistently by the European drafters. This might be owing to difficulties in drafting documents and using terms which must be applied in and by all Member States (see the comments by Jacometti and Pozzo 2018: 12ff). Other reasons for a non-clear-cut use of these legal terms could be due to the fact that the European drafters resort to concepts and institutions already existing in national legal systems (Šarčević 2000). When applying them to European documents without referring to a particular legal system, there might be room for misinterpretation or ambiguity. Also, semantic neologisms and resemantization processes may take place when adopting and adapting legal terms across the European Union (Sagri and Tiscornia 2009; Jacometti and Pozzo 2018: 85). In particular, the resemantization process consists of a change of meaning of words and is defined as "the transposition of a single term or series of words already existing in a language and the adaptation of its meaning to European Union law, with consequent semantic enrichment" (Mariani 2018: 83). There might also be instances of imprecision or inaccuracy (Jacometti and Pozzo 2018: 177-178) which weigh on the choice and use of the legal terminology to apply. A case in point is the former Directive 85/577 (later abrogated by Directive 2011/83) which, in the English version, considered as equal the consumer's "right of cancellation" and the "right of renunciation" in distance contracts. In this regard, it is worthwhile mentioning that the "right of renunciation" is inexistent in the contract law of English-speaking countries. The People's Law Dictionary (Hill and Thompson Hill 2002), for example, describe "renunciation" as "giving up a right, such as a right of inheritance, a gift under a will or abandoning the right to collect a debt on a note". Therefore, such a right does not entitle a party to terminate or end a contract. Hence, the "right of

renunciation" is a clear example of neologism (or resemantization if the term was already in use in other Member States' legal systems).

1.2. The legal English within the EU

In light of the comments made above, a few more words should now be dedicated to the legal English of the European Institutions.

It is well known that the legal English of the European Union is not grounded in a legal system (Jacometti and Pozzo 2018: 29). It is, in fact, a language based on a set of common criteria with the aim of fostering harmonization among the Member States. Hence, the legal English of the European Institutions (and of EU drafters) is not based on a specific legal system. For this reason, the legal English of the EU may be considered a unique language (see Giampieri 2016) and it would be too risky to compare it with the legal English of common law countries.

Therefore, the legal terminology and legal language adopted by EU drafters may not correspond to, or may have different meanings from existing legal terms adopted by the Member States.

2. Aim of the paper and research question

Given the above, it is now interesting to explore how English and non-English speaking countries of the European Union address the terminology used in the EU Directives.

Therefore, this paper is aimed at shedding light on the use of the terms "withdrawal", "termination" and "cancellation" in distance and off-premises contracts across EU Member States.

To this aim, the Regulations and Statutes adopted in the (pre-Brexit) UK, Ireland and Malta will be analysed, in order to bring to the fore similarities or discrepancies in the use of the EU nomenclature.

Afterwards, the English versions of some distance and off-premises contracts of non-English speaking countries will be focused on. The use of the English terminology will be analysed in order to

verify similarities or discrepancies with the terms suggested by EU Directives.

Therefore, the research questions of this paper are the following: are the "right of withdrawal", "right of termination" and "right of cancellation" used consistently in the law of English-speaking countries across the EU? Are the "right of withdrawal", "right of termination" and "right of cancellation" used consistently in distance and off-premises contracts drafted in English in non-English speaking countries across the EU?

Consequently, this paper will explore how and if the terms "withdrawal", "termination" and "cancellation" used in the Statutes and Acts of English-speaking countries and in the English versions of distance contracts in non-English-speaking countries assume similar or different meanings depending on the contexts and/or the legal systems of reference.

3. Analysis

This section of the paper will present an overview of the legal terminology used by the (pre-Brexit) British, Irish and Maltese drafters as far as distance and off-premises contracts are concerned. In order to do so, the laws and statutes implementing the EU Directives above-mentioned will be considered and the use of the terms "withdraw", "cancel" and "terminate" will be investigated.

Then, this section will focus on the legal English terminology used in distance and off-premises contracts drafted in non-English speaking countries. In order to do so, a corpus of online Italian and Polish terms and conditions of sale/service written in English will be considered and analysed. The analysis will explore whether the terms "withdraw", "cancel" and "terminate" are used consistently and have the same meaning(s) intended by the EU drafters.

3.1. Overview in English-speaking countries

This section will present an analysis of the terms "withdraw",

"cancel" and "terminate" in distance and off-premises contracts in Great Britain, Ireland and Malta.

3.1.1. The UK

The Directive 2011/83 was implemented in the UK through the *Consumer Contracts (Information Cancellation and Additional Payments) Regulations 2013*. The Regulations clearly refer to a "right to cancel" a contract within 14 days without giving any reason. In particular, Part 3, entitled "Right to Cancel", at (28) (1) states that

> The consumer may **cancel** a distance or off-premises contract at any time in the **cancellation** period without giving any reason, and without incurring any costs.

Part 3 (29) further establishes that "the cancellation period ends at the end of 14 days after the day on which the contract is entered into" or "after the day on which the goods come into the physical possession" depending on whether the seller provides services or goods.

Still Part 3 (37), however, points out that

> [I]f a consumer **withdraws** an offer to enter into a distance or off-premises contract, or **cancels** such a contract under regulation 28(1), any ancillary contracts are automatically **terminated**.

In this last excerpt, three apparently similar terms come to the fore, such as "withdraw", "cancel" and "terminate". It is not clear why an off-premises contract is "cancelled" but ancillary contracts are "terminated", and the Regulations do not provide any clear-cut definition of or distinction among the terms.

Moreover, as can be noticed in the example above-mentioned, the term "withdraw" is used (i.e., collocates) with "offer". Apparently, the British drafters preferred the following collocations, or formulae: "withdraw an offer" and "cancel a contract".

Nothing is mentioned in the Regulations as far as a failure to deliver the goods or to provide the service is concerned. Therefore, nothing is established in case of damage suffered by the consumer. Table 2 here below clarifies these findings.

Table 2. "Withdrawal", "cancellation" and "termination" in the UK law

Source	**Withdrawal; right to withdraw**	**Cancellation; right to cancel**	**Termination; right to terminate**
UK Law - Consumer Contracts (Information Cancellation and Additional Payments) Regulations 2013	"Withdraw" only refers to (i.e., collocates with) "offers", not "contracts".	Consumer's right to have second thoughts and change his/her mind	"Ending" ancillary contracts in case of cancellation of an off-premises contract

As can be seen, the term "withdraw" only refers to "offers"; the term "cancellation" is used to express the consumer's right to withdraw from a contract before the natural end, and the term "termination" is only used to end ancillary contracts in case of premature withdrawal.

3.1.2. Ireland

The Irish drafters used almost the same terminology as the British. The EU Directive 2011/83 was implemented in Ireland through *S.I. (Statutory Instrument) No. 484 of 2013*, namely the *European Union (Consumer Information, Cancellation And Other Rights) Regulations 2013*. Part 4, entitled "Right to cancel distance contracts and off-premises contracts, at (14) (1) provides that

> [T]he consumer may, at any time prior to the expiry of the **cancellation** period applicable under Regulation 15 or Regulation 16, cancel a distance contract or an off-premises contract without giving any reason for the **cancellation**.

Part 4 (15) further establishes that the cancellation period expires after 14 days from the day on which the contract is concluded" or "from the day the consumer acquires physical possession of the goods".

As can be seen, no mention to a "right of withdrawal" is present, but, instead, the Irish drafters prefer using the term "cancel".

Still Part 4 (23) (2) states that "[w]here a consumer cancels a distance or off-premises contract in accordance with this Part, any ancillary contract is automatically terminated". As with the UK Regulations, the uses and meanings of the terms "cancel" and "terminated" seem rather blurred.

In case of non-delivery of goods (or non-provision of services), the Irish drafters establish that "the buyer may treat the failure as a breach of a condition of the contract which entitles the buyer to repudiate the contract" (Part 6, 29, 2E). It is self-evident that the legal institution of the "Repudiation" comes into play. However, in the common law system, it is generally invoked in case of anticipatory breaches (Hill and Thompson Hill 2002). The People's Law Dictionary, in fact, defines "repudiation" as a "denial of the existence of a contract and/or refusal to perform a contract obligation" before "fully performing those obligations" (Hill and Thompson Hill 2002). Therefore, not only do the Irish drafters not use the term set forth by the European Directives (namely, "terminate"), but they also seem to misuse a common law term.

Furthermore, as anticipated above, the Statute does not mention any right to withdraw or right of withdrawal. Hence, this term is apparently not used.

Table 3 below summarizes these findings.

Table 3. "Withdrawal", "cancellation" and "termination" in Irish law

Source	**Cancellation; right to cancel**	**Termination; right to terminate**	**Repudiation**
Irish Law - European Union (Consumer Information, Cancellation And Other Rights) Regulations 2013	Consumer's right to have second thoughts and change his/her mind	"Ending" ancillary contracts in case of cancellation of an off-premises contract	Redress in case of damage suffered

As can be noticed, the word "cancellation" is used to express the consumer's right to withdraw from a contract before the natural end, whereas the term "termination" is only used to end ancillary contracts in case of premature withdrawal. Also, "repudiation" is a way to end a

contract in case of damage suffered by a party.

3.1.3. Malta

The Maltese *Subsidiary Legislation 378.17 Consumer Rights Regulations* adopted the same nomenclature proposed by the EU drafters. Cap 426 (10), entitled "Right of Withdrawal" states, in fact, the following:

> [T]he consumer shall have a period of fourteen (14) days to **withdraw** from a distance or off-premises contract, without giving any reason, and without incurring any costs.

As regards the use of the term "termination", the Maltese Regulations are in line with the nomenclature used by the EU Directives. Par. 17 (1), in fact, states that

> [I]f the consumer exercises his right of **withdrawal** from a distance or an off premises contract in accordance with regulations 10 to 16, any ancillary contracts shall be automatically **terminated**.

The word "termination" is also used in case of non-performance of the contract. Par. (20) (2) of Part IV, entitled "Other Consumer Rights", states the following:

> If the trader fails to deliver the goods within that additional period of time, the consumer shall be entitled to **terminate** the contract.

Hence, the right to terminate a contract is perceived both as a statutory right and a remedy, as in the EU Directives. There is no mention of any right of "cancellation".

Table 4 below summarizes the analysis carried out above.

Table 4. "Withdrawal", "cancellation" and "termination" in Maltese law

Source	Withdrawal; right to withdraw	Termination; right to terminate
Maltese Law - Subsidiary Legislation	Consumer's right to have second thoughts	(1) "Ending" ancillary contracts in case of

378.17 Consumer Rights Regulations	and change his/her mind	withdrawal from an off-premises contract (2) Redress in case of damage suffered

As can be guessed from Table 4 above, the term "withdrawal" refers to the consumer's right to end a contract before the natural expiry. The word "termination", instead, refers both to the possibility to end ancillary contracts in case of premature withdrawal, and to set a contract aside in case of damage suffered by a party.

3.1.4. Considerations

It is evident that the terminology used in the UK and Ireland is different from the one used by the EU drafters. This might be due to different uses and meanings of legal institutions (such as "cancellation") characterising the legal systems of such countries. Exploring in details the reasons for such discrepancies would go beyond the scope of this paper. It was, nonetheless, considered relevant pointing it out because the words "termination", "cancellation" and "withdrawal" seem to assume blurred meanings. As far as Malta is concerned, instead, no discrepancies were found *vis-à-vis* the uses and meanings of the terminology proposed by the EU drafters. Appendix 1 reports an overview of these terms and the circumstances in which they apply.

Given the considerations above, it is likely that the legal language of non-English speaking countries may be affected by similar discrepancies or non-equivalences, especially when translating from a native language into English as a second language (in this respect, see the research paper by Sacco 1991).

3.2. Non-English speaking countries

This section will analyse the terms "withdraw", "cancel" and "terminate" in the English versions of online terms and conditions of

sale/service proposed by non-English countries such as Italy and Poland.

In particular, this section will explore to what extent these terms are consistent with the ones mentioned in the EU Directives referred above.

In order to do so, a corpus of online terms and conditions of sale/service written in English will be analysed. This section will firstly describe in detail the corpus composition, then it will analyse each corpus separately (Italian, Polish) and it will shed light on the use and meaning of the terms "withdraw", "cancel" and "terminate". Finally, it will comment on the findings by making comparisons with the terms suggested by the EU drafters.

3.2.1. Corpus compilation

This section will outline the way the corpus of Italian and Polish terms and conditions of sale/service written in English was composed.

Firstly, each language (i.e., Italian and Polish) was dealt with separately. In order to compose each sub-corpus, the BootCaT freeware software (Baroni and Bernardini 2004) was used. In particular, the semi-automatic mode was applied.

As far as the Italian sub-corpus is concerned, the following keywords were googled: *"terms and conditions of" site:.it.* The command *site:.it* allowed to retrieve documents only in .it (i.e., Italian) domains. The first 10 Google results pages were saved onto the computer.

The same procedure was followed in order to build the Polish sub-corpus, with the only difference that the "site" command was *site:.pl*.

The queries above allowed to retrieve the exact words "terms and conditions of" in the selected domains (Italian and Polish, respectively). Furthermore, as contracts were sourced online, the process ensured that distance contracts were focused on.

Afterwards, the BootCaT software was launched and the "local queries" mode was chosen. In this way, the software built the two corpora in a matter of few seconds (one corpus at a time).

At the end of the compilation process, the Italian corpus was

composed of 89 txt documents (14,180 word types and 306,842 tokens), whereas the Polish corpus was composed of 83 txt documents (10,287 word types and 245,823 tokens).

All corpora were analysed by using AntConc offline concordancer (Anthony 2020).

3.2.2. The Italian corpus

This section will analyse the corpus of terms and conditions of sale/service sourced from Italian domains and provided by Italian traders or sellers. The terms and conditions are written in English. The analysis will focus on the terms "right of withdrawal", or "right to withdraw"; "right of cancellation", or "right to cancel", and "right of termination", or "right to terminate". Collocations and word uses in context will also be addressed.

The term "right of withdrawal" shows 99 occurrences and its use seems in line with the European Directive 2011/83. One document, in fact, establishes as follows:

> The customer is entitled to withdraw from the agreement in accordance with Legislative Decree no. 206/05. The **right of withdrawal**, which entitles the customer to return the purchased product and obtain a refund, is only available to individuals who entered into the agreement in their own capacity and not in connection with any business or professional activities. The customer may exercise the **right of withdrawal** within 14 working days of receiving the merchandise or purchasing a voucher without having to provide any reason or pay any penalty.

The paragraph clearly entitles a consumer (i.e., a natural person) to withdraw from the contract within 14 days from the receipt of the goods.

The phrase "right to withdraw" is mentioned 26 times in the Italian corpus and it is generally followed by "the agreement", "the contract", or "this distance contract". For example, the following phrase corroborates the meanings and uses of the "right to withdraw":

> The Customer has the **right to withdraw** from the contract, without giving reasons, within 14 days.

The term "right of cancellation" is mentioned 13 times, but in 4 documents only. In particular, one document defines it as "the right of the purchaser to return a purchased product and be reimbursed for the cost of the same". Hence, the "right of cancellation" could be compared to a statutory right of withdrawal. The term "right to cancel", instead, is mostly followed by words such as "order", or "purchase order". In one case only is "right to cancel" followed by "contract". The lemma "cancel" (searched as *cancel** in the corpus) collocates 51 times with "order" within a span of 5 words to the left and to the right. This is particularly evident in phrases such as "order cancellation"; "cancel an/any/the order"; "the order will be automatically cancelled", and so on.

Also, a clause mentions the "right to withdraw" although its title is "Right to Cancel":

> **Right to Cancel**. According to the clause 5 of the Legislative Ordinance number 185 of the 22nd of May 1999, the Customer (...) has the **right to withdraw** from the contract and to send back the Products ordered, with no penalty.

As can be seen, the terms "cancel" and "withdraw" seem to be used interchangeably. Hence, their differences in meanings and legal purposes are somehow blurred.

The "right of termination", instead, is only used once in the whole corpus:

> [The Company] may exercise the **right of termination** with immediate effect pursuant to the present article giving notice to the Customer by registered letter with recorded delivery or certified e-mail.

In the phrase above, it is not clear whether the right of termination is comparable to a right of withdrawal or to a remedy in case of breach of contract.

Furthermore, the word "termination" is mentioned in a penalty clause:

> Penalty Clause. In the case of **termination** of the contract for breach of the Purchaser, the sums paid by this latter at the time of undersigning the order shall be withheld by way of advance payment for damages sustained.

In this case, "termination" is clearly used as a remedy in case of breach of contract.

If the lemma "terminate" is searched in the corpus (by writing *terminat** in the search field), the following clarifying excerpt comes to the fore:

> [The Company] may **terminate** the Contract pursuant to Article 1453 of the Italian Civil Code by sending a notification to the Customer via registered letter with return receipt.

With reference to the quotation above, Article 1453 of the Italian Civil Code provides for the non-performance of a contract. The following extract corroborates it:

> In case of fault of the supplier or in the event of delayed delivery (…) the client shall be entitled to: (…) c) **Terminate** the contract with immediate effect.

Therefore, in light of the above, it appears that the words "terminate" and "termination" are mainly related to remedies in case of default or breach of contract.

As far as ancillary contracts are concerned, the corpus mostly refers to "ancillary services" and their price or cost. No ancillary contracts are, hence, tackled in the way the European drafters intended.

Table 5 summarizes the analysis carried out above.

Table 5. "Withdrawal", "cancellation" and "termination" in Italian law

Source	**Withdrawal; right to withdraw**	**Cancellation; right to cancel**	**Termination; right to terminate**
Italian terms and conditions of sale/service in English	Consumer's right to have second thoughts and change his/her mind	(1) Mostly referring to "orders" and "purchase orders" rather than "contract" (2) "Ending" a contract in case of withdrawal (very	Redress in case of damage suffered or contract non-performance

		few occurrences)	

As can be noticed, the term "withdrawal" refers to the possibility for a consumer to end a contract if s/he has second thoughts; the word "cancellation" mostly collocates with "orders" or "purchases", but in some minor cases it is a synonym of "withdrawal". The word "termination", instead, is used to set a contract aside in case of damage suffered by a party.

3.2.3. The Polish corpus

This section will analyse the corpus of terms and conditions of sale/service written in English and sourced from Polish domains. The terms and conditions are issued by Polish traders or sellers. The analysis will focus on the terms "right of withdrawal", or "right to withdraw"; "right of cancellation", or "right to cancel", and "right of termination", or "right to terminate". Furthermore, their collocations and the word uses in context will be addressed.

The phrase "right of withdrawal" occurs 20 times. Its usage and meanings seem consistent with the EU drafters' intentions, as the following excerpts clarify:

> Right to Withdraw: In accordance with Legislative Decree No. 21 of 21 February 2014, the buyer, who acts for purposes not related to the professional activity (the so-called PRIVATE user), may avail itself of the **right of withdrawal** or rethinking (art 52), returning the product purchased within 14 days of receipt, in full package.

And:

> The consumer has a period of fourteen (14) calendar days (hereinafter 'Withdrawal Period') to exercise their **right of withdrawal** without having to justify their decision, nor to bear other costs than those provided for in this article.

The term "right to withdraw" is used very frequently in the English versions of Polish terms and conditions of sale/service, as it shows 22 occurrences. However, its meaning seems changed, as it is a form of redress in case of non-performance:

> In the event the Buyer refused the delivery of the wares, despite the compliance with the Sales Agreement, [the Company] reserves the **right to withdraw** from the Sales Agreement and charge the Buyer with penalty fees.

The following excerpt corroborates these findings:

> The Ordering Party reserves the **right to withdraw** from an unexecuted purchase order in whole or in part within 3 business days, subject to Clause 7 of the GTCP. Furthermore, the Ordering Party reserves the right to seek damages.

As can be noticed, in the above sentence the right to withdraw from the contract is invoked as a form of remedy.

In the corpus, there is no "right of cancellation", whereas the phrase "right to cancel" is mentioned only 4 times and it mainly refers to orders or bookings. Only in one instance the "right to cancel" collocates with the word "contract". It is the case of defective products, as explained in the following extract:

> Claim for defects. (…) The Purchaser shall have the **right to cancel** the contract, i.e. to demand rescission, if the Seller has allowed a reasonable grace period set by the Purchaser for performing exchange or betterment to elapse to no avail, or if the betterment or the exchange was unsuccessful or was impossible.

In the clause above, invoking a contract "rescission" in case of defective products is erroneous, at least in English-speaking countries adopting a common law system. According to the common law institutions, for example, "rescission" is a redressing action allowed in case of mistakes, errors and misrepresentations. The People's Law Dictionary, in fact, clearly explains that: "a mistake can entitle one party or both parties to a rescission (cancellation) of the contract" (Hill and Thompson Hill 2002). In the sentence above, the term "cancel (the contract)" cannot be considered a synonym of "rescinding (a contract)", because no mistake, error or misrepresentation is referred to. However, it could be speculated that such an erroneous use of the term "rescission" might be due to influences from L1.

The term "right of termination" is not present in the corpus. However, the phrase "right to terminate" shows 8 concordances. This is a sample phrase:

> We have the **right to terminate** the contract without notice if such termination is necessary for us in order to comply with national or international legal provisions.

From the phrase above, it appears that the contract can be "terminated" by operation of law.

The following extracts (1 and 2), instead, clearly refer to the right of termination as a right to withdraw from the contract:

> (1) Each of the Parties shall have the right to terminate the agreement concluded for an indefinite period of time with one-month's notice, to be effective as at the end of the calendar month.
> (2) Each of the Parties may terminate this Contract by giving 3 months written notice.

The following excerpt considers "terminate" as a remedy in case of breach of contract:

> The **right to terminate** this agreement at an early stage for an important reason remains unaffected. An important reason exists if the customer violates repeatedly against this contract.

Given the examples provided above, it appears that the term "termination" is used inconsistently in Polish terms and conditions of sale/service written in English. This might be due to influences from L1 and/or to the specific legal system.

Finally, the corpus does not provide any particular information or details on ancillary contracts.

Table 6. "Withdrawal", "cancellation" and "termination" in Polish law

Source	**Withdrawal; right to withdraw**	**Cancellation; right to cancel**	**Termination; right to terminate**
Polish terms and conditions of sale/service in English	(1) Consumer's right to have second thoughts and change his/her mind (2) Redress in case of damage	(1) Mostly referring to "orders" (2) "Ending" a contract when invoking rescission (in case	(1) Parties' right to end the contract at their will (2) Redress in case of damage suffered or

	suffered or contract non-performance	of mistakes)	contract non-performance (3) "Ending" a contract by operation of law

Table 6 above shows how confusing the use of the terms can be. For example, both "withdrawal" and "termination" are used to end a contract in case of damage suffered by a party. Also, the term "withdrawal" refers to the consumer's right to end a contract before its natural expiry, and "termination" is invoked to set a contract aside by consent of both parties. The word "cancellation" mostly collocates with "orders", but it also applies in case of mistakes. Finally, "termination" is also used in order to end a contract by operation of law.

3.2.4. Discussion

In light of the analysis carried out above, it is self-evident that the English versions of Italian terms and conditions of sale/service mostly mirror the nomenclature, use and meanings proposed by EU drafters. For example, the right of "withdrawal" is used to allow customers to have second thoughts and change their minds. Hence, it is granted as a statutory right. The right to terminate a contract, instead, is mostly used in case of non-performance of a contract. Hence, it is granted as a remedy. As regards the term "cancellation", its meanings and uses appear sometimes non-clear-cut as it is often confused with "withdrawal". This, however, occurs in the English versions of Italian terms and conditions of sale/service as well as in EU Directives. Moreover, in Italian terms of service/sale written in English, the lemma "cancel" mostly refers to purchase orders.

As for the English versions of Polish terms and conditions of sale/service, it can be stated that the term "right of withdrawal" is used consistently, as it has the same meaning provided for by EU Directives. Nonetheless, some confusion comes to the fore as far as the phrase "right to withdraw" is concerned. If searched in the corpus, in fact, it seems to be used as a form of remedy (hence, it is a

synonym of "right to terminate"). As for "right of cancellation", the corpus provides no hits, whereas the phrase "right to cancel" shows very few hits, which mostly refer to orders. Hence, differently from the language of EU Directives, no confusion arises between the terms "withdrawal" and "cancellation". As far as "termination" is concerned, instead, it seems that Polish conditions of sale/service written in English make a varied use of it. As a matter of fact, a contract "termination" is not only invoked when ending it by law, but also in case of breach of the contractual obligations and when exercising the right to withdraw. Therefore, the use of this term seems rather "blurred".

4. Conclusions

This paper aimed at exploring whether legal terms such as "withdrawal", "termination" and "cancellation" are used consistently by the EU drafters and by English-speaking drafters addressing off-premises and distance contracts. Furthermore, its purpose was to verify whether consistency is present in the English versions of online terms and conditions of sale/service of non-English speaking sellers or traders.

The paper highlights that there are some inconsistency in the use of the terms across EU Directives. The Directives 97/7 and 2002/65, for example, propose different terminology *vis-à-vis* the more recent Directives 2011/83 and 2019/2161. This is particularly evident when referring to the consumer's right to "withdraw" from a contract, or when seeking redress.

Such inconsistency is reflected on Member States' national laws and contracts, especially when English is not a native language. The paper findings highlight that uniformity in the usage, purpose and meanings of the terms is not always accomplished. This occurs in view of the different legal systems of the Member States and owing to influences from a county's L1. For example, the drafters of English-speaking countries make use of terminology which is not always in line with the one applied by the European drafters. This may be due to an already existing nomenclature which has particular meanings and purposes in a given legal system. For example, the British and Irish

drafters chose the term "cancel" instead of "withdraw" when referring to the right of the consumer to put an end to an off-premises or distance contract because of second thoughts. Other reasons for inconsistency might be due to influences from the first languages of the Member States and/or to an incorrect use of common law terms (see "rescission" in Polish conditions of sale/service, or "repudiation" in an Irish Statute).

Therefore, in light of the above, this paper cannot claim that the terms "withdraw", "cancel" and "terminate" are used uniformly either in European law or in the law of English-speaking countries. Nor can it argue that consistency characterises the many terms and conditions of sale/service available online. Efforts in making terms and terminology clearer are called for, especially at institutional level.

In practice, this paper highlights that the terms "right of withdrawal", "right of cancellation" and "right of termination" differ substantially in content and legal purposes. Therefore, they are neither used uniformly in European countries, nor in EU Directives.

The limits of this paper lie in the limited number of countries considered. A larger number of European countries could yield more comprehensive results. However, given the limited space available for this paper, such an option was ruled out.

Further research could investigate whether future Directives make a more consistent use of the legal terminology in question. Moreover, future researchers could carry out comprehensive surveys and verify the English terminology used in online terms and conditions of sale/service of several non-English speaking countries.

References

Anthony, Laurence. 2020. *AntConc* 3.5.9. https://www.laurenceanthony.net/software/antconc/ (accessed August 26, 2021).

Baroni, Marco, and Silvia, Bernardini. 2004. BootCaT: Bootstrapping corpora and terms from the web. *Proceedings of LREC 2004*. 1313-1316. sslmit.unibo.it/~baroni/publications/lrec2004/bootcat_lrec_2004.pdf (accessed August 26, 2021).

Giampieri, Patrizia. 2016. Is the European legal English legalese-free? *Italian Journal of Public Law* 8 (2): 424-440.

Giampieri, Patrizia. In press. *Legal English & Contract Law – Contrattualistica Comparata*. Milan: Giuffrè-Lefebvre.

Hill, Gerald and Kathleen, Thompson Hill. 2002. *The People's Law Dictionary – Taking The Mystery Out of Legal Language*. New York: MJF Books.

Jacometti, Valentina, and Barbara, Pozzo. 2018. *Traduttologia e linguaggio giuridico*. Milano: Wolters Kluwer.

Mariani, Jessica. 2018. Migration in Translation: The Role of Terminology and Trans-Editing in Shaping The Crisis in EU Institutions. PhD diss., University of Verona, Department of Foreign Languages and Literatures. https://termcoord.eu/wp-content/uploads/2013/08/Mariani-PhD-Project-2017.pdf

Sacco, Rodolfo. 1991. Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II), *The American Journal of Comparative Law* 39 (1): 1-34.

Sagri, Maria-Teresa e Daniela, Tiscornia. 2009. Le peculiarità del linguaggio giuridico. Problemi e prospettive nel contesto multilingue europeo, *mediAzioni* 7: 1-28. http://www.mediazioni.sitlec.unibo.it/index.php/no7-anno2009/61.html (accessed August 26, 2021).

Sánchez Abril, Patricia, Francisco Oliva Blázquez and Joan Martínez Evora. 2018. The Right of Withdrawal in Consumer Contracts: a comparative analysis of American and European law. *InDret* 3: 1-56. University of Miami Business School Research Paper No. 18-13. https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3260506_code1215542.pdf?abstractid=3260506&mirid=1 (accessed August 26, 2021).

Šarčević, Susan. 2000. Legal Translation and Translation Theory: A Receiver-oriented Approach. In *La traduction juridique, Histoire, téorie(s) et pratique*, ed. Jean-Claude Gémar, 329-347. Genève: Université de Genève. http://www.tradulex.com/en/translators/Legal-Geneva2000 (accessed August 26, 2021).

Appendix 1. Overview of terms

Source	Withdrawal; right to withdraw	Cancellation; right to cancel	Termination; right to terminate	Repudiation
EU Directives	Consumer's right to have second thoughts and change his/her mind (Directives 2011/83 and 2019/2161)	(1) "Ending" a contract in case of withdrawal (Directive 97/7) (2) Redress in case of supplier's failure to comply with national provisions (Directive 2002/65)	(1) Redress in case of damage suffered (Directives 2011/83 and 2019/2161) (2) "Ending" ancillary contracts in case of withdrawal from an off-premises contract (Directive 2011/83)	-
UK Law - Consumer Contracts (Information Cancellation and Additional Payments) Regulations 2013	"Withdraw" only refers to (i.e., collocates with) "offers", not "contracts".	Consumer's right to have second thoughts and change his/her mind	"Ending" ancillary contracts in case of cancellation of an off-premises contract	-
Irish Law - European Union (Consumer	-	Consumer's right to have second thoughts and	"Ending" ancillary contracts in case of	Redress in case of damage suffered

Information, Cancellation And Other Rights) Regulations 2013		change his/her mind	cancellation of an off-premises contract	
Maltese Law - Subsidiary Legislation 378.17 Consumer Rights Regulations	Consumer's right to have second thoughts and change his/her mind	-	(1) "Ending" ancillary contracts in case of withdrawal from an off-premises contract (2) Redress in case of damage suffered	-
Italian terms and conditions of sale/service in English	Consumer's right to have second thoughts and change his/her mind	(1) Mostly referring to "orders" and "purchase orders" rather than "contract" (2) "Ending" a contract in case of withdrawal (very few occurrences)	Redress in case of damage suffered or contract non-performance	-
Polish terms and conditions of sale/service in English	(1) Consumer's right to have second thoughts and change his/her mind	(1) Mostly referring to "orders" (2) "Ending" a contract	(1) Parties' right to end the contract at their will (2) Redress in	-

	(2) Redress in case of damage suffered or contract non-performance	when invoking rescission (in case of mistakes)	case of damage suffered or contract non-performance (3) "Ending" a contract by operation of law	