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Preface

Zuzana Nad' Ová in her paper *Distribution of semi-clause constructions in acts of parliament vs. appellate judgements* presents results of investigations performed in the light of syntactic analysis. The research is concentrated on semi-clause construction (SCC) and especially on non finite verb-forms. The corpus includes Acts of Parliament (AP) and appelate judgmenets (AJ) and it is analysed in the scope of some statistic data given by the author. Distribution of SCC and non finite verb-forms are widely discussed and illustrated by the examples. As it comes the conclusions it is said that syntactic analysis gives the opportunity to draw some general results, nut also intersting results. The performed research is based on statistical data which improve its value. Moreover the structural approach to SCC was presented as adequate and useful tool to analyse and to interpret texts which are parallel to the corpus.

Next paper *Modal Values of Verbal Forms in the European Charter for Regional or Minority Languages. A Linguistic Comparative Analysis of the English, Italian And Spanish Versions* written by Mariangela Copolella is also connected with corpus analysis. Subject of the paper is presentation of methods to express deontic, epistemic or performative values of verbal constructions. The comparative analysis was performed on the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages. The results of the research are presented in contrast and specify the most characteristic and frequent methods to express modality, deontic or modal, in every analyzed national legal language. The paper includes valuable charts and graph containing statistical data which illustrate even more merit conclusions. The paper is very useful for further investigations of translatoric equivalence in legal translation theory and practice.

Last paper of the first part tittled "Legilinguistics" is the paper of Karolina Paluszek *The Equal Authenticity of Official Language Versions of European Legislation in Light of their Consideration by the Court of Justice of the European Union*. It is devoted to comparative analysis of judgements of the the Court of Justice of the European Union. The aim of the research is to determine whether all official language versions of EU legislation are considered in the course of interpretation. The investigation is performed on eighty (80) judgements and the author concentrates on comparison of reconciliation methods. The research includes some statistical data which are congruent with the given results. The author determines that given results are only *prolegomena* to wider studies which should be performed on the larger volume of the material and underlines that a weak point of the research of that king is limited number of documents in language versions different to analysed.

Second part of the volume is devoted to legal translation training. It contains the paper of Ewa KOŚCIAŁKOWSKA-OKOŃSKA entitled *Legal translation training in Poland: the profession's status, expectations, reality and progress towards (prospective) expertise?* It addresses translating legal texts from English into Polish and from Polish into English in the scope of skill development and translation teaching. The aim of the paper is to analyse translation teaching progress in contrary to still changing status of the translator profession. The investigation is accompanied with results of surveys filled by students. Conclusions underline that pragmatic, extra linguistic and linguistic knowledge should characterize both legal translation students and trainers.

Last part of the volume contains two papers devoted to legal translation. First of them is the paper *Interpretation of ambiguous provisions of international investment treaties authenticated in two or more languages* written by Filip Balcerzak. The aim of the paper is to identify and to offer some solutions for interpretation of international investment treaties. The case study is performed on the 1969 Vienna Convention on the Law of Treaties and the Kilic Insaat v. Turkmenistan, Berschader v. Russia and Daimler v. Argentina cases. The author points out that potential interpretative problems arises from the situations when the BITs have been authenticated in two or more languages do occur in practice of international investment law. The statement is confirmed by detail analysis of judicial interpretation in connection with Vienna Convention.

Last paper is the article of Justyna Walkowiak tittled *One word, two languages, two interpretations: the Polish-Lithuanian treaty of 1994 and how it was (mis)understood*. It is devoted to meaning difference of one Polish word in the Treaty on Friendly Relations and Good Neighbourly Cooperation of the Republic of Lithuania and Republic of Poland of April 26, 1994. In contrary the equivalent Lithuanian word used in the same place of the treaty has only one meaning. The interpretation problem may arise in the situation where the mutual English version of the treaty was not accepted. The divergence in meaning of one word influenced the discourse which took place in media and in the public pinion of Poland and Lithuania.

DISTRIBUTION OF SEMI-CLAUSE CONSTRUCTIONS IN ACTS OF PARLIAMENT VS. APPELLATE JUDGMENTS

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Abstract: The paper presents the findings obtained by comparative syntactic analysis of four types of semi-clause constructions (present participial, gerundial, infinitival and past participial) in two corpora of British legal English, i.e. Acts of Parliament and appellate judgments. The analysis focuses on differences in the employment of the respective types of semi-clauses across the two corpora (both quantitative differences and differences in their syntactic functions) and on their functional interpretation. The quantitative findings of analysis revealed that the mean number of semi-clauses per sentence is significantly higher in the corpus of Acts of Parliament as compared to the corpus of appellate judgments (2,97 and 1,58 respectively), which contributes to a higher level of sentence condensation of the genre of Acts of Parliament. Comparison of syntactic functions conveyed by the respective types of semi-clauses across the two corpora confirmed a significant predominance of semi-clauses with nominal syntactic functions in the corpus of Acts of Parliament. Corpus findings also suggest that the employment of the analyzed constructions contributes to stylistic qualities of the legal genres under analysis, such as a higher level of precision and unambiguity of meaning in the corpus of Acts of Parliament and a less rigid and formal style of appellate judgments.
Key words: semi-clause construction, present participle, past participle, infinitive, gerund, legal English, sentence condenser, secondary predication

DISTRIBÚCIA POLOVETNÝCH KONŠTRUKCIÍ V ZÁKONOCH A V ROZSUDKOCH ODVOLACIEHO SÚDU

Abstrakt: Obsahom príspevku je interpretácia výsledkov syntaktickej analýzy štyroch typov polovetných konštrukcií, ktorých jadrom je menný tvar slovesný (particípium prítomné, gerundium, infinitív a particípium minulé) v dvoch žánroch britskej právnej angličtiny, v zákonoch a v rozsudkoch odvolacieho súdu. Analýza sa zameriavala na rozdiely vo výskyte polovetných konštrukcií v skúmaných žánroch (kvantitatívne rozdiely a rozdiely v syntaktických funkciách, ktoré tieto polovetné konštrukcie vo vete plnia) a na ich významovú interpretáciu. Kvantitatívna analýza polovetných konštrukcií v skúmaných žánroch odhalila, že priemerý počet polovetných konštrukcií vo vete je v zákonoch podstatne vyšší v porovnaní s priemerným počtom polovetných konštrukcií vo vete v rozsudkoch (2,97 a 1,58), čo zvyšuje úroveň kondenzácie vetnej stavby zákonov. Porovnanie syntaktických funkcií skúmaných polovetných konštrukcií v oboch žánroch potvrdilo vyšší výskyt polovetných konštrukcií s nominálnymi syntaktickými funkciami v zákonoch. Výskyt polovetných konštrukcií v právnej angličtine prispieva aj k charakteristickým vlastnostiam oboch žánrov, ako je väčšia jednoznačnosť a presnosť vyjadrovania v zákonoch a väčšia štylistická uvoľnenosť v rozsudkoch.
Kľúčové slová: polovetná konštrukcia, particípium prítomné, particípium minulé, gerundium, infinitív, právna angličtina, vetný kondenzátor, sekundárna predikácia

DYSTRYBUCJA KONSTRUKCJI TYPU *SEMI-CLAUSE*
W AKTACH PARLAMENTU I WYROKACH APELACYJNYCH

Abstrakt: W artykule zaprezentowano wyniki syntaktycznej analizy porównawczej czterech typów konstrukcji typu *semi-clause* w dwóch korpusach, składających się z tekstów napisanych w angielskim języku prawa odmiany brytyjskiej, tj. aktach parlamentu oraz wyrokach apelacyjnych. Autorka skupiła się na różnicach w zastosowaniu poszczególnych typów tych konstrukcji w obu korpusach (zarówno różnicach ilościowych jak i różnicach w ich funkcjach syntaktycznych) oraz na ich interpretacji funkcjonalnej. Wyniki ilościowe przeprowadzonej analizy dowodzą, że średnia liczba tych konstrukcji w zdaniu jest znacznie wyższa w korpusie składającym się z aktów parlamentu niż w korpusie, na który składają się wyroki apelacyjne (odpowiednio 2,97 i 1,58). Porównanie funkcji syntaktycznych poszczególnych ich typów w obu korpusach pozwala potwierdzić znaczną przewagę konstrukcji z funkcją nominalną w korpusie aktów parlamentu. Zastosowanie analizowanych konstrukcji ma wpływ na stylistykę badanych tekstów prawnych, które odznaczają się większą precyzją i jednoznacznością w korpusie składającym się z aktów parlamentu i mniej formalnym stylem wyroków apelacyjnych.
Słowa kluczowe: konstrukcje typu semi-clause, imiesłów czynny, imiesłów bierny, bezokolicznik, gerundium, angielski język prawniczy, angielski język prawny

Introduction

In their seminal work *Investigating English Style* (1969), Crystal and Davy consider frequent employment of clausal constructions headed by non-finite verb forms to be one of the central syntactic and stylistic characteristics of legal English: "Much of the special flavour of legal English, generally, results from a fondness for using non-finite clauses, which in many other varieties would probably be replaced by finite clauses"(Crystal and Davy 1969, 205). The high proportional share of non-finite clauses in various genres of legal English has instigated the interest of many linguists who aimed their research at various aspects of the employment of non-finite clauses in this register. The research was generally concerned with a specific type of constructions headed by non-finite verb forms in selected legal genres (e.g. -ing forms in Acts of Parliament and law reports were studied by Janigová, 2008; -ing participles and -ed participles in prescriptive legal genres were studied by Williams, 2007; supplementive clauses in resolutions were studied by Dontcheva-Navratilova, 2005), etc. Similarly, the research was frequently limited to a specific characteristics of the employment of non-finite clauses in legal English (e.g. complexity and types of embedding of non-finite clauses in Acts of Parliament were studied by Hiltunen, 1984; non-finite clauses functioning as complements in Philippine Civil Code were studied by Gocheco, 2011).

This paper differs from the above-mentioned approaches in two respects. Firstly, it offers a comparative analysis of four types of structures headed by non-finite verb forms, i.e. present participial, gerundial, infinitival and past participial semi-clauses. Secondly, the conceptual framework for analysis is based on the notion of semi-clause construction as defined by linguists from the Prague linguistic school. The material under analysis consists of two corpora of British legal English of comparable length (each comprising approximately 36 000 words), namely Acts of Parliament and Appellate Judgments.

The aim of the present paper is twofold. Firstly, it aims to provide an account of the actual occurrence of the analysed semi-clause constructions in their respective syntactic functions in the selected corpora and secondly, it aims at identifying ambiguities stemming from their potential syntactic interpretations.

Conceptual framework and the method of analysis

Most syntactic analyses of legal English use the term non-finte clause and apply this term only to structures analyzable into clause elements, such as subject, verb and object. This analysis employs the term semi-clause construction (SCC for short) with the aim to include in the analysis a wider range of constructions headed by non-finite verb forms[1]. In accordance with this approach, all SCCs containing secondary predication and thus contributing to sentence condensation are included in the analysis. Secondary predication is used here to refer to the underlying structure of SCCs and is defined as "the capacity [of nominal forms of the verb] to create semi-clause constructions corresponding to dependent clauses." (Dušková 1988, 569).

The following sentence illustrates the method of clausal analysis and the main types and functions of SCCs included in the analysis.

Example 1. The applied method of clausal analysis.

> NP:S (The /**377PTP:Prem modified**/ condition) may require [**335 I:Od** the person on whom it is imposed **to apply** NP:Od (amounts /**378PTP:Postm paid** to it as result of this section/ PP:Adv-time (in {**208GER:CompPrep making** good any shortfall in the property available} PP:Adv-purpose (for {**209GER:CompPrep meeting** the expenses of the postal administration})].

Boundaries of semi-clauses are indicated by brackets: infinitival SCCs are enclosed by square brackets [], past participial SCCs are enclosed by slashes / /, present participial SCCs are enclosed by angle brackets < > and gerundial SCCs are enclosed by curly brackets{}. The type of SCC is also indicated by a corresponding abbreviation (INF, GER, PRP and PTP), preceded by a number indicating the position of the analysed semi-clause in the text from which it was extracted. The abbreviation is followed by a colon and an abbreviation of the syntactic function conveyed by the semi-clause. The structurally higher units in which semi-clauses are embedded are indicated by round brackets and a corresponding abbreviation of the type of phrase and its syntactic function, e.g.: NP:S( ), PP:Adv-purpose( )[2, 3].

[1] The notion of semi-clause construction was introduced by the linguists working within the Prague syntactic tradition. According to Mathesius, the main defining characteristics of semi-clauses is their status of "transitory structures" between a clause and a clause element: "semi-sentence constructions…are not sentences in the proper sense and neither have they become mere sentence elements…Like the predicate they express relations which are being linguistically shaped, but in such a way that does not result in the formation of a sentence." (cited in Dušková 2003, 143).

[2] For the purposes of the present paper, the above described system of bracketing and labelling was simplified and the only brackets and labells preserved in the examples are those denoting the type, number and syntactic fuction of the SCC being described in the example. The heads of SCCs are in

As indicated by the above bracketing, the sentence in example 1 contains a past participial semi-clausal premodifier of the subject, an infinitival SCC syntactically operating as direct object and containing secondary predication, a past participial semi-clausal postmodifier of direct object and two gerundial SCCs embedded in prepositional phrases and functioning as adverbials.

This approach enables to include in the analysis all the SCCs headed by participles, gerunds and infinitives that function as sentence condensers and consequently to compare the level of sentence condensation and the syntactic functions of the respective types of SCCs across the two corpora.

Corpus characteristics

The corpus of Acts of Parliament (henceforward referred to as AP) consists of Parts I-V of Postal Services Act 2011 (abbreviated as PSA 2011 and comprising 59 pages) and the whole text of Wildlife and Natural Environment Act 2011 (abbreviated as WNEA 2011, comprising 35 pages). The corpus of appellate judgments (henceforward referred to as AJ) consists of three British appellate judgments issued in 2007 (AJ 1) and 2009 (AJ 2 and AJ 3) and comprising altogether 81 pages.
The general data concerning the analysed corpora are summarized in table 1 below.

Table 1: Distribution of semi-clauses per sentence and per page in the corpora of Acts of Parliament and Appellate Judgments.

AP	**AJ**
94 pages (36 384 words)	81 pages (36 630 words)
519 sentences	753 sentences
1434 semi-clauses	1194 semi-clauses
nr of semi-clauses per page: 15,26	nr of semi-clauses per page: 14,74
nr of semi-clauses per sentence: 2,97	nr of semi-clauses per sentence: 1,58

Legislation represents a prescriptive legal genre and appellate judgments can be subsumed under the heading *application of law.* According to Maley, "discourse types or genres characteristically organize their content, message, within broadly recognizable structural shapes; that is to say, we can categorize the texts…according to the configuration of the structural elements that they exhibit." (Maley 1994, 18). The present analysis was therefore aimed to reveal whether the employment of SCCs in the analyzed texts contributes to "precision, unambiguity and clarity of the legislative discourse" (Bhatia 1993, 117) and "a more relaxed stylistic norm of judicial decisons" (Tomášek 1998, 28).

boldface font. The sources of the sentences cited as examples are indicated by abbreviations of title of the document from which they were extracted and by page number.

[3] The list of all abbreviations used in the article is provided at the end of the paper.

Discussion and Results

Overview of distribution of SCCs in the analyzed corpora

The general quantitative findings about the distribution of the four types of SCCs in the analysed texts are provided in table 2 below.

Table 2. Distribution of SCCs across the analyzed corpora of legal English.

		AP: 519 sentences		**AJ: 753 sentences**		
		PSA 2011: 362 sent.	**WNEA 2011: 157 sent.**	**AJ 1: 166 sent.**	**AJ 2: 260 sent.**	**AJ 3 : 327 sent.**
1	**Present Participial Semi-Clauses:**	174	65	33	39	110
2	*Nr.of PRP semi-clauses per sentence:*	*0,48*	*0,41*	*0,19*	*0,15*	*0,33*
3		***total: 239 (0,46/sent.)***		***total: 176 (0,23/sent.)***		
4	**Gerundial Semi-Clauses:**	220	85	78	81	79
5	*Nr. of GER semi-clauses per sentence:*	*0,60*	*0,54*	*0,46*	*0,31*	*0,24*
6		***total: 305 (0,58/sent.)***		***total: 238 (0,31/sent.)***		
7	**Infinitival Semi-Clauses:**	289	85	105	126	252
8	*Nr. of INF semi-clauses per sentence:*	*0,80*	*0,54*	*0,63*	*0,48*	*0,77*
9		***total: 374 (0,72/sent.)***		***total: 483 (0,64/sent.)***		
10	**Past Participial Semi-Clauses:**	426	127	49	70	133
11	*Nr. of PTP semi-clauses per sentence:*	*1,17*	*0,80*	*0,29*	*0,26*	*0,40*
12		***total: 553 (1,06/sent.)***		***total: 252 (0,33 /sent.)***		
Total nr. of semi-clauses:		**1434 (2,76/sentence)**		**1194 (1,58/sentence)**		

As demonstrated by table 2, the overall number of SCCs in the corpus of AP is higher than the overall number of SCCs in the corpus of AJ, the difference amounting to 240 SCCs in favour of AP (1434 in AP vs. 1194 in AJ). The table also shows that for gerundial and present participial SCCs, not only higher incidence was detected in the corpus of AP (see lines 3 and 6 of table 2) but their average distribution per sentence in the individual texts of this genre is also higher and very stable across the texts of this

genre (see line 2 and 5). On the other hand, gerundial and present participial SCCs in the corpus of AJ are not only less numerous than their counterparts in AP but in addition, the mean number of these SCCs per sentence varies from text to text. Such a distribution of SCCs across and within the analysed corpora could serve as the ground for the assertion that gerundial and present participial SCCs can be viewed as typical sentence condensers in the corpus of AP.

As can be seen in table 2, infinitival and past participial SCCs in the analysed corpora also exhibit significant differences in terms of their distribution. Infinitival SCCs are by far more numerous (by 109 SCCs) in the corpus of AJ. Moreover, the mean number of these SCCs per sentence in individual texts of this genre was also proved to be very stable (see line 8 of table 2). On the other hand, in the corpus of AP, infinitival SCCs exhibit the greatest quantitative differences in their average distribution per sentence in the individual texts (see line 8 of table 2).

Past participial SCCs in AP outnumber past participial SCCs in AJ more than twofold. The distribution of these SCCs per sentence is likewise much higher in the corpus of AP, where they represent the most frequent type of condensers (see line 12 of table 2).

The following sections present a more detailed comparison of the employment of the respective types of SCCs across the analyzed corpora. Since the analysis was also concerned with the assessment of unambiguity of syntactic interpretation of the employed SCCs, discussion will be centered around selected syntactic functions of SCCs that may present difficulties from this point of view.

Present participial SCCs in the analysed corpora

Distribution of syntactic functions performed by present participial semi-clauses in the analysed corpora is illustrated in table 3 below:

Table 3. Syntactic functions of pres. part. SCCs in the corpora of AP and AJ. (delimitation of syntactic functions adopted from Dušková, 1988).

Syntactic function of present participial SCC:	**AP: Nr (%)**	**AJ: Nr (%)**
Premodifier:	**49 (20,50%)**	**36 (20,45%)**
Postmodifier:	**167 (69,80%)**	**78 (44,32%)**
Prepositional subject complement:	**12 (5,02%)**	**4 (2,27%)**
Prepositional object complement:	**0 (0%)**	**3 (1,70%)**
Adverbial:	**11 (4,60%)**	**55 (31,25%)**
Adv. of time:	**2: *when***	**5: *while,when***
Adv. of result:	**0**	**1: *thereby***
Adv. of reason:	**0**	**0**
Adv. of concession:	**0**	**2: *even if,***
Adv. of concession and condition	**1:*whether..or***	***while***
Suppementive clauses:	**7**	**0**
		47
Total nr. of Present Participial SCCs:	**239 (100%)**	**176 (100%)**

As table 3 shows, the prevailing syntactic function of present participial SCCs in the corpus of AP is postmodification in noun phrases. On the other hand, the corpus of AJ contained more occurrences of adverbial and supplementive present participial SCCs than the corpus of AP. The most frequent syntactic functions of present participial SCCs thus correspond to the stylistic qualities of the analyzed genres: semi-clausal postmodifiers in AP contribute to the precision of the genre by adding details about the head noun while supplementive clauses[4] can be perceived as a marker of stylistic looseness of AJ.

The most frequently occurring type of syntactic indeterminacy was detected in the corpus of AJ. In several cases, there arose a slight ambiguity concerning the interpretation of the syntactic function of a present participial SCC as exemplified below:

Example 2. Case of syntactic indeterminacy in AJ.

> After all, the officer may himself have given evidence for the Crown in a criminal trial and he spends his working life PP:MannerAdj-means/instr.(with other police officers <**52PRP:Postm** **fighting** crime>). (AJ 1, p.16).

The above present participial SCC displays ambiguity in the sense that it could function either as a postmodifier in the noun phrase *other police officers* or it may have an adverbial reading, functioning as a subjectless supplementive clause conveying temporal relation or relation of manner.

Another difference in the employment of present participial SCCs across the analysed corpora was detected in the group of adverbial SCCs. The corpus of AJ contained several dangling or unattached present participial SCCs defined as clauses with an implied subject which is not identical with the subject of the finite verb of the matrix clause (Dušková, 1988, p. 585)[5].

Example 3. Dangling present participial SCC in AJ.

> <**58PRP:Adv-means/time.** **Adopting** the stance of the fair-minded observer>, the law would hold that such a person should be discharged from sitting on the jury. (AJ 1, p. 18)

The subject of the above semi-clause is logically *I* (the author) but syntactically, according to the normal attachment rule, it should be *the law*.

The semantic relation between the matrix clause and the adverbial semi-clause is pivotal for understanding the meaning of the sentence. However, as shown below, the

[4] The term supplementive clause is used by Quirk et al (1985) and by Biber et al (1999) to refer to optional adverbial present participial and past participial clauses that are not introduced by a subordinator and that implicitly convey either a particular semantic relation that has to be inferred from the text or several overlapping semantic relations. Such semantic relations can be sometimes very difficult to infer.

[5] Quirk et al. list several types of sentences in which compliance with the attachment rule is unobjectionable (e.g. when the implied subject is the whole of the matrix clause or the indefinite pronoun or when the clause is a style disjunct). However, the corpus of AJ contained several instances in which the violation of this rule generates sentences with absurd interpretations exemplified above.

analysed texts contain numerous instances of present participial supplementive clauses implying versatile semantic relation to the matrix clause due to absence of a conjunctive element between them. In the overall number of adverbial present participial SCCs in AP (11), supplementive clauses constitute 7 instances, i.e. 63,6%. In the corpus of AJ, supplementive clauses represent 47 instances, i.e. 85,5% in the overall number of adverbial present participial clauses (55). While the inference of the implied semantic relation in this type of sentences in the corpus of AP did not pose any difficulties, the corpus of AJ contained several sentences in which the semantic relation conveyed by the supplementive clause was so vague that it was difficult to determine and classify:

Example 4. Supplementive SCC in the corpus of AJ.

> Although the section 20(1) duty would appear to be triggered, <$_{\textbf{31PRP:Adv-time/result}}$ **taking** into account the child's wishes>, the local authority might judge him competent to look after himself and provide support, including help with accommodation, without making him a looked after child. (AJ 2, p. 15-16)

In the above example, the present participial clause could indicate temporal semantic relation, semantic relation of manner or even that of result.

Another type of indeterminacy detected in the corpus of AJ involves the difficulty of determining sytactic function of certain present participial clauses in sentence-final position as adverbial supplementive or as postmodifying clauses.

Example 5. Case of syntactic indeterminacy in AJ.

> This letter was passed to defending counsel, who sought to challenge Mr McKay-Smith, <$_{\textbf{13PRP:Adv-time/means}}$ **contending** that the court should not only do what is right but should be seen to have done what is right>. (AJ 1, p. 3)

The present participial clause above could be interpreted either as an optional adverbial supplementive clause indicating temporal relation or relation of means (...sought to challange Mr. McKay- Smith *while/by* contending that...) or as a postmodifier of Od (...sought to challenge Mr. McKay-Smith *who* contended that....). In the corpus of AP, the unambiguous interpretation of the semantic relations conveyed by adverbial clauses was achieved either by present participial SCCs introduced by a conjunction or by gerundial SCCs embedded in prepositional phrases. The main conditioning factor for the employment of these constructions in AP is precision of semantic meaning.

Gerundial SCCs in the analysed corpora

Table 4 below shows that gerundial SCCs are by far more numerous in the corpus of AP than in the corpus of AJ (the difference is 67 clauses in favour of the corpus of AP). Since gerundial SCCs function as complements of prepositions or convey nominal syntactic functions in a sentence (subject, object, subject complement and object complement), their higher incidence in the corpus of AP can be seen as a proof of a higher degree of nominality of this genre.

Table 4. Syntactic functions of gerundial SCCs in the corpora of AP and AJ (delimitation of syntactic functions adopted from Dušková, 1988).

Syntactic function of Gerundial SCC:	**AP: Nr (%)**	**AJ: Nr (%)**
Subject:	**4 (1,31%)**	**3 (1,26%)**
Extraposed subject:	**-**	**1 (0,42%)**
Direct Object:	**9 (2,95%)**	**16 (6,72%)**
Prepositional object:	**46 (15,08%)**	**65 (27,31%)**
Premodifier:	**50 (16,39%)**	**9 (3,78%)**
Postmodifier:	**64 (20,98%)**	**61 (25,63%)**
Complement of adjective:	**3 (0,98%)**	**11(4,62%)**
Apposition:	**1(0,33%)**	**4 (1,68%)**
Adverbial:	**128 (42,96%)**	**68 (28,57)**
Adv. of time:	***54***	***28***
Adv. of means:	***3***	***15***
Adv. of purpose:	***58***	***5***
Adv. of result:	***1***	***-***
Adv. of reason:	***2***	***6***
Adv. of accompanying circumstances:	***9***	***9***
Adv. of respect:	***1***	***5***
Total nr. of Gerundial Semi-clauses:	**305 (100%)**	**238 (100%)**

The most frequent gerundial SCCs in the corpus of AP were gerundial SCCs embedded in prepositional phrases with adverbial functions, which enhances the unambiguous interpretability of adverbial relations as well as the level of condensation of in this genre (see examples 6-10 below).

There were detected several differences in the employment of gerundial adverbial SCCs in the analysed corpora. While all gerundial SCCs embedded in prepositional phrases in the corpus of AJ had a clearly delimited adverbial function indicated by a single preposition, the corpus of AP contained frequent instances of several adverbial meanings conveyed by a single prepositional phrase:

Example 6: Condensing function of adverbial prepositional phrases in AP.

> The second case is where OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one $_{\text{PP:Adv-purpose/AccompCirc}}$ (for, or in connection with, {$_{\textbf{71G:CompPrep}}$ **achieving** the objective of the postal administration}). (PSA 2011, p.21)

Example 7: Condensing function of adverbial prepositional phrases in AP.

> For the purposes of this section amounts are applied in making good that shortfall if they are paid $_{\text{PP:Adv-time/purpose}}$ (in or towards {$_{\textbf{214G:CompPrep}}$ **discharging** so much of a relevant debt as cannot be met out of the property otherwise available $_{\text{PP:Adv-purpose}}$ (for {$_{\textbf{215G:CompPrep}}$ **meeting** relevant debts}) }). (PSA 2011, p. 54)

This frequently occurring phenomenon makes the corpus of AP more economic and condensed since it enables to express several semantic relations by combining a prepositional phrase containing two prepositions with a single gerundial SCC.

Furthermore, in comparison with present participial SCCs with adverbial syntactic functions, especially those attached asyndetically, gerundial SCCs express adverbial semantic relations more accurately, which can be one of the reasons for their more frequent employment in the corpus of AP where precision is of utmost importance. The following examples may serve to illustrate the point:

Example 8: Gerundial SCC in AP.

PP:Adv-time (In { **52GER:CompPrep** **performing** their duty under subsection (1) }) OFCOM must have regard to the need for the provision of a universal postal service to be financially sustainable. (PSA 2011, p. 16)

Eample 9: Gerundial SCC in AP.

PP:Adv-time (After {**125GER:CompPrep** **receiving** the report under subsection (6)}) the Secretary of State must determine what action (if any) the Secretary of State considers ought to be taken by OFCOM to deal with the burden. (PSA 2011, p. 29)

Example 10: Present participial SCC in AJ.

<**43PRP:Adv-time/result** **Dismissing** the appeal of the first appellant >, the court said (para 47): (AJ 1, p. 12)

While sentence in example 8 clearly conveys a simultaneous temporal relation indicated by the preposition *in* introducing the prepositional phrase in which the gerundial SCC is embedded and sentence in example 9 indicates a temporal sequence relation indicated by the preposition *after*, sentence in example 10 is ambiguous between the simultaneous temporal interpretation, temporal sequence interpretation or possibly even consequence interpretation.
The only type of dangling or unattached SCCs identified in the corpus of AP were gerundial SCCs (44 out of 128 gerundial SCCs were dangling). On the other hand, and in accordance with the stylistic requirements of the genre of AP, these SCCs represent the most unambiguous type of dangling semi-clauses since their subject was always the generic *one* or *I/we* referring to the writers:

Example 11: Dangling Gerundial SCC in AP:

PP:Adv-time (In {**27GER:CompPrep** **calculating** the value of any liabilities for those purposes}), a provision of the RMPP that limits the amount of its liabilities by reference to the amount of its assets is to be disregarded. (PSA 2011, p. 12)

While the corpus of AP demonstrates a complementary relationship between the compliance with the attachment rule and an overt expression of the semantic relation between the matrix clause and the SCC, the corpus of AJ contained 6 instances of adverbial clauses that were both dangling and supplementive:

Example 12: Dangling and Supplementive SCC in AJ:

What consideration <**26PRP:Adv-time/reason** **having regard** to his age and understanding> is duly to be given to those wishes and feelings?
(AJ 2, p. 14)

This important finding represents another piece of evidence supporting the higher degree of informality and stylistic looseness of the genre of AJ.

Infinitival SCCs in the analysed corpora

The analysis revealed both quantitative differences in the employment of infinitival SCCs (374 infinitival SCCs in AP vs 483 infinitival SCCs in AJ) and substantial differences in their syntactic functions. The most common syntactic function of infinitival SCCs in AJ was adverbial function while the corpus of AP contained more infinitival SCCs functioning as postmodifiers and direct objects.

Table 5. Syntactic functions of infinitival SCCs in the corpora of AP and AJ (delimitation of syntactic functions adopted from Dušková, 1988).

Syntactic Function of Infinitival SCC:	**AP: Nr. (%)**	**AJ: Nr. (%)**
Subject:	**1** (0,26%)	**0**
Extraposed subject:	**12** (3,47%)	**57** (11,80%)
Direct object:	**146** (39,03%)	**90** (18,63%)
Extraposed direct object:	**2** (0,53%)	**5 (**1,03%)
Infinitive in the position of Prepositional object:	**11** (2,94%)	**3** (0,62%)
Complement of adjective:	**15** (4,01%)	**71** (14,70%)
Subject complement:	**30** (8,02%)	**90** (18,63%)
Object complement:	**14** (3,74%)	**7** (1,44%)
Postmodifier:	**106** (28,34%)	**65** (13,45%)
Adverbial:	**37** (9,90%)	**95** (19,67%)
Adv. of aim/intention: Adv. of purpose: Adv. of reason: Adv. of comparison: Adv. of effect: Adv. of extent:	**4** **26** **1** **0** **5** **1**	**18** **60** **2** **2** **7** **6**
Total nr. of Infinitival Semi-clauses:	**374**	**483**

Infinitival postmodifiers in the corpus of AP outnumber infinitival postmodifiers in AJ (106 in AP vs. 65 in AJ). With respect to infinitival postmodification, the main difference between the two corpora lies in the complexity of infinitival postmodification. The corpus of AP contained frequent cases of multiple postmodifying infinitive as well as postmodifying infinitive expressing several contrasting actions or components of the same action (example 13), which increases the condensing capacity of postmodifying infinitive.

Example 13: Multiple infinitival postmodifiers in AP.

> the right [$_{\text{30INF, 31INF:Postm}}$ **to subscribe for**, or **acquire**, such securities and any other rights in connection with such securities,] (PSA 2011, p. 8)

Another interesting finding concerns the occurrence of infinitival extraposed subjects in the analyzed corpora. In both corpora, they were located in two types of sentential contexts:

1. the matrix clause contained a modal adjective *possible, necessary, essential, convenient, important* or the noun *duty* and the extraposed subject denoted the activity or state to which the modal adjective refers (example 14)

Example 14: Typical sentential context for infinitival extraposed subjects

> It is impossible, whether desirable or not, [$_{\text{24 INF:S(ep)}}$ **to ensure** that jurors have no previous knowledge of the law before they begin [$_{\text{25 INF:Od}}$ **to hear** a case]]. (AJ 1, p. 3)

- the matrix clause contained evaluative adjective, e.g. *right, wrong, hard, difficult, relevant, unrealistic, appropriate, practicable and safe, lawful, just and equittable* (example 15).

Example 15: Typical sentential context for infinitival extraposed subjects

> As such they become influenced by the principles and attitudes of the police, and it would be difficult [$_{\text{36 INF:S(ep)}}$ for them **to bring** to bear those qualities demanding a completely impartial approach to the problems confronting members of a jury]'. (AJ 1, p. 4)

On the other hand, gerundial semi-clausal subjects were never used in such modal or evaluative contexts but rather in neutral and descriptive contexts (matrix clause verbs were *involve, include, concern, impose,* and *be*):

Example 16: Typical sentential context for gerundial subjects

> {$_{\text{6GER:S}}$ **Conserving** biodiversity} includes – in relation to any species of flora or fauna, {$_{\text{7GER:Od}}$ **restoring** or **enhancing** a population of that species} (WNEA 2011, p.1)

However, the small number of infinitival extraposed subjects does not allow to make any generalizations about the typical sentential contexts for gerundial and infinitival subjects in legal English and the issue definitely presents an interesting topic for further research in syntax of legal English.

Past participial SCCs in the analysed corpora

As was the case with infinitival SCCs, past participial SCCs did not pose any difficulties from the point of view of semantic and syntactic ambiguities and therefore the following section presents only a few brief comments on their incidence in the studied corpora. The data in table 6 indicate that in terms of the occurrence of past participial SCCs, the corpus of AP can be considered to be not only more nominal but also more condensed since it

contains more instances of these SCCs per sentence than the corpus of AJ (1,06 in AP vs. 0,43 in AJ).

Table 6. Syntactic functions of past participial SCCs in the corpora of AP and AJ (delimitation of syntactic functions adopted from Dušková, 1988).

Syntactic Function of Past Participial SCC:	**AP: Nr (%)**	**AJ: Nr (%)**
Postmodifier:	**365 (69,78%)**	**193 (77,51%)**
Premodifier:	**136 (26,0%)**	**44 (17,67%)**
Adverbial:	**12 (4,81%)**	**22 (4,21%)**
Adv. of time:	**-**	**-**
Adv. of manner:	**5**	**13**
Adv. of condition:	**5**	**6**
Adv. of concession:	**2**	**1**
Adv. of condition/concession:	**-**	**1**
Adv. of respect:	**-**	**1**
Total nr. of past participial SCCs:	**523**	**249**

Adverbial past participial SCCs in AJ represent an important type of adverbial SCCs since they always overtly express semantic relations that are generally implied by present participial SCCs in this corpus. The most frequent semantic types of adverbial past participial SCCs are adverbial clauses of manner (*as*...), condition (*if*) and conditional-concessive clauses (*whether...or*).

However, the most frequent syntactic functions conveyed by past participles in both corpora were premodification and postmodification. The extremely high number of past participial premodifiers in the texts of AP is caused by recurrence of certain noun phrases throughout the text, e.g. the noun phrase *qualifying accrued rights* occurs 39 times in the analysed sections of Postal Services Act. Similarly, the past participial premodifiers *prescribed* and *specified* repeatedly collocate with a number of head nouns in both texts of the corpus of AP. The high incidence of past participial postmodifiers in the corpus of AP is contributed to by frequent occurrence of the postmodifiers *owned by the Crown*, *given by section*... and *concerned*. The frequent recurrence of such expressions again corresponds to the requirement of precision and unambiguity of the genre of AP.

Conclusion

On the basis of syntactic analysis of the studied corpora, it is possible to generalize that SCCs in the corpus of AP exhibit greater precision and unambiguity both in terms of their syntactic interpretation and in terms of their semantic interpretation. In contrast, the corpus of AJ contained several kinds of syntactically indeterminate or ambiguous SCCs.

Semi-clauses in AP outnumber semi-clauses in AJ (1434 in AP vs. 1194 in AJ) and the average number of all types of semi-clauses per sentence is also higher in this corpus. The corpus of AP was proved to be more condensed which was reflected e.g. in the syntactic function of postmodification: it contained more numerous occurrences of

head nouns postmodified by multiple infinitival postmodifiers and more occurrences of both present participial and gerundial postmodifiers. The numbers of sentence condensers in the two corpora thus reveal that sentence condensers in AP are used more frequently, enabling to pack more information into one sentence. However, even if the difference in the numbers of occurrences of sentence condensers between the two corpora is not too great, the average number of condensers per sentence is considerably higher in AP (2,76) than in AJ (1,58), which is a result of the long and self-contained sentences in the genre of AP. Sentence condensation in AP was most frequently increased by two or three co-occurring gerundial SCCs conveying various adverbial meanings in a single sentence whereas in the corpus of AJ, it was most frequently increased by sentences containing multiple infinitival SCCs.

The analysis of dangling and supplementive clauses represents another piece of evidence in support of greater semantic and syntactic ambiguity of semi-clauses in the corpus of AJ and greater stylistic looseness of the texts of judgments. The stylistic motive thus appears to be an important conditioning factor in terms of employment of particular formal types of SCCs in the analysed legal genres.

List of Abbreviations:

AJ – Appellate Judgments
AJ1 – Appellate Judgment 1
AJ2 – Appellate Judgment 2
AJ3 – Appellate Judgment 3
AP – Acts of Parliament
PSA 2011 – Postal Services Act 2011
WNEA 2011 – Wildlife and Natural Environment Act 2011
NP – noun phrase
PP – prepositional phrase
SCC – semi-clause construction
SCCs – semi-clause constructions
Sent. - sentence
Formal categories of SCCs:
$<_{PRP:}$.....> – present participial semi-clause
$[_{INF:}$.....] – infinitival semi-clause
/ $_{PTP:}$……./ – past participial semi-clause
{$_{GER:}$……..} – gerundial semi-clause
Syntactic functions of SCCs:
Adv–AccompCirc – adverbial semi-clause of accompanying circumstances
Adv – manner - adverbial semi– clause of manner
Adv–means – adverbial semi– clause of means
Adv–purpose – adverbial semi-clause of purpose
Adv–reason – adverbial semi-clause of reason
Adv–result – adverbial semi-clause of result
Adv–time – adverbial semi-clause of time
CompPrep – complement of preposition
MannerAdj-means/instr. – manner adjunct of means or instrument

Od – direct object
Postm – postmodifier
Prem - premodifier
S - subject
S(ep) – extraposed subject

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MODAL VALUES OF VERBAL FORMS IN THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES. A LINGUISTIC COMPARATIVE ANALYSIS OF THE ENGLISH, ITALIAN AND SPANISH VERSIONS

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Abstract: The present paper analyses the verbal expression of deontic, epistemic and performative values in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages, a treaty of the Council of Europe which aims to protect and promote the historical regional or minority languages of Europe.
The objective of this paper is to show that Legal English, Legal Italian and Legal Spanish express in a different way the deontic, epistemic or performative values of verbal constructions, in particular recurring, or not, to modal verbs or to specific tenses.
The results of the paper reveal that Legal English frequently uses modal verbs to express deontic or epistemic modalities of verbal forms, whereas it privileges indicative tenses to express performative modality; Legal Italian prefers indicative tenses to convey deontic and performative modalities, and subjunctive tenses to convey epistemic modality; Legal Spanish privileges indicative tenses to express deontic and performative modalities, and subjunctive tenses to express epistemic modality.
Key words: Legal English, Legal Italian, Legal Spanish, deontic modality, epistemic modality, performative modality.

I VALORI MODALI DELLE FORME VERBALI NELLA CARTA EUROPEA DELLE LINGUE REGIONALI O MINORITARIE. UN'ANALISI LINGUISTICO COMPARATIVA TRA LA REDAZIONE INGLESE, ITALIANA E SPAGNOLA

Abstrakt: Il presente studio analizza l'espressione verbale del valore deontico, epistemico e performativo nella redazione inglese, italiana e spagnola della Carta Europea delle Lingue Regionali o Minoritarie, un trattato del Consiglio d'Europa che ha lo scopo di proteggere e promuovere le lingue storiche regionali o minoritarie d'Europa.
L'obiettivo di questo lavoro è mostrare che il linguaggio giuridico inglese, italiano e spagnolo esprimono in modo differente il valore deontico, epistemico o performativo che deve essere attribuito a una costruzione verbale, in particolare ricorrendo o meno a verbi modali o a specifici tempi verbali.
I risultati dello studio rivelano che l'inglese giuridico impiega frequentemente i verbi modali per esprimere la modalità deontica o epistemica delle forme verbali, mentre impiega i tempi verbali dell'indicativo per esprimere la modalità performativa; l'italiano giuridico predilige i tempi verbali dell'indicativo per esprimere la modalità deontica e performativa, e i tempi verbali del congiuntivo per esprimere la modalità epistemica; lo spagnolo giuridico, impiega i tempi verbali dell'indicativo per esprimere la modalità deontica e performativa, e i tempi verbali del congiuntivo per esprimere la modalità epistemica.

Parole chiave: Inglese giuridico, Italiano giuridico, Spagnolo giuridico, modalità deontica, modalità epistemica, modalità performativa.

ŚRODKI WYRAŻANIA MODALNOŚCI W EUROPEJSKIEJ KARCIE JĘZYKÓW REGIONALNYCH LUB MNIEJSZOŚCIOWYCH. LINGWISTYCZNA ANALIZA PORÓWNACZA WERSJI W JĘZYKU ANGIELSKIM, WŁOSKIM I HISZPAŃSKIM

Abstract: Artykuł zawiera analizę środków deontycznych, epistemicznych i performatywnych w angielskiej, włoskiej i hiszpańskiej wersji językowej Europejskiej karty języków regionalnych lub mniejszościowych, traktatu Rady Europy, który ma na celu ochronę i promocję tych języków w Europie.
Celem autorki było wykazanie, że angielski, włoski i hiszpański język prawny charakteryzują się odmiennym sposobem wyrażania modalności deontycznej, epistemicznej i performatywności. W angielskim języku prawnym wyróżnić można wiele czasowników modalnych na wyrażenie modalności deontycznej lub epistemicznej, a performatywność wyrażana jest za pomoca trybu oznajmującego. We włoskim języku prawnym na wyrażenie modalności deontycznej oraz peformatywności stosuje się tryb oznajmujący, natomiast na wyrażenie modalności epistemicznej tryb łączący. Z kolei w hiszpańskim języku prawnym modalność deontyczną i performatywność wyraża się poprzez tryb oznajmujący, a modalność epistemiczną przez tryb łączący.
Słowa kluczowe: angielski język prawny, włoski język prawny, hiszpański język prawny, modalność deontyczna, modalność epistemiczna, performatywność.

1. Introduction

At the level of verbal constructions the language of normative texts expresses itself in three main ways - deontic, epistemic and performative - in the sphere of legal regulations as normative texts are built upon pragmatic conditions, such as legislator's intentionality, receiver's acceptability and situationality of communicative settings (cf. de Beaugrande, Dressler 1981).

In a statement, deontic modality is realised when «[…] the conditioning factors are external to the relevant individual […]»; it «[…] relates to obligation or permission, emanating from an external source […]» and it is distinguishable in «[…] the typological categories of (Deontic) Permissive and Obligative». In general, «[…] Deontic modality stems from some kind of external authority such as rules or the law, typically and frequently the authority is the actual speaker, who gives permission to, or lays an obligation on, the addressee» (Palmer 2001, 9-10).

Epistemic modality is realised when «[…] speakers express their judgments about the factual status of the proposition […]» and it is distinguishable in «[…] the typological categories Speculative, Deductive and Assumptive» (Palmer 2001, 8).

Finally, performative modality is realised when «[…] the issuing of the utterance is the performing of an action - it is not normally thought of as just saying something» (Austin 1967, 6-7). If a performative utterance fails, that is, if it does not have the desired effects for some reason, it is not defined false but unhappy, otherwise it is not defined true but happy (Austin 1967, 14).

The present paper analyses the verbal expressions of epistemic, deontic and performative values in the English, Italian and Spanish versions of the European Charter

for Regional or Minority Languages, a treaty of the Council of Europe which aims to protect and promote the historical regional or minority languages of Europe,[1] in order to compare English, Italian and Spanish expressions of those values and so making a contribution to the cross-cultural investigation of the linguistic features and the legal discourse, which is important for the understanding of the increasingly globalized legislative practices.

While the analysis is based on the English, Italian and Spanish versions of the Charter, the French version of the Charter is used as a further reference basis since it is the source text of the Italian and Spanish versions; in particular, the French version is taken into consideration to show whether or not the Italian and Spanish use of a modal or non-modal verb and of a specific tense is due to a transfer because of their fidelity in translation to the French version.

The choice of English, Italian and Spanish is based on the need to compare languages of different linguistic groups, in this case, a Germanic language and two Romance languages, and to compare States with different legal traditions, the United Kingdom belonging to the tradition of Common Law, Italy and Spain belonging to the tradition of Civil Law.

2. Verbal forms with deontic value

Deontic modal value refers «[…] to a particular branch or extension of modal logic: the logic of obligation and permission» and it «[…] is concerned with the necessity or possibility of acts performed by morally responsible agents. When we impose upon someone the obligation to perform or to refrain form performing a particular act, we are clearly not describing either his present or future performance of that act». Deontic modality is connected with futurity because «the truth-value of a deontically modalized proposition is determined relative to some state of the world later than the world-state in which the obligation holds; and the world-state in which the obligation holds cannot precede, though it may be simultaneous with, the world-state in which the obligation is imposed». Furthermore, deontic modality «[…] proceeds, or derives, from some source or cause. If X recognizes that he is obliged to perform some act, then there is usually someone or something that he will acknowledge as responsible for his being under the obligation to act in this way» (Lyons 1977, 823-824).

Deontic statements are distinctive of prescriptive rules, that is of rules which produce «[…] an event exercising a pressure on someone's behaviour [...] The prescribed situations or facts are produced in an immediate way, that is they are realized through a process which includes at least two distinct and subsequent acts, the act of the one who prescribes and the decisive act of the one who performs the prescription […]» (my translation, Carcaterra 1994, 224-225).

Prescriptive rules prevail in the Charter as its purpose is to regulate Member States' behaviour towards historical regional or minority languages.

[1] The sources of the examined versions of the Charter are the Council of Europe site for the French and Italian versions, the Foreign & Commonwealth Office site for the English version and the Official State Gazette Agency site for the Spanish version.

In laying down in the Charter, Legal English prefers the modal auxiliary verb "shall" in 33 occurrences, non-modal verbs in the "Simple Present" in 29 occurrences, the infinitive structure "to be" and the modal auxiliary verbs "may" and "will" in two occurrences; Legal Italian uses the "Indicativo Presente" in 54 occurrences, including three with the modal auxiliary verb "dovere" and two with the modal auxiliary verb "potere", non-modal verbs in the "Indicativo Futuro semplice" in 13 occurrences and the infinitive structure "da + infinito" in three occurrences; finally, Legal Spanish employs the "Futuro simple de Indicativo" in 40 occurrences, including five with the modal auxiliary verb "deber", two with the modal auxiliary verb "poder" and one with the modal auxiliary verb "haber de", and it employs non-modal verbs in the "Presente de Indicativo" in 29 occurrences.

In the majority of the cases, precisely in 27 occurrences, Legal English, Legal Italian and Legal Spanish agree with each other in using non-modal verbs in the present tense with deontic meaning; an example:

Article 2, paragraph 1

Chaque Partie s'engage à appliquer […].
Each Party undertakes to apply […].
Ogni Parte si impegna ad applicare […].
Cada Parte se compromete a aplicar […].

In contrast with the example mentioned above, which counts 26 occurrences, there is a case in which Legal English prefers a verbal construction with the modal auxiliary verb "shall"[2]highlighting both futurity and obligation of the undertaking given by contracting States, whereas Legal Italian and Legal Spanish, like Legal French, always use the same verb and tense, only highlighting the obligation of the undertaking given by contracting States:

Article 7, paragraph 4

[…] les Parties s'engagent à prendre en consideration les besoins et les vœux […].
[…] the Parties shall take into consideration the needs and wishes […].
[…] le Parti si impegnano a considerare i bisogni e i desideri […].
[…] las Partes se comprometen a tener en consideración las necesidades y los deseos […].

Another frequent case in the expression of obligation, with 20 occurrences, consists in the use of the modal auxiliary verb "shall" by Legal English, of the "Indicativo Presente" by Legal Italian, exactly 17 occurrences with non-modal verbs (art. 7, p. 1), two occurrences with the modal auxiliary verb "dovere" (art. 15, p. 1) and one case with the modal auxiliary verb "potere" (art. 4, p. 1), and of the "Futuro simple de Indicativo" by Legal Spanish, in particular 16 occurrences with non-modal verbs (art. 7, p. 1), three occurrences with the modal auxiliary verb "deber" (art. 15, p. 1) and one case with the modal auxiliary verb "poder" (art. 4, p. 1); only in one of the described cases,

[2] According to many studies on deontic modality, the modal auxiliary verb 'shall' is the most frequent modal in English legal texts (Hiltunen 1990, 75; Garzone 2001, 156; Caliendo 2004, 244, Caliendo 2005, 386).

Legal Spanish differs from the French and Italian versions in that it employs the modal auxiliary verb "deber" instead of a non-modal verb (art. 3, p. 1). Therefore, in those cases, Legal English and Legal Spanish underline both futurity and obligation of the sentence, whereas Legal Italian, like the French one, only underlines the obligation of the sentence. The examples:

Article 7, paragraph 1

[…] les Parties fondent leur politique […].
[…] the Parties shall base their policies […].
[…] le Parti fondano la loro politica […].
[…] las Partes basarán su política […].

Article 15, paragraph 1

[…] Le premier rapport doit être présenté dans l'année […].
[…] The first report shall be presented within the year […].
[…] Il primo rapporto deve essere presentato nell'anno […].
[…] El primer informe deberá ser presentado en el año siguiente […].

Article 4, paragraph 1

Aucune des dispositions de la présente Charte ne peut être interprétée […].
Nothing in this Charter shall be construed […].
Nessuna disposizione della presente Carta può essere interpretata […].
Ninguna de las disposiciones de la presente Carta se podrá interpretar […].

Article 3, paragraph 1

[…] s'appliquent les paragraphes choisis conformément au paragraphe 2 de l'article.
[…] the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.
[…] si applicano i paragrafi scelti conformemente all'Article 2 paragraph 2.
[…] deberán aplicarse los párrafos elegidos de conformidad con el párrafo 2 del artículo 2.

In a smaller number of cases, in 11 occurrences, in making prescriptions all three languages employ a modal verb or a tense which express the futurity and the obligation of the action: precisely Legal English uses the modal auxiliary verb "shall", whereas Legal Italian and Legal Spanish use, like Legal French, non-modal verbs, respectively, in the "Indicativo Futuro semplice" and in the "Futuro simple de Indicativo"; an example:

Article 7, paragraph 5

[…] la nature et la portée des mesures à prendre pour donner effet à la presente Charte seront déterminatées de manière souple […].
[…] the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner […].
[…] la natura e la portata delle misure da adottare per rendere effettiva la presente Carta saranno determinate in modo flessibile […].
[…] la naturaleza y el alcance de las medidas que se habrán de tomar para la aplicación de la presente Carta se determinarán de manera flexible […].

In two occurrences, the English modal auxiliary verb "may" does not have its usual function of expressing permission or possibility, but it has a deontic function. The deontic function is given to "may", in one case, through the anteposition of the adjective "no other" to the subject and, in the other case, through the pronoun "nothing" which performs the function of subject. In those two occurrences, Legal Italian employs, in one case, a modal auxiliary verb (art. 5) and, in the other case, like Legal French, an auxiliary verb (art. 21, p. 1) both in the "Indicativo Presente", whereas Legal Spanish employs, in one case, like Legal French, a modal auxiliary verb (art. 5) and, in the other case, a non-modal verb (art. 21, p. 1) both in the "Futuro simple de Indicativo"; therefore, only Legal Spanish expresses both future and obligatory values of the statement:

Article 5

Rien dans la présente Charte ne pourra être interprété comme impliquant le droit […].
Nothing in this Charter may be interpreted as implying any right […].
Nella presente Carta nulla può implicare il diritto […].
Nada en la presente Carta podrá ser interpretado en el sentido de que lleve consigo el derecho […].

Article 21, paragraph 1

[…] Aucune autre réserve n'est admise.
[…] No other reservation may be made.
[…] Non è ammessa alcuna altra riserva.
[…] No se admitirá ninguna otra reserva.

In two occurrences, the English modal auxiliary verb 'will' has a deontic function, as well as the primary function of expressing future. In those two cases, Legal Italian uses an auxiliary verb, in one case, in the "Indicativo Presente" (art. 3, p. 3) and, in the other case, in the "Indicativo Futuro semplice" (art. 8, p. 1, i), whereas Legal Spanish always uses, like Legal French, non-modal verbs in the "Futuro simple de Indicativo":

Article 3, paragraph 3

[…] et porteront les mêmes effets dès la date de leur notification.
[…] and will have the same effect as from their date of notification.
[…] e hanno gli stessi effetti a decorrere dalla data della loro notifica.
[…] y tendrán los mismos efectos a partir de la fecha de su notificación.

Article 8, paragraph 1, i)

[…] et à établir sur ces points des rapports périodiques qui seront rendus publics.
[…] and for drawing up periodic reports of their findings, which will be made public.
[…] e a redigere in merito a tali punti rapporti periodici che saranno resi pubblici.
[…] y redactar al respecto informes periódicos que se harán públicos.

In one case, Legal English and Legal Italian employ, like Legal French, a present tense to express an exhortation, whereas Legal Spanish employs a future tense,

precisely the "Futuro simple de Indicativo", so underlining both exhortative and future values of the statement:

Article 7, paragraph 4

[…] Elles sont encouragées à créer […].
[…] They are encouraged to establish […].
[…] Esse sono esortate a istituire […].
[…] Se las invitará a crear […].

In contrast with the above mentioned case, there is another one in which Legal Italian and Legal Spanish express in a verbal construction, like Legal French, both values of obligation and futurity, whereas Legal English uses an auxiliary verb in the "Simple Present" only with prescriptive value:

Article 18

[…] Elle sera soumise à ratification, acceptation ou approbation […].
[…] It is subject to ratification, acceptance or approval […].
[…] Essa sarà sottoposta a ratifica, accettazione o approvazione […].
[…] Será sometida a ratificación, aceptación o aprobación […].

In the end, in one case, Legal English and Legal Italian employ, like Legal French, an infinitive structure with deontic value, whereas Legal Spanish employs the modal verb "haber de", properly of formal register, in the "Futuro simple de Indicativo":

Article 7, paragraph 5

[…] des mesures à prendre pour donner effet à la présente Charte […].
[…] of the measures to be taken to give effect to this Charter […].
[…] delle misure da adottare per rendere effettiva la presente Carta […].
[…] de las medidas que se habrán de tomar para la aplicación de la presente Carta […].

From this linguistic comparative analysis it emerges that the examined legal languages do not always agree with each other in expressing statements with deontic value.

As a matter of fact, in two cases, the English and Italian versions, like the French one, show statements with deontic function, whereas the Spanish version shows statements with epistemic function. More specifically, in one case, Legal English uses the modal auxiliary verb "shall" and Legal Italian uses a non-modal verb in the "Indicativo Presente", and, in another case, Legal English employs the infinitive structure "to be" and Legal Italian employs the modal auxiliary verb "dovere" in the "Indicativo Presente", when Legal Spanish uses a non-modal verb in the "Presente de Subjuntivo"; below the two examples in point, in which Legal French uses, in the first one, a tense different from the one employed by Legal Italian and Legal Spanish, and, in the second one, like Legal English, an infinitive structure:

Article 17, paragraph 1

[…] qui seront proposées par la Partie concernée.

[…] who shall be nominated by the Party concerned.
[…] che sono proposte dalla Parte interessata.
[…] que proponga la Parte correspondiente.

Article 15, paragraph 1

[…] sous une forme à déterminer par le Comité des Ministres […].
[…] in a form to be prescribed by the Committee of Ministers […].
[…] in una forma che deve essere determinata dal Comitato di Ministri […].
[…] en la forma que determine el Comité de Ministros […].

Conversely, in only one case, Legal Spanish employs the modal auxiliary verb "deber" in the "Futuro simple de Indicativo" marking the obligation of the sentence, when Legal English and Legal Italian simply employ, like Legal French, a participial structure which does not mark the obligation of the sentence:

Article 2, paragraph 2

[…] dont au moins trois choisis dans chacun des articles […].
[…] including at least three chosen from each of the Articles […].
[…] di cui almeno tre scelti in ciascuno degli articoli […].
[…] de los cuales, al menos, tres deberán ser elegidos de cada uno de los artículos […].

In one case, only Legal Italian and Legal Spanish highlight the deontic value of a sentence employing, respectively, the implicit structure "da + infinito" and the modal auxiliary verb "deber" in the "Futuro simple de Indicativo", when Legal English uses a prepositional locution which does not highlight the deontic value of the sentence; observe, in the example below, that Legal French uses, like Legal Italian, an infinitive structure:

Parte III

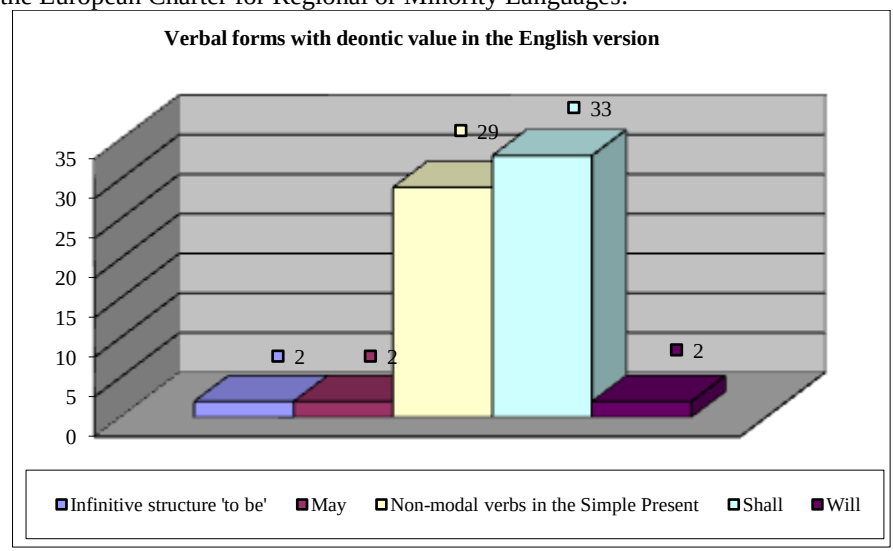
Mesures en faveur […] à prendre en conformité avec […].
Measures to promote […] in accordance with […].
Misure a favore […] da adottare conformemente […].
Medidas que, para fomentar […] deberán adoptarse de conformidad con […].

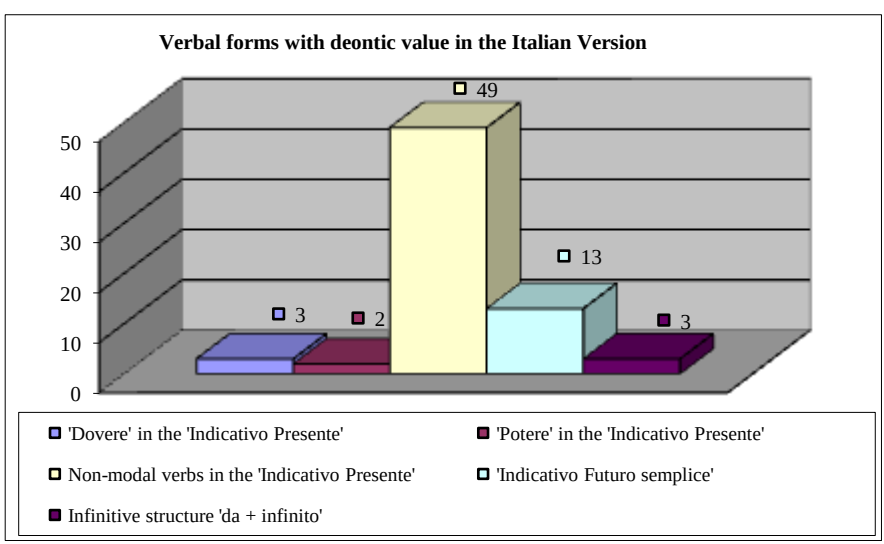
To sum up, in the expression of deontic modality in verbal constructions, the most relevant results emerging from the linguistic comparative analysis are, on the one hand, the use in 27 occurrences by Legal English, Legal Italian and Legal Spanish of non-modal verbs in the present tense and, on the other hand, the use in 20 occurrences by Legal English, Legal Italian and Legal Spanish of, respectively, the modal auxiliary verb "shall", the "Indicativo Presente", including 17 occurrences with non-modal verbs, two occurrences with the modal auxiliary verb "dovere" and one case with the modal auxiliary verb "potere", and the "Futuro simple de Indicativo", including 16 occurrences with non-modal verbs, three occurrences with the modal auxiliary verb "deber" and one case with the modal auxiliary verb "poder". It can surely be affirmed that a concordance prevails in the expression of the deontic modality among the examined legal languages,

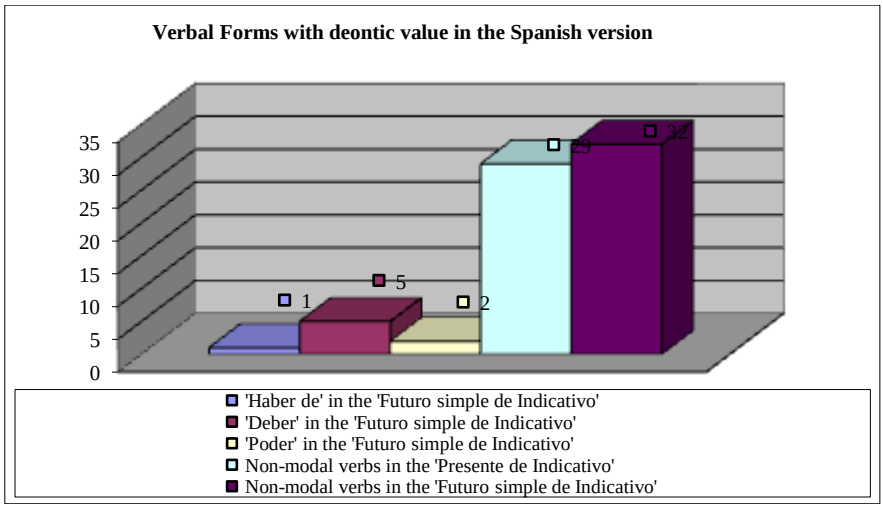
nevertheless, there are a considerable number of cases, only seven cases less compared to those of concordance, in which a discordance prevails.

Finally, it can be noticed that the use of modal auxiliary verbs is notable in the English version, whereas it is scarce in the Spanish version and even more so in the Italian version of the Charter, and that the use of future tenses is notable in the Spanish version and a little bit less in the English one, but it is scarce in the Italian version.

Graphic 1. Verbal forms with deontic value in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.







3. Verbal forms with epistemic value

The epistemic modal value indicates a «[..] logical structure of statements which assert or imply that a particular proposition, or set of propositions, is known or believed. Epistemic logic, in the option of some authorities, also lends itself [..] to formalization in terms of the notion of possible worlds» (Lyons 1977, 793). Epistemic modality can be objective, when it refers to reality in general, or subjective, when it refers to speakers' beliefs (Lyons 1977, 797).

In expressing epistemic modality in the Charter, Legal English prefers the modal auxiliary verbs "can" in four occurrences, "have to" in two occurrences, "may" in 18 occurrences and "should" in one case. Legal Italian uses the modal auxiliary verbs "dovere" in three occurrences, including two cases in the "Congiuntivo Presente" and one case in the "Condizionale Presente", "potere" in 16 occurrences, including 11 occurrences in the "Indicativo Presente", one case in the "Indicativo Futuro semplice" and four occurrences in the "Congiuntivo Presente", and non-modal verbs in the "Congiuntivo Presente" in 32 occurrences. Finally, Legal Spanish employs the modal auxiliary verbs "deber" in the "Condicional simple" in one case, "haber de" in the "Presente de Subjuntivo" in two occurrences and "poder" in 19 occurrences, including three occurrences in the "Presente de Indicativo", 10 occurrences in the "Futuro simple de Indicativo", five occurrences in the "Presente de Subjuntivo" and one case in the "Pretérito imperfecto de Subjuntivo"; besides, it employs non-modal verbs in the "Presente de Subjuntivo" in 90 occurrences, in the "Pretérito imperfect de Subjuntivo" in five occurrences, in the "Pretérito perfecto de Subjuntivo" in seven occurrences, auxiliary verbs in the "Pretérito pluscuamperfecto de Subjuntivo" in one case and non-modal verbs in the "Futuro simple de Subjuntivo" in one case.

In most cases, precisely in 20 occurrences, Legal English uses the modal auxiliary verb "may", when Legal Italian uses the modal auxiliary verb "potere" and Legal Spanish uses the modal auxiliary verb "poder"; an example:

Article 20, paragraph 1

[…] le Comité des Ministres du Conseil de l'Europe pourra inviter tout Etat […].
[…] the Committee of Ministers of the Council of Europe may invite any State […].
[…] il Comitato dei Ministri del Consiglio d'Europa potrà invitare ogni Stato […].
[…] el Comité de Ministros del Consejo de Europa podrá invitar a todo […].

Conversely, in five occurrences, Legal English employs the modal auxiliary verb "may", when Legal Italian and Legal Spanish do not employ, like Legal French, any modal auxiliary verb with epistemic value, but resort instead to other linguistic devices to express this modality, such as verbs in the present tense of the subjunctive (art. 9, p. 1, b, c. ii) or epistemic adverbs (art. 10, p. 4, a); some examples:

Article 9, paragraph 1, b), sub-paragraph ii)

[…] qu'elle s'exprime dans sa langue régionale ou minoritaire […].
[…] that he or she may use his or her regional or minority language […].
[…] che essa si esprima nella sua lingua regionale o minoritaria […].
[…] que se exprese en su lengua regional o minoritaria […].

Article 10, paragraph 4, a)

[…] la traduction ou l'interptétation éventuellement requises;
[…] translation or interpretation as may be required;
[…] la traduzione o l'interpretazione eventualmente richieste;
[…] la traducción o la interpretación eventualmente solicitadas;

In four cases, Legal English uses the modal auxiliary verb "can" and Legal Spanish uses the modal auxiliary verb "poder", when Legal Italian uses the modal auxiliary verb "potere", in three occurrences (art. 16, p. 2), or an auxiliary verb in the "Congiuntivo Presente", in one case (art. 9, p. 2, b); note, in the following examples, that Legal Spanish agrees with Legal French on the use of tenses but not always on the use of modal auxiliary verbs:

Article 16, paragraph 2

[…] Ces organismes ou associations pourront en outre soumettre […].
[…] These bodies or associations can furthermore submit […].
[…] Tali organismi o associazioni possono inoltre sottoporre […].
[…] Dichos organismos o asociaciones podrán asimismo presentar […].

Article 9, paragraph 2, b)

[…] et à prévoir qu'ils seront opposables […].
[…] and to provide that they can be invoked […].
[…] e a prevedere che siano opponibili […].
[…] y a asegurar que podrán ser invocados […].

In one case, in expressing the epistemic value Legal English employs the modal auxiliary verb "have to" in the present tense, Legal Italian employs the modal auxiliary verb "dovere" in the "Congiuntivo Presente" and Legal Spanish employs the modal

auxiliary verb "haber de" in the "Presente de Subjuntivo"; observe, in the following example, that Legal French employs, like Legal English, a modal auxiliary verb in the present tense:

Article 9, paragraph 1, b), sub-paragraph ii)

à permettre, lorsqu'une partie à un litige doit comparaître […].
to allow, whenever a litigant has to appear […].
a permettere, qualora una Parte in una vertenza debba comparire […].
permitir, cuando una Parte en un litigio haya de comparecer […].

Also in one instance only, Legal English uses the modal auxiliary verb "should", Legal Italian uses the modal auxiliary verb "dovere" in the "Condizionale Presente" and Legal Spanish uses the modal auxiliary verb "deber" in the "Condicional Simple"; note, in the following example, that Legal Italian and Legal Spanish agree with Legal French in the use of the conditional mode:

Preamble

[…] ne devraient pas se faire au détriment […].
[…] should not be to the detriment […].
[…] non dovrebbe avvenire a scapito […].
[…] no deberían hacerse en detrimento […].

Lastly, in one case, Legal English and Legal Spanish employ a verbal phrase with epistemic value which is conferred by the modal auxiliary verbs, respectively, "may" and "poder", whereas Legal Italian, like Legal French, does not employ a verbal phrase but only a parenthetic proposition with epistemic value, which is present also in the Spanish version with the function of reinforcing the verb:

Article 16, paragraph 4

[…] en vue de la preparation, le cas échéant, de toute recommendation de ce dernier à une ou plusieurs Parties.
[…] for the preparation of such recommendations of the latter body to one or more of the Parties as may be required.
[…] in vista della preparazione e, se del caso, di qualsiasi raccomandazione di quest'ultimo a una o più Parti.
[…] para la preparación, en su caso, de cualquier recomendación que este último pueda hacer a una o varias Partes.

From the linguistic comparative analysis it emerges that the English, Italian and Spanish versions of the Charter do not always agree with each other in expressing epistemic modality.

In two cases, Legal Italian and Legal Spanish describe, like Legal French, a hypothetical situation using, in one case, the modal auxiliary verbs, respectively, "potere" and "poder" and, in another case, the conditional conjunction, respectively, "se" and "si", when Legal English describes an assertive situation using a non-modal verb in the "Simple Present"; an example:

Article 17, paragraph 2

[…] Si un membre ne peut remplir son mandat […].
[…] A member who is unable to complete a term of office […].
[…] Se un membro non può adempiere il suo mandato […].
[…] Si algún miembro no puede completar su mandato […].

As affirmed before, to express epistemic modality Legal Italian uses the "Congiuntivo Presente" in 38 occurrences (art. 9, p. 1, a), c. iv) and Legal Spanish uses the "Presente de Subjuntivo" in 97 occurrences (art. 12, p. 3); in 35 occurrences the two considered legal languages show similar choices in employing the present tense of the subjunctive (art. 13, p. 1, a). In those cases, Legal English, like Legal French, describes, like the example above, assertive situations using non-modal verbs in different tenses. The examples:

Article 9, paragraph 1, a), sub-paragraph iv)

[…] n'entraînant pas de frais additionnels pour les intéressés.
[…] involving no extra expense for the persons concerned.
[…] che non causino spese aggiuntive per gli interessati.
[…] sin gastos adicionales para los interesados.

Article 12, paragraph 3

[…] et à la culture dont elles sont l'expression.
[…] and the cultures they reflect.
[…] e la cultura di cui sono l'espressione.
[…] y a la cultura que las mismas expresen.

Article 13, paragraph 1, a)

à exclure de leur législation toute disposition interdisant ou limitant […].
to eliminate from their legislation any provision prohibiting or limiting […].
a escludere dalla loro legislazione qualsiasi disposizione che proibisca o limiti […].
excluir de su legislación toda disposición que prohíba o limite […].

In one case, only Legal Spanish describes a hypothetical situation employing the modal auxiliary verb "poder" in the "Presente de Subjuntivo", whereas Legal English and Legal Italian, like Legal French, employ an infinitive structure whose epistemic value is conveyed by the presence of a consecutive proposition:

Article 14, paragraph a)

[…] de façon à favoriser les contacts […].
[…] in such a way as to foster contacts […].
[…] in modo da favorire i contatti […].
[…] de tal modo que puedan favorecer los contactos […].

Legal Spanish frequently employs the subjunctive mode to express epistemic modality; more specifically, the "Presente de Subjuntivo" prevails in the Charter, but also the "Pretérito imperfect de Subjuntivo" (art. 8, p. 1, e), c. iii), the "Pretérito perfecto de Subjuntivo" (art. 16, p. 3), the "Pretérito pluscuamperfecto de Subjuntivo" (art. 3, p. 2) and the "Futuro simple de Subjuntivo" (art. 11, p. 3) are employed. Some examples:

Article 8, paragraph 1, e), sub-paragraph iii)

[…] ne peuvent pas être appliqués […].
[…] cannot be applied […].
[…] non possano essere applicati […].
[…] no pudieran aplicarse […].

Article 16, paragraph 3

[…] les Parties seront invitées à formuler et […].
[…] the Parties have been requested to make and […].
[…] le Parti sono invitate a formulare e […].
[…] se haya invitado a hacer a las Partes y […].

Article 3, paragraph 2

[…] tout autre paragraphe de la Charte qui n'avait pas été spécifié […].
[…] any other paragraph of the Charter not already specified […].
[…] ogni altro paragraph della Carta, che non era stato specificato […].
[…] cualquier otro párrafo de la Carta que no hubiera sido especificado […].

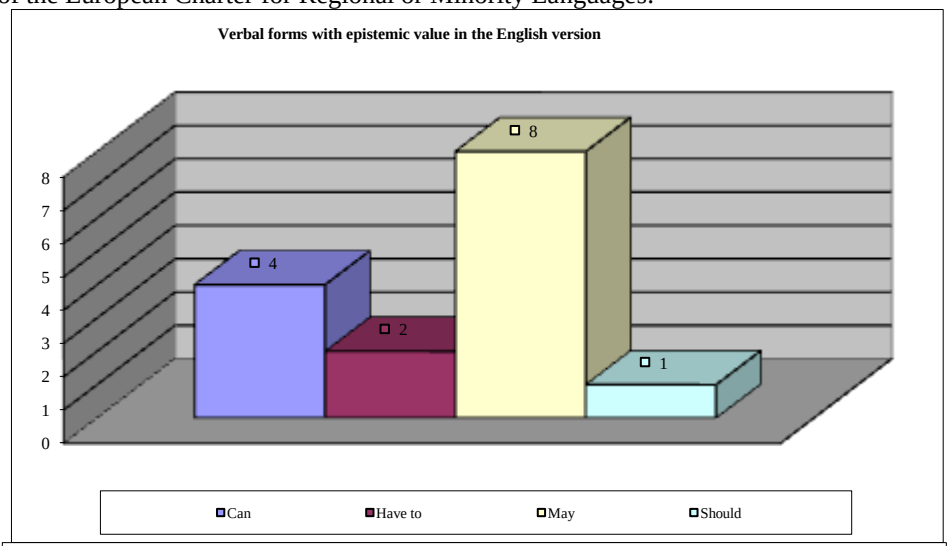
Article 11, paragraph 3

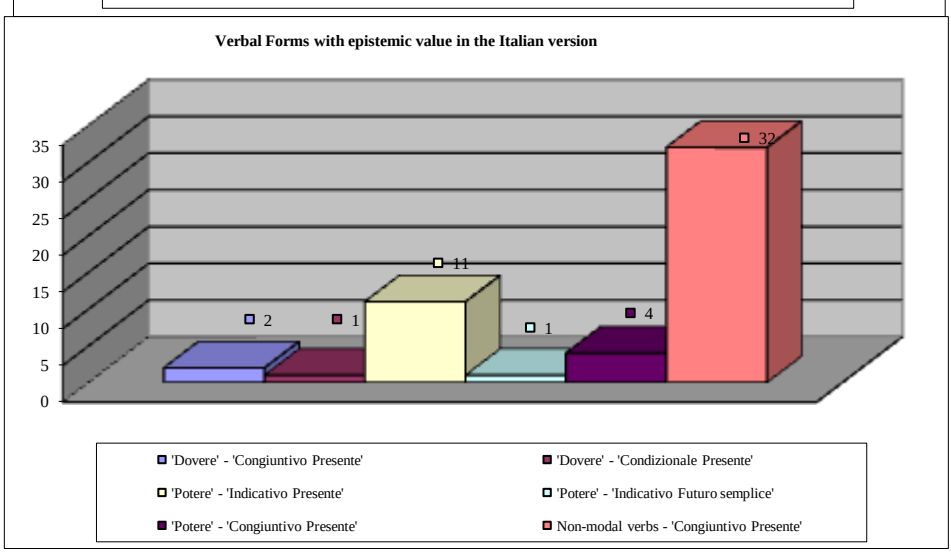
[…] éventuellement créées conformément à la loi […].
[…] as may be established in accordance with the law […].
[…] eventualmente create in conformità con la legge […].
[…] que se crearen de conformidad con la ley […].

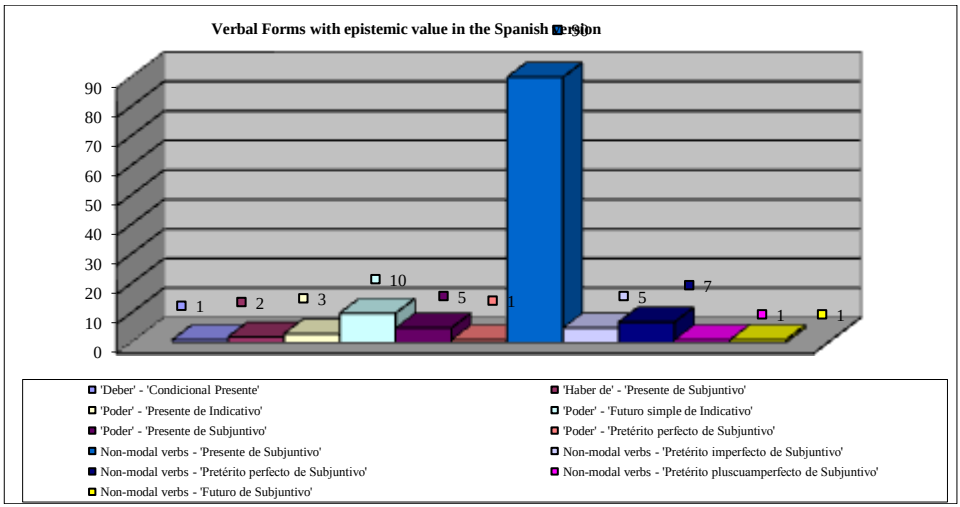
Concluding, Legal English, Legal Italian and Legal Spanish mainly agree with each other in their use of epistemic locutions, such as, respectively, "If necessary", "Se necessario" and "Si fuera necesario", "As far as possible", "Per quanto possibile" and "En la medida de lo possible", and "As far as this is reasonably possible", "Entro limiti ragionevoli e possibili" and "En cuanto sea razonablemente possible"; the only divergent case is in the article 16, paragraph 4, which is examined in this paragraph.

Summing up, in expressing the epistemic modality of verbal constructions, Legal English prefers the modal auxiliary verb "may", Legal Italian prefers non-modal verbs in the "Congiuntivo Presente" and, in a smaller number of cases, the modal auxiliary verb "potere", mainly in the "Indicativo Presente", and, finally, Legal Spanish prefers non-modal verbs in the "Presente de Subjuntivo" and, in a smaller number of cases, the modal auxiliary verb "poder", mainly in the "Futuro simple de Indicativo".

Graphic 2. Verbal forms with epistemic value in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.







4. Verbal forms with performative value

Statements with performative value are distinctive of constitutive or dispositive rules, that is dispositions which «[...] themselves produce the effect, which is their purpose and their content, realizing it for themselves: they constitute it - that is their characteristic - in the same moment of their entry into force [...] the established or disposed situations and facts produce themselves in an immediate way, they are intended to acquire reality mercy a single act, the one (exclusively complex) with which the rule is emanated, without the need to appeal to the obedience or to the executive collaboration of someone» (my translation, Carcaterra 1994, 224-225; see also Searle 1969, 184-186).

On this point, Conte talks about 'thetic' acts, in other words sentences that simply by being stated produce a state of things (Conte 1977, 147-165).

Legislators' statements can have a performative function because they are emanated by a person to whom a specified competence has been attributed, that is the competence of disposing a state of things, and because they are expressed in a appropriate context, that is the legal context (Filipponio 1994, 218).

The constitutive or dispositive rules are not very frequent in the Charter because its purpose is to regulate contracting States' behaviour towards the historical regional or minority languages; exactly, there are five constitutive or dispositive rules in the Charter.

In constituting or disposing a state of things in the Charter, Legal English prefers the "Simple Present" in four occurrences and the modal auxiliary verb "shall" in one case; Legal Italian uses the "Indicativo Presente" in all the five occurrences; finally, Legal Spanish employs the "Futuro simple de Indicativo" in three occurrences and the "Presente de Indicativo" in two occurrences. Therefore, contrarily to the Spanish version, the present tense prevails in the English and Italian versions.[3]

[3] Mortara Garavelli states that the deictic present is the specific tense of thetic enunciations, that is of constitutive or dispositive rules (Mortara Garavelli 2001, 62).

In expressing the performative value, in three occurrences, Legal English and Legal Italian use a present tense, respectively, the "Simple Present" and the "Indicativo Presente", whereas Legal Spanish uses the "Futuro simple de Indicativo"; an example:

Article 1, paragraph c)

par «langues dépourvues de territoire», on entend les langues […].
"non-territorial languages" means languages […].
per «lingue non territoriali» si intendono le lingue […].
por «lenguas sin territorio» se entenderán las lenguas […].

Conversely, in one case, Legal Spanish agrees with Legal English, Legal Italian and Legal French to employ a present tense:

Article 1, paragraph a)

par l'expression «langues régionales ou minoritaires» […] elle n'inclut ni les dialectes de la (des) langue(s) officielle(s) […].
"regional or minority languages" […] it does not include either dialects of the official language(s) […].
per «lingue regionali o minoritarie» […] questa espressione non include né i dialetti della(e) lingua(e) ufficiale(i) […].
por la expresión «lenguas regionales o minoritarias» […] no incluye los dialectos de la(s) lengua(s) oficial(es) […].

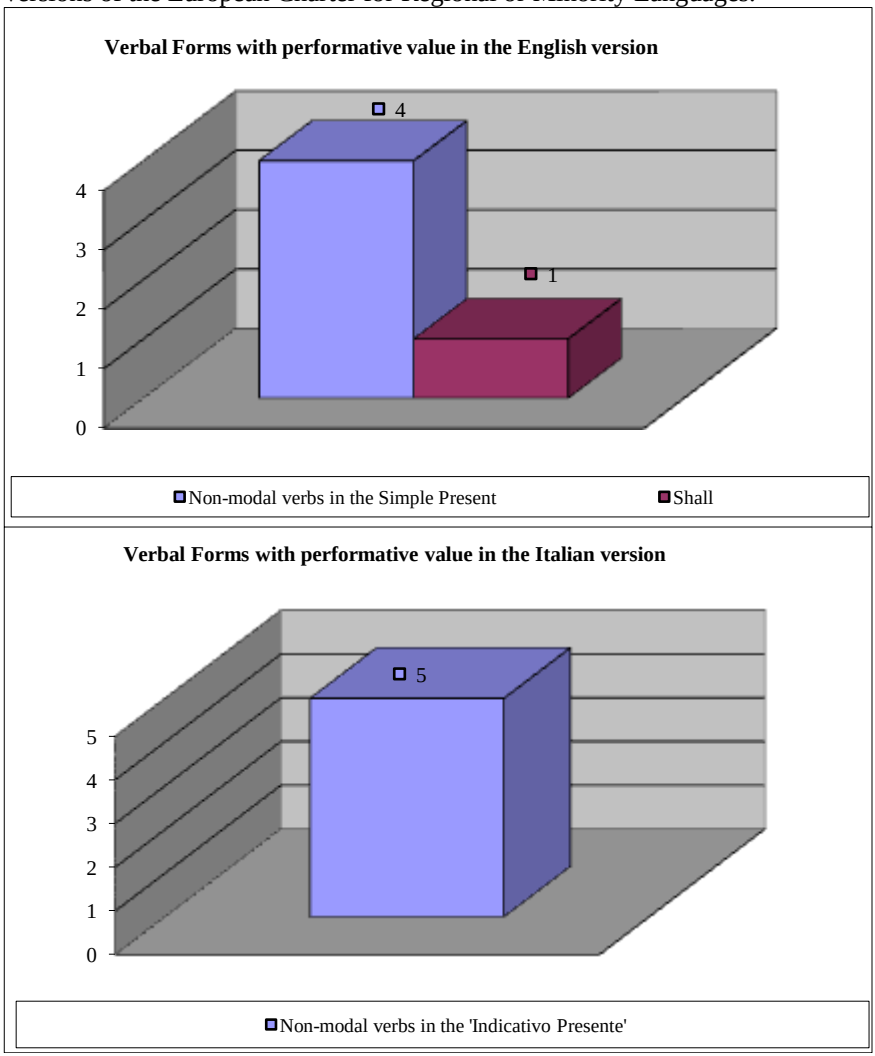
Regarding Legal English, it is important to dwell for a moment on the use of the modal auxiliary verb "shall". The modal auxiliary verb "shall" can express performative value, as well as deontic and futurity values: it has deontic function when the rule is applied to a specified subject who has to respect it, whereas it has performative function when the rule attributes a state of things contextually at its coming into force (Garzone 2008, 70-75); nevertheless, intermediate cases may arise when one of the two functions prevails but in such cases the non-prevailing meaning is not neutralised at all. In the English version of the Charter, there is an irrefutable case where the modal auxiliary verb "shall" has performative value, precisely in the case in which the Italian and Spanish versions show, like the French one, a non-modal verb in the present tense of the indicative:

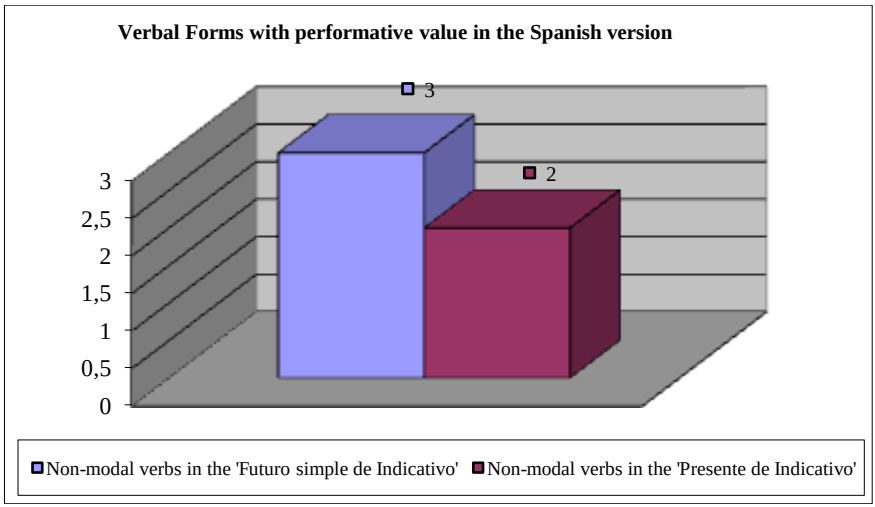
Article 18

La présente Charte est ouverte à la signature des Etats membres […].
This Charter shall be open for signature by the member States […].
La presente Carta è aperta alla firma degli Stati membri […].
La presente Carta queda abierta a la firma de los Estados miembros […].

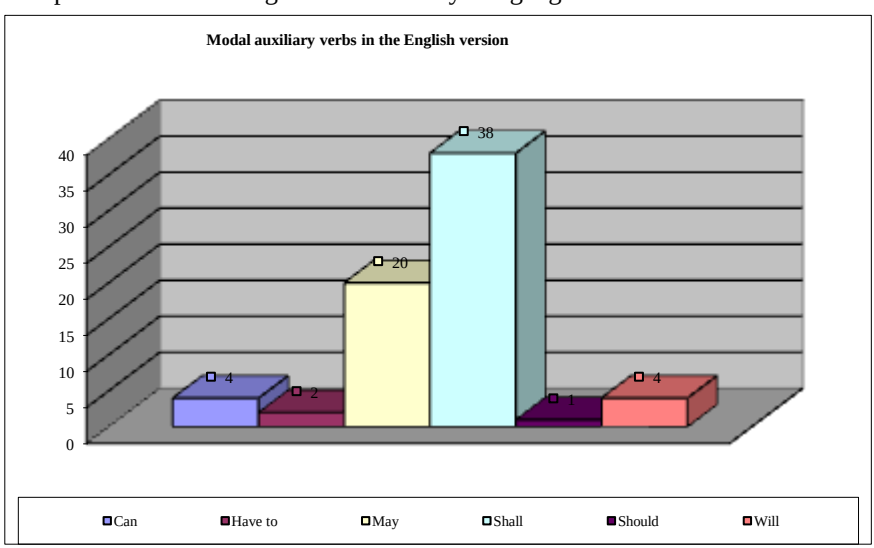
Referring to Austin's theory, Carcaterra asserts that constitutive rules can be included in the category of performatives; that category should be added to the five categories described by Austin (Austin 1967), which are the verdictives, commissives, exercitives, behabitives and expositives ones (Carcaterra 1994, 227-228).

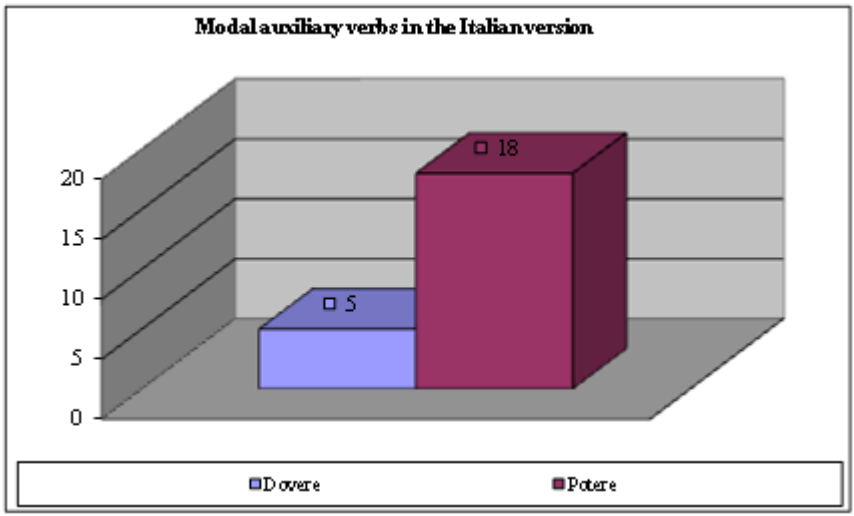
Graphic 3. Verbal forms with performative value in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.





Graphic 4. Modal auxiliary verbs in the English, Italian and Spanish versions of the European Charter for Regional or Minority Languages.





5. Expression of temporality in the formula of promulgation and in the formula of subscription

Besides analysing the expression of deontic, epistemic or performative values in verbal constructions, it is also interesting to examine the expression of temporality in the formula of promulgation and in the formula of subscription of the Charter.

In the formula of promulgation, Legal English, Legal Italian and Legal Spanish agree with each other on the expression of temporality as they use equivalent tenses, which are, respectively, the "Present Perfect", the "Indicativo Passato prossimo" and the "Pretérito perfecto compuesto de Indicativo"; the formula of promulgation:

Preamble

Les Etats membres du Conseil de l'Europe, […] Sont convenus de ce qui suit:
The member States of the Council of Europe […] Have agreed as follows:
Gli Stati membri del Consiglio d'Europa […] hanno convenuto quanto segue:
Los Estados miembros del Consejo de Europa […] Han convenido en lo siguiente:

In expressing the temporality in the formula of promulgation, the Italian and Spanish versions are faithful to the French version which shows the "Indicatif Passé compose", a tense equivalent to the one employed by Legal Italian and Legal Spanish.

In the formula of subscription, Legal English and Legal Italian use the same tense of the formula of promulgation, whereas Legal Spanish varies as it uses the "Presente de Indicativo"; the formula of subscription:

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé la présente Charte. […]
In witness whereof the undersigned, being duly authorised thereto, have signed this Charter. […]

> In fede di che i sottoscritti, a tal fine debitamente autorizzati, hanno firmato la presente Carta. […]
> En fe de lo cual, los abajo firmantes, debitamente autorizados a tal efecto, firman la presente Carta. […]

The difference of the English "Present Perfect", the Italian "Indicativo Passato Prossimo" and the Spanish "Presente de Indicativo", as well as the Spanish "Pretérito perfecto compuesto de Indiativo" and "Presente de Indicativo", lies in the verbal aspect, precisely the former are exclusively perfective forms, they describe actions in their completeness, whereas the latter is a fundamental imperfective form, therefore it describes actions without references to their completeness. Legal French employs in the formula of subscription, like Legal English and Legal Italian, the same tense as the formula of promulgation.

6. Conclusions

Summarizing the findings of the linguistic comparative analysis of the English, Italian and Spanish versions of the Charter as to the expression of deontic, epistemic and performative values of verbal forms it emerges that:
- in expressing deontic modality, Legal English prefers the modal auxiliary verb "shall" and, in a smaller number of cases, non-modal verbs in the "Simple Present"; Legal Italian prefers non-modal verbs the "Indicativo Presente"; Legal Spanish prefers non-modal verbs in the "Futuro simple de Indicativo" and, in a smaller number of cases, non-modal verbs in the "Presente de Indicativo".
- In expressing epistemic modality, Legal English prefers the modal auxiliary verb "may"; Legal Italian prefers non-modal verbs in the "Congiuntivo Presente" and, in a smaller number of cases, the modal auxiliary verb "potere", mainly in the "Indicativo Presente"; Legal Spanish prefers non-modal verbs in the "Presente de Subjuntivo" and, in a smaller number of cases, the modal auxiliary verb "poder", mainly in the "Futuro simple de Indicativo".
- In expressing performative modality, Legal English prefers non-modal verbs in the "Simple Present"; Legal Italian prefers non-modal verbs in the "Indicativo Presente"; Legal Spanish prefers non-modal verbs in the "Futuro simple de Indicativo".

Concluding, with regards to the expression of the deontic, epistemic or performative modalities, the English version is principally characterised by the use of modal auxiliary verbs, whereas the Italian version by the use of tenses, whose alternation is not as great as that of the Spanish version. Consequently, it can be affirmed that the wide range of modal verbs is bearer of precise semantic nuances in Legal English as well as the wide range of verbal tenses is bearer of precise semantic nuances in Legal Italian and Legal Spanish.

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THE EQUAL AUTHENTICITY OF OFFICIAL LANGUAGE VERSIONS OF EUROPEAN LEGISLATION IN LIGHT OF THEIR CONSIDERATION BY THE COURT OF JUSTICE OF THE EUROPEAN UNION

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Abstract: The aim of the paper is to analyse the judgments of the Court of Justice of the European Union in order to determine whether all official language versions of EU legislation are considered in the course of interpretation.
The Court itself has stated in many of its judgments[1] that all official versions should be taken into account in the interpretation process as they all have an equally authentic character. Moreover, the comparison of all official language versions is a common feature for all methods of reconciliation of differences between various language versions that had been distinguished in literature.
The author has examined 80 judgments in order to determine whether the comparison of all language versions really forms an important part of the interpretation conducted by the Court, or if it should be regarded as an unfulfilled wish expressed by the scholars and the Court itself.
Key words: Multilingualism in EU, interpretation of multilingual law by CJEU

JEDNAKOWA AUTENTYCZNOŚĆ OFICJALNYCH WERSJI JĘZYKOWYCH AKTÓW PRAWNYCH UE A ICH UWZGLĘDNIANIE PRZEZ TRYBUNAŁ SPRAWIEDLIWOŚCI UE

Abstrakt: Niniejsza praca przedstawia wyniki analizy orzecznictwa TSUE przeprowadzonej w celu zbadania, czy wszystkie oficjalne wersje językowe aktów prawnych UE są uwzględniane w procesie ich interpretacji.
W swoich orzeczeniach Trybunał wielokrotnie wskazywał[2], że wszystkie wersje językowe powinny być uwzględniane w procesie interpretacji, przez wzgląd na ich jednakowo autentyczny charakter. Badanie wszystkich oficjalnych wersji stanowi ponadto wspólny element wyróżnianych w literaturze metod rozstrzygania rozbieżności między wersjami językowymi.
Autorka przeanalizowała 80 orzeczeń TSUE w celu ustalenia, czy porównanie wszystkich oficjalnych wersji językowych rzeczywiście stanowi istotny element interpretacji dokonywanej przez TSUE, czy też powinno być traktowane jako niespełnione życzenie wyrażane przez przedstawicieli doktryny oraz sam Trybunał.
Słwoa kluczowe: wielojęzyczność w UE, interpretacja prawa wielojęzycznego przez TSUE

[1] For example Cases c-375/97 and c-289/05.
[2] np. sprawy c-375/97 oraz c-289/05.

Introduction

This study examines judgments of the Court of Justice of the European Union and opinions of the Advocates-General in cases where there have been problems concerning differences of wording (and of meaning) between versions of a legal act formulated in different official EU languages. The author will briefly describe the established methods of reconciliation of differences between various official versions of EU legislation, search for their core features, and analyse how the theoretical ideas are applied in the judicial reality of the Court of Justice of the European Union (hereinafter referred to as the Court or the CJEU). A quantitative comparison of selected judgments will be presented and analysed in order to verify whether the Court examines all official language versions of EU legislation that is claimed to ensure the realisation of the principle of equal authenticity of them.

The article concludes several parts of the research undertaken by the author within the project "The certainty of law and multilingual EU legislation", being conducted at the University of Silesia as a part of her PhD studies.[3]

1. INTERPRETATION OF MULTILINGUAL LEGISLATION BY THE CJEU

The concept of legal multilingualism and the unique approach towards it taken by the CJEU has been analysed by many scholars (*inter alios* Šarčević 2000 and 2002, Derlén 2009, Doczekalska 2006 and 2009, Fryźlewicz 2008). All agree that the European Union's diversity, proclaimed in its official motto "Unity in Diversity"[4], has a linguistic dimension, expressed through multilingualism[5]. Doczekalska (2009, 344) underlines that it: "not only guarantees the citizens of the European Union access to European law, but is also essential for a uniform application of EU law in Member States". This uniform application can be achieved only when European legal acts are understood in the same way in each Member State, regardless of the plurality of languages in which EU legislation is expressed.

The multilingualism of EU law makes its interpretation different from that of legislation drafted in only one language. The official versions all have the same legal value, therefore, according to the most popular approach[6], each one should be considered in the course of interpretation. The factual consideration of all versions by the CJEU has

[3] The project is being financed from public resources in disposition of the Faculty of Law and Administration UŚ for study projects of young researchers.

[4] The official motto of EU had been chosen in an international competition amongst schoolchildren of 15 Member States in 1998 (Gialdino, C.2005, English translation made by CVCE published online at http://www.cvce.eu/obj/carlo_curti_gialdino_the_symbols_of_the_european_union_the_origin_of_the_motto-en-3ecdfda2-d241-457b-ab15-0eac8ae8d727.html (accessed August, 21, 2013).

[5] However, it has been noted that "the EU's respect for Europe's 'linguistic diversity' does not shine evenly on all the languages spoken in the EU(...) the minority and regional languages of the Member States are the neglected stepchildren of the EU (Creech. 2005.66). Creech emphasizes also that "the EU's programmes [devoted to multilingualism – K.P.] do not acknowledge that economic and political integration is in fact inherently antagonistic to linguistic diversity" (Creech. 2005.51)

[6] van Calster (1997,375) Fryźlewicz (2008,54), Doczekalska (2006,16).

been given much attention in the conducted study and will therefore be presented separately.

The legal basis for multilingualism in the European Union has been established in its legislation, in the Treaties (art. 55 TUE), as well as in secondary law (Regulation 1/58[7]). Further principles concerning the equal value of all official languages and the need for consideration and comparison of all official versions of a disputed provision of EU law have been developed through legal science and case law. One of the most important judgments is CILFIT[8], where the Court stated that: "Community legislation is drafted in several languages and that the different language versions are all equally authentic; an interpretation of a provision of Community law thus involves a comparison of the different language versions"[9].

It is important to underline that the Court does not regard the chronological order in which different versions were created as important in the course of its interpretation. Meanings represented in one or some versions are not accepted on the grounds that that they were the first to be drafted. Such an approach can be explained through the theory of original texts (as well as by the principle of equal authenticity of all official versions[10]).

Another important consideration for this approach is in the method of drafting official language versions in the EU. The proposal of a legal act is usually presented in French or English (sometimes in German). The proposal is then immediately translated into other official languages. All the following preparatory work and discussion can be held in any official language and the act that is finally passed may have been drafted simultaneously in more than one language. It is not possible to separate the process of drafting and translation (particularly with regards to the working languages of the Commission, namely French, English and German[11]). This process is called the co-drafting of EU law in many languages[12]. For these reasons, no "pure" originals nor "pure" translations exist. The CJEU and the Advocates-General go even further by taking into account language versions that did not exist at the time of enactment of a particular

[7] Regulation No 1 determining the languages to be used by the European Economic Community.

[8] The Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health [1982] ECR 3415.

[9] The case 283/81 para. 18.

[10] As Doczekalska (2009, 353) puts it: "These both [principles – KP] require that all authentic texts be regarded as originals, whereas, in practice, the majority of them are prepared by means of translation."

[11] Other official languages are not that commonly used in the course of drafting, so the translation still plays a significant role for creation of multilingual legislation (see Doczekalska 2009, 351-352; Jacobs 2004, 302).

[12] Doczekalska (2009, 360) notes that the term "co-drafting" is used not only in European context, but also with regard to drafting of legislation in bilingual Canada. The author quotes Šarčević stating that "in a legal system such like the one of the EU, with 23 (now 24 – K.P) official languages, the translation plays an important role in drafting of legal act. However, the theory of original text preservers any of versions to be regarded as translation – all of them are recognized as originals" (Šarčević, quoted by Doczekalska 2009, 355).

piece of legislation. A. Doczekalska (2006, 19) presented some very interesting examples of this phenomenon[13].

For the aforementioned reasons, differences between particular versions cannot be solved in favour of the original. No single language version would prevail over the others just because it had served as a source for the other versions in the process of legal drafting.

National courts of Member States may submit an inquiry for a preliminary ruling to the CJEU when they have doubts concerning the interpretation of Community Law[14]. The CJEU will then provide a uniform interpretation of EU legislation to enable it to be understood in the same way in all Member States. It can therefore be seen that the judgments of the CJEU serve as important material in understanding the interpretation of multilingual law.

Linguists and legal scholars have made attempts to clarify and classify the methods applied by the CJEU in the process of reconciliation of differences observed by comparison of official versions. Detailed descriptions of various approaches can be found in Derlén (2009, 36-43). The reconciliation process has been analysed from a purely linguistic perspective (Loehr, as referred to by Derlén 2009, 42), with the result that all differences are to be reconciled in the process of interpretation only by linguistic means. According to Derlén (2009, 50) the reconciliation process requires the application of another, non-linguistic methods of interpretation (e.g teleological interpretation.)

Elements of quantitative analyses are sometimes used by the Court in the process of reconciliation of different language versions (the Court applies the provision interpreted in harmony with the majority of official versions)[15]. As it had been noted by Jacobs (2004, 304), numerical considerations are taken into account by the Court to "justify the conclusion that the version or versions in minority contained a drafting error[16], or that the ambiguity inherent in those versions must be resolved in a particular way". According to Advocate-General Sharpston, the Court gives preference to the meaning represented in the majority of official versions when it corresponds with the objectives of the regulation[17].

Other proposals for reconciliation of different language versions refer to the preference for the most clear meaning, or the meaning that is the most liberal for an individual.

The most important non-linguistic method of interpretation, stated to be useful for reconciliation of differences between authentic versions, is the teleological method. Various authors distinguish different types (for example, Derlén – 2009, 43-48, writes about radical teleological method, classical reconciliation and examination of the

[13] A.Doczekalska [Doczekalska 2006, 19] names the judgements: C-449/93, , C-375/97,§ 20, 21, 22; C-384/98, §17; § 14 i 15 of the opinion of AG Elmer in case C-292/96.

[14] Article 267 (ex Article 234 TEC) TFEU.

[15] Advocate-General Stix-Hackl in her opinion in Case C-265/03, confirms the existence of this method and points out that it had been used in cases 55/87 [1998] and 61/95 [1996] .

[16] Another interesting example for such proceedings can be found in Case C- 558/11, where the Latvian language version had been questioned and the Court had acknowledged it to contain "an omission which is clearly an editing mistake".

[17] Opinion of Advocate-General E. Sharpston from 16.03.2006 in case Case C-310/04, para. 45.

purpose), but the core issue of its application is the choice of the interpretation that is the most accurate to the scheme and the aim of the provision in question. This choice usually occurs after the examination and comparison of the official text of a legal act. Therefore, the first step to be taken is the consideration of wording of the provision in different languages. The Court's aim is to achieve uniform interpretation and resolve any problems with the application of the disputed provision in all Member States.

2. EXAMINATION OF ALL OFFICIAL VERSIONS AS THE CORE FEATURE OF ALL RECONCILIATION METHODS AND A SINE QUA NON CONDITION FOR THE EQUAL AUTHENTICITY OF OFFICIAL VERSIONS

Regardless of the classification and character of a certain method of reconciliation, all methods are based on a presumption that the Court's analysis includes all official versions of the disputed provision. If this was not the case, teleological reconciliation methods (aiming at the choice of meaning that is most accurate to the general aim and scheme of the analysed provision) could not be strictly applied because the choice would be limited to the examined language versions. Potentially, versions not examined could have proved to realise the aim and scheme of the provision better than the chosen ones. Consequently, when the examination is limited, the comparison is not complete and the choice not fully justified – there is a potentially more acceptable solution, not discovered by the Court.

The presumption of examination of all official language versions is the *sine qua non* condition for quantitative methods, where the interpretation in accordance with the majority of official language versions is considered to be justified.

The question of a right to rely on only one version versus the obligation of the courts (CJEU and national courts) to analyse and compare all official versions had been undertaken by several authors. Some observations contain a distinction between position of a national courts and CJEU.[18] The consideration of all official versions of a disputed provision is treated as an obligation of CJEU because it has the necessary resources (i.e. multi-national staff, and specialist services such as lawyer linguists and translators). The same analysis is not required from national courts as they do not have these resources at their disposal[19]. National courts should request the CJEU for a preliminary ruling in cases where there is an interpretative doubt concerning differences between language versions of the provision in question.

The dominant approach by authors[20,] confirmed by numerous CJEU judgments[21] and opinions of Advocates-General[22], is that the principle of equal authenticity of all language versions requires them all to be taken into account in the process of interpretation. Some authors claim that the Court tries to make comparisons of all official

[18] Doczekalska 2009. 363-364.
[19] Opinion of AG Stix-Hackl in Case C-495/03, par. 99.
[20] Doczekalska (2006.16), van Calster (1997.375) Fryźlewicz (2008.54).
[21] C-372/88; C-64/95; C-296/95; C-72/95; C-375/97; C-384/98; C-498/03; as cited by Doczekalska [2009, 363].
[22] Advocates General Stix-Hackl, Tizzano.

versions.[23] However, some authors state that the examination of all the versions is simply impossible, first and foremost for national courts, which is why they should ask the CJEU for a preliminary ruling (Jacobs, 2004,303).The most clear example of an explicit doubt in the factual comparison of official language versions by the CJEU itself is the statement of Advocate-General Jacobs:

> *"I do not think that the CILFIT judgment should be regarded as requiring the national courts to examine any Community measure in every one of the official Community languages (now numbering eleven—or twelve, if the Treaties and certain other basic texts are in issue). That would involve in many cases a disproportionate effort on the part of the national courts; moreover reference to all the language versions of Community provisions is a method which appears* ***rarely to be applied by the Court of Justice itself****, although it is far better placed to do so than the national courts." [emphasis added]*[24]

However, in the judgment C-498/03, the Court confirmed that all language versions should be considered in course of interpretation of EU legislation[25.]

In practice, the reconciliation choices made in course of adjudication already limit the material equal authenticity of certain language versions. All versions can never be equal because only some of them will be approved in the course of the decision-making process. Such "inequality" is acceptable, because particular language versions often represent opposite or contradictory meanings and the Court is required to make a decision by choosing one of them. With respect to the equal authenticity principle, the choice of a certain meaning requires a justification, usually based on other criteria, such as the expression of the aim and scheme of the disputed provision in case of teleological reconciliation methods.

The impossibility of realising the equal authenticity principle in its material meaning does not prevent the Court from realising its formal meaning. Formal equal authenticity enables the Court to choose the meaning that remains in accordance with any of the official versions. In author's opinion, this formal equal authenticity requires the consideration of all official versions to ensure that they all have a potential influence on the final decision. Even if certain versions do not prove to represent the correct meaning, they will at least be taken into account. The author further considers this to be a *sine qua non* condition for the realisation of equal authenticity principle. Without it, there is no reason to claim equal authenticity of official language versions. The conducted study determines whether and how far this principle is fulfilled by the CJEU.

[23]For instance, Doczekalska believes that the Court not only declares the principle of considering all language versions in the course of interpretation, but indeed makes attempts to do it (Doczekalska 2006. 19).

[24] Opinion of AG Jacobs in Case C-338/95, para 65.

[25] C-498/03.

3. THE CONSIDERATION OF OFFICIAL LANGUAGE VERSIONS BY THE CJEU

3.1 Methodology

Before the presenting the study results a few words need to be said about the selection of the analysed material and interpretative choices made to classify the judgments.

One of the biggest problems in selecting judgments for the study was the number of cases where the Court did not openly state all the details its interpretative processes and decision-making choices. In cases where the analysed versions had not been mentioned by name, but indicated as "all the versions", "all other languages", etc., the author counted the number of official EU languages at the time of adjudication as being the number examined. Where the multilingual comparison had been described with vague expressions like "other languages" or "some versions", or where one or several versions had been specified clearly as examples of wording that is relevant to an unspecified number of further versions, the cases are classified in the "no data" category. Versions that appeared in the Advocate-General's opinion or a statement of a party, are counted as as "examined" (i.e. the wording of examined versions is known by the Court regardless of whether the CJEU conducted the analysis itself). Overall, any indication of a language version by a party, Advocate-General, or the Court is counted as an "examined version".

3.2 The Choice of analysed material

The author found 96 judgments using the search engine at the official Internet site of the CJEU using the keywords "*wersja językowa*" ("language version" in Polish) Only CJEU judgments (no cases decided by General Court or Civil Service Tribunal) delivered before 30.06.2013 have been taken into consideration.[26] Interestingly, the results have revealed that many judgments frequently cited in the literature, especially those passed at the very beginning of EU, still have not been translated into Polish. To complete the picture, nine judgments widely commented on in in the literature and quoted in this article[27] were added to the study material. A total of 105 judgments were pre-selected for further analysis.

Of these, some of judgments from the Internet search turned out not to deal with multilingualism of legislation or interpretation of multilingual law at all[28], or concerned other language issues (such as the language of a TV programme[29], the language of a contract[30], or the the lack of publication of apiece of EU legislation in an official

[26] The search result equals 100, but 4 judgments have been shown twice, because they concern joined cases.
[27] Namely the cases: 55/87, c-372/88, c-449/93,C-64/95, c-72/95, c-292/96, c-296/95, c-375/97, c-384/98.
[28] Cases C- 606/10, C- 277/10.
[29] Cases C- 431/09 ; C- 432/09; Cases C-403/08 c-429/08 joined.
[30] C-202/11.

language[31]). Consequently, 25 out of 105 selected judgments proved to be useless for the study. The remaining 80 were chosen for further examination.

The fact that the number of official EU languages has not been constant in course of the Union's history had an important impact on the study. New languages are usually added at the time of accession of new Member States (but sometimes the status of official language is granted later, as with Irish and Maltese). Due to the changing number of official versions, the results of the analysis are displayed in relation to the total number of relevant cases (%) based on the time of adjudication rather than the time of enactment of a the particular legislation (this follows the CJEU's own approach towards considering versions created after a piece of legislation has come into force).

Presentation of proportional values enables comparisons of the number of language versions and the frequency of the examination of certain language versions.

- **The examined language versions in analysed judgments**

Table 1. The examined versions in analysed cases.

% of official languages examined	Number of judgments
100%	19
95%	1
85%	1
80%	1
50%	1
45%	1
40%	2
35%	5
30%	5
25%	2
20%	3
15%	8
10%	2
5%	1
NO DATA	28 of 80

[31] C- 161/06.

The first part of the study aims establishing how many language versions had been examined by the Court in particular cases. In order to estimate how many language versions existed at the time of the adjudication, the judgments are divided into groups representing the consecutive extensions to the number of official EU languages.

Table 1 presents the number of examined language versions in analysed cases. The study reveals that in the most cases only a few language versions were examined. Nearly 70% of the judgments examined fewer than half the official languages, most far fewer.

The last line contains 28 cases where the analysed versions cannot be estimated due to the wording of the judgment ("no data"). The Court has used expressions that do not allow to determine which versions had been analysed nor the number of examined versions.[32] However, although the exact number of examined versions was not given, it was possible to count the minimum number of languages examined (using mentions by the Court or Advocate-General as examples for an unspecified number of versions). It can be stated that in only 2 out of 28 "no data" judgments the Court or Advocate-General mentioned 50% of official language versions or more.

For reasons of vagueness by the Court explained above, it is difficult to be precise, but overall, it is estimated that the Court examined half or more of the official language versions in only 25 (23 +2 "no data" judgments) out of 80 examined cases.

Only in 19 judgments did the Court declared to have studied all language versions. Very often there was neither any indication of the differences between various versions nor any detailed comparison of wording. Of these, only 4 judgments (all been passed when the number of official EU languages equalled 11[33]) contain an analysis of the provision in question in all the official languages. In a further 4 judgments the Advocates-General conducted comparison of all official versions[34]. However, in the remaining 11 cases the Court or Advocates- General only declared to have examined all versions, using expressions like "all versions" and, "none of versions".

3.4 Certain language versions examination and their influence on final decisions

Table 2. The frequency of examination of particular language versions.

	Group	Language	Year	Total relevant cases	Examined languages in relevant cases (%)
	I	German	1958	80	93
		French			94
		Italian			71
		Dutch			65
		English	1973	80	89

[32] Such as: "in some versions"(C-245/11), other versions (C-413/04).
[33] C-449/93, C-72/95, c-296/95, C-375/97.
[34] C-372/88, C-292/96, C-395/11, C-384/98.

	II				
		Danish			44
	III	Greek	1981	80	38
	IV	Spanish	1986	80	**75**
		Portuguese			58
	V	Swedish	1995	78	41
		Finnish			35
	VI	Slovak	2004	71	24
		Polish			24
		Slovene			24
		Hungarian			21
		Lithuanian			21
		Czech			21
		Estonian			21
		Maltese			21
		Latvian			21
	VII	Romanian	2007	49	25
		Bulgarian			20
		Irish			14
		Croatian *	2013	----------	

Table 2 shows the official languages and the number of cases in the study relevant to each language group. Each group contains languages granted official EU language status in the same year. The total number of cases relevant to one language group differs from the total of other groups. For the oldest EU languages (group I), the number of cases equals 80 (all examined cases). For Finnish and Swedish (group V), the total number equals 78, because 2 cases had been adjudicated before those languages became official in 1995. For the youngest official EU languages (group VII), the number of relevant cases equals only 49 (all cases adjudicated before the recognition of those languages in 2007 had to be put aside). Croatian only became an official EU language in 2013, after the Court's adjudication of analysed cases, and therefore could not be taken into account. The total number of languages for the study was therefore 23.

The variation of the number of relevant cases for each group makes a direct comparison more difficult. To overcome this, the results for each official language are presented proportionally to the number of cases relevant to their particular language groups.

The general observed tendency is that the examination rate corresponds with the period of time in which a certain language has served as an official EU language. The "older" the official language, the higher the examination rate. Irish, one of the youngest official languages, was the least frequently examined, appearing in just under 15% of cases. Results for Bulgarian and Romanian also introduced in 2007 were significantly higher (20% and 25%), in line with the group VI - languages that became official in 2004).

The results for the groups I-V are more differential. The working languages of the Commission, French and German, the oldest of the EU official languages, as well as English were the most frequently examined (94 % for French, 93% for German and 89 % for English). Interestingly, Italian and Dutch, also amongst the original EU languages, have been examined much less frequently (71 % and 65%), comparable to Spanish and Portuguese, that became official only in 1986. The examination of Danish and Greek, which also have also long tradition as official EU languages, showed results similar to the more recently added Swedish and Finnish languages.

4. Conclusion

The examination of all official language versions of a certain provision is stated to be the core feature of all distinguished methods of interpretation of multilingual EU law. It is very important for the justification of choices made by the CJEU in the process of reconciliation of differences between the wording of particular versions where a provision is disputed.

In the author's opinion, the most finding of her work is that the examination of all official language versions of a legal act is hardly ever employed by the CJEU. Therefore, it should be regarded rather as a wish expressed by the Court itself and by the scholars, than as a real judicial practice.

The author agrees that the examination of all official versions would grant equal authenticity to all official versions of a legal act (by assuring them an influence on the final decision), but its practical use is impossible for private entities, or national courts (due to a large and constantly growing number of authentic languages). As this study has showed, even the CJEU, with al the necessary resources to conduct such a comparison, does not use this possibility very often.

The examination of a limited number of language versions has important consequences for the principle of equal authenticity of all official language versions in the EU. As long as some versions are not even examined, there is no equality at all. As stated before, material equal authenticity is impossible to achieve, as the Court is required to decide which of the opposite meanings should be chosen for the final decision. However, in situations where only a limited number of official versions are examined, there is no chance for even formal equal authenticity. The study showed that the number of examined versions does not reach 50% in 55 out of 80 cases. Moreover, the choice of certain versions to be examined in particular cases does not appear to be justified at all. The Court, as well as the Advocates-General, do not provide any reasons for having

analysed certain versions and putting other versions aside. The study revealed that the working languages of the Commission (French, English and German) proved to be most often examined (around 90 % of the total number of relevant cases).

The results of this analysis reveal the need for a separate study of the reconciliation methods in order to determine their efficiency with regard to the examination of a limited number of official language versions in the adjudication process. Additionally, in the author's further research projects, more judgments will be added to the analysis and more features of the analysed material will be considered.

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LEGAL TRANSLATION TRAINING IN POLAND: THE PROFESSION'S STATUS, EXPECTATIONS, REALITY AND PROGRESS TOWARDS (PROSPECTIVE) EXPERTISE?

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Abstract: The paper addresses the field of translating legal texts (from Polish into English and from English into Polish) from the point of view of translation teaching and skill development. Due to the changing perspective of the translator's profession, the necessity has emerged to have a closer look at the way translation skills and competence are developed and how the objective of such training is perceived by users (trainees). The results of a survey (conducted among trainees prior to the course and as a follow-up) are presented; the survey was aimed at juxtaposing expectations expressed by trainees with their follow-up achievements. It was assumed that trainees' awareness of potential competence-related problem areas (i.e. to underline the significance of such extralinguistic concepts as, e.g., background knowledge or cognitive factors) should be increased, combined with the responsibility for tasks performed as active participants of translation interactions. The complexity of competence, problems with defining the nature of expertise and its applicability to the research context as well as the significance of the didactic process still remain worthy objectives of further research. Trainees should be also made aware of changing market requirements and expectations as to skills and qualifications they should have to be highly appreciated and competitive employees.
Keywords: legal translation, translation teaching, translator's profession

DYDAKTYKA PRZEKŁADU PRAWNICZEGO W POLSCE: STATUS ZAWODU, OCZEKIWANIA, RZECZYWISTOŚĆ, A KSZTAŁCENIE (PRZYSZŁEGO) EKSPERTA?

Abstrakt: Artykuł dotyczy przekładu tekstów prawniczych (z języka angielskiego na język polski i z języka polskiego na język angielski) z perspektywy dydaktyki i kształtowania umiejętności. Z racji zmienności statusu zawodu tłumacza kwestią istotną staje się analiza sposobu rozwijania umiejętności i kompetencji tłumaczeniowych, a także postrzegania metod kształcenia w tym zakresie przez studentów. W artykule zaprezentowane zostaną wyniki ankiet studenckich (przeprowadzonych przed rozpoczęciem kursu przekładu prawniczego oraz jako follow-up), w których porównano początkowe oczekiwania studentów z późniejszą oceną ich dokonań w kontekście kształcenia. W badaniu założono, że należy zwiększyć świadomość problemów wynikających z potencjalnych deficytów kompetencji tłumacza u studentów, również w celu podkreślenia znaczenia takich pojęć pozajęzykowych jak np. wiedza ogólna lub czynniki poznawcze. Proces taki powinien także oznaczać zwiększające się poczucie odpowiedzialności za przekładany tekst, ponieważ studenci są czynnymi uczestnikami sytuacji tłumaczeniowej. Należy także nadmienić, że warto kontynuować badania nad złożonością zjawiska kompetencji, problemami z określeniem charakteru wiedzy eksperckiej i możliwościami jej zastosowania w kontekście badawczym jak również znaczeniem procesu dydaktycznego. Studenci powinni zdawać sobie również sprawę z dynamiki zmian na rynku, zmieniających się oczekiwań dotyczących umiejętności i kwalifikacji, które powinni posiadać, aby móc sprostać konkurencji.
Słowa kluczowe: przekład prawniczy, nauczanie przekładu, zawód tłumacza

Introduction

The translator's profession has been changing dynamically for the last decades and the recent years have brought the need to define it both in terms of a service rendered and a profession performed. Translators have always faced challenges, yet at present those challenges, with the world being a global place and translators doing their work for translational firms, seem to be bigger and obviously more demanding. Engaging in those ventures entails constant broadening of knowledge, learning how to use new technologies and how to apply new translation tools and techniques or learning how to find necessary data and mine reliable information.

As the demand for translation services is on the increase and the number of translation assignments seems to have no limits, the need emerges first to educate prospective translators, make them aware of the above factors and help them become experts in the future. This paper addresses the profession's status, specialist translation (translation of legal text in particular), with the focus on expectations and problems related with (legal) translator education, today's reality of system requirements and development possibilities. In the paper results of a study carried out on prospective legal translators shall be presented.

The status of the profession

In Poland the status of the profession may be perceived as an abstract concept, which – rather subjectively – refers to individually recognised and appreciated values such as authority or prestige of the profession. The only 'type' of translation that has been regulated by the law is the sworn/authorised/court translation (the term may vary), and the approximate number of all court/sworn translators in Poland is ca. 8,000 (to avoid any ambiguity in the paper, these translators shall be referred to as 'court translators' who have appropriate and legally stipulated qualifications to perform their tasks commissioned by state institutions, the police, the prosecutor's office, courts, etc.) Other translators working on the market do not 'enjoy' any specific legal provisions pertaining to their profession.

Court translators are the only group of translators who have to pass examinations before the State Examination Commission working at the Ministry of Justice. This obligation was introduced with the new law in 2004 (this law amended the previous legal regulation that allowed to become a court translator without the necessity of passing the required examinations). As for non-court translators, no certification system is in operation that could possibly verify the qualifications and competences of thousands of persons eager to enjoy the legally-regulated status of professional translators. In this situation, we may claim common sense to be the only qualification validation mechanism, yet for obvious reasons this is not an objective criterion of professional competences, expert skills and knowledge. Due to the absence of any validation mechanisms, there is no capability to put some restrictions implemented in the form of skill validation on the number of those persons who claim that they offer professional translation services. The need for certification is even much more prominent, especially if we take into account the wording of the Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation

and translation in criminal proceedings "In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified". This Directive, however, does not address the concept of 'appropriate qualifications', and thus leaves some space for ambiguity, theorisation and confusion. With the EU law being superior to the national law, and with so unspecific expressions, it is not surprising that the Polish legislative authorities are not even trying to address this question.

Therefore, there is a still growing necessity for the certification of translators, for the certification of translation training programmes so that they could be more consolidated, consistent and more up-to-date with the EU free and open market requirements. We cannot remain indifferent to the fact that quality, although itself being an elusive concept, of translation is on the decrease, despite the proliferation of CAT tools and increasingly larger numbers of persons willing to pursue translation on their professional career paths. This is manifested in everlasting and endless problems with official translations of EU instruments into Polish. Instead of – currently proposed by the Polish government – liberalisation of translation services and introduction of deregulatory provisions, including the final mainstay of certification, i.e., sworn translators, we would rather think of making the market more compact, controllable and trustworthy for the sake of translation recipients and for the sake of translation, the main aim of which is high quality, competent and adequate transfer of the message.

This need for competent translation and professional translators is nicely reflected in *The status of the translation profession in the European Union* in which we may find the following statement: 'Status is understood as the presumed value of expert skills, rather than the skills themselves. An individual or group with high status is ideally attributed trustworthiness, prestige, authority, higher pay and a degree of professional exclusivity. However, when the signals of status are weak or confusing, those values are low, market disorder results, and good translators may leave the market. The process of professionalisation can then be seen as the production of efficient signals of status that good translators stay in the market' (Final Report, 24 July 2012, 3). The question vital in our context is how to shape, educate and 'create' a good translator with skills, knowledge and competences progressing on the way to expertise so that his or her 'stay' on the market is the result of these skills, knowledge and competences possessed and accrued throughout the duration of his/her professional career, with the final objective of being an expert. Another document created within the frameworks of the European Master's in Translation Programme (which is a partnership project between the European Commission and higher education institutions) aims at, inter alia, improving the quality of translator training, thus preparing grounds for educating professional translators. In 'Competences for professional translators, experts in multilingual and multimedia communication'
(http://ec.europa.eu/dgs/translation/programmes/emt/key_documents/emt_competences_translators_en.pdf) six areas of competence to be possessed by professional translators are stipulated, namely, translation service provision competence, language competence, intercultural competence, information mining competence, thematic competence and technological competence. All these areas are – to a substantial extent – overlapping with

manifestations of competence as reflected in the research (see e.g. research results of the PACTE group, 2005).

As far as the notion of 'expert' or 'non-expert' is concerned, the empirical research data (see e.g. Englund Dimitrowa 2005, Risku 1998, Moser-Mercer 2000, Shreve 2002, Bereiter and Scardamalia 1993, also Jääskeläinen 2010 and Siren and Hakkarainen 2002) show that the central difference between experts (professional and experienced translators) and non-experts (usually student-translators or novices with no experience, also called semi-professionals in the research; see Englund Dimitrowa 2005, Jakobsen 2002, Kussmaul 1995, Tirkkonen-Condit 1996, Jääskeläinen 1993, Risku 1998, Moser-Mercer 2000, Shreve 2002, Siren and Hakkarainen 2002, Bereiter and Scardamalia 1993; for the discussion on professionals vs experts see Jääskeläinen 2010, also Siren and Hakkarainen 2002) seems to appear on the level of both procedural and declarative knowledge but also on the level of strategies (Siren and Hakkarainen 2002 refer to them as heuristic rules applied in the process of problem solving).

Another pivotal difference are varying processing characteristics; the above result from experience accrued, itself being a fundamental domain in the processes of problem solving and decision making and therefore affecting overall effective performance. Experience is a feature manifested by experts, in contrast to non-experts, yet it may not always be a predictor of high quality performance (see Ericsson 2006). The expert/non-expert categorisation allows us to perceive the former as a person with a higher level of (skilled) performance in a given domain which results from years of experience, thus the expert enjoys high reputation in his/her environment and, what follows, high professional status (see Ericsson 2006; also the concept of procedural skills, Chi et al. 1982, Chi 2006). In experts knowledge is better, thus more efficiently, organised, therefore they are capable of applying context-related knowledge and of inferring context-related meaning. In contrast, non-experts (novices or semi-professionals) obviously do not possess a body of experience, may have a tendency to generate context-irrelevant utterances; their information processing proceeds on microcontextual chunks (on the word- or sentence-level).

The question remains how to help prospective translators to develop an awareness of the importance of progressing towards expertise in their educational and subsequent professional development. Obviously, we should first aim at the specification of our objectives, i.e.:

(i) to make them realise the following factors: complexity of the translation process, importance of reflective (and self-reflective) skills which result in developing individual translation strategies, creativity, ability to face and deal with unexpected problems (this partly overlaps with Kiraly's [2000] term of 'translator competence');

(ii) to teach them how to effectively apply translation aids (including CAT tools) and how to find useful information in all types of available sources;

(iii) to introduce (selected) issues of the theory of translation as a foundation on which they can build their knowledge of translation mechanisms and operations, of specialist terminology and information-mining tools;

(iv) in case of training legal translation and interpreting: to introduce and elaborate on legal concepts and terms so as to expand their knowledge not only on the legal domain but also on the functions of the language in this domain and on the way the language may be used to mediate information;

(v) to show them the operation of market mechanisms and the challenges posed by market demands.

These objectives go far into the future but their implementation will allow us not only to improve linguistic and extralinguistic skills of our students – prospective translators – but, most of all, to teach them somewhat more holistically, or in other words, to educate them so that they will be able to develop attitudes that would motivate them to expand their knowledge, to be willing to learn, to be aware of the responsibility for the text generated and the significance of intercultural communication, mediation of meaning (in the context on legal translation that would also be the mediation of two different legal systems), terminological consistency (which is one of pivotal requirements of legal translation) or the accuracy of expression. Thus, we will be capable of developing not only general translation competence but individual translator competence, the ability of critical self-reflection and self-assessment, development of cognitive skills and, last but certainly not least, the capacity to recognise problems and (potential) deficits.

This overall development can be realised through providing contacts with professionals (active translators and interpreters) or translation agencies (e.g. internships, on-line coordinated cooperation with external feedback provided, etc.), using authentic texts for translation, developing social skills and teaching students how to cooperate successfully and smoothly not only with other translators but also terminologists, project managers or clients.

The reality: system requirements

Is there a discrepancy between our assumed goals and the goals externally imposed by institutions responsible for the educational policy of the state? When we analyse the learning outcomes, being an obligatory part to be accomplished in the teaching and training process on the university level, initially we can see an entire array of objectives that our students – prospective translators – can, or even should, expect to be fulfilled within their course of studies. These expectations can be transposed into a list of skills that a student is to achieve (for the sake of clarity, the applicable learning outcomes shall be presented with symbols corresponding to references in the relevant documents, with K_W standing for knowledge, K_U standing for skills and K_K – for competences). Thus, the student who plans to be a translator is said to have obtained the following skills and competences:

- K_W01: acquired and broadened knowledge on a foreign language, its origination and development,
- K_W02: knows advanced grammar and lexis of the language/languages,
- K_W03: knows translation principles in a wider context,
- K_W04: has extended knowledge on specialist languages,
- K_U01: can seek, analyse, assess, select and use information from various sources and formulate criticism if necessary,
- K_U02: can understand a complex text in a foreign language of a given culture,
- K_U03 and K_U04: can translate complex texts from and into a foreign language,

- K_U06: can integrate knowledge from a variety of domains (within the humanities) and use it in different situations,
- K_U16: can translate and interpret nonliterary, literary and specialist texts from the source into the target language using translation tools,
- K_U17: has developed translation and interpreting skills,
- K_U18: can use various registers and varieties of a foreign language,
- K_K01: recognises the depth of his/her knowledge and skills, understands the need for constant learning and development, can inspire and organise the learning process of other individuals,
- K_K02: can work in a team, assuming various roles,
- K_K03: can specify priorities of the task,
- K_K04: identifies and solves professionrelated dilemmas,
- K_K07: knows and can use ethical and professional standards towards the text, author, client and the receiver,
- K_W08: has broad knowledge on relations existing between language and culture studies with related fields of the humanities,
- K_W13: has broad knowledge on selected linguistic aspects in the comparative, contrastive and intercultural context,
- K_U10: can critically analyse and interpret various types of texts using specific terminology and explaining selected methodology.

It may be safely inferred from the above outcomes that the student has to fulfil a plethora of requirements, but a question comes to our mind: how can this be done? Is it possible to achieve so many objectives without running the risk of bordering on superficiality, or the 'lack of depth' (to put it mildly) in the didactic process?

For our considerations, it would be vital to know the view of those who are the target group in this process: our students. In order to consolidate and coordinate the teaching process with learning outcomes, a preliminary and a follow-up survey were carried out. 45 participants took part in the survey, all of them being students of post-graduate studies in translation, with special focus on translation of legal texts – these students want to become court translators in the future and decided to take a legal translation course to improve their skills and competences so as to be able to pass the state examination.

Legal language in translation and training

Prior to discussing the survey results and its implications, it would be worth to briefly elucidate the concept of legal language and related difficulties that are encountered while teaching legal translation.

Legal language is primarily a specialist language, thus it demonstrates certain characteristic features. Šarčević (2000) perceives it even as a sublanguage with specific syntactic, pragmatic or semantic properties. Specialist terminology is used to accurately describe the reality in which legal texts operate. Terms that we may encounter in legal texts and those that pertain to a given legal system quite frequently cannot 'enjoy' their relevant correspondents in other legal systems due to the absence of an activity, item or institution in a given system (Šarčević 1997). These are defined (Šarčević 1988) as

system-bound terms due to their contextualisation in a specific legal system as they are quite often untranslatable or their translation is descriptive. In general terms, one can observe a certain degree of conceptual incongruity in terminology (Šarčević 2000) which may be due to the historical evolution of legal systems that resulted in the development of a conceptual and terminological apparatus pertaining to social, historical, economic or cultural issues vital for a given country. Legal English is characterised by specific features which were presented by Tiersma (1999), namely:

(i) precision,
(ii) vagueness (fuzzy concepts),
(iii) conservatism (Latin terms or archaic grammatical or syntactic structures) ,
(iv) specialisation (using appropriate terminology),
(v) complexity on the level of the word (nominalisation), sentence (passive voice) and text (specific use of punctuation).

In case of the Polish legal language the characteristic features can be subsumed under the headings of communicative, stylistic and linguistic categories. Linguistic categories refer to directiveness and categoricity (Wojtak 2001, Jadacka 2002) as well as standardisation (Wojtak 2001) and terminologicalness (Hałas 1995). Communicative features include precision, i.e, consistent usage of legal terms (Wojtak 2001), adequacy with the item described (Jadacka 2002) and understandability (Wojtak 2001). Stylistic features pertain to impersonality or briefness that aim at obtaining maximum precision of the text (Wojtak 2001). Another essential feature is the presence of numerous borrowings from Latin, English, French and German (Jopek-Bosiacka 2006).

Thus, translation of legal texts is a real challenge and a post-graduate course in legal translation is aimed at acknowledging students with the specificity of legal English (perceived as the language of acts of law), with strategies and techniques to be applied in translating specialist (legal) texts, good translation practices (based, inter alia, on interpersonal and social skills), ability to find necessary information using available sources, broadening the knowledge on legal aspects of functioning in the modern world and free market economy. These components of the course are visibly compliant with the learning outcomes. During the course the students are acknowledged with the terminology and characteristic features of legal language; only authentic materials are in use to make in-class translation assignments resemble market reality and to sensitise students to issues essential for their prospective customers that they may encounter in their future career.

The survey

The question remains how these objectives of training and their implementation are perceived by the trainees and whether they are in accordance with prior expectations. The survey questions addressed skills that trainees want to develop, their expectations as to the significance of the course for their future career, potential problems they may have, prerequisites they think are absolutely vital to start the training process; finally, they were also asked whether the duration of the course is in accordance with their expectations or whether they would like to extend it.

The trainees were asked the same questions in the preliminary survey, carried out during their first class, and then another survey was performed as a follow-up at the

end of the course with the aim of finding whether there would be any statistically significant differences in the distribution of opinions. Two factors were taken into account in terms of the final resultant assessment, namely expectations with which the trainees started the course (and the focus was laid on the fact whether these expectations were fulfilled) and prerequisites, or, in other words, necessary skills and competences that trainees should have to start and complete the course.

As mentioned previously, the group surveyed consisted of 45 persons in two institutions offering post-graduate studies in translation (a state and a private university). Out of the 45 persons, 6 had previously studied law; the remaining 36 persons were graduates of English studies, and 3 persons were professionally involved with accounting.

The results of the surveys are demonstrated in the tables below, with figures representing the number of responses given and the calculated percentage ratio of the responses, respectively.

Table 1. Expectations as to needs expressed by trainees (before and after the course).

Essential aspects and features	Before the course	Follow-up
Knowledge of legal aspects	40 (88%)	45 (100%)
Knowledge of specialist legal language	45 (100%)	45 (100%)
Importance of native language competence	15 (33%)	39 (86%)
Cognitive skills	13 (28%)	43 (95%)

Table 2. Prerequisites necessary to start the course (as expressed before and after the course.

Essential aspects and features	Before the course	Follow-up
Introduction to the Polish and English law	32 (71%)	41 (91%)
Proficient knowledge of grammar	43 (95%)	45 (100%)
Proficient knowledge of native language	12 (26%)	37 (82%)
Knowledge of translation workshop and operating on the market	24 (53%)	42 (93%)
Cognitive skills	16 (35%)	40 (88%)

Discussion of results

The results demonstrate a tendency to increase in statistics in all the aspects mentioned, so the assumed a priori statistical difference is to be observed. This may result from a very simple premise: within the duration of the course the trainees had an entire array of opportunities to see that the above aspects are really significant for the translation process and for the competence of even a would-be translator to develop. It also shows the ability of critical self-reflection on the part of the survey participants: they are aware of the fact

that both linguistic and extralinguistic types of knowledge (including the knowledge of legal aspects) are essential.

Another interesting observation that can be made is the role of cognitive skills (covered in the learning outcomes as e.g. K_K01, K_K04). These were deliberately not specified in the tables but were rather treated as an umbrella term covering such issues as good memory that translators must have, ability to concentrate, ability to self-discipline and constant development, motivation to learn, ability to apply effective decision making and problem solving strategies that were mentioned by the survey participants in their responses. What is also worth observing is a dynamic numerical increase in the responses pertaining to the knowledge of the mother tongue: initially, it is somewhat taken for granted as trainees – being native speakers of Polish – claim themselves to know the language sufficiently well to perform good and high quality translation, thus seeing the 'ethnic' element as the only prerequisite for translating into one's native language. However, with time passing and the number of translation assignments accomplished, this attitude visibly changes into a more moderate one, thus allowing some degree of uncertainty to one's presumed near-to-ideal native language competence. The mother tongue issue, however, seems to be ignored in the learning outcomes, as developing the knowledge of the language is not mentioned at all.

The trainees also recognised the need to expand their knowledge on how the translation market functions, what the translation workshop should look like and how they perceive their role, i.e., they should be more focused on the development of their skills.

When we look at expectations (Table 1) we can observe that the array of expectations they have as to the course was transformed into an array of needs, into the awareness of aspects vital for the translator. The trainees' expectations have been confirmed, thus allowing them to consolidate the efforts on their path bringing them closer to the assumed objectives.

As far as the prerequisites are concerned (Table 2), there is again an explicit increase in the awareness of the significance of knowledge in general (both referring to the language and extralinguistic issues). One more time, a marked tendency may be observed in the growing importance of the knowledge of the mother tongue (which, on the other hand, shows a general trend consisting in disregarding learning and mastering one's native language). Similar as in Table 1, both cognitive skills (understood broadly as a set of intellectual abilities and skills) combined with more pragmatic skills of market functioning are on the increase. The persons surveyed also differed in terms of the duration of the course: 34 persons (i.e., 75.5%) were of the opinion that one year is too short a period for such a course, whereas 11 persons (i.e. 24.5%) thought this time was sufficient for them.

Finally, what is worth emphasising is the fact that, despite certain deficiencies, learning outcomes seem to correlate with what the trainees expect to achieve when completing the course (it should be also added that out of the 45 persons surveyed, no one has decided to take the court translator examination so far). Aspects related with the knowledge of the language (in both linguistic and extralinguistic terms) as well as cognitive and social skills that were stressed as essential by the trainees are also encompassed in the skills and qualifications development guidelines.

Concluding remarks

Obviously, language is only one of the instruments in the effective use of strategies and techniques resulting in good quality translation. It is combined with specialist knowledge and extralinguistic knowledge: these three form the basis, to which the translator may refer and treat them as his or her cognitive baggage, which has been corroborated in the survey results. On the way to developing competence, skills, broadening knowledge and seeking necessary information in all available sources motivation and the willingness to learn are key factors.

In legal translation training, expectations that trainees have are extensive, but their accomplishment or turning their dreams into reality depends on the individual, and on his/her readiness to transgress the unknown areas, to be self-critical, and to be ready to cope with novel tasks with sometimes deficient skills. The reality of legal translation training is difficult also due to the existence of externally imposed administrative restrictions (in the form of learning outcomes) which coerce both the trainers and trainees into situations specified a priori, thus limiting the possibility of implementing new solutions, with not much place for creativity which is indispensable in translation. As the survey results suggest, the progress towards prospective expertise as manifested by our trainees is possible and achievable, provided they are motivated, by means of transforming classes into a forum for exchanging ideas, giving practical tips, adjusting to students' individual learning styles, specifying course objectives, discussing materials covered, preparing projects facilitating cooperation and contacts with professional translators outside the educational context, and enabling students to participate in real translation tasks.

The combination of teaching, self-conscious motivated learning and immersion in the text and translation can result in a situation that the trainees do not only have the ability of translating texts or that they know techniques and strategies to be applied but they will also be creative individuals, whose potential should be used in a modern society. As trainers, we also have to take into account the needs and expectations of the market and expectations of employers so that our trainees are not only well educated, with intellectual potential, linguistic skills, translation strategies and the knowledge of instruments necessary for seeking information, but – being equipped with the above – they could be competitive on the labour market and motivated to constant learning and developing their skills and knowledge on their way to reach the expert status. It is our task to show them how to develop and become an expert, starting from high expectations through hard work, motivation-driven development and education.

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INTERPRETATION OF AMBIGUOUS PROVISIONS OF INTERNATIONAL INVESTMENT TREATIES AUTHENTICATED IN TWO OR MORE LANGUAGES

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Abstract: The presented article identifies and offers solutions to problems related to interpretation of international investment treaties, which have been authenticated in two or more languages. It focuses on situations when the provisions of investment treaties cause interpretational doubts because their wording is not identical in the official languages of the particular treaty. The scope of the analysis is narrowed down to the provisions concerning the jurisdiction of tribunals, which is justified due to practical implications of jurisdictional considerations in the course of arbitral proceedings. The first part of the article explains relevant applicable general principles of treaty interpretation as expressed in the 1969 Vienna Convention on the Law of Treaties. The second part is a case study, which analyses the problems faced by tribunals in the *Kilic Insaat v. Turkmenistan*, *Berschader v. Russia* and *Daimler v. Argentina* cases. The conclusions presented in the article may serve as a tool in the practice of investor – state arbitration, when implementation of specific provisions of international investment treaties occurs in the course of arbitral proceedings.
Key words: International investment law, investment arbitration, investor – state arbitration, jurisdictional clause, investment treaties, BIT, treaties authenticated in two or more languages, treaty interpretation, official language of a treaty, Vienna Convention on the Law of Treaties, case study, Kilic Insaat v. Turkmenistan, Berschader v. Russia, Daimler v. Argentina

INTERPRETACJA NIEJEDNOZNACZNYCH POSTANOWIEŃ MIĘDZYNARODOWYCH TRAKTATÓW O OCHRONIE I WSPIERANIU INWESTYCJI SPORZĄDZONYCH W DWÓCH LUB WIĘCEJ JĘZYKACH

Abstrakt: W artykule poruszono problematykę interpretacji międzynarodowych traktatów o popieraniu i ochronie inwestycji, które zostały sporządzone w dwóch lub więcej językach. Treść traktatów o popieraniu i ochronie inwestycji powoduje wątpliwości interpretacyjne, ponieważ brzmienie poszczególnych postanowień tychże traktatów w dwóch lub więcej językach, w których zostały sporządzone, nie jest identyczne. Zakres analizy artykułu został zawężony do postanowień dotyczących jurysdykcji trybunałów arbitrażowych, co jest uzasadnione doniosłością tych kwestii z perspektywy przebiegu postępowania arbitrażowego. W pierwszej części artykułu wyjaśniono zasady interpretacji traktatów prawa międzynarodowego uregulowane w Konwencji wiedeńskiej o prawie traktatów z 1969 r. Druga część artykułu stanowi analizę przypadków, w których poruszana problematyka była przedmiotem analizy trybunałów arbitrażowych, na przykładzie spraw Kilic Insaat v. Turkmenistan, Berschader v. Russia oraz Daimler v. Argentina. Wnioski wysunięte w artykule mogą być wykorzystane przy stosowaniu postanowień traktatów o popieraniu i ochronie w praktyce postępowań arbitrażowych na linii inwestor – państwo.

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Słowa kluczowe: Międzynarodowe prawo inwestycyjne, arbitraż inwestycyjny, arbitraż na linii inwestor – państwo, klauzula jurysdykcyjna, traktaty o ochronie i wspieraniu inwestycji, traktaty sporządzone w dwóch lub więcej językach, interpretacja traktatów, oficjalny język traktatu, Konwencja wiedeńska o prawie traktatów, analiza przypadków, Kilic Insaat v. Turkmenistan, Berschader v. Russia, Daimler v. Argentina

Introduction

Investment treaties are treaties of public international law, which are concluded between states. Although typically investment treaties are concluded between two contracting states, there are also multilateral investment treaties (see for example the North American Free Trade Agreement or the Energy Charter Treaty). However, in the present article references to Bilateral Investment Treaties ("BITs") also include multilateral treaties, despite the linguistic reservation related to this simplification.

Although the importance of BITs and the arbitral proceedings based on them is commonly undervalued in the perception of public opinion, the ongoing development of international investment law is a fact. Whilst in 1996 only 38 investor-state arbitration cases were registered in the International Centre for Settlement of Investment Disputes (referred to as the "ICSID"), in June 2012 the number had reached 390 (The ICSID Caseload – Statistics 2012, 7). If one remembers that not all investor – state arbitrations are administered by the ICSID, the number of publicly known cases at the end of 2011 amounted to 450 (IIA Issues Note 2012, 1). There are currently more than 3000 BITs in force worldwide (World Investment Report 2013, 101), which may give ground for potential disputes in the future.

The growing number of arbitral proceedings based on BITs raises numerous innovatory legal issues, not present in previous proceedings. Among many other legal issues present in international investment law and investor – state arbitration, some of them are related to linguistic aspects of the underlying BITs. The present article analyses the situation when there are interpretative doubts arising from the wording of a BIT which has been authenticated in two or more languages.

The methodology is based on the analysis of wording of international treaties and of available arbitral awards and the literature on the subject. Part of the article is descriptive in nature. The aim of this part is to present international investment law to the reader and then to illustrate the problems related the interpretation of ambiguous provisions of BITs in two or more languages within the general framework of international investment law. Subsequently, the article contains a general analysis of the legal norms expressed in the 1969 Vienna Convention on the Law of Treaties. It further becomes a case study. It goes beyond the black letter of law and refers to the relevant case law, illustrative for the problems related to the subject of the article. It analyses the case law by applying relevant principles of treaty interpretation to the problems encountered by the arbitral tribunals in the cases relevant to the subject. Therefore, it might be used as a tool in practice, when implementing specific provisions of international investment treaties in the course of future arbitral proceedings.

Brief introduction to BITs

One of the basic characteristics of BITs is that they create the possibility that investors, understood to be private subjects, file law suits against host states (states on the territory of which investments are made), understood to be sovereign states, in arbitral proceedings, which are binding. BITs incorporate a dispute resolution method known between private parties, i.e. arbitration. Not only do arbitral awards bind the parties to the proceedings, but also in the case that the losing party is not willing to pay the compensation awarded therein, they may serve as a basis of enforcement proceedings conducted in the vast majority of jurisdictions around the world.

Arbitration is based on consent of the parties (Dugan, Wallace, Rubins, Sabahi, 2008, 219). The host states – the contracting states to the BIT which is the basis for particular proceedings – give their consent to arbitration in advance, already at the moment when they conclude the BIT. It is the consent intended for the future and given towards a specified group of subjects, who are not described individually, but by their features, such as the nationality or the status of being an "investor" within the meaning of the BIT and international investment law.

Although they are not well known to the general public, there is no doubt that arbitral cases are important for states and, indirectly, for their citizens. The example of CME v. Czech Republic case might be noted, in which the compensation awarded to be paid by the host state was approximately 270 million US dollars plus interest (CME v. the Czech Republic, 2003, 161). This amount was comparable to the annual budget of the Ministry of Health of the respondent state (Green, 2003, W1). Another example is Occidental v. Ecuador case, in which the respondent state was ordered to pay compensation in the amount exceeding 1 billion 700 million US dollars (Occidental Petroleum v. Ecuador, 2012, para. 876).

Linguistic aspects of investment arbitration

BITs are instruments of public international law. It is common practice that they are concluded between the contracting states in two or more languages. It is not a surprise that contracting states wish to conclude treaties in their official languages. Thus, if the official languages of contracting states are different, a natural solution is that the treaty may be concluded in at least two languages, i.e. in each official language of each contracting state.

In some situations, a treaty may be concluded in even more languages, when the contracting states decide that a neutral language, typically a language commonly used in the type of relations governed by the negotiated treaty, will be decisive in case of divergences between the authentic texts of the treaty. An example of such solution in the realm of international investment law can be found in the BIT concluded between Cyprus and Poland, which in its art. 13.3. establishes:

> „[…] Done and signed in Warsaw on the 4th June 1992 in two originals in the Polish, Greek and English languages, all texts being equally authentic. In case of disagreement as regards the interpretation of the text, the English version will prevail."

A decision to choose a third language to be the prevailing one in case of divergences in the interpretation may be justified by various factors. For example it might be a response to situations such as those when (i) the languages are not commonly known in the other contracting state (official languages of the contracting states are not commonly known outside of the borders of these states) or when (ii) none of the contracting states agrees to recognise the supremacy of the other state's language.

BITs can be subject to interpretation by a whole group of different interpreters. For example they can be interpreted by a legal consultant providing services for one of the parties, an arbitrator deciding the case, a common citizen of a contracting state, who wishes to understand the nature of international obligations undertaken by his home state in the BIT etc. As observed above, it is not uncommon for a BIT to be authenticated in two or more languages. If this is the situation, the question arises as to how should an interpreter of such BIT – regardless of to which type of interpreter he belongs and what is the final purpose of the interpretation process – approach the issue of the interpretation of such treaty. In the context of BITs it is not only an academic question. The answer given to this question in the course of arbitral proceedings based on a BIT may have an impact on the final outcome of these proceedings, and as a result on the decision whether compensation is to be paid, and if so – in what amount.

General rules of treaty interpretation

BITs are treaties of public international law and as such, they must be interpreted in accordance with the principles of public international law. Thus, generally they should be interpreted in accordance with the rules expressed in articles 31, 32 and 33 of the 1969 Vienna Convention on the Law of Treaties (referred to as the "Vienna Convention"). The importance of the Vienna Convention cannot be underestimated, as it "would apply in interpreting a BIT even if the State contracting parties were not parties to the Vienna Convention as they reflect customary international law" (Weiniger, 2006, 254).

It is observed that in general there are three basic methods of treaty interpretation in public international law: (i) objective approach towards the interpretation, i.e. interpretation based on the real text of the treaties and the words used therein, (ii) subjective approach towards the interpretation, i.e. interpretation based on intention of the contracting states, and (iii) the broad approach towards the interpretation, based on the purpose and the aim of the treaty as a basis for interpreting the meaning of specific provisions. Articles 31, 32 and 33 of the Vienna Convention to a certain extent adopt all three approaches listed above (Shaw, 2006, 539).

The plurality of authentic texts of an international treaty is always an important factor in its interpretation and it may not be ignored. In general, the existence of authentic texts in two or more languages can either (i) complicate the interpretation, being an additional source of ambiguity or obscurity in the terms of the treaty, or (ii) facilitate the interpretation, being helpful when the meaning of terms is ambiguous in one language, but it is clear as to the intentions of the parties in the another language (Yearbook, 1967, 225).

The existence of a plurality of the authentic texts of an international treaty introduces in its interpretation a new element, that is a comparison of the authentic texts

of the treaties (Yearbook, 1967, 225). Although there is no express directive, which obliges an interpreter to always compare the authentic texts of the treaty at hand, if there is a difference or a dispute over interpretation presented to a court or to a tribunal, "comparison of texts is likely to be essential" (Gardiner, 2008, 360). There are various possible scenarios when a term of a treaty can be ambiguous or obscure: (i) it is so in all the authentic texts of the particular treaty, (ii) one or more texts of the treaty are clear, but another text (or texts) is (or are) ambiguous, or (iii) apparently the authentic texts seem not to have exactly the same meaning.

Of the listed provisions of the Vienna Convention, it is the article 33 which regulates the interpretation of treaties authenticated in two or more languages. It reads as follows:

> "1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
> 2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
> 3. The terms of the treaty are presumed to have the same meaning in each authentic text.
> 4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted."

Paragraphs 1 and 2 of the article 33 of the Vienna Convention should be read together. They regulate the significance of the choice of the contracting states concerning the authentic texts of the treaties. Paragraph 1 of the referred provision regulates situations when treaties provide that in the event of divergence between the texts, a chosen text is to prevail over the texts in other languages. Such situation is not uncommon and is visible at the example of the invoked BIT Poland – Cyprus. Paragraph 2 clearly states that if the choice referred to in the paragraph 1 has not been made by the contracting states, none of the authentic texts of the treaty prevails over the other language versions.

Paragraph 3 of the article 33 of the Vienna Convention introduces a presumption that the terms of the treaty have the same meaning in each authentic text. It is referred to as the principle of the "unity" of the treaty, according to which both (or all) the authentic texts express the terms of the agreement between the contracting states. However, they remain language versions of one document only, which remains the one treaty concluded between the parties. There exists one set of terms accepted by the parties to the treaty and one common intention with respect to those terms, agreed by them and expressed by the adopted wording of the treaty.

Thus, according to the principle expressed in the article 33 paragraph 3 of the Vienna Convention, when applying a treaty an interpreter must look for a common meaning of the texts and for the meaning intended by the parties to be attached to the terms included by them in the treaty. The existence of two or more authentic texts of the treaty justifies neither simple preference of one of these texts to another, nor discarding

the normal means of resolving an ambiguity or obscurity on the basis of the general principles of treaty interpretation. By recourse to the normal means of interpretation, efforts should be made in order to reconcile the texts and to look for the intention of the parties behind the words.

The presumption that the terms of the treaty are intended to have the same meaning in each of its authentic text (paragraph 3 of article 33 of the Vienna Convention), together with the principle of the equal authority of authentic texts (paragraphs 1 and 2 of article 33 of the Vienna Convention) guarantee that the unity of the treaty is observed. Effort should be made to find a common meaning of the interpreted provisions.

Despite these efforts, a comparison of the interpreted provision in both (or all) authentic texts of the treaty may disclose a difference of meaning, which leads to a conclusion that the authentic texts cannot be presumed have the same meaning. In such situations, paragraph 4 of article 33 of the Vienna Convention applies. According to it, if the application of the general rules of treaty interpretation – which are expressed in articles 31[2] and 32[3] of the Vienna Convention – does not remove the difference of meaning in the terms used in the authentic texts of the treaty, the interpreter is entitled to adopt the meaning "which best reconciles" the conflicting texts, having regard to the object and purpose of the treaty.

When looking for the object and purpose of the treaty – as is required under article 33 paragraph 4 of the Vienna Convention – recourse to the "original language" of the treaty may result helpful. By this term it is understood the language in which the treaty was negotiated, drawn up or firstly drafted (Gardiner, 2008, 366).

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[2] "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended. Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."

[3] "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."

Obviously, the mechanism established in article 33 paragraph 4 of the Vienna Convention does not exclude the possibility that the outcome of the interpretation of the provision of the treaty is that the meaning of the interpreted provision is the meaning which is clear in one of the authentic texts. Such an outcome is perfectly acceptable and it is not contrary to the directive that the interpreter should not simply prefer one authentic text to another (Gardiner, 2008, 375).

Practical significance of linguistic aspects of BITs

A difference of meaning of provisions authenticated in two or more languages can cause interpretative problems at various stages of arbitral proceedings based on BITs. However, the practical importance of this issue appears to be the most visible when analysing the scope of "consent to arbitrate" given by states. In other words, it is especially visible at the jurisdictional stage of the arbitral proceedings, when the arbitral tribunal decides whether it has authority to hear the case at hand.

The jurisdiction of the arbitral tribunals may be understood as the power to decide the case. The basis for the jurisdiction is consent of the parties (Dugan, Wallace, Rubins, Sabahi, 2008, 219). Without the consent to arbitrate, no arbitral tribunal may have jurisdiction at all. If any tribunal renders an award without having jurisdiction, or exceeding its scope, subsequent recognition and enforceability of the award may be denied (Born, 2009, 201-202), or it may be annulled under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

When the respondent state invokes objections to jurisdiction of the tribunal hearing the case, it is necessary to interpret the "jurisdictional clause" included in the BIT, that is the clause of the BIT on the basis of which the proceedings are commenced which contains the states' consent to arbitrate. At this stage, if there are differences between the authentic texts of the BIT, they may not be ignored.

The *Kilic Insaat v. Turkmenistan* case provides an example of such situation. The case was conducted on the basis of the BIT concluded between Turkey and Turkmenistan. In that case, the tribunal issued a decision, the sole purpose of which was to determine: (i) the number of authentic versions of the BIT at hand, (ii) accurate translations into English of any authentic version(s) of the BIT (to the extent there are authentic version(s) of the BIT in languages other than English), and (iii) the meaning and effect of article VII.2 of the BIT, which regulated the issue of jurisdiction (Kilic Insaat v. Turkmenistan 2012, para. 1.19.).

The approach of the arbitral tribunal towards the interpretation of the BIT authenticated in more than one language was in accordance with article 33 paragraph 1 and article 33 paragraph 2 of the Vienna Convention. The tribunal needed to identify what were the authentic texts of the BIT. The doubts of the tribunal were well justified, as the authentic English version of the BIT provided that the Treaty was *"DONE at Ashghbat on the day of May 2, 1992 in two authentic copies in Russian and English",* whilst the authentic Russian version of the BIT provided that the treaty was *"Executed on May 2, 1992 in two authentic copies in Turkish, Turkmen, English and Russian languages"* (as translated into English in the copy of the arbitral award, see Kilic Insaat v. Turkmenistan 2012, para. 2.8.).

The tribunal decided that English and Russian were authentic texts of the BIT. It did not agree with the argument that the Turkish and/or Turkmen versions were authentic texts of the BIT as well, together with the English and Russian texts. The tribunal's reasoning was based on the fact that there was no evidence of the existence of the Turkish and/or Turkmen texts of the BIT and that the respondent was unable to produce signed copies of either the Turkish or the Turkmen versions of the BIT.

The determination of which were the authentic versions of the BIT was important for the interpretation of article VII.2 of the BIT. This provision was the "jurisdictional clause", which contained the basis of jurisdiction of the arbitral tribunal in the case. Its interpretation was crucial to determine the jurisdiction of the tribunal. English version of article VII.2. of the BIT provided that:

> "If these desputes (sic) cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to [arbitration]
> provided that, if the investor concerned has brought the dispute before the courts of justice of the Party that is a party to the dispute and a final award has not been rendered within one year" (Kilic Insaat v. Turkmenistan 2012, para. 2.10).

At the same time, the Russian version of the BIT, translated literally into English provided that:

> "If the referenced conflicts cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the conflict may be submitted at investors choice to
> [arbitration]
> on the condition that, if the concerned investor submitted the conflict to the court of the Party that is a Party to the conflict, and a final arbitral award on compensation of damages has not been rendered within one year" (Kilic Insaat v. Turkmenistan 2012, para. 2.11).

The problem was whether the requirement to refer the dispute to local courts before submitting it to arbitration was optional, or mandatory. The Russian version of the BIT was clear as to the mandatory nature of this requirement. However, the English version was ambiguous and allowed for both interpretations. Thus, potential existence of additional authentic texts of the BIT could have a crucial result for the analysis. However, their existence was not proved and the tribunal continued its analysis on another basis.

Although the tribunal did not refer expressly to article 33 paragraph 4 of the Vienna Convention in the relevant passage, nevertheless it applied this provision in an implied – but correct – way. It interpreted the jurisdictional clause of the BIT by applying articles 31 and 32 of the Vienna Convention, i.e. by applying the general rules of interpretation. By using supplementary means of interpretation regulated in article 32 of the Vienna Convention, the tribunal referred to the circumstances surrounding conclusion of the BIT and on that basis decided that the local court requirement was obligatory (Kilic Insaat v. Turkmenistan 2012, paras. 9.18 – 9.23).

As a result, there was no need to "reconcile" the text of art. VII.2. of the BIT within the meaning of article 33 paragraph 4 of the Vienna Convention. However, it

seems that if it had been done, in this particular case the final outcome would have been the same. If one version of the BIT is clear, and the second one is ambiguous in the sense that it allows both interpretations, the Tribunal would have easily agreed to reconcile texts as having the meaning allowed by both versions. Thus, the final conclusion reached by the Tribunal was the same as the effect of "reconciliation" of both versions would have been.

Berschader v. Russia case is another example when the language versions of the BIT were analysed by the arbitral tribunal in the context of the scope of jurisdiction of the tribunal. The proceedings in that case were based on the BIT concluded between Russia and Belgium, which had been authenticated in two texts – Russian and French.

As already observed, the power of the tribunal to decide the case depends on the valid consent of the parties. In the context of BITs, one of crucial element when determining the scope of the consent is to determine what is understood to be an "investment" protected under the BIT and thus, what is the scope of the consent to arbitrate given by the states.

The crucial question to determine the jurisdiction of the tribunal in this particular case was whether a financial contribution to the construction of a building for the Russian Supreme Court qualifies as an "investment" under the applicable BIT. The Russian term, used for "investment" in the Russian authentic version of the BIT was narrower than the French term, used in the French authentic version of the BIT. The tribunal observed that:

> "Firstly, the Tribunal finds ample evidence amongst Russian-English legal and economic dictionaries for translating the term kapiralovlozhenie as "investment" and the term vlozhit as "to invest". Secondly, it is possible to point to a large number of BITs concluded by the Respondent where Russian and English are the authentic languages of the Treaty and where the term kapitalovozhenie is translated as "investment" and vlozhil is translated as '"to invest". It is thus clear that, while those terms may sometimes be used in the Russian language in the more limited sense of "contributions to the charter capital of a joint venture", they are in fact also frequently used in a broader sense corresponding exactly to the English terms "investment" and "invest" (Berschader v. Russia, 2006, para. 109).

The tribunal added:

> "Furthermore, regard must be had to the French version of the Treaty which, as set out in the Protocol, is equally as authoritative as the Russian version. The French text uses the words investissement and investir. With respect to these French terms, there can be no doubt but that their ordinary meaning is identical to that of the English words "investment" and "to invest". Therefore, and for the reasons set out above, the Tribunal finds that the Respondent's objections on this point must fail" (Berschader v. Russia, 2006, para. 110).

It is not clear on what basis did the tribunal refer to English definitions. The Tribunal did not explain the legal basis of "pointing to a large number of BITs concluded by the Respondent where Russian and English are the authentic languages". It may be assumed that the legal basis for this step was article 33 paragraph 4 of the Vienna Convention,

which refers to general rules of interpretation, amongst which one can find article 31 paragraph 3 point b[4].

However, it seems that the tribunal misapplied the above rule. "Subsequent practice" relates to the application of the particular international treaty, here the BIT Russia – Belgium. It does not refer to the practice between the states related to all the other international treaties.

The correct approach to solve the problem, which arose in the *Berschader v. Russia* case seems to be offered by the application of article 31 paragraph 1 of the Vienna Convention,[5] as a result of the referral from article 33 paragraph 4 of the Vienna Convention. In the analysis conducted by the tribunal one may see a conclusion that the terms used in the Russian authentic version of the BIT corresponds to the intention of the contracting states, as it is the ordinary meaning of the terms in both official languages. Thus, there was no need for applying the "reconciliation" under article 33 paragraph 4 of the Vienna Convention, but were it applied, it would have led to the same outcome.

The issue of authentic texts of the BIT arose also in the *Daimler v. Argentina* case. It was conducted under the BIT concluded between Argentina and Germany. The two authentic texts of the BIT were Spanish and German, although the working language of the arbitral tribunal was English.

In this case the scope of jurisdiction was conditioned upon application of the Most Favored Nation clause. This standard of protection guarantees that the states – parties to the BIT – shall not accord investments in their respective territories by nationals or companies of the other contracting state treatment less favourable than the treatment accorded investments of companies or investments of nationals or companies of any third state.

The application of the Most Favored Nation clause is conditioned, among other requirements, upon existence of an "investment", a "treatment" and the qualifier that it must be "in the territory" of the host state. The problem faced by the tribunal in the *Daimler v. Argentina* case was whether the qualifier referred to the term "treatment", or to the term "investment". In this context the tribunal observed:

> "English translation misconstrues the qualifier "in its territory" by attaching it to the word "investments" rather than to the word "treatment". The mistake is perhaps understandable, as the translation was prepared primarily from the German original, which […] arguably renders the intended reference point of the phrase "in its territory" uncertain. By contrast, Articles 3(1) and 3(2) of the Spanish text both clearly attach the phrase "in its territory" to the word "treatment" (Daimler v. Argentina, 2012, footnote 394).

Differently from the awards rendered in *Kilic Insaat v. Turkmenistan* and in *Berschader v. Russia* cases, the tribunal in *Daimler v. Argentina* case expressly referred to the Vienna Convention:

[4] "There shall be taken into account, together with the context any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."
[5] "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

> "Since […] both the Spanish and German versions of the text are equally "binding" or "authentic", this minor inconsistency is easily resolved by Article 33(3) of that Vienna Convention, according to which the terms of a treaty are presumed to have the same meaning in each authentic text. In case of difference, Article 33(4) directs that the meaning which "best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted"."

The tribunal followed:

> "Applying these rules to the present discrepancy: since the Spanish text is clear as to the proper placement of the qualifier "in its territory" while the German text leaves the question open, the interpretation given by the Spanish text must be preferred" (Daimler v. Argentina, 2012, footnote 394).

The mere application of the article 33 of the Vienna Convention and the final decision reached by the tribunal are correct in the circumstances of the case. However, it seems that the tribunal to a certain degree misapplied the Vienna Convention. Although article 33 paragraph 3 of the Vienna Convention introduces the presumption that the authentic texts have the same meaning, still - the meaning must be interpreted by application of the general rules of treaty interpretation. The meaning may not be simply reached by the tribunal by stating that "one version is clear". One must look for the common intention of the parties behind the words – and sometimes it may be that a clear provision must be interpreted differently from that, which initially seems to emerge from its literal wording. The issue in *Daimler v. Argentina* concerned application of the Most Favored Nation clause to the jurisdictional provisions of the BIT. It remains one of the most controversial topics in investor – state arbitrations and in international investment law. Thus, it is not surprising that even the proper application of general rules of treaty interpretation could not have led to a final determination of which approach is the correct one. As a result, the application of the rule of reconciliation provided in article 33 paragraph 4 of the Vienna Convention was justified. However, the Tribunal simply stated that one version is clear while the other is not, which led it to the decision that the clear version shall prevail over the ambiguous one. Therefore, the tribunal ignored that article 33 paragraph 4 of the Vienna Convention relates the reconciliations of authentic texts "to the object and purpose of the treaty". Despite that, although the tribunal did not apply the mechanism to the full extent, it reached conclusions justified in the circumstances of the case.

Concluding remarks

The potential interpretative problems arising from those situations when the BITs have been authenticated in two or more languages do occur in practice of international investment law. This may be seen at the examples of awards rendered in *Kilic Insaat v. Turkmenistan*, *Berschader v. Russia* and *Daimler v. Argentina* cases. In the context of investment arbitration this issue is especially visible at the jurisdictional stage of the proceedings.

These considerations are not purely academic. Decisions made by tribunals in investor – state arbitrations have direct influence on the final outcomes of disputes. If the

tribunals decide that they lack jurisdiction, the case is dismissed and the respondent can neither be found liable for a breach of the BIT nor ordered to pay compensation. If the tribunal decides otherwise, the proceedings enter the merits stage, which may end up in an award ordering the respondent state to pay compensation, in some cases in significant amounts.

The analysis contained in the article shows that international law developed a mechanism which offers solutions to the potential problems related to the differences in meaning between the authentic versions of the BITs. They are expressed in article 33, read together with articles 31 and 32 of the Vienna Convention. All authentic texts of the BIT are equally authoritative – unless the contracting states decided that one of the versions prevails in case of divergence – and are presumed to have the same meaning. If the comparison of the authentic texts discloses a difference of meaning, they must be interpreted in accordance with the general principles of treaty interpretation, as regulated in articles 31 and 32 of the Vienna Convention. Only if it does not remove the difference of meaning revealed by comparison of authentic texts, the tribunal should choose the meaning which best reconciles all the authentic texts, but having regard to the object and purpose of the BIT.

From the analysis of *Kilic Insaat v. Turkmenistan*, *Berschader v. Russia* and *Daimler v. Argentina* cases it emerges that when facing the issues related to interpretation of BITs authenticated in two or more languages, the tribunals in investment arbitration do not always properly apply the Vienna Convention. This creates a risk of rendering incorrect decisions, which could be contrary to the established rules of treaty interpretation. Despite the above, in the analysed cases the arbitral tribunals rendered decisions which were correct in the circumstances of the cases. What is even more significant, if these arbitral tribunals would have properly applied the rules established in the Vienna Convention, they would have rendered the same decisions on the interpretation of the authentic texts of the BITs.

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ONE WORD, TWO LANGUAGES, TWO INTERPRETATIONS: THE POLISH-LITHUANIAN TREATY OF 1994 AND HOW IT WAS (MIS)UNDERSTOOD

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Abstract: The article studies the impact of the differences in the meaning of the word *brzmienie* in the *Treaty on Friendly Relations and Good Neighbourly Cooperation of the Republic of Lithuania and Republic of Poland* of April 26, 1994. The Polish word in question is ambiguous and has two potential meanings, whereas its equivalent used in the Lithuanian language version is unequivocal. Interestingly, the treaty was prepared only in Polish and Lithuanian, without the mutually accepted English version. Therefore the two (published by government-endorsed periodicals) translations into English of the text of the treaty that exist – one made by Poles and one by Lithuanians – have only unofficial status. The difference between these two English translations highlights best the divergence in how the two contracting parties obviously perceive their rights and obligations as circumscribed by the treaty. This divergence has figured heavily on the attitude of the media, and in due course influenced the public opinion in both states.
Key words: translation of treaties, translation ambiguity, Polish-Lithuanian relations, given names, surnames

JEDNO SŁOWO, DWA JĘZYKI, DWIE INTERPRETACJE: POLSKO-LITEWSKI TRAKTAT Z ROKU 1994 I JEGO (NIE)ZROZUMIENIE

Abstrakt: Artykuł analizuje wpływ, jaki miała różnica w znaczeniu słowa *brzmienie* użytego w *Traktacie między Rzecząpospolitą Polską a Republiką Litewską o przyjaznych stosunkach I dobrosąsiedzkiej współpracy* z dn. 26 kwietnia 1994. Polskie słowo jest dwuznaczne, podczas gdy jego użyty w litewskim tekście odpowiednik – jednoznaczny. Co ciekawe, tekst traktatu sporządzono tylko w wersji językowej polskiej i litewskiej, bez uzgodnionej wspólnie wersji angielskiej. Zatem obie istniejące (i opublikowane w periodykach związanych ze stroną rządową obu państw) wersje angielskie tekstu – jedna sporządzona przez Polaków, druga przez Litwinów – mają status nieoficjalny. Różnica między nimi najlepiej uwypukla rozbieżność, jaka istnieje między układającymi się stronami w kwestii postrzegania obowiązków i praw definiowanych przez traktat. Rozbieżność ta znacząco zaważyła na podejściu mediów, a co za tym idzie – wywarła wpływ na opinię publiczną w obu państwach.
Słowa kluczowe: tłumaczenie traktatów, niejednoznaczność w tłumaczeniu, stosunki polsko-litewskie, imiona, nazwiska

Introduction

The dramatic systemic changes that took place in Poland after the fall of Communism in 1989 resulted in the sharp increase in the demand for legal translation at both private and – especially – state level. Among others, the state which broke with its Communist past needed to redefine its relations with the neighbours. Consequently, in the first half of the

1990s, bilateral treaties, whose titles typically referred to friendship and good neighbourly cooperation, were signed by the Republic of Poland with Germany (1991), the Czech and Slovak Federal Republic[1] (1991), Ukraine (1992), the Russian Federation (1992), the Republic of Belarus (1992), and finally with the Republic of Lithuania (1994). It was no coincidence that among Poland's neighbours, the relationships with Lithuania took the longest to establish. The bones of contention were many: Polish-language education for the children from the Polish minority in Lithuania; the issues of the restitution of property left behind by former Polish inhabitants of Vilnius and the Vilnius region; the controversies connected with the way Polish given names and surnames were spelt in official Lithuanian documents; and the existence or non-existence of bilateral street signs. In the following decade, the conflict about the oil refinery in Mažeikiai (Możejki) was to add to the list of mutual grievances.

Unfortunately, as Matulewska and Nowak (2006, 31) bitterly yet poignantly noted, "[i]t has suddenly turned out that Poland fails to translate legal documents reliably and professionally" (or maybe to proofread the Lithuanian version?). The present article is a case study which purports to prove how a single mistake in Polish-Lithuanian translation of the aforementioned 1994 treaty led to grave consequences and contributed to the increase in tension between the two states. In the opinion of Weisgerber,

> [i]t is generally accepted that the translation of a literary work of art can at best approximate to the original but can never hope to exhaust its meaning. The loss in such a case is only one of artistic effect, but *when the wording of a treaty is translated more or less imperfectly there is a direct impact upon the lives of all those affected by the document*. Every deflection from the line of expression of the original is a starting-point for active forces determining the everyday existences of those people (1961, 1-2, emphasis in the original).

One might invoke in support the case described by Weisgerber – the mistranslations in the so-called Paris Treaty between Italy and Austria (eventually incorporated into the Peace Treaty of 1947), which determined the status of German-speaking South Tirol that in the aftermath of WW2 became part of Italy. Another famous example involved the Treaty of Waitangi, signed in 1840 between the British government and Maori chiefs in New Zealand, which in the translation into Maori purportedly gave the natives a right of governance in return for protection, whereas its English-language version deprived Maoris of all sovereignty[2].

[1] Short-lived by that name, the state was soon to dissolve into the Czech Republic and the Slovak Republic. Nevertheless, as of 2013, the treaty remains in force.

[2] Cf. http://www.justice.govt.nz/tribunals/waitangi-tribunal/, accessed Jan. 5, 2014.

The Polish-Lithuanian Treaty of 1994

The *Agreement on Friendly Relations and Good Neighbourly Co-operation between the Republic of Lithuania and the Republic of Poland* [3] (in Polish: Traktat między Rzecząpospolitą Polską a Republiką Litewską o przyjaznych stosunkach i dobrosąsiedzkiej współpracy, in Lithuanian: Lietuvos Respublikos ir Lenkijos Respublikos draugiškų santykių ir gero kaimyninio bendradarbiavimo sutartis) was signed in Warsaw on April 26, 1994, by Polish and Lithuanian presidents: Lech Wałęsa and Algirdas Brazauskas. It was ratified by the parliaments of both states a few months afterwards and came into force on November 26, 1994.

The contested clause, whose observance (or non-observance) led to so many heated debates, concerned the right of the members of national minorities to use their given names and surnames in their native (i.e. minority) language. The following example illustrates the difference.

Example 1. The regulation concerning minority names.

> (i) Układające się Strony oświadczają, że osoby wymienione w artykule 13 ustęp 2 mają w szczególności prawo do… używania swych imion i nazwisk **w brzmieniu**[4] języka mniejszości narodowej [official Polish language version[5]].
> (ii) Susitariančiosios Šalys pareiškia, kad asmenys, išvardinti 13 straipsnio 2 punkte, taip pat turi teisę… vartoti savo vardus ir pavardes **pagal** tautinės mažumos kalbos **skambesį** [official Lithuanian language version[6]].
> (iii) The Contracting Parties declare that the persons referred to in Article 13, paragraph 2 have in particular the right to… use their names and surnames **in the version** used in the language of the national minority [English translation from the Polish version made by Andrzej Misztal[7]].
> (iv) The Contracting Parties declare that the persons, named in Article 13 paragraph 2, also have the right… to use their names and surnames **according to the sound** of the national minority language [English translation from the Lithuanian version[8]].

One more proof that the Lithuanian side understands the version of names to be *phonetic only* can be found in the text of the Report on the Implementation of the FCNM in the Republic of Lithuania:

> Article 14 of the Agreement on Friendly Relations and Good Neighbourly Co-operation between the Republic of Lithuania and the Republic of Poland, which

[3] There being no official English name of the treaty, the English translation of its name has been quoted after the CoE documents reporting the monitoring of implementing the Framework Convention for the Protection of National Minorities.
[4] The emphasis in all the quotes has been added by the present author.
[5] *Dziennik Ustaw* 1995 nr 15 poz. 71. Retrieved Aug. 19, 2013 from http://isap.sejm.gov.pl/DetailsServlet?id=WDU19950150071.
[6] Retrieved Aug. 19, 2013 from http://www.kpd.lt/lt/node/157
[7] *Zbiór Dokumentów* 1994/L, X-XII 1994. Warszawa: Polski Instytut Spraw Międzynarodowych, p. 29.
[8] *Lithuanian Foreign Policy Review* 1998/2, retrieved Sept. 4, 2013 from http://www.lfpr.lt/uploads/File/1998-2/Treaty%20on%20Friendly%20Relations.pdf.

> was ratified by the Seimas of the Republic of Lithuania on 10 October 1994, provides that persons belonging to the Lithuanian national minority in the Republic of Poland and persons belonging to the Polish national minority in the Republic of Lithuania have the right "to use their names and surnames **as it is pronounced** in the language of the national minority"[9] (2001: 60, emphasis added).

There is an outstanding difference between options (iii) and (iv) in terms of the consequences for the Polish minority in Lithuania. Admitting option (iii) would mean that the names remain intact; admitting its rival version (iv) would amount to the distortion, sometimes rather severe, of their written form, as the following examples illustrate:

Example 2. Selected Polish versus Lithuanised given and family names.

(i) Polish: *Krzysztof Szuszczewicz, Lech Wałęsa, Anna Okuszko, Andrzej Rekść, Józef Bączek, Róża Mackiewicz*

(ii) Lithuanised: *Kšyštof Šuščevič, Lech Valensa, Ana Okuško (Okuškienė, Okuškaitė), Andžej Rekst, Juzef Bonček, Ruža Mackevič (Mackevičienė, Mackevičiūtė)*

The reason why the two English versions diverge so visibly is to be found in the dictionary meanings of the respective phrases in Polish and in Lithuanian. Zgółkowa and Walczak (1994-2005)[10] give the following four meanings of the word *brzmienie*:

Example 3. Dictionary meanings of the Polish word *brzmienie.*

(i) the appearance as sound, voice; the making, producing of sound, voice

(ii) a particular wording, particular content, thought

(iii) the total of an acoustic phenomenon or sound impression; the sum of the characteritic features of a sound, voice; colloquially: timbre

(iv) *rare* a speech sound

A Lithuanian dictionary (Keinys et al. 1993) gives two meanings of the word *skambesys* which was used in the Lithuanian language version of the treaty:

Example 4. Dictionary meanings of the Lithuanian noun *skambesys.*

(i) ringing sound (of a key, of metal)

(ii) the height of sound, the total of [its] intensity and timbre

The above definitions indicate that while Polish allows both literal and figurative meaning of the word, its Lithuanian counterpart is only literal. This observation is corroborated by evidence in the form of multilingual versions of the European Union law[11]. In no instance has the Lithuanian noun *skambesys* been used in the sense of

[9] *Report Submitted by Lithuania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*. Oct. 31, 2001. Retrieved Aug. 20, 2013, from http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Lithuania_en.pdf.

[10] The largest dictionary of contemporary Polish (fifty volumes). This and all further translations into English are by the present author.

[11] http://eur-lex.europa.eu.

'version, wording, content'. Similarly the analysis of all multilingual EU documents in whose Lithuanian version the word *skambesys* (in the nominative or other grammatical cases) yields no documents in which it would be translated into Polish as *brzmienie* in the sense of 'version, wording, content'.

It is noteworthy that the same or similar clauses appear in the Polish language versions of five other treaties about friendship and cooperation between Poland and its neighbours or other states. The relevant quotes are presented chronologically below.

Example 5. Clauses in other bilateral treaties.

(i) prawa do … używania swych imion i nazwisk **w brzmieniu** języka ojczystego (Art. 15 (2) of the 1991 treaty with Germany)
(ii) prawo używania … imion i nazwisk **w brzmieniu i pisowni** języka ojczystego (1992 declaration signed with Lithuania)
(iii) prawa do … używania imion i nazwisk **w brzmieniu przyjętym** dla języka ojczystego (Art. 11 (1) of the 1992 treaty with Ukraine)
(iv) prawo... do... używania swych imion i nazwisk **w brzmieniu przyjętym** dla języka ojczystego (Art. 15 of the 1992 treaty with Belarus)
(v) prawa do... używania imion i nazwisk **w brzmieniu i pisowni** języka ojczystego (Art. 15 (2) of the 1992 treaty with Latvia)

The above shows that in only two cases – (ii) and (v) – is the phrasing unambiguous since it refers explicitly to *both the spelling and the pronunciation*. However, no problems or controversies over the interpretation arise in the case of the other three treaties. It is so for two reasons. In the case of (i), the German language version of the treaty helps resolve the potential ambiguity*: Ihre Vor- und Familiennamen in der Form der Muttersprache zu führen*. In the case of (iii) and (iv), on the other hand, the obvious difference between the writing systems of Polish and Ukrainian (or Belarusian, respectively) leads to the literal interpretation of *brzmienie* as 'sound, pronunciation' as the only imaginable understanding of the phrase. This is why only the Polish-Lithuanian treaty became a source of tension.

The Consequences

The uncertainty surrounding the question of what exactly has been safeguarded by the treaty (and what has not), in some cases coupled perhaps with a good measure of ill will, led to the situation wherein the politicians and media in Poland and Lithuania are still holding conflicting views on the issue. This is readily visible in quotes from Polish media:

> The original form of the spelling of surnames of Poles in Lithuania and Lithuanians in Poland is guaranteed by the treaty signed by both states in 1994. Vilnius does not comply with this law to this day (Filipiak 2010).

> In 1994 presidents of Poland and Lithuania of the time, Lech Wałęsa and Algirdas Brazauskas, signed the Treaty […] in which both parties promised to enable Poles in Lithuania and Lithuanians in Poland to write in documents their names according to the original spelling (PAP 2012).

> The Polish-Lithuanian treaty of 1994 provides for the introduction of the spelling of Polish surnames in Lithuania and of Lithuanian surnames in Poland with the use of all diacritical marks (Litewska komisja... 2012).

Even the Polish president Bronisław Komorowski, speaking for the Polish state radio on February 17, 2011, voiced his concern over the friction between Poland and Lithuania, which in his opinion was ”fuelled by as yet unimplemented agreement signed in 1994, securing civic rights for the Polish community, including [...] the right to use surnames and names in their native form.”[12]

Lithuanian media, on the other hand, hold that the treaty allowed phonetic transcription of surnames:

> In the agreement between Lithuania and Poland regarding friendly relations and good neighborly cooperation, both countries agreed to allow ethnic minorities to “use their names and surnames in the minority language sounds” (Lithuania Tribune 2012).

In a similar vein, on 5 April 2012 the Lithuanian ambassador to the UK, Oskaras Jusys, stated in a letter to ”The Economist” that ”Lithuania fully adheres to the provisions of the Lithuanian-Polish treaty of 1994, which gives Lithuanian Poles the right to spell their names according to how the Polish language sounds.”[13]

The Legal Point of View

As has aptly been noted, ”[w]e live in the age of treaties [...] New technology and growing international exchange have established the need for an ever more precise and flexible international law – a need not satisfactorily met by customary law [...] Considering [...] that the number of states capable of drafting and concluding treaties seems to be growing, it is not surprising that treaties are concluded far more frequently than ever before” (Linderfalk 2007, 1).

According to the Vienna Convention of 1969, a treaty is ”an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”[14] (article 2(1a)). It may go by different names, such as declaration, protocol, administrative agreement, convention and many others. On the basis of the number of contracting parties, treaties are divided into bilateral (signed by two states) and multilateral (with three or more parties involved). Regarding the language(s) in which they are drawn, there may be monolingual (a rare option), bilingual or plurilingual treaties, of which the last type is often the result of the wish to negotiate the treaty in a third language which will prevail in the case of a difference (Aust 2010, 250-255; cf. also Cao 2007, 138-140 and 143-153).

[12] http://www2.polskieradio.pl/eo/print.aspx?iid=149518, retrieved Aug. 22, 2013.
[13] http://www.economist.com/node/21552171, retrieved Aug. 22, 2013.
[14] Vienna Convention on the Law of Treaties. United Nations, *Treaty Series*, vol. 1155, p. 331. Retrieved Aug. 19, 2013, from http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

As Matulewska and Nowak (2006) have pointed out, no-one seems to know who the translators responsible for the erroneous legal translations of important state documents are; it is similarly difficult to establish in which language the negotiations that led to the signing of the treaty under consideration had been conducted. This is deplorable insofar as that information might shed some light upon the causes of potential mistranslations. Aust (2010, 251) notes that bilateral negotiations are often held in the language of only one of the states, or in a third language common to both; the choice of the language of negotiations is then in turn reflected in the choice of the language used to draw up the resulting treaty, as well as of the language text to prevail in case of divergence. The aforementioned bilateral treaties between the Republic of Poland and all its neighbours were all bilingual: Polish and respectively German, Ukrainian, Russian, Lithuanian, with both used languages declared equally authentic. Incidentally, the same held for analogous treaties between Poland and non-neighbouring countries (Hungary, Latvia, Estonia, Georgia, Moldova, Bulgaria, Romania, France, Italy, Spain) – these were all prepared in Polish and the titular language of the other respective contracting party. Only in the case of the treaty with the Czech and Slovak Federal Republic, the languages of the treaty were the equally authentic Polish and Czech, without the use of the Slovak language. However, in the case of the 1993 treaty with Turkey or the 1996 treaty with Greece, there were three languages – Polish, Turkish (or Greek respectively) and English – with the English text prevailing in case of divergence. Similarly the 1995 treaty with Uzbekistan was prepared in three equally authentic languages: Polish, Uzbek and Russian, with the Russian text prevailing.

It is known that the negotiations that led to the signing of the Polish-Lithuanian treaty of 1994 were long and arduous, as reported on September 8, 1994 in the Polish parliament by Iwo Byczewski, Poland's deputy foreign minister at the time. Referring to the article of interest here, he revealed:

> Finally the issue that aroused the most controversy and interest during negotiations, that is the issue of safeguarding minority rights in both states. […] Note that similar solutions, although not as detailed, have been adopted in other treaties, signed by Poland with Russia, Ukraine, Belarus and the Federal Republic of Germany. We are talking here of articles 14 and 15. Article 14 contains a detailed catalogue of minority rights. I wish to draw the attention of the Committee to the provision concerning the use of given names and surnames in the version ['w brzmieniu'] of the minority languages. Hammering it out took us a lot of time. The aim of this provision is to protect the given names and surnames of the members of Polish minority […], which were often deformed in the past by transcription.[15]

Byczewski's words would seem to indicate that the discrepancy between the Polish and Lithuanian language version is due to a mistranslation from Polish into Lithuanian. On the other hand, given the specific and delicate nature of the negotiations whose outcome is the drafting of a treaty, it is not easy at times to delineate translator turf from politician turf. Pisarska and Tomaszkiewicz emphasise:

[15] Dyskusja w Sejmie RP nad rządowym projektem ustawy o ratyfikacji Traktatu między Rzecząpospolitą Polską a Republiką Litewską o przyjaznych stosunkach i dobrosąsiedzkiej współpracy. Retrieved Jan. 5, 2014, from http://www.pogon.lt/docs/LT_ratyfikacja.pdf.

> And one more delicate function of the translator on exactly the level of international treaties. The preparation of each language version of a legal text, which in consequence would be legally binding for all the member states of some international organisation, takes place under intense political pressure. Either some of the states wish to preserve their national specificity and to emphasise their independence, or the texts contain certain intended ambiguities that leave a margin of freedom in interpreting (1996, 190-191).

The above observation is further confirmed by Cao, who reminds that

> in international diplomacy, negotiators frequently resort to a compromise that glosses over their differences with vague, obscure or ambiguous wording, sacrificing clarity for the sake of obtaining consensus in treaties and conventions […] Sometimes a provision is delicately left vague (known in French as *flou artistique*) to paper over a failure to reach full agreement (2007, 153).

The Point of View of Translation Theories

While the existence of two (or more) language versions of a treaty must have resulted from translation, its directionality is neither obvious nor easy to determine. What is clear, though, is the fact that in the translation into English the Polish side evidently takes the word in question to carry figurative meaning – Example 3 (ii) – whereas the Lithuanian side opts for the literal meaning – as in Example 4 (ii) and Example 5 (i). Thus only reference to a third language helps reveal the hidden divergence in Polish between the meaning of the phrase in legal language and its meaning in colloquial language. That kind of divergence has been listed as one of the potential pitfalls for legal translators by Matulewska (2008, 61). Moreover, as Pieńkos noted,

> [i]t is particularly dangerous to translate from a (closely) related language, i.e. when one assumes as a semantic equivalent the word that corresponds morphologically to the word to be translated, but does not have the same meaning or is an accurate translation in some meanings only […] Most legal terms are legal words that preserve their colloquial meaning – alongside their technical meaning, which differs more or less from the national language and which is frequently treacherously ambiguous (1999, 179-180).

In history there have been numerous theories of translation. Certain ideas are today discarded – many, however, are still supported; a discussion of their relative merits and of the criticism that they occasioned would be far beyond the scope of this article (on the topic, cf. e.g. Snell-Hornby 2006, Munday 2012, and Pym 2010). How applicable are they to the actual job of a translator – and, notably, a legal translator?

"There can be few professions with such a yawning gap between theory and practice [as that of a translator]" (Chesterman and Wagner 2002, 1), which statement is relevant to the present topic insofar as Wagner herself is a practising translator of UE documents (which include treaties). More specific reservations are voiced with reference

to legal texts within the functionalist theoretical framework by Garzone (2000, 3[16]), who observes that "legal writing is typically ritualistic and archaic, being subject to very strict stylistic conventions in terms of register and diction as well as highly codified genre structures"; therefore "the legal translator has to cope with problems that are different from those encountered in other sectors". Consequently, "a general translation theory, albeit conceived for comprehensiveness and extensive application, seems to be somehow inadequate".

Moreover, the very status of a theory of translation is differently understood by different scholars: should it merely describe the observed phenomena (possibly predicting future developments), or should it (also) offer explicit advice and guidance to translators? In other words, should it be merely descriptive or downright prescriptive[17] (possibly including description as its point of departure)? If one assumes that description is all that a theory of translation can aspire to, with even the explanation for the observed phenomena going perhaps too far[18], then the present article should be limited to merely describing the observed mistake in translation: to this end, older theories that focus on equivalence should be sufficient. For example Kade (1968, 202) observed that "die Intention eines Senders niemals völlig mit dem Effekt bei seinem Empfänger übereinstimmt." In Kade's classification, the case under consideration would likely be understood as the case of *Eins-zu-Teil-Äquivalenz*, where of the two potential meanings of the phrase in SL only one TL meaning (and perhaps the wrong one, too) has been chosen by the translator(s).

However, if a deeper explanation of how the mistake came about is needed, theories that take *purpose* as their focus might be more appropriate, though at the risk that "linguistics will not be of much help" and that one will engage instead in "applied sociology, marketing, the ethics of communication, and a gamut of theoretical considerations that are only loosely held under the term 'cultural studies' " (Pym 2010, 49). Of these, Skopos theory appears especially promising. Within the framework of this theory, Vermeer gives an example of a business contract, which in his opinion does not have to be translated "literally" but should be "adapted to target-culture conventions" and "worded in such a way that the legal implications of the project are clear and there will be no unexpected complications in the future". However, then Vermeer adds: "Unless complications are part of the 'game' [skopos][19] as is often the case in diplomatic negotiations" (1996, 32-33). This disclaimer is reminiscent of the previous observations by Pisarska and Tomaszkiewicz 1996 and by Cao 2007.

Finally, the present discussion could aim at offering advice on how the mistake in question may have been avoided – for instance Gouadec 2010 describes in detail the twelve steps to be taken in the translating assignment and includes among them

[16] Pagination given after the electronic text retrieved Jan. 4, 2014, from http://www.academia.edu/771698/Legal_Translation_and_Functionalist_Approaches_A_Contradiction_in_Terms.

[17] E.g. discussing Skopos theory, Pym (2010, 59) refers to its "strong pedagogical purpose beneath a thin veil of descriptivism."

[18] Pym (2010, 68) is of the opinion that if "theories about the posssible causes (personal, institutional, historical) explaining why people translate differently" are termed descriptive, this is a misnomer.

[19] The gloss in square bracket is by Vermeer.

consulting "other documents produced for the same work provider or in prior […] translation" (p. 18), a postulate that in this particular case was accidentally or intentionally neglected.

Thus, due to the uncertainly about the exact nature of the potential insight that translation theories might offer in the analysed case, it has been decided, in a manner that could possibly be described as eclectic, to limit the present discussion only to some (elements of) theories that might (it is argued regardless of Wagner's doubts) contribute some theoretical support to the analysis of the faulty translation of the Polish-Lithuanian treaty under consideration[20]. As Garre noted in reference to translating documents relating to human rights, "many translation theories and practices set out to establish one overall approach to as many text types, translation situations and purposes as possible. But the problem is whether existing translation theories are in fact applicable in the translation of international human rights texts" (1999, 3). One needs merely to replace "human rights texts" with "treaties" to obtain an equally applicable proposition.

Certainly the dichotomy between formal vs. dynamic equivalence (the latter understood as having equivalent effect) might be of use (cf. e.g. Nida 1964, 159ff): indeed the Lithuanian version reveals formal but certainly not dynamic equivalence to the Polish phrase. If one substitutes *equivalence* with a more up-to-date sounding notion of *matching* or *correspondence*,[21] the nature of the problem will not change much. One may also take a broader perspective (from analysing sentences or their elements to analysing the whole text), much as Translation Studies have, in the wording of Snell-Hornby, "taken the pragmatic turn", as embodied e.g. in the emergence of text linguistics. The notion of function, so important for the Skopos theory (cf. e.g. Vermeer 1996), is also to be drawn upon. However, Vermeer's assumption that the text is an *offer of information* (Informationsangebot), "from which the receiver accepts what they want or need" (Nord 2006, 132) potentially leads to the conclusion that the ambiguity embedded – to varying degrees – in both the Polish and the Lithuanian language version of the treaty is precisely the embodiment of this postulate; in fact, it is *the outcome of the translation process desired for a target purpose by the target addressees in target circumstances*.

Within the framework of the functionalist approach it is also possible to treat the mistranslation in question as an example of what Nord (2005, 81) terms *instrumental translation*[22], "intended to fulfil its communicative purpose without the recipient being conscious of reading or hearing a text which, in a different form, was used before in a different communicative situation." As Nord (ibid.) emphasises, "an instrumental translation is legitimate only if the intention of the sender or author is not directed exclusively at an SC [source culture] audience but can also be transferred to TC [target culture] receivers, so that the information offer of the TT [target text] is included in the information offer of the ST [source text]". Strictly speaking, this is the case: the TT meaning under consideration here is one of the two possible meanings that the corresponding expression in ST may assume.

[20] After all, "we should feel free to move between the paradigms, selecting the ideas that can help us solve problems" (Pym 2010, 165).

[21] Cf. Pym's question: "What happened to the equivalence?" (2010, 64-65).

[22] As opposed to documentary translation.

Many volumes have been devoted to the constatation that cultural differences between source culture and target culture (e.g. different types of institutions, such as – in legal translation – courts) render translation difficult. Nevertheless, the present article focuses not on profound cultural differences, but on simpler (and more trivial) language differences. Cao (2007, 34) refers in that context to the "often invisible crossover in translation" and points out that "[w]ords may be written and read in the same language but people's interpretations in the SL and TL differ due to the differences in language use," which – if one disregards for a moment the potential intentionality of the mistranslation – is exactly what happened in 1994.

Yet another proposal for interpreting (and possibly preventing) the mistake under consideration comes from scholars who accentuate the notion of *uncertainty*. One can never be certain about the intention of a text, and this uncertainty might even extend to communication in general. These theories are quite prescriptivist in the solutions they offer to deal with this problem. If one can not rely on the meaning of the ST, what is one to do? Certainly theories of consensus (cf. Pym 2010, 102-103) can help: the ST meaning needs to be established by discussion before a translation is made – the move obviously neglected in the translating of the 1994 treaty.

Concluding Remarks

In terms of the language, evidently the two different readings of the controversial passage in the 1994 treaty belong to two different realms: to the realm of the language of the law ('wording, content') and to the realm of general language ('sound'). In fact, the former is included in the latter, in line with the opinion expressed by Pieńkos that "the language of the law of normative acts, the legal language, the legal jargon[23], in order to express what it is to express refers not only to specific legal lexis and to certain characteristic peculiarities of inflection, but also to all of the national language" (1993, 302). In such cases translators must be aware of their responsibility – but also of the limitations of their job. Referring to the distinction between *understanding* (i.e. automatic cognition without consciously reflecting on the meaning) and *interpretation* (where due to some ambiguity or other unclarity the receiver is forced to reflect on the meaning), Šarčević notes in the context of international treaties:

> it is generally agreed that the translator has no authority to resolve an ambiguity in the source text as this would be an act of interpretation. This is especially true in the case of treaties which are often the product of political compromises where clarity must be sacrificed for the sake of obtaining consensus, thus resulting in ambiguous or vague formulations […] [O]ne of the biggest fears of treatymakers is that translators will clarify an intentional ambiguity or unclarity, thus upsetting the delicately achieved balance and inviting adverse interpretations (1997, 92).

Similar advice is given to legal translators by Cao who stresses that

[23] The distinction between the language of the law [język prawny] and the legal language [język prawniczy], introduced in the 1940s into Polish by Bronisław Wróblewski, is not necessarily paralleled in the systems of other European states, cf. e.g. http://transliteria.blogspot.com/2012/05/judicial-decisions-in-polish-and.html, accessed Sept. 4, 2013.

> important advice to translators of international instruments is that translators should avoid attempts to clarify vague points, obscurities and ambiguities, and as pointed out, those who do run the risk of upsetting the delicately achieved balance and misrepresenting the intent of the parties […] However, there is also the difficult question of how the translator distinguishes the deliberate obscurity […] from inadvertent obscurity (2007, 153).

The question remains open then how much responsibility for the situation described above rests with the translator(s) and how much – with the politicians. This issue is closely related to the following question: "to what extent can one disregard the literal meaning of the original texts[24] (even when there is no discrepancy between them) if it appears that the literal meaning does not reflect what the drafters intended to say, or the way in which a provision is applied in practice?" (Akehurst 1972: 25). It appears that in the case under consideration, the inclusion of a third language in the text of the treaty might have reduced the ambiguity. It is also possible, however, that the double-entendre on the part of the negotiators may have been intentional, since in this way the public opinion in each state has been left free to choose the meaning it wants.

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