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Preface

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The last text in the volume is a review of the newest book of Artur Dariusz KUBACKI titled *Tłumaczenie poświadczone. Status, kształcenie, warsztat i odpowiedzialność tłumacza przysięgłego [Certified translation. The status, education and training, fields of activity and liability of sworn translators]* published by Wolters Kluwer. It is devoted to the development of the institution of certified and court translators and interpreters in Poland and Europe as well as the tricks of the trade.

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

AUTHOR ATTRIBUTION IN SUICIDE NOTES: EVIDENCE FROM APPLIED LINGUISTICS

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Abstract: Authorship attribution is a branch of authorship identification whose aim is to examine the characteristic features of a piece of writing to establish its author. The present study applies the methods and techniques of forensic and applied linguistics to the analysis of a suicide note believed to have been written by a 49-year old brigadier in the Iraqi Army who was found shot in the head. The accident was regarded as a suicidal act, which the family of the deceased challenged. They suspected an assassination disguised as a suicide and claimed that the suicide note left close to the deceased was either a mere fabrication, or was written under duress. The present study attempts to verify these assumptions using the techniques commonly followed in authorship attribution in analyzing the form and content of the suicide note and comparing it to a text that is known to have been written by the deceased. The results indicate that the suicide note was not simulated or tampered with and was not written under threat or duress.
Key words: Suicide notes, Author Attributes, Forensic Linguistics, Applied Linguistics.

USTALANIE AUTORSTWA LISTÓW SAMOBÓJCÓW: DOWODY NA PODSTAWIE OPINI BIEGŁYCH Z ZAKRESU JĘZYKOZNAWSTWA STOSOWANEGO

Abstrakt: Ustalanie autorstwa tesktów polega na analizie dyskursu stosowanego przez domniemnaego autora tekstu w celu odnalezienia typowych dla jego idiolektu cech. W niniejszym artykule przedstawiono analizę listu samobójcy, którym był 49 letni brygadier z Armii Iraku, którego znaleziono z raną postrzałową głowy. Rodzina zmarłego poddała w wątpliwość fakt popełnienia przez niego samobójstwa, twierdząc, że list został bądź sfabrykowany bądź napisany pod wpływem groźby. Badanie listu przy wykorzystaniu technik językoznawstwa sądowego i stosowanego wykazało, że list nie był ani sfałszowany, ani napisanie go nei zostało wymuszone na autorze.

المستخلص
يعد التعرف على مؤلف نص ما فرع من فروع تميز المؤلف والذي يهدف إلى معرفة السمات التي تميز نصاً مكتوبا ويُعزوه إلى مؤلف معين . يسعى البحث الحالي إلى تطبيق طرق وتقنيات علم اللغة التطبيقي في مجال علم اللغة الجنائي ، إذ يهتم بتحليل رسالة انتحار وجدت قرب جثة المتوفى وهو ضابط برتبة عميد في الجيش العراقي توحي بان المتوفى كان قد كتبها . عُد الحادث عملا انتحاريا بينما أدعت عائلة المتوفى ومعارفه على أن الحادث عملية اغتيال اتخذت شكل انتحار وان الخطاب كان مفبركاً أو كُتب تحت التهديد أو بالقوة . يهدف البحث إلى التحقق من صحة المزاعم أعلاه مستخدماً الطرق المتعارف عليها في التحليل النصي لرسالة الانتحار شكلاً ومضموناً ومقارنته بنصوص سبق للمتوفى أن كتبها . بينت النتائج بأن رسالة الانتحار كانت حقيقية وغير منتحلة ولم يجرى عليها أي تحريف كما إنها لم تكن كُتبت تحت ضغط أو تهديد .

1. Introduction

Suicide is defined as the action of killing oneself intentionally. It is not a crime in itself; yet aiding, abetting, counseling or procuring a suicide is punishable in almost all statutes (Hooper 1968; Martin 1997:451). Many scientific disciplines like psychiatry, philosophy, sociology and ethics tried to find reasons for this act of voluntary and intentional self-destruction. Carven (1959:533) summarizes the main causes of suicide as frustration leading to hostility which is turned in ward upon the self instead of outward toward another person; loss of love; feeling of rejection; feeling of guilt and desire for vengeance; and the desire to escape from physically painful situations.

Suicide is a form of homicide in which a person vents emotions against the self whereas in homicide emotions are vented against another person (Carver 1959:534). Also, suicide is usually accompanied by a suicide note which may provide evidence on the deceased person's intentions (Richardson & Breyfogle 1947:490).

Suicide notes are potentially valuable sources of information about the suicidal person's psychological states (O'Donnell et al. 1993:45). They also offer an invaluable source of insight into what brought about the deceased person's suicidal behavior. Suicide notes „contain an unsolicited account of the victim's thoughts and emotions regarding his intended act and, often, what he felt was responsible for it" (Jacobs 1967:62).

Suicide notes differ considerably in form, content, motives, style and wording; however, they also share some general features of form and content. Osgood and Walker(1959), who identify a number of features that characterize the structure and content of suicide notes, conclude that structurally suicide notes are characterized by shorter, less diversified sentence fragments" (cited in Jones & Bennell, 2007:220). This might be due to the fact that suicide is usually committed under high level of emotional arousal when only the salient features of the message are highlighted.

Another salient feature in suicide notes is the „high percentage of nouns with preponderance of references to persons and concrete objects" and action verbs because these two parts of speech are semantically richer than others in expressing one's feelings and actions (Jones & Bennell 2007:221).

The content analysis of genuine as opposed to simulated suicide notes Jones & Bennell, based on relevant literature, conducted resulted in the following five characteristic features:

(i) The total number of words is typically greater in length. This is an index of heightened cognitive state experienced by the suicidal.
(ii) The high frequency of instructions to survivors regarding insurance or requests to notify one's next kin to perform actions which the suicidal is unable to accomplish.
(iii) High frequency of positive affect expressed in the form of affection, gratitude or concern towards survivors, with terms of endearment as well as a backdrop of despair inherent in the note.
(iv) Less likely to provide an explanation for the ultimate action.

(v) External locus of control, ascribing the behavior and circumstances to fate and luck.

In another research based on the analysis of suicide notes of persons who succeeded in suicide, Jacobs (1967) singles out a number of content features that are recurrent in most of the suicide notes analyzed:

First, the problem which lead to the suicide is not the victim's own making, and the suicidal person's woes have a long-standing history whose escalation has reached a point beyond human endurance.

Second, death is seen as necessary in the light of the circumstances experienced. Third, the suicide victim begs for the survivors' indulgence and forgiveness because what he/she has experienced cannot be expressed in words (e.g. "Please, forgive me, I cannot endure any more pain"). Fourth, some letters involve the last will and statement as well as some examples or notes of instructions. Finally, religious persons, believing that the suicide will outrage God, usually end the suicide note with „May God help and forgive me for what I am about to do".

2. Authorship Analysis: Literature Review

Assigning a particular text to a particular person or time period has a long history. The general purpose to establish a probable link between an author and a particular text; it is „a process of examining the characteristics of a piece of writing in order to draw a conclusion on its authorship" (Zheng et al. 2006:4). This process is used in a broad range of applications, the most important of which are: identifying the writer of anonymous text(s) or document(s); detecting plagiarism; and judging whether a claimed authorship is valid, etc.

Authorship analysis has three subfields: authorship identification or authorship attribution, authorship characterization, and similarity detection (de Val, et al. 2001:8). Authorship attribution determines the likelihood that a text or document was written by a particular author. Authorship characterization provides an author's profile of characteristics based on a disputed piece of writing. These characteristics involve the gender, the social and cultural background, and the psychological state of the author at the time of writing the text. Plagiarism or similarity detection is the process of comparing two or more pieces of writing, without necessarily determining the author, aiming at deciding whether the texts compared were written by the same author or not, or to determine whether the analyzed piece of writing has been plagiarized.

Gray, Sallies & MacDonell (1997:2f) suggest four principal types of authorship analysis: author discrimination, author identification, author characterization, and author intent determination. Author discrimination aims at deciding whether two or more texts were written by a single author or by multiple authors. The goal of author identification is to determine the likelihood that a particular person is the author of a disputed text. Author characterization identifies some characteristics of the author such as personality, age, linguistic or educational background based on the stylistic features of the analyzed text. Author intent determination specifies, for example, whether the code that had an

undesirable effect was written with deliberate malice or was the result of an accidental error. To verify authorship, various kinds of evidence are used. Corny (2003) points out that three sorts of evidence are most frequently used to establish authorship: external, interpretive, and linguistic. External evidence includes the author's handwriting or signed manuscript. Interpretive evidence includes indications of the author's intent when writing the document compared with other works written by the same author. Linguistic evidence emphasizes the actual words and patterns used in the document under investigation.

The linguist evidence to verify authorship is based on the assumption that every speaker or writer uses a unique idiolect "which manifests itself in distinctive and idiosyncratic choices in the text" (Halliday, McIntosh & Stevens 1964:75). Thus, every speaker or writer, for example, has a unique set of active vocabulary items built up over years which differs, in many respects, from the active vocabulary of another speaker or writer. Also, every speaker or writer has a unique preference for lexical items, collocations, clichés, and structures. These accumulated observations led Coulthard (2005:5) to suggest that a linguistic fingerprint, similarly to the fingerprint or signature, can be used to identify people.

The use of modern linguistic techniques in authorship attribution dates back to 1887 „when Mendenhall first created the idea of counting [text] features like word length" and Yule and Morton used sentence length to determine authorship (Taş & Görür 2007:152). Other scholars came up with adding word frequencies or lexical repetition to the set of linguistic features examined in identifying authorship. Mosteller and Wallace 1964) paid special attention to the frequency of function words to establish the authorship of disputed works (Zheng et al. 2006:7f). Most famously, Moesteller earned fame by using function word frequency in identifying Madison or Hamilton as the author of each paper in *The Federalist Papers.* Allen (1974) suggested a stylistic analysis for author attribution identifying average word length, sentence length, distribution of parts of speech and vocabulary as criteria for attributing a questionable text while in 1987 Burrows developed a set of fifty high frequency words to be tested on *The Federalist Papers.*

Holmes (1985) listed a variety of criteria to judge authorship, including average syllables per word, average sentence length, type-token ratio of the lexical items, and word frequency distribution; while Foster (1996) suggested examining patterns in linguistic habits, such as spelling, syntax, and rare words to identify authorship (Corny, 2003:17-19).

Corny (2003) used stylometric techniques such as style markers. Stylometry is based on the assumption that each author has his own stylistic habits in choosing and using words, phrases and structures. These habits are said to be unconscious and deeply ingrained "meaning that even if one were to make a conscious effort to disguise one's style this would be difficult to achieve" (Corney 2003:14).

Forensic authorship analysis has benefited from the techniques used in authorship analysis in investigating issues pertaining to what Shuy (1993) called language crimes such as threats, extortion, trade infringement, black mail, mining e-mails, bribery, etc. Linguists working on language crimes prepare admissible, convincing, and objective evidence for presentation in the court of law.

Allen(1974:906) maintains that at any given moment each "writer or speaker will have certain subconscious habits of using a finite number of words at his disposal based on his education, interests, individual idiosyncrasies etc. these features are subconscious in the sense that it is hard for a person to change them at will.

Goodman et al. (2001), Corny (2003) de Val et al., (2001) employed content independent features especially function words, such as "the," "if," "to," as well as punctuation marks to determine authorship in different contexts. Chaski (2002) used three groups of techniques for authorship attribution: syntactically classified punctuation and syntactic analysis of phrase structure; sentential complexity, vocabulary richness, readability and content analysis; and forensic stylistic techniques such as spelling errors, punctuation errors, word- form errors and grammatical errors (Corny 2003:30). Zheng et al. (2006) developed a framework based on four types of writing style features: lexical, syntactic, structural, and content- specific.

Stylistics and discourse analysis were found particularly relevant to forensic linguistics, especially the assumption that "it is possible to identify, describe and measure a writer's individual style or idiolect by careful linguistic observation and analysis of his/her unique set of linguistic choices" (Guillen-Neito et al., 2008:4). Recently, identifying an individual's style and measuring his/her use of style markers are mostly done by using software tools. For example, Morton (1996) developed a cumulative Sum Analysis (a general mathematical formula and graph producing method) for identifying authorship in attribution cases presented in the court of law (Jordan, 2002: 84).

Corny (2003) suggested a Support Vector Machine--light version-- as a tool for authorship attribution of e-mail messages in which stylistic features were selected for analysis. Guillen-Nieto at al. (2008) identified four most recently used software tools in forensic authorship attribution. The first two tools JVocalyse V2.05 band Copy Catch Gold V2 were developed by David Wools (2003) of CFL software Development in collaboration with members of the Corpus Forensic Linguist group at the University of Birmingham. The third tool was called Signature Stylometric System V1.0 designed by Peter Millican (University of Leeds) while the fourth one was called Wordsmith Tools V4.0 /5.0 developed by Mike Scott (University of Liverpool). All of these software tools were particularly used to help quantitative treatment of grammatical and lexical features as well stylistic markers.

Error analysis has also been used for forensic purposes in author attribution. Originally, error analysis was first used in second language pedagogy to refer to a set of techniques or producers used for identifying, classifying, describing and systematically interpreting unacceptable forms produced by the second language learner (Crystal 1991: 125; Ellis and Barkhuizan 2005: 51). Corder (1981: 10) distinguishes errors from mistakes. Errors are of systematic nature; they indicate a defect in acquiring the system of the target language. Mistakes are non-systematic and random. They are due to memory lapses, physical states, such as tiredness, strong emotions like anger or joy, etc. Mistakes are errors of performance, not competence.

Hubbard (1996) applied error analysis techniques to author identification in extortion letters with threats of poisoning the food stock in a chain store if $500-000 was not delivered (cited in Jordan 2002:114). He classified errors into the following types: lexis, word

order, tense, negation, agreement, pronominal, relatives, articles, demonstrative pronouns, prepositions, spelling and punctuation. He found that the errors identified in the extortion letters most closely resembled those of the suspect.

Yet, Jordan warns that the results of error analysis must be interpreted with great care. A person may intentionally make errors, or may unknowingly produce one form in one setting and another in another setting, which complicate the analysis (Jordan 2002:116).

Text analysis is also relevant in authorship analysis. Unlike a sentence, a text "is not a grammatical unit but rather a semantic and even a pragmatic unit' (Quirk et al. 1985:1423f.). For Halliday and Hassan (1976) a text is a unit of language in use, a unit of determined by meaning, not form; Brown and Yule (1983:191) maintain that a text, is a connected sequence of sentences depends on cohesive relationships within and between the sentences that force co-interpretation which can be formally established with a text providing cohesive ties which bind a text together". Halliday and Hassan (1976) provide a detailed description of the types of formal markers which relate what is about to be said to what has been said before. These text or discourse markers are additive, e.g., „and," "furthermore"; adversative, e.g., "but," "nevertheless"; causal, e.g., "so", "consequently," and temporal, e.g., "then," "an hour later."

The cohesive relationships that particularly tie the text components together are reference, (the expressions that direct the reader/hearer to another part of the text for the interpretation of certain linguistic items); substitution (the replacement of one linguistic item by another); ellipsis (the omission of linguistic items); and lexical relations like hyponymy, synonymy, collocation, comparison, or syntactic repetition.

A part from cohesion, coherence is „a semantic property of a discourse[1], based on the interpretation of each individual sentence relative to the interpretation of other sentences" (Van Dijk 1977:93). The main function of coherence is to contain information distribution in the text, by means of introduction, continuity, expansion, focusing, topicalization, etc. (Van Dijk 1977:95). In fact, relationships between sentences or propositions may exist without being explicitly expressed, i.e., without being marked by cohesive devices. Similarly, it is possible for a text to be cohesive without being coherent, and a text may include cohesive devices of various kinds, but lack the semantic structure that makes it a coherent text (Finch 2000:211). Therefore, cohesion and coherence complement each other in maintaining sense and unity in a text.

Discourse or text analysis has been used in the legal domain for forensic purposes since the early 1990s for comparing undisputed or known texts with disputed or anonymous texts, with special emphasis on handwritten records of interviews made by police officers with witnesses and suspects and the statements dictated by witnesses or defendants to police officers (Coulthard 1992:243). Text analysis in these settings is applied to provide linguistic evidence when, for example, a convicted offender claims that the police officers have fabricated the whole or part of an incriminating interview or statement.

[1] Discourse" and "text" are used interchangeably throughout this article.

In spoken discourse, the analyst should account for what Grice (1975) calls 'cooperative principles'. The cooperative principle dictates that one's contribution to discourse be informative, truthful, relevant, brief, unambiguous and orderly (Grice 1975). The text or discourse analyst should pay special attention to the types, manner and location of violations of the maxims above and provides persuasive reasons for the detected violation (Coulthard, 2007:28).

Three types of analysis are typically performed: topic analysis, response analysis and topic flow analysis (Jordan 2002:101). In topic analysis the emphasis is on the topics related to the case but avoided by the defendant; response analysis focuses on the types of responses made; while the topic flow analysis concentrates on how the topic starts, develops and ends. The ultimate aim of text analysis for authorship identification is to provide evidence on whether the disputed text can or cannot be attributed to the suspect or offender.

The review above clearly indicates that linguists and practitioners have used various techniques in authorship attribution analysis and not one technique has proved to be the best. What applies to one case or context might not apply to another case or context. Also, no technique alone could exclusively confirm or disconfirm that an anonymous text can be attributed to a specific suspect. Therefore, one may safely conclude that more than one technique can be used in analyzing and comparing the known text with the disputed one(s). Also, non-linguistic and cultural dimensions should be accounted for in any authorship analysis if a relatively complete analysis is sought. This is what the present study tries to do when analyzing the actual suicide note to find out its authorship.

3. The Case Under Investigation

On November 16, 2002, a forty-nine-year old brigadier in the Iraqi army was found shot in the head in his small garden with a suicide note left near him. The victim S. was a father of five children. He came from a poor family with strong religious values. S. was married to K., a thirty- six- year old woman who was a housewife and did not have much education because she dropped out of elementary school. K. and S. lead a traditional family life, which was probably not very happy because of their different educational background, the disparity between their aspirations and views of life, with each inhabiting his or her own world. K. always complained that S. never talked to her about his military life and problems when he came back home, and she knew very little about his work, his relations and friends.

S. was a brilliant soldier. His personality, seriousness, courage and dare earned him a high reputation in his job, but he also had many enemies and few friends. He was honored many times by the military leadership. A year or two before the accident, S. was sent home for a mandatory five-month vacation because of a quarrel with his commander on a financial matter. S. did not want to be involved in financial corruption. Then, he was asked to return and assume a military consultant position. Few months before his death, S. had been haunted by the feeling that he was being watched. He told his brother A. and his friend M. that he felt as if he was monitored and watched by someone wherever he

was going, and even when he was at home. Few days before his death S. told A. and M. that he suspected that his home was under surveillance and tapped by a device recording his and his visitors' moves. Few days before the accident, S. seemed very lonely and was feeling very much depressed, a close friend M. reported.

On the morning of 22 October, 2002, S. dressed up in his military uniform waiting for his companions to go to the office in Baghdad. According to his wife, S. sent his wife and children to her parents' house nearby. Shortly after, a gunshot was heard, and S's body was found lying in his small garden, with a wound from a gunshot in the head that apparently instantly caused his death. Five meters from the body there was a suicide note.

The neighbors confidentially told S.'s wife later that they had seen two or three men approaching the home then running away hurriedly when the accident took place. A month later, another neighbor told S.'s brother also confidentially that one of these men might have been spotted in the hospital making sure that S. had been dead. Yet, based on the forensic medical report, the police regarded the accident an act of suicide. S.'s relatives and friends, however, did not trust the police report and the forensic medicine department simply because the victim was a religious man, optimistic, highly ambitious and someone who was seen as most unlikely to commit suicide.Therefore, friends and family suspected assassination disguised as a suicide. At the time of the accident, nobody dared to press charges because of the oppressive political climate and fear of terrorism. An important element in support of the family's claim, the suicide note found near S.'s body was assumed to be planted and fabricated, or to have been written by the victim under duress or threat.

4. The research questions

The present research is particularly interested in the linguistic analysis of the disputed suicide note found near the victim's body. The aim is to provide objective answers supported by linguistic evidence to the following questions:

(i) Is the suicide note genuine, i.e., written by the deceased, or simulated, i.e., written by someone else and left near the victim to suggest a suicide?
(ii) If written by the deceased, was the suicide note tampered with?
(iii) Was the suicide note written under threat or duress?

5. The Framework of Analysis

In order to provide research-based answers to the research questions already raised, a linguistic analysis of both form and content of the questionable suicide note was conducted. Then, the findings were compared with a text „Letters to my sons" known to have previously been written by the deceased person S.

Based on the assumption in the authorship attribution literature that every speaker or writer has his own distinctive and idiosyncratic choices of specific lexical items, word combinations, grammatical structures, cohesive devices as well as the way the ideas are

organized, both micro-and macro-linguistic features were identified. The micro-linguistic features identified in the analyzed texts were the following: the number of words per sentence, the most frequently used words and word combinations, specifically, binominals and collocations, and the most frequent errors in spelling, grammar and punctuation. The analyzed macro-linguistic features include the most frequently used cohesive devices, paragraphing as well as coherence.

Each level of linguistic analysis had its own objectives. In micro-linguistic analysis, the objective was to provide linguistic evidence to decide whether the suicide note under question was or was not written by the deceased person S. The objectives of the macro-linguistic analysis were two-fold: to provide more evidence on the authorship of the disputed suicide note and to present objective evidence that the suicide note had not been tampered with or written under duress or threat.

6. Results and Discussion

Following the above described procedure, a linguistic analysis of the form of the disputed suicide note was first made. It was found that

(i) The disputed suicide note is relatively long. There are a lot of details. The sentences are very long. The average number of words per sentence is 41 words. The aim behind using long sentences might be the suicide victim's desire to provide a complete account of how he was feeling while writing the note and to prove his innocence to the political leadership and the country.

(ii) The preponderance of reference to people by names. This may be due to the deceased person's expectation that the note would be read by those whose names were mentioned namely, Uday or Saddam Hussein himself.

(iii) The words used more than once in the note were: 'قلق' worried, '' عقل mind, ' تنتابني ' مخاوف' haunted, ' ضحية'victim, 'معلقة' suspension, ' الشرطة' police, ' إحساس ' feeling, ' فشل ' failure, ' خيبة أمل' disappointment, ' مخلص' faithful, ' أمين' honest, ' برئ' innocent. These words reflect the cognitive state of the deceased before committing the act of suicide. They also imply his intention to commit the suicide.

(iv) The frequent use of words in combination, especially binominals and collocations. Two types of combination are apparent in the texts under investigation: binomials in first place and collocations in the second.

Binomials or "irreversible freezes," as they are sometimes called, are fixed expressions or constituents of two constants having the same word class and linked by grammatical items, frequently "and," or "or." (Gramley & Pätzold 1992:70). These constituents can be independently meaningful as in "bread and butter", or they can be idiomatic as in "head over heels." Syntactically, the two constituents have the same word class: noun+ noun, verb + verb, adjective +adjective or adverbs, such as "gold and silver", "day and night", "landings and take offs"; "rise and fall"; "black and white", "bad and good"; "sooner and later", "logically and objectively".

This phenomenon has been extensively studied and found to be available in most natural languages. The most comprehensive studies of binomials to date are Malkiel

(1959) and Benor & Lavy (2006). In Arabic, two seminal articles by Bakir (1999) and Gorgis & AL-Tamimi (2006) recently also studied binomials.

One of the characteristic feature s of the texts under investigation is the extensive use of various types of binomials. As for the disputed suicide notes, the frequently used binomials were mostly of the noun +noun type. For example:' الكذب والرياء' lie and eye service, ' جهة أجنبية أو محلية' foreign or local, ' الشرف والأمانة' nobility and honesty, ' الإخلاص والمثابرة' sincerity and persistence,' البلدي وحزبي' my home and party, ' الإخلاص والدقة' preciseness and loyalty, ' الاحترام والتقدير' respect and appreciation, ' جهد وكلل' diligence and hard working, ' الفشل وخيبة الأمل ' failure and disappointment. There were 14 of this type of binomials in S.' suicide note.

"Collocation" is a term first used by the British linguist John Firth (1957) to refer to the tendency of certain words to occur together. For Robins (1971:63) collocation is "the habitual association of a word in a language with other particular words in sentences". For Gramley & Pätzold (1992:61), collocation refers to "combinations of two lexical items which make an isolable semantic contribution, belong to different word classes and show a restricted range".

Structurally, collocation is divided into two elements: the node and the node's collocation, and the relation that holds them together is the span (Sinclair 1966). In the phrase "struggle desperately" the verb "struggle" is the base while the adverb "desperately" is the collocate; likewise in "commit a crime" commit is the node while "a crime" is the collocate. As for the suicide notes, the collocations most frequently used expressed feelings of disappointment, ينظر بعين العطف' feel pity for, الأب الحنون loving father, اكره المتعصبين والمتطرفين' dislike extremists and fanatics. تصور خاطئfalse conception الحصار الجائرunfair sanctions,' خدمتي في الجيش' military service, ' الجوانب السيئة' negative aspects.

(i) At discourse level, the cohesive devices commonly used were (و) 'and', 'or' أو typically used to combine 'noun and noun', 'adjective and adjective' and 'verb and verb'. (و) 'and ' was also used to combine paragraphs. The word ' لقد ' was used to introduce three paragraphs ' لقد بدأت أشعر' 'I started feeling', 'I have spent all my life' ' لقد أمضيت طيلة حياتي', and ' لقد كانت حياتي كلها' 'All my life had been'.

As for content, the suicide note indicates that:

(i) The use of the word " مكروه" 'bad thing' in the first sentence in the note implies that he has already made up his mind to do something and he perfectly knew that what he was going to do is a bad thing.

(ii) In the first paragraph, the writer confirmed that he would tell the plain truth and that he would never tell lies or be a hypocrite. But in the last two paragraphs, he praised Saddam Hussein and his son Uday whom he always criticized when talking to his family or friends. This may be due to the expectation that the suicide note would be read by Uday or his father Saddam Hussein owing to the suicide victim's close relationship with them.

(iii) The recurrent expressions of feelings of "failure and great disappointment," "feeling as if everything has turned against me", "fear of torture" also shed light on S's intention to terminate "the failure" and "agony" he had suffered from for so long.

(iv) Although S. mentioned that he committed suicide in order to avoid the torture he might suffer from to make him confess, he ascribed his act to fate and bad luck.
(v) S. finally begged president Saddam Hussein and his son Uday for indulgence and forgiveness and to look upon his family and sons with affection and kindness.
(vi) S. ended his note with a testimony that God be the witness to all that he had said.

A comparison was then made between the suicide note (henceforth text A) and a text known to have been written by the deceased and entitled "A letter to my sons" (enceforth Text B), which seemed to have been written shortly, probably a month or two, before S's death. The aim was twofold: to see whether the two texts could be ascribed to the same or different author(s), and to ensure that the whole or part of Text A had not been fabricated or tampered with.

Before doing the comparison, a linguistic analysis of Text B "A letter to my sons" was conducted. The same criteria used in analyzing the form and meaning of the suicide note were also applied to Text B, "A letter to my sons". At the level of form, Text B was found to have the following characteristics:

(i) The sentences were very long. The number of words per sentence was 41.
(ii) The words most frequently used were ' أحاسيس' feelings, ' وصية' will, ' مُراقب' monitored, ' العقل ' mind, ' المنطق' logic, ' خوف' fear, ' شك' suspicion, ' حسد' envy, ' كراهية' hatred, ' تنتابني مخاوف' haunted, ' مخابرات' intelligence, ' ندم' repentance.
(iii) Reference was made to the places where S. had been working, especially College of Military Staff, Military College, but no reference was made to persons with whom he was working, except for authors of the books he read like Ibnul Faridh, Ibun Rushd, Socrates.
(iv) Words in combination, especially binomials and collocations, were extensively used. The most frequent binomials were ' 'motive or drive', ' المدح والذم ' 'praise and dispraise', ' 'الخوف والتحسب '' fear and alert', ' 'العلم والمعرفة ' 'science and knowledge', ' 'الحسد والغيرة ' 'jealousy and envy', ' المتعصبين والمتطرفين 'extremists and fanatics', ' العقل والمنطق ' 'mind and logic', 'الشعب والأمة ' 'people and nations', ' بلدي وحزبي 'my country or political party' ' 'الحب والتسامح ' 'love and forgiveness'. The collocations mostly used were ' 'جندي ومخلص ' 'honest soldier', ' ' الاستخبارات العسكرية ' 'security police', ' الأجهزة الأمنية ' 'أنقذ نفسي ' 'save myself', ' 'جمال الإيمان ' 'beauty of faith', ' 'military intelligence', ' جمال الحق ' 'beauty of right', ' القيادة العظيمة للعراق ' 'great leadership of Iraq', ' 'جمال العدالة 'beauty of justice',
(v) The expressions that were mentioned more than once were ' لقد كنت دوماً مخلصاً لبلدي لم احمل ' 'I have been loyal to my country and believe in my nation", ' 'مؤمناً بأمتي لا أحب ' 'I have never experience hatred or despised anybody", ' 'الحق والكراهية مولع بالقراءة والحصول على ' 'I dislike fanatics and extremists", ' 'المتعصبين والمتطرفين ' 'I am fond of reading and getting information on everything", ' 'المعلومات من أي شي ' 'I have never thought of causing harm to my country or my party", ' 'لم أفكر يوماً في إن الحق الأذى لبلدي أو حزبي لقد أمضيت طيلة خدمتي في الجيش بمنتهى الشرف والأمانة والإخلاص ' 'I have spent all my military service in utmost honor, loyalty, perseverance, and honesty". These expressions clearly reflect the worries, fears 'والمثابرة

and agonies, which can be viewed as a prelude to deep depression and despair that might lead to unpredictable actions.

Regarding content, Text B can be divided into three parts.

In part one, the author reported that he felt he had been watched by military intelligence and security police for some reason which he did not know and which might have been due to slander or defamation.

The second part is a detailed description of S.'s relationship with his colleagues and students in the Military College and how his students admired him whereas some of his colleagues felt envious and jealous of S. ascribing to him expressions and ideas which he had never endorsed. This might have made the military intelligence suspect him.

Part three is a detailed advice to his sons urging them to follow his path in educating themselves in science, literature and the arts; to appreciate knowledge and beauty; to respect man and his dignity; and to do everything possible to benefit people and their country. S. concluded that he was neither the first nor the last one to be the victim of knowledge in an uneducated environment.

The form and content of Text B (the known text) were compared with Text A (the disputed text), concluding with the following major findings:

(i) In both texts, the sentences were very long. The average number of words per sentence was roughly the same: thirty nine (39) words per sentence in Text A and forty one (41) words per sentence in Text B.

(ii) The most frequently used words in both texts were roughly the same: haunted, being watched, ' أشعر ' feel, شعور' feeling, ' شك ' suspicion, الشرطة' police, ' المخابرات intelligence, ' محبط' disappointed, ' ضحية' victim, ' مخلص ' faithful, ' صادق' honest, ' بري ' innocent, ' حسود ' jealous, ' غيور ' envious.

(iii) Both texts contained a lot of words in combination, especially binomials and collocations. The following binomials were found in both texts: ' كبد وجهد ' diligent and hardworking, ' حب وتسامح ' love and indulgence, ' حسد وغيرة' jealousy and envy,' فشل وخيبة أمل' failure and disappointment, ' شك و ريبة' doubt and suspicion, ' شهامة وصدق' nobility and honesty. The collocations found in both texts were: ' الاستخبارات العسكرية' security police. ' أجهزة الأمن' honest soldier, ' جندي أمين' military intelligence, ' أدنى شك' little doubt, ' منتهى الصدق' absolute honesty, ' خوف ويقظة' fear and alert.

(iv) The second paragraph in both texts started with the following: Text A ' لقد بدأت اشعر منذ انتقلت من فدائي صدام بأنني مراقب من قبل اجهزة الأمن' "I started feeling since I was transformed from Fidaayiu Saddam that I was being watched by the security police" Text B ' بدأت اشعر مؤخرا في هذه الفترة باني مراقب من قبل المخابرات والاستخبارات العسكرية' "I started feeling, recently, that I was being watched by military intelligence". Longer expressions found in both texts were: ' لم أفكر أي لحظة ان الحق الصرر ببلدي وحزبي' "never thought of causing harm to my country or my party", ' أمضيت خدمتي العسكرية بمنتهى الشرف والإخلاص' "spent all my military service in utmost honor and loyalty", ' لم اعرف الحقد والكراهة على احد' "never experienced hatred or despise to everybody" and ' انقلبت وبالاً علي' "turned adversely against me". Expressions that imply exaggeration, were also abundant in both texts such as ' واثق أقصى' "without any doubt" ' بدون أدنى شك' "the great majority", ' الغالبية العظمى'

درجات الثقة‘, “deadly sure” ‘ كبيرة جدا جدا‘ “very, very large” ‘ قليلة جدا جدا‘ “very, very few”, حريص جدا “very serious”, ‘ في أية لحظة‘ “at any moment”.

(v) The cohesive devices common in both texts were: ‘and’ and ‘or’. ‘Or’ was usually used to combine nouns or adjectives; ‘and’ was mostly used to combine two or more nouns, adjectives or verbs. In two cases only was „and” used to combine paragraphs. Other cohesive elements used in both texts were concessive: “especially”, ‘ رغم‘ ‘although’ followed by the correlative ‘especially’ and ‘not only but also’.

(vi) The cohesive ties in both texts were mostly immediate, i.e., the cohesive device immediately refers to its presupposition or antecedent anphorically or cataphorically except for one item in Text A. In Sentence 1, the word مكروه (inconvenience) cataphorically referred to the act,i.e., suicide in Sentence 11.

(vii) Lexical cohesion was the most prominent types of cohesion in both texts. Synonymy, near synonymy and antonomy were extensively used, for example ‘ شرف وأمانة‘ ‘honour and honesty’, الإخلاص والمثابرة‘ ‘loyalty and perseverance’, ‘ ‘toil’. تعب ‘ ‘agony’, ‘ معاناة ’ ‘poverty’, ‘فقر ‘ ‘diligence and exertion’, ‘كدح جهد كلل ‘مقت وكراهية ‘ ‘and loyal to country trust in his nation’, ‘مخلص للوطن مؤمناً بأمنه ‘hatred and abhorrence’.

(viii) Although the two texts differ in content, Text A being a suicide note while Text B being a letter of advice, it seems that text B might be considered as a prelude to text A. As mentioned earlier, Text B contained a lot of words and expressions that were also found in Text A, a case which indicates that the author was in roughly the same psychological state.

(ix) As far as coherence is concerned, both texts are coherent. In Text A, the topic sentence is in the second sentence of the first paragraph. The idea that „I was going to meet Allah” is developed by giving background knowledge on what S. was feeling recently and that he suspected being watched by security police. In the second paragraph, the author swears that he is innocent and never thought of causing harm to the country, the political party, or the military leadership. The third paragraph reports the author’s feelings of failure and disappointment ascribing these feelings to bad fate and luck. Paragraphs four, five and six are a sort of praise showing love, high respect and dignity to president Saddam Hussein and his son Uday asking them to look after S.’s wife and children with kindness and affection. The last paragraph was written after the signature. This implies that it was added later, shortly, perhaps a few minutes, before the accident. In this paragraph, the deceased clearly states the reason behind committing the act of suicide ‘ وذلك لأني اعرف حجم التعذيب الذي سأتعرض له من اجل الاعتراف‘ “this is because I know the amount of torture I am going to be subject to in order to confess”.

Text B is also as coherent and to -the-point as Text A. However, there are a lot of repetitions, digressions, and reiterations in Text B. The topic sentence is introduced in the first paragraph ‘ اكتب هذه الوصية إلى أبنائي‘ “I am writing this word of advice to my sons” indicating that S. was feeling something inconvenient to happen shortly. Paragraph two develops the topic sentence. The controlling idea is that S. was being watched by the military intelligence for reasons unknown to him. Paragraph three is a very long one.

Here, the author relates his relationships with his colleagues and students in the Military College, repeating that the security police and intelligence were watching him but he did not care and had nothing to be afraid of. The controlling idea in paragraph three is that he was spending most of his time reading and increasing his knowledge. In the last and longest paragraph, the author unfolds his advice to his sons. The main point of his advice is summarized in the following: ' وصيتي لأبنائي تتمحور حول حثهم على طلب المعرفة والاستزادة منا لأنها أفضل الطرق لخدمة بلدهم و وطنهم . ' "My advice to my sons revolved around urging them to seek knowledge and increase it because it is the best way to serve country and nation" although he also stated that he was neither the first nor the last to be the victim of knowledge.

(i) Finally, an error analysis was made for both texts. The aim was to see whether the types of errors in both texts were similar. One difference found in Text B is a spelling mistake ' ومضيت' instead of ' وأمضيت' (passed); and there is also a grammatical mistake ' فرضته المعرفة عليَّ' instead of ' فرضته علىّ المعرفة' (while the knowledge dictates upon me). In contrast, eleven punctuation errors, especially using commas instead of periods, were found along with some lexical errors, for example ' شوطاً بعيداً' instead of ' شأواً بعيداً' (too far), and ' تتمحور حول' instead of ' تتضمن' (involves). In Text A, three spelling mistakes were found: ' واني جهودي' (my efforts), ' منذ تعرفت' instead of ' منذ عرفت' (since I have known) and ' إنني لم يكن لي' instead of ' انه لم يكن لي' (I did not have) but no lexical or grammatical errors. There are, however, eight punctuation errors, especially replacing periods with commas. This type of error in Arabic is not as serious as it is in English, and it is frequently overlooked, unlike grammatical or stylistic errors. No scrapes or cancellations were found in either texts. This implies that the writing of both texts was preplanned and done with great care.

7. Conclusion

The present study aimed at applying methods and techniques of applied linguistics in analyzing a suicide note left near a brigadier who was found shot in the head. The purpose was to provide research-based linguistic evidence to support the victim's family's claim that the accident was an assassination disguised as suicide and that the note found near S. was either a mere fabrication or was written by the deceased under duress or threat.The suicide note was carefully analysed linguistically and then compared to a text known to have been written by the deceased to see whether the two texts can be attributed to the same author.The result of the analysis and comparison indicate the following.

(i) In both the disputed and the known texts the sentences were very long and the number of words per sentence was almost the same; binomials and collocations were extensively used; similar expressions having roughly the same emotional meaning were found; the cohesive devices, cohesive ties as well as the type of cohesion were almost the same; the way the topics were introduced, developed and concluded were similar; and the number of errors and mistakes were very few

and similar, especially the punctuation errors. From these results one may safely conclude that both texts can be attributed to the same author. This means that the suicide note was genuine, i.e., written by the deceased.

(ii) The linguistic analysis of the form and content of the suicide note showed that the text was highly cohesive and coherent. This implies that the suicide note had not been tampered with either wholly or partially.

(iii) The suicide note was carefully written with no scrape, erasing or cancellation and with very few mistakes. This indicates that the author had probably written the notes few days before the accident and the last paragraph might have been added shortly before the accident. It also indicates that the note was not written under threat or duress as the family of the deceased assumed. The linguistic evidence found supplements the external and interpretive evidences in shedding light on the nature of the accident and in verifying the claims that the accident was not an assassination but a suicidal act. Yet the final decision is to be left to the discretion of the judge to whom the case will be submitted.

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DISAPPEARANCE OF WITNESSES' OWN WORDS

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Abstract: This paper discusses the characteristics of prosecutor's language that would appear in the prosecution witness's answers during direct examination. I performed a linguistic comparison of the language that is used in a witness's answers against that of five relevant documents, which include a prosecutor's opening statement, a prosecutor's final statement, 11 samples of suspect's statements from the handbook for investigating officers and one from witness's personal letters. I would like to argue that as the witness's answer had the features of a prosecutor's language as well as written language, the prosecutor's ten meetings with the witness immediately before the trial may have possibly influenced not only the witness's language but also the content of the testimony itself. The analysis of this paper is based upon my expert witness opinion that was submitted to the Tokyo High Court and Japanese Supreme Court for the case in question.

検察側証人の証言に表出した検察官用語についての考察

本報告は、被告人が無罪を主張している傷害致死事件における検察側証人の証言の言語分析である。同証人は、実行犯で刑が確定して服役中であるが、公判直前に検察官が10回面会をしており、自分の取調の時とは異なる証言をしていた。そこで、主尋問の証言と、検察官の冒頭陳述と論告、『新捜査書類全集：取調』から供述調書の7例、同証人の私信一通を比較すると、同証人の証言に検察官特有の言語的特徴や書記言語の特徴もあることが明らかになった。このことから、検察官による公判直前の面会が証人のことばのみならず証言内容にも影響をあたえた可能性もあることが考えられる。本報告は、東京高裁と最高裁に提出した傷害致死事件の検察側証人の証言の言語分析の意見書に基づいたものである。

ZNIKANIE SŁÓW ŚWIADKÓW

Abstrakt: Artykuł dotyczy języka używanego przez prokuratorów, który pojawia się w zeznaniach świadków w trakcie przesłuchania na sali sądowej. Autorka dokonała porównania języka użytego przez świadka i języka użytego przez prokuratora (m.in. w mowie oskarżyciela). Będąc biegłym sądowym, powołanym do dokonania analizy języka użytego przez świadka, autorka wyciąga wniosek, że z dużym prawdopodobieństwem wpływ na język, jakim posługiwał się świadek miały spotkania z prokuratorem, które odbyły się tuż przed rozprawą. Język świadka zawierał cechy języka prokuratora oraz cechy języka pisanego, które pokrywają się z konstrukcjami zawartymi w analizowanych dokumentach.

1 Introduction

In this paper I selected one Japanese criminal case of complicity, and I would like to show that the characteristics of a prosecutors' language are found in the answers of a prosecutor's witness during direct examination. The defendant of this case pleaded not guilty to a charge of aiding or abetting a crime of bodily harm that resulted in death. This case was put to a lay judge trial. I was present at the first trial from 7 to 15 November 2011. Before I discuss this case, I will introduce the Japanese lay judge system, which was implemented in 2004.

2 Japanese Lay Judge System

The Japanese lay judge system is a hybrid of the Common law jury system and Roman law lay judge system. Like the Common law juries, Japanese lay judges serve only a term of a single case. However, unlike the jury system of Common law countries, Japanese lay judges deliberate the case together with (an)other judge(s). The deliberation body is composed of three judges and six lay judges. Not all cases are deliberated under this hybrid system; only criminal cases composed of serious offences are subjected to this new system. Defendants indicted on serious offences cannot choose the traditional court-judge system.

The Lay Judge Act is the result of a compromise between judges and lawyers. As Japan in the past had a jury system, lawyers aimed to implement a jury system as part of a Judicial Reform, but judges indicated a reluctance to allow the participation of lay people in court proceedings. These two parties have argued and defended their views since 2001, and they finally reached a compromise.

Let me elaborate on the characteristics of the Japanese lay judge system. First, lay judges render a verdict in discussion with the other judges. Secondly, the judges and lay judges render a sentence upon a defendant. Lastly, it is not prohibited for lay judges to discuss the case before the conclusion of a trial. The presiding judge frequently declares multiple adjournments of fifteen minutes during a trial to help the lay judges understand what is being deliberated in the trial and thus the panel of professional and lay judges discusses the case between sessions.

Japanese criminal justice prosecutors are not required to disclose all of the evidence that they have collected. However, under the lay judge system, if the defense discloses their defense at a pre-trial conference, they can claim that the prosecutors should disclose to the defense all of the evidence that is relevant to the content of their defense. Some lawyers advocate this disclosure because it is a positive and progressive aspect of the lay judge system. However, in the case of aiding and abetting under consideration this partial disclosure of evidence worked against the defendant.

The Code of the Lay Judge Court prohibits both parties from presenting new evidence at a trial, which was not requested to be examined at a pre-trial conference. As a result, in a pre-trial conference, a defender tries to request as much evidence as possible for examination. The defender's request for an examination of the evidence provides the

prosecution with a good understanding of the defender's strategy ahead of time, so that they can prepare countermeasures before the trial. Revealing the defender's strategy beforehand had a poor effect on the case of aiding and abetting.

3 The Overview of the Case

The following is an overview of the case. A male "F" was found dead in a car that was submerged in an irrigation reservoir in Gunma, Japan, in July of 2009. Five acquaintances of the victim (A, B, C, D and E) were arrested on charges of bodily harm resulting in the death and disposing of a dead body. Three of them (A, B and C), who admitted to carrying out the crime, were given sentences of eight, nine and ten years respectively. However, the other two (D and E) denied any involvement in the crime. D had his indictment suspended. E was charged as a joint principal in the conspiracy. Although E pleaded not guilty to the crime, she was sentenced to nine years of imprisonment by the district court in November of 2010. Defendant E appealed to the Tokyo High Court, which was dismissed in March of 2010. The defendant then raised a final application to the Japanese Supreme Court.

The main issue in this case was whether Defendant E conspired with three others (A, B, and C) to assault the victim. At a pre-trial conference of Defendant E, a defense lawyer argued how incredible were the three witnesses' statements, specifically the three perpetrators' statements against Defendant E, so that the defense could collect from the prosecutors some evidence that might contradict those statements. However, the defender's statement provided the prosecutors with an opportunity to learn the defenders' strategy ahead of time. It seems that the prosecution worked out the countermeasures against the defense before the trial took place. In order to inculcate the prosecutor's story into the witnesses, the prosecutors visited all three witnesses who were serving their time in prison. Each witness was interviewed ten times before the start of this trial. At the trial of Defendant E the three witnesses A, B and C gave their statements against her, which were different from the previous statements given during their investigation for their own trials six months earlier. It could be said that the visitation by the prosecution had worked out most effectively.

I would like to select one witness and focus on his testimony for some linguistic analyses. This witness, B, previously had a relationship with the Defendant E. During an interview with this witness, the prosecutor told him that the defendant had offered him a stimulant drug in the kitchen with the intent to arouse him to attack Victim F. The witness was therefore in full resentment of her. At the trial, Witness B was clearly transfixed upon her with anger when he came into the courtroom to take the witness stand.

4 Linguistic Issues

4.1 Forensic Linguistics

Forensic Linguistics is a relatively new field, and a term that was coined by Jan Svartvik when he wrote *The Evans Statement* in 1968. In November of 1949 Timothy Evans was arrested for the murder of his wife and infant daughter. His trial started in January of 1950. As the prosecution was able to obtain his written confession during the investigation, Evans received a death sentence and was put to death in March of the same year. Three years after Evans's execution, John Christie was arrested for the murder of four women including his wife. During his trial, Christie confessed that he had murdered Evans's wife, which brought a heated debate over Evans's execution. Svartvik made a corpus analysis of Evans's written confession and found that there were two different grammatical styles: educated style (investigating officer) and casual style (Evans). He concluded that Evans's written statement lacked credibility.

I would like to introduce several forensic linguistic analyses in the context of professional language features such as peculiar word usage, preciseness, repetition, and some features of written language.

4.1.1 Usage of Words

Another pioneering case in forensic linguistics is the Bentley case, which is a matter of attempted burglary. Derek Bentley (age 19) was executed for the murder of a police officer in 1953. Although the actual murderer was Chris Craig (age 16), he was not given the death penalty because of his age at the time of his arrest. Bentley's IQ was far below average and he was near illiterate. Coulthard analyzed Bentley's confession statement in which he acknowledged complicity in a burglary attempt and argued that Bentley personally did not make a confession to the police. Coulthard (1994) showed that parts of Bentley's statements were made up of the language of the investigating officers, by using a corpus analysis of the term 'then'.

(1) Frequency of 'then'

Coulthard discovered that a frequent use of the term 'then' is a salient feature of Bentley's confession. Coulthard thought that it was not typical for the word 'then' to occurr ten times in the 582 words of Bentley's confession. Coulthard collected two corpora of data: The first was the corpora of 930 words of the three witnesses from different cases; The other was 2,270 words of three police officers who were involved in different cases. Coulthard contrasted the first witness's corpora against the police officer's corpora and discovered that there was only one occurrence of 'then' in the witness's corpora whereas 'then' occurred as many as 29 times in the police officer's corpora. Coulthard furthermore found, by using the Corpus Spoken English, which is a subset of the COBUILD Birmingham Collection of English text (BCET), in which 'then' occurred only 3,164 times in the entire corpora of 1.5 million words, that 'then' occured seldom in ordinary people's usage.

(2) The location of 'then'

Another salient feature of Bentley's statement is an occurrence of the postpositioning of 'then'. Postpositioning 'then' means that 'then' is placed after the subject, as in the following two examples from Bentley's statement. On the other hand, the positioning of 'then' before the subject, i.e., 'Then, Chris jumped over and I followed.' would be a more common usage than 'Chris then jumped over and I followed.' in ordinary spoken language.

> Chris then jumped over and I followed.
> Chris then climbed up the drainpipe to the roof and I followed.
> Although Bentley used a postpositioning 'then' seven times out of 582 words, none of the three witnesses used any postpositioning then' in their testimony with the 930 words. On the other hand, there were nine occurrences of postpositioning 'then' in the corpora of 2,270 words of the three police officers. More surprisingly, there were only nine occurrences of postpositioning 'then' in the BCET data containing 165,000 words. Coulthard concluded that postpositioning 'then' was the policeman's unique register. This indicates that the confession language was not Bentley's but that of an investigating officer.

4.1.2 Accuracy

Fox (1993) also demonstrated the characteristics of written statements from the grammatical features of police speech, by using a corpora of ordinary people and police officers. Here, I would like to introduce some features relating to time.

(1) Time
Investigating officers give actual times as in 'at 5:12 p.m.' and 'at approximately 3:45 p.m.'. This is because police officers are meticulous about time, unlike ordinary people in ordinary paths of life.

(2) Adverbials of Time
Adverbials of time such as *later, later on, later the same day, at this time,* and *after this* occur more frequently in a police officer's register than in the COBUILD corpus (ordinary people). More interestingly, these adverbials of time are placed at the beginning of a sentence in a police officer's register.

(3) Adverbial Clauses of Time
Adverbial clauses of time are frequently used and precede the main clause, as in the following example.

> When he had finished raping her he then threw her out of the van.

Investigating officers can effectively specify the sequence of events, by using time-related expressions at the correct positions.

4.1.3 Repetition

Coulthard (1994:420) demonstrated that a suspect named Power had simply retold the same events, by using the same words in his confession statement, as shown hereunder. It is not typical for a defendant to retell the same events by using the same words, because memory is not normally stored in a verbal form. Each retelling requires a re-coding in the verbal form, which creates slight differences each time. Retelling the same events in the same words would be rather more possible if the police officer collaborates with a suspect in taking a statement.

> and then he told Richard to give me one as well
> and then told Richard to give me one as well

4.1.4 Written Language

The following is from an example of Coulthard (1994:35), which was presented in court by the police as a verbatim record of a dictated statement. The suspect denied saying the following part, which is completely an admission of guilt.

> I wish to make a further statement explaining my complete involvement in the hijacking of
> the Ford Escort van from John Smith on Tuesday 28 March 1981 on behalf of the A.B.C.
> which was later used in the murder of three person (sic) in Avon that night.

Malcolm showed that the above example was not the suspect's verbatim record, by using lexical density (lexical term per clause). The typical lexical density of ordinary spoken language is between 1.5 and 2, while that of ordinary written language is between 3 and 6. More formal language has a higher lexical density. The lexical density of the above example is 8.3, which is higher than that of ordinary written language, and much higher than that of ordinary spoken language.

Investigating officers use their professional language when they write a statement. As we have seen, some characteristic features are the frequency of 'then', the location of 'then', accurate time-related expressions, and the location of adverbial phrases or adverbial clauses relating to time. All of these features are necessary to give specific information on a crime for the purpose of indictment. On the other hand, ordinary people do not use such features when they speak. These professional features can be considered as traces of typical police language when they appear in a statement of confession which is claimed by the police to be a verbatim record of a suspect's confession.

In the next section I would like to discuss the occurrence of prosecutor's language in the answers of witnesses for the prosecution. I will show the analysis of Witness B's statement in terms of professional language features and written language features.

4.2 Forensic Linguistic Analysis of Witness B's Statement

4.2.1 Professional Language Features

Japanese police officers and prosecutors also use their professional language features when they enter the suspect's statement on record. These professional features include the use of a demonstrative pronoun (*sono* (its, the)), prepositions (*ni taishite* (towards) and *tame* (for)), and the past progressive form, which help statements to gain great precision. First, I would like to show how these features are used in a suspect's statement that is written by an investigating officer, citing examples from a handbook for investigating officers (*Shin Sousa Shorui Zenshuu* (*A New Complete Work of Investigating Documents: Interrogation*)). Afterwards, I will show examples with the same features that appeared in Witness B's testimony.

4.2.1.1 Handbook Examples

1) *Sono* (the)

Constituents of a sentence are frequently omitted in the Japanese language, and more frequently in spoken language, when the speaker believes that the hearer knows or can understand the context of a situation, as shown by the following examples.

> Anata wa ashita eiga ni ikimasu ka? ~~Anata~~ ~~wa~~ ashita ~~eiga~~ ~~ni~~ ikimasu ~~ka~~?
> (Are you going to the movie tomorrow? ~~Are~~ ~~you~~ going ~~to~~ ~~the movie~~ tomorrow?)

The example sentences hereunder are from the handbook. 'My' of 'my internet' and 'her' are omitted because these demonstrative pronouns are recoverable from the context. On the contrary, 'the' of 'URL' or 'picture' is not deleted because the demonstrative pronoun 'the' clarifies 'the URL' and 'the picture' in question. This is how the handbook educates investigating officers why not to omit the demonstrative pronoun relating to the key notion.

> internet no homepage ni kouhyou shi, atode sono URL to kaijo key wo
> mail de okurukara, jibun de sono gazou wo sakujo shiro
> (As I would make Mayu's picture open to (my) internet homepage and send (her) the URL and cancel-key by mail, I was telling Mayu to delete the picture by herself…)
> 、、、真由の画像をインターネットのホームページに公表し、後でそのＵＲＬと解除キーをメールで送るから、自分でその画像を削除しろと真由に伝えていたので、、、(p.68)

2) *Ni taishite* (towards)

'Ni taishite (towards)' is a preposition that is commonly used in formal written Japanese. 'Ni taishite' is used in the handbook. One could simply say 'Mayu ni (to Mayu)' instead of 'Mayu ni taishite (towards Mayu)'.

Mayu ni taishite mail wo okuri tsudukete imashita
(I kept sending mails towards Mayu.)
真由に対してメールを送り続けていました。(p.67)

3) *Tame* (for, for the sake of)

'Tame (for the sake of)' is not a preposition that is mainly used in written language. Again, in the handbook, 'tame' is used in the example sentence given below. The usage of 'tame' is redundant and the sentence would be more natural without 'tame (for the sake of) - '.

sono youna hataraki wo shite morau tame no sharei toshite
(in reward for the sake of providing such a service for us)
そのような働きをしてもらうための謝礼として (p.262)

4) *-te imashita* (was doing) Past Progressive Form

The past progressive form frequently appears in a suspect's statement. This is because police officers or prosecutors are required to describe the crime scene vividly so that the judges can process a good image of the crime. Other examples of '*-te imashita* (was doing)' are from the example sentence above for '*ni taishite*': '*okuri tsuzukete imashita* (kept sending)'. Its shortened form '*-te ita*', '*tsutaete ita* (was telling)' is also found in the example sentence for '*sono*'.

uso wo tsuite imashita
(I was telling lies.)
嘘をついていました。(p.101)

4.2.1.2 Witness B's Examples

In this section I would like to discuss professional language features that appeared in B's testimony. In (1), the witness avoided omitting the demonstrative noun '*sono* (its)' and pronoun 'E'. Also, the witness used '*ni taishite* (towards)' and '*yobi*' (call). I will return to the usage of '*yobi*' in section 4.2.3 Repetition. The usage indicates features of professional written language, which we just reviewed in the examples from the handbook. If the witness had used ordinary spoken language, sentence (1) would become sentence (2), in which noun phrases are omitted because they are recoverable from the context, and formal written expressions like '*ni taishte* (towards)' are not used.

(1) E ga, sono musuko ga nagurareta koto ni taishite hara wo tate, onaji youna me ni awaseyouto aite no oya to ko wo yobi, E no ie ni yobidashimashita.
(E got angry in regard to (the fact that) that son (her son) was beaten and called the other party's parent and (his) son and called out to E's house to do same to them.)
Ｅが、その息子が殴られたことに対して腹を立て、同じような目に遭わせようと相手
の親と子を呼び、Ｅの家に呼び出しました。

(2) E ga, musuko ga nagurareta koto ni hara wo tate, onaji youna me ni awaseyouto aite no oya to ko wo ie ni yobidashimashita.
(E got angry in regard to (the fact that) that son (her son) was beaten and called the other party's parent and (his) son and called out to E's house to do same to them.)
Ｅが、息子が殴られたことに腹を立て、同じような目に遭わせようと相手の親と子を家に呼び出しました。

'*Tame*' is found in B's testimony. '*Tam*e' in sentence (3) can be replaced with subordinate conjunctions like '*node*' (as). It is more natural to use '*node*' than '*tame*'. On the other hand, 'tame' in sentence (4) means 'for the sake of'. I would like to note that the past progressive form of '*te-ita*' is also used in (4).

(3) Seki yakkyoku ni Z no kuruma ga tomatte-ita tame, Hokuryou Koko ni henkou to narimashita.
(As Z's car was parked in the parking lot of Seki drug store, we came to change the place to Hokuryo High School.)
セキ薬局にＺの車が止まっていたため、北陵航行に変更となりました。

(4) C no sei ni suru tame desu.
(It is for the purpose of blaming C.)
Ｃのせいにするためです。

Now look at the past progressive form '*kuwaesasete-imashita*' (was casing) in sentence (5). This usage of the past progressive form describes the crime scene where Defendant E ordered A to attack F physically and A was physically attacking F for a time.

(5) Sore ni hara wo tateta E ga A wo tsukatte F ni boukou wo kuwae sasete imashita.
(E who got angry with it was causing violence to F, using A.)
それに腹を立てたＥがＡを使って力Ｆに暴行を加えさせていました。

4.2.1.3. Prosecutor's Examples

These four features (*sono, ni taishite, tame, te-ita*) are also found both in the prosecutor's opening and closing statements.

1) *Sono* (the, its, her) demonstrative pronoun
Example (6) is from the opening statement. Sentence (7) is from the closing statement. '*Sono*' is used to make a specific reference to the defendant's daughter and corpus of the victim.

(6) Hikokunin no musume no G, sono kousai aite no H
(the defendant's daughter G, her boyfriend H)
被告人の娘のＧ、その交際相手のＨ

(7) Sono shitai wo suteta koto ni nanra kanyo shite inai.
(I have nothing to do with that they threw the corpus.)
その死体を捨てたことに何ら関与していない。

2) *Ni taishite* (towards)
Sentence (8) is from the opening statement and (9) is from the closing statement. '*Ni taishite*' is also found in (10).

(8) Kore wo kiita hikokunin mo F san ni taishite gekido shimashita.
(The defendant who heard about this was enraged with (towards) Mr. F.)
これを聞いた被告人もＦさんに対して激怒しました。

(9) A ya B ga F san ni taishite hageshii boukou wo kuwaeta.
(A and B caused violence towards Mr. F.)
ＡやＢがＦさんに対して激しい暴行を加えた。

3) *Tame* (for, for the purpose of)
Sentence (10) is from the opening statement and sentence (11) is from the closing statement. The usage of (10) is more natural than that of (11) because the usage of 'tame no' (for the purpose of) in (11) is redundant.

(10) F san ni hageshii boukou wo kuwaeru tame ni, kyouhansha wo atsume….
(…recruiting accomplices in order to cause violence to Mr. F)
Ｆさんに激しい暴行を加えるために、共犯者を集め・・・

(11) Hikokunin wa kyouhanshara wo jitaku ni yobidashite F san ni boukou wo kuwaeru tame no kyouki wo watashi…
(The defendant called out accomplices to her house and handed over weapons for the purpose of causing violence to Mr. F …)
被告人は共犯者らを自宅に呼び出してＦさんに暴行を加えるための凶器を渡し・・・

4) *-te imashita* (was doing) Past Progressive Form
The past progressive form is used in both (12) from the opening statement and (13) from the final statement. Both examples indicate a description of some on-going events.

(12) A wa … F san no yousu wo mite imashita.
(A was watching the condition of Mr. F.)
Ａは、・・・Ｆさんの様子を見ていました。

(13) ~ to hanashite imashita.
(was talking with ~)
~と話していました。

It is clear that these four features are used in the professional language of investigating officers. Now I would like to demonstrate that these four features are not a register of the witness but those of the investigating officers. I have counted the number of these four features in five different discourses: a witness's letter to the defendant's daughter's boyfriend; the testimony of the witness in court; 11 samples of the suspect's statement from the handbook; the prosecutor's opening statement of this case, and the prosecutor's closing statement of this case. None of these features (*sono*, *ni taishite*, *tame*, and *te-imashita*) were used in the witness's personal letter. On the other hand, these features *are* found in the discourse of the prosecutor or the police officer. Therefore, the use of these features in testimony indicates that the witness used the language of the prosecutor.

	sono	*ni taishite*	*tame*	*te imashita*
Personal letter (3,323 letters)	0	0	0	0
Testimony (4,730 letters)	4	10	13	40
Suspect's statement (42,917 letters)	76	11	43	73
Opening statement (10,839 letters)	8	3	8	16
Closing Statement (12,117 letters)	16	15	20	3

4.2.1.4. Written Language Features

Written language is more complex than spoken language (Halliday 1989). Academic writing, which develops one theme with its every part contributing to the main line of argument without digressions, includes linguistic characteristics of noun-based phrases, subordinate clauses/embeddings, complement clauses, sequences of prepositional phrases, participles, passive verbs, lexical density, lexical complexity, nominalization, and attributive adjectives (Gillett et al 2009). Among them, I would like to discuss noun-based phrases.

(1) Location of Modifiers

One example that was found in the direct examination is a modification of noun phrases: a relative clause (noun + post modifier). A relative clause is used to give additional information without having another sentence. Unlike the English language, the Japanese language does not use a relative pronoun. The relative clause (*Sore ni hara wo tateta* (got angry with it)) in sentence (14) directly modifies the noun phrase (E). In this example, the relative clause (*Sore ni hara wo tateta* (got angry with it)) comes before the noun phrase (E), which requires the process of reading back. This is because relative clauses are predominantly used in written language. In spoken language, it is more common to express this using two sentences as in (15). Therefore, the witness's statement (14) is a peculiar response to the questions of a prosecutor.

(14) Sore ni hara wo tateta E ga A wo tsukatte F ni boukou wo kuwae sasete imashita
(E who got angry with it was causing violence to F, using A.)
それに腹を立てたEがＡを使ってＦに暴行を加えさせていました。

(15) E wa sore ni hara wo tatete, A wo tsukatte F ni boukou wo kuwae sasete imashita.
(E got angry with it and was causing violence to F, using A.)
Ｅはそれに腹を立てて、Ａを使ってＦに暴行を加えさせていました。

4.2.1.5. Repetition

Coulthard (1994:414-5) states that it is a common misconception that people can remember verbatim what they and others have said and that what people remember is rather the gist of what was said. This means that slight differences occur at each retelling.

The witness said in court on 10 November 2010 about what had occurred from 3 to 4 July, 2009. However, the witness retold the same event using the same words, as shown in sentences (16) to (18). Also, I would like to add that sentence (1) has two usages of '*yobi*'. Not only '*yobi*' but also '*boukou wo kuwaeru*' (cause violence) was frequently used, as shown in (5) and (14). '*Boukou wo kuwaeru*' was predominantly used by the prosecutor when they read the opening and closing statements, as given in (9), (10), and (11). These indicate that the witness retold the same events using the same words which may have been used by the prosecutor in the interviews that were conducted in prison.

(16) Ｅから呼ばれたからです。
E kara yobareta kara desu.
(It was because I was called out by E.)

(17) Ｅから電話があって呼ばれました。
E kara denwa ga ate yobaremashita.
(I was called up by telephone by E.)

(18) Ｅさんに呼ばれました。
E san ni yobaremashita.
(I was called out by Ms. E.)

5. Conclusion

Witness B answered a direct question, using an investigating officer's register, which included the frequent use of *sono*, *ni taishite*, *tame*, *te-imashita*, and written language features, and repetition, which are not found in an ordinary person's spoken language. These features are more required features when prosecutors place a suspect's statement on record. This is because prosecutors prepare a precisely expressed statement. Because the features of Witness B's statement are very similar to those of a prosecutor's professional language, the prosecutor may well have repeated his own story over and over during his ten interviews with Witness B in prison.

In Japanese criminal justice, prosecutors are not required to disclose all of the evidence that they have collected. However, defense lawyers can claim that prosecutors should disclose evidence that is relevant to their defense at a pre-trial conference under the lay judge system. This allows for the prosecutors to gain a fairly good understanding of the defense's strategy, for which case they can prepare. In this case, it is likely that the prosecutors inculcated their own story into the witnesses in prison during the ten meetings that occurred just before the start of the trial of Defendant E.

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THE APPROXIMATION OF CRIMINAL LAWS IN THE EUROPEAN UNION: THE DEMISE OF INCONGRUENCY OF LEGAL TERMINOLOGY IN LEGAL TRANSLATION?

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Abstract: In legal translation, one of the major challenges is the translation of legal concepts, which may be attributed to the fact that translation of legal texts entails translation not only from one legal language into another legal language, but primarily from one legal system into another legal system. It is generally acknowledged that the incongruency of the SL and TL legal systems makes it impossible for the elements of one legal system to be automatically transposed into another. For this reason, the translation of legal concepts is characterized by the existence of near, partial, and non-equivalents. There are many words, which although perceived as linguistic equivalents, conceptually and/or referentially constitute only partial or non-equivalents. In what follows, I wish to investigate, whether the approximation of serious, transnational criminal offences in the European Union (EU) leads to the demise of the incongruency of legal terminology. The paper encompasses three major parts, of which the first introduces the existence of the incongruency of legal terminology, the successive part expounds the intricate mechanisms that lead to the approximation of criminal laws, and the final provides a comparative analysis of the approximated legal concepts relating to chosen serious criminal offences revealing its consequences on legal translation.

ZBLIŻANIE PRZEPISÓW PRAWA KARNEGO W UNII EUROPEJSKIEJ: DEMATERIALIZACJA NIEPRZYSTAWALANOŚCI TERMINOLOGII PRAWNICZEJ W TŁUMACZENIU PRAWNICZYM?

Streszczenie: Jednym z najpoważniejszych wyzwań, jakie niesie ze sobą tłumaczenie prawnicze jest tłumaczenie pojęć prawnych, które jest spowodowane faktem, iż tłumaczenie prawnicze pociąga za sobą tłumaczenie z jednego systemu prawnego na inny, tym samym powodując niemożliwym automatyczny przekład terminologii z języka źródłowego (JŹ) na język docelowy (JD). W związku z powyższym, tłumaczenie terminologii prawniczej charakteryzuje się występowaniem ekwiwalencji całkowitej, częściowej lub brakiem ekwiwalencji terminów prawnych oraz istnieniem wielu słów, które choć są ekwiwalentami językowymi słów JŹ, pojęciowo i znaczeniowo różnią się od siebie częściowo lub całkowicie. Celem niniejszego artykułu jest zbadanie na ile zbliżenie definicji groźnych ponadnarodowych przestępstw karnych w Unii Europejskiej (UE) ma wpływ na zanik nieprzystawalności terminologii prawnej. Referat podzielony jest na trzy części, a pierwsza z nich prezentuje zjawisko nieprzystawalności terminów prawnych,

następna część ujawnia zawiłe mechanizmy, jakie doprowadziły do zbliżania przepisów prawa karnego w UE, a ostatnia część stanowi analizę porównawczą wybranych pojęć groźnych, ponadnarodowych przestępstw karnych, ujawniając ich następstwa dla tłumaczenia prawniczego.

> *Law retains a sense of cultural homegeneity and gains its essential meanings from its rootedness in the traditional cultural matrix-the inherited environment (Cotterrell 2004:6)*

Introduction

One of the major challenges in legal translation appears to be the translation of legal concepts, which is an immediate result of the fact that legal translation entails not only the translation from one legal language into another legal language, but from one legal system into another, frequently entirely dissimilar legal system. For this reason, some lawyers contemplate, whether law is at all translatable (Beaupré 1987:736, as cited by Šarčević 1997:233), whereas others question the translatability of law asserting that legal translation remains a myth, a sublime aim never to be truly achieved (Kischel 2009:7). However, the volume of translation of laws, policy papers, reports, correspondence, and other written documents for the Commission of the EU by the staff of the Directorate General for Translation, who employ 150 linguists and 600 support staff, which reached 1.8 million pages in 2008, seems to contradict the idea of untranslatability of law, although the fact that translation of law remains a source of major terminological concerns, such as the incongruency of legal concepts, may not be denied. This paper studies how the approximation of criminal laws in the EU affects the perennial problem of the incongruency of legal concepts across various legal systems.

Translation of legal concepts: the incongruency of legal terminology and the existence of near, partial and non-equivalents

Under the positive theories of law, law may be defined as a set of norms that regulate human behavior (Wronkowska 2005:11). These norms vary in different legal systems, because there exist overwhelming differences between the legal systems. Professionals in comparative law assert that the dissimilarities between the legal systems pertain to five criteria, including, inter alia: (1) historical development and background, (2) the distinctive mode of legal thinking, (3) distinctive legal institutions, (4) distinctive sources of law, and (5) ideology (Zweigert and Kötz 1998:68-72). Additionally, law is generally perceived as an inherent component of a given nation's culture, which appears to be critical in the sense that law retains its *uniqueness* in the societies in which it is formulated (Savigny 1975, as cited by Cotterrell 2004:6; Curran 1998, 2002, 2006; Cotterrell 2004, 2006; Grossfeld 2002; Legrand 2005; Rosen 2006; Zweigert and Kötz 1998). For these reasons, legal norms, and hence also legal concepts diverge significantly from one legal system to another making it impossible for the elements of the SL legal

system to be automatically transposed into the TL legal system, thus triggering the existence of near, partial and non-equivalence defined by Šarčević (1997:238-239).

Near equivalence is described as the existence of concepts A and B, which share all of their essential and most of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B, and concept B all of the essential and most of the accidental characteristics of concept A (inclusion) (Šarčević 1997: 238). However, the existing functional equivalents are in most cases only partial equivalents, which is characterized by the fact that concept A and B share most of their essential and some of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B but concept B only most of the essential and some of the characteristics of concept A (inclusion) (Šarčević 1997: 238). In cases, where only a few or none of the essential features of concepts A and B coincide (intersection) or if concept A contains all of the characteristics of concept B but concept B only a few or none of the essential features of concept A (inclusion), such functional equivalent may no longer be considered as adequate (Šarčević 1997:238-9).

Although literature dedicated to legal translation appears to be rather meager in comparison with the amount of legal instruments translated all over the world per annum, it appears to be replete with examples that address the phenomenon of incongruency of legal terminology. By way of illustration, David (1980:39, as cited by Gotti 2009:56) asserts that in numerous cases the translation of English technical words into French, Spanish or German seems an impossible task owing to the fact that there simply exist no words in the English language to express the most elementary notions of the English law. Such basic notions as *common law* and *equity* are the best examples thereof, whereby no French words or words in any other language appear to be acceptable to convey the meaning of these words, which have strong associations with the exclusive history of the English law (David 1980:39, as cited by Gotti 2009:56).

For the same reasons, the French term *droit*, therefore, may not be considered as conceptually identical to the English word *law*, as the French concept of law appears to be broader than the concept of the English Common Law, which comprises political, science and morality (Cao 2006:57). Under the Civil Law, the definition of law is perceived in relation to the study of political, social and economic sciences and public administration and concentrates on the rights and duties recognized in society according to an ideal justice Dadamo and Farran, as cited by Cao 2006:57).

Similarly, the word *judge* at an American lower court may not be considered to be the same as the German *Richter*, for in the American legal systems the role of professional judges at courts of first instance is limited to instructing the juries and to overruling their verdicts in cases where these are grossly excessive or shock the court's conscience (Grossfeld 1975:20-22, as cited by Brand 2009:23-24), whereas the German legal system advocates the professional judge (Brand 2009:23). Additionally, lay persons, who may become members of the jury under the American Common Law legal system, have only the supportive role, at best, under the Civil Law system (Brand 2009:23).

Other excellent examples of the incongruency of legal terminology include the discrepancies between such French words as: *acteurs sociaux*, *acteurs économiques*, *acteurs institutionnels*, *acteurs publics*, *acteurs politiques*, which have no direct

equivalents in the target languages (Salmasi 2003:117, as cited by Gotti 2009:57), and, therefore, have to be translated into foreign languages by means of transliteration or calque, which is founded on the false assertion that there exists a very close relationship between similar lexemes in different languages such as in examples of *transmettre-/transmit*, or *prévor/foresee* (Seymour 2002: as cited by Gotti 2009:57).

Likewise, the Japanese concept of *jôri* translated in the Western legal cultures into reason, the nature of things, common sense, *ordre public*, or a source of law besides statutes and customary law, may not be treated as words with diverse meanings fortuitously joined together, but as a whole, for this is the way they are conceived by Japanese lawyers in the Japanese legal culture (Kischel 2009:7-8).

Equally, the concepts of *marriage* or *rape* may easily be translated into German *Ehe* and *Vergewaltigung*, until one realizes that the English common law marriage in contrast to the German Civil Law marriage is founded on a decision of a woman and a man to live together (cf. In re Benjamin, 34 N.Y.2d 27, 30 [1974], as cited by Kischel 2009:8), and the statutory rape, i.e. sexual intercourse with a minor even with that minor's full consent (Kischel 2009:8). An interesting remark about the concept of rape comes from Judge Rob Blekxtoon (2005:10), from District Court of Amsterdam, who warns that in the Netherlands, rape (Verkrachting) is defined as "entering another's body with sexual intentions", therefore, a French kiss administered against the will of the person so kissed is treated as *Verkrachting*.

In an attempt to understand the heart of the matter, David and Brierly (1985:19, as cited by Cao 2006) explain that each legal system possesses terminology employed to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society. For this reason the existence of incongruent legal terms seems to be an irrefutable fact:

> the absence of an exact correspondence between legal concepts and categories in different legal systems is one of the greatest difficulties encountered in comparative legal analysis. It is of course to be expected that one will meet rules with different content; but it may be disconcerting to discover that in some foreign law there is not even that system for classifying the rules with which we are familiar. But the reality must be faced that legal science has developed independently within each legal family, and that those categories and concepts which appear so elementary. So much a part of the natural order of things, to a jurist of one legal family may be wholly strange to another (David and Brierly 1985:16).

This opinion has been upheld by René David (cited in Pigeon 1982:277, as cited by Cao), who agrees with the previous opinions that legal concepts stemming from one legal system do not correspond with those from another legal system:

> Les concepts du droit anglais sont different de ceux du droit français, et il n'existe, et ne peut exister, aucun vocabulaire satisfaisant, traduisant en français les mots de la langue juridique anglaise ou traduisant inveresment en anglais les termes usités par les jurists français.

Therefore, de Groot (1987:3,10), asserts that legal translation is more than just a linguistic skill, for legal translation relies heavily on *comparative law*, and it is crucial for legal translators to verify the meaning of legal concepts in legal dictionaries before translating them into a foreign language, i.e. the nature of legal institutions under one legal system must be compared with the nature of an equivalent legal term in another legal system. In other words, the translation of legal terminology must be reinforced by verification of the terms in unilingual dictionaries, which provide an explanation of the terms that are translated, although it must be noted that the translation of legal documents shall be simpler, for one needs to understand that legal concepts from various legal systems hardly ever mean exactly the same thing.

The mechanisms that led to the approximation of criminal laws in the EU

The cultural embeddedness of law accounts for the fact that under the *lex loci*, certain acts are criminalized, while others are not. Additionally, the conceptual meaning of numerous crimes under diversified legal systems of various nations appears to be culture-bound, i.e. it depends in their understanding on the legal systems in which it was defined. The incongruency of legal systems within the territory of the EU makes it possible for the criminals, who may travel freely, to take advantage of the *lacunas* existing between the different EU legal systems. In other words, criminals are free to commit crimes under one jurisdiction and subsequently attempt to evade justice by means of hiding behind the laws of another jurisdiction under which the committed acts are not penalized. Owing to this fact, the only way out might be the harmonization of legal systems or at least the harmonization of the notions of crimes. However, claims are made that the EU Member States are reluctant to give up their sovereignty and the harmonization of laws appears to be an agonizing task, while the change of legal system is regarded as an unattainable goal (Mitsilegas 2009).

One of the prime objectives of the construction of the EU was to create a large European economic market. In that area without internal frontiers, goods, capital and services were to move about and be exchanged freely and without obstacles. However, the fourth freedom, the free movement of persons, soon gave rise to problems different from those caused by the free movement of goods, namely, the problem of the internal security of each Member State, therefore, it was decided that the creation of an area of free movement of persons must be accompanied by flanking measures to strengthen external frontiers and asylum and immigration policies (Craig and de Búrca 2008:232).

The signature of the Schengen Agreement in 1985, as well as Schengen Convention of 1995 brought about a progressive eradication of border controls and enabled the EU citizens to move freely within the territory of the EU. The lifting of

border controls has, however, caused an undesired effect facilitating transnational operational mobility of criminals (Fennelly 2007:5). Such offences, which knew no frontiers, as illicit trafficking in drugs, organized crime, international fraud, trafficking in human beings and the sexual exploitation of children soon appeared as problems of great concern to all the Member States of the EU. Since the scope of law enforcement and criminal justice operates within the boundaries of the criminals' Member State, it became clear that the criminals were taking advantage of the diversity of legal systems under which the offences committed in one EU Member State were not criminalized in another. Therefore, the need to fight *organized crime* as well as *serious crimes of transnational dimensions* have become one of the main motors for the advancement of European integration in the field of criminal law (Mitsilegas 2009:93). The advancement within the field of criminal law, however, has not always been a very straightforward issue, as in a number of instances, the proposed measures to deal with transnational crime clashed with the Member States' domestic criminal law (Mitsilegas 2009:92). This phenomenon was intensified by the fact that the Member States were reluctant to modify their domestic criminal law as a result of EU harmonization in the first place (Mitsilegas 2009:92).

The beginnings of judicial cooperation in the EU date back to 1-2 December 1975, when the Ministers of Interior met in Rome with a view to combat terrorism, radicalism, extremism and international violence (*Terrorisme, Radicalisme, Extremisme, Violonce Internationale*), the so-called TREVI Group that met twice a year until 1993, when it was substituted for the meetings of the European Council for Justice and Home Affairs (JHA) (Górski and Sakowicz 2008: 19). This paper examines the key treaties, such as that of the Treaty on European Union (TEU), signed on 1 February 1992 which came into force on 1 November 1993, upheld by the Amsterdam Treaty signed on 2 October 1997, which entered into force on 1 May 1999. Title VI – Provisions on Police and Judicial Co-operation in Criminal Matters, which define the Union's objectives as follows:

> to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among Member States in the field of police and judicial co-operation in criminal matters (…) (Art. 29 of TEU).

The objective is to be achieved by preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through: (a) closer co-operation between police forces, customs authorities and other competent authorities in the Member States …..; (b) closer co-operation between judicial and other competent authorities of the Member States ….; (c) *approximation*, where necessary, of rules on criminal matters in the Member States in accordance with the provisions of Article 31(e). (cf. OJ C 340 of 10 November 1997).

Article 34(2) of the TEU provides that Member States shall adopt *framework decisions for the approximation of the laws and regulations* of the Member States. Framework Decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect." (OJ C 191 of 29 July 1992).

The approximation of serious criminal offences of transnational dimension and its effect on legal translation

As has been indicated at the beginning of this paper, "law cannot fly free from its cultural foundations" (Cotterrell 2004:6). In the anthropological sense, the word "culture" stands for the "socially acquired knowledge: i.e. the knowledge that someone has acquired by virtue of his being a member of a particular society" (Lyons 1981:302). Many basic concepts that people acquire are *culture-bound*, i.e. they depend for their understanding upon socially transmitted knowledge, both practical and propositional, and vary considerably from culture to culture. Such concepts as: "honesty", "sin", "honor" are culture-bound concepts with substantial conceptual meaning differences in different cultures (Lyons 1981:308).

A question arises, whether it is feasible for conceptual meaning of culture-bound legal terms to be standardized and if so, what measures must be applied?

Article 31(1) (e) of the TEU provides for the gradual adoption of "measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties" in certain fields. The Council has already adopted legislative instruments, i.e. *framework decisions*, on fraud involving non-cash means of payment, Euro counterfeiting, money laundering, terrorism, environmental crime, trafficking in human beings and facilitation of unauthorized entry and residence. Other instruments are under discussion in the Council (e.g. Framework Decision on the fight against ship-source pollution, racism and xenophobia). The purpose of framework decisions is to *approximate* the Member States' legislation and regulations.

The first paragraph of Article I-41 of the Draft Constitution, associated with the area of freedom, security and justice, provides that the EU shall establish that area:

- by adopting European laws and framework laws intended, where necessary, *to approximate national laws* in the areas listed in Part III;
- by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions;
- by operational co-operation between the competent authorities of the Member States.

Part III of the Draft Constitution, in the Section on judicial cooperation in criminal matters (Article III-171), specifies that this cooperation is to be based on the *principle of mutual recognition of judgments and judicial decisions* and shall include the *approximation of the laws and regulations* of the Member States in certain areas. The Council acting unanimously after obtaining the consent of the European Parliament, may adopt a European Decision identifying other areas of crime. Article III-172 provides that:

> European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

> Under point 1.1 devoted to the objectives, the Commission provides that the approximation of criminal

penalties can satisfy several mutually complementary objectives: (1) by defining common offences and penalties in relation to certain forms of crime, the Union would be putting out a symbolic message, i.e. the approximation of penalties would help to give the general public a shared sense of justice, which is one of the conditions for establishing the area of freedom, security and justice. It would also be a clear signal that certain forms of conduct are unacceptable and punished on an equal basis. By way of illustration, the sexual exploitation of children is a good example, as the approximation of the definition of the offence and of the level of the penalty incurred for it, provides effective and equivalent protection for citizens throughout the Union against a phenomenon that strikes against the principle and values shared by the Member States; (2) the approximation also puts across a message that the same criminal conduct incurs similar penalties wherever the offence is committed. A degree of approximation is needed since certain forms of crime have a transnational dimension and the Member States cannot combat them effectively on their own; (3) Union minimum standards help to prevent offenders from taking advantage of divergences between penalties in the Member States and moving from one to another to evade prosecution or the enforcement of penalties. Point 5 of the Tampere European Council Conclusions, provides that criminals must not find ways of exploiting differences in the judicial systems of Member States.

In the light of the above, the *approximation of criminal laws* constitutes a step towards *establishing common criteria for public order*, it prevents Member State from being converted into a "penal paradise" in relation to others. Thanks to the approximation of criminal laws, the States *diminish the differences between the national legal systems*, so that the criminals could not take advantage of operating in a given State.

The process of *the approximation of criminal laws*, which was implemented with a view to create common standards aiming at ensuring harmony in the Community/Union system of criminal law (Mitsilegas 2009:59) *appears to have profound consequences on legal translation*. Thanks to the approximation of the criminal offences, the *concepts of serious criminal offences of transnational dimension have been standardized*. The framework decisions, under which the approximation takes place do not entail a direct effect. This implies that each Member State must transpose the regulations of comprised in the Framework Decisions into their respective legislations.

The Union has thus far approximated the following offences:

(1) Fraud against the EC's financial interests under Convention of July 1995;
(2) Corruption; the approximation of offences related to corruption in the public sector is addressed in a protocol to the Convention on the protection of the Communities' financial interests adopted on 27 September 1996 and in a Convention adopted on 26 May 1997; the approximation related to corruption in the private sector is addressed in the Framework Decision approved by the Council on 22 July 2003;
(3) Fraud and counterfeiting of non-cash payment means under the Framework Decision of 28 May 2001;

(4) Terrorism under the Framework Decision of 13 June 2002;
(5) Trafficking in human beings under the Framework Decision of 19 July 2002;
(6) General damage to the environment under the Framework Decision of 27 January 2003;
(7) Sexual exploitation of children and child pornography under the Framework Decision of 22 December 2003;
(8) Drug trafficking under the Framework Decision of 25 October 2004.

This paper investigates the approximation of the definition of terrorism under the framework Decision of 13 June 2002. Article 1 of the said Framework Decision provides that each Member State shall take the necessary measure to guarantee that the acts referred to in points (a) to (i), as defined under national law, if they seriously damage a country or an international organization where committed with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organization to perform or abstain from performing any act, or
- seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization,

shall be deemed to be terrorist offences:

(a) attacks upon person's life which may cause death;
(b) attacks upon the physical integrity of a person;
(c) kidnapping or hostage taking;
(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
(e) seizure of aircraft, ships or other means of public or goods transport;
(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
(i) threatening to commit any of the acts listed in (a) to (h).

Under Article 2, each Member State is to undertake the necessary measures to ensure that the following intentional acts are punishable:

(a) directing a terrorist group;
(b) participating in the activities of a terrorist group, including by supplying information or material sources, or by funding its activities in any way, with knowledge of the act that such participation will contribute to the criminal activities of the terrorist group.

Pursuant to Article 3 each Member State undertakes to take the necessary measures to ensure that terrorist –linked offences include the following acts:

(a) aggravated theft with a view to committing one of the acts listed in Article 1(1);
(b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);
(c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b).

Under Article 4, (1) each Member State takes the necessary measures to ensure the offences referred to in Articles 1 to 4 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition; (2) each Member State takes the necessary measures to ensure that the terrorist offences referred to in Article 1(1) and offences referred to in Article 4, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Art. 1(1), save where the sentences imposable are already the maximum possible sentences under national law; (3) each Member State takes the necessary measures to ensure that the offences listed in Art. 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in Art. 2(2)(a), and for the offence listed in Art. 2(2)(b) a maximum sentence of not less than eight years.

In Poland, the legal instruments, whose aim is to combat terrorism are partially within the domain of the administrative law, but in its greater part within the domain of the penal law. The former include the Act of 13 June 2003 on Foreigners, or competences and duties of the authorities established to prevent and combat terrorism, while the latter comprises articles of the Penal Code devoted to prevention and combating terrorism. Additionally, under the Polish law one of the most significant law instruments related to combating terrorism is the Act of 16 November 2000 on money laundering and financing terrorism. The Polish law, i.e. the Penal Code amended under the Act of 16 April 2004 on Amendment of Act – Penal Code and other Acts, prior to Poland's accession into the structures of the EU on 1 May 2004, under Article 115 section 20 defines a terrorist act in the following words: A terrorist act is as a prohibited act, which is subject to a custodial sentence of at least 5 years committed with a purpose of:

(a) seriously intimidating of a population,
(b) unduly compelling a Government, another country or an international organization to perform or abstain from performing any act,
(c) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization, or a threat o commit such an act.

Under the same Act, the amended Article 258 of the Penal Code has received the following wording: Art. 258 section 1: whoever participates in an organized group or an organization, whose purpose is to commit an offence or a fiscal offence is subject to deprivation of liberty for a period of time from 3 months to 5 years; Art. 258, section 2 provides that: If a group or organization stipulated for in section 1 has a military character, or acts with a view to commit a terrorist act, the perpetrator is subject to penalty of deprivation of liberty for a period of time from 6 months to 8 years; section 3 provides that: whoever sets up or leads such a group or organization is subject to penalty of deprivation of liberty for a period of time from one year to 10 years; section 4 provides that: Whoever sets up or leads such a group or organization with a view to commit

a terrorist act is subject to penalty of deprivation of liberty for period of time not shorter than 3 years.

The conceptual meaning of the terrorist offence, as indicated under the Polish law has been approximated in accordance with the Framework Decision of 13 June 2002. The definition of a terrorist act may be considered as conceptually partially equivalent with the definition comprised in the said Framework Decision.

Under Article 11(1) Member States are required to comply with the Framework Decision by 31 December 2002.

In the United Kingdom, pursuant to the Terrorism Act of 2000, as amended in 2006, terrorism is defined as follows:

(1) in this Act "terrorism" means the use of threat of action where-
   (a) the action falls within subsection (2),
   (b) the use of threat is designed to influence the government or to intimidate the public or a section of the public, and
   (c) the use of threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it-
   (a) involves serious violence against a person,
   (b) Involves serious damage to property,
   (c) endangers a person's life, other than that of the person committing the action,
   (d) creates a serious risk to the health or safety of the public or a section of the public, or
   (e) is designed seriously to interfere with or seriously disrupt an electronic system.

The Terrorist Act of 2006, Part 1 comprises such offences related to terrorism as: I. encouragement of terrorism; (2) dissemination of terrorist publications; (3) Application of ss.1 and 2 to internet activities, etc.; (4) Giving notices under s.3.; II Preparation of terrorist acts and terrorist training: (5) preparation of terrorist acts; (6) training for terrorism; (7) powers of forfeiture in respect of offences under s. 6; (8) attendance at a place used for terrorist training; III. Offences involving radioactive devices and materials and nuclear facilities and sites (9) making and possession of devices or materials; (10) misuse of devices or material and misuse and damage of facilities; terrorist threats relating to devices, material and facilities; trespassing etc. on nuclear sites.

The comparative analysis of the definition of terrorism approximated under the Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA), by the Republic of Poland and the United Kingdom as confirmed on the basis of appropriate laws implemented by the two Member States leads us to *a striking observation*. The approximation of criminal laws undertaken in this case with a view to effectively prosecute the terrorist offence, because victims of terrorist offences are vulnerable, because there is a need for reciprocal action for the primary aim of the EU to provide its citizens with a high level of safety within an area of freedom, security and justice, surprisingly reveals that the cultural barriers in legal translation have been reduced.

The obvious conclusion is that despite the fact that harmonization of criminal law is a very delicate issue, as the Member States are reluctant to give up their

sovereignty, in cases of serious, grave criminal offences of transnational dimension, the Member States stand united against those, who wish to pose a threat to the ideas of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms, the principle of democracy and the principle of the rule of law, which are common to all the EU Member States.

The conceptual meaning of terrorism has been standardized, as a result, the notions of the terrorist act in Poland and the UK are fundamentally alike. Both definitions clearly declare that terrorism is a prohibited act involving serious intimidation of a population, unduly compelling a Government, another country or an international organization to perform or abstain from performing any act, serious destabilizing or destroying the political, economic or social structures of a country or an international organization, or a threat to commit such an act. Although they may not be regarded as near equivalents, owing to the fact the wording of the two definitions is not identical, they may be considered as partial equivalents according to the definition of partial equivalents provided in the first part of this paper.

It must be emphasized that the Terrorist Act of 2000 and 2006 are much more elaborate and highly structured than the Polish laws, which may be attributed to the unfortunate experience, which the UK has had with the frequent terrorist attacks by the IRA in the 1970s and 1980s and 1990s, London bombings of 7 July 2005, the 2007 letter bombs, the 2007 Glasgow International Airport attack by Islamist extremists, which fortunately Poland has never had.

Conclusion:

The major objective of this paper was to study whether the approximation of criminal laws in the EU eradicates the problem of the incongruency of legal concepts under different legal system, the key challenge to lawyers and translators involved in translation of law. The applied method of comparative analysis in this paper reveals that from the point of view of legal translation, *framework decisions approximate the definitions of serious criminal offences of transnational dimensions* in all the EU Member States and ensure that they establish penalties and sanctions, which reflect the gravity of such offences for those, who dare to commit them.

It must be pointed out that the approximation of the definitions of serious criminal offences does not signify that cultural dependence of law and legal language shall vanish altogether, as it shall not. However, it needs to be underlined that the *approximation of criminal laws within the EU criminal law facilitates the approximation of the elements of the SL legal system with the elements of the TL legal system*. With regard to the concept of terrorism, the non-equivalent SL and TL legal concepts of terrorism prior to the process of the approximation of laws have been transformed into partial equivalents. Owing to the approximation of the definitions of criminal offences the decrease of borderline between the referential meaning of legal concepts of terrorism under the Civil Law in force in Poland and the Common Law in effect in the UK has become a viable process.

It has to be underlined that the approximation of the definitions of serious criminal offences examined in this paper is limited to the territory of the EU, as the approximation of criminal laws is a strictly EU phenomenon. Therefore, the definitions of the said criminal offence predictably diverge in any other part of the world, as do any other serious criminal offences, which have not been become subject to the approximation.

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‘SHALL’ AMBIGUITIES IN EU LEGISLATIVE TEXTS

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Abstract: This paper investigates the modal ‘shall’, whose excessive use can be problematic both in legal translation and interpretation (Coode 1843, Driedger 1976). The context of analysis is the EU for offering a relative young legal environment where translation represents the main channel of communication. The analysis moves from the deontic speech acts of ordering and prohibiting and looks at examples of performativity where ‘shall’ is not only deontically binding, but it is also used to express a necessary condition or to set a new state of things up. The disambiguation is particularly evident in multilingual translation and is performed with the help of parallel concordances, which also shed light on the conceptual framework of norms. Data consist of a parallel corpus including English, French, German and Italian versions of EU legislative texts chosen between 2001-04. As a term of comparison, a small comparable corpus containing English orginal texts has also been compiled.

WIELOZNACZNOŚĆ CZASOWNIKA MODALNEGO „SHALL” W AKTACH NORMATYWNYCH UNII EUROPEJSKIEJ

Autorka analizuje użycie czasownika modalnego ‘shall’, którego nadużywanie może prowadzić do problemów translacyjnych i interpretacyjnych (Coode 1843, Driedger 1976). Korpus badawczy obejmował akty normatywne Unii Europejskiej w języku angielskim, francuskim, niemieckim i włoskim wydawane w okresie od 2001 do 2004 roku. Należy tu zaznaczyć, że komunikacja prawnicza w ramach tej organizacji międzynarodowej ma stosunkowo krótką tradycję, a przekład prawniczy jest głównym kanałem komunikacyjnym. Analiza wykazała, że czasownik modalny ‘shall’ jest używany do wyrażania zarówno nakazu, zakazu jak i opisu stanów faktycznych

LE AMBIGUITÀ DI ‘SHALL’ NEI TESTI NORMATIVI DELL’UNIONE EUROPEA

Riassunto: L’articolo analizza il modale inglese ‘shall’ il cui uso eccessivo può rivelarsi problematico nel corso dell’interpretazione e della traduzione giuridica (Coode 1843, Driedger 1976). Il contesto dell’analisi è quello dell’Unione Europea, in quanto offre un ambiente giuridico relativamente recente, dove la traduzione rappresenta il canale principale di comunicazione. L’analisi parte dagli atti linguistici deontici dell’ordine e del divieto per soffermarsi su esempi di performativi dove ‘shall’ non impone alcun obbligo, ma esprime invece una condizione necessaria o pone semplicemente in atto un nuovo stato di cose, con precisi effetti pragmatici. La traduzione multilingue ed i concordance per l’analisi di corpora di testi paralelli permettono la disambiguazione di ‘shall’ e lasciano intravedere anche una struttura logica dietro la formulazione delle norme. I dati contengono un corpus parallelo in inglese, francese, italiano e tedesco con testi legislativi dell’UE datati 2001-04. Come termine di paragone, è stato compilato anche un piccolo corpus comparabile contenente testi legislativi scritti originariamente in inglese.

Introduction

While 'shall' is relatively infrequent in general use (Coates 1983), it is one of the most frequent modal verbs in English legal drafting. Its extensive usage covers meanings of obligations, entitlements, declarative statements, definitions, statements with negative subjects overlapping with 'may', directory requirements, future actions to be taken, thus often generating ambiguity and confusion when it comes to legal interpretation or court decisions. In recent years the 'misuse of shall' has been at the centre of several scholarly papers (Asprey 2003:194; Doonan 1995:175; Garner 1998:940) and since the late 1980s many English speaking jurisdictions have started replacing *shall* with other constructions, like the present indicative, the modal *must* or verbal periphrases[2]. It remains however a typical feature of the British legal system, particularly when imposing a duty to act. The *Black's Law Dictionary* (2004) also confirms this usage and indicates that *shall* is 'generally imperative or mandatory' in contracts or statutes. But it also notes that a *shall* statement 'may be construed as merely permissive or directory' and it may imply 'an element of futurity'. In a nutshell, *shall* means *must*, except for when it means *may* or *should* or *will*.

The ambiguities of *shall* and its countless meanings become even more evident when it comes to international law, legal interpretation of multilingual instruments and translation. To this point, the present paper investigates the use of *shall* in the legislative documents of the European Union. This represents a relative young legal environment, which produces European Law in 23 different languages, all legally valid and authentic, and where the established tradition of continental Civil Law should be theoretically more influential than others.

The use of *shall* is investigated in a parallel corpus containing EU secondary legislation in four languages, English, French, German, Italian and published between the year 2001-04. A small comparable corpus of English legislation has also been compiled as a term of comparison between the current domestic legislation and the English of the EU. The analysis of parallel concordances is enlightening and constitues a valid help in disambinguating the uses of *shall* within the EU legislation. This can improve legal interpretation but could also serve in the training of translators or in testing for automated translation tools. At the same time, the various usages of *shall* show recurrent features of legal statements, which may uncover in their turn, the conceptual framework of performatives.

The paper will proceed in the next section with a brief overview of *shall* in general and legal usage, delving in particular into legislative propositions and performatives. A further paragraph looks at the use of *shall* within the EU context and serves both as a description of data and of the EU legislative background. The analysis of *shall* occurrences and a conclusive discussion follows.

[2] *Shall* has disappeared in Australia, New Zealand and South Africa.

General remarks on legislative *shall* and performatives

Most current grammar and dictionaries regard nowadays the English modal *shall* as formal and outdated. The *Oxford English Dictionary* (2010, 3rd edition) also lists 'instruction and command' among its meanings, but its usage seems to be confined mostly to the future tense, to intentions, to polite suggestions in the first person singular or plural:

(i) in the first person expressing the future tense: *This time next week I shall be in Scotland/We shan't be gone long.*
(ii) expressing a strong assertion or intention: *They shall succeed/ you shall not frighten me out of this.*
(iii) expressing an instruction or command: *you shall not steal.*
(iv) used in questions indicating offers or suggestions: *shall I send you the book? Shall we go?*

English legal drafting seems to make up for this gap and a close look at the *Black's Law Dictionary* (2004, 8th edition) accounts for five different usages of *shall*, all quite different from those above:

(i) Has a duty to. More broadly, is required to. This is the mandatory sense that drafters typically intend and that courts typically uphold.
(ii) Should (as often interpreted by courts).
(iii) May. When a negative word such as 'not' or 'no' precedes shall, the word shall often means 'may'. What is being negated is permission, not a requirement.
(iv) Will. As a future tense verb.
(v) Is entitled to. Only sense (i) is acceptable under strict standards of drafting.

Now, although drafting guidelines agree mostly with the first instance of the Black's Law Dictionary, i.e. *shall* denotes a mandatory duty imposed on a person or an entity (Asprey 2003:193; Coode 1976:371; Driedger 1976:9, 139) and is therefore essentially deontic and agent-oriented, the variety above explains why it is so frequent in legal texts.

The nature of this ambiguity is probably to be found in diachronic linguistics and in the auxiliary variation in terms of meaning and role functions. Bybee et al. (1994:187) confirm that in Old English *shall* and *should* (present and preterit forms of 'scealan'= to owe, to be obliged) used to denote both moral, physical obligations and inevitabilities. It was only during the Middle English that *shall* moved to express promises and intentions in the first person, while *should* continued to be used to denote past destinies and inevitabilies. This old root links the use of *shall* to its contemporary future meaning, which is also confirmed by the shift in the 'change of roles' (Leech 1987:87-88) when relating to people, i.e. second or third person for mandatory meanings and first person singular or plural when indicating prediction or volition in the future. The *Collins English Dictionary* (2007, 9th edition) also stresses this shift: 'the usual rule given for the use of *shall* and *will* is that where the meaning is of simple futurity, *shall* is used for the 1st

person of the verb and *will* for the 2nd and 3rd: *I shall go tomorrow; they will be there now*. Where the meaning involves command, obligation or determination, the positions are reversed: *It shall be done; they will definitely go'*.

Nevertheless, the deontic nature of *shall* and its mandatory connotation remains well rooted in the English legal drafting tradition. Coode's report *On Legislative Expressions*, one of the oldest but still authoritive drafting text, confirms that 'in all commanding language at least, the word 'shall' is modal, not temporal; it denotes the compulsion, the obligation to act, (*scealan*, to owe, to be obliged) and does not prophesy that the party will or will not at some future time do the act' (quoted in Driedger 1976:371). In this way, with *shall* the speaker does not only impose an obligation, but also ensures that the event will take place at that particular time. This component of actualisation establishes a direct link between the utterance and the act that is to be performed and also explains why present indicative is to be regarded as the tense of law for its features of being constantly speaking. This is due to the performative character of legal norms and to situations where 'saying' becomes 'doing', provided this happens under designated circumstances, i.e. a context where the uttering is performed by particular people in certain positions (Austin 1962:33-37). Likewise, there are legislative statements that do not impose or prescribe anything, but simply set up a new state of things or a change in the previous state of things. These are called constitutive acts and consist mostly of repeals, nominations, promulgations, and entitlements, in a nutshell all those rules that produce legislative effects at the time when they come into force. Italian scholar A. G. Conte has called them 'thetic performatives' as they set and bring about a 'thesis' forth whose performativity also corresponds to the deontic status constituted in and by a legal order (Conte 1994, 247-60). Their language gains a performative value, because the act or the command is not only prescribed, but also performed. This double effect, which is essentially due to the performativity of the utterance, might justify the frequent occurrence of *shall* in non-deontic statements.

In this respect, the interpretation of *shall* may often result in disputes, and as put it by Williams 'shall had become the victim of its own success' (2006:240). The last decade has seen several scholars (Asprey 2005:5; Garner 1998; Kimble 2000) suggesting to eliminate 'shall' entirely, and countries like Australia, New Zealand, South Africa, US to a certain extent[3], have started drafting shall-free legislation with successful results (Williams 2006:245). This has been replaced, depending on the circumstances, by the present indicative, stative verbs, the modal *must*, negated *may* when drafting probibitions, as well as verbal periphrases like *be to.* Still, legal drafting conventions are also cultural specific and *shall* remains a very frequent word both in the British legislation and in international Law. To this point, Williams (2005:207) argues in favour of a pragmatic solution and in his analysis of prescriptive legal texts highlights that while *shall* mandatory force denotes a duty, in *must*, it establishes a condition or a requirement. A similar view is also shared by the American lawyer Kenneth (2007) who mentions the 'negligible benefits of must' in business contracts. He suggests *shall* for an obligation, which is imposed on the subject of a sentence in the active

[3] In American Court *shall* has been removed from the Federal Rules of Appellate Procedure and of Criminal Procedure (Asprey 2005:5).

voice, and calls for a disciplined used of *shall*, because 'banishing "shall" deals with the symptom, not the disease. By contrast, using "shall" to mean only "has a duty to" is intended to help treat the disease.

Data and preliminary results

The EU legal environment is not immune to the use of *shall* and English legislative documents account for a huge variety of meanings ranging from definitions, to directory and necessary requirements, deontic modality, entitlements, prohibitions and future actions to be taken. Véronis data (2005) on the English version of the Treaty for the European Constitution range *shall* as the sixth most frequent word, soon after conjunctions and prepositions. This is quite remarkable if we consider that the UK joined the Union only in 1973. The relative young legal environment of the EU should have been more exposed to the Civil Law tradition than to the Anglo-Saxon Common Law and in this scenario, one would expect a lower number of *shall* in favour of present indicative. However, *shall*-norms represent a stylized feature common to the drafting of many international instruments and their high occurrences in the European legislation denote the importance of contextual considerations and pragmatic conventions.

To account for the use of *shall* in both a monolingual legal perspective and within the EU legal environment, I have used a multilingual parallel corpus of EU legislation and a small comparable corpus of English legislation, drafted exclusively in the UK.

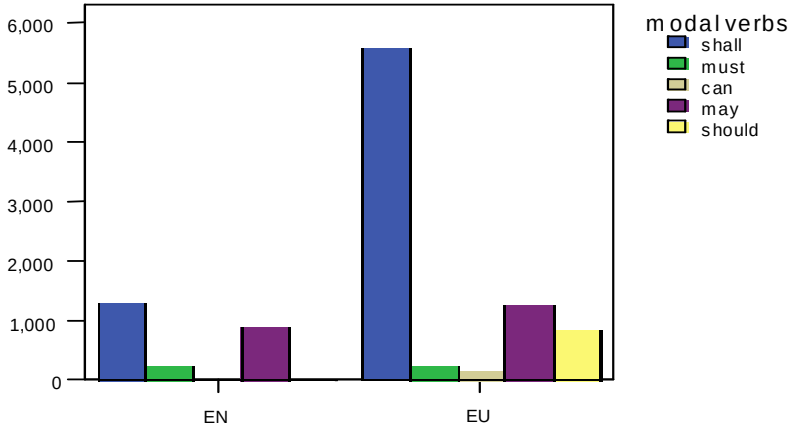
The parallel corpus (1,404,723 words) is made of the EU Constitution and of secondary legislation published between the years 2001-04. Documents are in four languages, English, French, German and Italian, and are meant to reflect contemporary EU legal language of the last decade. Texts (256 in total across the four languages) are all strictly 'legislative', namely binding and prescriptive rules on how things should and ought to be. They have been downloaded and collected in their entirety from the *Eur-Lex* database, which provide direct and free access to EU law in 23 languages. They are also known as instruments of secondary legislation and are of four types: regulations, directives, decisions and recommendations.

The English comparable corpus (160,765 words) is relatively small and is made of Public Acts and Statutory Instruments always chosen between 2001-04. Given the English Common Law system, which has no written Constitution, this choice attempts to mirror as far as possible the same criterion used for the selection of texts in the multilingual corpus, i.e. primary and secondary legislation. While Public Acts are statutes enacted as primary legislation by the legislative branch of government and could serve as the Constitution's counterpart, Statutory Instruments are delegated acts, i.e. law made by an executive authority under delegated powers and are conceptually closer to the EU secondary legislation.

The analysis is based primarily on the multilingual parallel corpus and on how occurrences of *shall* have been rendered in the other three languages. However, the distribution of *shall* has also been compared with the other modal verbs found in the two corpora. As the EU corpus was slightly bigger (337,825 words vs 160, 675 in the English comparable corpus), a Chi-square test was performed to compare observed data with data

I would expect to obtain according to the same hypothesis and number of occurrences. The table below confirms *shall* as the most popular modal verb, which appears in the EU corpus extremely frequent.

Table 1. Distibution of modal verbs in English



This high number of occurrences might be surprising when considering the British position within the EU context, as well as the nature of the EU Law. It is also a countertrend with the most recent legal practice, which advocates to use *shall* for mandatory requirements only, and to replace instead, all the other occurrences with the present indicative and less confusing alternatives. On the other hand, it is revealing in terms of drafting habits and pragmatic conventions, as *shall* is still very frequent in international instruments. Past and recent legal texts of the UN and other international organisations are laden with *shall* occurrences, thus showing that habits and conventions do not always follow linguistic rules and semantic intepretation.

In such contexts, the high frequency of *shall* remains however challenging when it comes to translation and legal interpretation of parallel texts. A *shall* constructed in another language as a future action, or a duty as a declaratory provision might affect strongly the interpretation of the international instrument. EU Law in particular, is subject to a complex drafting procedure with countless re-editing of the same text, which goes back and forth through an approval process in three different institutions (Commission, Parliament and the Council) with accompanying translation and amendements. For these reasons EU legislative texts are generally regarded as hybrids and little reliable in terms of linguistic analyis, but they also reflect a communication event and function as law for all the member countries.

'Shall' in EU legislative documents: a qualitative analysis

The *Joint Practical Guide of the European Parliament, the Council and the Commission* (2003) and the *English Style Guide* (2011) of the Directorate-General for Translation sets precise guidelines for the use *shall,* which is only recommended in mandatory acts:

2.3.2. In the enacting terms of binding acts, French uses the present tense, whilst English generally uses the auxiliary 'shall'. In both languages, the use of the future tense should be avoided wherever possible.
2.3.3. By contrast, in non-binding acts (such as recommendations and resolutions) (see Guideline 7), imperative forms must not be used, nor structures or presentation too close to those of binding acts.

A closer look at data and the parallel extraction of the occurrences through Paraconc (Barlow 2003) show that *shall* in EU texts is not always or not only deontic. The table below presents the equivalents of 1382 *shall* entries across 16 EU Regulations. They are grouped into present indicative, modal verbs, verbal periphrasis, modal expressions, i.e. lexicalizations of verbs like 'it is forbidden, it is allowed' and ellipses. It is interesting to note that more than 80% of *shall* entries correspond to the present indicative, while only 5% of them is rendered by equivalent modals denoting obligation in the other languages (e.g. *dovere, devoir, müssen/sollen*). These include the field of possibility as well, e.g. *potere, pouvoir, dürfen*, but they could indicate prohibition when negated, as *dürfen* is semantically linked to the idea of conferring a right. This last feature is confirmed by the entries under 'modal expressions'. Verbs like *consentire, autorizzare; autoriser, octroyer; bewilligen, erlauben, zugelassen* are all translations of the English 'to authorize' and 'to allow'. Concordances also suggest a more 'constitutive' usage of *shall* when expressing acts of empowering and conferring rights and benefits (*avere il diritto, avere il potere; avoir le droit; das Recht/ den Anspruch haben).*

Table 2.Linguistic equivalents of *shall* in the EU Regulations subcorpus

REGULATIONS										
English MV		**Italian**			**French**			**German**		
			raw no.	%						
shall	1382	Indicative - Others	1192	86.2518	Indicative - Others	1223	88.4949	Indicative - Others	1125	81.404
		MV	81	5.86107	MV	58	4.19682	MV	94	6.8017
		dovere (58)			devoir (32)			muessen (34)		
		potere (23) 9 neg.			pouvoir(26) 14 neg.			sollen (3)		
								duerfen (33) 9 neg.		
								Koennen (24)		
		Verbal periphrasis	6	0.43415	Verbal periphrasis	8	0.57887	Verbal periphrasis	71	5.1375
		va + Past part. (1)			кtre a (1)			sein…zu (61)		
		essere tenuto (5)			кtre tenu (7)			haben…zu (10)		
		Modal expressions	51	3.6903	Modal expressions	43	3.11143	Modal expressions	46	3.3285
		vietare (1)			interdire (1)			untersagen (1)		
		essere obbligatorio (15)			кtre obligatoire (15)			verbindlich sein (15)		
		soggetto a obbligo (1)			soumis a obligation (1)			verpflichten (8)		
		avere il potere (1)			avoir le droit (11)			das Recht/Anspruch haben (10)		
		avere il diritto (12)			il importe (1)			befuegt sein (2)		
		consentire, autorizzare, concedere (16)			autoriser, octroyer, habiliter (13)			bewilligt/zugelassen/erla t sein (7)		
		occorre (3)			il importe (1)			gewaehrt sein (3)		
		spettare (2)								
		Ellipsis	52	3.76266	Ellipsis	50	3.61795	Ellipsis	46	3.3285
		TOT	1382		TOT	1382		TOT	1382	

This brief analysis and the comparison with the other three languages suggests that *shall* is not exclusively limited to binding acts and is likely to occur in the following legal sentences:

(i) definitions
(ii) constitutive statements
(iii) deontic modality
(iv) necessary requirements
(v) authorisations and entitlements
(vi) prohibitions and negative propositions

The extraction of parallel concordances has confirmed this assumption, thus allowing the disambiguation of complex usages and isolating at the same time contextual features of the norm like temporal aspects, type of agents, aim of the norm.

The sentence below is a clear example of a prescriptive provision that would be hardly classifiable as an imperative norm:

Example 1. Definition.

(EN) For the purpose of paragraphs 1 and 2, „Community legislation" [[**shall**]] mean all Community Regulations, Directives and Decisions.
(IT) Ai fini dei paragrafi 1 e 2, per „legislazione comunitaria" **si intendono** tutti i regolamenti, le direttive e le decisioni della Comunità.
(FR) Aux fins des paragraphes 1 et 2, **on entend** par législation communautaire l'ensemble des règlements, directives et décisions communautaires.
(GE) Im Sinne der Absätze 1und 2 **bezeichnet** der Ausdruck „Rechtvorschriften der Gemeinschaft" sämtliche Verordnung, Richtlinien, Beschlüsse und Entscheidungen der Gemeinschaft

The intentions of the legislator here are clearly to give a definition because there are no animate agents on whom to impose anything and the presence of 'shall' does not add anything to the validity of the proposition. It rather suggests an instruction on how to intend "Community legislation" on the basis of paragraphs 1 and 2, but it is certainly not meant to instruct people on how to use the term. This is differently marked in the other three languages where definitions are given with the equivalent verb 'mean' or with a paraphrase stating what is 'involved', 'intended' or 'defined' as such. It is worth noticing that correspondences between the other three languages are very consistent; when French uses 'mean' (*entendre*), we have the same linguistic equivalent in Italian and German. In other cases definitions are rendered in the form of a dictionary entry, with the term followed by comma or colon and the actual definition.

In most cases *shall* is clearly constitutive and aims not at performing an act but at bringing to reality a new state of things. See the following examples:

Example 2. Constitutive statement.

(EN) Members' term of office [[**shall**]] be four years and can be extended.
(IT) Il mandato dei membri **è** di quattro anni e può essere prorogato.
(FR) Le mandat des membres **est** de quatre ans et peut être prorogé.
(GE) Die Amtszeit der Mitglieder **beträgt** vier Jahre und kann verlängert werden.

Example 3. Constitutive statement.

(EN) Article 3 [[**shall**]] be replaced by the following: „Article …3
(IT) L'articolo 3 **è sostituito** dal seguente: „Articolo 3…
(FR) L'article 3 **est remplacé** par le texte suivant: „Article 3…
(GE) Artikel 3 **erhält** folgende Fassung: „Artikel 3…

Example 4. Constitutive statement.

(EN) In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF)(9) [[**shall**]] apply without restriction to the Centre.

(IT) Ai fini della lotta contro la frode, la corruzione ed altre attività illegali, le disposizioni del regolamento (CE) n. 1073/1999 del Parlamento europeo e del Consiglio, del 25 maggio 1999, relativo alle indagini svolte dall'Ufficio per la lotta antifrode (OLAF)(9) **si applicano** senza restrizione al Centro.

(FR) Aux fins de la lutte contre la fraude, la corruption et d'autres activités illégales, les dispositions du règlement (CE) n° 1073/1999 du Parlement européen et du Conseil du 25 mai 1999 relatif aux enquêtes effectuées par l'Office européen de lutte antifraude (OLAF)(9) **s'appliquent** sans restriction au Centre

(GE) Zur Bekämpfung von Betrug, Korruption und anderen rechtswidrigen Handlungen **gelten** für das Zentrum uneingeschränkt die Bestimmungen der Verordnung (EG) Nr. 1073/1999 des Europäischen Parlaments und des Rates vom 25. Mai 1999 über die Untersuchungen des Europäischen Amtes für Betrugsbekämpfung (OLAF)(9).

In each of these statements *shall* is not meant to prescribe any future action and its non-deontic function is clearly evident: example 2 establishes the member's term of office up to four years, example 3 modifies an existing Article and finally, sentence 4 puts a provision into being. Once more, we find a stative verb with no animate agents, and just the result of the law, which will have immediate effect for the sole reason of being enacted within the legal instrument. As pointed out by Driedger, we are dealing here with a'creative *shall*' that 'operates to create something the moment the words are spoken, and its force is then spent' (1976,13). This element has to do with the performative character of the norms, which in this case derives from the context, i.e. there is an enacting formula, which enacts the provision and gives effectiveness to it because of an authority issuing the norm. The *Plain English Manual* of the Australian Office of Parliamentary Council (2005, points 83 and 84) regards these statements as neither imperatives, nor future actions to be taken, but 'declarations of the law' and calls for the present indicative, as in the French, German and Italian versions above. The reason behind is that 'even if the event is yet to happen, the law speaks in the present because an Act is always speaking'. Of a different opinion is Williams, who although in favour of the present tense, captures the pragmatic function of these statement and talks of a 'theoretical time sphere that has equal validity at any given moment' (2006, 247). Hence, it is the fact of being enacted as law, which confers to it the character of being always speaking.

A clear deontic and mandatory use of *shall* appears instead in the examples below where we find an animate subject and a dynamic verb, which shows a continued or a progressive course of action:

Example 5. Deontic *shall*.

(EN) the manufacturer [[**shall**]] check the disassembly of the system and …
(IT) il fabbricante **deve** controllare il disassemblaggio dell'unità di sistema e redigere una relazione al riguardo.
(FR) le fabricant **doit** vérifier le démontage du produit et établir un relevé de démontage...
(GE) Der Hersteller **muss** die Zerlegung des Produkts prüfen und eine Zerlegungsbericht bereithalten...

Example 6. Deontic *shall*

(EN) The controller [[**shall**]] be required to verify the competence of the recipient and to make a provisional evaluation of the necessity for the transfer of data.
(IT) Il responsabile del trattamento **è tenuto** a verificare le competenze del destinatario e ad effettuare una valutazione provvisoria della necessità del trasferimento dei dati.
(FR) Le responsable du traitement **est tenu** de vérifier la compétence du destinataire et d'évaluer à titre provisoire la nécessité du transfert de ces données.
(GE) Der für die Verarbeitung Verantwortliche **ist verpflichtet**, die Zuständigkeit des Empfängers zu prüfen und die Notwendigkeit der Übermittlung dieser Daten vorläufig zu bewerten.

In both cases the norm aims at regulating other peoples's behaviour while imposing a duty, which will ideally happen in the near future and not exactly at the time in which is uttered, as in the constitutive statements above. In terms of linguistic features, it seems that when the duty is imposed on a private individual, as in example 5, *shall* is more likely to correspond to an eqivalent modal verb or to another linguistic structure that states clearly the obligation (i.e., deontic verbal periphrasis and lexicalized forms highlighting the mandatory nature of the provision). In example 6, the provision is closer to a binding requirement than to a command and the duty looks more toned down in French and Italian, but not in German where 'the controller is obliged'.

A similar translation of *shall* is also to be seen when the norm does not prescribe, modify or bring about anything new, but it simply expresses a necessary requirement or condition. This function is called from Greek *anankastic* and it is linked to the semantics of necessity. In philosophical and normative studies, it was first identified by von Wright (1963, 94) and pertains to the study of 'constitutive rules', meaning the necessary pre-condition (positive or negative) to the validity of a certain action, norm or state of things: 'a statement to the effect that something is (or is not) a necessary condition of something else I shall call an anankastic statement' (von Wright 1963, 10). In a way, the concept of the necessary condition is analogous to the one of the technical rule, which is mostly concerned with the means to be used to attain a certain goal, or with some sort of constitutive requirements as in example 7 below:

Example 7. Anankastic *shall*.

(EN) The television [[**shall**]] have an on-mode energy efficiency index (EEIon) which is lower than 65% of the base-case consumption for a television of that format.
(IT) Il televisore **deve** avere un indice di efficienza energetica in modalità „on" (IEEon) inferiore al 65 % del consumo base di un apparecchio di tale formato.

(FR) Le téléviseur **doit** avoir un indice de rendement énergétique en mode de marche activé (IREon) inférieur à 65 % de la consommation de base usuelle des téléviseurs de même format.
(GE) Das Fernsehgerät **muss** in eingeschaltetem Zustand über einen Energieeffizienzindex (EEIon) verfügen, der weniger als 65 % des Grundverbrauchs eines Fernsehgeräts dieses Formats beträgt.

The parallel concordance shows here full agreement in the formulation of constitutive requirements and in fact, the three languages use the same modal verb. Actually, the modal *must* would have been perfectly suitable in English, as the EU conventions regard it for 'objective necessity' and the statement is about how things should be, rather what somebody should do. This is also in line with Šarčević who advocates in prescriptive texts *shall* for duties and *must* to express requirements or conditions (2000, 138).

Another frequent overuse of *shall* occurs with rights and entitlements, i.e. sentences, which are intended to express neither a duty or a necessary requirement, nor a constitutive-performative act, as in 8 below:

Example 8. Entitlements.
(EN) Undertakings, research institutes or natural persons from third countries [[**shall**]] be entitled to participate on the basis of individual projects without receiving any financial contribution under the programme, provided that such participation is in the interest of the Community.
(IT) Le imprese, gli istituti di ricerca o le persone fisiche di paesi terzi **hanno diritto** a partecipare al programma in base a decisioni prese progetto per progetto e senza ricevere un contributo finanziario, qualora ciò sia nell'interesse della Comunità.
(FR) Les entreprises, les instituts de recherche ou les personnes physiques des pays tiers **sont autorisés** à participer au cas par cas en fonction du projet, sans bénéficier d'une contribution financière au titre du programme, lorsque leur participation est dans l'intérêt de la Communauté européenne.
(GE) Unternehmen, Forschungseinrichtungen oder natürliche Personen dritter Länder **können** sich auf Projektbasis an dem Programm beteiligen, wenn dies im Interesse der Europäischen Gemeinschaft ist, erhalten jedoch keine finanzielle Unterstützung im Rahmen des Programms.

This is a case where *shall* does not add anything and present indicative would have served the same scope of the sentence. However, correspondence in the other languages denotes a slight semantic nuance. Although empowering and granting a right share the same semantic area of permission and the agent has freedom to perform a certain action, being 'entitled' denotes a right to something, 'empowering' implies authority to do something with a consequent discretionary power. In the English and Italian versions, undertakings and research institutes are literally entitled to take part in the program, in French they are authorized and in German, with *können*, they seems to have rather a discretionary power to do that.

The context of authorizations shows inevitably more pitfalls, because of the mandatory force of the act, and of its implicit element of restriction:

Example 9. Authorizations.

> (EN) Personal data [[**shall**]] only be processed for purposes other than those for which have been collected if the change of purpose is expressly permitted by the internal rules of the Community institution or body.
> (IT) Il trattamento dei dati personali per fini diversi da quelli per cui sono stati raccolti **è consentito** soltanto se il cambiamento di finalità è espressamente autorizzato dalla regolamentazione interna dell'istituzione o dell'organismo comunitario;
> (FR) Les données à caractère personnel ne **peuvent** être traitées pour des finalités autres que celles pour lesquelles elles ont été collectées que si le changement de finalité est expressément autorisé par les règles internes de l'institution ou de l'organe communautaire.
> (GE) Personenbezogene Daten **dürfen** nur dann für andere Zwecke als die, für die sie erhoben wurden, verarbeitet werden, wenn die Änderung der Zwecke durch die internen Vorschriften des Organs oder der Einrichtung der Gemeinschaft ausdrücklich erlaubt ist.

The sentence above has a clear mandatory value, because an authorization is a deontic act, which derives its force and effectiveness from the fact of granting permission - in this case in certain circumstances 'only'. Nevertheless, the *shall* above could have also read as 'personal data *may…*', this without undermining the force of the authorization. In fact, the permission to process personal data is literally paraphrased in Italian (*è consentito*) while in French and German we find the modals *pouvoir* and *dürfen* that are semantically linked to the idea of permission and possibility.

Finally, a further and controversial usage of the deontic *shall* occurs in its form of *shall not* or *no person shall*, when expressing prohibitions, i.e., a negative command, an obligation not to do. The *English Style Guide* of the European Commission (2011) also acknowledges this use, but recommends *may not* as the EU convention:

> **6.17.** Where a negative command expresses a prohibition, use may not […] Linguistically speaking, 'shall not' or 'must not' could also be used to express a prohibition, but this is not the convention in EU legislation. Note however, that **shall not** is used where no prohibition is meant, for example:
> The contract shall not be valid in any of the cases below:
> This agreement shall not enter into force until/if...
> **6.19.** For a negative permission, use need not.

For the translator, it is very important to understand and recognize the type of norm intended by the legislator. Logically speaking 'no prohibition' implies that something is optional, whereas from a legal point of view means that there are no legal effects (injunctions, sanctions) attached to the non-performance of the act. The examples quoted above in the *English Style Guide* suggest the presence of temporal and factual conditions that 'restrict' the scope of what is not possible. In other words, a condition or an exception might derogate from the negative directory provision and make the act possible. Example 10 shows a similar context because the factors restricting the action are explicitely mentioned, i.e. before 30 days:

> Example 10. Negative requirement
> (EN) The examinations referred to in point (b) [[**shall**]] **not** take place before 30 days

have elapsed after the completion of preliminary cleaning and disinfection measures on the infected holding.
(IT) Gli accertamenti di cui alla lettera b) **non possono** essere effettuati prima che scadano 30 giorni dal completamento delle operazioni preliminari di pulizia e di disinfezione nelle aziende infette.
(FR) Les examens visés au point b) **ne peuvent** être pratiqués que trente jours après l'achèvement des opérations préliminaires de nettoyage et de désinfection des exploitations infectées.
(GE) Die Untersuchungen gemäß Buchstabe b) **werden** frühestens 30 Tage nach Abschluss der Grobreinigung und Vordesinfektion der Seuchenbetriebe **vorgenommen.**

This means that the negative requirement will be applicable only if the condition of the 30 days is present and it is in a way analogous to a conditional prohibition. The comparison with the other three languages does not help much in finding a univocal translation, but the German thematic structure (*will take place not before…*) is probably closer to a deontic/anankastic requirement. On the other hand, French and Italian negate the modality and express a lack of permission, which is closer to the prohibition with *may not* as intended by the *English Style Guide* of the Commission. In linguistics, the main difference depends on whether we state 'you are not permitted to do that' or 'you are obliged not to do that'. French and Italian show exactly the same pattern with negated *dovere/potere* and *devoir/pouvoir*. In German, this difference is less evident because *dürfen* implies 'permission' and has no epistemic meaning. The goal is in both cases to 'prevent' a certain action or state of things from occurring, hence a prohibition, but the semantics of 'possibility' and 'necessity' carries different effects. *May not* (together with *non può/ne peut pas*) negates the modality and implies a denial of permission (= it is not possible for Y to do X), *shall not* and similarly *non deve/ne doit pas* negate the proposition (= it is necessary for Y not to do X) and can be read like a negative command. Now, according to the *English Style Guide* of the Commission, prohibition is understood as a negation of the modality, i.e. as the fact of 'not being permitted' of doing certain things, with a clear deontic and performative force. *Shall not* is used instead for negative requirements where no prohibition is meant. This is evident in example 11 below, where *may not* forbids to bring into circulation products with an exceeding level of aflatoxin and the other three languages express the same ban by clearly negating the proposition, i.e. someone 'is obliged' not to:

Example 11. Prohibitions
(EN) Products which levels of aflatoxin exceeding the maximum limit [[**may**]] **not** be brought into circulation, either as such, after mixture with other foodstuffs or as an ingredient with other foodstuffs.
(IT) I prodotti contenenti aflatossine in quantità superiore ai massimi stabiliti **non devono** essere messi in circolazione, sia in quanto tali, che miscelati con prodotti conformi o utilizzati come ingredienti di derrate alimentari.
(FR) Les produits ayant des teneurs en aflatoxines supérieures aux teneurs maximales fixées **ne doivent** être mis en circulation ni en tant que tels, ni après mélange avec d'autres denrées alimentaires, ni comme ingrédient d'autres denrées alimentaires.
(GE) Erzeugnisse mit einem Aflatoxingehalt, der über dem Hoechstgehalt liegt, **dürfen**

> weder als solche noch nach Vermischung mit anderen Lebensmitteln oder als Lebensmittelzutat in den Verkehr gebracht werden.

In these respects negative contexts present situations with a high degree of overlapping meanings, and without considering each single context, type of agents and sort of restrictions, it is often difficult to discern between mandatory prohibitions denoting an obligation not to perform certain duties, and directory prohibitions, stating negative requirements. The complex logic of negation and the overlapping sematics pertaining to the modals *shall not, must not, may not* is a further fuzzy factor which 'is also confirmed by the contradictory statements of drafting manuals' (Williams 2005:213).

Concluding remarks

Data have showed the various usages of the English modal *shall* in a parallel corpus of EU secondary legislation. They go far beyond the expression of binding norms and deontic modality, and also include definitions, entitlements, necessary requirements, declarative statements and future actions to be taken. This has been highlighted in particularly by the extraction of parallel concordances in other languages, which may suggest different interpretation of the legal act or even disambiguate complex meanings. In these regards corpus studies and cross-linguistic analysis can offer a practical help to foster legal interpretation and suggest translation solutions. The additional knowledge provided by the comparison with other languages should be seen first of all in terms of 'meaning', thus exploring how an idea or a word in one language is conveyed in another. Although parallel texts and translated language do not enjoy the same status as their original counterpart, they inevitably reflect a communication event and as put by Baker (1993, 234): 'what justification can there be for excluding translations produced by native speakers, other than that translated texts per se are thought to be somehow inferior or contrived?' Having said that, the same parallel corpora are an integral part of the business communication of multilingual societies like the United Nations, NATO and the EU, but also within officially bilingual countries like Belgium, Canada or Switzerland.
In legal language, the ambiguity of norms is a well-known matter of fact. This is both linked to the semantic complexity of certain concepts and to the syntactic relation in linking words with meanings, not to mention the contextual factors and the specific conventions of each legal system. It is a matter of fact that legal language would be pure syntax if deprived of the context in which is uttered and where it functions. In the legal field, maybe more than in any others, pragmatics allows the realization of the linguistic sign and its communicative content. As part of a social context, relations among signs are given by 'agents', by the type of 'norm-action' they are meant to state or perform, and by the 'situational context' in which they take place.

In these respects, the investigation of parallel concordances have helped to shed light on the behaviour of *shall* in context and its meanings. Concordances have pointed towards a contextual analysis of each legislative statement, and more precisely towards patterns linked to: a) the type of agents, b) action's projection, 3) aim of the norm and 4)

type of verbs. When looking at the other languages, these are more likely to be translated in a recurrent form, thus allowing for a certain degree of disambiguation of the modal *shall.* Defining a legal proposition as deontic, constitutive or anankastic means essentially to look at these linguistic factors in context, as well as at their interaction. Deontic norms are usually performed by animate subjects, they carry dynamic verbs and are future-oriented with the focus on the process of the action. The retrieval of parallel concordances has showed that the English *shall* often corresponds to an equivalent modal verb in the other three languages or to a verbal periphrasis. Similar translations are frequent when it comes to necessary requirements, although subjects are not animated and the construction might be in the passive. On the other hand, *shall* constitutive statements tend to be rendered in the other languages with the present indicative only. They often carry a stative verb, they have present or no time reference because they perform the act at the same moment it is uttered, and although it is not a rule, there are often no animate subjects. This is due to the overlapping between 'how things are' and 'how things ought to be' typical of this norm type.

In this way, despite the odds linked to the interpretation and production of parallel legal texts, translation and cross-linguistic analysis can offer a detailed annotation of what a term means, thus reducing as in this case the fuzzy areas of certain legal words. On that basis, the focus should be on the exploitation of the information that we can derive from the comparison of two or more languages. Whether this information triggers linguistic description, translation research or the implementation of new computational tools, it is only due to the goal of the different research areas and to the wide opportunities offered by parallel retrieval. On the other hand, the role of translation remains instrumental in bridging the gap between a theoretical descriptive approach to parallel text and a more practical and automated one.

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THE METAPHOR OF *SWOBODA* IN THE TREATIES OF THE EUROPEAN UNION

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Abstract: The subject of this article is a linguistic analysis of the texts of the EU Treaty of 1992, as well as of the Treaty on the Functioning of the EU of 2010, with an aim to demonstrate that in these legislative acts the meanings of legal and economic terms are communicated through the means of everyday expressions, which in great measure retrace the practical way of human thinking. The author claims that in legal principles regarding the decisions about the stability of the financial market, the metaphor of **SWOBODA** (Eng. **FREEDOM**) enables to understand the abstract sphere of the creating and functioning of the European economy in the image schemas of "*obejmowanie i wnoszenie*", typical for material objects. The freedom of establishment is conceptualized as a person, who *obejmuje* ('otacza rękami'; Eng.: 'takes into their arms') *prawo* (Eng.: law), *zniesienie dyskryminacji* (Eng.: abolition of any discrimination), *działalność gospodarczą* (Eng.: establishment), as well as *wnosi* ('umieszcza wraz z sobą w czymś'; Eng.: brings [in], 'places somewhere together with itself') *korzystny wkład w rozwój produkcji i handlu* (Eng.: valuable contribution to the development of production and trade). In the metaphor of **SWOBODA** are inscribed the metaphors of the EU market in the image schemas of "**PRZEPŁYW** [**RUCH**]" (Eng.: 'flow', 'movement'), "**OBRÓT**" (Eng.: 'circulation') and "**SOJUSZ**" (Eng.: 'alliance"). In the Polish translation of the Treaties, economic goods are treated as if they were a **LIQUID** [**PŁYN**], protected due to their expected profit; and the transfer of money, services and people producing these goods is described as **PRZEPŁYW** [**FLOW**] of the goods. In the English text of the Treaties **INFLOW** refers only to persons, while the transfer of money, goods and services is referred to as **MOVEMENT** [**RUCH**]. An alternative metaphorical pattern in both the Polish and English languages is created by **OBRÓT** [**CIRCULATION**]. These metaphors are linked to the metaphor of the **MARKET AS A CONTAINER**, in which **SWOBODA** [**FREEDOM**] locates the **MOVEMENT** [**FLOW**] and the **CIRCULATION** of goods, services, money and persons. In the EU Treatises, the economic cooperation is depicted as a **MILITARY ALLIANCE [SOJUSZ WOJENNY]** in relation to the **STRUGGLE FOR THE MARKET [WALKA O RYNEK]**, in the economic discourse. The **metaphorical patterning** depicts the personified **SWOBODA** [**FREEDOM**], sub-dependent to which are the ontological and orienteering metaphors communicating the principles of the functioning of the internal EU market. Summing up, the author concludes that in the Polish translation of the EU Treaties the notions of *swoboda* and *wolność* are separated, because the word *wolność* is used in its literal meaning in the Preamble to the Treatises, so within the axiological principle of law, whereas in the regulations of these legislative acts, the word *swoboda*, used metaphorically, characterises the aspect of establishment as a principle-norm to which, in the legal regulations of these legislative acts, all the other norms are sub-dependent. In the English version such a strong polarisation of meanings does not occur.

METAFORA *SWOBODY* W TRAKTATCH UNII EUROPEJSKIEJ

Abstrakt: Tematem artykułu jest lingwistyczna analiza tekstów Traktatu o Unii Europejskiej z 1992 roku oraz Traktatu o funkcjonowaniu Unii Europejskiej z 2010 roku, aby wykazać, że sensy pojęć prawnych i ekonomicznych są komunikowane w tych aktach ustawodawczych zwrotami potocznymi, które w znacznej mierze odtwarzają sposób praktycznego myślenia człowieka. Autorka twierdzi, że w regułach prawnych zawierających postanowienia o stabilności rynku finansowego metafora **SWOBODY (**ang. **FREEDOM)** pozwala rozumieć abstrakcyjną dziedzinę tworzenia i funkcjonowania gospodarki europejskiej w schematach wyobrażeniowych „obejmowania i wnoszenia", typowych dla rzeczy materialnych. Swoboda przedsiębiorczości jest konceptualizowana jako osoba, która *obejmuje* (tj. 'otacza rękami), *prawo*, *zniesienie dyskryminacji*, *działalność gospodarczą* oraz *wnosi* (tj. 'umieszcza wraz sobą w czymś'), *korzystny wkład w rozwój produkcji i handlu*. W metaforę **SWOBODY** [**FREEDOM**] wpisują się metafory rynku wspólnoty europejskiej w schematach wyobrażeniowych „przepływu [ruchu]", „obrotu", „pojemnika" i „sojuszu". W polskim przekładzie Traktatów dobra ekonomiczne są jak **PŁYN** [**LIQUID**] chroniony ze względu na oczekiwany zysk, a przemieszczanie pieniędzy, towarów, usług oraz ludzi wytwarzających te dobra to **PRZEPŁYW [FLOW]** dóbr. Natomiast w angielskim tekście Traktatów **INFLOW (**dosł. 'napływ'**)** dotyczy tylko ludzi, podczas kiedy przemieszczanie się pieniędzy, towarów i usług określono jako **MOVEMENT** [**RUCH**]. Alternatywnym modelem metaforycznym jest w obu językach **OBRÓT**, ang. **CIRCULATION**. Te metafory są sprzężone z metaforą **RYNKU JAKO POJEMNIKA (MATKET AS A CONTAINER)**, w którym to pojemniku **SWOBODA (**ang. **FREEDOM)** umieszcza **PRZEPŁYW [RUCH]** [**MOVEMENT/FLOW**]i **OBRÓT [CIRCULATION]** towarów, usług, kapitału i osób. W Traktatach unijnych współpracę ekonomiczną obrazuje się jako **SOJUSZ WOJENNY [MILITARY ALLIANCE]** w relacji do **WALKI O RYNEK [STRUGGLE FOR THE MARKET]** w dyskursie gospodarczym. **Model metaforyczny** przedstawia upersonifikowaną **SWOBODĘ (**ang. **FREEDOM)**, której są podporządkowane metafory ontologiczne i strukturalne komunikujące reguły funkcjonowania rynku wewnętrznego Unii Europejskiej. Podsumowując, autorka wnioskuje, że w polskim przekładzie Traktatów rozdziela się pojęcia swobody i wolności, bowiem słowo *wolność* zostało użyte w znaczeniu dosłownym w preambule Traktatów, a więc w obrębie aksjologicznej zasady prawa, natomiast w przepisach tych aktów ustawodawczych słowo *swoboda* w użyciu metaforycznym charakteryzuje aspekt przedsiębiorczości jako zasadę-normę, której w przepisach prawnych tych aktów ustawodawczych są podporządkowane inne normy. W angielskiej wersji nie ma tak wyraźnej polaryzacji znaczeń.

1. Metaphor as a linguistic phenomenon

The language of the EU Treaties resemblesthat of spoken idiom. The metaphorical condensation of knowledge of the world brings about the fragmentary characteristics of the economic phenomena, through reconstructing the structure of the practical thinking of man. Detailed characteristics of this sphere of social life belong to the science of law and economics and as such is not the subject under description in the current article. The linguistic analysis of the EU Treaties presented here is aimed at portraying the features of the language in which the provisions of the EU are established,for the complex meanings of its legal and economic terms are communicated through metaphorical expressions.

The metaphorical meaning of the word *swoboda* in the Polish version of the Treaties, as well as in the commentaries to the EU provisions, sounds strange. The

English noun *freedom* is translated into the Polish nouns *wolność* and *swoboda* differently in the Preamble to the Treaties, and differently in the main part of the normative act. In the Preamble, the Polish *wolność* corresponds to both the English *liberty* and *freedom* in synonymic chains, substantiating axiologically the legal principles in the system of values. In contrast, in the legal provisions the principle of freedom has been formulated, which regulates the functioning of the internal EU market as a particular kind of an overriding norm belonging to the legal system, binding together other subordinate rules**.** Here the English noun *freedom* is the equivalent of the Polish noun *swoboda*. It seems that while translating the English word *freedom* the translator considered the connotations of the Polish word *wolność*, and decided it to be improper to connect this word with the establishment[4].

The English word *freedom*, and its Polish equivalent *swoboda* in the expressions of legal regulations of a metaphorical nature, is a transposition of a name based on the principle of joining the conceptual domains of understanding and experiencing the abstract things through the categories typical for material things. In the process of using metaphorical expressions in a legal text, the joining together and the selective transposing of the structures of mental spheres from the physical conceptual experiences to mental experiences happens under the influence of the context. Understanding of the abstract conceptual domains of law and economics through a clearly defined structure of conceptual diagrams of movement of objects in space brings unexpected effects. On the level of the semantics of words and the semantics of sentences, both the linguistic and the situational contexts of the EU Treaties simultaneously evoke two thoughts, which operate together, referring to the notions of legal regulations within the scope of establishing a common European market, as if they were simultaneously similar and dissimilar to these notions – as identical to them, and, at the same time, with different images, depicting the existence of concrete material beings.

The EU Treaties are the main acts of the established law of the Union. The legal basis of these regulations rests in establishing a market without internal borders and the rules of its functioning. The declared goal is to uplift the standard of living of the citizens of Member States, which is to be achieved by lowering the prices of goods and the costs of their circulation as well as by ensuring a better access to services and increasing their

[4] See: **WOLNOŚĆ** 1. niezawisłość państwowa, niepodległość, suwerenność; kraj, naród utracił, odzyskał wolność; 2. możliwość podejmowania decyzji zgodnie z własną wolą; mieć wolność w wyborze zawodu; wypuścić ptaka na wolność; 3. prawa obywateli przez dobro powszechne, interes narodowy i porządek prawny, wolności obywatelskie, wolność osobista, wolność słowa, sumienia, wyznania, zgromadzeń; wolny mogący postępować zgodnie z własną wolą, nie podporządkowany komuś, będący na swobodzie; wolny kraj, naród; wolny wybór, wniosek, wolny zawód 'wykonywany prywatnie'; dzień wolny, nie wypełniony pracą; wstęp wolny, bezpłatny; etat wolny nie zajęty przez nikogo (*Słownik języka polskiego*, III, ed. M. Szymczak, Warszawa 1981, p. 748). Cf. swoboda postępowania, przekonań, poruszania się; możliwość postępowania według własnej woli, bez konieczności ulegania przymusowi; brak skrepowania, niezależność, wolność (*Słownik języka polskiego…*, p. 376).

competitiveness, and also by making the migration of people within the EU easier [5]. Creating a common market was initiated by signing the Treaty of Rome in 1957 and establishing the EEC. Decisions regarding the Economic and Monetary Union were included in the Treaty on the European Union of 1992 (the Maastricht Treaty). The next – the Treaty on the functioning of the European Union of 2010 – contains decisions regarding the stability of the financial market[6].

For the functioning of the common market it was necessary to liquidate administrative barriers, standardize technical regulations as well as to liquidate fiscal restrictions which could result in the rise in prices of goods and services. To achieve this goal, border custom controls were liquidated, norms and certificates as well as standards and labels in the individual areas of economic life were standardized, as were the various systems of indirect tax in individual countries. The legal decisions of the EU Treaties involving these matters include the so-called four freedoms of the free market, that is, the free movement of capital, goods, services and persons[7].

Due to the subject chosen, our current linguistic analysis will include texts of the EU Treaties which regulate these matters, especially the Preamble to the *Treaty on the European Union* and the *Part three – policy and internal actions*, titles I. II and IV, of the *Treaty on the Functioning of the European Union*[8]. In these chapters, metaphorical depiction superimposes associative implications, typical for material qualities of auxiliary objects, on the objects of legal regulations. It is done, most probably, to make it easier for a common recipient of the communiqués to understand them through their popular and schematic structure of abstract images, typical for the world of objects.

[5] The legal basis for the commencement of work on establishing the Common Market was given by the Treaty of Rome, signed on 23 March 1957, establishing the European Economic Community (EEC) of six countries: France, Germany, Italy, Belgium, Netherlands and Luxembourg. Establishing of the Common Market required the abolition of various kinds of barriers of the administrative nature (border pass controls), disparate technical regulations (norms and certificates, labels and standards in the individual areas of life), as well as the fiscal barriers (disparate indirect tax systems in individual states), which could limit the free movement of goods, services, persons and capital, and therefore affect the rise of prices of goods and services.

[6] In the linguistic analysis were used: 1. Wersje skonsolidowane Traktatu o Unii Europejskiej i Traktatu o funkcjonowaniu Unii Europejskiej, Dziennik Urzędowy Unii Europejskiej 2010/C83/01, and 2. the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal of the European Union 2010/C83/01.

[7] Free movement of capital applies to independent financial transactions that have no direct relation to the movement of people, goods and services. Provisions concerning the importation of goods into the EU have been unified. Free movement of services means the possibility of establishment in another Member State and doing business on the basis of the so-called self-employment. Free movement of persons is a guarantee that all EU citizens have the right to travel without a visa and authorization, to settlement, establishment and work in any of the Member States.

[8] Title IV refers directly to title III of the *Treaty of Rome* of 1957.

2. Metaphorical depiction

Anticipating that a metaphorical depiction results from the pre-conceptual image schemas, such as metaphorical projection in the spatial concept of the world (structural metaphor), attributing a particular way of existence to non-material beings within the range of experiences of material beings (ontological metaphor), as well as manipulating with spatial images (orienteering metaphor)[9], I also employ the notion of metaphorical patterning, which occurs in such cases where there is a connection between a structural metaphor and several, sub-dependent, ontological and orienteering metaphors[10]. Cognitive metaphorical patterns occur in the world of human images, and therefore they become a certain kind of idealisation of reality.

The problems of law and economics, which in the EU Treaties represent themselves in the form of a metaphorical and conceptual projection, reflect the common understanding of the economic processes on the territory of the European Union. A study of the metaphorical conceptualisation of economic phenomena situates itself not only as an analysis of word, sentence or text, but most of all as a system of associative implications, based on the principle of comparing the resources of knowledge within the two domains of social life: the abstract target domain, which is the legal norm of the internal market, and the rational source domain, which is the physical moving of material objects and organizing them in the field of vision. Due to human mental processes, the specific knowledge resources associated with the second object are superimposed on the first object. A complicated process of metaphorization takes place, from selecting comparable parts of the initial space, through blending and selectively transposing the initial structure to a separate space, through identification of lexemes, syntagmas and expressions as metaphorical, and then choosing a new, temporary structure as a result of the processes of composition, supplementation and development. The choice of a target domain opens a possibility to construct discourse within this domain, and the identification of lexemes, syntagmas and expressions as metaphorical, allows one to determine the source domains through determining the scopes of the literal use of metaphorical expressions[11].

[9] The division of conceptual metaphors into structural, orienteering and ontological, made by the American cognitivists, Lakoff and Johnson in the 1980, from the very beginning awakened controversies and changes into this classification were introduced several times. Critical revision resulted from the existence of intermediate categories – it is presumed that the structural and orienteering metaphors must be generated from the ontological metaphors. See the typology of conceptual metaphors, in: A. Kominek, *Metafory prawa moralnego*…, pp. 53-62.

[10] It is the cognitive theory of metaphor, which organizes the knowledge through structures of language explaining the world by everyday terms, most often in opposition to academic theories, see: Jäkel, 2003, p. 25, Kominek 2009, p. 31.

[11] In the history of the studies on metaphor, three periods are named by the commentators. The classical theory of metaphor reaches back to antiquity. Aristotle (384-322 B.C.) defined metaphor as the application of an alien name by transference either from genus to species, or from species to genus, or from species to species, or by analogy, that is, proportion, which is a diversion from the usual use of language. According to Quintilian (approx. 35-96 A.D.), who developed the idea of Aristotle, the substitution of one word for another happens from living beings to other living

The target domain determines the choice of a set of examples of legal reflection in the EU Treaties, from the field of social relations, economics and economy of the Member States. The present analysis focuses on conventional metaphors, conveyed by verbs and adverbial nouns as well as conventional units of words, which take the form of normative sentences of a metaphorical nature.

In the Treaties, the metaphorical imagery within the legal domain revels itself through the personification of **SWOBODA**, based on an image schema of "obejmowanie"[12], which inscribes itself into the structural metaphorical approaches of the internal market as a territory of economic cooperation, and also as a reification of economic goods in spatial orientation.

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beings, from non-living things to non-living things, from living beings to things and from things to living beings, see: M. Korolko, *Sztuka retoryki. Przewodnik encyklopedyczny*, Wyd. Wiedza Powszechna, Warszawa 1990, p. 103. By the end of the 19th century, Ivor Armstrong Richards modified the classical theory of Aristotle and Quintilian, transferring the problem of metaphor from the level of the semantics of word to the level of the semantics of sentence. According to Richards, a statement, influenced by the context, can at the same time induce two thoughts which operate simultaneously, referring at the same time to objects similar and dissimilar, identical and different, see: T. Dobrzyńska, *Metafora*, Zakład Narodowy im. Ossolińskich, Wrocław 1984, p. 24. The concept of Richards was developed by Max Black into an interaction theory of metaphor. Black claimed, giving as an example the sentence *Man is a wolf* that a metaphorical expression links together various objects by attributing the main object with associative implications typical for the auxiliary object, see: O. Jäkel, *Metafory w abstrakcyjnych domenach dyskursu. Kognitywno-lingwistyczna analiza metaforycznych modeli aktywności umysłowej, gospodarki i nauki*, transl. by M. Banaś, B. Drąg, Universitas, Krakow 2003, pp.107-108 [*Mataphern in abstrakten Diskurs-Domänen Eine kognitiv-linguistische Untersuchung anhand der Bereiche Geistestätigkeit, Wirtschäft und Wissenschaften*, Frankfurt am Main, 1997]. The cognitive concept of metaphor by Mark Turner and Gilles Fauconnier assumes that the process of the creating of a metaphor happens by blending and by selective transposing of the initial structure to a new, emerging structure, due to the processes of composition, supplementation and development, see: G. Fauconnier, M. Turner, *Tworzenie amalgamatów jako jeden z głównych procesów w gramatyce* (in:) *Językoznawstwo kognitywne II. Zjawiska pragmatyczne*, Ed. W. Kubiński, D. Stanulewicz, Wyd. Uniwersytetu Gdańskiego, Gdańsk 2001, p. 173. A different concept of cognitive metaphor was presented by Georg Lakoff and Mark Johnson. Their main points regarded: the omnipresence of metaphors, conceptual domains of perception and experiencing one kind of thing in terms of another, cognitive or cultural metaphorical patterns, conceptual and metaphorical link between the source and the target domain, the explanatory function of metaphor possible thanks to mental patterns enabling the perception of an object from target domain through a reference to experience from the source domain, invariance based on making it easier to understand the abstract conceptual domains through a clearly defined structure of pre-conceptual image schemas, the fragmentary nature of metaphorical mapping, and also the creativity of metaphor linked to vivid and elevated language or creating a new reality within various areas of human life, see: G. Lakoff, M. Johnson, *Metaphors We Live By*. University of Chicago Press 1980. An overview of previous and current research on metaphor was presented by Andrzej Kominek in a book, *Metafory prawa moralnego w dyskursie religijno-etycznym. Studium lingwistyczno-kognitywne*, Wydawnictwo Uniwersytetu Humanistyczno-Przyrodniczego Jana Kochanowskiego w Kielcach, Kielce 2009, pp. 25-37).

[12] Eng.: "to embrace, to hold, to hug".

3. Personification of *SWOBODA*

The EU Treaties establish the legal rules which are postulates of a legal system regarding the aims served by law, and also the legal norms which are postulates of the proceedings of legal entities in the fields of politics and economics. Establishing the rules and norms of politics and internal actions within the EU, the Treaties organize its functioning through setting the fields, limits and conditions of competence. The contents of the rules in the directive-like meaning, different from other kinds of norms formulated in the text, emerges through juxtaposing them with their rights and freedoms. In the opening part of the *Treaty on the European Union*, *Title I. Common Provisions*, among the rules there named, among others, are the principle of sincere cooperation (Art. 4), the principle of conferral and within it the principles of subsidiarity and proportionality (Art. 5); along with the principles guaranteed in the Charter of Fundamental Rights of the European Union (Art. 6). The principle of swoboda (Eng.: freedom**)** is inscribed in the principle of the equality of the citizens (*Treaty on the European Union, Title II, Art. 9*) and also in the principles foreseen for the aim of functioning of the internal market (*Treaty on the Functioning of the European Union, part three, Title I, Art. 49*), referring to the prohibition of the "the right to take up and pursue activities as self-employed persons and to set up and manage undertakings". Further regulations establish the norms of functioning of the EU internal market, stating that to make the principle of freedom real, the EU Parliament and the EU Council, while establishing directives, shall as a rule give priority treatment to activities where freedom of establishment *brings* (Pol.: *wnosi*) a particularly valuable contribution to the development of production and trade. It also abolishes those administrative procedures and practices the maintenance of which would form an obstacle to the freedom of establishment, and regulates the progressive abolition of the freedom of establishment in every branch of activity under consideration; see the Polish and the English texts:

> 1. W celu urzeczywistnienia swobody przedsiębiorczości w odniesieniu do określonego rodzaju działalności Parlament Europejski i Rada, stanowiąc… dyrektywy.
>   a) traktując co do zasady priorytetowo działalności, w których swoboda przedsiębiorczości wnosi szczególnie korzystny wkład w rozwój produkcji i handlu […]
>   c) znosząc takie procedury i praktyki administracyjne wynikające z prawa krajowego bądź z wcześniej zawartych umów między Państwami Członkowskimi, których utrzymanie w mocy stanowiłoby przeszkodę dla swobody przedsiębiorczości;
>   f) znosząc stopniowo ograniczenia swobody przedsiębiorczości w każdej wchodzącej w grę dziedzinie działalności (tytuł IV. rozdz. 1. *Pracownicy*, art. 50).
>
> 1. In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives.

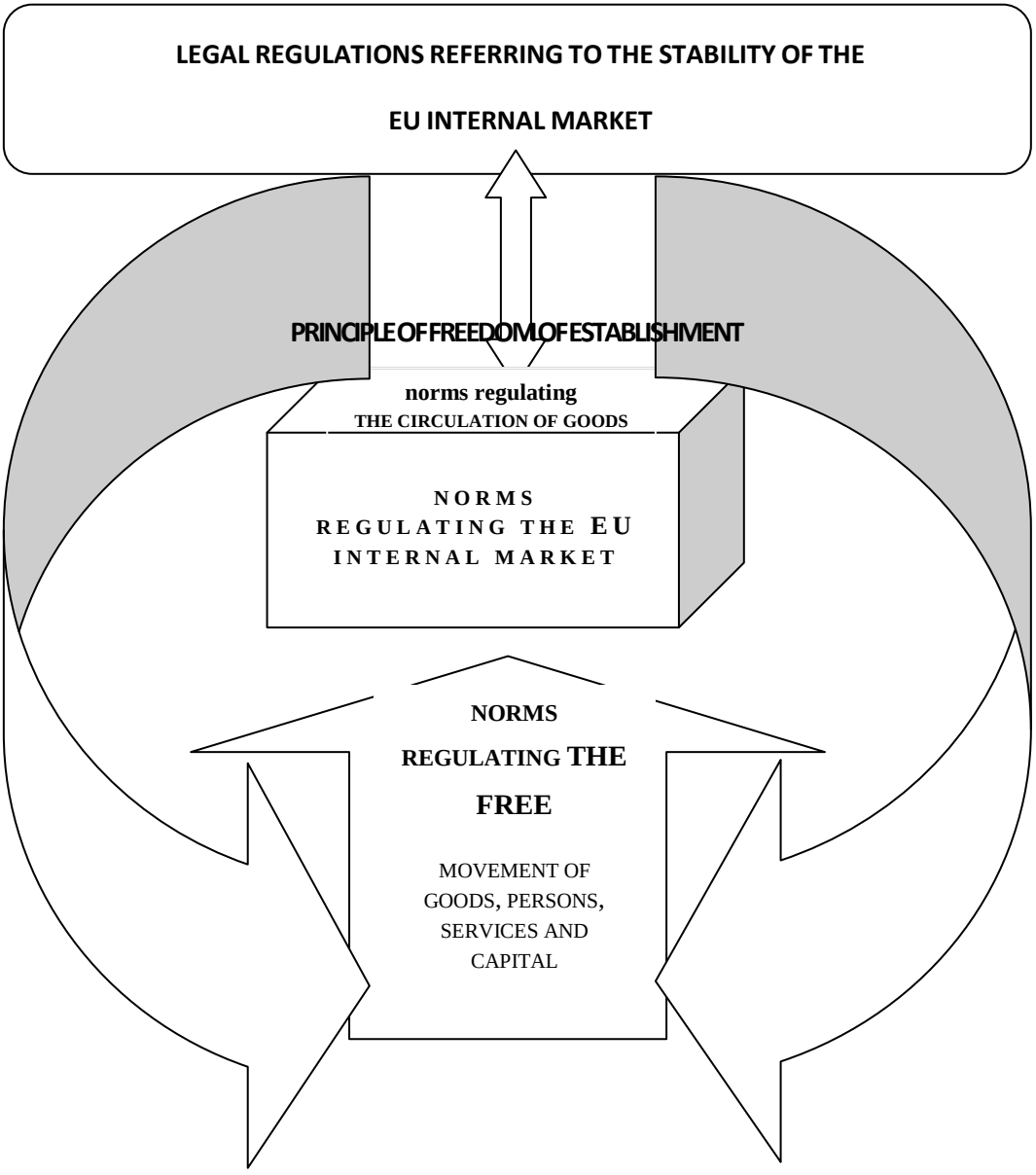
> (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
> (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to the freedom of establishment;
> (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration (title IV, Chapter 1. *Workers*).

Article 50 realises the freedom of establishment which as a postulate of law refers to the goals which the law should serve. In the perspective of knowledge about the values formulated in normative acts, SWOBODA is a good, which is to be protected in a preferential manner. The provisions of Article 50 attribute to the principle of the freedom of establishment the legal validity and axiological justification to refer to it in a situation pointed out by the legislator, as well as establish the binding power of that norm-principle regulating the functioning of the internal EU market.

The legal norms of the *Treaty on the Functioning of the European Union*, based on the principle of the freedom of establishment, regulate the internal EU market (*Part III, Title I.*) when it comes to the free movement of goods (*Part III Title II*) and the free movement of persons, services and capital (*Part III, Title IV*.). Here we can observe the hierarchy well-known to lawyers of provisions of normative acts[13]. See graph 1.

[13] See: A. Redelbach, S. Wronkowska, Z. Ziembiński, *Zarys teorii państwa i prawa*, Wydawnictwo Naukowe PWN, Warszawa 1993, pp. 224-225. On distinguishing between legal principles and legal norms, see: S. Wronkowska, M. Zieliński and Z. Ziembiński, *Zasady prawa. Zagadnienia podstawowe*, Warszawa 1974. See also: T. Gizbert-Studnicki, *Zasady i reguły prawne*, „Państwo i Prawo", book 3.

Graph 1. Legal terms referring to the stability of the internal market in the EU Treaties



Source: the author of this article's own study.

These complicated correlations within the scope of legal principles and norms are verbalised through the use of everyday expressions in the text of a legal act. In Article 45, **SWOBODA** is conceptualised as an embodied form which moves and adjusts objects, so, as a person who organizes the EU market and brings into this market material goods. It is attributed with human qualities of action and intention:

> Swoboda ta obejmuje zniesienie wszelkiej dyskryminacji […] swoboda ta obejmuje prawo […] swobodnego przemieszczania się w tym celu po terytorium Państw Członkowskich (tytuł IV. rozdz. 1. *Pracownicy*, art. 45).
> [Such freedom of movement shall entail the abolition of any discrimination […] It shall entail the right […] to move freely within the territory of Member States for this purpose] (title IV, Chapter 1. *Workers*, Art. 45).

> Swoboda przedsiębiorczości obejmuje podejmowanie i wykonanie działalności na własny rachunek (rozdz. 2. *Prawo przedsiębiorczości* art. 49).
> [Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings.] (Chapter 2, *Right of Establishment*, Art. 49).

Here we are dealing with a metaphorical analogy which clearly occurs in everyday language. The metaphor in the Polish text of the Treaty is carried by two verbs *obejmuje* and ***wnosi,*** placed in such image schemas, as: *ktoś obejmuje kogoś*, and *ktoś wnosi coś do pomieszczenia*[14]. Both these verbs possess crucial meaning in an image schema: X obejmuje Y i wnosi do Z, while *obemuje* in the source domain means: 'otacza ramionami, rękami; ogarnia', whereas *wnosi* means: 'niosąc osobę lub rzecz do przestrzeni zamkniętej, znaleźć się z nią tam'. The real dimension of perception refers to some really existing persons, for example: *matka obejmuje dziecko i wnosi dziecko do mieszkania*. The general character of perception in the EU Treaties is only an analogical perception, encompassing the relationships within the rightly understood syntactic structures. The similarity of such expressions as: *swoboda obejmuje prawo / zniesienie dyskryminacji* 'ogarnia, zawiera, skupia, włącza'; *swoboda wnosi korzystny wkład w rozwój produkcji i handlu* 'wraz z sobą umieszcza coś w czymś', is also obvious. The transferring of a concrete theme onto relationships which are perceived in different, analogical objects is achieved here through the use of a verbal metaphor.

Ontological metaphorization of **SWOBODA** depicts the non-transparent process of legal relationships. Studying the syntactic function of the noun *swoboda* as the agent, from the point of view of legal knowledge we should observe that the metaphorical conceptualization of **SWOBODA** apparently communicates an obligation of action of

[14] M. A. Krąpiec discussed the analogical metaphorical structures in his book *Język i świat realny*, Lublin 1985, pp. 238-239: Redakcja Wydawnictw Katolickiego Uniwersytetu Lubelskiego, pp.230-247. The author believes that metaphorization is the basic element of language, studied from the times of Aristotle up to the present, focusing on what in Aristotle's view is the substituting of a name with a foreign meaning. Therefore, it is not right to oppose the more modern theories of metaphor, and especially the 19th-century views of Armstrong Richards, with the ideas of Aristotle, ibid: pp. 238-239.

a quasi-recipient of the norm treated subjectively, and really it regulates not the action of the subject, but the spheres referring to the object of legal regulation regarding business.

In the categories of relationships existing in the world of legal norms, this obligation is established for the freedom of establishment and the freedom to provide services, through a common image schema. The transposing of a metaphorical meaning is jointly together with the notional and emotional reaction of the recipient of a communiqué, whose experience of economic and legal culture is common with the speaker. Thematization of **SWOBODA** in a sentence signalizes that an object (an abstract thing, not the subject – a person) becomes the agent, and the right, personal recipient of the norm remains a presupposed component: everyone should obey the rule of the prohibition of restrictions on the freedom of establishment:

> Ograniczenia swobody przedsiębiorczości obywateli jednego Państwa Członkowskiego na terytorium innego Państwa Członkowskiego są zakazane w ramach poniższych postanowień; swoboda przedsiębiorczości obejmuje podejmowanie i wykonywanie działalności prowadzonej na własny rachunek (*Traktat o funkcjonowaniu UE*, Część rozdz. 2. *Prawo o przedsiębiorczości*, art. 49). [Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of another Member State shall be prohibited; freedom of establishment shall include the right to take up and pursue activities as self-employed persons (Treaty on the Functioning of the European Union, Chapter 2 *Right of Establishment*, Art. 49).

It is indeed **SWOBODA/FREEDOM** – an abstract notion – which remains as the centre of the legislator's interest when it comes to economic matters. As a legal principle inscribed into legal regulations, together with its subordinate legal norms governing the functioning of the EU market, it has legal validity. The principle of freedom conditions all legal norms regulating the functioning of the EU market, established by regulations of the EU Treaties.

The metaphor of **SWOBODA/FREEDOM** becomes a part of the functioning of the EU economy. Being a component of a metaphorical pattern, the metaphor of **SWOBODA** creates a systemic link with other structural metaphors, and these in turn conceptualise the functioning of the internal EU market in further parts of the Treaties (*Part III, Title I*) and refer to the free movement of goods (*Part III, Title II*) and free movement of persons, services and capital (*Part III, Title IV*).

4. The metaphor of an internal market

A German scholar, Olaf Jäkel, who studied the metaphorical conceptualization of the economy in both the German and the English language, pointed out that two structural patterns of metaphors, **WALKA O RYNEK/STRUGGLE FOR THE MARKET** and **PRZEPŁYW KAPITAŁU/MOVEMENT OF CAPITAL,** play an important role in economic discourse. The struggle is carried on for the division of the territory; its goal is to obtain economic power. In the centre of this struggle remain the wars between antagonistic contractors. An

alternative for the metaphors of conflict become the international agreements, which are to replace the war-like conceptualisation of economic discourse with the metaphors of the cooperation of equal partners, possible to be imagined as a **WOJENNY SOJUSZ/MILITARY ALLIANCE** of allied economic units[15].

In the EU Treaties the option of economic policy is transferred precisely from **struggle** to **cooperation.** The metaphorical approach to economic cooperation is conceptualized as follows: **WSPÓŁPRACA EKONOMICZNA TO SOJUSZ WOJENNY/ECONOMIC COOPERATION IS A MILITARY ALLIANCE**. The Treaties dictate the conditions of the alliance:

> Rynek wewnętrzny obejmuje obszar bez granic wewnętrznych, w którym jest zapewniony swobodny przepływ towarów, osób, usług i kapitału, zgodnie z postanowieniami Traktatów (*Traktat o funkcjonowaniu Unii Europejskiej*, Tytuł I. *Rynek wewnętrzny*, art. 26).
> [The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.] (*Treaty on the Functioning of the European Union*, title I, *Internal Market*, Art. 29).
>
> Produkty pochodzące z państw trzecich są uważane za będące w swobodnym obrocie w jednym z Państw Członkowskich (ib., art. 29).
> [Products coming from a third country shall be considered to be in free circulation in a Member State] (ibid., Art. 29).

The structure of the term **WSPÓŁPRACA EKONOMICZNA/ECONOMIC COOPERATION** is a result of transposing, in the real dimension, the structure of the term **SOJUSZ/ALLIANCE** onto the term **SWOBODA/FREEDOM.** The EU market is treated as a territory, on which an alliance of unified states operates. The Treaties dictate the conditions of freedom understood as alliance, regulating the internal market through establishing necessary means to protect its functioning. Cooperation of equal partners – means to secure mutually advantageous conditions for the development of establishment, and freeing the market – means to cause economic growth. The Member States are unified enemies ('fellow men'), organising themselves with a common goal to effectively fight other competitors ('strangers'). The policy and the actions of the EU, regarding economic security through ensuring the free movement of economic goods, become a subject of legal regulation. Economic goods, which are abstract objects, are conceptualized as concrete objects.

[15] See: O. Jäkel, *Metafory w abstrakcyjnych domenach dyskursu. Kognitywno-lingwistyczna analiza metaforycznych modeli aktywności umysłowej, gospodarki i nauki*, transl. by M. Banaś, B. Drąg, Kraków 2003, pp. 221-224. The author mentions several economic metaphors present in the European languages and the translator translates them into adequate expressions in the Polish language, see selected examples in: *Der Autoleasingmarkt ist unverändert hart umkämpft…* [w dalszym ciągu *toczy sie twarda walka* o rynek leasingu samochodów]; the biggest takeover *battle* in American corporate history [największa batalia o przejęcie władzy w historii amerykańskich przedsiębiorstw].

6. Reification of economic goods

Freedom of establishment as a legal norm-principle is implied by the freedom of distribution of economic goods in consequence of abolishing all discrimination within the common EU market. Therefore, the objects covered by an action or an omission of an action prescribed or prohibited, so exactly the very four freedoms of the EU, are metaphorized. The movement of economic goods within the EU happens as a „swobodny przepływ" (Eng.: "free movement"), which is regulated by legal provisions:

> Zapewnia się swobodę przepływu pracowników wewnątrz Unii (rozdz. 1. Pracownicy, art. 45).
> [Freedom of movement for workers shall be secured within the Union] (Chapter 1, *Workers*, Art. 45).

> Usługami w rozumieniu Traktatów są świadczenia wykonywane zwykle za wynagrodzeniem w zakresie, w jakim nie są objęte postanowieniami o swobodnym przepływie towarów, kapitału i osób (Traktat o funkcjonowaniu UE, rozdz. 3. Usługi, art. 57).
> [Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons]. *Treaty on the Functioning of the European Union*, Chapter 3, *Services*, Art. 57).

In the expressions used in the Polish translation of the provisions of the Treaties, these goods are treated as if they were a kind of a **PŁYN** (Eng.: 'fluid'**)**, protected for the reason of some expected benefit, and their moving about within the territory of the European Union is a **PRZEPŁYW** (Eng.: 'flow')**.** The structural metaphor of **PRZEPŁYW** is here directly lexicalized, and the ontological basis of its pattern is set on the reification of money, goods, services and people. The Polish text of the Treaty allows the creation of such a metaphorical analogy. In the English version, the word *movement* is used, which depicts mobility. Therefore in the case of capital, goods and services these abstract terms are personified in the metaphor of movement.

In the English version of the Treaty, in some exceptional cases, the migration of persons is depicted as '˜flow'; e.g. compare the Polish phrases containing nouns *napływ* and *przepływ* and the English phrases with the noun *inflow* and flow:

> wspólny system tymczasowej ochrony wysiedleńców, na wypadek masowego napływu [a common system of temporary protection for displaced persons in the event of a massive inflow]; w celu zarządzania przepływami osób ubiegających się o azyl [for the purpose of managing inflows of people applying for asylum; znajdzie się w nadzwyczajnej sytuacji charakteryzującej się nagłym napływem obywateli państw trzecich [being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries] (Traktat o funkcjonowaniu UE, art. 78; Treaty on the Functioning of the European Union, Art. 78);
> zapewnienie… skutecznego zarządzania przepływami migracyjnymi [aimed at ensuring, …, the efficient management of migration flows**]** (Traktat o

funkcjonowaniu UE, art. 79, Treaty on the Functioning of the European Union, Art. 79).

Communication about the management of major economic goods as well as the transactions within the area of these goods, happens through conceptual recollection of experiences of the spatial concept of the world. Metaphorical projection is based on the fact that the defined physical phenomena (flow of liquid) in the source domain are treated as if they were non-physical phenomena in the target domain (movement of economic goods), through the projection from the source to the target[16]. Money, goods, services and the people producing the goods, in the Polish text are understood metaphorically, as PŁYN (Eng.: 'liquid') – in the English text it occurs sporadically, and only with reference to people.[17]. The metaphor of flow conceptualizes economic phenomena by means of the limited way of perceiving the world through expressions referring to the change of spatial position[18]. It refers to mapping between conceptual domains, and not to metaphorical expressions, which are only a secondary association. The expression *movement of money, goods, services and people* implies the following metaphor: **DYSTRYBUCJA DÓBR EKONOMICZNYCH TO PRZEPŁYW PIENIĘDZY, TOWARÓW USŁUG I OSÓB /DISTRIBUTION OF ECONOMIC GOODS IS A MOVEMENT OF MONEY, GOODS, SERVICES AND PERSONS**. It is a fragmentary depiction of a schematic structure, and a pre-conceptual image schema is not fully mapped[19]. Activity ascribed to abstract notions, places the focus on progress in the centre of the metaphor, which suggests that the legal regulations of the Treaties establish legal norms guaranteeing the economic development of the EU Member States[20].

An alternative pattern of the metaphor of **PRZEPŁYW** (Eng.: flow; or, in this case also: **MOVEMENT**) is the metaphor of **CIRCULATION** (Pol.: **OBRÓT**). Its carrier is the noun *circulation*, which in the source domain refers to the rotation of an object around its own

[16] The concept of source and target domains was formulated by G. Lakoff in *Women, Fire and Dangerous Things: What Categories Reveal about the Mind*, Chicago-London: Chicago University Press, 1987, p. 276.

[17] O. Jäkel relates the metaphor of the FLOW OF CAPITAL used in economics to the conceptualization of money as a LIQUID, and the financial transactions as FLOWING MOVEMENTS, proceeding to the structural metaphor of FINANCIAL HYDRAULICS, See: O. Jäkel, *Metafory w abstrakcyjnych domenach dyskursu…*, pp. 224-225. In the Polish translation of the EU Treaties the word *przepływ* (Eng. 'flow') has vaster connotations.

[18] On the change of position of an object seen as a structural problem in the cognitive description of metaphor, see: R Grzegorczykowa, *Teoretyczne i metodologiczne problemy semantyki w perspektywie tzw. kognitywnej teorii języka*, in: *Studia semantyczne*, Ed. R. Grzegorczykowa, Z. Zaron, Warszawa, Wyd. UW, 1993, p. 18 (pp. 9-22).

[19] Olaf Jäkel introduces a term 'physiocentrism of metaphor', See: O. Jäkel, *Metafory w abstrakcyjnych domenach dyskursu…*, p. 63.

[20] Horizontal movement in the Polish language is always active; in English it refers to the conceptual division of roles: the grammatical *patiens* is always passive. The active voice is ascribed to abstract terms, whereas the changing economic units remain passive (or perhaps the move by their own power, like the living beings?). In the centre of metaphor remains the focus on progress, See: O. Jäkel, *Metafory w abstrakcyjnych domenach dyskursu…*, footnote 18, p. 246.

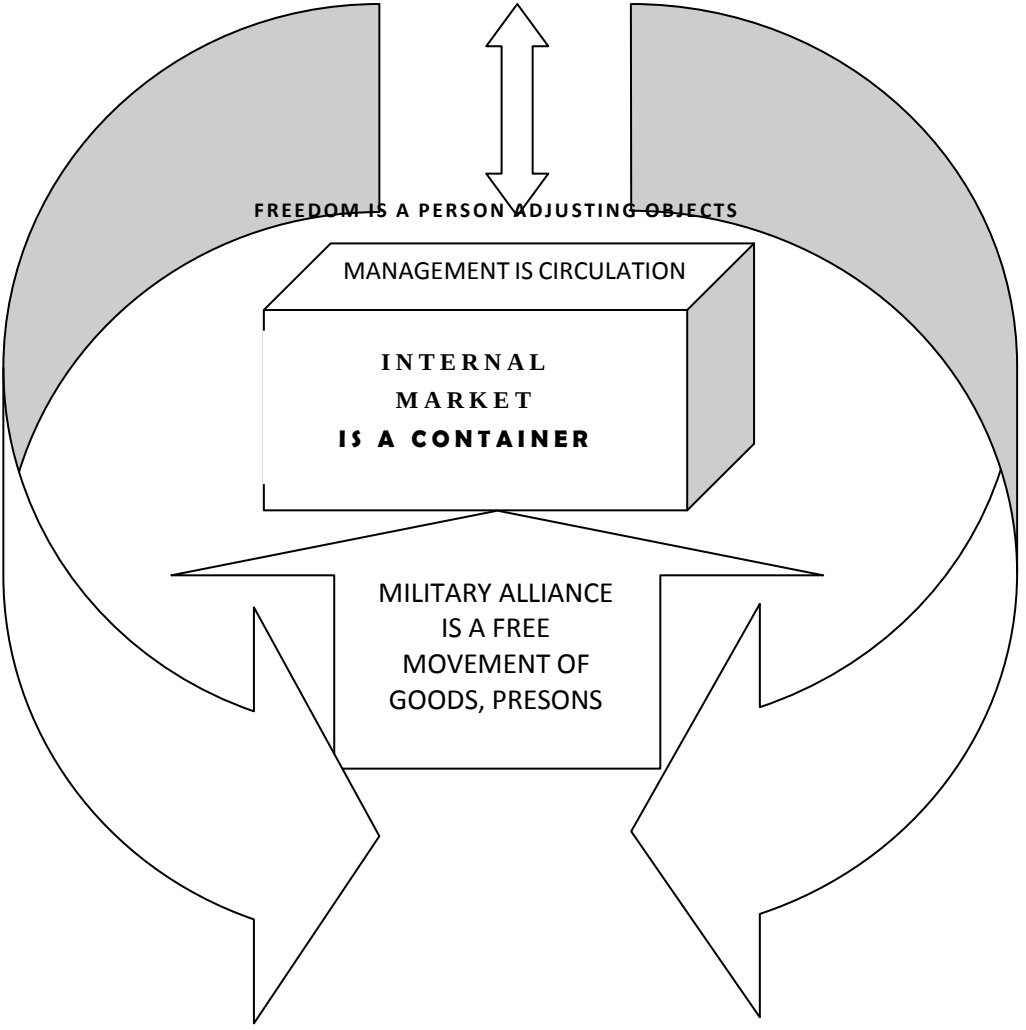
axis, while the economic term, *circulation of goods*, in business, means buying, selling or the exchange of goods:

> Postanowienia artykułu 30 i rozdziału 3 niniejszego tytułu stosują się do produktów pochodzących z Państw Członkowskich oraz do produktów pochodzących z państw trzecich, jeżeli znajdują się one w swobodnym obrocie w Państwach Członkowskich (Tytuł II. Swobodny przepływ towarów, art. 28).
> [The provisions of Article 30 and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States] (Title II, *Free movement of goods*, Art. 28).
> Produkty pochodzące z państw trzecich są uważane za będące w swobodnym obrocie w jednym z Państw Członkowskich [ib. art. 29.].
> [Products coming from a third country shall be considered to be in free circulation in a Member State] (ibid. Art. 29).

The conceptualization of knowledge in this metaphor happens through a cognitive path of movement within the same place.

The carriers of the metaphors of **FLOW/MOVEMENT** and **CIRCULATION** are modal predicates, in the theory of legal norms called legal modalities: *the products are understood as being in free circulation*; in legal texts this means that the free circulation of goods is in force, so the goods ought to be circulated freely. Therefore, the metaphors of **PRZEPŁYW** (Eng.: **FLOW**) and **CIRCULATION** are linked in a common metaphorical pattern with the metaphor of the **MARKET AS A CONTAINER** and a metaphor of **SWOBODA** which, while guaranteeing the **ALLIANCE/SOJUSZ** in economic cooperation, effectively enables the movement of foods and services within the EU economic area without internal frontiers. See graph 2:

Graph 2. Metaphorical pattern of the FREEDOM OF ESTABLISHMENT



Source: the author of this article's own study.

Analysing the metaphors, we can see that the abstract objects and happenings linked to the economy, are conceptualized as real, material objects. The internal market is a container which serves for locating goods, thanks to the freedom of establishment. Within the internal market, the economic cooperation is a military alliance, guaranteeing the distribution of economic goods, as a movement and flow within a container, and the

management of these goods – as circulation. Mutual relationships between the norm-principle of **SWOBODA** as well as the norms regulating the stability of the internal EU market, and the metaphorical everyday expressions in the legal provisions of the *Treaty on the Functioning of the European Union*, are evident; they can be depicted as identical schemas – differing only with their captions. In this way, in the form of a popular metaphor, the EU Treaties establish the economic relationships in Europe, to ensure the welfare of its citizens – just as if in a fairytale with a happy ending.

7. Final remarks

Metaphorical conceptualization of economic phenomena is a typical usage of language, as much in the Polish, as in the English text of the EU Treaties. Here we come across the substitution of words based on similarity, just as in the Aristotle's or Quintilian's theory of metaphor, but these are not just simple entanglements in syntactic contexts, as described by Ivor Armstrong Richards. But rather, it is linking together the objects through a system of associational implications, as metaphor was understood by Max Black. In the metaphorical approach to phenomena, an important role belongs to creating conceptual metaphorical patterns within mental spaces, through merging together and through selective transposing of the initial structure onto a new target structure, thanks to the processes of composition, supplementing and development. Metaphors, omnipresent in the provisions of the Treaties make it easier, as the cognitivists claim, to understand the experience of one kind in the categories of experience of another kind, in the conceptual and metaphorical relationships between the source and the target domain as well as through a clearly defined structure of pre-conceptual image schemas, and partial metaphorical mapping through analogy.

Not including a few exceptions, in both the Polish and the English texts, metaphorization of legal principles and norms within the field of economic policy happens through the means of personification of the abstract nouns, *swoboda* (Pol.) and *freedom* (Eng.). In the *Treaty on the Functioning of the European Union* both the expressions are attributed with the possibility of volitional action. In the metaphorical pattern, the projection of the concept of the world ascribes the way of existence natural for persons to the abstract principle of establishment. The metaphor of **SWOBODA** is attributed with actions named with the nouns, *przepływ* (Pol.) and *movement* (Eng.), which illustrate the freedom in business. The personified norm-principle of swoboda is active within the EU market, employing such varieties of movement as *przepływ* (in the English version: *movement*) and *circulation* of goods and services. In the metaphor of the EU market depicted as a container, functions the freedom of establishment (Pol. swoboda przedsiębiorczości), guaranteeing the free movement of goods, persons, services and capital as well as their management within the framework of economic cooperation in the EU, and also within the framework of economic struggle in the world markets.

While in the legal provisions of the *Treaty on the Functioning of the European Union*, **SWOBODA** is conceptualized as a person, attributed with actions and intentions, in the Preambles to both the *Treaty on the European Union* and the *Treaty on the*

Functioning of the European Union, the principle of freedom (Pol. zasada wolności) is accentuated. The ultimate value is ascribed to freedom, as it is to justice, democracy, human rights and legal state, or as it is to peace. In axiological reference *wolność* (Eng. *liberty*) in the *Treaty on the on the Functioning of European Union* is declared as follows:

> ZDECYDOWANI zachować i umocnić pokój i wolność przez połączenie swych zasobów, oraz wzywając inne narody Europy, które podzielają ich ideały, do połączenia się w wysiłkach (Preambuła Traktatu o funkcjonowaniu UE).
>
> [RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts]. (Preamble of the *Treaty on the Functioning of the European Union*).

Such similarities of the metaphorical transpositions as well as the connotations of pairs of expressions, Pol. *swoboda*, Eng. *freedom* and Pol. *wolność* and Eng. *liberty* in the EU Treaties, can induce a question why in the Preamble of the *Treaty on the European Union*, which formulates the axiological principles of law, the Polish word *wolność*, comes in the place of two English words, *liberty* and *freedom*:

> POTWIERDZAJĄC swe przywiązanie do zasad wolności, demokracji, poszanowania praw człowieka i podstawowych wolności oraz państwa prawnego (Preambuła Traktatu o UE).
> [CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law] (Preamble of the *Treaty on the European Union*)
> ZDECYDOWANI ułatwić swobodny przepływ osób… poprzez ustanowienie przestrzeni wolności, bezpieczeństwa i sprawiedliwości… **(**Preambuła Traktatu o UE).
> RESOLVED to facilitate the free movement of persons… by establishing an area of freedom security and justice…" (Preamble of the *Treaty on the European Union*).

After all, in the main text of the *Treaty on the Functioning of the European Union*, formulating the norms-principles as legal directives, the English word *freedom* unwaveringly corresponds with the Polish word *swoboda*. It seems, that the answer rests in directing the attention to the linguistic awareness of an ordinary Pole, and also perhaps maybe to the cultural tradition of Polish legislation.

It is true that in the contemporary dictionaries of the Polish language can be observed only a vague difference between the meaning of the adjectives *wolny* and *swobodny*, but there is a division between the semantic fields of the nouns *wolność* – as referred to the rights of the citizens in a legal system of a given state – and *swoboda* – as rights and privileges granted to members of a given community allowing them to act accordingly to their own will without being restricted neither by someone nor by

something[21]. Also the tradition of the Polish legislation is such, that *swoboda* and *wolność* occur in word chains, but as words of a different function and specificity of meaning: *wolności* (plural) every man shall enjoy by nature, whereas *swobody* (also plural) are granted by law. Already in the 16th-century Poland "*wolność* included a number of legal *swobody* (plural), such as the right to hold state offices, the right to formulate and better the law, the right to personal inviolability and integrity of assets"[22]. In the 18th century, freedom by birth and political freedom (*wolność polityczna*), as opposed to *niewola* (Eng.: *enslavement, captivity, slavery*), was definitely something completely different than *swoboda*, understood as self-seeking, lack of restrictions or exemption from something (Lat. *immunitas*), as opposed to *swawola* (Eng.: *insubordination, wilfulness*)[23]. The *Constitution of May 3* delimitated the *swobody* (plural) and *wolności* (plural) of the nobility and the *swobody* (plural) and *wolności* (plural) of the peasants[24]. In the Preamble of this *Constitution* there is a statement about the "internal freedom of the nation" (Pol.: „wolność wewnętrzna narodu"), about the "consolidation of freedom" (Pol.: "ugruntowanie wolności"), and about the "freedom of all rituals and religions" (Pol.: "wolność wszelkich obrządków i religii"). The present *Constitution of the Republic of Poland*, 1997, which refers to the *Constitution of May 3*, relates **SWOBODA** in legal provisions to religious beliefs (Art. 25) and establishes that everyone is allowed to swododnie (Eng.: *freely*) leave the territory of the Republic of Poland (Art. 52.3). It grants, among other benefits and right, the freedoms as well as human and civil rights (Pol.: "wolności i prawa człowieka i obywatela", Art. 5), freedom of establishing political parties ("wolność tworzenia partii politycznych", Art. 11), freedom of establishing trade unions ("wolność tworzenia związków zawodowych", Art. 12), freedom of press ("wolność prasy", Art. 15), freedom of profession ("wolność

[21] See: definitions in the *Inny słownik języka polskiego PWN*, Wydawnictwo Naukowe PWN, Warszawa 2000, vol. 2, pp. 723 and 1038.

[22] See: Dorota Pietrzyk-Reeves, *Podstawy wspólnotowego ładu Rzeczypospolitej w XVI wieku a wpływy humanizmu i republikanizmu*, in: *Polska czyli...*, Ed. A. Rzegocki, Ośrodek Myśli Politycznej, Kraków 2011, p. 47. Compare by the same author: the introduction to the edition of works by Łukasz Górnicki, in: Łukasz Górnicki, *Droga do zupełnej wolności & Rozmowa o elekcji, wolności, prawie i obyczajach polskich*, p. XIX. The Author quotes the view of Adolf Pawiński, who stated that the priviledges of Nieszawa, 1454 were the *Magna Carta* of freedoms (*swobód*) for the Polish nobility. See: A. Pawiński, *Sejmiki ziemskie. Początek ich i rozwój aż do ustalenia się udziału posłów ziemskich w ustawodawstwie sejmu walnego*, Warszawa 1895, p. 78.

[23] See: Linde VI 383-384 and Linde V 532-533.

[24] Compare the text of the *Contitution of May 3*: „Stanowi szlacheckiemu wszystkie swobody, wolności, prerogatywy pierwszeństwa zapewniamy, prawa wolności osobistej zachowujemy, źrenicę wolności obywatelskiej szanujemy, szlachtę za najpierwszych obrońców wolności uznajemy, zasadę wolności obywatelskiej zabezpieczamy" (rozdz. II. *Szlachta i ziemianie*) [We most solemnly assure to the noble estate all liberties, freedoms, we do assure the personal security, we desire to preserve the rights to personal liberty, we do respect as the pupil of civil liberty, we recognize the nobility as the foremost defenders of liberty (chapter II, *The Landed Nobility*)]; „jakiebykolwiek swobody, nadania lub umowy dziedzice z włościanami dóbr swoich autentycznie ułożyli" (rozdz. IV. *Chłopi włościanie*) [henceforth whatever liberties, assignments or agreements squires authentically agree to with peasants of their estates (chapter IV, *The Peasants*)].

wykonywania zawodu", Art. 17), freedom of establishment ("wolność podejmowania działalności gospodarczej", Art. 17). Whereas in the Preamble are declared the "civil rights and freedoms" (Pol.: "prawa i wolności obywatela") as well as the "fundamental laws of the state based on the respect for freedom and justice" (Pol.: "prawa podstawowe dla państwa oparte na poszanowaniu wolności i sprawiedliwości"), and also the right to freedom and the duty of solidarity with others (Pol.: "prawo do wolności i obowiązku solidarności innymi").

Therefore, in the Polish text of the EU Treaties, following the Polish tradition, swoboda przepływu osób (Eng.: freedom of movement of persons) has been distinguished within the space of wolność (Eng.: freedom), security and justice, so within the framework of the axiological principle of wolność (Eng.: liberty). In the legal provisions of the *Treaty on the Functioning of the European Union*, **SWOBODA** of the movement of capital, goods, services and people as a norm-principle, in the form of a directive, has been expressed by a noun *swoboda* (Eng.: *freedom*) or by an adjective *swobodny* (Eng.: *free*), depicting the functioning of economy in constant movement as a pattern of a metaphorical system. Whereas the word *wolność* does not occur in metaphorical situations. In the syntactic and situational context in the Polish text there is a clear differentiation, also in the *Preamble*, between ideological declarations of the legislation and the concrete decisions of the Treaties, in spite of the fact, that in the English version the polarization of these meanings is not so strong.

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UNIFICATION OF INFORMATION TECHNOLOGY TERMINOLOGY IN POLISH LAW – SELECTED ISSUES

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Abstract: In the present article the question of systematisation of information technology terminology in Polish Law is presented. The instrument, which is used for this purpose is the Amendment to Statutes in Order to Unify Information technology terminology Act of the 4th of September 2008. With this Act the number of provisions was amended and uniform terms of information origin were introduced - as an "information data carrier", an "electronic document", a "data communications system" and "electronic communications means". However, these concepts are not defined in the Act but referred to the Implementation of IT Solutions to Entities Executing Public Assignments Activity Act of the 17th of February 2005.

The article is divided into three parts. After the short preface in order to introduce the issues discussed, in the main part the author addressed the question of the above mentioned Amendment to Statutes in Order to Unify Information technology terminology Act. The summary is an attempt to make an assessment of regulation in force.

WYBRANE ZAGADNIENIA ZWIĄZANE Z PROBLEMATYKĄ UJEDNOLICENIA TERMINOLOGII INFORMATYCZNEJ NA GRUNCIE PRAWA POLSKIEGO

Abstrakt: W niniejszym artykule przedstawiona została problematyka związana z uporządkowaniem terminologii informatycznej na gruncie prawa polskiego. Narzędziem temu służącym jest *ustawa z dnia 4 września 2008 r. o zmianie ustaw w celu ujednolicenia terminologii informatycznej*. Przy jej pomocy znowelizowano szereg przepisów, wprowadzając do ich treści jednolite pojęcia o rodowodzie informatycznym: „informatyczny nośnik danych", „dokument elektroniczny", „system teleinformatyczny" oraz „środki komunikacji elektronicznej". Ustawa ta jednak nie definiuje ich, ale odsyła dalej - do *ustawy z dnia 17 lutego 2005 r. o informatyzacji działalności podmiotów realizujących zadania publiczne*.

Artykuł składa się z trzech części. Po krótkim wstępie, mającym na celu wprowadzenie do omawianej materii, w części głównej została omówiona problematyka związana ze wskazaną powyżej *ustawą o zmianie ustaw w celu ujednolicenia terminologii informatycznej*. W zakończeniu zawarta została próba oceny obowiązującej regulacji.

Introduction

The transition from the 20th to the 21st century was a time of unprecedented technical progress. Previous evolutionary development - especially in the field of information science – evolved into real revolution. Jurisprudence did not adapt to the example of the occurring phenomena, not to mention the legislator. The consequences are plainly apparent in Polish law, since the hurried creation of many ill-considered regulations has caused a lack of correlation between particular statutes. The effect of this situation is chaos in the conceptual system. Two main problems appeared. Primarily, the terms used by the legislator in statutes were not defined (and if defined their definitions referred only to one, specific act – there were no definitions applying to the entire legal system). Secondly, there were many concepts describing the same referents. It was not clear whether seemingly similar terms described the same concept and, if not, what was the relationship between their objective extents. For instance, an "electronic document" was referred to as an "electronic format" or an "electronic form" and instead of an "information data carrier" an "electronic data carrier", an "electronic information carrier" or a "computer data carrier" was used. Undoubtedly the situation must have changed.

In the Implementation of IT Solutions to Entities Executing Public Assignments Activity Act of the 17th of February 2005 (hereinafter: the Implementation of IT Solutions Act) the legislator announced the commencement of work on unification of the conceptual system. By the provision of its Art. 62, the Council of Ministers was obliged to adjust the terminology used in all statutes regarding implementation of IT solutions to the terms enumerated in Art. 3 items 1 and 2 of the Implementation of IT Solutions Act. The terms were: an "information data carrier" and an "electronic document". Whereas, in Art. 61 section 1 it is stated that when in provisions regarding implementation of IT solutions contained in separate acts are mentioned: an "electronic information carrier", an "electronic data carrier", a "computer information carrier", a "computer data carrier", an "electronic carrier", a "magnetic carrier", an "information carrier" or a "computer carrier", in case of interpretative doubts, all these terms should be understood as an "information data carrier". While there are doubts regarding comprehension of the electronic data concept, data in electronic format, data in electronic form, information data or information in electronic format or information in electronic form, these terms should be understood as indicating an electronic document. However, in section 2 of the provision a reservation was made so that the provision did not apply to "bank laws" (Banking Law Act of the 29th of August 1997, the National Bank of Poland Act of the 29th of August 1997, the Electronic Payment Instruments Law Act of the 12th of September 2002) and this was criticised because it made comprehensive unification of terminology impossible (Martysz 2007:291).

According to the Ordinance of the Prime Minister of Poland of the 20th of June 2002 on the Rules of Legislative Techniques (hereinafter: Rules of Legislative Techniques), any term, which is used in a statute or another normative act should be defined if it is ambiguous or imprecise (and its ambiguity is not desirable), if its meaning is not commonly understood, and if there is a need to introduce a new meaning of a term because of the field of regulated issues (§ 146 of Rules of Legislative Techniques). It is

possible to use such imprecise concepts when it is indispensable to provide flexibility to provisions of a normative act (§ 155 of Rules of Legislative Techniques).

Conceptual incomprehensibility may be caused by employing specialised terms in the text of a statute (professionally specific language) or words borrowed from foreign languages, which is permissible only if there is a lack of comprehensible Polish equivalents (§ 8 section 2 items 1 and 2 of Rules of Legislative Techniques). When the introduction to a legal text of specialist (e.g. information) terminology is necessary, the precision of the text shall be the issue of primary importance, not its clarity (Myślińska 2010, in press).

However, some scholars believe that when the statute is intended for the specialists in the profession, there is no need to explain all technical terms even if a "casual" recipient could not understand them. But it should be assumed that this applies only to statutes of lesser importance (Kokoszczyński 2003:480).

On occasion it happens that the legislator evidently feels compelled and endeavours to find a Polish equivalent of a word. That was the case, for instance, of the term "interface" used in the directive on the protection of computer programs. The Polish legislator regulating the issue of legal protection of computer programs (Chapter 7 of the Copyright and Related Rights Act of the 4th of February 1994) modelled on the mentioned directive. The term "interface" used in the directive was miserably translated as a "connection" (see more: Radoniewicz 2009, Ochrona…, 26). Presently the term has entered to the Polish language as "interfejs" and in that form is used for instance in the Telecommunications Act, which will be discussed later in this article.

The present article focuses on the problem of sistematisation of information technology terminology in Polish law. The author applies the semantic interpretation method. It consists in explaining phrases used in statutory instruments on the basis of meaning which is typical of the Polish common language. The second method is the linguistic analysis of legal text as well as its exegesis used in accordance with a derivative conception, assuming understanding of legal text by attributing certain meaning to phrases which such text contains. Certainly, reference to legal hermeneutics was necessary. Since discussing and interpretating various regulations of the Polish legal order as well as the European Union legal acts have been indispensable, the method of legal comparison has been applied. Whereas, because of the subject examined, it has not been necessary to employ historical interpretation.

Amendment to Statutes in Order to Unify Information Technology Terminology Act

The intention of the legislator to apply methodology to an unclear conceptual system was executed in the Amendment to Statutes in Order to Unify Information technology terminology Act of the 4th of September 2008 (hereinafter: Amendment to Statutes in Order to Unify Information Technology Terminology Act), despite the fact that it contains no definitions of concepts but only references to the Implementation of IT Solutions Act. The wording of Art. 1 of this Act in order to unify information technology terminology introduces to others statutes terms such as an **"information data carrier"**,

an **"electronic document"**, a **"data communications system"** and **"electronic communications means"**, enumerated in Art. 3 items 1-4 of the Implementation of IT Solutions Act. Among them, thirty statutes should be mentioned, for instance: the Civil Procedure Code, the Census and Identity Cards Act, the Penal Code, the Banking Law, the Accounting Act, the Social Insurance Act, the Classified Information Protection Act, the Economic Freedom Act, the Electronic Services Provision Act and the Electronic Payment Instruments Act.

But before one concentrates on the terms mentioned above, it is necessary to explain the meaning and distinguish between two important concepts used by the legislator, which have never been defined; those are the terms „data" and „information" which are often regarded wrongly as one and the same or synonyms.

According to definitions contained in the Recommendation of the Council of the OECD concerning Guidelines for Security of Information Systems (OECD/GD (92) 10, Paris, 1992:

- "data" means a representation of facts, concepts or instructions in a formalised manner suitable for communication, interpretation or processing by human beings or by automatic means;
- "information" is the meaning assigned to data by means of conventions applied to that data.

In consequence it should be assumed that "information" means an "abstract object which in coded form (data), can be stored (on data carrier), transmitted (e.g. by voice, electromagnetic wave, electric current), processed during algorithm performance and used to control (e.g. computer is controlled by program being coded information)" (Kalisiewicz 1997, vol. 3, 54); although "data" are objects on which programs operate (Kalisiewicz 1997, vol 2, 15). According to the above cited it should be presumed that information has no material quality and, furthermore is not an item but is an immaterial "abstract object". Only in the form of data can it be transmitted, processed, and stored. "Data" can have many forms, it can be records: literal, sound, digital etc. Therefore they are information carriers (media). It can be assumed they have material form but are not items. As information is regarded what can be read, decoded from data. That is why it is possible to possess computer data but be unable to use the information, which they contain for instance because of lack of knowledge of the algorithm according to which they are coded (see more: Radoniewicz 2010, in press). Distinction between these concepts is important from the legal point of view. Damaging data does not always mean damaging information; in the same way as data acquisition does not have to be information appropriation (Adamski 2000:39-40). Whereas "computer data", according to Art. 1 of the Council Framework Decision 2005/222/JHA of the 24th of February 2005 on attacks against information systems (hereinafter: Framework Decision 2005/222), are "any representation of facts, information or concepts in a form suitable for processing in an information system, including a program suitable for causing an information system to perform a function" (see more: Radoniewicz 2009, Ujęcie…, 48-53). A similar definition is contained in the Council of Europe Convention on Cybercrime no. 185 of the 23rd of November 2001 (hereinafter: Cybercrime Convention), which was signed but not ratified by Poland. According to that document "computer data" means any representation of

facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function" (Art. 1 b).

Computer data are carriers or information media, facts or ideas, which are readable only in the form of computer data for an information system. For this purpose it must be "coded" in the binary language – changed into a "0" and "1" sequence and then recorded on a carrier (e.g. CD, DVD or hard disc) or transmitted by a network. According to the definition contained in the Framework Decision and the Cybercrime Convention, the programs causing an information system to perform a function may also be regarded as computer data. Computer data have material form but are not items. Whereas as items such as hard discs, floppy discs, CDs and DVDs should be regarded as data carriers.

After that introduction, it is possible to pass on to analysis of the issues, which are the main subject of the article. In Art. 3 item 1 of the Implementation of IT Solutions Act **"information data carrier"** is defined as a material or a device used to recording, storing and reading data being in digital form. Within the objective scope of this concept are all data carriers "from information point of view" i.e. floppy discs, hard discs (magnetic carriers), CDs, DVDs (optical discs), semiconductor memories (such as RAM – Random Access Memory, ROM – Read Only Memory, or mounted in printers, network interface cards), flash memories etc.

In passing it is worth mentioning that this form of the provision is from the last amendment (the Amendment to the Statute on Implementation of IT Solutions to Entities Executing Public Assignments Activity and Some Other Acts of the 12th of February 2010; hereinafter: the 2010 Act on Amendment to the Statute on Implementation of IT Solutions). Since in the original text there was an apparent mistake in the expression of "material or device used for recording or reading data in digital or analogue form". The expression "analogue form", by which can be meant even a written sheet of paper, used in the provision was at once roundly criticised by scholars of jurisprudence (Szpor 2007, 42; Wojsyk 2007:184-185).

The present wording of the definition is similar to the one previously expressed by a jurisprudence doctrine (Gołaczyński 2004:3; Rudkowska-Ząbczyk 2006:33-34). At the same time it is so understandable that there is no doubt regarding its objective extent, which could not be said for instance in the case of the term "computer data carrier" used in the Penal Code (see: Adamski 2000:67; Kardas 2000:89).

Focusing on the question of **"electronic document"**, it is essential to discuss the meaning of this term in the language of information science. The author thinks that it may be presumed that an electronic document means information recorded on a file (as computer data, that is in a binary form), not comprehensible to a human but readable for a computer. For a human it only becomes understandable after being decoded and changed into the form enabling sensual perception, that is for instance to the form of a sound, a text or a picture. Consequently, in an "electronic document" two forms can be distinguished: byte – readable for a computer and interface – in the form ready for visible perception by a human.

The specific feature of an "electronic document" is that it is not permanently connected with the carrier on which it was recorded, namely with a hard disc or CD.

Consequently it is possible to change its contents without changing the carrier structure, by deleting or modifying a file.

In the structure of an electronic document two elements can be identified – an "actual document" (understandable for a human) and so called metadata ("data about data" which are readable for a computer but not for a human – to make them visible to a human additional steps are necessary) which contain information regarding a specific electronic document such as authors (or co-authors) or a person (persons) responsible for its contents, document size (number of characters, size in bytes etc.), a date and time of document creation (including the date of the last modification), document status (working or final version), the document format, the purpose of its creation, document language, connection with other documents, information about copyrights etc. (Abramowicz et al. 2008:30-37; Schmidt 2008:50-58). Thus metadata facilitates organisation, storage and location of electronic documents. A set of metadata should be independent of documents (so that their minimal set could be common for all types of documents). That enables automation of documents processing independently of their contents. In effect, it is necessary to determine this minimal set of metadata and the way to connect this set with a source document. One of the most popular metadata standards is the Dublin Core Metadata Element Set (DCMES), on which are based the British, Australian, New Zealand, Danish and Polish solutions and also those of other countries (Abramowicz et al. 2008:35-36; Majak 2007:37-40). In the case of electronic documents used by public administration entities the question is regulated by the Ordinance of the Minister of Internal Affairs of the 30th of October 2006 on the Indispensable Elements of an Electronic Document Structure.

In 1996 UNCITRAL (The United Nations Commission on International Trade Law – the commission, which was established by the United Nations General Assembly in 1966 to promote the progressive harmonisation and unification of international commercial law) passed the Model Law on Electronic Commerce. In the document were formulated general rules of using modern electronic communications methods and storage of data (including: Electronic Data Interchange and usage of electronic mail). It did not include a definition of the electronic document. However, in Art. 2 (a) "Data message" was defined as "information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy". The same definition was used in the Model Law on Electronic Signatures, the Convention on the Use of Electronic Communications and in the document Promoting Confidence in Electronic Commerce.

In Regulation No. 1049/2001 regarding public access to European Parliament, Council and Commission documents, a very wide definition of document was expressed and its objective scope included also an "electronic document". According to the provision of Art. 3 as a document is regarded "any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility". In that definition the contents of a document are highlighted, not the form (Janowski 2008:172; Kotecka 2007:27). Consequently the way

in which it is recorded is not important; there is no difference between a record on paper and on information data carrier.

In Art. 3 section 2 of the Commission Decision amending its Rules of Procedure an "electronic document" was defined as "a data-set input or stored on any type of medium by a computer system or a similar mechanism, which can be read or displayed by a person or by such a system or mechanism, and any display or retrieval of such data in printed or other form". It should be taken into consideration that in the above mentioned definition it is clearly indicated that as an electronic document should be regarded also "any display or retrieval of data in printed or other form".

The concept of electronic document was determined in the provision of Art. 3 item 2 of the Implementation of IT Solutions Act. According to its contents as an electronic document is meant a data set being a separate integrity organised in a determined internal structure and recorded on an information data carrier.

According to the above definitions, an electronic document must have three attributes. First of all, it must be a data set, which is a separate integrity. Secondly, a data set must have a determined, organised structure. Thirdly, it has to be recorded on an information data carrier. As stated by Adamski and Kutyłowski before that definition was expressed the term had been regarded in an "intuitive manner". For that reason, taking into consideration the importance of legal certainty, the interest and action of the legislator was desirable. On the other hand, the concept of a document is not defined and the category of an "electronic document" is very broad and is simultaneously evolving with technical progress. Therefore, the formulation of an excessively specific definition is not desirable. Instead, clarification of the exact objective extent of the term should be actually left to judicial doctrine and decisions (Adamski and Kutyłowski 2006:41).

The definition was rightly criticised on the basis of legal doctrine, which indicated its two fundamental weaknesses. Firstly, according to the definition, an electronic document has to be recorded on an information data carrier. Consequently, when transmitted by a network it actually cannot be regarded as a document any more (Janowski 2008:175; Kotecka 2007:30). Secondly, the requirement of a "determined internal structure" is not justified since an internal structure of a document is fixed by the organised and integrated data that it contains. The condition of a "determined internal structure" implies that the structure is not connected with data any more (with the semantic context of the term) but with the technical and formal manner of their organisation in a document. As a result, it means that a record in electronic form cannot be regarded as an "electronic document" until its internal structure is defined. Simultaneously, the Act does not indicate which entity and according to what procedure that should be fulfilled. It may cause limitation of the term "electronic document" to the meaning of normalised formats and electronic forms. (Adamski and Kutyłowski 2006:41; Janowski 2008:176; Kotecka 2007:30). Scholars concentrate on the fact that according to the definition, to sign an "electronic document" an electronic signature is not required, nor is any protection regarding its authenticity and integrity. (Janowski 2008:175; Kotecka 2007:31).

During the work on the Implementation of IT Solutions Act it was planned that it would include the definition of **"data communications system"**. Nevertheless, the idea was rejected and in the provision of Art. 3 item 3 of the Act only a reference was made to the definition contained in Art. 2 item 3 of another statute, the Electronic Services Provision Act of the 18th of July 2002 (hereinafter: Electronic Services Provision Act). As a consequence, this became a definition applicable to the whole of the legal system (Litwiński 2007:192). This solution was criticised in the legal doctrine (Bernarczyk 2005:381-382; Szpor 2007:44; Gołaczyński 2009:38) for two reasons. Primarily, the provision of Art. 2 item 3 referred to the Telecommunications Act of 2000, which was contrary to the norm of § 157 of rules of legislative techniques, which forbade reference to provisions containing further references. The unacceptability of such a method for creating definitions was highlighted by juridical decisions and the doctrine (see more for instance in Myślińska 2010, in press; and literature indicated there).

Secondly, the Telecommunications Act of 2000 is not in force. It was annulled with the Telecommunications Act of 2004. With the Amendment of the Statute on Implementation of IT Solutions Act of 2010, the definition of data communications system (referring to the Telecommunications Act in force) was inserted to the Implementation of IT Solutions Act and thus way it became a definition applying to the entire legal system. Since it is basically identical with the definition established in the Electronic Services Provision Act (the only difference is that the latter still refers to the Telecommunications Act of 2000), most of the above mentioned statements of scholars regarding the definition included in the Electronic Services Provision Act concern both of them (and when the legislator corrects his error and amends the Electronic Services Provision Act introducing to its provision of Art. 2 item 3 the reference to the Telecommunications Act of 2004 in force, there will be only one definition applying to the entire legal system, embodied in two legal statutes). Therefore a data communications system is a group of cooperating computer devices and software providing data processing, storage as well as transmission and reception through telecommunications networks by means of the final device appropriate for the network in question in the meaning of Telecommunications Act of the 16th of July 2004.

In the definition of a data communications system there are two references to the Telecommunications Act regarding the meaning of two concepts: a "telecommunications network" and "telecommunications terminal equipment". According to the definition included in Art. 2 item 35 of the Act, a "telecommunications network – means transmission systems and switching or routing equipment and other resources that allow the sending, receipt or transmission of signals by wire, by radio waves, by optical waves or other means using electromagnetic energy, irrespectively of their type" (cited from: Piątek et al. 2005, 61). The definition of "telecommunications network" is an implementation of the definition of "electronic communication network" contained in Art. 2 (a) of the Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services [Framework Directive] (hereinafter: Framework Directive). According to this, as an "electronic communication network" is regarded "transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by

other electromagnetic means, including satellite networks, fixed (circuit - and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed" (this definition was modified as a consequence of the last amendment of the framework directive - see Art. 1 of the Directive 2009/140/WE). Many member states used definitions from the Framework Directive when implementing provisions of so called electronic communications directives (Directive 2002/19/EC on access to, and interconnection of electronic communications networks and associated facilities [Access Directive], Directive 2002/20/EC on the authorisation of electronic communications networks and services [Authorisation Directive], Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services [Framework Directive], Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services [Universal Service Directive], Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector [Directive on privacy and electronic communications], Directive 2002/77/EC on competition in the markets for electronic communications networks and services and Commission Directive 2002/77/EC on competition in the markets for electronic communications networks and services). That has been for instance the case in Germany regarding the Telecommunications Act (Telekommunikationsgesetz) of the 22nd of June 2004. The Polish legislator reacted differently, creating his own definition, which differs from the prototype of the Framework Directive. In the prototype in question there is a reservation "where applicable" placed before the expression "switching and routing equipment and other resources". This means that it is not always necessary to use these devices (Krasucki 2008, 64). It makes the definition of Framework Directive broader than the Polish equivalent in which there is no such reservation.

As previously mentioned, in the Art. 3 item 3 defining data communications system there is another reference - to the contents of Art. 2 item 43 of the Telecommunications Act in which telecommunications terminal equipment is defined as "any telecommunication product which is intended to be connected directly or indirectly to network termination points" (cited from: Piątek et al. 2005:63). In the latter case, between terminal equipment (for instance a network interface card, telephone, TV set) and a network termination point there is another device intermediating in signal transmission, for example: a modem, modem DSL (Digital Subscriber Line), or decoder. Whereas, according to Art. 2 item 52 of the Telecommunications Act, the network termination means a physical point at which a subscriber is provided with an access to a public telecommunications network (a public telecommunications network used mainly for the provision of publicly available telecommunications services, that is services available to the general public: Art. 2 item 29 in connection with Art. 2 item 31), on condition that, in the case of networks involving switching or routing, the network termination is identified with a specific network address, which may be linked to a number or a name of a subscriber.

The expression "mainly for the provision of publicly available telecommunications services" used by the legislator is crucial for the understanding of the above cited definition and enables solution of the problem of networks providing services for various groups of users („general public" users as well as others, for instance belonging to an organisation of a service provider). It is evident then that as a non-public network should be regarded only a network used for internal purposes or used for providing non-public telecommunications services (Piątek 2005:86-87).

Monarcha-Matlak rightly points to a lack of precision in the legislation having in mind the usage of the term "information device" in the definition of data communications system although it means only a device for data processing and storing, not transmitting. Furthermore the other part of the definition shows that data transmission was also intended by the legislator. In that case the term "electronic (or data communications) device" should have been used as it was in the definition of "electronic communications means" embodied in the same act or, for instance, in the definition of service provided electronically which is a part of the Protection of Some Services Provided Electronically Based on or Consisting of Conditional Access Act of the 5th of July 2002 (Monarcha-Matlak 2008:66-67; see also: Konarski 2004:63).

It is significant that the definition of data communications system is also embodied in Art. 2 item 8 of the Classified Information Protection Act of the 22nd of January 1999. According to this Act as a data communications system should be regarded "a system composed of devices, tools, rules of conduct and procedures kept by specialised personnel in the manner ensuring creation, storage, processing and transfer of information". X. Konarski, comparing the above-cited definition with the definition from the Electronic Services Provision Act stated that in the latter omitted the issue of rules of conduct and procedures kept by staff, which is essential for a technical meaning of the term "system" and their omission is a relevant error (Konarski 2004:61-62).

The legislator defining the term of "data communications system" does not address the concept of „information system" (present in other legal acts, inter alia in the Penal Code), which is justly interpreted as a fault (Szpor 2008:43). The definition of the term can be found in the Framework Decision 2005/222, according to which it means "any device or group of inter-connected or related devices, one or more of which, pursuant to a program, performs automatic processing of computer data, and also computer data stored, processed, retrieved or transmitted by them for the purposes of their operation, use, protection and maintenance". Similarly, it is included to the Convention on Cybercrime, in which instead of "information system" the term "computer system" is applied by which is meant "any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data". Consequently, it should be assumed that an information system is utilised for data processing and a telecommunication system – as was stated before – for their transmission. It means that a data communications system is a structure fulfilling both tasks, that is, such a structure by which computer data is processed and transmitted by means of a telecommunications network. Especially, as a structure of this kind should be regarded an information system connected to a telecommunications network with the aid of which data are transmitted. A good example might be all records organised in an

information system, within which operations on stored data are carried out. When the data are made accessible for the system administered by another entity, the system starts to be a data communications system (Konarski 2004:62-63).

In Polish law the concept of "information system" was defined in Art. 7 item 2a of the Personal Data Protection Act of the 29th of August 1997, as "a group of cooperating devices, programs, procedures regarding processing information and software tools used for data processing".

In Polish statutes (among others in the Penal Code) there is one more term related to the data processing issue – a data communications network - which is, as it should be presumed, a type of telecommunications network. The structure of this type of network came into existence in connection with the convergence of extensive computer networks (as LAN – a local area network, WAN – a wide area network, MAN – a metropolitan area network) and telecommunications networks (Konarski 2004:64; Urbanek 1999:3-5). In Polish Law the term was defined in the Classified Information Protection Act of the 22nd of January 1999, as an organisational and technical construction of two data communications systems (Art. 2 item. 9).

The provision of Art. 3 item 4 of the Implementation of IT Solutions Act, regarding the question of the meaning of **"electronic communications means"** refers to Art. 2 item 5 of the Electronic Services Provision Act. According to that article, as electronic communications means should be considered technical solutions, including data communications devices and cooperating with them software tools, which enable individual communications at a distance through data transmission between data communications systems, especially as such a means should be regarded electronic mail. The definition refers to the contents of the Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), in which the expression "electronic mail or equivalent individual communications" was used. The Polish definition has a functional purpose – it applies to the function of devices enabling individual communications at a distance, by means of data transmission between data communications systems. The advantage of such a set phrase is that it does not refer only to existing solutions but it covers also electronic communications means which will be created in the future (Gołaczyński 2009:45; Litwiński 2007:193). In the provision, as an example of a communications means, electronic mail is indicated. As similar means can also be regarded other solutions which make use of the Internet and are utilised for communication at a distance through data transmission, for instance discussion groups and IRC. In the subject area of the term there is also communication by mobile phones (including SMS and MMS) and beepers (Gołaczyński 2009, 45; Konarski 2004, 74). There are doubts whether Instant Messengers (IM), as AIM, Skype or Miranda can be classified as means of electronic communications (Konarski 2004:74). Though, in my opinion there is no obstacle to such qualification. Therefore, certainly, similarly web pages cannot be regarded as means, since they do not enable individual communications (Litwiński 2007:193). Regarding the issue, it is noteworthy, that in the ruling of the 5th of December 2006 the Provincial Administrative Court in Warsaw rightly declared that service of a document via fax cannot be regarded as service of a document through

electronic communications means, as stated by Art. 391 § 1 of the Administrative Proceedings Code, regarding electronic services provision. It was indicated that a fax is not an information device because, as such devices, are meant computers equipped with memory enabling data reading and writing.

In the field of doctrinal theory a sharp distinction is highlighted, which is made by the legislator, between "electronic communications means" and "information data carriers". The first is used for communication at a distance, the second one - only for data recording (Gołaczyński 2009:45; Monarcha-Matlak 2008:65).

Concluding remarks

In author's opinion, despite activity undertaken by the Polish legislator to unify information technology terminology, some shortcomings in that sphere are still encountered. Certainly, the Amendment to Statutes in Order to Unify Information technology terminology Act is an important improvement. The Amendment has introduced to a series of laws unified information terms (replacing the previous ones).The definitions of such unified terms are found in the Implementation of IT Solutions Act. Indeed it is exactly this which arouses certain controversies. One of them is the definition of electronic document which has serious faults, as was indicated. Simultaneously, it should be mentioned that not all important information terms were defined and that is something which is perceived to be indispensable, especially in the cases of "computer data" and "information system" (Kunicka-Michalska 2005:527; Marek 2007:484; Radoniewicz 2010, in press). But it must be admitted that the legislator, although not immediately, has taken scholastic opinions into consideration. As an example the Amendment of the Statute on Implementation of IT Solutions Act of 2010 may be recalled, the result of which was to apply the definition of data communications system directly to the Implementation of IT Solutions Act and to modify the definition of "information data carrier".

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Reviews

Artur Dariusz KUBACKI, ***Tłumaczenie poświadczone. Status, kształcenie, warsztat i odpowiedzialność tłumacza przysięgłego*** *[Certified translation. The status, education and training, fields of activity and liability of sworn translators]*. Warszawa: Wolters Kluwer Business, 2012, ISBN 978-83-264-3820-2, 369 pages.

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The book is composed of six chapters in which the author focuses on aspects of the profession of sworn translators and interpreters (the latter also called in pertinent literature court interpreters), which will be referred to as sworn translators in this review for the purpose of convenience. It should be stressed, however, that in Poland sworn translators are rendering translations of written texts and interpret oral texts in legal settings as the Polish legislator has not enabled to choose whether one wants to be a translator or interpreter.

The first chapter is devoted to the historical development of the profession of sworn translators. In Poland the history of the profession starts in 1920 with the Act of 16 July 1920 amending the Act on Penal Procedure for the Austrian Annexation (Polish Journal of Laws no. 67, item 453) and the Regulation of the Minister of Justice in consultation with the Minister of Treasury of 7 August 1920 on compensation for witnesses, experts and translators in criminal proceedings (Polish Journal of Laws no. 75, item 515 as amended). The first laws on the subject-matter regulated mainly the financial aspects of the profession. In 1928, however, the Regulation of the Minister of Justice of 24 December 1928 on sworn translators (Polish Journal of laws no. 104, item 943) was enacted which specified the appointment of sworn translators, their qualifications, education, the oath and practical aspects of practising the profession. The first list of sworn translators was published in Poland in 1930. Till 1968 the Minister of Justice appointed sworn translators. Later on the President of the provincial court had the authority to appoint them. The Regulation of 19 August 1968 (Polish Journal of Laws no. 35, item 244) specified for the first time how the graduates of non-philological studies could become translators (an examination). The next milestone was the Regulation of the Minister of Justice of 8 June 1987 on expert witnesses and sworn translators (Polish Journal of Laws no. 18, item 112 as amended) which was in force till 2004. The

Regulation allowed only graduates of philological studies to become sworn translators. They had to be Polish citizens and at least 25 years old. The examination was no longer required. It should be stressed, however, that some courts organized an internal exam to check the competences of candidates, whereas in some other court districts there were no mechanisms of verifying applicants' abilities and skills at all. The situation changed almost two decades later when the Act of 25 November 2004 on the profession of sworn translators was enacted (Polish Journal of Laws no. 273, item 2702 as amended). The centralized national examination has been introduced and the National Examination Commission has been established. From now on the Commission is the organ authorized to confer upon translators who passed the examination the status of sworn translators. Since 1 July 2011, it is no longer required to be a graduate of philological studies which means that the title of *magister* of any studies suffices to take the examination. According to the list of sworn translators of 9 August 2011 there were 9294 sworn translators in Poland for 42 languages. The analysis of the historical development of the profession in Poland is very detailed and allows for the observance of main trends and changes introduced within almost a century in the wake of evolving political, economic and social spheres in Poland and Europe and the growing awareness of the importance and impact of the job on the situation of foreign participants of communication in legal settings.

The second chapter deals with the legal status of certified and sworn translators and their counterparts in Europe. The author conducts his analysis of the institution in question comparing ten aspects of the profession, that is to say: (i) the title held by the translator/interpreter, (ii) the division into translators and interpreters, if applicable, (iii) the institution granting the license, (iv) legal status, (v) entry into a list of sworn translators and court interpreters, (vi) ethics and qualification codes binding them, (vii) compensation, (ix) professional organizations for sworn translators and court interpreters, and finally (x) other aspects of the profession. As far as Nordic countries are concerned, the author has carried out research into the profession of sworn translators and court interpreters in Denmark, Finland, Iceland, Norway and Sweden. In all those countries, similarly as in Poland, candidates must pass an examination in order to work as sworn translators and court interpreters. The situation looks differently in Baltic countries (Estonia, Latvia and Lithuania). In Estonia there are three categories of translators: (i) trusted translators, (ii) independent translators and (iii) permanent court interpreters. They need to take an examination, in contrast to Lithuanian and Latvian translators. The next group includes other North European countries such as: (i) Ireland, where there is no national examination but in order to become a member of the Irish Translators' and Interpreters' Association one needs to take an internal examination, (ii) Great Britain and Northern Ireland where one may encounter court, and community police translators and interpreters. Similarly as in Ireland, there are no national standards for appointing them, but in order to belong to a professional organization, one needs to have his/her qualifications and skills verified which ensures a high standard of provided services. Next, the author describes the profession in Belgium, the Netherlands, Luxemburg, Austria, France, Liechtenstein and Germany. It should be born in mind that the situation in Germany is very complicated due to the autonomy of Lands in that respect. Finally, the status of sworn translators and court interpreters in Switzerland, Albania, Belarus,

Bulgaria, the Czech Republic, Russia, Romania, Slovakia, Slovenia, Hungary, Greece, Cyprus, Spain, Malta, Portugal, Italy and Poland is presented. The information on the status of the profession in 34 countries is very well organized and the ten distinguished core-areas enable the reader to compare the situation in this respect in different territories. It also helps distinguish the countries with the most rigid norms and standards achieved by the examination process or verification of the quality of rendered translations by various bodies such as professional organizations.

The author focuses on practical aspects of the sworn translator's work in the third chapter of his monograph. The definition of the term is suggested on the basis of approaches present in pertinent literature and the legal status. The author turns attention to the fact that onomasiological difficulties connected with finding a name for the profession stem from a wide variety of settings in which the translator's/interpreter's services are called for, e.g. in the notarial office we may talk about notarial translation/interpretation, in the court – court interpreting, etc. There is also community interpreting which is a very fast developing sub-type of interpreting. Apart from that, as already mentioned at least in Poland the profession encompasses both translation and interpreting. Next, the features of certified translations are discussed. In the absence of an official regulation on executing certified translations, the author suggests twenty rules, out of which 15 regulate formal aspects of producing such translations and 5 are pertaining to the content. The first group focuses on elements of certified translations, information about the translation direction, numbering translation pages, joining translations with source texts, sealing and signing translations, types of seals which may be used, methods of certification, dealing with graphical elements of source texts, translator's notes, the entirety of translation and possibilities of translating just a fragment of the source text, description of the features of the source text, and finally archiving registers of certified translations and translations. The second group of rules specifies the principles of translating proper names, school certificates, diplomas and alike documents, abbreviations and acronyms, dates and numbers, and dealing with errors and mistakes spotted in the source text. The author illustrates the application of the rules by presenting a model of certified translation and takes a stance on translation orientation strategies in the case of translating into languages spoken in more than one country where terminological equivalents may diverge depending of the legal culture of territories in question. Furthermore, the deontology of the sworn translator's profession is touched upon including the importance of the Code of Sworn Translators prepared by the Polish Society of Sworn and Specialized Translators TEPIS as well as the Charter of the Polish Association of Translators and Interpreters (STP). A separate sub-chapter has been devoted to court interpreting. Moreover, the problem of providing terminological equivalence is mentioned not only from historical perspective but also 10 typical techniques of providing equivalents in legal translation are listed and illustrated with Polish, German and English examples. Finally, Kubacki focuses his attention on the importance of the organization of the translator's place of work and activities starting from technical aspects and ending with methodological ones.

The fourth chapter elaborates on the national examination for candidates for sworn translators in the Republic of Poland. First, the National Examination Commission is presented. The Commission works in the panel of 11 specialists out of which 4 are

academics employed at philological studies at Universities who are delegated by the minister of education, 3 persons are appointed by two already mentioned organizations for translators and interpreters, 3 persons are appointed by the minister of justice, and one person is delegated by the minister of employment. It is stressed here that the Commission acts independently and autonomously and therefore is not bound by decisions of the minister of justice. The President of the Commission may appoint one or two consultants for the purpose of organizing an examination. The term of office lasts four years. The examinations are conducted by 3-5 examiners. The examination is composed of two parts. The first one is written translation of two documents into a foreign language and two into Polish. This part lasts 4 hours. The oral exam, in turn includes consecutive interpreting of two texts from Polish into a foreign language, and two written texts from a foreign language into Polish (a vista or at sight interpreting). The author elaborates on the criteria of assessment of the examination papers and recordings and provides a list of most typical texts form different branches of law which may be prepared for the examination. After presenting different classifications of translation problems, the author also provides a comprehensive analysis of typical errors and mistakes made by candidates taking the exam. They are divided into those made in the written and in the oral part of the examination. The first group includes: (i) substantial ones, (ii) terminological ones, (iii) language-related ones, (iv) stylistic ones, and finally (v) formal ones. The second group includes: (i) change of the meaning and informative content of the message, (ii) terminological and phraseological (collocation) problems resulting from the nature of the sub-LSP, (iii) language-related problems, (iv) stylistic problems, (v) problems with phonetics and intonation, and (vi) articulation and fluency-related problems. The conclusions concerning the number of failing candidates are drawn and recommendations on the introduction of some changes in the examination format and assessment criteria are proposed as well. The author carried out a survey (composed of 9 questions) among candidates taking the examination and on the basis of the results obtained in it prepared a profile of a typical candidate. Having obtained the access to data of sworn translators, he also prepared a profile of a sworn translator. The chapter is illustrated with tables with (i) statistical data presenting the activities of the National Examination Commission and (ii) selected problems spotted in examination works of candidates wanting to become Polish-German sworn translators. The information on the examination and typical problems of candidates taking it, definitely make the book unique on the Polish market. The other publications, which have been published so far, usually focus on the presentation of previous examination texts as well as presentation of the structure of the examination and general assessment criteria. They also include commentaries concerning the failure rate and underlying causes, but do not include examples of errors and mistakes. Apart from that the book by Kubacki, is the first one which presents the results of well-document research carried out by the author, rather than generalizations and speculations presented by some other authors.

In the fifth chapter the qualifications of sworn translators are elaborated on. The first sub-chapter is devoted to the profiles of training and educating translators described in pertinent literature. Next, the problem of training and educating candidates for sworn translators in Poland and abroad and curricula of selected Polish centers providing such

trainings are presented and compared. The author suggests a curriculum developed on the basis of his experience as a sworn translator and a member of the National Examination Commission. In the last sub-chapter the issue of re-fresher courses and in-service training is touched upon. It is worth remembering that the Polish Code of Sworn Translators provides a paragraph on the obligation in this respect.

Finally, in the last chapter the liability of sworn translators in Poland is discussed. In Poland there is the Commission of Professional Liability (Komisja Odpowiedzialności Zawodowej) established to settle disputes between sworn translators and their clients concerning the quality of rendered translations as well ethical aspects of practising the profession. The liability of sworn translators is regulated among others by the already mentioned Act of 25 November 2004 on the profession of sworn translators as well as the Polish Civil Code and other laws. The typical transgressions and offences heard by the Commission are referred to and a juxtaposition of the number of cases, the complaining parties, penalties and appeals from 2005 till 2010 is provided.

The author also draws conclusions concerning the status, training, education and liability of sworn translators in Poland.

The book is well-structured and very readable. However, the size of print is too small and eye-tiring. The title properly reflects the content of the monograph. It is illustrated with numerous examples and tables. The data presented in it is of practical character. It should be stressed here that the meticulously gathered data on the profession in European countries as well as the operation of the National Examination Commission and the Commission of Professional Liability definitely prove that the in-depth and thorough research was carried out by the author. The publication fills in the gap on the Polish market and will be of great help to candidates for sworn translators and institutions organizing training as well as offering university education in the field of translation, and especially legal translation. Finally, the comments and suggestions on the modification of the exam and assessment criteria should be carefully considered by the competent authorities. Moreover, at the end of the book there is an extensive bibliography of books and articles on translation and legal translation. Overall, the book is highly recommended reading.

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