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Preface

This volume of Comparative Legilinguistics contains six articles and one review.

First article refers to legal terminology. It is written by Mami OKAWARA (Japan) and it is titled: *Paraphrases of Legal Terminology Based on Lay Perceptions*. The author touches upon some theoretical issues of the language of law. The paper presents the paraphrase analysis of the legal term 故意 (intention). As a result of data analysis, the author presents downloaded sentences with the term 故意 (intention) that show four characteristics of legal terms. Also, the article shows the misunderstanding of legal language for lay people.

In the second category we have three articles which deal with court translation. Ejarra BATU BALCHA (Ethiopia) is the author of the article titled: *Analysis of Legal Discourse in Cross-Examination Questionings: Adama City Criminal Courtreooms, Oromia Regional State, Ethiopia*. The author discusses issues referring to the discursive properties of both question forms and functions as cross-examining lawyers attempt to deconstruct witnesses' testimony. The analysis in this research provides an insight into the extent of the problem which can arise from a literal interpretation of such answers as indicating agreement (*yes*, *no*, *OK*, etc.). The findings of the study suggest that the answerers are pressured to give answers expected by interrogators which finds reflection in a wide range of linguistic parameters such as discourse, exchange and question forms.

Prolegomena to a New Criminal Trial Procedure in Poland Following the Amendment of the Code of Criminal Procedure of 27.09.2013: From Inquisitorial towards Adversarial Procedure of Witness Examination in Criminal Trials is the main issue of the article written by Grażyna BEDNAREK (Poland). The aim of the author is to present the new criminal laws in Poland that came into effect on 1 July 2015 and explain the prospective consequences that they will have on Polish courtroom discourse. The paper comprises three major parts. It commences with the demonstration of the inquisitorial procedure of witness examination in criminal trials prior to the amendment of criminal law in Poland. Then, it presents the criticism of the inquisitorial criminal trial by the representatives of academia and legal practitioners in Poland, and explains the reasons for the transformation of the inquisitorial criminal trial into an adversarial one. Finally, it presents the new regulations of the Code of Criminal Procedure pertaining to the criminal trial and establishes what effects they will have on Polish courtroom discourse.

The article of Sangi GURUNG (Hong Kong) has the objective to illustrate the *Identities, Cultural Mitigation and Ethnic Minority Interpreters*.

This paper explores the identity construction of ethnic minority (EM) interpreters in Hong Kong and the way cultural differences are incorporated into interpreting in legal settings.

The next article is devoted to legal translation. *The postulate of affective neutrality vs. verbal expressiveness in the legislative texts on German and Polish criminal law. A comparative study* is written by Karolina KĘSICKA (Poland). The text is in German and illuminates the phenomenon of expressiveness in the language of law based on empirically examined terminology selected from the German and Polish Criminal Codes. The purpose is to show the variety of measures used for the verbalisation of expressiviness in the analyzed legal texts, to clarify their text function, to research how the examined German and Polish legal terms differ in terms of the degree of expressive intensity and to outline the issues of translation of verbal expression.

Finally, the last article is devoted to linguistic rights and legal communication in the European Union – *Institutional Multilingualism in the European Union – Policy, Rules and Practice*. The article is written by Karolina PALUSZEK (Poland). The author describes problems resulting from the usage of official EU languages. Also, the inconsistencies between the practice of internal and external communication of the EU institutions are presented.

The last text in this volume is a review of the Artur Dariusz KUBACKI's book *Wybór dokumentów austriackich dla kandydatów na tłumaczy przysięgłych. Auswahl österreichischer Dokumente für Kandidaten zum beeideten Übersetzer/Dolmetscher* written by Ida SKUBIS published by Wydawnictwo Biuro Tłumaczeń KUBART.

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

PARAPHRASES OF LEGAL TERMINOLOGY BASED ON LAY PERCEPTIONS

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Abstract: This paper discusses the issue of plain legal language in Japan. First, several legal language battles between legal and lay people are shown, followed by a paraphrase work on civil legal terms based on a research titled 'A Study on Paraphrase of Civil Legal Terms based on Lay Perception', which was funded by Grants-in-Aid for Scientific Research of Japan Society for the Promotion of Science from April of 2012 to March of 2013. The research was conducted, using corpus analysis of civil legal terms appeared in ordinary writings and questionnaire of legal experts. The finding of the research is that 'misunderstood' legal words which appear more than 50% in non-legal writings is an obstacle to lay understanding. One 'misunderstood' legal term 'intent' (故意) is selected for paraphrase analysis from the point of views of antonym, synonym, derivative of legal term.

Key words: civil legal terms, corpus analysis, synonym, antonym, derivative

市民に分かりやすい民事関連法律用語の言換えに関する研究

要約: 本稿では、法律用語の平易化について論じる。まず、法律家と非法律家の難解な法律文書や法律用語についての議論を紹介する。次に、科研費による研究 (挑戦的萌芽研究 平成24~25年度「市民に分かりやすい民事関連法律用語の言換えに関する研究」研究代表者 (大河原眞美) について解説する。本研究では、民事関連の法律用語についてのアンケート調査とコーパス調査を行って、アクセス障害となっている難解な法律用語を抽出し、反対語、類語、派生語からの解説を提案した。

キーワード：民事法律用語、コーパス分析、類語、反対語、派生語

PARAFRAZY TERMINOLOGII PRAWNICZEJ OPARTE NA OGOLNYM ROZUMIENIU PRZEZ LAIKOW

Abstrakt: Praca dotyczy kwestii stosowania prostego języka prawnego i prawniczego w Japonii. W pierwszej części autorka omawia spór toczący się w tym zakresie pomiędzy prawnikami i laikami. Następnie omawia badanie dotyczące parafrazy terminologii prawa cywilnego w ramach grantu naukowego pt. 'A Study on Paraphrase of Civil Legal Terms based on Lay Perception', finansowanego przez Japońskie Stowarzyszenie Promocji Nauki od kwietnia 2012 do marca 2013 roku. Badanie wykazało, że w wielu przypadkach terminy prawnicze są błednie rozumiane przez użytkowników nie mających wykształcenia prawniczego. Jednym z takich terminów jest 'zamiar' (故意).

Słowa kluczowe: terminologia prawnicza, analiza korpusowa, synonym, antonym, wyrazy pochodne

1. Introduction

Legal terminology is often incomprehensible to lay people. Lay people consult dictionaries on legal technical terms only to find that the explanations on the dictionaries are no help at all. This is because legal dictionaries are made by legal experts for legal experts and law students.

In this paper I would like to take up the issue of plain legal language. First, I would like to show several legal-Japanese language battles between legal and lay people, followed by some earlier studies of legal language in general. After that, I would like to propose our paraphrase work on legal terms based on our research, *A Study on Paraphrases of Civil Legal Terms based on Lay Perception*, which was funded by Grants-in-Aid for Scientific Research of Japan Society for the Promotion of Science. Co-researchers of this research are Makirou Tanaka (Meiji University), Richard Powell (Nippon University), Hiroyuki Kanemitsu (Takasaki City University of Economics). Yumi Miyazaki (Senshu University) is our research assistant. We would like to conclude that adequate paraphrase requires legal reasoning as well as corpus linguistics.

2. Some Earlier Studies of Legal Language

A pioneer work on legal language is the work of law professor Mellinkoff (1963), who discussed the peculiarity of English legal language from the perspective of the lexicon: (1) frequent use of common words with uncommon meanings; (2) frequent use of Old and Middle English words once in use but now rare; (3) frequent use of Latin words and phrases; (4) use of Old French and Anglo-Norman words not in the general vocabulary; (5) the use of terms of art; (6) frequent use of formal words; and (7) deliberate use of words and expressions with flexible meanings.

Following Mellinkoff's work linguists conducted the analysis of legal language. Crystal and Davy (1969) first drew attention to sentence length in legal language. They noted the extreme length of sentences with arrays of subordinate devices and the repetition of lexical items and a scarcity of anaphora. This is because legal experts want all the necessary information to be presented in one single sentence. The reason behind this is that one can avoid possible legal challenges resulting from problems of coherence of words.

For the strategic point of view, passives and nominalizations are used to obscure the actor. Tiersma's example (1999: 77) is that the defendant's attorney can write "the (girl's) injury happened at 5:30" instead of "the defendant injured the girl at 5:30".

Another source of syntactic elaboration relates to grammatical metaphor, which contributes to the incomprehensible nature of legal documents. Halliday (1985: 93-106) introduced the notion of grammatical metaphor in the process of differentiating between written and spoken languages. What Halliday noted is that something represented as a verb can be represented as a noun. Gibbons (2002: 20) then stated that grammatical metaphor can contain dense packaging of information in the form of a noun phrase. However, the sentence itself turns out to be simple. In other words, complex information can be expressed in a form of a simple sentence with noun phrases of densely packed information.

Legal language appears incoherent to lay people. Understanding legal language takes a special method of interpretation. Azuelos-Atias (2011) argues that a specialized legal meaning is conveyed implicitly. I would like to note in that such a special method of interpretation needs to be elaborated to serve as an intermediary between lay and legal experts.

3. Legal Language Battles

3.1 Linguist v. Cabinet Legislation Bureau Director

The incomprehensible nature of legal language became a growing concern among Japanese non-legal experts in the late 1950s. A linguist, Tadatoshi Okubo evaluated the readability of 警職法の一部を改正する法 (Partial Revision to the Performance of Police Function Act). Okubo pointed out five distinctive features of legal language from his language diagnosis of the police act. He then named these five features after disease: an extremely-long-sentence disease; an extremely-long-modifier disease; a subject & verb-placed-farther disease; an unconsciously deleting-statements disease; and an excessively-inserting-conditionals disease. He contributed his diagnosis analysis entitled 「法令用語を診断すれば一構文上から見た法律文書のわかりにくさ分析」

(*A diagnose on legal language – An syntactic analysis on incomprehensible nature of legal language*) to the February 1959 issue of 『法学セミナー』 (*Seminar on Legal Studies*).

As Okubo's article is caustic to legal experts, Shuzo Hayashi, director general of the Cabinet Legislation Bureau, made a rebuttal statement in the March issue of the same journal. Hayashi argued that the incomprehensible nature of legal language is a necessary evil associated with the nature of law. Legal language is required to be accurate and to insert niceties of the law as well. An incomprehensible-looking feature of legal language is actually providing a guidepost by a legal writer to make legal writings more readable. The guidepost reduces the complexity involved in legal language. Okubo, instead of countering, discussed incomprehensible nature of another type of legal

writing, court judgments in the May issue of the same journal. Okubo stated judgment and acts share similarity in the nature of incomprehensibility.

3.2 Critic v. Judge

A science critic called Yasuo Shizume co-signed his friend's word-processor when a word-processor cost €6,500 around 1985 in Japan. Unfortunately his friend suspended payment due to his financial difficulty. The cosigner Shizume then received a judgment to pay the debt from a summary court where the case of his friend's inability to pay debts was tried. It was written in the judgment that 被告らは原告に対し **各自**90万円を支払え (the defendants pay €6,500 individually (各自kakuji) to the plaintiff). Shizume planned to appeal the ruling because he thought that the debt turned to be €13,000 which was a double "price" of the original debt. However, Shizume immediately consulted with an attorney. The attorney said that 'individually' (各自kakuji) means 'jointly' (連帯してrentai shite) in legal language, and thereby no need to appeal.

The lawyer's explanation was that in a joint litigation a ruling is given to each debtor and only the total amount of debt is therefore written in the judgment and just ends at that point. The court has no concern with how much share of the debt each defendant decides to pay. It is therefore the best way to state simply the total amount of debt in the ruling.

Shizume, however, was not able to understand the legal usage of 'individually' synonymous with 'jointly' in the ordinary language. He contributed a short critical essay titled 裁判官の国語力は中学生並み？ (*I wonder if judges' verbal attitude is on the same level of that of junior high school students?*) to *Jurist*, one of the most prestigious Japanese legal journals, making a scathing attack on the use of legal terminology. He severely criticized the legal synonymous term, stating that judges would definitely fail in two subjects of the entrance examination of junior high school: Japanese and mathematics. Judges should simply add the term 'the total amount' to the amount of the debt, which is good enough.

Facing such criticism, former judge of Tokyo High Court Takuji Kurata offered rebuttals to Shizume's criticism in his book『続・裁判官の書斎』 (*A Sequel to 'A Judge's Study Room'*). From a perspective of legal experts, Kurata said that Shizume's argument is quite absurd. Sizume apparently does not understand that the main text of judgment is deemed to be the title of obligation, which is likely taught in the class of social studies at high school. His knowledge about justice system therefore remains as the level of junior high school students.

The misunderstanding or confusion arises when ordinary words are used as a legal term which represents an unfamiliar legal concept from lay perspectives. Tiersma (1999: 111) named a word which has a legal meaning very

different from their ordinary significance as “legal homonym”. More concretely, Tiersma states that a great deal of legal vocabulary looks like ordinary language, but has quite a distinct meaning. Legal homonyms can be very misleading to lay understanding. The paraphrase of legal homonym is therefore important for the study of plain legal language.

4. Paraphrases of Civil Legal Terms

4.1 Design and Method

In order to offer more comprehensible paraphrases of some Japanese civil law terms, we conducted our research in five steps:
(1) Questionnaire of legal practitioners;
(2) Selection of 234 legal words;
(3) Corpus analysis of 234 legal words;
(4) Classification of misunderstood terms and unintelligible terms from a list of 98 words;
(5) Paraphrases of ‘misunderstood’ terms.

4.2 Results

4.2.1 Questionnaire of Law Practitioners

We asked legal practitioners to give us some three legal terms which they found it difficult in the communication with their clients or parties. We got answers from 48 legal practitioners (31 judicial scriveners, 16 attorneys and 1 judge). Respondents wrote 74 words. Table 1 indicates top five words of those difficult words.

Table 1. List of Top 5 Difficult Words

Legal terms	**Number of legal practitioners**
瑕疵 (defect)	8 (6 attorneys + 2 judicial scriveners)
債務名義 (title of debt)	4 (1 attorney + 3 judicial scriveners)
善意 (without knowledge of) 悪意 (with knowledge of) (with knowledge of)	3 (1 attorney + 2 judicial scriveners)
遺産分割 (partition of the estate)	3 (3 judicial scriveners)
同時廃止 (simultaneous discontinuance, simultaneous abolition of bankruptcy)	3 (1 attorney + 2 judicial scriveners)

瑕疵 (defect) was made the top first in the list. 瑕疵 is predominantly used when buying secondhand houses or condominiums. The Chinese characters of 瑕疵 is difficult ones for lay Japanese because these Chinese characters are out of the national list of Chinese characters in common use. On the contrary, common Chinese characters are used for 債務名義 (title of debt), 遺産分割 (partition of the estate), 同時廃止 (simultaneous discontinuance, simultaneous abolition of bankruptcy), 善意 (without knowledge of) and 悪意 (with knowledge of).

Among the four legal terms 債務名義, 遺産分割 and 同時廃止 are a composite word which is a combination of two ordinary words respectively. Lay people might feel they know rough meanings of these legal terms because each word such as 債務, 名義, 遺産, 分割, 同時, 廃止 are commonly used familiar words for them. The combination of these words is very uncommon, though.

悪意 (with knowledge of) and 善意are a typical example of Japanese legal homonym. Ordinary usage of 悪意 (with knowledge of) and 善意 are 'evil intent' and 'good intent', which are totally different from their respective legal usages.

Other unintelligible words are the name of roles related to the justice system: 被相続人 (ancestor), 申立人 (petitioner), 相手方 (the other party). The difficulty of these words is easily solved if the function of justice system is taught at a social studies class. However, one confusing legal example is 社員 (partner) which means 'partner'. In ordinary Japanese 社員 indicates an 'employee', not a 'partner'. It is another example of legal homonym.

One more difficulty pointed out by legal practitioners is synonyms of legal terms such as 悪意 (with knowledge of), 故意 (intent). Minced legal notion is unintelligibility to lay people. Legal practitioners are required to explain the legal notion of terms in question.

It is important to note that both legal homonym and composite word cause more problems than legal terms with unfamiliar words in the communication between legal and lay people.

4.2.2 Selection of 234 legal words

We selected 234 civil law terms, using an introductory law book titled 『日本法への招待』 (*Law Students in Wonderland: An Invitation to Japanese Law*), which is aimed for international students who study Japanese laws. We then undertook research on actual lay usage of these 234 words, using the 『現代日本語書き言葉均衡コーパス』 (Balanced Corpus of Contemporary Written Japanese (BCCWC)) provided by 国立国語研究所 (National Institute for Japanese Language and Linguistics). BCCWC is the only available balanced corpus of modern Japanese which includes 104,300,000 words from books, journals, newspapers, blogs, online messages, textbooks, laws.

4.2.3 Corpus analysis of 234 legal words

We retrieved the 234 words, using a search tool called 「中納言」 (Chunagon) and downloaded all the usage examples of the 234 words. We then classified all the usage examples into two types: legal field and non-legal field. Those emerged less than 50% in non-legal writings are grouped under legal-field words whereas those appeared more than 50% in non-legal writings are categorized as non-legal words. For statistical reason we selected 98 words from these 234 words.

Table 2 shows legal terms which appear both the top five words and the bottom three words in legal field.

Table 2. Ranking list of legal terms

Rank	**Legal term**	**Legal field**	**Non-legal field**
1	先取特権 (the right of priority)	192 (97%)	6 (3%)
2	地役権 (easement)	86 (96.6%)	3 (3.4%)
3	留置権 (right of retention)	68 (95.8%)	3 (4.2%)
4	物権 (property right)	451 (93.2%)	33 (6.8%)
5	債務名義 (title of debt)	127 (90.1%)	14 (9.9%)
94	雇用 (employment)	518 (7.2%)	6705 (92.8%)
95	着手 (start)	83 (6.2%)	1253 (93.8%)
96	共有 (share)	163 (5.5%)	2822 (94.5%)
97	申込み (application)	168 (3.8%)	4261 (96.2%)
98	認知 (cognition)	65 (2.8%)	2259 (97.2%)

4.2.4 Classification of misunderstood terms and unintelligible terms

We classified the 98 words into two groups: misunderstood-word group and unintelligible-word group. The definition of misunderstood legal word is a group of legal words which appear more than 50% in non-legal writings. As we mentioned before, the questionnaire of legal practitioners indicates that legal homonym and composite word causes misunderstanding to lay people. This is because a commonly used legal word in ordinary language makes lay people feel that they know the word without knowing its technical legal meaning. This type of legal words is misunderstood by lay people and thereby is labeled as

"misunderstood terms". Among 98 legal words, 63 legal words occur more than 50% in non-legal writings.

Unintelligible terms were not analyzed in this research because they are less problematic due to their apparent-looking unintelligible nature.

4.2.5 Analysis of a "misunderstood" term of 故意 (intention)

(i) Part of Speech

We took up a 'misunderstood' legal term 故意 (intention), which is made the 56th in the list of 98 words. We analyzed 故意 (intention) from part of speech, legal antonym, legal synonym and derivative word.

Table 3 shows the part of speech of 故意 (intention). 故意 (intention) appears as noun, adverb, composite word in both legal and non-legal fields. However, the appearance-share of legal field is different from that of non-legal field. In legal field 故意 (intention) occurs as a noun by 70% while 故意 (intention) appears only by 33.5%. 故意 (intention) in non-legal field more commonly occurs as adverb. Following examples show some examples of different types of share between legal field and non-legal field.

Table 3. Part of Speech of 故意 (intention)

Part of Speech		**Legal field**	**Non-legal field**
Simple Words	Noun	160 (70.2%)	67 (33.5%)
	Adverb	29 (12.7%)	116 (58.0%)
Composite Words		39 (17.1%)	17 (8.5%)
Total		228 (100.0%)	200 (100.0%)

The following example of 故意 (intention) appears as noun in legal field. 故意 (intention) is the target of presence or absence. This is because the existence of one legal notion is important in legal field.

実務では、保険契約との関係で故意 (intention) の有無が重要である。 (円谷峻「不法行為法・事務管理・不当利得」)

(On a practical level the existence or non-existence of intent is important in relation to contract of insurance.)

However, the usage of adverb is composed of nearly 60% of all word classes of non-legal usages, as in the following example.

国の補助を得やすくするために、故意 (intention) に古いデータで基準をオーバーしたものを報告したというところまであった。 (小林道正「数学的発想」勉強法)

(In order to make it easy to obtain financial support from the national government, it got to the point that they intentionally reported an acceptable data used by old data.)

It is interesting to note that 故意 (intention) appears as a noun after a subsidiary verb such as だ,です,である in non-legal field.
何度も同じことをされるなら、気のせいとかたまたまではなく、故意 (intention) でしょうね。 (Yahoo!知恵袋)
(If we are done the same things many times by them, it isn't our imagination, or it isn't by chance, it must be their intention.)

(ii) Legal Antonym

When故意 (intention) is used as a noun form in legal field, 故意 (intention) often appears with 過失 (negligence), as in the following example.
故意 (intention) または過失 (negligence) によって一時そのような弁識能力を欠く状態を招いた場合は、 (田中嗣久・田中義雄「民法がわかった」)
(When a situation in which one is unable to understand right from wrong, is brought intentionally or negligently.)

We would like to call such a tied-relationship like 故意 (intention) and 過失 (negligence) 'legal antonym'. Tiersma (1999: 114) states that antonyms have most semantic features in common, but typically differ in one critical respect. It is this critical point that is the core of legal reasoning.

故意 (intent) and 過失 (negligence) are one of the requirements for an unlawful act in a civil case. 故意 (intention) means one's state of mind that one conducts illegal activities while he/she is aware of the occurrence of damages. On the other hand, 過失 (negligence) indicates a situation that one inadvertently misses the recognition of the occurrence of damages although he/she can do so. The critical point of the difference is the existence of recognition of the occurrence of damages, which would result in the level of responsibility and the amount of payment of damages. This kind of recognition does not exist in the mind of lay people as Tiersma also states that many pairs of words turned into antonyms, even though they have no such relationship in ordinary language.

(iii) Legal Synonym

It is important to note that 故意 (intention) in legal field means the recognition of the occurrence of damage, though the English translation of legal 故意 (intention) is 'intent'. On the other hand, 悪意 (with knowledge of) in the legal field is more similar to 故意 (intention) in non-legal field. The relationship between 故意 (intention) and 悪意 (with knowledge of) can be defined as "legal synonym". It is not easy for lay people to understand that 故意 (intention) and 悪意 (with knowledge of) are legal synonym. The difficulty of lay understanding was pointed out in the questionnaire of

legal practitioners. Legal synonym tells the important distinction which law wants to make in legal writing.

(iv) Derivative Word

Finally, I would like to show 故意 (intention) as a derivative word. Examples of legal field are 故意 (intention), 構成要素 (intentional components of intent), 故意 (intention), 不法行為 (intentional illegal conduct). All these words are nouns which have legal technical meanings. 故意的 (intentionally) found in non-legal field does not appear in legal field. 故意的 (intentionally) is an adjective usage, which is an example of non-legal usage. 的 (-like) is a derivative word in ordinary language as in the examples of 自分的 (to oneself) and 故意 (intention) is a word attached to the derivative word. In other words, 故意 (intention) is a key legal notion in legal field but just one of words in non-legal field.

5. Conclusion

"Misunderstood" legal words which appear more than 50% in non-legal writings is an obstacle to lay understanding. Among 98 legal words selected from the introductory law textbook for this research, we have 63 "misunderstood" legal words.

I have selected one "misunderstood" legal term 故意 (intention) for paraphrase analysis. Downloaded sentences of 故意 (intention) show four characteristics of legal terms. First, 故意 (intention) in legal field appears as noun more frequently than that in non-legal field. In contrast, 故意 (intention) in non-legal filed occurs as adverb more commonly than that in legal field. Second, the relation between 故意 (intention) and 過失 (negligence) is legal antonym, which clarifies the critical point of legal reasoning, using these two terms. Third, the relation of 故意 (intention) and 悪意 (with knowledge of) is legal synonym, which indicates niceties of the law. Fourth, 故意 (intention) works as a derivative word, which indicates that 故意 (intention) is a key word of law.

It is important to analyze word class, antonym, synonym, derivative of legal terms. These features show why the usage of legal terms is so distinctive from ordinary language. By analyzing these features, one could provide a good paraphrase of legal terms to lay people. Furthermore, it would elaborate the quality of paraphrasing to include the analysis of lexical pragmatics such as Wilson et al. (2007). More importantly, a method of interpretation should be developed for a better paraphrase of legal terms for the practical purpose. Such an approach to interpretation requires a coordinated efforts of linguists and legal experts, not the legal language battle between linguists and the legal experts of 1950s or 1980s.

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DEFENSE LAWYERS' DISCURSIVE STRATEGIES OF CONTROLLING THE LANGUAGE OF THE WITNESSES: QUESTIONING FORMS AND FUNCTIONS IN SOME CRIMINAL COURTS OF OROMIA REGIONAL STATE, ETHIOPIA

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Abstract: In everyday conversation the questioners and answerers are in an approximately symmetrical relationship that questioners do not have the information that they are requesting and the answerers are not obliged to answer. On the contrary, in the rule and role governed courtroom question/answer dyad, lawyers usually have particular version of events to control the language of the respondents where witnesses are compelled to respond, and do not have the right to question. So, it may hold back the production and interpretation of the evidence, and consequently hinder the execution of the tasks of the court trial. Such types of courtroom language-related problems are unexplored by academic research in Oromia Regional State. In this regard, no or little is known about these courtroom language-related problems in the criminal courts of the region. In an attempt to fill-in the existing gap, this study investigates how widespread such courtroom linguistic problems are and contribute to the limited conceptual and methodological values of linguistic analysis of courtroom oral discourse in legal institutions of the region. The analysis of this study is based on the authentic, naturally occurring courtroom defense lawyers-witnesses dyad of some Oromia Regional State Criminal Courtrooms. The aim of the study is, therefore, to present the discursive strategies of defense lawyers questioning forms and functions in their attempts to deconstruct persuasive testimony. In so doing, based on the way in which lawyers exploit the specialized speech-exchange linguistic system of the courtroom, the study focuses on the analysis of defense lawyers question forms and functions from the pragma-dialectical discourse perspectives. The findings of the study suggest that the use of declarative question, tag question, and projection question forms are the defense lawyers' discursive strategies to control and dominate the language of the witnesses. Such questioning forms function by potentially damaging witnesses' admission and limiting their response boundaries and are found the influential defense lawyers' discursive strategies through which the existing narratives of the witnesses are attacked and deconstructed.

Key words*:* discursive strategies, defense lawyer, questions forms and functions, pragmatic

TOOFTAALEEWWAN LOOGAA ABUKAATONNI DUBBII AFAANII WABEESSITOOTAA ITTIIN TOO'ATAN: CAASAWWAN GAAFFILEEFI HIIKKAWWAN ISAANIIRRATTI KAN XIYYEEFFATE, MANNEEN MURTII YAKKAA MOOTUMMAA NAANNOO OROMIYAA, ITOOPHIYAA

Axeerara: Dubbii afaanii guyyu guyyuu keessatti hariiroon gaaffii gaafataafi deebii kennaa sadarkaa wal-qixxummaarratti kan mul'atu ta'ee, namonni gaaffii gaafatan deebii gaaffichaa kan hin beekne akkasumas

nammonni gaafficha deebsan deebii kennuuf hindirqaman. Gama birootin ammoo, gaaffif deebii manneen murtii seeraafi ga'ee hirmaattotaatin guduunfame keessatti garuu, abukaatonni tooftaa loggaa addaa dubbii afaan deebstootaa ittiin too'atan kan qabaniifi nammonnni wabii deebii kennuuf kan dirqan garuu mirga gaaffii gaafachuu kan hin qabne dha.Kun ammoo adeemsa wabii yakkichaa hiikuufi qindeessuu keessatti gufuu ta'uudhan, hojiifi bu'aa xiinxala yakka addaan baasuu xaddachaa hir'isa. Rakkooleen manneen murtii gama afaaniin Naannoo Oromiyaa keessatti mulatan ilaalchisee qorannoon geggeeffame hamma ammaatti hin jiru.Kanaafuu, rakkinaaleen hojii xaddachaa geggeessuu manneen murtii naannicha keessatti gama afaanitiin mul'atan ilaalchisee wanti beekkamu baayyee muraasa yookan hin jiru.Adeemsa yaalii hula mul'atu kana hiphisuuf taasifamu keessatti, qorannoon kun rakkoolee afaanii manneen murtii naannichaa keessatti mul'atan xiinxaluun gumaacha gama hubannoos ta'ee maleewwan adda addaa rakkooleen afaanii kun itti sakatta;amuu danda'an kaa'uudha. Xiinxalli qorannoo kanaa gaaffif deebii abukaatootaafi wabeessitoota manneen murtii oromiyaa kallattiirratti kan bu'ureeffateedha. Kaayyoon qorannoo kanaa tooftaa loogaa abukaatonni caasawwaniifi hiika itti kennuun deebii wabeessitoota faallessun galma yaadan itti gahan dhiyeessuudha. Haaluma kanaan, tooftaalee loogaa addaa abukaatonni dubbii afaanii wabeessitootaa too'achuuf fayyadamanirratti hundaa'uun, caasawwan gaaffiwwaniii abukaatootaafi hiikkawwan isaanii gama diskoorsii gaaffiif deebii piraagmaatiksiitin xiinxala. Bu'aan qorannoo kana akka agarsiisutti, caasawwan gaaffiilee kan akka dekalaratiiv, taagiifi pirojakshini jedhaman toofataa loogaa abukaatonni dubbii afaanii wabeessitootaa ittiin too'atan ta'uusaati. Caasawwan gaaffiilee akkanaa kunis wabiiwwan bifaa faallaa ta'een amansiisuu, yaada addan kuchissisuu, aakkasumas hamma dubbachuu qaban murteessuu akka danda'an abukaatota gargaareera.

Jechoota Ijoo: tooftaa loogaa, abukaatoo, caasawwan gaaffileefi hiikkawwan isaanii, piraagmaatiks

ANALIZA DYSKURSU PRAWNICZEGO PRZESŁUCHAŃ ŚWIADKA W SĄDZIE KARNYM W MIEŚCIE ADAMA (REGION OROMIA) W ETIOPII

Abstrakt: W codziennych rozmowach pytający i udzielający odpowiedzi pozostają w mniej więcej symetrycznym związku, a odpowiadający nie jest zobowiązany do udzielenia odpowiedzi. Na sali sądowej sytuacja jest odmienna. Przesłuchiwani w charakterze zarówno świadków są zobligowani do udzielania odpowiedzi na pytania prawników. Autor bada startegie dyskursu obrońców na sali sądowej w Sądzie karnym w mieście Adama (Region Oromia) w Etiopii. Celem badania było pokazanie środków perswazji stosowanych przez obronę w celu uzyskania pożądanych odpowiedzi. Badanie wypełnia lukę, gdyż do tej pory nie zajmowano się tą tematyką w odniesieniu do strategii dyskursu sądowego w Etiopii.

Słowa kluczowe: strategie dyskursu, obrońca, pragmatyka, pytania i ich funkcja

1. Introduction

In the proceedings of courtroom questions/answers dyad, minimizing pressurizing and coercive question forms are essential in an attempt to make the truth less jeopardized in court trial. This can be achieved by informing and alerting the defense lawyers to the risks involved in such questioning forms and so that to modify such pressurizing and coercive questionings (Gibbons 2004). In this regard, as an applied (forensic) linguist (Shuy 2006), it is sensible to make an effort in addressing such types of pressing courtroom cross-examining lawyers language-related problems in Adama, Bishoftu and Asella Criminal

Courts to understand and investigate the extent to which such types of questionings can put the truth at risk to social injustice using authentic data. The study explores the discursive properties of both question forms and functions as cross-examining lawyers attempt to deconstruct witnesses' testimony.

Based on the Drew's (1992) defense lawyers specialized speech-exchange system of the courtroom, the paper demonstrates, after Gibbons (2003 2008), how and in what way the discursive strategies of lawyers' questioning forms function to pressure and coerce the witness into testifying what they do not mean and as a result causes the evidence to be twisted and distorted for social injustice. Hale (2004: 31) asserts that the discourse and the pragmatic function of cross-examination lawyers' main purpose is not to elicit new information (information-seeking), but to discredit the previously elicited examination-in-chief's case. The defense lawyers deconstruct a version of the same events to claim that the defendant is "not guilty, or is worthy of lenient treatment, or alternatively attempting to show that the prosecution's version has weaknesses which place it in "reasonable doubt" (Gibbons, 2007: 438). In cross-examination session, the witness is pressurized and even coerced by the forms of questions that the lawyers construct. According to Gibbons (2007), the cross-examining lawyer concentrates a more "destroying the prosecution's case" (Gibbons 2007: 439).

Similarly, Eades (2008) asserts that gratuitous concurrence can also function in conversations in a similar way as minimal responses do in many courtroom interactions. It also referred to as response tokens or feedback markers, such minimal responses – such as *yes*, *no*, *mm*, *yeh*, *OK* and *uh-huh* – generally indicate conversational involvement of listeners rather than agreement (Shuy 1990). At this stage, it is common for Oromia's Criminal Courtroom lay witnesses to respond to questions with answers which appear to indicate agreement, such as *yes*, *no*, and *yeh*. The analysis in this research exemplified the extent of the problem which can arise from a literal interpretation of such answers as indicating agreement. In this regard, the frequent 0-3 word length production, from the witness side was identified.

Gratuitous concurrence is supposed as the major problem in effective communication with lay witnesses. Eades (2008) repeats this view, giving a number of different explanations for why they believe that lay witnesses so readily use gratuitous concurrence. Some of the explanations given include: the "desire to please and be seen as agreeable", "fear of persons in authority", "not wanting to make a scene", "they do not think the courts will believe them if they tell their side of the story", and "they do not wish to admit that they do not know what has been asked of them" (Eades 2008: 95). She also asserts that gratuitous concurrence is widely recognized as occurring in all legal contexts: interviews with lawyers, and the police, and in courtroom evidence.

This is to emphasize that the more established preceding studies undoubtedly contribute to the discursive strategies of cross-examination questioning forms and functions. However, my argumentation here is that these studies are in limitations of

employing more authentic data or the number of both previous and recent courtroom cross-examination questioning studies which based their linguistic analysis of oral discourse on original source are not proportional with the visible courtroom language-related problems of our time or much lower to ascertain how such sort of problems studied are providing a more comprehensive authenticity of them. More specifically and most significantly, this type of courtroom linguistic problem, as far as my knowledge is concerned, is unexplored by academic research in Oromia Regional Region either using the original or the secondary official data. This is because, firstly, owing to the premature stage of such types of multidisciplinary field of legal language studies in the country, Applied Linguistics, there has been virtually no study on courtroom language-related problems used in Oromia Regional State in general and it's the selected Criminal Courts in particular. Secondly, because of the limited conceptual and methodological approaches in linguistic analysis of courtroom oral discourse, the attention given to investigate such types of courtroom language-related problem is neglected.

In this regard, it is found valuable to make an effort into uncultivated area of language-related problems of legal settings in some Oromia Regional State Criminal Courts to investigate the linguistic problems that can put the truth at risk to social injustice. Carrying out courtroom linguistic analysis of oral discourse in the place where authentic audio recordings is absent reduces the credibility of the findings (Tkačuková 2010). Therefore, the data source employed in this study is thought to be more credible even in filling the gap that exists in the more established studies (Cotterill 2003; Heffer 2005; Gibbons 2003, 2008; Tkačuková 2010). The courtroom language of Adama Higher Court trial is Afan Oromo. So, the judge, the lawyers and all other court communities speak Afan Oromo. But there were a frequent occasion when some witnesses (as far as the selected courtrooms incorporate a number of different ethnic groups found in Ethiopia) use Amharic Language (the language of wider communication). In such occasions the translator of the court translates Afan Oromo (of the judge and the lawyers) into Amharic Language (for the witnesses or defendants). So, the original data consist of both Afan Oromo and Amharic languages. Similarly, rather than using the secondary data source, this study presents an issue of authentic data which is absent in most similar previous studies from Adama Higher Criminal Court trial, where the study of courtroom language-related problem is entirely neglected, and where two languages – Afan Oromo and Amharic – are used as courtroom languages. Using the real data from selected Criminal Court trials, the researcher ascertains how the mentioned courtroom language-related problems are widespread and victimized the truth by analyzing the linguistic characteristics of destructive types in cross-examination questions.

2. An overview of Ethiopian Criminal Court procedures

The formal consent of 1994 new Ethiopian constitution was took effect in 1995. This 1995 Constitution replaced the nation's centralized unitary government with a federal republic based on a democratic form of government (Christophe 2007) which constitutes nine member states. In Ethiopia, law is created and passed by the country's federal legislative body, the House of People's Representatives (New York University 2006). Despite Ethiopia follows civil law system, the witness examination criminal procedure, as that of French evidentiary law, follows the criminal law system (New York University 2006: 51).

The Oromia Regional State is one of the nine member states in the federal government of Ethiopia (Christophe 2007) from which the criminal law system is drawn. New York University (2006) report notes that the Constitution directs the creation of three levels of state courts: the State Supreme Court, the High Court (or the Zonal Courts) which the focus area of this study, and the First Instance Court (or the Woreda Courts). The higher court consists of both the civil and criminal court of which the criminal court is the focus area of this study. In the Oromian Higher Court criminal procedure observed, the prosecution and defense present the evidence and question the witnesses after the judge's swearing-in and orientation/checking-in stages. Here, a well established understanding of what happens is that the two sides are attempting to construct competing versions of the same event or state (Bennett and Feldman 1981).

Similarly, Gibbons (2008) also asserts that in the Common Law system, when lawyers are cross examining a hostile witness, they have to play a complex game, where they are attempting almost simultaneously to construct and support their version of events and attack the version of the other side. Gibbons (2008) argues that the purpose of constructing a particular version strongly affects the social and informational relationships, causing them to differ substantially from those found in everyday conversation. The social relationship, rather than being roughly equal, is one of power asymmetry in that the lawyers have control of the questioning process and witnesses are obliged to reply. Lawyers are also in a position to pressure witnesses to agree with their version of events (Gibbons 2008). These typical personal and information relationships have a significant impact on the nature of both questioning exchanges and the form of questions. In this study, I focused on the abovementioned issues; demonstrating the selected court spoken discourse of courtroom proceedings. In so doing, the power asymmetry (Linguistic Power Imbalance as it has been used in this particular study) that exists in the cross-examination institutionalized speakers of Oromia Regional State Court participants, the cross-examining lawyers and the witnesses has been analyzed.

3. Research methodology

The methods chosen for the study certainly have profound effects on the outcomes (Patton 1990). The same holds for how subjects are selected and for how data are collected and analyzed. So, data that have been used to generate the findings were directly based on information from the authentic natural language use of courtroom talks of three heterogeneous trial participants-lawyers in defense, witnesses and judges. Purposive sampling technique is used to select the population for the study. Data were entirely drawn from Bishoftu, Asella and Adama town Criminal Court trial talks, and the naturally occurring spoken courtroom interactions were recorded and transcribed. Data were gathered by recording the courtroom entire talks that take place in the trials and additional hand-held note-taking/stenography technique was employed to record inaudible sound of the courtroom participants and to observe some non-verbal semiotic discourse aspects. The transcripts were done for the purpose of making a record of everything said in the courtroom, and in the efforts of minimizing the challenges of verbatimness and exactness that take place in stenographic recordings due to the nature of some spoken languages (see the full-fledged transcription conventions specified below).

Capitals	Indicate raised volume
=	Indicates latched utterances, i.e. no pause between the end of one utterance and the start of the next
[	Indicates talk overlapping with that of another speaker, marked at the point in each utterance where overlap begins
]	Indicates talk overlapping with that of another speaker, marked at the point in each utterance where overlap ends
A number in parentheses	Indicates the length of a pause in seconds e.g. (3.2)
(xxxx)	Indicates an inaudible utterance
AA	Abbaa Alangaa (=Prosecutor lawyer)
A	Abukaatoo (=Defence lawyer)
J	Judge
T	Translator/court interpreter
W1	Witness No. 1
W2	Witness No. 2
W3	Witness No. 3
W4	Witness No. 4

Personal Names	(which are pseudonyms) are mainly used for the four witnesses (for example, in the four trial cases observed, I used "W1" to represent the witness who is questioned first in each of the four trial cases, "W2" to represent the witness who is questioned next in each of the four trial cases, "W3" to represent the witness who is questioned third in each of the four trial cases and "W4" to represent the witness who is finally questioned in each trial cases). Any other personal names in the transcript extracts are also pseudonyms. Identifying locality names have been changed, with the exception of major kebeles, towns and jobs.

Note: In the data presentation, I didn't translate (into English) the courtroom translators' (Afan Oromo to Amharic) works, for the analysis is limited to the language of the four trial participants (the judges, the two opposing lawyers and the witnesses). So, I represent it with (----------) mark.

So as to make the naturally occurring spoken data original, the transcripts and the translations were made in conscious of avoiding making changing to the participants' actual language. So, induced changes which include correction of inaccurate grammar, elimination of false starts, syntactic rearrangements or restoration of dialectal features into standard forms were avoided.

4. Data presentation and analysis: discussions of question forms used as defense lawyers' discursive strategies

"Questions in everyday discourse consist of a situated exchange in which the questioner and answerer are in a roughly symmetrical relationship in which each is entitled to request information from the other" (Gibbons 2008: 115). This implies that in our normal day-to-day interaction experience, questioners naturally do not have the information that they are requesting and the answerer is not obliged to answer. According to him, in everyday speech, there is a common Gricean anticipation that the answer will bring the information requested. Unlike everyday questioning, as the findings of the study illustrate, courtroom questioning differs markedly in that lawyers usually have a particular version of events in mind that they are attempting to confirm with the witness (see extract 1). Frequently, "witnesses are compelled to answer, and do not have the right to ask questions" (Gibbons 2008: 115). Similarly, Drew's (1992) analysis of cross-examination illustrates the combative nature of courtroom interaction and analyses the way in which lawyers exploit the specific speech-exchange system of the courtroom to challenge versions of events presented by witnesses. Therefore, courtroom

questions differ from everyday questions in both their social and their information characteristics (Schegloff 1984, 1992, 2007), (see extract 1 for lawyers' social characteristics).

Extract 1 illustrates unequal social relationships and defense lawyers' attempts to gain the reconstruction and confirmation of their particular prepared version of events that have a range of linguistic manifestations within the question part. These choices of linguistic demonstrations lead lawyers to include much of the information in their questions. In so doing, "the lawyers enable to exert pressure on witnesses to go along with their version of events" (Gibbons 2008: 120). A broad description of types of question in legal contexts is given in Gibbons (2003: 102-107) and Gibbons (2008: 115-130). So, in the analysis of question forms and their functions of this study, I specifically deal with this description as source of secondary data in order to remain abreast of established knowledge on each aspect.

4.1 Declarative Questions

Declarative question in the courtroom manifests power imbalance in such a way that it contains the lawyer's version and puts pressure on the witness to agree. The questions are put as a direct statement, in declarative rather than interrogative form, and await the witness's agreement. In an instance follows in extract 1 below, the lawyer made it clear that he was providing his own version of events by saying "*that is not my request"*, and was making a bald statement of his version for the witness's agreement, "*the victim has been hit when he was crossing the road"* (turn 1). In this manner, the lawyer enabled to successfully put the witness in to agreement, "*Yes"* (turn 2)

Extract 1, Case 2, Cross-Examination question to W1

1. A: Lakki. Gaaffiin kiyya akkasii miti, miidhamaan karaa yoo qaxxaamuru rukutame bajaajirraa bu'eetii jette.	1. A: No, that is not my request; the victim has been hit when he was crossing the road, you said?
2. W1: Eeyyee.	2. W1: Yes.

This type of question may sometimes have a rising question intonation, making it more question-like, as in extract 2. In this particular extract the lawyer in defense, made the declarative more question-like by raising the intonation of the word of the question… OTHER…'

Extract 2, Case 2, Cross-Examination question to W2

A: Konkolaataan kuni firaankoorraa gara axanaa taraa deemaa ture jette, 'Ee… inni miidhamaan inni du'emmoo karaa gara KAANIRRA ce'aa ture' jette?	A: This car was going from Franco to Atena tera, you said, 'Ee…the victim the dead was crossing the OTHER side' you said?

In extract 3, the declarative sentence is the most straightforward sentence type. It is syntactic configuration which displays an unmarked (i.e. expected) order of the functional categories (Subject – he, Predicator – could see, Direct Object – the hit boy, etc.) This means that the Subject comes first in the sentence, followed by the Predicator, which in turn is followed by a Direct Object and an Indirect Object (front light). Therefore, extract 3, turn 1 below, is syntactically 'declarative', but pragmatically it is a 'statement' (Aarts 2001: 62).

Extract 3, Case 2, Examination-in-chief question to W3

1. AA: Kanaaf, mucaa rukutame kana bsaa fulduraatiin arguu danda'a Karaarratti	1. AA: Therefore, he could see the hit boy with front light on the road
2. W3: Ni arga, eeyyee.	2. W3: Yes, he could see.

Though the above pieces of discourse (extracts 1-3) may appear interactive, the entire structure and content of witness responses were determined by the lawyer. In fact, the crime narrative could largely be reconstructed only on the basis of the content and flow of the examining lawyer's turns while the witness provides just the details. In essence, the lawyers' questions provide the next link (extract 3, turn 1) in the narrative chain of events and the witness submissively provides the required "small piece" of information, "*Yes, he could see"* (turn 2). This also shows that lawyers can guide the witness by putting words in their mouths in other ways than asking Yes/No questions as opposed to declaratives or Wh-questions. Hence, counting question types is not found necessarily a true reflection of what is happening, or of the interactive process under investigation.

In a nutshell, although in courtroom dialect this is called a question, it reads much more like an accusation – one that the witness is obliged to respond to by the rules of procedure. It is important to realise that the terms declarative, interrogative, imperative and exclamation are syntactic labels that refer to sentence types that have certain syntactic characteristics while the notions statement, question, directive and exclamation, by contrast, are pragmatic notions (Aarts 2001: 62). Pragmatics is the study of the meaning of

linguistic expressions in context (Aarts 2001). In other words, pragmatics is concerned with language use. With regard to each of the sentence types discussed above we have observed that they all have a distinctive use.

In many cases, utterances are considered as interactive since a deictic term refers to the content of the witness' prior contribution. Looking at the nature of interactiveness, according to Gibbons (2008), there is a basic contrast between those contributions that interact with the *content* of witness contributions and those that interact with the *witness*. This latter category encompasses non-questions and potentially indirect questions where the main clause relates directly to the witness's person (e.g. "*Didn't Fyisa hold Yeshtla"* in turn 1). But, the turn, as a whole, still involves the lawyer adding to the Discourse Space rather than adding onto what the witness has provided (see turn 1 and 6 in Extract 4 below). The discursive implication is that Feyisa held the defendant, and the defendant fired to defend himself.

Extract 4, Case 4, Cross-Examination questions to W2

1. A: Fayyisaan harkasaa ofirraa qabee bahuurraan kan hafe Yeshitilaa hin qabnee?
2. T: ፈይሣ እጁን መ ዞ ከመ ው ጣ ት ውጭ እጁን አልያዘውም
3. W2: ማ?
4. T: ፈይሣ
5. W2: አዎ (xxxx)
6. A: Kana bichaa yaadattamoo, qabuuf qabuu dhabuusaa ni beekta jedhaniini?
7. T: ይሄንን ብቻ ነው የምታስታውሰው ? ወይስ መያዝ አለመያዙን ነው?
8. W2: አልያዘው ም መሣሪያውን ስይዝ "ማ ሎ ማ ሎ" ብሎ እጁን ገፍትሮ አጠገቡ ስላለ ወጣ።

1. A: Didn't **Feyisa** hold yeshtila except snatching his hand away and left the room?
2. T: ----------
3. W2: Who?
4. T: Feyisa
5. W2: Yes
6. A: Do you remember only this or, whether **he** held him or not?
7. T: ----------
8. W2: He didn't hold, when he seize the gun, saying "ማ ሎ ማ ሎ" (which is equivalent to, 'please, please', in English) as he was beside him, he snatched his hand from him and went out

4.2 Tag Questions

Tag question is the most important type of courtroom questioning known for its intimidating and coercive nature. Gibbons (2003: 101) says that tag questions are "strengthening devices, which make the demand for compliance greater than that of a simple question" and so the tag form is "more coercive" than simple polar questions. In this study the most significant forms of tag questions employed were the statement and the tag. In the form of a statement, the lawyer was including his version of events (the information). In the form of tag, the lawyer was exerting various forms of interactive pressure upon the witness (the social). This form of courtroom question is therefore a "paradigm

example of linguistic form matching pragmatic function" (Gibbons 2008: 121). As a result, it is found that most of the questions in cross-examination took the form of tags, and that there were many types of tags used for abovementioned purposes as scrutinized below.

4.2.1 Modal verb tag questions

Gibbons (2008) identifies two types of modal tag questions (reverse polarity and same polarity). In this regard, reverse polarity tag questions were used to put pressure on a witness to agree. This was demonstrated in the tag "did you not", Extracts 5 and 7, "was + pronoun + not" in Extracts 6, and by "can't + agent" in Extract 8.

Extract 5, Case 4, Cross-Examination question to W1

A: Miti! 48 qarshii kumaafi dhibba 8tti tilmaammama jette, mitii?	A: No, 48 you said, it is about 1,800 Birr, did you not?
W1: Eeyyee	W1: Yes

In abstract 5, the examining lawyer enables to oblige the witness to agree, "*yes"* with his version of event that the witness said "*it is about 48 birr"* using reverse polarity tag, "*did you not?"*

Extract 6, Case 4, cross-examination question to W1

1. A: =suuqii isin kireessitanii mitii - gibbuma keesan mitii.	1. A: **It was** the shop you hire, **was it not? It was** your own compound, **wasn't it?**
2. T: የራሳችሁ ግቢ ያከራችሁት ግቢ ነው አይደለም?	?. T: ----------
3. W1: አዎ። ድርጅቱ (እንት ያለው) በቁጥሩ ነው በቁጥሩ ነው ሰዎች ይቀያየራሉ በየጊዜው ነጋዴዎች አንዱ ይገባል አንዱ ይወጣል።	3. W1: Yes, the trade in number it is number that the renter substitute timely as one merchant rent another withdraws

Here, in extract, 6 turn 1, through the use of reverse tag-question **"***wasn't it?"*, the examining lawyer pressurize the witness to agree "*yes"* in turn 3 that the conflict was taken place in their own compound.

Extract 7, Case 3, Cross-Examination question to W1

1. A: Danda'a miti. Qorqorroo hammam, hammam akka fuudhe hin beektuu?	1. A: You know how many sheets he took away, **did he not**?
2. W1: Qorqorroo 48.	2. W1: 48 sheets

Extract 8, Case 2, Cross-Examination questions to W2

1. A: Ishii, Ramadan! Ee… nuti kan argine; ani kan arge, rukutaafi sagalee qofaadha mitii kan jette?	1. A: Ok, Ramadan! Ee… we saw, I saw only the hit and the sound, **wasn't you** said this?
2. T: እኔ ያየሁት ምትና ድምጽ ነው ብለሃል ቅድም	2. T: ----------
3. A: Kanumaa mitii ka ati jette?	3. A: Wasn't this what you said?
4. T: እሄው ነው አንተ ያልከው?	4. T: ----------
5. W2: አዎ።	5. W2: Yes.

The reverse polarity tag "*wasn't you…*" (in Extract 8, turn 1), "*wasn't this what you said?*" in Extract 8, turn 3, challenges the witness' claim whether he heard the mere sound or saw the actual event.

In the same way, same polarity tag-questions were used to spread hesitation on the witness's version of events. In Extract 9, cross-examination W1 below, the lawyer used same polarity tag-question to distrust the witness's previous answer.

Extract 9, Case 2, Cross-Examination question to W1

1. A: =Ibsaa makiinaa hin jenne, ibsaan magaalaa keessa hin jiru jette mitii gaafsana?	1. A: =I didn't say the car's light, on that day you said, there was no light in the town, **isn't it?**
2. W1: Eeyyee.	2. Yes

4.2.2 Agreement tag questions

Gibbons (2008) asserts that agreement tag questions operate and functions in a similar way to modal tag-questions, but use expressions such as "isn't it?", "am I right" and "is that correct?" or simply "right?" or "true?". Like modal tags, they can have "either-or" polarity (Example, extract 10); negative (Example, extract 11) and positive (Examples, extracts 12, 13, 14).

Extract 10, Case 4, Cross-Examination question to W2

1. A: Komodiinoon ati gabaabduu jettu kuni keessa dhokatte minii?	1. A: you hid yourself in the short comodino, **yes or not?**
2. T: "አጭር ነው" የምትለው ኮመዲኖ ውስጥ ተደብቀሃል አይደል?	2. T: ----------
3. W2: ኧ?	3. W2: What?
4. T: አጭር ነው የምትለው ኮመዲኖ ውስጥ ተደብቀሃል አይደል?	4. T: you hid yourself in the short comodino, short.
5. W2: አዎ በሰዓቱ ጥይቱ ሲተኮስ ተደብቄ እዛ ውስጥ ነኝ ያለሁት።	5. W2: Yes, at that time when the gun was firing I was there hiding myself

Extract 11, Case 3, Cross-Examination questions to W1

1. A: Mee… ati himatamtoota kana, gaafa isaan fudhatan hin jirtu **mitii?**	1. A: Look, you, these criminals, you *were not* present at the time they took off, **isn't that true?**
2. W1: Guyyaa isaan fudhatan hin jiru.	2. W1: I was not present at the time they took it off.
3. A: Gaafa isaan qorqorroo dhaqanii wasaneerraa fudhatan hin jirtu.	3. A: You were not present at the time they took the sheets off?
4. W1: Hin jiru.	4. W1: I wasn't present.

Extract 12, Case 4, Cross-Examination questions to W1

1. A: =suuqii isin kireessitanii mitii- gibbuma keesan mitii?	1. A: It was the shop you rented isn't it, your own compound **right?**
2. T: የራሳችሁ ግቢ ያከራችሁት ግቢ ነው አይደለም?	2. T: ----------
3. W1: አዎ። ድርጅቱ (እንት ያለው) በቁጥሩ ነው በቁጥሩ ነው ሰዎች ይቀያየራሉ በየጊዜው ነጋዴዎች አንዱ ይገባል አንዱ ይወጣል።	3. W1: Yes, ……
4. A: ((Ehii) Ee…. mee, mee gara rasaasa dhuka'e jette, ee… Bilaalirratti rasaasa 3tu dhuka'e **jettee miti?**	4. A: (Yes), Ee… look, look you said about bullets fired, ee… you said three bullets fired on Bilal, **right?**
5. T: ቢላል ላይ 3 ጥይት ነው የተተኮሰው ነው ያልከው አይደል?	5. T: ----------
6. W2: አዎ)	6. W1: (Yes)

Extract 13, Case 4, Cross-Examination question to W2

1. A: Komodiinoon ati gabaabduu jettu kuni keessa dhokatte minii?	1. A: You hid in the comodino you claim short, **right?**
2. T: "አጭር ነው" የምትለው ኮመዲኖ ውስጥ ተደብቀሃል አይደል?	2. T: ----------
3. W2: ኧ?	3. W2: Yes?

Extract 14, Case 3, Cross-Examination question to W1

A: Margaafi Girmaa jette mitii?	A: You said, Marga and Girma, **is that true?**
W1: Eeyyee.	W1: Yes.

4.2.3 Full verb tag questions

The strange alternative of tag questions is the full form tag question of hyper-explicit language (Gibbons 2008). The full form of the verb used in the following extract function to put pressure on the witness to reply in a similarly exact way, allowing no scope for partial disagreement (see extract 15 and 16 below).

Extract 15, Case 4, Cross-Examination question to W4

1. A: Kanumadhaa dhahee, dhahuusaa arge kan jettan.	1. A: 'I saw when he was hitting,' **was that what you're saying,**
2. W4: Eeyyee.	2. W4: Yes

With the full form of the verb used in extract 15 (*was that what you're saying***,** turn 1), the cross-examining lawyer enabled to convince the witness (based on the previous subsequent elicited witness's testimony) that what he has actually testified before the court and testified before the defense lawyer are different. Using this form of tag-question the lawyer pressurized the witness to discredit the evidence he gave to judge, in the recent judge-witness question/answer check-up (orientation stage).

Extract 16, Case 4, Cross-Examination questions to W4

1. A: Abbaa tokkotti, Abduljaliiti ykn Jamaalitti Yeshixilaan dhukaasee dhahuusaa argita-niituree yoos?	1. A: At that time, ***did you see*** *when Yeshtila was firing and shot one particular person, Abduljalil or Jamal*?
2. W4: Hin argine yoosan.	2. W4: I didn't see at that time.
3. A: Ishii, lamaan isaanittuu rasaasa dhukaasee rukutuu hinagarre?	3. A: Ok, *you did not see* when he fired and shot either of them?
4. W4: Hin agarre	4. W4: I didn't see.

Similarly, as that of extract 15, the cross-examining lawyer pressurized the witness to discredit the previously elicited evidence using (*At that time, did you see when…turn 1),* and so that the witness fully agreed that he didn't see (*I didn't see at that time*, turn, 2).

4.2.4 Yes or no Tag Question

In the following extract, strange tag 'yes or no', explicitly demanding a 'yes' or 'no' reply, as shown in Extracts 17 and 18 below.

Extract 17, Case 4, Cross-Examination question to W1

1. A: Ee…. mee, mee gara rasaasa, dhuka'e jette. Ee…. Bilaalirratti rasaasa 3tu dhuka'e jette, miti?	1. A: Ee…look, look to the firing, you said fired. Ee…you said three bullets have been fired on Bilal, **yes or no?**
2. T: ቢላል ላይ 3 ጥይት ነው· የተተኮሰው· ነው· ያልከው· አይደል?	2. T: ----------
3. W: አዎ	3. W1: Yes

Extract 18, Case 4, Cross-Examination question to W1

1. A: Jamaal si boodarra dhahame mitii?	1. A: Jemal has been shot next to you, **yes or no?**
2. T: ጀማል ካንተ ጎላ ነው አይደል የተመታው?	2. T: ----------
3. W1: አዎ	3. W1: Yes

In the above extracts (extract 17 and 18), we can see the way '*Yes or no Tag Question*' constrain the respondent by limiting the choice of expected answers. They limit the choice of answers to either 'a yes or a no', hence exerting a high level of control on the witnesses.

4.3 Information limiting questions and their effects

We have already seen various types of question that include all the information, and where the witness is licensed only to agree or disagree. Other familiar question types can be assessed similarly for the amount of information the lawyers allow the witnesses to contribute, and by the level of pressure they place for agreement.

4.3.1 Polar Yes-No questions

These include all the information, but usually exert no pressure for agreement, as in Extract 19 below.

Extract 19, Case 4, Cross-Examination question to W1

1. A: Han kufte sadanuu erga dhahamteeyi?	1. A: Did you get faint after you have been hit the three?
2. T: የወደከው 3ቱን ከተመታህ በኃላ ነው?	2. T: ----------
3. W1: አዎ	3. W1: Yes

4.3.2 Choice questions

In choice questions, the witness was given a choice of two alternatives, but no other answer was approved. Sometimes, as in extract 20, the choice was given as a front/back choice.

Extract 20, Case 2, Cross-Examination question to W1

1. A: Yeroo dhahu sana konkolaataa gara duubaatiin turtan moo gara fuulduraatiin turtan?	1. A: When it was hitting, were you at the back of the car or at the front side of the car?
2. W1: Karaa duubaa.	2. W1: At the back.

In extract 21 below, the witness is given a choice between persons while in extract 22; it is a choice of timings.

Extract 21, Case 4, Cross-Examination question to W4

1. A: Abbaa tokkotti, Abduljaliiti ykn Jamaalitti Yeshixilaan dhukaasee dhahuusaa argita-niituree yoos?	1. A: Did you see when Yeshtila was firing and shot one particular person, Abduljalil **or** Jamal?
2. W4: Hin argine yoosan.	2. W4: I didn't see at that time

Extract 22, Case 2, Cross-Examination question to W2

A: Lamaanuu osoo ati hin seenin dhuka'e moo erga seenteeti kan sirratti duka'e?	A: Have both of them fired on you **before** you entered or **after** you entered?

On the other instances, there may be a choice between single words, as in extract 23 where the witness is given choice between "right" "left" or "front" side, and the witness chose "left" in his reply.

Extract 23, Case 2, Cross-Examination question to W2

1. A: Karaa ce'aa, mirgarratti moo bitaarratti kan rukutame	1. A: Crossing the road, was he hit to the **right** or to the **left side**?
2. T: ግራ ላይ ነው ወይስ ቀኝ ላይ ነው የተመታው?	2. T: ----------
3. W2: ግራ	3. W2: Left

These all abovementioned choice questions recognize in the response only information provided by the lawyers. However, in addition to creating a processing challenge for the witness, this strategy does allow cross-examining lawyers to insert potentially deconstructing assertions within what may appear to be a relatively constructive question. The example given, Extract 24, below illustrates this potential. In this extract, the cross-examining lawyer was questioning a witness in order to ascertain the precise reason that made the criminal to shot on the victims.

In so doing, he firstly tended to elicit the witness if the victims and the criminal were exchanging some words (turns 5 and 7). In turn 6, the witness responded that he didn't hear what they were communicating one another. After the cross-examining lawyer had proved that there were no exchanges of words between the two rivals (turn 7), he started to deconstruct what the witness was recently testified to the court that he saw when the criminal fired and shot the victims (turns 11, 13, 15, 17).

Finally in extract 24, turns 19 and 21, the cross-examining lawyer succeeded in deconstructing the overall happening of the testimony that the witness recently testified. The cross-examining lawyer questions' positive responses of the witness in turns 18, 20 and 22 proved that the formulation of the final question as a potentially damaging admission that the witness didn't see when the criminal fired and shot the accusers. This was one of the most influential lawyer's discursive strategy through which the existing narrative was attacked and deconstructed by the cross-examining lawyer questions.

Extract 24, Case 4, Cross-Examination questions to W4

1. A: Ee…, meeti, yennaa Yeshixilaan dhufe, dubartootas namootas fideeti kunoo ati bahi asii ati asiitii waan gootu hin qabdu miseensas miti naan jedhe jette.
2. W4: Eeyyee.
3. A: Yennaa kanatti, Yeshixilaan kana yoggaa jedhu, warri miseensa abbaa qabe-enyaa ta'an sun keesumattuu dura ta'an maal jedhan turan?
4. W4: Kafalleeti si finnee. Ati (kana raawwadhu) hin ka'in nu barreessi naan jedhan.
5. A: Siin akkas haa jedhanii, isatti hoo?
6. W4: Isatti wanta dubbatan hin dhageenye anatti dubbatan malee; inni natti dubbataa, isaan natti dubbatan malee, isaan waan waliin jedhan hin dhage-enye.
7. A: Ee… dhukaasa rasaasaa kan jalqabee, ykn rasaasa kan baafatee kanumaa, sababuma kanaan, kanumaa waan jedhameef rasaasa baafateeree - Waa tokkoo otoo ittiin hin jedhin?
8. W4: Isa waan baafateef isatu beekakaa. Anaan bahi jedhee. Deebi'ee dhufee ani bahuu dinnaan kaanitti qabe siin jedheem.

1. A: Ee…, look, when Yeshitila came, he brought women, other persons and said, leave out, you said, he enunciated me, 'you have nothing to do around, you are not our member'.
2. W4: Yes.
3. A: At that time, when Yeshitila said this, what other members, busines-smen, especially the head, were saying?
4. W4: They said, we brought you on ayment, don't go out (do it) take the minute.
5. A: Let they said this to you, what were they saying to him?
6. W4: I didn't hear what they said to him rather than to me, he was speaking to me, they were speaking to me, more than that I didn't hear what they were communicating one another.
7. A: Ee…, firing, or was this the reason to drew the gun, for this reason, has he drown his gun because of what has been said - Without saying anything to him?

9. A: Ayyee. Amma sila ennaa si gaafatan, jecha kennuudhaaf dura manni murtii si gaafatu.
10. W4: Im….=
11. A: =Ee… rasaasa namatti dhukaasetii jette. Dhukaasuu beektaa jennaan beeka jettani turtan.
12. W4: Eeyyee.
13. A: Kan beeka jettan kanuma amma jettan kanamoo rasaasa dhukaasee nama dhahuusaa ykn nama miidhuu isaa maal argitan?
14. W4: Dhahuudhaaf Bilaalitti aggaameti dhabee siin jedhe. Na harkaa baafatee, itti garagaleeti irra dhaabbata.
15. A: [Kanuma]
16. W4: [Jarri sadeen na duubaa wacci.]
17. A: Kanumadhaa dhahee, dhahuusaa arge kan jettan.
18. W4: Eeyyee.
19. A: Abbaa tokkotti, Abduljaliiti ykn Jamaalitti Yeshixilaan dhukaasee dhahuusaa argitaniituree yoos?
20. W4: Hin argine yoosan.
21. A: Ishii, lamaan isaanittuu rasaasa dhukaasee rukutuu hin agarre?
22. W4: Hin agarre.

8. W4: It is him who knows why he drew it. He said to me go out. I told you, when he returned back and found me that I didn't leave the room, he aimed at others.
9. A: Ok! Recently, when they were asking you, when the court asked you to give the evidence
10. W4: Im…=
11. A: =Ee…, you said he fired a gun to the men. When they asked you, 'do you know that he fired on them?' you replied, yes I know.
12. W4: Yes,
13. A: Is what you said, 'I know', what you said right now or what have you seen when he shot and harmed a person?
14. W4: I told you that he aimed at Bilal and missed him. He escaped me; he returned to him and stands against him
15. A: [Was it just this]
16. W4: [The three guys were shouting behind me]
17. A: Was it just this that you said, 'he shot, I saw him firing?'
18. W4: Yes.
19. A: *So*, have you seen when Yeshitila fired and shot a single person, Abduljelil or Jamal?
20. W4: At that time, I didn't see?
21. A: Right, you didn't see when he fired on them and shot either of them?
22. W4: I didn't see.

In addition to these types of question complexities and deconstructive techniques, the cross-examination lawyer also managed to provide, within the question, a projected indication of what the response should contain, both in terms of the extent and content of the response. The next section examines an exploration of cross-examination lawyers' strategies for limiting response boundaries.

4.4 Questions That Limit Witnesses' Response Boundaries

The first cross-examination lawyers' testimony constraining strategy involves the clear demarcation of response boundaries within the initial elicitation, a technique illustrated below (Extract 25). In this extract, the whole narratives (22 turns) ask the witness to comment on a single cross-examining lawyer's question, '*Have you seen this car in advance as it was being driven, before the accident happened?*' But the witness's response was constrained by the use of '*for what I asked, say, 'I know' for what you know'* (turn 12).

Similarly, the cross-examining question in turn 7- '= *I didn't ask that - I didn't say that. What I'm saying is, FOLLOW ME!', 'Have you seen this car in advance as it was being driven, before the accident happened?*' and, *'HAVE I ASKED YOU THAT? Don't you tell him* (turn 10)' were all testimony constraining cross-examining lawyers' intimidating discursive strategies. In addition to the limitation of response content, the lawyer was also able to interrupt the witness in the middle of his response, to provide a reminder of the boundaries set up in the initial question (turns 7, 10 and 12).

The pragmatic implication of the cross-examining proposition in turns 7, 10, and 12 was to protect the witness's inherently vital evidences from being elicited to the court. In turn 7, for example, the cross-examining lawyer interrupts the witness's discussion (turn 6) that tended to illustrate the degree of the collision. In a similar vein, in turn 10, the cross- examining lawyer interrupts the witness's demonstration, '*I heard the sound Gua!'*(turn 9) that could display the level of the accident from being testified. In so doing, the cross-examining lawyer was using different constraining strategies to make a clear demarcation of the response boundaries. In the first instance there was coercive strategies, for example, '*HAVE I ASKED YOU THAT?*'(turn 10), '*I didn't ask that*', and '*FOLLOW ME!'*(turn 7).

In this extract, it was not only the lawyer that was intimidating the witness, but the judge and the translator were also cooperatively pressurizing the witness. For example, in turn 19 and 22, the judge himself was playing his own role in demarking the response boundaries of the witness. In turn 19, the judge actually interrupted the witness and reminded him to give just what cross-examining lawyer asked in short and in turn 22 he rejected the witness's detailed answers. In the same manner, the translator also overlapped and demarked the witness's response to be encircled to cross-examining lawyer's question (turn 21). Such strategy is extremely effective for the lawyer, since the request type is condensed from his initial diffuse narrative into a small but perfectly formed Yes/No request (for example, turn 16). Generally, the addressee was thus effectively prevented from hearing about the potentially significant content of the evidence.

Extract 25, Case 1, Cross-Examination questions to W4

1 A: Ee…. Ala jirtu, ee… konkolaataan, ee.. karaa Finf--- (ማነው) kara Harar irraa dhufuu dursanii arganittuu isin konkolaataa san isin balaan kun osoo hin qaqqabiin?
2 T: አደጋው ከመድረሱ በፊት ከሐረር እየመጣ ያለውን መኪና አይተው፣ታል?
3 W4: ሲመታ ነው እንጂ ከዚያ በፊት አላየሁም
4 A: Ee… yeroo inni, akkaataa inni deemaa ittiture hin agarree dursitanii?
5 T: በምን ሁኔታ ይመጣ እንደነበረ አላዩም ቅድሚያ?
6 W4: ፍጥነት ላይ ነበረ - ፍጥነት ፍሬን የያዘበት ቦታ=
7 A: =Amma isa hin jenne ani - isa hin jenne. Wanni ani jechaa jiruu, NA DUUKA DEEMI! Konkolaataan kun balaa osoo hin qaqqabsiisiin dura dursitanii argitaniittu yoo inni deemuu?
8 T: ቅድሚያ አደጋው ከማድረሱ በፊት መኪናው ሲሄድ አይተዋል ወይ?
9 W4: አላየሁትም። ሲመታው ብቻ ነው ያየሁት ጓ! ሲል ብቻ ዞር ስል=
10 A: =Amma san yooman si gaafadhe? Itti naa hin himtuu.
11 T: እሱን አይደለም የጠየኩት ቅድሚያ አደጋው ከመድረሱ በፊት መኪናው=
12 A: =Waanan ani__ilaa waanan ani gaafadhe kan beektan nan beekaa=
13 T: =በቃ የምጠይቆትን የሚያውቁትን አው፣ቃለሁ=
14 A: =Kana naa deebisaa jedhiin. Konkolaataan kun yoo dakanaa dhufuu hin agarreee jettan.
15 T: መኪናው ከታች ሲመጣ አላየሁም ብለዋል.
16 A: Eeyyee, erga rukutamee, erga balaan kun ga'ee argitanii?
17 T: አደጋው ከደረሰ ከተሙቱ በኃላ ነው ያዩት?
18 W4:ቀጥታ መስመር ይዞ ኪታችኛው መስመር ወደ አዲስ አበባ=
19 J: =አጭር እየው መልሱ አጭር ነው - ከመታ በኃላ ነው ያዩት?
20 W4:ከመታ በኃላ ሲመታው ዲ ሲል ዞር ስል ቆመ ያዝ ለቀቅ አደረገ [በዚያን ጊዜ እኔ]
21 T: [የተጠየቁትን ብቻ]
22 J: ለምን ዝርዝር ውስጥ ትገባለህ?

1. A: Ee… you were out of the compound, ee…the car, on Finfinne road, (to mean) did you see when the car was coming from Harar, before the accident happened?
2. T: ----------
3. W4: I saw it when it hit the man, I didn't see it before that.
4. A: Ee… when it, haven't you seen the way it was being driven?
5. T: ----------
6. W4: It was on speed – where he held the footbrake=
7. A: =I didn't ask that - I didn't say that. What I'm saying is, FOLLOW ME! Have you seen this car in advance as it was being driven, before the accident happened?
8. T: ----------
9. W4: I didn't see it. I saw it hitting the man, when I heard the sound, Gua! =
10. A: =HAVE I ASKED YOU THAT? Don't you tell him?
11. T: I didn't ask you that, before the accident happened, the car=
12. A: = What I, look, for what I asked, say, 'I know' for what you know=
13. T: =----------
14. A: Tell him to respond me this. You said, I didn't see the car when it was coming upwards.
15. T: ----------
16. A: Yes, did you see that he was hit, after the accident had happened?
17. T: ----------
18. W4: It was coming straight upwards to Addis Ababa =
19. J: =Short, look, the answer is short – have you seen after he hit him?
20. W4: After he hit him and sounded, Dua, when I turned back he was holding and releasing the footbrake, [at that time I]
21. T: [just what you are asked]
22. J: Why you speak its detail?

4.5 Wh-questions

Wh-questions enable the witness to supply more information. In the following extract, the lawyer's wh-question led the witness to undertake the gratuitous concurrence. The child-witness was giving a *yes* or its variant responses, such as *yeh* ('ʼĥ' in the context of this research). The most important defense strategy was to get the prosecution witness (es) to agree to damaging propositions. As the brief discussion of gratuitous concurrence, section 1, has indicated above, the cross-examination in this case was riddled with apparent gratuitous concurrence. The lawyer uses a number of subtle strategies to lead the witnesses to agree, in situations which were quite likely to produce gratuitous concurrence.

The examination was made at the beginning of the first trial of the courtroom hearing. Yabsira was an 11 years of age youngest child witness I ever met in the courtroom trial observation. He has been giving evidence for about an hour-chief, cross, and re-examinations. He has shown signs of being overwhelmed by the experience, as it has been delineated in extract 26 below.

In this extended narrative of 27 turns, it was only to elicit a single question. Turn 6 was a typical example of the questioning style of defense lawyer. It questions three propositions: (1*) 'to what speed did you observe that car?'* (2) '*how quick you observe the white car you mentioned to that instant?*' and (3) '*on what distance you observed*?' This all were with the requirement for a single answer which was requested in the rest of the turns (*how far the car was from the child).* There was little chance for the witness to think about his answer (6:4, 7:2, 8:1, and 6:5 seconds being quite long silences) in the process of pressuring by repeated question tags, the final one with a different request.

These were all strategies conducive to the elicitation of gratuitous concurrence child witness (turns 3, 8, 13, 15, 20, 22, 24 and the more damaging agreement turn, turn 27). It is impossible to know whether the witness did actually agree with the crucial response he gave in turn 27, but we have seen above several reasons which would urge caution about giving a literal interpretation to this answer.

Extract 26, Case 1, Cross-Examination questions to W1

1. A: Halkan keessaa sa'aa sagal, ee… yeroo sani ariitiin fiiga jette, mee ariitii ta'uusaatiifi ta'uu dhiisuusaa maaliin addaan baaftee, halkan sa'aa 9 kunoo halkan keessaa ariitiidha jette.	1. A: It was 3:00 PM, ee…at that time it was on speed, you said, look, how did you identify either the car was on speed or not since you said it was 3:00 pm and the car was on speed?

2. T: ሌሊት ነው _9 ሰዓት ነው ብለሃል። በፍጥነት እየመጣ ያለው ስትል ነበርና ሌሊት ላይ ፍጥነት መኖሩንና አለመኖሩን እንዴት ነው ልታውቅየቻልከው?
3. W1: ኧ?
4. T: ፍጥነት በፍጥነት መምጣቱን እንዴት ነው ልታውቅ የቻልከው?
5. W1: ኧ… አጠገቤ ሲደርስ ዞር ስል ማለት ነው የመኪና ድምጽ ሰማሁ ከላክስ አላደረገም ዞር ስል አጠገቤ ሲደርስ ሸሸሁ
6. A: ኣይ! Gaaffiin kooyii, ee… yeroo sin daandii ce'uuf deemtani; waliin ce'uuf deemtan, mee hagamitti argite konkolaataa san ati, konkolaataa adii jette san hangamitti argite fageenya hangamiirratti argite ati?
7. T: አንተ መንገድ ስታቋርጡ መኪናውን በምን ያህል ርቀት ላይ ነው ያየኸው ምን ያህል ርቀት ላይ ነው ያየኸው አንተ?
8. W1: ኧ?
9. T: ምን ያህል ርቀት ላይ ነው ያየኸው?
10. W1: በጣም ነው የቀረበው ከዚያ በፍጥነት ሲመጣ ዞር ስል አየሁ እኔ
11. T: አንተ ባየህበት ሰዓት በምን ያህል ርቀት ላይ ነበር ምን ያህል ይርቃል በግምት?
12. J: ከአንተ ማለት ነው?
13. W1: (6;4) (confused)…
14. T: ምን ያህል?
15. W1: (7:2) (silent).
16. A: Mee… mallattoomana kana keessatti agarsiisi. Hagam, hagam fagaata?
17. T: እስቲ እዚህ አካባቢ ካለው ምን ያህል ርቀት ከዚህ ምን ያህል ይደርሳል ከዚህ ምን ያህል የት ይደርሳል?
18. W1:ርቀቱ?
19. T: ርቀቱ መኪናውን ያየህበት ሰዓት ቦታ ምን ያህል ነው?
20. W1:(8: 1)(silent: confused)
21. J: ስንት እርምጃ ይሆናል ካንተ?
22. W1: (6:5)(Still confused, no answer)
23. A: Mee… duruma dursitee argitee jirtaa?
24. W1:25 ሜትር=
25. A: =Sadarkaa kanarratti argitee?
26. T: በዚህ ርቀት ላይ ነው ያየኸው?
27. W1:አዎ

2. T: ----------
3. W1: Ee?
4. T: How did you identify whether the car was coming with speed, speed?
5. W1: Ee…when it was approaching towards me I mean when I turned I heard the car's sound he didn't make clacks when I turned the car approached me I run off.
6. A: No, my question is, ee… when you tried to cross the road you were to cross together, look, to what speed did you observe that car, how quick you observe the white car you mentioned to that instant, on what distance you observed?
7. T: ----------
8. W1: Ee?
9. T: on what distance you observed?
10. W1: It was too approaching then when it was coming with speed when I returned I saw it.
11. T: when you were watching, how far away the car was from you, guess
12. J: it means from you?
13. W1: (6;4) (confused, silence)…
14. T: How many?
15. W1: (7:2) (silence)
16. A: Show with sign in this room, how far, how far it was?
17. T:----------
18. W1: Distance?
19. T: The place from where you observed the car how far was it?
20. W1: (8: 1)(silent: confused)
21. T:How far was it from you in yards?
22. W1: (6:5)(Still confused, no answer at all)
23. A: Look, have you seen from the beginning?
24. W1: 25 metres
25. A: Have you seen from this range?
26. T: ----------
27. W1: Yes.

4.6 Projection questions

Projection questions are another quite general characteristic of courtroom questions that contain verbal projections (reported speech) and mental projections (reported thought and belief) (Gibbons, 2008). He asserts that such types of questions were a principally efficient way of including a vast volume of information from the lawyer's version of events. Based on their structure, they also might put high degrees of pressure for agreement upon witnesses. For example see extract 27 below:

Extract 27, Case 4, Cross-Examination question to W2

A:	Ee… ati erga rasaasni dhuka'uu jalqabeeti achumaan jiraa, erga isaan bahaniitii achi bahe jetteeta. Komodiinoo jalaati erga jettee, Yeshixilaan jara kanatti haa dhukaasuu, hin dhukaasiinii; maaliif ati yeroo dura sitti dhuka'u waan seenteef, akkamitti arguu dandeesse?	A:	Ee… you said, I was there from the time when the gun was being started firing, I got out after they left, if you say you were under the comodino, whether Yeshtila fired or not on these men, because you entered as soon as the firing started, **how did you see it?**

In a verbal projection like "*you said, …*", there is an assumption that the witness was committed to the truth of the core proposition ('*I was under the comodino from the time when the gun was being started firing, I got out after they left*'), making it difficult to deny. Therefore, if the witness answers "*No*", this denial is primarily a denial of saying this, but does not deny that he was under the comodino from the time when the gun was being started firing (although the denial may affect this core proposition if there is no other evidence for the fact). The core information (he was under the comodino from the time when the gun was being started firing) is to some degree presupposed or embedded.

Extract 28, Case 4, Cross-Examination questions to W4

1. A:	Ee… meeti, yennaa Yeshixilaan dhufe, dubartootas namootas fideeti kunoo ati bahi asii. Ati asiitii waan gootu hin qabdu miseensas miti naan jedhe jette.	1. A:	Ee… look, you said that Yeshtila came with a certain women and men and ordered me to leave the room saying that you can do nothing here since you are not our member.
2. W4:	Eeyyee.	2. W4:	Yes
3. A:	Yennaa kanatti, Yeshixilaan kana yoggaa jedhu, warri miseensa abbaa qabeenyaa ta'an sun keesumattuu dura ta'an maal jedhan turan?	3. A:	At that time, when Yeshitila said this **what** were the members specially the coordinator was saying?
4. W4:	Kafalleeti si finnee. Ati kanaraawwa-dhu hin ka'in nu barreessi naan jedhan.	4. W4:	They said, we brought you on payment, don't get up just write for us.

In extract 28, using the projection question "*you said …*" turn 1, presupposes that the witness has recounted how Yeshitila ordered him to leave the room saying that he could do nothing there since he was not their member, and his refusal not to leave the room itself was very difficult to be denied.

Extract 29, Case 4, Cross-Examination question to W2

1. A: Yennaa rasaasni dhuka'e jedhe, yennaa rasaasni dhuka'e, erga dhukaasni eegaleen booda ani dhokadheera komodiinoo jala jette. Isaan keessan jiran moo duubaan jiru?	1. A: When you say the gun fired, when the gun fired, you said that after the firing started, I hid under the comodino, were they inside or backwards?
2. T: ከተኩሱበኃላአንተ እዚያ ውስጥ ከገባህበኃላ እነሱ ከኃላናቸው ከፊት ናቸው?	2. T: ----------
3.W2: ከእኔፊት	3. W2: In front of me

The basic form of the question in extract 29 is "… *were they inside or backwards*?" Once more the projection "*you said that*…" makes it hard to deny and the final positive agreement tag ("w*ere they inside or backwards*?" turn 1) places further pressure for agreement.

5. Conclusions

Conceivably the most prominent aspect of criminal courtroom questions is that they are so diverse from everyday questions. In day-to-day questions, authentic requests are provided for information from a questioner who does not know the answer. Here the answerer is not obliged to answer. In the contrary, in courtroom questioning, the questioner already has the answer, in which the answerer is obliged to answer.

The findings of the study suggest that the answerers are pressured to answer in the way the questioners wishes by means of a wide range of linguistic parameters such as discourse, exchange and question forms. The findings of the study reveal that the defense lawyers are attempting to have the witnesses either contribute to or agree with a version of events predetermined by these questioners. At the discourse level, defense lawyers construct the narratives element by element, by series of questions that recycled preceding information and ask for very limited pieces of new information. At the exchange level, there is an asymmetrical questioning/answering relationship that includes a lawyer evaluative third part. At the level of question forms, an

over-representation of questions that limited the scope for response in a range of ways, in an attempt to control the information provided by the witnesses.

The cross-examining lawyers' question forms are related to the degree of coerciveness of question types in order to achieve their discursive dynamicity. Declarative questions and tag questions are strongly biased towards a confirmative answer and consequently were more pressurizing and coercive questions. They also offer the cross-examining lawyers more obvious advantage as these question forms are perceived as statements so as to help the cross-examining lawyers in changing the questions into evidence to enables them to give evidence on behalf of witnesses and reduce witnesses to the role of minimal responders. In the other manner, tag questions have also a further pragmatic meaning that makes it the most coercive type of cross-examining lawyers' questions as they imply that the cross-examining lawyers previously know that the answer is right (information relationships). Projection questions are efficient way of including a vast volume of information from the lawyer's version of events, and are used to put high degree of pressure for agreement upon witnesses.

The rationalization that defense lawyers are typically giving for such types of questionings is that they 'test the evidence'. In fact, as the outcome of the study proposes, this justification is uncertain that the questioning process seems more likely to distort the evidence of witnesses rather than test it.

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PROLEGOMENA TO A NEW CRIMINAL TRIAL PROCEDURE IN POLAND FOLLOWING THE AMENDMENT OF THE CODE OF CRIMINAL PROCEDURE OF 27.09.2013: FOM INQUISITORIAL TOWARDS ADVERSARIAL PROCEDURE OF WITNESS EXAMINATION IN CRIMINAL TRIALS

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Abstract: The purpose of this paper is twofold. Firstly, it introduces the transformations, which the criminal trial procedure in Poland will undergo following the amendment of the Code of Criminal Procedure of 27 September 2013. Secondly, it explains the consequences that the altered criminal law will have on Polish courtroom discourse. The paper comprises three major parts. It commences with the demonstration of the inquisitorial procedure of witness examination in criminal trials as investigated, described, and expounded by Bednarek (2014)[1], prior to the amendment of criminal law in Poland. Subsequently, it presents the criticism of the inquisitorial criminal trial by the representatives of academia and legal practitioners in Poland, and explains the reasons for the transformation of the inquisitorial criminal trial into an adversarial one. Finally, it demonstrates the new regulations of the Code of Criminal Procedure pertaining to the criminal trial and establishes what effects they will have on Polish courtroom discourse. The paper ends with concluding remarks emphasizing the pressing need for novel and thorough investigations of the language used by judges, attorneys for the prosecution and attorneys for the defense in criminal trials in Poland following the amendment of the criminal law.

Key words: Polish courtroom discourse, criminal trial, amendment of the Code of Criminal Procedure of 27.09.2013 in Poland, transformation of the inquisitorial criminal trial in Poland into adversarial criminal trial, consequences of the momentous amendment of criminal law in Poland on Polish courtroom discourse.

[1]At the time when this paper is being written the study of courtroom discourse conducted by Bednarek (2014) is the only investigation of talk in interaction in the milieu of Polish courts that focuses on the modus operandi of witness examination from the point of view of linguistics.

PROLEGOMENA DO NOWEJ PROCEDURY DOTYCZĄCEJ PRZEPROWADZENIA PROCESU KARNEGO W POLSCE W KONSEKWENCJI ZMIANY KODEKSU POSTĘPOWANIA KARNEGO Z DNIA 27.09.2013: OD INKWIZYCYJNEJ DO KONTRADYKTORYJNEJ PROCEDURY PRZESŁUCHIWANIA ŚWIADKÓW W PROCESACH KARNYCH.

Abstrakt: Głównym celem artykułu jest przedstawienie transformacji, jakiej ulega procedowanie rozpraw karnych w Polsce w konsekwencji modernizacji k.p.k. z dnia 27 września 2013, a także wyjaśnienie skutków zmian prawa karnego na polski dyskurs sądowy. Artykuł składa się z trzech części. Rozpoczyna się prezentacją inkwizycyjnej procedury przesłuchania świadków w sprawach karnych, które zbadała, opisała i objaśniła Bednarek (2014). Następnie demonstruje uwagi krytyczne polskich przedstawicieli nauki oraz praktyków pod adresem inkwizycyjnej rozprawy karnej, a także wyjaśnia przyczyny transformacji rozprawy karnej z inkwizycyjnej na kontradyktoryjną. Ostatnia część artykułu demonstruje nowe przepisy k.p.k. odnoszące się do rozprawy karnej oraz omawia skutki, jakie one spowodują w polskim dyskursie sądowym. Artykuł kończą uwagi podkreślające pilną potrzebę przeprowadzenia nowych, kompleksowych badań dotyczących języka używanego przez sędziów, prokuratorów i obrońców w rozprawach karnych w Polsce w świetle zmiany prawa karnego.

Słowa kluczowe: polski dyskurs sądowy, rozprawa karna, reforma Kodeksu Postępowania Karnego z dnia 27.09.2013, transformacja inkwizycyjnego procesu karnego na kontradyktoryjny proces karny, konsekwencje historycznej zmiany prawa karnego w Polsce na dyskurs sądowy.

1. Introduction

This paper is devoted to courtroom discourse, a type of institutional talk, or institutional interaction understood as a form of action that is meaningful in context and that is shaped by talk that occurs in the courtroom setting. Its primary objective is first of all to introduce the revolutionary modifications of the criminal proceedings in courts in Poland following the momentous amendment of the Code of Criminal Procedure and of other laws of 27 September 2013, and subsequently explain the apparent consequences, which the new criminal law is going to have on Polish courtroom discourse, and more specifically on the modus operandi of witness examination – the key part of the evidential phase of the criminal trial. The paper encompasses three major parts. Part one provides a concise overview of the procedure of witness examination during criminal trials in Poland prior to the amendment of the criminal law, that is to say it addresses and explains the inquisitorial procedure of witness examination under Civil Law in Poland. The subsequent part presents stark criticism of the inquisitorial criminal trial by members of the academia and legal practitioners in Poland and explains why the long awaited change from the inquisitorial criminal justice towards an adversarial criminal justice appears to

be indispensable. The final part introduces the new criminal law and demonstrates how the revised law is likely to influence Polish courtroom discourse.

2. Polish courtroom discourse: a concise overview of the inquisitorial procedure of witness examination in criminal trials in the light of the research conducted by Bednarek (2014)

In Poland, courtroom discourse, i.e. the language used by judges, attorneys for the prosecution and attorneys for the defense during courtroom proceedings in criminal trials has been studied by Bednarek (2014), whose research is deeply anchored in linguistics and more specifically within the area of discourse analysis. A functionalist study of the language used by the representatives of the legal professions in criminal trials, the research devoted to courtroom discourse published by Bednarek (2014) examines how members of the legal speech community communicate and interact with one another in a particular speech situation and speech event and how through the use of language lawyers participating in the criminal trial perform certain social roles under a particular legal system. The study of courtroom discourse conducted by Bednarek (2014) draws on a number of disciplines, including: the theory and philosophy of law, comparative law, comparative criminal justice, sociology and anthropology of law, sociology, anthropology and anthropological linguistics, which makes it highly interdisciplinary. The work employs the concepts and methods of research developed by the following approaches to discourse analysis: (1) the ethnography of communication; (2) Conversation Analysis (CA), and (3) pragmatics, which allowed her to provide a holistic picture of Polish courtroom discourse, which she compares with American courtroom discourse pointing to the similarities and disparities between them. The major focus in her study falls on the evidential phase, and in particular on the comparative analysis of adversarial and inquisitorial procedures of witness examination under two entirely disparate legal systems, Common Law and Civil Law, as two distinct ways of seeking the truth and two distinct methods of pursing justice.

The investigation of courtroom discourse presented by Bednarek (2014) ensues from two major hypotheses. Hypothesis one assumes that each courtroom discourse is culturally varied. Hypothesis two presupposes that each courtroom discourse is socially conditioned. Bednarek (2014: 14) explains that the first hypothesis is founded on the postulation that each courtroom discourse is highly

influenced by the socio-cultural, historical, institutional, and legal context in which it takes place. That is to say, in each country, the language through which law is promulgated and enforced emerges and develops for hundreds of years within a specific legal system and as such it acquires certain idiosyncratic qualities that make it entirely different from all other languages of law that develop under dissimilar legal systems. The second hypothesis is based on the postulation that under a particular legal system the society sets certain legal norms, which in turn govern the social conduct of the major participants of criminal trials, i.e. judges, attorneys for the prosecution and attorneys for defense. Bednarek (2014) argues that owing to the fact that each courtroom discourse is shaped by a given socio-cultural, historical, institutional, and legal milieu in which it exists, each courtroom discourse needs to be perceived as a phenomenon sui generis, a distinctive example of linguistic genre.

The necessity to make use of the ethnography of communication to study Polish courtroom discourse is validated in the following manner: (1) firstly, the ethnography of communication treats language as a socially situated cultural form; (2) secondly, the ethnography of communication examines language not as an abstract form, but in specific communicative situations allowing the researcher to investigate the patterns of speech and communicative conduct of lawyers in Poland participating in criminal trials making it possible to present the broad socio-cultural, historical, institutional, and legal setting in which Polish courtroom discourse takes place. The use of the ethnography of communication in her research allowed Bednarek (2104) to employ the legendary SPEAKING grid devised by Hymes (1972b). Here is how Bednarek (2014) has described the socio-cultural, historical, institutional, and legal setting in which Polish courtroom discourse occurs by means of the SPEAKING grid.

As far as the (1) *Setting* is concerned, Polish courtroom discourse takes place under the Civil Law legal system. It is the legal system that began in the times of the patrimonial monarchy, continued its existence in the Noble's Republic, as well as the times of partitions and feudalism, the times of capitalism, the period of the Second Polish Republic, World War II, and the period of the Polish People's Republic (Jurek 1998). As far as the court system in Poland goes, it is a procedure that takes place in any of the following courts: district courts, regional courts, appellate courts, administrative courts or military courts. (2) *Participants* appearing in the court proceedings in criminal trials under Civil Law in Poland include: (1) the judge, (2) attorneys for the prosecution, and (3) attorneys for the defense, who all boast of unique professional qualifications, who are appointed to the positions under specific terms distinct from those in other countries under distinct legal systems and who

perform idiosyncratic social roles typical for the Civil Law in Poland. (3) The major objective, that Hymes (1972b) referred to as the *Ends*, of the entire criminal trial is to establish whether crime was committed, who committed the crime, and under what circumstances. If the defendant is found guilty, the major aim of the trial then is to adjudicate and execute penalty. The aim of the examination of witnesses is to enable the judge, who is the chairperson of the adjudicating body, to elicit testimony from the witnesses, reveal all the circumstances under which the crime was committed, establish the criminal responsibility of the accused person, in other words, to establish the substantive truth associated with commitment of the crime. Following art. 2 section 2 of the Code of Criminal Procedure in Poland, the basis for all the resolutions of the Court are the real and true facts (Waltoś 2009: 221). (4) As far as the structural organization of the evidential phase is concerned, which Hymes called *Act sequence*, the examination of witnesses under the Civil Law in Poland encompasses two major stages: (1) in case of the defendant it is to provide: (a) a free and unrestricted explanation, to which defendants have the right; and (b) the examination of the defendant by the judge, attorney for the prosecution and attorney for the defense, who may ask the so called supplementary questions in cases when certain ambiguities associated with the circumstances in which a crime was committed need to be elucidated; and (2) in case of witnesses it is to provide: (a) a free and unrestricted testimony; and (b) the examination of the defendant by the judge, attorney for the prosecution and attorney for the defense, who may ask the so called supplementary questions, in cases when certain facts linked with the commitment of the crime need to be clarified. The subsequent element studied is (5) the tone and atmosphere, i.e. the *Key*, in which the inquisitorial procedure of witness examination occurs, which in criminal trials is always dignified, serious, and solemn, owing to the fact that when proven guilty the defendants may lose their freedom for years to come, or even for life. For all those persons, however, who fail to observe the rules of conduct characteristic for courts, as well as those, who show disregard for the Court (Judge) or those, who obstruct justice, judges have at their disposal different means to punish them. (6) *Instrumentalities*: Under art. 365 of the Code of Criminal Procedure in Poland, criminal trials in Poland constitute a verbal phenomenon, which is subject to the following legal (7) *Norms of interaction*: (a) the principle of substantive truth; (b) the principle of objectivity; (c) the principle of co-operation with society and other institutions in prosecuting crimes; (d) the principle of presumed innocence and *in dubio pro reo*; (e) the principle of unrestricted evaluation of evidence; (f) the principle of directness; (g) the principle of adversarial and inquisitorial procedure; (h) the principle of legality;

(i) the principle of right to defense; (j) the principle of a public trial; (k) the principle of public control of the trial; and (l) the principle of a fair trial (Waltoś 2013-334). Of them all, the principle of substantive truth is the key principle – it assures that all the facts must be consistent with reality, which stands in opposition to the principle of formal truth (under Common Law in the USA and UK), whereby the procedural law does not compel the judge to study, whether the facts provided by the parties are consistent with reality (Waltoś 2009: 221). (8) Genre: under the definition of the "genre" provided by Swales (1990: 9), both the speech situation, i.e. the criminal trial and the speech event, i.e. the procedure of witness examination in the trial are both instantiations of communicative events.

Having established the socio-cultural, historical, institutional, and legal backdrop in which the Polish inquisitorial procedure of witness examination takes place, Bednarek (2014) narrows the scope of the research and concentrates on the talk itself, which is why she subsequently applies conversation analysis (CA) approach to discourse analysis that developed from ethnomethodological research in sociology and which allowed her to analyze the following key aspects of Polish courtroom discourse: (1) the structural organization of the examination of witnesses in criminal trials; (2) courtroom interaction during the evidential phase; (3) the system of turn-taking; (4) the social roles of the major participants of the procedure of witness examination; and (5) types of questions used in the evidential phase.

As has been described above, the inquisitorial procedure of witness examination in criminal trials under Civil Law in Poland primarily involves two major stages. In case of defendants it embraces: (1) the free and unrestricted explanations and (2) the examination of the defendant by the judge, attorney for the prosecution and attorney for the defense and lastly experts in various branches of science; and in case of witnesses it encompasses: (1) the free and unrestricted testimony by a witness and (2) the examination of the witness by the judge, attorney for the prosecution and attorney for the defense and lastly experts in various branches of science (Bednarek 2014)[2].

Bednarek (2014: 129) explains that under art. 366 of the Code of Criminal Procedure in Poland the person responsible for conducting the procedure of witness examination under Civil Law in Poland is the judge, who is also the chairman of the adjudicating panel. Further, under art. 385 section 1 of the said code, the evidential phase begins with the process of reading of the act

[2]In her book, Bednarek (2014: 129-138) has described and explained the structure of the entire criminal trial in Poland.

of indictment by the attorney for the prosecution, and in case of very long acts of indictment it commences with the presentation of the charges brought to court against the defendant (Bednarek 2014: 132). Next, the judge is required under the law in force to ask the obligatory questions to the defendant that will confirm whether s/he understood the act of indictment and if the answer is negative it is the onus of the attorney for the prosecution to explain it to the defendant (Bednarek 2014: 132). Having established that all the counts have been understood, the defendant is subsequently advised on her/his rights arising from art. 386 section 1 of the Code of Criminal procedure to provide explanations or to withhold from providing explanations or answering the questions followed by the obligatory question whether the defendant pleads guilty or not guilty of committing the crime (Bednarek 2014: 132). Next, under art.175 section 1, the defendant is free to provide explanations and the witness to provide testimony, which arise from this regulation and while they do that they may, pursuant to art. 171 section 1, reveal and describe all that they know in connection with the committed crime in response to just one single question in the form that is as long as they wish (Bednarek 2014: 133). Once the defendant or witness have completed her/his explanation or testimony respectively, they may be asked supplementary questions to elucidate any ambiguities in connection with circumstances of the committed crime by the judge, attorney for the prosecution and attorney for the defense, who may do so under art. 370 section 1 of the code mentioned above (Bednarek 2014: 133).

The questioning of the defendant and witnesses commences with establishing the key information about them, including inter alia: their forename, surname, place of residence, profession, relation to the accused person. Prior to that, however, the judge is required to instruct the person providing an explanation or testimony about the criminal liability for contributing untrue information or withholding the truth that arise from art. 191 section 1 of the Code of Criminal Procedure (Bednarek 2014: 134).

In the light of the research performed by Bednarek (2014: 129-138), the social roles that the key partakers play during the inquisitorial procedure of witness examination are as follows: (1) the judge, who as observed previously in this paper is the chairman of the court proceedings and the adjudicating panel, calls in the witnesses to the witness stand and examines the defendant and witnesses; his/her role is to establish the circumstances in which the crime was committed. The judge instructs the defendant/s and witness/es on their rights and obligations. In other words, the judge conducts an inquisition, whose purpose is to look for the truth concerning the circumstances under which the crime was committed; (2) attorney for the prosecution reads the act of indictment or

presents the charges against the defendant, s/he may ask the so called supplementary questions to the defendant or witnesses once they have completed providing explanations or testimony and as soon as the judge has terminated asking them questions; (3) attorney for the defense guarantees that the rights of the defendant are upheld throughout the entire criminal trial, s/he may, similarly to the attorney for the prosecution, ask the supplementary questions provided that the judge and attorney for the prosecution have finalized questioning the defendant or witness.

As for the system of turn-taking, Bednarek (2014: 138-140) established the following facts: (1) during the inquisitorial procedure of witness examination in criminal trials, talk always takes the form of questions and answers with the judge enjoying the right to ask the question "What do you know in connection with the committed crime?" and the defendant or a witness may proceed with their unrestricted explanation and/or testimony respectively, which may subsequently be followed by a serious of supplementary questions posed by: the judge, attorney for the prosecution or attorney for the defense, and experts; (2) the system of taking turn in the procedure of witness examination is strictly pre-allocated and determined by the law in force in Poland that empowers the judge to conduct the examination of witnesses, it also allows attorneys for the prosecution and attorneys for the defense to ask questions; (3) turns at talk always take place between two persons, the judge and the defendant, the judge and the witness, attorney for the prosecution and the defendant or witness, attorney for the defense and the defendant or witness, or an expert and the defendant or witness. Self-selections during the court proceedings are strictly prohibited; only the judge holds the power to grant the permission to take the floor to all the participants, both professional and lay (Bednarek 2014: 139).

The analysis of the questions asked during the inquisitorial procedure of witness examination displayed that in contrast to the adversarial procedure of witness examination under Common Law in the USA, the Polish judge, attorney for the prosecution, attorney for the defense and experts ask all types of questions interchangeably, except for the leading questions, which may never be posed due to restrictions in law (Bednarek 2014: 146-151). Owing to the fact that under the law in force in Poland both the defendant and witnesses may provide unrestricted information while providing verbal evidence, the number of questions asked during the inquisitorial procedure of witness examination is significantly abridged in comparison with the American adversarial procedure of witness examination, wherein both parties ask literally thousands of questions making substantial use of questions and who are allowed to use the leading questions in the cross-examination part of the evidential phase (Bednarek 2014:

66-75). As explained by Bednarek (2014: 147-149), Polish lawyers employ Yes/No-questions and Wh-questions on equal terms, no special techniques appear to be used while questioning the defendant and witnesses, lawyers do not seem to display any penchant for the use of any special types of questions, which is most probably the immediate consequence of the observance of the principle of substantive truth that provides that the judge is required to establish the objective truth concerning the circumstances in which the crime was committed, so the achievement and establishment of the entire substantive truth pertaining to the crime prevails and influences both courtroom interaction, as well as all the talk during the inquisitorial procedure of witness examination.

The use of pragmatics to investigate Polish and American courtroom discourse as the final method of research allowed Bednarek (2014) to concentrate on the smallest units of the language used during courtroom interaction, namely the *speech acts*, which are commonly perceived as more than mere linguistic acts and are seen as social acts (Geis 1995: xii). Bednarek (2014: 151) makes references to Grice's (1975: 45) seminal essay Logic and Conversation", wherein he urges all the conversationalists to make their contributions as required and in accordance with the major purpose of the talk. The four maxims that this renown philosopher propagated caution interlocutors to: (1) to make their speech as informative as required; (2) to avoid providing information that is far from the truth, or for which they lack evidence; (3) be relevant; and (4) be brief and orderly and evade ambiguity and obscurity.

The analysis of Polish courtroom discourse during the evidential phase under Civil Law conducted by Bednarek (2014) has shown that the overwhelming majority of witnesses in criminal trial under investigation observed maxim in that they provided true information associated with the committed crime during the examination, thus respecting art. 233 section 1 of the Polish Criminal Code in force, which cautions anyone, who in providing testimony, which is to serve as evidence in court proceedings, gives false testimony or hides the truth is subject to severe penalty of deprivation of liberty for up to three years. Despite the stern consequences that the said article of the Criminal Code in Poland anticipates for all those, who do not comply with this article when they provide testimony, Bednarek (2014: 152) has also established some evident instances of attempts to conceal the truth, as well as examples of testimony, whose veracity and reliability was not only dubious, but also quite easily questioned and contradicted by verbal evidence provided by other key witnesses.

As concerns maxim two, following which interlocutors are to provide only as much information as is asked of them and refrain from providing more information than is required, Bednarek (2014: 153) has found out that in contrast

to the American criminal justice rules of conduct applied in criminal trials, Polish witnesses and defendants are allowed to give as much information and for as long as they wish in connection with the committed crime, which is in conformity with the principle of substantive truth that governs the procedure of witness examination in criminal trials in Poland and which allows judges to get access to *all* the information about the circumstances of the committed crime in order to give an objective verdict, as opposed to the adversarial method of witness examination under Common Law in the USA, whereby prosecutors generally provide the information that will allow them to prove the defendant is guilty beyond reasonable doubt, whereas the defense only reveals the evidence that proves the innocence of their client/s.

Bednarek (2014: 155) has confirmed that defendant's explanations and witnesses' testimony appear to be relevant to the legal case under investigation in court, that is to say their talk and conduct appears to be in compliance with Grice's (1975) maxim three, so seem to be the contributions provided by the defendant and witnesses referring to maxim four that advises conversationalists to avoid ambiguity and obscurity and that advises interlocutors to make their contributions brief and orderly. The qualitative analysis performed by Bednarek (2014: 155ff) has shown that the explanations and testimony provided in this case are comprehensible, intelligible, presented in a rather orderly manner, except for the testimony of one witness. The language provided by experts in psychiatry, however, appeared to be more sophisticated and presented in a more logical way than that given by lay witnesses (Bednarek 2014: 156).

Bednarek (2014: 157) has proved that although certain floutings of Grice's (1975) principle of co-operation in conversation exist, the defendant and witnesses in their overwhelming preponderance follow conversational maxims proposed by the said philosopher that enables the judge to conduct the procedure of witness examination swiftly and in accordance with the binding laws.

In order to establish that both legal professionals and lay participants share common knowledge that enables them to communicate effectively during the trial Bednarek (2014: 158-164) has examined the speech acts introduced by Austin (1962) in his book published posthumously *How to Do things with Words*. The study displayed that the *Representatives* constituted the most frequently employed type of speech acts used to describe persons, actions and phenomena, i.e. to give account of the circumstances of the committed crime, whereas *Directives*, which took the form of requests, commands and orders, on the other hand, were not so commonly applied and neither were *Commissives* that allow witnesses and defendants to commit to certain actions and which are generally introduced by such words as: swear, warrant, promise, threaten or vow

*(*Bednarek 2014: 158-161). Bednarek (2014: 162) has discovered that the incidence of *Expressives*, which are employed to convey, inter alia: thanks, apologies, congratulations, and condolences, was regular. The prevalence of *Declaratives*, however, which are used to appoint, arrest, baptize, bid, declare, deem, define, pass sentence, resign, and whose occurrence during the entire criminal trial is usually high, have been found to be sporadically applied during the evidential phase.

The research conducted by Bednarek (2014) has confirmed that Polish courtroom discourse is unique, and should be perceived as a phenomenon *sui generis*, it is an example of a distinctive linguistic genre, wherein the major participants of talk-in-interaction play unique social roles. It is both culturally varied, and socially conditioned as hypothesized at the onset of the study.

3. Criticism and the major reasons for a change of the inquisitorial criminal process in Poland

Although in his seminal book dedicated to the description and explanation of the criminal process in Poland, Waltoś (2009: 216-217) insists that Polish criminal trial is adversarial in its nature, which, as he argues, is reflected in the battle between the prosecution and defense governed and resolved by the sovereign Court, his opinion has been contested by professionals in criminal law in Poland, such as Hofmański (2013: 33), Grzegorczyk (2013: 46), and Skorupka (2013: 76), to name but a few.

One of the arguments that appears to contradict the point of view presented by Waltoś (2009) is the fact that although during a criminal trial in Poland two parties appear *prima facie* to be engaged in an argument, their conduct may hardly be perceived as a battle, or an argument owing to the fact that the prosecution and defense in Poland do not have the right to conduct the procedure of witness examination, which, as explained earlier in this paper, is the responsibility of the judge (Hofmański 2013: 33).

Another reason that appears to challenge the point of view proposed by Waltoś (2009) is the fact that the prosecution and defense in Poland do not present two contrasting versions of events, two stories of the circumstances under which the crime was committed, as is the case in the USA under Common Law, wherein the prosecution and defense provide two dissimilar narratives, or accounts of the events in which the crime is committed, which they elicit in the form of testimony from their witnesses.

Although, it is true that the Polish criminal proceedings exhibit certain features of the adversarial criminal process, it must be indicated that such features are outnumbered by the attributes, which are typical for the inquisitorial

criminal trial, e.g.: (1) the criminal proceedings are dominated by the preliminary procedure in which the prosecution is liable for explaining all the circumstances of the committed crime, as well as for collecting and providing evidence, whereas the judge in the court is merely responsible for confirming its veracity, as well as for issuing of the verdict; (2) although it is true that Polish courts enjoy sovereignty, Polish courts are not always impartial in their actions, as the courts in the USA under Common Law, which may be attributed to the fact that following the Polish law, Polish courts play an active role; they are engaged in conducting the examination of witnesses, which implies that Polish judges are liable for contesting the presumption of innocence of the defendant, as well as for proving the truth of all the accusations presented in the act of indictment by the prosecution (this also means that the judge may introduce evidence against the defendant only in cases when such evidence may not be eliminated); (3) the prosecution and defense do not enjoy equal rights before courts – that is to say, the prosecution, which is supported by the state, not only enjoys the right to obtain evidence in numerous ways, which the defense does not, but it may also introduce such evidence in the process, while the rights of the defense in this respect appear to be radically limited[3]; (4) there is hardly any proof confirming the adversary nature of the criminal process in the preliminary stage of the criminal proceedings; thus, although there is a dispute between the prosecution and defense, it does not refer to the major object of the process (Hofmański 2013: 34).

Following Hofmański (2013: 33), such status quo of the Polish criminal process may be credited to the pernicious influence of the soviet model of criminal justice, which it exerted on the east-European countries, and which is so difficult to do away with.

One of the most unfavorable remarks pertaining to the criminal process in Poland is the fact that the criminal trial in Poland is founded on the *repetitive actions performed by the Polish courts during the evidential phase, which had already been conducted by the prosecution in the preliminary stage of the criminal process*, when the prosecution prepare and gather evidence to be presented in court (Hofmański 2013: 35). The old criminal procedure has also been disapproved of for being: (a) lengthy; (b) timeworn, and (c) inappropriate to the social changes taking place in our society, (d) the evolution of crime, and (e) emergence of new threats (Hernand 2013: 156; Małolepszy 2013: 209). In its

[3]The limitation of this right is reflected in the fact that evidence obtained by the prosecution from independent experts may be submitted without restrictions in the process, whereas such evidence obtained from an expert obtained by the defense does not at all constitute evidence; it merely indicates the need for obtaining new opinion provided by an expert (Hofmański 2013: 34).

Justification for the Bill of Amendment of the Law – Criminal Code and Code of Criminal Procedure and some other laws, the Criminal Code Codification Committee acting at the Minister of Justice in Poland reprimanded the Polish criminal process for the protracted nature of the criminal proceedings and unnecessary lengthy temporary detention of the accused, which confirms the fact that there is a pressing necessity for a change of the criminal process in Poland for reasons that the old procedure has exhausted its possibilities due to: (1) substitution of the adversarial procedure with the inquisitorial proceedings regarding the evidential phase targeted at achievement of the substantive truth related to the circumstances in which the crime was committed; (2) excessive formalism of the activities, which prolongs and delays the criminal procedure; (3) superfluous and unwanted activation of judges in activities that might be performed by other participants; (4) inappropriate realization of the Constitutional standards.

In the light of the foregoing, the said Committee has expressed its firm conviction that the present model of the criminal process requires profound transformation following consultation with experts in theory and practice in criminal justice. In order to take note of these opinions, the Committee organized three conferences in 2010 dedicated to the following aspects of the criminal process: (1) the model of preliminary and jurisdictional procedure; (2) application of coercive measures in the criminal process; and (3) models of supervision of courts, both internal and external. With reference to these issues, the Committee carried out a survey, which was subsequently analyzed by external experts and discussed during conferences by academic experts in criminal law, as well as by legal practitioners. On the basis of all that, the Codification Committee then published the postulations and guidelines for the reform of criminal law in Poland followed by the introduction of the draft of the amended Code of Criminal Procedure and other laws in 2011. In response to that emerged numerous opinions, which members of the Codification Committee analyzed thoroughly. The Bill is the final result of all these activities. Owing to the fact that some of the expert opinions expressed markedly diverging points of view, it was not feasible to include them in the Bill, wherein the Codification Committee encompassed those solutions that were relevant, accurate, and were not controversial.

The major objectives of the Bill are as follows:

(1) to remodel the current mode of criminal procedure towards an adversarial procedure that will create better conditions for explanation of the substantive truth and will best guarantee respect and observance of the rights of the participants to the criminal proceedings;
(2) to remodel – to the necessary extent –– the preliminary proceedings in order to assure the adversarial criminal process especially with regard to its objectives;

(3) to improve and expedite the proceedings thanks to creation of the legal framework for a wider application of consensual ways to terminate the criminal proceedings and usage of the idea of justice and rehabilitation;
(4) to remove the "pretentiousness" of the proceedings thanks to a new manner of proceedings due to the resignation of a number of activities that neither bring the Court closer to the truth nor respect the warranties of the participants to the proceedings;
(5) to shape anew the application of preventive measures in the manner averting their excessive usage in practice and assuring achievement of their aims;
(6) to limit the length of the proceedings thanks to a new appeal procedure;
(7) to take the burden off the judges, court presidents and chairmen of the court departments through authorizing Court Referendaries to make decisions and as a result allow judges to make use of their time more efficiently;
(8) to guarantee compliance of the statutory solutions with the standards of the Constitutional Court and the European Tribunal of Human Rights;
(9) to remove all the evident flaws, as well as flaws revealed by jurisprudence in the regulations.

4. The new criminal laws: towards an adversarial criminal process. The effects that the modernized laws will have on Polish courtroom discourse

As indicated above, in their justification for the amendment of the Criminal Code and the Code of Criminal Procedure in Poland, legal experts argue that one of the shortcomings of the present criminal process and reasons for a change of the hitherto criminal law in Poland is the fact that the Courts in Poland duplicate the evidential procedure conducted by the prosecution that holds the responsibility for gathering and securing the evidence pertaining to the committed crime at the pre-trial stage. Legal experts have expressed their conviction that there are two possible solutions that could prevent such an unnecessary repetition, which are as follows: (1) to introduce the office of an examining magistrate, also known as an investigative judge or a prosecuting magistrate; (2) to diminish the importance of the evidential procedure in the preliminary part of the criminal process and increase the role of the adversarial explanation of the evidence before the Court. Following the heated discussions and debates in this respect, the Codification Committee opted for the second solution, which transforms the hitherto inquisitorial criminal trial into an adversarial one. In what follows the reader will learn how this will be done.

As a result of this transformation, the evidential proceedings undertaken during the preliminary part of the criminal process will constitute the background of the prosecutorial accusation, that is to say these proceedings will be conducted for the benefit of the prosecution, not the Court, as it used to be. Following art. 297 § 1 point 5 of the Code of Criminal Procedure, the Court will retain its right to carry out the evidential proceedings only in exceptional circumstances. The procedure, which prior to the amendment of the law stipulated that the major objective of the preliminary proceedings was to "gather, secure and record the evidence *for the Court*", currently stipulates that the major aim of the preliminary proceedings is to "gather, secure and record the evidence in order to introduce it *to the Court*." Although the amendment may *prima facie* seem trivial, legal experts indicate that it is crucial, because such a formulation shifts the responsibility for these actions from the Court and delegates it to the prosecution. The Court, as they argue, should play the role of *a referee*, who will issue the verdict after the prosecution and defense conduct the evidential phase, as it is in the USA under Common Law.

In connection with that remains the reform of art. 167 of the Code of Criminal procedure, which prior to the alteration provided that the evidential phase is conducted *at the request of the parties* (the prosecution and defense) or *ex officio* (by the Court- judge), and which now in §1 provides that the evidential phase is carried out *by the parties*, i.e. the prosecution and defense, when the chairman of the proceedings or the Court allow it. As indicated earlier, in exceptional and justified circumstances the Court will still hold the right to conduct the evidential phase *ex officio*. These modifications appear to be the most important ones owing to the fact that they constitute the background of the momentous transformation in Poland of the criminal trial, that is to say they alter the hitherto inquisitorial procedure of witness examination, wherein the judge was responsible for examining the defendant and witnesses, into the adversarial one, wherein the judge assumes the role of an arbiter/referee with the right to examine the witness only in exceptional and justified cases, whereas the prosecution and defense get their right to introduce evidence and examine the defendant and witnesses.

In addition to the said modifications, there are other alterations of the provisions of the Criminal Code and Code of Criminal Procedure that affect the criminal trial in Poland. By way of illustration, until the introduction of the new law, the evidential phase in Poland in a criminal trial opened with the reading of the act of indictment, and in cases when the act of indictment was long it began with the introduction of the charges against the defendant presented by the prosecution (art. 385 § 1 and 2). Following the modification of art. 385 § 1, *the*

evidential phase of a criminal trial at present commences with a concise introduction of the charges against the defendant by an attorney for the prosecution. According to art. 370 § 1, when the person examined has ended providing her/his explanation or testimony (under art. 171 § 1), s/he may be questioned by the following persons participating in the process in the following order: 1) the public prosecutor; 2) the auxiliary prosecutor; 3) the plenipotentiary of the auxiliary prosecutor; 4) the private prosecutor; 5) the plenipotentiary of private prosecutor; 6) the expert; 7) the attorney for the defense; 8) the defendant; 9) the members of the adjudicating panel. Following art. 370 § 2 the party that introduces the evidence enjoys the right to question the witnesses first. In cases, when the judge examines the witnesses, the members of the adjudicating panel are the first, who examine the witnesses. Another very important change involves the defendant, whose participation in the trial prior to the amendment of the law was mandatory (cf. art. 374 § 1), and who these days is not forced to participate in the trial, but who enjoys the right to participate in the criminal trial under art. 374§1. Following art. 374 § 1 the Court may recognize the presence of the defendant obligatory (in felony cases).

The new regulations within the field of criminal law, which came into force on 1 July 2015 will profoundly affect the use of language by the members of the legal speech community during the courtroom proceedings in criminal trials in Poland, as well as the process of communication between them and between the lawyers and the lay people, i.e. the defendant and witnesses. Owing to the fact that the amended criminal laws have modernized the entire procedure of a criminal trial in court in Poland, Polish courtroom discourse will gain an entirely new image. At the time, when this paper is being written, we may only hypothesize or conjecture what consequences the amended law is going to have on Polish courtroom discourse.

By way of illustration, one of the consequences that the momentous transformation of the criminal law in Poland will have is an entirely new structural organization of the criminal trial, including a new structural organization of the procedure of witness examination, undoubtedly one of the major components of a trial that occupies more than 80% of the trial.

Another serious outcome of the amendment of the criminal law in Poland will be the new social roles of the major legal participants taking part in the criminal trial, e.g. the judge, attorney for the prosecution, and attorney for the defense. Under the new law, the judge will become a referee, a moderator of the talk, whereas attorneys for the prosecution and attorneys for the defense will now hold the responsibility for examining the defendant and witnesses. However, it must be remembered that the judge retains the right to examine the

defendant and witnesses in exceptional and justified cases. This implies that the judge will still play an active role in the procedure of witness examination, in certain cases. It is very difficult, in fact, even impossible, at the present time to anticipate how often the judge is going to exercise her/his right to examine the witnesses on the one hand, and to what extent the judge will refrain from examining the defendant and witnesses during the trial.

The new social roles that the judge, attorneys for the prosecution and attorneys for the defense will from now on play during the criminal trial will have another significant effect on Polish courtroom discourse, that is to say they will alter the number of questions posed by various participants. Since the judge has now lost her/his right to examine the witnesses, with the exception to conduct the examination of witnesses in exceptional and justified cases, the high number of questions that the judge posed to the defendant and witnesses prior to the amendment of the criminal law is now very likely to decline significantly, especially in those cases when the judge will not exercise the right to examine the witnesses the number of questions posed to the defendant and witnesses will be zero. It is very difficult to anticipate the number of questions posed by the judge to the defendant and witnesses in trials, when the judge will exercise her/his right to conduct the examination of witnesses in the so called exceptional and justified cases. As concerns the number of questions asked by attorneys for the prosecution and attorneys for the defense, their number is expected to rise from now on, as it is the attorneys for the prosecution and attorneys for the defense that will now be liable for examining the defendant and witnesses.

In order to demonstrate the new portrait, the new image of Polish courtroom discourse, it is therefore relevant to study anew: (1) the context in which Polish courtroom discourse occurs, especially the new legal norms that govern the criminal trial proceedings; and (2) the effects that the new context will have on Polish courtroom discourse. In linguistics, the fact that the context of the situation in which language use takes place is crucial for understanding what is being said and how it is being said is well established. As once indicated by Hymes (1974: 3-4), any analysis of language in use in order to be complete should inevitably encompass the context of the situation in which the language occurs. The origins of such a view take us directly to the ideas propagated by Bronisław Malinowski, who in his seminal essay "The Problem of Meaning in Primitive Languages" (Malinowski 1923: 302) insisted that "linguistic analysis inevitably leads into the study of all the subjects covered by Ethnographic field work". The analysis of language in use needs to take account of the fact that "*a statement spoken in real life is never detached from situation in which it is*

uttered. The utterance has no meaning except in the context of situation" (Malinowski 1923: 302).

Within the field of discourse analysis, the relevance of the notion of context for production and understanding of language use is fundamental, although, as is commonly known, the term "context" as some maintain "(…) is one of those linguistic terms, which is constantly used in all kinds of context but never explained" (Asher 1994: 731, as cited by Fetzer 2004: 1). Indeed, one homogenous definition of context does not exist, which researchers attribute to the fact that discourse analysis comprises a number of distinct approaches founded on dissimilar theoretical and methodological assumptions (Duranti and Goodwin 1992:2; Schiffrin 1994: 364-365). Schiffrin (1992) has reviewed these approaches in order to understand how context is defined in them. Yet this subject will not be addressed in this paper.

However, it is important to emphasize that the socio-cultural, institutional, and legal context is extremely relevant for the proper understanding of courtroom discourse. Each and every language of law that lawyers use as the major tool to formulate, enact and construe law strongly relies on the setting in which it exists. In each country, the language of law, including that used in courtroom interaction, develops for hundreds of years in different socio-economic, and political conditions. Whenever the conditions change, so does the language of law. In all the legal systems, societies formulate the law, which not only regulates the behavior of the people, but which also regulates the social roles that the legal representatives of a particular society play when they partake in different legal procedures. The historic change of the criminal law in Poland alters the criminal proceedings in courts, the communicative competence that judges, attorneys for the prosecution and attorneys for the defense have to communicate effectively during the criminal trial to exercise correctly the social roles that practicing their professions entails. The amended criminal law will undoubtedly alter the portrait of Polish courtroom discourse as has been described and explained in this paper, which as the title indicates should be perceived as the introduction – the prolegomena – to a further study of the language used by judges, attorneys for the prosecution and attorneys for the defense in criminal trials in Poland under the new criminal law.

5. Concluding remarks

The major objective of the present paper has been to introduce the new criminal laws in Poland that came into effect on 1 July 2015 and explain the prospective consequences that they will have on Polish courtroom discourse. As has been expounded in the paper, languages do not occur in the vacuum, for they emerge and evolve in certain socio-economic, institutional, and legal settings. Whenever the settings change so does the language. For this reason in order to understand what is being said during a criminal trial in Poland and how it is being said under the new criminal law will have to be studied afresh. Owing to the momentous alteration of the criminal law in Poland the new image of Polish courtroom discourse is at the present time an enigma that requires a thorough investigation anew from a number of different perspectives.

The reform of the criminal justice system in Poland also needs to be perceived as one of the numerous efforts that various nations around the world undertake in order to enhance and strengthen their own systems of justice. By way of illustration, Uruguay, Brazil and Cuba have adopted some versions of the adversarial criminal justice that replaced the inquisitorial one. So have Japan, South Korea, and Taiwan, wherein significant transformations of criminal justice have taken place in the direction of the adversarial criminal justice. In Europe, Italy is the country, which started the reform of its criminal justice system in the late 80-ies in the same direction as the Polish criminal justice. China has also introduced the reform of their judicial system implementing the key adversarial criminal justice features. Although the motives for the reform of the system of justice in all of these countries most probably differ from country to country, any modifications of the system of justice seem to be a natural response to a number of key factors that seem to take place around the world, e.g.: 1) steady economic development and social advancement; 2) rapid increase in crime; 3) globalization; 4) spread of democracy; and 5) respect for human rights. Looking for better and more advanced systems of justice that will allow nations to deal with the ever growing process of law-breaking all the countries rely on the field of study of comparative criminal justice that investigates and evaluates national systems of justice in order to: a) learn and profit from the experience of the others; b) extend our understanding of different cultures and approaches to various problems; c) help us handle various forms of transnational crime; and d) adjust our justice systems to such values as: democracy, human rights, human safety, and equality of justice for everyone (Dammer 2014: 5).

6. References

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IDENTITIES, CULTURAL MITIGATION AND ETHNIC MINORITY INTERPRETERS

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Abstract: This paper explores the identity construction of ethnic minority (EM) interpreters in Hong Kong and the way cultural differences are incorporated into interpreting in legal settings. The linkage between the two key themes under this study is intertwined by a proposition that an EM interpreter is able to identify cultural differences at work because of his/her close affiliation with the culture, language and ethnicity. In examining the formation of EM interpreters' professional identities, the intricate interplay of the interpreters' perceptions, knowledge, native values and beliefs on the one hand and institutional mechanisms/mainstream practice on the other, will be studied. Based on the theoretical framework of Jenkins' internal-external dialectic of identification developed in *Social Identity* (2004) and *Rethinking Ethnicity* (2008), I will integrate Neuliep's (2009) contextual approach of intercultural communication to examine the integration of cultural differences in interpreters' interpretation. The research methods primarily used in this project are Milroy's (1987, 2003) approach of social networking and critical ethnography (Madison 2005). Social networking has been used as an overarching theme in navigating contacts for collecting data and analysing the network dynamics that influence interpreting practice. Likewise, critical ethnography has been used as a tool to investigate how different power structures impact legal interpreting practice. Need for proper assessment, accreditation, professional development opportunities and the code of ethics have emerged as overlapping topics in the process of data collection. As interpreting practice in EM languages in Hong Kong is still relatively unexplored, the project aims at providing viable recommendations to the development of the interpreting profession in legal settings, in particular in Hong Kong.

Key words: Identity, culture, context, social networking and critical ethnography

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TOŻSAMOŚĆ, OGRANICZENIA KULTUROWE ORAZ TŁUMACZE MNIEJSZOŚCI ETNICZNYCH

Abstrakt: W artykule zostaje podjęta analiza tożsamości etnicznych tłumaczy w Hong Kongu. Zaprezentowano również sposób w jaki różnice kulturowe są adaptowane w interpretacji prawniczej. Metoda badawcza zaprezentowana w pracy operia się na podejściu Milroy'a (1987, 2003) oraz Mdisona (2005). Media społecznościowe zastały użyte do zebrania danych potrzebnych do analizy. W procesie zbierania danych: potrzeba właściwej oceny, akredytacja, możlliwości zawodowe czy kodeks etyki pojawiały się najczęściej. Stosunkowo, temat ten nie był podejmowany. Należałoby go poszerzyć w najbliższej przyszłości. Praca miała za zadanie zapewnienie realnych zaleceń dla rozwoju tłumacza ustnego prawniczego w Hong Kongu.

Słowa kluczowe: tożsamość, kultura, kontekst, social networking oraz krytyczna etnografia

1. Background: existing issues

Over the past few decades Hong Kong has developed a history of using Ethnic Minority (EM) or foreign language interpreters, also known as part-time interpreters, in legal settings, both in the courts and law-enforcement agencies. This paper consistently uses EM language interpreters (hereafter referred to as interpreters,) as opposed to foreign language interpreters, as EM groups not only denote a smaller number in proportion to the mainstream population, but also signify indifference (Erni and Leung 2014) to their existence by the mainstream

society. As EM groups, interpreters' professional needs go unheeded, the quality of service compromised and the interpreting service seen as what Herbert (1952) referred to be a "necessary evil". "EM" is used not merely because it is categorised or labelled by the dominant society, it also represents the ability of the groups to claim or re-assert their own images and identities in terms of self-determination, self-identification and self-esteem (Song 2003). The following paragraphs outline the situation and underlying issues.

1.1 Current practice

As at June 2013, according to information provided by the Judiciary[4], there were 337 registered part-time interpreters who provided interpreting and translation services involving foreign languages (other than Chinese and English.) They interpreted a total of 57 languages and dialects, with some capable of interpreting more than one language/dialect. Among the total number of interpreters, 206 interpreted 21 Asian (including Middle Eastern) languages, 16 interpreted 8 African languages, 41 interpreted 9 European languages and 171 interpreted 19 Chinese dialects. This record excludes in-house (full time) Judiciary interpreters, who interpret in the official languages, which are Cantonese, Mandarin and English, in addition to some Chinese dialects. Interpreters registered with the Judiciary interpret, translate and certify all kinds of documents used in legal proceedings.

Due to Hong Kong's colonial history, escalating migration trends, limited job opportunities for EM groups and flexible working hours, interpreting work in Hong Kong has attracted candidates from many ethnic minority groups who are bilingual or multilingual and have diverse backgrounds and qualifications, ranging from secondary education to university degrees. The majority of EM interpreters with the Judiciary became interpreters inadvertently, as a result of searching for viable job opportunities in Hong Kong; work that emerged out of necessity, both for the service users as well as the interpreters.

EM language interpreters are recruited by the Judiciary and a master list of interpreters is created by it and circulated amongst the law enforcing bodies, quasi-government sectors, such as the Duty Lawyer Service (DLS,) Legal Aid (LA) and the Hospital Authority (HA.) In addition, in recent years, the Judiciary interpreters' master list has been used by the Convention Against Torture (CAT) – DLS office and the Removal Assessment Section (RAS) responsible for

[1]Information received from the Judiciary via email, dated June 2013. Enquiry sought from the email address available on the Judiciary's website: http://www.judiciary.gov.hk/en/others/contactus.htm

legally representing asylum seekers and assessing their claims respectively, under the Unified Screening Mechanism (USM.)

1.2 Recruitment by the Judiciary previously and today

From the early 80s until the late 90s, EM interpreters were unassessed and simply recruited through recommendation by consulates' offices, or fellow interpreters, or by legal professionals. No written guidelines were provided and some were even assessed informally by a colleague. The repercussions of such an arbitrary recruitment system resulted in a practice, whereby interpreters were asked to interpret in multiple regional languages and dialects, regardless of whether they could read and write in the language interpreted. Nevertheless, at the turn of the millennium, there was progressive transformation in the recruitment policy and vacancy announcements were made accessible to public. Interpreters were required to be university graduates or holders of an equivalent degree. Speaking and writing abilities were assessed either by personnel from a respective consulate's office, or by a senior interpreter in the language group for a native language and by a senior in-house court interpreter for the official languages.

To date, nothing much has been reformed regarding the recruitment procedures, except for the granting of registration. Previously, interpreters were put on probation for a few months before they could be registered by the Judiciary, thereby ensuring their names appeared on the master list and thus making their services available to other departments. In recent years however, interpreters have been required to work exclusively for the courts for a few years before receiving a registration number from the Judiciary. One of the reasons for such an arrangement seems to be the retention of interpreters solely for court assignments. Once registered, most interpreters prefer jobs with other departments, since it is less stressful and more flexible, unlike the courtroom arrangement. In addition, court work only guarantees payment for a minimum two hours, even though interpreters could have been booked for a whole day, or days. Such a practice has inadvertently developed into a pattern, whereby novice interpreters, or newly recruited interpreters, are sent to the courts and the experienced ones are engaged by the law enforcing bodies, or DLS, LA or other departments, with flexible working hours.

1.3 Shortfall of training provisions

In the last decade or so, the Judiciary has attracted academically qualified EM language speakers, although they are not necessarily trained in interpreting and translation. A handful of EM interpreters are trained overseas, or by local NGOs and the Hong Kong Baptist University (HKBU)[5], while the majority are self-taught practitioners. The Judiciary does not provide a comprehensive training to part-time interpreters. The in-house (full time) Judiciary interpreters, who usually work alongside part-time interpreters, however, are academically qualified and trained[6], as mentioned in the paper submitted to the "Panel on Administration of Justice and Legal Services Performance of Court Interpreters", LegCo[7] in 2004. Translation and interpreting courses at a tertiary level are available in the official languages; however, no courses are available for ethnic minority groups. Although the Judiciary used to organise an-hour long workshop for interpreters once every few years in the past, there have been none since 2011. The content of the workshop focused mainly on registration for police record checks, a short presentation on interpreting and a brief discussion.

Currently, after passing the recruitment assessment, interpreters are provided with a few hours of induction on court procedures and the code of ethics, issued with a handbook containing a glossary of English legal terminology, court procedures and court addresses, and then sent to the courts for interpreting assignments. In addition, a period of court observation lasting for a few hours is organised for new recruits either before or after taking up a few court assignments. There are short courses offered by NGOs and the Employment Retraining Board[8] (ERB) in community interpreting; these courses, however, are too general and not adequate to interpret in legal settings, the requirement being basic literacy in the languages interpreted. In contrast, a high level of language proficiency is essential for interpreting.

[5]A small group of interpreters, registered with the Judiciary were trained as trainers by Dr. Ester S.M. Leung at Hong Kong Baptist University (HKBU.) Interpreters were trained as a part of the research project undertaken by Dr. Leung.

[6]http://www.legco.gov.hk/yr03-04/english/panels/ajls/papers/aj0322cb2-1592-1e.pdf, retrieved 25th August 2015.

[7]Legislative Council of HKSAR http://www.legco.gov.hk/general/english/cmi/yr08-12/reg_0812.htm, retrieved 25th August 2015.

[8]http://www.erb.org/Corp/home/coz_eng_cit/en, retrieved 25th August 2015.

1.4 Demand for interpreting service

The interpreting service is in mounting demand, because of the escalating population of ethnic minorities in Hong Kong over the last two decades. According to the Population Census Report 2011[9], a total of 451,183 ethnic minorities, constituting 6.4% of the total population were residing in Hong Kong in 2011. Among them, ethnic population comprised Indonesians (29.6%), Filipinos (29.5%), Whites (12.2%), Mixed (6.4%), Indians (6.3%), Pakistanis (4.0%), Nepalese (3.7%), Japanese (2.8%), Thais (2.5%), Other Asians (1.6%), Koreans (1.2%) and others (0.3%). The majority of ethnic minorities in Hong Kong were regular residents (98.7%) while only 5,918 (1.3%) were mobile residents. The number of ethnic minorities in Hong Kong increased by a significant 31.2% over the past 10 years, from 343,950 in 2001 to 451,183 in 2011.

While the majority of the EMs are migrant workers, others, such as Indians, Pakistanis and Nepalese are residents in Hong Kong, an eventuality mainly associated with Hong Kong's colonial history (Erni and Leung 2014; Gillian 2009; Plüss 2005). In addition, an emerging phenomenon is the increasing number of asylum seekers in Hong Kong in the last 10 years, which is around 10,000[10] at present. Comparatively, the groups requiring interpreting services may be low in ratio to the total EM population, as many are also highly educated groups, living as expatriates among the South Asian and East Asian communities, as well as people hailing from the other continents. The demand still exists nevertheless among the less educated groups, or people who have been educated in their mother tongue in their native countries.

2. Identities of EM interpreters and cultural mitigation

This paper explores the professional identity of interpreters that intertwines with their ethnic identities; their existence in Hong Kong, historical and economic dimensions and social perception of their status by the interpreters themselves, other professionals and laypersons present in triadic exchanges. It also studies how interpreters as well as professionals, working together, conceive incorporating cultural differences that occur in the speakers' utterances into interpreting. Cronin (2002) advocated for the need within the discipline of Interpreting Studies (IS) to examine economic, political and cultural

[9]http://www.census2011.gov.hk/pdf/EM.pdf, retrieved 25th August 2015.

[10]http://qz.com/477021/photos-these-refugees-stuck-in-hong-kong-cant-get-asylum-cant-work-and-cant-leave/, retrieved 22nd September 2014. No official data is made available so far.

circumstances underpinning interpreting activities, as interpreters work across the boundaries of language, culture, gender, class, nationality, ethnicity and other relevant variables.

It is generally assumed that interpreters should be able to identify cultural differences, as they are aware of their native culture, as well as the dominant mainstream culture. Yet, whether an interpreter is a native speaker of the language he or she interprets and is actually accustomed to the mainstream working culture and systems in place, necessitates further investigation. Berk-Seligson (1990) exemplified hedging as one of the cultural manifestations, where roundabout talking or narrative-style speech are not regarded as evasive, but rather succinct, whereas direct and blunt expressions are considered rude in various dealings in Hispanic culture. Thus, a hedged narrative series of answers may not have a negative connotation of evasiveness to Hispanics.

Various researchers (Corsellis 2008; Hale 2007; Lee 2009; Ra 2013) have pinpointed the issues related to cultural differences and cultural invention in legal settings, the conflicting views of legal professionals and interpreters on cultural mediation, the need to examine how it is done by the interpreters and whether it is possible to integrate cultural meanings without intervening in court proceedings. Tallentire (2009), now listed as a District Court Judge, drawing upon his experience as a Magistrate of some 11 years in Hong Kong, opined how interpreters and clerks in his court assisted him to understand local culture and how cautious he was not to impose his western values on Hong Kong's "multi-racial" and "multi-custom" social structure.

His opinion is analogous with Morris (1995) who advocated providing some latitude to interpreters, allowing them to use their discretion, to take an active stance in attempting to convey meanings and intentions in the communication process of interlingual and intercultural mediation, against the legal preference of verbatim (word-for-word) interpretation. In her research, the legal professionals firmly stated that "when rendering meaning from one language to another, court interpreters are not to interpret – this being an activity which only lawyers are to perform, but to translate […] the speaker's words verbatim" (ibid: 26).

3. Research Methodology

The initial plan for research methodology was drawn on the basis that audio recordings of trial hearings in Hong Kong law courts could be obtained for analysis. However, the Judiciary declined the request for the recordings, with no reasons given, despite the fact that earlier researchers, such as Leung and

Gibbons (2007) and Ng (2013) have obtained recordings from the courts; none were in minority languages, however. Interpreting in the official languages has been known to be less problematic because of the bilingual professionals and spectators present in the courtrooms. Interpreters often get corrected by the judges or the legal professionals. The change of the Judiciary's decision on accessible data for research purposes indicated a much more conservative approach to the interpreting services provided to the ethnic minorities, which have been known to be controversial. The following are the research methods used in the current project:

3.1 Social networking

I have implemented Milroy's (1987, 2003) social networking approach to collect data via the interpreter-network that I have established through almost 9 years of my work as an interpreter. Social network analysis has been expansively employed by anthropologists and sociologists as a holistic approach to examine complex networks of social relations and network dynamics, revealing underlying meanings to a phenomenon (Barnes 1954, 1972; Barnett 2011; Wellman and Berkowitz 1988). Milroy's (1987) study covered the political situation in Belfast, in which the social network research method was the most appropriate one for her at the time, in order to find out the intricate relationships between different groups of people. Milroy and Gordon (2003) suggest a concept of how social network structure is a "boundless web of ties" of individuals engaged in interactions, influencing a repertoire of shared norms in social practice.

With regard to the identity formation of EM interpreters, I have looked into the dynamics of how each language group of interpreters work together at a micro level, in terms of professional information sharing amongst the group, as well as whether there are any overlaps or conflicts between the interpreters' ethnic and professional identities in interpreting practice.

3.2 Ethnography

Under the overarching principle of the social network approach, I have also employed critical ethnography (Madison 2005) to analyse how structural factors and systems in place impact upon interpreting practice. Critical ethnography is about critical analysis unravelling unfairness beneath the surface and a sense of moral obligation to address the issues of unjust practice, in order to challenge the status quo within a particular domain. Altogether 27 criminal cases were

observed from June 2014 until May 2015, out of which, 25 were trial cases, whereas 2 were appeal hearings at the high court. All the cases observed were in courts open to public and the clerks sitting in the courts had been notified before the observation.

3.3 Semi-structured interviews with interpreters

One-on-one, semi-structured, in-depth interviews with 20 Judiciary registered EM language interpreters were conducted. Professionally known interpreters of various language backgrounds were approached for the interviews. The questions revolved mainly around their background, reasons for joining the interpreting industry, identification with interpreting practice in Hong Kong, their views on the quality of interpreting services and their particular experience on cultural mitigation/intervention at work. All the interviews have been audio-recorded and transcribed.

3.4 Semi-structured questionnaire for legal professionals

Using snowball sampling (Browne 2005), a technique used in social science researches to start collecting data through the social network, 39 semi-structured questionnaires were circulated among the solicitors and barristers electronically and in person, out of which, 24 were returned completed. Since the selection of informants is critical to the reliability of the data collected, as some lawyers have seldom worked with interpreters, I have made use of my own experience by sending the questionnaires to those solicitors and barristers known to have prominent recognition within the legal sector and with rich experience of working on cases that involved EM defendants and EM language interpreters.

3.5 Semi-structured questionnaire for government service providers or users

Information had been sought from the Judiciary, as well as government departments, regarding the interpreting service provided by interpreters in Hong Kong. The Judiciary's Part-time Interpreters' Unit, was approached for an interview or survey questionnaire, however the request was declined. Later, a semi-structured questionnaire was sent to the DLS for the CAT office, the RAS of the Immigration Department, Legal Aid (LA) and the Hong Kong Police Force. The questionnaire consisted of 8 questions relating to interpreters'

professional identity, their role, performance, knowledge of legal concepts and procedures, interpreting techniques, monitoring mechanisms and guidelines. The only completed questionnaire was received from the RAS-Immigration. The low rate of participation from government departments, despite them having high usage of interpreting services, seems to demonstrate their lack of interest in research, or the inability to prioritise interpreting services in EM languages, among other reasons.

3.6 A semi-structured interview with a service recipient

An interview was conducted with a service recipient who has been a resident in Hong Kong for the last 18 years and who has been a user of the interpreting service throughout this time. Although an interview with a single service recipient did not provide any conclusive data, it did help to explore the interpreting service through the lens of a service recipient.

3.7 An online survey for interpreters

The online survey was released exclusively to interpreters to ensure maximum participation of practising interpreters. It was released through informal social network platforms created by the interpreters themselves and made easily accessible by the usage of smart phones in recent years. The interpreters not in these social network groups were sent online survey links through available electronically mediated communication channels.

The online survey was open for a month, with the response rate of around 10 percent. From a quantitative research perspective, 10 percent is affirmatively at the lower end, with Bryman (2012) suggesting an online survey requires a 70 percent response for reliability and validity of research; however, data producing extremes, as in the current case, can be sufficient for comparative analysis and qualitative exploration (Yin 2014). This low response seems to demonstrate the interpreters' lack of interest in research, risk of the exposure that such research results might trigger, or the availability of the limited number of interpreters who believe in quality and professionalisation of the interpreting services.

4. Theoretical framework

4.1 Identity

Identity, studied across almost all social science disciplines, relates to who we are and with whom and with what we identify. Identity is expounded as a linkage between the individual and the social (i.e. how I see myself and how others see me), demarcation by similarities and differences, one's active engagement in negotiating tension between the human agency and social structure, as well as existence of single or multiple identities being fixed, or fluid and transformative (Burke and Stets 2009; Elliott 2011; Giddens 1990; Goffman1972,1984; Jenkins 2004; Schwarzbaum 2011; Spencer 2006; Taylor and Spencer 2004; Woodward 2000). In analysing identity construction, I have adopted Jenkins' (2004, 2008) theoretical model of internal-external dialectic, which focuses on the reciprocation of the self (group identity) and the other (external factors) and also gives prominence to the role of the institution, social world, structure/practice, in the process of identity formation.

Jenkins draws on Barth (1969) to incorporate the idea of boundaries, which are delineated by the concept that identity is not only to be signalled, but has to be accepted by the other before it can be embodied. Hence, identities are negotiated in these boundaries of persistence, resistance and acceptance, which work interactively between the internal-external dialectic of identification. An example could be the institutional power in categorising and allocating resources for the benefit of a group; how that group perceives it in return, or vice versa and how such a step impacts the identity formation of the group.

Group identification takes place through shared meanings and practices, which is then recognised and enforced by institutionalised practices and which are either, accepted, negotiated or resisted by individuals or groups. The identification and categorisation work between the three submerged orders: individual, interactional and institutional signify the processes of ethnic identification, where the flow is bidirectional.

4.2 Incorporating cultural differences into interpreting

I have supplemented Jenkins' model with Neuliep's (2009) contextual approach to intercultural communication, in order to analyse how interpreters integrate identified cultural differences. The model attempts to explain intercultural communications through various interdependent contexts depicted through

concentric circles, namely, cultural context, micro-cultural context, environmental context, perceptual context and sociocultural context.

In the model, cultural context denotes a larger milieu or a mainstream practice, society, government or nation. Within cultural context remains a microcultural context, that is to say, subcultures or group identification, such as ethnic groups. Within it, remains environmental context, which is one's immediate surroundings where the communication takes place; for instance, the work place. Then, comes the perceptual context that refers to one's perception towards others in interaction, whereas sociocultural context emerges in interaction between people from different cultures through verbal and nonverbal cues. Although these contexts seem nebulous in a real situation, a particular context does constrain and influence the context encircled and the ubiquity of the cultural context and the dominance it can exert in communication cannot be denied. The model also examines the hierarchical existence of a subordinate status of the microcultural groups within the dominant group, where the dominant mode of expression as a preferred language contributes to the subordination of the microcultural groups.

5. Findings

5.1 Identity in question:

Although the majority of interpreters consider themselves to be professionals, the exception is those working part-time, who consider themselves non-professionals due to the lack of proper accreditation in interpreting and translation in Hong Kong. There are varying factors conducive to the formation of a more equivocal status, which are discussed in the following:

5.1.1 Lack of stringent recruitment, training and monitoring

The need for rigorous assessment in recruitment has been advocated by many interpreters. Lack of professional development courses for these interpreters has resulted in a compromise of quality service and violation of the code of ethics, in particular by stepping out of the interpreters' role. Interpreters have reported to have understood very little due to a lack of knowledge of legal proceedings, legal concepts and systems in place when they first started, which conspicuously shows a practice of guess work, supplemented by the trial and error method. Likewise, lack of proper monitoring by the Judiciary and various employing

departments, and the implementation of appropriate disciplinary actions, have contributed to negative generalisations and tarnished the professional image of interpreters.

5.1.2 Interpreters' stance

For a considerable period, interpreters have been trying to get organised as a group in terms of information sharing and discussions in various languages and are known to have conducted signature campaigns for a pay increment, resulting in the practice of automatic increments in recent years. Many interpreters see the need for a professional body to be formed by the interpreters, working for the Judiciary. This would enable them to act collectively, so that they stand a better chance of negotiation with the Judiciary and government departments. Differences of opinion and a lack of solidarity among the interpreters have been observed to be an impediment to the establishment of a body with a legal entity.

5.1.3 Inconsistencies and irregularities

One of the irregularities observed is the payment practice. Although an interpreter may get booked for a full day, his or her payment is determined by the actual number of hours worked, which is highly dependent on the attendance of the service recipient and circumstances beyond an interpreter's control. Interpreters consider it to be an unfair policy. A similar practice exists for last minute cancellations, which are made around 6 pm for the appointment fixed for next morning, or in the morning for an appointment fixed for the same afternoon or, worse still, an hour before the appointment, by which time the appointed interpreter would already be on the way or even in the vicinity of the work place by then. Though these occur quite frequently, none of the departments have a policy to address it and payments in such cases are dealt with at the discretion of the officer involved.

5.1.4 Changing perceptions

Interpreters have traditionally been perceived as a mere language converters of the message uttered by the speaker, drawing minimum attention to the self, although the invisible self of the interpreter has been challenged by the scholars (Angelelli 2004; Hale 2007; Metzger 1999; Morris 1995; Roy 1993; Tate and Turner 1997; Wadenjsö 1998) in favour of "co-participation" and "co-construction," as opposed to a mechanical relaying of messages. The same

concept of a passive message conveyer is largely expected of interpreters, but interpreters are increasingly found to be vocal and organised when it comes to their rights to fair treatment, or the rights of the service recipient on humanitarian grounds.

The constant negotiation and tensions between the interpreters and authorities, in its entirety, demonstrates the phenomenon of a process of identity construction for the interpreters. This is based on both positive and negative attributes, their nationalities and languages interpreted, professional recognition, as well as professional service rendered. The identity formation of interpreters, which commenced with an arbitrary recruitment of bilinguals to cater to legal needs in the early 80s, continues to build today, with a high demand for professional services and supply of interpreters in multicultural Hong Kong. Interpreters struggle for professional recognition, which can only be achieved through accreditation, rigorous assessment, training, monitoring, evaluation and feedback, as well as better remuneration. Nevertheless, such recognition cannot be attained without intervention by the authorities, in order to ensure quality control, as well as professional treatment in terms of remuneration and attitude towards interpreters in the work place.

5.2 Incorporating cultural differences

Incorporating cultural differences has been found to be one of the most challenging acts for interpreters, as it is directly linked with the role of interpreters and the code of ethics. It requires interpreters to add or introduce something, which has been only indirectly hinted at or spoken about in veiled speech, if taken literally. Even though the majority of interpreters claim to have intervened, or explained in various legal settings and think it is unavoidable, a few veteran interpreters with decades of experience opined that it is forbidden within the courtroom setting, as it goes beyond the established function of verbatim interpreting. From the observation of cases and with only a few exceptions, the majority carried on with the flow of interpreting, focusing on the words and completely relying on the legal professionals to figure out the meanings, if any.

From observations, interviews with interpreters, questionnaires with legal professionals, as well as RAS, it is concluded that the context or the situation governs to a considerable extent whether interpreters incorporate cultural differences. Interpreters have been found to be reticent when it comes to intervening or providing explanations, because of the DARTS (Digital Audio Recording Transcription Services) in place and the power imbalance situated within the constriction of a courtroom setting, where interpreters are expected to

interpret only what has been said by the speaker. Other than the courtroom setting, interpreters claim to have explained any cultural differences identified to the concerned parties in all legal settings, with the exception to RAS, which stipulates that the interpreters interpret "verbatim in direct speech".

Legal professionals' views on incorporating cultural differences demonstrate a conflicting expectation when analysed in conjunction with the expected roles of interpreters, as shown in figure 1 and 2. Interpreters' expected roles strongly link how utterances relating to cultural differences can be dealt with, while the majority opined that interpreters should explain any utterances, some still held the view of leaving aside probing and explaining tasks to the legal professionals.

Figure 1

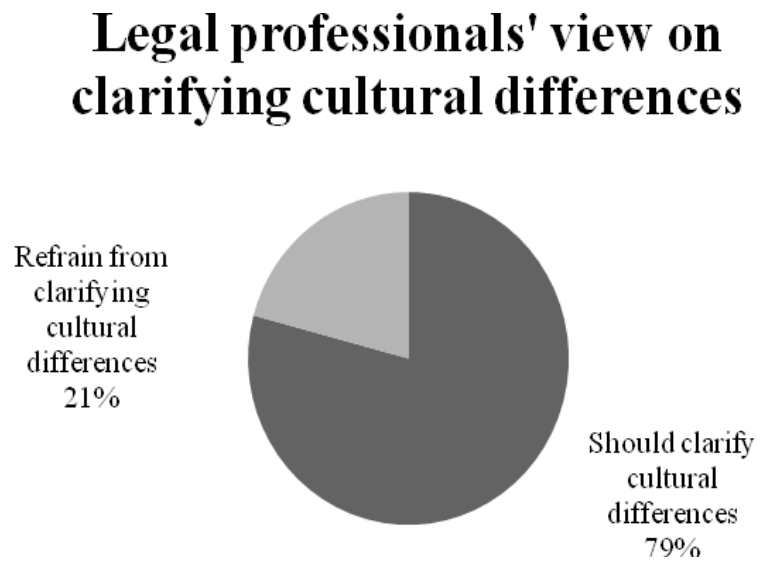
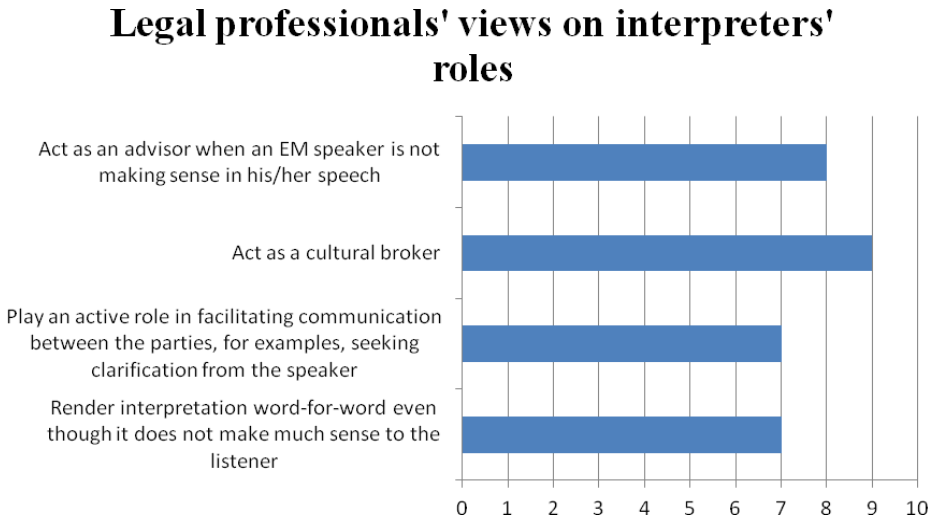


Figure 2



It is concluded that the setting, or context, are the decisive factors that guides interpreters to include cultural differences identified through verbal and non-verbal codes. To a novice interpreter, the hierarchical structure of the courtroom is immensely overwhelming, both in the form of the language used and the systems in place. The interpreter interpreting in a minority language needs to be empowered through training, comprising components on legal concepts and procedures, ethical incorporation of culturally loaded terms and mainstream work culture, particularly in legal settings, so that an interpreter stands firm in his/her role and responsibilities while interpreting and dealings with service providers, instead of making speculations based only on the written guidelines received and taking a compromising perspective.

6. Conclusion

To summarise, on the one hand, EM interpreters in Hong Kong have a unique professional identity, that of both experienced and inexperienced, highly qualified and less qualified, as well as trained and untrained interpreters. On the other hand, little has been done by the Government to enhance the quality of

service by professionalising the service industry and ensuring that proper mechanisms are put in place with regard to assessment, training, accreditation, evaluation and feedback. The demand for interpreting services is recognised, but the status quo of the interpreters is ignored.

These facts can be condensed to the issue of the status quo of EM interpreters' professional identity; whether it is linked to their EM identity and the fact that their exclusion from professional development opportunities is in any way associated with their EM status in Hong Kong. Likewise, many interpreters ought to think that cultural mitigation is indispensable, as interpreting is based on meanings and intentions, not only words. There are interpreters who are proponents of verbatim interpretation within the courtroom, signifying a divisive practice. Although the general assumption is that an EM interpreter is able to identify cultural differences, whether one is able to identify and would include such differences into interpreting is contentious. It calls for proper directions by the Judiciary or other bodies issuing guidelines to ensure a standardised practice.

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WIE KALT IST DIE RECHTSSPRACHE? – NEUTRALITÄTSPOSTULAT UND VERBALE EXPRESSIVITÄT IN GESETZESTEXTEN DES STRAFRECHTS. EIN DEUTSCH-POLNISCHER VERGLEICH

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Abstract: Durch den Lapidarstil, den Agensschwund und die begriffliche Abstraktheit bestrebt die Rechtssprache die Erzielung von Objektivität, wobei sie gleichzeitig als ein Werkzeug dient, die Autorität-Gehorsamkeit-Relation zum Ausdruck zu bringen. Von der Rechtssprache wird wie von jeder anderen Fachsprache erwartet, dass sie sich durch ästhetische, expressive sowie moralische Neutralität kennzeichnet. Die Beachtung des Neutralitätspostulats erweist sich in Bezug auf Rechtssprache allerdings nicht so offensichtlich, wie es angenommen wird. Die Rechtssprache ist wie die Gemeinsprache durch Subjektivität und verbale Expressivität gekennzeichnet, die u.a. durch Gefühlsbetontheit in der Fachterminologie, emphatische Floskeln oder wertausfüllungsbedürftige Ausdrücke zum Vorschein kommt. Das Hauptanliegen dieses Beitrags liegt in der Erörterung der genannten Problematik am Beispiel der deutschen und polnischen Rechtssprache. An ausgewählten Beispielen aus dem deutschen und polnischen Strafgesetzbuch sowie ihren Übersetzungen werden verschiedene Facetten von Expressivität und Subjektivität sprachvergleichend dargestellt und anschließend im Hinblick auf ihre Funktion in einem Gesetzestext und Übersetzungsproblematik analysiert. Ergänzend wird darüber hinaus auf Subjektivitätszüge im Übersetzungsprozess an sich wie verschönernde Ästhetisierung der Übersetzungstextes, die Bestimmung und Wahl des Intensitätsgrades von Affektvollem in Übersetzung oder Hervorhebung des Druck-Effekts bei der Wiedergabe von emphatischen Phrasen hingewiesen.

Schlüsselwörter: Expressivität, Konnotationen, Rechtssprache, Rechtsübersetzung, Strafrecht, Subjektivität

POSTULAT NEUTRALNOŚCI A WERBALNA EKSPRESJA W JĘZYKU PRAWNYM I PRZEKŁADZIE TEKSTÓW PRAWNYCH Z ZAKRESU NIEMIECKIEGO I POLSKIEGO PRAWA KARNEGO. STUDIUM PORÓWNAWCZE

Abstrakt: Poprzez lapidarny i bezosobowy styl wypowiedzi oraz abstrakcyjną pojęciowość język prawny dąży do obiektywizmu, pozostając przy tym narzędziem pozwalającym na wyrażenie relacji autorytarności i podporządkowania. Mimo postulowanej wobec języka prawnego jako języka fachowego estetycznej, ekspresywnej oraz moralnej neutralności język ten nie jest wcale aż

tak neutralny. Zawiera w sobie elementy subiektywności i ekspresywności w postaci nacechowania emocjonalnego terminologii, obecności emfazy czy stosowania wyrażeń ocennych. Niniejszy artykuł ma na celu prześledzenie przejawów ekspresji w obszarze leksyki z dziedziny prawa karnego, określenie roli ekspresywności i porównanie stopnia jej intensywności w analizowanych niemieckich i polskich przykładach z tekstów prawnych oraz przedstawienie problematyki ich przekładu. Uwaga skierowana zostanie ponadto na elementy subiektywności obecne w samym procesie przekładu, takie jak nadmierna estetyzacja przekładu oraz ocena i wybór stopnia intensywności zabarwienia emocjonalnego w tłumaczeniu. Jako materiał badawczy do analizy posłużą wybrane fragmenty niemieckiego i polskiego kodeksu karnego wraz z tłumaczeniami.

Słowa kluczowe: ekspresywność języka, konotacje, język prawa, tłumaczenie prawnicze, prawo karne, subiektywność

THE POSTULATE OF AFFECTIVE NEUTRALITY VS. VERBAL EXPRESSIVENESS IN THE LEGISLATIVE TEXTS ON GERMAN AND POLISH CRIMINAL LAW. A COMPARATIVE STUDY

Abstract: The succinct and neutral style of discourse and the abstractiveness of legal terms are the ways to reaching the objectivity by the legal language. It remains at the same time an instrument to express the authority-obedience-relationship. We expect the legal language as a language for special purposes to be aesthetic, expressive and moral neutral. However it seems to be not as much neutral as expected. It contains subjective and expressive elements in the form of emotionally marked terminology, using of emphasis or vague terms and phrases. In this paper I shall illuminate the phenomenon of expressiveness in the language of law based on empirically examining of the selected terminology from the German and Polish Criminal Code. Our purpose is to show the variety of measures for the verbalisation of expressiviness in the analyzed legal texts, to clarify their text function, to research how the examined German and Polish legal terms differ in terms of the degree of expressive intensity and to outline the issues of translation of verbal expression. Finally, our focus is on showing of subjective elements in the process of translation itself such as aestheticization of translation and translators individual decision how far to emphasize the expressive component in the translation.

Key words: verbal expressiveness, connotations, legal language, legal translation, criminal law, subjectivity

1. Vorbemerkungen

Gustav Radbruch bezeichnete die Rechtssprache als **kalt**, **barsch** und **knapp** (vgl. Radbruch 2003: 104). Sie verzichte auf jeden Gefühlston sowie auf jede Begründung und Lehrabsicht. Durch den Lapidarstil, den Agensschwund und die begriffliche Abstraktheit erstrebe sie die Erzielung von Objektivität, wobei sie gleichzeitig als ein Werkzeug dient, um die Autorität-Gehorsamkeit-Relation

zum Ausdruck zu bringen. Kommunikationsbezogen lässt sich die Fachsprache des Rechts somit u. a. durch folgende Merkmale bestimmen[11]:

- Einheitlichkeit
- Institutionsgebundenheit
- Bildhaftigkeit
- Objektivität
- Unpersönlichkeit
- Distanziertheit

⇩ Sachlichkeitsideal

- Autorität
- Gehorsamkeit
- Normiertheit
- Wirklichkeitsschaffende Funktion
- Gehobenheit

⇩ Präskriptivität

Aus der obigen Aufzählung lässt sich ableiten, dass sich die Rechtssprache in einem Spannungsfeld zwischen dem Sachlichkeitsideal einerseits und der Autorität andererseits befindet. Auf der einen Seite ist die Rechtssprache bestrebt, die Fiktion der Sachlichkeit zu evozieren, also den Anschein der Wirklichkeit zu vermitteln. „Das Ausgesagte erscheint als vorgegeben" (Gast 2006: 445), um es mit Wolfgang Gast zu sagen. Es wird also dem Objektivitätspostulat zufolge ein besonderer Akzent darauf gelegt, die Sachlichkeit des Sprechers sowie das Eigengewicht der Sache hervorzuheben und unerwünschte Subjektivitätszüge auszumerzen. Dies findet seinen Niederschlag u. a. in der Vorliebe für Passivkonstruktionen, die ein handelndes Subjekt ausblenden lassen, oder in der Dominanz des Nominalstils, der für die begriffliche Darstellung eines Geschehens und die Verhinderung produktiver Phantasie sorgt. Die rechtssprachliche Fachlexik soll sich also durch ästhetische, expressive sowie moralische Neutralität kennzeichnen, d. h. ein Terminus sollte einem anderen Terminus nicht deshalb vorgezogen werden, weil er schöner formuliert ist (ästhetische Neutralität); er sollte nicht allzu expressiv sein, um den rationalen Charakter von Fachsprachen nicht zu unterminieren (expressive Neutralität) und keine subjektiven Haltungen des Sprechers bzw.

[11]Mehr zur Charakteristik von kommunikativen Merkmalen der Rechtssprache u. a. bei Jacewicz 2010: 185-195; Busse 1998: S. 24-47, insbesondere S. 38-42, auch Busse 2000: 1382-1391; Gast 2006: 440- 459, Weisflog 1996: 46.

Schreibers andeuten (moralische Neutralität), weil dies dem Prinzip der Rationalität widerspräche.

Der Sachlichkeit, Objektivität und Distanziertheit der Rechtssprache steht allerdings ihre Präskriptivität entgegen. Das Ausgesagte hat einen performativen Charakter, der sich in der Autorität-Gehorsamkeit-Relation niederschlägt. Dem Ausgesagten ist zu gehorchen und das Wort muss seine Schlagkraft haben. Um dies zu erzielen, greift die juristische Ausdrucksweise zu Mitteln, die es erlauben, an das Wertgefühl des Adressaten zu appellieren. Praktisch heißt dies sprachliche Mittel einzusetzen, die affektiv/expressiv besetzt sind und dies wiederum hat die Verletzung des Neutralitätsprinzips zur Folge. Seine Beachtung erweist sich also nicht so unumstritten, wie es Radbruch annimmt.

Das Hauptanliegen dieses Beitrags liegt in der Erörterung der Problematik sprachlicher Expressivität in der Rechtssprache. An ausgewählten Beispielen aus dem deutschen und polnischen Strafgesetzbuch sowie ihren Übersetzungen werden verschiedene Facetten von Expressivität in der Fachsprache sprachvergleichend dargestellt und im Hinblick auf ihre Funktion in einem Gesetzestext und die Übersetzungsproblematik analysiert. Es wird darüber hinaus auf Subjektivitätszüge im Übersetzungsprozess selbst wie verschönernde Ästhetisierung des Übersetzungstextes sowie die Bestimmung des Intensivierungsgrades von Affektvollem in der Übersetzung als Individualentscheidung des Übersetzers hingewiesen.

2. Verbale Expressivität in der Rechtssprache

Die Rechtssprache ist wie die Gemeinsprache durch Subjektivität und verbale Expressivität gekennzeichnet, die u. .a. durch Gefühlsbetontheit in der Fachterminologie, emphatische Floskeln oder wertausfüllungsbedürftige Ausdrücke zum Vorschein kommt. Rechtssprachlichen Termini und Ausdrücken wohnt eine emotive Färbung selbst dadurch inne, dass sie meist der Standardsprache entstammen und oft in unveränderter Bedeutung und mit ursprünglichen Konnotationen in das Fachvokabular Einzug finden. Trotzdem werden sie eingesetzt, um die Bewertungsfunktion der Sprache, die auch der Rechtssprache eigen ist, zu verdeutlichen und zu verwirklichen.

Laut Fiehler sind einer jeden Äußerung zwei grundlegende Funktionen zuzuschreiben, und zwar die Vermittlung von Informationen und die Bewertung. Für ihn gehen beide Komponenten immer miteinander einher und daher „sind Sachverhalte immer bewertete Sachverhalte“ (Fiehler 1990: 36). Damit knüpft er an die Modalität des Sprachgebrauchs an. Jeder Sprecher (auch Schreiber) verleiht seiner Sprache zweckbestimmt eine gewisse Modalität, sei es die

kognitive, volitive oder expressive Modalität (vgl. u. a. Drescher 2003: 43). Durch Sprache will der Gesetzgeber 1) über den Sachverstand ein Urteil abgeben; 2) seinen Willen umsetzen sowie 3) eine bestimmte Wertordnung manifestieren und an das Wertgefühl des Adressaten appellieren.

Dies bedeutet natürlich nicht, dass Emotionen zum Inhalt der Kommunikation werden, d. h. der Gesetzgeber sein emotionales Empfinden explizit benennt oder beschreibt. Wie Jahr bemerkt, muss nicht jede bewertende Stellungnahme gleich eine Emotion enthalten (vgl. Jahr 2000: 76). Ausschlaggebend für die Bestimmung, ob eine Bewertung emotional gefärbt oder nichtemotional ist, ist „das Maß der Ich-Beteiligung bzw. der Selbstbetroffenheit (als interner Zustand)" des Sprechers (Jahr 2000: 76). Dies mag am Beispiel von *feeling rules* exemplifiziert werden, die der strategischen Manifestation von Emotionen dienen. Es wird also ein emotionales Erleben vermittelt, das sozial in einer jeweiligen Situation angebracht ist und erwartet wird, dies bedeutet allerdings nicht das echte Erleben von Emotionen durch den Sprechenden.

In Bezug auf die juristische Fachsprache wäre es daher zutreffender, von der Expressivität in der Sprache anstelle von der Emotionalitätspräsenz zu sprechen, da hier der für das Auftreten von Emotionalität konstitutive Faktor der Ich-Beteiligung im Prinzip nicht oder kaum vorhanden ist, um damit rechtlichen Bewertungen einen überzeitlichen und überindividuellen Charakter verleihen zu können. Damit wird an die expressive Funktion der Sprache angeknüpft, die nach Jakobson neben dem Ausdruck von Emotionen auch die Wertung des mitgeteilten Sachverhalts umfasst (vgl. Jakobson 1960: 354). Sprache versteht sich hier als Mittel der Ausdrucksverstärkung und in dem Sinne ist jedes sprachliche Zeichen potentiell expressiv, weil es je nach Bedarf zum Signalisieren der Einstellung des Sprechers gebraucht werden kann.

Jedes Sprachzeichen verfügt auch über ein konnotatives Potential, das sich beispielsweise im Kontext einer Wortgruppe oder Texteinheit entfalten kann. Die Bedeutung sprachlicher Zeichen setzt sich nämlich aus dem begrifflichen Inhalt, dem Nebensinn sowie dem Gefühlswert zusammen, der „alle reaktiven Gefühle [beinhaltet], die das Wort erzeugt" (Erdmann 1925: 105ff.). Dem Erdmannschen Gefühlswert entspricht in moderner Linguistik der Begriff der Konnotation. Konnotationen stehen gerade für diese semantischen Merkmale, die nicht zur Grundbedeutung gehören, also keinen definitorischen Charakter haben. Sie vermitteln Affektives, d. h. das gefühlsmäßige Element der Bedeutung. Die Feststellung, dass Emotionen als eine unzertrennliche Komponente der Bedeutung sprachlicher Zeichen zu erachten sind, findet auch kommu-nikationstheoretisch Bestätigung, u. a. bei Ciompi, demzufolge

Information gleichzeitig Kognitives und Affektives ist und Affekte Motivatoren aller kognitiven Dynamik sind (vgl. Ciompi 1997: 95f. und 301f.).

Kognitive Informationen sind somit immer affektiv besetzt, auch wenn die emotionale Beteiligung (echte oder gespielte) des Sprechers nur implizit vorhanden bleibt, indem das Affektive durch spracheigene Mittel kodiert wird. Während es allgemeinsprachlich u. a. durch Ausdrucksformen der Expressivität wie der Gebrauch von Emotionswörtern, die hyperbolische Ausdrucksweise, Metaphorik, Wiederholungen, Ellipsen und Auslassungen, Interjektionen, entsprechende Intonation oder Wortbildungsmittel sowie durch affektive Syntax (nach Bally 1966: 124f.) zustande kommt[12], manifestiert sich die Affektivität in der Rechtssprache grundsätzlich durch folgende Ausdrucksmittel:

(i) affektive Semantik (darunter v.a. durch den Gebrauch von konnotierten (emotional positiv/pejorativ markierten) Spracheinheiten, intensivierende Ausdrücke und Proformen, attributive bzw. adverbiale Zusätze, Modalpartikeln, Modalverben, metaphorische Wendungen z. B. in der Form von Komposita);
(ii) den Emphasengebrauch,
(iii) Stilfiguren auf textueller Ebene (Figuren der Wiederholung, Änderung der Reihenfolge von syntaktischen Einheiten → Figuren des Platzwechsels);
(iv) die Anwendung von wertausfüllungsbedürftigen Begriffen und Ausdrücken.

3. Affektive Lexik in Gesetzestexten des Strafrechts

Aus der aufgestellten Liste der meist gebrauchten Expressivitätsmitteln in der Rechtssprache wird ersichtlich, dass Mittel des Emotionsausdrucks, die im lexikalischen Bereich angesiedelt sind, überwiegend und meist variiert gebraucht werden. Dies wundert nicht, das Phänomen der Expressivität wird nämlich in erster Linie mit semantischer Funktion sprachlicher Zeichen in Verbindung gebracht. Im Bereich der Lexik ist auch das größte Inventar an Mitteln zu verzeichnen, um die Semantik von Lexemen zu spezifizieren. Neben der expressiven Markierung von Wörtern kann Affektivität mithilfe unterschiedlicher Wortbildungsmittel, Flexionsformen sowie Phraseolo-gismenbildung erzielt werden.

Daher wird das Augenmerk unserer Analyse auf den lexikalischen Bereich und genauer auf die Präsenz und Funktion von gefühlsbetonter Lexik in Gesetzestexten gerichtet. Dass andere Erscheinungsformen der Affektivität von der

[12]Für ausführliche Darstellung von Expressivitätsmitteln auf lexikalischer, syntaktischer sowie textueller Ebene siehe u. a. Jahr 2000: 89-91, 93-100, 101-103.

Analyse ausgeschlossen werden, ist allein dem beschränkten Umfangsrahmen der vorliegenden Publikation geschuldet.

Strafgesetzbücher sind nicht willkürlich als Beispiele für den Gebrauch affektiver Semantik gewählt. Im Strafrecht ist nämlich die Verwendung emotional besetzter Lexik durchaus legitim. An der Beschreibung gesetzlicher Tatbestandsmerkmale wird die immanente Zweidimensionalität juristischer Aussagen – also das Verknüpfen von beschreibendem (dem sachlich-inhaltlichen) und normativem (bewertendem) Element – besonders deutlich. Durch entsprechende Wortwahl sucht man einen Weg, den Adressaten auf eine bestimmte Wertung hin zu lenken. Man erstrebt also nicht die Neutralisierung/Objektivierung der Beschreibung durch ihre Versachlichung. Ganz im Gegenteil, die Emotionalität wird gar nicht aufgehoben, sondern intendiert mit dem Ziel herangezogen, Unrecht zu verdeutlichen sowie rechtlich und moralisch inakzeptables Handeln zu brandmarken (vgl. Gast 2003: 449). Hier einige Beispiele:

Beispiel 1.

> § 211(…) (2) **Mörder** ist, wer
>
> aus **Mordlust**, zur **Befriedigung des Geschlechtstriebs**, aus **Habgier** oder sonst **aus niedrigen Beweggründen**, **heimtückisch** oder **grausam** oder **mit gemeingefährlichen Mitteln** oder um eine andere Straftat zu ermöglichen oder zu verdecken, einen Menschen tötet.(StGB 2013, 241-243)

> § 211(…) (2) **Mordercą** jest, kto zabija:
>
> człowieka dla **żądzy zabijania**, w celu **zaspokojenia żądzy seksualnej**, z **chęci wzbogacenia** lub **w wyniku motywacji zasługującej na szczególne potępienie**, **podstępnie** lub **ze szczególnym okrucieństwem** lub **przy użyciu niebezpiecznych środków**, lub by umożliwić albo ukryć inny czyn karalny. (StGB 2013, 241-243)

Beispiel 2.

> Art. 148 (…) § 2. Kto zabija człowieka:
>
> **1) ze szczególnym okrucieństwem**,
> **2)** w związku z **wzięciem zakładnika**, **zgwałceniem** albo **rozbojem**,
> **3) w wyniku motywacji zasługującej na szczególne potępienie**,

4) z użyciem materiałów wybuchowych, podlega karze (…). (poln. StGB 2011: 102)

Art. 148 (…) § 2. Wer einen Menschen

1) **besonders grausam**,
2) im Zusammenhang mit der Begehung einer **Geiselnahme**, einer **Vergewaltigung** oder eines **Raubes**
3) **aus besonders verwerflichen Beweggründen**
4) unter Einsatz von Sprengstoff tötet, wird mit Freiheitsstrafe (…) bestraft. (poln. StGB 2011: 103)

An den angegebenen Beispielen werden die Tatbestandsmerkmale von qualifizierter Form der Tötung im deutschen sowie polnischen StGB beschrieben. Gleich anzumerken ist, dass im deutschen Strafrecht die emotionale Wirkung der Lexeme für das verpönte Handeln des Tötens bereits in der Unterscheidung zwischen *Mörder* und *Totschläger* divers abgestuft wird. Totschläger (§ 211 StGB) wird derjenige, der sich den gesetzlichen Tatbestandsmerkmalen zufolge nicht als Mörder klassifizieren lässt, also negativ verifiziert wird. Der Legaldefinition des Mörders ist dagegen zu entnehmen, dass seiner Handlung eine besonders verwerfliche und inhumane/ dehumanisierende Motivation zugrundeliegt. Dies wird u.a. durch die Akzentuierung des Triebhaften (*Mordlust*, *Befriedigung des Geschlechtstriebs*, *Habgier*) zum Ausdruck gebracht. Der Gesetzgeber schließt an dieser Stelle an Emotionen an, welche ein Mord gängig auslöst, – also eine starke Abwertung – , und verwendet zu ihrer Verbalisierung Substantive, die den affektiven Aspekt noch intensivieren, indem den sonstigen indefinit genannten niederen Beweggründen die meist inakzeptablen der Habgier, des ungehemmten Geschlechtstriebs und der Mordlust vorausgehen.

Die emotionale Ladung wird nicht nur durch Substantive, sondern auch durch die adverbialen Bezeichnungen *heimtückisch* und *grausam* vermittelt, die den Modus Operandi des Täters zu beschreiben haben und der qualitativen Bewertung der Handlung dienen. Beide Lexeme erfahren im Gesetzestext keine genauere Klärung durch Legaldefinition. Dies wird – ähnlich wie entsprechend im polnischen Strafrecht die Lexeme *podstępnie* und *szczególne okrucieństwo* – erst aufgrund der Rechtsprechung und Rechtslehre möglich. Das Lexem *heimtückisch* wird rechtsbezogen eher aufwiegelnd erklärt, indem es auf eine Handlung hindeutet, infolge deren dem Opfer die Möglichkeit genommen wird, dem Täter Widerstand zu leisten, während allgemeinsprachlich grundsätzlich die Verborgenheit und allgemein die Bösartigkeit der Handlung akzentuiert werden. Was den Affektivitätsgrad des Lexems *grausam* im rechtlichen Kontext anbetrifft, so lässt er sich als gleich intensiv einstufen, wobei sprachvergleichend zu bemerken ist, dass in der polnischen Übersetzung der negative Gefühlswert

durch die Hinzufügung des attributiven Intensivierers *szczególne* (dt. besonders grausam) wesentlich verstärkt wird.

Neben den ausdrücklich stark pejorativ geladenen Ausdrücken kommt in der Definition als eines der Tatbestandsmerkmale noch der Gebrauch von *gemeingefährlichen Mitteln* vor, bei dessen Beschreibung im Unterschied zu sonstigen Merkmalen auf die affektive Komponente verzichtet wird. Anstelle des Nennens konkreter Mittel und Waffen erfolgt die Umschreibung ins Abstraktere, wodurch das affektive Potenzial abgeschwächt wird. Als verstärkend kann einzig das Erstglied *gemein-* gelten, das auf die Einordnung der außersprachlichen Bezugsgröße auf einer negativen Skala (der Allgemeingefahr) hinweisen lässt. Diese Verstärkung geht in der Übersetzung jedoch verloren, vielleicht aus sprachökonomischen Gründen.

Mit Affektivität lässt sich also im Prinzip auf dreierlei Weise umgehen: das affektive Niveau gleich halten, das affektiv wirkende Wort abwiegelnd erklären, d.h. es abschwächen, oder die emotionale Besetzung des jeweiligen Lexems noch verstärken. Das gleiche trifft auf den Übersetzungsvorgang zu.

Durch die Lehnübersetzung (*morderca*) bleibt die affektive Ladung im Zieltext auf gleichem Niveau. Das verwendete Lexem (notabene aus dem Deutschen entlehnt) entstammt im Polnischen der Gemeinlexik und wird stark pejorativ mit einer Person konnotiert, die einen anderen unter Gewaltanwendung und grausam ums Leben bringt. Rechtsvergleichend lässt sich feststellen, dass in der polnischen Rechtssprache die unterschiedliche Stärke der Brandmarkung von Tätern keine terminologische Abgrenzung zwischen *morderca* und *zabójca* erfährt. Angesichts dessen wird die Tötung als Straftat im Vergleich mit dem dt. Strafrecht zwar eher abwiegelnd definiert, dies bedeutet aber nicht, dass das tadelhafte Verhalten affektiv neutral beurteilt wird. Auch im poln. Strafrecht wird auf eine qualifizierte Form der Tötung verwiesen. Aus der Aufzählung von gesetzlichen Tatbestandsmerkmalen ergibt sich dann, dass es zum großen Teil dieselben sind, die erfüllt werden müssen. Das wundert natürlich nicht, sondern bestätigt, dass die genannte Tatmotivation in der westlichen Kultur und Wertordnung als besonders verwerflich anzuprangern gilt. Dies sind grausames Töten oder Tötung aus niedrigen Beweggründen. Hinzu kommen noch Geiselnahme, Vergewaltigung und Raub, die als Beweggründe sich für die Pönalisierung der Tat als verstärkend auswirken.

Im terminologischen Sprachvergleich ist der Gebrauch der Adaptation *w wyniku motywacji zasługującej na szczególne potępienie* für *niedrige Beweggründe* besonders auffallend, während im analogen Fall in der dt. Übersetzung des poln. StGB eine verfremdende Lehnübersetzung (*aus besonders verwerflichen Gründen*) eingesetzt wird. Die Formulierung *w wyniku motywacji zasługującej na szczególne potępienie* hat im Strafrecht den früher gebrauchten Ausdruck *z niskich pobudek*

ersetzt. Beide Begriffe sind emotiv besetzt. Die Verbalisierung des Expressiven erfolgt hier durch den Gebrauch des konnotativen Lexems *potępienie* (dt. *Missbilligung*), des Intensivierers *szczególne* (dt. *besonders*) und des wertenden Adjektivs *niskie* (dt. *nieder/niedrig*), das normalerweise als ein Dimensionsadjektiv gilt, dessen Bedeutung aber durch den Kontext als negativ wertend festgelegt wird.

Wegen einer fehlendenden Legaldefinition herrscht in der Rechtsprechung und Doktrin keine Einigkeit darüber, ob man die Rechtsbegriffe terminologisch als Synonyme betrachten kann. Die Meinungsstreitigkeiten sind auf die verschiedene Interpretation der Begriffe *motywacja* (dt. Motivation) und *pobudka* (dt. Beweggrund) zurückzuführen. Beweggründe verknüpft man in Anlehnung an die psychologisch fundierte Begriffsauffassung mit einem emotionalen Erlebnis, während unter dem Motiv ein geistiges Erlebnis verstanden wird (vgl. Kulesza 2004: 123-128).[13] Für die Durchsetzung des Begriffs Motivation sprach, dass er als ein Oberbegriff beides vereint, intellektuell-volitive mit emotionalen Erlebnissen. Nach wie vor sind allerdings die Meinungen geteilt, welcher der Begriffe rechtsbezogen als enger/weiter gelten kann. Die Abkehr von dem Terminus *niskie pobudki* mag Kulesza zufolge auch damit begründet sein, dass ein niederer Beweggrund in der Doktrin jahrelang einseitig, klischeehaft und eindeutig pejorativ mit der Befriedigung des Geschlechtstriebs assoziiert wurde (vgl. Kulesza 2004: 125). Nach der geltenden Rechtsprechung des Obersten Gerichts kann dieser Beweggrund auch positiv im Sinne eines natürlichen menschlichen Triebes konnotiert werden. Für die Brandmarkung der Tat müssen demnach noch andere Motive vorliegen, die allgemeingesellschaftlich als tadelnswert und als Verletzung guter Sitten empfunden werden. Vonnöten war somit eine terminologische Neudefinierung, die den Begriff emotional neu besetzen ließe.

In Bezug auf die Übersetzungsstrategie für den Fachausdruck *w wyniku motywacji zasługującej na szczególne potępienie* am Beispiel 2 ist abschließend anzumerken, dass sie wahrscheinlich darauf zurückzuführen ist, dass vermieden werden soll, fälschlicherweise die Konnotation mit dem Begriff *niskie pobudki* zu evozieren. Dies wird aber nur teilweise erreicht, da das Lexem *Beweggrund* gleich eine Assoziation mit dem erstarrten Phraseologismus in der dt. Rechtssprache (*niedrige Beweggründe*) hervorruft, der dem Begriff *niskie pobudki* funktional gleichgesetzt wird.

Beispiel 3.

(i) den Beischlaf vollziehen (§ 177 StGB 2013: 213)

[13]Mehr zur begrifflichen Abgrenzung zwischen Motivation und Beweggrund u. a. Obuchowski 1966: 20f.; Daszkiewicz 1961: 60-72.

dopuszczać się obcowania płciowego (§ 177 StGB 2013: 212)

(ii) sexuelle Handlungen vornehmen (§ 174 StGB 2013: 207)
doprowadzać do obcowania płciowego (§ 174 Abs. 1 Nr. 1 bis 3 StGB 2013: 206)
podejmować czynności seksualne (§ 174 Abs. 2 Nr. 1 bis 2 StGB 2013: 206)

(iii) Eindringen in den Körper (§ 177 StGB 2013: 213)
wtargnięcie w ciało (§ 177 StGB 2013: 212)

Das nächste Beispiel betrifft die Straftaten gegen die sexuelle Selbstbestimmung und stellt ein Beispiel für den Versuch dar, die affektive Semantik, die mittels kognitiv herbeigerufener Wortkonnotationen und einer metaphorischen Wendung evoziert wird, durch die **Euphemisierung** abzuschwächen, um damit das Lexem *Sexualverkehr* zum Zwecke seiner rechtlichen Definierung von seinen ursprünglichen allgemeinsprachlichen Konnotationen zu lösen.

Anstelle von Geschlechtsverkehr spricht man also vom Beischlafvollzug, wobei mit *beischlafen* jede Form des Geschlechtsaktes, darunter seine Ersatzformen wie orale oder anale Geschlechtskontakte, gemeint ist. Vom *Beischlaf* werden dann *andere sexuelle Handlungen* semantisch abgegrenzt, unter die sonstige Verhaltensweisen subsumierbar sind, die den begrifflichen Rahmen des Beischlafs sprengen und mit dem weit gefassten Sexualleben des Menschen verknüpft sind. Mit sexuellen Handlungen sind also Formen des körperlichen Kontakts des Täters mit dem Verletzten gemeint, die auf die passive oder aktive Teilnahme des Opfers zum Zwecke der Befriedigung des Geschlechtstriebes des Täters hinauslaufen (z.B. Masturbation).

Die genannte begriffliche Abgrenzung ließ den Gesetzgeber die gesetzlichen Merkmale der Vergewaltigung weiter als allgemeingültig definieren. Unter Vergewaltigung wird somit nicht nur das körperliche Eindringen im Sinne des Geschlechtsverkehrs verstanden, sondern jede sexuelle Handlung, die gegen seinen Willen am Verletzten vorgenommen wird, egal ob er Widerstand leistet oder nicht. Die expressive Komponente bleibt trotz abwiegelnder Definition nach wie vor beibehalten, wobei die emotive Konnotation vom Geschlechtsakt an sich auf die Akzentuierung von erniedrigender Nötigung zu Sexualhandlungen und der Zwangslage des Opfers verlagert wird. Dies kommt per excellence in dem polnischen Terminus *doprowadzać do obcowania płciowego* zum Ausdruck, der funktional dem deutschen Terminus *den Beischlaf vollziehen* entspricht.

Stark emotiv wirkt auch die metaphorische Formulierung *in den Körper eindringen*, die das gewaltsame Antasten der körperlichen Unantastbarkeit verbal sensibilisiert und in der Übersetzung mit gleichem affektiven Ton wiedergegeben wird. Zu bemängeln ist dagegen ist die angewendete

Übersetzungsstrategie in Bezug auf die übrigen Termini. An mehreren Stellen scheint die Übersetzerin das Prinzip der ästhetischen Neutralität verletzt zu haben, indem sie aus unklaren Gründen, wahrscheinlich der **verschönernden Ästhetisierung der Übersetzung** halber, (gezielt?) die Fachbegriffe *Beischlaf* und *sexuelle Handlungen* verwechselt oder sie als synonymisch betrachtet. Dies stiftet eine gewisse terminologische Verwirrung, insbesondere in § 174, in dem in zwei benachbarten und intratextuell verknüpften Absätzen desselben Paragraphen derselbe Terminus anders wiedergegen wird. Während im Originaltext konsequent vom sexuellen Missbrauch vom Schutzbefohlenen die Rede ist, der im dt. Strafrecht als Begriff eine weite Auslegung erfährt, überinterpretiert ihn die Übersetzerin im Abs. 1 als Beischlaf, wodurch der Kontext eingeengt wird.

Mit Subjektivitätszügen, die aus übersetzerischer Entscheidung resultieren, ist auch das nächste Beispiel markiert, in dem sexuelle Handlungen vor einem anderen legaldefiniert werden.

Beispiel 4.

> § 184g Im Sinne dieses Gesetzes sind
>
> (…) 2. sexuelle Handlungen vor einem anderen nur solche, die vor einem anderen vorgenommen werden, der **den Vorgang wahrnimmt**. (StGB 2013: 227)
>
> § 184g W znaczeniu tej ustawy rozumie się przez:
>
> (…) 2. dopuszczenie się czynności seksualnej przed inną osobą: tylko takie czynności, **jeżeli** osoba przed którą są wykonywane, **je jako takie postrzega**. (StGB 2013: 226)

Die **Subjektivität** wird hier auf zweierlei Wege evoziert: einerseits durch die subjektive und falsche Interpretation des Ausdrucks *den Vorgang wahrnehmen* und andererseits durch den Perspektivenwechsel von der objektiven Darstellung des Tatbestands zugunsten einer subjektiven Bewertung der Tat durch das Subjekt (*postrzegać jako* – dt. *wahrnehmen als*). Der Schwerpunkt wird also auf den Emotionsausdruck gelegt, während im Original die sinnliche Wahrnehmung angesprochen wird. Die Vorgehensweise der Übersetzerin ist hier somit ein Element, welches fürs Aufwiegeln des Emotionalen sorgt.

Zum Schluss noch ein Beispiel für **Graduierung der emotionalen Ladung** bei der Beschreibung gesetzlicher Tatbestandmerkmale. Diesmal wird aber nicht die Tatschwere (wie bei Mord und Totschlag) für den verstärkten Emotionston ausschlaggebend, sondern *wer* eine Straftat verübt. So handelt

krimineller als ein gewöhnlicher Dieb, wer als Bandenmitglied einen Diebstahl begeht.

Beispiel 5.

(i) Mitglied einer Bande (§ 244 StGB 2013: 271)
członek bandy (§ 244 StGB 2013: 270)
(ii) Kriminelle Vereinigung (§ 129 StGB 2013: 171)
związek przestępczy (§ 129 StGB 2013: 170)

Beispiel 6.

(i) zorganizowana grupa (Art. 258 poln. StGB 2011: 160)
Bande (Art. 258 poln. StGB 2011: 161)
(ii) związek mający na celu popełnienie przestępstwa (Art. 258 poln. StGB 2011: 160)
Vereinigung, deren Zweck es ist, Straftaten zu begehen. (Art. 258 poln. StGB 2011: 161)
(iii) związek mający na celu popełnienie przestępstwa o charakterze terrorystycznym (art. 258 poln. StGB 2011: 160)
Vereinigung, deren Zweck es ist, terroristische Straftaten zu begehen. (Art. 258 poln. StGB 2011: 161)

Unter Zugriff auf das pejorativ besetzte umgangssprachliche Lexem *Bande* wird in der deutschen Rechtssprache ein Fachbegriff gebildet, unter welchen „der verabredete, ernsthafte Zusammenschluss mehrerer Personen zur Begehung von (…) noch unbestimmten Straftaten für eine gewisse Dauer“ (Creifelds Rechtswörterbuch 2000: 150) subsumiert wird. Der Bande liegt eine deliktische Zusammenarbeit zugrunde, die über die übliche Mittäterschaft hinausgeht. Mit anderen Worten, Bandenmitglieder schließen sich zunächst zusammen, um in Zukunft im gemeinsamen Interesse eine Straftat (z.B. einen Bandendiebstahl) zu begehen. Ihr Modus Operandi ist durch ein geplantes Handeln gekennzeichnet. Eine bandenmäßige Tatbegehung wird immer als ein qualifizierter Fall angesehen und mit einer höheren Strafe bedroht. Die emotionale Ladung des Lexems findet u. a. in Bildung von Komposita mit dem wertenden Erstglied *Banden-* (z.B. Bandendiebstahl, Bandenschmuggel oder Bandenhehlerei) ihren Niederschlag, die jeweils als erschwerte Fälle gelten.

Interessanterweise lässt sich bemerken, dass die Gruppen des organisierten Verbrechens zunehmend mit Skala und Zweckbestimmtheit ihres Handelns jeweils drastischere Namen erhalten. Aus einer *Bande* werden sie zu *krimineller* und schließlich zu *terroristischer Vereinigung*. Auch an diesen affektiven Vokabeln ist die

graduelle Verstärkung der „Gefühlsseite“ (nach Gast 2006: 450) eines Sachverhalts gut sichtbar. Kriminelle Vereinigungen weisen im Vergleich mit Banden meist eine ausgebautere Strukturbildung auf, ihre Tätigkeit wird im Prinzip auf längere Dauer und auf rückfällige und mehrfache Begehung von Straftaten ausgerichtet. Noch krimineller ist strafrechtlich die Gründung von terroristischen Vereinigungen und die Beteiligung an ihnen (§ 129a StGB). Am Attribut *terroristisch* ist das emotionale Potenzial noch stärker, was auf die Skala der Handlung zurückführbar ist. Die kriminelle Tätigkeit terroristischer Vereinigungen ist nämlich auf die Begehung von gemeingefährlichen Straftaten (wie Brandstiftung) oder schwersten Straftaten und Verbrechen gegen das Leben und die persönliche Freiheit des Menschen (wie Mord, Völkermord oder Menschenraub) ausgerichtet. Anzumerken ist, dass die Gradbezeichnung *terroristisch* erst durch die Doktrin und Rechtsprechung zur Abgrenzung von gefährlichsten und anderen kriminellen Vereinigungen eingeführt wurde. Im Strafgesetzbuch kommt ein solches Definiens nicht vor.

Im Vergleich zur deutschen scheint die polnische Rechtssprache mit Benennung von kriminellen Zusammenschlüssen eher abwiegelnd vorzugehen. Im Strafgesetzbuch ist hier deutlich eine Tendenz zu bemerken, den Gebrauch von emotional beladenen Vokabeln *banda* (dt. Bande) oder *kryminalny/przestępczy* (dt. kriminell) zu vermeiden, an deren Stelle den **paraphrasierenden und expressiv neutralisierenden Ausdrücken** *zorganizowana grupa* (dt. organisierte Gruppe) oder *związek* (dt. Vereinigung) Vorzug gegeben wird. Nichtsdestotrotz wird die Abgrenzung von Bedeutungen beider Begriffe nicht diffus, da sie doktrinär näher bestimmt werden. Unter Vereinigung wird ein fester Zusammenschluss von mind. 3 Personen verstanden, der eine bestimmte Strukturiertheit und Handlungsregeln aufweist und als solcher dem dt. Begriff krimineller Vereinigung als funktional äquivalent erachtet werden kann, während eine organisierte Gruppe durch eine lockere Strukturbildung gekennzeichnet ist und ihrem Charakter nach dem Begriff der Bande auch funktional entspricht.

Beispiele 5 und 6 sprachvergleichend analysierend, fällt allerdings auf, dass in der Übersetzung von diesem reziproken Verhältnis nur teilweise Gebrauch gemacht wird. M.E. verzichtet die Übersetzerin bewusst auf die Hinzuziehung von funktionalen Äquivalenten, um die emotionale Färbung der Ausdrücke im deutschen StGB beizubehalten. Auf der anderen Seite geht sie bei der Wiedergabe polnischer Termini ins Deutsche strategisch nicht mehr so konsequent vor, indem sie die übersetzten Textstellen als Mosaik von emotional besetzten und neutralen Sprachmitteln ästhetisiert, wodurch die Übersetzung stilistisch uneinheitlich wird.

4. Fazie

Allen analysierten Beispielen aus dem deutschen und polnischen Strafgesetzbuch ist die expressive Komponente gemeinsam, die durch Gefühlsbetontheit in der Fachterminologie zum Vorschein kommt. Die Präsenz von expressiver Markierung in der auf Sachlichkeit und Objektivität hinauslaufenden Fachsprache des Rechts ist allerdings keineswegs ein lege artis Verstoß. Die Rechtssprache ist nämlich auch eine Bewertungssprache, der eine kognitive, volitive und auch expressive Modalität innewohnt.

Als Funktionen von aufwiegelnder Semantik im Strafrecht lassen sich u. a. folgende angeben:

(i) das Normative und Autoritäre zum Ausdruck zu bringen (v. a. bei emphatischen Floskeln);
(ii) die Hinlenkung des Adressaten auf eine bestimmte Wertung;
(iii) das rechtlich und moralisch Inakzeptable zu verpönen und das Unrecht zu verdeutlichen.

Die Verbalisierung des Expressiven erfolgte in untersuchten Beispielen v. a. durch:

(i) die Übernahme von emotiv besetzter Allgemeinlexik und Graduierung ihrer Gefühlsbetontheit in der Fachterminologie (*Mörder* vs. *Totschläger, Bande* vs. *kriminelle Vereinigung*) mit (dt. Strafrecht) oder ohne explizite terminologische Abgrenzung (poln. Strafrecht – *zabójca*);
(ii) wertende Attribuierung (*niedrig, heimtückisch, grausam, kriminell, ze szczególnym okrucieństwem, zasługująca na szczególne potępienie*, etc.);
(iii) den Gebrauch von Komposita mit verstärkendem Erstglied (*Mordlust, Habgier*);
(iv) semantische Festsetzung der emotionalen Färbung durch die Rechtsdoktrin (*heimtückisch, grausam*);
(v) Variieren der emotionalen Ladung durch Legaldefinitionen im Gesetzestext (*Vergewaltigung*);
(vi) Abschwächen der Expressivität durch Euphemisierung (*Beischlaf, sexuelle Handlungen, doprowadzać do obcowania płciowego, związek mający na celu popełnienie przestępstwa*);
(vii) den innersprachlichen diachronischen Wandel emotionaler Besetzung von Lexemen in der Rechtssprache (*niskie pobudki → motywacja zasługująca na szczególne potępienie*).

Beim Umgang mit Expressivität in der Übersetzung lassen sich offensichtlich drei Wege nennen: den Gefühlston gleich halten, abwiegeln oder aufwiegeln. In diesem

Zusammenhang sind an untersuchten Beispielen folgende Übersetzungsstrategien zu bemerken:

(i) Verfremdung unter Beachtung des Emotionalen (*Mörder → morderca*);
(ii) Adaption mit abwiegelnder Wirkung (*niedrige Beweggründe → motywacja zasługująca na szczególne potępienie*) bzw. aufwiegelnder Wirkung (*zorganizowana grupa → Bande*);
(iii) Abwiegeln durch Euphemisierung (*den Beischlaf vollziehen → doprowadzać do obcowania płciowego, związek mający na celu popełnienie przestępstwa → Vereinigung, deren Zweck es ist, Straftaten zu begehen*);
(iv) verschönernde Ästhetisierung mit Aufwiegeln als Folge (*sexuelle Handlungen vornehmen → doprowadzać do obcowania płciowego*).

Ergänzend wäre auf noch eine Möglichkeit (und vielleicht auch Strategie?) hinzudeuten, und zwar auf Subjektivitätszüge und Expressivität, die im Originaltext nicht intendiert werden und erst in der Übersetzung infolge subjektiver Entscheidung und Falschinterpretation des Übersetzers (Beispiel 4) evoziert werden.

Aus der hier kurz umrissenen Problemanalyse lässt sich abschließend noch eine Schlussbetrachtung ziehen, und zwar, dass sich – zumindest in Bezug auf untersuchte Textpassagen – die emotionale Modalität in der deutschen Rechtssprache deutlicher und häufiger als in der polnischen Rechtssprache abzeichnet. Bezüglich der Expressivität der Rechtssprache bietet sich somit ein interessantes Feld zur weiterführenden Forschung.

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6. Primärliteratur

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INSTITUTIONAL MULTILINGUALISM IN THE EUROPEAN UNION – POLICY, RULES AND PRACTICE

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Abstract: This paper examines the rules and working practices of main institutions of European Union in relation to EU policy multilingualism. The institutions analysed in this research include the Commission, the Council of the European Union, the Court of Justice of the European Union, and the European Parliament. After presenting the legal basis of EU multilingualism, the study identifies the achievements and difficulties met by EU institutions in the process of its realisation.
Topic highlighted in this study include:

- Problems resulting from the status and number of official EU languages.
- The distinction made between EU institutions obliged to observe citizens' language rights and other bodies that can seemingly make their own rules.
- Inconsistencies between the practice of internal and external communication of the EU institutions, presenting examples from individual institutions, as well as from judicial practice of the Court of Justice of the European Union.

Finally, the article presents an evaluation of the solutions to the observed problems presented in the literature, along with the author's own conclusions.

Key words: institutional multilingualism, linguistic diversity

WIELOJĘZYCZNOŚĆ INSTYTUCJONALNA W UNII EUROPEJSKIEJ – POLITYKA, REGULACJE PRAWNE I PRAKTYKA

Abstrakt: Niniejszy artykuł przedstawia regulacje prawne oraz praktyki najważniejszych instytucji Unii Europejskiej (Komisji Europejskiej, Rady Unii Europejskiej, Trybunału Sprawiedliwości oraz Parlamentu Europejskiego), dotyczące wielojęzyczności. Po omówieniu podstaw prawnych, strategii i zasad dotyczących wielojęzyczności w Unii Europejskiej oraz politycznych deklaracji z nią związanych, opracowanie wskazuje osiągnięcia oraz trudności poszczególnych instytucji w ich realizacji.
Praca koncentruje się wokół następujących zagadnień:

- problemy związane ze statusem i liczbą języków oficjalnych;
- rozróżnienie instytucji UE, jako adresatów konkretnych obowiązków wynikających z wielojęzyczności oraz innych jednostek organizacyjnych, które mają swobodę w kształtowaniu własnych zasad i praktyk językowych;

- różnice związane z wewnętrzną i zewnętrzną komunikacją instytucji UE, omówione na przykładach poszczególnych instytucji, z uwzględnieniem orzecznictwa TSUE.

W artykule omówiono ponadto rozwiązania opisanych problemów proponowanych w literaturze oraz dokonano ich oceny.

Słowa kluczowe: wielojęzyczność instytucjonalna w UE, różnorodność językowa

Multilingualism in the EU and its legal framework

Linguistic diversity has been recognized as a fundamental value of the EU. Comprising 24 languages, EU multilingualism constitutes an international precedent. Other international bodies and organisations operate only a limited number of official and working languages[14]. From the beginning, the EU has underlined the importance of language for its culture. Multilingualism and linguistic diversity have been said to be: "an asset for Europe and shared commitment"[15], a "genetic code of the European project"[16], "the heart of Europe's DNA"[17], "a real opportunity that raises many challenges"[18], a "rewarding challenge for Europe" (Maalouf 2008), "part and parcel of the European identity"[19], and "a bridge to mutual understanding"[20]. As a value and a fundamental right, linguistic diversity also has its legal dimension.

First of all, the linguistic diversity is protected by the law of the treaties. The Treaty on the European Union states in Article 3 that "It [the EU] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced". Moreover, equality between all official languages, as well as the authentic character of all 24 language versions,

[14]For instance the United Nations has 6 official languages, two of them being used as working languages of the UN Secretariat. http://www.un.org/en/aboutun/languages.shtml

[15]Title of European Commission's communication COM/2008/0566 final

[16]L. Orban in the interview prepared by EurActiv.sk's editor in Bratislava, during Multilingualism Commissioner Leonard Orban's visit to Slovakia, http://www.euractiv.com/culture/orban-multilingualism-cost-democracy-eu/article-177107, (accessed February 26, 2016)

[17]A. Vassiliou, Member of the European Commission for Education, Culture, Multilingualism and Youth, Speech from 24 June 2014, Brussels, International Annual Meeting on Language Arrangements, Documentation and Publications, http://europa.eu/rapid/press-release_SPEECH-14-492_en.htm (accessed February 26, 2016)

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[19]Council Resolution of 21 November 2008 on a European strategy for multilingualism (2008/C 320/01)

[20]Title of a publication by the European Commission and Directorate-General for Education and Culture, 2009

is emphasized in Article 55. The Treaty on the Functioning of the European Union [TFEU] foresees the right of any citizen to send a petition to the European Parliament, to apply to the Ombudsman, and to address any of the EU institutions and advisory bodies, as well as receive an answer, in any official EU language.

Accordingly, the first Council Regulation from 1958 was devoted to the language system of the EU[21]. The Regulation names the official and working languages (Article 1) and provides that all of them should serve as possible languages of communication between the institutions and persons subject to the jurisdiction of Member States (Articles 2-3). It also specifies the languages in which the legal acts should be drafted and published (Articles 4-5), and gives EU institutions the competence to stipulate the language of their proceedings (Articles 6-7). The statute of the Court of Justice of the European Union, as a part of the TFEU, as well as the Rules of Procedures of individual institutions, often refer directly to the Regulation.

Moreover, linguistic diversity has found its place in the European Charter of Fundamental Rights. In Article 22, the respect for linguistic diversity has been repeated from Article 3 of the Treaty on the European Union. According to Article 21, language constitutes one of the grounds of prohibited discrimination. The right to communicate with EU institutions in any of the Treaty languages forms part of the right to good administration. As noted by C.J. Baaij (2012: 4.2.2), the inclusion of language rights in the Charter is important: it has the same legal status as EU Treaties, expresses the fundamental principle of multilingualism in the EU, and is binding upon EU institutions. This strong legal framework is further supported by the rhetoric of EU politicians[22] and their policy documents, where weighty language is used to underline the importance and value of multilingualism in the EU. The most important documents issued by EU institutions to promote and develop multilingualism include "*Communications from the Commission: New Framework Strategy for Multilingualism from 2005*"[23], and "*Multilingualism: an Asset for Europe and a*

[21]REGULATION No 1 determining the languages to be used by the European Economic Community (OJ P 017, 6.10.1958, p.385)

[22]Speeches given by L. Orban and A. Vassiliou, the subsequent EU Commissioners for Multilingualism

[23]Communication from the Commission of 22 November 2005 - A new framework strategy for multilingualism [COM(2005) 596 final - Not published in the Official Journal].

Shared Commitment from 2008"[24], along with the *Council Resolution of 21 November 2008 on a European strategy for multilingualism*[25].
Nevertheless, the institutional practice of the main EU institutions is not consistent with the EU's invoked principles and political declarations. Several sensitive issues concerning institutional multilingualism have been observed in the literature.

The status of EU official and working languages

First of all, the number of official EU languages and the manner of granting this status to new languages is questionable. Only 24 languages have been recognized as official and working languages of the EU. According to Federal Union of European Nationalities (FUEN), there are more than 60 another regional or minority languages that are being spoken by around 40 million people in the European Union.[26] The European Commission also states that there are more than 175 migrant languages spoken in the EU.[27]

An official language of any Member State can be granted the status of an official EU language. Usually, each state seeking EU Membership asks for recognition of its language as official. The necessary measures (such as translation of EU legislation, employment of translators and interpreters, etc.) are carried out as a part of the preparation for the accession of a new Member State. However, there is no obstacle for EU Member States to apply for their language to be recognised as an EU official language after they have already joined the EU.

The possibility of any language official in a Member State being recognised as an official and working language of the EU seems compatible with its rhetoric of equality, non-discrimination, and respect for linguistic diversity. However, as Creech (2005: 151) points out, the possibility of becoming an official and working language, along with all benefits that brings to native and other speakers (such as access to EU legislation and institutions, job opportunities, etc.), concerns only the official languages of Member States. All other languages, even those recognized as official in the parts of Member States, as well as other regional or minority languages, are left outside the system. It does not matter how many inhabitants of Member

[24]Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Multilingualism: an asset for Europe and a shared commitment {SEC(2008) 2443} {SEC(2008) 2444} {SEC(2008) 2445} /* COM/2008/0566 final *
[25]Council Resolution of 21 November 2008 on a European strategy for multilingualism (2008/C 320/01)
[26]https://www.fuen.org/european-minorities/general/ (accessed February 26, 2016)
[27]http://europa.eu/rapid/press-release_MEMO-12-703_en.htm?locale=en (accessed February 26, 2016)

State speak a particular language, even though many of them enjoy the status of EU citizens. The EU's lack of consideration for the number of native speakers of a language, as well as EU's strict adherence to the formal criterion of a language having state official status, has been criticized by C.J. Baaij (2012: 3.1). Examples can be given both for official EU languages that spoken only by the small number of people in a Member State and for languages that are spoken by large number of EU citizens, (often as their sole language) that are not recognised as official by the EU.

The Irish language belongs to the first group. Interestingly, it was the co-official language (along with English) when Ireland joined the EU in 1973, but it was not granted the status of an official and working language of the EU until 2007. The reason, as reported by Seán Ó Riain (2010: 66), was a lack of initiative on the side of Ireland at the time of accession due to "certain practical difficulties" resulting from the potential recognition of Irish as an EU official and working language. The official request was made in 2004. However, immediately after granting Irish the status of official EU language, the Council suspended it – by means of Council Regulation (EC) No 920/2005 of 13 June 2005 (OJ L 156, 18.6.2005, p. 3). The reason given was that they did enough specialists to translate and interpret from and into Irish. During the time of derogation, only the Regulations adopted jointly by the Council and the Parliament had to be drafted and published in Irish. The status of Irish is revised every 5 years; the derogation was extended in 2010 for the period 2012 to 2017. Two other state official languages, namely Luxembourgish and Turkish, remain outside the list of official EU languages.

Apart from the large number of official languages spoken by proportionally few EU citizens (Maltese, Lithuanian, Latvian, Slovene, Finnish, etc.), there are also languages spoken by large numbers of people that cannot be given official EU status because they are not state official languages. These include regional languages, like Catalan in Spain, as well as minority and immigrant languages such as Russian, Arabic, and the various Romani languages. An interesting example is Turkish, the – language of Turks living in many Member States, as well as being the co-official language in Cyprus (an EU Member State). At present, Turkey has a status of a candidate state and the future accession of Turkey would most likely result in recognition of Turkish as official and working language of the EU.

It is questionable whether equalization of the status of Irish with other official EU languages has any practical importance, either as means of communication with EU institutions or to familiarize Irish citizens with EU legislation. There are not even enough specialists to produce the necessary translations, and Irish people themselves declare that Irish is not their mother

tongue. On the other hand, failure to acknowledge the number of people speaking Catalan, Russian, or Arabic, for example, simply on the grounds of lack of formal recognition for their languages in the Member States puts the realization of the fundamental principles of equality, democracy and non-discrimination into question.

However, the EU has started to recognize the problems caused for speakers of minority and regional languages. They have introduced a new category for languages recognized by the Constitution of a Member State. These are used in some formal EU meetings, as well as in EU documents, by virtue of agreements between EU institutions and the government of the relevant Member State. Up to now, concluded agreements have been made for Basque, Catalan, Galician, Welsh and Scottish Gaelic. As the result of these agreements, the aforementioned languages are considered as "co-official"[28] EU languages, enjoying a better position than other regional languages, but still not as important as official EU languages. Unlike official state languages, the onus for the initiative, along with the costs of translations and interpretations for "semi-official" languages, are borne by the Member State.[29]

Institutions and other bodies

One of the very important limitations of institutional multilingualism, overlooked by a large number of EU citizens, is connected to the legal meaning of "EU institution". All legal provisions concerning obligations resulting from the principle of multilingualism are addressed to the EU institutions (the Treaty provisions concerning the language requirements of communication with the public, and the provisions of Council Regulation no 1/1958). Article 13 of the Treaty on the European Union names all the institutions and advisory bodies[30], leaving no doubt that the catalogue is closed. The Treaty on the Functioning of

[28]http://ec.europa.eu/languages/policy/linguistic-diversity/official-languages-eu_en.htm (accessed February 28,2016)

[29]http://europa.eu/rapid/press-release_MEMO-12-703_en.htm?locale=en

[30]Article 13 TEU: 1. […] The Union's institutions shall be:

— the European Parliament,
— the European Council,
— the Council,
— the European Commission (hereinafter referred to as 'the Commission'),
— the Court of Justice of the European Union,
— the European Central Bank,
— the Court of Auditors. […]

4. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

the European Union [TFEU] refers directly to this Article when stipulating the bodies that are obliged to observe the right of citizens to communicate in any of the official EU languages.

European politicians often evoke the importance of multilingualism and the EU's respect for it[31] without mentioning the practical consequences of this limitation. Many agencies and other bodies of the EU are left outside the umbrella of language rights' protection. These are not just internal bodies that are unlikely to have direct contact with citizens. On the contrary, some have been designed to perform activities that involve external communications and the realization of initiatives. For example, the European Data Protection Supervisor does not have the whole of his official internet site translated into all official EU languages. One of the most important documents from the perspective of a citizen seeking rightful protection, namely the complaint submission form, is available only in English, French and German[32]. Not even the links to the relevant forms have been translated into other official languages.[33]

The best known example of this type of problem is the dispute between a Dutch national, Christina Kik, and the Office of Harmonization of the Internal Market (OHIM). Christina Kik was a Dutch lawyer and trademark agent in Netherlands. She was seeking for registration of the word KIK as a Community trademark. OHIM is one of the EU agencies not listed among the EU institutions and advisory bodies in the Treaty on the European Union. Among the formal requirements for a Community trademark registration application is an obligation for the applicant to indicate a second language chosen from English, French, German, Italian or Spanish. The 'second language' is one that the applicant accepts as a possible language for some proceedings and written communications with the OHIM. The provocative Kik application was made in Dutch, with Dutch also quoted as a second language, so not meeting the procedural requirements. After dismissal of the application, followed by an appeals by the applicant, the case was considered by the General Court[34], and

[31]Androulla Vassiliou, http://ec.europa.eu/commission_2010-2014/vassiliou/about/priorities/index_en.htm (accessed February 28, 2016)

[32]https://secure.edps.europa.eu/EDPSWEB/edps/Supervision/Complaints (accessed February 28, 2016)

[33]The EDPS introduced lately new version of his official internet site. However, in comparison to the previous one, nothing changed in discussed matter. For example, Polish language version contains only short information on EDPS, and the submission form can be found under "complaints" (not translated link).
https://secure.edps.europa.eu/EDPSWEB/edps/lang/pl/EDPS/cache/offonce (accessed February 28, 2016)

[34]Judgment from 12 July 2001, Case T-120/99 Christina Kik v Office for Harmonisation in the Internal Market [2001] ECR II-2235

finally by the Court of Justice[35]. The applicant challenged the legality of the rule that required the indication of a 'second language' from only five official EU languages. She claimed the language regime of the OHIM to be contrary to the fundamental right of linguistic equality and that it resulted in an competitive disadvantage for her as a professional trademark agent on the grounds that she was unable to work in her mother tongue. She argued that she had been discriminated against. Both Courts dismissed her actions. The CJEU held that, whereas "the Treaty contains several references to the use of languages in the European Union, those references cannot be regarded as evidencing a general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances".

The Kik argumentation found support in other cases adjudicated by the CJEU. In the case of Spain v. Eurojust[36], the advocate general, Maduro, made a distinction between the communication between EU institutions and its citizens where the respect of linguistic diversity should have the highest protection (most importantly, the communication of legal acts), and contacts relating to administrative procedures, where the linguistic rights of a person are subject to restrictions based on administrative requirements (Maduro 2005, Opinion, 43-44). Finally, he argued that "a system of all-embracing linguistic pluralism is in practice unworkable and economically intolerable" (Maduro 2005, Opinion, 47).

The Kik-OHIM judgments have been commented on in the literature (Creech. 2005; Baaij. 2012, Athanassiou. 2006). Creech points out the factual inequality of official languages. He even presents a rank of importance of particular languages in the EU (Creech, 2005: 44). Baaij criticizes the CJEU argumentation in Kik v. OHIM for its negation of policy rhetoric. The principle of language equality is treated as a relative, not absolute, principle, so diminishing the importance of multilingualism in the internal operations of EU institutions. He also argues that, by virtue of the Charter of Fundamental Rights, fundamental language rights given direct protection in the EU Treaty, denial of the importance of the principle of multilingualism by the Court in this case was outdated (Baaij. 2012: 4.2.2).

From the examples presented above, it is clear that the distinction between EU bodies that are required to obey the principle of multilingualism and those that are not is artificial. It does not have any justification with the functions

[35]Judgment from 9 September 2003, Case C-361/01 P, Christina Kik v. Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), [2003] ECR I-08283

[36]Judgment from of 15 March 2005. Case C-160/03 Kingdom of Spain v Eurojust., [2005] ECR I-02077

of the body or the likeliness of their direct contact with citizens. From the perspective of democracy and equal access to EU bodies by an individual wishing tor to enforce their rights (such as registration of a trademark or filing a complaint to the European Data Protection Supervisor), this distinction make no sense at all.

Internal procedures vs. external communication

Another limitation of institutional multilingualism is the distinction made between internal procedures of particular institutions and rules governing their external communications. The latter are in accordance with invoked principles, respecting the principle of institutional multilingualism, whereas, for internal procedures institutions operate in only a few selected official languages. Officially published documents concerning this matter remain very general. For example, in 2005 the Commission issued a Communication to other institutions, entitled "*A new Framework Strategy for Multilingualism*"[37]. It was issued to "complement the Commission's initiative to improve communication between European citizens and the institutions that serve them. It reaffirmed the Commission's commitment to multilingualism in the European Union and set out the Commission's strategy for promoting multilingualism in European society, the economy and the Commission itself. The communicate describes many aspects of European multilingualism and the initiatives undertaken to develop it (for example, promotion of language learning and linguistic diversity, scientific issues, studies, publications and informative actions). It declared that the Commission: "will: ensure, through an internal network, that all departments apply its multilingualism policy in a coherent way." However, it does not contain any provision concerning the internal working languages. The idea of a strategy towards multilingualism was continued in the next Communication, issued in 2008[38]. But again, the document is very general and does not cover the use of languages for internal work.

As noted in the literature, institutions rarely have any formal rules limiting the number of languages used in their internal work, but such limitations are commonly applied in practice (Gazzola, 2006: 397). The rules of procedure regulate only those situations where institutional multilingualism is respected.

[37]Communication from the Commission of 22 November 2005 - A new framework strategy for multilingualism [COM(2005) 596 final – Not published in the Official Journal].

[38]Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Multilingualism: an asset for Europe and a shared commitment {SEC(2008 2443} {SEC(2008) 2444} {SEC(2008) 2445} /* COM/2008/0566 final *

The language used in the day-to-day work of internal operations remains officially unregulated. The rules governing language policy are very general, underlining the equality of all official languages. Article 18 of The Rules of Procedure of the European Commission[39] states that adopted documents should be attached in "authentic language or languages". This means "the official languages of the Communities in the case of instruments of general application, and the language or languages of those to whom they are addressed in other cases". In regards to the Commission's meetings, "the agenda and the necessary working documents shall be circulated to the Members of the Commission within the time limit and in the working languages prescribed by the Commission in accordance with Article 25" (Article 6). The same applies to the language of proposals that require the agreement of the Commission (Article 12). Conclusively, all language rules stipulated by the Rules of Procedure concerning the internal work of the Commission refer to the competence of the Commission to prescribe the working languages as provided in Article 25. The invoked Article is very general. It states: "The Commission shall, as necessary, lay down rules to give effect to these Rules of Procedure". The Commission may adopt supplementary measures relating to the functioning of the Commission and of its departments, which shall be annexed to these Rules of Procedure. However, the Annex to the Rules of Procedure contains only one rule related to language regime. According to point 4 of the Annex, entitled "*Code of good administrative behaviour for staff of the European Commission in their relations with the public*", replies to letters are to be prepared in the language of the initial letter, provided that it was written in one of the official languages of the Community. No other rules concerning language procedures can be found in any of the official legal documents currently available.

Similar provisions can be observed in the Rules of Procedure of the European Council (2009)[40]. According to Article 14, 1. "Except as otherwise decided unanimously by the Council on grounds of urgency, the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages". Similarly, both the Rules of Procedure of the Commission and the Rules of Procedure of the Council refer to "languages specified in the rules in force governing languages." However, Annex IV to the Rules of Procedure contains a statement

[39]Rules of Procedure of the Commission [C(2000) 3614] available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000Q3614, (accessed February 28, 2016).

[40]Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure, available at: http://europa.eu/legislation_summaries/institutional_affairs/institutions_bodies_and_agencies/l14576_en.htm (accessed February 28,2016)

recognizing the institutional multilingualism principle. It says: "The Council confirms that present practice, whereby the texts serving as a basis for its deliberations are drawn up in all the languages, will continue to apply."

Unlike the Rules presented above, the Rules of Procedure of the Court of Justice of the European Union (CJEU)[41] contain more detailed provisions concerning language (the whole Chapter 8, Articles 36-42 of the Rules). First of all, it names all official EU languages, allowing the use of any one of them as the language of the case (Article 37). The following Articles stipulate rules for determining the language of the case for a particular dispute. The language of the case automatically becomes the authentic language of the documents, unless another language has been authorised. Translations or interpretations into other official EU languages may also be prepared at the request of a judge, advocate general, or a party. Publications of the CJEU are also issued in official EU languages – however, it has not been categorically stated that they have to be issued in all official languages. Although the Rules of Procedure of the CJEU are more detailed than those of other institutions, they refer only to the official procedures before the Court; its judicial activity, publications, and Court language services. The Rules do not cover the use of languages within the administrative activity of the Court.

The European Parliament is often referred to as the most multilingual EU institution. It has more detailed rules and procedures concerning languages than any other institution. These rules are documented in *Title VII (Sessions) Chapter 3: "general rules for the conduct of sittings", rule 158 of Parliament's Rules of Procedure*[42]. They apply only to core of parliamentary work, namely its legislative activities, not to the Parliament's administration. Underlining the right of all members to speak in Parliament in the official language of their choice, there are specific rules concerning interpretation, which is generally provided into and from the official languages used and other official languages requested (158.3-4). Accordingly, there is a very important rule concerning discrepancies between language versions discovered after voting. In such cases "*the President decides whether the result announced is valid pursuant to Rule 184(5). If he declares the result valid, he must decide which version is to be*

[41]Rules of Procedure of the Court of Justice of the European Union of 29 September 2012 [Official Journal L 265 of 29.9.2012]
http://europa.eu/legislation_summaries/institutional_affairs/institutions_bodies_and_agencies/ai0049_en.htm (accessed February 28,2016)

[42]Rules of Procedure of the European Parliament, 8th parliamentary term, available at:
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20140701+TOC+DOC+XML+V0//EN&language=EN, (accessed February 28, 2016)

regarded as having been adopted. However, the original version cannot be taken as the official text as a general rule, since a situation may arise in which all the other languages differ from the original text" (158), It should be noted that this very rule highlights the sensitivity of Parliament to the principle of multilingualism and its awareness of the difficulties resulting from the application of this principle. What also distinguishes the Parliament from other EU institutions is that it has its own "*Code of Conduct on Multilingualism*"[43]. The first version, adopted in 2004[44], followed the previously issued resolutions and decisions concerning the Multi-annual Plan on preparing for Parliament for an enlarged European Union. The concept of "controlled full multilingualism" was developed in the aforementioned document. As declared by Parliament, 'controlled full multilingualism' represents the only means of keeping the costs of multilingualism within acceptable budgetary limits, whilst maintaining equality among Members and citizens". The development of this concept was said to serve "the more practical proposals concerning the more effective use of resources. The latest version of the Code, adopted in 2014, changed the name of the concept into 'resource efficient full multilingualism'[45] consequently, declaring to "lay down the implementing arrangements (of the language-related rights contained in Parliament's Rules of Procedure), and, in particular, the priorities to be observed in cases where language resources are not sufficient to provide all the facilities requested". The Code further explains that the control of language resources is to be carried out in respect of the users' real needs. These measures were introduced "to make users more aware of their responsibilities and [to enable] more effective planning of requests for language facilities" (Article 1 point 2 of the Code). The Code sets out orders of priority, both for interpretation (Article 2) and translation (Article 13), and provides rules for governing requests for interpretation and translation, their scheduling and processing, and document circulation, as well as the necessary deadlines for requests for language services and their cancellation. Articles 2 and 13 of Code list the Parliamentary bodies entitled to request language and interpretation services (referred to as "users"). These include Parliamentary governing bodies, committees, and delegations. Priority is also given to situations where language

[43]Bureau of the European Parliament. 2014. Code of conduct on multilingualism from 16 June 2014, available at: http://www.europarl.europa.eu/pdf/multilinguisme/coc2014_en.pdf (accessed February 28, 2016)

[44]Bureau of the European Parliament. 2004. Code of conduct on multilingualism from 19 April 2004, available at: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/budg20040727/code%20en.pdf (accessed February 28, 2016)

[45]http://www.europarl.europa.eu/pdf/multilinguisme/coc2014_pl.pdf (accessed February 28, 2016)

services need to be provided, such as interpreting meetings and translating documents.

Interpretation services are generally reserved for meetings of Parliamentary bodies (Article 2). They can only be granted for administrative meetings in exceptional circumstances, which must fulfil additional requirements. All users (with the exception of plenary sittings) are required to have a language profile containing the languages they actually use (Article 4). The Code sets limits on the number of languages that can be interpreted for meetings outside the workplace (Article 5), limits to the number of meetings with simultaneous interpretation into several languages (Article 7), as well as limits on the length of documents that can be translated (Article 14 specifies maximum lengths for different types of documents). The general deadline for requests for interpretation services is three weeks before the date of a workplace meeting or six weeks before an external meeting (Article 8). The Code also requires an internal computer system to have been set to manage the document circulation (Article 9). Finally, Article 15 contains provisions for evaluating language services in respect of the Code along with budgetary guidelines.

The idea of such regulations has been criticised in the literature. As Baaij (2012) argues: "cost-cutting measures actually facilitate a limited internal institutional multilingualism". He further maintains that need-based budgeting strategies end up rationalizing the predominant use of English (a preferred language within many institutions), so undermining the fundamental EU principle of equal democratic representation.

Nevertheless, the official acknowledgement of practical limitations to multilingualism should be seen as positive. Apart from its cost-cutting importance, it introduces measures aimed at better timekeeping and organisation. In my view, the idea of adopting a set of rules concerning practical language arrangements can be seen as possible means to fill the gap between the very general Rules of Procedure of individual institutions, and their largely unregulated day-to-day reality. Parliament's *Code of Conduct on Multilingualism*, and its announcement to the public, exemplifies the efforts to organize internal work in respect of the general principle, and with regards to requirements of efficiency and economy. Of course, the possibility of arguing with this particular solutions remains open.

As stated before, other EU institutions do not have any legal basis for the restrictions on multilingualism that they apply to their day-to-day work. They operate under very general provisions, declaring respect for multilingualism, but also stating that special language arrangements can be prescribed in certain situations (Rules of Procedure of the Commission).

Nevertheless, no rules about special language arrangements have ever been published. Consequently, this does not stop them restricting the number of languages they actually use in their internal work without the need for justification. Moreover, the institutions themselves often refer to working or procedural languages, which are limited to a small number of official EU languages, in their official statements and other non-legal documents. Many examples of such practice can be found in documents related to job and traineeship offers. For example, the traineeship application form for the Court of Justice of the European Union is available only in English and French (the English version was added only recently). The Court advises candidates that: "in view of the nature of the working environment, a good knowledge of French is desirable"[46]. On the official internet page of the Commission's Traineeship Office, the FAQs advise would-be trainees that: "The working languages of the European Commission are English, French and German"[47]. In the FAQs on multilingualism and language learning, an EU Commission Memo from 2012, referred to these three languages as "procedural languages"[48]. This terminological inconsistency is not surprising when you take into account the lack of detailed rules concerning multilingualism within the internal activities of the Commission.

External communications of EU institutions, generally protected by the Treaties, the Charter, Regulation 1/1958, as well as in the Rules of Procedure of particular institutions, also have a sensitive aspect. The protection refers only to written communication with citizens. It does not cover internet pages, press

[46]Court of Justice of the European Union, official information on traineeships, published at: http://curia.europa.eu/jcms/jcms/Jo2_7008/ (accessed February 28, 2016)

[47]http://ec.europa.eu/stages/information/faq_en.htm (accessed February 28, 2016)

[48]http://europa.eu/rapid/press-release_MEMO-12-703_en.htm?locale=en (accessed February 28, 2016). Moreover, the former (2014) Commission's internet page concerning language policy described English, French and German as the three core languages of the European Union "In order to reduce the cost to the European taxpayer, the European Commission is increasingly endeavouring to operate in the three core languages of the European Union; English, French, and German, while developing responsive language policies to serve the remaining 21 official language groups" (http://ec.europa.eu/languages/policy/language-policy/index_en.htm, accessed August 16, 2014). Surprisingly, in the latest version of this site the information disappeared, but a new one concerning internet policy was added: "In order to reduce the cost to the tax payer, the European Commission aims to provide visitors with web content either in their own language or in one they can understand, depending on their real needs. This language policy will be applied as consistently as possible across the new web presence. An evidence-based, user-focused approach will be used to decide whether many language versions are required or not." http://ec.europa.eu/languages/policy/linguistic-diversity/official-languages-eu_en.htm (accessed February 28, 2016).

releases, or other means of communication. These issues have been raised in many questions filed by the Members of the European Parliament. For example, Georgios Papanikolaou (Papanikolaou 2012) requested information on language versions for the Commission's press releases. He asked about the criteria used for determining of the number and choice of the languages for the translation of press releases along with the percentage of press releases available in all languages, and, in particular, Greek. He also asked whether the Commission was endeavouring to increase the number of documents translated into all official languages. The Commission answered that, in first half of 2012, out of a total of 2951 press releases, 89% were published only in English, French and German, and only 11% in more than 22 official languages. There was no direct answer to the question whether the Commission plans to increase the percentage of press releases available in all official languages. Instead, they stated that: "when deciding on the translation of a given press release, the Commission considers its relevance for particular countries and the translation costs. The press release is then translated on an *ad hoc* basis according to this assessment."[49] Other questions, raised by Axel Voss (Voss 2011), Karl-Heinz Florenz (Florenz 2011), Daciana Octavia Sârbu (Sârbu 2011) and Nathalie Griesbeck (Griesbeck 2011), concerned language versions of the EU institutions' official internet pages. In answer, the Commission openly admitted the dominant of usage of English in documents that are not legally binding[50]. It stated that (as of 2011) "24.2% of pages on the Europa EU and European Commission websites were available in 22 or 23 languages. 96.7% of those pages were available in English, 39.9% in French and 34.7% in German"[51]. The Commission also repeatedly explained its efforts to ensure multilingualism on its internet pages while, at the same time, making the following reservations. "The choice of languages on a site depends on its target audience, the nature of the content, the amount of information, and its lifetime. […] For reasons of cost-effectiveness, highly-specialised sites addressing a relatively small target group are available in fewer languages. As for urgent information with a short lifespan, such as news, the Commission aims

[49]Answer given by Mrs Reding on behalf of the Commission on 28 August 2012, E-007013/2012, OJ C 219 E, 31/07/2013

[50]Answer given by Mrs Reding on behalf of the Commission, on 10 May 2011, E-002764/2011, OJ C 309 E, 21/10/2011

[51]Answer given by Mrs Reding on behalf of the Commission, on 10 May 2011, E-002764/2011, OJ C 309 E, 21/10/2011

to provide it without any delay. So such documents are often not published in all languages."[52]

With regard to internet communication, the Commission has now launched the *Information Providers Guide – EU Internet Handbook*, which contains a separate section devoted to language coverage. It makes a distinction between general and specialised content, based on the character of information and its target audience. Contents of a general character (in response to a legal obligation, online public consultations, when the general public is the target audience, access to funding, or any stable content with a wide audience) is to be published in all official EU languages (at the same time or subsequently), whereas the specialised content can be published in limited number of languages, depending on the users' needs.

In practice, many internet pages of EU institutions have only been available in limited number of languages for a long time, often with a kind notice saying "other language versions will be added shortly". For example, the European Commission's internet page on language policy, containing very basic information on the matter, was available only in English as of June 2014.[53]

The issue of the Handbook and the formulation of a policy on language-related matters concerning internet pages is a step in the right direction. Maybe there should be a published schedule to make the public aware of when translations will be available, as well as providing an initiative for information providers to really make the language versions available as soon as possible. It should be noted that, at the date of writing, the *EU Internet Handbook* itself is available only in English and still needs to be translated into the remaining 23 official languages.

[52]Answer given by Mrs Reding on behalf of the Commission, on 29 April 2011, P-003280/2011, , OJ C 309 E, 21/10/2011

[53]http://ec.europa.eu/languages/policy/language-policy/index_en.htm (accessed June 26, 2014). In current version of this site, the other language versions has been added http://ec.europa.eu/languages/policy /linguistic-diversity/official-languages-eu_en.htm (lately accessed February 28, 2016)

Other highlighted challenges

Amongst the other issues raised as problems for institutional multilingualism, efficiency, time, and cost are the most important. First of all, it is obvious that daily operation in 24 languages would be extremely costly time-consuming. According to the Commission, the total cost of translation and interpretation in all the EU institutions[54] is around €1 billion per year. This represents less than 1% of the EU budget or just over €2 per citizen. [55] European Politicians often refer to the low cost of EU multilingualism as the price of a cup of coffee per citizen (Orban 2007). Various EU institutions[56]underline the importance of linguistic variety for the EU, its cultural heritage and democracy, but at the same time boast about keeping the costs down. As C.J Baaij notes, "if the aim is as important as the fundamental rights, values, the democracy itself, then there is no problem for us to pay more than one cup of coffee" (Baaij, 2012: 4.1). According to Baaij "cost should not be raised as a reason for limiting multilingualism in the EU".

Multilingualism raises a huge challenge for the organisation of institutional work. Efficiency and time are considered to be the most difficult to reconcile within the ideal of multilingual administration. In this regard, the measures regulated in the European Parliament's *Code of Conduct on Multilingualism* – such as rules concerning deadlines, procedures for document circulation and orders of priority – appear to be responsible institutional reaction to the present challenges, even if they do not represent the whole solution.

Possible solutions

In his article, C.J. Baaij presented and analysed three proposals for the elimination of inconsistencies between the general principle of institutional multilingualism and the reality of internal practices:

- Increasing the budget for multilingualism
- Relegating the principles of multilingualism

[54] including the European Commission, European Parliament, Council, Court of Justice of the European Union, European Court of Auditors, European Economic and Social Committee, Committee of Regions

[55]Source: official Commission's internet site (accessed August 20, 2014) http://europa.eu/rapid/press-release_MEMO-13-825_en.htm

[56]e.g. Parliament in its Code of Conduct of Multilingualism, Commission on its Communications and the internet site concerning the language policy, EU Commissioners for Multilingualism

- The language learning and Possible Value of a European *Lingua Franca* (Baaij, 2012: 4.1-4.3).

Baaij found the first and the second solutions insufficient. He stated, that "there seems to be a strong economic and practical argument in favour of a limited number of official EU languages, and for a slimmed-down multilingualism for the EU institutions' internal operations" (Baaij, 2012: 4.1). In this regard, it is worth adding that an increase in financial resources for multilingualism can be seen as a natural consequence of increasing number of EU official languages. If the EU continues to add new official languages (even if only as a result of its enlargement), it has to spend more money to guarantee the same level of institutional multilingualism. This has already been proved to be inconsistent with EU policy on the matter. Baaij points out that the huge increase in EU official languages may potentially prove to be "unmanageable and detrimental to the quality of everyday communication" (Baaij 2012: 4.1). Therefore, in my view it is not the amount of money but the way it is allocated that could help to solve the described problems. The allocation of current and additional financial resources for the current number of EU official languages should be reconsidered and better used to manage linguistic variety. The EU should continue its research on tools and computer programmes for assisting translation and interpretation, as well as improving mechanisms for the management of multilingual work (such as those foreseen by the EU Parliament).

The second solution presented by C.J Baaij, namely the relegation of the principle of multilingualism, is presented on the basis of the CJEU judgements in Kik v. OHIM and Spain v. Eurojust. He criticized the Court's attempt to downgrade fundamental principles in order to appease practical and budgetary considerations (Baaij 2012: 4.2). His analysis revealed the difficulties of changing the rhetoric that has presented multilingualism as a core value and essential part of EU democracy. However, Baaij's criticisms of the Court in these two cases do not seem to exclude other possibilities for change. Maybe the solution requires a reformulation of existing legal principles and the adoption of new legal rules. For example, the practical limitations placed on the number of working languages used for administrative issues could be regulated and made open knowledge. In any event, it is not acceptable to publicly praise the idea of linguistic variety while unofficially adopting arbitrary limitations, about which there is no public unawareness or declared justification. If limitations are necessary and inevitable, there should be no problem in admitting their existence in legal provisions and public speeches.

C J. Baaij opts for third solution, namely the possibility of promotion and recognition of English as an European *Lingua Franca*. He suggests that: "if

the EU institutions are not able to use all languages that EU citizens speak, then it should work towards having citizens speak the language or languages that they uses" (Baaij 2012: 4.3). Aware of the difficulties and sensitivity of this solution, he argues it would increase the coherence and credibility of EU policy on multilingualism. He supports the proposal of the High Level Group on Multilingualism to continue the research on the pros and cons of this solution. Other possible candidates for a *Lingua Franca* have been discussed, including Latin and an International Auxiliary Language (Gobbo 2005).

However, the EU officially continues to deny the idea of reducing the number of official EU languages or the introduction of an official *Lingua Franca* (European Commission 2013). The potential acceptance of the domination of English and the resignation of EU multilingualism has also been criticized by a number of researchers. Amongst these, Robert Phillipson (2003: 338) sees multilingualism as a way to prevent "linguistic imperialism" of English-speaking people and countries.

The recognition of English as European *Lingua Franca* encompasses elements of other solutions listed above. First of all, the potential acceptance of an European Lingua Franca would have to result in a reformulation of the principle of multilingualism, as well as changes in multilingual EU administration and the way financial resources are allocated. In this matter it should be considered that even if the EU will not accept such a radical solution, it will not be able to escape from taking a choice between further limitations of institutional multilingualism (due to the increasing number of official languages, resulting in financial and organisational challenges) and resignation of its current limitations in order to better realise the ideal of multilingual community (including further changes in its policy towards migrant and regional languages, increasing the costs of multilingualism).

Conclusion

The research shows that institutional practices of the main EU institutions differ from the declarations made by EU politicians. Reconciling the inconsistencies between political rhetoric invoking fundamental principles and institutional practices that often ignore them is a very difficult task. Any decision taken would involve a reformulation the principle of multilingualism and a re-evaluation of the linguistic regime and its associated rights. Needless to say, any change would have organisational and financial implications, but perhaps the hardest to achieve of all would be a change in rhetoric.

In my view, the first step to be taken is the development of clear rules concerning institutional multilingualism, its scope and limitation. We also need sincerity of on the part of EU politicians and institutions in the public debate to provide the whole story on multilingualism, not just the parts they think we want to hear.

Lately, slight changes of rhetoric can be observed. Androulla Vassiliou, the former EU Commissioner for Education, Culture, Multilingualism and Youth, admitted the domination of the English language (Vassiliou 2013). At the same time, she highlighted the importance of learning other foreign languages. "while English may be seen as a 'basic skill' today […] I am still absolutely convinced that it is more and more the knowledge of other languages that can make the difference in getting a job and progressing in one's career" (Vassiliou 2013). Surprisingly, multilingualism disappeared from the current (2014-2019) Comission's main working areas – it is no longer pointed out as working field of any particular Commissioner (the Vassiliou's successor, Tibor Navracsics, works as commissioner for Education, Culture, Youth and Sport)[57].

Nevertheless, EU institutions are also starting to inform us about their practical limitations of multilingualism by referring to "working"[58], "procedural"[59] languages or "core languages of European Union"[60]. Such statements can be treated as a "wind of change" towards a new shape for institutional multilingualism in Europe. Only the sufficient and sincere information about the present can provide the basis for better future. Nonetheless, the present challenges and observed inconsistencies require more decisive and resolute steps to be taken by competent authorities.

[57]Official information at the internet site of the Commission http://ec.europa.eu/commission/2014-2019/navracsics_en (accessed February 28, 2016)

[58]For example the information on traineeships at the CJEU, http://curia.europa.eu/jcms/jcms/Jo2_7008/ (accessed February 28, 2016)

[59]European Commission, MEMO, Frequently asked questions on languages in Europe, from 26 September 2013, http://europa.eu/rapid/press-release_MEMO-13-825_en.htm(accessed February 28, 2016))

[60]official internet site of the European Commission from 2014 http://ec.europa.eu/languages/policy/language-policy/official_languages_en.htm (accessed June 20, 2014).

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A review of "*Wybór dokumentów austriackich dla kandydatów na tłumaczy przysięgłych. Auswahl österreichischer Dokumente für Kandidaten zum beeideten Übersetzer/Dolmetscher*" by Artur Dariusz KUBACKI

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Artur Kubacki's brand new book was published recently, in 2015 in Chrzanów by Publishing House Biuro Tłumaczeń KUBART. Artur Dariusz Kubacki is Professor at the Institute of Neophilology, Pedagogical University of Cracow, a sworn interpreter and translator of German, an expert member of the Polish Society of Sworn and Specialized Translators (TEPIS) as well as a member of the Polish Translators and Interpreters Association (STP) in Warszawa. Moreover, since 2005 he has been a consultant of the State Examination Board established by the Minister of Justice to conduct examinations for sworn translators and interpreters in Poland.

Artur Dariusz Kubacki deals with legal and judicial translations for many years that is why he is an expert in this field. The author published some books concerning certified and legal translations and the enormous number of articles. The series of books constitute an intensive and indispensable training for potential translators and interpreters.

The latest book "Wybór dokumentów austriackich dla kandydatów na tłumaczy przysięgłych. Auswahl osterreichischer Dokumente fur Kandidaten zum beeideten Übersetzer/Dolmetscher" concerns the Austrian variety of German and translation process of Austrian documents. There is a great number

of documents from different branches of law and administration, all of them being authentic Austrian documents.

The book comprises 12 chapters, each of them divided into sub-chapters. The titles of the chapters are available in two language versions: in Polish and in German, while sub-chapters are in German. The main part of the book, i.e. the set of Austrian documents, is preceded by the introduction in Polish and German, where the author underlines that German is a pluricentric language and the main focus is put on standard German used in Germany, while Austrian and Swiss German remain still neglected. Artur Kubacki emphasises that the aim of this book is to provide information about the Austrian specialized documents and notions and to sensitize German language learners to usage of specialized terms adjusted to concrete variety of the language.

The introduction is followed by considerations about the pluricentricity of German language in translation process. The author describes the differences between standard German and Austrian German which concern morphology, lexis, pragmatics and orthography. There is also an abstract in three languages: Polish, English and German.

The first chapter is entitled "Dokumenty wydane przez USC i Instytucje Kościelne – Standesamtliche und kirchliche Urkunden" (Documents issued by the register office and ecclesiastical institutions). There are different types of Austrian documents i.e. birth certificate, certificate of baptism, death certificate, marriage certificate etc.

The second chapter concerns the documents issued by schools and universities: "Dokumenty wydane przez szkoły i uczelnie wyższe – Schul- und Hochschuldokumente". The documents which can be found in this chapter are e.g. school attendance confirmation, school leaving certificate and so forth.

The third chapter relates to documents issued by the self-government administration: "Dokumenty wydane przez administrację samorządową – Dokumente der Geimeindeselbstverwaltung". There are i.a.: confirmation of citizenship, first name change notification etc.

The fourth chapter comprises the documents issued by a notary: "Dokumenty wydane przez notariusza – Notarielle Urkunden", where following documents can be found: land registry extract, purchase contract, notarial deed e.g. power of attorney etc.

The fifth chapter is devoted to documents issued by police: "Dokumenty wydane przez policję – Polizeiliche Dokumente" e.g. about theft or other notifications.

The sixth chapter which is entitled "Dokumenty wydane przez sąd – Gerichtliche Schriftstucke" (documents issued by the court) is divided into four

parts: in civil cases, criminal cases, administrative cases and in economic cases which, in turn, are divided into sub-chapters.

The seventh chapter includes the documents issued by banks and credit institutions: "Dokumenty wydane przez banki i instytucje kredytowe – Unterlagen aus Banken und Kreditinstituten". There is i.e. request for bank account opening, closure of bank account etc.

The eighth chapter contains documents issued by insurance companies: "Dokumenty wydane przez firmy ubezpieczeniowe – Unterlagen aus Versicherungsunternehmen", i.e. vehicle registration certificate, life insurance policy, accident insurance policy etc.

The ninth chapter is devoted to documents issued by place of work/employee organization: "Dokumenty wydane przez zakład pracy/organizacje pracobiorców – Unterlagen au seiner Arbeitsstatte/Arbeitnehmerorganisation". The reader can find here i.e. payslip, travel expenses allowance, employment contract etc.

The tenth chapter comprises documents issued by tax office[61]: "Dokumenty wydane przez urząd skarbowy – Dokumente aus dem Finanzamt", i.a. income tax assessment etc.

The eleventh chapter includes the documents issued by doctors or hospital administration: "Dokumenty wydane przez lekarzy lub administrację szpitala – Dokumente von einem Arzt oder aus einem Krankenhaus". In this chapter there are i.a. following documents: hospital discharge, X-ray result etc.

The last chapter, the twelfth one, deals with documents issued by other institutions: "Dokumenty wydane przez pozostałe instytucje – Durch sonstige Einrichtungen ausgestellte Dokumente". The documents included in this chapter are i.a.: flat rental agreement, bill, prompt note etc.

In the final part of the book the reader can find an extensive list of references and the list of abbreviations that appear in the book and may be useful in the translation process. There is also the alphabetical list of documents and the page indication, where a particular document can be found in the book.

Artur Dariusz Kubacki's book is the ideal offer for people willing to become specialized and competent translators and interpreters of German language but also a perfect support for people who work as translators yet. They can broaden their knowledge, use the authentic documents that appear in the book as comparison to German or Polish ones and find Austrian equivalents of certain terms. The book needs to be thoroughly studied by people preparing for exams to become sworn translators and interpreters.

[61]In Great Britain the institution is called the Inland Revenue.

It should be underlined that the other books published by Artur Kubacki which concern certified translations are also indispensable for everyone who wants to devote their life to professional translations. The knowledge gained by Artur Kubacki as an expert member of the Polish Society of Sworn and Specialised Translators (TEPIS) as well as a member of the Polish Translators and Interpreters Association (STP) and the number of years devoted to job as a sworn translator and interpreter contributed to the high quality of the books.

Concept of German pluricentrism

The problem of pluricentrism and varieties of German were frequently analysed by Professor Kubacki in his works. He specializes in judicial and legal translation and lexical differences in German-speaking countries. According to Kubacki (2014: 163) German was treated until the end of the 80s of the twentieth century as a monocentric language. Then it started to be perceived as a pluricentric language.

The pluricentric languages can cause a lot of difficulties for foreign language learners and for translators and interpreters. German is a language used in several countries, hence each of those countries has its own varieties which differ from each other. German is used in Germany, Austria, Luxembourg, Switzerland, Lichtenstein but also in eastern Belgium or in southern Tyrol in Italy.

In Germany or Austria it is the sole national language however in Switzerland it functions alongside French, Italian and Romansh, in Luxembourg alongside French and Luxembourgish. On the one hand, German has a standard orthography, grammar rules and vocabulary but on the other hand it can vary from region to region (Russ 1994, 2).

Clyne (1992: 1) summarizes the concept of pluricentrism in the following way: “Pluricentric languages are both unifiers and dividers of people. They unify people through the use of the language and separate them through the development of national norms and indices and linguistic variables with which the speakers identify. They mark group boundaries indicating who belongs and who does not.”

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