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Preface

This volume of *Comparative Legilinguistics* contains five articles. Two of them refer to language and terminology in legal settings, two to legal translation and one to legal corpora.

Michal KUBÁNEK and Ondřej KLABAL from the Czech Republic (*Plain or Archaic: The New Czech Civil Code Going against the Flow*) discuss the terminology included in the new version of Civil Code of the Czech Republic which will enter into force on January 1, 2014 and terminological decisions made by legislators. The analysis and survey carried out by the authors have revealed that the applied terminology is to a large extent unknown to lay people. However, the authors remind the readers that statutory instruments play a very special role and therefore they cannot be expected to be understood by everyone.

The second paper by Mami Hiraike OKAWARA from Japan (*Lay Understanding of Legal Terminology in the Era of the Japanese Lay Judge System*) touches upon the unintelligible nature of legal terminology from the perspective of persons not well versed in law, that is to say, lay judges and the attempts to make the terminology more easily accessible and understandable for them. In the second part of the article a case study is presented illustrating the discussed terminological quandaries.

Hanna JUSZKIEWICZ (Poland) in her paper titled *Dissolution of Marriage: Functional Approach to Polish-English Translation of Selected Court Documents* presents the analysis of problems which may be encountered when translating selected court documents in divorce and judicial separation cases. The research reveals that translators need a more advanced and context sensitive legal dictionary than the typical ones available on the market.

Łukasz ZYGMUNT, a Polish prosecutor, (*Lexical Pitfalls in Polish-English Legal Translation: a Case Study Involving Students of English Philology in Poland*) deals with difficulties connected with the lack of full equivalents for Polish legal terminology in English. The author presents a selection of examples and discusses why they may not be considered sufficiently equivalent.

The next section contains only one paper by Juliette SCOTT from the UK (*Can Genre-Specific Diy Corpora, Compiled by Legal Translators Themselves, Assist Them in 'Learning the Lingo' of Legal Subgenres?*) who presents very inspiring research into the role of corpora in legal translation. The author rightly notes that highly specialized corpora are indispensible in the legal translators' work especially if there are no legal dictionaries and thesauri for a given language pair.

The last section in the volume contains three reviews. Marcus GALDIA reviews The Oxford Handbook of Language and Law, edited by Peter M. Tiersma and Lawrence M. Solan published by the Oxford University Press in 2012. Karolina KACZMAREK reviews *Vagueness in Normative Texts* edited by Vijay K. Bhatia, Jan Engberg, Maurizio Gotti and Dorothee Heller published as 23 volume of the Linguistic Insight Series. Finally, Aleksandra MATULEWSKA reviews the book edited by Maurizio Gotti and Christopher WILLIAMS titled *Legal Discourse Across Languages and Cultures*, issue 117 of the series Linguistic Insights edited by Maurizio Gotti and published by Peter Lang.

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

PLAIN OR ARCHAIC: THE NEW CZECH CIVIL CODE GOING AGAINST THE FLOW

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Abstract: The article presents the discussion on the wording of the new Civil Code of the Czech Republic which becomes effective on January 1, 2014. Some critics claim that the Code contains many newly coined or re-introduced terms which are unknown to the general public and may even feel archaic. Inspired by this debate, a survey was carried out in which a group of students was asked to assess the perceived familiarity with ten terms selected from the new Code and also mark the terms with respect to their perceived stylistic features. All the terms had been analysed with respect to their relative frequency in various text types using the Czech National Corpus. Only one term was assessed as known by more than 40% of the subjects. The same portion of the subjects marked six terms as archaic and five terms as strangely formed. The results show that the debate on the wording was justified. Nevertheless, the requirement for accessibility of legal documents to the general public should be seen with due consideration to various functions, situations and contexts in which individual genres and text types are used.
KEYWORDS**:** legal drafting, plain language, term motivation, archaism, Civil Code

SROZUMITELNOST NEBO ARCHAIČNOST: NOVÝ OBČANSKÝ ZÁKONÍK POPÍRÁ TRENDY

Abstrakt (Czech / česky): V úvodu článek seznamuje s diskuzí o znění nového občanského zákoníku České republiky, který nabývá účinnosti 1. ledna 2014. Podle některých kritických ohlasů zákon obsahuje mnoho nově utvořených nebo zpětně zavedených termínů, které veřejnost nezná
a které mohou dokonce působit archaicky. Na základě této diskuze byl proveden výzkum, v rámci kterého měla skupina studentů za úkol označit deset termínů vybraných z nového zákona s ohledem na to, zda si myslí, že jejich význam je jim známý, a dále označit, jak tyto termíny vnímají s ohledem na jejich stylistickou hodnotu. U všech termínů byla provedena analýza se zaměřením na jejich relativní frekvenci v různých typech textů s využitím Českého národního korpusu. Pouze jeden termín byl označen jako známý více než 40 % účastníků výzkumu. Stejný podíl účastníků označil šest termínů za archaické a pět termínů za neobvykle utvořené. Výsledky naznačují, že diskuse o znění zákona byla oprávněná. Nicméně požadavek na všeobecnou

srozumitelnost právních dokumentů pro širokou veřejnost je třeba vnímat ve vztahu k různým funkcím, situacím a kontextům, v rámci kterých se jednotlivé žánry a typy textů používají.
KLÍČOVÁ SLOVA (Czech / česky): tvorba právních dokumentů, srozumitelný jazyk, motivace termínů, archaismus, občanský zákoník

PROSTY CZY ARCHAICZY: NOWY CZESKI KODEKS CYWILNY PŁYNIE POD PRĄD

Abstrakt: Język nowego czeskiego kodeksu cywilnego, który wejdzie w życie w styczniu 2014, wywołał w Czechach dyskusję. Niektórzy krytycy twierdzą, że kodeks ten zawiera wiele nowo utworzonych lub wprowadzonych ponownie terminów, które są powszechnie niezrozumiałe i mogą brzmieć archaicznie. Debata ta dała powód do przeprowadzenia badania, w którym poproszono studentów o określenie stopnia znajomości wybranych terminów z nowego kodeksu oraz określenie ich cech stylistycznych. Wszytkie terminy zostały przeanalizowane pod kątem częstotliwości występowania przy użyciu Narodowego Korpusu Języka Czeskiego. Tylko jeden z badanych terminów został oceniony jako zrozumiały przez 40% respondentów. Taka sama liczba badanych określiła sześć terminów jako archaiczne i pięć jako utworzone w dziwny sposób. Wyniki pokazują, że debata na temat sfomułowania nowego kodeksu była uzasadniona.

1 Introduction

The fact that the language of legal drafting tends to be archaic is a well known and documented phenomenon. In this respect, Matilla (2006, 93–94) identifies the following reasons: conservative mentality of lawyers, long-standing tradition of certain legal documents, efforts to avoid ambiguity and use "proven" wordings, and in some cases the tendency to use solemn and conservative language by authoritarian regimes.

On the other hand, there have been attempts to reform the style in which legal documents are written to make them more understandable and accessible to the general public. Petelin (2010) provides a brief account of the plain language movement in English speaking countries where such campaigns seem to be particularly prominent.[1] In 2010, the European Commission started its own campaign for clear writing and published simple guidelines individually for each of the twenty-three official languages (Wagner 2010). The aims of such campaigns are very similar: to facilitate effective communication with fewer errors and thus ensure cost savings, to respond to the call of the users of legal documents and the requirements imposed by various authorities, or to improve the image of lawyers (Asprey 2003, 33–59).

Voices critical of these attempts should also be mentioned. In his essay "A Defense of Legal Writing", Richard Hyland (1986) argues that the major difference between legal writing and other written discourses is that law requires highly conceptualized thinking. The author concludes that:

> despite the critics' fervent wish and the idea's utopian appeal, legal concepts cannot be translated into Plain English by looking in a thesaurus, and it is either delusion or

[1] Apart from the initiatives and movements in the United Kingdom, USA, Canada, and Australia, the website of *The Plain Language Action and Information Network* links to similar campaigns in Sweden, Portugal, and Mexico (www.plainlanguage.gov/usingPL/world/index.cfm).

> demagoguery to proclaim that those with no legal training might understand a legal document merely because their vocabulary includes all of the words in which it is written (1986, 618).

From the linguistic perspective, critics primarily point out that language is a structured and stratified phenomenon, a system of interlinked systems. In their review of plain English campaigns, Chovanec and Budíková (2008) warn against hasty judgements regarding the seemingly inaccessible way in which legal documents are written. The authors stress that successful communication always reflects functional and situational conditions which give rise to the variety of styles, genres, and text types that can be identified in a language. It would be unreasonable to "flatten" these functional means of communication, as well as to expect that each specialized discourse would be understandable to everyone.

In 2011, the Czech Republic witnessed a debate on the wording of the newly drafted Civil Code. While it is virtually always the content of the bills which is discussed by politicians, experts, media, and the general public, in the case of the new Civil Code it was also the language and especially some terms used in it what was commented on. This article therefore introduces the principles of and grounds for the new Code and the major voices of the debate on its wording. Inspired by some of these opinions, a survey was carried out to see whether the debate was justified.

2 The New Civil Code

The new Civil Code of the Czech Republic[2] came into force on March 22, 2012 when it was signed by the President, but it will only become effective on January 1, 2014 so that all interested stakeholders may familiarize themselves with it. At present, the Civil Code which came into effect in 1964 in the former socialistic Czechoslovakia is still effective in the Czech Republic with more than thirty amendments which have been passed after the revolution in 1989. Considering the period of origin, the Code diverges from the continental law ideologically, terminologically, as well as systematically. As for the ideology, the existing Civil Code, in line with the socialistic law, places little emphasis on the man and related issues, which are regulated in 9 sections only. As for the legal system, private law is currently fragmented in several laws, with fields such as Family or Labour Law having separate code-like acts. With regard to the terminology, the existing Civil Code intentionally avoids some traditional private-law terms because Private Law was deemed not to exist, and replaced them with newly coined artificial terms (e.g. *svéprávnost* was substituted by *právní způsobilost*). Therefore, more than ten years ago, the drafting process started with the aim to create a new law which would ultimately replace the Civil Code of 1964.

The new Code is to a great extent based on a government bill of 1937, which was, however, never adopted due to the political development in Central Europe of that

[2] The Code is included in the *Collection of Acts of the Czech Republic* and referred to under its number 89/2012 Sb. Full text in Czech may be found at http://obcanskyzakonik.justice.cz/tinymce-storage/files/sb0033-2012.pdf.

time. The 1937 bill conceptually followed the Austrian-Hungarian ABGB Code. Therefore, the new Civil Code aims at adopting the ABGB values, while being more modern and fit for the 21st century at the same time. Three underlying principles of the new Code include: convention (i.e. conformity with the continental law and more generally with the Roman Law); discontinuity (with regard to the 1964 Code), which often manifests itself in the area of terminology and lexis; and integration (i.e. paying heed to the European legislation). Furthermore, the new Code is more anthropocentric than the previous one (see above).

The debate on the wording of the new Code became especially prominent before its final reading in the Parliament in autumn 2011. Critical voices of people of different professional backgrounds could be heard in the media. To mention but a few, Tomáš Mottl, Vice-President of the Union of Judges, admits that the Code brings a lot of positive things, but at the same time he believes that it was not necessary to make such a thick line and replace well-established and defined legal concepts with new ones. Jan Hurdík, Professor of Civil Law at the Faculty of Law, Masaryk University in Brno, thinks that "[t]he authors apparently suppose that the Code will be more likely used by people well-versed in law". Stanislav Polčák, lawyer and a Member of Parliament for one of the government parties claims that "[o]rdinary citizens will surely be lost. They will need the assistance of legal professionals even in common situations"[3].

While some critics maintain that the Code contains many newly revived terms which are unknown or feel archaic, the Ex-Minister of Justice Jiří Pospíšil argues:

> The degree to which the language is archaic or not is a very leading question. I am not a linguist. For me, it is crucial that it can be understood. But it is part of the cultural heritage and it builds on the legal tradition in this region. So, in my opinion, a certain degree of archaic form is not a problem[4].

In the same interview, Pospíšil also mentions that he has no signs that the new Code would not be understandable and easily accessible for young people. This claim inspired a survey which is described in the following section. The aim was to obtain judgement concerning perceived familiarity and stylistic features of selected terms from a group of university students. Due to its emphasis on individual lexical items, the survey offers only a very limited insight into the very complex phenomenon of legal drafting.

[3] The quotes and paraphrase are all taken from a summarizing article published in an online magazine and translated from Czech into English by the authors. (Němec, Jan. 2011. "Nad novým občanským zákoníkem se stáhla těžká mračna." *Aktuálně.cz*, July 23. Accessed May 15, 2012. http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=708108.).

[4] The quote is taken from an interview with the Ex-Minister of Justice Jiří Pospíšil who had been responsible for passing the Code in the Parliament in 2011. The quote was translated from Czech into English by the authors. (Němec, Jan. 2011. "Ministr: Revoluci v právu píšeme 10 let, na lepší nemám." *Aktuálně.cz*, August 28. Accessed May 15, 2012. http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=710578.).

3 The Survey

3.1 Material

For the purpose of the survey, ten terms were selected from the new Civil Code[5]. The selection was inspired by the discussion (some of the terms were specifically mentioned by experts as problematic). All the selected terms are single-word nouns and none of them is present in the still valid Civil Code of 1964. The terms were split into two groups of five members each in order to better concentrate on two phenomena which terminographers find relevant for the suitability of terms.

Group 1: Morphologically motivated terms derived from relatively common stems. Czech as a predominantly synthetic language has a rich inventory of affixes. Poštolková, Roudný and Tejnor (1983, 36–42) describe derivation as one of the fundamental term-formative means in Czech concluding that there is a strong tendency towards systematic usage of individual affixes within a single domain for referring to the concepts of the same semantic class. This systematic motivation facilitates semantic clarity of terms and makes their meaning more easily accessible (cf. also Sager 1997, 27–41 for morphological motivation in English). Group 1 therefore serves to investigate the effect of morphological motivation on the perceived qualities of terms.

The following list gives English equivalents or explanations of the terms, simple morphological, analyses, and the ratios of the derived word to its stem word as indicated by the Czech National Corpus[6] (CNC).

Rozhrada – a physical division between plots of land (e.g. a fence, a ditch…); *roz-* (pref) : to divide
+ *hrad*(*ba*) (stem): wall, fence; derivation ratio 2 / 21343.
Soupojištění – co-insurance; *sou-* (pref): together + *pojištění* (stem): insurance; derivation ratio 42 / 103178.
Švagrovství – relationship in-law (of a brother or sister in-law); *švagr*(*ová*) (stem): brother (sister) in-law + *-ství* (suf) : -hood (cf. parenthood); derivation ratio 10 / 6057.
Služebnost – servitude: a burden attaching to an estate for the benefit of an adjoining estate or of some definite person; *služba* (stem) : service + *-nost* (suf): -tude (cf. gratitude); derivation ratio 364 / 638955.
Výprosa – precarium: gratuitous loan in which the lender gives the use of a thing in express words, revocable at pleasure; *vy*(*ý*)- (pref): "to procure by means of the activity referred to by the stem" + *pros*(*it*) (stem): to ask (for something) *-a* (suf): "the product/service obtained from the activity referred to by the stem"; derivation ratio 1 / 73154.

[5] Since the purpose of the present study is primarily to introduce the debate on the wording of the new Civil Code and only suggest a way of gaining insight into the issue, the scope of the survey was limited to ten terms in order to keep it compact and convenient for the subjects. As mentioned by the critics, the new Civil Code contains a number of problematic terms; for illustration, other terms which might have been considered for the survey include *držba* (possession), *vypuditel* (an ejector; a person who ejects another person from possession), *beneficient* (beneficiary), or *průhon* (a cattle drive).

[6] Data and comments concerning selected terms are based on the SYN corpus which combines all synchronic written corpora created and managed under the project of the Czech National Corpus (Český národní korpus). It contains texts from the period between 1990 and 2010 with the total amount of 1.3 billion tokens.

Group 2: Terms with specific distribution within the lexicon. In the theory of terminology, one of the requirements for terms is that they are stylistically unmarked with no expressive or emotional load. It should, however, be noted that after a word has been taken from the general language and defined as a term in a specific domain (assigned to a concept), it loses its markedness (Poštolková, Roudný and Tejnor 1983, 76–77). Group 2 was compiled in order to investigate perceived stylistic features and markedness of the terms.

The following comments are based on the results of searches for the relative frequency of distribution of individual terms (lemmas) within the text-types recognized by CNC. It should be noted that apart from the term *prokura*, the remaining four words are often used not strictly terminologically in the respective sources.

> *Závdavek* – advance payment/earnest payment; the word appears with the highest relative frequency in works of fiction (49 tokens) and non-fiction (23 tokens) predominantly in the religious contexts, and in newspapers and magazines (148 tokens).
> *Pachtýř* – tenant (a party to gale); the word again appears with the highest relative frequency in works of fiction (65 tokens including for example the Czech translation of *Harry Potter and the Prisoner of Azkaban*), then in non-fiction publications dealing with history (29 tokens), and in newspapers and magazines (40 tokens).
> *Výměnek* – right to a granny flat; the word concludes the group of three words which were found with the highest relative frequency in works of fiction (54 tokens), then in non-fiction publications (20 tokens), and in newspapers and magazines (175 tokens). In most contexts, the word has no abstract meaning, but refers to the flat or part of a house as such.
> *Prokura* – procuration (a power of attorney related to running a business); the term appears almost exclusively in books and dictionaries dealing with law and economy (91 tokens) and with much lower relative frequency in newspaper and magazines articles dealing with the same topic (123 tokens).
> *Spolek* – club, association; unlike the previous words, this one is much more frequent in the general language (74736 tokens in CNC). Its relative frequency shows that it most often appears in newspapers and magazines, but also in fiction as well as non-fiction publications.

In addition, all terms were checked against a monolingual normative dictionary and a bilingual translation dictionary. The monolingual dictionary of standard Czech (Filipec 2009) contains the terms *závdavek*, *výměnek*, and *spolek*, and also the stems of *švagrovství* (*švagr*), *výprosa* (*vyprosit*), and *pachtýř* (*pacht*). The dictionary contains also the derived word *prokurista*, but not the stem *prokura*. *Rozhrada*, *soupojištění*, and *služebnost* are not included. The Czech English legal dictionary (Chromá 2010) contains all the selected words with the exception of *rozhrada*, *soupojištění*, and *výměnek*. *Pachtýř* is also not included, only the stem *pacht* and another derived word *pachtovné*. The relatively high coverage of these terms in the bilingual legal dictionary is just another proof of the fact that the concepts introduced are not new as such, but had been part of the legal theory even before the introduction of the New Civil Code.

3.2 Subjects and Procedure

Forty students of English for translators and interpreters at Palacký University in Olomouc took part in the survey. Out of them, 28 were at the BA level and 12 at the MA level of study, 7 were male and 33 female. All the students were native speakers of

Czech and all of them had already passed an introductory course which deals with concepts referred to in the survey (word formation, stylistic value, archaic, foreign origin; see below).

Before starting the completion of the survey administered via an online form, the subjects were instructed stressing the following points: give us your own opinion on the following terms; it is not a test, there are no correct or incorrect answers therefore do not search for the meaning of the terms on the Internet or in any dictionary. It was not mentioned that the terms are all taken from the new Civil Code. There was no time limit assigned. After the completion of the survey, students were asked to fill in a short questionnaire focusing on their specific experience with legal matters, e.g. studies at a faculty of law, part-time job in a company dealing with legal matters, or extensive experience in translating legal documents. None of the students reported any specific law experience.

The terms were presented to the subjects in two rounds. The first round investigated the degree into which the subjects felt familiar with each term. They could choose one of the following three options:

a) *I do not know the term and I would not be able to guess its meaning.*
b) *I do not know the term, but I think I would be able to guess its meaning.*
c) *I know the term and I would be able to explain its meaning.*

No actual proof (e.g. providing a definition or a choice out of multiple options) that the subjects knew the terms was required.

In the second round, the subjects were asked to judge each term with respect to its perceived stylistic features. The subjects could choose one to three options out of the following seven completions of the statement "*I think that the term is . . .*":

a) *used in general language*.
b) *used in special languages*.
c) *used in the language of law*.
d) *archaic*.
e) *strangely formed*.
f) *of foreign origin*.
g) *poetic*.

3.3 Results and Discussion

The results of the two rounds eliciting subjects' assessment of the selected terms are shown in Figure 1 (familiarity) and Figure 2 (stylistic features) below. As for the Group 1 focusing on morphological motivation, none of the terms were judged as known to more than 50% of the subjects. On the other hand, with the exception of the term *rozhrada* the other four terms scored relatively high (70% or more) when the answers in which the subjects felt that they either knew or would be able to guess the meaning of the terms are combined. This observation seems to be in accord with the claim that transparent morphological motivation is a desirable feature in terms because it brings easier access to the meaning of the terms.

Of course, the design of the experiment gives no proof that the subjects do really know the correct legal definitions of the terms judged as known or guessable. This issue may become apparent when the results of the two rounds are compared. The terms

služebnost and *výprosa* were marked as known or guessable by 70% and 80% of the subjects respectively, but Figure 2 shows that only 4 and 5 subjects respectively assigned these terms specifically to the language of law. Moreover, both terms were marked as archaic by more than 60% of the subjects. These results suggest that the subjects might not have been aware of the specific legal meaning of these terms.

Also, it is interesting that four out of the five terms (*rozhrada*, *soupojištění*, *švagrovství*, *výprosa*) received high scores as strangely formed terms. The term *rozhrada* which was marked as completely unknown by almost 70% of the subjects was coined for the new Code and its structure is quite complex and opaque. On the other hand, *švagrovství* was most often marked as known or guessable. The term fits into the class of words derived with the suffix *-ství* (*soused-ství*: *neighbour-hood*; *dět-ství*: *child-hood*), still it was felt as strangely formed by the highest number of subjects in the survey. This observation suggests that the subjects might have been referring in their judgements to the rather unusual combination of relatively common stems with the given affixes creating strangely sounding words rather than to the process of word formation as such.

Group 2 which was intended specifically for the investigation of stylistic features of the terms brought interesting results as well. The terms *pachýř* and *výměnek* were marked as completely unknown by more than 50% of the subjects even though these terms appear also outside legal documents in fiction. At the same time, the two terms were marked as archaic by 67.5% and 92.5% of the subjects respectively, *pachtýř* even scored relatively high as poetic (30%). Taking both groups of terms in the survey together, six out of the ten terms were felt as archaic by more than 40% of the subjects. Given the requirement on minimizing term markedness, this observation shows that the discussion on the wording of the Code was justified.

Similar to the observation in group 1 regarding actual familiarity of the subjects with the definitions of the terms, *závdavek* was judged as known or guessable by almost 90% of the subjects but majority of them assigned it to the general language which again suggests that the subjects might not have been familiar with its specific legal meaning. The case might be, as the concordances from the CNC show, that the term is used in general language in more abstract meaning referring to any promise or even enticement.

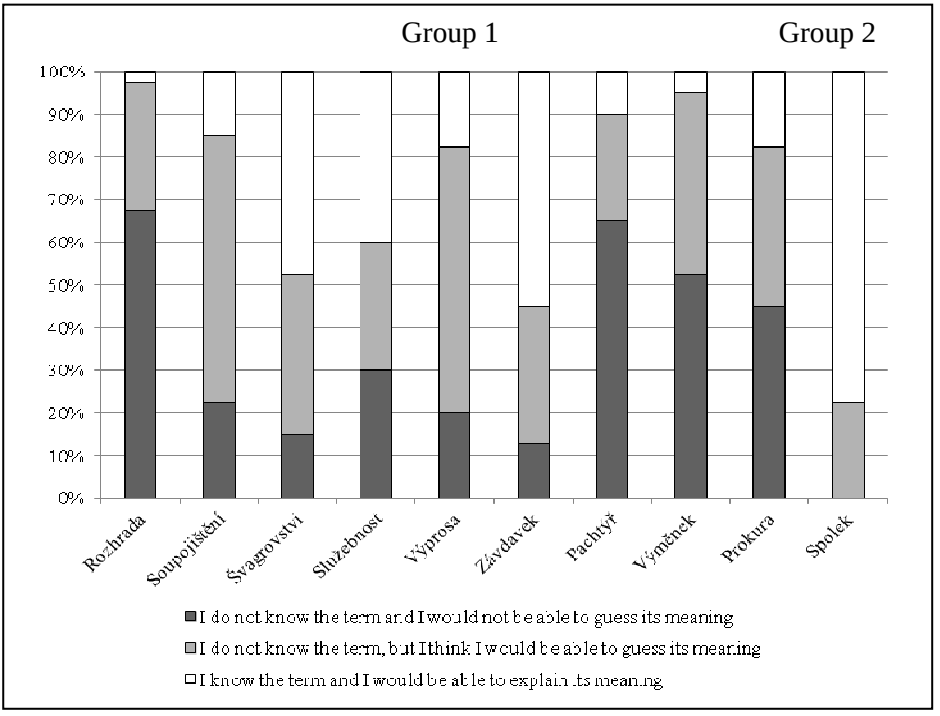
The results obtained for *závdavek* are similar to those for *spolek* which also scored high as a word from the general language the meaning of which was judged as known or guessable. But unlike *závdavek*, none of the subjects considered *spolek* archaic, strangely formed, or poetic. Therefore, it might serve as an example of an unmarked term taken from the general language to the special language of law where it has been assigned to a specific concept.

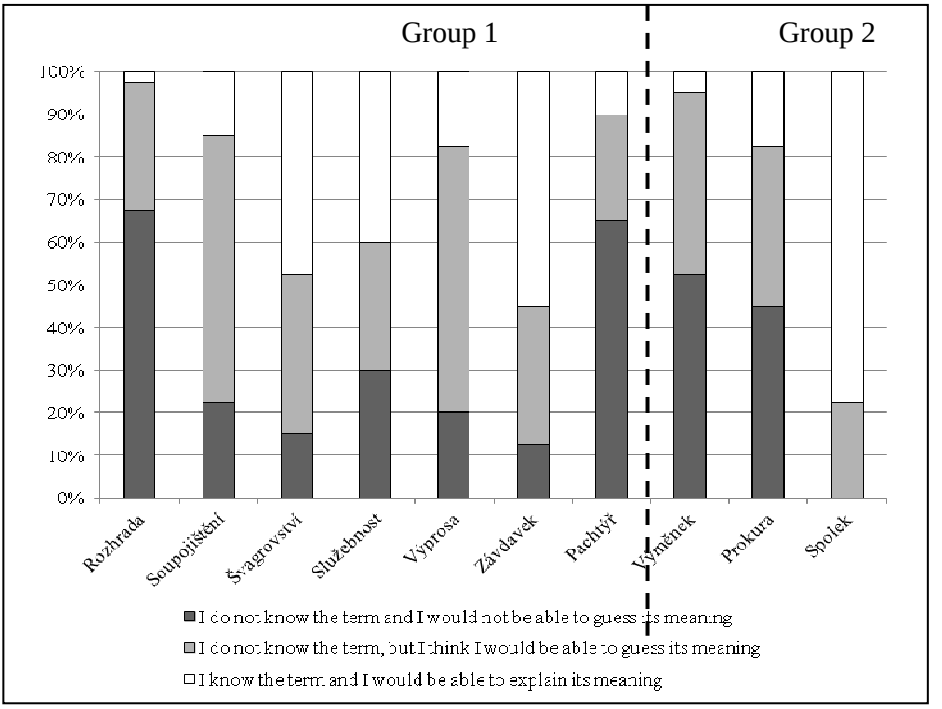
Finally, the term *prokura* was correctly identified as a term of foreign origin (40%) and as belonging to the language of law (77.5%). This might be due to its long-standing presence in the Commercial Code of 1991.

Figure 1: Subjects' perceived familiarity with the terms.

		used in general language	used in special languages	used in the language of law	archaic	strangely formed	of foreign origin	poetic
Group 1	Rozhrada	4	11	7	18	17	0	4
	Soupojištění	1	14	29	2	16	0	0
	Švagrovství	12	5	10	5	21	0	2
	Služebnost	9	7	4	24	6	0	5
	Výprosa	2	3	5	30	19	0	6
Group 2	Závdavek	24	4	6	18	1	0	3
	Pachtýř	3	3	2	37	3	0	12
	Výměnek	13	7	7	27	4	0	4
	Prokura	2	11	31	7	4	16	0
	Spolek	39	6	8	0	0	0	0

Figure 2: The number of subjects' assessment concerning stylistic features of selected terms. The darker the background colour of each cell the higher the number of subjects who marked the respective term with the given stylistic feature.





Conclusion

Overall, out of the ten terms which were selected for the survey on perceived familiarity and stylistic features six terms were marked as archaic and five as strangely formed by more than 40% of the subjects. Therefore we may conclude that the discussion on the wording of the new Civil Code was justified.

Generally, certain issues seem to be worth addressing in the process of drafting legal documents. The results for example show that morphologically motivated terms based on common stems are relatively more easily accessible while the re-introduction of previously used terms is more problematic. It is also advisable that linguists should be more involved in the drafting of important legal documents because they can provide valuable insights into language functioning. In the case investigated in this survey, it would be particularly the processes of term motivation and demotivation, issues of stylistic features, presence and loss of markedness, or function, situation and context sensitive usage of terms.

Finally, the demand that legal documents should be understandable and accessible to the general public should also be reflected on. Given the specific properties of legal thinking and conceptualization, it might perhaps be more reasonable to focus on individual genres and text types which correspond to various communicative situations, functions and needs. It this case, it might be interesting to observe in what ways, if any, the new Civil Code will be introduced to the general public and how the text types used will differ linguistically from the wording of the Code itself.

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LAY UNDERSTANDING OF LEGAL TERMINOLOGY IN THE ERA OF THE JAPANESE LAY JUDGE SYSTEM

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Abstract: This paper discusses the unintelligible nature of legal terminology from lay perspectives in the era of the lay judge system. First, I will introduce Japan's first plain language project which was set up by the lay-judge preparatory headquarters of Japan Federation of Bar Associations in preparation in 2005 for the lay judge system introduced in 2009. The project paraphrased sixty-one legal terms, which were important for lay judges but not known to lay people. I will show some rewording work, which was conducted by joint effort between legal and non-legal experts of the project. After the discussion of the rewording work I will move to a mock lay judge trial which was held by Maebashi District Courts, together with Maebashi District Public Prosecutors' Offices and Gunma Bar Association in 2006 to prepare for the lay judge system. I will focus on one unintelligible legal terminology, 'murder through willful negligence' (*mihitus no koi*) and discuss how the intent to murder was determined in a deliberation of a mock trial, using a discourse connective, 'the only thing is that…' (*tada*). The introduction of the lay judge system has therefore given a prodigious opportunity to work on plain legal language in Japan.

裁判員時代における市民の法律用語の理解についての考察

本論文は、法律専門用語のわかりにくさについて市民の観点から論じたものである。まず、2009年の裁判員制度導入にあたり日本弁護士連合会の裁判制度実施本部に2005年に設置された法廷用語日常語化プロジェクトについて紹介する。本プロジェクトでは、裁判で重要であるが市民が知らない法律用語61語の言換えを行った。本論の前半では、プロジェクトの法律家と非法律家の委員の協働の言換え作業について解説する。
次に、同じく裁判員制度導入にあたり行われた法曹三者合同模擬裁判の内で2006年の前橋地方裁判所と前橋検察庁と群馬弁護士会模擬裁判（山本純子事件）を取上げる。「未必の故意」という市民にとって理解困難な法律専門用語がどのようにして理解されていくかについて、接続詞「ただ」の使用に着目して論じる。裁判員制度の導入は、法律用語のわかりやすさ研究に大きな契機となった。

ROZUMIENIE TERMINÓW PRAWNYCH PRZEZ NIESPECJALISTÓW W DOBIE SYSTEMU OPARTEGO NA SĘDZIACH NIEZAWODOWYCH W JAPONII

Artykuł dotyczy problemu niezrozumiałości terminologii prawnej przez niespecjalistów w dobie systemu opartego na sędziach niezawodowych (ławnikach). Na wstępie autorka omawia pierwszy projekt uproszczenia japońskiego języka prawa stworzony w 2005 roku przez jednostki Japońskiej Federacji Izb Adwokackich w ramach przygotowywania systemu sądownictwa opartego na sędziach niezawodowych wprowadzonego w życie w 2009 roku. W projekcie sparafrazowano sześćdziesiąt jeden terminów prawnych, które są ważne dla sędziów niezawodowych, ale nie są zrozumiałe dla niespecjalistów. Następnie został omówiony próbny proces sądowy przeprowadzony w 2006 roku przed wprowadzeniem systemu opartego na sędziach niezawodowych w życie. Autorka koncentruje się na niezrozumiałym terminie "zabójstwo przez umyślne zaniedbanie" (*mihitus no koi*) oraz konektorze dyskursu *tada*.

Introduction

The implementation of the lay judge (*saiban-in*) system in 2009 has opened the way to plain legal language in Japanese courts. In this paper I briefly introduce Japan's first plain language project of which I served as an academic member. I then discuss how the intent to murder is determined in a deliberation of a mock trial. Lay persons seem to find it difficult to make the distinction between 'murder through willful negligence' and 'recklessness', though this distinction is the boundary between 'murder' and 'manslaughter'. This is because lay persons may lack the notion of 'murder through willful negligence'. I will show how 'murder through willful negligence' is understood through the discussion between professional judges and lay judges. I would like to emphasize that legal expert's time-consuming efforts as well as cooperative work between legal and language experts are effective for lay understanding of legal terminology.

The Lay Judge System

The Japanese lay judge system is a hybrid of the common law jury and Roman law lay judge systems. Like the Common law jury system, Japanese lay judges decide only a single case. However, unlike the jury system of common law countries, Japanese lay judges deliberate and decide the case together with professional judges. The deliberation body is composed of three professional and six lay judges. Not all cases are tried under this hybrid system. Only criminal cases of serious offences are subjected to this new system. Defendants indicted on serious offences have no option of being tried by the traditional bench trial system.

Lay judges not only render a verdict after having engaged in deliberative discussions with professional judges; they also work together to sentence a guilty defendant. It is neither prohibited nor uncommon for lay judges to discuss the case with professional judges prior to the conclusion of trial. Furthermore, the presiding judge frequently declares fifteen-minute adjournments to facilitate and ensure that lay judges have an adequate understanding of what is being presented in the trial.

Lay judges serve in trials in the first level district courts. Not only defendants but also prosecutors can appeal the decisions of lay judge trials to higher courts. Lay judges are chosen randomly by computer from the electoral roll. However, not all voters are qualified to serve as lay judges; those who have not finished compulsory education

and those who have been imprisoned are disqualified from serving, along with various people employed in the legal system or in government. Finally, people over 70 years old or students have the right to be excused from the duty. Trials are open to the public, but deliberations are held behind closed doors. Lay and court judges are not allowed to discuss their deliberations in public.

The lay judge system is not the first lay judge system in Japan. Japan previously had a jury system, which was introduced in 1928 and suspended in 1943. The current lay judge system was proposed as a pillar of judicial system reform in 2001. The lay judge system is expected to make court procedures more efficient and comprehensible through public participation.

Preparation for the Lay Judge System

Legal Professions took several measures for the new lay judge system. I would like to discuss two major measures: mock lay judge trials and plain courtroom language projects.

1 Mock Lay Judge Trial

To prepare for the new lay judge system, district courts, together with district public prosecutors' offices and local bar associations, held about ten mock trials in each prefecture throughout Japan using the same mock case scenarios between 2006 and 2009. The total number of mock trials held nationwide has surpassed 500.

In each of these mock trials three court judges in their own district court played the role of professional judges. Attorneys of the district public prosecutors' office took on the role of prosecutors. Lawyers of the prefectural bar association performed the role of defense attorneys. Court staff members acted as defendants and witnesses. The lay judges were recruited from ordinary citizens through connections within the legal profession in the area. In these mock trials the argumentation was very heated. Although real trials are open to the public, the mock trials are held *in camera* to avoid criticism about poor performance from those strongly opposed to the implementation of the lay judge system. Academic access to the courtroom discourse of mock trials is limited to a few researchers.

2 Plain Courtroom Language

There have been several efforts to promote the use of plain courtroom language. Public prosecutors published a guidebook (Maeda 2006). A project on Plain Courtroom Language in the Preparation for the Lay Judge system, on which I will introduce in this paper, was launched in the Japan Federation of Bar Associations (Nihon Bengoshi Rengoukai) resulting in the publication of two guidebooks (Nihon Bengoshi Rengoukai 2008a, b). An introductory book on legal language from the perspective of lay persons has also been published (Okawara 2009b). In addition, some work has been done on persuasive language in the courtroom (Okawara 2008a, b, 2009a).

The Project to Simplify Courtroom Language

In August of 2005 the Japan Federation of Bar Associations set up the lay-judge preparatory headquarters in preparation for the lay judge system. The project was characterized by collaboration between legal and non-legal experts. To reflect daily Japanese usage, the project team included language-related experts such as linguists (Seiju Sugito, Makio Tanaka and Mami Okawara), a social-psychologist (Masahiro Fujita), and broadcasters (NHK announcer Tomoo Koda and Fuji TV analyst Yukito Minowa), together with lawyers and criminologist. As legal experts regard themselves as language experts, the incorporation of non-legal experts in a Japan Federation of Bar Association project was a highly unconventional method for Japan.

1 Survey[7]

The plain language project needed to gain a clearer perception how lay people feel about legalese. Therefore, the project team decided to identify three features:

(1) the type of legal terms which lay people felt they knew;
(2) how lay people actually understood the terms they had indicated they knew;
(3) the type of vocabulary lay people used when they were explaining those 'known' terms.

The project first selected fifty legal terms from among legalese commonly used in the courtroom, using legal textbooks which include verbal exchanges in criminal trials. Needless to say, their own criminal court experience of attorneys was reflected in the process of selecting fifty words.

The survey was to be conducted to obtain lay people's thoughts about the fifty legal terms, using a field research method called cognitive interview. The respondents of the surveys were 46 lay people consisting of university students and office staffs. The respondents were first asked Question (1) to each fifty word. If a respondent answered 'yes' to Question (1), then Question (2) was given to the word to which the respondent gave the 'yes' answer. Those who answered 'no', that was the end of the survey on the word with 'no' answer. In Question (2) there are five answers to choose. The responded answers were converted into a five-point rating scale, where 1 is 'not at all' and 5 is 'very well'. After obtaining answers to Question (2), the experimenter encouraged respondents to talk about fifteen or twenty selected legal terms freely. By doing so, the experimenter collected verbal information on legalese. The survey thus identified types of vocabulary lay people used when they were explaining those 'known' terms.

The fifty words were first arranged in order of the number of 'yes' answers to Question (1). Then, the average score of each legal term answered in Question (2) was listed in descending order by score. We have found a correlation between Question (1), the category of 'heard-of-feeling' and Question (2), the category of 'already-known feeling'.

The degree of importance of the fifty words was measured by a survey for attorneys, using a five-point scale. Although there was a definite correlation between lawyers' 'important-word' feeling and lay peoples' 'heard-of-feeling', the correlation between lawyers' 'important-word' feeling and lays' 'already-known' feeling was distantly held.

[7] Fujita played a pivotal role in conducting the survey. See Fujita (2005).

This means that lay people have heard of 'important legal terms' but it does not necessarily mean that lay people feel that they know the meaning of these important legal terms.

With these findings, the fifty words were then classified into four groups:

a) important but not known;
b) important and well-known;
c) not important but well-known;
d) neither important nor known.

From the classification based on the survey, the project concluded that Group a) requires explanation and rewording; Group b) was considered to take fewer measures; Group c) demands caution for lay understanding; Group d) should be given less priority. The project team commenced paraphrasing legal terms in the order of a), b), c), and d). In the process of paraphrasing, the project team checked the type of vocabulary used when explaining their 'known-words' so that we could judge how correctly they knew legal terms.

2 Rewording Work

Most of the time spent on the project was rewording work. Rewording work was conducted by joint effort between legal and non-legal experts. Legal experts offered legally adequate but rather lengthy explanations for legal terms under examination. Language experts then provided understandable but brief paraphrases to these words. After a long discussion about each legal term, the gap of understanding between legal and lay cultures was narrowed; comprehensible and sufficient rewordings were thus produced.

I would like to illustrate this paraphrasing process of legalese with an example of 'suppression of rebellion' (*hankou no yokuatsu*). 'Suppression of rebellion' (*hankou no yokuatu*) is not a legal technical word, but it is a mandatory phrase written in charging facts in a case of robbery, for the purpose of distinguishing 'robbery' from 'theft'. 'Theft' indicates taking someone's property with the intent to permanently deprive them of it while 'robbery' requires a form of violence or threat of violence used to deprive someone of their property, in addition to the definition of 'theft'. 'Suppression of rebellion' (*hankou no yokuatu*) is therefore used to clarify that the defendant used force or imposed fear on the victim in order to prevent resistance in charging facts as follows: the defendant suppressed the victim's rebellion and stole 32,000 yen from the victim's bag ….

'Suppression of rebellion', however, is an incomprehensible phrase to Japanese lay people. In Japanese, 'suppression' indicates that someone in authority puts down either anti-social or anti-Establishment movement by using force or making it illegal. On the contrary, 'rebellion' means a more personal violent action by someone who is trying to change his or her current status, to give one example, 'a rebellious child'. Therefore, Japanese lay people would conjecture that a policeman 'suppressed' the defendant's 'rebellious' conduct.

At a project meeting, non-legal experts were confused with 'suppression of rebellion' and could not understand 'who' did 'what' in the charging facts. Therefore, language experts offered a clearer rewording from their linguistic sense: the use of 'resistance' (*teikou*) instead of 'rebellion' (*hankou*). As 'resistance' (*teikou*) indicates 'an

attack consists of fighting back against the person who has attacked you', language experts said that lay people could imagine that the defendant put down the victim's resistance, using 'suppression of resistance'. However, attorneys and criminologist disagreed with the use of 'resistance' (*teikou*) instead of 'rebellion' (*hankou*). It is because 'rebellion' (*hankou*) includes the notion that the defendant's threat is strong enough that a victim cannot fight it back. Therefore, the use of 'resistance' (*teikou*) limits the interpretation of the defendant's robbery conduct. After a long discussion, the project team concluded that 'suppression of rebellion' (*hankou no yokuatsu*) means that the defendant put the victim into fear physically as well as mentally, and that it includes the victim's submission despite his or her failed resistance.

3 Result

On November of 2005 the project team presented an interim report on sixteen legal terms, which was widely covered in the media. The public prosecutors' office was mildly critical of the paraphrase of 'opening statement' (*boutou chinjutu*). In our paraphrase 'opening statement' is 'a story read by a public prosecutor or a defense counsel at the beginning of the examination of evidence'. As public prosecutors indict a defendant for a certain crime with absolute confidence in Japan, they thought the usage of 'a story' makes their opening statement a mere conjecture of a criminal act. As Article 296 of the Code of Criminal Procedure puts 'at the outset of the examination of evidence, a public prosecutor shall make clear the facts to be proved by evidence', public prosecutors have used the term 'fact', not 'story'. However, in daily Japanese the term 'fact' is 'a piece of information that is known to be true'. If the word 'fact' is used in the paraphrase of 'opening statement', lay people would find it difficult to understand that the burden of proof is placed on the prosecution. 'The term 'story', which was originally considered a misuse, has become an acceptable word in the era of lay justice system.

On April of 2008 the paraphrase work on the sixty one legal terms was completed and published in two books by a well-known publisher named Sanseido: one book (Nihon Bengoshi Rengokai 2008a) for lay people, *Handbook of Courtroom Language for Lay People* (*Saiban-in no tame no Houtei Yougo Handbook*), and the other (Nihon Bengoshi Rengokai 2008b) for legal experts with the highlights of the discussion between lay and legal experts, *Courtroom Language in the Era of Lay Judges* (*Saiban-in Jidai no Houtei Yougo*). It is also included in an electric dictionary made by Casio.

Murder through willful negligence (*mihitsu no koi*)

In Japan the categories of types of murder are not specified using (1st degree, 2nd degree, etc.). To clarify the several types of homicide, 'intent', 'murder and manslaughter by negligence' are stipulated in The Penal Code of Japan of 2008 (EHS Law Bulletin Series) as follows[8]:

Intent

Article 38. An act without intention of committing a crime shall not be punished. Provided that, this shall not apply when otherwise specified by law.

[8]'Death or bodily injury, etc. caused by negligence in conduct of business' is also stipulated in the Article 211 in the Penal Code. As the Article 211 is not relevant to the discussion of this paper, the Article 211 is not included in this section.

Homicide
Article 199. A person who kills another shall be punished with death or penal servitude for life or not less than five years.
Manslaughter caused by negligence
Article 210. A person who causes the death of another by negligence shall be punished with a fine of not more than five hundred thousand yen.

'Homicide' is thus differentiated from 'manslaughter by negligence' with the existence or nonexistence of 'intent'.

A difficulty in the Japanese Criminal Code is that penalty is broadly stated, and determination is left to interpretation by legal experts. When a defendant is found guilty of 'intent to kill', his or her possible penalty starts from a five-year jail sentence term to death penalty. When a defendant is found guilty of 'negligence', the penalty carries a maximum fine of 500,000 yen. For a defendant the final judgment regarding the nature of his criminal act is literally a matter of life and death.

Homicide is classified into two main categories: 'intent' (*koi*) and 'negligence' (*kashitsu*). 'Intent' (*koi*)[9] is furthermore divided into two types: 'definite intent to murder' (*kakutei-teki koi*) and 'murder through willful negligence' (*mihitsu no koi*). 'Negligence' (*kashitsu*) is then subdivided into two types: 'recklessness' (*ninshiki aru kashitu*) and 'inadvertent negligence' (*ninshiki naki kashitsu*). Legal experts use these four notions when they judge a homicide case.

The notion of 'definite intent to murder' and 'inadvertent negligence' is easily recognized. However, lay persons seem to find it difficult to make the distinction between 'murder through willful negligence' and 'recklessness', though this distinction is the boundary between 'murder' and 'manslaughter'. The distinction between 'definite intent to murder' and 'murder through willful negligence' is also difficult to determine. This is because lay persons may lack the notion of 'murder through willful negligence', which questions whether a defendant knew the results that would probably result from his actions or not. Ramseyer and Nakazato (1998, 153) succinctly explains that to be liable for murder, one need not even know about the person who dies; instead, one need only intend to kill *some*one and take actions that do kill someone, whether the person intended or someone else. If prosecutors can prove that a defendant knew 'the results' that would probably result from the actions he took and took them anyway, he is convicted of murder.

It is not sufficient to rely on accessing a defendant's mind through his confession or statement in court when determining 'intent to murder' (Kobayashi 1992, 1). Legal experts thus have worked out a conventional way of judging 'intent to murder' from the externals of a homicide rather than the internal feelings of a defendant. More concretely, they use circumstantial evidence: the region of an injury, the degree of an injury, types of a weapon, how a weapon was used (e.g. randomly stabbing or making a lunge), an action after a criminal act, and motive. The first four types of evidence

[9] 'Intent' *(koi*) does not indicate 'intent to murder'(*satsu*i). More precisely, 'intent' (*koi*) includes 'intent to injure' as well as 'intent to kill'. However, in the issue of the acknowledgment of homicide, 'intent' is conventionally used as 'intent to murder'.

relating injury or weapon are considered to be the most important in the acknowledgment of the intent to murder; the other two are used more as supplementary evidence. Kobayashi (1992, 2) emphasized the importance of the use of circumstantial evidence, in particular when acknowledging 'murder through willful negligence' (*mihitsu no koi*).

1 'Murder through Willful Negligence' (mihitsu no koi)

The term *mihitsu no koi* is a legal word coined in the Meiji era (1862–1912) when a new western legal concept was introduced. *Mihitsu* means 'not necessarily', but used in Japan except for this legal usage. However, the term is still used as an ordinary word in China (Okawara 2009a, 28). '*Koi*' (intent), however, is used in ordinary Japanese, though the legal usage of '*koi*' includes a more precise definition. Attaching an unknown term '*mihitsu*' to '*koi*' has made the new term, '*mihitsu no koi*', totally unintelligible to ordinary citizens.

At a lecture on the lay judge system offered at Masoho Culture College for citizens on 27th February 2005, I asked thirty participants to write down legal terms which I dictated (2008a, 27–30). '*Mihitsu no koi*' is one of the legal transcription test words. None of them gave a correct transcription; rather, there were several curious answers such as '*misshitsu no ko*i' (romance at a locked room) or '*misshitsu no kooi*' (a conduct at a locked room). As the participants had never heard the term '*mihitsu*', they thought my pronunciation was wrong and wrote down a different word with a similar sound '*misshitsu*' (locked room). It is needless to say that the legal concept of '*mihitsu no koi*', on its own, is quite difficult, but the term itself makes the word even more alien to lay persons.

2 Mock Lay Judge Trial

As mentioned earlier mock trials were held around the country in order for those in the legal system and the general public to understand and refine the new lay judge system. This section consists of 1) a summary one of the mock cases: 2) observations made by the investigator while observing the mock trial; 3) an introduction to the discourse particle '*tada*'; and 4) the text and comments from one of the deliberations by the professional and lay judges.

2.1 The Mistress Case

The Mistress Case is one of the mock trial cases held in all district courts in Japan. The defendant (Junko Yamamoto) met the victim (Goro Ikeda) at a bar where she was working as a barmaid. Later, she became his lover and was financially supported by Goro. Goro was a violent man with a criminal record. On the day of the crime, the two had a quarrel over their relationship. Goro was beating her violently. Junko then stabbed him in the right side of his back with a kitchen knife (the 1st stab), upon which he pulled the knife out of his back and continued to beat her. Junko grabbed the knife from Goro and in the same motion she stabbed Goro in the abdomen (the 2nd stab). Goro died.

2.2 Mock Trial

I observed a Mistress case held at a district court for three consecutive days late October of 2007. The point of the case is to highlight two issues: the intent to murder and self-defense.

The prosecution demanded 16 years' imprisonment for the accused. The court passed a six-year sentence. The court acknowledged excessive self-defense, 'murder through willful negligence' for the 1st stab, and 'definite intent to murder' for the 2nd stab.
In the trial, the prosecution used the term '*mihitsu no koi*' with restraint. Instead, they replaced a paraphrased explanation for '*mihitsu no koi*'. For example, in the opening statement, the prosecutor said, 'the defense lawyer claims that when the defendant was stabbing the victim with a kitchen knife, the defendant did not have the intention to kill the victim, to say nothing of the feeling that it is all right the victim might be dead …'.

2.3 Deliberations

In this analysis I discuss two questions involving a discourse connective *tada* ('except that…', 'the only thing is that…').

1. What kind of 'words' did professional judges try to draw out of lay judges?
2. How did lay judges try to respond to professional judges?

2.3.1 Discourse Connective

Japanese *tada* ただ('except that…', 'the only thing is that…') is a discourse connective which adds an exceptional or supplementary clause to the previous clause (Morita 1980, 265), as shown in the following:

(1) (a) Aji wa ii ga,
taste topic marker good but
味　　は　　いい　　が
(b) tada shoushou ne ga haru.
the only thing a bit price subject marker cost
ただ　　少々　　値　　が　　はる。
'The taste is good. The only thing is, it's a bit expensive.'

The use of *tada* marks a Proposition in which the speaker assumes that what the hearer believes is not sufficient. The speaker believes that the Proposition (a) requires a supplementary explanation or an explanatory note. After *tada*, the speaker gives a Proposition (b) as a form of supplementary comment.

Kawagoe (2003) notes that *tada* is used as a communicative strategy to be considerate of the hearer, referring to Brown & Levinson's negative politeness. Brown & Levinson (1978) developed politeness strategies to save the hearer's 'face'. 'Face' consists of two separate kinds of desires: positive face and negative face. 'Positive face' indicates the desire to be approved of by others, while 'negative face' means the desire not to be impeded by others. People usually do not want to make others uncomfortable. If one asks someone a favor, that person is put in a threatened situation because people usually do not want to reject the other's request for a favor. Brown & Levinson then proposed 'face-threatening acts' (FTA) which make the other uncomfortable by threatening the other's desires. Before one performs an FTA, he considers the best strategy possible. Thus, five strategies are proposed. The politest strategy is not to perform a FTA, which means you do not ask any favors. The second politest strategy is

'off record', which is not making an explicit request. The third one is 'negative politeness with redressive action', which expresses one's respect to the other and one's recognition of imposing on the other, using an expression like 'I do not want to bother you, …'. The fourth one is 'positive politeness with redressive action', which shows respect to the other, using 'is it all right if I do …?'. The least polite strategy is 'without redressive action, baldly', which is a very direct request. In the case of Japanese language, negative positiveness indicates one shows respect to the other, using honorifics. Thus, the use of *tada* indicates the speaker is not imposing on the hearer.

Kawagoe suggests that *tada* is used when the hearer partially opposes the speaker's statement in a polite and mitigated way, as in the following:

(2) (a) Nagao: (te ni totte mite) Shinseihin desu ka?
(picking it up and looking at it) new product copula final particle
長尾： （手にとってみて） 新製品 です
か。
Ii desu ne.
good copula final particle
'Is this a new product? It's good, isn't it?'
いい です ね。
(b) Waga: Tada, kono bunya ni kanshite,
The only thing this field about
和賀： ただ、 この 分野 に関して、
uchi wa tano kaisha ni kurabete
our company topic marker other company compare
うち は 他の 会社 に比べて
okureteru kara na,
behind because final particle
遅れてる から な、
urikomi wa kanari kitsui darou.
hard selling topic marker quite difficult copula
'The only thing is, we are behind other companies in this field.'
売り込み は かなり きつい だろう。

Kawagoe (2003:86) states that while '*tada*' agrees the other's utterance partially, it also points out a problem or a difference in the utterance given by the other. This means that a problem or a difference in Proposition (a) is noticed and Proposition (a) is revised with the notion of Proposition (b) by the use of *tada*.

In the deliberations in the mock trials professional judges frequently used *tada* when they were trying to convince lay judges of *mihitsu no koi*. As mentioned before, the notion of 'murder through willful negligence' is barely comprehensible to the mind of ordinary people because lay persons lack the concept of 'knowing the results that would probably result from the actions one took'. Therefore, lay judges did not mention the notion of 'murder through willful negligence' when professional judges expected to

hear it. In such a case, a judge would first paraphrase a lay judge's opinion ('no intent to murder') as a Proposition (a), then the judge's opinion ('murder through willful negligence'), Proposition (b) would be expressed after *tada*.

The important point is that the lay judge's Proposition (a) ('no intent to murder') is contrary to the trial judge's Proposition (b) ('murder through willful negligence'). Unlike Kawagoe's business example (2) above, trial judges are not opposing Proposition (a) partially; they are presenting a completely different Proposition (b). If the defendant's act is understood using Proposition (a), he is found guilty under Article 210 (manslaughter caused by negligence), and the penalty is 'a fine of not more than 500,000 yen'. If the defendant is found guilty with Proposition (b), he is subject to Article 199 (homicide), and the penalty is between death and a five-year jail sentence. Proposition (b) is neither a partial denial of Proposition (a) nor a supplementary comment to Proposition (a). It implies that professional judges use *tada* as a supplementary or a partial denial when they are actually opposing to an opinion of lay judges.

2.3.2 Deliberations on the 1st Stab

The following discourse is a 30 minutes discussion of the deliberation in the morning of the third day. The issue is to acknowledge *mihitus no koi* ('murder through willful negligence') on the act of the first stab. The six lay judges are Mrs. A (60s housewife), Mr. B (50s professor), Mr. C (40s government employee), Mrs. D (50s housewife), Mr. E (60s administrative scrivener) and Mr. F (20s college student). Trial judges consist of a Chief Judge (50s male), a senior associate judge (40s male) and a junior associate judge (30s male).

(3) Chief Judge: …When the defendant made the first stab, as I explained many times, can you say that she was aware of that because of her action the victim would die or might die? I would like to focus on the defendant's mind. What about this, Mrs. A?

その時、突き刺し行為をした時、何度か説明しているように、自分の行為で相手が、池田さんが死ぬと、あるいは死ぬかもしれないと、いうことがわかっていた、と言えるのかですね、被告人の心の中で。ここをまぁ、メインに見ていきたいんですね。ここのところはどうですかね、Ａさんどうですか。

Sono toki, tsukisashita koui wo shita toki, nandoka setsumei shiteiru youni, jibu no
its time pierced action obj-marker did time many times explain was doing as oneself of

koui de aite ga, Ikeda-san ga shinuto, aruiwa shinu kamoshirenaito,
action by the other party sub-marker Mr. Ikeda sub-marker die or die may

iukoto ga wakatteita, to ieru no ka desu ne, hikokunin no kokoro no naka de. Koko
say sub-marker understand that say of is defendant of feeling of inside here

wo maa, main ni mite ikitain desu ne. Koko no tokoro wa dou desu kane, A-san dou desu ka?
obj-marker look want is see here of topic how is it Mr. A how is it

(4) Mrs. A: I don't know what to say.
ちょっとわかんないです。
Chotto wakannain desu.
A little don't understand

(5) Chief Judge: As I mentioned a little while ago, we cannot read people's hearts. It is impossible to grasp correctly what the other person is thinking. So, as I said a little while ago, we infer from the external circumstances.
さっき言いましたように、人の心の中はわかんないってのは、本当に何考えてたのかズバリ当てましょうっていったら、無理な話なんですよね。だからさっき言ったように、外の事情から、推測していくしかないんですよね。
Sakki iimashita youni, hito no kokoro no naka wa wakannaitte no wa, hontouni
before said as person of heart of inside topic- marker don't understand of topic really

nani kangaeteta noka zubari atemashoutte ittara,murina hanashi nann desu yone. Dakara sakki
what thinking right guess say difficult story what is isn't it so before

itta youni, soto no jijou kara, suisokushite iku shika nainn desu yone.
said as outside no situation from guess only isn't it

(6) Mrs. A: The external circumstances mean the violence the defendant received or the injury she got?
そうしましたら、暴力をふるわれてましたか、どんなダメージが？
Sou shimashita ra, bouryoku wo furuwaretemashita ka, donna damage ga?
so did if violence obj-marker received what kind of sub-marker

(7) Chief Judge: In other words, it is something like this, the defendant is aware that the victim would be killed or might be killed by her stab, something like that.
つまり自分が突き刺すという行為で、相手が死ぬことがわかっている、あるいは、死ぬかもしれない事がわかっている、そういう風な
Tsumari jibun ga tsukisasu toiu koui de, aite ga shinu koto ga
after all oneself sub-marker pierce that action by the other party sub-marker die that submarker

wakatteiru, arui wa, shinu kamoshirenai koto ga wakatteiru, souiu fuuna
understand, or die may that sub-marker understand such a way

(8) Mrs. A: I don't think she was thinking at that level, 'will die' or 'may die'.
その辺までは考えてなかったと、私は思います。死ぬとかそこまでは。
Sono hen made kangaete nakatta to, watashi wa omoimasu. Shinu toka soko made wa
there about thinking not that I sub-marker think die or to that level

(9) Chief Judge: You are thinking she did not recognize 'will die' or 'may die', aren't you?
死ぬとか考えてないという感じですかね。
Shinu toka kangaete nai toiu kanji desu kane.
die or thinking not that feeling is isn't it?

(10) Mrs. A: yes.
ええ。
Ee
Yes

The Chief Judge tried to form his opinion on the definite intent or willful negligence based on circumstantial evidence in (3). Mrs. A could not answer because she was still unfamiliar with the distinction of the intent in (4). Then, the Chief Judge suggested external evidence would give some clues in (5). In (6), Mrs. A was confused about the external evidence and mistook the injury of the victim for that of the defendant. The Chief Judge returned her to the issue of the intent in (7), but Mrs. A flatly rejected the notion of intent to murder in (8). In (9) the Chief Judge repeated Mrs. A's response, the use of tag question implies his doubt about her response, but she did not change her answer in (10). The Chief Judge gave up, and then moved to another lay judge, Mr. B.

(11) Chief Judge: Mr. B, what do you think of this?
Ｂさんいかがですかね。
B-san ikaga desu kane.
Mr. B how is it see

(12) Mr. B: The defendant has been beaten for a while. So, there must be some kind of lesson or punishment, in addition to counterattack. I'm thinking she wanted to show she was taking some revenge on him.
私は前から言ってる事の繰り返しになって、真実ではないから、議論は？？とこなんですけど、色々あれしてきてこう、やられっぱなしで、反撃と合わせて何か、こういう事もやってやるんだよっていう、見せしめみたいな部分があったんじゃないかなという感じがするんですけど。
Watashi wa mae kara itteru koto no kurikaeshi ni nattte, shinjitu dewa nai kara,
I topic-marker before saying that of repeat truth is not because

giron wa … toko nan desu kedo, iroiro are shitekite kou, yarareppanashi de,
argument is but various that doing such a way kept being hit

hangeki to awasete nanika, kouiu koto mo yatteyarunda yotte iru, miseshime
counterattack put together such thing that also actively doing lesson

mitaina bubun ga attan janai kana toiu kanji ga surunndesukedo.
like part sub-marker was wasn't it that feeling sub-marker having

(13) Chief Judge: Well, you are thinking she had the will to protect herself, and moreover she had the intent to counterattack. The only thing is that (*tada*) the content of her intent to counterattack. Had she gone as far as thinking of murdering him?
まあ、身を守ろうという意志だけではなくて、攻撃の意志はあったろうと、ただその中身ですよね。殺してやるっとまで思っていたのか、、、

Maa, mi wo marou toiu ishi dake dewanakute, kougeki no ishi wa attarou to,
well self obj-marker protect intention only not attack of intention sub-marker was that

tada sono nakami desu yone. Koroshite yarutte tomade omotteita noka
the only thing its content is see kill for to the degree was thinking or

(14) Mr. B: I don't think she was thinking to that extent.
そこまではいってないと
Soko madewa itte inaito
to that extent thinking not

(15) Chief Judge: The only thing is that (*tada*), otherwise, how do you answer if you were asked whether she must have recognized he would die or might die?
ただ、そうじゃなくても、死ぬなとか、あるいは、死ぬかもしんないな、そこら辺はわかってたんじゃないかと、言われたらどうですかね。
Tada, sou janakutemo, shinu natoka, aruiwa, shinu kamoshinnnaina, sokora henwa
the only thing otherwise die must or die may there about

wakattenn janai kato, iwaretara dou desukane.
recognize isn't whether were asked how is it see

(16) Mr. B: Well, I also might do, just threatening someone, just showing a knife, that's all. I don' have any intention to kill …
ちょっとまぁ、あれなんですよね。私もなんかこう、相手に脅威をみせるっていうか、そういう意味で、ナイフを。だから、殺すっていう気は全然ないし、それから、
Chotto maa, are nan desu yone. Watashi mo nannka kou, aite ni kyoui wo miserutteiuka,
well that is it see I also well the other party threat obj-marker show

souiu imide, knife wo. Dakara, korosutte iu ki wa zenzen naishi, sorekara,
in that meaning obj-marker therefore kill feeling topic-marker not at all then

(17) Chief Justice: No intention to kill means the strong intent to kill?
殺す気がないってのは、殺してやる一つみたいのは
Korosu ki ga naitte noha, koroshite yartte mitai noha
kill intention sub-marker isn't that kill strong intent that

(18) Mr. B: Not at all.
全然ない。
Zenzen nai
not at all

(19) Chief Justice: Well, not that level. Well, how about her recognition of 'will die' or 'might die'?
じゃあ、そこまでいかないにしても、じゃあ、死ぬかなぁ、死ぬな、死んじゃうかな、それくらいはわかってたんじゃないかっていうのは、どうですか。

Jaa, soko made ikanai ni shitemo, jaa, shinu kanaa, shinu na, shinn jaukana,
well, not that level not go well die may die die will

Sorekurai wa wakattetan ja nai kattiu nowa dou desu ka
that level topic-marker recognize isn't that how is it

(20) Mr. B: I don't think she had that sort of recognition. That must be a lesson, pressing down the other party's violence. The term 'pressing down' might not be the right word, but counterattacking and teaching a lesson, something like that.

そういう意識はなかったんじゃないかと。見せしめのようなんですよね、私もなんかこうあれして、見せしめのような感じで、相手の暴力をある程度封じ込めるような、封じ込めようというのはちょっと言葉が、とにかく、私も反撃して、見せしめてってそういう部分があったのかなぁって。

Souiu ishiki wa nakattan janai ka to. Miseshime no you nann desu yone.
sort of recognition topic-marker wasn't isn't it that lesson like is it see

Watashi mo nannka kou are shite miseshime no youna kanji de, aite
I too something like this that did lesson like something the other party

no bouryoku wo aru teido fuujikomeru youna, fuujikomeyou toiunowa
of violence obj-marker some degree contain like contain like

chotto kotoba ga, tonikaku, watashi mo hangekishite, miseshimetette
a little words sub-marker anyway I too defend lesson

souiu bubun ga attano kanaatte
such parts sub-marker was wonder

Mr. B repeated his opinion that the defendant was teaching a lesson in (12), (16), and (20); on the other hand, the Chief Judge also repeated two types of intent to murder. Both were talking along parallel lines. The Chief Judge then asked a senior associate judge for help.

(21) Chief Judge: It may a bit early to ask you, but Senior Judge, what do you think of this?

ちょっと早いけど、三上さんいかがですか。

Chotto hayai kedo, Senior Judge san ikaga desu ka.
a little early but how is it

(22) Senior Judge: Well, I'm not talking about this ('the intent to murder') with confidence. I also think that was an impromptu act, it was an immediate act.

そうですね、これもあんまり自信持って、こっちだと言いきる感じでもないんですけど。咄嗟にやったことと、咄嗟という点では、そうだと思うんですけれど。

Sou desu ne, kore mo anmari jishin motte, kocchi dato iikiru kanji demo nainn desu kedo.
well this too very confidence with this is declare feeling but isn't but

Tossani yatta koto to, tossa toiu ten dewa, sou dato omounn desu keredo
immediately what did and immediate point is so is think but

(23) (Senior Judge) The only thing is that (*tada*) she stabbed him in the back, this time (1st stab). It is true that she did not stab him in the very important internal organs, but that part, that part perhaps includes kidneys or liver …I don't know, but I don't think she stabbed him, trying to avoid stabbing his internal organs. So, if she had missed it a bit, she might have thrust the knife home into the most important organ from the side of the backbone in the middle of the back.

ただ、背中、今回は特に重要な臓器まで行ってませんけど、あんな所を刺して、腎臓やらあそこだと肝臓もあるのかな、ちょっとわかりませんが、しかし、臓器にあたらないようにしようと思って刺したわけでもないから。ちょっと手元が狂えば、ほんとに背中の真ん中の背骨の脇あたりから、重要な臓器を、突き刺してしまったかもしれない位置ですよね。

Tada, senaka, konkai wa tokuni juuyou na zouki made ittemasen
the only thing back this time topic-marker not particular important internal organs up to didn't go

anna tokoro wo sashite, jinnzou yara asoko dato kanzou mo aru no kana,
such place obj-marker stub kidney or there liver too is wonder

chotto wakarimasen ga, shikashi, zouki ni ataranai youni shiyo to omotte
a little don't understand but but internal organs to not touch like try that think

sashita wake demo naikara. chotto temoto ga kurueba hontoni senaka no
stubbed not the way a little at hand sub-marker clumsy really back of

mannaka no sebone no waki kara, juuyouna zouki wo tsukisashite shimatta
middle of backbone of side from important internal organs obj-marker pierced

kamoshirenai ichi desu yone.
may position is isn't it

(24) (Senior Judge) Furthermore, if she had stabbed just like touching the back from upper part, that might have been a different story. But, I think her way of stabbing would have ended up plunging the knife into his chest … or he could have been deeply stabbed.

しかも、それを上からこうなぞるようなやり方とかそういうのであれば、また別ですけど、あのやり方だと、ブスっと刺さってしまってもしょうがない。もっと刺さる事があったかもしれない刺し方のように思うんですよ。

Shikamo, sore wo ue kara kou nazoru youna yarikata toka souiu node areba,
but, it obj-marker from this touch like way or that

mata betsu desu kedo, ano yarikata dato busutto sasatte shimattemo shouganai.
again different is but that way is zunk stubbed can't be helped

Motto sasaru koto ga atta kamoshirenai sashikata no youni omoun desu yo.
more lug that sub-marker was may how to pierce of like think is it

(25) (Senior Judge) While I've been thinking over those things, I don't think she had the intent to kill, at that point.
そういう事を考えると、殺しやろうとか、私もそこまで、思ってなかったんじゃないかと思うんですよ、この時点では。
Souiu koto wo kangaeru to, koroshite yarou toka, watashi mo sokomade, omotte nakatta
those things obj-marker thinking kill intend or I too to that extent, thinking was

njanai kato omou ndesuyo, kono jiten dewa.
isn't think this point

(26) (Senior Judge) The only thing is that (*tada*), I'm feeling 'might die', so it is 'all right to kill him in order to protect herself'.
ただ、死んじゃうかもしれないなというのは、身を守るためには構わないくらいの感じがするんですよね。
Tada, shinjau kamoshirenaina toiu noha, mi wo mamoru tame niha kamawanai
the only thing might die that oneself obj-marker protect in order to don't mind

kurai no kanji ga surunn desu yone
extent of impression sub-marker feel

Senior Associate Judge gave a long explanation. In (22) he used 'impromptu act' or 'immediate act' which lay judges used during some earlier deliberations. In other words, he started the explanation, placing himself in the lay person's shoes. However, in (23) the use of *tada* introduced the notion of willful negligence with emphasis on the region of the injury. In (24) Senior Judge reinforced his argument with his emphasis of 'death'. However, in (25) the judge expressed denial of definite intent, which is contradictory to (24). But, in (26) the judges started with the use of *tada* and indicated 'willful negligence'. The Chief Judge seemed to be satisfied with the explanation of Senior Judge. Then, he asked another lay judge the same question in confirmation.

(27) Chief Judge: Mr. C, what do you think of this?
Cさんいかがですか。
C-san ikaga desu ka
Mr. C how is it

(28) Mr. C: I think at her first stab she (the defendant) had not realized anything about the possibility that he (the victim) might die. Rather, her feelings were mostly occupied with her desire to stop the violence from the victim, I think.
一回目のときには、死ぬだろうなとかそういう考えが一切なかったんじゃないかなと思います。それよりも暴力をやめさせたいというのが、ほとんど支配してたんじゃないかなと。

Ikkaime no toki niha, shinu darou natoka souiu kangae ga issai
first of time die might something thinking sub-marker not at all

nakattan ja nai kana to omoimasu. Sore yori mo bouryoku wo yamesaseta
wasn't was it that think that than violence obj-marker stopped

toiunoga, hotondo shihaishiteta njanai kana to.
that almost control wasn't might

(29) Chief Judge: Well, that was an immediate attack. So, you are thinking that was a counterattack. As I said just a little, for example, about a situation of stabbing someone in a frenzy of the moment, it is true that in such a moment one cannot grasp what he is thinking.

まあ、咄嗟のことだったし。反撃という感じですかね。前にもちょろっと言いましたけど、例えば、逆上して刺しちゃう場合とかってのがあるんですよね、そういう時ってあまり詳しい事考えてないってこともありますよね。

Maa, tossa no koto data shi. Hangeki toiu kanji desu kane. Maenimo chortto
well immideate of thing was counterattack feeling is before a little

iimashita kedo tatoeba gyakujoushite sashichau baai tokatte no ga arunn desu yone,
was saying but for example frenzy stab case thst of sub-marker is isn't it

souiu tokitte amari kuwashii koto kanngaete naitte koto mo arimasu yone.
such moment much detail that thinking not that also is it

(30) (Chief Judge) <u>The only thing is that (*tada*)</u>, even in such a case, if we follow the way <u>courts</u> think, from the act which appeared outside, for example, random stabbing.

ただ、その場合でも、今までの裁判所の考え方だと、外に出た行為から、例えば、メッタ刺しにしてるとかですね。

Tada, sono baai demo, imamadeno saibansho no kangaekata dato, soto ni deta,
the only thing such case even before court of way of thinking outside appeared

koui kara tatoeba, mettazashi ni shiteru toka desune.
conduct from for example jab or is it

(31) (Chief Judge) Yeah, in a frenzy of the moment, feeling a rush of blood to the head, yelling noisily, in such a case the feelings such as 'will kill' or 'may die' would disappear somewhere in the midst of a frenzy

ほんとにめちゃくちゃ血が上っちゃって、うわーとか言ってやっちゃう場合もあるわけですよね。そういう時ってのは、殺すとか、死ぬかもしれないとか、そういう気持ちってのは、どっか全部逆上の中に、消えちゃってるわけですよね。

Hontoni mechakucha chi ga agacchatte, uwattoka itte yacchau baai mo
really absolutely blood sub-marker raise oh said did case

aru wake desu yone. Souiu tokitte noha, korosu toka, shinu kamoshirenai toka,

is reason is is it such moment kill or die might or
souiu kimochitte noha, dokka zenbu gyakujou no naka ni, kiechatteru wake desu yone.
such feeling where entirely frenzy of inside disappear is it

(32) (Chief Judge) The only thing is that (*tada*), even in such a case, in a case of random stabbing, when we try to view the inside of the heart of the accused, we have so far conjectured 'may die' from external evidence.
ただ、そういう場合でも、メッタ刺しにしているとかの場合だと、そういう場合だと、心の中を考えるときには、死ぬことがわかっていたろうとか、そういう形で、外部の事情から、推定していくってことは、やってるわけですね。
Tada, souiu baai demo, mettazashi ni shite iru toka no baai dato, souiu baai dato
the only thing such case but random stabbing of case such case

kokoro no naka wo kangaeru toki niha, shinu koto ga wakatte itarou toka, souiu katachi de,
heart of inside obj-marker think when die that understood or such form

gaibu no jijou kara, suitei shite ikutte koto wa, yatteru wake desune.
outside of circumstances from g uess that topic-marker did didn't it

(33) (Chief Judge) So, I personally don't think an immediate act does not include 'may die'.
だから、単純に咄嗟の事だから、ないという事にはならないかなぁとは個人的には思うんですけど。
Dakara, tanjun ni tossa no koto dakara, nai toiu koto niwa naranai kanaa to wa
so simply immediate act because not that is it

kojinteki niha omounndesu kedo
personally think but

(34) (Chief Judge) The only thing is that (*tada*), in a chain of events, because of the immediate act the defendant was simply thinking of an immediate counteract, or, as Mr. B mentioned, she might be thinking of threatening him. I don't think it isn't impossible to think that way, though.
ただ、まさにこの一連の流れの中で、咄嗟の反撃行為だから、頭の中はとにかく反撃と。あるいはせいぜい、Ｂさんの指摘があったように、ちょっとなめんなよみたいな、気持ちぐらいまではあったかもしれないけど。死ぬなとか、そういう風なことはなかったんじゃないかという見方も、それはできない事はないと思うんですけど。
Tada, masani kono ichiren no nagare no nakade, tossano hangeki koui dakara,
the only thing really this chain of events immediate counteract because

Atama no naka wa tonikaku hangeki to. Aruiwa seizei, B-san no shiteki ga atta youni,
head of inside topic-marker simply counteract or at best Mr. B of pointed out as
Chotto namen nayo mitaina, kimochi gurai madewa atta kamoshirenai kedo.
a little not monkey like feeling about to that level was might but

Shinuna toka, souiu fuuna koto wa nakatta njanaika toiu mikata mo,
might die or like way that topic-marker wasn't that and so perspective also

Sorewa dekinai kotowa nai to omounn desu kedo.
that cannot do that not that think isn't it but

(35) (Chief Judge) The only thing is that (*tada*), as Senior Judge mentioned, the position of the stab, how she stabbed him, that was not a straight way, she did this, she did that, those kinds of things …
ただ、そこら辺はさっき、ちょっと右陪席裁判官も言ってましたけど、刺した位置とか、対応ですよね、ぱっと取って、くっとやったとかじゃなくて、こうやって、こうやってるところとか、そういったところですね。
Tada, sokora hen wa sakki, chotto migi baiseki saibankan mo itte mashita kedo,
the only thing all over topic-marker before a little right associate judge also saying was but

sashita ichi toka, taiou desu yone, patto totte, kutto yatta toka janakute,
stubbed position or, handling is isn't it immediately took this way did or isn't

kouyatte, kou yatteru tokoro toka, sou itta tokoro desu ne
this way this was doing while or things like that isn't it

Mr. C could not recognize any specific kinds of 'intent' in (28) in spite of repeated explanations from the judges. In (29) the Chief Judge repeated and paraphrased the lay person's views of 'no intent'. However, in (30) the Chief Judge started to talk about the court's conventional way of recognizing 'intent' by the use of *tada*. But, he changed his approach in (31) probably because he was trying to be careful not to persuade lay judges to his way of thinking. In (32) by the use of *tada* he returned and reiterated the court's way, using 'we', which does not include lay persons. In (33) he mentioned his personal view in line with the court view, in a mitigated way by using double negatives. In (34) by the use of *tada* he repeated the lay view citing a previous comment of Mr. B, again using double negatives. But, in (35), he again started with *tada*, and he presented the traditional court view, citing the comment of the Senior Judge. The Chief Judge was careful about not giving plain and straightforward persuasion, but with repetition he was hoping that the lay judge would understand the court's way of judging. As he realized that was not an easy task, he changed his approach and started with a less controversial question.

(36) Chief Judge: Let me see, the defendant said she had not recognized where she was stabbing … that it was his back. What do you think of her utterance?
あと、背中である事がわからなかったと、被告人が言ってるんですけど、ここら辺はどうですか、認識として
Ato, senaka dearu koto ga wakaranakatta to hikokunin ga itterunn desu kedo,
maybe back is fact sub-marker didn't understand that defendant sub-marker was saying but
kokora hen wa dou desuka, ninshiki toshite
here about topic-marker how is it recognition as

(37) Mrs. A: I cannot believe her.
それはないんじゃないですか。
Sore wa nain janai desuka
that topic-marker isn't is it?

(38) Chief Judge: It is only natural that you cannot believe her.
流石にそれはないんですかね。
Sasugani sore wa nain desu kane
as it to be expected that topic-marker isn't is it?

(39) Mrs. D: Since part of his shirt was ripped in the back, she probably thought that was a good timing.
シャツが捲れて背中が目に入ったから、ちょうどいいなと思ったんじゃないですか、きっと。。
Shirt ga makurete senaka ga me ni haitta kara, choudo ii na to omottan
shirt sub-marker ride up back sub-marker eyes to enter because just good that thought

ja nai desuka, kitto
isn't is it? certainly

(40) Senior Judge: I remember her saying that.
被告人はそんな風なことを言ってましたよね。
Hikokunin wa sonnna fuuna koto wo itte mashita yone.
defendant topic-marker as much things obj-marker was saying wasn't it?

(41) Chief Judge: Whether she really thought that or not is disputable, though. It is only natural you don't believe her utterance. We would like to see her heart to determine the credibility of her utterance. What do you think of this, Mr. E?
ちょうどいいなと思うかどうかってのは、議論の余地があるかと思うんですが。わからなかったっていうのは、流石にこれはないんですかね。という事も踏まえて考えるということになると思うんですが。Eさんいかがですか。
Choudo iina to omou ka doukatte nowa, giron no yochi ga aru ka to omou n desu ga.
good time that think or whether dispute of open sub-marker or that think but

Wakaranakatta tte iu nowa, sasugani kore wa nain desu kane.
didn't understand by this as might be expected this topic-marker isn't is it?

Toiu koto mo fumaete kangaeru toiu koto ni naru to omou n dusu ga.
that also take think that have become that think but
E-san ikaga desu ka.
Mr. E how is it?

The Chief Judge was successful in starting with an undisputable question and has confirmed a common ground with one lay judge. He then returned to the intent issue, calling on another judge, Mr. E.

(42) Mr. E: Well, she perceived neither 'will kill' nor 'may die' at this point.
そうですね、殺す気はなくて、死んじゃうかなってのも、この段階ではなかったんじゃないかと。そこまで考えてなかった。
Sou desu ne, korosu ki wa nakute, shinjau kanatte nomo, kono dankai dewa
I see kill intention topic-marker isn't there die may either this stage at

nakattan janai ka to. Soko made kangaete nakatta.
wasn't or that that extent to thinking wasn't ?

(43) Chief Judge: You are saying she did not have that kind of perception. How about Mrs. D?
そういう認識はなかったということですか。Ｄさんはどうですか。
Souiu ninshiki wa nakatta toiu koto desuka.
that kind of perception topic-marker wasn't there that is it

D-san wa dou desuka?
Mrs. D topic-marker how is it?

Contrary to the expectation of the Chief Judge, Mr. E did not recognize any 'intent', either. He called back again Mrs. D, hoping to extract 'intent' from her answer.

(44) Mrs. D: I don't think she had the intent to kill. She was just in despair. Both were quarreling over a divorce. She was almost in despair. She might not be thinking that he would die. She might be thinking that if his violence would continue, she would end up the relationship. If you take up a kitchen knife in the quarrel, you won't get away with it. So, as the defendant said, she just wanted to finish his violence. So, her intent is to stop the violence.
殺す気はないでしょうと、かなり自棄になってたと思うんですね、別れる気で二人は？？？わけですから、半分自棄になってて、かなり、死ぬまでは思わないかもしれませんが、暴力が続くならば、これで終わりにしようという気持ちがあったんではないか、包丁で突き立てたら、何かその後は、ただでは済みませんよね。ですから、被告も言ってますが、これ以上殴る蹴るをやめてほしかった。だからそういう意志を持って、？？？？
Korosu ki wa nai deshou to, kanari jiki ni natteta to omoundesu ne.
kill intent topic-marker not that, just despair become that think see

wakareru ki de futari wa, hanbun jiki ni natete, kanari
end up intent two people topic-marker half despair become, rather

shinu madewa omowanai kamoshiremasen ga, bouryoku ga tsuzuku naraba,
die till not think may but violence sub-marker continue if
korede owarini shiyou toiu kimochi ga attan dewa naika, houchou de
this end will that feeling sub-marker wasn't knife by

tsukitatetara, nanika sonogo wa, tadadewa sumimasen yone. Desukara, hikoku mo
stick if some after that topic-marker not get away with isn't it? so, defendant also

ittemasu ga, kore ijou naguru keru wo yamete hoshikatta. Dakara, souiu ishi wo motte,
said but this above beat kick obj-marker stop wanted so such intent with

(45) Chief Judge: Mr. B said she had the intent of a counterattack and the intent to threaten him. And Mrs. D said she had the intent to end the relationship because by taking up a knife, they cannot continue the relationship any more.

Ｂさんはさっき、反撃ったのもあったけど、畜生なめんなよと言って、攻撃を加えるぞみたいな意志もあったと。今のＤさんのご意見だと、終わりにするっていうような意志もあったから、包丁で刺せば、関係が今後も続くとは考えにくいわけで。

B-san wa sakki, hangekitta nomo atta kedo, chikushou namen nayo to itte,
Mr. B topic-marker just now, counterattack but, damn it don't monkey that saying

kougeki wo kuwaeru zo mitaina ishi mo atta to. Imano D-san no goiken dato,
attack obj-marker give like intent also was that earlier Mr. D of opinion

owari ni surutte iu youna ishi mo attakara, houchou wo saseba,
end that like intent also was knife obj-marker stub

kankei ga kongo mo tuzuku towa kangae nikui wake de.
relations sub-marker from now on also continue that think difficult reason

(46) (Chief Judge) This means, it may be too harsh, but she had <u>the intent of that kind</u>.

そういった意志で、攻撃っていうと、ちょっとどぎついかもしれませんけど、そういう意志もあったんだろうと。

Souiu ishi de, kougeki tteiuto, chotto dogitui kamoshiremasen kedo,
such intent by attack that, a little hard may but

souiu ishi mo attan darou to.
Such intent also was likely that

(47) (Chief Judge) <u>The only thing is that (*tada*)</u>, it does not mean the intent of death, that's how you are thinking.

ただ、それは死というところまでいってないんじゃないだろうかと、死という認識まではいってないんじゃないだろうかと。

Tada, sore wa shi toiu tokoro made itte nain janai darouka to, shi toiu
the only thing it topic-marker death that till saying not wasn't that death that

ninshiki made wa itte nain janai darou ka to.
recognition until topic-marker saying not wasn't probably that

(48) Mrs. D: <u>The only thing is that (*tada*)</u>, <u>she was aware that he would be badly wounded</u>.

ただ、相当な怪我をすることは、わかってたと思うんですね。

Tada, soutouna kega wo suru koto wa, wakatteta to omoun desune.
the only thing badly injury obj-marker that topic-marker, understood that think see

(49) Chief Judge: She had the intent of that level, all right. Mr. F, what do you think of this?
そこまではいってたろうと、いう感じですね。Ｆさん、いかがですか。
Soko made wa ittetarou toiu kanji desune. F-san, ikaga desu ka.
that level topic-market intent that feel all right Mr. F, how is it?

In (45) the Chief Judge repeated the opinions of Mr. B and Mr. D. After that, the judge introduced the intent of 'injury', not the intent of 'death'. As Mrs. D thought the intent of 'injury' was related to the defendant's feeling to stop the violence of to end the relationship, she recognized the defendant's intent to injure. Mrs. D's comment (48) is certainly a turning point on the intent issue in the deliberations. It is interesting to note that Mrs. D also used *tada* when she met the Chief Judge halfway. The Chief Judge tried to obtain 'the intent' from another lay judge.

(50) Mr. F: Regarding the opinion on the intent to end the relationship, I don't agree with it. That was a simple, as Mr. B mentioned, an immediate action. But it is something caused by a reflex action.
その関係を終わらせようとした、そういう意志があったんじゃないかという意見があったんですけど、僕はそれはないと思います。それは単純に、Ｂさんと同じような、咄嗟と言いきれないですけど、反射的な、防衛の意志から出るという。
Sono kankei wo owaraseyou toshita, souiu ishi ga attan janaika toiu iken
that relationship obj-marker end that such intent sub-marker were not that opinion

ga attann desu kedo, boku wa sore wa nai to omoimasu. Sore wa tanjunni,
sub-marker were but I topic-marker that topic-marker not that think it is simply

B-san to onaji youna, tossa to iikirenai desu kedo, hanshatekina, bouei no ishi kara deru toiu
Mr. B same as like immediately difficult to say but reflex defense intent from that

(51) Chief Judge: A reflex action means a counterattack?
反射的に、反撃みたいな感じで。
Hanshatekini, hangeki mitaina kanji de.
reflex counterattack like isn't it?

(52) Mr. F: That's right. Something caused by a reflex action, counterattack, self-defense. But, by looking at her action of stabbing him with a kitchen knife, I have a feeling that she must have some kind of 'intent'.
そうですね、反射的な、防衛の意志から出るという。でも、ただし、包丁で刺すという行為をみると、それには何らかの意図があったんじゃないかなという風には思いますね。
Sou desu ne, hanshatekina, bouei no ishi kara deru toiu. Demo, tadashi,
that's right, reflex action defense of intent from caused that but in this regard

houchou de sasu toiu koui wo miruto, sore niwa nanrakano ito ga attan
knife by stub that action obj-marker look that something intent sub-marker was

janai kana toiu fuu niwa omoimasu ne.
isn't that way think see

The intent to cause injury was again confirmed in (52). After a few exchanges between Mr. F and the Chief Judge, which were deleted in this paper due to space, the Chief Judge talked about 'intent' again in (53).

(53) Chief Judge: The only thing is that (*tada*), I asked Mrs. D's opinion about this, but you are thinking she did not have the intent of death, are you? … not the level of his death?
ただ、さっき私、Ｄさんにも確認しましたけど、死というところまでは言ってないという感じですかね。相手の死というところまで
Tada, sakki watashi, D-san nimo kakunin shimashita kedo, shi toiu tokoro made wa
the only thing just before I Mrs. D to confirmed but death that until topic-marker

ittenai toiu kanji desu kane. Aite no shi toiu tokoro made.
not saying that feel isn't it? the other party of death that until

(54) Mr. F: If she had had that intent, she would have stabbed him in a different place. It was just like random stabbing.
殺すつもりだったら、もっと違う所を刺したんじゃないかな、それこそ、メッタ刺しとか。
Korosu tsumori dattara, motto chigau tokoro wo sashita njanai kana,
kill intent was more different obj-marker stubbed isn't it?

Sorekoso, metta zashi toka.
exactly stub mercilessly or

(55) Chief Judge: The only thing is that (*tada*), you are talking about a more definite intent to kill. Not that level of the intent, something like a feeling that he may die if she does such … how about this intent?
ただ、それは、まさに積極的にぶち殺してやろうと思っている場合ですよね。そこまで行かなくても、これじゃ死んじゃうかもみたいな感じぐらいの所ってのはどうですかね。
Tada, sore wa, masani sekkyokutekini buchikoroshite yarou to omotteiru baai
the only thing it topic-marker exactly positively definite intent to kill that thinking case

desu yone. Sokomade ikanakutemo, koreja shinjau kamo mitaina kanji gurai
isn't it? until that level this die may like feeling somehow
no tokorotte nowa dou desu kane.
of some how is it

(56) Mr. F: Well, I do not think she had the presence of mind, after all.
いや、そういう風に考える余裕がなかったんじゃないかなと思います、やっぱ。
Iya, souiu fuuni kangaeru yoyuu ga nakatta njanai kana to omoimasu. Yappa.
No, like that way think latitude sub-marker wasn't there that think all in all

(57) Chief Judge: From the circumstance, you think that way?
その状況からして
Sono joukyou kara shite
the circumstance from

(58) Mr. F: Yes.
はい。
Hai.
Yes.

(59) Chief Judge: Junior Judge, Junior Judge …
左陪席さん、左陪席裁判官。
Junior Judge-san, Junior Judge-san.
Mr. Junior Judge, Mr. Junior Judge.

The Chief Judge tried to extract the perception of the intent to murder based on the issue of the intent to injury, but it ended unsuccessfully. None of the lay judges recognized 'willful negligence'. He asked the Junior Judge for help. After a seven minutes' long explanation by trial judges, lay judges began to understand the notion of 'willful negligence'.

(60) Mr. B: Well, that's a gap between professional judges and ordinary citizens. Your way of asking is whether the defendant had a will to kill or not
その辺がやっぱり、裁判官の先生方と、私たち法律の素人とのギャップだと思うんです。裁判長が、聞いていらっしゃる事っていうのは、被告人に殺す気があったかどうかっていう訊き方だと思うんですね。
Sono hen ga yappari, saibankan no senseigata to, watashitachi houritsu no shirouto tono
that around sub-marker surely judges and we legal of amateurs of

gyappu da to omoun desu. Saibanchou ga kiite irassharu koto tteiunoha hikokunin ni
gap that think chief judge sub-marker ask that defendant to

korosu ki ga attaka douka tteiu kikikata da to omoun desu ne.
kill intent sub-marker was whether that how to ask that think see

(61) Chief Judge: Not a will to kill, but the intent to kill. Because I feel that a will to kill means a definite intent to kill, it is the intent to kill.
殺す気っていうか、殺意ですね。殺す気っていうと、殺す気満々ぶち殺す、みたいな感じで、
Korosuki tteiuka satsui desu ne. Korosuki tteiuto korosuki manman buchikorosu mitaina kanji
will to kill that intent to kill see will to kill that intent to kill full of definite intent to kill like feeling
(62) Mr. B: Well, you are asking whether she had the intent to kill, but the intent to

kill includes what Senior Judge stated, but we are simply looking at only how she was feeling.
殺意があったかどうかってのを聞いてると思うんですけれども。それの、殺意があったかどうかの中に、右陪席裁判官が仰られたような事が入ってると思うんですよね。ところが、私たちの方は、単純に気持ちだけをみている。
Satui ga attaka doukatte nowo kiiteru to omoun desu keredomo. Soreno satsui
intent to kill sub-marker was whether asking that think but that intent to kill

ga attaka douka no nakani migibaisekisaibankan ga osshararеta youna koto
sub-marker was whether of inside junior judge sub-marker said like things

ga haitteru to omoun desu yone. Tokoroga, watashitachi no hou wa, tanjunni ni
sub-marker mean that think don't I however our side topic-marker simply

kimochi dake wo miteiru.
feeling only obj-marker looking

Mr. B is getting the point of 'willful negligence' in (60). The Chief Judge gave a more precise definition of the intent. In (62) Mr. B clarified the different approaches between lay and professionals. After some supplementary explanation from the Chief Judge, Mrs. D also recognized the defendant's intent to kill. Her reasoning was that a gambler-mistress of an ex-convict is so different from herself that Mrs. D could assume that that kind of woman could have had an intent which ordinary people would not have. After that, Mr. B expressed his opinion as in (63).

(63) Mr. B: If I can round off the discussion, my personal view is my perception of her heart and in such a narrow sense she did not have the intent to murder. But in a more broad sense including legal interpretation, I think I can perceive the intent to murder.
今の話をまとめると、私個人的な考えとして、心の中の認識として、被告人が持っている、認識という、狭い意味での殺意がなかったけれども、法律上の解釈を含めた、広い意味での殺意ってのは出てる、あったんじゃないかなぁと。
Ima no hanashi wo matomeruto watashi kojintekina kangae toshite kokoro no naka no
last remark obj-marker sum up I personal opinion as heart inside of

ninshiki toshite hikokunin ga motteiru ninshiki toiu semai imi deno satsui
perception as defendant sub-marker have perception that narrow meaning intent to kill

ga nakatta keredomo houritsujou no kaishaku wo fukumeta hiroi imi deno
sub-marker wasn't but legal interpretation obj-marker include broad meaning

satsui tte no wa deteru attan janai kanaa to.
intent to kill that appear wasn't was it?

This is how 'willful negligence' regarding the first stab finally came to be shared with professional and lay judges.

Now let me return to the two questions posed in the beginning of this section. The answer for the first question is that professional judges wanted to extract the word, 'the intent that the victim might die' form lay judges. As lay judges lacked the notion of 'willful negligence', they could not differentiate between 'definite intent' and 'willful negligence'. As they could not perceive the definite intent in the first stab, they could not see any other kinds of 'intent'. Therefore, they replied 'no intent'. The Chief Judge reiterated lay response of 'no intent' and then carefully provided the conventional notion of 'intent that he might die', using *tada*. As mentioned before, *tada* is used when one adds supplementary information or partially opposes to what the other said. Although the Chief Judge was completely opposing to what lay judges said, he presented his opinion as if he were only partially opposing to the lays' perception. His use of the communicative strategy was so successful that lay people were not hesitant to express their different opinions continuously. Lay judges did not understand 'willful negligence' in their own sense, but to respond to professional judges, lay judges differentiated between their notion of 'intent' and the legal notion of 'intent'. They agreed to use the legal notion in the deliberations.

Because heinous criminal cases are deliberated under the lay judge system, lay judges are often involved in hearing murder cases. When a defendant admits to "intent to murder" (definite intent), the deliberation is on the assessment of culpability. However, when the defendant claims "no intent" (negligence) to a murder charge, lay and professional judges need to decide whether the defendant had the required intent at the time of enacting the crime or not. The courts' conventional way of judging intent is based on external circumstances; in contrast, it appears that lay persons may focus more on the defendant's motives to understand the story of the crime. Thus, as lay persons lack the notion of "willful negligence," opinions of the panel of judges very well might be divided.

Conclusion

Legal terminology is unintelligible to lay people though people's life is prescribed by laws. The introduction of the lay judge system therefore has given a prodigious opportunity to work on plain legal language in Japan. The diversity of the Japan Federation of Bar Associations' project was effective in reflecting lay understanding legal terminology.

To have a fruitful deliberation in a lay judge trial, professional judges have to learn how to explain to lay judges important legal distinctions, without placing too much pressure on them to simply agree with the professionals. Lay judges also have to learn how to express their opinions and participate in a meaningful way.

Three years have passed since the lay judge system was implemented. As the new system has not caused any major problems up until now, the feeling of tension in lay understanding has been decreasing among legal experts. On the other hand, more and more lay people with the experience of serving as a lay judge have expressed the feeling that trials are difficult to follow, according to a survey conducted by the Japanese Supreme Court. Legal experts need to go back to the principle of the lay judge system and work with language experts.

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DISSOLUTION OF MARRIAGE: FUNCTIONAL APPROACH TO POLISH-ENGLISH TRANSLATION OF SELECTED COURT DOCUMENTS

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Abstract: The paper presents results of a study aimed at analysing problems that arise in Polish-English translation of selected court documents in divorce and judicial separation cases, as well as the ways of solving such problems in the light of the functional approach to translation. The methodology used includes parallel texts analysis, corpus linguistics for term extraction and comparative legal research into concept comparison. The results, including comments on specific terminological, phraseological and textual choices and a critical analysis of certain established equivalents, are presented in the form of an annotated translation. The findings also include general observations on the types and the sources of common problems encountered by both beginner and experienced translators. Finally, a need is identified for developing a more effective form of presenting results of practice-oriented research in the field of translation studies, especially with reference to legal translation, which would account for a richer knowledge component and more extensive contextual information than traditional dictionaries and term-bases.

FUNKCJONALNE PODEJŚCIE DO POLSKO-ANGIELSKIEGO PRZEKŁADU WYBRANYCH PISM PROCESOWYCH I ORZECZEŃ SĄDOWYCH W SPRAWACH ROZWODOWYCH ORAZ W SPRAWACH O ORZECZENIE SEPARACJI

Abstrakt: W artykule zaprezentowano wyniki badań, których celem była analiza problemów właściwych dla tłumaczenia z języka polskiego na język angielski wybranych pism procesowych i orzeczeń sądowych w sprawach rozwodowych oraz w sprawach o orzeczenie separacji. W ramach badań przeprowadzono m.in. analizę tekstów paralelnych, zastosowano metody właściwe dla językoznawstwa korpusowego w celu ekstrakcji jednostek terminologicznych oraz komparastykę prawniczą w celu porównawczej analizy pojęć. Wyniki, w tym uwagi dotyczące konkretnych wyborów terminologicznych i frazeologicznych oraz rozwiązań na poziomie tekstu, a także krytyczną analizę wybranych powszechnie przyjętych ekwiwalentów, przedstawiono w formie tłumaczenia z komentarzem. W artykule ujęto także wyniki obserwacji dotyczących rodzajów oraz źródeł problemów tłumaczeniowych napotykanych przez początkujących oraz doświadczonych tłumaczy. Ponadto we wnioskach wskazano na potrzebę opracowania skuteczniejszej formy prezentowania wyników ukierunkowanych praktycznie badań w dziedzinie translatoryki, w szczególności w odniesieniu do tłumaczeń prawnych i prawniczych, która – w porównaniu do tradycyjnych słowników oraz baz terminologicznych – byłaby bogatsza pod względem merytorycznym oraz zawierała szersze informacje na temat kontekstu użycia poszczególnych terminów.

Introduction

Although in the past decades we have seen changes in translation studies resulting in a shift of focus towards the target reader and a growing significance of communicative and pragmatic aspects as factors influencing a translator's decision making process, and even though these changes have also had an impact on the theory of legal translation, leading to a number of scholars pointing to the necessity for adopting the functional approach to translating legal texts, arguably there is still certain reluctance among Polish-English legal translators in this respect. This may be attributed to the fact that for centuries literal approaches used to be exclusively preferred in relation to legal translation and also nowadays there are opinions voiced that, in order to avoid introducing unintentional changes to the legal effect of the text, translators should demonstrate fidelity not just to the substance of the source text, but also to the way it is expressed.

Another reason for the continuing preference for the literal approach may be the fact that the practical aspects of legal translation remain under-researched. Arguably, there is an insufficient number of comprehensive resources guiding translators through terminological pitfalls resulting from the incongruence of legal systems, which would also account for textual and phraseological aspects of translating particular text types.

This article is based on the author's MA dissertation project (Juszkiewicz 2012) aimed at the analysis of potential problems arising in Polish-English translation of selected court documents in divorce and judicial separation cases. It sought to identify the solutions to such problems and to evaluate them in the light of the functional approach to translation, as well as to present the results of the analysis in the form aimed to be of practical value for translators.

The choice of the topic is motivated by the ongoing social changes which arguably contribute to the increased demand for Polish-English translation of divorce documents. They include a growing number of marriages between Polish citizens and foreign nationals (presumably as a result of globalisation, as well as Poland's accession to the European Union and the free movement of persons principle) and a reported increase in the number of couples filing for divorce in the past years (GUS).

Presented below are the main theoretical assumptions behind the project, an overview of the materials and methodology used, chosen specific observations in the form of an annotated translation of one of the analysed documents, as well as the general conclusions and implications for further research.

Theoretical framework

1 Characteristics of legal translation

Regarding the distinctive features of legal translation[10], some of those discussed in the literature refer to the specific nature of legal language, others stem from extra

[10] The analysed court documents in divorce cases are related to the law by subject matter, as well as the by their communicative purpose (through performing their assigned functions in the course of legal proceedings). On these grounds a position is taken here that their translation falls within

linguistic factors linked to the nature of the law itself, the way it operates and the fact that it is based on various conceptual frameworks in different legal systems.

Among the features of legal language rendering it a "recognisable linguistic phenomenon" (Cao 2007, 20), the complexity of the lexicon, syntax, style and pragmatics (related to the performative nature of legal language, its modality and intentional vagueness) is often described (*ibidem*, 20–23). Some authors refuse to recognise the distinctiveness of legal translation on the grounds of the mentioned linguistic features of legal discourse, arguing that the prescriptive function is also present, e.g. in directions for use of medical equipment or instruction manuals (Harvey 2002, 179). This is indeed hard to deny, however, what seems to be linguistically unique and particularly important from a translator's point of view is that the forms used to express legal speech acts are often "determined by drafting practices, not by rules of grammar" (Šarčević 2000, 137) and therefore specialist knowledge of the drafting practices in both source language and target language is required.

As regards the extra-linguistic features of legal translation, it is widely acknowledged that one of the greatest sources of difficulties it poses stems from the fact that the reality behind the language, that is the law, is not universal as in pure sciences, such as mathematics or physics (Cao 2007, 23). To the contrary, national legal systems are results of long development and reflect the countries' history and culture. Consequently, concepts, defined as elements of knowledge representing a class of objects (Cabré 1999, 42–43), developed in different legal systems are to certain extent unsymmetrical. Following an assumption that concepts (and thus knowledge) are accessed by means of the language through terms, it is clear that incongruence of legal concepts will cause terminological problems in the translation process. It is a widely held view that "being able to compensate for terminological incongruency" is among the greatest challenges facing legal translators (Šarčević 2000, 4).

Some writers disagree that system-bound terminology is unique for legal translation. Harvey rightly indicates that, in fact, "culture-bound concepts (…) crop up in all fields of knowledge which have not been completely standardised" (2002, 180). However, it must be emphasised that, as stated by Šarčević, in legal translation it is not enough (as may be e.g. in social sciences) to simply identify the closest corresponding equivalent, but it is also crucial to compensate for any conceptual differences due to which the interpretation of the term could be altered (2000, 149). The first step, however, is to measure the degree of equivalence between the source language and the considered target language term, i.e. to analyse and compare the concepts they denote and the legal effects they cause. Šarčević proposes dividing the characteristics of legal concepts into vital (*essentialia*) and additional (*accidentalia*). Depending on the degree to which the vital and additional features of the source language and the target language concepts overlap, the author distinguishes three categories of equivalence: near, partial and non-equivalence (*ibidem*, 237–238). The information on the degree of equivalence is to

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the category of legal translation and that scholarly findings presented under the 'legal translation' label apply hereto, even though they may not necessarily be described as 'prescriptive', which, according to some authors, would leave them outside the scope of this category (Šarčević 2000, 9; Garzone 2000, 1).

provide the translator with the knowledge on whether a considered target language term could serve as a functional equivalent in a given context. One flaw may however be identified here, as in practice it often proves difficult to establish which characteristics of a concept are vital and which are just additional. Arguably, this cannot be universally agreed and stated in a dictionary, as depending on the context in which a term is used, its different characteristics may be vital.

2 Functional approach to legal translation

As in any kind of translation, macro-level strategies in legal translation vary from source-language- to target-language-oriented ones. As regards their use, due to the normative (and thus sensitive) character of legal texts, for centuries exclusive preference was given to literal translation (Šarčević 2000, 23). However, in recent decades a legal translator has been recognised as "an active participant in legal communication" (*ibidem*, 3), no longer involved in the "process of linguistic transcoding", but in "an act of communication in the mechanism of the law" (*ibidem*, 55). In other words, a free approach to translation has become accessible to legal translators, however, with certain implications and restrictions attached to it, which stem from the nature of legal texts.

The predominant approach to translation adopted here is the functional one. As long as the need for accurate rendering of the meaning and the legal effect associated with it is seen as crucial and cannot be denied, Schroth's view, that in legal translation "substantive equivalence is paramount and literary quality counts for all but nothing" (1986, 57) is only partly shared. If we accept the functional approach, with its key orientation on the target reader and on the equal effect that the source text and the translation should have on their respective recipients (Trosborg 1997, 148), it follows that the reader's perception of the text as regards its register and style must also be catered for. This may require adjustments of the style, the level of formality and the modes of expression which may (and often will) vary for the same genre across languages and cultures. As noted by Šarčević, "due to cultural and language differences, different drafting practices have developed in various jurisdictions, thus resulting in distinctive drafting styles" (2000, 167).

As regards terminology, a position taken by Weston is supported, who presents an argument in favour of using functional equivalents to translate culture bound source language expressions denoting a concept with no exact equivalents in target language, and who describes such a technique as an "ideal method of translation" (1991, 23). The author recommends the use of functional equivalents whenever possible, unless the target language term is "peculiar to the target language culture" (*ibidem*, 22). He sees word-for-word translation as obligatory if only it also yields a functional equivalent. Weston compares and evaluates a range of techniques at a translator's command (including: transcription, a literal equivalent, a descriptive equivalent, a functional equivalent and a neologism) to conclude that "to write a natural, idiomatic form of the target language" is the translator's "paramount duty" (*ibidem*, 24).

We also take a position that the realisation of equivalence at the word level is determined by its realisation at the level of a sentence, a paragraph and the whole text. As noted by Šarčević, "despite the continued emphasis on preserving the letter of the law in legal translation, the basic unit of translation is not the word but the text" (2000, 229).

It follows that the objective must be to ensure that all translation units are functionally equivalent, which may require adjustments of the text's macrostructure. Consequently, a hierarchical, "top-down" (rather than "bottom-up") approach is adopted, whereby "interpretation is not supposed to take place from the micro-level of the word (…) but from the macro-structure of the text to the micro-unit of the word" (Trosborg 1997, 145).

To summarise, a view expressed by Šarčević that "legal translators must know exactly how far they can stretch their freedom and still respect the restraints of their profession" (2000, 3) is shared here, which can be complemented by saying that legal translators must also strive not to treat 'the restraints of their profession' as an excuse to "adhere slavishly to the words of the original" (Weston 1991, 24) and produce what Schroth calls a "barbaric effect" (1986, 54).

3 Terminology

According to Cabré's communicative theory of terminology, terminological units, rather than concepts, are the objects of terminology as a discipline (2003, 183). Central to the definition of a terminological unit is recognition of its complexity and distinction of its three dimensions: cognitive (the concept), linguistic (the term) and socio-communicative (the situation). Under this approach terminological units are perceived as dependent on specific communicative context, as "special meanings of the lexical units at a speaker's command" that is "activated by the pragmatic characteristics of the discourse" (*ibidem*, 190). This assumption accounts for a view supported here that for the analysis of legal terms a reference must always be made to their context of use, as their meaning is not always fixed and predefined. This allows us to explain the circulation of lexical units between general and specialised discourses and the circulation of terminological units between different domains (*ibidem*, 190).

Apart from terminological units, in her work Cabré distinguishes other units which also express specialised knowledge, among them – phraseological units (*ibidem*, 183). While some phraseological units carry a certain degree of a domain-specific meaning (qualifying them as terminological units), others are devoid of such a specialised semantic load. As indicated by Kjær, they are formulaic expressions, standard and routine phrases "normally used, simply because they serve the important function of relieving lawyers from the immense burden of text production connected with the exercise of their profession" (2007, 513).

The awareness of phraseological units is considered crucial for delivering functionally equivalent translations, as they reflect the conventional usage of language and therefore serve to cater for the target text recipients, who, as argued by Trosborg, have the right to "approach the text from their own frame of reference" (1997, 157).

Materials and methodology

The choice of the materials and the methodology corresponds to the two key research aims, i.e. the identification of translation problems and the search for the appropriate solutions. Consequently, the selected materials can be divided into two main groups: (1) source language materials and (2) target language materials.

The first group, comprising a number of authentic court documents of each of the selected types (i.e. a divorce petition, a judicial separation petition and a divorce

decree), allowed for the preparation of comprehensive (as regards the range of terminology and phraseology featured) sample documents that were subsequently used as source texts for annotated translation. Among source language materials there were also resources of referential value devoted to the subject matter.

The second group included parallel English documents, as well as reference materials, such as legal acts, law textbooks, law dictionaries and miscellaneous web-sourced materials on the subject matter, some of which have become target language corpus components[11].

Other materials, which defy the above categorisation, were also used, including materials of a mixed nature, i.e. those which are either translations (Polish legal acts and summaries of Polish law in English, etc.) or products of terminography work, such as specialised bilingual dictionaries and term bases. Within this group a sub-group may be distinguished, comprising a number of past certified translations of the types of documents under analysis, as well as translations of similar texts conducted by beginner translators (students of Translation Studies at the University of Gdańsk). Reference to both these groups allowed for the identification and evaluation of the tendencies and practices as regards dealing with specific issues by different groups of translators.

Finally, online tools, such as discussion forums for translators, which are recognised as valuable information sources, complementary to the traditional ones and demonstrating significant potential for improving translation quality (Biel 2008, 35), were also consulted.

As regards the methodology, the following were employed on different stages of the project: (1) parallel texts analysis; (2) comparative legal research for concept comparison; and (2) text analysis tools and methods developed within corpus linguistics for term and phraseme extraction.

Annotated Polish-English translation of a divorce petition

Presented below is a proposed translation of a sample divorce petition, along with the commentaries on the choices made and translation strategies used[12]. In order to account for a wider range of terminology and phraseology that may be encountered in translation practice of such texts, the source text is a compilation of several authentic documents of its kind, with alternative elements marked as 1a, 1b, etc.

[11] With a view to retrieving from the target language a range of potential linguistic solutions to the identified translation problems and to create an easily-accessible collection of phraseological choices at a translator's command, a target-language corpus was assembled and analysed with the use of a number of corpus analysis tools (a description of which, however, remains outside the scope of this article). As a result, a target-language glossary was delivered, featuring the key terms for the domain along with the lexical clusters in which they tend to appear, phraseological units they form, prepositions they take and, if considered appropriate, also along with sample sentences showing their specific context of use. With such an emphasis, it was assumed that the outcome would be of substantial referential value for legal translators (as well as legal drafters), particularly non-native English speakers, who, regardless of being advanced language users, are reported to find the correct use of prepositions and collocations challenging (Bowker and Pearson 2002, 34).

[12] Owing to the limited size of the research, the findings are mainly directed at British (European) readers, whose primary frame of reference is the legal system of England and Wales.

Divorce petition

Warszawa, 18 września 2009 r. Do Sądu Okręgowego Wydział Cywilny w Poznaniu Powódka: Katarzyna Grześkowiak, zam. w Poznaniu, ul. Nowa 3/5 Pozwany: Grzegorz Grześkowiak, zam. w Poznaniu, ul. Nowa 3/5	Warsaw, 18 September 2009 **In[1]** the Regional Court [*Sąd Okręgowy*] in Poznań Civil Division **BETWEEN[1]:** Petitioner: Katarzyna Grześkowiak, residing in Poznań at ul. Nowa 3/5 **AND[1]** Respondent: Grzegorz Grześkowiak, residing in Poznań at ul. Nowa 3/5
Pozew o rozwód	**Petition for divorce**
Wnoszę o:	**I pray that:**
1a) rozwiązanie małżeństwa Katarzyny Grześkowiak z pozwanym Grzegorzem Grześkowiakiem, zawartego w dniu 15 października 1987 r. w Urzędzie Stanu Cywilnego w Poznaniu — nr aktu małżeństwa: 222/87 — przez rozwód z winy pozwanego;	1a) the marriage between Katarzyna Grześkowiak and the Respondent, Grzegorz Grześkowiak, solemnised on 15 October 1987 at the Register Office [*Urząd Stanu Cywilnego*] in Poznań — marriage certificate number: 222/87 — be dissolved through divorce and the Respondent be found **at fault[2]**;
1b) rozwiązanie małżeństwa Katarzyny Grześkowiak z pozwanym Grzegorzem Grześkowiakiem, zawartego w dniu 15 października 1987 r. w Urzędzie Stanu Cywilnego w Poznaniu — nr aktu małżeństwa 222/87 — przez rozwód bez orzekania o winie;	1b) the marriage between Katarzyna Grześkowiak and the Respondent, Grzegorz Grześkowiak, solemnised on 15 October 1987 at the Register Office [*Urząd Stanu Cywilnego*] in Poznań — marriage certificate number 222/87 — be dissolved through divorce on a **no-fault basis[2];**
2a) powierzenie powódce Katarzynie Grześkowiak wykonywania władzy rodzicielskiej nad wspólnym dzieckiem stron – Alicją, urodzoną w dniu 1 listopada 1994 r. w Poznaniu;	2a) primary **parental responsibility[3]** in relation to the child of the parties, Alicja, born on 1 November 1994 in Poznań, be awarded to the Petitioner, Katarzyna Grześkowiak;
2b) powierzenie obojgu rodzicom wykonywanie władzy rodzicielskiej nad małoletnią córką stron Alicją Grześkowiak, ur. 1 listopada 1994 r., oraz ustalenie, że jej miejscem zamieszkania jest miejsce zamieszkania matki;	2b) shared **parental responsibility[3]** in relation to the minor daughter of the parties, Alicja Grześkowiak, born on 1 November 1994, be awarded to both parents and a **residence order[4]** be made in favour of the mother;
2c) zawieszenie pozwanemu władzy rodzicielskiej nad małoletnią córką stron	2c) the Respondent's **parental responsibility[3]** in relation to the minor daughter of the

Alicją Grześkowiak w okresie jego pobytu w zakładzie karnym;	parties, Alicja Grześkowiak, be suspended during his prison term;
3a) zobowiązanie pozwanego do ponoszenia kosztów utrzymania i wychowania dziecka stron, Alicji Grześkowiak, w wysokości 900 zł miesięcznie;	3a) the Respondent be ordered to pay **child maintenance**[5] of PLN 900 per month for the child of the parties, Alicja Grześkowiak;
3b) zobowiązanie obojga rodziców do ponoszenia kosztów związanych z utrzymaniem i wychowaniem małoletniej córki i w ramach udziału ojca w tych kosztach zasądzenie od pozwanego Grzegorza Grześkowiaka na rzecz powódki Katarzyny Grześkowiak alimentów w kwocie po 700 zł miesięcznie, płatnych do rąk Katarzyny Grześkowiak jako ustawowej przedstawicielki małoletniej – do dnia dziesiątego każdego miesiąca, poczynając od uprawomocnienia się wyroku, z ustawowymi odsetkami w razie uchybienia terminowi płatności każdej raty;	3b) the parents be ordered jointly to cover the costs of **maintenance**[5] of their minor daughter and the father be ordered to contribute to these costs through **periodical payments**[5] of PLN 700 per month, due as of the date that the divorce decree becomes final and binding, and payable directly to the Petitioner, Katarzyna Grześkowiak, as a legal representative of the minor, by the 10th day of each month, with statutory interest charged in case of default on each payment;
4a) zasądzenie od pozwanego na rzecz powódki kosztów procesu według norm przepisanych;	4a) the Respondent be ordered to pay the Petitioner's **legal costs**[6] pursuant to the applicable provisions of law;
4b) zasądzenie od pozwanego na rzecz powódki kwoty 4500 zł tytułem zwrotu kosztów postępowania.	4b) the Respondent be ordered to pay the Petitioner PLN 4500 as reimbursement of **legal costs**[6]**.**
Ponadto **wnoszę o:** 5) powierzenie dziecka stron – Alicji Grześkowiak na czas trwania procesu powódce Katarzynie Grześkowiak i zobowiązanie pozwanego Grzegorza Grześkowiaka do płacenia kwoty 600 zł miesięcznie do dnia 10 każdego miesiąca do rąk powódki, na pokrycie kosztów utrzymania i wychowania dziecka;	Moreover **I pray that:** 5) for the period of the proceedings, **custody**[3] over the child of the parties', Alicja Grześkowiak, be awarded to the Petitioner, Katarzyna Grześkowiak, and that the Respondent be ordered to pay child maintenance of PLN 600 per month, payable by the 10th day of each month, directly to the Petitioner;
6) zwolnienie powódki od kosztów sądowych.	6) **court fee remission**[6] be granted to the Petitioner.

Annotations:

[1] The words: *IN*, *BETWEEN* and *and* are elements which do not formally correspond to the source text. As long as *In* can be regarded as a functional translation of *Do*, the other two lack any lexical correspondents in the source text, thus require explanation.

Through the study of a number of parallel documents, these words have been identified as elements contributing to the functional equivalence at the text level. Picture 1 below shows a typical structure of an English document initiating court proceedings in a civil case.

THE MANCHESTER COUNTY COURT

IN BETWEEN

Case No. TR123456

Claimant

JANE LARKIN

Defendant **and**

EMMA WHITE

PARTICULARS OF CLAIM

1. On 20th January 2008, the Claimant visited the premises occupied by the Defendant …

Picture 1. Particulars of claim. Source: http://www.ukessays.com/lpc/civil-litigation/particulars-of-claim.php

It is argued that adjusting the textual frame of the Polish document accordingly is desirable in order to enable the reader to access the text from a more familiar perspective.

[2] at fault, on a no-fault basis

The phrases *rozwód z winy pozwanego* and *rozwód bez orzekania o winie* constitute translation problems resulting from the differences in the way that a divorce process is regulated under the Polish and the English law. Pursuant to s.56 and s.57 of the Polish Family and Guardianship Code[13] (KRO), complete and irretrievable breakdown of a marriage (*całkowity i trwały rozkład pożycia*) provides a single and only ground for divorce. If the court is satisfied that this condition is met, it also needs to rule on whether and which of the spouses is at fault for the breakdown (which could include none, one or both parties). However, upon a joint request of the parties, the court does not rule on the issue of fault at all[14]. The possible outcomes of divorce proceedings in which a divorce is granted are summarised below:

Table 1. Possible outcomes of court proceedings ending in divorce being granted

[13] *Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy. Dz.U. z 1964 r. Nr 9, poz. 59.*

[14] What is more, if there are no minor children of the marriage and the respondent supports the divorce petition, the court may, under s. 442 of the Polish Code of Civil Procedure (*Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego. Dz.U. z 1964 r. Nr 43, poz. 296*), make a ruling based solely on the statements of the parties, which makes the Polish regulations relatively liberal and, in certain circumstances, a divorce relatively easy to obtain.

rozwód z winy obojga małżonków	divorce with fault attributed to both spouses
rozwód z wyłącznej winy jednego małżonka	divorce with fault attributed to one spouse
rozwód bez orzekania o winie	no-fault divorce
rozwód z orzekaniem o winie	divorce with attribution of fault

Consequently, following a divorce, the parties may be referred to as:

Table 2. Parties to a divorce case following the granting of divorce

małżonek wyłącznie winny	party solely at fault
małżonek niewinny	innocent party
małżonek, który nie został uznany za wyłącznie winnego	party not found to be solely at fault

Rozwód bez orzekania o winie has been translated as a *no-fault divorce*, and as an analysis of dictionary entries (Pieńkos, Kienzler, Myrczek), as well as a number of past court translations suggest, it can be regarded as an established equivalent. However, a question may be rightfully asked whether the differences between the Polish concept and what is understood in common law by a no-fault divorce are not too significant for the terms to be used as equivalents.

In common law tradition, a no-fault divorce is defined as one in which "the parties are not required to prove fault or grounds beyond a showing of the irretrievable breakdown of the marriage or irreconcilable differences" (Garner 2004, 516). Clearly, this definition covers all types of divorce provided for by the Polish law, where the element of fault is not among the necessary grounds for divorce and allocating the fault is a duty of the court (unless the parties request that this issue not be considered at all), not the spouse seeking dissolution. A *no-fault divorce*, as used to translate *rozwód bez orzekania o winie*, may lead to a wrong conclusion that the other types of divorce in Poland are fault-based. However, the vital characteristics of the two terms (*essentialia*), as defined by Šarčević (2000, 237–238), overlap, therefore a *no-fault divorce* can be accepted as a functional equivalent or *rozwód bez orzekania o winie*.

Rozwód z orzekaniem o winie is not a term used by the Polish lawmaker but it frequently appears in the Polish legal discourse and refers to both *rozwód z winy jednego małżonka* and *rozwód z winy obojga małżonków*. Rather controversially, it tends to get translated as a *fault-based divorce*, e.g. in the IATE term base (IATE ID: 3537464).

Black's Law Dictionary defines a *fault divorce* as one granted to a spouse on the basis of some proven wrongful act by the other spouse (Garner 2004, 515). The law of England and Wales provides an example of such a solution, where, under s.1(1) of the Matrimonial Causes Act 1973, each party to a marriage may present a petition for divorce on the ground that the marriage has broken down irretrievably. However, irretrievable breakdown of the marriage may only be evidenced by one of the following facts, referred to in s.1(2) thereof: adultery, unreasonable behaviour, desertion (all three are fault-based) or sufficiently long separation (no-fault).

Consequently, it is argued that the defining features of a fault-based divorce under common law do not correspond to the essential features of *rozwód z orzekaniem o winie* under the Polish law, which should still be described as a no-fault one, as the lack of fault on the part of either of the spouses does not prevent the divorce[15]. Therefore, alternative descriptive equivalents have been suggested, as presented in Table 1 above. They are an attempt to avoid the risk of activating the wrong kinds of associations on the part of the reader and to remain clear with regard to the meaning. Admittedly, the terms coined are stylistically less appealing than the short *fault-based divorce*. However, the greatest difficulty in this respect arises when one tries to express these concepts in a nominal form – in the text of the petition this problem has been avoided by the use of passive voice and a neat construction: *to be found at fault*.

[3] parental responsibility, custody, [4] residence order

Under s.95(1) of KRO, *władza rodzicielska* refers to the "rights and duties of the parents to exercise care over the person and the property of the child and the child's upbringing, respecting his/her dignity and rights"[16]. There seems to be strong preference among Polish translators for literal equivalents of this term, such as *parental authority* or *parental power*, as indicated *inter alia* by past court translations and discussions at specialist Internet translation forums. This is believed to be a consequence of many translation resources, i.e. dictionaries (Myrczek, Ożga, Pieńkos) and the above quoted translation of KRO, opting only for those literal equivalents. Among the materials referred to, the EU term base (IATE) is the only one adopting a functionally oriented approach in this case, by showing preference for the term *parental responsibility*[17] (IATE ID: 3537435). Arguably, this should be the favoured option for the European audience.

In the UK, under s.3(1) of the Children Act 1989, parental responsibility refers to all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. Clearly, the concepts referred to under the Polish and English law overlap to a significant extent. Therefore, employing the term *parental authority* in the translation, while there is a close functional equivalent available, is found hard to support. Arguably, apart from sounding odd or foreign, the literal equivalent in this case also carries certain negative connotations, activating the

[15] What might prevent it, however, is fault found solely on the part of the petitioner: in these cases a divorce is not granted if opposed by the innocent party (unless there are important reasons to rule otherwise); the distribution of fault also affects the rights and obligations of the parties following a divorce.

[16] Translation: Faulkner, Nicholas (2010). *Kodeks rodzinny i opiekuńczy. The Family and Guardianship Code.* Warszawa: Wydawnictwo C.H. Beck.

[17] IATE also lists the term *parental authority* under *władza rodzicielska* (IATE ID: 778128). However, preference is given to the functional equivalent, directly sourced from the English legal system, as explained in the notes accompanying the entry. The fact is worth noting, as it contradicts (or perhaps is an exception to) the general tendency of the EU terminology to be detached from the particular legal systems of the Member States.

archaic concept of superiority and subordination in family relations and thus potentially misleading the reader as to the actual understanding of the term under the Polish law.

As far as the issue of parental responsibility is concerned, mention should also be made of a potentially confusing term *custody*, defined by *Black's Law Dictionary* as "the care, control and maintenance of a child awarded by a court to a responsible adult" which, in divorce or separation proceedings between the parents is "usually awarded to one of them" (Garner 2004, 412). It follows that *custody* seems to be the American equivalent of *parental responsibility* and functionally correspond to *władza rodzicielska.* Although the intended target audience considered here is European and it is assumed that its primary frame of reference is the English legal system, we refer to the term *custody*, as it is also used in the European context, however, with a somewhat different meaning.

According to *Oxford Dictionary of Law*, the term *custody* was in use in England until the introduction of Children Act 1989, when it was replaced by *parental responsibility* (Martin 2003, 132). For this reason it is used in such sense in some older documents, as well as in informal or semi-legal texts[18] (which may also be a result of American influence); otherwise, it is a term featured in criminal law. However, *custody* is also recognised by the European Union and translated as *piecza nad dzieckiem* (IATE ID: 773368), which, according to the above quoted s.95 of KRO, is one of the elements of *władza rodzicielska*. Following an analysis of several other provisions of the Code (96(2), 100(1), 112^1(1), 120^1(2) and 158), it is argued that the term *piecza* refers to being able to decide about a child's whereabouts and being under a duty to provide care to that child; there is also an element of temporality involved. It thus appears to have a narrower semantic scope than *parental responsibility* but wider than just *residence*, which is why it is considered fit to express the concept of *powierzenie dziecka na czas trwania procesu.* However, if one wished to use only current British terminology, *residence*, denoting "the place in which a person has his home" (Martin 2003, 430), could also be supported as a transparent enough functional equivalent, with an assumption that the duty of care is implied when a residence order is granted.

[5] child maintenance, periodical payments

The issue of maintenance is closely related to parental responsibility. Under the Polish law, parents must provide for their children, i.e. cover the costs of their *utrzymanie* and *wychowanie*. The consulted translation of KRO lacks consistency regarding the equivalents of these terms — the following combinations can be found: *living and educating* (p.58), *welfare and upbringing* (p.103), *subsistence and education* (p.128), *maintenance and upbringing* (p.140) and *the child's upkeep* (p.98). It is argued that for the purpose of a divorce petition none of these is ideal: except for the last one, they are all word-for-word translations, not functioning as stable lexical combinations in the target language and, as there is a functional equivalent available, they arguably bear the mark of 'translationese'. The last example listed, *the child's upkeep*, appears to be a step in the right direction; however, it is too general. According to *Oxford Dictionary of Law*, the amount that a non-resident parent (i.e. one who does

[18] For example: www.childsupportlaws.co.uk and http://news.bbc.co.uk/2/hi/uk_news/2048681.stm.

not live with the child concerned) must pay as a contribution to the upkeep of his or her child is referred to under the English law as *child support maintenance* or *child maintenance* (Martin 2003, 79–80).

A reference to an American term *alimony* must be made here, which is a false friend of a similarly sounding Polish one: *alimenty*. Alimony refers to a "court ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced" (Garner 2004, 80). In the UK the term *alimony* was used in a similar way but has been replaced with *maintenance* or *financial provision*. The risk, however, is connected with the broad understanding of *obowiązek alimentacyjny* under the Polish law, where it refers to the maintenance obligation between parents and children, siblings, other relatives, as well as former spouses (p. 128 of KRO). It is therefore important not to mistranslate *alimenty na dziecko* (child maintenance) as *alimony*, which should be reserved to the maintenance obligation between spouses — not necessarily "*na żonę*" (to the wife) as suggested by Ożga and Pieńkos.

This annotation also concerns another term used as the translation of *alimenty*, namely *periodical payments*. In this context it is considered fit, as under the English law child maintenance may be provided in various ways (e.g. as a lump sum of money or property adjustments) and monthly payments are just one of them. This is an example of how the meaning of terms is dependent on the situational configuration: used out of context, *periodical payments* could refer to a number of hypothetical situations, as well as *alimenty* do not tend to be translated as *periodical payments* in dictionaries. Indeed, both these terms cover broad semantic areas; however, in the given context the functionally essential elements of their meaning overlap.

[6] legal costs, court fee remission

Before remarks are made regarding the term *court fee remission*, disambiguation is needed between commonly confused terms, i.e. *koszty postępowania (koszty procesu)* and *koszty sądowe*. Generally, the first ones refer to all the necessary costs borne by the parties in order to start and win the case — they correspond to *legal costs* under the English law (often shortened to *costs*) which amount to solicitor's costs, counsel's and experts' fees, other charges, expenses and disbursements, including court fees (Sime 2009, 561). Under both legal systems, the general principle regarding the payment of legal costs is that the losing party pays the costs of the winning party.

Koszty sądowe, although covering a wider range of expenses than English court fees (for example, in Poland they include experts' fee), appear to be their closest functional equivalent, also because certain categories of persons may not have to pay them. *Zwolnienie z kosztów sądowych* tends to be translated as *exemption from court fees* (Kienzler, Ożga). However, in the UK court fee exemption defines a situation in which someone does not have to pay court fees by law[19]. This is not the case in the petition above, where an application is made and a decision is to be taken by the court. Therefore the term *court fee remission* seems more fit, as it applies to situations where people "do

[19] Guide "Court fees – Do I have to pay them?": hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf [access: 1 May 2012].

not pay … court fee because the court has decided that if they paid it, they would **suffer financial hardship**"[20]. This corresponds to the grounds for court fee remission under the Polish law, provided in s.102(1) of the Act of 28 July 2005 on Court Fees in Civil Cases[21], which reads that:

> *Zwolnienia od kosztów sądowych może się domagać osoba fizyczna, jeżeli złoży oświadczenie, z którego wynika, że nie jest w stanie ich ponieść **bez uszczerbku utrzymania** koniecznego dla siebie i rodziny.*

Consequently, the term *court fee exemption* should be reserved to the cases where one is not required to pay court fees by law (*ustawowe zwolnienie z kosztów sądowych*), e.g. in petitions for determination of paternity *(ustalenie ojcostwa).*

Conclusions

The above annotated translation of a divorce petition is only a fraction of the empirical part of the research conducted. The conclusions, however, are based on the analysis as a whole and draw also on the parts not included in this article due to its limited size.

As regards the first research question, i.e.: 'What problems are likely to emerge in Polish-English translation of court documents in divorce and judicial separation cases?', it can be concluded that they are mainly of a terminological and a phraseological nature. As for the problems of a textual nature, they sometimes arise as a result of differences in the macrostructure of the parallel English documents. On the other hand, the register and the level of formality of these documents can be regarded as close enough to the source language texts to assume that few major difficulties for translators arise on these grounds.

With respect to the analysed terminology, it can be stated that as regards the substantive-law terms, there is a significant degree of similarity between the Polish and the English legal systems. However, certain established equivalents may be questioned, either on the grounds of their conceptual incongruence with the source language terms, or due to existence of better-suited alternatives.

Finding functional equivalents of the procedural terms, on the other hand, proves more challenging. This can be attributed to the significant differences in the way that the Polish and English conceptual systems are structured, as well as to the proliferation of English terminology in the language of the legal procedure.

Unlike under the Polish law, under the legal system of England and Wales there are separate statutes governing the rules of civil and family proceedings[22], which vary in the way that certain corresponding concepts are termed. Additionally, within the scope of each of these procedures, different terms for the same concepts exist as a result of the recent reforms in England that modernised the language of the law, so that many obscure

[20] *Ibidem.*

[21] *Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych. Dz.U. z 2005 r. Nr 167, poz. 1398.*

[22] Civil Procedure Rules 1998 and Family Procedure Rules 2010.

terms have been replaced with plain English ones. Inevitably, however, the old words and phrases are still in use and it is common to encounter a rather confusing mix of the old and the new (Malleson 2007, 99), both in authentic documents and in reference materials.

Another complicating factor is linked to the historical development of the English legal procedure, during which separate terminology was used for proceedings before chancery courts and for cases tried before common law courts, both of which are still in use today (e.g. *decree* and *judgement*). Different terminology used in other English-speaking countries, notably the United States, also adds to the confusion, especially as legal dictionaries do not tend to make references to the geographical distribution of terms or their context of use (which would often be simply impossible, given their limited size). As a result, the translations by both professional translators and the students of translation studies analysed for the purpose of the research demonstrate some inconsistency in their use of terminology. In addition, the students tend to have significantly more problems with achieving readability due to unidiomatic or even ungrammatical use of the language (which, in turn, seems to result from their overreliance on source-language oriented strategies).

As regards the implications for further research, it can be claimed that although the corpus-derived glossaries of terms and phrasemes can serve as valuable translation resources by providing a wide range of linguistic solutions that form the tissue of a naturally-sounding text and which are hard to retrieve from any other resources not specifically aimed at translators, and although the form of an annotated translation seems particularly suitable for presenting extensive contextualised comments on specific translation problems, there is a need for a more comprehensive form of presenting the results of practice-oriented research in translation studies. Arguably, thematic purpose-built resources combining the advantages of terminological and phraseological glossaries with a much richer and more systematically structured knowledge component, providing comparative information on conceptual systems in various jurisdictions, as well as highlighting the essential elements of concepts depending on their context of use, would be a tool that could significantly aid the legal translator's decision making process.

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List of pictures and tables:

LEXICAL PITFALLS IN POLISH-ENGLISH LEGAL TRANSLATION: A CASE STUDY INVOLVING STUDENTS OF ENGLISH PHILOLOGY IN POLAND

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Abstract: The article illustrates problems which were encountered by students of the first and second year of English Philology, who had been given a task of translating from Polish into English a passage from a Supreme Court act, concerning the European Arrest Warrant execution. The author who is an active lawyer – working as a prosecutor of the District Prosecutor's Office – analyzes almost twenty legal phrases coming from the original text and, comparing them with the official version of translation, examines the students' versions (108 translations altogether) which are then accompanied by descriptions and comments on the mistakes made. The analyzed examples show the uniqueness of the legal language and its pitfalls as well as lexical and syntactic dilemmas which create linguistic traps for a Polish translator who is preoccupied with translation of legal texts from Polish into English or vice versa. Moreover, the discussed cases indicate the need for a highly professional training of philology students, especially in the area of ESP (English for Special Purposes).

LEKSYKALNE PUŁAPKI W POLSKO-ANGIELSKIM PRZEKŁADZIE PRAWNICZYM: STUDIUM PRZYPADKU OBEJMUJĄCE STUDENTÓW FILOLOGII ANGIELSKIEJ

Abstrakt: Artykuł ukazuje problemy jakie napotkali studenci I i II roku anglistyki, którym postawiono za zadanie przetłumaczyć z języka polskiego na angielski, fragment uchwały Sądu Najwyższego dotyczącej wykonania Europejskiego Nakazu Aresztowania. Autor – czynny zawodowo prawnik – prokurator Prokuratury Rejonowej – analizuje ok. 20 zwrotów prawniczych pochodzących z tej uchwały i, odnosząc się do oficjalnego tłumaczenia tekstu, dokonuje analizy tłumaczeń zaproponowanych przez studentów (w sumie 108 wersji) przedstawiając i opisując zaistniałe błędy. Przeanalizowane przykłady ukazują specyfikę języka prawnego i prawniczego oraz zawiłości i pułapki leksykalno-syntaktyczne, jakie czyhają na polskiego tłumacza zajmującego się przekładem prawniczych tekstów z języka polskiego na język angielski lub odwrotnie. Omówione przykłady wskazują na potrzebę wysoce profesjonalnego szkolenia studentów neofilologii w zakresie przekładu tekstów specjalistycznych.

Introduction

The aim of the paper is to show the uniqueness of the legal language and its pitfalls as well as lexical and syntactic dilemmas which create linguistic traps for a Polish translator who is preoccupied with translation of legal texts from Polish into English or vice versa. Moreover, the paper's aim is to evoke and focus attention on the need for a highly professional training of philology students, especially in the area of ESP (English for Special Purposes).

The present paper illustrates the degree of linguistic competence and the translator's efficiency in the case of the examined students of English. First and second year students of English Philology at two Polish higher education institutions were asked to translate a legal text that combined both the language of law and the lawyers' language. The subject matter of the examined translation was a legal question of the Court of Appeal directed to the attention of the Supreme Court in Warsaw. The author has analyzed a total number of 108 sample translations of a Polish document into English.

The main tool of the research was the Lexical Approach in relation to comparative studies is. The adopted way of material penetration allowed for the analysis of the range of correctness evident in the use of legal terminology, functioning in the linguistic systems of Polish and English.

General remarks

Translation, by definition, is perceived as rewording of the same ideas in a different language from the original (Random House Webster's Electronic Dictionary and Thesaurus, College Edition). Plain, everyday language makes translation a plain and simple task. In the analysis of information and what it says, some of the most important questions arise in connection with the way language is used. Nevertheless, legal language, no matter whether English or Polish, cannot be considered as plain. Its intricacies in the area of syntax and lexis set off plenty of linguistic and cultural problems to be dealt with by the translator. To fully understand the notion of legal translation we have to be aware of a distinction between two types of language, namely the language of law and the lawyers' language. The first one may be defined as the language of legislative acts and it differs from the ordinary language especially in the aspect of vocabulary and stylistic (Seidler 1998, 114). The second term corresponds to the language of all categories of lawyers as well as legal scholars during the process of interpretation of legal acts and everyday legal activities e.g. litigation, constructing legal documents (Korybski 1998, 55). The way of dealing with problems and overcoming difficulties encountered in translation of a Polish legal text into English is to be presented in the further parts of the present paper.

Resolution of the Supreme Court and its translation

The text chosen for the students to translate into English was an official document stemming from the Polish Supreme Court, namely Resolution of the Supreme Court of the Republic of Poland of July 20, 2006 (Ref. File No I KZP 21/06), concerning the execution of the European Arrest Warrant issued by the Belgian judicial authority against Adam G., a Polish juvenile living temporarily in Belgium but with permanent

residence in Poland, who was suspected of murder to facilitate robbery of a Belgian citizen committed jointly with a second person on April 12, 2006 in Brussels. This sort of offence in Belgium is penalised with a life long detention sentence. Due mainly to the differences between the Belgian and Polish procedure of dealing with the juvenile offenders accused of committing most serious crimes, not wanted to be accused of infringing the suspect's rights, the Court of Appeal in Warsaw presented the Supreme Court with two legal questions as follows:

> *I. „czy zawarte w dyspozycji art. 607 k § 1 k.p.k. sformułowanie dotyczące przekazania z terytorium Rzeczypospolitej Polskiej osoby ściganej europejskim nakazem aresztowania „w celu przeprowadzenia przeciwko niej postępowania karnego" (podkr. SA) winno być interpretowane ściśle z jego brzmieniem, co oznaczałoby przekazanie wyłącznie bezpośrednio do przeprowadzenia postępowania karnego, czy też dopuszczalna jest szeroka interpretacja pojęcia „w celu przeprowadzenia postępowania karnego" (podkr. SA) oznaczająca możliwość przekazania osoby ściganej europejskim nakazem aresztowania do innego postępowania niż postępowanie karne w państwie wydania europejskiego nakazu aresztowania, zmierzającego bezpośrednio do stworzenia warunków formalno-prawnych do przeprowadzenia postępowania karnego, które to warunki uzależnione są od wydania uznaniowej decyzji przez sądowy organ tego państwa, w szczególności, gdy decyzja ta ma ustanowić, że osoba ścigana, będąca nieletnim w rozumieniu prawa państwa wydania europejskiego nakazu aresztowania, odpowiadać będzie w tym państwie za popełniony czyn wyczerpujący znamiona przestępstwa w postępowaniu karnym",*
> *II. „czy odmowa wykonania europejskiego nakazu aresztowania przez sąd polski dopuszczalna jest wyłącznie w przypadku zaistnienia przesłanek określonych w dyspozycji art. 607 p k.p.k. (bezwzględne przesłanki odmowy) i art. 607 r § 1 k.p.k. (względne przesłanki odmowy), czy też odmowa taka możliwa jest także na skutek innych przyczyn, np. stwierdzenia przez sąd polski braku przesłanek określonych w dyspozycji art. 607 k § 1 k.p.k."*
> *(*http://www.sn.pl/orzecznictwo/uzasadnienia/ik/I-KZP-0021_06.pdf*).*
>
> ("*I. whether the expression included in the disposition of Article 607 k § 1 of Criminal Code Proceedings concerning surrendering a person for whom a European arrest warrant had been issued "for the purposes of conducting against the person criminal prosecution" (underlined by the Court of Appeal) should be interpreted literally, which would mean surrendering directly for conducting criminal prosecution, or whether a wider interpretation is admissible "for the purposes of conducting criminal prosecution" (underlined by the Court of Appeal), providing the option to surrender the person concerned by a European arrest warrant for other than criminal prosecution in the State issuing the European arrest warrant leading directly to establishing formal and legal conditions for criminal prosecution, which conditions are pending on issuing a discretional decision by the judicial authorities of that State, and in particular when the decision is to determine that the requested person as an juvenile under the law of the State issuing the European arrest warrant, is to bear responsibility in that State for the act committed meeting the premises of crime in criminal prosecution,*
> *II. whether refusal to execute the European arrest warrant by Polish judicial authorities is admissible solely pending on premises given in the disposition of Article 607 p of Criminal Code Proceedings (absolute premises for refusal) and*

> *Article 607 r § 1 of Criminal Code Proceedings (relative premises for refusal), or whether such refusal is also admissible due to other reasons, e.g. statement by Polish judicial authorities of failure to satisfy premises stipulated in the disposition of Article 607 k § 1 of Criminal Code Proceedings.")*
> (http://www.sn.pl/english/orzecznictwo/uzasadnienia/I-KZP-21_06en.pdf)

On July 20, 2006 the Supreme Court - Criminal Chamber, passed a resolution providing a reply to those questions. The students were ordered to translate the heading of the resolution and the first legal question it contained, i.e. one sentence consisting of seventeen lines of text in the original text and take into account the original outlook of the text.

Dunin-Dudkowska (2006, 157–158) stresses the importance of adequate and thorough translation of legal terms:

> *"Legal norms must not be translated into a foreign language without taking into consideration the fact that they were worked out by other and for other recipients who think differently and live in a different socio-cultural environment. Legal texts possess a unique semantic character. They do not contain synonyms, homonyms and redundancy. What matters in legal texts exclusively is their literal meaning but not their symbolic sense. A given legal text must have only one precise meaning assigned, which permits the decisive consideration of the fact"(transl Ł.Z.).*

To what degree precision and adequacy in legal translation count can be vividly shown by the analysis of the way in which the below presented terms have been used by the examined students in their translations.

Table 1: The most important legal terminology used in the translated excerpt of the Supreme Court's Resolution.

	Polish version	**English version**
1.	Przewodniczący	Chairman
2.	Sąd Najwyższy	Supreme Court
3.	Sędziowie	Judges
4.	Prokurator Prokuratury Krajowej	prosecutor of the National Prosecutor's Office
5.	kodeks postępowania karnego (k.p.k.)	Criminal Code Proceedings
6.	Sąd Apelacyjny	Court of Appeal
7.	Postanowienie	decision
8.	zagadnienie prawne	legal question
9.	zasadnicza wykładnia ustawy	fundamental interpretation of the act
10.	przekazanie	surrendering
11.	Europejski Nakaz Aresztowania	European arrest warrant

12.	przeprowadzić	conduct
13.	postępowanie karne	criminal prosecution
14.	warunki formalno-prawne	formal and legal conditions
15.	organ sądowy	judicial authorities
16.	Nieletni	Juvenile
17.	znamiona przestępstwa	premises of crime

The chosen text clearly shows that textual conventions in the source language are often culture-dependent and may not correspond to conventions in the target culture[23]. The notion of culture is of great importance and the translator must bear in mind that legal cultures and systems differ and theses differences must be reflected in translation as it may frequently occur that the source text was composed by a person belonging to one legal culture while the target text is read by someone belonging to another legal system. Tokarczyk (2000, 109–152) shows connections between law, religion and morality and distinguishes, besides legal cultures of common law and statutory law, legal cultures of Judaism, Christianity, Islam, Confucianism, Hinduism, and Animism. Linguistic structures that are often found in the source language have no direct equivalent structures in the target language[24]. The translator, therefore, has to find target language structures with the same functions as those in the source language. The examples below show how the sample group managed to fulfil the task:

Chairman

Surprisingly, the translation of the first term, that did not present a considerable challenge, produced so many variants, though the words *chairman* and *chairperson* were most commonly used. The term *chairman*, as used in the official translation, means: *"the presiding officer of a meeting, committee, etc., or the head of a board or department."* It is not exclusively a legal term and the institution of chairman is common in many different countries.

It seems that many students tried to examine the cultural aspect of translation and looked for some equivalents rooted in the Anglo-Saxon legal culture like Lord Chief Justice, Chancellor or Honour Judge which, regardless of the effort, cannot be considered as direct equivalents of the word *"Przewodniczący"* as used in the context of the Supreme Court. Interestingly, a few people used expressions like *Chief Justice* or *Mr*

[23] Cf. Nielsen (2010, 23–35) who pointed out that translators may find it helpful to identify conventions in the microstructure of source texts. This is, however, only a first step towards producing translations that conform to the conventions in the target-language culture without changing the substantive contents of the source texts.

[24] Cf. Zweigert & Kötz's (1998, 40 et seq.) thesis: the *praesumptio similitudinis* according to which there is a presumption of similarity of practical legal results amongst different legal systems. Otherwise dissimilar legal notions are actually the legal equivalents in different legal systems e.g. private title insurance companies in the USA do what the public Land Registry does in Germany. The two structures are wholly different but are functional legal equivalents.

Chief Justice, but failed to consequently describe other members of the court as Justices.

Two grieve mistakes occurred: terms *foreman* and *President of the Jury* have been used. They can be treated as synonyms and denote *a juror who leads jury proceedings and speaks to the court on the entire jury's behalf.*

The other term was *director*. A dictionary definition says that it is *a person who runs or manages a business, company or corporation, often as a member of a board of directors, with a fiduciary duty to direct its affairs in the best interest of both the business and its shareholders*. *Leader* in the English legal meaning is *Queen's Counsel or any barrister who is the senior of two counsels appearing for the same party* (Oxford 1994, 225).

One person decided that the term *Prime Minister* would be most suitable. It is hard to tell whether Justice Paprzycki (the Chairman) would mind, but for better or for worse Polish Constitution establishes separation of judicial and executive powers.

Two other terms are worth mentioning: *Chairperson* as a more politically correct version of *chairman*, as it does not describe the person's sex, and *Presiding judge.* It seems that the second term would be most suitable for the translation in question as it conveys the idea that the chairperson is at the same time a judge. The verb *to preside* means *to occupy the place of authority or control, as in an assembly or meeting; act as president or chairperson* and can frequently be found in legal register.

Table 2: Official version and students' equivalents of the term "*Przewodniczący*".

Official version:	**Students' equivalents:**
Ad 1. Chairman	Chairperson; Chairman; The Honour Judge; President of the Jury; Lord Chief Justice; President; Head chairman; Presiding judge; Chancellor; Director; Chief Justice; Leader; Foreman; Chair; Mr Chief Justice;

The Supreme Court

This term has only one lexical equivalent (though in Britain the House of Lords is the highest court) and most students were able to introduce it properly.

About a quarter of the students used the term High Court (which denotes a British court but of a lower instance), probably also due to the fact, that in Polish proceedings, while addressing the judge "Your Honour" the phrase "*Wysoki Sądzie*" is being used, which some people literally translate as *High Court*. Whatever was the

reason, the term *High Court* clearly does not express the idea of this particular court being the highest instance in the whole country.

Some students tried to communicate this idea by translating *"Sąd Najwyższy"* as *Highest Court of Law*. In this case, adding the word "law" was unnecessary as firstly, the whole text was concerned with legal issues and did not concern matters connected with e.g. the royal court or any marked horizontal area within which a game is played like a court of tennis. Secondly, as stated above, this term has only one lexical equivalent. One student introduced the term *Court of Justice*, probably to stress the fact that in her opinion lower instance courts in Poland lack justice, and thus, justice can only be served at the final instance. On the other hand, the European Court of Justice exists and the EU member states are bond by its legal decisions.

One person translated *"Sąd Najwyższy"* as… *National Party*. It cannot be doubted that the Supreme Court and the Polish long forgotten pre-war nationalist party *"Stronnictwo Narodowe"* share the same abbreviation - *"S.N."* but it is terrifying that the person in question did not have any second thoughts.

Table 3: Official version and students' equivalents of the term "*Sąd Najwyższy*".

Ad. 2. Supreme Court	Supreme Court; High Court; Highest Court of Law; Court of Justice;

Judges

First of all, the term *judge*, as correct lexically as it may be, is used in the English legal language to denote only lower instance judges and cannot be used in connection with the Supreme Court. Those jurists who sit in the Supreme Court are called *Justices* in order to emphasise their high rank, experience, power and importance, although the mission of both judges and Justices is to deliver justice. Only a few students were able to spot this difference, but mostly applied the term *judge.* As their justification, it has to be admitted that in the Polish legal language only one term functions to describe the whole profession, i.e. *sędzia* and it was indeed an uneasy task as even the Supreme Court's translator used the word "judge".

An interesting attempt was at the term *Puisne judges* used by a few students. Though this British term describes junior judges in rank, as opposed to the term denoting the Supreme Court's seniors, but at least a few students tried to find some equivalent, though clearly not being familiar with the idea of the British (and Polish) court system.

One person used the term *adjudicators* which could be at best translated into Polish as *'osądzacze'*. Another egregious error was mistaking judges (Justices) with Juries (a group of persons selected by law and sworn to examine the evidence in a case and render a verdict to a court). This example shows how the lack of knowledge of the legal culture of a different country leads to serious misinterpretations. A general and thus vague term like *members* was also used, probably as the last resort for a person totally unfamiliar with legal register.

The word *array* remains a mystery when it comes to legal context. None of its

ordinary definitions matches the idea of judge. After a thorough search, the only legal context for the term was found in Oxford's Dictionary of Law (1994, 58–59) under the definition "*challenge to jury*". The expression "*to challenge jury to the array"* describes the situation in which "*the whole panel is challenged by alleging some irregularity in the summoning of the jury (e.g. bias or partiality on the part of the jury summoning officer)."*

Table 4: Official version and students' equivalents of the term "*Sędziowie*".

Ad. 3. Judges	judges; Puisne judges; Justices; Arrays; Members; adjudicators; Juries;

Prosecutor of the National Prosecutor's Office

As it was predicted, this point was most troublesome and caused most misinterpretations. The main problem lies in the fact that the continental idea of the prosecution's office differs from the Anglo-Saxon one, though the role remains largely the same, i.e. prosecutor is *an attorney who prosecutes criminal cases on behalf of the state* (Blackwell 2004, 243).

Most students were aware of the fact that the prosecution is conducted in the name of the sate and by officials appointed by the state, so they tried to express it in the process of translation. As a result adjectives and nouns like *public*, *state*, *country*, *domestic*, *national*, or even *central*, *internal* and *native* were used.

In the case of the term *"prokurator Prokuratury Krajowej"* the word *"krajowy"*, which can be expressed by many English equivalents, shows both the high rank of the prosecutor in question as well as the fact that this prosecutor's office covers the whole territory of Poland. That is why *national* is considered as probably the best equivalent.

Attorney General means *an attorney who serves as the head of the Department of Justice and chief legal adviser to the President and represents the United States in legal matters; each state has its own attorney general who performs the same functions at the state level* (Blackwell 2004, 24). In Poland, this term (used interchangeably with General Prosecutor) was at the time the Supreme Court's resolution was issued, attributed to the Minister of Justice who was also responsible for prosecution policy. In 2010, fundamental changes in the functional model of the Public Prosecution Service in Poland were introduced as the statute of October 9, 2009, amending the Prosecution Act and some other statutes (Journal of Laws nr 178, position 1375), came into force on March 31, 2010. The most important changes were the separation of function of the Prosecutor General from the Ministry of Justice and replacement of the National Prosecution (or National Prosecutor's Office) with the Prosecution General.

A few examined students used the term p*rocurator*. It is closest in spelling and pronunciation to the Polish term *"prokurator"* but its English meaning (derived from

Latin) is similar to an agent or a proxy and describes *a person who acts on someone else's behalf.*

Table 5: Official version and students' equivalents of the term "*Prokurator Prokuratury Krajowej*".

Ad. 4. prosecutor of the National Prosecutor's Office	prosecutor of the Public; General Prosecutor; Public Prosecutor of Public National Prosecutor's Office; Prosecutor of the state prosecution' prosecutor of the National Prosecutor's Office; Public Prosecutor; Prosecutor of national prosecutor's office; General Public Prosecutor; Public Prosecutor General; Attorney General of Public Prosecutor's Office; State Public Prosecutor; Prosecutor of the Country Public Prosecutor's Office; Prosecutor of Domestic Prosecutor's Office; Central Prosecutor; Native Public Prosecutor; Prosecutor of the Internal Prosecutor's Office; Procurator;

Code of Criminal Proceedings/Procedure

As expected, students of English philology do not necessarily have direct knowledge of both foreign and domestic legal systems and their terms. That is why it did not make any difference to many of them whether *k.p.k. (kodeks postępowania karnego)* should be translated as *Penal Code* (i.e. the codification of criminal law) or *Code of Criminal Proceedings/Procedure* (i.e. the codification of the rules governing the criminal procedure). Some students left empty spaces, some translated only the abbreviation, changing the Polish letter "*k*" into the English "*c*", without any explanation. Furthermore, the misunderstanding of the abbreviation *k.p.k.* led one person to translate it as *the code of canon law.* This example must be considered as an egregious mistake because the whole text was dealing with the matters of criminal law and not the Church. A similar example is the expression used by another student - *code of practice*. This term (correctly *code of practices*) is not a penal phrase but describes rules of conduct of a trade organisation or company, etc.

One person decided to translate the term "*prawo"* as *right*. It could be considered as the case of Kade's facultative equivalence[25], because the Polish term

[25] Kade (1968, 79 et seq.), studying the notion of equivalence in translation distinguishes four types of equivalence:

prawo could be translated as *right* provided it should denote the direction. In a text concerned with legal matters the choice of the correct equivalent must be doubtless.

Finally, it has to be emphasised that the phrase *Criminal Code Proceedings* used in the official English version of the text must also be considered as inappropriate because the word order does not reflect the English word order. Re-translated into Polish, this phrase would sound as *karny kodeks postępowania,* which would not correspond to a genuine Polish legal term.

Table 6: Official version and students' equivalents of the term "*kodeks postępowania karnego (k.p.k.)*".

Ad. 5. Criminal Code Proceedings	Penal Code; Code of Penal Proceedings; Code of Penal Procedure; Criminal Code Proceedings; (…); penal right code; Code of the penal law; k.p.k. – c.p.c. code of practise; punitive proceeding codex; code of canon law;

Court of Appeal

Court of Appeal appeared to present little challenge during translation since courts of appeal exist probably in all legal systems around the world. The name is commonly shared because the idea of granting the defendant the right of having his case reheard belongs to the fundamental human rights in democratic states – even Saddam Hussain's lawyers were allowed to appeal against the capital punishment sentence, though the appeal was not successful and did not change his fate.

A few students used rather uncommon and obscure terminology, namely: A*ppellate Court*. One person decided to emphasise the fact that that particular court deals with appeals against sentences in criminal cases, and as a result he created a term unknown to the Polish judiciary (i.e *Court of Criminal Appeal*).

A few translations opted for *District Court* as the courts fulfilling the idea of

(a) Totale Äquivalenz (total equivalence) – ideal correspondence between both languages, that can usually be found in standardised specialised terminology. e.g. die Marktforschung (German) – market research (English)
(b) Fakultative Äquivalenz (facultative equivalence) – a one to many correspondence between the source language words and those of the target language, e.g. napięcie (Polish) tension, voltage, suspense, stress, pressure (English).
(c) Approximative Äquivalenz (approximating equivalence) accounts for one to part of one correspondence, e.g. niebo (Polish) sky/heaven (English),
(d) Null-Äquivalenz (zero equivalence) lack of equivalent in the target language, usually in the case of culture bound lexical items, cf.: bigos (Polish), pub (English).

second instance courts. Unfortunately, although District Courts adjudicate appeals against the sentences of Local Courts as first instance courts, it is not enough to consider them equal in hierarchy to the Courts of Appeal. In the Polish legal system, District Courts are inferior to Courts of Appeal, and treating them as one in translation leads to serious misinterpretations.

Table 7: Official version and students' equivalents of the term "*Sąd Apelacyjny*".

Ad. 6. Court of Appeal	Appeal Court; Court of appeal; Court of Appeal; Appellate Court; Administrative Court; Court of Criminal Appeal; District Court;

Decision

Evaluating different varieties of the term, the word *decision* seems the best option and this term was most widely used by the students in their translations. The term itself is similar to the Polish *"decyzja"*. It means a *conclusion reached after considering facts and applicable law if necessary; a judicial determination or judgement.* The term r*uling* could also be taken for the idea of *judge's or court's of law authoritative statement.*

Only a few other expressions were introduced, namely *resolution* and *reference*, which cannot be accepted. *Resolution* means a *formal expression of the opinion or intended course of action of a legislative body or other group arrived through a vote* and is a proper term for the judgment passed by the Supreme Court. *Reference* is either a citation or an act of referring a matter to another body. In both cases it cannot be used as an equivalent of the process of the court's decision making.

Table 8: Official version and students' equivalents of the term "*postanowienie*".

Ad. 7. decision	decision; resolution; ruling; reference;

Legal question

The exact Polish term was *"zagadnienie"*, so *legal issue* could have been considered as the term closest in meaning. On the other hand, it does not fully reflect the idea, i.e. that the lower instance court, being unable to deal with a difficult legal problem that requires the fundamental interpretation of the law, turns to the Supreme Court for such an interpretation (colloquially speaking "asks for help"). We may compare this, to some extent, with the idea of precedent because the Supreme Court explains the legal provisions that caused problems in interpretation and its decision is binding.

The term *legislation issue* was improperly introduced as the Supreme Court does not deal with matters of legislative character. There is no doubt that in Poland the

legislative power lies in the hands of the Parliament and is legally controlled, in accordance with the Constitution, by the Constitutional Tribunal.

Table 9: Official version and students' equivalents of the term "*zagadnienie prawne*".

Ad. 8. legal question	legal problem; law question; legal issue; legal question; law's issue; question of law; legal act; legislation issue;

Fundamental interpretation of the act

Most students opted for the correct adjective *fundamental* meaning *far-reaching and thoroughgoing in effect* and the noun *interpretation*. Some other adjectives being used were *essential, cardinal, elemental* and *principal.* The main problem with the translation of this phrase was how to translate the noun *"ustawa"* in the Polish legal fixed phrase *"zasadnicza wykładnia ustawy"*. In this case, the noun should be attached to an abstract meaning and thus the term *law* is the best option, because the Supreme Court does not limit its interpretation to only one legal act, but examines the provisions in question in accordance to the whole system of criminal law. It is only worth mentioning that the term *bill*, traditionally improperly used as a synonym of the term *act*, is limited in meaning to the draft of a proposed law.

Table 10: Official version and students' equivalents of the term "*zasadnicza wykładnia ustawy*".

Ad. 9. fundamental interpretation of the act	principal interpretation of law; fundamental act interpretation; fundamental exponent of a statue; fundamental interpretation of the act; fundamental interpretation of the bill; fundamental interpretation of the law; constitution; elemental supplementation of statue; essential interpretation of statue; fundamental commentary; cardinal interpretation of the law; essential construction of the act;

European arrest warrant & surrendering

Expression 10 will be discussed together with 11 below, as both are connected with the issuing of the European Arrest Warrant (EAW/EUAW).

The only correct term is European Arrest Warrant written with capital letter as

it is the proper name[26]. Many students used the term *writ* which belongs to legal English terminology but is a court's command aimed at a particular person ordering that person to do a particular act whereas EAW is directed at the judicial authorities of the Member States.

The United Kingdom Home Office has defined it as *"common arrest and **surrender** warrant designed to provide efficient and effective justice within the EU, whilst protecting the rights of defendants and victims."* The EAW is a means to increase the speed of extradition within the EU but it cannot be treated as a synonym of extradition. One person explained the procedure of EAW as "being hunted by the EAW."

Table 11: Official version and students' equivalents of the term "*przekazanie*".

Ad. 10. surrendering	transferring; extradition; handover; surrendering; expedition; deliveration; transference; pass; assignment; delivery;

Table 12: Official version and students' equivalents of the term "*Europejski Nakaz Aresztowania*".

Ad. 11. European arrest warrant	European order of arrest; European arrest warrant; European warrant for arrest; European warrant of arrest; European writ; European detention order; European Bench-warrant; order of arrest European precept of apprehension; European penal warrant;

To conduct

To conduct prosecution is a fixed legal phrase and should not be translated in any other way, with totally inappropriate verbs like e.g. *make*, *lead*, *maintain*. It is also possible to use phrasal verbs *carry out* or *carry on* in this context though they sound rather colloquial (and the translated document was a Resolution of the Supreme Court).

Table 13: Official version and students' equivalents of the term "*przeprowadzić*".

[26] Cf. http://www.eurowarrant.net

Ad. 12. conduct	carry out; execute; conduct; lead; maintain; take; make; trial;

Criminal prosecution

To correctly translate this term, at least a basic understanding of both source and target legal systems is needed, especially of the criminal procedure, in order to be able to distinguish between the seemingly synonymous terms of *criminal prosecution* and *criminal proceedings.* The second one is the umbrella term and includes the stages of investigation, prosecution and, finally, sentencing (punishment). Unfortunately, the interchanging use of these terms causes fatal problems in the administration of international justice. Even translations of the European Arrest Warrants produced by Polish sworn translators are not free from such mistakes. The problem is that if we use the term criminal prosecution we denote the early stage of the criminal proceedings. Therefore, it is illogical to translate that the person was sentenced and convicted to imprisonment during the stage of criminal prosecution. In such cases, British judicial authorities usually turn the Polish EAW down and demand explanation how it is possible that a person who is wanted for criminal prosecution (i.e. he is a fugitive from justice and did not stand trial) was sentenced to imprisonment. Such translations lead to the conclusion that Poland follows some kind of medieval (or even more archaic) code of criminal proceedings where the rights of the defendant are nonexistent.

Table 14: Official version and students' equivalents of the term "*postępowanie karne*".

Ad. 13. criminal prosecution	penal proceedings; penalty proceedings; criminal prosecution; penal procedure; criminal proceedings; court procedure; criminal action; legal proceedings; criminal charge;

Formal and legal conditions

Term 14 did not cause any special problems although one person decided to translate *"formalne"* as *administrative*, probably without checking in the dictionary that *administrative* means *of or pertaining to administration; executive.*

Requirements cannot be considered appropriate as its closest Polish meaning is *"wymagania." Official* was used as a synonym of *formal* and *lawful* as a synonym of *legal.*

Table 15: Official version and students' equivalents of the term "*warunki formalno-prawne*".

Ad. 14. formal and legal conditions	formal and legal conditions; formal-law conditions; formal and lawful conditions; legal-formal conditions; formal and legal requirements; official-legal conditions; legal and administrative conditions;

Judicial authorities

In this case (15) it is important to use a general phrase like judicial authorities (plural), because both the author of the source text and the translator are usually unaware what kind of organs deal with the matter in question in the target legal culture. It is often the case that the same matter is heard in one country by a Local Court in other by a District Court and in another by administrative authorities. That is why translations like *court organ*, *Court*, *court of justice* (probably suggesting existence of a court of injustice) or *magistrates* are more or less mistakes. One person used the expression *Body Court* (written with capital letters) which in reality does not convey any idea and the closest dictionary entry is body count.

Table 16: Official version and students' equivalents of the term "*organ sądowy*".

Ad. 15. judicial authorities	court organ; judicial authority; judicial authorities; judicial body; criminal justice body; Court of justice/court of justice; Court; Body Court; magistrates;

Juvenile

Juvenile is the only possible term in this context, as it is the only term rooted in the criminal law. *Under-age* and its variants, including the incorrect one "*underage*" are rather not being utilised within the legal field.

Minor is a civil legal term and has a different meaning i.e. someone who is younger than eighteen years of age. According to the Polish Civil Code, the age of majority is attained at the first moment of the eighteenth birthday (Myrczek 2005, 3), whereas criminal responsibility starts in Poland with the first moment of the seventeenth birthday (in case of some more severe offences – with the fifteenth). *Adolescent* is also a legal term but denotes a type of juvenile (in the English sense of the term), i.e. a teenager being of the age thirteen through nineteen, and *pupil* is an educational term and does not have any application in the legal lexicon of penal law.

Table 17: Official version and students' equivalents of the term "*nieletni*".

Ad. 16. juvenile	under-age; under age; juvenile; minor; underage; adolescent; pupil;

Premises of crime

One of the trickiest and most difficult to translate terms was *"znamiona przestępstwa"* as it is an example of a legal jargon. The most commonly used and correct translation is *premises of crime.* Most students were not familiar with the term though correctly decoded the idea it conveys, i.e. characteristics of an offence that lead to the criminal persecution of the offender. As shown above, many variations occurred, some represented the idea of translating *verbum ad verbo*, others tried to describe the term using ordinary words.

Table 18: Official version and students' equivalents of the term "*znamiona przestępstwa*".

Ad. 17. premises of crime	hallmarks of the offence; characteristics of offence; characteristic of a crime; qualified enough as an offence; premises of crime; account for an offence; responsible for actions; regarded as an offence; signs of crime; act recognised as a crime; act which at law is count as a crime; described as a crime; trait of crime; comprehensive crimes; features of a criminal offence; said to be a crime; features of criminal offence; badges of crime; indication of a crime; hallmarks of the crime; stigma of crime;

Concluding remarks

The clash of two language systems always gives birth to controversies in the sphere of lexis and syntax, which usually results in semantic ambiguity and misunderstanding. Misinterpretation and thus misunderstanding can readily close the whole channel

through which information is sent, which, in turn, may cause significant real problems of cognition. The problem of misinterpretation and misunderstanding of English legal terminology by Polish users of English was the core element of the present exposition. Having analyzed 108 sample translations of a Polish document into English rendered by first and second year students of English Philology at two Polish higher education institutions, the following conclusions can be drawn:

(i) The students' socio-linguistic and cultural competence, requiring some basic knowledge of the cultural, social, and legal background of Great Britain and the United States is inadequate. The examined students displayed a great deficit in socio-linguistic competence with reference to the English legal jargon since the majority of them was not able to convey the message.

(ii) It appeared that pragmatic competence within its socio-linguistic domain, and especially in relation to cultural and professional references was very limited in the case of the examined students. They were not able to compare adequately and thus find functional English legi-linguistic equivalences to Polish legal institutions. For example, the institution of jury and its verdict was wrongly identified with the sentencing by a judge and penal law was identified with criminal procedure.

(iii) The above-presented examples give evidence not only of socio-linguistic competence deficiency but they also point to the students' inadequate training in the use of dictionaries. Mixing up the position of Justice with the position of Prime Minister or decision with reference is really alarming since the lexical and socio-cultural problems appear with the students of English Philology, many of them in their second year of the three-year programme of studies, even though it would have to be recognised that such students may not have been given the intellectual tools to translate in a more effective way than they did in the case study in question. Therefore, one recommends that school and university authorities reconsider curricula, especially those which neglect the teaching in relation to the effective use of dictionaries.

(iv) Moreover, organizational competence of the research students, especially in the domain of grammar, calls for improvement and thorough consideration. In many cases syntax was violated and the used vocabulary was entirely wrong. For example, **penal right code*; **hunted by the European Arrest Warrant*; **Mr Chief Justice*, or **deliveration*.

(v) The aforementioned examples testify to the students' inability to create a cohesive text in legal English. As our analysis and observation show, the subjects' organizational competence, and especially their textual competence is far below the level expected to be represented by a student of English Philology. Some of the translated texts bear witness of misinterpretation and misunderstanding.

(vi) Examining 17 principal legal terms used in the Polish text and their equivalents in English as created by the observed and tested translators, it appeared that they worked out 169 term versions! Some terms had fewer number of equivalents than others, ranging from 6 (*postanowienie* - decision) to 21 (*znamiona przestępstwa* - premises of crime) and their number can only point to inadequacy of translation

and thus to inadequacy in the translators' training.

(vii) A thorough analysis and discussion over the problems and materials presented in the present paper make us cognizant of the difficulty of legal translation. Moreover, we realise that translation is, as a matter of fact, a demanding process especially if it refers to translation of texts for rather specific and highly specialised purposes. Hence, not only should listening, speaking, reading, and writing be considered as skills but the list ought to be expanded by translation as a special purpose skill which requires special training.

Taking into account all foregoing conclusions, we receive quite a clear image of what legal translation is, and what kind of competence is required from the professionally prepared translator. Besides, we also get a relatively clear picture of the teaching/learning process designed for the students of English Philology and especially their results in the translation test. The obtained results, in general, call for certain verification and modification of the contemporary three-year-programmes of studies offered by the majority of higher education institutions in Poland and designed for students of English.

Since demand for translators is ever-increasing, much must be done to change the educational system and curricula to make college and university graduates better prepared for the translator's job. The carried out research studies showed that the knowledge of the legal system and culture of the target language users, demonstrated by the subjects, was insufficient. The subjects' legal and linguistic competence was generally too low to transform ideas and forms without violating proper communication. Inadequate results in translation, as demonstrated by the subjects, only underscore the validity of the adopted proposition of this analysis.

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CAN GENRE-SPECIFIC DIY CORPORA, COMPILED BY LEGAL TRANSLATORS THEMSELVES, ASSIST THEM IN 'LEARNING THE LINGO' OF LEGAL SUBGENRES?

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Abstract: This paper presents a study aimed at examining whether DIY corpora compiled by professional legal translators can assist them in their role as learners of legal sublanguages, particularly those translators working into non-native target languages.

A procedural DIY corpus methodology has been developed, involving the framed retrieval of authoritative legal texts from Internet repositories or other sources by legal translators themselves, according to their specific needs or those of particular projects, bearing in mind at all times feasibility in the workplace. Target audience expectations and requirements are also an important consideration in the project.

A pilot study performing some initial testing with professional legal translators in certain legal genres and different languages has been completed and will be reported on. Results so far seem to indicate that compilation of such corpora can be achieved in an average of 30-45 minutes, in line with users' expressed criteria.

It is posited that these highly specialised corpora may provide translators with some additional reference material that they are sorely lacking due to the absence or shortage in many language combinations of legal dictionaries or thesauri, in particular as regards collocations. It is hoped that a contribution may be made to professional practice in the long term.

CZY KORPUSY POSZCZEGÓLNYCH GATUNKÓW TEKSTÓW ZEBRANE SAMODZIELNIE PRZEZ TŁUMACZY PRAWNICZYCH POMAGAJĄ IM „UCZYĆ SIĘ JĘZYKA" PODGATUNKÓW TEKSTÓW PRAWNYCH?

Artykuł przedstawia wyniki badań przeprowadzonych w celu określenia czy korpusy tekstów tworzone przez zawodowych tłumaczy testów prawa, zwłaszcza tych tłumaczących na języki obce, mogą pomagać im w uczeniu się odmian języka prawa. Stworzono metodologię dotyczącą samodzielnego tworzenia korpusu wykorzystującego pozyskiwanie wiarygodnych tekstów z internetu lub innych źródeł przez tłumaczy. Badanie pilotażowe dotyczące wybranych gatunków tekstów prawa oraz różnych języków dowodzi, że kompilacja takiego korpusu zgodnego z kryteriami użytkowników, może zająć 30-45 minut. Zakłada się, że te wysoko wyspecjalizowane korpusy stanowią dla tłumaczy dodatkowe źródło informacji, zwłaszcza, że w wielu językach brakuje słowników prawnych, szczególnie jeśli chodzi o kolokacje.

Introduction: Scope and limitations

Legal translation[27] is a thorny subject, due in part to the highly conservative nature of legal sublanguages. Whilst lawyers are taught legal language at law school as part of their studies, and paralegal staff undertake training on legal writing, translators are rarely trained in this singular lect.

Despite the fact that professional legal translators have a wide range of *general* tools at their disposal, such as dictionaries, glossaries, termbases, and online fora[28], target sublanguage conventions and appropriate collocations may escape them due to the lack of legal thesauri[29] and legal collocation dictionaries (Biel 2010). Parallel corpora, generally used by professionals in the form of translation memories, may make a contribution, but availability is limited for the most part to the genre of legislation.

The project to be described in this paper seeks to examine whether and to what extent small, specialised electronic corpora created in legal subgenres by professional translators themselves according to their needs can assist them in producing translations that are closer in line with target audience expectations.

The project also aims, in a distinct strand, not detailed here, to gather information from those commissioning legal translations in order to better understand their expectations, as well as requirements and quality issues encountered, and to find out what information is communicated to translators when commissioning takes place.

The majority of studies on corpora created by translators themselves (hereafter 'DIY corpora', standing for Do-It-Yourself) have involved students. This project will involve professional translators only. Freelancers have been selected rather than translators employed in-house, because the latter generally have access to far more terminological resources to support their efforts.

Research methods

This empirical research project is mainly qualitative – participants are volunteers and not selected using statistical methods. However, insofar as certain demographic data such as country of origin, language pair, professional experience, etc. is being collected, the project could also be described as adopting a mixed methods approach. It comprises a pilot study performed between December 2011 and March 2012, and a main study to be launched in October 2012. The author has herself been a practising professional legal translator for over twenty years, and there is thus an element of action research.

Recruitment of participants so far has been carried out using web groups such as Yahoo! Groups and LinkedIn, through professional blogs, and face-to-face networking at events on translation and the law. The main study may also involve workshop settings – this has been suggested by certain interested national associations[30].

Feedback is obtained through questionnaires hosted on an online platform – Wufoo.com. This enables the researcher to have real-time access to the data as it is

[27] This paper is concerned with translation (the written medium) and not interpreting (spoken).
[28] Such as Proz.com, Wordreference.com.
[29] Burton's Legal Thesaurus published by McGraw Hill, in English, would appear to be the only example at this time.
[30] E.g. Sweden, Holland.

generated, and to produce statistics on an ad hoc basis. Data from the Wufoo platform can be exported, via Microsoft Excel, to the data analysis software package NVivo, in particular for responses to open questions, where text can be marked up into fields created by the researcher on an on-going basis and subsequently enable a fine-grained scrutiny. It is hoped that these tools will give a more rigorous justification to qualitative findings, and provide deeper insights into the data.

Disciplinary foundations

Genre theory applied to the legal domain

In this paper I shall use the following terms for the legal domain: *supergenre* as comprising all "language of the law" (Bhatia 1987); in which '*subgenres*' are grouped under '*genres*', which act thus as common headings encompassing a number of the lower level categories" (Monzó Nebot 2008, emphasis added).

Bhatia (1987, 227) provided a structure distinguishing the main legal genres according to their "communicative purposes" and the "lexico-grammatical, semantico-pragmatic, and discoursal resources" used in different legal contexts. A systematic organisation of such a complex supergenre is clearly valuable. However, regarding written genres, Bhatia (1987) differentiated between "frozen legal documents like contracts, agreements, insurance policies, etc." and "formal" documents such as "legislation, rules and regulations, etc."; classifying them both under the term "legislative", which seems somewhat perplexing. In his 2006 work, however, Bhatia offered a different view of legal genres, dividing them into a "primary" genre – legislation; "secondary" genres – e.g. judgments and case reports; "enabling academic genres" – such as textbooks, critical essays, etc.; and "target genres" – e.g. contracts, affidavits, insurance documents etc. The latter three categories are collectively termed "derived" genres, as being "interpretations of legislative intentions" (p. 6).

Other classifications of the legal supergenre have been proposed, for example by Trosborg (1997, 20) according to "situation of use". Kurzon (1997, 120) differentiates between "legal language […] employed when people talk about the law" and "the language of the law" that he defines as institutional laying down of the law. A further classification has been made by Mattila (2006, 4–5) according to the sub-groups of legal professionals.

I will be offering a complementary structure aimed at addressing use within legal translation practice. In particular, such an organisation could be used by translators to classify their collection of DIY corpora.

Legal translation and functionalism

The issue of a legal translation's (non-)compliance with target expectations will be explored in this section.

In a work devoted to the interaction between translation theory and practice, Chesterman and Wagner (2002) raise three key issues: differentiation of translators' service by offering several levels of quality to suit a range of purposes; "maintaining a resemblance to the intended genre" (e.g. p. 96) when translating; and increasing the use of target language resources in the profession.

Nord (1997) is a seminal work on functionalist approaches to translation. It contains a detailed description of *Skopostheorie*, according to which "the prime principle

determining any translation process is the purpose (*Skopos*) of the overall translational action" (p. 27). Nord also emphasises the importance of a translation 'brief' in translator training, defining the "conditions under which the target text should carry out its particular function" (pp. 59–60).

In the legal domain, Šarčević (2000) outlined the new focus placed by Reiss and other German scholars from the 1970s onwards on target audiences, to enable translators to select appropriate translation strategies, discussing *Skopostheorie* in particular. She also considers differentiation of purpose, and the corresponding variation in strategies. She cites Kelsen in classifying different groups of addressees or receivers as direct or indirect (p. 4), and further develops approaches and advice for specific receiver groups.

Gémar (2002, 168) distinguished four main categories of reader in the context of legal texts: laymen, those who are 'lettered', practising legal professionals, and legal scholars. It ensues that depending on its destination, a translation will be informed by knowledge of its intended readership.

Garzone (2000) demonstrated the suitability of a functional approach to legal translation and concluded that:

> "the degree of equivalence to be achieved in the translation of a given text is not absolute, but depends first and foremost on the TT [target text] intended function as well as on the nature of the ST [source text]; the whole process is governed by a principle located at a sufficiently high level of generalisation as to be suitable for virtually all types of legal texts".

Sparer and Covacs stated that "Specialists in legal translation now define fidelity as achieving an equivalent impact on the target reader […] to respect the stylistic conventions of the target legal culture" (taken from Harvey, 2002, 180).

However, in order for the translation to appropriately fulfil the intended purpose, it should be clear from the above that translators need to be informed of what that purpose actually is. The latter point is beyond the scope of this paper, but as mentioned in the Introduction, forms part of the second strand of the project.

Corpora and translation

Although corpus use in translation has been studied extensively at academic level since first highlighted by Baker (1993, 1995), Kenny (2001) and Olohan (2004), amongst others, professional uptake is considerably more limited, as demonstrated in the EU-funded MeLLANGE project survey (MeLLANGE, 2006) and in my own survey (J. Scott 2011, 7–8) and discussed by Bowker (2004) and Bernardini (2006).

Much research has been done on parallel and comparable[31] corpora, and a significant amount on small DIY corpora *per se* (e.g. Varantola 2002; Zanettin 2002; Maia 2002).

[31] The terms 'parallel' and 'comparable' are somewhat contentious in the literature. They are considered here as defined by Fernandes (2006): 'parallel' being texts and their translations, 'comparable' consisting of two (or more) sets of L1 texts.

In particular Varantola (2002) described "disposable corpora as intelligent tools" for translators, i.e. those that "adapt to users' needs and allow user profiling" (p. 171). She also states that "disposable material can be recycled and refined to form part of a more permanent collection" (p. 175).

Other studies have examined DIY corpora used in specific genres such as tourism (Wilkinson, 2007) and timber (Jääskeläinen & Mauranen: 2006), and some cover several genres (Tagnin 2002). However, studies have in the main concerned student rather than professional translators – indeed my searches in this regard have only brought to light Jääskeläinen & Mauranen (2006) and Maher, Waller & Kerans (2008), and there has been little application to the legal field – there is only a passing reference in the latter paper to an association bylaws corpus. There is a study involving a corpus of travel insurance documents and legislation, in the context of the extensive Spanish tourist industry rather than legal translation as such, mainly focusing on translator training and corpus representativeness (Corpas Pastor & Seghiri 2009).

Corpora and Language for Special Purposes

Bowker and Pearson (2002) is generally considered as the reference work on the compilation and use of corpora in the field of Language for Special Purposes (LSP). They state: "In our experience, well-designed corpora that are anywhere from about ten thousand to several hundreds of thousands of words in size have proved to be exceptionally useful in LSP studies".

The use of self-compiled specialised corpora for LSP learning was studied by Lee and Swales (2006) in the area of English for Academic Purposes (EAP). A group of university students were introduced to the corpora and to the skills needed to investigate the language, *inter alia* using context for disambiguation, using frequency patterns, and examining collocations. They were also taught to compile two corpora of their own. The software used was WordSmith Tools (M. Scott 1996). Upon completion of the research programme, most participants had purchased the software in order to "continue their concordancing activities outside the classroom".

Hafner and Candlin (2007) examined the use of specialised corpora in understanding professional discourse. Their study, carried out in Hong Kong, looked at how corpus tools could contribute to language prowess as a part of professional training for fledgling lawyers. A genre-based approach was adopted and examples included: letters of advice; statements of claim, defence and counterclaim; affidavits; opinions; and agreements. Student participants were given access to a corpus of 114 legal cases (797,000 words) from three subject areas and divided into seven sub-corpora, that had been compiled for them, and were given the option whether to use the tool or not. Those who chose to adopt the corpus "viewed them as a convenient and helpful toolset to provide language support for their legal writing and drafting assignments" (p. 314).

Bhatia, Langton and Lung (2004), looking at corpus linguistics and language teaching and learning in legal contexts, conclude, citing Tribble, *inter alia*, that "the use of genre-based small corpora will be much more useful than large corpora covering a complete register of law" (2004, 215). They further hold that "legal discourse is so conservative in its construction, interpretation and use that it often does not require a large corpus to determine its linguistic frequencies" (2004, 207).

The NIFTY corpus methodology

I will now describe the corpus methodology that has been developed. It is a process consisting of five steps: defining corpus criteria; collecting corpus material; manual assessment; file conversion[32]; and use in translation. The current version of the methodology results from trialling during a pre-study that I carried out from 2009–2011 which is the subject of a Masters' thesis (J. Scott 2011).

I have chosen the acronym 'NIFTY', standing for 'Nimble, Individual, Fast & fruitful, Tailor-made and Yield a great harvest!', as well as the usual dictionary definitions of the word[33]. The aim is to make the methodology as user-friendly as possible.

Defining corpus criteria

In particular: target language; geographical perimeter, due to differences between UK/US English or Portuguese in Brazil and Portugal, for example; type of document [the (sub)genre]; file type, since the PDF format may be more freely available than .doc files in the legal domain and may show signatures or official stamps thus attesting to the authoritative nature of the text; and date of publication, e.g. where terminology has changed following a certain event or piece of legislation.

Collecting corpus material

As regards corpus collection, translators may make use of their own archives, and are also given some indications on legal electronic document repositories, both those accessible freely and those on a subscription basis. I have also provided step-by-step instructions for advanced Google file search.

Manual assessment

The importance of a short but essential manual assessment is strongly emphasised, to check whether texts are authoritative, include good quality language (are not obviously translations or badly written), and whether they comply with the criteria defined. This is feasible since the number of texts in a corpus for a highly specific legal subgenre remains manageable[34].

Corpus query software and file conversion

Following comparative testing (J. Scott 2011), the freeware AntConc (Anthony 2010) was chosen in order to consult the corpora collected. Preference was given to this software rather than WordSmith Tools (M. Scott, 2010) due to its single user interface and simplicity of use. AntConc is also freeware, whereas WordSmith Tools costs GBP 59.50[35]. At the present time, corpus query software can only accept .txt files. Some

[32] Due to restrictions in corpus query software packages at this time.
[33] Examples: first-rate; great, clever, sharp: a nifty idea.
[34] Testing carried out by the author so far of corpora comprising an average of between 10 to 25 texts has yielded good results. These figures vary according to the genre.
[35] Price checked 31 August 2012.

examples of batch file conversion software are therefore supplied, where possible freeware. Using such packages, all files collected can be converted in a single operation. The importance of clear labelling of files is stressed in the participants' training pack, as highlighted by Maher, Waller and Kerans (2008), to ensure that source files can be identified at the corpus consultation stage. A suggested file name might include a language code, type of document (subgenre) and name(s) of party(ies).

Corpus consultation and use during translation

In terms of corpus consultation and use while performing a translation, as regards the corpus query software, the attention of study participants is drawn to the Key Word in Context (KWIC) concordance function, keyword lists, and cluster/collocate functions.

Once familiar with the methodology, participants may also choose to load more than one set of files (NIFTY corpus) into the software, and thus consult several corpora at the same time, where relevant for a translation. For example, if they have collected corpora for power purchase agreements, joint venture agreements and sales agreements, they may choose to consult these three corpora if performing a translation of another type of agreement. In this case, they could avail themselves of the proposed supergenre structure referred to briefly in the section on genre theory.

Pilot study

Participant profiles

Current practice in the translation profession is heavily dependent on the Internet, both for job offers – for example through Proz.com and similar, and email exchanges with regular clients – and to consult resources such as termbases. As described earlier, online groups have therefore been leveraged in order to recruit participants.

This may lead to certain type of 'internet-savvy' participant being foregrounded in the study, but I have weighed this up with the advantages of obtaining global reach and thus a wider range of languages. By the very nature of their working methods as described above, translators should tend towards this profile in any case. Wright (2006) carried out a study of the strengths and weaknesses of researching Internet-based populations and online survey research, in which he concludes that researchers may save considerable time using online survey tools, but must be aware of "issues related to sampling frames, response rates, participant deception, and access to populations" in respect of their research aims.

Data collection

Three questionnaires are being used. A registration form, setting out the appropriate ethical information, is used to collect data relating to the translator's profile. Upon receipt of this form, a participant code is issued, enabling the remaining data to be anonymised. Participants were asked to provide feedback using two separate forms – one relating to corpus compilation, and another on corpus use in translation.

Following registration, professional translators participating in the research are given a training pack consisting of an illustrated handbook as well as a video guide in the form of a commented screencast slide show giving details on how to compile their

NIFTY corpora. These multimedia tools can be downloaded from a simple project website that I created to streamline the administration of participants. The website is password-protected in order to control participation in the study and avoid undue dissemination.

In order to recruit professional translators, to date I have used the following sources:

i) a pool of 81 translators that had expressed interest in further research during a pre-study (J. Scott, 2011);
ii) 106 translators that were present at a legal translation conference where I ran an introductory workshop on the methodology;
iii) a notice posted on a private legal translators' group on Yahoo;
iv) a notice posted on an open legal translators' group on LinkedIn.

This recruitment drive for the pilot study took place in early January 2012, resulting in 43 translators registering to participate in trialling the methodology.

Results

The following section summarises some key aspects of the data collected so far.

Table 1 shows an attrition rate of 79% between registration and provision of feedback. Many participants cited workload or personal circumstances when contacted on this subject. Some have requested to defer their participation until the main study.

Table 1: Overview of pilot study participants

N° of translators registered	43
N° of target languages registered	12
N° of countries registered	16
N° of translators having provided feedback on corpus compilation and/or use	9[36]

Participants were free to choose the content of their NIFTY corpora. It can be seen from Table 2 below that the subgenres chosen range from court-related documents (e.g. pleadings and judgments) to corporate texts (e.g. agreements, Articles of Association), notarial texts (e.g. deeds) and regulatory instruments (e.g. rules, procedures, codes).

[36] One of these participants is an academic also working as a translator in an institution and thus does not fit into the intended target population frame.

Table 2: Data for NIFTY corpora compiled by pilot study participants

(Sub)genre	Total words	Language	Source of corpus material	Time required for compilation (in minutes)	Participant code
Divorce judgments	5 527	Spanish	Own archives	15	018
Divorce decrees	Not supplied	Polish	Google file search	Not supplied	035
Acceptance and Vesting of Estate	12 500	Spanish	Own archives	40	018
Lease agreements	1 643	English	Web repository	40	036
Loan agreements	120 000	English	Online search	30	050
Sales agreements	45 000	Spanish	Own archives & Google file search	30	043
Memoranda & Articles of Association	437 971	English	Own archives & Google file search	20	029
Articles of Association	221 283	English	Google file search	45	031
Deed of acceptance and award of inheritance	2 000	Catalan	Own archives & Google file search	40	043
International Arbitration Rules	115 847	Spanish	Official websites	75	018
Patent examining procedures	67 578	English	Google file search	60	017
Penal codes	206 089	Spanish	Online search	60	014
Study and examination codes	70 000	English	Online search	30	050
Arrhythmias[37]	15 734	English	Not supplied	60	017

Feedback received from pilot study participants' structured questionnaires can be summarized in three main points. Firstly, it was generally seen as relatively easy to compile the corpora. Secondly, all participants providing feedback felt that the tool was useful. Several also felt more confident in their completed translation than without the use of the tool. Third, they used the corpora more than they had expected, and used other tools and methods less than usual.

Table 3 below includes comments sent in by participants either by email or using the free comments box in the questionnaire. As can be seen, the comments are favourable to the use of the methodology. The position of those who did not provide feedback is not known. The author is currently considering ways in which provision of feedback could be incentivised in the main study.

[37] Whilst this is a specialised corpus, it does not fall within the frame of legal (sub)genres.

Table 3: Pilot study participants' free comments – raw data

Participant code & country	**Comment**
018, Spain	*"I really find your proposal very useful. I guess it depends on each one own translating method. In my case, I really used that function, I need to check on original texts (into the documents I really trust) over and over. I used to did it searching manually or with google desktop help. NIFTY corpus... it's a great tool, I am glad that I went to Lisbon and hear you. I am going to save time and, specially, increase the confidence on my own job. ¡Muchas gracias!"*
018, Spain	*"Just some comments about the collecting process. It's my first corpus, I did it in a field that I usually work with and feel comfortable. To my surprise, I have used the corpus more than I expected. I have used original court texts from my own archives that were in DOC format. I have a lot of original useful PDFs in my own archives, but when I tried to use them, even if I use Abby finereader 9.0, I realised that I had to work for a while on them and I don't have time now. After using the corpus I have realised that it is a great tool and will work on my PDF files to have clean TXT files to work with."*
022, Germany	*"I've started working through Juliette's material. The introduction video she did is a beautifully simple, clear explanation of basic principles and terms, and after watching it a few things that I thought I knew were understood much better. It also dawned on me after a bit that, while her approach is similar in many ways to what I have done for some time in source language research, she focuses on the target language. This has pretty powerful implications for someone working to master a new specialty. I had never really thought about this much before, because I mostly translate in domains I know very well because I have worked in them at some point as a researcher, etc. and I'm not much bothered about searching for collocations and the like.* *Her research project involves legal translators. But her methodology applies very well to any specialist domain. And I do see value in it for my usual specialties (including two legal areas), because it is a more efficient way of performing certain kinds of language checks. I've just been so focused on source language that this took a while to sink in."*
014, USA	*"I just - finally - dared to dive in and create my first corpus... and I feel as if I've just learned the ABC!* *This may sound too gushy, but I'm truly happy about this. I had read Lynne Bowker's book, but I was still intimidated by the prospect of building a corpus. Now it all worked beautifully, thanks to the excellent instructions on your guide…"*
050, Czech Republic	*"The bulk of my translation work are translations into English, and I think that as a non-native translator I need much more robust language data to consult in order to achieve natural collocations and expressions typical of the given text type. Therefore, I often work with language corpora (mostly Mark Davies). However, the problem is that these corpora are very often too large on the one hand, and little specialized on the other. That's why I was happy to have been introduced to NIFTY corpora, which I started using almost immediately. I usually download about ten documents to compile the corpus. Corpora I have made include a corpus of study and examination codes, a corpus of loan agreements etc. I have always found them to be very useful, and they have helped me to use idiomatic language structures and collocations. I would especially highlight their benefit for translations into L2."*

These preliminary results, however, need to be analysed in more detail, and further investigated, in all probability by means of interviews.

Data collection challenges

It has proved very difficult to obtain feedback from participants, despite their expressed high levels of interest in the tool. A number of reasons have been cited, the majority relating to heavy workloads. This difficulty has already been encountered in the small number of previous studies involving professional translators (Jääskeläinen and Mauranen, 2006).

At this stage it is unknown whether they are using the tool and not providing feedback, encountering difficulties, or simply not using the tool at all. During the main study attempts will be made to drill down into this issue[38].

Forthcoming main study

The main study, to be launched in October 2012, will aim to include a larger number of professional legal translators, and to encompass other languages.

Recruitment will once again use online channels such as LinkedIn groups and professional blogs in order to achieve a wide geographical spread, as well as translator networks. As mentioned in the section on research methods, workshops may also be run in collaboration with national translators' associations.

In order to address the problems of data collection, supplementary contact methods will be made available in addition to the online feedback forms.

Conclusion

This paper has presented initial findings concerning a methodology for monolingual target-language corpora as a tool to counterbalance the lack of familiarity by legal translators with the 'insider' sublanguages of the law, in particular with a view to their usefulness in retrieving legal collocations.

The pilot study has shown some encouraging avenues to be explored, but has underscored the constraints of carrying out research with professional translator participants in terms of their availability.

The next stages of the research will involve a deeper analysis of the data already collected, and in the light of preliminary results, slight changes to the collection instruments and methods. It is hoped that the main study will include a larger participant population, as well as a number of in-depth interviews to further probe how translators use the tool, and to assess its value and practicability in the workplace.

[38] In addition, use in other fields than law has been alluded to twice: one corpus was compiled for arrhythmias, and one participant mentioned use "in other areas" (see Table 3).

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Reviews

AN APPRAISAL OF LANGUAGE AND LAW IN TIMES OF EXPANDING LEGAL LINGUISTICS

*Review of **The Oxford Handbook of Language and Law,** edited by Peter M. Tiersma and Lawrence M. Solan, Oxford University Press, 2012, pp. 642.*

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Summary The Oxford University Press published in 2012, within its series Oxford Handbooks in Linguistics, a volume entitled The Oxford Handbook of Language and Law. The volume was edited by two prominent American writers on law and language, Professor Peter M. Tiersma and Professor Lawrence M. Solan. The volume of 642 pages invites a longer review as it comprises contributions by forty-eight authors in forty separate chapters. Also some fundamental, yet omitted legal-linguistic issues necessitate critical comments by the reviewer. Overall, however, the reviewer read the book with interest as its singular contributions include many inspiring thoughts. Meanwhile, these original contributions are somehow in contrast to the declared character of the volume that according to the publisher and the editors should portray the state of the art in the interdisciplinary field covering language and law in the form of a handbook. In spite of the valuable input to the development of legal-linguistic research in the singular contributions one might doubt whether the main goal, as defined by the publisher and the editors has been achieved by this publication. Therefore, also a bitter reflection is included in the final part of this review. This criticism notwithstanding, the reviewer welcomes the published collection of papers by renowned scholars and younger researchers as one more valuable contribution to the development of legal-linguistic studies.

Handbook's Structure

The Handbook consists of an Introduction, authored by the editors, and subsequent nine main parts: Legal Language, Interpretation of Legal Texts, Multilingualism and Translation, Language Rights, Language and Criminal Law, Courtroom Discourse, Intellectual Property, Identification of Authorship and Deception, and Speaker Identification. Each part is composed of three to six chapters, written mostly by single authors. The disparate range of issues labeled in above headlines of the main parts indicates the first structural problem of the publication. Notably, the question arises whether this loose string of issues that incontestably corresponds with the content of chapters (or articles), published under each headline, reflects the optimal or even

efficient structure for a handbook that should portray the field of legal-linguistic studies. After all, the legal-linguistic research seems today much too advanced to justify this all too 'tolerant' and noncommittal approach to the demanding task of structuring the diversified legal-linguistic research in times of its otherwise rejoicing proliferation. The flow of issues in the nine main parts of the Handbook that appear isolated from their epistemological contexts will not facilitate the reception of the reviewed publication that due to its name raises systematical expectations. Although the uniform editorial layout that was designed for all chapters may engender the first impression of a systematic treatment, it cannot replace a systematized exposition of the subject matters treated. As a rule, the appropriate structure for the exposition of subject matters that are relevant to a branch of knowledge is almost automatically dictated by the method applied in a particular field. Understandingly though, in an interdisciplinary undertaking the task of structuring is more demanding as an interdisciplinary field has to cope with a multitude of competing, complementary, or even contradictory methods. However, this circumstance does not mean that the field of 'Language and Law' could not have been defined and structured more firmly by the editors.

Reviewer's Remarks to Editors' Introduction

The interdisciplinary object of study is seized, also in the book title, as 'Language and Law', apparently as a conscious reversal of the established order of 'Law and Language' in the English-speaking countries. The editors probably wished to broaden the scope of the published topics and avoid terminological controversies as to which matters belong to Law and Language and which matters make part of other related (interdisciplinary) branches of knowledge such as forensic linguistics or legal linguistics. Meanwhile, at the actual stage of research into law and language the contrary, stricter approach would be more persuasive. For instance, J. Engberg and A.L. Kjær (2011) required a methodologically more precise distinction between law and language studies and legal linguistics, mainly due to the increase in the number of publications that declare themselves as belonging to legal linguistics. One might discuss whether the time is already ripe to draw the distinctive line between legal linguistics (legilinguistics), philological research into language use in legal texts, analyses of legal concepts with help of logical or historical methods, technology of speech analysis and the like. However, when fundamental research and methodological studies are not taken into consideration, one may easily miss the forest for the trees. Engberg's and Kjær's claim should therefore be taken into consideration by future authors of publications that commit themselves to the legal-linguistic paradigm. Moreover the intricate relation that the legal-linguistic research maintains with legal theory, legal logic or legal informatics is not mentioned in the introduction. Recently, A. Aarnio (2012) stressed again the importance of deontic logic, developed by G.H. von Wright, for any reflection upon the language of law. It is particularly disappointing for the reviewer not to find in the book any reference to G.H. von Wright, who succeeded L. Wittgenstein in Cambridge. The works by H. Putnam, W. Quine and S. Kripke are mentioned in the Handbook; yet these authors were much less influential in the area of fundamental research into law than G.H. von Wright who is remembered as a teacher of generations of legal theoreticians, and this not only in the UK and in Scandinavia. While overall it is understandable that

selection of issues and authors has to take place in works such as the reviewed Handbook, more explanation form the editors on the methodology of the underlying selection would be helpful also for readers unaware of the existence or of the state of the legal-linguistic research.

Parts of the Handbook in Overview

Part I Legal Language includes a chapter on the history of the legal language that mostly focuses on the processes in which the legal English has emerged; it includes a thought-stimulating, yet very brief, section 1.5. about the globalization of the legal language (pp. 25–26). Meanwhile, the linguistic aspects in legal globalization could have been connected with the proposals for the globalization of law, such as R. Domingo's (2010), who anticipated many of the issues in the challenging debate about the future language of law. The following chapters focus on the legal vocabulary (legal terms and legal concepts, polysemy and synonymy, relation to ordinary language); the structure of legal texts that stresses syntactic analysis, yet also mention speech acts in law and the legal discourse; and the plain language movement. Maurizio Gotti's chapter on text and genre that sums up the problems of textual complexity of legal discourses is very clear and didactic (pp. 52–66). Part I is composed of contributions written by authors who follow different methodological approaches and therefore it would be in vain to demand a more consistent account of legal language at this place. However, a more coherent connection between the identified elements of the 'legal language' could have been proposed. Authors such as E. Vinnai (2010, 2011) have shown the way in which the legal discourse is constructed from smaller, yet coherently connected elements. P. Anesa (2009) also structured the complex legal discourse convincingly. An approach grounded in the legal discourse would help avoid the traps concealed in the analysis of legal terminology that often focuses on separate linguistic units and thus contributes less to the most interesting issue in the legal-linguistic research, i.e. the processes of meaning emergence in law. M. Gotti's chapter sheds much light on the legal language in the sense mentioned in the research by Vinnai and Anesa whose works are not indicated in the handbook. The influence of electronic media and the fact that jurists increasingly work with texts available online could also have been considered as topics worthwhile to mention in Part I. Impressive research into these new and relevant topics, by R. Berring (2000), and R. Danner (2006), is available. Moreover, the terminological perspective upon the legal language could have been broadened along the vistas developed by H.P. Glenn (2010), W. Menski (2006) or J. Husa (2007) in the area of comparative law. Such an integrative approach would enable to characterise the language used in law all over the planet and enrich the description provided in Part I that mainly concerns the legal English. Part II The Interpretation of Legal Texts includes chapters on statutory interpretation, constitutional interpretation, ambiguity and vagueness in legal interpretation and an elucidating account by Brian H. Bix (pp. 145–155) on legal interpretation and the philosophy of language. Bix develops his analysis around the concept of indeterminacy and by so doing he also clarifies some previous chapters that concentrated on selected, less systematic issues in the area of legal interpretation. His brilliant analysis stresses the limits of linguistic interference into the process of concept interpretation in law. This view is definitely right because legal interpretation is not a philological activity; it is

a politically dominated process of finding the best law within a discursive framework of reference defined by power structures, which govern state and society. The limited logical coherence of all interpretive attempts in law finds its explanation in this particularity of law. The course of Part II is interrupted by a chapter on contract formation as a speech act that would better accompany the article on speech acts in penal law of the Part V. Part II is mainly focusing on problems in the interpretation of American law. European legal writers such as A. Aarnio (1988), R. Alexy (1983), M. Atienza (2010) made valuable contributions to all problems described in Part II. None of them is mentioned in the Handbook, unlike the American author R. Dworkin whose theory is comparable with approaches of the named European scholars. Furthermore, Brian G. Slocum (2012) described recently problems of 'ordinary meaning' in law in a way that is innovative and comprehensive. Part III Multilingualism and Translation includes a chapter on bilingual interpretation rules as a component of language rights in Canada; an original chapter by Jan Engberg on word meaning and problems of a globalized legal order; challenges for the legal translator; language and law in the European Union, and the past fifty years of multilingual interpretation in the European Union. Again, the order of the contributions is rather surprising. Due to its very loose structure Part III finds, therefore, an inconclusive end. Part IV is entitled Language Rights and deals with linguistic human rights; language policy in the U.S.; legal rights of linguistic minorities in the European Union; and the language situation in Africa. The legal-linguistic situation in Asia is not covered in this Part. This is particularly unfortunate because reliable data concerning the mechanisms of language protection in Asia is difficult to obtain. Possibly, some recent contributions on the formation on linguistic identity of speakers could broaden the perspective upon the legislative developments in the area of language rights that is still dominated by conceptions construed in the public international law several decades ago. Part V Language and Criminal Law devotes separate chapters to issues such as: the meaning of silence in the right to remain silent; potential impact of juvenile suspects' linguistic abilities on Miranda understanding; the caution in England and Wales; the language of consent in police encounters; the language of crime; and the interrogation through pragmatic implication. Part VI Courtroom Discourse also deals with issues related to criminal law, so in chapters on the discourse in the courtroom where pleas, pleadings, voir dire, opening statements, testimonies and closing arguments are analyzed. Further follow chapters on courtroom discourse in Japan's new judicial order; courtroom discourse in China; the language of criminal trials in the Netherlands; linguistic issues in courtroom interpretation, and on instructing the jury. In Part VI, Meizhen Liao (pp. 395–407) analyzes the influence of two traditional concepts of the Chinese legal culture, 'fa' and 'li' and their influence upon the structure of contemporary Chinese court decisions. This paper is particularly elucidating because it combines the cultural elements of remote past and the modern court system practices. Liao's approach explains the law in its broader context and shows the complexity of the legal discourse. It is also valuable as an input into the debate about the globalization of law where cross-cultural discursive segments and cultural particularities must be distinguished. Courtroom discourse research is all too often focused on criminal matters that Liao also critically reflects. Law, however, is much more than a repressive mechanism of criminal persecution. The struggle for law in

society concerns, as a rule, other than criminal cases. Overall, the legal-linguistic research seems to be overburdened with analyses of criminal cases to the detriment of sometimes more significant private law cases. Hopefully the non-criminal cases that may appear to legal linguists as rather sterile and, at the first glance, less spectacular would attract more of their attention in the future. Part VII is devoted to linguistic aspects of Intellectual Property and more specifically to trademark and copyright cases, including a chapter on psycholinguistic basis of distinctiveness in trademark law. Part VIII Indentification of Authorship including K. Kredens's and M. Coulthard's chapter on corpus linguistics in authorship identification also brings some samples taken from the Polish language (pp. 504–516). Another chapter concerns plagiarism detection. Finally, Part IX describes problems of Speaker Identification with articles on determination of origins of asylum seekers, lay persons' identification of speakers; and forensic speaker comparison. The reviewer approaches, with some reservations, the issue of academic contributions to origin identification in asylum seeker cases as the procedure involves, in the eyes of some scholars, obstacles of ethical nature. Parts VIII and IX also include remarks on problems in cooperation between forensic linguists and jurists and show the limits of linguists' involvement in some areas of legal practice such as meaning determination. Jurists tend to misinterpret the nature of linguists' interest in meaning and sometimes perceive linguists as specialists who know what a 'word really means'. Likewise, jurists tend to underestimate speakers' input into processes of meaning determination. Linguists, in turn, regularly overestimate jurists' competence for understanding linguistic expert opinions. Some of these remarks and observations on the inherent frictions in communication between linguists and jurists are revealing about the state of practical cooperation between both professional groups. They are truly instructive and their study can help both groups to overcome some of the existing communicative barriers. However, they also make clear the methodological weaknesses of forensic linguistics that seems to perform efficiently when it uses advanced technology as is the case with speaker identification procedures. Its non-technological methods seem to be less reliable or practically insignificant. A rather banal example on p. 491 shows this intricate situation. There, a culprit is identified because he obstinately misspells the word 'library' as 'libary'. Meanwhile, evey policeman with minimal criminalistic training and some common sense should be able to solve investigative puzzles of this sort without additional linguistic expertise that is at best Holmesian. Some of the non-technological approaches to language in forensic linguistics seem to be problematic from the methodological point of view of language sciences. Meanwhile, the Handbook does not elucidate this admittingly disconcerting aspect of linguists' forensic involvement. Finally, the extensive bibliography of the Handbook (pp. 572–628) comprises almost exclusively publications in the English language. One may add that in Heikki E.S. Mattila's (2002) Vertaileva oikeuslingvistiikka (Comparative Legal Linguistics), published already ten years ago, the representative legal-linguistic literature seems to have been rendered more fully than in the Handbook that often reflects the contributions of its co-authors rather excessively.

Some Critical Remarks Including a Bitter Reflection

On the book jacket the reviewed publication is praised as "encyclopedic in scope" and as a "handbook." The goal to produce a handbook is also stressed in the publication's title. Meanwhile, the editors (p. 4) distanced themselves from this idea to a certain extent while proclaiming: "This book contains some of the leading ideas that have arisen from the research. It is not encyclopedic. Rather, it is intended to capture the state of the art at the moment, and to reflect what we consider to be some of the most promising directions for continued research." In fact, the publication is an interesting collection of papers on legal-linguistic issues that makes for good reading. However, it is clearly not 'encyclopedic in scope' neither is it a 'handbook' on the interdisciplinary subject called regularly 'Law and Language' or 'Legal Linguistics/Legilinguistics'. Systematic and methodological problems of the subject are not discussed in it and they were eschewed through the innovative creation of a field called 'Language and Law' that is not further developed in the publication. Probably due to the neutral approach adapted to the choice of the studies represented under 'Language and Law' the term 'legal linguistics' used sporadically by one of the contributors does not even appear in the index (pp. 629–642). The diachronic perspective is largely missing in the book if some digressions on the Roman law in the introduction and a sketch of the history of legal English are taken apart. Particularly surprising is, however, that legal argumentation – unlike legal interpretation – is not explicitly treated in the book. Such a fundamental issue for any discussion of the legal language should not have been omitted. One can furthermore assume that due to the fact that only eighteen of forty-eight contributors work in non-English speaking countries and of those eighteen five co-authors are professors of English, the book is overwhelmingly centered on the English language. It also tends to stress problems in the legal tradition of the common law such as originalism or constitutionalism in the American constitutional interpretation. One might doubt whether these issues can be perceived as so central for legal-linguistic research that they would have to be included in a book that aspires to render the general knowledge about the field. Also formulations such as: "...the form of a valid agreement ordinarily involves an offer, an acceptance, and consideration..." (cf. p. 101) are misleading because they concern exclusively the common law of English origin. Contract laws in civil law countries do not include the consideration as requirement of contract enforceability. Therefore, 'ordinarily' a contract does not include the requirement of consideration. Furthermore, the Handbook is unfortunately not particularly well adapted to the needs of students who are usually looking for a systematic overview of this interdisciplinary branch of knowledge, nor does it provide a globally valid state of the art account that would interest more advanced researchers. The volume will not convince especially those jurists who are rather skeptical about the usefulness of legal-linguistic studies for the practice of law because it in many respects falls behind its powerful competitor, the mainstream legal theory. This embarrassing calamity is particularly visible in the omitted manifest challenges that the legal argumentation engenders in law. This criticism applies equally to the selective treatment of legal interpretation that has been exposed by many legal theoreticians, e.g. by A. Smirnov and A. Manukyan (2008), more comprehensively and in a more general manner, i.e. less dependent upon the American exceptionalism. It seems that the editors prepared rather a collection of research papers and essays, an

academic product which typically presents the results of international conferences where some recent research papers as well as essays of general kind can be found and enjoyed by colleagues with more or less benefit. Most disappointingly, the chance offered by one of the most distinguished publishing houses in the world to make the quintessence of the legal-linguistic research known all over the world has been missed. The renowned publishing house also deserves to be blamed for calling a collection of research papers and essays an 'encyclopedia' and a 'handbook'. Unfortunately, it occurs not for the first time that Oxford University Press announces an essential handbook on an academic subject and then offers a loose collection of (admittedly and regularly) interesting research papers. By so doing, the publisher contributes to the dilution of academic genres and discourages potential readers from taking its 'Handbook' series at face value. In sum, the reviewed publication illustrates, although probably in an involuntary way, the urgent need to compile a handbook on issues relevant to contemporary legal-linguistic investigations. Such a publication would help systematize the hitherto accumulated yet dispersed methodological and material knowledge and it would structure the particular research areas more rigorously. A synthetic and systematizing work would definitely contribute to the further strengthening of the expanding field of legal-linguistic research, also in terms of its institutionalization.

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PRECISION AND VAGUENESS IN LEGAL LINGUISTICS

*Review of **Vagueness in Normative Texts** edited by Vijay K. Bhatia, Jan Engberg, Maurizio Gotti, Dorothee Heller.*

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Vagueness in Normative Texts. Linguistic Insights. Studies in Language and Communication.
Vijay K. Bhatia, Jan Engberg, Maurizio Gotti, Dorothee Heller (eds), Peter Lang AG: Bern 2005.

As the editors of the book notice, the problem of vagueness in law has always been crucial from the point of view of law making specialists. But nowadays, when societies are more and more multilingual and multicultural, there is a pressing need for research into the vagueness of the language of law, both in its theoretical and practical aspects, because interpretation of vague text may be problematic not only for law interpreters but also for LSP translators. The authors of "Vagueness…" discuss some issues from legal acts and juridical decisions, which can be beneficial for writing and interpreting other legal texts. The authors also discuss some language features connected with communicative indeterminacy on the lexical, syntactical or textual level.

In the opinion of many law makers and researchers, the law should simultaneously meet two requirements. On the one hand, it should be maximally determinate and precise, because people should be aware exactly what they can and can't do. For example, the interpretation of this problem by the Supreme Court of the United States is that "laws which prohibit the doing of things, and provide a punishment for their violation, should have no double meaning […]. Every man should be able to know with certainty when he is committing a crime" (compare: Solan 2005, 82). On the other hand, the law should be formulated in a general way because it must be applicable in many relevant situations.These two concepts of drawing legal texts are discussed by the authors of the articles published in "Vagueness…"

The articles of the book are divided into four thematic sections. In the first part, the authors discuss some legal aspects of vagueness in normative texts and the consequences of this linguistic phenomena for the interpretation and application of the law. In the second part, researchers analyse specific linguistic features of legal texts which lead to their determinacy or indeterminacy. The third part contains articles about specific legal contexts which are applicable in many countries and cultures.

The fourth part discusses the problem of vagueness from a multilingual and comparative perspective.

The authors of the articles explain and interpret some important terms connected with the problem of vagueness in normative texts. For example, they discuss the terms not only of vagueness but also ambiguity. Lawrence M. Solan claims that vagueness is the phenomena which occurs in borderline situations when it is difficult to tell whether a concept is a member of a particular category. By contrast, the term 'ambiguity' is applicable when an expression has two or more clear meanings. Also Davide Simone states that ambiguity:

> "usually involving homonymy, polysemy, metaphor, ellipsis, syntax or unclear referents – consists of a word or phrase endowed with alternative meanings: its semantic value can only be inferred from the utterance's textual and communicative context […] Vagueness, on the other hand, arises with words or phrases possessing an indeterminate, semantically blurred meaning." (Giannoni 2005, 438).

The authors discuss many crucial problems both for the legal and linguistic interpretation of texts. In particular, they examine whether there are some kind of laws "which should be applicable to any sort of legal relationship (whether contractual or not), referring to all types of disputes (both all and certain), and covering the whole temporal gamut (which have arisen or which may arise)"(Gotti 2005, 229), for example Human Rights, Rights of the Child, Model Law, etc. Analyzing legal acts, the researchers discuss some particular, vague and precise expressions, and particular grammatical issues, which may help to specify the meaning of words. They also show how cultural, political and sociological discourse can influence an internationally applied legal terminology. As Vijay K. Bhatia (2005, 337) states "the use of text-internal resources is largely determined by text-external factors and constraints, which play a decisive role in the construction and interpretation of legislative provisions".

A further important issue discussed is the meaning of the term '*reasonableness'*. The interpretation of vague texts in a reasonable way seems to be the most important rule of law interpretation. Giannoni points out one solution to the question of vagueness in law chosen by the Supreme Court of Canada:

> "Vagueness must not be considered in abstracto, but instead must be assessed within a larger interpretive context developed through an analysis of considerations such as the purpose, subject matter and nature of the impugned provision, societal values, related legislative provisions, and prior judicial interpretations of the provision" (compare Giannoni 439).

As noticed before, the main theme of discussion in the book is the phenomena of vagueness. Most of the authors admit that vagueness in legal texts is actually sometimes necessary. As Celina Frade (2005, 136) states "vagueness is a kind of convention used in situations where flexibility and generalization are needed or else where precision and determinacy are neither needed nor wanted". Timothy Endicott considers vagueness as essential for the functioning of every legal system as it prevents

arbitrary government and anarchy in regulating human conduct. He discusses the problem of the interpretation of some terms. For example, the statue defines the term '*child or young person'* precisely, as referring to a person under the age of sixteen years, but the term '*neglected child'* is defined as "in a manner likely to cause him unnecessary suffering or injury", and interpretations of such definitions can be extremely different. So, one of the conclusions is that vagueness may allow incompatible views, depending on the standards acceptable in the society in which the law is to be applicable. On the other hand, there is no doubt that some minimal rules of precision in legal texts should be maintained.

As previously noted the authors also discuss some language features connected with communicative indeterminacy. An interesting approach is made for example by Peter Tiersma and Celina Frade. These authors show some possible ways of interpretation of some categorical lists, sequences of grammatically and semantically related words used for listing particulars or exemplars. For instance, they discuss the problem of using hyperonymy and hyponymy, as a choice between generality, and flexibility or precision. The authors quote some legal rules, which have been given to make the interpretation of the legal texts easier. For example, 'the canon of contra proferentem' states that "in private legal documents like contracts, ambiguities in the first place must be resolved against the drafting party" (compare Tiersma 2005, 120). The authors also discuss some textual maxims like for example *noscitur a sociis*, *ejusdem generis*, or *expressio unius est exclusio alterius* which all may be applied by law interpreters and are strongly connected with the language features of texts. Choosing one of these maxims may decide about excluding or including some meanings. So, it is possible to narrow the meaning or the potential application of a list, which can be helpful especially in criminal law.

Another important issue discussed by the authors in the aspect of vagueness in legal language is the role of adjectives. As Ruth Vatvedt Field (2005, 157) states "most nouns are indefinite and need specification, either according to the situation, or according to linguistic specification. The main function of adjectives is normally to specify or identify vague or indefinite nouns". That's why researching of this question can be very useful, both for legal drafters and for interpreters. The authors analyse some kind of adjectives, which helps to precise nouns, like for example evaluative adjectives, dimensional adjectives, general quality adjectives, modal adjectives, relational adjective, ethic adjectives, consequence adjectives, evidence adjectives, frequency adjectives, etc.

The last, but not least issue, discussed in the book is the question connected with the translation of legal texts. Specialized texts which, as it was explained before, are vague in their nature, to be understood properly in other languages must be firstly properly interpreted by the translator. For example, Martha Chroma states that the main problems of translation arise not from legal, but from semantic indeterminacy. This issue seems to be complicated and there is no doubt that further research is needed in this field.

To sum up, the book offers a wide exposition of questions connected with the problem of vagueness and indeterminacy in legal texts. The authors discuss both general and particular issues, from the philosophical and practical points of view.

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NEW DEVELOPMENTS IN LEGAL LINGUISTICS

Review of ***Legal Discourse across Languages and Cultures****. Linguistic Insights. Studies in Language and Communication. Edited by Maurizio GOTTI and Christopher WILLIAMS, Peter Lang: Bern, 2010, ISBN 978-3-0343-0425-2, 339 pages.*

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The 117st volume of *Linguistic Insights* series contains the latest works of scholars investigating legal discourse from cultural and lingual perspectives. Contributions have been submitted by participants of the 4th CERLIS Conference – CERLIS 2009 held in Bergamo on 18-20 June 2009. The contributors touch upon various aspects of legal language and legal discourse in various settings. It is divided into two parts with the former one on legal discourse across languages and the latter one on legal discourse across cultures. There are seven chapters in each part.

In the introduction the editors, M. Gotti and Ch. Williams, turn the attention of readers to the impact of legal culture and national legal systems on legal language, discourse and translation and rapid changes which may be observed in that domain of research.

Part 1 Legal Discourse across Languages

Susan Šarčević (*Creating a Pan-European Legal Language*) discusses the efforts connected with the preparation of the European Common Frame of Reference (CFR) and the role of language in the process of harmonization. Numerous problems connected with the fact that English, embedded in common law system, is used as the language of legal communication in pan-European context arise. The CFR would be especially helpful in the European contract law but also other areas of civil law. Right now EU terminology is often constructed by national courts in compliance with national concepts well-known to judges. The transparent and uniform interpretation is hindered by the lack of definitions and vagueness of EU terms, use of polysemous terms without narrowing down their meanings by definitions, terminological inconsistency, etc. The time will show whether the CFR will be adopted and applied consistently by legal drafters, lawyers and translators, and whether the glossary will serve its purpose. The method and material are correct and as always in the case of Šarčević's works the examples used illustrate the reasoning in a very natural, clear and logical way.

Colin Robertson (*Legal-linguistic Revision of EU Legislative Texts*) touches upon the role of legal linguists in the process of revision of EU legislative instruments. First, the

author presents the job and qualifications of lawyers-linguists, next he analyses cultural setting of such revisions, and especially EU linguistic regime, and finally the constraints of time, space, politics, administration and negotiation. It is concluded that legal linguistics is becoming more and more important and recognized as an area of scholarly research and that some new developments are expected in the near future in this respect. The author has included in the chapter his thoughts on the subject matter as well.

The chapter by Martina Bajčić (*Challenges of Translating EU Terminology*) illlustrates the process of searching for and arriving at terminological equivalents for EU terminology. Using the Posted Workers Directive as an illustrative material, she presents the challanges which the translator must face when deaaling with EU jargon. It is concluded that the standardization of terminology may facilitate the job of the translator but at the same time the task of the translator is interdisciplinary and sometimes hard to accomplish as it requires an interdisciplinary approach (both linguistic and terminological knowledge) and valuable time. The chapter constitutes a valuable contribution even if it confirms the existing knowledge. There is an adequate number and quality of the illustrative material and the method applied is correct as well. There is an unnecessarily bolded comma in the middle of page 84.

Jan Roald and Sunniva Whittaker (*Verbalization in French and Norwegian Legislative Texts: A Contrastive Case Study*) analyze the difference in verbalization of certain concepts in French and Norwegian statutory instruments mainly on public tenders. The analysis reveals significant differences in signalizing the reader stages of procedure in French and Norwegian. The conclusions drawn are coherent and logical and consistent with the results obtained. The illustrative material is sufficient and despite the fact that the chapter deals with French and Norwegian and is written in English as the language of communication the examples provided from both languages are incorporated into the text in such a manner that the text is comprehensible for redears not knowing French and Norwegian.

Lelija Sočanac (*Linguistic Transference in Croatian Law Articles*) presents the results of the research into lexical transfers affecting legal Croatian. The four major languages imprinting Croatian are Latin, English, German and French. The quantative method was used to obtain the relevant data for four periods between 1955 and 2008. The author classified the obtained data on the basis of the branch-of-law criterion. Finally, the probable motivations for transference were revealed. The research is meticulous and the results are properly analysed.

Silvia Cacchiani and Chiara Preite (*Law Dictionaries across Languages: Different Structures, Different Relations between Communities of Practice?*) present the research into borrowings from French into English and from English into French found in the *Oxford Dictionary of Law* (2006), *Longman Dictionary of Law* (2007), and *Vocabulaire juridique* (2007). The detailed analysis of entries reveals that despite similar aims declared by the publishers of dictionaries, they diverge to some extent. English dictionaries focus on the encyclopaedia and disciplinary knowledge whereas the French dictionary 'has a multiple focus on language, the law and contribution of linguistic analysis to the legal system, which translates into an interesting form and language use' (p. 151). The research has been limited to a relatively narrow sample of entries, therefore it cannot be concluded authoritatively that the results obtained are representative.

Nevertheless, it still provides some interesting insight into the different approaches of lexicographers and usability of particular dictionaries for specific purposes.

Snježana Husinec (*The Use of Comparative Legal Analysis in Teaching the Language of the Law*) analyses the model of teaching a foreign legal language. The technique of comparative legal analysis is presented and its usefulness in the process of teaching is discussed. The author stresses that the best teaching method is the so-called content-based instruction. The following methods have been discussed: (i) juxtaposition of features of an area of law in two jurisdictions, (ii) componential analysis of meaning of legal terms, and (iii) comparative legal analysis. The chapter is well-structured. The methods presented are illustrative and the examples are of proper quality and quantity. In general, it is a valuable contribution.

Part 2 Legal Discourse across Cultures

Janet Ainsworth (*Linguistic Ideology in the Workplace: the Legal Treatment in American Courts of Employers' 'English-only' Policies*) deals with the so-called 'English-only' policies which are discriminatory and ineffective as far as communication in a workplace is concerned. The author analyses false linguistic assumptions used in courts' reasoning in employment related cases. The conclusion is that the required use of English on numerous occassions may make the workplace less efficient and safe.

William Bromwich (*Discourse Practices and Divergences in Legal Cultures in Employment Tribunals*) presents the results of his research into proceedings before the Employmet Tribunals in Great Britain, the European Union Civil Service Tribunal, and finally the International Labour Organization Administrative Tribunal. On the basis of the comparative analysis, a number of divergences are revealed. The analysis is well grounded, the method is applied consistently and properly. In general, the chapter provides a valuable insight into discursive divergences depending on the Tribunal before which the proceedings are instituted.

Giorgia Riboni (*Constructing the Terrorist in the Decisions of the Supreme Court of the United States and the European Court of Human Rights*) investigates the evolution of the meaning of the term *terrorist* starting from the times of the French Revolution and ending with the present understanding and usage after the 11th of September 2001. Riboni highlights the interaction between the language and the terrorist phenomenon. Moreover, she justifies the lack of definition with politcal reasons. The reasearch has been arried out meticulously and indicates the development of the meaning of the term in question as a result of the changing political scene.

Davide Mazzi (*The Centrality of Counterfactual Conditionals in House of Lords and US Supreme Court Judgments*) has analysed two corpora of judgments of: (i) the Supreme Court of the United States of America and (ii) the House of Lords (UK). The methods applied were both quantitative with the software WordSmith 4.0 and qualitative carried out manually. Finally, the concorrdance analysis was conducted. The research revealed that there are definitely more backward-oriented dialogic forms of counterfactual conditionaals in both corpora, than forward-oriented ones. Moreover, the judgments are highly dialogic and argumentative. The research methods are correctly applied and the chapter is well-structured. The conclusions are logical.

Ignacio Vázquez Orta (*A Genre-based View of Judgments of Appellate Courts in the Common Law System: Intersubjective Positioning, Intertextuality and Interdiscursivity in the Reasoning of Judges*) investigates appelate court judgments. The author bases his research on legal discourse, critical discourse analysis, and systemic functional linguistic foundations. He focuses his attention on 'manifest intertextuality' and 'constitutive intertextuality' (terms used by Fairclogh 1992) as well as 'dialogism' and 'heteroglossia' (terms used by Bakhtin 1981). The conclusions are that judgments are dialogic, intertextual and interdiscursive. The research is amply illustrated with relevant examples. The research methods applied are corect and persuasive and the literature is pertinent.

Thomas Christiansen (*The Concepts of Property and of Land Rights in the Legal Discourse of Australia Relating to Indigenous Groups*) deals with the issues of property and land rights in relation to the Aboriginal peoples and Torres Strait Islanders in Australia. Two corpora have been examined: (i) Indigenious Law Bulletin (issues from 1981 till 2007) published by the University of New South Wales, Faculty of Law and (ii) as a reference corpus Harvard Law Review published by Harvard Law School (USA). First the author examines possession as a linguistic concept and draws conclusions that it is known to Aboriginal people but as their culture has been less materialistic the occurrence of words relating to possession was less frequent than in other languages. Next, the analysis of clusters obtained for selected terms through the application of WordSmith 3.0 is presented. The research reveals that there are different collocations with key words found in clusters in both analysed corpora.

The last chapter written by Ismael Arinas Pellón (*How Does a Patent Move? Genre Analysis Has Something to Say about It*) focuses on patents. The author analyses the rhetorical structure of a corpus of 333 US utility patents (from 199 to 2009) with the exclusion of biotechnology and drug patents. The parts containing novelty, non-obviousness, technical adequacy and usefulness are scrutinized. A number of formulaic sentences and structures are identified in the corpus which results in treating US patents as a genre having specific feature. Finally, recommendations for future research into patents are formulated. The author has applied proper research method and drawn logical conclusions. The chapter constitutes a valuable contribution.

To sum up, the volume *Legal Discourse across Languages and Cultures* is a recommendable reading. The selection of topics reveals the interdisciplinary character of legal linguistics and legal discourse. The title of the volume accurately reflects its content. In general, the research methods are accurately applied, the illustrative material is of sufficient number and quality (most of the chapters are amply illustrated with examples), and finally the interpretation of results is appropriate.

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