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REVIEWS

Susan Blackwell[1]

WHY FORENSIC LINGUISTICS NEEDS CORPUS LINGUISTICS

Abstract: While corpus linguistics has existed since the 1960s, Forensic Linguistics is a relatively new discipline, involving both linguistic evidence in court and wider applications of linguistics to legal texts and discourses. Computer corpora of natural language may be marked up in various ways, grammatically tagged, parsed, lemmatised and analysed with concordance, collocation and other specialist software. In the relatively short history of forensic linguistics, its exponents have often employed corpus linguistics techniques in order to throw light on questions like disputed authorship. However, the corpora employed have been general ones such as the Cobuild "Bank of English", rather than purpose-built databases of language used in legal contexts, with the result that such research sometimes raises more questions than it answers. Conversely, corpus linguists have from time to time incorporated data from legal settings into their collections; but they have tended to use these resources as the basis for sociolinguistic or historical linguistic research rather than as a means of exploring topics in language and law.

This paper makes a plea for these two fields, which are both already cross-disciplinary, to join forces and create a purpose-built corpus for forensic linguistics. It illustrates how corpus techniques may be successfully applied to questions of disputed authorship, citing both hypothetical and actual examples. It ends with an outline of the kinds of texts which a proposed new corpus for Forensic Linguistics should contain and the tools required to exploit it effectively.

Key words: corpus, linguistic, forensic linguistic

1 Some definitions
1.1 Forensic linguistics

The term "Forensic Linguistics" was probably first coined by Svartvik (1968), but acquired currency in the 1990s with a series of seminars and the establishment of the International Association for Forensic Linguists (IAFL)

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and the journal *Forensic Linguistics: the Journal of Speech, Language and the Law²*. The term can be said to have both a narrow and a broad definition. The former covers the use of linguistic evidence in court, concerning for example disputed confessions (Coulthard 1994), trademark disputes (Okawara, 2006 and forthcoming), threats and attempts at extortion (Shuy 1993), taped conversations allegedly offering bribes (Shuy 2005), suicide notes (Shapero, forthcoming), disputed authorship and alleged plagiarism (Kniffka 2000). The broader definition covers all areas of overlap between language and law, including courtroom interpreting (Berk-Seligson 1990), courtroom discourse (Solan 1993; Tiersma 1999), linguistic minorities in the legal process (Eades 1994) and children in the legal process (Walker 1999). These lists are by no means exhaustive but serve to give a flavour of the wide range of research currently being undertaken in Forensic Linguistics (henceforth FL).

1.2 Corpus Linguistics

The most concise definition available is probably that of Renouf: "The term 'corpus' will be used to refer to a collection of texts, of the written or spoken word, which is stored and processed on computer for the purposes of linguistic research." (Renouf, 1987:1)
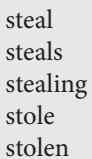
The first corpora in this sense were the Brown corpus (Kucera and Francis 1967) and the Lancaster-Oslo-Bergen (LOB) corpus (Garside, Leech and Sampson ed.s, 1987). These consisted of 1 million words of US and British English, respectively, from published sources in the year 1961. Since then a number of general corpora have been built including the COBUILD Corpus, now known as the "Bank of English" (Sinclair ed., 1987); the British National Corpus (Burnard, L. ed., 1995) and the International Corpus of English (Greenbaum ed., 1996). As well as general linguistic research aimed at achieving a more accurate description of natural language, larger corpora have often been used for lexicographic purposes, most famously the COBUILD range of dictionaries and grammar books such as the *Collins Cobuild English Dictionary for Advanced Learners (2001).*

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2   The journal was founded in 1994 as *Forensic Linguistics* but the title changed in 2003 to *The International Journal of Speech, Language and the Law* to reflect a broadening of academic coverage and readership.

The field of corpus linguistics has also spawned a plethora of specialised corpora, including the International Corpus of Learner English (Granger, 1994); the CHILDES database (really a collection of sub-corpora) of child language (MacWhinney 1995); the Bergen Corpus of London Teenage Language (COLT) (Stenström et al. 1998), the Leeds Corpus of English Dialects (Klemola and Jones 1999) and the Helsinki corpus of English texts (Kytö 1994). Specialist corpora may be used to study a language at a particular period in time or in a particular region, or to examine the linguistic patterns in a particular author or text type.

Corpora rarely consist of plain text, although Sinclair's concept of a "monitor corpus" (Sinclair 1982) envisaged almost-raw text flowing through a series of software filters to extract information from it and then being discarded. More commonly, corpora are marked up with various kinds of information such as the sex of the speaker or the date of the text; less trivially they may incorporate part-of-speech tagging or higher constituent tagging (syntactic parsing). It may be considered desirable to lemmatise the text, in order to enable the linguist or lexicographer to retrieve all forms of a particular word in a single search expression; indeed, in highly-inflected languages such as Hungarian lemmatisation and consequent morphological mark-up are virtually essential (Pajzs 1991). In the case of parallel corpora, "hooks" into the translation equivalents in another language are embedded into the text (Botley et al. 2000). Markup may be carried out automatically or manually: usually some combination of the two is employed. Figure 1 illustrates the various forms related to the lemma "steal" while Figure 2 shows a fairly basic form of mark-up, "COCOA" tagging for the now-superseded Oxford Concordance Program (Hockey and Martin 1987), applied to the official court transcript of an English trial to label the speaker of each utterance and to mark certain text as "comment" to be excluded from any processing.

Figure 1: Lemma "steal"

steal
steals
stealing
stole
stolen

Figure 2: Corpus data with mark-up

```
[ Wednesday, 23rd January, 1985 ]
[RANSFORD NEDRICK: Sworn.
 Examined by Lord Hooson, Q.C.   ]
<P 01>
<S LH>   Mr. Nedrick, when I ask you questions will you please face the jury as much
         as you are now. What is your full name?
<S RN>   Ransford Delroy Nedrick.
<S LH>   Your normal address?
<S RN>   40 Hallett Drive.
<S LH>   That is a council flat in Wolverhampton?
<S RN>   A council maisonette.
<S LH>   Your age?
<S RN>   49.
```

Once a corpus has been created and marked up ready for exploitation, specialist software can be used to analyse it to produce wordlists, concordances, collocation sets and more: the CLAWS suite of programs for the LOB corpus and the CLAN suite for CHILDES are two well-known examples. Kirk (1994) gives a good overview of the various types of corpora, annotation and processing software.

2. Forensic linguistics meets Corpus linguistics
2.1 Hypothetical scenario: The case of the disputed confession

Disputed confessions are a fairly frequent phenomenon in FL as narrowly defined. A typical problem involves a suspect denying that part or all of an incriminating statement consists of his/her own words. A forensic linguist tasked with evaluating the plausibility of such a claim will usually seek to obtain an undisputed sample from the suspect for comparison, along with an undisputed sample from anyone suspected of being the real source of the text, such as a police officer.

Let us examine a fictitious example of this "genre", in which the text in question contains 4 instances of a relatively rare lexical item, such as "vehicle", which does not appear at all in the defendant's undisputed statement. However, it appears 5 times in the police officer's witness statement, as shown in Table 1.

Table 1: Hypothetical example: "car" vs. "vehicle"

	Disputed statement	Undisputed statement	Police witness statement
"car"	2	6	2
"vehicle"	4	0	5

The linguist's native-speaker knowledge of English tells her that "vehicle" is a rarer word than "car" and moreover belongs to a more formal register, likely to be favoured by officers of the law. It is tempting, faced with the evidence in Table 1, to conclude that the confession is the work of the police officer. However, such a conclusion would be unwarranted without taking into account the relative text size, as shown in Table 2.

Table 2: Hypothetical example: "car" vs. "vehicle" with text size

	Disputed statement	Undisputed statement	Police witness statement
"car"	2	6	2
"vehicle"	4	0	5
Total words	3,000	2,000	3,500

It now appears that the absence of the word "vehicle" in the undisputed statement may be due to its shorter length and not to the rarity of the word. The fact that "car" occurs here with a higher frequency than in the longer, disputed statement would seem to reinforce our original suspicions, but nonetheless it is hard to be sure. This is the kind of situation where a reliable corpus can be a godsend.

Table 3: Frequencies of "car" and "vehicle" in the Bank of English

	BBC radio	USA radio	General spoken	Total spoken
"car"	2,535	1,896	1,205	5,636
"vehicle"	618	269	121	1,008
Text size	20 m	10 m	4 m	34 m

The data in Table 3 are actual and not hypothetical. They indicate that for both British and US English the lexical item "car" is 4-5 times as frequent as "vehicle" in radio broadcasts, while in general spoken discourse it is 10 times as frequent. The forensic linguist can be confident, after all, that there

is something distinctly odd about a text in which "vehicle" appears more frequently than "car", at least if its origins are supposed to be in speech rather than writing.

2.2 The Google "corpus" - a quick and dirty solution?

Some linguists now use search engines such as Google as a tool for checking the relative frequency of contrasting words in modern English, as a rough-and-ready general corpus; or as a means of demonstrating that phrases one might think were common are in fact quite unique to specific texts or speakers/writers. Subjecting "car" and "vehicle" to a Google enquiry for domain names ending in ".co.uk" and ".com", on the assumption that these will yield British and US data respectively, is likely to produce statistics like those in Table 4.

Table 4: Results of a search for "car" and "vehicle" using Google

	.co.uk	.com
"car"	95,900,000	953,000,000
"vehicle"	17,300,000	244,000,000

It is gratifying to find that the general proportions of the lexical items under scrutiny are confirmed by a trawl of the World-Wide Web. However, we have no way of knowing the total "text size" of the pages from which these figures were returned. There are many questions which one can ask of a corpus but not of a search engine, such as "Do men and women use this word equally?" (requiring mark-up for the sex of the speaker/writer); "Is this feature more common in speech or writing?" (requiring control of the corpus collection), and "What words appear most frequently two places to the left of the key word?" (requiring collocation software). With part-of-speech tagging it is even possible to interrogate a corpus about particular usages of a syntactically ambiguous word, requesting all occurrences of, for instance, "judge" used as a verb but not a noun. None of this is possible with an Internet search engine.

Two case studies
3.1 Daniel Raphaie

Mr. Raphaie came from Iran to Britain in 1978 as a student. His first language is Farsi (Persian). He remained in the country, married, had a child, took various jobs and fell into bad company. In 1988 the police raided the flat of his former wife, where he was staying at the time. He was charged with dealing in drugs and stolen goods although no hard drugs were found in the flat: he was convicted solely on the statements of the police that at the time of the search he had admitted having just flushed a quantity of heroin down the toilet.

In a linguistic examination of the alleged incriminating statements by Raphaie, it was noted that these included the following:

"*Look* I didn't want to get caught holding it."
"*Look* I might get six or seven grammes, maybe more, every two days."

There is no evidence from much longer, undisputed samples of Raphaie's speech that he ever uses *look* as a discourse marker; yet in this supposedly contemporaneous transcript of the search, which contains just 232 words attributed to him, he is supposed to have used it twice.

The Cobuild Bank of English was searched for instances of the word "look" used as a discourse marker: the results are shown in Table 5.

Table 5: Discourse marker "Look" in the Bank of English

Total instances of "look" as discourse marker: Of these:	949
Total primary occurrences:	318
Total secondary occurrences:	631
Total corpus size: (spoken British English)	20,181,050

It was found that the use of discourse marker "look" could be divided into primary and secondary usages (Blackwell, 2000). Primary occurrences were instances of the speaker using "look" directly in addressing the hearer, as in "*Look*, you've got to be here on Sunday." Secondary occurrences, by contrast, were examples of quoted speech in which use of the feature was

being attributed to someone else, or to the speaker at some previous time: "Yeah but the ANC are saying *look* equality for blacks." Table 5 shows that secondary usage is twice as frequent as primary usage: in other words, *"look"* is twice as likely to appear in a reconstruction of someone's purported speech than in their actual original words.

This in itself might not be sufficient to support Mr. Raphaie's allegations that the supposed contemporaneous transcription of his speech at the time of the police raid was nothing of the kind. However, there is other evidence that the introduction of discourse markers is one way of giving a veneer of authenticity to texts which are not contemporaneous (Coulthard 1996). One may note, moreover, that *"look"* is a confrontational item, unlikely to be used by a suspect to a police officer. Finally, Lindsay and O'Connell (1995) have observed that transcribers tend to omit all discourse markers due to pressures of real-time writing and the lack of psychological saliency of such items for the hearer. The sum total of this linguistic and metalinguistic evidence was considered sufficient to discredit the police claims that the interview with Raphaie had been transcribed contemporaneously at the time of the search. This does not mean, of course, that the content was a total fabrication: it may have been based on a real speech event but written up some time afterwards. In that case, however, one is justified in asking why the police wrote up the alleged interaction in the Exhibits Book, claiming that this was the only book available to write in at the time the transcription was made.

This analysis of discourse markers was made available to Mr. Raphaie's legal team and submitted as part of the evidence to the Court of Appeal. It is believed to be the first occasion when an appeal was heard in the English courts on the grounds of linguistic evidence. In the event, Mr. Raphaie's appeal was allowed on legal grounds without the linguistic evidence being put before the court.

Eddie Gilfoyle

Eddie and Paula Gilfoyle were a married couple living in Upton, Wirral, England. On 4th June 1992 Paula Gilfoyle's body was found hanging in the garage of her home. She was eight and a half months pregnant. Despite the fact that a suicide note was found in Paula's handwriting, Eddie was prosecuted for her murder. The prosecution claimed that Eddie, a hospital nurse, had tricked Paula into writing the note and then murdered her, in effect using the

note as his alibi. The jury believed this and convicted him. He and his family and friends are still protesting his innocence.

Goutsos (1995) compared the language of the problematic suicide note with samples of Eddie's writing and found a number of apparently incriminating phrases which were common to both, including "rebuild your life", "turn back the clock" and "if I could, I would". There was also a tendency in both texts to use couplets such as "cheated and lied", "family and friends", "pain and suffering" / "suffering and pain", "hurt and suffering" and "pain and heartache". It is tempting to conclude from this that Eddie was indeed the originator of the "suicide" note and had justly been convicted. However, as Table 6 shows, the Bank of English reveals that some of these phrases are common collocations in general use.

Table 6: Phrases from the "suicide note" in the Bank of English

rebuild + life	7
turn the clock back	16
could + would	125
pain and suffering	24
suffering and pain	3
pain and heartache	1

(from Goutsos, 1995)

Worse was to come. Goutsos recollects the investigations of the Birmingham University Forensic Linguistics group:

"We found that the surprising phrase *Goodnight and God bless* which appeared in the closing off section of the disputed suicide texts is in fact a common feature of death announcements in the press of the area where the texts originated." (Goutsos 1995:108)

Further problems emerged when the nature of the texts being compared with each other was taken into account:

"One major problem is that our corpora were significantly skewed. The texts involved were not alike with regard to almost any parameter among the components of speech events as formulated by Hymes (1974) "… To achieve register objectivity, we would have to refer to comparable corpora with different variables such as a corpus of letters written by other people or a corpus of suicide notes." (Goutsos, 1995:107)

Thus, although at first sight there had appeared to be a number of incriminating similarities between Eddie's language and that of the suicide note, on closer investigation this conclusion was not justified. In the first place, the phrases are not so unusual in colloquial English; secondly, it has to be borne in mind that people who live together intimately probably tend to converge in their language use; and thirdly, the linguists were not comparing like with like and did not have corpora which would enable them to do so.

The outcome for Mr. Gilfoyle was a less happy one than for Mr. Raphaie: his two appeals against conviction were unsuccessful and he remained in jail, vehemently protesting his innocence.

4. General vs. Specialised Corpora for Forensic Linguistics

While general corpora such as the British National Corpus or Bank of English may be adequate for some FL purposes, as in the Raphaie case, it is clear from Goutsos' remarks cited above that such corpora cannot answer questions such as whether or not "Goodnight and God bless" is a likely way to end a suicide note. There is a need for a specialised database of texts which can be used to research issues in language and law. A wide range of issues could be investigated with such a resource, such as differences between the language of prosecution and defence lawyers, or between expert witnesses and eye-witnesses. The language of judges, which has already been the focus of examination (Solan 1993), could be studied more effectively if a machine-readable, marked-up corpus were available to researchers.

Admittedly some legal language is already available in corpus form, most notably the proceedings of the Old Bailey from 1674-1834 which have recently been placed online. However, to date this material has been used mainly for historical linguistic and sociolinguistic research, as a rich source of information on variation and change at the interface of early modern and modern English in London. Dr Magnus Huber of the University of Giessen, for instance, is exploiting the Old Bailey data to analyse differences correlating with the social parameters of age, gender, place of origin and social status (Huber 2007). Similarly, the International Corpus of English (ICE) contains ten 2,000-word texts of "legal presentations" in each category (Nelson 1996), but the main purpose of this is to compare the language of such presentations across various parts of the world in which English is spoken rather than to investigate the language of the courtroom *per se*.

It is to be hoped that some of the existing collections of legal texts can be incorporated into the proposed corpus for forensic linguistic research.

Table 6 offers a tentative list of text types which might usefully be included in a specialist FL corpus.

Table 6: A corpus for Forensic Linguistics: Text types

| suspects' statements to police, contested |
| suspects' statements to police, uncontested |
| suspects' statements to solicitors |
| suspects' statements to linguists |
| witnesses' statements to police, contested |
| witnesses' statements to police, uncontested |
| witnesses' statements to solicitors |
| witnesses' statements to linguists |
| police statements used in court |
| police reports for internal consumption |
| transcripts of court proceedings |
| threatening/extortion letters |
| transcripts of threatening/extortion telephone calls |
| suicide notes |
| "martyrdom" videos and letters |

Table 7 indicates some of the features which it would be desirable to include in the mark-up of such a corpus.

Table 7: A corpus for Forensic Linguistics: annotation

| age of text originator[2] |
| sex of text originator |
| role of text originator (e.g. suspect, eye witness, police officer) |
| first language of text originator |
| other languages spoken/used by text originator |
| how long text originator has been resident in the country concerned |

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[3] I have used the term "text originator" to indicate the person responsible for the language of the text in question. This is not necessarily the same as the person who writes it, as can be seen from the Gilfoyle case where a suicide note was allegedly dictated by Eddie, the text originator and alleged perpetrator, to Paula, the scribe and alleged victim.

text type (statement, court proceedings etc.)
whether text was written by text originator or transcribed by someone else

if transcribed:
        whether from speech or tape recording
        age, sex and role of transcriber(s)

if written: details of writing (e.g. handwritten; typewritten; word-processed).
if word-processed, were spell- or style-checkers available?
purpose of the text (e.g. evidence in court, background info. for solicitor)
whether other texts from same text originator exist in the corpus

5. Conclusion

This paper has attempted to provide an overview of the kinds of problems which face the forensic linguist. While some questions may be resolved satisfactorily by reference to language data readily available on the Internet or in a general machine-readable corpus, there remain thorny issues which can only be discussed properly when a specialist corpus for language and law becomes available. We cannot state with any degree of confidence that a disputed suicide note is a forgery until we have an idea of what a "normal" suicide note looks like. We may be sure that a particular utterance, such as "I then proceeded to exit the vehicle", is so formal that it can only have been produced by a police officer; but a cross-examining lawyer is likely to put it to any expert witness stating this that perhaps in the formal setting of a police interview, suspects (especially seasoned ones with previous experience of such speech events) are likely to accommodate their language to that of the interviewing officer. When a person's liberty and reputation are at stake, mere linguistic intuition is not good enough: there needs to be a solid basis on which to draw reasonable conclusions, preferably supported by quantitative data which can be subjected to statistical tests. The construction of a purpose-built corpus for research in language and law will not only nurture the academic curiosity of linguists, but should serve the wider interests of justice.

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Milena Hadryan[1]

ACHIEVEMENTS OF THE PLAIN SWEDISH MOVEMENT FROM THE POLISH PERSPECTIVE

Abstract: The paper deals with the plain language movement in Sweden from the Polish perspective. Plain Swedish is endorsed by law as an objective of state policy and there is a state body responsible for the quality of public language. The concept of plain language belongs to speech and language planning and is considered to be a central part of Swedish language policy. Polish law only provides protection for the Polish language. As a result, there is neither Polish speech and language planning to promote simple and comprehensible use of official language nor any state body dealing with these issues.

Key words: Plain Swedish, Klarspråk, speech and language planning, language policy

1. Introduction

For many years I have worked as a translator of Swedish legal and official texts into Polish and vice versa and I have often been struck by the impression that many Swedish official texts were much more understandable than their Polish equivalents. This sparked my interest in the concept of "plain Swedish" ("klarspråk" in Swedish).

In this paper I will present the Swedish policies whose aim is to create understandable official language use within government, the activities of the Plain Swedish Group and their results. Finally, I will mention some problems in connection with Polish official language – legal regulations and the Polish official language policy.

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2. Review of the plain swedish movement within the swedish government

The work on clear and understandable official texts began in Sweden almost 40 year ago. The most important reasons for this were democratisation, efficiency and better legal rights. Official documents have to be understandable in order to reach as many users as possible. This increases the level of trust between authorities and citizens and facilitates better cooperation between them. The idea of plain official language comes from Swedish linguists (first of all Erik Wellander) but it was carried out from above - by the Swedish government. The government started the plain Swedish activities with modest recommendations but continued its activities in the form of projects designed to simplify and improve the drafting of official documents. The following events were of importance for the plain Swedish movement:

- 1965 a Cabinet Minister began to modernise the language of draft bills;
- 1967 the first guidelines on the language in Acts and other regulations appeared.

1976 the first linguist was employed at the Cabinet Office to organize a systematic modernization of the language in Acts and other regulations.

Since 1980 there has been a team of linguists and lawyers working together within the Government, who have revised texts and encouraged all government officials to use plain Swedish. They formed the Division for Legal and Linguistic Draft Revision at the Ministry of Justice. No government bills, acts, regulations or Committee Terms of Reference could be printed without the division's approval. Over the years, language experts have developed new text models of legal texts for the Swedish Government.

Some of the principles for drafting Swedish acts, bills, government commission reports, governments administrative decisions and other legal texts are as follows:

- A Swedish Act is divided into chapters, with chapter headings and informative subheadings;
- No article in a Swedish Act should have more than three paragraphs;
- Informative headings can be formulated as questions;
- The language should be as simple as possible;
- Every day word order should be used;

- The passive voice should only be used when the agent is unknown or unimportant;
- Archaic and formal words and phrases should not be used.

The development of new text models has had an effect on the drafting process of the Swedish Government and the use of the models has gradually spread outside the ministries. Meanwhile, there were more and more specialists in the field of plain language thanks to the fact that 1978 the University of Stockholm began an academic program for Swedish language consultants.

2. Activities of the plain swedish group and their results

The most important event for Plain Swedish was the founding of Plain Swedish Group in 1993. It was appointed by the Government and worked within government structures. The Plain Swedish Group's aim was to encourage state authorities all over Sweden to start plain language projects and to promote experiences gained from the work carried out in the government. The main tasks of the Plain Swedish Group (founded 1993) are to:

- supply knowledge, ideas and experiences from various plain language projects in Sweden and abroad;
- organise conferences to promote plain language;
- give lectures on plain language to the authorities;
- participate in international conferences;
- publish a bulletin devoted to plain language issues, "Klarspråksbulletinen";
- award authorities with the Plain Swedish prize, Klarspråkskristallen;
- run a website www.regeringen.se/klarsprak (in Swedish and English).

The idea behind the Plain Swedish Group's mission to promote plain language is: If people are to take an active interest in what is going on in society and to contribute to the democratic process, information must be not only available but must also be understandable. Since its start, the Plain Swedish Group has worked in close contact with Swedish authorities. By 2001 there was a contact person at every government authority in Sweden. Contact persons often had a special responsibility for language matters and some of them organised networks bringing together authorities from the same geographical region.

Every year the Plain Swedish Group organizes conferences and invites

all kinds of civil servants to take part in them. There is a big demand for them, sometimes they must be carried out over two sessions.

Once a year the Plain Swedish Group awards a prize - The Plain Swedish Crystal – to one or more authorities as a reward for good results in their plain language work. Among the winners are a Social Insurance Office, a Tax Office, two National Tax Boards, but also individual enthusiasts. The winners often present the winning projects on conferences or in publications. The project's aim is mostly to re-draft specific official texts (for example, a letter by the Social Insurance Office to pensioners about a new way of calculating their pensions). Most of the projects share the following common points:

- experts from various fields work together (lawyers, briefers, language consultants and other experts);
- they contact and survey potential readers (set target-groups or volunteers) in order to get to know them, their background and needs regarding the specific official texts;
- authorities work on plain languge matters continuously, employ language and information experts and involve significant resources;
- authorities have come to the conclusion that to re-write an official text costs more money than to write it correct in the first place (answering questions from users, preparing and sending new versions by post).

A very important result of the Plain Swedish Group's work is the instrument for drafters of official texts - a Plain Swedish Test - which is still available on the website www.regeringen.se/klarsprak (in interactive version and as pdf-file). The Plain Swedish Test can be used by drafters for self-checking of their own texts (first of all decisions and reports). It contains 33 questions referring to 8 levels:

- register of the text (e.g. if the text is addressed directly, OR if the pronoun 'we' referring to the text sender is used);
- contents of the text (e.g. if the main text of a decision contains answers to likely questions from the reader);
- text disposition (e.g. if the most important message is placed at the beginning);
- headings (e.g. the main heading has to convey the type of the matter, headings and subheadings have to refer to the contents);
- text parts (e.g. if the reasons of the decision are presented under the proper heading);

- passages and connections (e.g. if the text is divided logically into passages)
- utterances (e.g. if the text consists of long utterances (up to 25 words) as well as short utterances (up to 10 words), OR if the most important information is placed at the beginning of a sentence);
- words and phrases (e.g. if the text contains no nominalisations, which makes the text heavy, if the words used are modern and clear).

The test is followed by detailed explanations and correct and incorrect examples. The user's answers to questions for each part of the test are marked (very good, good, sufficient).

Following questions regarding the readers precede the main test:

- Who are the readers? (what do they already know about the matter? What do they want to know? Are they used to reading official texts?);
- What do the readers need to know after they have read the text? (to understand the decision – e.g. if it is positive or negative, to understand why this decision has been made, to know what regulations it's based on, to be informed to undertake something, for instance to pay a debt).

The test is said to be very often used by authorities as a suitable instrument for checking their official texts.

From the 1st of July the activities of The Plain Swedish Group moved to a state body for language planning, the Language Council (Språkrådet), that is why it is changing the web address to www.sprakradet.se/klarsprak. Within the Language Council, the work and activities of the group will continue as before. This reorganisation took place as a result of a Government „Best language" Bill from the year 2005. The Government Bill was accepted by the Riksdag, the Swedish parliament, in December 2005. One of the four objectives of the proposed language policy in the „Best Language" Act is: "Public Swedish is to be cultivated, simple and comprehensible." The act also contains the following statement: „... clear and comprehensible official texts are a pre-condition for a living democracy, in which citizens take part in public debate and can make their voices heard." „Best language" proposes funding of a new state body for language planning and proposes an additional SEK 2.2 million in funding for language planning as from 1 July 2006.

In the spring 2006, the Plain Swedish Group carried out a survey about its activities among the authorities. The results were as follows:

- 87% authorities are aware of The Plain Swedish Group' activity;

- about 50 % of 231 state and local authorities have worked on Plain Swedish issues during the last two years;
- the most common way to work was to revise the language of decisions, pattern texts and forms and to buy dictionaries and manuals;
- about 25% authorities have produced own instructions, trained department managers for language issues and organised lectures;
- about 13% have language sites on their intranet.

As can be seen from the development of language state projects, the Swedish model of language planning contains, along with corpus planning and status planning, also speech and text planning. The speech and text planning is even considered to be a central part of Swedish language policy. It is the Plain Swedish Group which is responsible for speech and text planning.

We can summarize the situation of Plain Swedish activities as follows:

- Plain Swedish is endorsed by Swedish law as an objective of state policy;
- there is a state body responsible for the quality of public language;
- the Swedish Government finances and promotes many activities in the area;
- there is an increase of state financing of language policy;
- the Plain Swedish activities were adopted by the Government to cover the documents it issues;
- experiences from the government work were conveyed to local government agencies and spread all over Sweden;
- the activities are very practically-oriented and resulted in published reports, manuals, internal authority guidelines and other instruments;
- for almost 30 years the University of Stockholm has been running an academic programme for language consultants.

3. The Polish perspective

As mentioned at the beginning, there is an essential difference in terms of clarity between Swedish and Polish official texts and there is a significant difference between the political and social circumstances as well. Since 1999 the Polish Language Act has been in effect. It states that Polish is the official language of state and local authorities. It should be noted that the Swedish

law does not contain equivalent provisions. The Best Language Act states only that Swedish is the main language in Sweden.

The 1999 Polish Language Act „addresses the protection of Polish and its usage within public domain as well as in legal dealings in Poland" (Article 1). Article 3.1 of the Polish Language Act defines such protection as „promoting of the correct usage of the language and improvement of public language quality as well as ensuring proper language development as an instrument of human communication". It is worth mentioning that the Act, unlike the Swedish legislation, does not deal with the question of clarity of official texts.

The Polish Language Act appointed the Language Council (founded in 1996) to advise and give opinions in language matters. The Language Council is to report every second year on the current state of the Polish language protection. So far two reports have been published.

The first report (for the years 2000-2002) presents results of a survey held in line of the provisions of the Polish Language Act: "All public authorities, institutions and organizations participating in public life have the duty to protect the Polish language" (article 3.2). The questionaires were sent to 15 ministries. The Language Council asked the authorities:

- if the ministries put into practice the provisions of the Act;
- if persons have been appointed who are responsible for the language quality in official materials and correspondence;
- which aspects of language protection were considered to be the most important.

Only 4 of 15 ministries have replied. From their answers it followed that:

- they paid attention to language correctness;
- the staff used dictionaries;
- and that they considered simplification of the official writing style as the most important issue.

In the conclutions to the report the Language Council wrote that

- it was mostly local-level authorities, which took care of language matters, as opposed to central authorities;
- it was necessary to enforce the active interest in the protection of the language within the ministries and the Parliament.

The second report (for the years 2003 – 2004) also includes the results from a similar survey.

This time, many more authorities responded (60%).

- 63% of them said that they „always" pay attention to the style of documents and letters they issue.
- In most of them (57%) there was no person responsible for language matters. The staff was advised by colleagues and superiors but they very seldom asked external language experts. The authorities seldom employed Polish language graduates as text editors.
- They claimed that they were using dictionaries and manuals but they were not able to name any specific dictionary or mentioned them only in general terms ("a Polish dictionary") or very old ones.
- The respondents suggested arranging training courses in language matters for the staff.

The results of the second survey indicate an increased awareness of language matters among civil servants of central authorities. It was possibly caused by a control carried out by the Supreme Chamber of Audit (Najwyższa Izba Kontroli [NIK]) in 2003. The objective of this audit was the implementation of the Polish Language Act by government bodies as well as monitoring of language usage within authorities, media and trade. The control focused on official texts and was carried out in cooperation with the Languge Council. The results of it were judged "sufficient" however the basis for the assessment was not the general language standards but the standards of the official language ("otherwise the results would have been worse"). As the most common errors the Supreme Chamber of AuditControll (NIK) regarded syntax errors and using inappropriate words.

It needs to be stressed that assessing the quality of texts in Poland is quite specific:

- They are deemed "correct" or "incorrect" only on the basis of two criteria: syntax and vocabulary.
- There is a much greater tolerance for incomprehensibility in official texts.
- The perspective of readers of official texts is barely taken into consideration.

After having studied the existing literature and contacting several Polish authorities I conclude the following:

- very few reports and manuals on official language have been published in Poland;
- the existing manuals are mostly devoted to lawyers drafting laws, not to civil servants or authorities;

- there is very little practical work within the authorities focused on language matters;
- authorities do not usually employ staff responsible for this area;
- authorities have very few modern dictionaries and manuals available for their staff;
- some civil servants feel the need for specific training in language matters;
- higher level authorities are less interested in language matters than local ones;
- authorities very often re-write exiting laws instead of creating new reader-friendly texts.

From the Polish perspective, language is considered a basic component of national identity and culture, but also an instrument that reflects societal hierarchies. As the the Language Council report says, the higher authorities are very little interested in language matters. One has the impression that they are not really interested in reaching citizens with the documents they publish. There is clearly a tradition in Poland that an official text is expected to be incomprehensible, both by the public and even language experts. The Polish language policy seems to stick to this bad tradition. The Polish linguistic literature mentions the need for education in understanding legal texts. That is an obvious task for the Polish educational system. But it is not only for members of the public to try to understand the language of the authorities. First of all it is the duty of the authorities to make efforts to effectively communicate with one another and the people.

4. Conclusions

To sum up, analyzing the situation regarding official written communication in Poland against the Swedish plain language concept we can conclude that
- there is no speech and language planning to promote simple and comprehensible use of official language;
- there is no state body dealing with speech and language planning;
- there is no concept in place endorsing the role of the language as an instrument of democracy.

The Swedish model can be useful also in Poland. In the 19th and at the beginning of the 20th century Sweden also had also a bad tradition of official language usage. During the past 40 years this has been continuosly changed

by means of the language policy. In my opinion, there is a need to create a similar program of language planning and similar state bodies in Poland, in order to support the process of democratisation.

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SZWEDZKIE OSIĄGNIĘCIA NA POLU KULTURY JĘZYKA URZĘDOWEGO (KLARSPRÅK) Z POLSKIEJ PERSPEKTYWY
Streszczenie

Artykuł jest poświęcony działalności na rzecz kultury języka urzędowego w Szwecji na tle sytuacji językowej w Polsce. W Szwecji już od ponad 30 lat dąży się w usystematyzowany sposób do stworzenia prostszego i bardziej zrozumiałego języka urzędowego. Podstawowym pojęciem w tym zakresie jest *klarspråk*, w dosłownym tłumaczeniu „jasny język". Dążenie do stworzenie zrozumiałego języka organów administracji wynika z głęboko w społeczeństwie szwedzkim zakorzenionych zasad demokracji. Uznaje się, że zarówno akty prawne wyższego rzędu jak i dokumenty urzędowe niższej rangi powinny być zrozumiałe i dostępne dla możliwie szerokiej grupy odbiorców, co prowadzi do usprawnienia współpracy między urzędami a obywatelami i przyczynia się do lepszego korzystania obywateli z ich praw.

Ważną rolę na polu kultury języka urzędowego odegrała Kancelaria Rządowa zatrudniając w 1976 roku eksperta językowego, którego zadaniem było sprawdzanie projektów ustaw pod względem językowym. W latach 80-tych w Kancelarii Rządowej pracował już kilkuosobowy zespół ekspertów tworzący Wydział ds. prawnej i językowej kontroli projektów ustaw przy Ministerstwie Sprawiedliwości, którego zadaniem było m.in.:

– sprawdzanie projektów ustaw i rozporządzeń rządowych przedkładanych parlamentowi

– prowadzenie kursów w zakresie języka urzędowego dla osób redagujących teksty prawne w Kancelarii Rządowej;

– publikacja poradników i zaleceń językowych dla urzędów.

W roku 1993 utworzono przy Ministerstwie Sprawiedliwości grupę ekspertów *Klarspråksgruppen*. Jednostka ta na zlecenie rządu wspiera działania w zakresie kultury języka w urzędach państwowych. Bardziej szczegółowe zadania tej jednostki to m.in.:

– wspieranie i rozpowszechnianie informacji nt. poszczególnych projektów językowych prowadzonych w Szwecji i zagranicą;

– organizacja konferencji i seminariów;

– prowadzenie strony internetowej (www.regeringen.se/klarsprak) i wydawanie biuletynu (*Klarspråksbulletinen*).

– coroczne przyznawanie nagrody (*Klarspråkskristallen*) dla wyróżniających się urzędów

Laureatami nagrody *Klarspråkskristallen były* m.in. szwedzki zakład ubezpieczeń społecznych oraz urzędy skarbowe na szczeblu krajowym i lokalnym. Większość z nagrodzonych projektów realizowana jest we współpracy prawników, konsultantów językowych i innych specjalistów, którzy przed zredagowaniem tekstu badają wiedzę merytoryczną i oczekiwania przyszłych odbiorów. Wyróżniające się urzędy pracują w systematyczny sposób, zatrudniając np. wykwalifikowanych konsultantów językowych (Uniwersytet w Sztokholmie oferuje odpowiedni kierunek kształcenia) i inwestują znaczne środki w tę działalność. Kierują się przy tym zasadą, że właściwe zredagowanie tekstu jest korzystne pod względem ekonomicznym (np. z powodu mniejszej ilości zapytań odbiorców wobec urzędów). Od 2001 roku w każdym państwowym urzędzie pracuje osoba odpowiedzialna za redakcję pism i dokumentów.

Na dwujęzycznych (szwedzki, angielski) stronach internetowych www.regeringen.se/klarsprak i www.sprakradet.se/klarsprak dostępne są – poza biuletynem – elektroniczne wersje poradników językowych przeznaczonych dla osób tworzących teksty prawne i urzędowe. Znajduje się tam również test przeznaczony do samodzielnej kontroli redagowanego tekstu *Klarspråktestet*, uwzględniający podstawowe zasady *klarspråk*. Test zawiera szereg pytań, objaśnień i przykładów z zakresu rejestru tekstu, potrzeb jego odbiorcy, dyspozycji tekstu, jego składni i słownictwa.

Od 1 lipca 2006 działalność *Klarspråksgruppen* została przeniesiona do szwedzkiej Rady Językowej (*Språkrådet*), w związku z czym zmianie uległ adres internetowy tej specjalistycznej jednostki – www.sprakradet.se/klarsprak. Reorganizacja miała miejsce w związku z rządowym projektem ustawy „Best language" z 2005 r. Jeden z 4 celów polityki językowej sformułowanych w tym dokumencie dotyczy języka publicznego: „Język szwedzkich urzędów powinien być staranny, prosty i zrozumiały". Projekt zaproponował stworzenie nowego organu ds. języka urzędów oraz przeznaczenie na politykę językową od 1 lipca 2006 środków w wysokości 2,2 miliona koron szwedzkich.

Wiosną 2006 roku *Klarspråksgruppen* przeprowadziła wśród szwedzkich urzędów ankietę potwierdzającą efektywność swej pracy. Wykazała ona na przykład, że prawie 90% szwedzkich urzędów jest poinformowana o działalności tej jednostki oraz że połowa urzędów-respondentów zajmowała się w ostatnich dwóch latach pracą nad językiem swych dokumentów.

W Polsce, od roku 1999 zagadnienia związane z językiem reguluje *Ustawa o języku polskim*. Art. 1 tej ustawy określa, że jej przepisy „dotyczą ochrony języka polskiego i używania go w działalności publicznej oraz obrocie prawnym na terenie Rzeczypospolitej Polskiej." Art. 3.1 określa, że „ochrona języka polskiego polega w szczególności na używaniu języka i doskonaleniu sprawności językowej jego użytkowników oraz na stwarzaniu warunków do właściwego rozwoju języka jako narzędzia międzyludzkiej komunikacji". Na mocy ustawy działa Rada Języka Polskiego (RJP) jako instytucja „opiniodawczo-doradcza w sprawach używania języka polskiego" (Art. 12.1), która co minimum dwa lata jest zobowiązana do przedstawiania Sejmowi i Senatowi sprawozdania o stanie ochrony języka polskiego w rozumieniu art. 3. (Art. 12.2). Dotychczas RJP przedstawiła dwa sprawozdania o stanie ochrony języka polskiego. Kierując się art. 3.2., zgodnie z którym „do ochrony języka polskiego są zobowiązane wszystkie organa władzy publicznej" RJP skierowała ankietę do 15 ministerstw. Pytano m.in., czy „przy formułowaniu pism i rozporządzeń pracownicy kierują się przepisami ustawy, czy jest w instytucji osoba odpowiedzialna za kształt językowy tworzonych pism i rozporządzeń i czy pracownicy zasięgają porad językowych i korzystają ze słowników". Na ankietę obejmującą lata 2000-2002 odpowiedziały jedynie 4 ministerstwa. Odpowiedzi były w większości pozytywne (poza pytaniem o istnienie osób odpowiedzialnych za kształt językowy pism). W jednym przypadku pojawił się postulat uproszczenia stylu pism urzędowych. W podsumowaniu wyników ankiety RJP podkreśliła, że więcej troski o polszczyznę przejawiały instytucje niższego szczebla niż najwyższe instytucje państwowe. Na kolejną ankietę RJP obejmującą lata 2003-2004 odpowiedziało już 60% badanych urzędów. Jednakże w większości urzędów (57%) w dalszym ciągu nie było osób odpowiedzialnych „za nadzór nad poprawnością językową pism i rozporządzeń." Twierdzono, że korzysta się z poradników i słowników, ale respondenci nie byli w stanie wymienić konkretnych wydawnictw. Poprawę wyników drugiej ankiety łączono z przeprowadzoną w międzyczasie

(2003 r.) przez NIK kontroli m.in. przestrzegania Ustawy o języku polskim przez organy państwowe. Pisma urzędowe poddane kontroli oceniono dostatecznie, „przy założeniu, że kierowano się w niej standardami stylu urzędowego, a nie języka ogólnego (wówczas ocena byłaby znacznie niższa)". Warto podkreślić, że wg raportu NIK do niezrozumiałości treści pism urzędowych przyczyniały się błędy składniowe oraz używanie wyrazów niezgodnie z ich przeznaczeniem. Przy ocenie pism urzędowych istnieje zatem dużo większa tolerancja wobec ich niezrozumiałości niż przy ocenie tekstów języka ogólnego. Przy ocenie nie stosuje się w ogóle kategorii perspektywy odbiorcy tekstu.

Podsumowując można stwierdzić, że język polski jest postrzegany jako składnik narodowej tożsamości, ale również jako instrument hierarchii władzy. Władza wyższego stopnia jest w nieznacznym stopniu zainteresowana dotarciem z treścią swoich dokumentów do odbiorcy, czyli obywateli lub urzędów niższego szczebla. Język polski wydaje się nadal tkwić w złej tradycji niezrozumiałej polszczyzny publicznej. Poza koniecznością edukacji społeczeństwa w tym zakresie języka, postulowaną przez niektórych polskich badaczy, należy przede wszystkim rozwinąć w Polsce politykę językową zajmującą się promocją prostego i zrozumiałego języka publicznego i wyznaczyć instytucję za to odpowiedzialną. Promując prostą i zrozumiałą polszczyznę publiczną można wzmocnić jej rolę jako narzędzia demokratyzacji. Opisany w artykule szwedzki model pracy nad językiem publicznym - z jego przeszło 30-letnimi doświadczeniami - mógłby posłużyć jako wzorzec dla polskiej polityki językowej.

Peter Sandrini[1]

THE PARAMETERS OF MULTILINGUAL LEGAL COMMUNICATION IN A GLOBALIZED WORLD

Abstract: In law a tendency towards a tighter global embedding of national legislation can be observed. A few historical notes on the evolving of national legal systems will be the basis for the identification of the parameters of international legal communication and the factors influencing legal translation. An attempt at defining legal translation from the viewpoint of LSP-communication leads to a comprehensive overview of the key parameters for legal translation.

Key words: legal communication, legal translation, communicative parameters, legal systems

1. Introduction

Legal communication is changing due to the development of legal communication spheres. This paper attempts to give an overview of the parameters which determine legal translation and how it is embedded in new global communication patterns. We will attempt to analyze the parameters for legal communication in general, and in particular for legal translation, with respect to the global changes taking place nowadays in relation to their historical dimension. This topic is at the crossroads of varying disciplines as it is influenced by legal theory and history, linguistics, semiotics and translation theory.

2. Legal communication

The assumption that legal translation is an „act of communication within the mechanism of law" (Sarcevic 1997: 3,55) has been underlined by Sarcevic: Legal translation and all legal communication in general is firmly rooted in the discipline of law. Law itself can be described in a threefold approach (Fuchs-Khakar 1987:36) as

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1. a regulatory framework for social interaction emphasizing its functional role in society;

2. the discourse of legal experts, underlining its LSP character;

3. the communication within an institutional framework specifying a sphere where legal discourse is taking place.

Law as a regulatory framework for social interaction has legal content at its basis, namely the rules and regulations for a specified social area: What to do in the case of a murder, an unjustified dismissal of a worker or a car accident etc. An array of statutes and rules for specific situations in our society make up for a specific legal content. Combined, they constitute a legal system as the law for specific situations is brought under the umbrella of a common system, bringing single provisions and regulations into relation and coordinating them. To set up such a system of rules and regulations language as a means of communication is needed: Each legal system uses one or more national languages to make laws, to enforce the law, to talk about the law. As such, each communicative act serves a specific purpose within law. In fact, we can say that communication is a purposeful activity with the most basic purpose being the regulation of community life. Within law, groups of specialists have developed different patterns of communication according to their role in the system. Law however, is also addressed to each individual citizen, to the man on the street, as they are required to abide by the rules of the law.

Accordingly, the key parameters governing legal communication can be summed up as follows:

1. legal content
2. legal system
3. language
4. people
5. purpose

The text or the actual communication taking place is a product of these elements: it is about a specific legal topic within a broader legal framework of reference, i.e. a national legal system or a supranational legal framework; it is written in a specific language; the text pursues a specific purpose and there are people who perform the communicative act and people at whom the communicative act is directed.

Text linguistics introduced the distinction between text internal and text external factors where syntactic, structural and semantic text description

categories are regarded as text internal, while pragmatic and functional categories are seen as text external (Adamzik 2004:53 with reference to Dressler 1972). This has been applied also in translations oriented text analysis (Nord 1995:40) as well as for legal translation: Wiesmann (2004:83) distinguishes between a text with a function (text internal) and the factors of legal translation such as the objective of translation, legal systems involved, addressee of translation, applicable law, status of translation which she regards as text external factors. For legal communication this distinction seems not so fruitful. A distinction between the text as a linguistic entity and its communicative environment or pragmatic embedding seems a little bit construed since the textual appearance and the linguistic function of a text is in the first place a result of the communicative environment. A text does not have a function for itself, a legal text has a function within a legal system, as such it is the result of a network of legal provisions and specific legal content, it serves its purpose within this legal system. Therefore, a text cannot be seen as an autonomous entity outside the legal system. There is no contract without reference to a specific legal framework, be it national or international; we cannot have an independent legal text, a sentence, a communication of dismissal, a writ or any other legal text without a system of laws of other legal texts to which the text is connected. Each legal text has implicit or explicit references to other legal texts: this strong inter textual dimension is a typical feature of legal texts (Busse 1992:60). Intertextuality is reflected in the embedding of a specific text in the legal system as a whole.

The four listed parameters are decisive for every act of communication in law and we will look at these parameters in detail taking into account historical developments and their impact on legal translation.

2.1. Legal systems

The main characteristic of legal discourse is its dependence on national legal systems which determines intertextual references to specific legal backgrounds and creates problems whenever communication attempts to bridge national borders, that is, in every type of international or intercultural communication. Translation is per definitionem a kind of intercultural and international communication and is thus, affected by intercultural communication difficulties. The different national legal systems and the problems arising from this for legal translation have been addressed many

times (DeGroot 1991, Sarcevic 1989, Gemar 1982) and this fact has even been labeled as a salient characteristic of legal translation. But a short look at the historical development of law teaches us that such rigorous division into autonomous legal systems is a rather recent phenomenon in law which, moreover, has been weakening in very recent times as will be shown further on.

Legal systems are bound to the concept of statehood. Modern statehood began after the religious turmoil of the Thirty Years War with the Treaty of Westphalia in 1648 when two basic principles were introduced: the principle of territoriality and the principle of sovereignty. To avoid war, people have to enter into an agreement, thereby transferring their rights to a sovereign entity. Through this power the sovereign is now in the position to protect its subjects both from internal and external aggressions. Through this explanation, the sense and the need for a state is justified. Jurisdictional concepts in turn flow from sovereignty. The scope of a sovereign government's law corresponds to the geographic boundaries of its territory. all legitimate power was drawn into a single sovereign, who absolutely controlled a defined territory and its associated population. State power was rendered territorial.

This emerges clearly in the two following quotations:

"What then is the extent of jurisdiction which a state possesses? We answer, without hesitation, the jurisdiction of a state is co– extensive with its territory." US v. Bevans, 1818

"The Court concludes that the military base at Guantanamo Bay, Cuba, is outside the sovereign territory of the United States…writs of habeas corpus are not available to aliens held outside the sovereign territory of the United States." Rasul v. Bush (DC Circ., 2002)

The acceptance of national sovereignty by others, gives the right to a state of territorial integrity and self-determination and binds itself to accept this right of other states. The international community of nations is structured around the principle of sovereignty.

Territoriality in turn provided the bedrock principles for the development of international law in the 18th and 19th centuries, when Westphalian territorial sovereignty became supreme in Europe, and spread slowly and unevenly to the rest of the globe.

Today however, it is indisputable that territoriality is decreasingly important as a jurisdictional principle. The general but somewhat uneven tendency over the last century has been to loosen these geographic restraints and by some countries to increasingly assert domestic law beyond sovereign borders. This was done on the basis of flexible, functional concepts such as

"interests analysis" which found application in some areas of law with extra-territorial effect – antitrust, securities, criminal law, intellectual property, to name just some – territoriality has been slowly detached from sovereignty.

Territoriality and sovereignty were the historical requirements for modern states to evolve. National legal systems as we know them today however, are the result of a process which began at the beginning of the 19th century with the codification of law in Europe (Allgemeines Preussisches Landrecht 1794, the first German civil code, the Code Civil or Code Napoleon 1804, the Austrian Allgemeines Bürgerliches Gesetzbuch 1811). This process led to the development of modern national states in Europe. Single states created national legal systems by differentiating their laws. Jurisprudence became focused on national law, something which was previously unknown when Europe cultivated its century-old tradition of Roman Law – the Ius Commune – in one language, Latin. Even though the Ius Commune was only subsidiary law in addition to the particular rights of each region or country, it quickly created a common legal basis because of its adaptability. The legal establishment of the middle ages was a system that comprised multiple, layered power centers and different sources of legitimation, allegiance, and status.

This came to an end with independent legal systems. The object of jurisprudence was narrowed down to national law and this was criticized heavily by many scholars, especially by legal historians in the second half of the 19th century. Rudolf von Jhering even called this process a degradation of legal sciences. he said:

„Die Wissenschaft ist zur Landesjurisprudenz degradiert, die wissenschaftlichen Gränzen fallen in der Jurisprudenz mit den politischen zusammen. Eine demüthigende, unwürdige Form für eine Wissenschaft!" (Rudolf von Jhering: Geist des römischen Rechts auf den verschieden Stufen seiner Entwicklung: 1. Teil 1852, 15).

Legal science has been degraded to a state jurisprudence, its research borders now correspond to political borders: a humiliating and shameful situation for a scientific discipline.

To alleviate this situation new previously unknown disciplines appeared roughly in the same period of time, such as Comparative Law, studies of foreign law, and later Private International Law.

Today, social and economic changes on a global, regional and local level put pressure on national legal systems. European unification, world-wide treaties, global institutions and other forms of international cooperation threaten the two pillars of statehood, territoriality and sovereignty. Capital,

labor, goods, and ideas move largely without regard for political borders. Globalization is pushing back the nationalization of legal systems initiated in the last 200 years by eroding the authority of national states and undermining the principles of territoriality and sovereignty.

The concept of globalization is difficult to grasp, but a few central features of the phenomenon can be clearly identified. Globalization has to do with people from different continents meeting, communicating with each other, doing things on a global level, with a global perspective: be it companies selling products or services, or international organizations like the OECD or the IMF, geographical distances are disappearing and some form of global society is emerging. Roland Robertson, one of the main globalization theorists, defines globalization as the compression of the world and the intensification of consciousness of the world as a whole (Robertson 1992:8) and he goes on: „as part of the general globalization process, the new forms of electronic communication are giving rise to virtual neighborhoods or communities, these being examples of the way in which identification and participation are increasingly deterritorialized" Robertson (1999:7). National states have found different means to counteract this difficult situation, like increased international cooperation, or new models of governing, Global Governance based on subsidiarity.

In the light of these historical developments, rigorous divison into autonomous national legal systems can be seen as a transitory phenomenon which began at a certain point in time and will come to an end at some other point in time. It is certainly not the rule in law, it is rather an exception in legal history.

Globalization softens the once strict barriers of national legislation, but national legal systems will not disappear completely. They will rather be supplemented by a strong framework of international law. In the future, maybe we can distinguish a strong common legal basis (referring to international and regional law) and some legal particularities for each region or country. In a certain way and to a certain degree, similar to the legal setup of the middle ages.

2.2. Language

The relationship between law and language has been dealt with extensively in many disciplines. By the first half of the 19th century, Friedrich Carl von

Savigny had already compared law and language: they are similar in that both are the product of a long development in a society; in both disciplines what has come into being spontaneously in society, in a second phase of development becomes the object of further investigation and scrutiny by academics: jurists in the one case and grammarians in the other (von Savigny:1814).

More recent approaches (Oppenheim, Bobbio) see law as language where each legal activity corresponds to a text, law is nothing else than a class of sentences, a set of texts, a corpus of norms. This corpus then is the object of analysis by jurists who operate on a meta-linguistic level. For Bobbio (Bobbio 1950:97) the work of the jurist, meaning law professors, legal experts, is a linguistic analysis of the normative propositions of a legal system. The three tasks of the jurist are in this respect: **purificazione**: to purify the language of legislation to make it more rigorous; **completamento**: to complete as much as possible the language of the legislator, and **ordinamento**: to bring it into a system.

This holds true for continental law where the roles of legislators who make laws, jurists who interpret the norm, and judges who apply the law, are strictly divided. Critics of this approach cite the existence of systems of norms that are not collections of linguistic entities, or norms that were codified only ex-post by legislators. In this sense, law is something completely independent of language. Taboos or other forms of prescriptive codes of conduct exist without the need to articulate them explicitly. Road signs are an example for the use of another semiotic system, a prescriptive code of conduct on the basis of pictorial signs more or less without language.

„Il diritto non ha bisogno della parola. Il diritto preesiste alla parola articolata" (Rodolfo Sacco 1992, a scholar of comparative law) *Law does not need language. Law exists before articulated speech or language*

Sacco (1992) postulates that law exists before language, it is something in the human mind that is not related to language in general, and not related to a specific national language. In modern legal systems, however, language is the most important means of communicating and operating with law.

Leaving aside theoretical considerations and philosophical schools, language plays a critical role in law, for the following reasons: It is a general principle in law that all rules must be made public: this is the general principle of publicity: law has an intrinsic obligation to be made public: and citizens have the right to know the laws governing their lives. On the other hand, law is about

talking and communicating within the framework of prescribed rules. Law has evolved as a means of escaping armed conflict and instead bringing conflicts between citizens onto a higher level where things can be sorted out without recourse to violence. So communication is a fundamental trait of law.

Reverting to history again, there is a strict link between the creation of national legal systems and the discovery, construction, deepening and emancipation of language communities. Language was placed at the centre of cultural and political movements which eventually led to linguistically homogeneous national states. National legal systems could not have evolved without the creation of national states based on language as the main identifier of communities. While this is true for a historically retrospective analysis of legal systems, it is nonetheless hard to find a single language which is strictly linked to a particular national legal system today. Obviously, language communities are linked to particular legal traditions, such as English to the tradition of case law. As a result of colonialism, conquests, unsuccessful nationalistic movements and other historical developments, most languages today are linked to more than one national legal system: Many states use two or more languages within their legal system, or one language is used by more than one country (such as German for example which is used in 5 countries: Germany, Austria, Switzerland, Italy, Belgium).

So we might have two languages used in the same legal system (federal law in Switzerland), or even a third language used for a smaller part of the legal system, for example as a regional minority language such as German in Italy (Mayer 1999). In this case however the same language will be the language of another legal system, or maybe of two other legal systems (such as Germany and Austria).

Law is communication, law is language. However, communication needs to differ depending on the legal context. The main legal context is the national legal system or the international or regional legal framework, as we have seen. This represents a macro-context which can be structured into more specific legal fields such as hereditary law, commercial law, penal law and so on. Within these legal fields there will be different communicative levels such as jurisdiction, legislation and legal science as well as different communicative situations. On a micro-level the communicative situation corresponds to the use of a specific communication pattern. It is at this level that legal content and linguistic form combine and produce legal genres and subgenres.

2.3. People

At micro-level, it is people who communicate. In law, different persons and roles are linked to the three traditional areas of jurisdiction, legislation and doctrine or science of law: judges and lawyers, lawmakers and politicians, professors and students of law. All of these are subject specialists or legal experts who draft and use legal texts. But also non-specialists play a role in legal communication: laymen may be the authors of legally binding texts, such as in contracts, or the addressee of legal texts written by legal experts such as in verdicts or statutes.

For the translator it is of utmost importance to know what kind of knowledge the addressee of a translation will have with regard to legal concepts and norms. Every legal expert can be regarded as such only for his specific legal system: he will be familiar with the concepts, with the norms, with principles and ideas as well as with the language and the phraseology of his particular legal system. When he reads a text in his language, he will automatically establish a link to this framework of reference and interpret the text accordingly. The translator has to be aware of this and carefully choose the language of the target text. The most important parameter for a translation will be then to know the framework of reference or the legal system of the target text reader as well as the addressee of the translation.

2.4. Purpose

Language is used in particular communicative situations serving particular communicative purposes. The basic assumption is that the function of a text, the aim of a communicative action within the legal context is of overall importance. Many authors distinguish between the linguistic function of a text which is inherent in a text and the communicative aim of a text or the aim of communication a particular text serves. A third factor would be the aim of the translation which is equal to the communicative aim of the target text. We distinguish, therefore, the text function, the communicative purpose and the translation purpose.

The communicative purpose is not a text-internal feature; it is determined by the communicative situation and what the author of a text wants to achieve in this situation. Communicative purposes constitute

text genres while text functions are the basis for more general text types. The translation purpose is the reason why a translation is carried out and it is based on the communicative purpose of the target text. However, there are situations in which the function of a legal text differs from the purpose of its translation: When a statute is translated for a comparative lawyer, the translation will have an informative purpose while the source text is a prescriptive text (Wiesmann 2004:88). This causes the need to distinguish between the purpose of a legal text and the purpose of the translation.

Thus, we might add three other parameters to the ones already mentioned:
- the person of the translator and his knowledge
- the purpose of the translation
- status of the translation or alternatively the status of the target text, meaning if the target text is an authoritative legal text or not.

3. Legal translation

At this point we might try to define legal translation on the basis of its characteristics. As an act of communication within the mechanism of law it is first and foremost a purposeful activity. Furthermore it has to do with language for special purposes, since legal language is a type of LSP communication. Specialist communication has been defined on the basis of specialist knowledge by Lothar Hoffmann (1993:614) a German LSP scholar who focuses on the exteriorization and interiorization of specialist knowledge in the act of communication by the individual (reader and writer of texts). Communication leads to the production of a text, or to an act of exteriorization of specialist knowledge in a text.

In law each text is the result of an application of legal knowledge systems as well as legal cognitive processes, and each act of communication reflects a world of normative ideas and projects them into the text which serves a specific communication need. What will be exteriorized by the translator in the target text depends on the purpose of translation and the legal setting in which the target text will be used. Through interpretation of the source text, the translator inevitably chooses, selects and weighs and therefore acts as a sort of filter for the text. We can define legal translation thus as a
1. purposeful activity of

2. exteriorizing legal knowledge systems, legal cognitive processes and norms
3. selected and weighted from a offer of information (interpretation),
4. aiming at disseminating them in another language (interlingual) and/or
5. in another legal system (transcultural)
6. while assessing their legal effect
7. against the background of relevant supranational and international regulations

The legal effect has to be seen in conjunction with the purpose of the target text and since people from different legal backgrounds communicate in translation, the relevant supranational and international regulations must be taken into account. It should be stressed here that there is no fixed meaning in a legal text which can be transcoded into another language with the help of a dictionary. Meaning is rather constructed in communication by specific communicative parameters (Engberg 2002). Training and education of the translator will be decisive in this respect; for he must be able to judge legal implications and effects in the text which are possible only with appropriate legal knowledge.

While this definition applies to texts which reflect legal content, Engberg (2002) takes a more general approach in defining legal translation when he sees it as a "translation of texts for legal purposes and in legal settings, i.e., a functionally – and situationally – defined translation type." (Engberg 2002:375). The main advantage of such a broad application would be "that not only prototypical legal texts like statutes and contracts, but also restaurant bills and other texts to be used as evidence, for example in a court case, might be subject to legal translation in this view" (Engberg 2002:375). Such texts, however, will be subject to an interpretative reading by lawyers to determine their judicial impact and legal importance.

With the growing importance of international legal settings, translation cannot be described solely as an intercultural within one legal system or a transcultural activity between two legal systems. Of special interest will be the cases of supranational law where two or more countries conclude an international agreement to regulate a specific legal matter in a common way, e.g. international agreements like the WTO, but also more complex regional legal systems such as European law . One could argue that it would be a relatively simple case of a translation from language A to language B

within the same supranational legal framework. This would be a rather naive assumption because in most cases a legal language for supranational law does not exist and has to be created anew (Kjaer 1999:70). A translator or the text producer inevitably uses his own terminology or legal language, that is the language of his legal system to express new legal thoughts which then become part of the new supranational framework.

We can change our definition of legal translation accordingly: legal translation within the framework of supranational law would then be the purposeful activity of exteriorizing *supranational* legal knowledge systems, legal cognitive processes and norms, which are selected and weighted from a source text constituting an offer of information, aiming at disseminating them in another language against the background of *national and local* legal systems, while assessing their legal effect.

Three different types of legal translation can, thus, be identified: the translation within one legal system, the translation between different legal systems and the translation in an international context.

4. Classification of factors

Coming back to the decisive factors governing multilingual legal communication listed above which are to be applied to legal translation as well, it is important to order these parameters into categories to get an overview of potential situations for legal translation. An initial possibility would be to try to integrate all parameters into a formal table (Sandrini 1999:24), but such an approach can never be exhaustive and if it really comprises all factors it would become too complicated. Such a table must take into account not only the aforementioned five parameters, but also the type of the source text, the purpose of the translation and the status of the target text.

A valid alternative might be to propose a layered structured approach. A good starting point for this is the distinction made by Madsen (1995) who spoke about three universes that cover „the essential factors that are relevant to translation of legal texts" (Madsen 1994:291):

1. a legal universe, meaning the extralinguistic reality, the world of legal actions;

2. a textual universe, meaning the descriptions of legal actions fixed in a text; and

3. a translator's universe.

Madsen analyses the ties between the legal text and the legal reality and comes to the conclusion that „the cornerstone of a model for translation of legal texts must be the rooting of the legal text in a legal system" (Madsen 1994:292), meaning that top priority should be given to the legal universe, establishing thus a hierarchical relation between these three universes. All of the parameters mentioned should be allocated to one universe.

The following parameters would be assigned to the legal universe: legal content, legal system. What legal system does the source text belong to? In what legal setting is the source text originally used? What is the legal background of the addressee of the source text? Does the translator have the appropriate legal knowledge and training? And with respect to the target text: In what legal system will the target text be rooted? What legal action will be performed with the target text? In what legal setting will it be used? From what legal background do the receivers of the target text come?

The parameters of language, purpose and people are assigned to the textual universe and the following questions must be asked: What type of text is the source text? Is the source text a legal binding text? Who is the author of the text? What is the language of the source text? What is the original communicative intent of the text? Who is the recipient of the source text, specialist or non specialist? And with respect to the target text: Will the target text be an authoritative translation? What is the communicative intent of the target text? Who are the recipients of the target text (specialists or non specialists)

And the translator's universe is responsible for the parameters: purpose of translation, people who reflect the person of the translator. What is the purpose of the translation? What are the interpretative capabilities of the translator? How much legal knowledge does he have? What is the status of the translator?

The three universes can be combined to attain three layers, each representing one universe with the translator's universe representing a bridge separating the source text from the target text as shown in the graphic below.

With the help of this structure we can analyze legal translation by selecting aspects from each layer and putting them into perspective. For example,. the legal context and the communicative intent of the target text, or the type of text and its status and the status of the translation, and so on.

Thus, all the different perspectives on legal translation and the different
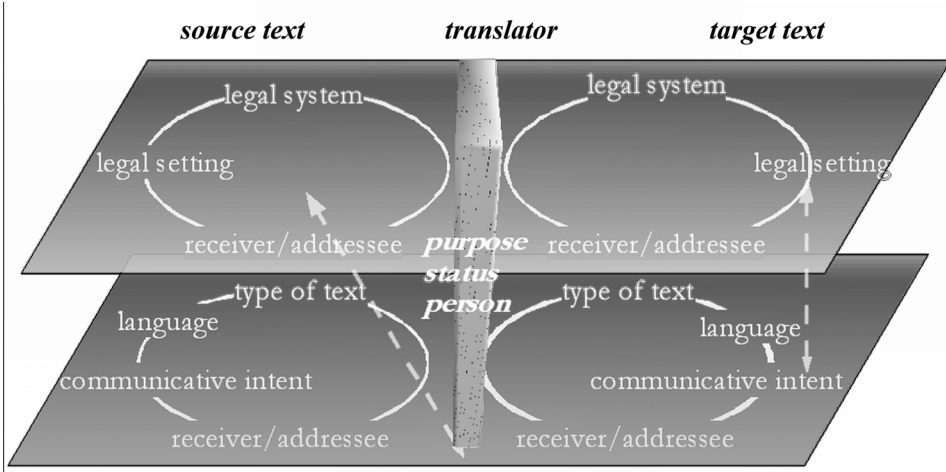
functions of this type of translation can be represented. This multifaceted and transdisciplinary aspect makes legal translation such a thrilling and interesting area of research.

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ARABIC IN CERTIFIED TRASLATORS' WORK

Abstract: The present paper concerns Arabic in certified translators' work. The paper contains a selection of examples translated from Arabic into Polish from a large domain of translation studies. I would like to underline that the present examples concern Polish language, with the English version not being a primary focus. This paper will deal with two important points (i) suitable words which express exact meanings and terms and (ii) the correctness of administrative style in some Arabic documents. The author will also examine the composition of Arabic texts and selection of information during the translation process.

Key words: certified translation, Arabic, Polish

The present paper concerns Arabic in certified translators' work. The paper contains a selection of examples translated from Arabic into Polish from a large domain of translation studies. I would like to underline that the present examples concern Polish language, with the English version not being a primary focus.

There are numerous translation terms which have a large impact on the translation process and the quality of translation. However, different methods of translation are related to the rule of clearness of the text and with conditions and preferences of the audience[2]. In addition, the Arabic language imposes other exigencies and requirements such as traditional, religious, cultural, social, administrative aspects.

In my presentation I will refer to two important points. In the first, I will pay attention to suitable words which express exact meanings and terms. The second problem affects the correctness of administrative style in some

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[2] Different methods of translation process are refined in the book *Translation terminology* translated and adapted by Teresa Tomaszkiewicz. See: Jean Delisle. Hannelore Lee-Jahnke (et alii) 1999. Adaptation and translation: Teresa Tomaszkiewicz 2006.

Arabic documents. We will examine the composition of Arabic texts and selection of information during the translation process.

To begin, I will detail suitable Arabic vocabulary. It is difficult to express and determine the meanings of words from different domains such as new technology and computer science. We will examine many calques from English and French which help to solve this problem. Words like *burjer*, *sbaysī*, *fīza*, *tāksī*, *fidiū*, *telewizjūn*, *sīdi*, *kasīt*, *hard dīsk*, *ultrafiolet* are universally used in everyday Arabic. At the same time, corresponding words in Arabic are: *ta'shīra* (a visa), *sayyāra ujra* (a taxi), *sharīṭ* (a CD, a cassette), *quṛṣ ṣalbi* (a hard disk) become less frequently used. Calques can prove an advanced poverty of Arabic language and a huge influence of English taking the place of local languages in the future[3]. We must add that the exaggeration of calques is treated as a methodological mistake during the translation process[4]. On the other side, that situation is a comprehensible effect of globalization and conscious choice of Arabic speakers.

Some models and schemas help to avoid the calques in Arabic. They support the building of new terms and meanings too. Many examples are related to technology, physics and chemistry. We find, for instance, an Arabic model *fa"āl* which refers to some machines and installations like *dabbāba* (a tank), *sayyāra* (a car) and *ghawwāṣa* (a submarine). This schema also refers to the names of professions like *khabbāz* (a baker), *rassām* (a drawer, a designer), *khayyāṭ* (a tailor). Another model, *mif'al*, refers to machines engaging in an activity such as *miṣ'ad* (a lift) or *mikbaḥ* (a brake)[5]. There is also a schema called the hybrid (ar. *naḥt*). It consists of words combinations which contain an Arabic and European subjects like the word *fikrulujya* (an ideology). It is a connection of two separate words: the Arabic word *fikr* (an idea) and the European word *logia*. We can observe a similar situation in the example: *kahraḥarari* (thermoelectric) composed of two Arabic significations: *kahraba* (electricity) and *ḥarāra* (temperature)[6].

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[3]   The arabization of words and borrowings from different languages was a natural process in the history of Arabic. Famous philologists like Sibawayh (d. 796), Abū 'Ubayda (d. 825), Ibn Qutayba (d. 869) and Al-Jāḥiẓ (d. 869) proved that many words had come from Persian, Hindi, Latin etc. Cultural, economic and political devolopment in Islamic Empire increased research in a huge domaine of Arabic words and significations from different languages. Muḥammad 'Abd al- 'Azīz 1985: 140-150.

[4]   Jean Delisle. Hannelore Lee-Jahnke (et alii) 1999: 29.

[5]   Jerzy Łacina 1989: 6-7. See also Janusz Danecki 1994: 143-146.

[6]   Ibidem: 18-19, 34.

It should be mentioned that a large group of suffixes retain particular meanings. Suffix *īk*, for instance, signifies acids like *ḥāmiḍ kibritīk* (sulfuric acid) or *ḥāmiḍ fusfurīk* (phosphoric acid). There are also many meanings that correspond to European prefixes: *dawi* (photo), *mutaʾaddad* (multi) or *fawki* (hyper)[7].

However, all of those methods are not sufficient for the huge domain of Arabic meanings and words. In fact, one word cannot determine multiple meanings. Among the many examples, there is the word *ḥawd*. It means a bath, a washbasin, a sink etc. The essential meaning comes from a reservoir in a mosque for an ablution before the prier. *Ḥawd* has new meanings as a result of semantic displacement. Nevertheless, it does not contain every detail related to bathroom equipment. A similar situation can be found in the expression: *athathu al-bayti*, which means furniture but more generally refers to all equipment in a house. The distinction between these meanings is important in judicial cases like divorce and division of property. The two parties involved often mention each type of furniture such as a book-case known in Polish language as *meblościanka*. The word *khizāna* is an Arabic equivalent of that meaninig but it also refers to other furniture in the house like a chest of drawers, a wardrobe, cupboards, etc. Also relevant is the word *miftāḥ* which means a key and a switch like in the phrase: *miftāḥu al-kahrabāi* (electricity switch). The precision of that term is important in electrical systems. There can be confusion about if the object being referred is a switch or a key placed in some installations.

Word meanings cannot always be developed from the Arabic context. It not only takes into consideration particular meanings, but also different situations, circumstances and a deeper sense of the text too. We may draw attention to the word *rizq* which signifies food as well as a gift. At the same, time *rizq* has religious connotations related to the Grace of Allah and a gift coming from heaven. Words *maṭar* and *ghayth* mean rain but the first example holds a negative connotation effected by dangerous floods and natural disasters. Instead, *ghayth* defines positive connotationsof the rain in the desert.

The question of the context is also obvious in translations of media language. The concept of *Jihād* is a good example of this. It loses its religious connotations and gains contemporary, useful translations. This is why *Jihād* often means The Holy War or even terrorism[8].

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7   Muḥammad ʿAbd al-ʿAzīz 1985: 108-114.
8   The notion *Jihād* needs deeper explanations of course. However, we must remark that Arabic word

The precision of words and Arabic context can be solved by the generalization of meanings. This is especially useful in difficult and less frequently used terminology from law and exact sciences. These generalizations are justified because of the clearness of communication between Arabic and Polish audiences. Moreover, additional meanings do not have to b e taken into consideration.

The term *a complaint* brings some difficulties in translation. The Arabic words *shakwa* and *iddi'ā* correspond with this phrase but they also introduce negative connotations related to sorrow, pretentions, and complaints. In order to avoid discussions about these deeper meanings, we can adopt the word *ṭalab* (a request) which responds with a simple proposal or a request due to family cases or heritage. Arabic audiences should know that this meaning does not complain or accuse, but proposes a request or an argument to the court.

A similar situation occurs in the term *a judgment*. It can be translated as *ḥukm* or *muḥākama*. The first equivalent has an archaic sense and is rarely used. The second one concerns criminal cases and accusations. In this situation the word *qarār* (a decision) should be used to generalize the meaning and remain clear and legible for Arabic audiences.

The generalization of meanings is evident in the terms *adoption* and *preparation*. The word *tabann* refers to both of them, but it does not separate the questions of natural, biological parenthood and adoption of a child by new parents. *Tabann* embraces just the general problem of a child's adoption.

During the translation process, we must adopt different stylistic constructions and expressions composed of two or three words in order to detail particular Arabic notions. This is an effect of imagery and metaphor in the Arabic language. Expressions like *Bintu shafatin* (lips' daughter) and *Ibn awa* (shelter's son) are good examples of this[9]. The first phrase signifies *a word* and the second one *a jackal*. The sense of those expressions is based on impressions following the common marks between each word of the phrase.

Descriptive constructions help to precise and complete technical and audiovisual terminology. This is evident in the following examples.

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jihād means an effort and self-sacrifice. The meaning is related to moral struggle in order to reach religious and spiritual purity. *Jihād* is also a self-defence against the danger for the faith. That defence is usually based on rational explanations of Quran and logical argumentations. Violence in that case is condemned and criticized. See more: Tahar Gaïd 1982: 100-103.

[9]   Janusz Danecki 1994: 114.

The Arabic equivalent of the phrase: *remote control* is expressed by the description *waḥdatu at-taḥakkumi an buʾdin* (a unit for remote control). The word *waḥda* (a unit) which not only indicates a general meaning of remote control, but also especially the mechanism.

The translation of the term *a notebook computer (laptop)* corresponds with the Arabic equivalent *ajhizatu kumbyūtarin al-maḥmūlatu* (a mechanism of a mobile computer). The word *ajhiza* (a mechanism) is essential in that phrase. It determines the kind of installation and its small size. A notebook computer can be compared with installations like a camera (ar. *jihāzu at-taṣwīri*) or a video-camera (ar. *jihāzu kamīra*).

We should also pay attention to some translations of commands in different audiovisual installations. The phrase *azrāru ikhtiyāri al-qanāti* (buttons for selecting the channels) is an Arabic version *channels button*. The word *ikhtiyār* (choice) describes the function and application of the mechanism. A similar situation is present in the example *azrāru l-bahthi al-waẓīfati* (buttons for searching the function) which defines the function *search buttons*. The command is completed by the word *waẓīfa* which defines the function of searching. Particular words give clear information concerning the application of certain mechanism.

We should also mention the phrase *miqyāsu surʾati ar-riyāḥi* (wind speed gauge) which is the equivalent to the term *an anemometr*. The word *surʾa* (speed) explains the activity of the mechanism. The anemometr not only measures the wind, but also the speed.

The phrase *a passenger vehicle* is often translated as *sayyāratu naqli ar-rukkābi* (a vehicle for passenger transport). The expression *sayyāratu ar-rukkābi* (passenger vehicle) seems more acceptable and efficient but it defines possession of a vehicle. The mentioned phrase with the word *naql* (transport) distinguishes the membership and allocation of the vehicle.

Sometimes the precision of meaning rests on the replacement of particular words. This is evident in a questionnaire concerning an application for a visa to Tunisia. The application contains the following expression *Bilād Tūnisiyya* (Tunesian Lands) or *Turāb Tūnisiyy* (Tunesian Soil). These kinds of names make a distinction of the Arabic word *Tūnis* which defines the capital and name of the state. The exact meaning of the expressions are important due to questions concerning the stay in country as a whole or only the capital. On the other side, there is an official name *Al-Jumhuriyya at-Tūnisiyya* (Republic of Tunesia), but it is usually used in certain situations and is treated as a separate name in some documents.

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The second question of the present paper concerns the formal style in Arabic documents and requirements related to culture, tradition, religion and administration. I would like to take into consideration these stylistic forms.

Admistrative style depends on certain terminology such as formal functions of Arabic institutions. The terms: *mudīr*, *muwazzaf*, *amīn*, *mukhtār*, *ḍābit* are generally used. *Mudīr* designates a manager, a director, a president, a principal etc. *Muwazzaf* refers to a clerk and a civil servant. However, *ḍābit* means an officer. *Amīn* means a secretary and *mukhtār* a foreman. It i diffi-cult to translate and define the formal functions *murāqib* (a supervisor) and *nazzār* (an inspector). This is why, in the target language, we must replace those terms by more popular and useful equivalents like president, manager, officer or principal.

Different, formal functions correspond with administrative zones in Arab countries. We dinstinguish words like *wilāya*, *muḥāfaza*, *dāira*, *baladi-yya*, *muqāṭaʿa* and *iqlīm*. They signify European terminology: *voivedeship*, *district*, *province* and *region*. The application of those notions depends on the location of the Arab countries. *Muḥāfaza*, for instance, occurs in the Middle East and *wilāya* in the West. Because of multiple sense of admin-istrative units, French offices use the word *ouilaya* to descibe districts in Tunesia, Algeria or Marocco. There are also the terms *iqlīm* and *muqāṭaʿa* which mean a district and a province. However, *muqataʿa* is used only as a nominal name for a district and it differs from the words *muḥāfaza* or *wilāya*. Besides, *iqlīm* defines a large surface with undetermined borders like in the case of Kurdistan known in Arabic as: *Iqlīmu Kurdistaniyy* (The Region of Kurdistan).

Another group of words has a big influence on formal style in Arabic documentation. These words emphasize notions in texts and express the se-riousness of content in documents. The following nouns are an example of such: *mustanadāt* and *qayd*. *Mustanadāt* represents certificates and guaran-tees presented in an office or joined to documentation. *Mustanadāt* is dif-ferent from the terms *wathīqa* (a document) or *awrāq* (writings, papers), which are well known in everyday Arabic language.

Nevertheless, the word *qayd* responds to Arabic words: *tasjīl* or *sijl*. They signify registration and record. *Qayd* instead refers to the registration number and essential information about a citizen. The fundamental meaning of that

term is related to strong relationships and connections. This means that *qayd* refers to connections between a particular person and his identity. If any certificates concern general registration, it appears in the words *tasjīl* or *sijl*. The term *qayd* occurs when documentation refers to specified personal information.

We can also observe additional verbs in some documents. The expression *tamma taʾīnahu* is an Arabic version of the phrase *to be nominated*. Using the verb *tamma* (to finish) formalizes the document. This also differs from simple, everyday statements such as *ʿayyanahu raisan* (he nominated him for a prime minister).

A similar style dominates in the example *jaa an-naṣṣu wifqan li-muḥtawa shahādatin* (the text has arrived in accordance with the matter of the certificate). The verb *jaa* (to arrive) is essential to the sentence because it introduces an official style and emphasizes a solemnity of the document.

The analysis of the order of words in Arabic sentences as well as the selection and segmentation of information in the text are equally important in the translation process.

Many Arabic certificates contain the following phrases *yashhadu al-mudīru, binaan ʿala al-marsūmi raqmun…* (the principal declares, according to the ordinance number…). We can observe a long list of ordinances and regulations. There is an essential declaration of the principal. The target language requires that we select certain information and change the order of the text. We must separate all ordinances from the declaration. The decision should appear on the top of the text and other parts should be placed in a particular passage.

There is the same method of translation in some birth certificates. These certificates usually contain the sentence: *fī as-sāʾati as-sābiʿati khamsa ʿashara daqīqatan, fī al-madinati Abu Saʾid, al-baladiyyati Abu Saʾid, ad-dairati Abu Saʾid, wulida Ḥasan, ibnu Aḥmadin wa Layla.* (at seven o'clock, fifteen minutes, in the city of Abu Saʾid, in the district of Abu Saʾid, the region of Abu Saʾid was born Hasan, the son of Ahmad and Layla). A birth certificate is a sort of detailed description of the birth process. It does not contain a list with all essential information about the child and the parents.

Arabic documents have a stylistic order. Some of them contain passages with the phrase *wa baʿdu* (then, next) such as in the following example *aṭyabu taḥiyyatin wa baʿdu* (best wishes and then [next]). *Wa baʿdu* does not correspond to the other parts of the sentence. That is why it is often used in translations. However *wa baʿdu* underlines the formal sense and separates certain passages in the document.

The same description is present in a marriage certificate. It demonstrates the protocol of the ceremony and includes every person taking part in the marriage as well as instructions and formal regulations.

Some documents contain sentences and phrases related to religious and moral aspects. The passage *Bi-smi Allahi wa raḥmāni wa raḥīmi* (in the name of Allah, Most Gracious, Most Merciful) occurs in a majority of certificates. That phrase authenticates and executes the document. It also proves the strong relations between the state and Islam. A translation into the target language usually obliges us to avoid religious references in order to conserve administrative style.

Nevertheless, we cannot ignore that question in certificates declaring faith and acceptance of Islamic law (ar. *dīn wa madhhab*). It is important in many judicial and administrative cases such as marriage, divorce, adoption or citizenship.

Influence of religion is obvious in the documentation ofhe condition before marriage. It contains the following sentence: *lā yūjadu māni'un shir'iyyun aw qanūniyyun bi an yatazawwaja* (there are not any juridical and Islamic juridical prohibitions for marriage). Religious references can be necessary in family cases which do not occur in civil law. That is why religious aspects should be translated.

We can add the example of a marriage certificate. It contains a long description of a dowry which includes the amount of money for each side of the marriage as well as bars of gold for a bride in the case of divorce. Of course, this unique desription is mot present in Polish translations because of formal regulations. However, we can present a summary of information about the marriage ceremony.

The relations of bystanders are equally important in many documents. Here is an example from the condition certificate *lahu al-ḥaqqu al-qanūniyyu bi-an yatazawwaja bi-shahādati ash-shāhidayni* (He has the right to be married based on the declaration of two bystanders). The phrase *shahādatu ash-shāhidayni* (the declaration of two bystanders) is the most interesting in this certificate. It not only includes the signatures of bystanders during the marriage ceremony and formal rules, but also ocular relations of the participants. A verbal declaration appears more important than any document or certificate[10].

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[10]   The experience from my childhood passed in Algeria proves that bystanders' testimony is very important. A friend of our family sold a car. New owners caused a car accident and injured one person on the same day. Unfortunatly the name of our friend was appearing in documentation of the car.

The importance of verbal and visual testimony is also evident in birth certificates. The following information is present on the certificate *al-abu, al-ummu, al-qābilatu aw ghayruhum mimman shahida al-wilādata* (a father, a mother, a nurse or anyone else who has seen the birth). Polish documentation is concentrated on the child's parents. Arabic certificates place an emphasis on persons who can testify to the birth.

Social and moral tendencies are illustrated in Arabic documents too. The Arabic Health Book (ar. *daftar 'ailiyy*) from the 1980's is a good example of this. There are approximately twelve pages referencing children. Details about subsequent children are placed in each page. This is proof of the high birth rate in Arabic countries. It is worth noting that there is only one page for the father. It contains essential information about his name, profession as well as the date and place of birth. The health book shows the important function of the father in a family. Due to the lower birth rate it is difficult to adopt this kind of certificate in Polish (European) conditions. This is why a summery of the first page of the document should be given. In the case of many children, we must translate all pages and refer to every passage of the text.

<p style="text-align:center">****</p>

Conluding, I would like to remark that my comments present the specifity of the Arabic language on the level with administration, societal, moral, and religious regulations. I also analyzed different methods of translation and questions of formal style in Arabic documentation. Nevertheless, the clearness of the text is most important during the translation process

This paper points to the fact that efficient and detailed words express multiple meanings in Arabic. I refered to descriptive phrases and stylistic constructions which exemplify the difficult significations as well as the formal style in documents.

While selection of information and the different order of Arabic sentences are very important, this paper proves that segmentation is based on essential details for the target language.

It could cause some problems with the police and indicate the perpetrator of the accident. Finally, the problem was solved by people who saw the incident and declared immediately that the buyer had given some amount of money so he became a new owner of the car and he was responsible for the accident.

I presented some social, moral, and religious aspects which are not present in many Polish translations. However these aspects show the working of Arabic administration and offices. Many of these questions are useful in making formal decisions and can improve communication between European and Arabic institutions.

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Język arabski w pracy tłumacza przysięgłego

Niniejszy referat dotyczy osobistych refleksji związanych z pracą tłumacza przysięgłego języka arabskiego.

Istotną rolę odgrywa odpowiedni dobór słownictwa, które obejmowałoby swoim zakresem znaczeniowym poszczególne pojęcia w danym języku. Należy także wspomnieć o odzwierciedlaniu właściwej terminologii w języku arabskim, która nie zawsze odpowiada językowi polskiemu. Taka sytuacja zmusza niekiedy do stosowania ekwiwalentów znaczeniowych, generalizujących pojęć bądź rozbudowanych, opisowych konstrukcji stylistycznych.

Specyfika języka arabskiego wymaga również uwzględniania różnorodnych czynników w pracy translatorskiej niezależnie od charakteru i tematyki tekstu. Czynniki te dotyczą często religii, tradycji, kultury i obyczajów czy wreszcie kwestii społeczno-politycznych i administracyjnych.

Równie ważną rolę odgrywa szyk zdania w arabskim tekście, w którym określone informacje zostają wyeksponowane na początku i dominują liczne wtrącenia i dopowiedzenia, co zmusza do pomijania i skracania niektórych kwestii.

Zaprezentowane rozważania mogą okazać się użyteczne przy wydawaniu różnych decyzji administracyjnych i sądowych, a także mogą przyczynić się do sprawnej komunikacji między urzędami europejskimi i arabskimi.

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DISCOURSE DISFLUENCIES IN BILINGUAL COURT HEARINGS

Abstract: In about 9% civil and criminal cases that are settled in Swedish District courts every year, i.e. in roughly 10 000 court hearings, an interpreter is employed when at least one of the involved parties speaks another language than Swedish. In this paper, aspects of interpretation in the courtroom are discussed in general, and examples from court proceedings are used to analyse disfluent situations. The role of the interpreter is viewed, and compared to that of other participants' in the discourse. Aspects of legal rights for the individual are discussed in relation to examples from other language communities. The results show that the confusing situations and misinterpretations are not only dependent on the decisions made by the interpreter. The attitudes and the linguistic behaviour of all discourse participants may contribute to the disfluencies.

Key words: Interpretation, Disfluencies, Courtroom, Discourse

1. Introduction

Every year, more than 130 000 civil- and criminal cases are settled in Swedish District Courts. In about 9 % of these cases, i.e. in approximately10 000 court hearings, the help of an interpreter is required, since at least one of the involved parties speaks another language than Swedish. According

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to the Swedish law, all court hearings must be held in Swedish, even if all involved parts understand the other language spoken in the courtroom. The motivation is that any Swedish citizen shall have the right to attend and to understand a Swedish court hearing. The interpreters are ideally summoned from an agency that provides certified interpreters. If no such person can be found, someone with sufficient knowledge of both source and target language can function as an interpreter.

No matter how well the interpreter performs, disfluencies in the discourse are bound to arise from time to time. In our paper, we study discourse disfluencies and discourse techniques aimed at disfluency correction and prevention. By discourse disfluencies we mean not only phenomena traditionally defined as speech disfluencies (self-corrections, hesitation marks etc.), but also disruptions of the interpretation process, and of the dialogue as a whole.

The base for this study consists of recorded hearings from a Swedish District court. We focus on hearings interpreted between Swedish and Polish. Parts of the dialogues are translated, studied and discussed more in detail with respect to theories of translation and discourse.

2. The interpreter's dilemma

Focusing on the translation process, it is unavoidable to deal with the question of what shall be translated, and what shall be emphasised in the translation. Since Nida (1964), translation theorists distinguish between formal and dynamic equivalence. In translation oriented towards the *formal equivalence*, the source language structures are maintained - as far as it is possible – in the target language. The obvious drawback of this strategy is that the original illocutions of the source language may be lost. The other approach, *dynamic equivalence*, has a stronger focus on the receptor: "the relationship between the receptor and the message should be substantially the same as that which existed between the original receptors and the message" (Nida 1964:159). This implies that it often is necessary to deviate from the form of the source text to retain the meaning of the message.

A similar distinction is expressed by Newmark (1988) in the terms of *semantic* and *communicative* translation. Semantic translation resembles Nida's formal equivalence: the focus is on the thought processes of the sender. This type of translation is rooted in the source language culture,

which means that the result is close to the original, and does not adapt foreign elements into the target language culture. This type of translation, however faithful to the source language, has a tendency to be complex, very detailed and with a risk for "overtranslation" (Munday 2001:45). Communicative translation is more oriented towards the receiver and the culture of the target language society. It transforms foreign elements, e.g. metaphors and idioms, into the target language culture, hereby deviating from the literal translation but gaining in illocutionary force and clarity for the target language speaker.

Along with the demands for linguistic accuracy, the translator should ideally both literally and figuratively be invisible, i.e. to translate so idiomatically correct that an illusion of transparency is created (Venuti 1995). The ideal translator should in other words perform his task in a manner that renders him/her invisibility.

The theoretical notions mentioned above are primarily concerned with translation of written texts, but of high relevance also for interpreting spoken language. There are several factors working against the court interpreter, as compared to the translator. The perhaps most crucial of these is the time factor. The interpreter has little or no time to decide on what strategy to use to achieve equivalence in a particular situation. He or she is very much present in the court room, making the invisibility aspect yet more complicated. To add to this complex situation are the cultural differences between speakers and idiosyncratic speech styles.

The aim of this work is to study and define the types of discourse disfluencies that occur in court hearings when the dialogue is interpreted. The discourse is analysed with respect to the interpreter's role and the roles of addressor and addressee to find the main causes of disfluencies.

3. The Swedish judicial system

The Swedish judiciary is organised in three different organisations; The general courts, (district courts, courts of appeal and the Supreme Court), the general administrative courts (county administrative courts, administrative courts of appeal and the Supreme Administrative Court) and the special courts (i.e. the market court, the labour court). The general courts handle criminal cases and civil disputes, e.g. disputes between individuals. Such civil disputes concern family law, divorce proceedings and custody of children.

The primary objective of the general administrative courts is to handle disputes between the public authorities and a private individual. Typical issues include tax cases, cases on treatment of drug addicts and alcoholics, treatment of mentally ill, and cases on social insurance issues.

Special courts handle civil suits where, as the name implies, special competence in a field is required. To this category of courts belong for instance the Labour Court and the Market Court.

The cases included in this work are all civil and criminal cases from district court hearings.

Table 1: Total number of civil- and criminal cases in Swedish District Courts. Statistics from the Swedish Judiciary 2006

Year	1998	1999	2000	2001	2002	2003	2004	2005
Civil	68557	65805	64563	64548	64761	66297	67080	65010
Criminal	61085	60436	62584	60861	62236	64894	68512	69215
Σ	129642	126241	127147	125409	126997	131191	135592	134225

Table 2: Total number of bilingual hearings in Swedish District Courts. Statistics from the Swedish Judiciary 2006

Year	1998	1999	2000	2001	2002	2003	2004	2005
Bilingual	9205	7953	8900	9907	10287	11676	12610	12348
Rate of bilingual hearings, per cent of all civil- and criminal hearings								
Civil	1,6%	1,6%	1,8%	2,1%	1,8%	1,6%	1,7%	1,6%
Criminal	5,5%	4,7%	5,2%	5,8%	6,3%	7,3%	7,6%	7,6%
Σ	7,1%	6,3%	7,0%	7,9%	8,1%	8,9%	9,3%	9,2%

As seen in table 2, the trend is clearly rising as for interpreted court hearings. The total number of criminal cases shows an increase over the last eight years, while the trend regarding civil cases is less clear. As for the increase regarding interpreted hearings, one explanation could be that since joining the Schengen-treaty in late 1996 it has become easier for people to move freely across borders in Europe. Without moving into socio-political discussions it goes without saying that such possibilities for movement between countries include individuals whom, for one reason or another, will get into contact with the judicial system. As a direct consequence of this, the

need for increased knowledge about, and ability to handle interpretation situations is needed.

4. Interpretation in the courtroom

According to The Swedish Judiciary, all main hearings in Swedish courts are based on the principle of orality: a case must be decided after an oral hearing. It is also stated that all hearings in Swedish courts must be held in Swedish, even if all involved parts understand the other language. One reason for this is that, according to the principle of free access to records, any Swedish citizen has the right to attend a court hearing, and understand the language spoken. This illustrates the view of the importance of language as a tool for achieving justice. It also shows the need for accurate interpretation in cases where any of the involved parts speak little or no Swedish.

In cases where other languages than Swedish are spoken, a court interpreter is summoned to the hearing. Ideally, the interpreter should be certified by the National Judicial Public Board for Land and Funds (Kammarkollegiet). The dominating interpretation method in hearings is consecutive interpreting: the interpreter listens to what is said, and gives a batch-translation when the speaker pauses. Simultaneous interpreting occurs e.g. when both addressor and addressee are Swedish speaking, and the suspect is not. In-between stages of the two interpretation strategies can be seen as an accelerated consecutive, without actually going as far as simultaneous interpretation. (c.f. Gile 2001)

5. Material and method

This study is based on material from ten criminal case hearings in one of the 95 Swedish district courts. All hearings referred to were cases where the defendant spoke a language other than Swedish, and thus had an appointed translator to make hearings possible. The most common scenario, and all the court hearings referred to in this paper, is that the suspect constitutes the non-Swedish speaking part and that the interpreter has the same first language as the suspect. Languages included in the material are Albanian, Polish, Romanian, Russian, Serbian, Thai and Vietnamese.

Even though the reason for prosecution and the possible sanction was considered as of no interest for the study, all cases viewed concerned

common petty offences, e.g. shoplifting, traffic violations or theft. This is to avoid any unintentional identification of defendants due to the nature of the crime or situation.

The dialogue situations studied fall into three categories;
1. Swedish interpreted into a foreign language.
a. the sender speaks Swedish, and the addressee speaks some other language (e.g. a prosecutor questions a non-Swedish speaking suspect)
b. the sender and the addressee speak Swedish, while some of the hearers is not Swedish-speaking (e.g. a Swedish-speaking witness is questioned and a non-Swedish speaking suspect should be able to understand)
2. Some other language is interpreted into Swedish
3. Swedish is the only language spoken in the courtroom.

As will be shown and discussed, most of the dialogue-related difficulties have other sources than the interpreter, even if he/she often at first glance appears to be part of the problem rather than part of the solution.

6. Case study

Out of the studied hearings, one was judged as being the most interesting from a dialogue-structure point of view, and viewed more in detail. Examples from the other hearings are found in the discussion section. The suspect in the hearing analysed here was a Polish citizen with no knowledge of Swedish, accused of shoplifting at a supermarket. Except for the interpreter, no one in the courtroom had any knowledge of Polish, so the dialogue was totally dependent on the interpreter.

The initial stages of the proceedings consisting of formalities such as personal particulars, presentation of the legal staff, and statement of the criminal act charge, are interpreted without any problems. The suspect is then asked to account for his view of the incident at hand. This part of the hearing proves to be the most challenging for all discourse participants. The suspect starts his story by telling about events leading up to the trip to Sweden, what he and his friends brought to sell in Sweden and who was in the car. The interpreter tries to keep up, but the average length of the suspect's utterance batch contains 30 – 40% more words than the Swedish version. After two minutes, the judge points out that the story should *concern*

the event that is the subject for this hearing, the events at supermarket X and not the background, and this is explained to the suspect. This is followed by a conversation between the judge, the prosecutor and the interpreter, where the judge says that "as you as an interpreter know, it is important that the court understands what is said, and you must translate everything that is said without asking the suspect any questions" The interpreter agrees (*mmm yes, exactly, and keep to the point, right*), and the interpretation process continues for about three more minutes.

The suspect's story is then interrupted by the judge, and a dialogue between the judge [J] and the interpreter [I] takes place (authors' translation):

[J] I get the impression that the suspect is telling much more than you are translating. Polish is perhaps a little longer then Swedish, but…

[I] Oh, well yes, but you know, he….he….

[J] Yes, but we want to hear everything that he….if you say that he…it's what he says that….

[I] Yes, but you know he repeats things and….

[J] Yes, but then you should really repeat that too.

[I] But I can not talk like he does

[J] No…

[I] You can all hear how he talks!

[J] Yes, but we cannot understand anything of it!

[I] I can not stutter and (overlapping) [J] No no, not stutter, that's not what I'm asking…..

[I] It is….well it is him, it is him you know…

[J] Well if that is the case it should not be interpreted, but it is important that we get to know also if he is unsure about anything, and hesitating about where he was or such… It is not up to you to make it clearer

[I] Yes but I did say that he said that he went past the media department and that he looked at two cans of shaving foam that he did not know if he wanted to take, but I say it fluently, right?

[J] Mmm….hmmm….right….

After this argument, the interpreter changes his strategy. He goes from a consecutive approach to something in between an accelerated consecutive and a simultaneous interpreting style. The interpretation comes in shorter batches and the whole dialogue is characterised by lots of overlapping speech and incomplete phrases and sentences as the suspect makes no, or just very short pauses in his narrative.

The hearing continues with two witness statements. The witnesses are Swedes employed as shop surveillance personnel. This part of the hearing passes without any disturbances worth mentioning.

A closer look reveals several reasons for the confusion in the initial stages of the hearing. Told by the interpreter to "tell the story from the beginning" the suspect starts out with a long description about buying a certain amount of beer and brandy in Poland to sell in Sweden. His concept of "telling from the beginning" is clearly different from what the court sees as the beginning, namely arriving at the store where the alleged shoplifting incident is claimed to have taken place.

The suspect is probably uncertain about what the hearing really concerns. He is in a foreign country, in a foreign language community, in an authoritarian environment, and he knows that bringing alcoholic beverages into the country to sell is not legal. He starts by spontaneously admitting what he believes is the crime. What the hearing is really about is the shoplifting charge, but this has to be explained to him by the interpreter.

The suspect talks a variant of Polish that signals a rather low level of education. His speech is full of self-corrections and repetitions. He uses, with a very high frequency, Polish demonstrative pronouns and pronominal adverbs (*to, to tego, ten, taki, tam*…), i.e. semantically empty markers that Polish elementary school pupils are trained to avoid in oral presentations. His speech tempo is fairly high with a high frequency of filled pauses, even to a non-Polish speaker signalling a high stress level. What to the court sounds like a fairly long and extensive piece of information that eventually is translated with *…and then we went from the car to the shop* could be something along the lines of *…and well, we sort of well, we went out of the car, and we were in the car and well we ….eh…we left the car and the shop, we went to the shop when we left the car all of us*.

Considering the importance of language and linguistic ability reflected in the "principle of orality", the suspect is an example of an individual in a double linguistic limbo. His task is to account for a course of events with the limited verbal capabilities he is in possession of, reflected in poor performance of his mother tongue and to do this through an interpreter.

7. Conclusions and discussion

The sources of communication errors in an interpreted discourse vary, and cannot be ascribed to any single participant. How well trained the interpreter, there is no guaranty for a smooth and well functioning discourse if the other involved parties lack insight in the linguistic and cultural differences. As these factors generally are unknown, or at least not reflected upon by the legal staff, the witnesses, and the suspects, the occurrence of disfluencies in court hearings is unavoidable.

During periods of consecutive interpretation, disfluencies are due to the behaviour of the foreign language (here: not-Swedish) speaking addressor in the following discourse situations:

a. no, too short or too few pauses in the narrative; this does not give enough time for the interpretation process.

b. repetitions, self-corrections, hesitations and incomplete syntactic structures c. context insufficient for disambiguation, e.g. in the case of differences in semantic fields between source language and target language. One example observed is a case of describing how toothpaste was wrapped when investigating a case of shoplifting (Swedish – Thai). The interpreter says that *the tubes were packed in a container, or rather a case, or like a box*. It takes some reasoning between the parties before establishing that each tube of toothpaste sits in an individual box, and that these individual boxes where placed in a bigger case, sitting on the store shelf.

When the foreign language speaker is the addressee during consecutive interpretation, other reasons for the disfluencies emanate:

a. Problems with understanding of "legalese" and culture specific concepts. Legal jargon can prove complicated enough in a monolingual setting, and even more so in a bilingual situation. An example of this is when the prosecutor in a case interpreted between Swedish and Arabic demands that the consequence of a criminal act should be *30 dagsböter* (literally 'day-fine', proportional to ones' daily income) and the accused gets the impression that he has to pay everything he earns in a month.

b. Problems with understanding particular illocutions, e.g. when the suspect and the judge have different concepts of "the beginning"

c. Cross-cultural differences in politeness conventions. If a simple "yes" or "no" is expected from one part and the other part feels the need to give the background to an answer, the discourse is bound to collapse. One example

of intercultural and sociolinguistic consequences is the gratuitous use of the word "yes" by young aboriginal Australians in answer to any question, this regardless of whether the speaker agrees with the given statement or not (Eades 2002). Other examples of the same phenomenon come from more informal discussions with lawyers during visits to the district court. A speaker of Arabic could reply to a yes/no-question with a long narrative starting with a story about parents and family to indicate the serious approach to answering the question (House 1998).

The disfluencies occurring in simultaneous or close-to-consecutive interpretation when the addressor and addressee are Swedish-speaking are of a different nature:

a. When addressing another Swedish speaker, the addressor makes no, to short or too few pauses. The most common disturbance here, when interpreting interaction between the legal staff, is uncertainty on where/when to pause for interpretation. This is also evident when the atmosphere gets a bit excited for some reason, and someone is eager to convey a message or a question. Some cases of problems with wording and self corrections are found here, both from the interpreter and from court staff. This causes the interpreter to lag behind in interpreting.

b. Sudden changes of addressee is another critical factor. It happens that the addressor changes addressee without any notice, e.g. turning from the suspect to address the interpreter with questions or remarks on the interpretation. This leaves the former addressee hanging in mid-air, probably adding to the insecurity.

During periods of simultaneous interpretation, e.g. when a Swedish-speaking witness is questioned, yet other types occur:

a. Situations like this are interpreted simultaneously in a low or whispered voice. This causes the interpretation process to be "forgotten" unless someone points out that the interpreter needs time to perform his task.

b. Other disfluencies in this modus are to be seen as channel-related. When a witness is heard over a telephone line, he/she does not have access to the visual cues of turn taking normally used in dialogues. As the telephone witness can not see, and in many cases not even hear the interpreter, it is not surprising that the interpretation process is forgotten from time to time and pauses do not occur as frequently as necessary. An interpreter has, by definition, a "third-part" function in a conversation. The interpreter's task in these situations is very much dependent on how the

dialogue is structured. It is very important that the accused understands what a witness claims to have seen or heard. It is however not uncommon that as a dialogue between a witness and the prosecutor or judge evolves, the interpreter is forgotten or overlooked, leaving him/her with too little time to perform the translation task.

Other problems, not really disfluencies but still with a negative impact on the discourse are observed in the hearings as well. These include:

a. slips of the tongue. The only purely interpreter-related problems are at the same time the hardest to spot. This concerns misinterpretations and interpretation errors, impossible to detect without knowledge of both languages. It is not obvious how common such mistakes are, but in one of the hearings used for this paper two such errors were detected. In one case, the interpreter translates the phrase *…and I turned left* as *…and I turned right*. The other mistake is when the suspect describes a person as blonde, and the interpretation is *dark-haired*. In this particular shoplifting case, the misinterpretations did not have any significance for the outcome, but it is still an alarming fact that such things pass unnoticed. It does not take too much effort to imagine scenarios where misinterpreted words could mean all the difference to a suspect's story.

b. lexical and grammatical interference. An illustrative example is a Polish interpreter using the Swedish *mobil* ('mobile phone', 'cell phone') instead of the Polish *komórka* ('cell') when interpreting a question to a Polish suspect.

A case where the lack of basic linguistic knowledge has had severe consequences for an individual is described by Rodman (2002). A suspect was accused of, and convicted for a serious drug-related crime based on a surreptitious recording of a drug deal. The suspect's accent was, compared to the accent spoken in the recording, of such different nature that it, according to the author, could not possibly be the same speaker. He argues that if the court had possessed some basic linguistic training, the conviction of a man innocent of the crime at hand could have been avoided, and the search for the actual perpetrator could have continued.

Agreeing with Rodman (ibid.) that some sort of basic linguistic knowledge should be administered to court personnel and, ideally, to other people appearing in courts. Examples of such are for instance shop surveillance personnel, security- and police officers and other occupational branches that can be expected to appear in court settings as part of, or consequence of, their

work. If some basic knowledge about communication through an interpreter was delivered to both witnesses and suspects, many of the smaller but still at best annoying disturbances should be avoided. Even though the examples in this paper are not of such dramatic scale as the aforementioned, they still point out the importance of the oral communication and the significance of the interpretation process.

Yet another fact to bear in mind at the end of this discussion is the debate on attitudes towards accented speech Previous research suggests a correlation between foreign accented speech and negative evaluation, preconceived notions and stereotypical attributions on factors like credibility, perceived guilt etc. (Cunningham-Andersson & Engstrand 1988, 1989; Doeleman 1998; Abelin & Boyd 2000; Bayard et al. 2001) This has been shown to have impact e.g. on judgment in court hearings (Rodman 2002) and witness statements (McAllister 2000). A research question to investigate is whether the same attitudes occur when someone is interviewed or interrogated using an interpreter. In a vast majority of interpreted court hearings, the interpreter is a native speaker of the same language as the suspect and thus speaks the target language in a more or less accented way. This could imply that an individual appearing in court without knowledge of the language spoken has a disadvantage from the start. This is said keeping in mind that in most cases the interpreter has an accent, too. We leave to the reader to consider how a "dynamic" or "communicative" interpretation of hesitation markers and low-education markers could affect the professional career of the interpreter.

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Diskursdisfluenser i tvåspråkiga rättsförhandlingar

Svensk sammanfattning

Artikeln behandlar de diskursdisfluenser som uppstår i rättegångsförhandlingar förda med tolk. Olika aspekter av rättegångstolkning diskuteras och exemplifieras utifrån studerade tingsrättsförhandlingar. Tolkens roll granskas och jämförs med övriga diskursdeltagares. Resultaten visar att disfluenser, missförstånd och feltolkningar har olika orsaker beroende på deltagarnas roller och diskursstrategier.

Karen Deschamps[1] and Hans Smessaert[2]

THE LOGICAL-SEMANTIC STRUCTURE OF LEGISLATIVE SENTENCES

Abstract: This article analyses the logical-semantic structure of legislative sentences from a linguistic point-of-view. First, it is examined which elements constitute the meaning of legislative sentences. The following norm elements will be discussed: legal modality, norm subject, act, conditions of application, time and space, norm authority and negation. In the second part of the article, the logical-semantic relations between these elements are analysed. Following Bowers (1989), these logical-semantic relations are represented in a predicate-argument structure on different levels.

Key words: legislative language, legal norms, predicate-argument structure, semantic roles

1. Introduction

Legal theory often distinguishes between NORM-FORMULATIONS and NORMS (Von Wright 1977: 93; Kelsen 1991: 2). In linguistics, a similar distinction is made between the SURFACE SYNTACTIC STRUCTURE of (legislative) sentences and their UNDERLYING LOGICAL-SEMANTIC STRUCTURE (Bowers 1989: 209). It is well-known that the relation between this surface form of a sentence and its meaning is not a straightforward one. Compare for instance the Dutch, German and French version of article 101 of the Belgian Constitution:

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(1) *Geen* minister kan worden vervolgd of aan enig onderzoek onderworpen naar aanleiding van een mening in de uitoefening van zijn ambt uitgebracht.[3]

"No minister may be prosecuted or pursued on account of opinions expressed in the line of his duties."

(2) Ein Minister darf *nicht* anlässlich einer in der Ausübung seines Amtes erfolgten Meinungsäußerung verfolgt oder Gegenstand irgendeiner   Ermittlung werden.

(3) *Aucun* ministre *ne* peut être poursuivi ou recherché à l'occasion des opinions émises par lui dans l'exercice de ses fonctions.

Although the sentences in (1)-(3) express the same norm, they differ as for their syntactic structure. In the Dutch version in (1), the negative determiner *geen* combines with the noun *minister*, which is the grammatical subject of the sentence. In the German version in (2), on the other hand, the negative element *nicht* negates the modal verb *darf*. Finally, in the French version in (3), negation is expressed by the discontinuous morpheme *aucun…ne. Aucun* combines with the grammatical subject *ministre*, whereas *ne* negates the modal verb *peut*. So, at the syntactic level, negative marking may occur either on the subject or the verb, or on both. However, as will be shown below, at the logical-semantic level, it is the deontic modality which is negated in each case.

This example shows that the syntactic structure of a sentence does not straightforwardly reflect its meaning. In order to cope with these differences between form and meaning, Bowers (1989: 209) argues that a linguistic description of (legislative) sentences "must adopt at least a dual representation, whereby external syntactic structure is accompanied by internal semantic structure". This article examines how the semantic structure of legislative sentences can be represented. Formalisations of legal norms have been proposed by scholars in various fields, including logic (Von Wright 1977), legal theory (Ruiter 1993) and legal informatics (Van Kralingen 1996). In this article, we will examine the logical-semantic structure of legal norms from a linguistic point-of-view, following Bowers (1989). We will argue that a number of problems raised by his analysis can be solved by making use of insights from legal theory.

In section 2, we determine which elements constitute the meaning of legislative sentences. In section 3, we analyse how these norm elements relate to each other and how these logical-semantic relations can be represented.

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[3]   Article 101 of the Belgian Constitution. See http://www.senate.be/doc/const_nl.html.

2. The elements of a legal norm

The question as to which elements constitute the meaning of legislative sentences has been considered by researchers in various disciplines related to law, including legal translation (Šarčević 2000), legal drafting (Driedger 1976), legal theory (Brouwer 1990), legal informatics (Van Kralingen 1996) and philosophy of law (Von Wright 1977; Ross 1968). Most scholars agree that a norm must comprise at least three elements: a LEGAL MODALITY (2.1), a NORM SUBJECT (2.2) and an ACT (2.3). In addition, four further norm elements may be distinguished: the CONDITIONS OF APPLICATION (2.4), TIME AND SPACE (2.5), the NORM AUTHORITY (2.6), and NEGATION (2.7).

2.1 Legal modality

The legal modality, which is also referred to as the norm character (Von Wright 1963), the directive operator (Ross 1968) or the deontic modality (Brouwer 1990), is generally considered the most important element of a norm, because it provides the norm with its normative character. The legal modality determines in which way the norm regulates a certain behaviour. Thus, the function of a norm is to a large extent determined by the legal modality (Van Kralingen 1996: 44).

However, there are some differences in opinion as to what types of legal modalities must be distinguished. We will limit ourselves here to the most widely accepted view, presented in Van Kralingen (1996: 44-50), which argues that there are three basic legal modalities: OBLIGATION, PERMISSION and COMPETENCE. Obligation and permission are deontic modalities which also feature in modal logic and linguistics. Competence is a typically legal modality. It can be defined as the legally established ability to create or apply legal norms (Ross 1968: 130; Kelsen 1991: 102).

2.2 Norm subject

It is generally acknowledged that norms are always directed to a person or a class of persons, referred to as the NORM SUBJECT. If a norm were not directed to someone, the norm would be without effect or function (Van Kralingen 1996: 42). However, the norm subject is not always referred to explicitly in legislative sentences. Although the sentences (1)-(3) are not

explicitly directed to a norm subject, there must be some implicit party that the norm is imposed upon, in casu the court of justice.

Von Wright (1977: 77) defines the norm subject as follows: "By the subject (or subjects) of a prescription I understand the agent (or agents), to whom the prescription is addressed or given." As norms are to be observed and applied, only beings endowed with reason and will, that is human beings, can be the subject of a norm (Kelsen 1991: 89-90).

2.3 Act

The object of a norm, i.e. that which the norm regulates, is human behaviour. Most commonly, the behaviour constituting the object of a norm is some act or activity. An act can be defined as an event performed by a human being, e.g. killing a person, whereas an activity is a process in which a human being is engaged, e.g. smoking (Van Kralingen 1996: 58). Norms concerning activities can be translated into norms concerning acts. For instance, a norm which prohibits the activity of smoking involves two acts: (1) when a person is engaged in the activity of smoking, the norm orders him to perform the act of ceasing to smoke, and (2) when a person is not smoking, the norm prohibits him from performing the act of starting to smoke.

However, not only acts and activities can be the object of a norm. Sometimes, the object of a norm is a certain state of affairs. These norms are not concerned with acts or activities, but envisage what may (not) or must (not) be the case (Van Kralingen 1996: 22). Norms concerning states of affairs are often referred to as norms of the SEIN-SOLLEN type, whereas norms concerning acts or activities are called norms of the TUN-SOLLEN type (Van Kralingen 1996: 22-23). The sentence in (4), taken from the South-African road traffic regulations, is an example of a sein-sollen norm.

(4) A seatbelt shall comply with the standard specification SABS 1080 […] and bear a certification mark or approval mark.[4]

According to Von Wright (1983: 185), sein-sollen norms can be rewritten into tun-sollen norms. For instance, a norm prescribing that a certain state of

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[4]   Article 213 (8)(a) of the *National Road Traffic Regulations (1999)* of South-Africa. See http://www. polity.org.za/html/govdocs/regulations/1999/roadregs00.html

affairs ought to be the case, implies, among other things, that, if the desired state of affairs does not hold and will not arise spontaneously, a norm subject has to bring about the state of affairs. For instance, in (4), the driver of a motor vehicle must take care that the seatbelts of his vehicle comply with certain standards and bear a mark.

2.4 Conditions of application

Legal scholars, e.g. Kelsen (1991: 19-21) and Von Wright (1977: 73-75), distinguish between CATEGORICAL NORMS and HYPOTHETICAL NORMS. According to Kelsen (1991: 19), categorical norms are norms which decree that a certain behaviour is unconditionally obligatory (or permitted), whereas hypothetical norms are norms which decree that a certain behaviour is obligatory (or permitted) only under certain circumstances, which are termed "conditions of application" by Von Wright (1977: 73).

However, both Kelsen and Von Wright point out that even categorical norms are valid only conditionally. A norm is valid when it ought to be observed. So, a norm such as *Close the door* is only valid when the door is open, i.e. when there is an opportunity to perform the act prescribed by the norm. So, all norms are valid only conditionally, but the behaviour which is the object of the norm may be conditionally or unconditionally obligatory (or permitted). For instance, in the norm *Close the door when it's raining*, the act of closing the door is obligatory only when the condition *it's raining* is fulfilled.

Standardly, the conditions of application are expressed by a conditional clause, as in (5). However, the conditions of application may also be inherent in other norm elements, e.g. in the norm subject, as in (6) (Franken e.a. 2001: 164).

(5) No person shall operate a vehicle on a public road towing another vehicle *if the length of the tow-rope, chain or tow-bar between the two vehicles exceeds three and a half metres* […].[5]
(6) Any person *driving a vehicle on a public road* shall do so by driving on the left side of the roadway […].[6]

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[5]   Article 330 of the *National Road Traffic Regulations (1999)* of South-Africa.
[6]   Article 296 (1) of the *National Road Traffic Regulations (1999)* of South-Africa.

In (6), the conditions of application are expressed by the restrictive postmodifier inside the noun phrase which functions as the norm subject. Thus, the sentence could be reformulated as in (7):

(7) If a person drives a vehicle on a public road, he shall do so by driving on the left side of the roadway.

2.5 Time and space

Since the object of legal norms, i.e. human behaviour, takes place in space and time, both the place and the time in which that behaviour must or may be performed are part of the semantics of each legislative sentence (Kelsen 1991: 144). In the legislative sentence in (8), space and time are referred to explicitly:

(8) No person shall drive any animal referred to in subregulation (1) *along a public road* during the period *from sunset to sunrise* […].[7] [our italics]

However, not all legislative sentences express the place and time in which a certain act must or may be performed. In that case, space and time must be inferred from the context (Brouwer 1990: 77-89).

2.6 Norm authority

Norms do not appear out of the blue: they are always issued by some authority (Von Wright 1977: 75). The norm authority orders, permits or empowers certain norm subjects to do certain things on certain occasions. In the case of statutes, the authority is the lawgiver or legislator, who is mentioned in the so-called enacting formula, appearing at the beginning of every statute. English statutes, for example, are preceded by the following enacting formula (Maley 1987: 27):

(9) Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, as follows:

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[7]   Article 313 (4) of the *National Road Traffic Regulations (1999)* of South-Africa.

Formerly, a shortened version of this enacting formula, *And be it further enacted, That…*, preceded each section of the Act. This practice was omitted by the Interpretation Act of 1889, which stated: "Every section of an Act shall have effect as a substantive enactment without introductory words". So, in fact, the enacting formula is to be understood before each section of a statute (Maley 1987: 47).

2.7 Negation

Although it is generally ignored as a separate norm element, negation plays an important role in legislative sentences. Prohibitions, for instance, which are quite numerous in legislative texts, can only be expressed by means of some explicit negative morpheme (Bowers 1989: 249). This is illustrated in the legislative sentence in (10):

(10) *No* person shall park a motor vehicle on a traffic island or in a pedestrian mall or pedestrian lane.[8]

But even in legislative sentences expressing positive deontic concepts such as obligation or permission, negation is often found, for instance in the form of a restriction or an exception, as illustrated in (11) and (12) respectively (Mellinkoff 1982: 28).

(11) A pedestrian may cross a public road *only* at a pedestrian crossing or an intersection […].[9]

(12) Persons, other than traffic officers in the performance of their duties, driving motor cycles on a public road, shall drive in single file *except* in the course of overtaking another motor cycle […].[10]

Obviously, sentences such as (10), (11) and (12) have a negative element not only in their syntactic structure, but also in their logical-semantic structure. As we will see below, the place of negation in the logical-semantic structure of legislative sentences may differ.

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[8] Article 305 (5) of the *National Road Traffic Regulations (1999)* of South-Africa.
[9] Article 316 (6) of the *National Road Traffic Regulations (1999)* of South-Africa.
[10] Article 309 (6)(a) of the *National Road Traffic Regulations (1999)* of South-Africa.

3. The logical-semantic relations between the norm elements

Having identified the principal elements of a norm, it is now possible to determine the logical-semantic relations between these norm elements. A method which has proved very useful to represent semantic relations in natural language sentences is the predicate-argument analysis, based on the Predicate Calculus of formal logic (Bowers 1989: 212). In section 3.1, we will briefly discuss this method. In section 3.2, we will apply it to legislative sentences.

3.1 Predicate-argument analysis

The abstract structure representing the logical-semantic relations in a sentence is called a proposition. In propositions, we can distinguish between elements that describe an event or a state and elements describing which participants are involved in the event or state (Givón 2001: 106). The element describing the event or state is called the PREDICATE of a proposition, whereas the participants in the event or state are called the ARGUMENTS of the predicate. For instance, in a sentence such as *John is running*, the predicate *to run* describes an event in which the argument *John* is involved. A predicate which takes one argument is called a one-place predicate. A predicate which takes two arguments, for example *kill* in *Bertha killed Cato*, is a two-place predicate and so on. The usual representation of propositions is to put the predicate first (in capital letters), followed by its arguments between round brackets, e.g. *RUN (John)* or *KILL (Bertha, Cato)* (Comrie 1994: 905).

In addition to identifying the predicate and its arguments, the relationship between the arguments needs to be established as well, i.e. which of them takes which part in the event or state (Comrie 1994: 905). For instance, in *Bertha killed Cato*, one must know not only that *Bertha* and *Cato* are arguments of *kill*, but also that *Bertha* is the initiator of the action and that *Cato* is the participant undergoing the effect of the action. The former is assigned the semantic role of agent, whereas the latter is called patient (Saeed 1997: 140). Standardly, the semantic roles are indicated below each of the arguments, as in (13):

(13) KILL (Bertha, Cato)
      agent   patient

3.2 Predicate-argument structure of legislative sentences

3.2.1 The analysis of Bowers (1989)
In his comprehensive study on legislative expression, Bowers (1989) has applied the predicate-argument analysis to legislative sentences. According to him, the logical-semantic structure of legislative sentences must be represented as in (14) (Bowers 1989: 250):

(14) ENACT (her Majesty, SHALL (DO X (all persons)))

Replacing the concrete norm elements in (14) by the more abstract elements discussed above, results in the following represention:

(15) ENACT (norm authority, LEGAL MODALITY (ACT (norm subject)))

1
2
3

    [1] norm content
    [2] provision
    [3] norm declaration
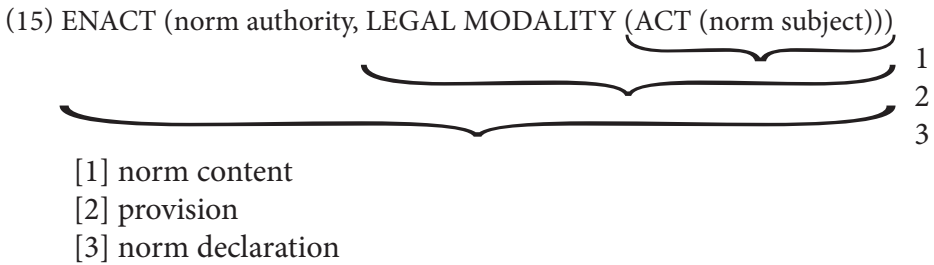
The proposition represented in (15) is a complex one: it contains three predicates, which are recursively embedded one into the other. At the innermost level, we find the ACT, which has at least one argument, namely the norm subject. Together they form the NORM CONTENT (cf. Von Wright 1977: 71). The norm content is in its turn the single argument of a higher predicate, namely the LEGAL MODALITY. This modal predicate and the norm content constitute the PROVISION. As we have seen above, this provision is dependent on the enacting formula. So, semantically speaking, the provision, together with the norm authority are the two arguments of the ENACT predicate (Bowers 1989: 29; Kurzon 1986: 9 ff.). This level will be called the NORM DECLARATION.

However, Bowers' analysis raises a number of questions. First, the modal predicate is represented as a one-place predicate, a view which is contested by other linguists (e.g. Brennan 1993). Furthermore, the representation in (15) only applies to categorical norms. It is not clear on which level the conditions of application should be represented in the case of hypothetical norms. The same question arises with respect to the norm elements time and space, as well as negation. All these issues are addressed in the remainder of this section.

3.2.2 The logical-semantic relation between the legal modality, the norm subject and the act

According to Bowers (1989: 220-222), the "legislative modals" *shall* and *may* are one-place predicates, operating on a proposition, which we have called the norm content. Standardly, however, it is argued that deontic modals represent a two-place predicate, operating not only on a proposition, but also on a subject (in the case of legislative sentences, this is the norm subject) (cf. Brennan 1993). Deontic verbs, then, establish a relation between the subject and the proposition, or, in the case of legislative sentences, between the norm subject and the norm content. Lyons (1977: 823), for instance, defines directives as "utterances which impose upon someone the obligation to make a proposition true".

The differences between these two views can be demonstrated by means of the following example, taken from Bowers (1989: 220).

(16) An officer shall take a record of the interview.

The legal modality, expressed by *shall*, may be represented either as a one-place predicate, as in (17), or as a two-place predicate, as in (18). These two representations correspond to different types of paraphrases.

(17) SHALL (RECORD (officer, interview))
 "It is obligatory that an officer take a record of the interview."
(18) SHALL (officer, RECORD (officer, interview))

"An officer has the obligation to take a record of the interview."
In the representation in (17), proposed by Bowers, there is no direct semantic relation between the legal modality, realized by *shall*, and the norm subject, realized by *officer*. This is also reflected in the "impersonal" paraphrase given in (17). However, at the syntactic level, there is a relationship between the norm subject and the legal modality: in the sentence in (16), *officer* is the syntactic subject of *shall*. According to Bowers, this syntactic relation does not reflect a semantic relation. He argues that the syntactic relation between *shall* and *officer* is due to a process called subject-to-subject raising: the norm subject, which is an argument of a lower predicate, namely *record*, is raised to take the subject position in the surface sentence.

According to Brennan (1993: 25), by contrast, the syntactic relation between the modal *shall* and the subject *officer* does reflect a semantic

relation between the two: in deontic utterances, the subject "is understood to have a modal property". In the case of (16), the norm subject, *officer*, *has* an obligation to take a record of the interview; he is the *bearer* of an obligation. So, on this view, the sentence in (16) must be paraphrased by using a "personal" construction, as illustrated in (18). The legal modality, then, must be considered as a two-place predicate, taking two arguments, namely the norm subject and the norm content. This is represented in (19).

(19) LEGAL MODALITY (norm subject, ACT (norm subject))

Thus, the norm subject occurs in two places in the logical-semantic structure of norm sentences. The motivation for this representation is that the norm subject is a participant of two different predicates, not only of the ACT but also of the LEGAL MODALITY. However, the formula in (19) does not yet reflect that the two tokens of the norm subject refer to the same entity. This can be solved by adding an identical subscript to the two occurrences of the norm subject:

(20) LEGAL MODALITY (norm subject$_x$, ACT (norm subject$_x$))

What remains to be solved then, is what semantic role the norm subject fulfills with respect to the legal modality and with respect to the act. Above, we have referred to Von Wrights definition of the norm subject as "the *agent* to whom a prescription is *addressed*" (our italics). With regard to the act, the norm subject obviously functions as the agent. He is the one who must or may perform the act regulated by the norm (cf. Bowers 1989: 220). With regard to the legal modality, the norm subject functions as the addressee: the obligation or permission is addressed to the norm subject. In linguistics, this semantic role is called the *goal* (Saeed 1997: 141) or the *experiencer* (Longacre 1983: 155).

(21) LEGAL MODALITY (norm subject$_x$, ACT (norm subject$_x$))
                     goal/experiencer   *agent*

Notice that the norm authority, functioning as the first argument of ENACT, the highest level predicate, as in (15) above, can be said to fulfill the semantic role of the source.

3.2.3 *The representation of the conditions of application*

As pointed out above, hypothetical norms differ from categorical norms in that the behaviour they regulate is only obligatory or permitted under certain conditions of application. The question arises which is the logical-semantic relation between the conditions of application in a hypothetical norm and the other norm elements, or, as Kelsen (1991: 20-21) puts it: "in a norm which decrees a certain behaviour to be obligatory under certain conditions, what exactly is subject to the condition? Is it the behaviour decreed to be obligatory or is it the Ought of this behaviour (i.e. its being obligatory)?". According to Kelsen, it is the legal modality which is conditional, for the question is: under which conditions one *ought* (or may) behave in the way specified in the norm, under which conditions the behaviour is obligatory. So, the conditions of application are outside the scope of the legal modality. This may be represented as follows:

(22) conditions of application → LEGAL MODALITY (norm subject$_x$, ACT (norm subject$_x$))

Legal theory often refers to the conditions of application as the FACT-SITUATION (Tatbestand). The legal modality, the norm subject and the act together constitute the so-called LEGAL CONSEQUENCE (Tatfolge) (cf. Ruiter 1987: 45-46).

(23) fact-situation → legal consequence

So, in the case of hypothetical norms, the provision consists of two propositions, one specifying the conditions under which the particular norm operates and one prescribing to the norm subject what s/he must or may do, in the event the conditions constituting the fact-situation are fulfilled (Šarčević 2000: 136).

3.2.4 *The representation of time and space*

As pointed out above, time and space specify when and where the act must or may be performed. As such, they modify the act regulated by the norm. However, time and space do no constitute arguments of the act, but adjuncts (Comrie 1994: 906). They specify the circumstances of the act, whereas the arguments refer to the participants involved in the act, e.g. the norm subject,

functioning as the agent. In order to separate arguments and adjuncts in our representation of legislative sentences, a semicolon will be used, as illustrated in (24).

(24) act (norm subject, … ; time, place, …)

arguments adjuncts
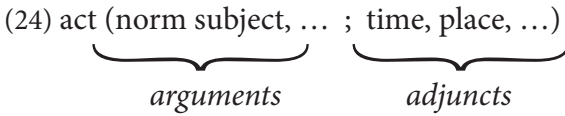
3.2.5 *The representation of negation*

Negation can be seen as a predicate acting upon lower propositions (Bowers 1989: 250). As pointed out above, a legislative sentence is a complex proposition, consisting of a norm declaration, a provision and a norm content. Theoretically speaking, negation may operate on each of these three levels. Lyons (1977: 770-773) distinguishes between PERFORMATIVE NEGATION (negation of the performative verb, e.g. *to enact*), MODAL NEGATION (negation of the modal operator, e.g. the legal modality) and PROPOSITIONAL NEGATION (negation of the proposition within the scope of the modal operator, e.g. the norm content).

Performative negation obviously does not come into play in the case of legislative sentences (Bowers 1989: 250). Modal negation, on the other hand, is frequently found in legislative sentences. For instance, the sentences discussed in (1)-(3) of the introduction, all involve modal negation. Their logical-semantic structure can be represented as in (26) (the elements between square brackets are implicit):

(25) No minister may be prosecuted or pursued on account of opinions expressed in the line of his duties.

(26) NOT (MAY ([court$_x$], PROSECUTE OR PURSUE ([court$_x$], minister; because of opinions expressed in the line of his duties)))

The sentence in (27) provides an example of propositional negation.

(27) The members of the Commission shall refrain from any action incompatible with their duties.[11]

(28) SHALL (Commission members$_x$, NOT (DO (Commission members$_x$, any action incompatible with their duties)))

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[11] Article III-347 of the European Constitution. See http://europa.eu/constitution/en/lstoc1_en.htm

Figure 1 Logical-semantic structure of legislative sentences
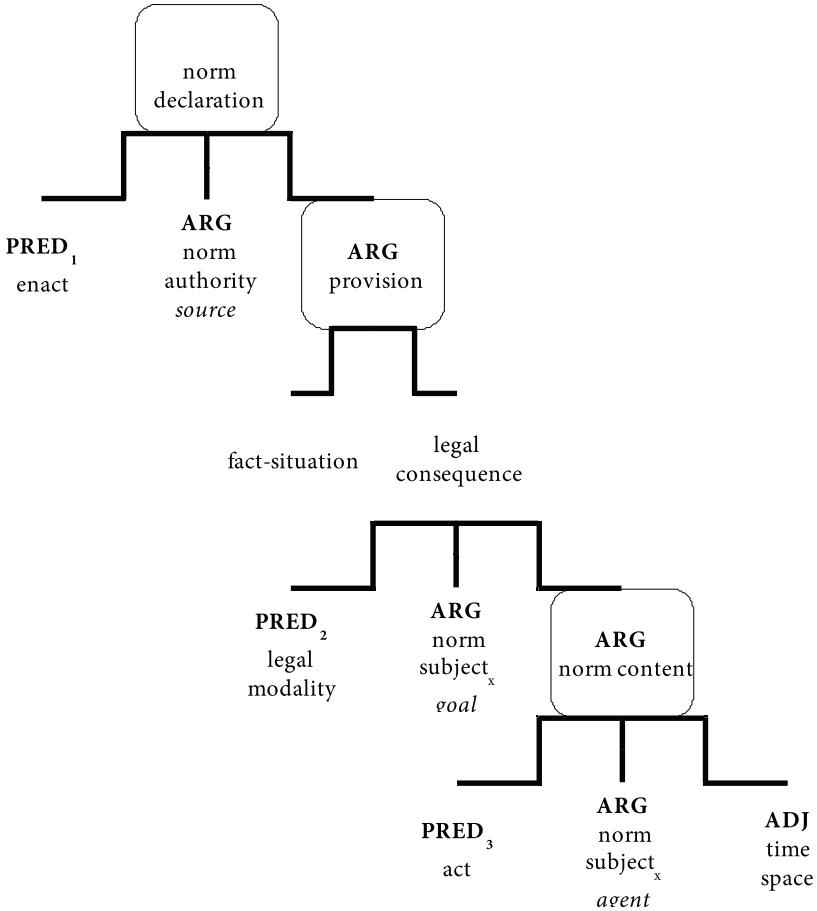
Theoretically speaking, prohibitions may be expressed by stating that it is obligatory *not* to perform some action, as in (27), but in general, they involve modal negation (Lyons 1977: 774).

Finally, in legislative sentences, negation may also operate on the conditions of applications, as illustrated in the legislative sentence in (12).

(12) Persons, other than traffic officers in the performance of their duties, driving motor cycles on a public road, shall drive in single file *except* in the course of overtaking another motor cycle [...].

(28) NOT (OVERTAKE (motor cyclist$_x$, another motor cycle)) → SHALL (motor cyclist$_x$, DRIVE IN SINGLE FILE (motor cyclist$_x$))

4. Conclusion

In this article, we have examined which elements make up the meaning of legislative sentences and how these elements relate to each other. In Figure 1, the logical-semantic structure of legislative sentences is represented by means of a tree diagram.

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THE TEXTUAL ROLE OF REPETITION IN THE TRANSLATION OF POLISH AND HUNGARIAN LEGAL TEXTS

Abstract: This article presents research on written legal texts with a focus on the cohesion of such texts by analyzing the function of lexical repetition. The author indicates the possibility of using Hoey and Károly's method of researching repetition patterns in texts in the process of translating Polish and Hungarian legal texts. In this analysis Polish, and Hungarian contract texts serve as a search base. Because contracts in both languages are structured into similar units, so called clauses, the author chose it for a base category of analysis. The author used three structures to search for lexical repetitions: intrasentential, intersentential and discourse structure. Because of the specific genre, contract clauses were used for analysis instead of popular linguistic units such as the sentence. Therefore, the discussion here concerns intra-clausual, inter-clausual or legal discourse structures. The author states that the number and quality of repetition in Polish und Hungarian contracts is comparable. However, the number of lexical repetition appear to be smaller in Hungarian texts.

Key words: legal text, legal translation, repetition

In recent years, the textual nature of translation has become a popular research topic. According to Neubert (1996: 87, 91) "the textual perspective has now been fully integrated into the agenda of translation studies." Neubert indicates two aspects of textuality which are connected with translation studies:

1. Linguistic utterances are always part of larger communicative events, and

2. Individual texts can be grouped into classes of texts that reflect the communicative habits of speakers of a particular language.

Neubert rephrase these insights for two translation purposes:

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1. Translation in the real world always has to do with whole texts

2. Translation is always connected to how other "similar" texts have been translated.

For a comprehensive analysis of text, it is necessary to examine the various levels of language. Some researchers emphasize the need to analyze the interaction of three levels of language: the intrasentential structure, the intersentential structure, and the discourse structure (compare: Connor and Kaplan: 1987:2, Károly: 2002:16). According to Károly (2002), no theories thus far have been able to analyze all of these levels. One of the reasons for this could be the variety of text types and genres. In this analysis, a specific genre was analyzed and Polish and Hungarian legal texts were chosen as a search base.

In our study of legal text, we apply two issues as follows:

1. The meaning of written legal texts is consistently influenced by the whole legal system of the country from which the text originates in addition to other legal systems. This means that a translation of texts cannot be completed without taking into account the complete legal context.

Sometimes units of texts indicate the type of context which should be applied. For instance, Polish and Hungarian written contracts usually contain a unit which indicates the source of law regulation which should be applied if there are issues not mentioned in the units of contract. One such example is that of Polish or Hungarian statutory text. For instance:

Unit of Polish contract:

W sprawach nieuregulowanych postanowieniami niniejszej umowy mają zastosowanie przepisy kodeksu cywilnego.

Unit of Polish contract:

A szerződésre a magyar jog szabályait kell alkalmazni.

2. In the study of legal text, it can be useful to compare parallel texts. "Parallel texts are texts produced by users of different languages under near-identical communicative conditions. [...] Parallel text files [...] are part and parcel of the material and mental equipment of the competent translator. This equipment is a vast database storing enormous experience. It is the key to an extensive knowledge of how texts are structured in the (text) world of different (communicative) cultures" (Neubert 1996:101). In translating legal written texts, the comparison of content and structure in parallel texts can be especially helpful when the legal systems of the two languages are similar. An example of this is the tradition of the continental legal systems

in Europe and the Code Napoleon. Polish and Hungarian legal systems are both based on the continental tradition. Moreover, for fifty years the two legal systems were applied as systems of Soviet satellite states. That is why parallel texts of the two languages are often surprising with their similarity of content and structures in spite of different (inflected and agglutinative) language systems.

The following example illustrates this point:

Unit of Polish contract:

Sprzedający oświadcza, iż przedmiot umowy jest wolny od wad fizycznych i prawnych.

Unit of Hungarian contract:

Az eladó a jármű tulajdonjogáért, per-, teher– és igénymentességéért felelősséget vállal.

From our "legal text translation" perspective, one of the interesting issues discussed by Neubert (1996: 99) is the term *units of translation*. According to this perspective, *units of translation* are "the smallest source items of patterns susceptible of being rendered into the target text." This flexibility means that they may consist of single words or whole texts. In our research, we applied the term *unit* to help with the process of analysis of Polish and Hungarian written contract texts. Comparing parallel texts, we stated that contracts in both languages are structured into the same kind of units, called *clauses*. According to the definition of Oxford Dictionary of Law, "a *clause* is a subdivision of a document. A clause of written contract contains a term of provision of the contract. Clauses are usually numbered consecutively" (Martin, Law: 2006). *Units of translation* can also reside in larger textual structures called *macrostructures*. "Source texts very often show a particular macro structural order or distribution that is dependent upon certain conventions of a text type. These conventions governing how textual chunks are coordinated and/or superordinated in the source culture may differ significantly from the usual way texts are structured by the target community" (Neubert 1996: 99).

Written contracts using a special macro structural order and certain conventions of a text type can be treated as a special genre of legal texts. Text researchers often use the two terms macrostructure and microstructure of a text. However, for our analysis of written contracts, we applied the third term used in the context of text structure: a mezostructure (van Dijk: 1980, Beaugrande-Dressler: 1981). This term is understood as the middle level

of text which, in contracts, would be the part of the text called the clause. A clause is a unit which contains one or more sentences, but the sentences within the clause are more strongly connected to each other.

One of the most important issues in text research is coherence as well as cohesion. According to Halliday and Hasan (1976: 4) cohesion is "the relation of meaning that exists within the text, and that define it as a text". The most frequent, and thus the most important category of cohesive ties, is the lexical category. Halliday and Hassan show that over forty percent of all cohesive ties in texts submitted to analysis were constituted by lexical ties. Grabe and Kaplan (1996: 55) define cohesion as „the means available in the surface forms of the text to signal relationships that exist between sentences or clausal units in the text" (compare: Károly 2002: 64-65). Károly states, that they explain the importance of lexis from a more cognitive perspective. Their main argument is that "lexical entries used in text construction provide the basic meaning and inference signaling from which syntactic structures, semantic senses, and pragmatic interpretations are produced" (Károly 2002: 66-67). Our research of written legal texts is focused on cohesion of text by analyzing the function of lexical repetition. We compare the models of repetition in texts of two languages to obtain information about cohesion as well as obtain theoretical, methodological and practical issues for translation.

Károly (2002) indicates, that most of the research on cohesion draws on Halliday's and Hasan's (1976) work, especially in connection with their cohesion analysis model of explicit cohesion markers to help infer meaning. Károly focuses especially on Hoey's (1991) work and modifies a particular aspect of Hoey's original taxonomy to propose a refined version of the repetition model. She proposes an analytical tool for the study of lexical repetition in written argumentative discourse, which contributes to three main areas of study: cohesion analysis, repetition research, and English written text analysis.

One of the most important features of Hoey's system is his analysis of repetition cohesion which "not only itemizes cohesive features but also observes how they combine to organize text" (Károly: 2002:73). According to Hoey, repetition forms bonds which create nets of bonds, thus organizing text. In later studies Hoey (1995) also includes intertextual bonding in his system. Károly mentions a numerous aspects of Hoey's (1991) research. One aspect mentioned is that the greater part of cohesion is the product

of lexical relations rather than grammatical relations. He perceives these lexical relations as various forms of lexical repetition. He emphasises the non-structural nature of his method, and reinterprets the description of text as ”structure” and ”culturally popular patterns of organization”. In analysing texts, Hoey dissects each sentence of the given text and indentifies items which are related. An amount of connection helps to distinguish between ”central and marginal sentences” in the text. Central sentences make multiple connections with other sentences and thus play a crucial role in the development of theme in a text. The ones which show fewer connections and consequently contribute less to the development of the theme are called marginal sentences (compare Károly 2002:79).

Thus Károly, basing her research on Hoey's system, also indicates areas of weakness and proposes solutions. For instance, Hoey's criteria for the selection of lexical relations under the category of repetition remains unclear. The question remains of why certain lexical relations are excluded, such as antonyms which designate opposite rather than similar meaning. Diagrammatic representation does not indicate the quality of bonds, which can give misleading information about the distance between the bonded pairs. Károly improves these categories to cover more lexical relations and apply standard terminology (e.g. synonymy, hyponymy). It is also crucial that she establishes a hierarchy of lexical relations based on semantic closeness and demonstrates the place of each category within this hierarchy. Károly applied Hasan's (1984) category of instantial relations and grouped all instances of relations under this category which are created by textual context, i.e. are text-bound lexical relations. Károly (2002:113) states that "the potential of Hoey's (1991) analytical method is greater than what is shows in its present form. [...] In order for the revised analytical tool to be sensitive enough to predict subjective reader judgement of the organizational quality of texts, it is important to include measures related to the length, strength, and position of bonds."

The framework of analysis applied by Károly is a partly revised version of Hoey's (1991) repetition model for the study of the text-organizing function of lexical repetition. The main categories of repetition are: same unit repetition (simple and derived repetition) and different unit repetition, including synonymy (simple and derived), opposites, hyponymy, meronymy and instantial relations. The table below shows the summarized categories proposed by Károly (2002:104) and their distribution within the text:

close relation	Grammatical elements:
	Certain non-lexical elements (semi-lexical) LEXICAL RELATIONS Same unit repetition – repetition (simple, derived) Different unit repetition – synonymy (simple, derived) – opposites (simple, derived) – hyponymy (simple, derived) – meronymy(simple, derived) TEXT-BOUND RELATIONS instantial relations
loose relation	Metaphors nad highly subjective, cultural and personal lexical relations

Hoey's principal aim of his research was to highlight sentences that are central to the development of theme and assist in the formation of readable summaries of text. The aim of the study by Károly was to propose and test a theory-based analytical tool, which would be capable of predicting subjective reader appeal in a reliable and valid manner. In relation to this our analysis is connected with the process of translation, especially with the translation of legal texts. Károly (2002:117) noticed that "as repetition is expected to play a similar role in other text types as well, the application of the revised taxonomy may be extendable to other genres too, except narration, on the same grounds as espressed by Hoey (1991) as well." According to the legal dictionary definition (Martin, Law: 2006), contract is "a legally binding agreement. Agreement arises as a result of offer and acceptance, but a number of other requirements must be satisfied for an agreement to be legally binding." Data analysis in Polish and Hungarian contracts on the basis of Károly's method reveals:

– a number of basic measures: the number of sentences and clauses in texts and the number of sentence interactions within texts

– repetition type

– combination of links and bonds to organize text, including strength of connection between the sentences linked by repetition (compare Károly 2002: 131).

Analyzed text of Polish contract

UMOWA KUPNA –SPRZEDAŻY SAMOCHODU

Sprzedający: Imię i nazwisko, Adres zamieszkania, Seria i numer dowodu osobistego, Wydany przez...,

Kupujący: Imię i nazwisko, Adres zamieszkania, Seria i numer dowodu osobistego, Wydany przez....

Pkt. 1 Przedmiotem umowy jest sprzedaż pojazdu: marka/model, rok produkcji, nr silnika, nr nadwozia nr rejestracyjny

Pkt. 2 Sprzedający oświadcza, że pojazd będący przedmiotem umowy stanowi jego własność, jest wolny od wad prawnych oraz praw osób trzecich, że nie stanowi on również przedmiotu zabezpieczenia.

Pkt. 3 Strony ustaliły wartość przedmiotu umowy na kwotę: ....słownie

Pkt. 4 Sprzedający przenosi na rzecz Kupującego własność pojazdu określonego w punkcie 1 niniejszej umowy za kwotę określoną w punkcie 3 niniejszej umowy, której otrzymanie Sprzedający kwituje. Kupujący kwituje jednocześnie odbiór w/w pojazdu.

Pkt. 5 Kupujący oświadcza, że stan techniczny pojazdu jest mu znany.

Pkt. 6 Strony ustaliły, że wszelkiego rodzaju koszty transakcji wynikające z realizacji ustaleń niniejszej umowy oraz koszty opłaty skarbowej obciążają kupującego.

Pkt. 7 W sprawach nie uregulowanych w niniejszej umowie zastosowanie mają obowiązujące w tym zakresie przepisy kodeksu cywilnego.

Pkt. 8 Niniejszą umowę sporządzono w dwóch jednobrzmiących egzemplarzach, po jednym dla każdej ze stron.

The repetition matrix of text shows us repetitions within the text. The number 0 represents the title of text. Also, connections within a title are accounted for. The method of counting repetition connections across the text are as follows: the 0 sentence (title) connects with the 0 clause, followed by the first clause, second clause, third clause, etc. The table contains repeated units from two analysed clauses. Exceptions to that rule are:

– the sentence 0, in which the window contains repetitions beyond 0 sentence, and

– the windows 1-1, 2-2, 3-3 etc., which show connections within one clause.

Figure 1: The repetition matrix of Polish contract

0	kupno	Kupujący
	sprzedaż	Sprzedający
	* personal data	personal data

1	umowa
	sprzedaż
	pojazd

2	Sprzedający		Sprzedaż	Sprzedający	prawny	prawa
	pojazd	samochód	przedmiot umowy		przedmiot umowy	przedmiot zabezpieczenia
	umowa		przedmiot zabezpieczenia	przedmiot	pojazd	przedmiot umowy
			pojazd		stanowi	nie stanowi
					wolny	nie stanowi

3	Strony	Sprzedający		przedmiot		kwota	słownie
	Strony	Kupujący	umowa	Strony	Sprzedający		
	umowa			umowa			

4	Sprzedający		Sprzedający	sprzedaż	Sprzedający	Sprzedający	Strony	Sprzedający	Strony	Sprzedający
	Kupujący		pojazd		umowa		Kupujący	Strony	Kupujący	Kupujący
	pojazd	samochód	umowa		pojazd		umowa	pojazd	umowa	niniejsza umowa
	umowa	** Definition			własność		przedmiot		przedmiot	kwitować
							kwota			
								określony	okreslony	pojazd
								ustalony	punkt 3	określony w punkcie

5	Kupujący		pojazd	oświadczyć	Kupujący	Strony
	pojazd,	samochód		pojazd	pojazd	przedmiot

	0	1	2	3	4	5	6	7	8
6	Strony / Sprzedający / Kupujący	umowa	Strony	Kupujący	Strony / Sprzedający		Koszty / Strony		
	Strony / Kupu jący			Strony	Strony / Kupujący	Strony / Kupujący	Kupujący		
	umowa		umowa	ustalić / ustalenia	ustalić / Kupujący	umowa			
	Kupujący			umowa / pojazd					
7	umowa	umowa	umowa	umowa	niniejsza umowa		ustalić / nie uregulowane		
			wada prawna / przepisy kodeksu						jednobrz- miący / jeden
			prawa / przepisy kodeksu	ustalić / nie uregulowane					
8	umowa	umowa	umowa	umowa	Strony / Kupujący	Strony / Kupu- jący	niniejsza u mowa	niniej- sza umowa	
	Strony / Kupujący		Strony / Sprzedający	Strony	Strony / Sprzeda- jący	umowa	Strony / Strony		
	Strony / Sprzedający						Strony / Ku pujący		

0 – repetition of different personal (⋆) data within the same established pattern

0-4 content of clause (⋆⋆) is very similar to the definition of contract in statute, so it is not treated as a repetition of the text. It is treated as a repetition within legal discourse. We do not deny that it is possible to find more repetition in analyzed text with such as approach, but concentration in this article was placed on repetition within the text.

On the basis of the table above various conclusions were drawn:

Table of repetition
The table below contains a number of repetitions within the title, clauses, and text. According to this information, we find three repetitions in the 0 sentence (title), three connections of 0 sentence within first clause, four connections between fourth clause and second clause, two repetitions in sixth clause, etc.

Figure 2: Number of repetitions in text

0	3								
1	3	0							
2	3	4	5						
3	3	1	3	1					
4	4	3	4	7	6				
5	2	1	2	2	0	0			
6	4	1	2	4	4	0	2		
7	1	1	3	2	1	0	2	0	
8	3	1	2	2	2	2	3	1	1
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**

Basic conclusions deducted from figure 1 and figure 2:
- the number of clauses in texts (with a title): 9
- the number of sentences in texts: (with a title): 10
- the number of signs in texts: 1158
- the number of sentence interactions within texts (with a title): 101

Repetition type
Based on table 1 and 2, we could also ascertain the type of repetitions used and the frequency of their appearance.

1. Same unit repetition

The table below contains a number of same unit repetition as well as the proportion of same unit repetition and different unit repetition. The first number in the table shows the number of same unit repetition. The second number gives

the number of all repetitions in the analysed clause. For reasons of better clarity, we have not distinguished derived and non-derived forms.

Figure 3: Number of same unit repetition in text
All amount of same unit repetition: 56

0	0-3							
1	3-3	0						
2	2-3	2-4	1-5					
3	1-3	1-1	2-3	0-1				
4	2-4	2-3	4-4	3-7	6-6			
5	1-2	1-1	2-2	0-2	0-0	0-0		
6	2-4	1-1	1-2	1-4	2-4	0-0	1-2	
7	1-1	1-1	1-3	1-2	1-1	0-0	1-2	0-0
8	1-3	1-1	1-2	2-2	0-2	1-2	1-3	1-1	0-1
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**

2. Different unit repetition

In our analysis, we took into account categories such as synonyms and opposites as well as other categories. When one category is in a repeated unit, we can find similar words but different grammatical forms, such as the noun *kupno* and the participle *kupujący*. The other category represents the repetition of the same established pattern and widely understood repetition within legal discourse. For reasons of better clarity, we have not counted opposites between *seller* and *buyer* or *sell* and *buy*.

Meaning of signs used in the figure 3:
G – grammar change, Hn – hyponym, O – opposite, Hm – homonym (or partly homonym), S – synonym, P – the same pattern, D – repetition within legal discourse.
The number before a sign signals the frequency of appearance. For example, signing *2 G* means two repetitions with a grammar change (for example: 0 (title) – sprzedaż – sprzedający, kupno – kupujący). 0-2 *1 Hr – Hn* means that beyond 0-2 (title and second clause) connection there is one hiperonym – hiponym relation (pojazd – samochód). 7-3 S, O – shows the repeated word stay in relation to synonymity and oppositity to its pair.

Figure 4: Table of different unit repetition

	0	1	2	3	4	5	6	7	8
0	2 G 1 P								
1	0	0							
2	1 Hr – Hn	1G 1 Hn-Hr	2 S 1 Hm 1 O						
3	2 Hn-Hr	0	1 Hr – Hn	1 S					
4	1 Hr-Hn 1 D	1 G	0	2 Hn-Hr 2 S	0				
5	1 Hr-Hn	0	0	1 Hn-Hr 1 S	0	0			
6	2 Hr-Hn	0	1 Hr-Hn	2 Hr-Hn 1 G	2Hr-Hn	0	1 Hr-Hn		
7	0	0	1 Hn-Hr 1 Hr-Hn	1 S, O	0	0	1 S, O	0	
8	2 Hr-Hn	0	1 Hr-Hn	0	2 Hr-Hn	1 Hr-Hn	2 Hr-Hn	0	1 Hm
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**

To sum up, in the text we could find 45 different unit repetitions
– 28 relations of hyperonyms and hyponyms;
– 5 repetitions with grammar changes;
– 1 repetition with the same pattern;
– 1 repetition within legal discourse;
– 6 relations of synonym;
-2 relations of synonym but opposite;
– 1 partly homonym;
– 1 homonym.

Analysed text of Hungarian contract

GÉPJÁRMŰ ADÁSVÉTELI SZERZŐDÉS

amely létrejött

egyrészről név:..... (született: .... születési hely, idő: .... anyja neve: .... személyi igazolvány száma: .... lakcíme: ....) mint eladó (a továbbiakban: Eladó),

másrészről név: .... (született: .... születési hely, idő: .... anyja neve: .... személyi igazolvány száma: .... lakcíme: ....) mint vevő (a továbbiakban: Vevő) között

alulírott helyen és időben az alábbi feltételekkel:

1. Az Eladó eladja a tulajdonában lévő ……… típusú ……… forgalmi rendszámú, ……… alvázszámú, ……… motorszámú gépkocsit.

2. A Vevő megveszi az 1. pontban megjelölt gépkocsit, miután azt megtekintette, kipróbálta és megfelelőnek találta.

3. A kölcsönösen kialkudott vételár ……… forint, amelyet a Vevő teljes egészében a jelen szerződés aláírásakor átad. Az Eladó az összeg átvételét a jelen szerződés aláírásával elismeri és nyugtázza.

4. Az Eladó szavatol a gépkocsi per-, teher-, és igénymentességéért.

5. Az Eladó tájékoztatta a Vevőt arról, hogy tudomása szerint a járműnek nincs olyan hibája, amely annak használatát gátolná.

6. A Vevő a gépkocsit jelen szerződés aláírásának napján veszi birtokba, és kötelezettséget vállal arra, hogy a tulajdonos személyében bekövetkezett változást 15 napon belül bejelenti az illetékes rendőrhatóságnál és a lakóhelye szerint illetékes polgármesteri hivatal adócsoportjánál.

7. Az ebben a szerződésben nem szabályozott kérésekben a Polgári Törvénykönyv rendelkezéseit kell alkalmazni.

8. A jelen szerződés három példányban készült, amelyet a szerződő felek mint akaratukkal mindenben megegyezőt aláírásukkal megerősítenek.

Figure 5: The repetition matrix of Hungarian contract

	0	1	2	3	4
0	adásvételi – eladó adásvételi – vevő eladó vevő a továbbiakban *personal data – *				
1	eladó eladó – elad gépjármű – gépkocsi	eladó – eladja 3-számú			
2	gépjármű – gépkocsi gépjármű – gépkocsi vevő	gépjármű – gépkocsi	vevő – megveszi		
3	vevő szerződés – 2 eladó	eladó	vevő	vételár – összeg aláíráskor – aláírásával átad – átvétel jelen szerződés	
4	gépjármű – gépkoc si eladó	eladó gépkocsi	gépkocsi	eladó	mentesség – 2

	0	1	2	3	4	5	6	7	8
5	eladó / vevő / gépjármű	eladó / gépkoc si / jármű	vevő / gépkocsi / jármű	vevő	eladó	vevő	illetékes		
6	gépjármű / szerződés	gépkocsi	vevő / megveszi / gépkocsi	vevő / jelen szerződés aláírásakor	gépko-csi	vevő / gépko-csi		szabály(ozott) / szerződés	szerző-dés
		tulajdonos / tulajdon	veszi birtokba	jelen szerződés aláírásának napján			rendel-kezés		
	vevő								
7	szerződés			2szerző-dés¹			2szerző-dés¹		
8	szerződés / szerződő felek	eladó / szerződő felek	vevő / szerződő felek	vevő / szerződő felek	eladó / szerződő felek	eladó / szerződő felek	vevő / szerző-ződő felek	szerződés	
	eladó / szerződő felek			eladó / szerződés / aláírása aláírásuk		vevő / szer-ződő felek			
	vevő								
	0	1	2	3	4	5	6	7	8

0 – repetition of different personal (⋆) data within the same established pattern

Figure 6: Number of repetition in text

	0	1	2	3	4	5	6	7	8
0	6								
1	3	2							
2	2	1	1						
3	4	1	1	4					
4	2	2	1	1	2				
5	3	2	2	1	1	0			
6	3	2	3	2	1	2	1		
7	1	0	0	2	0	0	2	1	
8	3	1	1	4	1	2	1	1	1
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**

Basic conclusions deducted from figure 1 and figure 2:
- the number of clauses in texts (with a title): 9
- the number of sentences in texts: (with a title): 10
- the number of signs in texts: 1401
- the number of sentence interactions within texts (with a title): 75

Figure 7: Number of same unit repetition in text:
All amount of same unit repetition: 45.

	0	1	2	3	4	5	6	7	8
0	3-6								
1	1-3	1-2							
2	1-2	0-1	0-1						
3	4-4	1-1	1-1	1-4					
4	1-2	2-2	1-1	1-1	2-2				
5	2-3	1-2	1-2	1-1	1-1	0			
6	2-3	1-2	2-3	1-2	1-1	2-2	1-1		
7	1-1	0	0	2-2	0	0	2-2	0-1	
8	1-3	0-1	0-1	1-4	0-1	0-2	0-1	1-1	1-1
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**

3. Different unit repetition

Figure 8: Table of different unit repetition

	0	1	2	3	4	5	6	7	8
0	2 G, Hr-Hn 1P								
1	1G, 1 S	1G							
2	1 S	1S	1G						
3				1S 1G 1 G,O					
4	1S								
5	1 Hn-Hr	1 Hn-Hr	1 Hn-Hr						
6	1S	1G	1S	1S					
7									
8	2Hn-Hr	1Hn-Hr	1Hn-Hr	2Hn-Hr 1G	1Hn-Hr	1Hn-Hr	1Hn-Hr		
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**

In the analysed text, we found 30 different unit repetitions
– 12 relations of hyperonyms and hyponyms
– 2 relations of hyperonyms and hyponyms with grammar change
– 6 repetitions with grammar change;
– 1 repetition with the same pattern;
– 7 relations of synonym.

To sum up, we can see, that the number and quality of repetition in Polish and Hungarian contracts is comparable. However, the number of lexical repetitions appears to be smaller in Hungarian texts. Though more research is required, we deduced that in making a text more coherent, the role of grammar is made more significant in Hungarian texts than in Polish. Our second thesis, which calls for replication, is that in legal texts there are more of the same unit repetitions than in other kinds of texts. Both in Hungarian and Polish there is a manner, in order to make the style of text better that one should avoid same unit repetitions. However, that manner is not applied to legal written texts because of the importance of clarity.

Coming back to the Connor and Kaplan's (1987:2) approach, we can say that we used three structures to search for lexical repetitions: intrasentential, intersentential and discourse structure. Because of the specific genre, contract clauses where used for analysis despite other popular linguistic units such as the sentence. Intra-clausal relations are shown in the tables in windows such as 1-1, 2-2, 3-3, etc. Inter-clausal relations are shown in other windows, such as 1-2, 1-3, 1-4, etc. In our research, we did not focus on legal discourse structure. However, every clause of contract can be a kind of repetition and can be found in the content of a statute.

Because of the specific genre analyzed, it would not be useful to highlight the sentences that are central to the development of theme. We can see that almost every clause has at least one connection with another clause of the text, especially with the title of a text. The basic and most frequently used words of texts are: *buy, sell and car*. Each one of these can be found in the title, and in nearly each clause. Therefore, every clause has the same importance. This statement agrees with the principle of law that the degree of importance of each word in legal text is the same.

It should be noted, that the results of our analysis may only be regarded as provisional, and further research is needed. However, we can say that research of repetition is useful not only for linguistics but also for translatology. It is imperative to better understand the meaning of translated text, taking into account both the contents inside the text and their connections to wider discourse.

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Jana Levická[1]

ANALYSIS OF "CLASSICAL" AND LEGISLATIVE DEFINITIONS FOR THE TERM RECORDS OF THE SLOVAK TERMINOLOGY DATABASE

Abstract: The paper presents a comparative study of „classical" and legislative definitions referring to the same concept in the field of law, which reveal multidimensional nature of these concepts. The author focuses on one hand on typology of definitions and on the other on their structure, coherence and applicability. The aim is to decide, on the basis of this comparison, which type of definition is to be used to represent concepts in the domain of law in the Slovak Terminology Database, addressing not only lawyers but also lay public, so that definitions included in this Database can facilitate and enhance knowledge acquisition.

Key words: terminology, definition, consistence, terminology database

Every terminologist agrees that "ultimate purpose of any terminological resource is to facilitate and enhance knowledge acquisition" (Faber 2001:194). Therefore, any team involved in terminology management, whatever the type, size, purpose and target audience of the given terminology collection might be, cannot but cope and answer the essential question: What is the optimal method for achieving this goal in our case? Or, to put it more precisely: What is the best way for representing "specialised" concepts? And because of the fact that it is the definition that is widely acknowledged as the key terminological information, more specific question requires to be answered: What criteria should a definition meet in order to help the user to acquire specialised knowledge from this collection? And the team must bear in mind that in case of reusing different terminological sources reflecting points of view of various authors the key issue is to harmonise their definitions and thus ensure consistency and clarity of information.

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The paper does not have the ambition to present extensive and theoretical study on definitions and legal definitions in particular, instead it focuses on the comparison of direct quotations from Slovak legislation and their "classical" counterparts or paraphrases, which had been incorporated in the beta version of the Slovak Terminology Database (hereinafter referred to as the STD), both types featuring as definitions for the same legal concept. The reason behind this comparison is a contradiction between the requirement of definition's authenticity and the need for its adaptation to the guidelines of a specific terminology collection, i.e. many terminology databases include definitions from various primary or secondary knowledge or terminology resources in a cut-and-paste fashion (Faber 2006:40) without taking into consideration the complementarity of term record data categories and its coherence with respect to related term records. Although definition creation imperatively leads to the selection of conceptual characteristics dictated by the author's point of view, degree of the accuracy of the conceptual description, culture etc. Definitions should not be therefore treated as given information but as a construction (see Bessé 1996).

Upon a brief introduction dealing with STD project presentation, the focus of the paper will be drawn to the definition in general – its delimitation and structure, its typology and functions, criteria of formation, and will close with a focus on legal definitions and their specificities. In the second part the attention will be paid to the definition analysis itself, which will subsequently enable to draw the concluding suggestion for appropriate treatment of definitions. The aim of the paper is to determine or propose guidelines for modifications, if acceptable by domain experts, that a legislative definition can or should undergo when included into the STD.

Project of the slovak terminology database

The STD, which started in the autumn of 2005, was conceived as a monolingual database to provide the user with both conceptual and linguistic information. From the very planning phase of the project the STD was to aspire for the cooperation with leading European database IATE in terms of exchanging terminological data, and that is why the same classification system EUROVOC 4.2 Thesaurus was chosen for the STD. As for the STD software the team chose and adapted the ready-made, open source and especially userfriendly

WikiWikiWeb editing system based on MoinMoin. Although the STD was started with insertion of already compiled terminological resources, the main line of project methodology favours the extraction of lexical units – potential terminological units from running specialised texts included in specialised corpora and followed by the validation of their relevancy and correctness by domain experts.

As far as the term record design is concerned, the inspiration was drawn especially from the ISO 10241:1992 International terminology standards -– Preparation and layout. Nowadays, resulting term record comprises – after several updates – 13 data categories, 7 out of which are obligatory. In order to satisfy the needs of professionals, lay public and last but not least the translators and interpreters, obligatory categories include term, field, definition, context, related terms and sources of both definition and context. Remaining optional fields of the term record feature synonym, foreign language equivalent, acceptability, indication of the institution or terminology committee that approved the head term, comment and links to relevant reliable web pages.

The beta version of the STD, launched online in May 2007, was focused on reusing and adapting existing quality terminology resources published in particular in the Slovak linguistic revue *Kultúra slova*, as the team received a copyright license for their non-commercial use. The testing period enabled to verify and evaluate proposed methodology, which resulted in several subsequent modifications, and to train team editors and proofreaders. More specific issues of this phase covered harmonization of varying editorial practices in order to meet one common form of the term record.

Nowadays, the STD offers more than 3300 terminological records that can be classified by a circa 20 EUROVOC descriptors corresponding to specialized domains such as: Administrative Law, Astronomy, Bilingualism, Civil Security, Construction, Criminal Law, Criminology, Employment and Working Conditions, Fire Protection, History, Labour Law, Linguistics, Migration Policy, Private Law, Public order, Social Protection, Society and Demography etc.) with only a part of terminology fields completed, i.e. term and usually definition, source, less often synonym, sometimes related terms, and comment. Since January 2008 the team together with external collaborators started two partial terminology projects focused on social security and history.

Table 1. Model term record – *rozhodnutie* (*decision*)

Delimitation and structure of definition

„Definition is nothing else but the showing the meaning of one word by several other not synonymous terms,"[2] wrote Johne Locke in 1689. However, within the realm of terminology, definition should not explain the meaning but clarify given concept and is usually defined as a microsystem consisting of hierarchically ordered characteristics of a concept.

These characteristics or conceptual features maintaining relations of different nature are supposed to reflect the structure of a concept but as Seppälä (2004:37) points out they can never cover its totality. Therefore, it is not unusual to find several differing definitions for the same concept. It is a mental construct, a sort of a generalisation or synthesis and thus can never be exhaustive (see Analysis part).

It is common knowledge that every definition should consist of mutually substitutable parts – definiendum and definiens, the former being in our case the term and the latter represents the defining utterance containing defining elements of two kinds: classifying core and a handful

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2   http://en.wikisource.org/wiki/An_Essay_Concerning_Human_Understanding/Book_III

of specifying information. According to numerous studies the conceptual structure of the definition, namely number of these specifying features and their order, depends on the very categorising element of this defining sentence – the Aristotelian *genus proximus*. However, the selection or nature of this classifying element is in turn the function of the knowledge level the participants of this communication – author and target public – have.

And final remark to conclude this section, the only defining element, vital for the distinguishing of the concept, that is not be expressed in the definition is the respective field the concept belong to.

Typology and purpose of definitions

The practice has recorded numerous typologies of definitions based on different perspectives – e.g. function, conceptual structure, situation of use, formal composition, content, role, and editing practice, their choice being dictated especially by the target audience, aim of work and respective domain.

CONCEPTUAL STRUCTURE. Linguistic and terminological theory fosters traditional, most frequent and abovementioned Aristotelian definition also referred to as **classical, intensional or comprehensive definition**[3], whose conceptual structure features nearest superordinate concept followed by specific features. Sager (1990:42) defines its function as follows: "systematically identifies a concept with respect to all others in the particular subject field".

Example from the STD:

vodičský preukaz/driving licence – *osvedčenie, ktorým sa preukazuje oprávnenie na vedenie motorového vozidla*

/certificate, which proves that one is entitled to drive a motor vehicle/[4]

Comprehensive definition has its counterpart in the **extensional definition** that ISO 740 defines as "an enumeration of all species which are all on the same level of abstraction".

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[3] **ISO 740** „An intensional definition (in the classical sense) consist of a listing of the characteristics of the concept to be defined, i.e. the description of the intension of the concept. For this purpose the nearest genus that has either been defined already or can be expected to be generally known, and the characteristic(s) restricting (determining) this genus are given. One or several of these characteristics also differentiate the concept to be distinguished from other concepts of the same horizontal series".

[4] Translations of definitions from Slovak into English were done by the author with the aim to reflect as much as possible original wording and semantics regardless of Slovak specificities in terms of legal and administrative system.

Example from the STD:

disciplinárne opatrenie/disciplinary measure – *písomné pokarhanie, zníženie služobného platu až o 15 % na dobu najviac 3 mesiacov, zníženie hodnosti o jeden stupeň na dobu jedného roka, zákaz činnosti, prepadnutie veci*
/written censure, lowering of service salary by as much as 15 % for the period not longer than 3 months, degradation to lower rank for the period of one year, prohibition to undertake activities, confiscation of a thing/

However, it is a common phenomenon to find so-called mixed definitions that usually consist of comprehensive as well as extensional part or feature other types of definitions – e.g. partitive[5], functional[6] , etc.[7]

Another very frequent and useful typology (see Bessé 1996, Larivière 1996 etc.) is based not on the form but on the definition's object and on the type of outcome, in which the definition appears. It distinguishes *encyclopaedic definition* (provides a collection of knowledge concerning an object and is used in encyclopaedias), *lexicographic one* (explains the signified by distinguishing their meanings and usage of language signs and employed in the dictionaries and also encyclopaedias) and finally *terminological definition*. The last one can be identified only on the basis of its triple purpose, i.e. it enables to describe, to circumscribe and distinguish the concept within an organised system.

To characterise terminological definitions in conclusion – they can refer to the intension, extension of the concept, or its function but first of all they should act as a pointer to both hierarchical and non-hierarchical relations between concepts within the same subject field, which can be achieved by means of coherent elaboration (Faber 2001:196). Some authors also claim that this kind of definition should be prescriptive and didactic.

What is a quality terminological definition?

According to the metaphorical wording of Juan Sager (1990), definition is a „bridge between the term and its concept". This bridge, however, can be

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[5]   Is a definition based on the enumeration of the concept that refer to the main parts of an object covered by a superordinate concept in a partitive relation. ISO 12620

[6]   A definition describing function or purpose of the defined concept/object of the extralinguistic world.

[7]   For example *stipulative definition* (the one that is restricted to one theory, author, legal act etc.)

of various material, construction and stability because, as Hanks (2006:399) rightly points out: every definition "offers an interpretation (or a menu of possible interpretations) of" a given term. The question is, of course, where are the limits of this interpretation and how to assure its applicability and quality of the definition itself.

Besides the criterion of authenticity of the source the theory of terminology suggests for definition creation following criteria :

1. ACCURACY – refers to a definition that includes all essential characteristics required for the concept identification and distinction. However, if a definition does not comply with this criterion and the definitional work reveals to be incomplete, the result cannot be classified as a   definition but as a defining context[8] for it fulfils only one third of definition's functions – description.

2. CONSISTENCY and SYSTEMATICITY – refers to a definition that is worded without contradiction and with respect to its internal coherence and to its interrelation with nearest concepts – e.g. many definitions contradict basics of terminology work for they comprise unknown, ambiguous or vague terms;

3. OBJECTIVITY – in spite of certain inevitable subjectivity every definition should aspire for objective and neutral wording. Acceptable degree of subjectivity results from the fact that human perception and knowledge of the world, its classification and segmentation of the lexicon are interdependent within a synchronic point of view (see Rey-Debove 1971). Therefore, definition naturally reflects development of the science, thus of a concept.

4. ADEQUACY – level of the language used in the definition must take into consideration the level of education of the target audience, if not it can be even completely useless;

5. ECONOMY – defining statement should express and describe the concept as condensely as possible.

6. UNDERSTANDABILITY – essential requirement related to all the previous ones and aiming at functionality and effectiveness of the defining statement

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8   **Context** is defined in the ISO 12620 as a „text which illustrates a concept or the use of a designation", or „a text or part of a text in which a term occurs" while ***defining context*** is considered by Canadian term base Termium as the one that brings a light on the distinctive characteristics of the concept. ISO 12320:1995 informs that it contains substantial information about a concept but does not possess the formal rigour of a definition.

Legal definitions

Let us tackle the specificity of legal definitions. According to Kaczmarek and Matulewska (2006: 86) "legal definitions are those which are in statutory texts and which introduce an unknown term with the help of known terms". I would like to extend this textual characterisation of legal definitions to all „legal concepts" represented by terms regardless of the type of text they appear in. However, in order to avoid any misunderstanding, those taken from Slovak legislation and analysed in the second part will be referred to as "legislative definitions".

Zieliński distinguishes two fundamental functions of legal definition (2002:188-191): expressing the precise meaning of agents, things or conventional actions created by the legislator as well as eliminating ambiguity and vagueness by stipulating legal terms that: 1. come form the colloquial or general language; 2 are still in development; 3. have been borrowed from other languages; 4. have been borrowed from other LSPs.

However, one can raise the question if the elimination of ambiguity and reference to legal concepts are the only distinguishing features of legal definitions. Can we identify any structural and/or formal specificities? What kind of defining elements are essential for a legal definition? Can we rely on Solan's statement (2006): "the law is a classical definition in that it lists elements that are individually necessary and together sufficient for a XY to have occurred"? And as far as their usage in a general terminology database like the STD is concerned, what is the best practice – copy-and-paste inclusion of Slovak legislative definitions or only after some kind of modification? Let us remind that the purpose of not only legal definitions in the STD is to provide understandable expert knowledge. For some terminologists (see e.g. Da Graça Krieger 1996) warn that „laws are usually synthetic texts and their regulatory and sanctioning nature do not offer semantically rich contexts to provide satisfactory definitions". Moreover, legal terms might occur with different meanings in different legal contexts which creates ambiguities and is in direct contradiction to the requirement for accuracy.

Analysis of the conceptual structure of selected definitions

The second part of the paper is devoted to the analysis of conceptual structure of about 40 pairs of definitions – first one comes from the terminology

resource entitled the Law and Protection Terminology (hereinafter referred to as LPT) compiled by a team of circa 25 authors from the Police Academy of Bratislava[9]. The other element of the pair has been taken from the Slovak legislation and expresses same concept belonging to the field of administrative law, private law, labour law or criminal law. We will try to evaluate the quality and functionality of these examples for the purpose of the STD.

As for the nature of defined concepts, they can be labelled as general legal ones and their terms appear also everyday in media and thus undergoing also the process of determinologisation. However, other legal concepts from the set of analysed terms were coined within the opposite tendency – coming from the general lexicon they acquired specific meaning in the field of law (e.g. *rozhodnutie/decision*). Most of analysed definitions make explicit abstract concepts rather than concrete ones, which we classified according to Seppälä typology of conceptual classes into activities, acts, entities, and groups.

1. First four analysed definitions belong according to authors to the realm of administrative law. They refer to the related concepts expressing protection of different agricultural properties instituted by the law – *lesná stráž, rybárska stráž, stráž prírody, poľná stráž* – as follows:

poľná stráž (field guard)
LPT DEFINITION: **ochrana** poľnohospodárskeho majetku nachádzajúceho sa na poľnohospodárskych pozemkoch mimo intravilánu obce;
/***protection*** *of agricultural property located on the agricultural lots beyond the community grounds/*

LEGISLATIVE DEFINITION (Act n° 255/1994): **jej povinnosťou** je ochrana poľnohospodárskych kultúr, plodín a majetku, ktorý slúži na zabezpečenie poľnohospodárskej výroby a nachádza sa na poľnohospodárskych pozemkoch mimo intravilánu obce
/***its duty*** *is to protect breeds, crops and agricultural property, which enables agricultural production and is located on the agricultural lots beyond the community grounds/*

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9　　Ďurčo, P. et al. 2007. *Bezpečnostnoprávna terminológia*. Bratislava: Akadémia Policajného zboru v Bratislave.

lesná stráž (forest guard)
LPT DEFINITION: **inštitút slúžiaci na ochranu** lesného pôdneho fondu,
lesov, bez ohľadu na vlastnícke a užívacie vzťahy;
/*institute assuring the protection of forest soil, forests as such regardless of
their owners and users*/
LEGISLATIVE DEFINITION (Act n° 326/2005): **na zabezpečenie
ochrany** lesného majetku orgán štátnej správy lesného hospodárstva
ustanovuje lesnú stráž
/*in order to assure the protection of the forest property the body of public
administration for the forest economy establishes the forest guard*/

rybárska stráž (fishery guard)
LPT DEFINITION: **inštitút zriadený na ochranu výkonu** rybárskeho
práva, pričom zák. č.139/2002 Z.z. ukladá navrhnúť rybársku stráž
užívateľovi rybárskeho revíru ako povinnosť;
/*institute established to provide protection for the exercise of fishing rights,
in accordance with law n 139/2002 it is the duty of the user of fishing area to
propose fishery guard*/
LEGISLATIVE DEFINITION (Act n° 139/2002): zabezpečenie ochrany
výkonu rybárskeho práva v rybárskych revíroch **je povinnosťou užívateľa;
užívateľ** je povinný navrhnúť okresnému úradu pre každý rybársky revír
rybársku stráž
/*to assure the **protection of the exercise** of fishing rights in the fishing areas
is the duty of the user; the user is obliged to propose to the community council
fishery guard for each fishing area*/

stráž prírody (guard of the nature)
LPT DEFINITION: **fyzická osoba**, ktorá dosiahla vek najmenej 18 rokov,
je občanom SR, bezúhonná a úplne spôsobilá na právne úkony, je odborne
spôsobilá, zdravotne a fyzicky spôsobilá a zložila sľub;
/*natural person that reached the age of 18 years, is a citizen of the Slovak
Republic, has appropriate moral profile, knowledge, health and physical
skills??? and has taken the oath*/
LEGISLATIVE DEFINITION (Act n° 543/2002): členom stráže prírody sa
fyzická osoba stáva **dňom zápisu** do zoznamu členov stráže prírody, ktorý
vedie krajský úrad
/*natural person becomes a member of the guard of nature **on the day** of*

*his/her inscription into the list of members maintained by the department
council/*

The first defining statement for each concept comes from LPT – three
out of the four definitions can be labelled as functional. Apart from specific
characteristic denoting purpose, they include locality and object characteristics.
In comparison with legislative ones they lack the agent and time characteristics
but in this case they do not seem to be essential. The fourth one – *stráž prírody*
– is incomplete for it lists some conditions for becoming a member of the
specialised guard but no distinguishing features, that is why it could refer
to any group/agentive concept. The terms also lack systematicity for their
semantic motivation indicates that they are co-hyponyms but the wording of
respective definitions do not clarify if this is the case or not – they feature three
different genus proximus. The reason might be that although coming from the
same terminology resource they were actually taken from different acts.

Each of abovementioned legislative defining statements lack classifying
element and therefore we labelled them as defining contexts. Two of them
are of functional nature while the most exhaustive and detailed one referring
to the *guard of nature* is a partitive defining context and includes specific
characteristics like agent, time, means but not the purpose.

2. Legislative definitions from the next pair reveal a typical thriving for exhaustiveness in legal acts:

utajované skutočnosti (classified information)
LPT DEFINITION: zákonom vymedzený **okruh informácií alebo vecí**,
ktoré treba chrániť pred nepovolanými osobami alebo cudzou mocou
/***a pool of information or things*** *defined by law that are to be protected
against unauthorized persons or foreign power/*
LEGISLATIVE DEFINITION: (Act n° 215/2004) **informácie alebo**
veci určené pôvodcom utajovanej skutočnosti, ktoré vzhľadom na
záujem Slovenskej republiky treba chrániť pred vyzradením, zneužitím,
poškodením, neoprávneným rozmnožením, zničením, stratou alebo
odcudzením a ktoré môžu vznikať len v oblastiach, ktoré ustanoví vláda
Slovenskej republiky svojím nariadením
/***information or things*** *determined by the author of classified issue that,
with respect to the interests of the Slovak Republic, are to protected against*

disclosure, misuse, damage, unauthorized copying, destruction, loss or theft and that can originate only within areas established by the government of the Slovak Republic by means of a directive/

LPT definition represents a simplified version of the concept's verbal representation in comparison with its legislative counterpart which is of mixed character (enumerative+intensional). Both definitions express what is to be protected but while the first one points out to the type of abusers, the legislative one lists all possible ways of misuse and at the same time emphasizes the origin and agent of the classification of the information.

povolanie (call-up)
LPT DEFINITION: **dočasná zmena** v služobnom pomere policajta, pri ktorej ho minister povolá na plnenie úloh inšpekčnej služby
/temporary change of employment of a policeman within which the minister calls him/her on to perform tasks of inspection service/
LEGISLATIVE DEFINITION: (Act n° 73/1998) **minister môže** na nevyhnutne potrebný čas povolať na plnenie úloh inšpekčnej služby policajta s jeho súhlasom, a to i na také činnosti, ktoré nevyplývajú z funkcie, do ktorej bol ustanovený alebo vymenovaný
/minister can call on a policeman for a period of time necessary for the performance of inspection service tasks, with his/her agreement, and also for activities that do not arise from his/her function to which he/she has been nominated or appointed/

First legislative definition of these two interdomain homonymes lacks categorisation, but expresses agent/means characteristics, time and condition characteristics while the second one shows a formal deficiency for it includes verb with the same root, which heavily impairs understandability – *prevelenie => preveliť.*

prevelenie (transfer)
LPT DEFINITION: **dočasná zmena** v služobnom pomere policajta, ktorú možno realizovať za zákonom stanovených podmienok i bez jeho súhlasu, ale iba na stanovený čas
/temporary change of employment of a policeman that can be carried out in accordance with the conditions stipulated by the law even without his/her

agreement but only for a determined period of time/
LEGISLATIVE DEFINITION: (Act n° 73/1998) **policajta možno preveliť**
aj bez jeho súhlasu na plnenie úloh Policajného zboru uložených pri
vyhlásení bezpečnostného opatrenia na ochranu života, zdravia alebo práv
iných osôb na nevyhnutne potrebný čas
*/a policeman can be transferred even without his/her agreement for a
period of time necessary for the performance of Police Forces tasks imposed
in time of security measure declaration for the purpose of life, health or other
persons's rights protection/*

3. Legislative definitions in the following pairs reveal the lack of
categorisation, they mostly include characteristic of function; the first two
are based on enumeration of conditions and types respectively. Their LPT
counterparts can boast a more consistent and transparent content not to
mention exhaustiveness of essential characteristics:

rozhodnutie (decision)
LPT DEFINITION: **individuálny správny akt**, ktorým sa zasahuje do
právnej situácie konkrétnej fyzickej alebo právnickej osoby
*/individual administrative act that intervenes into the legal situation of a
concrete natural or legal person/*
LEGISLATIVE DEFINITION: (Act n° 71/1967) **musí byť v súlade so**
zákonmi a ostatnými právnymi predpismi, musí ho vydať orgán na to
príslušný, musí vychádzať zo spoľahlivo zisteného stavu veci a musí
obsahovať predpísané náležitosti
*/must comply with laws and other legal provisions, must be issued by an
entitled authority, must be based on a reliably verified state of things and must
include required elements/*

disciplinárne opatrenie (disciplinary measure)
LPT DEFINITION: **sankcia** za disciplinárne previnenie policajta, ktorá sa
ukladá najskôr v nasledujúci deň po spáchaní disciplinárneho previnenia
a len do 30 dní odo dňa, keď sa o disciplinárnom previnení dozvedel
ktorýkoľvek z nadriadených, najneskôr však do jedného roka odo dňa
spáchania disciplinárneho previnenia
*/sanction for disciplinary wrongdoing of a policeman that is imposed at earliest
on the following day after the disciplinary wrongdoing and only until 30*

days after the day when any of his/her superiors learnt about the disciplinary wrongdoing, however until a year time at latest from the committing of the disciplinary wrongdoing/
LEGISLATIVE DEFINITION: (Act n° 73/1998) písomné pokarhanie, zníženie služobného platu až o 15 % na dobu najviac 3 mesiacov, zníženie hodnosti o jeden stupeň na dobu jedného roka, zákaz činnosti, prepadnutie veci
/written censure, lowering of service salary by as much as 15 % for the period not longer than 3 months, degradation to lower rank for the period of one year, prohibition to undertake activities, confiscation of a thing/

pracovný poriadok (working guidelines)
LPT DEFINITION: **súčasť podnikových normatívnych aktov**, vydávaný zamestnávateľom na základe ZP, konkretizuje jeho ustanovenia podľa vlastných osobitných podmienok za účelom špecifikácie uplatňovania práv a povinností vyplývajúcich z pracovnoprávnych vzťahov, organizačno-technologických predpisov, BOZP, atď.
*/**part of company's normative acts**, issued by the employer on the basis of the Labour Code, which puts its provisions in concrete terms according to its own specific conditions for the purpose of the specification of the exercise of rights and duties arising from the employer-employee relationships, organisation and technological regulations, industrial safety guidelines, etc./*
LEGISLATIVE DEFINITION: (Act n° 311/2001) **bližšie konkretizuje** v súlade s právnymi predpismi ustanovenia Zákonníka práce podľa osobitných podmienok zamestnávateľa
*/**provides more details** in accordance with legal provisions of the Labour Code according to specific conditions of the employer/*

Conclusion and further work

Analysed legislative defining statements
     1. reveal to be rather defining contexts than definitions in comparison with LPT counterparts because of missing classifying elements – i.e. defining context[10] does not have to explicitly express superordinate genus term and all the essential characteristics but must include enough information to identify the concept;

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[10]   In the Belgian terminology manual *Recommandations relatives à la terminologie* it is referred to as **legal definition**.

2. are mostly functional and enumerative in nature. Their enumerative character consists of listing detailed conditions that an act/activity/entity must comply with in order to be acknowledged as such by the law;

3. are more explicit than „classical" definitions;

4. sometimes lack generalisation for they were in some cases created for the sake of specific legal act, i.e. they correspond to stipulative definitions and therefore are less suitable for the STD needs.

As far as their form is concerned only a few legislative definitions can boast a rigorous form (minimal punctuation, no capital letters, no copula verbs, etc.) and meeting abovementioned criteria of economy. Moreover, a handful of them breach the basic rule not to use the same linguistic unit or its derivative both for the definiendum as well as within the definiens since it heavily impairs understandability. In several cases domain expert opted for the possibility to state two definitions for the same concept separated by a semi-colon for the sake of avoiding the slightest possible ambiguity and thus created redundancy.

The author is fully aware that presented analysis lacks substantial corpus of definitions especially with respect to different branches of law and therefore requires to extend the research. Nevertheless, it enabled her to formulate following interim recommendations:

Bearing in mind the character of analysed legislative defining statements, especially absence of classifying element and some of the essential characteristics the non-expert user can have problems to deduce the exact concept they express. For the sake of clarity and coherence it would be therefore desirable to state the genus explicitly.

In order to assure consistency and understandability we suggest as the first step creation of terminological fields consisting of related terms/concepts followed by an analysis and comparison of their definitions focusing on the inclusion/absence of classifying element, number and type of characteristics, which is a feasible activity also for a non-specialist.

However, none of these modifications would not be inserted into the STD without further documentation and especially consultation with specialists; their approval is always needed to gather additional data to enable the terminologist to build a legally accurate and linguistically satisfactory definition.

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Merike Ristikivi[1]

LATIN LEGAL TERMINOLOGY IN ESTONIA

Abstract: The article examines the use of Latin in contemporary legal texts and its impact on terminology. The terminology analysed in the article comprises the terms collected from the Estonian juridical periodicals. Attention is paid to the following topics: average size of the vocabulary of the Estonian lawyer; the most frequent Latin terms and phrases; context of Latin terms and phrases; main problems and errors in the use of Latin.

Key words: legal language, terminology, terminological dictionaries, language contact

1. Introduction

Latin has great significance for law: the Estonian legal system as part of the legal system of continental Europe is based on Roman Law, which is considered the common denominator of European legal systems; it is also called "the *lingua franca* of the world's jurisconsults" (Wieacer 1978:97). The same consistency can be observed in the language of Roman Law as well – the Latin language. Thus, in Estonian texts we can find juridical terms in Latin, which developed more than two thousand years ago.

In recent decades Latin juridical terminology has been gradually becoming more important as regards the understanding and communication between lawyers representing different languages and legal systems (Benke, Meissel 1997:10). It is also observed that the use of Latin expressions facilitates unifying the European judicial system and makes juridical literature internationally understandable (Knütel 1994:251).

The terminology analysed in my paper comprises the terms collected from the Estonian periodical *Juridica* during the last 13 years. The motivation to survey the usage of Latin from that aspect was caused by the compilation

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of a "Latin-Estonian Legal Dictionary" (Adomeit, et al. 2005) (published in 2005). As a member of the group working on it, my main interest and purpose were to find out the Latin terms and phrases which are commonly used by Estonian lawyers and therefore should be included in the Dictionary.

2. Journal *Juridica* as the basis of the research

The reason I chose the *Juridica* as the basis of my research was that the *Juridica* has been the most important Estonian juridical journal. The first issue of the *Juridica* was published in 1993 as a journal of the faculty of law of Tartu University. In 13 years the *Juridica* has developed from a small faculty magazine into the most influential legal journal. The articles in the *Juridica* contain texts dealing with all major areas of law and thus give an objective overview of the different aspects of terminology. In years articles have been published about public and private law in Estonia, as well as international law, the laws of the EU and the theory, history and philosophy of law. Still, it should be specified that articles concerning the history of law and Roman law – that is, topics which in general contain numerous Latin terms – were only few; for instance, there was only one article about Roman Law (Siimets-Gross 2002: 626-634). Hence, the list of the terms and phrases does not include first and foremost legal history, but gives an overview of the general vocabulary of today's lawyers.

Over the years, the journal *Juridica* has been used as additional study material in teaching lawyers; every year also summaries of the bachelor and master thesis of law students have been published there[2]. Those articles compiled by students enable us to get a good overview of the tendency in using Latin by a future generation of lawyers.

3. Co-authors of the *Juridica*

The circle of co-authors is very wide. Over the years, specialists from different fields have published their articles in the *Juridica*. Besides the professors and students of the faculty of law, the faculty of economics and business administration and

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[2]   In special issues of bachelor and master students, Latin is used quite often: on average 29 terms or phrases *per* issue of *Juridica*: 6/1996 (29 Latin terms), 7/1997 (11), 6/1998 (16), 6/1999 (20), 5/2000 (17); during recent years, the usage of Latin terms and phrases has increased: 5/2001 (47), 5/2002 (64).

the faculty of social sciences of Tartu University – we can see among the authors also professors and students from other Estonian universities, such as Tallinn Technical University and the Public Service Academy.

A large group of co-authors are members of Parliament and civil servants from various ministries. Judicial authorities have also published articles in the journal, such as the legal chancellor, attorneys, prosecutors, and judges. A smaller group of co-authors are specialists from auditing and insurance companies, medical, and religious circles.

4. Results of the research
4.1. Frequency of usage of Latin terms and phrases

The research includes issues of the *Juridica* from the years 1993-2005 (i.e. from the beginning till nowadays). All in all, there are 126 issues[3]. These 126 issues of the *Juridica* contain 1148 articles and 7251 pages.

732 different Latin terms and phrases can be found in the articles. In total, Latin was used 4110 times; consequently, on average 30 terms or phrases *per* issue and 3-4 terms or phrases *per* article. If we divide the number of pages by the number of terms and phrases, we can see that the Latin language appears on average on every second page of the *Juridica*.

4.1.1. The number of terms and phrases in issues of Juridica
TABLE 1: Terms in issues

| Issue/ Year	1	2	3	4	5	6	7	8	9	10
1993	8	7	11	6	26	8	-	-	-	-
1994	2	5	22	18	13	23	27	27	20	6
1995	1	21	23	1	11	47	63	22	59	11
1996	27	24	11	12	3	29	43	156	60	12
1997	56	29	0	1	17	11	11	28	31	21
1998	31	10	40	51	44	16	24	27	15	8
1999	52	14	24	195	6	20	26	19	24	30
2000	31	17	14	26	17	47	61	6	10	23
2001	58	41	10	9	47	91	53	55	7	20
2002	34	23	44	46	27	37	52	25	36	69
2003	32	42	33	38	46	53	36	47	65	32
2004	108	9	12	68	64	10	65	7	86	19
2005	22	34	28	155	32	44	35	28	41	37

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[3]   In the first year, 1993, 6 issues were published, the years 1994-2002 contain 10 issues *per annum* each.

Some issues do not include any Latin terms, for instance in the 3rd issue of 1997 not a single Latin term is used. The 4th issue of 1997 and the 1st and 4th issue of 1995 contain only one term. On the other hand, a great number of terms and phrases can be found in the 1st and 9th issue of 2004 – 108 and 86 terms respectively. The 6th issue of 2001 contained 91 terms, the 4th issue of 2005 155 terms, the 8th issue of 1996 156 terms and the 4th issue of 1999 included as many as 195 terms.

The usage of Latin terms primarily depends on the historical development of the particular area of law. Latin terms and phrases are often used in articles on legal theory, philosophy of law, criminal law, international law, succession, and the law of obligation. In all these areas the body of terminology in use nowadays, developed in ancient times already, or during the Middle Ages.

Very few terms or no terms at all are to be seen in articles on labour law, family law, and business law. The development and study of these fields has mostly taken place in the 20th century. Hence there is very little or no connection with Roman Law from which the greater part of Latin legal terms originates.

TABLE 2: Terms and phrases through the years
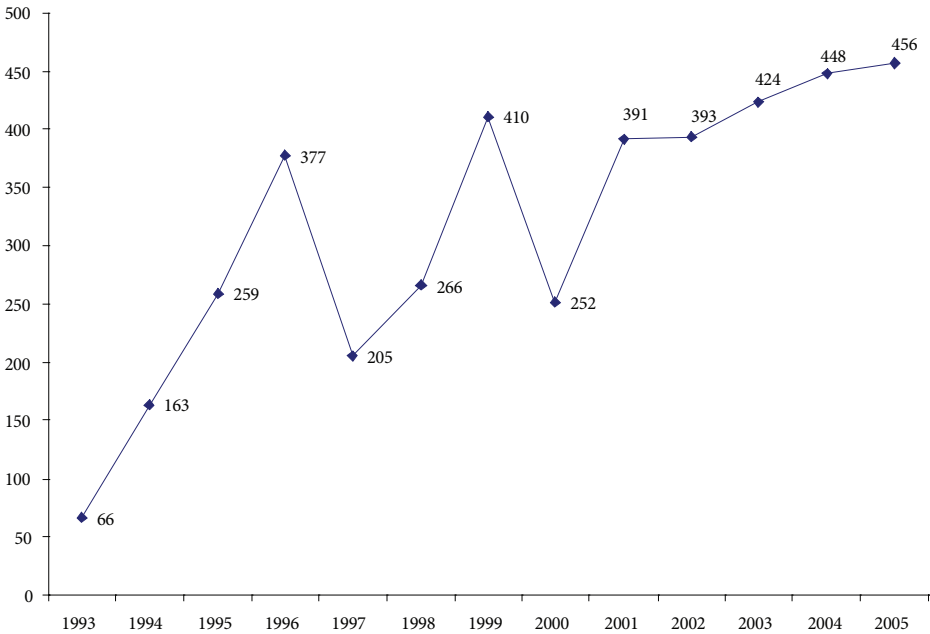
4.1.2. Terms and phrases through the years

According to the graph, there are two major falls in the rising line – in the years 1997 and 2000[4].

As we can see, the usage of Latin terms and phrases has noticeably increased over the years, especially during the last couple of years. In 1993, in total 66 terms were used, which makes on average a rather modest 1.08 Latin expressions per article. 5 years later, in comparison, (in 1998) already 266 terms were used, which is on average 2.9 expressions per article. And last year, in 2005, there were 456 instances of Latin terms used in the articles, which is on average 5.3 Latin expressions per article.

4.1.3. Most frequent terms and phrases

Latin juridical terms are typically single words – stem words or compound words. In addition to nouns, also verbs, adjectives, pronouns, numerals and adverbs are used as terms. Latin terms are concise and economical, enabling one to convey the notion which otherwise in one's native language might require a lengthy explanation.

The most frequent words in *Juridica* are *lex* (610 times), *ius* (384), *corpus* (176) and *forum* (138). The result is not very surprising as 'the law', 'the right', 'the body' and 'the court of justice' are the basic elements of the law. Similarly, the words following in the list correspond to expectations: *culpa* (76 'fault, negligence'), *ratio* (70 'reason'), *res* (60 'thing, object'), *factum* (54 'fact; deed'), *poena* (41 'punishment'), *crimen* (37 'crime'), *vis* (28 'force or violence'), *pactum* (27 'pact'), *locus* (26 'place'), *causa* (25 'a cause'), *actio* (23 'a claim or legal action'), *fides* (18 'faith or trust') and *status* (17 'state or condition').

The most frequent terms and phrases are *corpus iuris* (159 'body of law'), *lex mercatoria* (96 'commercial law'), *de lege ferenda* (88 'desirable to establish according to the law'), *culpa in contrahendo* (58 'pre-contractual liability'), *lex fori* (48 'the law of the court'), *de facto* (42 'in fact'), *de lege lata* (38 'according to the law in force'), *pacta sunt servanda* (21 'agreements of the parties must be observed'), *lex specialis derogat generali* (18 'a special statute overrules a general one'), *nullum crimen nulla poena sine lege* (14 'there should be no crime and no punishment without a law fixing the penalty'), *in*

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4   3/1997 special issue: civil law (0 Latin terms), 4/1997 special issue: labour law (1 Latin term), 8/2000 special issue: corruption (6 Latin terms), 9/2000 special issue: criminal proceedings (10 Latin terms).

dubio pro reo (12 'in a doubtful case, the defendant is to be preferred'), *ne bis in idem* (9 'not twice for the same', *i.e.* an individual may not be tried twice for the same crime).

In addition to juridical terms, also wide-spread Latin expressions and abbreviations are often used in articles: *op. cit. – opus citatum* or *opere citato* (141 'quoted book, in the quoted book') *expressis verbis* (128 'pointedly'), *ca. – circa* (51 'about, around'), *sui generis* (34 'of its own kind'), *ib., ibid. – ibidem* (31 'in the same place or book'), *ad hoc* (26 'for this, for this special purpose'), *a priori* (23 'from the former'), *supra* (22 'above, upon'), *prima facie* (21 'at first sight') and many others.

According to the frequency of usage, at least 5 times 118 terms and phrases were used, at least 3 times 185 were mentioned and at least 2 times I found 262 Latin terms and phrases. If we look at the frequency of usage, we can say that approximately 200 Latin terms and phrases are contained in the active vocabulary of Estonian lawyers.

4.2. The context of Latin terms and phrases

Whilst analysing the collected material, I was also interested in when and in what context the terms and phrases are used. In general, Latin can be found in two ways:

1. The terms are used in rhetoric or for illustrative purposes, *e.g.*,

"The appendix of the Directive is *mutatis mutandis*[5] in the Law of Obligations Act § 42." (Ginter 2001:506)

2. The terms are normative arguments and contain specific juridical information, *e.g.*,

"Therefore the legal definition of the delict in modern Penal Codes contains primarily principle *nullum crimen nulla poena sine lege*." (Sootak 2001:448)

In my research I very often noticed that although Estonian lawyers like to use Latin expressions in their articles, the translation into Estonian is usually missing. It is clear that sometimes Latin expressions in the text can cause misunderstanding and misinterpretation on the part of the reader. The problem is not very acute when well-known juridical terms are used. For example, the

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5   *Mutatis mutandis* ('with the necessary changes').

nemo iudex[6] principle, the *lex specialis*[7] precept, or the *stare decisis*[8] concept or the quotation from the 2nd issue of *Juridica* of the year 1999:

"On certain conditions it can be claimed, that what in Germany is with the status of the prosecutor in the criminal procedure *de facto*, is in Estonia at the moment *de lege lata*, and in my opinion, it could also be, with slight modifications, *de lege ferenda*." (Kergandberg 1999:65)

Although the sentence was long and difficult to follow, according to the frequency of usage, all the terms used belong to the basic vocabulary of lawyers and are therefore actually known.

However, quite often very rare terms can be found, which contain specific juridical information. It seems to me that, for those readers without a background in legal studies or special commentaries and explanations, those sentences might not be completely understandable. A good knowledge of Latin alone is not sufficient for the correct interpretation here. Even more, it might happen that the whole concept of the context will be unclear if the meaning of the Latin word or term is misunderstood. For example, a quotation from the year 2000:

"The doctor must replace the paternalistic hippocratic approach *salus aegroti suprema lex*[9] with the current principles of contemporary society *voluntas aegroti suprema lex*, which is specified by the sentence *nihil nocere*." (Nõmper 2000:447)

Here, on the contrary, the sentence can be easily followed by philologists, but it is difficult for lawyers.

4.3. Problems and mistakes

There occur several problems when using Latin terms. In Latin, a synthetic language, grammatical relationships are represented in the words by applying inflectional endings and suffixes. As a result, the recognition and understanding of a Latin term may be affected by the use of the singular and the plural form, as well as the use of a term in different case forms or with various prepositions. For example: *actio – actiones* ('action – actions'),

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6   *Nemo iudex in causa sua* ('no man can be a judge in his own case').
7   *Lex specialis derogat legi generali* ('a special statute overrules a general one').
8   *Stare decisis* ('to stand by matters decided').
9   *Salus aegroti suprema lex* ('the welfare of the unhealthy is the supreme law'), *voluntas aegroti suprema lex* ('the wish of the unhealthy is the supreme law'), *nihil nocere* ('make no harm').

pactum – pacta ('pact – pacts'), *lex – leges* ('law – laws'), *ius – iura* ('right – rights'); *tacitus consensus – tacito consensu* ('tacit consent – in or with tacit consent'), *bona fides – bona fide – ex bona fide* ('good faith – in or with good faith – according to good faith').

Mistakes frequently appear in the orthography of Latin terms, as well as in the agreement between case forms and gender forms and in translation of Latin terms. The most common problem when using Latin terms, however, is adapting the foreign words to the context and incorporating them into the Estonian sentences. Ordinarily mistakes occur in the usage of two forms – the basic form in the nominative case and the adverbial in the ablative – in the proper context.

The most common errors in *Juridica* were misprints:

Mistakes	Correct form
vocatio legis	*vacatio legis*
preater/prater legem	*praeter legem*
numerantur sententie, non ponderander	*numerantur sententiae, non ponderantur*
summa summarium	*summa summarum*
nebisin idem	*ne bis in idem*
op. cot.	*op. cit.*
ubiquae	*ubique*
ekspressis verbis	*expressis verbis*
lex spetsialis	*lex specialis*
sine periculo sotsiali	*sine periculo sociali*
lucrum sessum	*lucrum cessans*

Also, mistakes of declination and agreement were found:

Mistakes	Correct form
strictu sensu	*stricto sensu*
ultimo ratio	*ultima ratio*
ex iniuriae ius non oritur	*ex iuniuria ius non oritur*
poena absoluta ad effectu	*poena absoluta ad effectum*
bonae mores	*boni mores*
ius naturalis	*ius naturale*
ius animatus	*ius animatum*
lex posteriori derogat priori	*lex posterior derogat priori*
lex posteriori derogat leges priori	*lex posterior derogat legi priori*
lex generali	*lex generalis*

It must be pointed out that such mistakes were typical of the first issues and first years of the *Juridica* journal. During recent years, serious errors can no longer be found. Avoiding mistakes and controlling Latin and other foreign terms is particularly important, because the journal *Juridica* is also used as study material. Incorrect grammatical forms, especially in an article of a professor, can be misleading to the students. For example, the term *strictu sensu* – with the wrong grammatical ending – first appeared in an article by a professor and later in the article of one student.[10]

5. Conclusion

The research on the usage of Latin terms and phrases in the journal *Juridica* has proved to be useful and practical in many ways. It was proven that even today the Latin language has a certain and firm position in legal writing and terminology. The usage of Latin over 4000 times and more than 700 different Latin expressions is a remarkable result, which confirms that the compilation of the "Latin-Estonian Legal Dictionary" was far from unnecessary.

The history of a language is nothing less than the history of a culture. Although we cannot use Latin today as extensively as in past centuries, it still helps us to understand better the meaning of legal concepts and use the terminology adequately.

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[10] Uibopuu, H.-J. 1997. Üldised inimõigused Eesti 1920., 1937. ja 1992. aasta põhiseadustes. (Fundamental human rights compared in the constitutions of 1920, 1937 and 1992) *Juridica*, 5, p. 237; Parmas, A. 2002. Inimsusevastased kuriteod rahvusvaheliste kriminaalkohtute käsitluses. (Crimes against humanity in the context of international criminal courts) *Juridica*, 5, p. 324. (in Estonian)

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Ladina õigusterminoloogia eestis

Euroopa õigussüsteemi ühiseks nimetajaks peetakse Rooma õiguse pärandit. See järjepidevus ilmneb ka Rooma õiguse keele – ladina keele tasandil. Käesolev artikkel puudutab ladina keele esinemist kaasaegsetes juriidilistes tekstides ning selle mõju terminoloogiale. Analüüsitav materjal hõlmab Eesti juriidilistest ajakirjadest kogutud ladina termineid. Artikkel keskendub järgmistele küsimustele: kui suurel määral kasutavad Eesti juristid ladina termineid, millised on kõige enam tekstides kasutatud ladina terminid ja fraasid, millises kontekstis ladina terminid esinevad. Käsitlemist leiavad samuti peamised probleemid ja eksimused ladina õigusterminite kasutamisel.

Aleksandra Matulewska[1]

METHODS OF EXPRESSING DEONTIC MODALITY IN ENGLISH AND POLISH STATUTORY INSTRUMENTS IN THE ASPECT OF TRANSLATION

Abstract: This paper deals with the methods of expressing deontic modality in statutory instruments. The author analyzes three pure meanings that is to say; (i) obligation, (ii) prohibition and (iii) permission. Within those three meanings three sub-meanings are distinguished. Within the meaning of obligation, the author distinguishes the following sub-meanings: (i) unlimited duty, (ii) conditional duty, and (iii) external duty. Within the meaning of prohibition the following three sub-meanings may be distinguished: (i) unlimited prohibition, (ii) conditional prohibition, and (iii) external prohibition. Within the meaning of permission we have distinguished three sub-meanings: (i) unlimited permission, (ii) conditional permission, and (iii) external permission. The exponents of deontic modality are presented in the tables and compared in order to show potential translation equivalents.

Introduction

This paper deals with the methods of expressing deontic modality that is to say obligation, prohibition and permission in Polish and English statutory instruments.

Purpose of research

The purpose of this research is to provide answers to questions related to possible translation equivalents for pure modal meanings and sub-meanings of deontic modality in English and Polish. The author presents typical lexical and grammatical means of expressing obligation, prohibition and permission in English and Polish statutory instruments.

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Analysed corpora

The author has analysed the following Polish statutory instruments: (i) Polish Civil Code of 1964, (ii) Polish Code of Civil Procedure of 1964 as amended, (iii) Polish Code of Labour, (iv) Polish Code of Commercial Companies. The Polish corpora consisted of approximately 1000 standard pages altogether.

The English corpora included: Louisiana Civil Code (1275 pages), Uniform Commercial Code (about 503 pages), Childcare Act 2006 (about 67 pages), and Law of Property Act 1925 (about 32 pages).

Method used

The research method utilized in this study included the analysis of parallel documents of statutory instruments in Polish and English (British and American ones).

Deontic modality in statutory instruments – pure modal meanings

Deontic modality 'odnosi się do świata norm i ocen i dotyczy działań człowieka, które z woli indywidualnego lub zbiorowego sprawcy są mu nakazane lub dozwolone [refers to the world of norms and judgments and it relates to the actions of people which at the will of an individual or collective actor are imposed on him or permitted to be performed by him]' (Jędrzejko 1987: 19).

Having analyzed the corpora in Polish and English we may distinguish three pure modal meanings present in statutory instruments:
(i) obligation,
(ii) prohibition, and
(iii) permission.
Within these three pure modal meanings, we may distinguish at least three modal sub-meanings.

Statutory obligation

Statutory obligation is 'an obligation – whether to pay money, perform certain acts, or discharge duties – that is created by or arises out of a statute,

rather than based on an independent contractual or legal relationship' (Black's Law Dictionary 2004:1105).

As it has already been mentioned within the meaning of obligation, we can distinguish the following sub-meanings:

(i) *Unlimited duty* understood here as an obligation to perform which is binding no matter the situation.

(ii) Conditional duty which is understood here as an obligation to perform only in specific circumstances.

(iii) External duty that is an obligation to perform imposed on the actor not by the legislator but by other factors such as contracts, agreements, etc.

Due to grammatical reasons, we may distinguish different methods of expressing deontic modality with the actor revealed and not revealed in the sentence surface structure. The fact that the actor is not revealed in the sentence structure does not mean that he is not known. As a rule, he may be identified via the context. Additionally, in the case of Polish utterances in which the actor is not revealed in the sentence structure, we may often encounter impersonal structures, where the English passive voice is usually used.

In order to present the results of the research in a succinct way, the methods of expressing pure modal meanings and sub-meanings have been gathered in the tables below. The words and expressions given in inverted commas next to Polish exponents are literal translations and are presented here to show potential translation problems which may occur when they are translated literally by translation trainees. On the other hand, English and Polish expressions given without inverted comas may be treated as dynamic equivalents for the purpose of legal translation of exponents of deontic modality in statutory instruments.

Obligation
(i) Unlimited duty

English	Polish
actor revealed	
(i) Shall (ii) Is obliged to (iii) (although *must* and *is required to* are possible they are very rare)	(i) Jest obowiązany 'is obliged' (ii) Wymaga 'requires' (iii) Powinien 'should' (iv) Ma obowiązek 'has a duty' (v) Należy do obowiązków 'is the duty of' (vi) Present tense indicative (*including*: obowiązek ciąży/obciąża 'the duty burdens sb') (vii) Future tense indicative
actor not revealed	
(i) Shall (ii) Must (iii) Is binding (iv) Binds (v) is to be done	(i) Jest wymagane 'is required' (ii) Wymaga 'requires' (iii) Musi 'must' + passive voice (iv) Należy + infinitive and Należy się 'should' (v) Powinien 'should' (vi) Present tense indicative (*including* obowiązek obejmuje 'the duty includes') (vii) Future tense indicative

(ii) Conditional duty

English	Polish
actor revealed	
(i) Shall (ii) Must (iii) Is obliged to (iv) Is to be done by (v) Is required to (vi) x is bound by (vii) y is binding for x (viii) y binds x	(i) Jest obowiązany 'is obliged' (ii) Wymaga 'requires' (iii) Należy do '….' (iv) Powinien 'should' (v) Ma obowiązek 'has a duty' (vi) Present tense indicative (*including*: obowiązek ciąży/obciąża 'the duty burdens sb', obowiązek spoczywa 'the duty burdens sb') (vii) Future tense indicative
actor not revealed	
(i) Shall (ii) Must (iii) Is to be done by (iv) Is required to be done	(i) Wymaga 'requires' (ii) Musi 'must' + passive voice or Musi + infinitive mieć 'have' (iii) Należy 'should' and Należy się 'should' (iv) Present tense indicative (including: obowiązek obejmuje 'the duty includes') (v) Future tense indicative

(iii) External duty

English	Polish
actor revealed	
(i) is to be to (ii) is obliged to	(i) jest zobowiązany 'is obliged to'
actor not revealed	
no examples found	no examples found

Although we may encounter the same methods of expressing deontic modality in both British and American statutes, some of these methods are more often used in American statutes while others are common in British statutes. In the analyzed English material, the following exponents of deontic modality have been found: (i) *shall*; (ii) *is obliged to*; (iii) *must* and (iv) *is required to*. The expression *is required to* is the rarest. The most frequently used one is still the modal verb *shall*, and the second most frequent is *must*. It is worth noting that recently *must* is becoming more popular in statutory instruments, especially in the USA. This is most likely due to the recommendations included in the ABC rule and the US Code Construction Act, Chapter 311, Government Code. The ABC rule has been advocated by some American, British and Canadian drafters who have pointed out that *shall* is used in multiple meanings making the construction of legal documents, including statutes, very difficult and disputable. This is especially true in that some of those meanings are not deontic, but rather epistemic (as we would formulate it from the linguistic point of view). The US Code Construction Act, Chapter 311, Government Code, on the other hand, gives specific directions as to the usage of modals and their meanings:

'Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

(1) "May" creates discretionary authority or grants permission or a power.

(2) "Shall" imposes a duty.

(3) "Must" creates or recognizes a condition precedent.

(4) "Is entitled to" creates or recognizes a right.

(5) "May not" imposes a prohibition and is synonymous with "shall not."

(6) "Is not entitled to" negates a right.

(7) "Is not required to" negates a duty or condition precedent.'

There are also passive structures (*shall be done by sb*) or structures with adjectives (*shall be exercisable, shall be admissible,* etc) which are used when the agent on whom the duty is imposed is not the subject of the sentence but is given after the predicate.

We may also encounter deontic expressions such as: *is to be done*, *is binding*, *is bound, binds*. The deontic expressions *is obliged to*, *is required to* do not occur in unconditional sentences without revealing the agent in the sentence surface structure.

In the analyzed Polish material, the deontic meaning of the obligation may be expressed in a descriptive utterance without any exponent of deontic modality, that is to say (i) present tense indicative and (ii) future tense indicative. The function of the deontic exponent is realized with indicative mood by the non-modal finite or non-finite verb in present or future tense. The normative character of such utterances results from the pragmatic situation. In other words, the statutory instrument is obligatory in its nature. It should be noted here that in the majority of cases the semantic equivalence occurs among the units bearing the modal meaning of obligation. Sometimes there are strengthened structures with present tense indicative such as the present tense indicative + noun *obowiązek* 'duty, obligation' e.g. *obowiązek ciąży/ obciąża* 'the duty burdens sb'. (Kaczmarek, Matulewska, Wiatrowski 2008).

The deontic meaning of the duty of the person obliged to perform it not revealed in the surface structure may be expressed by: (i) *jest wymagane* 'is required'; (ii) *wymaga* 'requires'; (iii) *musi* 'must' + passive voice; (iv) *należy* + infinitive and *należy się* 'should'; (v) *powinien* 'should'; (v) present tense indicative; (vi) future tense indicative. It should be stressed here that the most frequent exponents of the imposed duty are impersonal, non-deontic verbs in present or future tense, and impersonal modals or modal expressions of the grammatical structure which does not reveal the person on which the duty is imposed in the surface structure. We may also encounter strengthened structures with present tense indicative and the noun *obowiązek* 'duty, obligation' e.g. *obowiązek obejmuje* 'the duty includes sb'.

What is interesting is the fact that the most typical exponent of obligation in colloquial and literary language (*musieć*) has not occurred in the whole corpus under scrutiny despite the fact that it is enumerated as one of the methods of expressing deontic modality by the drafters of statutory instruments and lawyers (Wronkowska, Zieliński1993, 1997).

Statury Prohibition

Prohibition is defined as 'a duty to refrain from acting' (Garner 2001:609). That is to say it is an obligation not to do something.

Within the meaning of **Prohibition** the following three sub-meanings may be distinguished:

(i) Unlimited prohibition which is understood here as the prohibition to perform which is binding no matter the situation.

(ii) Conditional prohibition which is understood here as the prohibition to perform only in specific circumstances.

(iii) External prohibition which is understood here as the prohibition to perform imposed on the actor, not by the legislator, but by other factors such as e.g. contracts, agreements.

(i) Unlimited prohibition

English	Polish
actor revealed	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA) (v) Is prohibited	(i) Nie 'not' + powinien 'should' (ii) Nie 'not' + present tense indicative (iii) Nie 'not' + future tense indicative (iv) Nie móc 'may not' (v) Nie jest uprawniony 'is not entitled' (vi) Nie ma prawa 'has no right' (vii) Niedopuszczalne jest (jest niedopuszczalne, nie jest dopuszczalne) 'is not admissible, is not permissible'
actor not revealed	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA) (v) Is prohibited	(i) Nie 'not' + powinno 'should' (ii) Nie 'not' + należy 'should' (iii) Nie 'not' + present tense indicative (usually passive) (iv) Nie 'not' + future tense indicative (usually passive) (v) Nie można 'may not' (vi) Nie wolno 'must not' (vii) Niedopuszczalne jest (jest niedopuszczalne, nie jest dopuszczalne) 'is not admissible, is not permissible' (viii) Zabronione jest 'is forbidden, is prohibited'

(ii) Conditional prohibition

English	*Polish*
actor revealed	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA)	(i) Nie 'not' + present tense indicative (ii) Nie 'not' + future tense indicative (iii) Nie może 'may not' (iv) Nie ma prawa 'has no right' (v) Nie wolno 'must not' (vi) Nie jest dopuszczalne 'is not admissible, is not permissible'
actor not revealed	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA)	(i) Nie 'not' + present tense indicative (ii) Nie 'not' + future tense indicative (iii) Nie może 'may not' (iv) Nie można 'may not' (v) Nie wolno 'must not' (vi) Nie jest dopuszczalne 'is not admissible, is not permissible'

(iii) External prohibition

English	*Polish*
actor revealed	
is prohibited	wydać zakaz 'impose the prohibition'
actor not revealed	
prohibition	być zakazanym 'be prohibited'

In English, prohibitive clauses with the deontic meaning have been expressed by: (i) *shall not* and (ii) *must not* (UK) as well as not so frequent clauses (iii) *may not*; (iv) *cannot* (USA) and (v) *is prohibited*.

In Polish prohibitive utterances we have found the following exponents used for utterances

➢ with the actor revealed in the sentence surface structure

(i)   *nie* 'not' + *powinien* 'should';

(ii)   *nie* 'not' + *należy* 'should',

(iii)   *nie* 'not' + present tense indicative,

(iv)   *nie* 'not' + future tense indicative,

(v)   *nie móc* 'may not',
(vi)   *nie można* 'may not',
(vii)   *nie jest uprawniony* 'is not entitled',
(viii) *nie ma prawa* 'has no right',
(ix)   *nie wolno* 'must not',
(x)   *niedopuszczalne jest* (*jest niedopuszczalne, nie jest dopuszczalne*) 'is not admissible, is not permissible',
(xi)   *zabronione jest* 'is forbidden, is prohibited'.
➢   and the actor not revealed in the sentence surface structure:
(i)   *nie* 'not' + *powinno* 'should'
(ii)   *nie* 'not' + *należy* 'should'
(iii)   *nie* 'not' + present tense indicative (usually passive)
(iv)   *nie* 'not' + future tense indicative (usually passive)
(v)   *nie można* 'may not'
(vi)   *nie może* 'may not'
(vii)   *nie wolno* 'must not'
(viii) *niedopuszczalne jest* (*jest niedopuszczalne, nie jest dopuszczalne*) 'is not admissible, is not permissible'
(ix)   *zabronione jest* 'is forbidden, is prohibited'

Still, the most frequent method of expressing the prohibition is the present tense indicative. The next most frequent exponents of prohibition are *nie można* and *nie należy*.

Statury permission

within the meaning of **Permission** we have distinguished three sub-meanings:

(i)   *Unlimited permission* which is understood here as the right which may be exercised no matter the situation.

(ii)   *Conditional permission* which is understood here as the right which may be exercised only under specific circumstances.

(iii)   *External permission* which is understood here as the right which may be exercised under non-statutory instruments such as e.g. contracts, agreements.

(i) Unlimited permission

English	Polish
actor revealed	
(i) have a right (ii) may (iii) shall be entitled	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'
actor not revealed	
may	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'

(ii) Conditional permission

English	Polish
actor revealed	
(i) have a right (ii) may (iii) shall be entitled	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'
actor not revealed	
may	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'

(iii) External permission

English	Polish
actor revealed	
enjoy a right	prawo przysługuje 'enjoy a right' nabywać prawo 'acquire a right'
actor not revealed	
the right conferred the existing right the right which exists	prawo powstaje 'a right is established' prawo jest ujawnione 'a right is revealed'

In general, in Polish permission is expressed by the following exponents of deontic modality:

(i)   *jest uprawniony* (lit. *is entitled*),
(ii)   *ma prawo* (lit. *has a right*),
(iii)   *może* (lit. *may*),
(iv)   *wolno jest* (lit. *it is allowed*),
(v)   *dopuszcza się* (lit. *it is allowed*),
(vi)   *zezwala się* (lit. *it is permitted*);

It requires further analysis whether the exponents of weak obligation, that is to say *należy, powinno*, may also be used as exponents of recommendation.

The typical exponents of permission in utterances with the actor revealed in English are the modal verb *may* and the expression *have a right* (*to do something*) as well as the expression *shall be entitled*. The most frequently used exponent of permission in utterances not revealing the actor in the sentence structure is the modal verb *may*.

Conclusions

To sum up, it is worth stressing that it is typical of Polish and English languages of statutory instruments to use the same exponents of deontic modality for expressing various deontic sub-meanings. Consequently, the meaning of the source text cannot be deciphered solely on the basis of the exponents of deontic modality used by the legislator. Thus, it requires a thorough knowledge of the legal construction to find the proper meaning of the source text.

Palmer (1999:233) stated that 'in an overall system of modality it may be best to treat the declarative as the semantically unmarked member of the epistemic system, by which speakers merely present the information available to them, without guaranteeing its truth; it is also, of course often but not always, formally unmarked.' However, the present tense indicative is a typical grammatical exponent of obligation and permission in Polish statutory instruments.

Moreover, it seems that the choice of the exponents of deontic modality used in various legal instruments (especially Polish ones) is not intentional, but rather intuitive. Although, present tense indicative remains the most frequently used exponent of deontic modality (obligation and prohibition), the other exponents are used interchangeably. Additionally, the analysis of frequency indicates that the distribution of the exponents is random and varies depending on the analysed statutory instruments. Therefore, we may draw the conclusion that

the choice of the exponents of deontic modality used in Polish statutory instruments is intuitive, and the legislators' legal idiolects affect the final distribution of exponents of deontic modality used in specific statutory instruments.

On the other hand, a translator is less likely to make a mistake if he/she used proper translation equivalents for exponents of obligation, prohibition and permission uses in statutory instruments.

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Uniform Commercial Code

Wanda Wakuła-Kunz[1]

COGNITIVE CONSEQUENCES OF TRANSLATIONS FOR RENDERING THE MODALITY OF LEGAL DOCUMENTS (A SEMANTIC STUDY BASED ON *THE AMSTERDAM TREATY* AS AN EXAMPLE)

ABSTRACT: This study aims at examining how the manifestation forms of linguistic modality, which plays a rule-constitutive role in the content of legal documents, may be changed in the process of translation. Basing on the achievements of cognitive linguistics the author tries to find a solution for a proper translation of root and epistemic modals that would serve the same communicative function. In concluding remarks she notices that the role of linguists in solving the problems of the legal world is essential for checking the occurrence of ambiguity in the interpretation of translated texts.

KEY WORDS: cognitive linguistics, the language of law, modality, translation studies,

1. Introduction

The objective of this study[1] is to find out how the interpretation and translation of modals may be consequential in the understanding of their meaning with respect to their rule setting roles in legal documents. Theoretical foundations of this study constitute the characteristics of modality in general, and the classificatory divisions of modals into root and epistemic types. Following the opinions of some cognitive linguists, the reasons are explained why the root not epistemic modals are used in legal documents and what problems they create for translators. Linguists give solutions to these problems, and according to these difficulties they suggest which modals should be used

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in texts and which should be avoided. Examples of the most popular modals from Polish and English versions of *The Amsterdam Treaty* (signed on 2 October, 1997 and came into effect on 1 May 1999) show that these pieces of advice are not always used by authors and translators. But still, the explanations can be found why the rules of some linguists are avoided and other definitions are applied.

2. Determining the roles of modals and cognitive solutions for their translations

Modality is one of the most important semantic categories which operate at the sentence level, as we may read in *Semantics* written by John I. Saeed (1998: 125). This term covers devices allowing speakers to express various degrees of commitment to, or belief in a proposition; and one of the strategies employed in communicating the modality is the use of auxiliary words, which are called modal verbs. Discussing "Types of modality and types of modalisation" at the *Second International Conference on Modality in English*, Paul Larreya derives the two categories of meaning, root and epistemic, embodied in modal verbs, from two different domains of human mental activity, namely "the domain of *affect and/or action* and the domain of *knowledge*" (2004: www-site page 1).

There are historical, sociolinguistic, and psycholinguistic evidences for considering the epistemic use of modals as an extension of a more basic root meaning, rather than viewing the root sense as an extension of the epistemic one. For example, the studies of child language conducted by Stan A. Kuczaj and Mary J. Daly (1979), and Susan C. Shepherd (1981), as Eve Sweetser (1994 [1990]: 50) mentions, have revealed that children acquire root senses of modal verbs earlier than epistemic ones. It is probable that past historical changes in the domain of root modality are shaped by general rules of semantic linkages which underlie inherent psycholinguistic motivations. Sweetser argues that root-modal meanings are extended to the epistemic domain precisely because people generally use the language of the external world to apply it to the internal mental world, which is metaphorically structured as parallel to that external world. Thus, the reasoning processes of communicating people are to be viewed as being subject to compulsions, obligations, and other modalities, just as real-world actions as subject to modalities of the same sort. In addition to this, Sweetser (1994: 50)

claims that English modal verbs, constituting essential cases of homonymy rather than ambiguity, independently of their historical development, are synchronically unrelated. Finally, she notices also that root-modal meanings are often analyzed as lexical predicates involving force or obligation, while epistemic readings are treated as combinations of logical operators.

While pointing to linguists who characterize as "root modality" those meanings which denote the real-world obligation, permission, or ability, Saeed (1998) exposes root modals that communicate two types of social information, namely obligation and permission. Root modals, like epistemic modals, signal the speaker's judgment. However, while with epistemics the judgment is about the way the real world is, with roots it is about how people should behave in the world. This means that the use of roots is tied in with all sorts of social knowledge: the speaker's belief system about morality and legality and his or her estimations of power and authority. That is, to say, following Saeed (1998: 126): "A stronger statement of obligation, a weaker granting of permission – the use of them would depend on different judgments by the speaker of her authority over the listener and the degree of formality of their relationship."

Ronald Langacker (2000 [1999]: 308) claims that root modals generally convey force-dynamic relationships in the domain of interaction. In his view, there is a shift from physical to social force which constitutes attenuation in regard to domain. What is very important in a legal document, as he states, the source of potency is no longer identified with the subject. It is not necessarily any specific individual. Moreover, the target of the potency is also diffuse, although the modal force may be directed at a specific individual – be it the subject, the addressee, or some third party. According to Langacker (2000: 307) the force is simply directed toward the realization of a target event, to be apprehended by anyone who might be in position to respond to it. And because the subject is usually not the source of potency, and need not be its target, the root modals exhibit transparency.

In *Translating by Factors* Christoph Gutknecht and Lutz J. Rölle introduce the notion of "multiple meanings of the modals" (1996: 100); by this they talk about the conceptual or denotative meanings of modal verbs; that is, their meanings by virtue of the concepts they denote ("possibility", "ability", etc.). In reality, showing eclectically how these meanings act as translation factors, they have never given a full account of all the conceptual meanings of each modal in question. To provide at least some graphical overview, they have reproduced, as illustrated in Figure 1, the interrelationships of modals and meanings distinguished by Jennifer Coates

(1983: 26), who differentiates between "primary, secondary", and "infrequent uses". She also notices that groups of modals share certain meanings. Worthy of quotation is here the opinion of Coates (1983: 246) that: "It is often asserted that the polysemy of the modals leads to ambiguity. Corpus study reveals, however, that, in context, sentences containing modal auxiliaries are very rarely ambiguous; in particular, prosodic features serve to disambiguate utterances".

Figure 1. The English Modals and Their Conceptual Meaning (adapted from Gutknecht and Rölle 1996: 101)
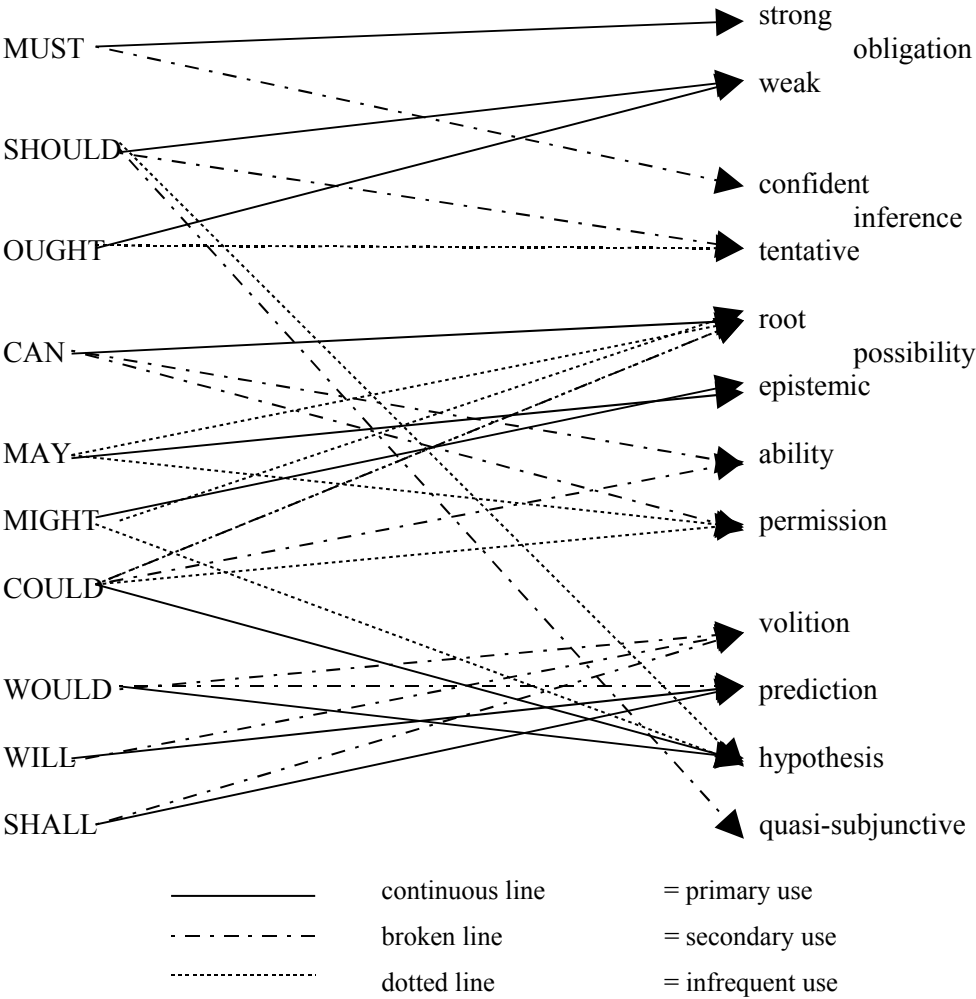
The meaning of modals is especially important when the legal statements are translated from one language into another. As Judith J. Levi (1986: 260) emphasizes, the value of this language variety for linguistics: "linguists should be interested in examining the language of the law for their own professional purposes, that is, to further their understanding of the structure, organization, and use of natural language". Vice versa, the knowledge of linguistics is seen by her to be relevant to legal questions and problems: "linguistics can be applied to solve real-world problems and to assist individuals who must deal with the legal system to work more successfully towards their own objectives".

To identify the actually intended meaning of modals in such legal contexts, the translator can only try to follow the legal specialist's strategy just outlined and aim at achieving a correct interpretation of the modals consistent with their co- and contexts. It is as if the translator were declaring: "Instead of shall the speaker should have used may", which amounts to an actual restructuring of the source language (SL) text. Because the translator thus goes far beyond the usual task of "merely" translating what is presented, he or she enters a new professional field, and it is fitting to acknowledge this new status by referring to the person as a "translator-editor". In view of such complexity, which can only increase the semantic indeterminacy of how to interpret the modals, a requirement for intervention and the setting up of binding guidelines for the use of modals seems to be urgent, at least in the field of language for special purposes. This would alleviate the translator, as Gutknecht and Rölle state (1996: 247), to the burden of an unduly great amount of "editing" activity.

Many linguists have tried to find a solution for a proper translation of modals. Some proposals are very general and some of them are very detailed. Therefore, it is clear for Gutknecht and Rölle (1996: 67) that the definition of modality cannot be a necessary condition for the purpose of translating the modals. For theoretical unilingual purposes it may be interesting to discuss different notions of modality. But, from the translational point of view, "possibility, necessity, prepositional attitudes" and "speaker's attitudes" are all just factors that, if appearing in SL, have to be taken into account for producing target language (TL) renditions, irrespective of the label "modal".

As Christiane Nord (1991 [1988]: 51) points out, "in almost all approaches to translation-relevant text analysis, the recipient is considered to be a very

important, if not the most important, factor". However, for Sider Florin (1993: 127) there is no need to make global reference to "the" hearer(s) or reader(s) TL. The question emerges: "which factors characterize the 'average readers' of the target text …?". They include the level of education, age group, occupation, previous knowledge of the subject, degree of bilingualism, and language attitudes. In this case, Coates (1983: 14) observes that "the clearest cases are those where the enabling or disabling circumstances are actually specified", while referring to the example, numbered here as utterance (2):

(2) You can't see him because he's having lunch with a publisher. (Coates 1983: 15)

Because the most popular modals in *The Amsterdam Treaty* are *shall* and *may*, examples in this paper concentrate mainly on them in comparison with modals which have more or less similar and sometimes very confusing meanings. Attempts are made to explain translations of chosen presented modals.

As Dietrich Nehls (1986: 49) notices the use of *shall* to express the imposition of a strict obligation has occurred for the first time in Early Modern English and is to be found in contracts and official provisions to this day. However, in the analyses of Clive R. Meredith (1979: 63): "In many cases, *shall* to the surprise of many, is contraindicated, particularly after a negative subject: The phrase "No debtor shall" ought to become "No debtor may". Thus, s*hall* has always to be replaced by the present indicative in giving a definition: "Debtor means" is preferable to "Debtor shall mean". The only case in which *shall* is admitted is that where someone is actually commanded to do something. This situation is rare indeed in juridical acts". But, if *The Amsterdam Treaty* is taken into consideration, *shall* is a very popular element of this document, and that means, according to Meredith, that creators of the document command the rest of Europe to do something. Yon Maley (1987: 30) also notices that the expression "shall be treated" in a legislative text "appears to" create a rule with the force of a command. He justifies the interpretative reservation by pointing out that *shall* – as well as *must* and *may* – are notorious sources of ambiguity in legislative interpretation, e.g. in certain cases, one may argue that the legislature intended *shall* to be not mandatory, but only discretionary, and courts may decide that *shall* means *may* or vice versa. Moreover, from the translator's point of view, it is very important that *shall* has no epistemic reading, so it does not seem to be ambiguous. Nevertheless, its translation in *The Amsterdam Treaty* is

sometimes very confusing and not consequent. As it is suggested above by Meredith, in this document, in most cases *shall* is translated into present tense, and *will*, according to English grammar books*,* is treated as the form representing the future. While numbering in square brackets the different uses of modal verbs in the Articles of the Treaty (excerpted from the text elaborated by Przyborowska-Klimczak and Skrzydło-Tefelska 1999, where respective pages are given in round brackets), we will show how the selected English phrases (distinctions in italics is ours: WW-K) have been rendered with Polish equivalents in question. To begin with the first example, Article 53, numbered as [1], one can notice that *shall* is translated as pertaining to future, only *will* in [2] and *shall* in [3] are translated according to the mentioned rules. Cf. Article 53 (92):

This Treaty, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish language, the texts in each of these languages being equally authentic, *shall be deposited* [1] in the archives of the government of the Italian republic, which *will transmit* [2] a certified copy to each of the governments of the other signatory States.

Pursuant to the Accession Treaty of 1994, the Finnish and Swedish versions of this Treaty *shall also be* [3] authentic.

Niniejszy Traktat, sporządzony w jednym oryginalnym egzemplarzu, w językach: angielskim, duńskim, francuskim, greckim, hiszpańskim, holenderskim, irlandzkim, niemieckim, portugalskim i włoskim, przy czym teksty we wszystkich językach są na równi autentyczne, *będzie zdeponowany* [1] w archiwum Rządu republiki Włoskiej, który *wyda* [2] uwierzytelniony odpis każdemu z rządów innych Państw-Sygnatariuszy.

Zgodnie z Traktatem Akcesyjnym z 1994 r. wersja fińska i szwedzka niniejszego Traktatu *są* [3] także autentyczne.

But in the second example, Article 19, one can notice that both modals, *shall* and *will*, included in phrases [4] [5] and [6] are translated into the present tense. Cf. Article 19 paragraph 2 (66):

Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep [4] the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concern and keep [5] the other Member States fully informed.

Member States which are permanent members of the Security Council will, in the execution of their functions, ensure [6] the defence of the positions and the interest of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

Nie naruszając ustanowień ustępu 1 i artykułu 14 ustęp 3, państwa Członkowskie reprezentowane w organizacjach międzynarodowych, w których nie uczestniczą wszystkie państwa Członkowskie, informują [4] te ostatnie o wszelkich sprawach ogólnego zainteresowania.

Państwa Członkowskie, które są także członkami Rady Bezpieczeństwa Organizacji Narodów Zjednoczonych, działają zgodnie i informują [5] w pełni inne Państwa Członkowskie.

Państwa Członkowskie, które są stałymi członkami Rady Bezpieczeństwa, przy wykonywaniu swoich funkcji zapewniają [6] obronę stanowisk i interesów Unii, nie naruszając swoich obowiązków wynikających z postanowień karty narodów Zjednoczonych.

In some way, Article 19 gives the "universal" truth, condition which is supposed to be natural in some procedures as law is supposed to be a kind of the universal truth for societies. This problem can be explained in terms of Langacker's distinctions (2000: 280) who proposes to analyze a sentence, numbered here as (3), which refers to the universal truth:

3) Water will boil when heated to 100 degrees centigrade.

For Langacker (2000: 280) *will* does not have its future-time epistemic value in this example, since it does not pertain exclusively to future events. It is not a present time epistemic for the sentence is the description of "known" reality. It is quite similar to "habitual" expressions. It does not designate a single instance of the event. In the article above *will* indicates that an event of that type is in some sense a regular or expected occurrence. Using *will* and not present simple give the regularity matter-of-factly, while the sentence in present simple tense is in some way "predictive" and seem more "energetic". For Langacker the verb *will* exposes the force-dynamic aspects of the structured world model. Using Present Simple the inclusion of the process type in the structure of the world is portrayed in static terms, as a part-whole relation. The effect of *will* is to invoke the full dynamic evolutionary model, which brings to the force the force-dynamic implications of this relationship.

According to Figure 1, pertaining to the English modals and their conceptual meaning, the primary use of *can* means root possibility and the

secondary means permission; and the infrequent use of *may* means root possibility and permission. Moreover, dictionaries give epistemic meaning of *may* as the first definition. But, taking into consideration the root meaning of both words, the modal verb *can* has two meanings which are different: "to be able to" in Polish "móc coś zrobić, mieć na to pozwolenie" and "know how to" "umieć, potrafić". *May* has one root meaning – "it indicates permission" – "you may do it" "możesz to zrobić – pozwolono ci". This may be one reason for using the modal *may* in documents which state law. Following Randolph Quirk (1987: 36) *may* in the document is to be treated as a more formal substitute for *can*. Though, in accordance with Sweetser's opinion (1994: 53) the overlap of *can* and *may* is equally explicable in terms of a more intuitively satisfying definition of *can*. For Sweetser the word *can* denotes positive ability on the part of the doer and *may* the lack of restriction on the part of someone else. This lack of restriction reflects as well the meaning of *may* in the Treaty. In the analyzed document, there are few sentences with *can*. For example, in phrase [7] *cannot* is translated similarly as in the case of *may not*, but in [8] to avoid the same translation, the future form is used instead. Cf. Article 5 (106):

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action *cannot* [7] be sufficiently achieved by the Member States and *can* [8] therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

W zakresie, który nie podlega jej wyłącznej kompetencji, Wspólnota podejmuje działania, zgodnie z zasada subsydiarności, tylko wówczas i tylko w takim zakresie, gdy cele proponowanych działań *nie mogą* [7] być skutecznie osiągnięte przez Państwa Członkowskie, a zatem, z uwagi na skalę lub skutki proponowanych działań, *zostaną* [8] lepiej zrealizowane przez Wspólnotę.

Must is also very rarely used in the Treaty. Referring to Sweetser (1994: 52) *must* is equally to be understood as a compelling force directing the subject towards an act. Citing Talmy, Sweetser (1994: 52) considers *must* as a barrier restricting one's domain of action to a certain single act; and it is true that force or constraint would have the same physical result. "But *must* has the force of an order to do something, a positive compulsion rather than a negative restriction" (1994: 52).

In the analyzed examples of modal verbs included in Article 120, *must* is translated as "*musieć*". One can see that *must not* is translated here as "*nie mogą*" similarly as it is the case with *may not* in Article 195. Moreover, in the first sentence of Article 120, *may* is translated as "*może*" and in the second sentence, there is a clear emphasis on the necessity of the action connected with "disturbances". The following *must not* is the consequence of the previous *must* in the same sentence, and at the same time it forbids some activities stronger than *may*. In the Polish version, *must not* is translated as "*nie mogą*" so as *may not*, although the best direct translation would be "*nie wolno im*". Probably the translator did not want to be very strict in his interpretation. Cf. Article 120 (196):

Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 119(2) is not immediately taken, the Member State concerned may [9], as a precaution, take the necessary protective measures. Such measures must [10] cause the least possible disturbance in the functioning of the common market and must not [11] be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

Jeżeli pojawia się nagły kryzys w bilansie płatniczym I decyzja, w rozumieniu artykułu 119 ustęp 2, nie zostaje natychmiast podjęta, Państwo Członkowskie może [9] podjąć, w celach prewencji, konieczne środki ochronne. Takie środki muszą [10] powodować możliwe jak najmniejsze zakłócenia w funkcjonowaniu wspólnego rynku i nie mogą [11] mieć szerszego zakresu, niż jest to absolutnie konieczne do pokonania nagłych trudności, które powstały.

Cf. also Article 195 paragraph 3 (258):

The Ombudsman may not [12], during his term of office, engage in any other occupation, whether gainful or not.

Rzecznik Praw Obywatelskich nie może [12], w trakcie swojej kadencji, podejmować żadnej innej działalności zawodowej, płatnej lub niepłatnej.

It should be underlined here that *cannot*, *must not*, and *may not* are translated in the same way. This is probably the reason why only one of them is chosen to be used in the international treaty. Summarizing, therefore, the analysis of the selected articles it may be suggested that *can* and *must* are very seldom to be used in the Treaty because they create problems with translation and in consequence with interpreting legal texts.

3. Conclusions: the role of linguists in solving legal world's problems

The category of modality discussed and exemplified in legal contexts is one of the most problematic in translation but by no means the only one that causes difficulty. The expression of modal meanings can vary widely from language to language and has to be handled sensitively and carefully in translation. As linguists state, modality or modal meanings have to do with the attitude of the speaker to the hearer or to what is being said, with such things as certainty, possibility, and obligation. Moreover, the expression of modal meanings can take quite a different form in each language. Especially if a legal text such as *The Amsterdam Treaty* is taken into consideration. In the interpretation of a text involving an English modal verb, the knowledge of pragmatic linguistic definitions involved in identifying the modality in question is very helpful. The correct identification of meaning is very important for appropriate translation, because the word is not transferred, but rather its meaning. This is why the practice of translating modals must provide criteria for identifying the source language uses and their subcategories referred to. As it is presented on some examples from *The Amsterdam Treaty*, most of translations may be explained using cognitive grammar. This is why it must be underlined again, that linguists are important for interpreting legal documents to avoid ambiguity in texts.

[1]Note: My special thanks are due to Zdzisław Wąsik, Professor of the Adam Mickiewicz University in Poznań and Nicolaus Copernicus University in Toruń, who carefully reviewed this paper acting as a true co-author of its scientific style and editorial supervisor of its content. I am also very grateful for his encouragement to take part in the international conference, where I could present the results of my initial studies. Wanda Wakuła-Kunz

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Kognitywne konsekwencje tłumaczenia modalności w tekstach prawnych (badania semantyczne oparte na traktacie amsterdamskim)

Streszczenie

Celem pracy jest ukazanie konsekwencji, jakie może mieć tłumaczenie czasowników modalnych, które ustanawiają reguły i zasady rozumienia norm w tekstach prawnych. W oparciu o rozróżnienia językoznawstwa kognitywnego zostały wyjaśnione przyczyny, dlaczego deontyczne czasowniki modalne są tak często używane w legislacji. Jako materiał do analizy wybrano *Traktat amsterdamski* w jego angielskiej oraz polskiej wersji. Przykłady pochodzące z tegoż tekstu ukazują, iż tłumaczenie deontycznych czasowników modalnych może być źródłem wieloznaczności dla jego odbiorców i to właśnie badania oraz definicje lingwistyczne pomagają rozwiązać problemy związane z błędnym rozumieniem znaczenia słów w tak ważnym tekście międzynarodowym.

Iwona Witczak-Plisiecka[1]

LEGAL SPEECH ACTS IN A COGNITIVE LINGUISTIC PERSPECTIVE – FOCUS ON MODALITY

Abstract: The paper involves three main fields of linguistic analysis: the pragmatic theory of speech acts, cognitive linguistics and legal language. Its main aim is to demonstrate the relevance of the cognitive framework to the analysis of speech acts and especially the deontic use of the modal verb *shall* in the legal context. The focus is on the use of the modal, which is mainly used to impose obligations or to confer rights. Thus, its meaning seems to be in most cases a combination of both assertive and directive illocutionary forces when approached from a pragmatic perspective, and a combination of deonticity with futurity and prediction in traditional grammar terminology. The discussion is illustrated with a variety of examples retrieved from a corpus of legal documents drafted in English and translated into Polish.

It is argued that the meaning of most instances of *shall* in the legal domain, due to its context-sensitivity, can be best accounted for in terms of a cognitive blend, which integrates various aspects of its meaning. These aspects are believed to be inherently vague and possibly an instance of ongoing processes of grammaticalisation, which can only be grasped with reference to the context of a particular expression, thus pragmatic in nature.

Key words: legal language, cognitive linguistics, modality.

1. Introduction

The present paper comments on selected aspects of speech acts in the legal context and their theoretical linguistic account in both what can be recognized as a traditional view and a newer cognitive linguistics. The traditional approach is primarily associated with the speech act theory as introduced and developed by John L. Austin (1962), John

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Searle (1969) and their followers. The cognitive approach adopted for the present study refers to work of Ronald Langacker (1983, 1999), Gilles Fauconnier (1985, 1999), Mark Turner (eg. Fauconnier and Turner 1996) and Eve Sweetser (1990, 1999). It follows from the very nature of a speech act, which involves performative, operative values, that the theory places itself in the center of pragmatic analyses, and although, as it has been emphasized by Roman Kalisz (2001: 13), pragmatic theories are basically sociolinguistics, while cognitive studies are psychologistic in nature, it seems fruitful to try and integrate the two methodological perspective, which, it is believed, may result in a better description of language phenomena. It is also worth noting that there are new linguistic theories, not associated with the cognitive approach but built within the philosophy of language, which indicate that speech act theory must inherently be psychologistic (cf. Barker 2004)[2].

In the present study the cognitive approach to legal speech acts is illustrated via the account of the deontic *shall*, which is recognized as one of the characteristics of legal register. The semantics of the deontic *shall* is approached in terms of a cognitive blend.

2. Speech act theory and linguistic pragmatics.

Despite the ubiquity of the term – pragmatics, the theoretical status and scope of linguistic pragmatics has not been sufficiently defined. Most often pragmatics is understood as a layer of linguistic analysis next to other such layers, e.g. phonetics, phonology, syntax, semantics, etc. (cf. Akmajian et al. 2001, Kalisz 2001). Pragmatics understood in this way is the study of meaning beyond semantics, i.e. the study of meaning in context. The most often quoted features which are to differentiate pragmatics from semantics include departure from truth-oriented analysis, and focus on notions such as possible worlds, speech acts, linguistic implicature, politeness, language deixis, i.e. phenomena which may not be readily accessible though reference to language as a (relatively well defined) code, but rather available via inference[3]. There are also

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[2]   In his book „*Renewing Meaning: A Speech Act Theoretic Approach*" Barker (2004: 221) claims that the theory of speech acts is 'wedded to psychologism'.

[3]   It is significant that linguistic pragmatics includes research into the question of explcitness of lin-

pragmatic researchers who claim that pragmatics is not yet another layer of linguistic analysis, but a holistic approach to research in language (e.g. Verschueren 1999). Verschuren (1999) points to the fact that all linguistic phenomena, on all traditional layers (i.e. phonetics, syntax, etc.) can be analysed 'pragmatically', i.e. from a linguistic pragmatic perspective; another problem is whether these traditional layers are at least methodologically justifiable. It is evident that language is not simply composed of structured layers and their presence can only be accepted as useful generalization which are to facilitate research and point to the most salient aspects of a particular approach. However, it can never be justified that e.g. syntax can be sufficiently accounted for without reference to other aspects of language, most prominently meaning. On the other hand more restrictive approaches which entirely reject structuring linguistic research into the traditional layers have to cope with generality and all-inclusiveness and may appear methodologically vague even though they are able to avoid many problems connected with borderline categories, and seem to be closer to people's everyday experience, where the world is seen as imperfect and saturated with 'folk' definitions. The extreme view on language as non-autonomous and semantically dynamic, and on linguistics which require immediate demythologization, can be seen in the 'sociologistic' integrational linguistics (cf. Harris 1988, Toolan 1996), a more moderate view, where language is also seen as non-autonomous, but dependent on human cognitive abilities, is the more 'psychologistic' cognitive linguistics[4].

It seems common sense solution to accept that language cannot be analysed with no reference to the context of its use. Much as it is not possible to think of language out of its social context, the speech act theory introduces a very special methodology, which embraces the effects of linguistic performance. This field of study, whose origin is marked with focus on performative, operational utterances, i.e. the language in (and of) action, the language which is not just descriptive, seems to be especially relevant to the study of legal language.

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guistic expressions and the implicit-explicit relation (cf. research done within the relevance-theoretic framework by Robyn Carston and Diane Blakemore, e.g. Carston 2002 , Blakemore 1989), which however falls beyond the scope of the present essay.

[4]   It should be noted however that some integrational linguistic notions are not compatible with the commitments of the cognitive approach.

Legal language forms a very unique sub-system of natural language, because law, unlike other fields, e.g. engineering, medicine, is both expressed and performed via linguistic expressions. In fact it is not possible, at least in the European tradition, to think of law which is not formulated in language.

3. Speech acts in theory and their methodological status

The multidimensionality and complexity of speech acts have already been asserted by John L. Austin, who systematically introduced the theory into the philosophy of language. Austin (1962) pointed to the fact that there is no characteristic form for a speech act, one which could be successfully formalized; he also emphasized that linguistic acts may be unsuccessful for a great number of reasons. Searle (1969) suggested constitutive and regulative rules, which were more formalized and provided a more detailed, but also methodologically generalized, description of the conditions for successful accomplishment of linguistic acts.

The notion of the speech act itself has undergone significant evolution since the 1960s, especially with regard its recognition as a primary unit of meaning. As has been indicated above, Austin (1962) claimed that linguistic acts can be performed in a variety of ways despite indicating the most prototypical performative form in which they occur, i.e. the present simple first person indicative mood with the use of an explicit performative verb preceded with the adverb *hereby*. Thus, even Austin asserted that there is no direct, natural correspondence between form and function, which allows us to recognize and discuss speech acts on supra-sentential level. This understanding is in agreement with a number of newer approaches, e.g. that of illocutionary logic proposed by Vanderveken and Searle (Vanderveken 1990, 1991, 1994; Searle and Vanderveken 1985) or the account of meaning suggested by Stephen Barker (2004). In both these approaches speech acts are treated as primary units of meaning although while Vanderveken and Searle recognize six main categories of speech acts, Barker is in favour of their indefinite number, which is to reflect the mereology found in natural world. Barker's methodology brings him closer to the cognitive approach via his focus on intention and form, at the same time reviving notions related to the well known and somewhat

obsolete performative hypothesis rooted in generative grammar[5] (cf. Ross 1970, Sadock 1974).

With regard legal language, and especially the language of English normative documents, it is common to recognize speech act-oriented units of meaning at various levels of legal discourse. These units are recognized at various levels of e.g. a statute, a will, a contract. There is ample discussion in literature of macro-acts and micro-acts, macro-structures and micro-structures, speech events and internal lower-rank acts[6], which can be found in legal documents. It seems significant that '*event*' is also one of central technical terms in cognitive linguistics.

Technical methodological problems connected with speech acts and their interpretation had resulted in many academic discussions and had provoked the formulation of the so-called Cohen's problem (1964)[7], which summerises alleged methodological inconsistences of explicit performative expressions. The problem focuses on interpretational difficulties in cases which involve illocutionary force encoded in a subordinate clause. Such sentences, contrary to intuitive, common sense reading, can be shown to be inherently true. For instance, in saying:

(1) I herby assert that I had never intended to do wrong.

it can be claimed that the sentence is true by the virtue of involving true assertion, i.e. the act of asserting, while the content encoded in the subordinate clause can be in conflict with reality, but also outside the scope of assertion as such.

Thus, the Cohen's problem can be seen as another argument in favour of the cognitive approach, as it is evident that only through recognition of the dynamicity of language and the reality of meaning construction in the process of communication, can non-prototypical meaning be explained. Such non-prototypical reading of lexical expressions, which involves the

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[5]   It should be noted that even disregarding methodological problems related to the performative hypothesis itself, its notion cannot be directly identified with newer approaches discussed here, first of all due to the fact that the levels of meaning allowed within these theories are not (at least entirely) consistent with deep structure and other generative ideas. However, the commitment that speech act involves a semantic-pragmatic value which can be associated with a variety of form brings these approaches closer to each other.

[6]   Cf. e.g. Kurzon 1986, van Dijk 1987; also discussion of speech acts in English legal texts in Witczak-Plisiecka 2001.

[7]   Introduction to the so-called Cohen's problem can be fund in e.g. Lycan 2000, pp.181ff.

speaker's (often less expected) intention, can be exemplified as e.g. humorous or specialized meaning. These meanings are more rooted in context than in the formal aspects of the expressions, i.e. are more dependent on inference than code.

The cognitive approach in the analysis of speech acts can further be justified by reference to other aspects of cognitive studies, most notably their concentration on radial categories. In his Harvard lectures Austin (1962) introduced the important distinction between performative and constative utterances; however, in conclusion he decided that performatives should be included in constatives. His discussion suggests that speech acts are best conceived of in terms of prototypes, which are characterized by specific features; however, most of the features are not necessary. This approach seems to follow into the tradition of Eleonor Rosch (1975), and former linguistic philosophical ideas of Wittgenstein (1953) who introduced the notion of 'family resemblance'. At present the core of these ideas can also be found in Idealized Cognitive Models (ICM) present in the cognitive theory of George Lakoff (e.g. 1987). Eventually, having allowed non-prototypical forms of speech acts, the difference between performative and non-performative uses of language resides in context and its intricacies where the interplay between the illocutionary force and the form being a vehicle for it takes place. Thus, the most typical speech acts, such as:

(2) *I hereby declare the meeting open.*
(3) *I hereby name you 'Strzebrzeszyn'.*
(4) I declare you man and wife.

are considered as speech acts, i.e. action performed by language use. They are typically conventional, often fossilized in structure; part to a social ritual.

Speech acts necessarily emerge from social conventions and expectations common to a culture, but are rarely written down or well-defined. Thus, prototype-related categories provide sufficient means for a description of this somewhat gradable arbitrariness, which holds between form and function related to illocutionary force associated with a particular act. Implicit speech acts can be conveyed via the use of forms which significantly depart from explicit speech acts like the ones quoted above even within a sub-type. For instance, a directive speech act can be conveyed via an interrogative form accompanied with relevant intonation, or entirely derive its power from context, which may appear to be a violation of the lexical semantic properties of its linguistic, (non-pragmatic but) semantic form.

On the level of internal, lower-rank categories of speech acts, their classification and recognition is also dependent on pragmatic notions and can only be expressed in terms of fuzzy values, typical and non- or less typical features. Quite often the interpretation of the act involves a degree of vagueness which might be purposeful and intended by the author. The vagueness may result from the pursuit of politeness, or creativity (e.g. humour, sarcasm). Even mundane expressions such as:

(5) Go to the library and check under 'Polish philosophers of language'

may be understood (and intended) as a directive, recommendation, advice, a warning, and in fact many other acts.

Within its rich repertoire of possibilities for expressing directives, the English legal language includes modal forms, which are highly specialised and recognised as legal context-specific, cf. the examples below:

(6) … the authority *shall seek* the views of …

(7) Students *may enrol* …

(8) The above mentioned level of 50% *may be changed* by the resolution of shareholders.…

(9) … any such person *will be charg*ed …

(10) Every person (…) *must aid and assist* in making the arrest …

The examples serve to show that illocutionary force is not necessarily bound with a performative verb and may well be conveyed without any loss in its strength via modal expressions.

Both mood and modality are language phenomena which are complex and multidimensional. They involve a variety of forms and functions both intralingually and in a contrastive perspective, and are not readily formalisable in a linguistic description. In most general terms, modality is presented as a semantic-grammatical category, which conveys the speaker's perspective on the content of his or her expression (cf. Palmer 1990, 2001). Due to its complexity and variety of form, but also focus on the Speaker's intention and semantic modulation involved, modality seems to be especially relevant as an object of cognitive analysis. Within the cognitive approach the notion of cognitive mental spaces, as introduced by Fauconnier (1985), and the related notion of cognitive blends, also appear to be relevant and provides an insightful technique for a description of modal meanings in the legal context, which is shown in further sections of the present paper.

4. The deontic *shall* in English legal texts

The verb *shall* is the least frequent modal in the English language. Its distribution within Longman corpus (LSWE) has been determined at 250 uses per million words, with the most frequent English modal verb – *will* – at 3500 uses per million. It also seems insightful that the average frequency of modal verbs in English can be determined at circa 1000-1500 occurrences per million (Biber et al. 1999, p.486). It is commonly accepted that the modal verb *shall* is used in several main senses. The most frequent one is when *shall* is used with future reference, i.e. as a vehicle for the notion of futurity (or/and prediction) in often somewhat formal or even archaic sense in the first person singular and plural and in opposition to *will* used with other grammatical persons, e.g.:

(11) I shall do it later.

or: (12) I shall be twenty five next week.

The example in () already possesses a deontic touch and depending on context can be read either or both as prediction and a promise. Other uses of *shall* involve much fossilised and idiomaticised expressions, which have been pragmaticised in that they are used with a particular well-defined "Shun the ambiguous *shall*. function, e.g. that of proposal:

(13) Shall I carry it for you?

(14) Shall we go out tonight?

Finally, *shall* can be used with a directive force, which normally happens only in formal, most often legal, context.

(15) *The contract shall be deemed null and void should any of the aforesaid clauses not be met.*

Data on etymology informs that the deontic meaning of *shall* was prior to its 'futurity'-oriented reading. However, although the aspect of duty and obligation is historically stronger, the deontic use has been now restricted to the specialised register of the language of the law. Within the law thus deonticity of *shall* is widely recognised and typical, while outside the domain it is seen as rare and peripheral. As a result *shall*, especially in the legal context, can appear as ambiguous or vague. Used under correct, felicitous circumstances, it can result in the introduction of legal consequences in extralinguistic reality. At the same time it can be perceived as descriptive of the future, the future which is both expected and 'required'. This aspect reveals what can be recognised as non-temporal or rather atemporal nature

of deonticity in general and is reflective of the complexity of the relation between mood, modality and tense. Even within the English legal language researchers and practitioners do not always agree on the standard readings of *shall*. Expert opinions range from those in favour of the deontic reading towards those which suggest that the use should be banned altogether, cf. the quotation below cited as (16) and (17), which illustrate contrary views on the usefulness of *shall* in the legal context:

(16) "the use of '*shall*' indicates that the legal subject is under obligation to act in accordance with the terms of the provision (...) it does not indicate something in relation to the future" (Robinson 1973: 39)

(17) The word is used vaguely in five distinct ways, and it requires interpretation. (…) It is a "dead" word never heard in everyday conversation. (…) [Y]our reader encounters it only in contracts, rules, regulations, and so on. (…) *Shall* has been interpreted in various ways by various judges; some say it means "must," but others insist it's just a recommendation, and means "should." Never *suggest* legal obligation. *State* it." (Lauchman 2005: 47)

The opinion cited as example (17) places itself in the mainstream of the so-called Plain Language Movement, whose main objective is to make legal language more comprehensible to lay people. The movement, which originated in the United States with the suggestion that jury instructions should be rewritten so people not trained in the law could understand them better, has gained many supporters over the world and has spread onto many other also non-English language-oriented legal cultures. However, voices against the 'legal' use of *shall* have also come from professional linguists, cf. Trosborg 1991, 1994.

The complexity and of the deontic shall and its semantic nature can also be seen in contrastive studies and in translation. For instance in Polish, deonticity can be both rendered via the use of the present tense and morphologically marker future, cf. examples below cited as Table 1:

The data shown in Table 1 above seems to reinforce the belief that expressions with *shall*, as in fact other modal expressions, are typically atemporal in nature. This atemporality, where especially the future and the present are merged into a unit, is clearly visible in contrastive studies. In Polish deonticity is rendered both via the use of the future tense and the present. Not always the present and the future forms are felt to be entirely equivalent, however, in most cases it can be said that the present 'includes' the future or extends into it due to the deonticity encoded in the expression.

The use of *shall* in the legal context suggests that the expressions are primarily performative in nature; they are to be operative in the law and to introduce extralinguistic results. Some of these results are immediate, others can be 'planned', introduced at the time indicated, or just potential; however, in all cases the law itself becomes a binding description of reality. Thus, it may seem that *shall*, at least in the legal context, should not be associated with the notion of futurity, but only that of deonticity. However, disregarding the future reading of *shall*, even as used in English legal documents, evidently hurts intuitions of language users, who normally, even if trained in the law, perceive this use as a mixture of *futurum* and deonticity or just a (present) description of the desired (future) state of affairs.

Table 1: Samples of shall in the legal context with relevant Polish equivalents

1.	Distribution of the net profit **shall be done** by resolution of the shareholders.	podział (…) **dokonywany jest** [present tense] uchwałą ...
2.	The reserve capital **shall be created** by deduction of 50% of early net profit.	Kapitał rezerwowy **tworzony będzie** [future tense] rokrocznie poprzez …
3.	The right of the member of the board of directors to manage the affairs of the company and to represent it **shall cover** all court proceedings and out of court dealings of the company.	Prawo członka zarządu do prowadzenia spraw Spółki i jej reprezentowania **dotyczy** [present tense] wszystkich czynności sądowych i pozasądowych Spółki.
4.	The resolution of the board of directors **shall be adopted** by absolute majority of votes	Uchwały zarządu **zapadają** [present tense] bezwzględną większością głosów obecnych
5.	(…) in the event of an equal number of votes the president of the management board **shall have** the casting vote.	(…) w razie równowagi głosów decydującym **jest** [present tense] głos prezesa zarządu.
6.	The calendar year **shall be** the financial year of the company.	Rokiem obrotowym Spółki **jest** [present tense] rok kalendarzowy.
7.	The remuneration of members of the company's bodies **shall be fixed** by a resolution of shareholders.	Zasady wynagradzania członków organów Spółki **określane są** [present tense] uchwałą wspólników Spółki.
8.	The opening of liquidation **shall result in** the expiry of the power of the commercial power of attorney.	Otwarcie likwidacji **powoduje** [present tense] wygaśnięcie prokury.
9.	The annual fee **shall** be paid at the time of ...	Opłaty roczne **wnoszone będą** [future tense] …

10.	If the child support payment is a fixed sum, it **shall** be adjusted annually ...	Jeżeli alimenty płacone na dziecko określone są sumą **będą rewaloryzowane** [future tense] każdego roku
11.	The fee **shall be doubled** each succeeding year in which the annual fee remains unpaid,…	Nieuiszczenie opłaty **spowoduje podwojenie** [future tense] jej w kolejnym roku,
12	… but the total annual fee **shall not** exceed ...	… cała suma **nie może** jednakże **przekroczyć** [present tense]…
13.	The directors, administrators and employees of bodies involved in an adoption **shall not** receive remuneration which is unreasonably high in relation to services rendered.	Osoby zawodowo związane z instytucją adopcji **nie *(będą)* mogą otrzymywać** [present tense; future use indicated in the brackets as possible] wynagrodzenia, które byłoby niewspółmiernie wysokie w stosunku do wykonywanych przez nie obowiązków.
14.	No person **shall** act as an election officer knowing that they do not meet the requirements for an election officer set out in this section.	Osoba, która posiada wiedzę, że nie spełnia wymaganych kryteriów, **nie ma prawa pracować** [present tense] jako urzędnik wyborczy.
15.	No one **shall** derive improper financial or other gain from an activity related to an intercountry adoption.	Nikt **nie ma prawa osiągać** [prezent tense] niedozwolonych korzyści materialnych lub innych korzyści w związku z wykonywaną pracą na rzecz adopcji międzynarodowej.

In summary, the use of shall in the legal context can be accounted for in a number of ways. One solution is to accept that the verb is used in legal texts in two different ways, either (1) as a vehicle for deonticity or (2) as a grammaticalised form to refer to the future. This approach finds it difficult to explain the uses which appear as vague between the two readings. On the other hand accepting that *shall* is just context-sensitive and its reading can only be revealed in a particular context does not seem theoretically fruitful as it is not able to solve theoretical problems and systematically account for differences sound for language users. These pragmatic in nature approaches further introduce problems related to the accessibility of context, its being given or chosen, and postulate subjectivity in language reception.
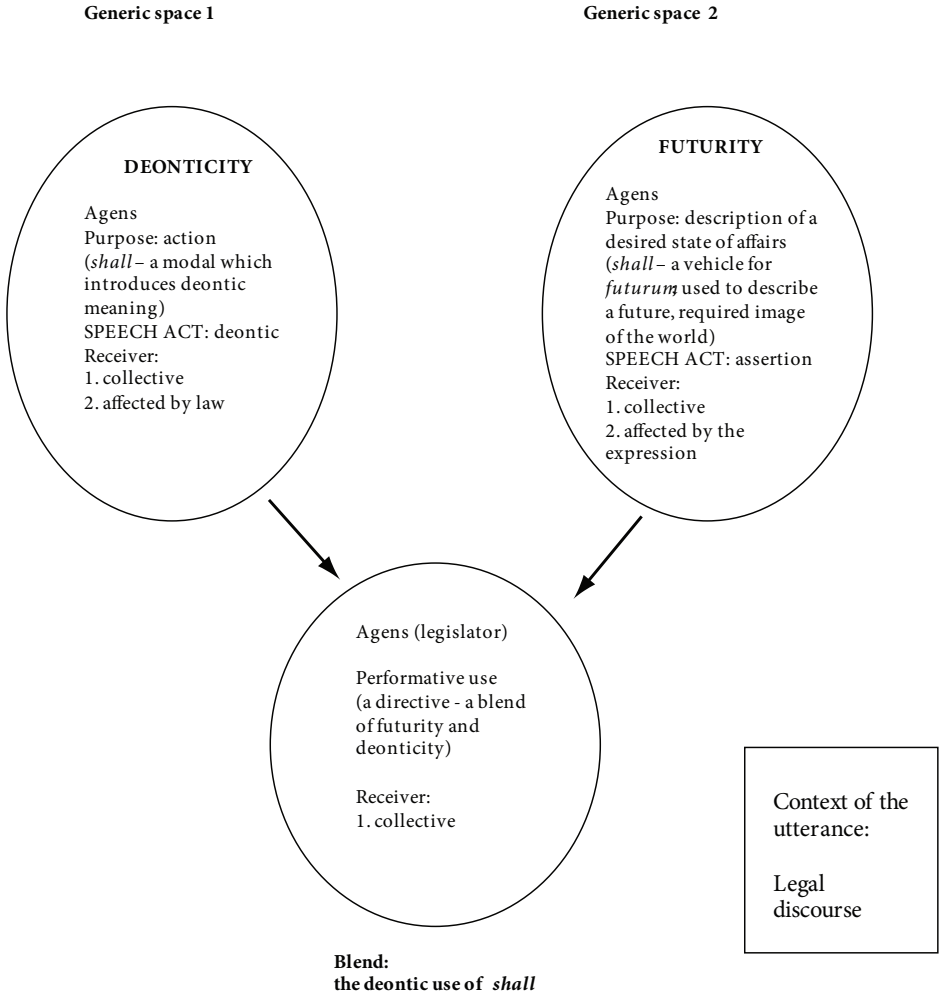
It can also be suggested that the contemporary reading of *shall* illustrates the fact that the verb is being affected by the on-going or heterogenoius

process of grammaticalisation, i.e. a transition from being a lexical category towards becoming a grammatical one. Within this approach, it may be argued that in selected contexts *shall* may behave as a modal verb, which still possesses its lexical semantic power, while in others it may behave as a purely grammatical (and grammaticalised) category, whose function is similar to that of inflectional morphemes in other languages, e.g. Polish. This approach must face the problem that the deontic reading of *shall* is historically prior to its other readings, thus, it could be seen as grammaticalisation which works semantically backwards, towards less frequent meaning which in the past had been central, while in grammaticalisation etymologically original meaning should be the basis and not the result of the process. However, the 'future' reading of *shall* is nowadays more transparent to most language users that its deontic meaning, especially among people who are not within the legal profession. Thus, the grammaticalisation hypothesis can be supported by accepting that deonticity of *shall* in the legal context is a product of grammaticalisation of a particular contextual aspect, resulting in its fossilization and a high level of conventionality. It also points to the fact that legal language as a sub-domain of natural language is hermetic and not easily accessible to lay persons.

It seems that the best description of the use of *shall* in the legal context can be achieved within the cognitive approach by reference to the concept of the conceptual blend (cf. Fauconnier and Turner 1996), which coordinates at least two mental spaces. A cognitive blend is a complex structure composed of elements available in context and integrated in a sufficient degree to be perceived as a coherent conceptual/mental unit. The theory claims that cognitive blends are created within a discourse frame. Thus, this method of description allows to account for the functional, legal use of *shall* with relation to two basic performative categories, i.e. the speech acts in the form of a directive and of an assertion. The understanding of a speech act as a psychologically motivated category (as suggested by Barker 2004), which is a function of a linguistically coded intentional state of a language user, seems to reinforce the validity of this approach. Both Barker's approach and cognitive linguistics are psychologistic in nature and recognize the compositionality of intentional states and linguistic expressions. Both theses approaches also accept that intentional states are prior to language and accept that primary, 'simple' intentional states may motivate much more complex linguistic expressions, expressions which are complex in their logical and grammatical

form. It results from the approach that language is a morphological-syntactic system, which possesses complex speech act characteristics, a system which integrates form and function.

Figure 1: The image of the deontic shall as a cognitive blend.

Generic space 1

Generic space 2

DEONTICITY

Agens
Purpose: action
(*shall* – a modal which introduces deontic meaning)
SPEECH ACT: deontic
Receiver:
1. collective
2. affected by law

FUTURITY

Agens
Purpose: description of a desired state of affairs
(*shall* – a vehicle for *futurum* used to describe a future, required image of the world)
SPEECH ACT: assertion
Receiver:
1. collective
2. affected by the expression

Agens (legislator)

Performative use
(a directive - a blend of futurity and deonticity)

Receiver:
1. collective

Context of the utterance:

Legal discourse

Blend:
the deontic use of shall

In conclusion it is theoretically sound and in agreement with language users' intuitions to indicate a cognitive blend which exemplifies a unit

composed of elements of assertive and directive speech acts. From another perspective this blend may be viewed as a blend of the notion of *futurum* and deonticity, because both these notions may be perceived as dynamic and against the background of ongoing processes of grammaticalisation, where semantic spaces merge one with another. The concept of mental spaces has already been applied to the analysis of modal meanings by Eve Sweetser (1990), who, however, indicated just three basic aspects of modal vague meanings which were to correspond to three basic mental spaces, i.e. content, epistemic meaning, and speech act meaning (cf. Sweetser 1990, p.74).

The notion of the blend makes it possible to explain the differences in context accessibility and as a result recognition (or the lack of it) of the deontic function of *shall*, which for some users is evident and for others instantiates a structure which requires complex processing. Such perceptual differences result from differences in the ability to recognize a relevant context, here-legal specialized sub-domain. Below a tentative schematic representation of the use of the legal *shall* as a cognitive blend has been presented[8].

5. Conclusions

The cognitive linguistic description of the legal *shall* presented above is tentative and by no means final or exhaustive. However, even on this limited level it is evident that it is able to embrace many salient aspects of the semantics of both the modal *shall* and modal verbs as well as modality in general. Due to its focus on the dynamicity of meaning, it attracts attention to the fact that categorisation in language naturally cannot be discussed in terms of clear-cut domains. All categories necessarily possess more typical members and members which pose problems in classification; acknowledging the fact allows for a description of language which is non-contradictory and adequate. The cognitive account of linguistic phenomena are also coherent and able to present phenomena which are particularly susceptible to context variation, including those related to the legal domain.

The deontic-*futurum* blend, which can be exemplified by the deontic meaning of *shall* in the legal context, can be successfully coordinated with the pragmatic theory of speech acts, within which it can be seen as a blend

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8   In the diagram the fourth element, i.e. the generic space, often recognized as separate ext to two
      input spaces and the blend, has been integrated with the input constituents.

of an assertion and a directive. In most general terms it is a description of a desired state of affairs, which via its 'ritualised' form and performative, operative, illocutionary force is to be introduced into extralinguistic reality, where things are to be done with words.

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Streszczenie

Niniejszy tekst porusza problemy integrujące trzy pola badań nad językiem: teorię aktów mowy, językoznawstwo kognitywne oraz język prawa. Głównym celem artykułu jest ukazanie adekwatności zastosowania metodologii kognitywnej w badaniach aktów mowy. Jako studium przypadku przedstawiono deontyczne użycie angielskiego czasownika 'shall' w tekstach prawnych. Analiza ilustrowana jest przykładami zaczerpniętymi z korpusu anglojęzycznych tekstów prawnych.

Dyskusji poddano występowanie czasownika, który w kontekście prawnym najczęściej stosowany jest w celu narzucenia obowiązku lub autoryzowania czynności. Jego znaczenie może w kategoriach aktów mowy określone być jako złożenie asercji i dyrektywy, natomiast w tradycyjnych kategoriach gramatyki wyrażenia takie rozpatrywać można jako formy czasu przyszłego, teraźniejszego, lub złożenie ich obydwu.

Tekst sugeruje, że ze względu na dużą wrażliwość na kontekst, znaczenie 'shall' w tekstach prawnych najlepiej opisane być może w kategoriach amalgamatu (ang. 'blend'), który łączy różnorodne aspekty semantyczne. Aspekty te, które są z natury nieostre i mogą stanowić elementy postępującej gramatykalizacji, uchwycone być mogą jedynie w odniesieniu do kontekstu wypowiedzi, zatem najtrafniej analizowane być mogą w dziedzinie pragmatyki językowej.

Łucja Biel[1]

ORGANIZATION OF BACKGROUND KNOWLEDGE STRUCTURES IN LEGAL LANGUAGE AND RELATED TRANSLATION PROBLEMS

Abstract: The paper examines the organization of background knowledge structures in legal language and related incongruities of legal terms. The cognitive linguistics methodology, in particular its findings on the nature of meaning, is applied. Terms serve as prompts with a semantic potential to activate various levels of knowledge structures, such as domains, scripts, scenarios, cognitive models and frames. In most cases organization of knowledge will differ in the SL and TL. The final part analyses translation strategies and techniques in terms of their potential to activate relevant knowledge.

Key words: legal language, legal translation, translation strategies, cognitive linguistics.

1. Introduction

Translation is frequently regarded as an act of communication, and legal translation is defined by Šarčević as a special type of act of communication which takes place "in the mechanism of the law" (2000). Our conventional model of communication is reflected in the conduit metaphor discussed by Reddy. People talk and think about linguistic communication as about the sending and receiving of parcels filled with meaning. Ideas, thoughts, emotions are taken out of the mind and put into words by the speaker; next they are sent along a conduit to the receiver, who unpacks the ideas from

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words (Ungerer and Schmid 1996:119). Deeply ingrained as it may be, this model is misleading in a number of ways. It suggests that it is possible to pack meaning into a word and find another packaging for that content in another language (*translation* comes from Latin *transferre = to transfer;* Oxford English Dictionary). It has been experientially proved that human communication is much more complex due to the nature of concepts. The aim of this paper is to analyse the organization of background knowledge structures behind legal concepts and related translation problems.

2. Semantics of legal terms and concepts

Terms, as argued by Sager, are 'depositories of knowledge' and units with specific reference in that they "refer to discrete conceptual entities, properties, activities or relations which constitute the knowledge space of a particular subject field" (1998:261). Although the discreteness of concepts may be questioned, the claim that concepts are embedded in complex knowledge structures is in line with the approach to semantics proposed by cognitive linguistics (CL), the mainstream branch within functional linguistics. CL views language as a direct reflection of cognitive processes and an integral part of human cognition and understanding of the world. In Langacker's 'subjectivist' theory of semantics, meaning is understood as a dynamic process involving conceptualization (mental experience) rather than a static bundle of features (1988:50). As argued by Evans et al., during conceptualization "linguistic units serve as prompts for an array of conceptual operations and the recruitment of background knowledge" (2006:160); therefore, they have a certain semantic potential (Evans 2006:493). This claim also extends to terms, which function as prompts or points of access to vast knowledge structures rather than as containers for knowledge. The connection between a term and its knowledge structures may be seen as a mental routine. Sometimes people know only 'linguistic labels' but have not built the mental path which activates relevant knowledge: you may know the term *constructive trust* but may have difficulties in explaining what it means.

   This dynamic approach is based on Haiman's claim that meaning resembles an encyclopaedia rather than a dictionary. Therefore, to characterize a concept it is necessary to refer to other cognitive domains presupposed and incorporated by it (Langacker 1988:53). To understand a *tort of negligence,* the following domains should be activated: *tort law, court,*

duty of care and *breach of duty of care, civil liability, loss* and *remedies*. The *tort of negligence* also has a semantic potential for activating the domains of *the Caparo test, defences*, *causation, solatium,* etc. The domains overlap and are arranged hierarchically in terms of relevance and salience. Depending on a usage event, some domains are activated in the foreground, some are activated in the background, while others are not activated at all. The foreground is the focal point and is referred to by Langacker as a profile, the background serving as a base (1988:60). The term *base* emphasizes "the way in which background knowledge 'supports' the concept" (Clausner & Croft 1999:5) by providing a context.

All the domains activated by a given concept are called its matrix (Langacker 1988:56). Since meaning is a mental process, it invites idiosyncrasy: the domains activated by conceptualizers will differ depending on their experience and knowledge. The defendant may activate the domain of defences with more detail, focusing on the voluntary assumption of risk, contributory negligence or illegality while the claimant may focus on the domains of loss and remedies. A judge is expected to have a more structured knowledge and activate more domains than a lay magistrate from the magistrates' court or a working-class tortfeasor aged 19.

For this reason it may be difficult to specify how many domains have to be evoked to understand a legal term. According to Shelov's degrees of terminologicality, the more information is required, the more terminological a lexeme is (qtd. in Thelen 2002:196). In the case of legal concepts, the supraindividual semantic potential of terms is specified in legislation and case law. A substantial part of this knowledge is expected to be internalised and intersubjectively shared by members of the legal profession.

As emphasised by Clausner and Croft, the structure of domains "is more than a list of experientially associated concepts" (1999:2). Knowledge is arranged not only in terms of relevance and salience; concepts form complex interrelated networks and such vertical and horizontal interrelations are part of their meaning. A concept is understood fully when the conceptualizer knows its exact place in the network (cf. Sager 1998:260). First of all, concepts are organised in terms of their level of specificity along taxonomic vertical hierarchies (Langacker 1988:64). For example, a *legal person* is more schematic than a *company*; hence, the image it evokes is less rich in detail. Secondly, legal concepts are frequently organised along horizontal causal scripts/scenarios. Kjśr argues that the horizontal organization has a form

of complex IF-THEN rules that prestructure the expert's knowledge and reasoning patterns. A legal concept connects legal conditions with legal effects; the connecting concept may be regarded as "a reduced representation of legal rules" (2000:146). A similar view is expressed by Gizbert-Studnicki, who sees legal terms as shortcuts that connect a certain set of facts with a certain set of legal consequences. He notes that the sets of facts and consequences are unlikely to be identical in two legal systems and goes as far as to suggest that the connecting concepts known as 'legal institutions' are proper names and as such are untranslatable (2001:52). These assumptions can be illustrated by *tort of negligence,* which evokes the following scenario: if the defendant owes a duty of care to the claimant and breaches it, the claimant suffers a loss, the loss is not time-barred and the tortfeasor is not able to raise any defences, then the claimant may bring a civil action and claim damages. This generic scenario forms part of the meaning of *tort of negligence* and is filled with details in a usage event.

Besides causal relations, concepts are embedded in various cultural models that organise a given field, which is clearly visible from the cross-linguistic perspective. For example, *Board of Directors* evokes the one-tier corporate governance model, where the board has both supervisory and management functions. By contrast, the Polish term *Zarząd*, which is provided in 5 out of 6 legal and business dictionaries as an equivalent of the *Board of Directors*, automatically activates the two-tier corporate governance model, which clearly separates management functions (*Zarząd*) from supervisory functions (*Rada Nadzorcza*). The incongruity between *Board of Directors* and *Zarząd* results from their entrenchment in different cultural models.

It may be supposed that concepts, scripts and scenarios are embedded in a number of overlapping, larger structures called frames. A frame is defined by Fillmore as a system of interrelated concepts that form a coherent script-like structure (1982:117). Ungerer and Schmid see frames as a type of cognitive models which include scenarios, domains, interactive networks and scripts, and claim it represents "a cognitive, basically psychological view of the stored knowledge about a certain field" (1996:211). The most important frame is the metaframe formed by the legal system itself. It provides organising principles, rules of legal reasoning, approaches to statutory or contractual interpretation. For example, it is more frequent in continental countries to apply the teleological approach to statutory interpretation, while English

courts prefer the literal approach (cf. McLeod 2005:328). Another illustration may be found in UK and US contract law and its parol evidence rule. The rule prevents any modification of contracts with evidence that was not included therein. By contrast, according to Article 65(2) of the Polish Civil Code, intentions of the parties should be taken into account: "In respect of contracts, one should determine the congruent intention of the parties and the purpose of the contract rather than rely on its exact wording." Therefore, the approach to interpretation may limit or widen the scope of knowledge activated during meaning construction.

The macroframe consists of a number of microframes which function as a narrow context. Some frames may be shared by legal systems, especially those that stem from the same legal traditions, such as the continental legal systems. Polish frames will show more similarity to French or German frames than to English ones. Owing to the harmonization of law in the EU, the incongruity of frames between the continental systems and the UK (common law) system will decrease in time.

The above analysis provides a deeper insight into the nature of incongruity of legal terms between languages and legal systems. The incongruity applies not only to the boundaries of concepts underlying terms but, above all, is connected with the complex organization of knowledge structures in the SL and the TL. Concepts are embedded in different macro- and microframes, cognitive models, scripts, scenarios and domains, and it is very unlikely that these structures will be organised in the same way in two languages/legal systems. In most cases terms will not have the same semantic potential in the SL and the TL.

3. Textual conventions

Conventions concerning the amount of knowledge to be incorporated into a legal text may differ in the SL and TL country. Hill and King's comparative research of US and German contracts has shown that the former are significantly longer than the latter. This is because less statutory contract law is applicable to transactions in the US. The US legal system is not uniform as it has fifty state statutes and the common law. Some states, such as Louisiana and California and several Western states, are more code-oriented, while others regulate only certain types of contracts by statute (2004:921). Hill and King's findings may be extended

to Polish contracts, which in fact are similar to German ones. Poland is a civil law system with only one jurisdiction; contracts are governed by the Civil Code and hence show a higher degree of intertextuality. Additionally, some contract law has a form of definitions and elaboration of typical legal concepts. As emphasised by Hill and King with reference to US contracts, "the parties typically would not have available either a common-law or statutory definition that could be readily incorporated" (2004:913); hence, contracts contain a large amount of knowledge, detailed definitions and litanies of synonyms. US lawyers attempt to draft very cautious, self-contained contracts since they may be litigated in various states. Having regard to the foregoing, it may be supposed that a verbose US contract translated into Polish and thereby uprooted from its legal context will be easier to understand than a concise Polish contract translated into English.

It is worth emphasising that a source text contains as many prompts and activates as much knowledge as necessary for SL recipients to understand it properly, which is consistent with Grice's Maxim of Quantity. Difficult as it may seem, the translator's task is to ensure that TL prompts are adequate for TL recipients in that they create the same legal effect as SL prompts. This may pose problems in legal translation since, in general, translators are not expected to make explicit information that is implicit in the source text.

4. Knowledge and translators

With regard to LSP translators, who frequently work under time pressure, they should have sufficient knowledge to limit the time required for research. The translator's knowledge is one of the factors that affect translation quality and productivity. This requirement is emphasised not only by theorists (e.g. "translation as knowledge-based activity", Wilss 1994), but also by translator educators and the translation industry. For example, the programme of European Master's in Translation prepared by the Directorate-General for Translation (EC) recommends allocating at least 50% of the total credits to practical translation classes and courses fostering knowledge of special fields and their languages. With regard to the translation industry, the translator's knowledge of the field and expertise are regarded as an industry standard and are frequently provided

for in contracts that regulate the relationship between freelance translators and translation agencies. Additionally, some institutions set very high requirements concerning the translator's formal training in the special field. This can be illustrated by the European Court of Justice, which employs only lawyer-linguists as translators.

In respect of legal translation, the translator should know both the SL and TL legal macroframes: the more specific and detailed the frames, the higher the quality of translation and the lower the risk of mistranslation. As emphasised by Wilss, if the translator has little expertise, s/he will be involved in local processing of information without the wider picture rather than more global and efficient processing (1994:41). In particular, the translator should be able to distinguish a term from a mere word and select the right equivalent from a dictionary entry. My analysis of English equivalents of Polish company types shows that in 5 dictionaries there are as many as 16 equivalents of *spółka akcyjna*, some of which are incorrect (Biel 2006). The overall quality of bilingual legal dictionaries published in Poland leaves much to be desired, which poses constant challenges to translators and increases the time they need to find the most suitable equivalent.

In addition to the knowledge of the field, another crucial component of translation competence is the knowledge of the target audience's expectations. As noted by Séguinot, "a successful translator is conscious of the receptivity and reactions of the target audience. Some of that recognition may be stored in the form of knowledge, but each new client and every new assignment brings with it the potential for interaction and novelty" (2000:96). Generally, the translator is expected to fill in the knowledge gaps of the target audience; however, this issue raises some controversy in legal translation. The influential Polish Sworn Translator Code claims that the translator is entitled to assume that the recipient is aware of incongruity of legal systems; hence, the translator does not have to provide any additional explanations or definitions (Kierzkowska 2005:87–88). On the other hand, in TL-oriented approaches, such as Šarčević's receiver-oriented approach, it is argued that translators should "compensate for conceptual incongruity whenever possible" to ensure that the SL text and the translation have the same legal effect (2000). This, however, requires the translator to project how SL and TL texts will be received, and hence to be more actively involved.

5. Translation strategies and their potential to bridge knowledge gaps

As already noted in section 3, in most cases terms will not have identical semantic potential in the SL and the TL. Furthermore, the translator may well be able to replace the SL concept with a relatively similar concept from the TL legal system, but the TL concept will not be able to evoke the same knowledge structures. The scope and depth of knowledge evoked will depend on the recipients, who may range from experts to laypersons. As noted by Schäffner, the recipient's prior knowledge has a crucial impact on his/her ability to understand a text (1993).

There are several degrees of terminological incongruity, ranging from identical concepts (very rare) or near equivalence to conceptual voids without equivalents in the TL. The techniques of dealing with incongruous concepts may be placed along the continuum between two extremes: domesticating and foreignizing strategies. As noted by Venuti, the debate between domesticating and foreignizing is long-standing in translation practice. **Domesticating** involves assimilation to the TL culture and is intended to ensure immediate comprehension; hence, it is also referred to as the **TL-oriented strategy**. By contrast, **foreignizing** "seeks to evoke a sense of the foreign" by "sending the reader abroad"; as a result, it may pose a risk of incomprehension (2001:240–4). It is also known as the SL-oriented strategy.

Chesterman proposes to reserve the term *strategy* for macro-level problem-solving, a cognitive plan, e.g. "the initial choice of source or target orientation, decisions about foreignizing or domesticating", while the term *technique* should be used for "routine, micro-level, textual procedures" (2005:26). This distinction will be followed in the subsequent section, which discusses major translation techniques in terms of their potential to activate relevant knowledge structures. The micro-level techniques of legal translation were adopted with some modification after Weston (1991:19–34) and Harvey (2000). The most important ones include: transcription, literal equivalent, descriptive equivalent and functional equivalent. They may be placed along the foreignizing-domesticating continuum as shown in Chart 1.

Chart 1. The continuum of major translation strategies and techniques.

Foreignizing SL-oriented	STRATEGIES		Domesticating TL-oriented
Transcription	Literal Equivalent	Descriptive Equivalent	Functional Equivalent

SL- and TL-orientation in legal translation are based on Kierzkowska's distinction between near and far recipients. The former have a relatively good knowledge of the SL culture, while the latter do not know it and have little motivation to learn it. In the first case SL-oriented equivalents of legal terms should be used to emphasize differences, while far recipients require TL-oriented equivalents to capitalize on similarities (2002:88-89).

The first technique is **transcription** (borrowing), including **naturalization** (adaptation of spelling). It is the most foreignizing strategy, the use of which is usually motivated by a large incongruity or untranslatability of TL concepts. As Weston notes, "inevitably … there will be a number of SL expressions which defy translation in the strict, narrow sense because nothing truly comparable to the corresponding concept exists in the TL culture and a literal translation makes no sense" (1991:26). Prominent examples include *common law*, *equity* and *trust*. The advantage of using a transcription is that it provides a clear and accurate reference to the external source frame. As emphasised by Šarčević, it specifies "the law according to which national terms and institutions are to be interpreted", which is very useful in translation of international conventions "because national courts have no other choice but to apply the foreign concept" (2000). From the translator's point of view, a borrowing is a 'safe' equivalent as it allows him or her to avoid liability for inaccuracy. On the other hand, accuracy is achieved at the expense of comprehension. Some researchers emphasise that this technique "admits defeat" (Weston 1991:26). The meaning is opaque and has low analysability; it does not capitalise on the TL knowledge. In consequence, its understanding requires more mental effort and a good working knowledge of the SL legal system. This technique is more appropriate for translation from well-known languages, e.g. from English to Polish rather than from Polish to English. Given the low popularity of Polish as a foreign language and few English-language publications on Polish law available in the UK and the US, transcription of Polish legal terms in the English texts would be impracticable. These barriers are lower in translation from German or French.

Another technique, **literal equivalence**, may be regarded as a special type of borrowing. It is also known as formal equivalence, word-for-word translation, calque or loan translation. As noted by Weston, the acceptability of literal equivalents depends on their type. Some do not correspond to any TL concept (**neologisms**) but are sufficiently transparent in meaning; in some cases, it is possible that a literal equivalent will also be a functional equivalent. Literal equivalents are not acceptable when they are false friends (refer to a different TL concept) or are virtually meaningless (1991:25). For example, the term *limited partnership* is calqued in some dictionaries as *spółka z ograniczoną odpowiedzialnością,* which is misleading since it evokes the concept of a Polish *limited company*. The danger connected with the literal equivalent is that it will neither refer the recipient to the right SL frames nor, as with most neologisms, be connected with knowledge structures in the TL. The latter may be exemplified by the Roman-law term *użytkowanie wieczyste*, which is unknown in the common law system. The standard equivalent in legal dictionaries and translation practice is *perpetual usufruct*. Obscure to most English lawyers, this term does not evoke the information that *użytkowanie wieczyste* applies to land owned by the state or local government and leased for 99 years or less but at least 40 years (Articles 232 and 236 of the Polish Civil Code).

Instead of *perpetual usufruct,* the translator may use a **descriptive equivalent** (also known as a gloss or a paraphrase), such as *99-year or less lease of land owned by the state or local government* or *a long-term leasehold*. This technique is more TL-oriented than the previous ones as it takes into account the recipient's knowledge gaps. It is based on explicitation, i.e. making explicit in the TT what may be implicit in the ST. It is worth noting that explicitation is not so infrequent in translation practice: it is regarded as one of the translation universals (Laviosa-Braithwaite 2001:289). The descriptive equivalent may provide more (but not complete) information than the literal equivalent and is certainly more comprehensible. The major disadvantage of descriptive equivalent is its length. Since a term functions as a shortcut and may be repeated frequently in a text, one of its main properties should be brevity of form. The longer the equivalent, the more inconvenient it is.

A descriptive equivalent is frequently based on a legal term known in the TL but which undergoes some modification to signal the difference. It is argued that foreign-sounding equivalents make recipients realize the incongruity of terms and refer them to the proper legal system (cf.

Kierzkowska 2002:59). They may also allow recipients to map some TL knowledge by activating generic scenarios; for example, when *spółka partnerska* is translated as a *professional partnership*, the translator activates the general knowledge connected with partnerships (personal liability of partners, etc.).

The most TL-oriented equivalents, known as **functional** or dynamic equivalents, approximate the SL culture by evoking well-internalized concepts. Šarčević defines a functional equivalent as "a term designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system" (1997:236). When *spółka partnerska* is translated as a *limited liability partnership*, more detailed knowledge of limited liability partnerships in English law is mapped from the TL concept onto the SL concept than in the case of a *professional partnership*. What is interesting is that recipients access an SL concept by using their knowledge of the TL system and establishing epistemic correspondences. This cross-systemic mechanism seems to resemble the intralinguistic mechanism behind conceptual metaphors where one concept that is usually more abstract, novel or complex is accessed through a more basic, concrete or well-known concept (cf. Biel 2008:25). The functional equivalent is easy to understand as it quickly activates relevant knowledge structures. However, its major disadvantage is that it may map too much system-specific knowledge that is not connected with the SL concept and may suggest that the TL and SL concepts are identical. Even though readability is frequently obtained at the expense of accuracy, this method is gaining proponents. Weston considers it to be "the *ideal* method of translation", (1991:23) while Alcaraz and Hughes emphasize, "After all, the aim, in legal as in other forms of translation, is to provide target versions that are at least as readable and natural as their source predecessors" (2002:178–9). Some researchers are however less enthusiastic about this technique; Šarčević argues that the acceptability of functional equivalents depends mainly on the degree of incongruity between SL and TL concepts (1997:236). It is worth noting that the translator may provide clear reference to the SL system by including the SL term in brackets or by adding a prompt such as a *Polish* limited liability partnership.

6. CONCLUSIONS

The foregoing discussion has demonstrated that legal translation is a complex act of communication subject to two competing motivations: accuracy and

comprehensibility. In fact, legal translation may be perceived as a hybrid where the SL text is accessed through TL knowledge structures. What requires further research is the nature of mapping from TL concepts onto SL concepts as well as the role of TL knowledge structures in understanding a legal translation.

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Problemy terminologiczne w przekładzie prawniczym związane z organizacją struktur wiedzy

Artykuł omawia specyfikę terminów prawniczych i struktury wiedzy aktywowane przez terminy. W analizie zastosowano metodologię językoznawstwa kognitywnego. Terminy pełnią rolę skrótów prowadzących do pojęć zakotwiczonych w strukturach wiedzy, jak np.: domeny, scenariusze, modele kognitywne i ramy. Struktury wiedzy są odmiennie zorganizowane w poszczególnych systemach prawnych, przyczyniając się do nieprzystawalności pojęć. Strategie i techniki translatoryczne w różnym stopniu uzupełniają brakującą wiedzę.

Karolina Gortych[1]

THE FUNCTION OF ANCIENT GREEK IN MODERN GREEK – POLISH LEGAL TRANSLATION TEACHING

Abstract: According to ideas which have been presented in main course books and methodological guides, a lack of Ancient Greek in the process of teaching Modern Greek Philology has occurred. It could be a problem if Modern Greek philologists decide to be translators and interpreters of legal texts because the Greek language of law has archaisms, rigid structures and elements. My project deals with the function and amount of Ancient Greek in the curiculum of Modern Greek Philology. I conclude that it is impossible to avoid Ancient Greek in the curriculum of Modern Greek Philology completely. I show the necessity of the Ancient Greek language because present Greek grammar and dictionaries cannot offer any insight in this field. Analysis of the curriculum affects the Modern Greek Language and Literature Department at Adam Mickiewicz University. The research material concludes with selected parts of Greek and Cypriot statutory acts which also affect the aforementiones issues.

Key words: legal translation, teaching, Modern Greek

1. Curriculum of Modern Greek Language and Literature studies

My observations and conclusions are based on my work with MA and BA students of Modern Greek Language and Literature which were conducted at the Institute of Linguistics at Adam Mickiewicz University. The course of Modern Greek Language and Literature started in 2003 and since that time I have conducted courses such as Descriptive Grammar of Modern Greek Language and Modern Greek Language at the beginner and intermediate

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level (level A and B according to CEFR[2] and description of levels in the Center of Modern Greek Language – main institution which provides Certificates in Modern Greek language[3]).

The research is new and interesting because currently I have students who do their courses simultaneously in two different systems: 1) the "old system": second, third, and fourth year of M.A. in Modern Greek Language and Literature in unitary M.A. 5-years studies, 2) the "new system" according to the Bologna Process which is the first year of B.A. Modern Greek Language and Literature in one's 3-year studies. These two systems are being conducted simultaneously because the Institute of Linguistics at Adam Mickiewicz University in Poznań introduced the principles of the Bologna Process three years after introducing the Modern Greek Language and Literature studies.

These two programs differ in terms of time and quantity of the Ancient Greek Course (old system: 1st -2nd year, 180 hours together; new system 2nd year – 90 hours), and the Modern Greek Language Course and Descriptive Grammar of Modern Greek Language[4] in the first three years of these studies which are essential for future graduates. The following three subjects are essential for absolute beginners who begin learning a foreign language.

Table 1. Comparison of subjects: Ancient Greek Course, Modern Greek Course, Descriptive Grammar course

Subject	Modern Greek Language and Literature Unitary M.A. 5-year studies		Modern Greek Language and Literature B.A. 3-year studies	
	Quantity of course	Year of of studies	Quantity of course	Year of of studies
Ancient Greek Course	180 hours	1st-2nd (120 hours at the 1st year, 60 hours in the 1st semester of the 2nd year)	90 hours	2nd

2   CEFR – Common European Framework of Reference. http://www.coe.int/T/DG4/Portfolio/?L=E&M=/main_pages/levels.html

3   http://www.greek-language.gr/greekLang/files/document/certification/OdigosGr.pdf, s. 26-28.

4   Exact programme available on site of Institute of Linguistics: http://www.inling.amu.edu.pl/studia.php?link=plan

Modern Greek Course	870 hours	1st-3rd (240, 300, 330 hours)	840 hours	1st-3rd (300, 300, 240)
Descriptive Grammar Course	120 hours	1st-2nd (120, 120)	120 hours	2nd-3rd (120, 120)

Having classes with both groups of students, I noticed that the function of Ancient Greek in preparing future philologists, especially translators and interpreters is essential in comparing the "old system" and "new system". The main differences between students of the "old system" and "new system" were clearly seen in the second and third year of studies in which more advanced grammatical and lexical topics were discussed and compared among groups of students.

2. Contradictions in Modern Greek Language and Literature Studies and their contribution to the curriculum

In most cases people who study or learn foreign languages plan to work as interpreters or translators of that language. The same happens with students of Modern Greek Philological studies. Academic staff must prepare curriculum which fulfills expectations and provides the best background for future interpreters and translators.

The first main problem which is connected with the Modern Greek Language is the **range of academic courses offered**. The course "Modern Greek Language" according to some scholar monographs should concern philological subjects which have immediate connection with Modern Greek. From a linguistic point of view it is quite easy to determine a range of studied material – the period from ca. 1600 a.d.[5] or even 4th century[6], but from the historical and political point of view, the issue is more complicated because the formal Greece has existed since 1832. Legal translators and interpreters of Modern Greek Language must know not only this fact but also must know various types of Greek Language used before Greece was founded. There

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[5]   OSU Departament of Linguistics, http://www.ling.ohio-state.edu/~bjoseph/articles/gancient.htm#origins and http://www.ling.ohio-state.edu/~bjoseph/articles/gmodern.htm, Weinsberg A. 1986:10, Bednarczuk L., 1986: 399, 443–444, 451–452

[6]   Jurewicz O., 1999: 20.

were some historical legal texts such as last wills or agreements between Turkish authorities written in the contemporary Greek language[7] which could have been sample for Greek lawyers. These texts are very often used as examples not only of legal language but historical language too because they include both legal information and historical-linguistics information which could have been in use at the beginning of the Greek State. Written in mixed language (ancient-popular-modern) sources need simoultaneously knowledge of the Ancient Greek Language and the Common Modern Greek Language to be undestood well.

Diglossy in Greek language makes up next main obstacle which may occur in legal translation. It is caused by diversity of the language types used in Greek state after 1832. Diglossy in Greek language lies in two different language systems used at the same time. The official language of Greece was called "katharevousa", which written in the Constitution of Greece[8] untill 1976 when another Constitution was written in the Modern Greek Language. The last constitution started to be a sample for following statutory and legal texts. It is important to note that "katharevousa" was an artificial language based on the Ancient Greek Language and taught in schools as a foreign language to the Greeks because another language was used in every-day life, called "dimotiki". Even today legal translators and interpreters come across texts written and published in "katharevousa" which cannot be understood without sufficient knowledge of Ancient Greek.

The polytonic system is another issue connected with the Modern Greek languge. Since 1982, the Modern Greek language has had only a monotonic system[9] and all published texts had to be written and prepared in polytonic system when writing was the same like in the Ancient Greek Polytonic System. Different accents did not influence phonetic system but made orthography even more difficult. Currently Greek legal texts are published and written in the monotonic system but there are some older (before 1982) original statutory and legal texts saved still in the polytonic system. Also there is still a possibility to keep the polytonic system in some publications. The issue how to treat the polytonic transcript in relation with

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7   Horrocks G. 2006: 584, 594.

8   Βαβαρέτος Γ. Αχιλ. 1968: 12.

9   Φραγκουδάκη Α., 2001:97.

the monotonic system can be explained more effectively with the Ancient Greek Language as it was its integral element.

2.1. Contribution of the Ancient Greek Course to teaching language, translationing and interpreting

The most important part of the curriculum of philological studies is learning a specialized language. In my case, this language is NEK – Νεοελληνική Κοινή Γλώσσα (Common Modern Greek Language) which is the official language spoken in: the Republic of Greece and the Republic of Cyprus. Obviously learning Modern Greek is a time-consuming process like learning any foreign language. The methodology of teaching Greek extends over few years at least[10]. The first step is to understand the differences between Greek and other alphabets and to learn how to read and write in Greek. Although this step is long it is necessary as the Greek alphabet is in force in Greece and in Cyprus. The second step is to understand Greek orthography which is quite complicated, for instance, there are six possibilities in how to write the sound [i]. Then, students learn Greek grammar and vocabulary. After about four years of studies, which consist of about 1200 hours of Greek exercises, students reach the advanced, fourth level which is called the *Delta* Level[11]. At this point they are able to develop their knowledge of Greek and to work with professional and specialized texts.

According to my observations, students who start the Ancient Greek course have less problems with writing in the Greek alphabet and with orthography in the beginning, but sometimes they have problems with pronunciation because they hear and use Erasmus' way of pronouncing in Ancient Greek so they may not recognize Modern Greek diphthongs very quickly when talking or reading aloud. This situation took place during the first two years of studies when I compared students of these two systems. Here I present the most relevant reasons which affirm the existence of the Ancient Greek course in the curriculum of Modern Greek Language and Literature studies:

1. In addition to the course of Modern Greek, which is approximately 300 hours a year, students learn the Greek alphabet to a greater extent in the

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[10] Series of books: *Επικοινωνήστε Ελληνικά, Νέα Ελληνικά γιε Μετανάστες, Παλλινοστούντες, Πρόσφυγες και Ξένους «...και καλή επιτυχία»*

11 http://www.greek-language.gr/greekLang/files/document/certification/OdigosGr.pdf; s. 26-28.

course of Ancient Greek language which is 120-180 hours at 1st – 2nd year of studies.

2. There is a different pronunciation of Ancient Greek (compared to Modern Greek) which is taught using Erasmus' methodology (lack of Modern Greek diphthongs). This means that students read consequently what is written without changing articulation in different phonetic situations – apart of diphthong *ου* – they may preserve complicated Greek orthography. For instance endings of conjugated verbs of 1st conjugation in indicative of the present tense, -εις (2 sg.), -ει (3 sg.) are read "eis", "ei" which is like spelling.

As seen above Ancient Greek might be useful in the beginning of learning Modern Greek, but the most important issue of my presentation is the role and value of Ancient Greek for future translators and interpreters. Especially if they are sworn translators and work with legal texts, the Ancient Greek is very needed. (see following examples).

Before analyzing the main issue, which is legal Modern Greek Language, I will examine the issue of NEK[12] [Νεοελληνική Κοινή (Γλώσσα)] – Common Modern Greek Language. To avoid vague definitions and explanations I would like to suggest a short description of the presented here term NEK based on widely recognized authorities on Common Modern Greek Language.

One of the Modern Greek scholars, Liakos, states that the Common Greek Language makes up the "dimotiki" language filtered through "katharevousa" language[13] what means that popular natural language was modified with "katharevousa's" elements based on Ancient Greek language.

British scholars, Holton, Mackridge and Φιλιππάκη-Warburton, write that the NEK is a language based on the spoken popular language "dimotiki" and simultaneously incorporates elements of the written traditional language "katharevousa"[14].

One of the aforementhined British scholars, Mackridge thinks NEK is a "mixture" of "katharevousa" and "dimotiki" elements[15].

The mentioned above statements contain the same information which is dual character of Common Modern Greek Language and its content of Ancient Greek and Modern Greek structures and elements. This statement

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[12]   Used after Mackridge P. 2004: 36.
[13]   Χριστίδης Α.-Φ.2002: 970 – 971.
[14]   Holton D., Mackridge P., Φιλιππάκη-Warburton E. 2006: XV – XVI.
[15]   MackridgeP., 2004: 54 – 55.

is essential when, discussing about legal Modern Greek language which is even much more formal and closer to archaic principals and sources[16]. In these circumstances I am sure that knowledge of Ancient Greek Language is necessary in the process of teaching legal translating and interpreting of the Modern Greek Language.

3. Use of Ancient Greek elements in legal Modern Greek language in Greece and in Cyprus (research samples)

I will describe linguistic problems that translators and interpreters may come across in their work which cannot be solved with knowledge acquired during the course of Modern Greek only, with the methodology presented through standard materials for foreign Greek speakers[17]. I will then explain their connection with Ancient Greek. In conclusion, I want to clarify the problems which cannot be solved with the help of standard bibliography (listed in "Suggested and used bibliography at the Course of Modern Greek Language" at the end of the paper) used in the process of teaching and learning Greek. To address the problem, I will analyze the Constitutions of two Greek-speaking countries. They are both written in the Modern Greek language but in a fact they are written in two different language systems. Next, I will examine the language of statutory texts which are in force in Cyprus and are prepared in the traditional language which seems to be the "katahrevousa" without the polytonic system.

The base for issues are parts of Greek and Cypriot statutory texts which exactly are Constitutions of these countries[18]. The most important aspects of legal Greek language are divided into three main groups, which are connected with semantics and grammar. My method is to show each specific problem and then to explain the type of problem which stems from the Ancient Greek language.

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[16]   Compare research samples in 3rd part of the article (aut.)
[17]   See Bibliography of the problem – Suggested and used bibliography at the Course of Modern Greek language.
[18]   *Σύνταγμα της Ελλάδας*: 2007, *Το σύνταγμα της Κυπριακής Δημοκρατίας 2007*

1. Lexis

Table 2. Use of Ancient Greek language in legal Greek language – samples of lexis

Constitution of Greece	Constitution of Cyprus
Η νομοθετική <u>λειτουργία</u> ασκείται από τη Βουλή (Art. 26, point 1)	*Η νομοθετική <u>εξουσία</u> ασκείται υπό της Βουλής (...) (Art. 61)*
Problem (vocabulary and meaning): Noun <u>*λειτουργία*</u> which is present in the Greek Constitution used to have legal meaning in Ancient Greek, especially in the Classical Period in Athens. In NEK, this noun is replaced by another noun <u>*εξουσία*</u> which is given in the Cypriot Constitution.	
Οι βουλευτές εκλέγονται <u>για</u> τέσσερα συνεχή έτη (...) (Art. 53, point 1)	*Η Βουλή των Αντιπροσώπων εκλέγεται <u>διά</u> περίοδον πέντε ετών. (Art. 65)*
Problem (vocabulary): Preposition <u>*για*</u> exists in NEK and it is one of the most common in used prepositions. Archaic preposition <u>*διά*</u> has not survived in NEK since ancient times. It is said not to be used currently in NEK apart of special phrases and scholars (Mackridge, Holton, Mackridge and Φιλιππάκη-Warburton) say it is in the group of less used generally[19] but even currently it is not used preposition in Greek statutory texts.	
Τίτλοι ευγένειας ή <u>διάκρισης</u> ούτε απονέμονται ούτε αναγνωρίζονται σε Έλληνες πολίτες. (Art.4, p.7)	*Ούδεις τίτλος ευγενείας ή άλλης <u>κοινωνικής διακρίσεως</u> απονέμεται ή αναγνωρίζεται εν τη Δημοκρατία.(Art. 28, p. 4)*
Problem: Greek noun *διάκριση* has the modern meaning which is *discrimination*. Cypriot noun *διάκριση* has the ancient meaning of *to separate* which needs the adjective *κοινωνικός*, meaning *social*.	

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[19]   Mackridge P. 2004: 319-320, Holton D., Mackridge P., Φιλιππάκη-Warburton E. 2006: 387.

2. Morphology

Table 3. Use of Ancient Greek language in legal Greek language – samples of morphology

Constitution of Greece	Constitution of Cyprus
Βασικές διατάξεις (Part I. Title)	*Γενικαί διατάξεις (Part I. Title)*
Both titles are given in nominative case what is typical for Modern Greek, **but** morphology of Cypriot text is Ancient Greek: adjective is inflected according to principles of nominal feminine declension which is the so called 1st declension in ancient Greek[20]. Problems: 1.Currently, no system of declension of adjectives in NEK, this issue is discussed further under "types of declension". 2. Secondly the ending **–αi** which is used in Cypriot texts does not exist in NEK.	
Άρθρο (in the title of every article of the Constitution)	*Άρθρον (in the title of every article of the Constitution)*
The noun *Άρθρο* (article) exists in NEK in the form which is given in the text of the Greek Constitution. Type of the noun *Άρθρον* given in the Cypriot Constitution is the archaic type which has not survived in NEK. In Ancient Greek grammar there was a group of nouns of neutral gender which had the ending **–ν**, but in NEK this "ending n" **–ν** is not used.	
Το πολίτευμα της Ελλάδας είναι <u>Προεδρευόμενη Κοινοβουλευτική Δημοκρατία.</u> (Art.1, p.1)	*Η Κυπριακή Πολιτεία είναι <u>ανεξάρτητος και κυριαρχός Δημοκρατία,</u> προεδρικού συήματος (...) (Art.1, p.1)*
Problem: Declension of composed adjectives in NEK is the same as the declension of simple adjectives, because they are both regulated by grammar rules which dictate the ending or accent determine type of declension. According to this principle Greek texts include that kind of inflected adjectives <u>*Προεδρευόμενη Κοινοβουλευτική*</u> which describe the feminine noun <u>*Δημοκρατία.*</u> The mentioned adjectives have typical ending for feminine adjectives and Nouns **– η** According to ancient Greek grammar principles, composed nouns inflect according to the masculine types even if they describe the feminine noun like it is in Cypriot texts. That is why the ending of adjectives describing feminine nouns in Cypriot text have masculine endings -**ος** in the place of Modern Greek feminine ending **–η** or **–α**.	

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[20]   Auerbach M., Golias M. 1954: 27 – 30.

3. Syntax

Table 4. Use of Ancient Greek language in legal Greek language – samples of syntax

Constitution of Greece	Constitution of Cyprus
Ατομικά και κοινωνικά δικαιώματα (Part II)	*Περί των θεμελίδων δικαιωμάτων και ελευθεριών (Part II)*
In the Greek Constitution, the title is given in Nominative case which is typical for Modern Greek. In Cypriot Constitution the title has different, ancient – structure: Preposition *Περί* + genitive case *των θεμελίδων δικαιωμάτων* / *ελευθεριών* Problem: According to the normative dictionary of Modern Greek (NEK)[3] the preposition *Περί* exists mostly in special phrases in NEK. According to Modern Greek grammar[4] this preposition not to be used currently in NEK apart from special phrases and scholars say this preposition belongs to the group of less used. Consequently Cypriot texts seem more archaic in the aspect of syntax.	
Τέτοιου περιεχομένου περιοριστικά μέτρα είναι δυνατόν να επιβληθούν (...) (Art. 5, p. 5)	*(...) ουδεμία διάταξις τοιούτου νόμου (...) θα εξακολουθήση να ισχύση (…)(Art. 188, p.2)*
Problem: Place of the attribute – noun in genitive case (genetivus qualitatis): *Τέτοιου περιεχομένου* in Greek text is before the described noun *μέτρα* which is like in ancient Greek attributive order. Currently in NEK, the most common place of that kind of attribute (genetivus qualitatis) *τοιούτου νόμου* is after the described noun *διάταξις* like in Cypriot text.	
Κάθε γνωστή θρησκεία (...) και τα σχετικά με τη λατρεία της τελούνται ανεμπόδιστα υπό την προστασία των νόμων. (Art. 13, p. 2)	*Η εκτελεστική εξουσία διασφαλίζεται υπό του Προέδρου και του Αντιπροέδρου της Δημοκρατίας. (Art. 46)*
Problem: The preposition *υπό* in NEK exists only in some phrases and in common Greek it can be expressed: κάτω από + accusative case. It means: *under, below* and it is used in that way in the Greek text. Consequently text shows the archaic, traditional way of expression which I very rare in NEK nowadays. The preposition *υπό* together with noun in Genitive case in the structure with verb in passive voice and with has in text following scheme subject + verb in passive voice + preposition *υπό* + noun in genitive case (genetivus auctoris). Currently, it is expressed in NEK as follows: subject + verb in passive voice + preposition *από* + noun in accusative case (accusativus auctoris)	

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[21] Triantafyllidis
[22] Mackridge: 319-320, Holton D., Mackridge P., Φιλιππάκη-Warburton E. 2006 do not enumerate the mentioned preposition in the group of preposition in NEK, 357-360.

The examples above – which are just samples of my research – show and underline the fact that NEK (Common Modern Greek Language) seems very archaic, especially when it is used in law. The language of statutory texts is made up with ancient grammar principles in the field of morphology and syntax. Presented parts of texts show that legal Modern Greek language still uses elements and structures which come from Ancient Greek and existed in NEK in official unitary phrases.

The archaic vocabulary still exists in lexicological areas of legal language of NEK. The rigid structures and still-alive words have survived for few thousand years. Probably they will be still present in legal Modern Greek Language in both countries (Greece and Cyprus) where NEK is official or one of the official languages (in Cyprus there are two official languages: Greek and Turkish).

Cypriot-Greek legal language is influenced by Ancient Greek even currently. Very complicated and very rapid historical circumstances[23] caused not well stabilized situation in law and consequently in the sources of law (statutory texts). According to my opinion this situation influenced the Cypriot legal language. To illustrate my opinion I will present below a significant example of still alive ancient Greek language in the Cypriot legal language.

Table 5. Presence of Ancient Greek language in Cypriot statutory texts – example

Constitution of Greece	Constitution of Cyprus
Οι Έλληνες έχουν το δικαίωμα να συνέρχονται ήσυχα και χωρίς όπλα.(art. 12, p.1)	*Έκαστος έχει το δικαίωμα του συνέρχεσθαι ειρηνικώς.(art. 21, p. 1)*
Cypriot texts includes few Ancient Greek elements: Gerundium – it is exactly ifinitivus aoristii passivi *συνέρχεσθαι* which has not been used for a very long time in NEK and it is unknown completely for students who have not even basic knowledge of Ancient Greek grammar. Adverbium *ειρηνικώς* which comes from different adjective than tone used in Greek text (*ήσυχα)*, both have meaning: *peaceful, calm*. The morphology present in Cypriot texts exist only in very rare, stylized traditional and old version of NEK full of "katharevousa" elements and it is rarely present even in legal Modern Greek language.	

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[23]   http://www.parliament.cy/parliamentgr/002_01.htm

4. Conclusion

Legal translation is obviously working for legal and statutory texts, written and spoken. Proper and accurate expression of translated texts is essential for this professional activity. The indisputable fact is the presence and influence of Ancient Greek and the "katharevousa" language in legal Modern Greek language in Greek-spoken countries. "Katharevousa" and the Ancient Greek used in statutory acts and legal texts may have different features which are as follows:

1. The presence of the polytonic system in older publication which can be treated as a "technical" issue.

2. The presence of the "katharevousa" language (elements of morphology and syntax) in statutory texts being still in force published earlier or not after "metaglossy"[24] (not translated into NEK yet).

3. The presence of Ancient Greek vocabulary which has Modern Greek equivalents.

These issues are difficult to recognize without sufficient knowledge of Ancient Greek language. Some experts may feel it is unnecessary to conduct the whole Ancient Greek course in the framework of the Modern Greek Language and Literature curriculum, and it would be adequate to prepare a kind of handbook or dictionary with the most fixed often linguistics situations connected with the Ancient Greek language. Although this kind of handbook/dictionary would not solve all the problems previously declared. Simultaneously, I must clear up that there is not any possibility to prepare this kind of assistance avoiding even basic elements of the Ancient Greek language. The legal translator and especially interpreter of Modern Greek must know the Ancient Greek system to be able to translate Greek texts into a second language and vice versa.

I mentioned above the so-called Ancient Greek course because various opinions exist among scholars[25] connected with the question: "Which Ancient Greek is the most useful for future translators?" Currently among Modern Greek Philologists, there are some options which can be discussed:

1. The Ancient Attic dialect which could be based on the text of the

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[24] Greek: μεταγλώττιση – translation inside one language (aut.).

[25] Conference *Η Ελληνική Γλώσσα στα Πανεπιστήμια της Κεντρικής Ευρώπης. Προβλήματα και προοπτικές*, Prague 8 December 2006.

period IV-II BC, for instance the text of Pausanias, Thucydides. This dialect influenced the Greek language the most because later it became the base for "koine": of epoch of Alexander the Great.

2. "Koine" of the epoch of Alexander the Great which later became the language of another "koine" in the first ages B.C. (Roman Empire). This language was official language of the Hellenistic administration and it is not as complicated as the classical Attic dialect.

3. "Koine" based on the Holy Bible, specially on the New Testament which was written in contemporary *lingua franca* – Greek language of that epoch: first ages A.D.

4. "Koine" of Byzantine times which was based on the "pure" classical Attic dialect and on the previously mentioned "koine" above.

According to my opinion, authentic texts from the historical periods mentioned above could be samples used to show linguistics rules like the system of verbs with its whole range of verbal themes used in some verbal types of NEK (for instance: less commonly used participles). The whole course can be based on two main themes: 1) comprehensive grammar, 2) some authentic texts from various periods to practice grammar and to teach vocabulary (another virtue of Ancient Greek is its universal vocabulary which is presented in several foreign languages). The legal Modern Greek language in comparison with other specialized professional languages seems to be the most traditional. This character influence the programme of Ancient Greek course and could become a criterion in the selection of authentic texts – material for linguistic excercises.

There are also opinions that "katharevousa" could be taught too[26]. I must say it would be quite risky to replace Ancient Greek with only the "katharevousa" language because this type of the Greek language was originally an artificial language. Moreover, no grammar rules or principles were ever written or published. I believe "katharevousa" may be an additional course but not obligatory.

Discussion about the proper type of Ancient Greek language that is most useful for future translators and interpreters is very wide and popular. Undoubtedly, there is a common belief among Modern Greek Philologists and scholars that the Ancient Greek language is necessary in the curriculum

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[26]   Conference *Η Ελληνική Γλώσσα στα Πανεπιστήμια της Κεντρικής Ευρώπης. Προβλήματα και προοπτικές*, Prague 8 December 2006.

of Modern Greek Language and Literature studies. The role of the Ancient Greek course is vital for legal translators and interpreters just as the role of Latin in the education of lawyers.

In my paper, I wanted to analyze legal Modern Greek language which is used in two European Union Member States. I realize that Greek is a less-spoken language, even in Europe, but it is still an official language of the EU. That is the reason why teaching translators and interpreters of Modern Greek language is necessary. Organization of the curriculum must provide them accurate preparation to work and one element is the Ancient Greek course.

To summarize, I would underline that there is a lack of materials which could be used in teaching legal translators and interpretors. Some general publications about translation and interpretation may be used here, but unfortunately there are not exact monographs about the methodology of education of Modern Greek translation and interpretation. It is clearly seen in the Member States of the EU after 2004, that there is a necessity for Modern Greek translation and interpretation. In these circumstances both analysis legal texts and analysis of language of law (used in statutory texts) are necessary, because translators and interpreters need the knowledge about the legal text from lawyers and lawyers need the knowledge about the language from a translator on interpreter. This way only statutory acts and legal texts may be translated and interpreted correctly.

In these circumstances I do hope that some proposals to the curriculum of Modern Greek Language and Literature studies I presented above will be useful for both academic teachers and future legal translators and interpreters.

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POLYSEMY, HOMONYMY AND OTHER SOURCES OF AMBIGUITY IN THE LANGUAGE OF CHINESE CONTRACTS

Abstract: This paper discusses the main sources of ambiguity in Chinese-Polish translation of the contract legal language. Legal Chinese is very often the same as ordinary formal Chinese and that fact causes ambiguity in Chinese contracts. The author focuses on polysemy and homonymy which make the interpretation of legal language difficult and ambiguous. The meaning of Chinese characters depends on the textual context. However, when an interpreter does not know the background information of translated legal texts, it is very difficult to achieve a high quality legal translation. The abundance of homophones in Chinese language also poses a problem, especially in the case of contracts concluded in words, not in writing. The paper further presents different grammatical functions of Chinese terms encountered in contracts without a morphological change. Such linguistic features of Chinese language as: the absence of distinction between singular and plural nouns, lack of inflection, no grammatical categories of tense and aspect cause ambiguity and vagueness in interpreting the Chinese agreements. Moreover, the understanding of such texts is sometimes incorrect due to omissions and elliptical sentences. The author also shows the differences in the meaning of terms, which apparently signify the same entities and concepts in Polish and Chinese legal languages but in fact differ significantly.

1. Introduction.
1.1. The goal of the paper.

The article deals with translation of Chinese contract law into German and Polish. The goal of the present paper is to show the kind of problems that occur in translating Chinese contractual clauses in terms of law. The author collected data by using translation trainees' assignments, also by working for Chinese, Polish and German trade companies.

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Legal language is classified as a language for special purpose (LSP). Generally speaking, all LSP translation is interdisciplinary in nature. Translators of legal language must be competent in both translation and law (Šarčević 2000:113). *Legal competence presupposes not only in-depth knowledge of legal terminology, but also a through understanding of legal reasoning and the ability to solve legal problems, to analyze legal texts, and to foresee how a text will be interpreted and applied* (...) (Šarčević 2000:113-114). Unfortunately most of the translators and interpreters are educated in language, but are unfamiliar with economy and law, especially in the target language country.

1.2. The differences between legal reality and cultural background of Chinese, German and Polish legal language..

Linguistic features and cultural background that characterize legal language in China, Germany, and Poland differ significantly. Many rules and practices of Chinese law can only be understood by applying Chinese legal thinking, cultural archetypes, history, and common linguistics patterns. In formulating laws, the People's Republic of China has been influenced by a number of sources, for instance the law of Germany, the *common law* and the P.R.C.'s socialist background. Chinese law is often seen as a collective term for the plurality of legal systems (Menski, 2006:493). According to Jones (2003), the Chinese legal system looks like a western system but contains the influence of its own traditions (Hsu, 2003:40). Codified law is overshadowed by cultural norms, customs, and Confucian ethics. Moreover, Chinese law has long been characterized as a socialist system with Chinese characteristics (Menski, 2006:23). In recent years, a large body of laws has been produced, in a kind of 'juridification' (Cao, 2004:12). Globalisation, business, and commercial opportunities change China into a modern, and increasingly capitalist country, but the reality of varied historical traditions remains like before (Menski, 2006:3-4). Polish and German legal systems belong to the family of the so-called civil law, which is based on the codifications introduced by Napoleon.

Seemingly legal Chinese discourse is not very complicated. It has to be easily understood by every citzen therefore is not a typical scientific language. The first authors of Chinese written law belonged to the working class (Senger von, 1994:173). The Polish language of law and the German *lingua legis* seem to be complicated and unclear and are very often difficult

to understand by common people. The Chinese legal language is written in a way so as to be understandable by many people. That is a distinctive feature of the *lingua legis* of the Chinese culture. Legislators learned that legal documents should be written in plain language and a simple style. However generality and vagueness of Chinese legal texts poses many translation problems. It is easy to make mistakes when interpreting and translating legal texts which are highly dependent on the context. Many translators complain about the inconsistency of legal Chinese texts. Keller, in his study of Chinese law, notes that *Chinese lawmakers have not, in general, attempted to use legislative language supported by rules of construction to strengthen the internal structure and order of positive law. They prefer instead, particularly in relation to primary legislation, that the specific meanings attached to legislative language shift according to their contexts* (Keller, 1994:752). *Similarly, Chinese administrative bodies also have a preference for broadly drafted laws that leave them free to act as they see fit in specific circumstances* (Keller, 1994:749). Another opinion, that is worth mentioning is the view of Potter (2001), who agrees that *Chinese laws are intentionally ambiguous and are replete with vague passages that do not lend predicability or transparency to the regulatory process, but he believes that this is a consequence of legal instrumentalism prevailing in China that gives policy makers and officials significant flexibility in legislative interpretation and implementation* (Cao, 2004:95).

The roots of the Chinese contractual law are in the "continental European" theory, especially German theory. However, there are some differences in the comprehension of contract. The Chinese meaning of contract does not include a contract of marriage ('Ehevertrag *m*') and a contract of last will and testament ('Erbvertrag *m*') like the German contract does (Ping Shi, 2005:19). Moreover, a Chinese contract does not always contain specific agreements on the price, quality, renumeration, place for performance, etc. Under Polish and German law, such a contract would be called a pre-contract and would contain the obligation that both parties are willing to conclude a final contract in the future (Julius, in Gebhardt, 2003:133-134).

2. The ambiguity problems.
2.1. Polysemy.

The ambiguity of Chinese legal language arises very often from using polysems. Let us start with the analysis of the polysemy of the lexical item

代理人 *dàilĭrén*, dictionary equivalents of with are: 'an agent', 'a proxy', 'a limb', 'a deputy', 'an attorney' (in German: 'Agent *m*', 'Agentin *f*', 'Beauftragte *m*', 'Beauftragter *m*', 'Bevollmächtigte *m*', 'Kommissionär *m*', 'Prokurist *m*', 'Stellvertreter *m*', 'Substitut *m*', 'Vertreter *m*'; in Polish: 'przedstawiciel', 'prokurent', 'agent', 'zastępca'). According to Black's Law Dictionary (2004:68), *an agent* is *one who is authorized to act for or in place of another; a representative.* An *attorney is a* person, who is designated to transact business for another; a legal agent (Black's 2004:138). *A person appointed or delegated to act as a substitute for another, especially for an official* is a *deputy* (Black's 2004:474). A *proxy* is one who is authorized to act as a substitute for another; especially, in corporate law, a person who is authorized to vote another's stock shares (Black's 2004:1263). In Polish and German, there is a distinction between 'die Prokura' (Polish: 'prokura') and 'die Vollmacht' (Polish: 'pełnomocnictwo'). The first is a special type of the second and can be granted only by businessmen. The rights of proxy (Polish: 'pełnomocnik', German: 'Bevollmächtigte *m*') concern all court acts of partnership and out-of-court acts of company. The rights of commercial proxy (Polish: 'prokurent', German: 'Prokurist *m*') concern only out-of-court acts of company. It is imperative to find out by translation what kind of power of attorney contains the source text. Although the Chinese have a term for the legal representation of a company (公司法定代表人 *gōngsī fǎdìng dàibiǎorén*), the low quality of dictionaries causes translators with little or no experience in Chinese commercial law not to use the term.

Another term, which can pose problems to translators with no legal knowledge is 财产 *cáichǎn*, which means 'ownership' or 'property'. There are two types of titles for objects: 占有 *zhànyǒu* and 财产 *cáichǎn*. The first title means 'possession' (in German: 'Besitz *m*', 'tatsächliche Sachenherrschaft'; in Polish: 'posiadanie'). The second has the following English equivalents: 'ownership' and 'property' (in German: 'Eigentum *n*', 'rechtliche Sachherrschaft'; in Polish: 'własność'). For example, a thief can possess a car, but that does not mean that he owns it. There are dictionaries, which propose two meanings for 财产: 'possession' and 'ownership'. For instance:

i. 新汉德词典 "Das neue Chinesisch-Deutsche Wörterbuch" 北京 2000:
财产 : 'Eigentum *n*', 'Besitztum *n*', 'Hab und Gut *n*', 'Vermögen *n*'
ii. 英汉双向法鲁， 北京 2001：
财产 : 'possessions', 'belongings', 'estate', 'fortune', ‚means'.

There are translators or rather translation novices with no knowledge of the Chinese legal system or who simply do not distinguish possession from ownership. Such persons can sometimes unknowingly create a false legal reality. The difficulty in terms of law is, that a Chinese company can possess land but not own it. As contributions to a joint venture with German or Polish, Chinese businessmen use land-use rights (土地使用 *tǔdì shǐyòng*). As stated in "General Principles of the Civil Law of the People's Republic of China", *a citizen's personal property shall include his lawfully earned income, housing, savings, articles for everyday use, (…) trees*, etc., but never land (中华人民共和国民法通则，第十八条).

The next term which can be ambigous is 股本 *gǔběn*, which means 'share capital', or 'stock capital'. In German, it has more equivalents, e.g.: 'Gesellschaftskapital', 'Grundkapital' and 'Stammkapital'. Even more equivalents exist in Polish, e.g.: 'majątek spółki', 'kapitał zakładowy', 'kapitał akcyjny'. Translating in German or Polish 股本 can mean different types of capital. It can' be translated as 'Gesellschaftsvermögen' ('majątek spółki'), the capital of a commercial company or it could also be translated as 'Grundkapital' ('kapitał akcyjny', 'kapitał zakładowy') which is the capital of an association, such as a joint stock company or a limited joint-stock partnership. The minimal value of the abovementioned capital is EUR 50,000 (or PLN 500,000 zł in Poland). 'Stammkapital' ('kapitał zakładowy') means the capital of a limited liability company. Its minimal value is EUR 25,000 (or PLN 50,000 zł in Poland). The translator who does not know the context or who does not know the language of commercial law can easily use the wrong term when translating from Chinese into German or Polish.

Another Chinese polysem is 股东 *gǔdōng* and its English equivalents are 'shareholder' and 'stockholder' (in German: 'Aktionär *m*', 'Anteilseigner *m*', 'Gesellschafter *m*'; in Polish: 'udziałowiec', 'akcjonariusz'). 'Gesellschafter *m*'/ 'udziałowiec' is the one who owns or holds a share or shares in a company, esp. a corporation. 'Aktionär *m*', 'Anteilseigner *m*' / 'akcjonariusz' is a type of a shareholder in a stock company. Every 'Aktionär *m*', 'Anteilseigner *m*' / 'akcjonariusz' is 'Gesellschafter *m*'/ 'udziałowiec', but not every 'Gesellschafter *m*'/ 'udziałowiec' is 'Aktionär *m*', 'Anteilseigner *m*' / 'akcjonariusz'. For instance, the following sentence:

股东按照出资比例分取红利。

can be translated as:

'Shareholders (German: 'Gesellschafter *pl*' / 'Anteilseigner *pl*', Polish: 'udziałowcy') draw dividends in proportion to their capital contributions'

(regarding limited liability companies – 有限责任公司)

or:

'Shareholders (German: 'Aktionäre *pl*', Polish: 'akcjonariusze') shall draw dividends in proportion to their capital contributions'.

(regarding joint stock limited companies – 股份有限公司)

One of the most interesting examples for ambiguity in Chinese legal terminology is 被告 *bèigào* which is used to name the party sued in civil proceedings (German: 'Beklagter *m*', Polish: 'pozwany') and accused in criminal proceedings (German: 'Angeklagter *m*', Polish: 'oskarżony').

There are terms 租赁 *zūlìn* and 出租 *chūzū* and terms regarding hire, rent and lease, which are ambiguous in Chinese with their English equivalents being polysemic as well. By translating these into German or Polish, the situation is even more complicated because there are many different equivalents for 租赁 and 出租. 租赁 – English 'hire', 'rent', 'lease' can be translated into German as 'Miete *f*' ('Polish: najem') or 'Pacht *f*' ('dzierżawa'). As far as the first one is concerned, one party conveys to another party a parcel of land or another immovable property, to be used and occupied in exchange for payment. As far as the second one is concerned, the second party not only owns but also benefits from using the leased object. 出租人 *chūzūrén* – English 'lessor, landlord' can be translated into German as 'Vermieter *m*' ('wynajmujący'), 'Verpächter *m*' ('wydzierżawiający') or 'Leasinggeber *m*' (into Polish: leasingodawca / finansujący). 承租人 *chéngzūrén* can be translated into German as 'Mieter *m*' (into Polish: 'najemca') or 'Leasingnehmer *m*' ('korzystający', 'leasingobiorca'). The polysemy of the aboved mentioned terms can create problems in business talks or oral negotiations when context is omitted.

The term 共同遗嘱 *gòngtóng yízhǔ* can also cause vagueness in understanding. It is the equivalent of 'Berliner Testament *n*' or 'gemeinschaftliches Testament'. 'Gemeinschaftliches Testament' means joint last will and testament and 'Berliner Testament' is the special form of it. Thus 'gemeinschaftliches Testament' is a hyperonym whereas 'Berliner Testament' is a hyponym. The mentioned last will and testaments conclude marriages and civil marriages.

2.2. Grammar.

Translators must cope with many linguistic problems caused by the dissimilarity between Polish and Chinese, such as structural or syntactic ambiguities in legal Chinese. It is often necessary to decipher, or even guess, the meaning from the

context due to the lack of grammatical changes. The change of meaning is hard to notice as there is no morphological change to be observed.

One of the difficulties is the fact that there are no verbs which denote an imperative in the future tense in Chinese. Some of the present tense sentences have the same imperative meaning as the Polish sentences containing verbs in Present Tense. They impose an obligation or command but without the use of any imperatives. Those sentences are often called *zero performatives* (Cao 2004: 57), to denote sentences without any modal verbs.

Artykuł 15
(...) Zgromadzenie Ogólne <u>otrzymuje i bada</u> roczne i specjalne sprawozdania Rady Bezpieczeństwa; sprawozdania te <u>powinny</u> zawierać zestawienie środków (...)

第十五条
(...) 大会<u>应收</u>受并审查安全理事会所送之常年及特别报告；该项报告<u>应</u>载有安全理事会(...)

Article 15
(...) The General Assembly <u>shall receive and consider</u> annual and special reports from the Security Council; these reports <u>shall</u> include an account of the measures (...)
(Charter of the United Nations)

Artykuł 53
(...) Rada Bezpieczeństwa <u>posługiwać się będzie</u> układami lub organizacjami regionalnymi w odpowiednich przypadkach w celu stosowania środków przymusu pod jej kierownictwem. (...)

第五十三条
(...)安全理事会对于职权内之执行行动，在适当情形下，<u>应利用</u>此项区域办法或区域机关。(...)

Article 53
(...) The Security Council <u>shall,</u> where appropriate, <u>utilize</u> such regional arrangements or agencies for enforcement action under its authority. (...)
(Charter of the United Nations)

2.3. Legal language versus colloquial language.

Legal language is often used alongside colloquial language. Matulewska (2007) notices, that *if there are two texts which in one natural language are formulated in lingua legis and colloquial language their translations into another natural language may differ despite the fact, that they may apparently look the same in the source language.* For instance, the sentence from Universal Declaration of Human Rights:

"<u>No one shall</u> be subjected to torture or to cruel, inhuman or degrading treatment or punishment"

is translated into Chinese as

„任何人<u>不得</u>加以酷刑，或施以残忍的，不人道的或侮辱性的待遇或刑罚. " The phrase 不得 bùdé (English: 'is forbidden') is often replaced with other phrases, which are colloquial: '不许' bùxǔ, '不要' búyaò, '不准' bùzhǔn.

3. Conclusion

Chinese legislation has been created under the influence of foreign sources and many legal terms are translated terms. Foreign laws were not absorbed in a vacuum, but incorporated into a totally different culture and linguistic reality. Therefore, there are words which only seemingly denote the same legal reality as in German or Polish. *Many Chinese legal terms of foreign origin have unfolded a life of their own in the Chinese legal context* (Cao 2004).

To sum up, only translators who have extensive knowledge of the target legal system as well as the source legal system are capable of mitigating the difference between the terms, which seemingly have the same scope of meaning.

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Marcin Michalski[1]

LEGAL THEMES IN THE MAQĀMAS OF AL-ḤARĪRĪ (1054 – 1122)

Abstract: The paper deals with legal themes used by al-Ḥarīrī (1054-1122) in his *Maqāmas*, which portray various social situations typical of the Arab world of the author's time. This genre, characterized by ornate form and jocular contents, is a good tool of criticism of social phenomena like Islamic law or its language. Al-Ḥarīrī bases some of his *Maqāmas* on the ambiguity of the language of law, by which he consciously shows that such ambiguity exists. He also presents some cases examined by judges, including a charge of plagiarism, which at that time was not considered a legal matter.

Key words: Law; Arabic; *Maqamas*; al-Hariri

1. Introduction

It is no wonder that in a literary work like the *Maqāmas* of al-Ḥarīrī, which is a collection of depictions of various social scenes, legal themes should occupy an important position.[2] Legal settings or legal matters appear in seven *maqāmas* where they serve as frames or pivots for the story. In this article some of these legal themes used by al-Ḥarīrī will be presented. It will be argued that they were employed by the author not only for comic purposes or in order to show his skills in inventing puns, puzzles and curious situations, as some historians of literature prefer to claim, but that al-Ḥarīrī was well aware of linguistic ambiguities and that in one *maqāma* he showed a possible legal problem which was left outside the scope of the interest of Islamic jurists of his time.

There are five *maqāmas* narrating a trial, before the qadi or the *wālī* (governor). The cases concern: charge of plagiarism (*M.* 23), charge of murder (*M.* 10), charge of child disobedience (*M.* 37), a wife's accusation of

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her husband not fulfilling his marital duty (*M.* 45) and a wife's accusation of her husband having unlawful intercourses with her (*M.* 40). There is also one *maqāma* where more than 100 fatwas are being issued (*M.* 32) and one *maqāma* relating a legal puzzle concerning succession law (*M.* 15).

2. Al-Ḥarīrī's life

Little is known of al-Ḥarīrī's life. He was born in 1054 in Basra. At this time the ʿAbbāsid dynasty in Baghdad had lost their independence and was ruled or controlled by various foreign groups (Persian Buyids and Seldjuk Turks). The Arab rulers were at these times unable to oppose themselves to non-Arab, viz. Persian and Turkish, influences. Such prominent men of culture of this age as Nasir-i-Khosrou and Omar Khayyam both wrote in Persian.

It is in this time, marked by political and cultural changes and considered to be the onset of the decline (*inḥiṭāṭ*) of the Arabic language, that al-Ḥarīrī lived and worked. He followed the normal courses for every well educated man in the Arab world: he studied Arabic and law (*fiqh*) and the tradition of the Prophet Muḥammad (*ḥadīṭ*). He was appointed by the caliph administration as *ṣāḥib al-ḫabar*, which was equivalent to chief of intelligence and meant extensive travels throughout the Arab world. He died in 1122, leaving 50 *maqāmas*, several letters, a treaty on language purity and another on grammar.

2. Maqāma as a genre

It is accepted that the *maqāma* as a genre was created by al-Hamaḏānī (968-1008).[3] It had its roots in earlier prose works but al-Hamaḏānī is considered the author of the first and perfect *maqāmas*. The construction of a *maqāma* follows a constant pattern: in a typical *maqāma* of al-Ḥarīrī, the narrator travels from town to town through the Arab world, where he comes accross a respectable man in a financially difficult situation. The respectability of this man demonstrates itself in his pious, sage and, above all, ornate words (which

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3   Polish translation of his *maqāmas* is al-Hamaḏāni 1983. For more information on *maqāma* as a genre and bibliography see Katsumata 2002. For social and political background of the origination of *maqāma* see Monroe & Pettigrew 2003: 158-161.

he utters as a preacher, a street-preacher, a teacher, a lawyer, a lawyer's client etc.). In most cases, his excellent Arabic makes his listeners or interlocutors give him some money. After the needy man goes away, the charitable realize that they have been duped: the man was the notorious Abū Zayd as-Sarūǧī, assuming various characters but following one aim: to swindle money out of naive people and spend it on wordly pleasures. It is in Abū Zayd's various "incarnations" that the reader of the *Maqāmas* gets to know the panorama of the Arab society of his age.

It has been sometimes claimed that the form of the *maqāma* surpasses its contents. Thus for instance, Święcicki calls al-Hamaḏāni's text "blabber" and "pointless rhymes" (1901: 233). Bielawski says that "in these works [scil. of al-Ḥarīrī] the contents give way to the form" (1971: 190). Similarly, Pellat states that al-Ḥarīrī's works "abounded in verbal acrobatics, to the detriment of the originality of the subject-matter and the interest of the adventures recounted" (1976: 149f). However, under the cover of what seems to be superfluous eloquence one finds interesting insights: social criticism, which has been remarked many times, and linguistic criticism, which the above mentioned scholars ignored. In the following, some legal themes as well as legal language and how it was used by al-Ḥarīrī not only for entertaining purposes but also for his linguistic observations will be discussed.

3. Judges

As it is the case in other *maqāmas* with respect to other aspects of life, in his "legal *maqāmas*" the author shows a jocular attitude towards law, lawyers and judges. His sometimes disrespectful treatment of such important functions as preacher or teacher does not spare venerable men of law. Al-Ḥarīrī amuses the reader with the outcome of situations in which the judge, moved by the eloquent depiction of the misery of the two parties, gives them money from his own pocket or public funds only to find afterwards that they had cheated him. On one hand we can see the judge portrayed as a naive dupe, who, being unable to solve the intricate problem, decides to satisfy both parties which leads to his own detriment. On the other hand, the judges are depicted as kind and sincere men of great understanding of Arabic language, able to appreciate others' education and wit, wihout looking at their poverty.

4. Plagiarism

In *Maqāma* 23, the narrator relates a legal action taken by an old man against a boy who had allegedly stolen his poem. The case begins with the formulaic blessing for the *wālī* and then the facts are presented. The man claims to have raised and educated the boy, who, having grown up, stole his poem. Here the Arabic terms for using others' words in one's poem are used: *iddaʿayta* ('you unduly assumed'), *istalḥaqta* ('you annexed'), *intaḥalta* ('you took over'), *istaraqta* ('you stole'). Now, plagiarism, although much discussed among men of letters, was not a matter of legal actions. But al-Ḥarīrī put into the old plaintiff's mouth the following statement:

"For poets, literary theft is more outrageous than stealing silver or gold. And their jealousy for thoughts is like their jealousy for virgin daughters" (al-Ḥarīrī 1950: 168)[4].

After the plaintiff recites his poem as well as the alleged plagiarism, which actually is an abbreviated original, the boy swears that he was not aware of the lines before he composed his own ones and argues that there occurred coincidence of thoughts (*tawārud al-ḫawāṭir*) becasue it happens that, as the Arabic idiom says, "a hoof may fall upon another hoof".

These terms are used in reference to coincidence of thoughts, which was much discussed by classical Arab critics and men of letters, who were not unanimous as to whether this was at all possible. With poets of old times who were dead, it was a difficult task to attribute the poem to one of them. However, there were even some modes of procedures of attributing poems to poets. Thus, one reads in the book of Abū Bakr al-Ṣūlī (d. 946):

"where two poets coincide over a thought or an expression or combine both, priority would be given to whichever of them is older; the one who was the first to pass away; and borrowing would be attributed to the younger, because this is most often the case. But if both belong to the same age, it would be attributed to the one with whose idiom it has a stronger affinity; should that be difficult, it would be conceded to both of them." (al-*Ṣūlī* 1937: 100f, quoted from and translated by Sanni 2001: 123).

In this *maqāma*, it seems that the *wālī* applies the above procedure, which must have been known to a person versed in literature like al-Ḥarīrī. Here, both poets are alive, so, it would follow from the procedure, neither

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of them is older. Thus the *wālī* decides to put them on trial as if in order to find out to whose idiom the poem "has a stronger affinity" and lets them make a poem in his presence, by making lines in turns. Both of them did it so well that the *wālī* believed in the *tawārud* and ordered the old man to give up his accusation (which he did only after he and the boy were given two gowns and a sum of money). As one can see, al-Ḥarīrī made the scene in court develop according to the procedure recommended by the Arab literary studies.

By placing the dispute in court, al-Ḥarīrī seems to ask whether it is possible, from the point of view of the Islamic law, to treat plagiarism as theft. Indeed, one of the terms for plagiarism is simply *sariqa* 'theft'. As is commonly known, according to Islamic law theft should be severely punished.[5] One of al-Ḥarīrī's contemporaries, ʿAlī Ibn Aflaḥ (d. 1141), rejected the existence of *tawārud* and argued that "Any poet found guilty of it should be seriously reprimanded and his membership of the poetical salon withdrawn" (Sanni 2001: 127). However, his view was rather isolated. Although the opinion varied from criticism to acceptance, plagiarism was not a matter of courts but of literary criticism.

However, Sanni relates one case (which he, however, finds "to good to be true") where the question of attribution of a literary work had to be settled in a rather official way: when two pre-Islamic poets, Ṭarafa and Imruʾ l-Qays, were quarelling over the authorship of a famous line, "each of them brought records of events from his respective clan on account of which it was established that both had composed the poem containing the similar lines on the same day" (Sanni 2001: 129). It is also related that Ṭarafa had to swear that "he was not aware of the exemplar of Imruʾ l-Qays" (Sunni 2001: 129).

Classical Arab historians of literatures tried to explain such phenomena by saying that similarity of impressions caused similarity of expressions. But of course, the nature of transmitting the poems, which initially was exclusively oral, could not have been without influence on occurrence of similar or even identic passages in two different works.

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[5]   It is noteworthy that this argument seems to be based on *qiyās*, i.e. reasoning by analogy (words are precious things, consequently their appropriation should be treated like theft), which is one of the sources of Islamic law.

5. Succession

Maqāma 15 relates a puzzle concerning the law of succession. The puzzle consists in the following problem:

A man died and left his brother, a Muslim, freeman and pious, born of the same parents.
The deceased had a wife, who had a brother, a respectable person, with no fault.
She took her part and her brother took the remaining part, while the brother of the deceased got nothing (al-Ḥarīrī 1950: 110).

Assuming that not mentioning any ascendants or descendants means that there were not any, one should say that the succession was divided wrongly, since according to the Qur'ān:
"if a man or a women leaves a succession and has no ascendants or descendants [*yūriṯu kalālatan*], but has a brother or sister, then each of them shall obtain one sixth part" (Qur'ān 4, 12).
But even if one assumes that the deceased had children, it is still not clear why his wife's brother should have anything of the inheritance while his brother should be omitted. The solution is given in the further lines of the *maqāma* (al-Ḥarīrī 1950: 112f):

The deceased, whose brother was omitted by law in favour of his wife's brother,
Married his son to his mother-in-law [scil. the mother-in-law of the deceased] (...).
Then this son died, but his wife [the mother-in-law of the deceased] had child with him.
This child is the grandson of the deceased (...) and the true brother of the wife of the deceased.
And a grandson is closer to his grandfather [the deceased] and has more right to inherit than the brother [of the deceased].
Therefore when that one died, his wife was given one eighth part of the inheritance,
And his grandson, who actually is her brother from her mother, took what was left.
The full-brother was thus excluded from the inheritance (…).

It turns out that the man was granted the inheritance by virtue of being a grandson of the deceased, and not by virtue of being his wife's brother. The deeper sense of this riddle lies in the word 'brother,' which makes the solution difficult: Arabic has two words for brother: *aḫ* and *šaqīq.* The latter means a brother born of the same parents (full-brother), while the former may mean a brother sharing only the mother or only the father (half-brother), but more often than not is also used as the general term, including full-brother as well. This may lead to misunderstanding as in the case of this puzzle, where one is told about the wife's brother (*aḫ*) and what instantly comes to one's mind is not half-brother (although this is the precise dictionary definition of *aḫ*, known by most Arabs), but full-brother (which is the everyday use).

6. Marital obligation

Al-Ḥarīrī wrote two *maqāmas* concerning legal actions taken by women against their spouses. Both concern sexual problems but in none of them is there to find a direct reference to sex or human body. It is only by interpreting metaphors and allusions and equally allusive responses of the interlocutors that the reader arrives at the wife's true concern.

In *Maqāma* 40 the wife sues her husband for unnatural way of fulfilling his marital duty ("he enters the house through the rear gate"). Interesting as this story is from the point of view of history of morals and society, it is of lesser interest as far as legal language is concerned. More attention in this respect deserves *Maqāma* 45 where the problem lies in the unfulfilment of the marital obligation, or, more strictly speaking, fulfilling it only once. Here, the wife requires either the divorce or the proper treatment from her husband. What is of special interest here is not the theme itself, but the way it is presented. The very intimate problem is not adressed by its true name. The wife presents her case using only euphemisms – if one may thus term what some will consider sacrilege since the euphemisms are taken from the religious terminology: the sexual intercourse is alluded to as the pilgrimage to the Holy House in Mecca.[6]

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6   In order to forestall any accusation of me being the only one to see indecencies in this text (with such sanctitudes as the hajj involved, an error would be grave) I hasten to make two observations: first, that the reading of the pilgrimage as sexual intercourse is indicated by the Egyptian editor (*taknī bi-ḏālika 'ani l-ǧimā'i*, p. 377, fn. 17) and second one, more convincing, that such reading is confirmed by the text itself (the husband replies: *miltu 'an ḥarṯī* 'I turned away from my land' (p. 379; see below for the meaning of 'land'), and by the fact that every other reading makes little if any sense.

One translation of the charge presented by the wife is:

    I complain about the injustice of my husband

    who did not make the pilgrimage to the Kaaba but once.

    I wish that he, after he had carried out his pious deed,

    and relieved his backbone by throwing his stone,[7]

    Had (…) connected the Great Pilgrimage with the Little one (al-Ḥarīrī 1950: 377f).

Of course, one could take these lines as the accusation against a man who did fulfil his religious duty, went to Mecca, but did it only once. But why should his wife sue him for that? It makes more sense to interpret it metaphorically. Yet perhaps one can even do without recourse to metaphors since it will suffice to translate the original text in a different way. By virtue of polysemy, the same Arabic text may assume a shape with no religious connotations:

    I complain about the injustice of my husband

    who did not *aim at the house* but once.

    I wish that he, after he had carried out his pious deed,

    and relieved his *back by throwing off his heat*,

    Had (…) connected this *one travel* with [another] *visit*.

Other metaphorical euphemisms are used by the defendant, the husband, who argues that the reason for his sexual abstinence is the poverty which would make raising children impossible. His words are:

    I turned away from my land not because I dislike it,

    But because I fear for the seed (p. 379).

    In this case the metaphor is taken directly from the Qur'ān, which says:

    nisā'ukum ḥarṯun lakum fa-tū ḥarṯakum annà ši'tum

    Your wives are your arable land. So come to your land as you like (*Qur'ān* 2, 223)

In this place it can be noted that the author probably makes conscious use of his etymological knowledge. Numerous technical words and legal terms have their roots in everyday language. With time they became specific and their meaning got narrowed. Thus e.g. the verb *ḥaǧǧa* which meant 'to go in direction of, to aim for' was narrowed to mean 'to aim for Mecca' i.e.

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7   The stone (*ǧamra*) is a pebble used by Muslim pilgrims for symbolic stoning of the devil during the pilgrimage.

'to make the Holy pilgrimage.' Similarly, *'umra* originally meant 'heading for inhabited place' but changed it meaning to 'Little Pilgrimage.' Such examples are quite abundant. Some more frequent can be adduced:

qur'ān 'recitation, reading' > 'Holy Qur'ān'

ḥadīṯ 'speaking, tale' > 'tradition of the Prophet'

sunna 'way' > 'sunna, body of *ḥadīṯ*'

fiqh 'knowledge' > 'jurisprudence'

'idda 'number' > 'period of waiting during which a woman may not remarry after being widowed or divorced' (Wehr 1974: 595)

mut'a 'pleasure' > 'temporary marriage contracted for a specified time for the purpose of sexual pleasure' (Wehr 1974: 890)

zakāt 'purity' > 'alms, alms tax' (for purification of wordly things)

ḥaǧr 'barring, closing' > 'revocation or limitation of someones legal competence'

This process is conditioned by the history and grammar of Arabic. Classical Arabic had no holy or technical language like Latin or Greek in Europe, since it itself is the holy and technical language. Consequently, it could not receive technical terms from other sources just like European languages drew from Latin or Greek. Secondly, although Arabic morphology allows semantic nuances to be reflected by form modification (today 'reading' is not *qur'ān* but *qirā'a*, 'speaking' is not *ḥadīṯ* but *taḥadduṯ* or *muḥādaṯa*), such modification was used rather infrequently to differentiate technical meanings from non-technical. An example may be:

ḫul' 'divorce at the instance of the wife, who must pay a compensation' (Wehr 1974: 256), while *ḫal'* means 'taking off, expropriation'.

7. Fatwas

Polysemy is also the pivot of *Maqāma* 32, the protagonist of which is asked 104 questions concerning jurisprudence (*fiqh*). These questions are solicitudes of issuing *fatwas*. A fatwa is a legal opinion delivered by an Islamic authority called *muftī*, which can be an individual or an institution. Since Islamic law (*šarī'a*) regulates other domains of life than e.g. European systems, the subject of a fatwa can concern things that from the Western point of view could be considered a matter of theology or manners. A fatwa consists usually of two parts: the question asked by a *mustaftī* 'asking for fatwa' and the answer given by a *muftī*. Today a *mustaftī* can send a question

to a newspaper or television, since many newspapers and television channels have special space dedicated to it.

In *Maqāma* 32, Abū Zayd, the chief character, who claims to be versed in *fiqh*, is confronted by an eloquent young man who claims to have gathered from different *faqīhs* (jurists) all over the world 100 fatwas. A kind of competition takes place and the young man asks Abū Zayd questions concerning various domains of *fiqh* including ablution, prayer, imams, fasting, alms, pilgrimage, trade, ritual sacrifice, interpersonal relations, legal competence, legitimation as ruler, legitimation as witness, apostasy, murder, theft and marriage. Now, each of these question is answered in a way contrary to the common sense and, indeed, to an average *faqīh*'s expectations. Here is the first instance, concerning ablution, with the Arabic original:

Q: What do you say if someone has made his ablution and then touched the back of his shoe?

Q: *mā taqūlu fī-man tawaḍḍaʾa ṯumma lamasa ẓahra naʿlih?*

A: His ablution was made void by his action.

A: *intaqaḍa wuḍūʾuhū bi fiʿlih* (p. 251).

Touching the back of one's shoe does not make one ritually impure, in other words does not make the ablution void. The solution is that the word *naʿl* has more than one meaning. One suggests itself, but second, less frequent or archaic, must be looked for. In fact, the appropriate explanation for the word *naʿl* is not found in the vocabulary of contemporary Arabs nor in today's dictionaries of Arabic (e.g. Wehr or *al-Munǧid*). But it can be found in Fayrūzābādī's *al-Muḥīṭ* from 14th century: it means 'wife'. However, one can not state that due to its remoteness, the remote meaning is less justified. Other examples are:

Purity:

Q: Is it permitted that a *dāris* [student/menstruating woman] carry Qurʾāns?

A: No, not even if they were enveloped (p. 253).

Fast:

Q: Can a man break his fast when the *ṭābiḫ* [cook/fever] insists?

A: Of course, but it must not be the chef (p. 255).

Alms:

Q: Do those who have *awzār* [sins/arms] deserve a part of alms?

A: Yes, if they are warriors (p. 256).

Food:

Q: What do you say on *maytat al-kāfir* [the corps of an infidel/fish swimming near the surface of the sea]?

A: It is permitted [to eat it] both to those who are in travel and those who are not (p. 258).

Q: Is it forbidden for a *ḏimmī*[8] to perform *qatl al-ʿağūz* [kill the old woman/mix wine]?

A: One must not forbid him to do that (p. 259)   .

Customs:

Q: What do you say on *ṣabr al-balīya* [suffering misfortune/tethering a she-camel to the grave[9]]?

A: It is a very grave sin (p. 260).

Legal competence:

Q: May the judge *yaḍriba ʿalà yad* [hit upon the hand of/declare legally incompetent] an orphan?

A: Yes (...) (p. 261).

Crimes:

Q: What should be done to the *muḫtafī* [stay-at-home/grave plunderer], according to law?

A: He should be sanctioned, so that he be prevented from it (p. 263).

From the fact that the word *zawğa* 'wife' has the synonym *naʿl*, which in turn has the homonym *naʿl* meaning 'shoe', arises ambiguity. Not always is it possible to be sure that what one sees and thinks is what is really meant. This may have negative impact on everyday life but such an uncertainty is particularly dangerous in language of law.

Of course, every Muslim knows that, for instance, a non-Muslim is allowed to make wine. These fatwas are not very innovative. They do not give any new insight into Islamic law. But they do provide insight into its language. One could say that al-Ḥarīrī did not aim to show any possible ambiguity in language, that what he put in his *maqāma* was simply a literary entertainment, play on words. But in the same way as jokes must have foundations in serious life in order to be more than just amusing, the contents of *maqāmas* can not be totally abstracted from reality in order for generations of readers to want to read them. Indeed, ambiguities of this kind do occur in everyday legal practice. Everyone who at least superficially

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[8]   A free non-Muslim.
[9]   A pagan custom, prohibited by Islam.

came into contact with problems of Islamic law must have come across such difficulties: the much discussed problem of what really jihad (*ǧihād*) is may be the first example. Another one is the Qur'ānic commandment to cut the hand of a thief:

wa s-sāriqu wa s-sāriqatu fa qṭaʿū aydiya-humā ǧazāʾan bi-mā kasabā

'as for the man and woman who have stolen – cut their hands as punishment for what both of them have gained' (5, 38).

The verb *qaṭaʿa* does not necessarily need to mean 'cut off', it may also have the meaning: 'to stop' or 'to prevent'. Compare for instance the above fatwa about the grave-plunderer which should be subjected to *qaṭʿ*, i.e. to prevention or sanction. It is also used in another line in the Qurʾān (12, 31), where the women who have heard about al-ʿAzīz's wife planning to seduce Yūsuf were given knives and when they saw Yūsuf, they were so impressed by his externals that they *qaṭaʿna aydiya-hunna*, which rather did not mean 'cut their hands off' but 'cut' or 'injured their hands'.

Another very important problem concerns the interpretation of the Qur'ānic regulation on punishing disobedient wives. The crucial verb *ḍrubū* (4, 34) is translated as "(And last) beat them (lightly)" by Yusuf Ali (1987), as "scourge them" by Pickthall (2000), and as "beat them" by Shakir (1999). One of the Qur'ān translations into Polish (via English) renders it by:

poddawajcie je karze

'subject them to punishment' (*Święty Koran* 1996: 202).

8. Conclusions

It seems justified to see in al-Ḥarīrī's works a conscious treatment of Islamic law as an important theme in his *Maqāmas*. Islamic law, which according to Bielawski is "a sort of summary of Islamic thought, the most typical manifestation of Muslim way of life" (1995: 100) was chosen by al-Ḥarīrī to be the basis for several of his *Maqāmas*. In them, he tacitly but convincingly pointed to the ambiguity of the language of Islamic law and to polysemy of its vocabulary. On the pretext of entertaining, he presented a situation which could not have taken place in the then world but is something normal in our courts and thus, in promoting plagiarism to the rank of a legal matter, al-Ḥarīrī anticipated the modern idea of settling such disputes with recourse to the law. It seems that by how he used legal themes in his works, he showed a good deal of critical sense with respect to the legal system and the society in which he lived.

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Motywy prawne w *makamach* al-Ḥarīriego (1054-1122)

Wśród przedstawionych w *Makamach* al-Ḥarīriego różnych sytuacji społecznych typowych dla świata arabskiego z czasów życia autora nie mogło zabraknąć zdarzeń związanych z prawem. *Makama*, jako gatunek popisowy w formie i rozrywkowy w treści, doskonale nadawała się jako narzędzie do krytycznych obserwacji dotyczących prawa i języka prawa muzułmańskiego. Al-Ḥarīrī opiera swe *makamy* na wieloznaczności języka prawa dla celów artystycznych, lecz jednocześnie świadomie pokazuje, że taka wieloznaczność istnieje. W swych utworach umieszcza też rozprawy prowadzone przez sędzich, m.in. sprawę o plagiat – spór, który w jego świecie nie stanowił przedmiotu zainteresowania prawa.

Diana Yankova

TRANSLATION APPROACHES IN A MULTILINGUAL AND PLURILEGAL SETTING: CANADA AND THE EU[1]

Abstract: This paper willfocus on the converging and diverging elements of the idiosyncratic legal regimes of federal Canada and of the supranational European Union. The methodology applied in Canada in terms of the stages in identifying the points of contact between the different legal systems and languages in relation to the procedure adopted in cases of conceptual and terminological non-correspondence, as well as the drafting techniques employed and the justification for choice in each particular instance, will be highlighted. The Canadian approach to terminological issues in the ongoing process of harmonizing federal legislation will be considered as a possible model for felicitous solutions regarding current pressing difficulties in the translation of legal terms in the European Union.

Key words: translation, legal translation

Introduction

The focus of this paper is the converging and diverging elements of the idiosyncratic legal regimes of federal Canada and of the supranational European Union. The methodology applied in Canada in terms of the stages in identifying the points of contact between the different legal systems and languages in relation to the procedure adopted in cases of conceptual and terminological non-correspondence, as well as the drafting techniques employed and the justification for choice in each particular instance, will be highlighted. The Canadian approach to terminological issues in the ongoing process of harmonizing federal legislation will be considered as a possible model for felicitous solutions regarding current pressing difficulties in the translation of legal terms in the European Union.

The choice of topic was determined by the fact that the translation of legal texts produced within the European Union presents multifarious conceptual and linguistic problems for translators. EU Member States have to harmonize their existing institutions, create new ones and find the language to communicate adequately within unified Europe. A lengthy and arduous process of approximation of legislation ensues, which implies the laborious and demanding task of standardizing legal terminology.

There have been little or no substantive studies of the important linguistic elements in EU law and its implications for the understanding and application of the law (McAuliffe 2006). The EU translation system has not been devised or analysed by language experts and according to Tosi (2005:388) "in addition to being addressed as administrative procedures, language and communication issues should be informed by scholarly discussion". My objective is to present the specific legal, linguistic and communicative context of Canadian bijuralist practices in the process of legal harmonization as representing a unique set of features and conditions and to ascertain if the methodology and terminological choices made by Canadian legal harmonizers can offer pertinent solutions regarding current pressing difficulties in the harmonization of legal terms within the European Union.

Language for legal purposes and legal terminology

In general, analysts agree that in most languages for special purposes, such as the language of technology for instance, the terminology is denser, but the structure is simpler. This, however, does not hold for legal language. Although it abounds in specialized terms, the sentential and suprasentential structure is extremely complex and presents comprehension problems at times even for specialists, exemplified in numerous cases where the correct interpretation of terms, general words, structures and punctuation, for instance, have been at issue. One reason for this is the fact that in contrast to other, more recently developed languages for special purposes, such as the language for communication in computer science, technology or air traffic control, the language for legal purposes has existed for thousands of years. What is even more important and specific, again in contrast to other languages for specific purposes, is that legal language is a social phenomenon, indelibly related to the culture of a specific society, its moral and ethical

norms and its dominant legal tradition. In this sense, the language for law is a metaphysical phenomenon, not extant outside of language, not present in the physical world, but entirely man-made. Therefore, legal concepts and terms, as well as discourse structure, can and often do differ considerably across languages and cultures and it is precisely this characteristic feature that presents the greatest difficulties in cross-linguistic and cross-cultural legal communication as well as in translation of legal instruments. Within the sphere of physical phenomena, computer science, or medicine, for instance, there might arise a problem in linguistic equivalence; in law, however, the most insurmountable issues are first and foremost those of conceptual equivalence and finding the appropriate verbal expression of a concept so that the mental representation of an object does not clash with, diverge from or lead to misunderstanding in the conceptual system of the legal framework of the target language that the term is being translated into. Yet another peculiar feature of legal terminology, not shared by many other specialized languages is its diachronic polysemy which enables language to render legal concepts in tune with the changing perception of a certain society of basic and more complex notions of justice and codification of socially accepted human behavior and encompass the infinite variety of notions and conduct that arise in human interaction.

The lexical stock of legal language is, as a rule, created in several manners: an ordinary word acquires specialized meaning, a new word is coined, or a borrowing is resorted to. The first option is only reasonable: legal parlance incorporates general language words, which become explicitly defined terms often with meaning deviating from standard general usage. Legal neologisms are coined in cases when different legal systems and languages converge, as in international institutions or national bilingual or multilingual contexts and quite often result in compounds or explanatory phrases. Borrowings can sometimes be historically connected to prevalent ideology – as is the case with the former colonial powers of Britain, France, Russia and their colonies. Often borrowings make concepts more comprehensible and amenable to cross-legal understanding than the respective national terms. Currently, this is especially true for European legal integration, where borrowings make reference among 23 languages extremely easier.

Another reason for the perceived complexity of legal language comes from the subject matter under codification itself. On top of the exigencies of the structure and lexis of a specific legal tradition, especially that of Anglo-

American law, we find the added difficulty of the terminology of the special area regulated by the statutory instrument.

The translation of legal text genres can be classified according to different criteria. In relation to their function in the source language Šarčević (1997) groups legal texts into prescriptive (made up of laws, regulations, contracts, treaties, conventions), primarily descriptive texts (comprising judicial decisions, pleadings, appeals, petitions) and purely descriptive (such as legal opinions, law textbooks, articles). Cao (2007:9) builds on this classification but takes into account some missing factors such as the difference in function or status of the source text, documents used in court proceedings, and communication between lawyers and clients. On this basis she distinguishes four sub-varieties of written legal texts: legislative texts - national statutes, international treaties and multilingual laws; judicial texts arising in the judicial process; legal scholarly texts; and private legal texts, such as contracts, leases, wills and also texts drafted by non-lawyers – private agreements, witness statements. Consequently, translation is classified into legal translation for normative, informative or general legal and judicial purposes.

Here I will focus on conceptual issues in translating legal texts for normative purposes within a multilingual and plurilegal context, or the translation of prescriptive texts that have a binding character in the different jurisdictions. Owing to the diverse development of different societal orders, values and dominant belief systems, legal traditions differ in their origin, sources of law and historical and political development which have a distinct bearing on legal ratiocination. A translator or any cross-cultural legal communicator has to keep in mind that concepts are hardly ever completely interchangeable. Different languages package concepts in an idiosyncratic manner, more so concepts in the legal sphere, even within one language – as is the case with legal English in the USA and the UK, for instance, or legal French in France, Belgium and Canada. Consequently, total legal equivalence at the conceptual level is extremely hard to achieve and is one of the challenges that legal practitioners and translators are faced with.

The role of language in the functioning of various legal systems

Apart from cases where one single national jurisdiction is expressed in one language, throughout the world there exist several other basic legal contexts,

namely - different legal systems are expressed in one language (e.g. the English and Scottish system); one and the same legal system is expressed in different languages (e.g. the Swiss system); the third option is the bilingual or monolingual system of public international law.

As international organizations came into being in the 20th century, language became an important political issue on an international level, having previously been predominantly a national political issue. A fierce competition among languages marked the birth of each new international organization: the choice of official language(s) became a political matter, one that entailed considerations of power, prestige and discrimination.

Within this context, both Canada and the EU manifest exceptional features, not inherent in the above distinction. Unlike other international organizations whose resolutions are directed to governments only, the EU is the only international body that passes laws directly binding to the citizens in its Member States. The multilingual EU institutions stand in stark contrast to other international organizations: the United Nations has six official languages, the Council of Europe two, NATO two; EFTA uses only English, which is in fact a foreign language to all six of its members (the current members of the European Free Trade Association are Iceland, Norway, Switzerland and Liechtenstein). As of January 1st, 2007, the date of the last enlargement, the official languages in the European Union stand at twenty-three. EU's multilingual policy is markedly different from other international organizations in that the selection of official languages is not based on power relations between member-states, but since the very beginning has been identified by the principle of linguistic parity, whereby the official languages of member-states are official within the Union.

The uniqueness of the Canadian legislative framework is engendered by the circumstance that not only do two different legal systems co-exist: one based on the traditions of English common law, the other on French civil law (thus making it distinct from the Swiss system), but also that these two legal systems have to be expressed in two languages (unlike the UK and the Scottish system). Since the late 1970s federal bills have been drafted by a Francophone and an Anglophone drafter in conjunction so as to reflect more felicitously Canada's bijural legal tradition. The adoption of the reformed Civil Code of Quebec in 1994, which gave rise to substantial changes in the essence and terminology of civil law, served as an impetus to the harmonization process in Canada and resulted in a huge effort to harmonize federal common-law

based legislation with Quebec civil law: Justice Canada adopted a policy on legislative bijuralism and created a Civil Code Section to implement this policy in cooperation with the Legislative Service Branch. All in all, it has been estimated that about 350 federal statutes (out of more than 700) either apply to Quebec, or resort to the civil law of Quebec as supplementary law.

What are the converging and diverging elements of these two idiosyncratic legal regimes – that of federal Canada and that of the supranational European Union?

The first point of convergence finds expression in the identical function that certain EU legislative instruments, for instance regulations, have with Canadian federal statutes: both are directly applicable in their respective context. However, the scope or effect of EU regulations cannot be supplemented or altered by the implementation activities of the Member States, while a piece of provincial legislation can result in harmonizing a federal statute in Canada.

The second is the languages that legal documents are drafted in. The principal purpose of the huge EU translation service is to safeguard the equal footing of all official languages, and thus, multilingualism is, at least in theory, one of the main features of the European Union. Officially all 23 languages are equal, but in practice some (e.g. French, English, German) are more equal, and others (e.g. Greek, Danish) hardly ever act as source languages. Or as the present director General for Translation Karl-Johan Lönnroth states: "The Commission functions internally on the basis of a language regime of three procedural languages (French, German and English) of which two (French and English) are vehicular and drafting languages" (Lönnroth 2006: 4).

The texts that are translated into all the official languages are documents that are essential in the final stages of the decision-making process, all texts that are for adoption by the Council, and documents that are of general interest for the citizens of the Member States. In all other instances, mainly at the intra-institutional level, functional and pragmatic considerations are operative and this means less effort without loss of transparency or efficiency. This includes the daily administrative work of the institutions and the initial stages of legislative drafting which is done by in-house officials in one or two working languages: mostly English and French. Therefore, most of the legislative drafting in the EU is done in English (70%) and French (20%), as is the case in Canada.

The specific legal language mirrors the legal system it is a product of; this entails that English language terms will denote common law concepts and institutions, and French language terms – Roman law-based concepts and institutions. This is a topical issue indeed, since the national jurisdictions in all of the present EU member states are either based on continental Roman law or common law and equity, and legal practitioners and translators have long struggled with the task of rendering concepts from one system to the other. This aspect also reflects the state of affairs in Canadian drafting – harmonizing the concepts within the two legal traditions and finding the adequate terminology.

Some of the most salient problems that drafters, legal experts, translators and revisers have encountered within the EU context are, among others, differentiating between meanings of one and the same term, differentiation and rendering of terms with close meaning, translation of terms not existent in national legislation, semantic deviation of words belonging to international lexis or faux amis. A study of translation issues in approximating EU legislation, based on an analysis of 120 pages of EU directives (Yankova, forthcoming) found that most of the translation errors stemmed from the difference in conceptualization and the difference in semantic relations between concepts, or in other words, the different manner in which concepts are packaged in the various languages.

I will attempt to elucidate some of these common pitfalls in view of how they have been dealt with by legal harmonizers in Canada, who have for years been involved with the process of harmonization and have demonstrated a very methodical and comprehensive approach. More specifically, I will touch upon the harmonization methodology applied in Canada in terms of the stages in identifying the points of contact between the different legal systems in the Federal Real Property Act and the relevant sections of the Quebec Civil Code in relation to the procedure adopted in cases of non-correspondence; the drafting techniques employed (for instance, using the same term in civil law and common law, resorting to definition, opting for binomials) and the justification for choice in each particular instance.

Towards a unified EU legislation

The ongoing process of social, political, economic and legal integration in Europe has brought about the necessity to harmonize private law within the

European Union. The EU Commission, Council and Parliament have called for adopting a body of rules by 2010 that would provide a common frame of reference for contract law and would pave the way towards uniformity in Community legal practice and to drafting a European Civil Code. No doubt ambitious, this task is liable to encounter problems connected to, above all, the absence of a single European legal culture (cf. Koskinen 2004) López-Rodriguez (2004) concurs and stresses that given the lack of experience in transposing Community law into national legal systems; any legislative initiatives should also promote the creation of a European legal discourse. A European Civil Code would entail problems, related to "*inter alia*, the legal basis for such an enterprise, the choice of instrument and scope of the adopted measures, the feasibility of unifying European private law, the crisis of codification, the sociological background of private law institutions and, finally, the link between private law, language and cultural identity" (López-Rodriguez 2004:1197).

The legislative initiative in the EU lies exclusively with the Commission (although it also includes the Council and the Parliament) and this monopoly "resides in the need of balancing European and national concerns" (Gallas 2001: 84). Of the five types of secondary EU instruments: regulations, directives, decisions, recommendations, and opinions, the first two are the most important and the most common. Each instrument performs a different function and has a different extent and scope. Regulations are absolutely binding, while directives are binding in regard to the results to be achieved, but the exact methods of attaining these results are left to the discretion of each Member State; decisions are binding on those to whom they are addressed, while recommendations and opinions have no binding force. Directives provide guidelines and minimum standards and that means that there might be clashes between the different national laws transposing a certain directive. None of the instruments provide a thorough and all-embracing regulation of a given institution. The national context of each member-state thus influences and distorts the uniformity, aimed at by the directive.

Although some areas of private law have been harmonized, such as fractions of company law, contract law, copyright law, labour law, the EU is far from having a comprehensive and unified regulation of private law. It can so happen that under different Directives, different conditions apply to one and the same case (cf. López-Rodriguez 2004: 1198) and

such inconsistencies have hindered the swift and painless transposition of Directives into national law.

The legal basis of the supranational European law was mainly the predominantly civil law system of the founding members of the European Communities, and more specifically, of French law. The French *commissaire du governement* served as a model for the EU Advocate-General and the French *Conseil d'Etat*'s methods for legal protection have been adopted by the European Court of Justice as pointed out by Mattila (2006: 107). In the 1970s, after the accession of the UK and Ireland, European law came to be affected by common law as well, which is evident in the establishment of precedents at the ECJ (McAuliffe 2008). Therefore, the two legal systems are converging. At the same time, the supranational system of EU law is developing its own methods and principles, not exiting in common law or continental law – such as the principle of subsidiarity, defined in Article 5 of the Treaty establishing the European Community. Its aim is to ensure that decisions and actions at Community level are justified in relation to the possibilities at national, regional or local level and with the exception of its specific and exclusive prerogatives the Union does not take action. Other specific principles are those of proportionality, which leaves the greatest freedom to the Member States and individuals and the principle of necessity, stipulating that any action by the Union should not surpass what is necessary to achieve the aims of the Treaty.

Transposition of concepts

The exceptional communicative situation in the creation and consumption of texts within the European Union finds expression in the character of the participants in the process. In the context of supranational law, legislation is produced in a long process of draft-making, revisions and modifications within all the language versions. There are constant consultations and cooperation between text originators, legal experts, translators and revisers. The individual and independent voice or imprint is completely lost within this multi-authored prose: "the co-decision procedure entails at least 31 steps by 11 different services in the three main institutions and four of these involve the European Commission's Translation Service" (Wagner 2000). Sometimes, at different stages, the language in which one and the same statutory instrument is drafted changes and quite often legislation is drafted by non-native speakers.

The non-correspondence of legal terminology from one legal language to another has long been at issue – even in cases when there is a superficial surface equivalence, the content of the legal institution is different in common law and civil law. Such is the case with *mortgage/ hypothèque*, for example: in civil law jurisdictions if personal property is mortgaged, the debtor keeps the legal title to the property and the creditor only has a charge, while under common law the title is transferred to the creditor or the mortgagee as security. Problems with terms can arise due to several reasons. National legal terms can sometimes be applied within EU law and thus their meaning can be widened or narrowed. For instance, the specific use of the generic terms Council, Commission and Community. A number of concepts have appeared in some national legal systems as a result of harmonizing terminology and concepts, such as the requirement of *good faith* as a contractual term (limiting the effective agreement of the parties by standard contract terms) was not present in English law with the same content, conversely other terms from case law did not exist in continental law.

In a supranational context, it is vital to come up with terminology that is not expressly related to the national legal orders of the Member States to avoid confusion and culture-laden expressions, which in practice might result in verbosity and the coining of new terms.

Terminological formation in the EU

The methodology used in transposing new notions in national legal systems follows several principles. Sometimes general words are used with a specialized sense, i.e. they acquire a narrow meaning or even deviate from general usage (e.g. the precisely defined terms of marriage or employment). In some cases, calques are freely adopted. For instance, *White Paper*, a term mostly used in Britain and other Commonwealth jurisdictions, is easily rendered as *Bílá kniha* in Czech, *Livre blanc* in French, *Livro branco* in Portuguese, *λευκή βίβλος* in Greek, *Witboek* in Dutch, *Baltoji knyga* in Latvian, and the foreign element is not so perceptible. Most of the specific Community terminology comes from French, most notable of which is the name of the whole body of EU law – *acquis communautaire* – where some languages use the same term (English, Dutch), others have calqued the expression (Italian and Greek), yet others have opted for translation with the meaning of Community law (German, Swedish, Finnish). In

some languages more than one term is used, which shows the difficulty in rendering even such central to EU law concepts.

In other cases, a word of national origin is opted for as in the translation of the term Directive – although English, Spanish, Portuguese, Danish and Finnish use a common root word, Germany has designated the term *Richtlinie* and the Dutch *Richtlijn* for the same concept.

The legislative process in the EU has affected the uniform and coherent system of private national law that is typical for European countries following the Continental tradition. Since 2001 there has been an initiative to consolidate, codify and modernize existing instruments within the sphere of Civil law. But still, there is the danger that a national court will interpret Community legislation in light of national law and will thus rule out actual uniformity.

In the US, the common legal culture and a shared language has facilitated the approximation of laws, in Scandinavia an intensive cooperation and a strong feeling of normative unity has led to uniformity. Conversely, although Germany, Switzerland and Austria share a common language and similar socio-economic and cultural backgrounds, they lack both political unity and a common legal source (López-Rodriguez 2004: 1208). A necessary prerequisite for attaining legal uniformity is the presence of a common legal culture, generated by a common legal discourse, which does not exist for the time being in the EU. Member states are close geographically, homogeneous religiously, and share a common philosophical background, but they lack a common legal thinking, and it is not only a matter of differences between common law and civil law jurisdictions, but also the large number of national jurisdictions which reflect national uniformity. The absence of a shared language further hinders interpretation. Future harmonization has to take into account the cultural and linguistic divides and has to promote the elaboration of a common European legal discourse and the creation of a common legal methodology whereby courts in Europe construct and apply national law, using a comparative European method – considering functionally equivalent decision-making in other jurisdictions that would result in creating a European doctrine of precedents.

Drafting in Canada

Historically, federal legislation in Canada was drafted predominantly on the basis of common law, then translated into French and adapted

to Quebec's civil law. The problems with this process were obvious – the translations were often deemed legally inadequate and the quality of the legal French was poor. Also, outside of Quebec, adaptation to civil law was not considered of importance (cf. Sullivan 2004). Since 1978, the federal Department of Justice initiated the process of co-drafting, whereby all legislation is drafted simultaneously by a team of a Francophone and an Anglophone jurist. The co-drafting practice, however, soon was found to be catering for the needs of the bilingual character of federal legislation, not so much for its bijural basis. It was therefore felt that co-drafting imposed common law conventions on the French language text of federal legislation. More recently, two factors have brought about a fundamental change in the way legislators approach drafting – the first is the efforts of the provincial and federal governments to develop adequate terminology for common law concepts; and the second and more important one is the enactment of the new Civil Code of Quebec in 1994.

We need to examine the relationship between federal and provincial private law. Federal legislation often depends on provincial private law for interpretation. Some federal enactments are fully comprehensive and self-contained while others can only be fully understood and interpreted if reference is made to extrinsic legal sources, most often provincial law. The 1867 Constitution Act provides that provincial legislatures have exclusive jurisdiction over matters of property and civil rights and therefore, the predominant part of Canada's private law is legislated on the provincial level. In cases when federal legislation includes private law terms and concepts such as mortgage, property, trust and leases, without defining these terms and concepts, they take the meaning that applies in the private law of the province in which the provision is being applied. Federal and provincial legislation are thus in a relationship of complementarity, where provincial private law is the suppletive law.

Drafting bilingual and bijural legislation in Canada is oriented towards four different types of audience: anglophone common law lawyers; francophone common law lawyers; anglophone Quebec civil law lawyers; and francophone civil law lawyers.

The initial stages of the process of harmonizing federal legislation with the reformed Civil Code of Quebec, are: verification (ascertaining whether a statutory instrument applies to Quebec); then examining the political and legal contexts of an enactment and the distribution

of powers between the federal and the provincial legislature and determining if there is complementarity or dissociation in respect to provincial law; and then identification of points of contact between federal and provincial private law. But I will try and shed more light on the Canadian model for harmonizing legislation as far as it concerns harmonizing terminology.

Looking at the results from the pilot studies in revising federal statutes in the area of private law and the lack of their conformity with the Civil Code of Quebec, several types of difficulties surface (Morel 1999):

a. insufficient harmonization linked to reform of the civil law;

b. insufficient harmonization linked to language used: use of approximate language; use of equivocal language: words with precise technical meaning in the civil law but in a clearly different sense;

c. insufficient harmonization linked to unijuralism.

Following the guidelines of the 1993 Policy for Applying the Civil Code of Quebec to Federal Government Activities, there are several techniques available for drafting in a bijural context (Wellington 2001):

1. using a common term which is neutral, generic, or general which has no connotation in either of the two legal systems. This means using the same term in civil law and common law, e.g. *lease/bai', loan/prêt*. Another example is the proposition that the terms *immeubles* and *real property* be replaced by neutral terms such as *biens-fonds* and *land* in the *Federal Real Property Act*. The idea is that such an option would render the terms bijural and avoid ascribing artificial meaning to terms that are part of the respective legal language.

2. definition, or giving a specific meaning to a term in both the civil law and the common law. For instance, *abandon* (*release or surrender*) in subsection 248(9) I.T.A.:

| Les définitions qui suivent s'appliquent au paragraphe (8). «abandon». - «abandon» a) Abandon, au sens de release ou surrender **en vertu du droit des autres provinces que le Qu**é**bec**, qui n'indique aucunement qui est en droit d'en profiter; | In subsection (8), «release or surrender» means (a) a release or surrender made **under the laws of a province (other than the Province of Quebec)** that does not direct in any manner who is entitled to benefit therefrom, or |

b) donation entre vifs d'un droit sur la succession ou d'un bien de celle-ci, **faite en vertu du droit de la province de Québec** a la personne ou aux personnes qui auraient profité de la renonciation si le donateur avait renoncé a la succession sans le faire au profit de quelqu'un; l'abandon doit être fait dans un délai se terminant 36 mois après le décès du contribuable ou, si le représentant légal de celui-ci en fait la demande écrite au ministre dans ce délai, dans un délai plus long que le ministre considère raisonnable dans les circonstances.	(b) a gift inter vivos made **under the laws of the Province of Quebec** of an interest in, or right to property of, a succession that is made to the person or persons who would have benefited if the donor had made a renunciation of the succession that was not made in favour of any person, and that is made within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances.

Also, a generic definition, which is characterized by a high degree of abstraction – can be extremely useful for the purposes of covering a concept or an institution in each of the provinces. As an example, the definition of *secured creditor* in the Bankruptcy and Insolvency Act, section 2, is an enumerative and concrete definition which does not fulfil the purposes of the ongoing legislative reforms in Canada. Following the new Civil Code of Québec it has been proposed that the concept is defined as a 'person holding a security', and security defined by its essential components, with no specific reference to any express type of security.

3. the third option is using a double – a technique that expresses the legal rule applicable to each legal system, in different terms. It involves the use of common law and civil law terms in drafting a provision applicable in each or both major legal systems. The technique is especially useful when it is necessary to clearly delineate the application of the rule of law in Quebec and the rest of Canada, e.g.:

real property or immovables/immeubles ou biens réels;

personal property or movables/meubles ou biens personnels;

tangible personal or corporeal movable property/meubles corporels ou biens personnels corporels.

Another example might be *fee simple or ownership/fief simple ou propriété.*

The double can be simple or paragraphed. A simple double presents the terms specific to each legal system consecutively, as in the following example:

The title to the real property or immovable intended to be granted . . .

Le titre sur l'immeuble ou le bien réel est dévolu ...

and a paragraphed double is a technique whereby the concepts specific to each legal system are given in separate paragraphs:

"liability" means

(a) in the Province of Quebec extracontractual civil liability, and

(b) in any other province, liability in tort;

« responsabilité »

a) dans la province de Québec, la responsabilité civile extracontractuelle;

b) dans les autres provinces, la responsabilité délictuelle.

It has to be noted that resort to the above technique may sometimes hinder the comprehension of a provision, especially when the statutory provision lists a number of legal concepts, which would under this principle be doubled. In such cases the provision might result in clumsiness and obscurity.

Types of problems encountered in the process of harmonization in Canada:

1. Unijuralism – when a provision is based on a concept, specific to only one legal tradition in both language versions.

Unijuralism is found in the terms *special damages/dommages-intérêts spéciaux*, in subsection 31(3) of the Crown Liability and Proceedings Act. *Special damages* and its French translation *dommages-intérêts spéciaux* refer to the common law. The accurate civil law counterparts are *pre-trial pecuniary loss* and *pertes pécuniaires antérieures au procès*. In such cases, the technique of the double is suitable to define the application of the legal rule in the two legal orders, as in:

When an order referred to in subsection (2) includes an amount for, <u>in the Province of Quebec, pre-trial pecuniary loss or, in any other province</u>, special damages . . .	Si l'ordonnance de paiement accorde <u>une somme, dans la province de Québec, à titre de perte pécuniaire antérieure au procès ou, dans les autres provinces, à titre de</u> dommages-intérêts spéciaux …

See Bill S-4, clause 51(2).

Other examples would be the translation of common law terms such as *leasehold interest*, *licence* or *beneficial ownership* respectively by *tenure a bail*,

permis and *propriété effective*, which are clearly do not belong to Quebec civil law.

2. Semi-bijuralism – when a legislative provision is based on concepts specific to the common law in the English version and concepts, specific to the civil law in the French version. An example is the case with *real property/ immeuble*, in section 20 of the Federal Real Property Act, where the English version uses a common law term and the French version a civil law term. In order for this provision to become truly bijural and to conform on the one hand to common law terminology in French, the term *biens réels* is appended to the French version, and in order to reflect the civil law terminology in English, on the other, the term *immovable* is added to the English version. These changes would result in a double, e.g.:

A Crown grant that is issued to or in the name of a person who is deceased is not for that reason null or void, but the title to the real property or immovable intended to be granted...	La concession de l'État octroyée à une personne décédée ou à son nom n'est pas nulle de ce fait; toutefois, le titre sur l'immeuble ou le bien réel est dévolu …

The semi-bijural drafting approach, however, is considered no longer appropriate to address the four legal audiences (common law and civil law in each official language).

3. The third type of problem encountered in Canadian harmonization is apparent bijuralism – when a legislative provision contains civil law terms that are inappropriate in the context because of obsolete terminology, inadequate terminology, or incompatibility with a new civil law principle. An example of obsolete terminology can be found in the terms *délit civil, délit*, and *quasi-délit*, in section 2 of the Crown Liability and Proceedings Act. The concepts these terms denote remain unchanged in the new Civil Code of Quebec, but are now expressed by the term *responsabilité civile extracontractuelle*. By combining the techniques of definition, the neutral terms *liability/responsabilité*, and the paragraphed double, the problem of obsolete terminology can be solved as in the previous example (with a paragraphed double).

A case of inadequate terminology is when a federal act provision makes use of civil law terms but gives them, in context, an inadequate meaning, e.g.:

Catégorie 8 Annexe II R.I.R.	Class 8 schedule II I.T.R
c) un **immeuble** qui est un four, un réservoir ou une cuve, acquis aux fins de fabrication ou de transformation; d) un **bâtiment** ou une autre structure, acquis après le 19 février 1973, qui est conçu pour préserver le fourrage ensilé dans une ferme	(c) a **building** that is a kiln, tank or vat, acquired for the purpose of manufacturing or processing; (d) a **building** or other structure, acquired after February 19, 1973, that is designed for the purpose of preserving ensilage on a farm;

In some provisions *immeuble* is used as the equivalent of *building*. In civil law, *immeuble* comprises the land and buildings on the land, while *bâtiment* refers to a specific building erected on a piece of land. Consequently, the use of the civil law term *immeuble* is a case of inadequate terminology.

Another example of inadequate terminology is *surrender/rétrocession*, in paragraph 16(1)(d) of the *Federal Real Property Act*. The term *rétrocession* exists in civil law, but in this context it creates a disparity of content: the accurate civil law concept in this case is *résiliation*, and the accurate French common law term is *résignation*. One way to solve this disparity is by using a double:

d) authorize, on behalf of Her Majesty, a surrender <u>or resiliation</u> of any lease ...

d*)* autoriser, au nom de Sa Majesté, soit la <u>résiliation ou la résignation</u> d'un bail …

See Bill-4, clause 18(1).

An instance of incompatibility with a new civil law principle is the term *privilège* (*Defence Production Act,* section 20). In the new *Civil Code of Quebec*, the concept of *privilège* has been disposed of and replaced in part by *priorités et hypothèques* – 'prior claims and hypothecs'. The French term *privilège* has been kept for the French common law audience, but *priorités et hypothèques* must be given for Quebec civil law audience.

Once again, the double technique has made this provision compatible with the new rule in the *Civil Code of Quebec:*

> ... clear of all claims, liens, <u>prior claims or rights of retention within the meaning of the</u> *Civil Code of Quebec* <u>or any other statute of the Province of Quebec</u>, charges...

> … libre <u>de toute priorité ou droit de rétention selon le</u> *Code civil du Québec* <u>ou les autres lois de la province de Québec</u>, ainsi que de tout privilège ou de toute réclamation, charge …

In order for the new techniques of bijural legislation to be communicated to the legal community and to the population in general, the Canadian Department of Justice has compiled bijural terminology records[2] of civil law and common law terminology in English and French. They are intended for the use of the previously mentioned four types of audience. This presents a clear attempt to go beyond linguistic correspondence and into the realm of conceptual equivalence.

Harmonization cannot be reduced to a mere question of vocabulary. Civil law and common law traditions have a discrete way of conceiving and expressing legal ratiocination. Or, in the words of Macdonald, "Any attempt to achieve a bilingual statute-book through the translation of legislation initially drafted in one language cannot fully succeed. The inevitable limits of discursivity are such that translators will be compelled to sacrifice meaning for textual exactitude, and this sometimes even at the expense of clarity... Distinct originals are, in other words, the precondition for legal bilingualism. Bilingual statutes will then be the result of integrating two separate texts initially crafted in a manner sensitive to the contexts and subtleties particular to each language" (Macdonald 1997: 159).

Implications for the EU

Several conclusions stem from the examination of the Canadian bilingual and bijural context and practices that can prove suitable within the European context.

It is important to investigate the terminological changes brought about by the transposition of Directives into the domestic law of member states by replacing notions of national legislation that are no longer part of the technical vocabulary of the new supranational law.

Also, it is essential to analyze the consequences of the use in domestic law of terms that remain unchanged but whose conceptual content has been altered or legal regime transformed.

Except where Parliament has chosen to use neutral terms, expressions with no precise meaning - such as particular, private person, etc. - or which are ambiguous in meaning - such as *dommages* (which can refer to harm as well as damages) - should be replaced by the appropriate technical terms.

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[2]   http://www.justice.gc.ca/eng/pi/bj/harm/index.html

We should refrain from using homographs belonging to both the French civil law vocabulary and the English common law vocabulary, with different meanings in each tradition, such as *détention/detention* or *charge/charge*. Different considerations apply, of course, when Parliament chooses to accommodate the potential difference in meaning of the words in each of the two legal systems. Such may be the case, for example, with the *contrat/contract* couplet, where the meaning is analogous but not identical.

Whenever there is a way to express the concept unequivocally, we should refrain from using, in a different sense, a word that has some technical meaning in the civil law. Examples that come to mind are the use of the word *représentants* to refer to persons responsible for the administration of an estate or succession or the word *dévolution* to render "vesting order".

We should, as far as possible, refrain from artificially giving special meaning to a word with a precise technical meaning. For example, the use of the expression *right of use/droit d'usage* to refer to a right 'other than an interest in land', or giving the word *tort* the meaning of *délit* (delict) or *quasi-délit* (quasi-delict) in the old civil code, can be avoided.

Rules drafted exclusively in a national vocabulary should be reformulated within EU legislation, since they are universally applicable. Examples are the references to a *simple contract*, or to *special damages*.

The English versions of statutes formulated in semi-bijural language should also be rewritten, since they are drafted using only the common law vocabulary. This reformulation is necessary notwithstanding the fact that the transposition into civil law language of the vocabulary that is used may be done by way of statutory interpretation.

Conclusions

By way of a conclusion, I would like to point out that in multilingual and plurilegal contexts one of the greatest pitfalls are cases when the denotation of a certain legal institution might be the same across languages, but the connotation different and thus misleading. A case in point is the pair *mortgage/hypotheque* – where it was shown that although the two terms can be said to be linguistic equivalents and would be found in bilingual dictionaries to be such, they differ in the legal content they express and in the legal consequences they entail. Apart from knowing the linguistic terms, what

is needed is comprehensive knowledge about the legal institutions and the concepts used within a legal framework in order to arrive at appropriate translation choices.

In achieving felicitous rendition of legal concepts across different languages and different legal cultures what is essential is sound knowledge of the linguistic possibilities for representing them in another language and in a different legal culture. There is a need for a systematic inquiry into the conceptual system of legal institutions, their terms and referents especially in the EU, where judicial decisions, directives and regulations come into force and are transposed in all 27 Member States. It is of utmost importance to come up with terminology that is relevant, appropriate and recognizable within all those legal contexts. At the same time, the legal framework of the European Community calls for the creation of so far unfamiliar to national jurisdictions legal institutions and the languages to express them, striving to prevent reference to the diverse legal systems of national jurisdictions and thus lead to supranational misunderstanding.

A balance has to be found between using terms that are reminiscent of national law, of coining neologisms, of using archaisms, and introducing specialized terms.

The methodology and drafting techniques used in harmonizing Canadian federal legislation with Quebec civil law are pioneering, unparalleled, innovative and unique worldwide. They also continue to evolve.

Canada is the only country in the world where the common law and civil law systems co-exist as the two fully-fledged legal systems of a sizeable population. Internationally, Canada is already a leader in the well-balanced co-drafting of bilingual legislation and a source of inspiration for countries such as Switzerland, Belgium and Hong Kong. Adding bijuralism to bilingualism only creates increased interest within the European community, where the common law English-speaking countries, Great Britain and Ireland, are co-members with civil law countries.

The scope of the Canadian Harmonization Program has no precedent; in this era of globalization of national economies and markets, the mastery of the two legal systems that are the most widespread throughout the world is a major asset, especially in the area of international trade.

 What is more, as the harmonization process makes more headway and gains greater impetus, the Department of Justice has undertaken to share the results of applying legislation in several ways: by continuing to expand

the bijural terminology records, by elaborating a harmonization guide, by publishing the research carried out by academics, experts in the field. Canada's efforts are laudable – it is not often in the social sciences that we see a synergy between academics and practitioners, of combining theory with practice: the academic expertise will prove invaluable to legal drafters, engaged in the harmonization process, and in turn, legal drafters will share their own experience as legal harmonizers.

Unfortunately, so far there has been little interaction, either practical or academic, between EU law makers and Canadian legislators in highlighting and solving common conceptual and terminological problems that arise in the attempt to find expression of diverse legal systems in different languages. In Fernbach's words more than twenty years ago: "It is to be hoped that the effects of the development of Canadian jurilinguism will be felt in Europe and will result in productive exchanges, given that the European Economic Community's legal translators are also looking for language solutions to the problems of the co-existence of French, the language of the civil law, and English, the language of the common law" (Fernbach 1984). Canada's best practices in the sphere of harmonizing legislation should be made more visible in Europe and their enormous efforts and achievements could serve as an example and assist in the process of EU legal integration.

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