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Preface

This volume of *Comparative Legilinguistics* contains six articles, two of them refer to language and the law, one to forensic linguistics and three deal with legal translation.

The first one, written by Agnieszka DOCZEKALSKA (Poland), titled *Legal multilingualism as a right to remain unilingual – fiction or reality?* touches upon the discrepancies between language versions of European Union legal acts. The author identifies methods applied by the judges of the Court of Justice of the European Union and national courts to deal with such discrepancies. She discusses whether the principle of legal multilingualism guarantees legal certainty and what courts can do to ensure that a right to remain unilingual is observed.

Anna SOBOTA (Poland) analyses whether modern legal drafting implements the revolutionary changes argued for by the plain language movement and whether modern legal texts are made more user-friendly. The corpora for her research were modern legal drafts and selection of American consumer contracts from 2011 and 2012.

Raquel TARANILLA (Spain) elaborates on the genre of Spanish civil and criminal judgments. The author discusses whether those judgments are homogeneous or whether they have any specific linguistic characteristics. She claims that a comprehensive description of the judicial genre of Spanish judgments should include a genre variation relating to both the variant of judicial order and the variant of judicial instance condition.

Joanna GRZYBEK (Poland) presents the Chinese polysemous term 机关 *jīguān* used in the General Principles of the Civil Law of PRC of April 12, 1986 and the Civil Procedure Law of PRC of April 9, 1991. The author investigates translated (English) versions of mentioned statutes and presents English equivalents of the term 机关. She proposes German and Polish equivalents of the term in question taking into account English as an intermediary language. She indicates the necessity to determine the intended meaning of legal terms from the context and establishing constituent features of particular concepts, especially when using the intermediary language.

Ewa KOŚCIAŁKOWSKA-OKOŃSKA (Poland) compares and analyses the original (English) and the translated (Polish) versions of the Medical Device Directive (93/42/EEC). The author discusses whether the Polish version fully reflects assumed terminological consistency. She argues that the role of the sworn translator is changing to be more active in the institutional sense: to officially inform on and indicate errors, monitor modifications introduced and verify resultant effects through the administrative powers of professional associations.

The last text in the volume written by Joanna SYCZ-OPOŃ focuses on machine translation (MT) technology in the process of professional translation. The author touches upon MT software available on the market that supports the English-Polish language pair, that is to say Google MT and Microsoft MT. She discusses the process of post-editing of MT raw output to verify whether machine translation (MT) technology can be utilized in the process of professional translation.

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

LEGAL MULTILINGUALISM AS A RIGHT TO REMAIN UNILINGUAL – FICTION OR REALITY?[1]

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Abstract: The rule of law, guaranteed in democratic countries, requires that those who are subject to the law should be able to know the law (the principle of legal certainty). Hence, a citizen should have an access to laws in a language that he or she knows. Therefore, in multilingual settings, the principle of legal multilingualism requires that legal acts be drafted in all official languages and provides that all language versions be equally authentic and contribute to the meaning of a legal act. Thus, citizens can read laws in a language they understand. On the other hand, since no two languages are identical, the discrepancies between language versions, due to the nature of language or a mistake, are inevitable. The paper identifies methods applied by judges of the Court of Justice of the European Union and national courts to deal with the discrepancies between language versions of EU legal acts. Through case law analysis, the paper demonstrates whether the principle of legal multilingualism actually guarantees legal certainty and what courts can do to make the right to remain unilingual in a multilingual setting real.
Keywords: legal multiligualism, EU Texas, legal translation

WIELOJĘZYCZNOŚĆ PRAWA JAKO PRAWO DO JEDNOJĘZYCZNOŚCI - FIKCJA CZY RZECZYWISTOŚĆ?

Abstrakt: Zgodnie z zasadą pewności prawa, wynikającą z zasady demokratycznego państwa prawa, obywatele powinni mieć możliwość zapoznania się z obowiązującymi aktami prawnymi. Zatem adresat norm prawnych powinien mieć dostęp do prawa w języku, który zna. Aby zagwarantować spełnienie tego wymogu w środowisku wielojęzycznym (takim jak państwo wielojęzyczne lub Unia Europejska), akty prawne uchwala się i publikuje we wszystkich językach urzędowych, przyjmując, że wszystkie wersje językowe są w równym stopniu autentyczne i tworzą znaczenie aktu prawnego. Dzięki temu obywatel może oprzeć swoją wiedzę o obowiązującym prawie tylko na aktach prawnych uchwalonych w jego języku ojczystym. Z drugiej strony, trudno jest uniknąć niezgodności między wersjami językowymi aktów prawnych, wynikających z natury języków (nie ma dwóch identycznych języków) lub błędów popełnionych podczas tworzenia prawa. Artykuł opisuje metody, stosowane przez sędziów Trybunału Sprawiedliwości Unii Europejskiej oraz sądów krajowych, w celu usunięcia niezgodności między wersjami językowymi aktów prawnych Unii Europejskiej. W artykule, na podstawie analizy orzecznictwa, wyjaśniono, czy unijna zasada wielojęzyczności prawnej *de facto* gwarantuje pewność prawa oraz jak sądy mogą zapewnić prawo do oparcia swojej wiedzy o wielojęzycznym prawie tylko o wersję w znanym adresatowi języku.
Słowa kluczowe: wielojęzyczność prawna, teksty unijne, tłumaczenie prawnicze

[1] The work of the author has been supported by the Polish National Science Centre funds allocated on the basis of the decision no. DEC-2013/11/D/HS5/01822.

Introduction

The paper analyzes whether legal multilingualism in the European Union actually provides EU citizens with the right to remain unilingual, i.e. to base their knowledge about multilingual EU law on one language version of a legal act, and still enjoy the certainty of law.

The first part of the paper gives a short overview of the meaning of the principle of legal certainty in the European Union. Only the law, which is predictable for a person to whom it is addressed, guarantees legal certainty. Hence, legal rules should be clear, precise and comprehensible for those who are subject to them. In particular, the addressees must have access to legal rules drafted in a language that they know. Therefore, in the European Union, the principle of legal multilingualism, explained in detail in the second part of the paper, requires that laws be drafted in all official languages. Consequently, the addressees of EU legal acts (especially of regulations that are directly applicable) do not have to acquire competence in a foreign language to understand the laws that apply to them. Hence, they can remain unilingual.

Legal certainty cannot, however, be guaranteed only by drafting and publishing EU legal acts in all official languages. From a legal standpoint, all official language versions must be equal and have the same force of law. This is required by the principle of equal authenticity explained in the third part of the paper. Since this principle requires that all language versions be considered when law is interpreted, it is questionable whether EU citizens can actually base their knowledge about law only on one language version and whether multilingual law is *de facto* predictable, especially in the case of discrepancies between language versions. These issues are addressed in the last part of the paper, which more closely examines the methods, applied by the Court of Justice of the European Union and national courts when they interpret multilingual EU law.

1. The principle of legal certainty in the European Union

To act in accordance with the law, a person must know the laws to which the person is subject. In legal systems rooted in Roman law[2] and in common law countries,[3] it is presumed that the addressees of the legal norms know them; therefore they cannot justify illegal action by claiming ignorance of the law. Thus, the laws should be stable, and any amendments or new legal rules ought to be announced well in advance to give sufficient time to the addressees to learn about them and to adjust their planned actions accordingly. Moreover, the legal rules should be intelligible, which requires that they be clear, precise and available in a language that those subject to the law can understand.

Therefore, when law is applied within territory inhabited by people who speak different languages, it is usually required that the law be provided in the languages that

[2] The principle is expressed in the following Roman brocard: *ignorantia iuris non excusat* (ignorance of the law does not excuse) or in the Latin maxim, known in Polish legal culture: *ignorantia iuris nocet* (not knowing the law is harmful).

[3] As to common law countries, see, for instance, Section 19 of the Criminal Code of Canada (R.S. 1985, c. C-34) on the ignorance of the law.

the inhabitants know. As a result, a person who is subject to a law has access to the law in a language that the person understands. This guarantees the principle of legal certainty – one of the general principles of EU law.[4]

The rich literature, mainly in the field of legal theory, provides various approaches to and defintions of legal certainty.[5] Since the analysis of this concept goes beyond the scope of this paper, I will refer only to the explanation of the principle given by the Court of Justice of the European Union:

> *Community legislation must be certain and its application foreseeable by individuals. The principle of legal certainty requires that every measure of the institutions having legal effects must be clear and precise and must be brought to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and starts to have legal effects.*[6]

The Court has also recognized the importance of providing EU law in all official languages for legal certainty and has decided that, if a regulation, which is directly applicable in Member States, is not published in the language of a Member State, it cannot be enforceable against individuals in that State.[7]

In addition to drafting legal acts in all official languages, the versions must be in a high enough quality to guarantee that the law is certain and predictable. All language versions should be clear, precise and render the same meaning. In each EU institution in which legislative drafting takes place, a group of lawyer-linguists is responsible for the quality of language versions and especially for consistency and congruity between them.[8] The Supreme Administrative Court of Poland has pondered whether it is possible to consider the act as not published in the Polish language, thus unenforceable against Polish citizens, when a Polish version of an EU legal act is not consistent with other official language versions.[9]

The principle of legal certainty is guaranteed in the process of legal drafting but also in the process of adjudication.[10] In the case of multilingual law, it is particularly important how the principle of legal multilingualism and the principle of equal authenticity are understood by courts.

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4 See, for instance, the judgment of 6 April 1962 in the Case 13/61 Kledingverkoopbedrijf de Geus en Uitdenbogerd v Robert Bosch GmbH, ECR 1962 00089.

5 For the most recent and relevant analysis, see Paunio 2013 and the literature quoted there.

6 Par. 124 of the judgment of 22 January 1997 in the Case T-115/94 Opel Austria GmbH v Council of the European Union, ECR 1997 II-00039.

7 Judgment of 11 December 2007 in the Case C-161/06 Skoma-Lux sro v Celní ředitelství Olomouc, ECR 2007 I-10841; see also Bobek 2007.

8 For more details on the work of lawyer-linguists, see Guggeis 2014, 53-54, Somssich, Várnai, Bérczi 2010, 22-25.

9 The judgement of the Supreme Administrative Court of Poland of 23 April 2008, II GSK 31/08.

10 See Wojciechowski 2010, 560.

2. The principle of legal multilingualism in the European Union and the right to remain unilingual

It is already difficult to guarantee the principle of legal certainty and to draft a law even in one language so that the law is clear and comprehensible to those who are subject to the law and that a predictable and unequivocal interpretation by a court is assured. To fulfill these requirements when a law is drafted in two languages is even more challenging. The more languages involved in legislative drafting, the greater the challenge becomes.

The extreme case of a legal multilingualism has been developed by the institutions of the European Union. Today, EU law is drafted and authentic in twenty-four languages and applied, sometimes directly[11], in twenty-eight Member States – each of them having its own specific legal system and its own variety of a legal language.

The first founding treaty – the Treaty of Paris establishing the European Coal and Steel Community – was enacted and authentic only in French.[12] Signed in 1951, this Treaty began the European integration that led to the rise of the European Union and its multilingual law. At that time, however, the language policy and legal multilingualism issue, especially languages in which the laws were drafted, although discussed, were not regulated.[13] The two successive founding treaties – the Treaty establishing the European Atomic Energy Community (the Euroatom Treaty) and the Treaty establishing the European Economic Community (the EEC Treaty), both signed in Rome on 25 March 1957 - were also drafted only in French. However, after preparation of versions in Dutch, Italian and German, the Treaties were enacted and authentic in the four languages.[14] Moreover, the Treaties granted the competence to develop the language policy of the Communites to the Council.[15] As a result, the Council in the very first Regulations recognized Dutch, French, Italian and German as official and working languages of the Communities' institutions and required that EC law be drafted in the four languages.[16] The latter requirement provided in Article 4 of the Council Regulation 1/1958 introduced the principle of legal multilingualism.

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11 Regulations are directly applicable in all Member States; see article 288 of the Treaty on the Functioning of the European Union (consolidated version OJ C 326, 26.10.2012, p. 171).

12 See Article 100 of the Treaty of Paris. The Treaty signed on 18 April 1951, entered into force on 23 July 1952, and expired after 50 years, i.e. in 2002.

13 For details on the language policy discussion between the ministers of foreign affairs of Belgium, France, Germany, Italy, Luxembourg and the Netherlands, see Reuter 1953, 81-82 and Stevens 1967, 703-704.

14 For details on preparing the language versions of the Treaties, see Akehurst 1972, 20-31.

15 See Article 190 of the Euroatom Treaty and Article 217 of the EEC Treaty replaced by Article 290 of the Treaty establishing the European Community (OJ C 325, 24.12.2002, p.145), and nowadays by Article 342 of Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 193).

16 See respectively Article 1 and Article 4 of the Regulation No 1 determining the languages to be used by the European Economic Community **(**OJ 17, 6.10.1958, p. 385–386**)** and Regulation No 1 determining the languages to be used by the European Atomic Energy Community (OJ 17, 6.10.1958, p. 401–402); hereinafter Regulation 1/1958.

While new Member States joined the European Communities then and are joing the European Union today, the official languages of new Member States that have not been yet recognized as official languages of the European institutions have been granted the status of official language.[17] The grow in the number of EU official and working languages has increased the number of possible language combinations. The four official and working languages indicated in the Council Regulation in 1958 made 12 combinations. In contrast, presently twenty-four EU official and working languages create 552 combinations.[18] Such a growth in the number of EU languages from 1958 to 2013, when Croation gained the status of an EU official and working language, results in the increase of translation and interpretation costs. In 2012, the European Commission estimated that the total cost of translation and interpretation in all of the EU institutions is approximately €1 billion per year.[19]

The replacement of EU legal multilingualism with the policy of one EU language (e.g., English, Esperanto or Latin) has been proposed several times.[20] However, despite the costs and other difficulties brought by the extention of legal mutilingualism, no steps have yet been made to decrease the number of languages in which EU law is drafted.[21]

A full legal multilingualism is supported by the EU "united in diversity" policy, but if one wants to focus only on legal arguments for such a challenging and expensive multilingual legal drafting, the following two reasons should be sufficient to justify the principle of legal multilingualism.[22] First and foremost, after being enacted by EU institutions and published in all official languages in the Official Journal of the European Union, regulations enter into force and are directly applicable in all Member States. This means that regulations do not need to be implemented or transposed by national

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17 It is decided during accession negotiations whether a language will be granted the status of an official language of the EU institutions, and, if so decided, the Regulation 1/1958 is amended accordingly. In the case of Member States, that have more than one official language, all official languages of a Member State do not always gain this status in the institutions; e.g. Irish did not become an official language of the EC when Ireland joined the Communities in 1973, but later in 2007; Turkish which is together with Greek an official language of Cyprus – a member of the EU since 2004 – is not recognized as EU official language.

18 According to the formula n (n-1), where 'n' is a number of languages ; see Pym 2001.

19 See European Commission 2012, 3.

20 In various language policy scenarios alternative to EU legal multilingualism (including "*de facto* English hegemony", "Esperanto Union" and "Latin as *lingua franca*"), see Christiansen 2006, 21-44; see also Pool 1996, 159-179; on Latin as the language of EU law, see, for instance, Ristikivi 2005, 199-2002; on Esperanto as the language of EU law, see Coulmas 1991, 30-32.

21 This does not mean that no efforts were made to reduce the translation and interpretation costs. For instance, during Parliament debates, the relay or pivot languages system is applied; i.e., interpretation is done first into a few pivot languages and then from those languages into the remaining languages (Gazzola 2006, 402-404, 407-410, Wagner, Bech, Martínez 2014, 94,106). Sometimes, asymmetric systems are applied; e.g., 'Speak All, Listen Three' (SALT) – during a meeting participants can speak any official language, but interpretation is provided only in English, French and German (Wagner, Bech, Martínez 2014, 106). Another solution was adopted in 2004 by the Council by offering the request-and-pay system; according to which, Member States partially pay for interpretation service provided in their language (Doczekalska 2009, 351).

22 For more deatils on legal reasons justifying EU legal multilingualism, see Doczekalska 2009, 343-346.

authorities to bind EU citizens. Moreover, directives that require transposition into national legal systems, have a direct effect.[23] Thus, EU citizens can enforce rights given by an EU directive in a national court, even if a Member State fails to transpose this directive. The principle of legal certainty requires that those to whom a law id applicable should be able to understand the law. Consequently, they should have access in the language that they understand to legal acts that affect them and that they can invoke before a court. Therefore, EU legislation should be drafted, enacted and published in all official languages.

However, from a legal standpoint, providing the access to law in twenty-four EU official languages is not sufficient to guarantee legal certainty. The predictability of multilingual law can be ensured for EU citizens who base their knowledge about law on only one language version only if all language versions of EU legal act are equally authentic.

3. The principle of equal authenticity

Whether legal multilingualism actually provides EU citizens with the right to remain unilingual and at the same time with the certainty of multilingual law depends on how the principle of equal authenticity of all official languages versions is understood.

The Council Regulation 1/1958, which requires in Article 4 that regulations and other documents of general application must be drafted in all of the official languages, directly provides only the principle of legal mutilingualism. Although the Regulation does not explicitly state that official language versions of the legal acts indicated in Article 4 are equally authentic, according to some authors the principle of equal authenticity results from the provision of Article 4 (McCluskey 2001, 10).[24]

Nevertheless, in 1982, the European Court of Justice for the first time explicitly confirmed that the different language versions of EC legislation are equally authentic and explained that "[a]n interpretation of a provision of Community law thus involves a comparison of the different language versions".[25] This requirement, on one hand, is in

[23] For more details on direct effect, see, for instance, Robin-Olivier 2014, 165-188.

[24] The principle of equal authenticity is very often laid down directly. For instance, as far as EU primary law is concerned, all treaties provide explicitly that the texts of a treaty in each of the twenty-four languages are equally authentic; see, for instance, Article 55 of the Treaty on European Union, which also applies to the Treaty on functioning of the European Union (according to Article 358 of TFUE). In the case of international law, Article 33 of *Vienna Convention on the Law of Treaties* of 1969 (United Nations, Treaty Series, vol. 1155, p. 331) directly provides the principle of equal authenticity. Section 18 of the *Canadian Charter of Rights and Freedoms*, 1982, serves as an example of a direct indication of the principle of equal authenticity in national law.

[25] Par. 18 of the judgement of 6 October 1982 in Case 283/81 Srl CILFIT [1982] ECR 3415. The principle of equal authenticity and the requirement to compare different language versions have been confirmed numerous times in the settled case law of the Court of Justice. See, for instance, the following recent cases: par. 110 of the judgment of 2 October 2009 in Case T-324/05 Republic of Estonia v Commission of the European Communities, ECR 2009 II-03681; par. 73 of the judgement of 17 May 2013 in Joined Cases Trelleborg Industrie SAS (T-147/09) and Trelleborg AB (T-148/09) v European Commission, not yet published in the

accordance with the principle of equal authenticity, according to which all versions have the same force of law, and all of them are binding. On the other hand, the expectation that all language versions are considered when multilingual law is interpreted might contradict the right to remain unilingual, since the acquaintance of multilingual law acquired only through one language version might not be sufficient to forsee properly how law will be interpreted and applied.

If all language versions of EU legislation are equally authentic, and hence are binding to the same degree, they must have the same legal effect. Therefore, it is presumed that all of them have the same meaning.[26] In some multilingual legal systems, although not in EU legislation, this presumption is explicitely indicated by the law.[27] If all language versions have the same meaning, then the meaning of multilingual EU legal acts can be determined on the basis of one language version. Thus, the right to remain unilingual is preserved.

However, the presumption of the same meaning can be refuted since, due to the nature of language, it is very difficult to achieve absolute equivalence between two language versions.[28] In the case of EU law, the perfect correspondence should be attained in twenty-four languages.[29] Consequently, divergencies between language versions are inevitable due to the nature of language or to mistakes.[30]

The presumptions on which the principles of legal multilingualism and of equal authenticity are based create a paradox, which can be described as an interpretation paradox (Figure 1), since it is the most evident when EU multilingual law is intepreted.[31] To find out whether this paradox can be explained, and whether the addressee of EU multilingual law can predict how the law will be applied on the basis of just one

ECR; par. 20 of the judgement of 21 May 2014 in Case T-61/13 'Melt Water' UAB v. OHIM, not yet published in the ECR.

26 On the presumption of equal meaning, see Doczekalska 2009, 363-364 and Šarčević 2014, 52-54.

27 For instance, in Hong Kong, since 1987, the *Interpretation and General Clauses Ordinance* in Part II A, Section 10B(1) states that both English and Chinese texts of an ordinance shall be equally authentic, and Section 10B(2) presumes the provisions of a statute to have the same meaning in each authentic language text.

28 See, e.g. the judgment of 3 March 2005 in Case C-428/02 Fonden Marselisborg Lystbådehavn v Skatteministeriet and Skatteministeriet v Fonden Marselisborg Lystbådehavn, ECR 2005, I-01527, in which the Court analyzed the meaning of the concept "vehicle" due to a difference between the language versions of Article 13B(b)(2) of the Sixth Directive; see Cao 2007, 33 who examines this case and an "issue of ambiguity that arises from the inconsistency in meaning of the same equivalent word in the different languages".

29 Biel 2014, 69-70.

30 See, e.g., the judgment of 17 October 1996 in Case C-64/95 Konservenfabrik Lubella Friedrich Büker GmbH & Co. KG v Hauptzollamt Cottbus, ECR 1996, I-05105, in which the Court dealt with a "material error" (par. 18) caused by the use in the German version of Commission Regulation (EEC) No 1932/93 of 16 July 1993 establishing protective measures regarding the import of sour cherries (OJ L 174, 17.7.1993, p. 35–36) the term Süßkirschen (sweet cherries) instead of Sauerkirschen (sour cherries).

31 For more details, see Doczekalska 2009, 361-366 on paradox of identicalness.

language version, the practice of interpretion, especially in the case of discrapencies between language versions, should be considered.

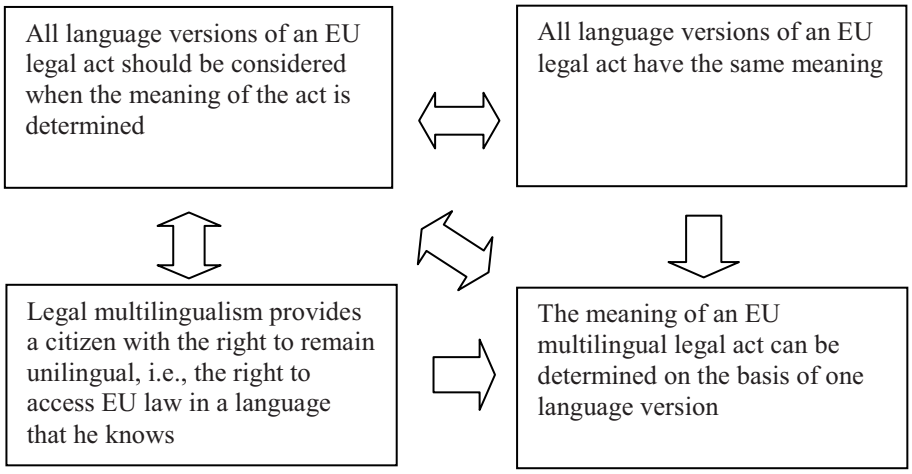

Figure 1. The paradox of interpretation; A⇔ B – statements A and B are contradictory to each other; A ⇨ B – statement B follows statement A.

4. The interpretation of EU multilingual law - to compare or not to compare?

In addition to the paradox described in the previous part, the theoretical presumptions on which legal mutilingualism is based create a paradox that ensues from the contradiction between the requirement to compare all language versions to determine the meaning of the interpreted legal act and the actual ability to perform this comparison. The European Court of Justice first stated that the interpretation of EC legal provisions requires all language versions to be considered in 1969, when EC law was authentic in only four official languages.[32] Today, EU law is drafted, enacted and authentic in twenty-four languages. It is practically unfeasible not only for EU citizens but also for the Court of Justice and national courts to compare all twenty-four language versions to determine the meaning of a legal provision. The practical difficulty has been noted by Advocate Generals who observed that this requirement involves a disproportionate effort and puts a practically intolerable burden on the national courts.[33]

[32] Par. 3 of the judgment of 12 November 1969 in Case 29-69 Erich Stauder v City of Ulm – Sozialamt, ECR 1969, 419.

[33] See par. 65 of the opinion of Advocate General F. G. Jacobs delivered on 10 July 1997 in the Case C-338/95 Wiener S.I. GmbH v Hauptzollamt Emmerich, ECR 1997, I-08151; par. 99 of the opinion of Advocate General Stix-Hackl delivered on 12 April 2005 in the Case C-495/03 Intermodal Transports BV v Staatssecretaris van Financiën, ECR 2005, I-08151; see Doczekalska 2009, 364.

Actually, national courts rarely declare in their judgements that the comparison of various language versions has been performed. Even then, the courts refer to just a few language versions. Usually interpretation of the version in the official language of a Member State is supplemented with the versions in widely known languages like English, French and German.[34] Moreover, the Court of Justice of the European Union seldom refers to all language versions when EU legal provisions are interpreted. The Court's judgements include the explanation of how the comparison is conducted, mainly when the divergence between language versions is observed.[35]

Even if the discrepancy between language versions occurs, the Court of Justice and national courts do not exclude the diverging version from the interpretation process. In such a case, the court goes beyond linguistic interpretation and interprets the provision "by reference to the general scheme and purpose of the rules of which it forms a part"[36] (teleological and contextual interpretation).[37]

Thus, the requirement to interpret law in the light of all language versions does not mean that all of them must actually be considered but that, in the case of divergency, none of them can be rejected.[38] This approach ensures that EU law is interpreted and applied uniformly. Therefore, the requirement of the principle of equal authenticity that all language versions must be compared and that the text of a legal provision cannot be considered in isolation[39] does not imply that a citizen must read EU law in all languages to understand its meaning. On the contrary, a citizen can base his knowledge on one language version, since no version can be excluded from interpretation, and consequently, uniform interpretation is ensured. The Court of Justice underlined that it is the principle of legal certainty that requires EU law to be interpreted uniformly.[40]

Hence, all three principles together (the principle of equal authenticity, the principle of legal multilingualism and the principle of uniform interpretation and the application of EU law) guarantee and comply with the principle of legal certainty.[41]

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34 On Polish courts see Doczekalska, Jaśkiewicz 2014; on British, Danish and German courts, see Derlén 2009, 9-10 and part 3.

35 See recent cases: the judgement of 21 May 2014 in Case T-61/13 'Melt Water' UAB v. OHIM, not yet published in the ECR; the judgment of 26 September 2013 in Case C-189/11 European Commission v Kingdom of Spain, not yet published in the ECR; judgment of 9 April 2014 in Case C-74/13 GSV Kft. v Nemzeti Adó, not yet published in the ECR; judgment of 10 July 2014, in Case C-307/13 Criminal proceedings against Lars Ivansson and Others, not yet published in the ECR.

36 Par. 28, Case T-61/13 "Melt Water" UAB v. OHIM, *op. cit.*, and the case law cited in par.28.

37 As observed by Baaij (2012), the Court of Justice sometimes takes the literal approach to discrepancies and then usually prefers the meaning rendered in the majority of language versions (majority argument). However, if the teleological and literal approaches lead to different interpretations, the Court chooses the former (Baaij 2012).

38 Doczekalska 2009, 364-365.

39 Par. 27, Case T-61/13 'Melt Water' UAB v. OHIM, *op. cit.*

40 Par. 34, Case T-61/13 'Melt Water' UAB v. OHIM, *op. cit.*

41 However, according to some authors the Court of Justice of the EU fails to find the balance between legal certainty and multilingualism, and therefore other interpretation methods should be proposed (e.g. proposal of one authentic version or of a limited number of authentic versions that are consulted), see Derlén 2011, Luttermann 2009 and Šarčević 2013 and 2014.

Conclusion

The principle of EU legal multilingualism provided in Article 4 of Regulation 1/1958 guarantees the access to EU legislation in the languages that those subject to EU laws understand. Thus, the principle ensures the certainty of law and helps to make law, which is directly applicable in twenty-eight Member States, predictable for the citizens, who can base their knowledge about EU legal rules merely on one language version of a legal act.

The principle of legal multilingualism is, however, complemented with the principle of equal authenticity, according to which authentic language versions of EU legislation must be considered and compared when an EU legal act is interpreted. This requirement questions whether the addressees of multilingual law can actually predict how legal rules are going to be applied, if they read them in only one language. The right to remain unilingual is especially challenged when the comparison of language versions reveals discrepencies between them.

The analysis of the meaning of the principle of equal authenticity reveals, however, that this principle and the requirements that follow it actually enhance the certainty and predictability of EU mulitilingual law. The equal authenticity means that all official language versions have the same weight and that none of them can prevail when the meaning of a legal rule is determined. Hence, none of the language versions can be rejected when a legal act is interpreted, even if it discloses differences with other versions. This approach to legal multilingualism ensures the uniform interpretation and application of EU law. Consequently, the certainty of EU law is guaranteed, because EU citizens in all Member States can enjoy the same rights and obligations despite the language version they choose to learn about EU law.

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THE PLAIN LANGUAGE MOVEMENT AND MODERN LEGAL DRAFTING

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Abstract: This paper aims to answer the question whether modern legal drafting is implementing the revolutionary changes argued for by the plain language movement and whether legal texts are made more user-friendly, particularly to their non-professional recipients. The paper discusses the main characteristics of modern legal drafting against the background of research conducted in 2011 and 2012 based on a broad selection of American consumer contracts. The interest centres on the successes rate of the plain language campaigners as well as the threats to their pursuit of plain legal drafting.
Key words: plain language, legal drafting, legal text, contract, plain legal drafting.

JĘZYK UPROSZCZONY A JĘZYK WSPÓŁCZESNYCH UMÓW KONSUMENCKICH

Abstrakt: Artykuł ma na celu odpowiedź na pytanie, w jakim stopniu zasady plain language movement są wdrażane przez autorów tekstów prawnych i prawniczych, aby uczynić współczesny język prawniczy bardziej zrozumiałym dla przeciętnego odbiorcy, nieposiadającego wiedzy prawniczej. Artykuł przedstawia szczegółową analizę wyników badań ilościowych przeprowadzonych w 2011 i 2012 na podstawie ponad 80 autentycznych tekstów angielskich umów konsumenckich.
Słowa kluczowe: język uproszczony, sporządzanie dokumentów prawnych, tekst prawny, tekst prawniczy, umowa, sporządzanie dokumentów prawnych językiem uproszczonym.

Introduction

For decades, legal language has been discussed not only by linguists but also by lawyers and legal theorists. They examined legal language not only from the perspective of the philosophy of language and logic but also text linguistics or sociolinguistics, which equipped researchers with knowledge sufficient to describe it thoroughly, concentrating not only on linguistic but also functional properties of legal language. The perception of legal language varies as Pieńkos (1999, 71) defines it as a "subsystem of ethnic language" similar to the language of experts, Gizbert-Studnicki (1986, 94) assumes that legal language may be defined as a register of language and Šarčević (1997, 9) states that there is no legal language but one should talk rather about legal languages as each and every legal system manifests its own legal language. However, the results give an input to further studies going beyond linguistics and covering such fields as psycholinguistics or sociolinguistics in order to see a legal text not only as a product but also as a linguistic tool used in communication not only within professional environment but also between professionals and laypersons. Although on the basis of legal regulations lawyers struggle

to use adequate linguistic means to argue their points, legal texts are still flooded with long complex sentences, passive voice, pronominal adverbs and jargon words, which may pose a challenge to a non-professional user. This paper, although, it explores the linguistic features of legal texts, showing legal language belongs to the category of "language for specific purposes" (Trosborg 1991, 69)[42] used for drafting deeds, wills and contracts, it also addresses the issue of understanding legal texts by ordinary users as well as gives some consideration to the function of legal language.

Taking into account the modal revolution in legal writing (Williams 2006) and growing tendency of "shall-free legislation" (Garzone 2013, 69) the aim of this paper is to give a comprehensive picture of the employment of the plain writing rules in American consumer contracts expending the current studies by analysing plain lexical and syntactical structures in order to answer the question whether the legal environment is prepared for the revolutionary changes advocated by plain language campaigners. The paper is organized as follows. Section 1 offers a brief historical outline of the plain language movement and the basic principles of the plain writing style. Section 2 reviews the employment of plain writing rules in modern legal documents. The discussion is based on the results of the research conducted in 2011 and 2012 on a selection of contracts and agreements. Section 3 looks at the causes of the limited application of the plain writing style in legal texts and Section 4 draws some conclusions.

Historical overview

> *Never use a metaphor, simile or other figure of speech which you are used to seeing in print.*
> *Never use a long word where a short one will do.*
> *If it is possible to cut a word out, always cut it out.*
> *Never use the passive where you can use the active.*
> *Never use a foreign phrase, a scientific word or a jargon word if you can think of an everyday English equivalent.*
> *Break any of these rules sooner than say anything outright barbarous.*
> (George Orwell, *Politics and the English Language*)

In his comments on the style of writing and analysis of “bad writing” (Orwell 1946) he underlines the fact that it is not archaic expressions that modern language should shed but much rather meaningless or less important words which decrease the value of an utterance. He emphasises that a vital element of an utterance is clarity and accuracy as well as the fact that the speaker should concentrate on the meaning he/she wants to convey, that is, the merit not the manner. A similar view is shared by plain language campaigners who wish to alter the traditional versions of official writing. The demands of western consumer movements for their rights to benefit from mass production and mass consumption created the need of unscrambling the enigmatic style of credit facilities, insurance policies or tax documentation. The first person who started the fight for clear and simple official writing was Chrissie Maher, who actively took part in introducing plain language rules. As a co-founder of the “Plain English Campaign”,

[42] Complete division of legal language in Trosborg, A. 1995. *Introduction. Special Issue on Laying down the Law – Discourse Analysis of Legal Institutions* [in:] Journal of Pragmatics 23(1). 1-5.

member of "the National Consumer Council" and founder of "The Benefits Shop", she supported and still supports all who have problems with official paperwork. Chrissie Maher also launched *The Liverpool News* – a newspaper for the people who have difficulties with reading sophisticated texts. Another prominent plain language activist is John Walton, a lawyer, and the founder of "Clarity", an organization of lawyers, linguists, public service workers, translators and plain language advisers from over 30 countries which organizes conferences on the plain language all over the world.

In the United States it was President Carter who in 1978 issued Executive Orders to simplify and clarify federal laws. A similar measure was implemented by President Clinton in 1998, who issued a Presidential Memorandum in which he called on federal employees to prepare documents according to the plain language principles. Meanwhile PLAN (PLAIN LANGUAGE ACTION NOW) started its active promotion of the plain writing style and throughout 80's such organizations as the Centre for Plain Legal Language at the University of Sydney, Law Faculty in Australia, the Plain Language Society or The Canadian Legal Information Centre in Vancouver, Canada became actively involved in the plain language movement. Some financial institutions took steps to convert their "old" documents into plain versions. An early example is Citibank which in 1973, after frequent complaints from its clients, decided to change the archaic wording of its promissory note and other loan documents. Lately, similar actions have been taken by the British Parliament which initiated the action of rewriting "old" Acts using the plain language principles[43]. Finally, President Obama signed the Plain Writing Act on October 13, 2010, which become the International Plain Language Day.

The aim of the plain language revolutionists is to build a common platform of basic principles which would serve as guidelines for those who draft official documents. Over the years the plain writing manuals have focused on linguistic and non-linguistic aspects of formal writing with the view that it should be processed in a most simple and clear manner by their ordinary recipients.

The recommendations below are only examples of the plain writing instructions:

- structural recommendations
  - (i) **use** simple and logical sentences, which are affirmative rather than negative
  - (ii) **reduce** the length of sentences
  - (iii) **avoid** double negation
  - (iv) **use** parallelism
- grammatical recommendations
  - (i) use of the active voice constructions over the passive voice constructions **use mo**dal verbs instead of *shall* (legal drafting)
  - (ii) **use** the present s**imp**le tense instead of *shall (le*gal drafting)
  - (iii) **use** the personal pronouns he/she
- lexical recommendations
  - (i) **avoid** jargon
  - (ii) **use** precise verbs

[43] e.g. The UK Tax Law Rewrite Project mentioned by Ch. Williams in his article *And yet it moves': recent developments in plain legal English in the UK* (2008)

(iii) **avoid** the negative compound **not** not able **but** use unable
(iv) **avoid** the nominalisation **not** make payment **but** use pay
(v) **omit** the unnecessary words **not** in the event that **but** use if

- layout recommendations
  (i) **arrange** graphics in a logical form
  (ii) **use** headings
  (iii) **use** tables to be more explicit
  (iv) **use** visuals (bullets, vectors etc.)
  (v) **use** adequate fonts[44]

In 2008 *Clarity* published an article by Hep Yi Chong, Abdul Rahman and Mohamad Zin Rosli in which they presented the results of their studies[45] conducted on 30 respondents who were executives, engineers, quantity supervisors or directors of consulting firms. The respondents were asked if they find a construction contract comprehensible, and if not, their job was to point out those aspects which contribute to the legalese and problems with achieving clarity. Out of eleven issues analysed, eight have been regularly indicated by the respondents as sources of clarity problems. In the first place the respondents underlined the length of sentences, that is, the fact that the sentences in the analysed construction contract were too long. The second threat to clarity of the analysed document noted by the respondents was "too many cross references between the clauses" as well as the fact that words are repeated. In the fourth place the participants of the research highlighted the extensive use of the passive voice, subsequently, "the negative style of language", "ambiguous words or sentences which have more than one meaning", "complexity of the noun phrase", overuse of the modal verb *shall* – however, this category was "controversial as technical terms" go. As for the legalese, the analysis of the material showed that only three aspects had been raised by the respondents, that is, "unnecessary length and complexity of sentences", intensity of legal terms, and "specialised vocabulary or legal jargon". The results of the studies proved that 53% of the respondents believed the construction contract lacked clarity, the remaining ones saw the contract readable, however, the authors stress that the latter hold more than 15-year experience. The results are not surprising but they are based on only one contract, which may not be convincing as a verification of the use of plain language principles.

In order to offer a most objective assessment of the actual application of the plain style in legal drafting I developed a corpus of contracts.

Verification of plain language claims

The research material is based on a corpus of 50 American consumer contracts that comprises of 537 050 words. The length of documents varies from 5 000 to 30 000 words. The documents were drafted and gathered after the year 2000, i.e. after plain

[44] Plain writing instructions based on Garner B. 2001 Legal Writing In Plain English. The University of Chicago Press, Ltd: London and A Plain English Handbook: How to create clear SEC disclosure documents.

[45] Detailed results in *Construction contract administration — an approach on clarity* In Clarity No.60, 2008.

language principles were defined and publicized and cover the period from 2001-2008. In majority, the material has been obtained from translation agencies located in Poland and from sources available on the Internet. After verifying over 120 agreements and contracts 50 of them were classified as written in "plain" writing style , mostly due to the employment of modal verbs, the use of the present simple tense, avoidance of borrowings or the graphical arrangement. However, none of the selected texts fully satisfied all the rules of the plain writing in grammar, vocabulary or syntax. They may be only considered attempts towards clarifying legal style. Consequently, throughout the remaining part of this paper the word *plain* will be used in inverted commas to underline that incompleteness.

Reduction of the length of sentences

Table 1. Reduction of the length of sentences.

Plain writing style	Traditional writing style
ca 10%	90%

Christopher Williams (2004, 122) states that long sentences in legal discourse are partly justified by the lawyers' way of forming their thoughts, Pieńkos (1999, 99), in turn, takes the position that long sentences or endless constructions always prove poor knowledge of legislative techniques and the lack of editorial skills. The study has covered complex compound sentences that hold at least one subordinate clause and exceed the number of approximately 20 words (Garner 2001, 27). The results illustrated above clearly show that ca 90%, of the inspected material holds long, complex sentences, which are enigmatic probably to the same extent for the reader and the writer. However, occasionally shorter sentences, rarely those of the S-V-O type, can be found constituting about 5% of the researched documents – in majority occurred in the "payment conditions" and "final provisions" part.

Avoidance of the passive voice

It has been found that the passive voice is a constant element not only of traditional but also "plain" versions of legal documents. After verifying 50 documents it may be clearly stated that the passive voice is present in every document, even when the context does not require its usage.

Use of modal verbs

Table 2. Employment of modal verbs.

	shall	may	should	can	must
Employment of modal verbs	70%	20%	4%	5%	1%

Based on the results above, it should be underlined that the modal verb *shall* , which in general language is used sparingly, predominates in the investigated legal documents. The results of the analysis indicate that the modal verb *shall* is not employed to express futurity, however, in 70% of the inspected material it is used to express obligation or prohibition. Nevertheless, it should be also stated that prohibition is

successfully but not commonly expressed by the negative form of the modal verb *may* when in 80% of its use the positive from of the modal verb *may* is applied to express permission. Despite the frequent occurrence of the modal verb *shall* noted above, a tendency of using the present simple tense instead of *shall* has been observed, especially in the first section of contracts, i.e. the "definitions" part. What is more, the modal verb *should* has been found to be replacing *shall* to introduce the obligatory character of a legal message. The growing occurrence of the modal verb *can* has been also detected, however, it is rarely employed to express permission or prohibition- in majority of cases it indicates ability or its lack. Finally, it is should be stated that the modal verb *must* advocated by plain language campaigners is regularly omitted in the analysed legal texts.

Avoidance of jargon & technical terms

(i) pronominal adverbs

Table 3. Employment of pronominal adverbs.

Employment of pronominal adverbs	Avoidance of pronominal adverbs	Adherence to traditional writing style
	2%	98%

A common practice observed in legal writing is the usage of pronominal adverbs and the results reveal that only 2.5% of analysed documents are free from such linguistic forms. The high level of pronominal adverb use may be justified by the fact that they are convenient for the writer and they do not require from the author the repetition of often relatively long expressions. Therefore, instead of "the list is included in Schedule No X **to this Agreement**" "the list is included in Schedule No. X **hereto**" may be used and "upon termination of this Agreement and without prejudice of Article X indicated **in this Agreement above**" "upon termination of this Agreement and without prejudice of Article X **hereabove**" may be used instead., it does not give any comfort to the recipient of a legal text, mainly because the use of pronominal adverbs requires background knowledge and high linguistic competence.

Example 1. Use of pronominal adverbs.

> Except as set forth in Section 2(a)(ii) or elsewhere herein, APPLE will not edit, change or alter any of the COMPANY Content or Artwork without COMPANY'S prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), provided that APPLE may modify metadata as reasonably necessary to correct errors or to append sub-genres or like information for artist and track categories…[46]

(ii) Latin terms

Legal texts are not overloaded with metaphors or similes but from time to time one may find maxims or Latin terms, especially in such types of legal documents as

[46] The excerpt from DIGITAL MUSIC DOWNLOAD SALES AGREEMENT.

contracts. It is not a common practice but it is still observed. Although Pieńkos (1999, 81) claims that Latin maxims only emphasize the timeless character of legal documents it should be stated that in the examined contracts Latin terms and borrowings have been eliminated in 100%, which may only serve as evidence of the success achieved by the plain language campaigners.

Omission of unnecessary words

(i) Wordiness

Table 4. Use of wordiness.

Including but not limited to	35%
In accordance with	95%

Legal documents do not show a tendency of shortening words or expressions, but the opposite, the expressions used in legal texts are long and seem to be repeated. The analysed documents indicate numerous examples of wordiness, however, the two presented in the table above are the most common and their appearance in the verified texts seems to be quite frequent. The first is the traditional expression *including but not limited to*, which has been in 65% replaced by the expression *including*. The second expression that was analysed is *in accordance with*, which was very rarely substituted by *according to*. The replacement occurred only in 5% of the analysed material.

(ii) doubles and triples

Table 5. Use of doubles and triples.

between vs. by and between	20% vs. 80%
terms vs. terms and conditions	15% vs. 85%

The use of doubles and triples is another feature which in a conspicuous manner contributes to legal language. The results show that the average use of doubles and triples exceeds 80% of the verified documents. *By and between* seems to be irreplaceable as it has been recorded in 42 out of 50 cases. Similar results have been noted in the case of *terms and conditions,* which can be found in more than 85% of the analysed examples.

(iii) Nominalisation

Table 6. Use of nominalisations.

Avoidance of nominalisations	15%
Adherence to traditional writing style	85%

The situation where a verb is nominalised into a noun phrase is commonly observed in the analysed material. The diagram above demonstrates that nominalisations occur in 43 out of 50 analysed documents. Slightly more than 10% of the drafters decided to replace *make payment* with the verb *pay*, or eliminate the noun phrase *make an inquiry* and use the verb *inquire,* replace *conduct an inspection* with *inspect*, etc.

Layout of legal documents

The last aspect to be discussed is the design of the selected legal documents. The results definitely confirm that a major part of the documents, mainly due to the fact that they are in an electronic version, are equipped with graphic signs such as bullets, vectors etc., which present the layout of the documents in a clear, comprehensive and logical manner. What is more, the authors of the documents, to enhance the process of understanding, introduced tables. So far it has not been a common practice, and the same is the case with colour. For example, for completing a text with some details - the red colour is used, explanations supporting the provisions included in a document are in green and alternative clauses, which are obligatory only to some users of a contract are marked in blue. It has to be noted also that the analysed documents have been prepared in different fonts, beginning with the traditional Times New Roman and Arial, and going on to the more "casual" styles like Verdana.

Rationale for limited applications of plain language principles

The results evidently indicate that the plain writing style does not find much approval in the legal environment. One reason for such unwillingness and reserved position in relation to the changes argued for by the plain language movement maybe the Anglo-American common-law tradition and the fact that lawyers not only rely on court decisions and orders issued sometimes centuries ago but also on their content, transferring archaic grammatical and lexical constructions into modern legal texts.

Another reason may be attributed to the plain language movement. Some critical comments on its precepts are summarised below.

The legal texts do not function as self-explanatory texts

Francis Bennion (2007) clearly states that the plain language movement has faced failure and he sees its roots in the fact that plain language campaigners do not treat law as an area of expertise. After distinguishing four types of legal texts from "a text which is law" to texts about law directed to non-professionals, the author criticizes the plain language activists for their pursuit of self-explanatory legal texts claiming that:

> *The law is made up of what I will call law texts, that is texts that actually are law. They constitute the law, which resides only in words. The purpose of a law text is geared to this function of* constituting *the law. Many plain language campaigners fail to grasp this point. They think the purpose of a piece of legislation is to* explain *the law.*

We may ask whether contracts and agreements are the type of documents that constitute law. Undoubtedly, they define and regulate relations between individuals and introduce norms and standards of mutual legal behaviour. However, Francis Bennion insists that the cause for the miscomprehension of legal texts by laypersons lays in an inadequate composition of the "old" texts and not in the use of technical terms.

Technical terms ensure precision

Jargon words and technical terms are a part of legal language, the language of professionals, and their replacement with general terms raises doubts and inclines to the belief that such a substitution may affect the balance between simplicity and precision. Gizbert-Studnicki (2001, 52-53), discussing the methods of translating texts, underlines that apart from background professional knowledge, the selection of an adequate term is extremely important in the translation process, especially the process of translating legal documents, where one inadequate word may ruin the intention of the sender and introduce miscomprehension to the recipient. He points out that behind a simple sentence "Peter is the owner of a house" stands a specific factual state of affairs, which has to be understood to translate the sentence correctly. In order to show how the technical terms are fundamental to legal drafting and how general vocabulary may deform the meaning of a legal text, supporting the way of thinking presented by Gizbert-Studnicki (2001), let us discuss the meaning of the following apparently simple sentence: "John **has got** a house". Although the sentence uses expressions that belong to general language in legal context it may find different interpretations. Firstly, the verb "have" may indicate that John **owns** the house, which in the light of law means that John because **is** the **owner** of the house by paying an agreed amount of money with all rights to it transferred to him at the moment of purchase. Secondly, the general verb "have" may, in turn, suggest that John is only the **user** of the house under, for example, a perpetual usufruct right, generally granted for 99 years. The examples above illustrate how significant it is to maintain technical terms in a professional text and how important it is to save the triple *hold, possess, and enjoy* for the sake of precision. At first sight, doubles and triples may be considered ambiguous, however, from the legal point of view adequate and exact legal drafting is not possible without them. Examples may be multiplied but even such a commonly used expression as *terms and conditions* does not leave any doubts. *Terms* are optional for the parties to a contract, whereas, *conditions* must be satisfied before the transaction becomes binding upon the parties, therefore, routine employment of the said double is fully justified. The same is the case with *the party represents and warrants*, that is, it not only declares the factual state of affairs but it also warrants that such a state will remain unchanged for the term of an agreement.

However, it should be underlined that the notion of precision is not similarly perceived and understood in all legal languages. In Polish, for example, the concept of clarity and precision significantly differs from the presented above. The use of more than one verb of similar meaning introduces miscomprehension leaving the recipient with interpretation turmoil irrespectively whether it is a professional or a layperson. The cluster of two verbs of similar meaning does not provide abundantly clear language construction. The answer to the above may lay in the phenomenon of legal culture - by Lawrence Freidman (1975, 15) defined as "social forces…constantly at work on the law", which would justify the fact that although English and Polish legal language are not free from lexical redundancy, its employment may be dictated by different reasoning stemming from either the culture of producing legal texts as in English legal texts or the legal system itself, mostly illustrated by applying repetitions as observed in Polish legal documents.

Conclusions

The results of the studies clearly indicate that the legal environment is not inclined to dispose of their advantage in the process of formulating legal regulations and the proposals submitted by plain language activists meet with considerable criticism. Firstly, it is believed that a legal text cannot function as a self-explanatory text as it does not explain law but it becomes law. The results shown above only prove that the opinion expressed by Bennion (2007) is shared by a considerable number of anonymous legal drafters. Secondly, the claim that the use of technical terms ensures precision and clarity seems to be reasonable and, as has been underlined by Bhatia (2012), plain language activists concentrate their efforts on the accessibility or availability of legal discourse, ignoring other factors, e.g. meaning and precision, which call for the use of precise terms, i.e. technical terms. Thirdly, the opinion presented by Jerzy Pieńkos (1999) and Maciej Zieliński (1972) that it is general language which in legal contexts deforms the meaning of a message and introduces confusion and miscomprehension to the recipient has its supporters. How much useful is a message which, despite being clear and simple, does not convey the right meaning and does not express the intention of the author?

The only reasonable behaviour in that case is to save common sense and keep the balance between precision and plainness, providing the recipient with an efficient, coherent and accurate message. In order to conduct a satisfactory process of modernising legal discourse without prejudice to its effectiveness one has to avoid "fake simplicity" (Orwell 1946, 264) and the desire for "repairing" texts with simple words and sweeping away precision and, at the same time, the clarity of the message. The plain language movement should be supported in its efforts to achieve clear texts deprived of archaic expressions such as *witnesseth*, *hereinafter* or *notwithstanding the forgoing*, the modal verb *shall* or pronominal adverbs and wordiness to equip modern documents with more fresh and natural sounding language, however, there is a thin line between ease and expertise which should not be crossed.

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LA VARIACIÓN EN LA SENTENCIA JUDICIAL: HACIA UNA DESCRIPCIÓN EXHAUSTIVA DEL GÉNERO

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Resumen: Esta investigación parte de la pregunta de si el género de la sentencia es homogéneo o si, en realidad, hay factores que determinan las características concretas de una sentencia determinada. Para ello se ha compuesto un corpus de cuarenta sentencias españolas (combinando los órdenes civil y penal, y la 1ª instancia y la apelación). Este artículo demuestra que las variantes de orden e instancia jurisdiccional condicionan la forma lingüística de la sentencia y que, por ello, debe hablarse de variación en el género. En ese sentido, una descripción exhaustiva del género debería incluir dichas variantes
Palabras clave: sentencia, género, órdenes civil, órdenes penal, orden e instancia jurisdiccional

THE VARIATIONS OF THE COURT JUDGMENTS: TOWARDS A COMPREHENSIVE DESCRIPTION OF THE GENRE

Abstract: This research addresses the question of whether the genre of judgment is homogeneous or whether there are any factors which determine the specific linguistic characteristics of a judgment. For this purpose, a corpus of forty Spanish judgments has been compiled (containing civil and criminal judgments, and the 1st instance and appeal instance). This paper demonstrates that both the variant of judicial order and the variant of judicial instance condition the linguistic form of judgments; therefore, we should speak about genre variation. For that reason, a compre-hensive description of the judicial genre of Spanish judgments should include such variants.
Key words: judgment, genre, civil judgement, criminal judgment, court, genre variation, Spanish legal language, judicial genre.

WARIANTYWNOŚĆ ORZECZEŃ SĄDOWYCH: PRÓBA KOMPLETNEGO OPISU GATUNKU

Streszczenie: W niniejszym artykule zostaje postawione pytanie o to, czy orzeczenia sądowe tworzą homogeniczny gatunek lub czy istnieją czynniki determinujące specyficzny, językoznawczy charakter orzeczeń. Na potrzeby badania stworzono korpus składający się z czterdziestu hiszpańskich orzeczeń sądowych (w tym orzeczenia sądowe z zakresu prawa cywilnego i karnego, orzeczenia sądów pierwszej instancji oraz sądów apelacyjnych). W artykule wskazuje się, że zarówno gałąź prawa, w jakiej działa sąd, jak i jego instancja, warunkują językową postać orzeczenia i z tego względu należy mówić o wariacjach w ramach gatunku. Jest to powodem, dla którego w badaniach nad gatunkiem hiszpańskich orzeczeń sądowych, należy uwzględnić wspomnianą wariantywność.
Słowa kluczowe: orzeczenie, gatunek, orzeczenie w sprawach cywilnych, orzeczenia w sprawach karnych, sąd, wariantywność gatunku, hiszpański język prawniczy.

Introducción

La sentencia judicial es, con diferencia, el género del español jurídico al que más interés investigador se le ha dedicado (véanse Alcaraz y Hughes 2002, 251-255 y 288-292; Cucatto 2009; Garofalo 2009, 222-256; López Samaniego 2006a; 2006b; 2010; Pardo 1996; Taranilla 2009; 2012a, cap. 6; e.p.; entre otros). Sin embargo, empieza a ponerse en evidencia que una descripción ajustada de ese género requiere tener en cuenta que no todas las sentencias tienen las mismas características; en realidad, el género parece contar con ciertas variedades que determinan la forma específica de cada sentencia. Así, por ejemplo, el orden jurisdiccional desde el que se emite una sentencia condiciona la forma del relato de los hechos probados (Taranilla e.p.). En esa línea, este artículo se propone probar si hay elementos lingüísticos del género de la sentencia que cambian en función del orden y de la instancia jurisdiccional que emite el texto.

Metodología de investigación

El objetivo de esta investigación exige confeccionar un corpus de textos que integre sentencias de distintos órdenes e instancias. Concretamente, se ha optado por comparar sentencias emanadas de los órdenes civil y penal, resueltas en primera instancia y en apelación. En total, el corpus de análisis está compuesto por cuarenta sentencias, emitidas entre 2009 y 2012, sobre asuntos de índole muy diversa, y divididas en cuatro subcorpus: diez sentencias penales resueltas en 1ª instancia, diez sentencias civiles resueltas en 1ª instancia, diez sentencias penales resueltas en apelación, y diez sentencias civiles resueltas en apelación[47]. Las veinte primeras han sido dictadas por juzgados de 1ª instancia y las veinte segundas, por audiencias provinciales de distintas ciudades españolas. Todos los subcorpus son semejantes en número total de palabras, tal como refleja la tabla siguiente, que recoge la composición del corpus de estudio:

Tabla 1. Composición del corpus de estudio.

SENT. PENALES 1ª INSTANCIA		SENT. CIVILES 1ª INSTANCIA		SENT. PENALES APELACIÓN		SENT. CIVILES APELACIÓN	
Proceso	*Nº palabras*	*Proceso*	*Nº palabras*	*Proceso*	*Nº palabras*	*Proceso*	*Nº palabras*
PE : I : 1	1.936	CI : I : 1	1.909	PE : A : 1	1.477	CI : A : 1	2.416
PE : I : 2	2.072	CI : I : 2	1.277	PE : A : 2	3.066	CI : A : 2	4.253
PE : I : 3	5.525	CI : I : 3	834	PE : A : 3	1.395	CI : A : 3	1.109
PE : I : 4	1.425	CI : I : 4	5.619	PE : A : 4	964	CI : A : 4	3.040
PE : I : 5	1.014	CI : I : 5	4.177	PE : A : 5	1.199	CI : A : 5	4.401
PE : I : 6	949	CI : I : 6	4.864	PE : A : 6	4.897	CI : A : 6	3.124
PE : I : 7	1.086	CI : I : 7	1.070	PE : A : 7	2.580	CI : A : 7	1.874
PE : I : 8	2.221	CI : I : 8	898	PE : A : 8	2.536	CI : A : 8	976
PE : I : 9	3.188	CI : I : 9	802	PE : A : 9	1.119	CI : A : 9	1.391
PE : I: 10	4.375	CI : I: 10	2.469	PE : A : 10	4.967	CI : A : 10	723
Total	23.791	Total	23.919	Total	24.200	Total	23.307

[47] El grupo de sentencias penales de 1ª instancia ha sido extraído del *Corpus de Procesos Penales* (Taranilla 2012a y 2013), que fue construido gracias a la colaboración de los Juzgados Penales de la ciudad de Barcelona. En ese corpus, todos los documentos aparecen anonimizados, es decir, los datos personales han sido modificados a fin de salvaguardar la identidad de los implicados. Por su parte, el resto de subcorpus han sido obtenidos a través de la base de datos del CENDOJ (Centro de Documentación Judicial), que es pública y abierta. En ella los textos aparecen cegados (es decir, se han eliminado los apellidos y los demás datos sensibles de las personas implicadas). En todos los textos utilizados en este trabajo se han mantenido los errores tipográficos y de ortografía originales.

Ese corpus servirá de base empírica para comparar diferentes elementos textuales del género de la sentencia. Esta investigación abordará cada una de las secuencias que componen la superestructura de las sentencias (a saber, encabezamiento, antecedentes de hecho, hechos probados, fundamentos de derecho y fallo) y comparará su composición para sacar a la luz diferencias en las sentencias que emiten unos órdenes y unas instancias jurisdiccionales respecto a otros. El tipo de análisis que se realizará será cuantitativo, ya que se comparará la frecuencia de aparición de las cuestiones mencionadas, pero también cualitativo. Así, un objetivo relevante es proponer las causas de las semejanzas y las diferencias entre las sentencias de órdenes e instancias distintos.

Análisis

Como se ha mencionado arriba, cada uno de los apartados que siguen se dedica al análisis específico de una secuencia de la superestructura de la sentencia. A pesar de que el ordenamiento jurídico español dice bastante poco sobre la forma que deben tener las sentencias judiciales, la superestructura del género es uno de los aspectos que están regulados con detalle. De un lado, la Ley Orgánica del Poder Judicial, en su artículo 248.3, establece que las sentencias han de constar de cinco secciones: "Las sentencias se formularán expresando, tras un encabezamiento, en párrafos separados y numerados, los antecedentes de hecho, hechos probados, en su caso, los fundamentos de derecho y, por último, el fallo". De otro lado, en el ámbito civil en particular, las sentencias deben tener cuatro secciones, tal como dispone el artículo 209 de la Ley de Enjuiciamiento Civil: encabezamiento, antecedentes de hecho, fundamentos de derecho y fallo; es decir, a diferencia de la sentencia penal, la sentencia civil carece de la secuencia específica de hechos probados[48].

El examen de los textos reales demuestra que esa superestructura diferenciada que prescribe la ley se mantiene en la práctica, con algunas excepciones. Por lo que respecta a las sentencias civiles que integran el corpus de estudio, todas ellas se adaptan a la superestructura en cuatro partes que establece la regulación civil. En cuanto a las sentencias penales que conforman el corpus, todas las de primera instancia respetan la superestructura en cinco partes que prevé la ley. Sin embargo, dos de las sentencias penales dictadas en apelación (la sentencia PE:A:8, dictada en 2009 por la Audiencia Provincial de Valencia, y la sentencia PE:A:9, dictada en 2012 por la Audiencia Provincial de Córdoba) no contienen esa distribución, dado que ambas carecen de secuencia de hechos probados. En la primera de ellas, esa ausencia se explica por el hecho de que las partes no discuten los hechos que dan lugar al proceso, sino que el recurso de apelación se plantea por disconformidad con la tasación de las costas procesales que establece la sentencia de instancia. En la segunda, en cambio, la parte recurrente sí discute la apreciación que el juzgador de instancia ha realizado sobre los hechos en disputa. El tribunal de apelación, no obstante, no dedica ningún fragmento textual a desglosar los hechos que da por probados[49], sino que produce una composición

[48] Sobre la ubicación peculiar de la secuencia de hechos probados en las sentencias civiles, véase Taranilla (e. p.).

[49] Opta por incluir, como fundamento jurídico primero, esta fórmula de remisión general: "Se aceptan los de la sentencia recurrida en lo que no se opongan a la presente resolución". Sobre

textual sin explicitar cuál es el relato de hechos probados, lo que, de hecho, contradice lo que establece la literatura especializada sobre cómo debe ser una sentencia adecuadamente motivada (véase, por ejemplo, Igartua 2003). Según los tratados jurídicos sobre la motivación de las sentencias judiciales, resulta imprescindible que las sentencias determinen con precisión y claridad cuáles son los hechos probados y los argumentos que llevan a la decisión sobre el caso.

Sobre la superestructura del género, cabe mencionar para acabar que, más allá de las convenciones prescritas por la ley, todas las secuencias de una sentencia, salvo el encabezamiento, llevan un título: respectivamente, "Antecedentes de hecho", "Hechos probados", "Fundamentos jurídicos" y "Fallo". Ahora bien, existen ciertas variaciones en los títulos de la sección de "Fundamentos jurídicos", que en ocasiones recibe el nombre de "Fundamentos de derecho" o "Razonamientos jurídicos", y de la sección del "Fallo", que también puede titularse "Parte dispositiva" e incluso, cuando es un tribunal pluripersonal y no un único juez quien dicta la sentencia, "Fallamos".

El encabezamiento

Junto con el fallo, el encabezamiento es la secuencia textual que tiene una composición más formulaica (Montolío et al. 2011, 137). Los formulismos son expresiones que se repiten con escasa variación y se rutinizan en un determinado contexto. En este apartado, se han examinado las fórmulas que se emplean en los encabezamientos de las sentencias que componen el corpus para ver si difieren. El resultado que arroja el análisis es que no existe ninguna diferencia de composición según el orden o la instancia de la sentencia. Todos los encabezamientos recurren al verbo *ver*, que puede formar dos tipos de oraciones distintas: (i) una estructura de participio, que puede tener algunas variaciones, como ocurre en los ejemplos 1 y 2; y (ii) una oración activa en la que el juez o el tribunal sean el sujeto del verbo *ver*, como en el ejemplo 3:

Ejemplo 1.

> VISTA, en grado de apelación, por los citados Ilmos. Srs. Magistrados de esta Sección de la Audiencia Provincial, la causa anotada al margen … [PE:A:4]

Ejemplo 2.

> Vistos por mí, Don Enrique Clavero Barranquero, Magistrado-Juez del Juzgado de Primera Instancia número Seis de esta Ciudad, los presentes Autos … [CI:I:1]

Ejemplo 3.

> D. Miguel Giménez Alvar, magistrado del Juzgado Penal núm. 1 de Barcelona, ha visto en juicio oral la causa … [PE:I:6]

El encabezamiento que recurre a una oración activa (como la del ejemplo 3) es más moderno —y, presuntamente, también más legible— que el que emplea una oración de

el empleo de esas fórmulas se hablará con mayor profundidad en el apartado "El relato de hechos probados".

participio (Taranilla 2012a, 273), pero que el juez prefiera una u otra estructura no parece estar relacionado con el orden o la instancia jurisdiccional, sino con la voluntad de producir un texto cercano a la lengua común. En el corpus de estudio algo más de la mitad de sentencias (22 sobre el total de 40) utiliza la formulación de participio, mientras que el resto se decanta por producciones más modernizadoras. La mayoría de las composiciones más modernas son estructuras activas, pero se registra una forma de composición del encabezamiento, en sintonía con las propuestas más avanzadas en legibilidad y visualización de la información en los textos (Alliende 1994; Taranilla 2012a, 110), que consiste en una lista vertical de elementos predeterminados que el juzgador va completando con los datos identificativos del juzgado, del procedimiento y de las partes. En el corpus hay cuatro sentencias que contienen un encabezamiento en lista, pero hay que señalar que todas ellas provienen de juzgados del País Vasco, donde el proceso de modernización del discurso jurídico está ciertamente más avanzado que en otras zonas del estado español (Borrego et al. 2011, 30). Véase un ejemplo de esa composición en lista:

Ejemplo 4.

SENTENCIA nº 73/2012
JUEZ QUE LA DICTA: Dª MARIA JOSE VILLAIN LÓPEZ
Lugar: VITORIA-GASTEIZ
Fecha: quince de junio de dos mil doce
PARTE DEMANDANTE: SOCIEDAD GENERAL DE AUTORES YEDITORES
Abogado: DIEGO xxx xxx
Procurador: CARLOS JOSE xxx xxx
PARTE DEMANDADA: Mario xxx, José Antonio xxx y GRUPO xxx S.C.
Abogado: RAFAEL xxx xxx
Procurador: JOSE CARLOS xxx
OBJETO DEL JUICIO: DERECHO MERCANTIL

[CI:I:7]

La tabla 2 registra el tipo de formulismo escogido para encabezar cada una de las sentencias del corpus, esto es, si se prefiere una estructura de participio (P), una estructura activa (A) o una composición en lista (L). Como se puede ver, no se puede establecer ninguna correspondencia entre las distintas fórmulas del encabezamiento y las variantes del género.

Tabla 2. Composición del encabezamiento.

SENT. PENALES 1ª INSTANCIA		SENT. CIVILES 1ª INSTANCIA		SENT. PENALES APELACIÓN		SENT. CIVILES APELACIÓN	
Proceso	*Encabeza-miento*	*Proceso*	*Encabeza-miento*	*Proceso*	*Encabeza-miento*	*Proceso*	*Encabeza-miento*
PE : I : 1	P	CI : I : 1	P	PE : A : 1	A	CI : A : 1	P
PE : I : 2	P	CI : I : 2	P	PE : A : 2	A	CI : A : 2	A
PE : I : 3	P	CI : I : 3	L	PE : A : 3	P	CI : A : 3	A
PE : I : 4	A	CI : I : 4	P	PE : A : 4	P	CI : A : 4	P
PE : I : 5	A	CI : I : 5	P	PE : A : 5	P	CI : A : 5	P
PE : I : 6	A	CI : I : 6	P	PE : A : 6	P	CI : A : 6	P

PE : I : 7	A
PE : I : 8	A
PE : I : 9	P
PE : I : 10	P

CI : I : 7	L
CI : I : 8	L
CI : I : 9	L
CI : I : 10	P

PE : A : 7	P
PE : A : 8	A
PE : A : 9	P
PE : A : 10	P

CI : A : 7	A
CI : A : 8	A
CI : A : 9	A
CI : A : 10	A

Lo que parece esperable, por otro lado, es que el género evolucione hacia una composición del encabezamiento en forma de lista vertical de elementos que, a modo de un formulario, el redactor debe rellenar. Ese sistema, sin duda, podría ser común a todas las variantes de la sentencia.

Los antecedentes de hecho

La secuencia de antecedentes de hecho contiene el relato de acontecimientos procesales previos a la sentencia que se redacta (Jackson 1988, 65-88; Cotterill 2003, 21-23; Taranilla 2012a, 77). Se trata de una relación más o menos sucinta, en orden cronológico y en párrafos que habitualmente están numerados de los eventos del proceso. En las sentencias de 1ª instancia, tanto las del orden civil como del penal se da cuenta de los acontecimientos que dan comienzo al proceso, hasta llegar al momento del juicio oral. Los ejemplos 5 y 6 son dos muestras de secuencias completas de "Antecedentes de hecho":

Ejemplo 5.

> ANTECEDENTES DE HECHO
>
> PRIMERO.- Por el Procurador D. Carlos José XXX XXX en nombre y representación de SOCIEDAD GENERAL DE AUTORES Y DE EDITORES se presenta demanda de juicio verbal contra D. Indalecio XXX en reclamación de la cantidad de 3.605,62 euros.
>
> SEGUNDO.- Turnada a este Juzgado el 2 de abril de 2012, se admitió la demanda convocándose a las partes al acto del juicio el día 15 de mayo, señalándose de nuevo el día 27 de junio a las 11 horas. Al acto de juicio no comparece la parte actora siendo declarada en situación procesal de rebeldía, y tras la practica de la prueba, documental y testifical, admitida quedaron los autos conclusos para sentencia. [CI:I:3]

Ejemplo 6.

> ANTECEDENTES DE HECHO
>
> 1. Con fecha 05 de julio de 2010, ha tenido lugar en la sala de vistas de este juzgado, la vista oral y pública de la causa seguida por un supuesto delito de simulación de delito en tentativa contra Andrés Daniel Comas López, el cual estuvo presente en el acto del juicio.
>
> 2. El ministerio fiscal, en el trámite de calificación definitiva, dirigió la acusación, contra Andrés Daniel Comas López por un delito de simulación de delito en tentativa, previsto y penado en el art. 457 del Código Penal, interesando la imposición de 5 meses de multa, con una cuota de 12,00 euros, con la responsabilidad personal y subsidiaria del art. 53 en caso de impago e insolvencia y costas.
>
> 3. La defensa calificó los hechos como no constitutivos de delito e interesó la absolución de su patrocinado.
>
> 4. La vista del juicio se ha celebrado con la práctica de las pruebas que constan en acta. [PE:I:4]

En los dos ejemplos anteriores se percibe una característica común a la secuencia de antecedentes de hecho de toda sentencia: es, por lo común, una enumeración "descomprometida y burocrática" (Igartua 2003, 157) de hechos procesales, algo así como "una historia estándar del proceso, más o menos idéntica en todos los casos, que incluye los datos identificadores del proceso y sus principales elementos" (Taranilla 2012a, 279), en cuya exposición se hace uso de numerosas fórmulas que se repiten, con pequeñas modificaciones, en todos los textos. Igualmente, los antecedentes de hecho tienen características discursivas comunes: es el caso del uso recurrente de la voz pasiva y, en particular, de la voz pasiva con "se", sobre todo, cuando el agente es un órgano jurisdiccional (en los ejemplos previos, "Por el procurador […] se presenta", "se aceptan", etc.) (Taranilla, 2012a, 279), así como del uso de estructuras de participio absoluto ("Turnado a este juzgado…", "dado traslado a la parte contraria").

Ahora bien, como es esperable, existen diferencias entre las sentencias de 1ª instancia y las de apelación, ya que estas segundas cuentan una historia del proceso en la que han ocurrido más eventos. En ese sentido, en las sentencias de apelación los antecedentes suelen comenzar con un breve resumen del fallo de la sentencia recurrida. En algunos casos, se sintetiza la decisión del juez de 1ª instancia—como en el ejemplo 7—, pero lo más habitual es que se recurra a la cita directa de una parte del fallo de la sentencia de instancia, tal como ocurre en 8. La tabla 3 registra el número de sentencias de apelación del corpus manejado que resumen la sentencia de 1ª instancia ("síntesis") y el número de sentencias que reproducen directamente el fallo ("cita directa"):

Ejemplo 7.

ANTECEDENTES DE HECHO

PRIMERO.- La parte dispositiva de la Sentencia apelada, para lo que aquí interesa CONDENA a Jose Pedro como autor de un delito de abandono de familia en su modalidad de impago de pensiones, sin la concurrencia de circunstancias modificativas de la responsabilidad criminal, a la pena de de Multa de 6 meses a razón de 6 euros día y a que, en concepto de responsabilidad civil, indemnice a Miriam en la cantidad de 2.156,16 euros por el impago de los meses reflejados en los hechos probados , con expresa imposición de costas del procedimiento.
SEGUNDO.- Notificada a las partes la anterior resolución … [PE:A:5]

Ejemplo 8.

ANTECEDENTES DE HECHO

PRIMERO.- En los autos indicados la Iltma. Sra. Magistrada Juez Dª Amelia V… Q…, dictó sentencia el 1 de septiembre de 2011, cuya parte dispositiva es del tenor literal siguiente:
FALLO: "Que, desestimo la demanda interpuesta por el Procurador de los Tribunales D. Ángel O… T… en nombre y representación de DOR…, S.A, en liquidación, contra INVERSIONES EUROP… S.L, representada por el Procurador de los Tribunales D. Manuel Á… H…, y contra COMUNIDAD DE PROPIETARIOS PARQUE000, representada por el Procurador de los Tribunales D. Manuel Á… H…, a los referidos pedimentos de la misma, y con imposición a ésta de las costas causadas con la demandada."
SEGUNDO.- Notificada la sentencia a las partes … [CI:A:4]

Tabla 3. La secuencia de hechos probados en las secuencias penales de apelación.

SENT. PENALES APELACIÓN	
Proceso	
PE : A : 1	Cita directa
PE : A : 2	Cita directa
PE : A : 3	Cita directa
PE : A : 4	Síntesis
PE : A : 5	Síntesis
PE : A : 6	Cita directa
PE : A : 7	Síntesis
PE : A : 8	Cita directa
PE : A : 9	Cita directa
PE : A : 10	Cita directa

SENT. CIVILES APELACIÓN	
Proceso	
CI : A : 1	Cita directa
CI : A : 2	Cita directa
CI : A : 3	Cita directa
CI : A : 4	Cita directa
CI : A : 5	Cita directa
CI : A : 6	Cita directa
CI : A : 7	Cita directa
CI : A : 8	Cita directa
CI : A : 9	Cita directa
CI : A : 10	Síntesis

En ocasiones, en las sentencias de apelación del orden civil, antes de esa referencia al fallo precedente, la sentencia de apelación incluye una integración general de los antecedentes que relataba la correspondiente sentencia de 1ª instancia, mediante una fórmula semejante a "Se aceptan los de la resolución apelada", como en el ejemplo 9. En el corpus de estudio, eso sucede en cinco sentencias de apelación del orden civil (CI:A:3, CI:A:7, CI:A:8, CI:A:9, CI:A:10)—, pero en ninguna sentencia penal.

Ejemplo 9.

> ANTECEDENTES
> PRIMERO.- Se aceptan los de la resolución apelada.
> SEGUNDO.- Por el Juzgado de Primera Instancia indicado, con fecha 7 de junio de 2.012 se dictó sentencia, cuya parte dispositiva dice así: "Estimo la demanda interpuesta por la procuradora Dª. Flora XXX, en representación de D. Maximo XXX, frente a Helvetia Previsión y Dª. Eva María XXX, representados por D.ª M.ª Eugenia XXX, y, en consecuencia, los demandados abonarán al actor la cantidad de 5.980,30 euros, más intereses legales y costas, así como los intereses de la cantidad consignada en el Juzgado de Instrucción, hasta la fecha de consignación".
> TERCERO.- Contra la anterior se interpuso recurso de apelación y, dado traslado a la parte contraria, fueron remitidas las actuaciones a esta Audiencia para la decisión del recurso. [CI:A:8]

Por su parte, algunas sentencias penales de apelación dedican el primero de los antecedentes a referir cuáles fueron los hechos que se declararon probados en la sentencia de 1ª instancia, en forma de cita directa; eso sucede en tres sentencias del corpus de esta investigación (PE:A:2, PE:A:6, PE:A:10).

Tras la alusión al fallo de la sentencia de 1ª instancia, las sentencias de apelación se refieren al recurso interpuesto contra aquella. Esa alusión no da detalles sobre el contenido del recurso, ni selecciona parte del recurso para citarlo de forma directa, sino que solamente remite al propio documento del recurso. Puede verse como muestra, la parte señalada en negrita en el ejemplo siguiente, que contiene una sección de antecedentes de hecho completa. Esa parte contiene la alusión al recurso que la sentencia

está resolviendo y es, en realidad, un fragmento que podría utilizarse sin cambios en otra sentencia semejante. Ello es una muestra del carácter formulaico y repetitivo de la secuencia de antecedentes de hecho.

Ejemplo 10.

ANTECEDENTES DE HECHO

PRIMERO.- La parte dispositiva de la Sentencia apelada, para lo que aquí interesa CONDENA a Jose Pedro como autor de un delito de abandono de familia en su modalidad de impago de pensiones, sin la concurrencia de circunstancias modificativas de la responsabilidad criminal, a la pena de de Multa de 6 meses a razón de 6 euros día y a que, en concepto de responsabilidad civil, indemnice a Miriam en la cantidad de 2.156,16 euros por el impago de los meses reflejados en los hechos probados , con expresa imposición de costas del procedimiento.

SEGUNDO.- **Notificada a las partes la anterior resolución, se interpuso contra la misma por la representación procesal del condenado en primera instancia recurso de apelación, fundamentado en las alegaciones que constan en su escrito, recurso admitido en ambos efectos y tramitado en legal forma, habiendo sido impugnado por la contraparte y el M. Fiscal. Elevados los autos originales a esta Audiencia Provincial y a esta sección, por turno de reparto, donde se formó Rollo de apelación.**

TERCERO.- Ha sido Ponente la Iltma. Sra. Magistrada Doña Mª Magdalena Jiménez Jiménez quien expresa el parecer del Tribunal, tras la correspondiente deliberación y votación. [PE:A:5]

Las citas y las menciones a otros textos (ya sea a la sentencia de 1ª instancia o a los recursos interpuestos contra ella) son constantes en los antecedentes de hecho de las sentencias de apelación. En ese sentido, la interpretación completa de cada sentencia requiere que se conozcan los demás textos que componen el sistema de géneros de un procedimiento determinado[50]. Así, para comprender exhaustivamente el fragmento anterior es preciso tener acceso al recurso de apelación planteado por el condenado en 1ª instancia, así como a los escritos de impugnación del recurso.

Para terminar, en general, tanto las sentencias de 1ª instancia como las de apelación cierran con una fórmula que, en algunos casos, declara que el procedimiento judicial ha seguido las prescripciones legales y, en otros casos, identifica al magistrado ponente, como ocurre en el ejemplo anterior, en el fragmento subrayado.

En suma, las sentencias de apelación contienen una secuencia de antecedentes de hecho que es más compleja que las sentencias de 1ª instancia. Tienen al menos dos partes específicas: (i) la referencia al fallo de la sentencia previa, que generalmente citan de modo directo, y (ii) la referencia al recurso que resuelven, que solamente se menciona. Además, las sentencias de apelación penal en ocasiones contienen la cita directa de la secuencia de hechos probados de la sentencia de 1ª instancia.

[50] Un "sistema de géneros" es un conjunto de géneros que actúan de forma interdependiente y en un orden preestablecido (Bazerman 1994). Para un estudio sobre el sistema de géneros penal en España, véase Taranilla (2012a).

El relato de hechos probados

Tal como han sostenido los estudios sobre el género de la sentencia, esta no solo contiene un único tipo de texto, sino que a lo largo de su superestructura contiene fragmentos de distinta tipología textual. En concreto, los que mayores atenciones han reclamado han sido los fragmentos argumentativos (pueden verse, entre otros, Bourcier y Bruxelles 1995; Cucatto 2009; 2010; López Samaniego 2006; Mazzi 2005; 2006; 2007a; 2007b; 2008; 2010a; 2010b; 2011; Taranilla 2009; Taranilla y Yúfera 2012a; 2012b) y los narrativos (véase Carranza 2003; 2010; Cotterill 2003; Harris 2001; 2005; Heffer 2005; 2010; Taranilla 2007; 2011; 2012a; 2012b; e.p.; Taranilla y Yúfera 2012a; 2012b). Si bien, como se expondrá más adelante, no parece haber diferencias formales en la composición de las argumentaciones de las sentencias en función del orden o la instancia jurisdiccional, sí las hay en la formulación de la narrativa de hechos probados. Ese hecho se origina en la propia ley procesal. Según se ha explicado arriba, la sentencia penal tiene, a diferencia de la sentencia civil, una secuencia específica donde el juez detalla los hechos que ha considerado probados durante el juicio. En las sentencias penales de 1ª instancia, como ocurre en el ejemplo 11, se incluye una narrativa de los hechos en una secuencia independiente (Taranilla 2012a, 284-292; e.p.). En las sentencias penales de apelación, en cambio, se opta por lo común por una solución textual mucho más económica: la secuencia de hechos probados acostumbra a ser una remisión a los hechos probados de la sentencia de 1ª instancia, con las modificaciones que en cada caso sean oportunas, como se muestra en los ejemplos 12 y 13.

Ejemplo 11.

> Hechos probados
>
> Único. Valorando en conciencia la prueba practicada en el juicio oral, resulta probado y así expresamente se declara que el acusado Andrés Daniel Comas López, de nacionalidad peruana, mayor de edad, con antecedentes penales cancelables, en fecha 23 de abril de 2008 ante la comisaria de MMEE de Les Corts, Barcelona, denunció faltando a la verdad, denuncio que en la noche del 21 al 22 de abril, se encontraba en el establecimiento "Sol y luna" en el carrer Aribau de Barcelona, donde hizo una consumición que abonó con su tarjeta Visa, para comprobar al día siguiente que se le habían cargados 7 anotaciones a esa misma tarjeta por importe de 1.153,00 euros que según él no había consumido.
> Los cargos habían sido todos autorizados por el acusado. [PE:I:4]

Ejemplo 12.

> Hechos probados
>
> SE ACEPTAN los así declarados en la resolución que se recurre. [PE:A:2]

Ejemplo 13.

> Hechos probados
>
> SE ACEPTA el relato de hechos probados de la Sentencia apelada y se añade el siguiente párrafo: "Juan Ignacio con anterioridad al juicio oral indemnizó a Epifanio en cantidad no concretada". [PE:A:3]

Ya que, salvo excepciones muy puntuales, el grueso de la práctica de la prueba se concentra en los juicios de 1ª instancia, mientras que la apelación se dedica a cuestiones procesales o de fundamentación jurídica, las sentencias de apelación suelen carecer de

secuencia narrativa de hechos probados como tal. La tabla 4 registra precisamente que la relación de hechos probados en las sentencias de apelación en el orden penal se lleva a cabo, de forma habitual, remitiendo a la sentencia apelada (como en los ejemplos 12 y 13). Ese modo de construir el texto y de proporcionar la información es una muestra del hiperutilitarismo de la escritura judicial (Taranilla 2012a, 137 n98, 149 y 292). Sin embargo, se opone al imperativo de autosuficiencia que algunos autores predican del género de la sentencia (Andrés Ibañez 2007, 222; Colomer 2001, 141; Igartua 2003, 28), según el cual toda sentencia debe poderse entender de forma autónoma, sin que sea necesario conocer más informaciones que las que en ella se exponen.

Tabla 4. La secuencia de hechos probados en las secuencias penales de apelación.

SENT. PENALES APELACIÓN	
Proceso	*Recurso para relatar los hechos probados*
PE : A : 1	Remisión a la sentencia de primera instancia
PE : A : 2	Remisión a la sentencia de primera instancia
PE : A : 3	Remisión a la sentencia de primera instancia con una modificación puntual
PE : A : 4	Remisión a la sentencia de primera instancia
PE : A : 5	Remisión a la sentencia de primera instancia
PE : A : 6	Remisión a la sentencia de primera instancia
PE : A : 7	Remisión a la sentencia de primera instancia
PE : A : 8	La sentencia carece de secuencia de hechos probados[51]
PE : A : 9	Remisión a la sentencia de primera instancia (pero no en una secuencia de hechos probados, sino en los fundamentos jurídicos)
PE : A : 10	Remisión a la sentencia de primera instancia

Por su parte, en virtud de lo que establece la ley española, en la sentencia civil, de haber relato de hechos probados, este debería integrarse en el fragmento de antecedentes de hecho[52]. En la práctica, sin embargo, no ocurre exactamente así: tal como se ha demostrado en un estudio previo (Taranilla, e.p.), en las sentencias civiles, los hechos probados aparecen en la secuencia de fundamentos de derecho y, a menudo, no como un relato unificado e independiente, sino como un relato atomizado, que va desprendiéndose de la motivación jurídica. Tal es el caso del ejemplo 14, en donde los hechos que el juzgador considera probados (los destacados en negrita) van conociéndose mientras se explican las razones que llevan a resolver el caso en un determinado sentido:

[51] Para los casos peculiares de las sentencias PE:A:8 y PE:A:9, véase el apartado previo "La superestructura del texto".

[52] Así lo establece el artículo 209 de la Ley de Enjuiciamiento Civil, que para algunos autores implica que hacer un relato de los hechos probados no es un mandato para el juez civil, sino una opción. Conviene señalar que este es un punto de conflicto doctrinal; para una explicación detallada, véase Taranilla (e.p.).

Ejemplo 14.

> FUNDAMENTOS DE DERECHO
>
> PRIMERO.- Circunscribiéndose el presente litigio a **contrato** (documento nº 5 de la demanda y nº 2 del escrito de contestación) **mediante el que, en Septiembre de 2.007 y efectuando abono de 130.000 euros, el demandante concertó producto denominado "valores Santander"**, la resolución del mismo no puede soslayar que, contrariamente a la imagen que del mismo se ofrecía en el marco del relato fáctico de la demanda (vid. en particular documento nº 12 de entre los anejos al escrito de contestación), nos hallamos ante **demandante en absoluto ajeno al fenómeno de la inversión financiera, habiendo de hecho adquirido acciones** (evidente inversión de riesgo dada la notoria volubilidad del mercado) **de la propia demandada con anterioridad a referida concertación contractual**. [CI:I:1]

Esa característica también se registra en las sentencias civiles de apelación. En ellas el relato de los hechos probados tampoco se emite de modo completo e independiente de la motivación, sino segmentado. Además, en la sentencia de apelación los hechos relatados son particularmente puntuales, esto es, el relato nunca es exhaustivo. Ello se debe a que el juzgador que resuelve en alzada solamente debe ocuparse de aquellas cuestiones que han sido expresamente recurridas por el apelante y no al conjunto de la controversia, lo que se resume en la máxima latina "tantum devolutum quantum apellatum". Por otra parte, las numerosas remisiones a la sentencia de 1ª instancia que aparecen en las sentencias de apelación, tal como se expondrá en el apartado siguiente, hacen que estas incumplan de forma permanente el requisito de autosuficiencia del que se hablaba arriba.

Los fundamentos de derecho

La secuencia de fundamentos de derecho es la que contiene los motivos que llevan al juzgador a resolver el caso en un determinado sentido. La comparación entre los fundamentos de derecho de las distintas sentencias que configuran el corpus no ha revelado diferencias textuales. No pueden establecerse peculiaridades sintácticas relacionadas con el orden y la instancia jurisdiccional. Existen, en cambio, especificidades discursivas, que están originadas por el hecho de que la operación que se realiza en cada variante de sentencia es particular, tanto en relación con el orden como con la instancia.

Una de esas especificidades es el uso de los procedimientos de cita. Con frecuencia se ha puesto de manifiesto que la práctica del derecho genera textos de abundante contenido intertextual (véanse, entre otros, Bhatia, 1998; Candlin & Maley 1997), lo que significa que en ellos pueden identificarse numerosas relaciones (implícitas o explícitas) con otros textos (Bazerman, 2004, 86; Kristeva, 1969). En particular, el carácter intertextual del género de la sentencia ha sido puesto de relieve en multitud de ocasiones, incluso en referencia a las sentencias escritas en español (Rodríguez Aguilera, 1974, 52). Dentro de los recursos intertextuales, la cita de las palabras ajenas resulta imprescindible en el texto de una sentencia, que con mucha frecuencia ha de referir lo que se ha dicho con anterioridad, oralmente o por escrito (García Asensio, 2011). Así, las sentencias recurren constantemente a la cita de leyes, de sentencias y otros documentos jurídicos, o de las palabras que han aportado al proceso judicial los distintos participantes.

Ahora bien, existen ciertas variaciones en el empleo de tales procedimientos en función del orden y la instancia a los que pertenezca una sentencia. Si bien el análisis no prueba variaciones en la forma de las citas según el orden o la instancia (es decir, no hay diferencias reseñables en el uso de la cita directa o la indirecta, el empleo de fórmulas citativas, de signos de puntuación o de recursos ortotipográficos, etc.)[53], sí se han registrado evidentes diferencias en cuanto a la fuente citada, según la variante de la sentencia. Tal como se puede ver en la tabla 5, que aparecerá seguidamente, para esta investigación se han clasificado y cuantificado las citas de cada uno de los cuatro subcorpus de estudio, en función de distintas fuentes[54]:

(i) la ley (ejemplo 15);
(ii) otra sentencia, distinguiendo entre las citas a sentencias de dos tipos:
  ii.1. la sentencia de 1ª instancia, citada en la sentencia que resuelve el recurso presentado contra aquella (ejemplo 16), y
  ii.2. otras sentencias anteriores, de cualquier órgano jurisdiccional (ejemplo 17);
(iii) un texto escrito de los que forman parte del mismo proceso, esto es, integrado en el mismo sistema de género que la sentencia que se analiza, diferenciando entre los tipos siguientes:
  iii.1. escritos procesales (como los escritos de las partes) (ejemplo 18), y
  iii.2. otros documentos, incorporados al proceso como prueba (ejemplo 19); y, por último,
(iv) las palabras que emiten oralmente los participantes del proceso —ya sean las partes implicadas, los testigos, los peritos o los operadores jurídicos (abogados o fiscales)— durante el juicio oral (ejemplo 20).

Ejemplo 15.

> [C]onviene recordar, una vez más, qué criterios deben tenerse en cuenta en orden a la valoración de la prueba pericial, pues, señala e[l] artículo 348 de la Ley de Enjuiciamiento civil que: "El tribunal valorará los dictámenes periciales según las reglas de la sana crítica" [CI:A:1].

Ejemplo 16.

> La sentencia impugnada, en su fundamento jurídico quinto, hace referencia al informe del Equipo Técnico para imponer la medida de Libertad Vigilada, no considerando necesaria la medida de internamiento a la vista de las circunstancias personales concurrentes en el menor que enumera [PE:A:6].

[53] Sobre las diferencias formales y pragmáticas de los distintos modos de citación, véase Reyes (1993 y 1994) y Maldonado (1999). La gran diversidad de modos citativos de las sentencias judiciales ha sido tratada por García Asensio (2011).

[54] Se han tenido en consideración todas aquellas citas contenidas en los fundamentos jurídicos del corpus que explícitamente señalen que se reproducen las palabras ajenas, ya sea mediante un signo de puntuación, un verbo de comunicación o una fórmula de cita, del tipo de *según.*

Ejemplo 17.

> En estas circunstancias, y en relación con la doctrina jurisprudencial expuesta, debe concluirse que la parte demandada no cumplió con la diligencia suficiente su deber de informar de manera completa de las consecuencias del producto contratado, propiciando así que el consentimiento de la actora se prestase viciado por error. Error que, como precisa la citada sentencia de la Audiencia Provincial de Asturias de 10 de diciembre de 2010, "viene relacionado con el desconocimiento de lo que realmente estaba contratando ante la falta de transparencia e información de la entidad bancaria de las consecuencias y efectos reales del tipo de contrato que firmaba" [CI:I:4].

Ejemplo 18.

> Hechas estas precisiones, cuestiona […] el recurso la condena por el delito de robo con violencia alegando que no [ha] quedado acreditada la preexistencia de los cordones de oro sustraídos ni, en consecuencia, el ánimo de lucro, reprochando que no exista ninguna factura sobre la compra de esos cordones [PE:A:10].

Ejemplo 19.

> Según el informe pericial elaborado por don Juan Antonio XX y don Ángel Jesús XX, la videoconsola PS3 está diseñada para ser conectada a una televisión y ser utilizada para jugar a los videojuegos desarrollados para la PS3 o para visionar el contenido de DVDs o discos Blu-ray que típicamente contienen películas [CI:I:5].

Ejemplo 20.

> Es relevante en este punto que la denunciante Sra. Viñas afirmara que ella personalmente había comprobado que con tales claves se podía acceder a los contenidos codificados, y siendo su credibilidad mayor que la del perito de parte, puede tenerse por acreditado tal hecho [PE:I:9]

Tabla 5. Tipos de fuentes citadas en los subcorpus de estudio.

		PE : I	PE : A	CI : I	CI : A
LEYES		15	10	26	6
SENTENCIAS	*Sentencia de 1ª instancia del mismo proceso*		6		14
	Otras sentencias	14	46	23	35
TEXTOS ESCRITOS QUE FORMAN PARTE DEL MISMO PROCESO	*Escritos procesales*	2	30	12	29
	Documentos presentados como prueba	10	1	15	21
INTERVENCIONES ORAL DE LOS PARTICIPANTES EN EL PROCESO		83	11	26	5

El análisis del corpus de estudio muestra que las sentencias de 1ª instancia (tanto civiles como penales) tienden a citar aproximadamente el mismo número de textos normativos que jurisprudenciales (15 textos normativos frente a 14 sentencias en el orden penal, 26 textos normativos frente a 23 sentencias en el orden civil); es decir, en las sentencias de 1ª instancia no parece haber preferencia hacia una u otra fuente del derecho. Por el contrario, el examen de las sentencias de apelación muestra una clara tendencia a citar otras sentencias en la justificación de la decisión. Así, en el corpus de sentencias penales de apelación, frente a los 10 textos normativos citados, se registran 46 textos jurisprudenciales; igualmente, en el orden civil, el número de citas de la ley es de 6, mientras que las citas a sentencias que se emplean como jurisprudencia alcanzan las 35. En definitiva, a diferencia de las sentencias de 1ª instancia, las sentencias de apelación invocan con mayor frecuencia la jurisprudencia que las leyes para motivar el fallo. Una explicación probable para ello es la naturaleza distinta de la operación decisoria que se lleva a cabo en las sentencias de diferente instancia. El juez de 1ª instancia, en esencia, busca establecer hechos probados sobre los que aplicar la ley, lo que dará lugar a una decisión conforme a derecho; para ello recurre indistintamente a textos normativos y a textos jurisprudenciales. Por su parte, el juzgador que resuelve un recurso de apelación tiene el propósito de revisar una decisión judicial previa, para lo que a menudo no necesita tanto acudir al texto de la ley como al texto de otras sentencias que resolvieron casos semejantes.

En segundo lugar, las sentencias de apelación también citan con mayor frecuencia fragmentos extraídos de los textos procesales que forman parte de su mismo proceso, es decir, que están en su sistema de género. En el corpus, en el conjunto de las sentencias penales de 1ª instancia solo se cita 2 veces un escrito procesal y ello ocurre en 12 ocasiones en las sentencias civiles de 1ª instancia. En cambio, las sentencias penales de apelación citan 30 escritos procesales, cifra a la que se debe sumar las 6 veces que se emplean palabras de la sentencia recurrida; de forma semejante, en las sentencias civiles de apelación se citan escritos procesales 29 veces y 19 veces la sentencia recurrida. Esa preponderancia de las citas de textos procesales en las sentencias de apelación vuelve a tener que ver con el hecho de que resolver una apelación acostumbra a ser una operación peculiar, distinta a la de resolver en 1ª instancia. El apartado de fundamentos jurídicos de una sentencia de apelación es, en realidad, una secuencia metaargumentativa, que valora una motivación judicial. Con ese objetivo, emplea fragmentos textuales de la sentencia de instancia, así como fragmentos de otros textos que se refieren a ella y argumentan en torno a ella.

En relación con esa cuestión se puede explicar además la prevalencia de las citas de los elementos probatorios en las sentencias de 1ª instancia, tanto de documentos escritos aportados a la causa como prueba como de las intervenciones de los participantes en el juicio oral. En el orden penal, las sentencias se caracterizan por la cita extraordinariamente frecuente de las palabras que los participantes durante la celebración del juicio. En el corpus analizado, se registran 83 citas de intervenciones orales en el juicio oral. Además, el subcorpus penal de 1ª instancia contiene 10 citas a fragmentos de documentos presentados como prueba. Por lo que respecta al orden civil, las sentencias de 1ª instancia también contienen numerosas citas extraídas de pruebas documentales (15 en el subcorpus de estudio) y de intervenciones orales (26 en el subcorpus). Esa

utilización recurrente de fragmentos de textos probatorios (escritos u orales) tiene que ver con que las sentencias de 1ª instancia tienen el cometido destacado de fijar los hechos probados, para lo que necesitan recurrir al examen de las pruebas. Citar el contenido de las pruebas, en cambio, no resulta tan habitual en las sentencias de apelación cuyo objetivo rara vez es un nuevo examen completo de las pruebas.

El fallo

Por lo que respecta a la secuencia del fallo, la composición más frecuente es la que emplea el binomio formado por un verbo duplicado (*condenar, absolver, confirmar, estimar*, etc.) que se coordina en forma de perífrasis de obligación y en forma simple, al modo de "debo condenar y condeno", tal y como ocurre en los ejemplos siguientes:

Ejemplo 21.

Fallo
Que debo condenar y condeno a Ernesto Olio como autor responsable de un delito de … [PE:I:1]

Ejemplo 22.

Fallo
Que debo desestimar y desestimo íntegramente la demanda formulada por don Abel… [CI:I:1]

Esa es la fórmula tradicional de la redacción del fallo, que funciona sintácticamente como una oración completiva que se subordina al título de la secuencia ("fallo", "fallamos", en singular o plural en función de si la sentencia es emitida por un órgano individual o colegiado) (Garofalo 2009, 239-242; Taranilla 2012a, 274). Responde a la voluntad de expresar que la decisión no se debe únicamente al criterio individual del juzgador, sino que proviene de un deber externo a él, que se deriva de la ley, que le compele (López Samaniego 2006a, 126-127). Sin embargo, junto a esa fórmula, se registran otras tres opciones más modernas. La primera es el uso de la primera persona del presente simple (en singular o en plural), prescindiendo de la perífrasis de obligación, como en los ejemplos 23 y 24. La segunda es el uso de una construcción pasiva con *se*, como en 25. La tercera es el empleo del verbo en infinitivo, como en 26:

Ejemplo 23.

Fallo
Desestimo el recurso de apelación … [CI:A:3]

Ejemplo 24.

Fallo
Estimamos parcialmente el recurso de apelación … [PE:A:3]

Ejemplo 25.

Fallo
Se desestima el recurso de apelación … [CI:A:7]

Ejemplo 26.

Fallo
Estimar la demanda formulada … [CI:I:3]

En esas formulaciones más actuales, la forma "fallo", que proviene originalmente de la primera persona del singular del presente de indicativo del verbo *fallar* (en el sentido de 'decidir sobre un litigio'), ha experimentado una desemantización que ha hecho de ella "un simple marcador de apertura del veredicto" (Garofalo 2009, 242).

En cuanto a la frecuencia de esas fórmulas en el corpus manejado para este estudio, la tabla siguiente recoge las sentencias que emplean (i) la fórmula que conserva la perífrasis de obligación (PV), (ii) las que emplean solo el verbo en forma presente simple (Pres), (iii) las que emplean una forma pasiva (Pas) y (iv) las que emplean un infinitivo (Inf). El cómputo total es que 17 sentencias recurren a la estructura con perífrasis verbal, 12 al infinitivo, 9 al presente y 2 a la pasiva. No es posible establecer ninguna correspondencia entre la fórmula elegida y el orden y la instancia jurisdiccionales de la sentencia. Esas múltiples posibilidades de redacción revelan que el género de la sentencia está en un momento de cambio, en el que conviven elecciones tradicionales con otras más novedosas.

Tabla 6. Composición del fallo.

SENT. PENALES 1ª INSTANCIA	
Proceso	
PE : I : 1	PV
PE : I : 2	PV
PE : I : 3	PV
PE : I : 4	Inf
PE : I : 5	Inf
PE : I : 6	Inf
PE : I : 7	PV
PE : I : 8	PV
PE : I : 9	PV
PE : I : 10	PV

SENT. CIVILES 1ª INSTANCIA	
Proceso	
CI : I : 1	PV
CI : I : 2	Pres
CI : I : 3	Inf
CI : I : 4	Pres
CI : I : 5	Inf
CI : I : 6	PV
CI : I : 7	Inf
CI : I : 8	Inf
CI : I : 9	Inf
CI : I : 10	PV

SENT. PENALES APELACIÓN	
Proceso	
PE : A : 1	PV
PE : A : 2	PV
PE : A : 3	Pres
PE : A : 4	Pres
PE : A : 5	Pres
PE : A : 6	Pres
PE : A : 7	Pres
PE : A : 8	Inf [55]
PE : A : 9	PV
PE : A : 10	PV

SENT. CIVILES APELACIÓN	
Proceso	
CI : A : 1	PV
CI : A : 2	PV
CI : A : 3	Pres
CI : A : 4	Inf
CI : A : 5	Pas
CI : A : 6	PV
CI : A : 7	Pas
CI : A : 8	Inf
CI : A : 9	Pres
CI : A : 10	Inf

[55] El fallo de esta sentencia tiene una forma particular:
Fallo:
S.Sª acuerda:
Desestimar…
De alguna manera, esta composición pone en evidencia que el proceso de desemantización del título "fallo", mencionado arriba, está aún en vías de consolidación. Así, en este ejemplo, el juez que opta por un fallo en infinitivo necesita utilizar un título ("S.Sª acuerda") que actúe como oración principal del verbo en infinitivo, para no incurrir en un anacoluto.

Ahora bien, aunque la forma sintáctica del fallo no esté condicionada por el orden y la instancia, sí lo está el verbo que se emplea, debido a que los actos de habla que se llevan a cabo en cada orden e instancia difieren. Así, por ejemplo, en las sentencias penales de 1ª instancia, los verbos performativos se reducen a *absolver* y *condenar*. En cambio, son más diversos en el orden civil, donde se utilizan, entre otros, *declarar, ordenar*, así como en sentencias que resuelven una apelación (tanto del orden penal como del orden civil), donde aparecen *estimar, desestimar, confirmar,* etc.

Asimismo, las sentencias civiles de primera instancia y las sentencias civiles y penales de apelación contienen, en sus fallos, referencias a otros documentos previos, tanto a sentencias como a documentos que producen las partes. Esas referencias a menudo se introducen en el fallo como una oración de gerundio que se subordina a la oración principal, que contiene la decisión. En ese sentido, los fallos de las sentencias civiles y de las sentencias de apelación suelen ser más complejos que los de las sentencias penales de 1ª instancia. El par de ejemplos siguientes son una muestra:

Ejemplo 27.

> Fallamos
>
> **Que desestimando** el recurso de apelación interpuesto por la representación procesal de la mercantil Canteras Godall S.L., y con desestimación de las impugnaciones de sentencia formuladas por la representación de Don Pio y la mercantil Agua, Minería y Medio Ambiente S.L.U., contra la Sentencia dictada el día 30 de abril de 2012 por la Iltma. Sra. Magistrado Juez del Juzgado de Primera Instancia Núm. 8 de Castellón, en los autos de Juicio Ordinario Núm. 46 del año 2.012, de los que este Rollo dimana, **debemos confirmar y confirmamos** la expresada resolución … [CI:A:2]

Ejemplo 28.

> Fallo
>
> Que, estimando parcialmente la demanda formulada por la entidad Sadi Néstor Otal contra la entidad Bankia SA debo declarar y declaro la nulidad del contrato … [CI:I:6]

Conclusiones

El análisis realizado permite asegurar que el género de la sentencia no es homogéneo, sino que existen diferencias lingüísticas ligadas al orden y a la instancia jurisdiccional en que se emite cada documento. Esas variaciones afectan tanto en un nivel macrotextual como microtextual. Además de las diferencias en la composición de las sentencias derivadas de la propia ley, que se han detallado al inicio de este artículo, este estudio ha establecido las siguientes singularidades:

(i) El fragmento de "Antecedentes de hecho" es más simple en las sentencias de 1ª instancia que en las de apelación. En las sentencias de apelación se incluye una referencia al fallo de la sentencia recurrida, ya sea en forma de síntesis o de cita directa, así como una referencia al recurso interpuesto contra la primera sentencia.

(ii) El relato de los hechos probados es más extenso en las sentencias de 1ª instancia. En las sentencias de 1ª instancia del orden penal se suele incluir un relato

exhaustivo, en un fragmento narrativo autónomo. En cambio, en las sentencias de 1ª instancia del orden civil, el relato de hechos probados se incluye de forma disgregada en la secuencia de fundamentos jurídicos. Por su parte, las sentencias de apelación se caracterizan por incluir solo de forma mínima y puntual referencias a los hechos probados. Ello se debe a que las sentencias de apelación no se suelen dedicar a resolver cuestiones probatorias, vinculadas al establecimiento del relato de hechos, sino a cuestiones de razonamiento jurídico.

(iii) Si bien las características discursivas del fragmento de "Fundamentos de derecho" son semejantes en todos los órdenes e instancias, hay algunos elementos que cambian en función de esas variantes. Así, en este estudio se ha confirmado que existen diferencias en las fuentes citadas en los procedimientos de reproducción del discurso ajeno: las sentencias de 1ª instancia no muestran preferencias respecto a la fuente de cita, mientras que las de apelación acuden más habitualmente a la cita de otras sentencias judiciales.

(iv) La forma sintáctica del "Fallo" no está determinada por razones de orden o instancia, salvo en lo que respecta a la forma verbal (singular o plural) que se emplea y al verbo performativo escogido.

(v) Existen diferencias de redacción independientes de los factores de orden e instancia, que se deben a que la sentencia se encuentra en un momento de cambio en el que coexisten soluciones tradicionales con otras más modernas.

En suma, se ha demostrado que los factores de orden e instancia jurisdiccional determinan algunas características lingüísticas de las sentencias. Por ello, la descripción exhaustiva del género de la sentencia ha de considerar tales variantes. Solo de ese modo se podrá obtener una caracterización cada vez más granulada del género. Por otro lado, cabe añadir que esta investigación es solo una primera aproximación a la variación de la sentencia judicial. Por ello, en el futuro debería emprenderse un estudio semejante que cuente con un corpus de análisis mayor y que integre, además, otros órdenes jurisdiccionales (contencioso-administrativo y social) y otras instancias y órganos judiciales.

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THE CIVIL LAW TERM 机关 *JĪGUĀN* IN TRANSLATION INTO ENGLISH, GERMAN AND POLISH

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Abstract: The paper presents the options available when selecting equivalents of the Chinese term 机关 *jīguān* in legal context. The author undertook the conceptual analysis of the potential German and Polish equivalents of 机关 applied in the General Principles of the Civil Law of the People's Republic of China of April 12, 1986 (中华人民共和国民法通则 *Zhōnghuá Rénmín Gònghéguó mínfǎ tōngzé*) and Civil Procedure Law of the People's Republic of China of April 9, 1991 (中华人民共和国民事诉讼法 *Zhōnghuá Rénmín Gònghéguó mínshì sùsòng fǎ*). The corpus under study included the translation of the mentioned statutes into English proposed by Centre of Laws and Regulations in Law Press China (法规中心，法律出版社 *Fǎguī zhōngxīn, Fǎlǜ chūbǎnshè*). English and German are often intermediary languages in the process of finding equivalents in Polish-Chinese translation. The term 机关 used in a legal and/or administrative context is translated into English, German and Polish differently depending on the context.
Key words: Chinese statutory language, legal terminology, legal translation

TERMIN 机关 *jīguān* W TEKSTACH PRAWA CYWILNEGO I JEGO TŁUMACZENIE NA ANGIELSKI, NIEMIECKI, POLSKI

Abstrakt: W artykule zaprezentowano ekwiwalenty terminu 机关 *jīguān* użytego w tekstach Ustawy o ogólnych regułach prawa cywilnego Chińskiej Republiki Ludowej z 12 kwietnia 1986 roku (中华人民共和国民法通则 *Zhōnghuá Rénmín Gònghéguó mínfǎ tōngzé*) oraz w Ustawie o prawie postępowania cywilnego Chińskiej Republiki Ludowej z 9 kwietnia 1991 roku (中华人民共和国民事诉讼法 *Zhōnghuá Rénmín Gònghéguó mínshì sùsòng fǎ*). Autorka dokonała analizy potencjalnych ekwiwalentów terminu 机关 w języku niemieckim i polskim. Dobierając ekwiwalenty odniosła się nie tylko do terminów z tekstu źródłowego, ale także do ich ekwiwalentów w anglojęzycznej wersji wspomnianych ustaw, przygotowanej przez Centrum regulacji prawnych w Wydawnictwie prawniczym (法规中心，法律出版社 *Fǎguī zhōngxīn, Fǎlǜ chūbǎnshè*). Język angielski i język niemiecki stanowi często język pośredni w procesie tłumaczenia polsko-chińskiego. Wykazano, że odpowiedni dobór ekwiwalentów polisemu 机关 jest możliwy tylko przy znajomości kontekstu jego użycia.
Słowa kluczowe: chiński język prawny, terminologia prawna, tłumaczenie prawnicze

关于将民事法律文本的《机关》术语翻译成英文、德文、波兰文的译文

提要： 本文主要介绍在法律场合的《机关》术语。作者做出在《中华人民共和国民法通则》（1986年4月12日第六届全国人民代表大会第四次会议通过）与《中华人民共和国民事诉讼法》（1991年4月9日第七届全国人民代表大会第四次会议通过）中都使用的《机关》术语分析，分析其德文及波兰文翻译对应词。语料库包括由法律出版社法规中心编辑的中国法律英文标准文本。波兰文—中文翻译仍需依赖英语及（或）德语作为中介语。《机关》术语用在法律及（或）行政场合有不同的含义，所以我们应该把《机关》术语依据场合翻译成英文、德文及波兰文。
关键词： 立法术语；法律术语；法律翻译

Determining the degree of equivalence

When undertaking the process of determining the degree of translative equivalence one may find that some functional equivalents are not sufficiently accurate. According to Šarčević (2000, 237-240) to establish the degree of equivalence between terms in different languages one should be able to compare the concepts in the source and target language. Šarčević wrote about the decision-making process and analysis of the options available when selecting equivalents. She indicated that the purpose of the conceptual analysis of the potential equivalents is to establish the constituent features or characteristics of particular concepts. Translators should be able to determine the intended meaning of legal terms from the context, because legal terms are typified by polysemy (Šarčević 2000, 231).

Much has been written about polysemy in legal Chinese (see: Keller 1994, 749-750, Peerenboom 2002, 247-251, Cao 2004, 94-100, Grzybek 2013, 54-57). The language of law should be precise. It is commonly acknowledged that contemporary law in China suffers from generality and vagueness and legal Chinese is often just as imprecise as ordinary Chinese (Cao 2004, 94, 113).

The polysemy of the term 机关 *jīguān* in legal context

The purpose of this article is an analysis of the term 机关 *jīguān* in two Chinese statutes:

(i) General Principles of the Civil Law of the People's Republic of China adopted by the Fourth Session of the Sixth National People's Congress on April 12, 1986 – 中华人民共和国民法通则 *Zhōnghuá Rénmín Gònghéguó mínfǎ tōngzé* (ChCPL),

(ii) The Civil Procedure Law of the People's Republic of China adopted by the Fourth Session of the Seventh National People's Congress on April 9, 1991 – 中华人民共和国民事诉讼法 *Zhōnghuá Rénmín Gònghéguó mínshì sùsòng fǎ* (ChCL).

The equivalents of 机关 in the aspect of technology are:

(i) mechanism, gear (机械的关键部分 *jīxiè de guānjiàn bùfen*), for instance: 启动机关 *qǐdòng jīguān* 'starting gear', or

(ii) mechanically operated, automatic device (用机械控制的 *yòng jīxiè kòngzhì de*), for instance: 机关布景 *jīguān bùjǐng* 'mechanically-operated stage scenery'.

Another equivalents of the term 机关 *jīguān* are 'stratagem', 'scheme', 'intrigue', i.e. 识破机关 *shìpò jīguān* 'see through a 'trick' or 'system', i.e. 税务机关 *shuìwù jīguān* 'taxation system'.

In the language reality of law and administration the mentioned term relates to department of dealing with affairs (办理事务的部门 *bànlǐ shìwù de bùmén*), which English equivalents are:

(i) office – 军事机关 *jūnshì jīguān* 'military office',
(ii) organ – 公安机关 *gōng'ān jīguān* 'public security organs', 国家机关 *guójiā jīguān* 'state organs',
(iii) institution – 文化教育机关 *wénhuàjiàoyù jīguān* 'cultural and educational institutions', 科研机关 *kēyán jīguān* 'research institute',
(iv) body – 领导机关 *lǐngdǎo jīguān* 'leading bodies',
(v) organisation – 党政机关 *dǎngzhèng jīguān* 'the Party and government organisations', 行政机关 *xíngzhèng jīguān* 'administrative organisation'.

According to *The New Chinese-English Law Dictionary* (新汉英法学词典) the term 机关 has the following equivalents: 'body', 'government agency', 'government unit', 'office', 'organ and organisation'. For instance 公安机关 *gōng'ān jīguān* is translated as 'public security organisation', 国家机关 *guójiā jīguān* as 'government agency', 'state organ'.

One finds various equivalents of syntagms containing the term 机关, for instance 税务机关 *shuìwù jīguān* is translated as:

(i) tax authorities (Yu, Wen 2005, 735; Liao, Li, Zhang 2001, 696; He 2002, 550; Wu 2004, 4384), or
(ii) tax office (Wu 2004, 4384).

The inconsistency of the terminology may be seen in Chinese-English legal translation.

Inconsistent terminology in the target language

In 2000 Chen (596-597) identified eight equivalents of the term 司法机关 *sīfǎ jīguān*, which are to be found in different Chinese-English dictionaries. According to *The Chinese-English dictionary of commonly used legal terms* (常用汉英法律词典) 司法机关 *sīfǎ jīguān* is a 'judicial administrative bureau'. It is also translated as 'judicial organ' (see: *The Chinese-English Law Dictionary*, chin. 汉英法律词典) or 'judicial organisation' (see: *The New Chinese-English Law Dictionary*, 新汉英法学词典 and *The English-Chinese Bilingual Dictionary of Law*, 汉英法律词典) or 'organisation of justice' (see: *The New Chinese-English Law Dictionary*, 新汉英法词典). One finds the equivalent 'judicial authority' (see: *English-Chinese Bilingual Dictionary of Law*, chin. 汉英法律词典). The syntagm 司法机关 was translated also into 'judicial body' (see:

The New Chinese-English Law Dictionary, 新汉英法学词典) and even 'judicial office' (see: *The English-Chinese Bilingual Dictionary of Law*, chin. 汉英法律词典) or 'judicial system' (see: *The Chinese-English Law Dictionary*, chin. 汉英法律词典). The equivalents of the term 机关 listed in mentioned dictionaries are:

(i) bureau,
(ii) organ,
(iii) organisation,
(iv) authority,
(v) body,
(vi) office,
(vii) system.

One might ask if all the listed equivalents are sufficiently accurate. If not, how does one choose the proper one?

The term 机关 *jīguān* in General Principles of the Civil Law of the People's Republic of China and Civil Procedure Law of the People's Republic of China

The *Bilingual Education Series with Law and Regulations* published by Law Press China (法律出版社 *Fǎlǜ chūbǎnshè*) contains the English translation of General Principles of the Civil Law (中华人民共和国民法通则) and Civil Procedure Law of the People's Republic of China (中华人民共和国诉讼法). Both of these statutes were adopted during the time of big changes in China. The term 机关 is used in these texts in a legal and/or administrative context and is translated differently depending on the context. In order to determine the choice of proper equivalents in German and Polish terms in German and Polish Law were sought, which correspond with the chosen terms in Chinese Law and its equivalents in English, proposed by the Centre of Laws and Regulations in Law Press China.

In the translated Civil Procedure Law the term 机关 has the following equivalents:

(i) organ,
(ii) office,
(iii) authority (examples and number of articles listed below).

There are three different equivalents of the term 机关 in the translated text of General Principles of Civil Law, such as:

(i) organ,
(ii) authority,
(iii) agency (examples and number of articles listed below).

机关 *jīguān* as an organ

The term 机关 is often translated into English as 'an organ' with the meaning of 'an official organisation or department' (官方机构 *guānfāng jīguān*) that performs

a specified function (Oxford Dictionary), i.e.: 中央机关 *zhōngyāng jīguān* 'central organ', 主要机关 *zhǔyào jīguān* 'major organ', 国家的中央机关 *guójiā de zhōngyāng jīguān* 'the central organ of state', 立法机关 *lifǎ jīguān* 'legislative organ / body', 行政机关 *xíngzhèng jīguān* 'administrative organ / body', 经济机关 *jīngjì jīguān* 'economic organ', 司法机关 *sīfǎ jīguān* 'judicial organ', 立宪机关 *lìxiàn jīguān* 'constitutional organ', 政治机关 *zhèngzhì jīguān* 'political organ', 安全机关 *ānquán jīguān* 'security organ' (see: Oxford Collocations Dictionary 2006, 145-146, 1077).

The German functional equivalent of the term 机关 understood as an official organisation or department that performs a specified function is '*das Organ*'. The Federal Republic (*die Bundesrepublik*), states (*Länder*), organisations (*Körperschaften*) and public companies or joint stock companies (*Anstalten des öffentlichen Rechts*) are legal entities, which act through their organs (*Organe*). For instance the organs of states are '*Landtage*' (parliaments), '*Landesregierungen*' (federal states governments) and the courts of the states. Other public legal entities have their organs as well. The private companies, for instance capital company (*Kapitalgesellschaft*) also have their organs.

The Polish functional equivalent of 机关 as an official organisation or department that performs a specified function is '*organ*'. There are for instance organs of the public administration (*organy administracji publicznej*), which according to article 5 of the Polish Code of Administrative Proceedings (*Kodeks postępowania administracyjnego*) are: ministers (*ministrowie*), central organs of governmental administration (*centralne organy administracji rządowej*), provincial governors (*wojewodowie*), other local organs of governmental administration, organs of local authorities, etc. The organs of local authorities (*organy jednostek samorządu terytorialnego*) are the organs of municipality (*gmina*), district (*powiat*), province or voivodeship (*województwo*), association of municipalities (*związek gmin*), association of districts (*związek powiatów*), voyt (municipality executive officer) (*wójt*), mayor (*burmistrz*), city president (*prezydent miasta*), district executive officer (*starosta*), marshal (executive) of the province (*marszałek województwa*), etc. The limited liability private companies, for instance (*spółka z ograniczoną odpowiedzialnością*) have also their own organs.

机关 *jīguān* as 'an organ' is used in art. 83 of ChCPL. This term is modified by the adjective 'other' – 其他机关 *qītá jīguān* 'other organ' (see: art. 124 (3) of ChCPL) or 'administrative' – 行政机关 *xíngzhèng jīguān* 'administrative organ' (see: art. 6 of ChCPL). The German equivalents and Polish equivalents of these syntagms are: '*anderes Organ*', '*Verwaltungsorgan*' and '*inny organ*', '*organ administracyjny*'.

Also mentioned is 'state organ' (国家机关 *guójiā jīguān*) (see: art. 15 of ChCPL, art. 12 of ChCL), which corresponds to the German term: '*das Staatsorgan*' and the Polish: '*organ krajowy*'. Other example of the application of the term 机关 is the syntagm '*political organ*' (政治机关 *zhèngzhì jīguān*) (art. 81 of Chinese CPL), which may be translated into German as '*politisches Organ*' and into Polish as '*organ polityczny*'. Other types of organs, which are found in the analyzed statutes, are: 'supervisory organ' (监察机关 *jiānchá jīguān*) in art. 113 (4) of ChCPL and 'relevant organ' (有关机关 *yǒuguān jīguān*) in art. 113 (4), 124 (3) and art.

111 (3), 167 and 168. It is not difficult to find the equivalents of the last one – in German: '*zuständiges Organ*' and in Polish: '*odpowiedni organ*'. Problems may occur when choosing a German equivalent for 监察机关 *jiānchá jīguān* ('supervisory organ'). One should differentiate between potential equivalents of this term: '*Aufsichtsbehörde*' and '*Überwachungsorgan*'. The first term is used to designate an authority, which manages the control of the state. The second one means an organ of internal control of a company such as *die Aktiengesellschaft* or *die Genossenschaft*. Polish equivalents of 监察机关 *jiānchá jīguān* are '*organ nadzorczy*' or '*organ nadzoru*'.

The functional equivalents of the term 'public security organ' (公安机关 *gōng'ānjīguān*) mentioned in art. 167 of ChCPL in the syntagma 'public security organ or other relevant organs' (公安机关或者其他有关机关 *gōng'ānjīguān huòzhě qítā yǒu jīguān*) or 人民法院交公安机关 *rénmínfǎyuàn jiāo gōng'ānjīguān*) mentioned in art. 104 of ChCPL are: '*Organ für öffentliche Sicherheit*' or '*Polizeibehörde*' in German and '*organ bezpieczeństwa publicznego*' in Polish.

Tab. 1. 机关 *jīguān* as an organ.

Chinese term in ChCPL and/or ChCL	equivalent in English proposed by Center of Law and Regulations in Law Press (法律出版社 法规中心)	equivalent in German	equivalent in Polish
机关 *jīguān*	organ	Organ	organ
其他机关 *qítā jīguān*	other organs	sonstige Organe	pozostałe organy
行政机关 *xíngzhèng jīguān*	administrative organ	Verwaltungsorgan	organ administracyjny
国家机关 *guójiā jīguān*	state organ	Staatsorgan	organ państwowy
政治机关 *zhèngzhì jīguān*	political organ	politisches Organ	organ polityczny
监察机关 *jiānchá jīguān*	supervisory organ	Aufsichtsbehörde	organ nadzorczy / organ nadzoru
有关机关 *yǒuguān jīguān*	relevant organ	zuständiges Organ	odpowiedni organ
公安机关 *gōng'ān jīguān*	public security organ	Organ für öffentliche Sicherheit,	organ bezpieczeństwa publicznego

机关 *jīguān* as an office

Office is one of the already mentioned dictionary equivalents of the term 机关. According to Black's Law Dictionary it means a position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose (i.e. the office of attorney general) or place where business is conducted or services are performed (i.e. a law office). It can also mean a division of the U.S. governmental ranking immediately below a department (see: Black's Law Dictionary 2004, 1115).

The ChCPL contain the syntagm 公证机关 *gōngzhèng jīguān* translated into 'notary office' (see: art. 218) or 经所在国公证机关 *jìng suǒzài guó gōngzhèng jīguān* translated into 'notarial office in the country of domicile' (see: art. 242). When taking in account the English as the intermediary language office could be translated as *das Büro* into German and *biuro* into Polish. But the functional equivalents of 公证机关 are: '*Begalubigungsstelle*' in German or '*biuro notarialne* / *jednostka certyfikacyjna*' in Polish.

Tab. 2. 机关 *jīguān* as an office.

Chinese term in ChCPL and/or ChCL	equivalent in English proposed by Center of Law and Regulations in Law Press (法律出版社 法规中心)	equivalent in German	equivalent in Polish
公证机关 *gōngzhèng jīguān*	notary Office	Beglaubigungsstelle	jednostka certyfikacyjna, biuro notarialne

机关 *jīguān* as an authority

There are several examples of translation of 机关 *jīguān* into 'authority' in the analysed statutes. An authority may be understood as a governmental agency or corporation that administers a public enterprise, which may be also termed public authority (see: Black's Law Dictionary 2004, 143). The term 机关 is often translated into English as authority with the power to give orders (权力机构 *quánlì jīgòu*), i.e.: 合法的机关 *héfǎ de jīguān* 'lawful authority' (see: Oxford Collocations Dictionary 2006, 94).

The functional German equivalent of 机关 understood as an authority is '*Behörde*'. German *Behörde* (authorities) are groups of officials assigned to handle official business of the state, city, church, etc. (see: Wahrig 1997, 263). They are classified, organisational entities of people or tangible means who are appointed to act to achieve the purposes of the country based on the public authority (see: BVerGE 10, 48).

Authority is every position in the administrative organism of a country or other institution, which is responsible for public administration. The entities of private law may be also authorities if they act under public law (for instance private schools). One should remember that the supporter of the public administration, that is to say state or country or other legal entities are not authorities. They have their authorities. Also the courts are not authorities, but they have units which correspond to authorities. The functional equivalent of 机关 understood as authority is in Polish the term '*władze*', which means institutions, governing organs or governing people, i.e. *władze lokalne* (local authority).

机关 as authority occurs in article 91 of ChCL. The statute contains descriptions of the different types of authority, such as:

i. 'competent authority' 主管机关 *zhǔguǎn jīguān* (see: art. 41, 47 and art. 50 of ChCL, art. 152 of ChCL),
ii. 'registration authority' 登记机关 *dēngjì jīguān* (see: art. 44, 45 and 46, 49 of ChCL),
iii. 'tax authorities' 税务机关 *shuìwù jīguān* (see: art. 49 of ChCL),
iv. 'higher authority' 上级机关 *shàngjí jīguān* (see: art. 116 of ChCL).

Tab. 3. 机关 *jīguān* as an authority.

Chinese term in ChCPL and/or ChCL	equivalent in English proposed by Centre of Law and Regulations in Law Press (法律出版社法规中心)	equivalent in German	equivalent in Polish
机关 *jīguān*	authority	Behörde	władze
主管机关 *zhǔguǎn jīguān*	competent authority	zuständige Behörde	odpowiednie organy
登记机关 *dēngjì jīguān*	registration authority	Registrierungsstelle	organ rejestrujący
税务机关 *shuìwù jīguān*	tax authorities	Steuerbehörde	organy podatkowe
上级机关 *shàngjí jīguān*	higher authority	vorgesetzte Behörde	organ nadrzędny

It is interesting that the Polish functional equivalent of the term 机关 *jīguān* translated into English as 'authority' is in Polish the term *organy* (organs). The German functional equivalent, that is to say '*Behörde*' is not the only one equivalent of 机关 used as

'authority', because the equivalent of 财政机关 *cáizhèng jīguān* (financial organisation) is 'Finanzbehörde' (Fiskus).

机关 *jīguān* as an organisation

Organisation is defined as a body of persons (such as a union or corporation) formed for a common purpose (see: Black's Law Dictionary 2004, 1133). Actually it is rare that the term 机关 is translated into 'organisation', for instance: 政府机关 *zhèngfǔ jīguān* is sometimes translated as 'government organisation', but also as 'government office' or 'body of government', 'government body'.

One finds the syntagma 财政机关 *cáizhèng jīguān* translated into 'financial organisation', 党政机关 *dǎngzhèng jīguān* as 'the party and government organisation' and 行政机关 *xíngzhèng jīguān* as 'administrative organisation'. Sometimes the term 公安机关 *gōng'ān jīguān* is surprisingly translated as 'public security organisation'.

The Civil Procedure of People's Republic of China contains only one term 机关 conveying the meaning of an organisation, that is 任何外国机关 *rènhé wàiguó jīguān* in article 263, translated into every foreign organisation.

Tab. 4. 机关 *jīguān* as an organization.

Chinese term in ChCPL and/or ChCL	equivalent in English proposed by Centre of Law and Regulations in Law Press (法律出版社法规中心)	equivalent in German	equivalent in Polish
任何外国机关 *rènhé wàiguó jīguān*	every foreign organization	jede ausländische Organization	każda zagraniczna organizacja

机关 *jīguān* as an agency

The last equivalent for 机关 found in the selected statutes is 'agency'. An agency is inter alia a governmental body with the authority to implement and administer particular legislation, i.e. 'government agency', 'administrative agency', 'public agency', 'regulatory agency' (see: Black's Law 2004, 67). There are two types of agencies named 机关 in ChCL: administrative agency for industry and commerce, 工商行政管理机关 *gōngshāng xíngzhèng guǎnlǐ jīguān* in article 41 and article 152 of ChCL and arbitration agency, 仲裁机关 *zhòngcái jīguān* in art. 59 of ChCL. The functional German and Polish functional equivalents of them correspond with the English term an agency. They refer to an institution, see the table number 5.

Tab. 5. 机关 *jīguān* as an agency.

Chinese term in ChCPL and/or ChCL	equivalent in English proposed by Centre of Law and Regulations in Law Press (法律出版社 法规中心)	equivalent in German	equivalent in Polish
工商行政管理机关 *gōngshāng xíngzhèng guǎnlǐ jīguān*	administrative agency for industry and commerce	Verwaltungsstelle für Industrie und Handel	organ administracyjny w zakresie przemysłu i handlu
仲裁机关 *zhòngcaí jīguān*	arbitration agency	Schiedsinstitution	instytucja arbitrażowa

The German and English equivalents of the term 仲裁机关 *zhòngcaí jīguān*, proposed in bilingual dictionaries, that ist o say 'Schiedsinstitution' in German and 'arbitration agency' in English, can be misleading when used as a intermediary terms in Polish-Chinese translation. The functional equivalent of 仲裁机关 is in Polish '*instytycja arbitrażowa*' (arbitration institution).

Conclusions

There are equivalents of the term 机关, which were not mentioned in this article, but can be used in the legal and administrative context. For instance the equivalents of 地区医疗保险机关 *dìqū yīliáo bǎoxiǎn jīguān* are: '*Ortskrankenkasse*' in German and '*miejscowa kasa chorych*' in Polish, the English equivalent of which is healthcare fund. Another interesting Chinese syntagm is 行刑机关 *xíngxíng jīguān*, which may be translated into German as 'die Strafvollzugsanstalt' and into Polish as 'zakład karny'. Other example can be 建筑主管机关 *jiànzhù zhǔguǎn jīguān* with the German equivalent '*Bauamt*' and Polish equivalent '*urząd budowlany*'. The equivalents of the term 机关 in the mentioned syntagms are '*Kasse*' in German and '*kasa*' in Polish, '*Anstalt*' in German and '*zakład*' in Polish, '*Amt*' in German and '*urząd*' in Polish.

The polysemy of Chinese legal terms constitutes a difficulty in determing the degree of equivalence of legal texts, especially for those translators who use English as the intermediary language. Although foreign libraries are offering more and more bilingual Chinese-English, English-Chinese and Chinese-German and German-Chinese dictionaries containing legal terminology, using them does not always lead to finding

a proper equivalent. The application of intermediary language, e.g. English in the Polish-Chinese translation often makes the situation more complex by introducing terminology existing in different law systems. One should remember that the functional equivalents, should be selected only by determining the context.

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DIRECTIVES AND THE SWORN TRANSLATOR: THE TERMINOLOGICAL CHALLENGE OF THE MDD 93/42/EEC

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Abstract: the presentation addresses the field of translating EU texts (directives), specifically the Medical Device Directive. The translation of EU instruments lies within the scope of responsibilities of the translators working for the European Commission and the European Parliament. Yet, sworn translators working in their native countries face the need to translate medical documentation both for natural persons (that is necessary for administrative purposes) and for corporate bodies (that operate on the common European market and require e.g., declarations of conformity, instructions for use or EC design examinations certificates to commercialise their products and thus run their business). Naturally, sworn translators while performing tasks commissioned refer to and consult the accepted translated versions of EU instruments to remain in line with the versions that have been transposed into their national legislations. In this paper, the original (English) and the translated (Polish) versions of the Medical Device Directive (93/42/EEC) shall be compared and analysed to find whether the Polish version fully reflects assumed terminological consistency.
Key words: EU texts, directives, medical translation, medical terminology

TŁUMACZ PRZYSIĘGLY A DYREKTYWY: TERMINOLOGICZNE WYZWANIA ZWIĄZANE Z TŁUMACZENIEM DYREKTYWY DOTYCZĄCEJ WYROBÓW MEDYCZNYCH

Abstrakt: Artykuł dotyczy przekładu tekstów związanych z Unią Europejską (dyrektyw), w szczególności dyrektywy dotyczącej wyrobów medycznych. Tłumaczenie tekstów unijnych znajduje się w gestii tłumaczy pracujących w Komisji Europejskiej i Parlamencie Europejskim. Tłumacze przysięgli świadczący swoje usługi we własnym kraju muszą się zmierzyć z tłumaczeniem tekstów i dokumentacji medycznej zarówno dla osób fizycznych (co bywa konieczne dla celów administracyjnych) oraz dla osób prawnych i firm działających na wspólnym rynku europejskim, które do prowadzenia swojej działalności potrzebują np. deklaracji zgodności, instrukcji użytkowania czy certyfikatów badania projektu WE w celu wprowadzenia produktów do obrotu). Tłumacze przysięgli w trakcie realizowania zleceń odwołują się do zaakceptowanych wersji dokumentów UE, aby zachować zgodność terminologiczną z wersjami przetransponowanymi do polskiego prawa. W artykule zostanie przeprowadzona analiza porównawcza oryginalnej (angielskiej) i przetłumaczonej (polskiej) wersji dyrektywy dotyczącej wyrobów medycznych (MDD, 93/42/EWG), która ma na celu zbadanie zgodności terminologicznej oryginału i przekładu.
Słowa kluczowe: teksty unijne, dyrektywy, tłumaczenie tekstów medycznych, terminologia medyczna

Introduction

The language of legal instruments, itself being a multi-faceted and an intriguing phenomenon, is, undoubtedly, a challenge for all translators, and sworn translators in particular, due to the rights and duties they possess. The European Union through its *acquis communautaire* effectively and clearly designates legal rights and duties of individuals, of social groups, of societies and of entire states. Thus legal instruments have an immense potential to influence human life.

Translating EU texts is a truly challenging task, given high standards that are to be fulfilled in this area. Translators are not a party to the drafting process, yet their knowledge of the issues and terminology occurring in the texts they are to translate should be thorough. The aim of this paper is to briefly discuss the specificity of EU texts, with a special focus laid on one of medicine-related directives that embraces the most comprehensive range of medical devices, i.e., the Medical Device Directive, which shall be followed by the comparison of two versions of the Directive (the English original and its Polish translation) in order to analyse the impact of terminological knowledge deficiencies on the final translation product and resultant far reaching consequences.

EU texts

It has to be borne in mind that the fact whether a given text, or a legal instrument, belongs to the category of legal texts does not rely on its linguistic features, regardless of their importance, but the major classification of legal texts sets the line between texts without the force of the law and normative ones, i.e. authoritative texts that are legally binding their addressees. Therefore an established and generated set of a variety of the sources of law in a given legal system determines the real legal nature of the text. The function of legal texts seems to be the most useful classification 'tool', and the debate pertaining to the fact whether legal texts display an informative function has been developing for years. Šarčević (2000, 11) enumerates three categories of legal texts: 1) primarily prescriptive, 2) primarily descriptive but also prescriptive, 3) purely descriptive (2000, 11). Primarily prescriptive texts embrace laws and regulations, codes, contracts, treaties and conventions (thus directives are also included within this category), and the normative nature is the common feature of those texts. The second category covers judicial decisions and instruments related to judicial or administrative proceedings (appeals, actions, petitions, pleadings); these texts are mainly descriptive. Prescriptive elements tend to have some legal force yet they are not sources of the law and they do not establish legal norms. Finally, purely descriptive texts refer to the doctrine in the form of legal opinions of law experts, scholars, law textbooks, and articles focusing on law-related issues.

Directives, together with regulations and decisions, belong to secondary EU law that comprises legal acts and instruments as well as international agreements concluded by the European Union. Directives are published in the Official Journal of the European Communities and are generated either by the EU Council or the EU Commission. In contrast to regulations, they do not have equivalents in terms of the domestic legislation. They are also binding for a given member state within a specific field and specific

results that are to be achieved. The methods of attaining these results are left to each Member State's discretion.

EU normative texts (embracing the entire legal output and legal regulations of the European Union, i.e., *acquis communautaire*) are part of the working reality of sworn translators. Not only are translators obliged to observe them as citizens of a given member state of the European Union, but also to use them as a source of reference when needed. Obviously, sworn translators do not translate EU texts (it is the responsibility of the Directorate General for Translation), yet relevant terminology applied in those texts may be helpful in accomplishing tasks commissioned.

Provisions of the EU law are currently published in all language versions (official languages) of the EU pursuant to Articles 21 and 290 of the Treaty Establishing the European Community (Jopek-Bosiacka 2006). The languages of member states can be classified into three groups, and these are:

1. authentic languages of treaties that are identically legally valid and form the basis for binding interpretation of treaties
2. official languages are all the official languages of the European Union member states
3. working languages that are used on a daily (working) basis, i.e. English, French and German

The English language used within the EU (and in EU documents) is considered somewhat different from standard English, which may be caused by a variety of factors. First of all, the EU legislation is not always produced and drafted by native speakers of English. Secondly, the supranational nature of normative legislation of the European Union enforces the application of directives and regulations that do not occur in legal systems of member states. Therefore we are witnessing some form of a reformulation of traditional, almost classic, concepts inherent for communicative contexts such as the sender and receiver of a message or a text type, as they become blurred or ambiguous. The emerging product is conceptually similar to what Trosborg called 'hybrid text' (Trosborg 1997, 146) as they are "documents produced in a supranational multicultural discourse community where there is no linguistically neutral ground". This might be the reason why these texts are in a way 'a-cultural' in the sense of not having resulted from particular cultures and languages, but being 'born' on the intercultural plane and derived from the contact between cultures and languages. Koskinen (2000:59) aptly observes that the specificity of EU translations is "the blurred divisions of languages and cultures. It has been taken for granted in translation studies that a change of language always also entails a change of culture, but within the EU context many translations are in fact intracultural".

Thirdly, what is also typical of EU legal documents is certain standardisation of texts; the identity of content (meaning) was mentioned above, yet the very structure and organisation of the texts must be matching as well: articles, paragraphs, sentences, clauses, etc. are organised identically and the text is easier to follow in terms of finding references to other EU official language versions. Trosborg (1997, 152) mentions the full

stop rule which stipulates that the number of full stops both in the source text and its translations must be equal. In terms of terminology, the role of potential connotations of meaning is less essential: the referent is most important (thus the referential function prevails), and a specialist term is viewed in its conceptual context.

The language of those documents is a specialist language, and has properties characteristic of specialist texts. Šarčević (2000) even considers this language a sub-language that is subject to certain specific rules (of syntactic, pragmatic and semantic nature). Additionally, yet another feature is typical of the language of those texts, namely, specialist vocabulary, whose aim is the accurate description of the reality affected by the normative function legal documents are intended to perform. Therefore, the text of a directive includes, apart from typical features of specialist texts such as (over)use of the passive, impersonal forms, nominalisations, and specialist vocabulary from a given field. The language of legal texts is, obviously, a challenge for translators: as a specialist language it has certain characteristic features (for further elaboration on such features as precision, vagueness, complexity, conservatism, and specialisation see Tiersma 1999). The reality in which legal texts function is described and reflected in specialist terminology: terms encountered in legal texts and those that refer to a given legal system can have a different meaning from their relevant correspondents in other legal systems due to the absence of an item, activity, or institution (Šarčević 2000). Naturally, all legal systems have their own legal realia or sets of concepts (quite frequently highly abstract ones), therefore it seems substantially difficult to compare terms used in different legal systems. These terms are defined (Šarčević 2000) as system-bound terms (also see de Groot (1999, 206) for *Systemgebundenheit)* because there are so deeply contextualised in a specific legal system. For that reason they are quite often untranslatable or their translation must be descriptive to compensate conceptual gaps. This conceptual incongruity in terminology (Šarčević 2000) may result from the historical evolution of legal systems that led to the development of a conceptual and terminological apparatus pertaining to social, historical, economic or cultural issues vital for a given country and its legal tradition. For this very reason – as Chiocchetti and Ralli (2013, 11-12) aptly observe – legal concepts are so difficult to be transposed from one legal system to another, which results in legal translation being a very complex task.

Since the focus of our considerations in this paper is the language, and specifically specialist vocabulary, of the Medical Device Directive (93/42/EEC) and translation-related problems that occur in the Polish version of this instrument (henceforth MDD), a number of comments pertaining to the specificity of medical terms and challenges they pose for translators as well as the context in which medicine-related directives function seems in order. It is common knowledge that medical translation is one of the types of technical (specialist) translation that is concentrated on medicine and its related fields. First and foremost, due to its being conditioned by the ethical codes of both biomedical research and healthcare, it should be accurate and reliable (Resurreccio 2011), as a translation error may result in serious consequences (for the discussion on quality of medical translation see Karwacka 2014). Thus the priority of the translator is to transfer not only the complex terminological content but also the form with features inherent in specialist translation; this transfer should be devoid of any references to cultural or ideological issues. Resurreccio (2007) claims that this neutrality and objectivity in conveying information gave rise to neutral, impersonal and uniform style

of medical translation. One of problems typical of the English medical language is the fact that medical terminology was constructed out of roots, prefixes and suffixes of Latin or Greek origin (for further elaboration see Kościałkowska-Okońska 2012; problems related with Greek and Latin roots and stems are discussed in van Hoof 1998). Resurreccio and Gonzalez (2007, 230-255) observe two major trends in medical terminology: one towards standardisation (in vitro terminology), the other towards variation (in vivo terminology). The aforementioned Greek and Latin forms and terms are – to a substantial extent – internationalised, and the emerging differences between modern languages are only in spelling. Standardisation pertains also to a variety of international classifications (e.g. the International Classification of Diseases or the Nonproprietary Names of Pharmaceutical Substances, cf. Resurreccio and Gonzalez 2007), yet it must also consider the fact that medical terminology is in a state of flux, changing dynamically and embracing recent discoveries and innovations.

Synonyms are yet another problem, and quite frequently they co-occur – as a 'mixture' of both ordinary and specialist language (so called doublets) – in e.g. hospital records or discharge reports. Equivalent names have been used for a variety of reasons, to mention only descriptive, historical or anatomical nature. *Acute anterior poliomyelitis*, formerly known as *the Heine-Medin disease*, might serve as an example of this trend: in the past it was translated into Polish as *choroba Heine-Medina* or *choroba Heinego-Medina*. With the passage of time, it has been more regularly referred to as *polio* (an abridged form of *poliomyelitis*) which is a recognised international term for the disease. Terms adapted from names of physicians or scientists, i.e., eponyms, enhance the usage of synonyms. Van Hoof (1998) introduces a distinction between two types of eponyms, depending on whether the proper noun gives rise to another proper noun (e.g. *parkinsonism/ parkinsonizm*) or whether the proper noun refers to a disease (e.g. *Down's syndrome/ zespół Downa*) or an anatomical notion (e.g. *islets of Langerhans/ wysepki Langerhansa*).

Finally, another typical and problem-generating feature of medical texts is the presence of abbreviations (shortened forms of words or phrases, usually not capitalised) and acronyms (constructed out of word strings, usually capitalised), particularly in view of the multiplicity of potential meanings. They are frequently and commonly used in medical language to – as van Hoof (1998) claims – save time and space, and to make the language hermetic and understood by professionals only. Those acronyms and abbreviations are not usually explained in medical texts, constituting thus a part of a lexicon of medical professionals (cf. Kasprowicz 2010).

The abovementioned problems related with medical language require from the translator a thorough insight not only into the text, but also into its context, in which the text is to function and be effective; this shall be briefly discussed in the following section.

Translating directives: the case of the Medical Device Directive

At present, translation of documentation related with medical devices is a necessity since global healthcare market players tend to apply a number of requirements – to be fulfilled by translators – in proceeding with user documentation (such as e.g. instructions for use) and related materials. Obviously, these requirements may vary from country to country (depending on provisions and conditions imposed by, for instance in Poland, the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products [*Urząd Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych]*). Within the European Union the process of commercialisation of medical devices is stipulated and specified in three directives, namely the aforementioned Medical Device Directive (MDD; 93/42/EEC), Active Implantable Medical Devices Directive (AIMD; 90/385/EEC) and the In Vitro Diagnostic Medical Device Directive (IVDD; 98/79/EC); out of these three the MDD covers the widest range of procedures and products, and for that reason it was selected as exemplary for the analysis in this paper. As far as translation requirements pertaining to these directives are concerned, there is an extensive degree of similarity, yet – in line with general principles of the EU legislation – particular EU member states are capable to establish separate essential requirements for medical devices.

MDD, AIMD or IVDD include dozens of medical or medicine-related words, and understanding them is absolutely essential for successful task performance, and the most essential priority of the translator is the most accurate transfer of the message included in the original text. The sworn translator encounters MDD (or other EU documents that refer to medicine or related disciplines) if research documentation – connected with the task commissioned – pertaining to a medicinal product or a medical device, i.e., the objective of the MDD, is to be made available to the general public (patients, doctors, experts), and products are to be launched on the market. If medicines or medical devices are to be commercialised, then – as the first step – legal requirements must be fulfilled, and the medicines or devices approved of by the Federal Drug Agency or the European Medicines Agency. The second step, as Poland is one of EU member states, entails the necessity to translate legal documents into Polish. As it was mentioned above, these documents are translated by translators within the European Commission and the European Parliament. However, outside the EC and EP context, sworn translators translate medical documentation not only for natural persons who need that for administrative purposes (e.g. death certificates, hospital records, discharge reports, examination results, etc.). They also translate texts for corporate bodies operating on the common European market. Product commercialisation procedures require such documents as, for instance, declarations of conformity, instructions for use (IFU), EC design examination certificates, full quality assurance certificates, product registration documents, patient information leaflets (PILs), or clinical trial protocols. In Poland, relevant provisions of the law require such documentation be translated only by sworn translators to be legally valid; this is where the sworn translator comes into the fore and in this very place can encounter a variety of potential problems. Obviously, it is hardly possible to mention all types of texts; the above short list shows, nevertheless, how varied the tasks for sworn translators are and how demanding in terms of translation they can be.

The classification of medical devices in the abovementioned directives – from Class I to Class III – relies on the degree of risk related with the usage of these devices. Concurrently, requirements for translators are certainly more complex as medical devices belonging to Class I and Class II need to be accompanied by additional certificates, issued by third parties such as notified bodies and registered EU representatives.

It should be stressed that manufacturers of medical devices and medical products need to have production-related documentation, including declarations of conformity, full quality assurance certificates, instructions for use, etc., translated in official languages of a given country where the commercialisation process takes place. The range of the product within the EU determines the range of languages into which the product documentation and supporting materials are to be translated. Thus translation even into all 24 official languages of the EU may be necessary for one product to comply with essential provisions of the MDD, AIMD or IVDD, which is a prerequisite to have the CE labelling.

In this context the sworn translator faces a huge challenge. On the one hand, enterprises operating on broadly understood healthcare markets should consider potential benefits for the performance and success of their products resulting from good translation. On the other hand, wrong, inappropriate, low-quality or simply incompetent translation can ruin the reputation of an enterprise or even, which is far worse, do harm to the final user and, eventually, result in serious legal consequences. For instance, if certain items from the original version of the directive are omitted in translation – most probably due to the translator's oversight, which *per se* is unacceptable – then the national legislation is to implement and use a slightly different version, and this stands in stark contrast with the principle of identity between documents, and related subordinate provisions may be also different and may bring different legal effects.

Directives are referred to in a variety of documents from such areas as instruction manuals for medical professionals and patients, instructions for use, medical articles, brochures, flyers, medical equipment and software, even glossaries and packaging. For instance, in documents such as EC Certificate Full Quality Assurance System there is a reference to the compliance of the quality system with provisions of Annex II of the directive 93/42/EEC.

It can be safely hypothesised that the MDD, AIMD, or IVDD have encouraged, to say the least, many manufacturers of medical devices to acknowledge and recognise the significance of languages other than the English language and thus have made them understand and appreciate the value and importance of translation and translators in the market of today. It is finely reflected in the very wording of the IVD directive: its Article 4, Section 4 stipulates that "Member States may require the information to be supplied pursuant to Annex I, part B, section 8 to be in their official language(s) when a device reaches the final user." Moreover, the MDD in Annex I, Article 13.1, states that "Each device must be accompanied by the information needed to use it safely and to identify the manufacturer, taking account of the training and knowledge of the potential users."

That is why accurate, competent, and precise translation is an imperative since potential users' knowledge is vital.

The Medical Device Directive imposes certain requirements on enterprises in order to proceed with documentation processing that is performed in several languages, which forces enterprises to provide for the translation of documents. These documents are related with instructions for use, labelling, packaging and, if need arises, supporting documentation. These materials are very important, especially when we consider instructions for use intended for the final user: the safety of application of a medical device that is used in compliance with its purpose and works well is of top priority, and low-quality incompetent translation can have a detrimental effect.

The abovementioned product-related information that the sworn translator faces can be divided into two categories, namely, professional use and patient use. The user information intended for patients (OTC, over-the-counter, relating to products or devices that can be bought without a doctor's prescription) is usually translated into all languages spoken on all potentially available markets, and does not have to result from any regulatory restrictions. As regards devices for professional use only, information pertaining to the safety of application is usually translated since those products are complex, and this level of complexity entails the need for the final users to comprehend all information items relevant for the proper functioning of a device. Consequently, this information is provided in the native language of the user. For that reason, accurate, precise and terminologically acceptable translation is absolutely crucial. It must be underlined that not only does inappropriate, inaccurate or terminologically inadequate translation adversely affect the final user (be it a physician or patient) but also it does breach the directive and its provisions. We are not capable of anticipating the legal consequences of court proceedings in a case when hypothetically a legal action is instigated against a manufacturer, which results from the error made by the user. This error may stem from the user's inability of understanding, e.g., instructions for use in a foreign language. The damage to the reputation and business operation of the manufacturer would occur anyway, regardless of the potentiality of being liable in legal terms. Therefore, we could say good translation, no matter whether it is legally binding a specific manufacturer as to a specific product, is a profitable investment.

Sworn translators do refer to and consult the translated versions of EU instruments in order to remain in line with the versions transposed into their national legislations, thus directives are for them one of the sources of relevant and necessary information. The terminology, and specific terms in particular, used in directives form certain guidelines for translators (notwithstanding some terminological problems). Translating medicine-related texts requires from the translator to be knowledgeable about the field to the extent available and possible in case of persons who are not physicians themselves (or experts from other related fields such as, e.g., pharmacy, biology, biochemistry, physiology, etc.). If the translator fails to understand the text – and violates the first and most important principle of translation – they will not be able to translate it correctly. As obvious as it may seem, there are instances when this understanding of the translator's role is somewhat distorted… In addition to the knowledge of the field and specialist terminology, the translator must also have an understanding of the context in which a given text functions. The ideal path seems to be

the one proposed by O'Neill (1998, 76) when the text is first translated by the translator and then verified in terms of substance and terminology compliance by an expert (e.g. a physician), or the text is translated by a physician, and then is 'polished' in terms of stylistics and language by the translator. This seems to be the best, or most effective option when it comes to successful and high quality translation of medical texts. Specialist knowledge, apart from the translator's own motivation to develop it, should be accompanied by information mining in the form of having access to and using any sources of information, starting from specialist dictionaries, glossaries, books, databases, articles and online information.

As stated previously, directives (and MDD in particular, for the purposes of this article) are valuable sources of information on the terminology used and specific solutions that may be considered necessary not only by translators themselves, but also by either natural persons or corporate bodies commissioning translation tasks. For that reason it would be interesting and worthy to have a brief insight into the way the MDD is translated into Polish so as to verify whether it can truly be a valuable source of information for the sworn translator, or rather its translation should be treated with caution. The examples provided in the remainder of the article are taken from the Polish translation of the MDD. The subject of assessment are not broadly understood language problems (errors, of semantic or syntactic nature, quite a substantial number of which can be found in the aforementioned directive and would need separate and further research) but only specialist terms as they pose the biggest challenge for translators who may be translation experts but are not experts in medicine.

MDD in translation: a comparison

To illustrate terminological problems addressed above, examples of specific terms occurring in the directive shall be provided. The methodology applied shall be a micro-comparative study: the study is limited to one instrument only, and only specific equivalents used are subject to comparison. It aims at addressing potential translation gaps and terminological inconsistencies encountered in the translation of the MDD, which will allow us to assess the efficiency of the transfer of terms from one language to another. The micro-comparative study is focused on the ways specific medical terms were translated into Polish; these terms are extracted from the original and compared with their translated equivalents in the Polish version of the directive. As a way of signalling terminological problems occurring in the MDD and potential consequences both for translators who refer to the MDD as one of information sources and translation users, those examples of 'problematic' translations in the Polish version of the directive shall be briefly discussed, and tentative categorisation of translation inconsistencies shall be also presented which reflects the nature of those problems. Numbers of articles and sections of the MDD are provided, respectively.

Example 1: inconsistency

> The first example concerns *medicinal products*: this term is used as early as in the preamble to the Directive and occurs quite regularly throughout the entire document. In the Polish version *medicinal products* are inconsistently translated at times as *produkty lecznicze*, but sometimes as *leki gotowe*. The more relevant

option would be the former, since *produkty lecznicze* in contrast to *leki gotowe* cover an entire range of products, and not only medicines or drugs, and thus are closer to the meaning range of the English term. This is reflected in the very wording of the subsection (Art. 1, Section 5) where medicinal products include also products 'derived from blood as covered by Directive 89/381/EEC'.

Example 2: omission

In Article 1/ Section 2(c) the words *calibrator* and *control material* are missing and, quite surprisingly, were not translated into Polish at all: this omission may yield grave consequences since no calibration (thus no obligation imposed on the manufacturer) can possibly make substantial volume of equipment useless. The absence of *control material* may result in the understanding that no controls or control groups are required to perform valid clinical trials in this particular case.

Example 3: terminology

In Article Section 5(a) *in vitro diagnostic devices* were translated as *wyroby diagnostyczne in vitro* whereas the usual and most frequently applied term in this context is *wyroby medyczne do diagnostyki in vitro.* The same problem occurs in Section 5(e) in this Article where *blood products* were translated into *produkty z krwi ludzkiej* which seems slightly awkward and stylistically deficient, as the standard term is *produkty krwiopochodne.* The same section can also 'take pride in' two other examples, namely, *plasma* translated as *plazma ludzka* instead of *osocze* and yet another problem with *blood cells of human origin* emerging as *komórki krwi pochodzenia ludzkiego* instead of *komórki krwi ludzkiej.*

Example 4: terminology

Article 1 Section 5(f) applies *transplanty* for *transplants* where *transplanty* are very rarely used in Polish in this specific context as *przeszczepy* or *przeszczepione narządy* are incomparably more common, not to mention the fact that the Polish translation sounds stylistically deficient and is not used as a relevant term.

Example 5: misunderstanding

In Annex 1, Section II, Subsection 7.2 another serious problem cannot go unnoticed as the meaning of the original sentence is distorted due to the translator not having properly understood the original. The sentence:
The devices must be designed, manufactured and packed in such a way as to minimize the risk posed by contaminants and residues to the persons involved in the transport, storage and use of the devices and to the patients (…)
was translated into Polish as:
Wyroby muszą być projektowane, produkowane i pakowane w sposób minimalizujący zagrożenie powodowane skażeniem i pozostałościami po osobach zajmujących się transportem, przechowywaniem i używaniem wyrobów oraz po pacjentach (…)
where the term *residues* is applied to refer to components or ingredients of medical devices that can have an adverse effect on the persons involved in transport and on the patients. This sentence may be understood as if persons involved in transport as well as patients were responsible for contamination and leaving any kind of residues behind, which obviously is a nonsense. A better option would be to use

w stosunku do or *wobec/ w przypadku osób zajmujących się transportem (…)* oraz *wobec/ w stosunku do/ w przypadku pacjentów.*

Example 6: terminology

In Annex 1, Section 9, Subsection 9.2 we see *the volume/pressure ratio* translated almost literally as *objętość/współczynnik ciśnienia* whereas a better, more frequently occurring and certainly more context-fitting option would be *współczynnik ściśliwości* since the clause does not refer to general pressure but to properties of devices relevant in cases where their application does involve pressing the device (or the product) onto e.g. a surgical site (in procedures that require the usage of haemostatic materials such as haemostatic sponges, bonewax, etc.). These are instances where *współczynnik ściśliwości* of the product or device is essential for the patient's performance.
The same subsection 'houses' another example similar in nature to *transplanty*, namely, *implants* were translated into *implantaty* instead of *implanty*. This probably results from the translator's misspelling, yet the final effect is not satisfactory, to say the least, and the term is not really used in Polish medical texts.

Example 7: terminology

Another example that shows certain deficiency in the knowledge of medical terminology can be found in Annex IX, Section III, Subsection 2, Rule 5 where *the ear drum* ('ympanic membrane' in medical terminology) was translated as *nabłonek bębenka*. From the medical point of view *bębenek* as a bodily organ does not exist; on the humorous side one may venture a conclusion that maybe the translator followed *młoteczek*, *kowadełko* and *strzemiączko* (being part of the ear) and found *bębenek* matching with the aforementioned, yet the proper name for this part of the human ear is *błona bębenkowa* and the phrase refers to *nabłonek błony bębenkowej* or simply to *błona bębenkowa.*

The findings of the above study corroborate a seemingly obvious truth: while translating medical or medicine-related texts the most important factor is the subject specialist knowledge, without which the translator – even understanding words – is not capable of comprehending terms included in the text, the textual context and the processes, to which a given text refers. This specialist advanced knowledge of the field is a substantial determinant both for the process and for the product of translation (and translation competence is reflected in the process and the product of translation, which has been empirically verified by e., the PACTE group [2009, 209]). The language level of those texts is not substantially varied in terms of style, use of register or of complex grammatical structures; it is terminology that occurs to be the major 'enemy' of the translator.

Concluding remarks

From the above examples we can explicitly infer that terminological deficiencies and inaccuracies in the text substantially affect the perception of the translation. Yet, the underlying danger is that those imperfect renderings may adversely affect the quality of texts produced by sworn translators. There is an apparent tendency to enter a – once translated – phrase or term into a database, and subsequently such term becomes an

equivalent that is almost automatically chosen and applied, yet not always verified. It seems surprising that even though translation solutions suggested are wrong and faulty (or even misspelled), they are still to be found in the texts that – as mentioned above – are to serve as a source of reference and information. Undoubtedly, an increasing awareness, on the part of sworn translators, as to the possible drawbacks of the translated version is a factor facilitating the development of professional experience and competence, yet in the long run badly translated – in terms of terminology – legal instruments can be even detrimental to the well-being, or even health, of patients or final users of medical devices. Thus translators should be more careful and less reliant on the directive, and on the reliability of the terms used in the Polish version. This presumably should lead to the increasing awareness of the importance of personal professional competence, ability to search for and find relevant and credible information in e.g., parallel texts, such as papers in medical journals, medical databases. This will also lead to demythologisation of directives, whose translated versions are sometimes – unfortunately – treated as an invaluable source of truth.

One of potential remedies to this problem might be a changing role of the sworn translator to be more active in the institutional sense: to officially inform on and indicate errors, monitor modifications introduced and verify resultant effects through the administrative powers of professional associations. Thus, such blunders would not be seen in official versions of documents transposed into Polish legal regulations.

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Dyrektywa 98/79/WE z dnia 27 października 1998 roku dotycząca wyrobów medycznych do diagnozy in vitro http://eur-lex.europa.eu/legalcontent/PL/TXT/HTML/?uri=CELEX:31998L0079&from=en (DoA: 12.08.2014).

MACHINE TRANSLATION – CAN IT ASSIST IN PROFESSIONAL TRANSLATION OF CONTRACTS?

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Abstract: The aim of this research project is to verify whether machine translation (MT) technology can be utilized in the process of professional translation. The genre to be tested in this study is a legal contract. It is a non-literary text, with a high rate of repeatable phrases, predictable lexis, culture-bound terms and syntactically complex sentences (Šarčević 2000, Berezowski 2008). The subject of this study is MT software available on the market that supports the English-Polish language pair: Google MT and Microsoft MT. During the experiment, the process of post-editing of MT raw output was recorded and then analysed in order to retrieve the following data:
(i) number of errors in MT raw output,
(ii) types of errors (syntactic, grammatical, lexical) and their frequency,
(iii) degree of fidelity to the original text (frequency of meaning omissions and meaning distortions),
(iv) time devoted to the editing process of the MT raw output.
The research results should help translators make an informed decision whether they would like to invite MT into their work environment.
Key words: machine translation, professional translation, legal translation, legal contract.

TŁUMACZENIE MASZYNOWE – CZY MOŻE WSPOMÓC PROFESJONALNY PRZEKŁAD UMÓW?

Abstrakt: Niniejszy projekt badawczy ma na celu wykazanie czy jakość tłumaczenia maszynowego jest na tyle dobra, by mogło być ono wykorzystywane podczas pracy profesjonalnego tłumacza prawniczego. Podczas badania analizie poddane zostały umowy – teksty użytkowe charakteryzujące się wysoką powtarzalnością wyrażeń, zwrotów i terminów, złożoną składnią oraz nieprzystawalnością terminologiczną (Šarčević 2000, Berezowski 2008). Przyjęta metoda badawcza polegała na nagraniu procesu tłumaczenia przy zastosowaniu narzędzi Google MT oraz Microsoft MT. Badanie umożliwiło wydobycie informacji na temat użyteczności tłumaczenia maszynowego poprzez określenie:
(i) rodzaju błędów występujących w tekście wygenerowanym przez tłumacza maszynowego,
(ii) częstotliwości występowania błędów,
(iii) zgodności merytorycznej z treścią oryginału (liczba pominięć oraz zniekształceń),
(iv) czasu poświęconego na edycję tekstu wygenerowanego przez tłumacza maszynowego.
Wyniki badania powinny pomóc tłumaczom w podjęciu świadomej decyzji czy chcieliby włączyć tłumaczenie maszynowe do swojego warsztatu pracy.
Słowa kluczowe: tłumaczenie maszynowe, tłumaczenie profesjonalne, tłumaczenie prawnicze, umowa

Introduction

On 26th April 2012 Google researcher Franz Och (2012) announced on the Google official blog that Google MT (machine translation) was at that moment used monthly by 200 million people. He continued quoting even more impressive figures:

> *In a given day we translate roughly as much text as you'd find in 1 million books. To put it another way: what all the professional human translators in the world produce in a year, our system translates in roughly a single day.*

The numbers speak for themselves. Machine translation is gaining popularity at impressive pace, not only among laymen who need it for basic communication, but also in a professional sphere. MT solutions are utilized by large companies (e.g., Xerox, Ford, General Motors) and institutions (e.g., European Commission, Pan American Health Organization), which without MT's assistance would not manage to translate large volumes of text in a short time (Hutchins 2007). These companies have throughout the years understood the limitations of automated translation and no longer expect perfection. They have also learnt how to prepare MT-friendly input texts (characterised by controlled terminology and restricted syntax), which significantly influences quality of MT output (Hutchins 2010). A change of attitude towards MT solutions could be observed also among translators. The studies show that automated translation is slowly, but systematically gaining translators' approval (Fulford 2002, Fulford and Granell-Zafra 2004). It should be also mentioned that machine translation has been recently added to many CAT tools. The number of MT enthusiasts is still small, but it seems that we are now at the breaking point, where automated translation, which has been for decades taken with a pinch of salt, is now beginning to be seriously considered as a helpful tool.

A translation assignment handed over to a client is expected to be faultless. This is, as of today, still unattainable for machines (Graham et al. 2014) . Thus, not soon will MT substitute translators (if ever), but it can provide them with a raw material to work on. However, if MT is to find any application in the translator's work, the process of post-edition needs to be significantly shorter than translation from scratch. This is what this study tested. The aim of this research is to verify usefulness of MT by measuring the effort required to post-edit the MT raw output. The research results should help translators make an informed decision whether they would like to invite MT into their work environment.

Scope of the Study

The focus of this study is utility of automated translation in the work of professional translators. Although there are many studies devoted to MT performance, majority of them were designed with a non-professional user in mind. MT solutions are predominantly used nowadays for *assimilation*, i.e. the purpose of deciphering the meaning of a foreign language text, or for basic *communication* (Hutchins 2003), while translators want MT to facilitate production of a text (*dissemination purpose*). Both groups have different expectations towards the tool and different levels of expertise. Non-professionals want the text to be understandable. Thus, they assess MT utility taking into consideration the errors that

distort the original meaning. What is crucial for translators is the amount of work they need to put into erasing all errors in MT output. Thus, the aspect of the text that the translator is most concerned with is the amount of errors and the time devoted to their correction – the so called *post-editing effort*. This is what this study examined.

It was decided that the subject of this research project had to be narrowed down to translation of (1) agreements (2) from Polish into English (3) with the use of two MT tools: Google MT and Microsoft MT. Such limitation of the scope of the study was necessary due to the fact that quality of MT output is highly dependent on individual features of a text.

(i) First of all, MT performance differs depending on a genre. Each genre is characterised by many distinct features, e.g., syntactic structure, specific phraseology, lexis, text density, or degree of repeatability. All of these features have impact on MT performance. The genres characterised by simplified syntax, predictable terminology and high rate of repetitions are more MT friendly. On the contrary, genres with long, complex sentences and varied vocabulary are hardly machine-translatable (Kit and Wong 2008, Zervaki 2002 in Seljan, Brkić, and Kučiš 2011). Moreover, since statistical MT works on the basis of bilingual texts stored in its memory, the popularity of a given genre also plays an important role. If a particular genre is well-represented in the realm of the Internet, it is also present in the corpora used by MT software. That increases the chances of it being decently translated by the machine. The genre to be tested in this study is an agreement. It is a non-literary text, with a high rate of repeatable phrases, predictable lexis, culture-bound terms and complex syntax (Šarčević 2000, Berezowski 2008). This is a fundamental document regulating all kinds of business transactions, thus it could be assumed that it is well-represented in MT corpora.

(ii) The second factor determining MT performance is a language pair, namely, the similarity between the languages and their popularity. The greater the syntactic gap between the languages the worse the MT outcome, especially in case of rule-based MT systems. Polish belongs to a West Slavic language family while English is a West Germanic language. That results in multiple linguistic differences between the two. Polish is an inflected language, equipped with noun cases (singular and plural), verb conjugation, perfective and imperfective aspects, and masculine, feminine and neuter genders. Because of the declension, Polish has relatively free word order in a sentence and subject pronouns are often omitted. It does not make use of articles. English, on the other hand, is generally an uninflected language, yet it is abundant with articles. It has a relatively fixed word order, and generally does not allow omission of personal pronouns.

As for language popularity, English is naturally one of the most widely spoken languages in the world. Polish, on the contrary, is in the minority – used mainly by its native speakers. On the list compiled by Hutchings (2008: unpaginated) it is ranked as follows:

> *The most frequent pairs (for online MT services and apparently for PC systems) are English/Spanish and English/Japanese. These are followed by (in no parti-cular order) English/French, English/German, English/Italian, English/Chinese, English/Korean, and*

French/German. Other European languages such as Czech, Polish, Bulgarian, Romanian, Latvian, Lithuanian, Estonian, and Finnish are more rarely found on the market.

(iii) The third factor that needs to be borne in mind is the MT software. Most of MT tools utilize their own technological solutions, drawing on rule-based (RBMT) and/or corpus-based approach. In rule-based system the machine generates translation on the basis of multiple sophisticated linguistic rules and dictionaries in its memory (Hutchins 2007). In corpus-based system, the machine translates on the basis of a large corpus consisting of ready-made translations. This is still a new approach to MT, but many companies have switched to it as more promising for future development. Within this basic division there exist multiple subcategories of machine translation. Rule-based technology can be subdivided into: *direct method (dictionary-based MT), transfer RBMT systems, interlingual RBMT systems.* The corpus-based MT incorporates, among others, solutions such as: *statistical machine translation (SMT)* and *example based machine translation* (Bijimol and Abraham 2014). Each software works on the basis of its own individual MT engine that uses one of the abovementioned technologies or their combination. Both Google and Microsoft declare that their MT engines work on the basis of corpus-based solutions. It is not material to discuss the technological details here (more information on this topic can be found in Bijimol and Abraham 2014). Yet, it needs to be stressed that the results of the experiment conducted on particular MT software should not be generalized to other MT tools.

Methodology

Evaluation of MT performance is not an easy task, because it requires assessment of many parameters, some of them difficult to measure objectively in mathematical counts. Therefore, various approaches to MT evaluation have been developed so far, ranging from purely automated (e.g., BLEU, NIST and METEOR evaluation metrics), through semi-automatic (e.g., HTER) to traditional human assessment. Automatic methods assess MT quality by comparing MT output with the available translations of the same text produced by humans (reference texts), using language independent statistical metrics (Hutchins 2007). The semi-automatic method – HTER – proposes a different approach. It does not make comparisons between MT output and reference translations done by humans. Instead, it measures the so called *edit distance* between MT raw output and its post-edited version performed by a human translator. *Edit distance* is the amount of editing required to transform MT raw translation into a text of publishable standard. The evaluation is done by means of automatic count of edits during the post-editing process. Then, special software automatically compares MT raw output to its post-edited version. The higher the number of edits, the worse quality is the raw output produced by the machine (Snover et al. 2006).

Automatic and semi-automatic evaluation methods are fast and low-cost. Yet, they are burdened with several weaknesses. Every translation is an act of creative writing; there is not one true version to which MT raw output might be compared. Therefore, what a machine automatically counts as an error might as well be an alternative correct translation. Moreover, automatic count of errors or corrections does not reflect the actual cognitive effort involved in post-editing. This claim was confirmed

in the study by Koponen et al. (2012, 12), which showed that "translator's perception of post-editing effort, as indicated by scores in 1-5, does not always correlate well with edit distance metrics such as HTER. In other words, sentences scored as requiring significant post-editing sometimes involve very few edits, and vice-versa." Finally, the raw data generated in such tests are abstract. To properly understand the results of MT automatic tests, a translator would have to be aware of the amount of corrections or keystrokes made during traditional translation. Taking into account the above arguments, it was decided that automatic evaluation methods do not serve the purposes of this research. Instead, a qualitative approach was applied, namely, the task-based human assessment.

Four participants took part in the experiment. They were graduates from the University of Silesia with one to six years' experience as translators. The participants were asked to translate one of the texts in exactly the same manner they would normally do it, but with the assistance of a selected MT solution (which in practice meant post-editing the output produced by MT tools). Each participant translated two different texts with the use of two different MT solutions. The participants were asked to make the minimum number of changes to MT raw output, according to their own judgment. The experiment was recorded via the screen-capture recording tool *Camtasia Studio*. Then, the recordings were played back and analyzed by human researchers to obtain the required data. The participants were asked to note down the time when they started and finished their translation. These data were used to establish the total time of translation. Moreover, the participants were asked to pause the recording every time they consulted sources, so that the recording did not include the time devoted to consultation of sources. The recording registered only the post-editing process.

In order to create the experiment conditions that resemble natural work environment of a translator, it was necessary to introduce CAT tools into the experiment setting. Wordfast Anywhere was used as a platform to test Microsoft MT, while the performance of Google MT was tested in Google Translator Toolkit – an internet service addressed to translators recently launched by Google.

The most important datum that the study aimed to obtain was the time of post-editing. This is the simplest and most visible indicator of MT quality, since as Koponen et al. (2012) aptly noticed, the shorter the post-editing time, the lower the number of errors and corrections. On top of that, the aim of the study was to reveal common errors appearing in MT output. The errors were counted and classified. The results of the experiment are presented in sections 4 and 5 of this article.

As far as research material is concerned, the main criterion for text selection was its length. For the sake of statistics, it was decided that each text should constitute approximately one translation page (1600-2000 characters) or its multiple (3200-4000 characters), and for the sake of authenticity of the translation task – a text should be an entire document. The texts selected for the experiment are as follows: *umowa kupna-sprzedaży* [*sale agreement*], *umowa o poufności* [*confidentiality agreement*], *umowa najmu* [*lease agreement*], *umowa o dzieło* [*contract for a specific task*]. Due to data protection, no authentic contracts were used. Instead, it was decided to use templates available online, which were filled in with fictional data. In order to ascertain the level of the texts' syntactic complexity, the average sentence length was established (number of words per sentence). Moreover, the readability of the texts was verified with the tool available on the website *logios.pl*. This is a Gunning's FOG index

adjusted to the properties of the Polish language, designed by Polish linguists. The parts of the text that do not constitute grammatical sentences were not taken into account (headings and parties' signatures). The properties of the four texts constituting research material are provided in Table 1 below.

Table 1. Properties of the research material used in the experiment.

Type of agreement	*Language*	*Characters with spaces*	*No. of sentences*	*The average sentence length*	*Readability index (logios.pl)*
Umowa kupna-sprzedaży [sale agreement]	Polish	1979 (1 translation page)	17	14.2 words per sentence	FOG index: 13-17 years of education; difficult (higher education level)
Umowa o poufności [confidentiality agreement]	Polish	3600 (2 translation pages)	16	27.6 words per sentence	FOG index: 13-17 years of education; difficult (higher education level)
Umowa najmu [lease agreement]	Polish	3191 (2 translation pages)	19	21.5 words per sentence	FOG index: 13-17 years of education; difficult (higher education level)
Umowa o dzieło [Contract for a specific task]	Polish	3214 (2 translation pages)	22	18.4 words per sentence	FOG index: 13-17 years of education; difficult (higher education level)

General Results

The results of the experiment are shown in Tables 2 and 3. The tables present data pertaining to the general performance of tested MT software, such as: time of post-editing, time devoted to consultation of sources, time of translation, no. of sentences that required editing, no. of faultless sentences and nonsense sentences, as well as no. of sentences translated from scratch by the participants. The results are presented separately for each of the four texts. *Total time of translation* is understood as the time devoted to post-editing plus consultation of sources. *Time devoted to post-editing* excludes the time devoted to consultation of sources. *Nonsense sentences* were classified as such subjectively by the researcher during the analysis of the errors in MT output. There were also several instances during the experiment when the participant decided to delete the whole sentence produced by MT and translate it by himself. Such situations are presented in the category: *sentences translated from scratch.* The lengths of the texts (i.e., no. of characters and sentences) are also presented in the tables for easier comparison of the results.

Table 2. General performance of Google MT.

Researched data	***Umowa kupna-sprzedaży [sale agreement]***	***Umowa o poufności [confidentiality agreement]***	***Umowa najmu [lease agreement]***	***Umowa o dzieło [Contract for a specific task]***
Length of the text	1979 characters (17 sentences)	3600 characters (16 sentences)	3191 characters (19 sentences)	3214 characters (22 sentences)
Total time of translation	36 min. 20 sec.	43 min. 20 sec.	42 min. 10 sec.	55 min. 35 sec.
Time devoted to post-editing	28 min. 20 sec.	39 min. 20 sec.	39 min. 40 sec.	49 min. 50 sec.
Time devoted to sources consultation	8 min.	4 min.	2 min. 30 sec.	5 min. 45 sec.
No. of sentences requiring editing	14 (82.5%)	14 (87.5%)	17 (89.5%)	22 (100%)
No. of sentences not requiring editing (100% accuracy)	3 (17.5%)	2 (12.5%)	2 (10.5%)	0 (0%)
Nonsense sentences	1 (6%)	1 (6%)	0 (0%)	4 (18%)
Sentences translated from scratch	0 (0%)	0 (0%)	2 (10.5%)	6 (27%)

Table 2 above presents results of Google MT performance. *Umowa kupna-sprzedaży* [*sale agreement*] was post-edited in 28 min. 20 sec., *umowa o poufności* [*confidentiality agreement*] – in 39 min. 20 sec., *umowa najmu* [*lease agreement*] – in 39 min. 40 sec. and *umowa o dzieło* [*contract for a specific task*] – in 49 min. 50 sec. The average time of post-editing was 22 min. per one translation page (assuming that one translation page consists of 1700 characters with spaces). It was established by dividing the total time of post-editing of the four texts by the total number of translated pages. The amount of time devoted to consultation of sources varied from 2 min. 30 sec. to 8 min. It is related to individual features of a text (terminological complexity) as well as the knowledge of a participant. That is why this figure was presented in a separate row. The average time of translation, calculated in the same manner as the average post-editing time, was 25 min. per one translation page. Approximately 90% of the sentences in Google MT raw output required some degree of editing. The number of nonsense sentences is surprisingly low – about 8%, and appeared in three out of four texts. This could be an indicator of fast-improving quality of MT tools. Sentences translated from scratch constitute close to 11% of the total.

Table 3. General performance of Microsoft MT.

Researched data	*Umowa kupna-sprzedaży [sale agreement]*	*Umowa o poufności [confidentiality agreement]*	*Umowa najmu [lease agreement]*	*Umowa o dzieło [Contract for a specific task]*
Length of the text	1979 characters (17 sentences)	3600 characters (16 sentences)	3191 characters (19 sentences)	3214 characters (22 sentences)
Total time of translation	30 min. 30 sec.	46 min. 30 sec.	47 min. 30 sec.	51 min. 10 sec.
Time devoted to post-editing:	27 min.	36 min. 20 sec.	38 min. 30 sec.[56]	45 min. 10 sec.
Time devoted to sources consultation:	3 min. 30 sec.	10 min. 10 sec.	1 min.	6 min.
No. of sentences requiring editing	13 (76.5%)	11 (68.5%)	18 (94.5%)	22 (100%)
No. of sentences not requiring editing (100% accuracy)	4 (23.5%)	5 (31.5%)	1 (5.5%)	0 (0%)
Nonsense sentences	1 (6%)	1 (6%)	0 (0%)	7 (32%)
Sentences translated from scratch	0 (0%)	0 (0%)	2 (10.5%)	5 (23%)

Surprisingly, performance of Microsoft MT and Google MT turned out to be very similar. As Table 3 shows, *umowa kupna-sprzedaży* [*sale agreement*] was post-edited in 27 min., *umowa o poufności* [*confidentiality agreement*] – in 36 min. 20 sec., *umowa najmu* [*lease agreement*] – in 38 min. 30 sec. and *umowa o dzieło* [*contract for a specific task*] – in 45 min. 10 sec. The average post-editing time of one translation page was 21 min. and the average time of translation – 24 min. The lenght of time devoted to consulting sources ranges from 1 min. to 10 min. 10 sec. The sentences not requiring editing constitute 13.5% of the total, and nonsense sentences – 12% of the total. 9.5 % of the sentences were translated from scratch.

Errors in mt output

Let us now look at the types of errors most commonly committed by the tested machine translation software. Table 4 presents the errors encountered in Google MT output, and Table 5

[56] The actual time of recording is 46 min. 30 sec. However, it includes 8 min. of a break when the translator stopped translating for unknown reason, but did not pause the recording. The recording does not suggest that the translator consulted sources during that time. Therefore, these 8 minutes were deducted from the total time of recording.

– in Microsoft MT output. Right columns in both tables present the average occurrence of particular types of errors per one translation page (i.e., 1700 characters with spaces). This figure was established by dividing the total amount of errors of particular type (appearing in all four texts) by the total amount of pages (i.e., seven). The average was not calculated for several types of errors, because their occurrence depends on the contents of the original text. Each of the four translated texts contained different number of currencies, numbers, dates, proper names, etc., and generally whenever they appeared they were the source of error. *Total errors* category embraces all errors that appeared in all four texts, including items for which the occurrence frequency was not established. The selected categories of errors are discussed in detail further on in this article.

Table 4. Errors in Google Translate raw output.

Type of error	***Umowa kupna-sprzedaży [sale agreement]***	***Umowa o poufności [confidentiality agreement]***	***Umowa najmu [lease agreement]***	***Umowa o dzieło [Contract for a specific task]***	***Total errors (7 transl. pages)***	***Average occurrence per 1 transl. page***
wrong word/phrase	20	28	34	62	144	approx. 20 errors /page
word/ phrase missing	8	4	20	9	41	approx. 6 errors / page
article	9	2	5	4	20	approx. 2.8 errors / page
surplus word	3	9	2	3	17	approx. 2.4 errors / page
punctuation	5	2	5	4	16	approx. 2.3 errors / page
wrong sentence order	4	1	3	5	13	approx. 1.8 errors / page
wrong word form	3	0	1	3	7	approx. 1 error / page
proper name	3	4	4	2	13	not applicable
word capitalization	3	1	5	3	12	not applicable
surplus clause	0	0	6	0	6	not applicable
currency	0	0	3	0	3	not applicable
number	0	0	2	0	2	not applicable
date	0	0	0	0	0	not applicable
total errors	58	51	90	95	294	approx. 42 errors / page

Table 5. Errors in Microsoft MT raw output.

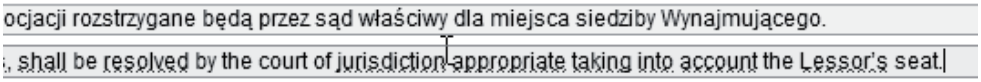
Type of error	*Umowa kupna-sprzedaży [sale agreement] (1 transl. page)*	*Umowa o poufności [confidentiality agreement] (2 transl. pages)*	*Umowa najmu [lease agreement] (2 transl. pages)*	*Umowa o dzieło [contract for a specific task] (2 transl. pages)*	*Total (7 transl. pages)*	*Average occurrence per 1 transl. page*
wrong word/phrase	18	10	22	59	109	approx. 15.6 errors / page
word/phrase missing	4	7	13	11	35	approx. 5 errors / page
proper name	3	4	10	3	20	approx. 2.8 errors / page
wrong sentence order	7	3	4	4	18	approx. 2.5 errors / page
wrong word form	8	2	2	4	16	approx. 2.3 errors / page
article	1	1	7	5	14	approx. 2 errors / page
surplus word	4	2	2	2	10	approx. 1.4 errors / page
punctuation	0	0	3	3	6	approx. 0.8 error / page
word capitalization	10	30	9	1	50	not applicable
date	2	0	2	0	4	not applicable
currency	1	0	1	1	3	not applicable
number	0	0	0	0	0	not applicable
surplus clause	0	0	6	0	6	not applicable
total errors	58	59	75	93	285	approx. 41 errors / page

Selected categories of errors will now be discussed in detail, accompanied by illustrative examples.

Wrong word or phrase

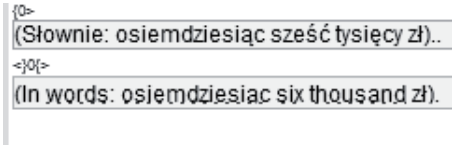
This is a broad category that encompasses various situations when the participant substituted a lexical item from the MT raw output with, in his opinion, a better lexical solution. The items were replaced due to various reasons. Most typically, the word or phrase was perceived by the participants as stylistically awkward. In Example 1, even though the clause *court of jurisdiction appropriate taking into account the Lessor's seat* is understandable, it is stylistically awkward. It was substituted with the clause: *court having jurisdiction over the Lessor's seat.*

Example 1.



There were several cases when the original word was left untranslated in the MT output, usually when there was a spelling error in the original text, as illustrated by Example 2.

Example 2.

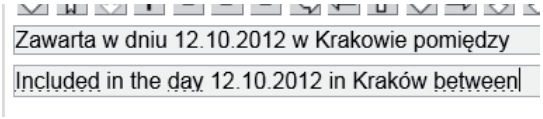


Another common error was the use of imprecise legal terms, as illustrated by Example 3, where *posiadanie* was automatically translated as *ownership* instead of *possession.*

Example 3.

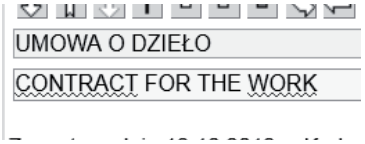
Moreover, MT output exhibited insufficient recognition of context, as illustrated by Example 4. The Polish word *zawierać* has several meanings: to close, to be included in something or to conclude an agreement. Example 4 shows that MT provided the equivalent that did not fit into the context. It needs to be stressed, however, that in multiple other cases registered in this experiment MT solutions proved to be context-sensitive. Yet, they are still not faultless.

Example 4.



Example 5 illustrates another common situation, when the translation produced by MT was lexically and grammatically correct, but there existed a well-established equivalent of a term that should rather be used. In Example 5, *contract for the work* is a literal translation of *umowa o dzieło* (type of employment contract in Poland designed for freelancers). The most common renditions of the phrase are: *contract for specific work, contract for a specific task,* or *contract of commission.* One of them was used by the participant to replace the translation done by the machine.

Example 5.

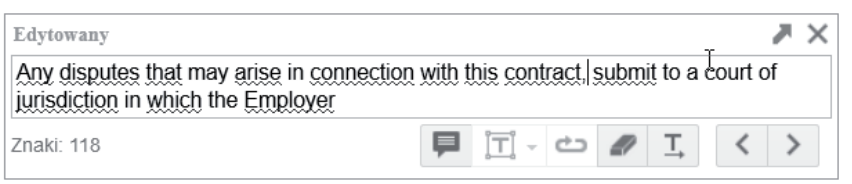


Last but not least, the words or phrases were replaced due to lexical inconsistency in MT output. One basic principle of legal drafting is that for the sake of precision one person or item should in a document be referred to with the same name. In the MT output, however, the term *wynajmujący* was interchangeably translated as *lessor* and *landlord*, and *najemca* as *lessee* and *tenant*. This illustrative example is one of many encountered inconsistencies. As the experiment revealed, this was one of the most common errors committed by MT. Consistency is difficult to achieve for MT solutions, especially corpus-based, because every sentence is translated by the machine independently on the basis of translations found in the corpora. Luckily, the problem can be easily remedied with the use of automatic replacement of terms in a document.

Missing word or phrase

The elements most often omitted in MT raw output were prepositions. Yet, in several cases the sentences also lacked important factual information, as in Example 6, where the final part of the sentence is missing. It has to be stressed that such situations were rare, and general improvement in that respect is noticeable.

Example 6.



Another source of error was noncompliance with the rules of legal translation. Due to terminological incongruency, it is good practice to provide the original names of system-bound items (such as the name of an institution, a piece of legislation, or a legal term) in square brackets next to their equivalents. This is what MT raw output lacked, as illustrated by Example 7, where the sentence does not include any reference to the country where the legislation is applicable.

Example 7.

FINAL PROVISIONS

Surplus clauses

Surplus clause category pertains to situations when MT raw output included a clause that was not the rendition of an original sentence. This happened during translation of *umowa najmu,* as shown in Example 8. The machine, instead of inserting into the placeable only the number of the paragraph [1.], inserted the number with the accompanying clause which was not related to the original text in any way. There is no logical explanation why the clause appeared in MT output, other than a technical error. The same error reappeared six times, surprisingly, both in Google MT and Microsoft MT. This may suggest that both MT solutions utilize the same corpora of legal texts.

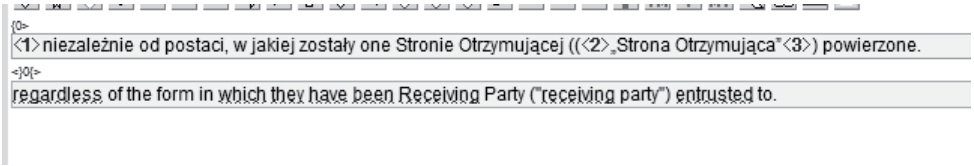
Example 8.

The matters covered by this agreement shall be governed by the Civil Code.

Wrong sentence order

Wrong sentence order appeared fairly rarely – 13 times per 1 translation page in Google MT and 18 times per one translation page in Microsoft MT. This could be attributed to the fact that MT systems tested in this study are not rule-based. Both Google and Microsoft solutions draw on ready-made translations. Thus, in general, syntactic awkwardness, which used to be a serious problem, is now less noticeable. Yet, it is still existent, as illustrated by Example 9, where MT translation is a one-to-one representation of the original sentence order.

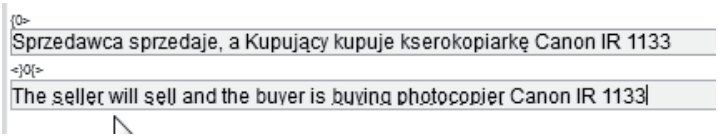
Example 9.



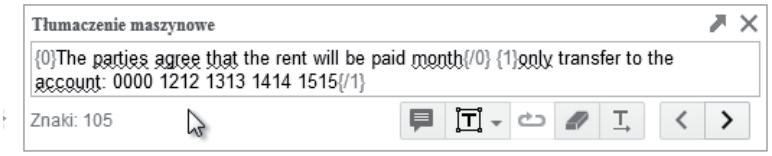
Grammatical errors

Grammatical errors were more common in Microsoft MT output (16 cases) than in Google MT output (7 cases). This category included the following errors: inconsistent use of tenses (Example 10), use of a wrong word category (Example 11) or an incorrect form of a word, as illustrated by Example 12, where the name of the city is not in the nominative case.

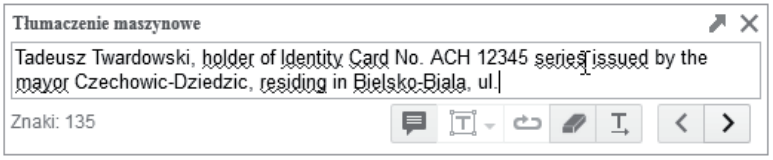
Example 10.



Example 11.



Example 12.



Capitalization

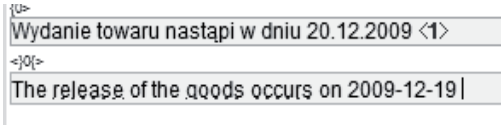
Generally, modern MT technology correctly applies the rules of capitalization. Yet, MT tools are still not aware of the idiosyncrasies of legal writing – namely the rule that the word that has been defined at the beginning of a document is then, in the remaining part of the document, written in capital letters. That was the main source of errors related to capitalization, as illustrated by Example 13, where the words *agreement* and *premises* are not capitalized.

Example 13.

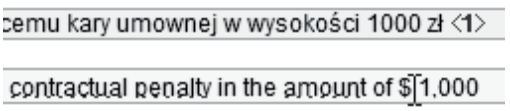
Dates and currencies

MT solutions tested in this study work on the basis of previous translations. That is the reason why there are so many errors related to incorrect dates (Example 14), or currencies (Example 15). This class of errors is especially dangerous, because they pertain to crucial factual information, and can be easily omitted by the human post-editors of MT output, who tend to focus on linguistic aspects of translation.

Example 14.



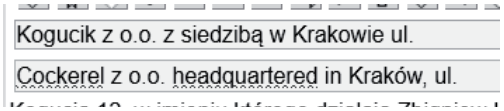
Example 15.



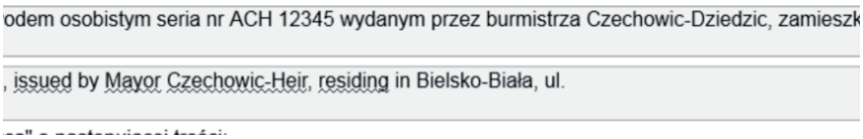
Proper names

MT tools are still unable to recognize proper names, as illustrated by Examples 16, 17 and 18. Example 16 presents awkward rendition of a company's name, Example 17 – wrong rendition of the name of the city, while Example 18 – erroneous rendition of a name and a surname – Jan Kowalski translated as John Smith – plus incorrect punctuation. The experiment revealed that the proper names that resembled standard words were automatically translated by the machine into the target language (even though they were capitalized), whilst the proper names that did not match any dictionary word were left untranslated. The errors of this kind were very common - appeared throughout all eight analyzed texts.

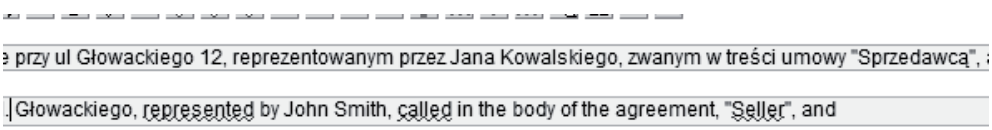
Example 16.



Example 17.



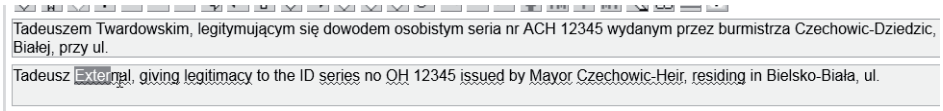
Example 18.



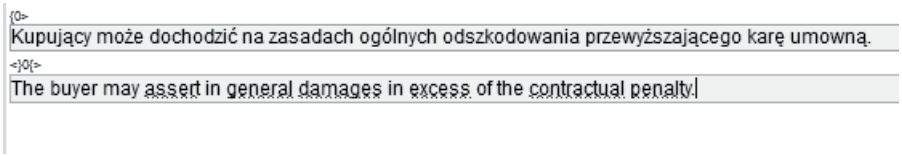
Nonsense clauses

MT tools do not produce as many nonsense translations as it is generally believed. There were only 6 registered instances of nonsense clauses in Google MT output and 9 – in Microsoft MT output. However, the experiment revealed that there are still cases when MT output resembles literal translation of the original text, i.e. each particular word is being translated by the machine, even when it should not be, which results in disruption of sentence logic. A few striking examples of nonsense translations are presented below (Examples 19, 20, 21, 22).

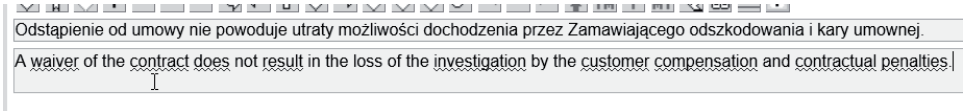
Example 19.



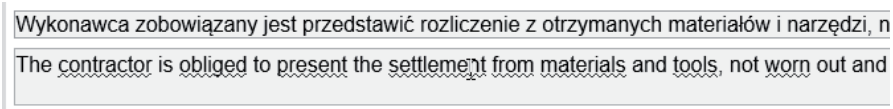
Example 20.



Example 21.



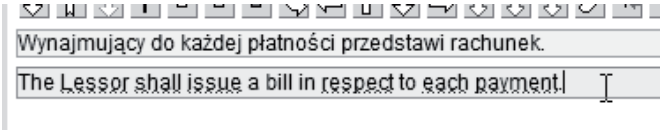
Example 22.



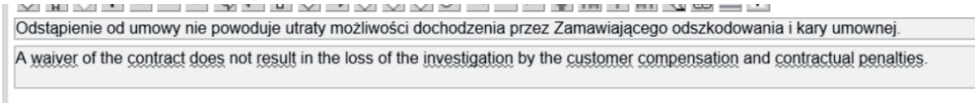
Clauses translated from scratch

The decision to delete a whole sentence was absolutely subjective, based on the participant's personal opinion that the sentence is not editable. The participants translated the sentence from scratch when they wanted to apply a completely different grammatical construction than the one proposed by MT, as in Example 23, where the sentence was transformed by the participant into passive. The participants decided to translate from scratch also when logic of the sentence was disturbed and/or the number of errors was too high to make post-editing worthwhile (Examples 24 and 25).

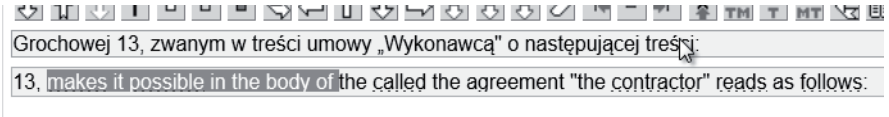
Example 23.



Example 24.



Example 25.



Conclusions

The above presentation of errors should not give the impression that MT performance is of low quality. Quite the contrary. The result of the experiment is very promising. In general, MT tools exhibit good recognition of the genre. The raw output produced by the machine in the experiment looked like a legal text. Moreover, majority of sentences produced by MT were perceived by the participants as logical and understandable. Even though there were instances of imprecision, stylistic awkwardness or even serious factual mistakes, on the whole, the amount of editing was not overwhelming, which was reflected in short post-editing time. It is possible to further improve the time of post-editing with deepened knowledge of what errors to expect and how to use MT tools

more efficiently (e.g., by using Word Processor options to automatically erase all errors of one type in a document).

Is it then recommended to use MT solutions during translation? The experiment revealed that cooperation with MT tools differs significantly from traditional translation. On the one hand, MT assistance releases translators from the excessive use of memory and typewriting, thus it might be welcomed by translators struggling with these aspects of a translation task. On the other hand, cooperation with MT demands critical thinking, perceptiveness and most of all flexibility. Translators who want to use MT in their work need to be willing to accept a different translation than the one that they have in mind. Therefore, the result of this experiment should be matched to individual situation of each translator. Everyone needs to weigh pros and cons of machine translation and decide individually whether it is worth adding to one's workstation. Hopefully, this study, by showing MT's strengths and weaknesses sheds some light on the topic and helps to make an informed decision in this matter.

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