Volume 5/2011

Comparative Legilinguistics

International Journal for Legal Communication

Institute of Linguistics
Faculty of Modern Languages and Literature
Adam Mickiewicz University
Poznań, Poland

INSTITUTE OF LINGUISTICS
LABORATORY OF LEGILINGUISTICS
www.lingualegis.amu.edu.pl lingua.legis@gmail.com

Adres Redakcji/Editorial Office
Instytut Językoznawstwa
Pracownia Legilingwistyki
Al. Niepodległości 4, pok. 218B
61-874 Poznań, Poland
lingua.legis@gmail.com

Wydanie publikacji dofinansował Instytut Językoznawstwa
The issue has been published with financial grant from the Institute of Linguistics, Poland.

ISSN 2080-5926

Nakład 100 egz.
Redakcja i skład: Pracownia Legilingwistyki
Druk: Zakład Graficzny Uniwersytetu im. A. Mickiewicza

Table of Contents

ARTICLES

Spis treści

ARTYKUŁY

Preface

This volume of *Comparative Legilinguistics* contains nine articles. Three of them deal with various aspects of legal translation training.

Fernando PRIETO RAMOS (*Developing Legal Translation Competence: an Integrative Process-Oriented Approach*) from Switzerland presents a legal translation competence model. The author claims that an integrative approach proposed by him is process-oriented. The key elements of the approach include the legal translation-specific know-how within the key methodological or strategic subcompetence controlling all other subcompetences. The research carried out by the author has proved the model effective for the systematization of translation problem identification and categorization. Moreover, the model also helps in training legal translators.

Ewa KOŚCIAŁKOWSKA-OKOŃSKA from Poland (*The Concept of Norm in Professional (Legal) Translation and Interpreting: the Trainee (User) View*) focuses on the concept of translation norms in legal translation. The author considers whether norms hinder or facilitate the process of translation. The conclusions drawn are based on the survey conducted among translation and interpreting trainees.

Hammouda SALHI (Tunisia), (*Translator Training in Tunisia Today: Market Challenges and Available Opportunities*) touches upon the development of translation industry in Tunisia. The aim of the paper is to give hints how to face the challenges of the translation services market by professionally-oriented translation training.

One paper is devoted to forensic linguistics. Roger T. BELL (UK/Malaysia), in his paper *The Turney Letters: Linguistic Evidence of Fraudulent Authorship* touches upon the authenticity of authorship. The paper is a case study of letters allegedly written by Faye Turney in 2007. The analysis revealed that the letters were corrupt, with a non-native, covert author who almost certainly was a Farsi speaker.

Four papers touch upon legal terminology and legal language issues.

Emilia BOLESZCZUK (Poland), (*Plain Language Solutions to the Problems of Legalese — A Case Study of Wills*) focuses on the Plain English Campaign and its impact on the language of last wills and testaments. The author points out that the lack of consistent rules slows down the language reforms and some genres of legal texts such as last wills and testaments are especially resistant to it, despite the fact that plain language wills are much more readable and comprehensible. The author opts for the popularization of plain English in legal texts.

Filip RADONIEWICZ from Poland concentrates on the existence of languages for special purposes in statutory instruments. In his article titled *Information Technology Terminology in Chapter XXXIII of the Polish Penal Code of 1997* he discusses the problems connected with the usage of the language of IT in statutory instruments and the lack of definitions of some key terms such as information and data in them. The absence of definitions leads to the language ambiguity and interpretation problems.

Terezie SMEJKALOVÁ from Czech Republic (*Story-Telling in Judicial Discourse*) devoted her paper to the judicial discourse and the style of written judicial decisions. The paper focuses on the narrative analysis of one judgement of a Czech court. Moreover, the author discusses the following issues: (i) narrative differentiation, (ii)

narrative structure and (iii) narrative coherence in relation to judicial decision-making. Finally, the importance of story-telling in judgments is stressed.

Rafał SZUBERT from Poland (*Sprachnorm Und Sprachvarietäten Als Messkriterien Der Präsentationsfunktion Der Äusserung Im Fachtext*) tackles with the problem of variants in language usage. The author is especially interested in the presentative function and the forms it adopts in communication process. The theoretical background is supported with the results of an experiment carried out among the students of German studies in the Institute of German Studies at the University of Wrocław in Poland.

The last text is listed under the legal drafting section. The author, Marzena MYŚLIŃSKA (from Poland, article titled *The Principle of Determinacy of Legal Rules as an Element of the Principle of Competent Legislation*) focuses on the principle of competent legislation and the principle of determinacy of legal rules typical of a democratic legal state. It is pointed out that this principle aims at giving citizens confidence in the state and the law established by it. The author stresses that those principles have been introduced to provide citizens with correct, precise and clear legal rules. However, the legislator violates the principles and on numerous occasions produces legal acts which are not understandable. The study is illustrated with some examples of such violations of the principle of determinacy of legal rules.

DEVELOPING LEGAL TRANSLATION COMPETENCE: AN INTEGRATIVE PROCESS-ORIENTED APPROACH

Fernando PRIETO RAMOS
Translation Professor, University of Geneva
ETI, Uni Mail, Bd du Pont-d'Arve 40
CH-1204 Geneva, Switzerland
Fernando.Prieto@unige.ch

Abstract: Building on previous holistic multicomponent paradigms of translation macrocompetence, a legal translation competence model is presented which avoids certain conceptual duplications in the light of professional practice, and incorporates distinctive legal thematic elements. Beyond component description, it is argued that the integral development of legal translation competence requires specific interdisciplinary methodologies for practical problem solving. The integrative approach proposed in this paper is process-oriented, and focuses on the legal translation-specific know-how within the key methodological or strategic subcompetence controlling all other subcompetences. Translation and legal knowledge are inextricably linked throughout the translation process, from the initial *skopos* analysis and legal macro-contextualization until the final revision stage. This approach, intended as a meta-reflection continuum between competence acquisition and reinforcement, and between formal training and professional practice, has proved effective for the systematization of problem-identification, problem-categorization and problem-solving patterns. Finally, some implications for legal translation training are outlined by way of conclusion.

Keywords: legal translation, competence development, translation process, translation problem solving, translator training

EL DESARROLLO DE LA COMPETENCIA EN TRADUCCIÓN JURÍDICA: UN ENFOQUE INTEGRADOR ORIENTADO AL PROCESO

Resumen: Partiendo de anteriores paradigmas multicomponenciales holísticos de macro-competencia traductora, se presenta un modelo de competencia en traducción jurídica que evita ciertas duplicaciones conceptuales en vista de la práctica profesional, e incorpora elementos de temática jurídica distintivos. Más allá de la descripción de componentes, se argumenta que el desarrollo integral de la competencia en traducción jurídica exige metodologías interdisciplinares específicas para la resolución de problemas prácticos. El enfoque integrador que se propone en el presente artículo está orientado al proceso y hace hincapié en los conocimientos especializados propios de la traducción jurídica incluidos en la subcompetencia metodológica o estratégica, subcompetencia clave que controla las demás. Los conocimientos traductológicos y jurídicos se entrelazan inextricablemente a lo largo del proceso traductor, desde el análisis del *skopos* y la macrocontextualización jurídica iniciales hasta la fase final de revisión. Este enfoque, concebido como un continuo metarreflexivo entre la adquisición y el fortalecimiento de competencias y entre

la capacitación formal y la práctica profesional, ha resultado eficaz para sistematizar pautas de detección, categorización y resolución de problemas. Por último, a modo de conclusión, se esbozan algunas consideraciones sobre la formación en traducción jurídica.

Palabras clave: traducción jurídica, desarrollo de competencias, proceso traductor, resolución de problemas de traducción, formación de traductores

1. Competence-based approaches to translation

Since the 1990s, the study of translation competence has been stimulated by the proliferation of university programmes and research in translation. It has gained momentum within the framework of the Bologna reform in Europe in recent years, as reflected in the competence-based approach of the European Master's in Translation (EMT).

In spite of the different perspectives, consensus has grown in the past two decades around some elements of the so-called "competence-based training" (see e.g. Hurtado Albir 2007). Firstly, the need to orientate translator training programmes to the development of professional skills (see e.g. Hurtado Albir 1999 or Schäffner 2000). Secondly, the perception of translation competence as a complex "macrocompetence" (e.g. Kelly 2002, 14) or "supercompetence" (e.g. Wilss 1976, 120) comprising several competences, subcompetences or skills.[1] Thirdly, studies on translation competence have progressively expanded the list of core components of translation macrocompetence. During the 1990s, authors like Nord (1991), Delisle (1992), Gile (1995), Kiraly (1995) and Neubert (2000), albeit using different labels and divisions, identified similar key competences. These can be summarized as follows by combining Nord's (1991, 235) account of "essential competences required of a translator" and Neubert's (2000, 6) taxonomy of "parameters of translational competence": (1) language competence; (2) textual competence (text reception and analysis, production and quality assessment); (3) subject or thematic competence; (4) cultural competence; (5) research competence; (6) transfer competence.

Since the late 1990s, the PACTE Group, led by Amparo Hurtado Albir, has been conducting research on translation competence components with a view to applying their model to the empirical-experimental study of competence acquisition (PACTE 2000, 2003, 2005). Drawing on cognitive approaches, they identify new components. In the improved version of their model, translation competence is described as "the underlying knowledge system needed to translate" (PACTE 2005, 610), and is made up of five interrelated subcompetences and psycho-physiological components:

> The *bilingual sub-competence* is made up of pragmatic, socio-linguistic, textual and lexical-grammatical knowledge in each language. The *extra-linguistic sub-competence* is made up of encyclopaedic, thematic and bicultural knowledge. The *translation knowledge sub-competence* is knowledge of the principles that guide

[1] For ease of reading, "competence" is used in this paper interchangeably with "macrocompetence" or "subcompetence" depending on the context.

translation (processes, methods and procedures, etc.) and the profession (types of translation briefs, users, etc.). The *instrumental sub-competence* is made up of knowledge related to the use of documentation sources and information technologies applied to translation. The *strategic sub-competence* is the most important, as it is responsible for solving problems and the efficiency of the process. It intervenes by planning the process in relation to the translation project, evaluating the process and partial results obtained, activating the different sub-competencies and compensating for deficiencies, identifying translation problems and applying procedures to solve them. The *psycho-physiological components* are cognitive and behavioural (memory, attention span, perseverance, critical mind, etc.) and psychomotor mechanisms (PACTE 2005, 610; emphasis added).

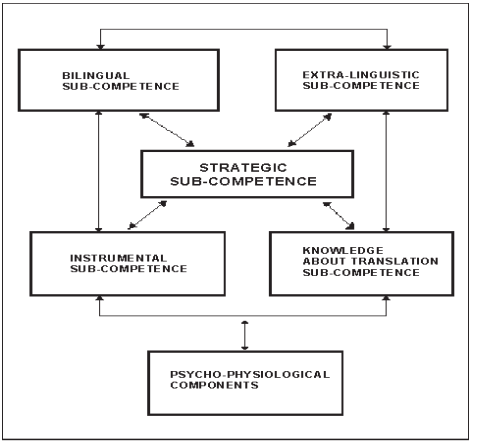

Figure 1. PACTE Group translation competence model (*ibid*., 610)

Other than the new information technology and psycho-physiological components, and the distinction between the translation knowledge competence and the strategic competence, the main contribution of the PACTE model lies in highlighting the relevance of the latter as procedural knowledge needed to activate the other competences for problem solving, beyond more limited paradigms of transfer competence. This central role was first underlined by Neubert, for whom "transfer competence is the distinguishing domain of a translator"; it "dominates over all the other competences" (2000, 6). However, the PACTE Group also considers other competences as translation-specific: "Given that any bilingual has knowledge of two languages and may have extra-linguistic knowledge, we consider that the sub-competencies specific to TC [translation competence] are the strategic, the instrumental and knowledge about translation" (PACTE 2005, 611). The inclusion of instrumental competence in the list is clearly the result of new technological developments in the field, while the distinction between the strategic and the translation knowledge competences seems more arbitrary, as we will argue below.

Largely inspired by the PACTE Group, Kelly (2002) agrees on the prominent procedural role of strategic subcompetence, which she places at the top of her pyramidal model. She distinguishes between thematic and cultural subcompetences (grouped under "extra-linguistic competence" in the PACTE model), rather than between strategic and translation knowledge subcompetences, and she adds the interpersonal subcompetence necessary for professional practice (ability to interact with other translators, professionals, clients, etc.).

In spite of some criticisms of the complexity and academicism of multi-component competence models,[2] most authors now agree on the advantages of these paradigms for the systematic description of the activities carried out and analyzed in our field, particularly for curriculum-design purposes (e.g. Kelly 2002, 16). For Hurtado Albir (2007, 166), competence-based training offers "greater transparency of professional profile in study programmes, greater emphasis on the outcome of learning, more flexibility and a greater integration of all aspects of a curriculum". It is in fact this approach that has been enshrined by the EMT reference framework in an attempt to put forward "a minimum quality profile", fearing that some of the recently-launched translation programmes[3] "may exist in name only, owing to a lack of analysis of requirements, a lack of understanding of the demands of the profession, and a lack of qualified teachers" (EMT Expert Group 2009, 1).

Within that framework, "competence" is defined as "the combination of aptitudes, knowledge, behaviour and know-how necessary to carry out a given task under given conditions". Six interdependent competences are identified:

- Translation service provision competence (interpersonal and production dimensions)
- Language competence
- Intercultural competence (sociolinguistic and textual dimensions)
- Information mining competence
- Thematic competence
- Technological competence

[2] For instance, Pym (2003, 487) notes that this kind of model "is obviously a response to interdisciplinarity and the break with linguistics; but institutionally it operates as a political defence of a certain model of translator training. And that model is not the only one, nor necessarily the best".

[3] They argue that "following the Bologna Declaration, with particular reference to employability, a number of universities launched a translation programme, often with the aim of recycling or of renewing their language teaching" (*ibid*., 1).

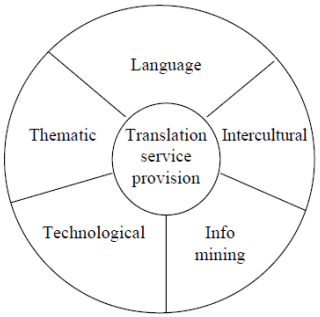

Figure 2. EMT Expert Group translation competence model (*ibid*., 4)

If we look into the components of the production dimension of the translation service provision competence, we find that this competence equates to the strategic competence in other models:

- Knowing how to create and offer a translation appropriate to the client's request, i.e. to the aim/*skopos* and to the translation situation
- Knowing how to define stages and strategies for the translation of a document
- Knowing how to define and evaluate translation problems and find appropriate solutions
- Knowing how to justify one's translation choices and decisions
- Mastering the appropriate metalanguage (to talk about one's work, strategies and decisions)
- Knowing how to proofread and revise a translation (mastering techniques and strategies for proofreading and revision)
- Knowing how to establish and monitor quality standards (*ibid*., 5).

In fact, the translation service provision competence features at the centre of the EMT model. For example, "the aptitude for taking reasoned decisions is horizontal; it applies equally to the provision of a translation service and to documentary research" (*ibid*., 3). It is also made clear that the six competences identified "comprise the minimum requirement to which other specific competences may be added (for example in localisation, audiovisual translation or research)" (*ibid*., 3). This brings us to the question of which specific components characterize legal translation competence.

2. Towards a legal translation competence model

The models presented above are useful in outlining the core skills that must be applied in any specialized translation, including legal translation. Nonetheless, in order for them to work efficiently, they must be enriched with the specific interdisciplinary elements of each branch of translation (in the case of legal translation, with particular attention to legal thematic competence), and they must be integrated into adequate methodological

models for professional practice and competence development (in our case, through a solid legal translation-oriented methodological competence).

Anchored on the assumption of usefulness of multicomponent competence descriptions, our holistic model is informed by professional practice and previous paradigms, notably those of the PACTE Group, Kelly and the EMT Expert Group. It avoids certain unnecessary duplications, and rather aims at simplifying reference to professional skills. Cultural and thematic competences are grouped together (as in PACTE's "extra-linguistic subcompetence"), as are strategic and translation knowledge competences, while psycho-physiological components are integrated into a wider interpersonal and professional management competence.[4] All five competences are oriented to legal translation under the coordination of the key strategic or methodological competence:

- *Strategic or methodological competence*, which controls the application of the other skills and comprises: analysis of translation briefs, macro-contextualization and general work planning, identification of problems and implementation of transfer strategies (translation procedures), decision-making argumentation, self-assessment and quality control (for more details, see section 3 below).

- *Communicative and textual competence*: linguistic, sociolinguistic and pragmatic knowledge, including knowledge of linguistic variants, registers, specialized legal linguistic uses and legal genre conventions.

- *Thematic and cultural competence*: knowledge of legal systems, hierarchy of legal sources, branches of law and main legal concepts; awareness of asymetry between legal notions and structures in different legal traditions.

- *Instrumental competence* (documentation and technology): knowledge of specialized sources, information and terminology management, use of parallel documents, application of computer tools to translation.

- *Interpersonal and professional management competence*: teamwork, interaction with clients and other professionals, knowledge of legal framework for professional practice and fiscal obligations, deontological aspects.

The five competences comprise declarative and operative knowledge to a greater or a lesser extent. Given its central role in putting different skills at the service of concrete translation tasks, methodological competence is the most procedural in

[4] On initiatives illustrating the interplay between these components within interpersonal competence (group perceptions, self-confidence, interaction between translators and legal experts), see Rayer 1991 and Way 2002.

nature, but it also draws on its own specific declarative knowledge of the translation process and problem-solving procedures (what the PACTE Group isolates as "translation knowledge competence").

The above breakdown reflects the interdisciplinarity of translation macrocompetence components in general, and the interplay between law and translation in the case of legal translation. In that context, as in any specialization, thematic competence constitutes a distinctive feature of legal translation competence. The core of that subcompetence would be very close to the practical principles of comparative law (contrastive analysis of concepts in different legal systems). However, other elements of legal science and legal linguistic knowledge impregnate legal translation competence:

- Scope of specialization: classification of legal genres (textual competence);
- Comparative legal linguistics: features of legal discourse in the source and the target languages and jurisdictions (communicative and textual competence);
- Documentation: specialized legal sources (instrumental competence);
- Professional practice: market conditions, associations and deontology issues in legal translation (interpersonal and professional management competence).

Even if legal translators do not need to be equipped with a jurist's level of legal expertise, it is essential that they acquire sufficient legal knowledge in order to situate the documents in their legal and procedural context, as well as to grasp the legal effects of original and target texts. In fact, legal translation between national systems normally entails an exercise of comparative law before any translation procedure can be applied to culturally-marked segments on reasoned grounds. The legal translator must try to understand and produce legal texts with "lawyer-linguist" eyes (if we adopt the term employed for legal translators at the Court of Justice of the European Union), i.e. s/he must be familiar with rules of interpretation, legal reasoning, legal structures and procedures, common legal phraseology, and legal sources used by jurists. For instance, in the case of international and supranational legal systems, their renderings will often become binding law, and their role as legal drafters forces them to address textual ambiguities according to international rules of legal interpretation.

Through specialization in specific areas of legal practice, the legal translator can actually get to develop some subcompetences (knowledge and skills mentioned above) also present in the legal professional working in the area in question, even if at different levels and for different purposes. The deeper the knowledge of legal subjects, the more confident the translator can feel when dealing with legal content issues during analysis and transfer stages of translation; and, as the argument reasonably goes, those trained in both translation and law potentially make the best legal translators. Nonetheless, most legal translation experts also agree that it is more realistic to aim at interdisciplinary legal translation training programmes integrating law courses for the development of thematic competence (see e.g. Šarčević 1997, 113-115). This

precondition is a crucial step in the right direction, but not enough to ensure sound decision-making in legal translation. It is in legal translation courses that translation and law, and all competences reinforced in other courses, must be integrated and put into practice through legal translation-specific methodologies. The proposal outlined below explores avenues in that direction.

3. Methodology for competence development in legal translation

No matter how well one defines skill components, success in building legal translation competence is far from assured without the methodological know-how necessary to activate and coordinate all relevant components in problem solving. Not always sufficiently valued in Translation Studies,[5] methodological competence is the engine that makes the whole translation machinery work; it lies at the very heart of the specificity of professional translation practice and training. As specified above, it entails the mastery of all stages of the translation process from the analysis of the translation brief to quality control, i.e. essentially a process of problem identification and solving, as Kaiser-Cooke (1994, 137) well expressed it: "From the perspective of an expert activity, translation is primarily a problem-solving activity, which involves problem recognition as well as decision-making, since recognition of the problem necessarily precedes decisions as to the various strategies which can be taken to solve it".

Our integrative methodology for legal translation practice is nourished by the experience of both professional legal translation in different contexts and teaching at university level, particularly in legal translation courses of the Master's degree in Translation at the University of Geneva. The model is accordingly oriented to both competence acquisition and competence reinforcement. As verified in our experience, the same systematization of methods and problem-solving strategies analyzed in training stages of practice can later prove essential for coherent decision-making in professional practice, and it is in professional scenarios (whether real or simulated) that our methodology has been tested with very positive results. Rather than presenting all stages of the translation process in much detail, we will offer an overview, emphasizing the legal translation-specific features with a view to identifying the most distinctive elements that could be incorporated into other paradigms.

a) Analysis of *skopos* and macro-contextualization

[5] "Dealing with this practical methodology of translation, which has always played a major role in the classroom, has often been discarded by translation theorists as too practicist and even trivial" (Neubert 1994, 416).

This comprises the analysis of the translation brief, including the type of translation, and the communicative situation and purpose of both source and target texts, as well as their contextualization according to three parameters, from more general to more specific (see Prieto Ramos 2009):

- *legal system* (i.e. linguistic and geographical coordinates of jurisdictions): this will allow us to determine whether we are mediating in an international legal framework, within a multilingual system or between national systems with different linguistic variants and divergent legal concepts; for instance, the translation of a divorce judgment by a Californian court for Mexico will be different from an Irish divorce judgment whose translation is needed in Venezuela;

- *branch of law* (i.e. thematic and statutory coordinates): this will activate knowledge of applicable legal sources and main legal concepts relevant to the translation; in the previous example of the divorce judgment, we will immediately refer to the main sources in family law within the legal systems identified;

- *legal text typology* according to the discursive situation (legislative, judicial, administrative, etc.), and more specifically, the *legal genre*[6] (as textual realization of a specific legal function following established conventions in a particular socio-cultural context); this parameter will help identify the procedural *raison d'être*, legal effects and formal discursive conventions of particular genres, before identifying conventions in parallel texts fulfilling the same functions.

This first contextualization will provide an adequate framework for overall strategy design at macrotextual level, and for detecting, categorizing and solving translation problems at microtextual level. Furthermore, it already activates thematic, textual and instrumental competence relevant to the specific translation job.

b) Source text analysis

Apart from verifying the key features of the source text in terms of coherence, cohesion and style (*legal linguistic elements*), the translator must perfectly understand the legal function of the text, and identify any *comprehension problems*. In order to grasp legal meaning as intended by specialized authors, s/he must primarily rely on legal sources (and legal experts or authors if necessary and/or possible), rather than dictionaries or secondary sources, and s/he should ideally be familiar with *legal reasoning* (or legal argumentation; see e.g. Hage 1997) and principles of *legal hermeneutics* (e.g. applicable rules of interpretation in the case of international treaties; see Prieto Ramos 2011). Such

[6] Genre classification requires a great deal of flexibility, since the same genre can refer to different legal branches, paralegal genres can also deal with legal concepts (for example, an opinion article on trade dispute settlement), and multiple subclassifications of particular genres are possible.

skills are paramount in detecting and addressing ambiguity problems, as well as in instrumental *legal information mining* throughout the translation process, beyond the analysis of the source text. Needless to say, given the legal force of many legal texts, the translator must be particularly alert in scrutinizing semantic nuances in order to scrupulously convey them in reformulation.

c) Transfer and target text production

At this stage the translator must typically deal with interrelated terminological, procedural and discursive difficulties in order to produce the target text.

Terminological or conceptual problems are usually posed by the differing levels of equivalence between legal concepts in the source and target legal systems (for example, the organization of judicial institutions in different national jurisdictions). In those instances, the translator must first engage in an exercise of *comparative law*. As pointed out by de Groot (2006, 424), "Translators of legal terminology are obliged to practise comparative law. […] Through comparative law, the translator of legal terminology needs to find an equivalent in the target language legal system for the term of the source language legal system" (for recent examples of comparative legal analysis in translation, see e.g. Bestué Salinas 2008 or Ferran Larraz 2009).

Once the degree of equivalence between legal concepts is established, problems of terminological congruency must be solved through the *application of translation procedures* adequate to the *skopos* (on degrees of equivalence and procedures to compensate for terminological incongruency in legal translation, see e.g. Šarčević 1997, 229-269). The activation of preliminary knowledge of adequacy of source-oriented and/or target-oriented solutions after the initial macro-contextualization will have previously served to prioritize certain procedures in the overall translation strategy. In translation between legal systems, "neutral" renderings, borrowings and solutions combining literal formulations with lexical expansions are commonplace in order to accurately convey the specificity of source system-bound concepts, while allowing for target text comprehension. This encapsulates, for many, the defining challenge of translation between legal systems, in Biel's words (2009, 187), "a hybrid where the source language text is accessed through target language knowledge structures". However, the priorities of documentary translation between legal systems (where we commonly do not pretend to be producing a non-translated document, but may rather be expected to offer a meticulous rendering of a source text for purposes different to those of the original) can differ enormously from instrumental legal translation in an international framework, where conceptual unity, terminological harmonization and formal concordance tend to be prioritized.

Other problems related to stylistic rather than semantic aspects of reformulation usually arise when drafting the target text (e.g. established formulas, syntactic complexities, structural features). In translation between two legal systems,

such problems often demand measuring the level of correspondence between *discursive conventions* of the text type and legal genre in question in both systems through exploration of parallel texts and related sources previously identified. This exercise of applied *comparative legal linguistics* should be based on previously acquired knowledge of key features of legal language and legal genres in the context analyzed (see e.g. comparison of legal German, legal French and legal English in Mattila 2006). Special attention must be paid to microtextual markers of legal enforceability, such as modal verbs in English, whereas decision-making regarding established phraseology and other formal conventions will depend on the relevance of the particular text segment, on the level of interlinguistic idiomatic correspondence, and crucially on target reader expectations.

d) Revision

As in any other branch of translation, in this critical final phase of the translation process,[7] the overall adequacy of the target text to its *skopos* must be carefully verified. *Quality control* in legal translation requires particular emphasis on accuracy and effectiveness of legal communication when assuring the macrotextual coherence of solutions to the semantic, procedural and reformulation problems encountered.

4. Implications for training

From a pedagogical point of view, global simulations of translation jobs with real legal texts in real professional conditions are the best possible exercises for methodology application in legal translation courses at advanced level. Process-oriented approaches constitute the appropriate framework to expose the trainee translator to a variety of legal text types and legal translation argumentation necessary to assimilate background knowledge to be later applied and adapted to new translation scenarios by analogy. It is through practice that cognitive frames are built which allow the translator to situate legal texts, and identify, categorize and solve translation problems more efficiently in those scenarios. In other words, the assimilation and predictability of translation regularities through such frames have a positive impact on proficiency and productivity (on cognitive aspects of "translatorial expertise", see e.g. Kaiser-Cooke 1994[8]).

[7] Perceived here as a circular process along the lines of Nord's (1991) "looping model".

[8] She rightly notes that problem recognition "is a salient feature of expertise; we are all familiar with novices or laypersons who describe texts as 'easy to translate' because they are not aware of the difficulties (i.e. the nature of the problem) involved". She refers to "explicit, face value" perception of problems by novices as opposed to experts, "whose knowledge is organized around inferences about principles and abstractions, categorise problem at a higher, more abstract level" (Kaiser-Cooke 1994, 137).

Systematic reflection on the translation process through practice must be particularly explicit in the case of trainee translators in order to consolidate strategic competence. That reflection will help reinforce procedural skills to overcome deficiencies and improve performance. Subsequent practice and specialization in certain branches and legal genres may lead to expert performance in specific contexts, often including cognitive automation in the application of adequate problem-solving strategies.

5. Conclusions

Far from old misconceptions of translation as a derivate of language competence, converging multicomponent models of translation macrocompetence have shed light on what makes a good translator and what specific skills should be reinforced in specific training programmes. Building on certain shared views from generic models, our analysis of legal translation competence underscores the complexity and high level of interdisciplinarity of this branch of translation. The model not only integrates the characteristic legal thematic elements of the specialization, but is also accompanied by a distinctive process-oriented proposal for application of methodological or strategic competence as central coordinating competence. Without adequate procedural skills to successfully interconnect relevant knowledge (including legal knowledge) in translation problem solving, this knowledge could remain scattered, compartmentalized and/or inoperative.

Beyond the benefits anticipated by Alves (2005) in relation to dynamic models bridging the gap between declarative and procedural knowledge, the integrative process-oriented approach presented here allows for systematization of problem-identification, problem-categorization and problem-solving patterns, in turn channeling a meta-reflection continuum between training and professional stages of practice, and between acquisition and advanced levels of competence. Nonetheless, the implications for formal training are particularly relevant. While non-academic training can certainly be effective, and even necessary, in the adaptation of translation skills to specific translation scenarios, the complexity of legal translation competence and the high variability of those scenarios call for formal interdisciplinary training in order to establish solid methodological pillars for subsequent competence development. Otherwise, the lack of meta-reflection on strategic patterns can lead to erratic or superficial problem-solving. Furthermore, comprehensive interdisciplinary training should contribute significantly to the legal translator's self-confidence and awareness of professional specificity.

Two further implications derive from the above. Firstly, as regards trainers, the pedagogical implementation of truly interdisciplinary methods requires a considerable level of preliminary competence in translation and law. Both practitioners and academics in the field should acknowledge deficiencies owing to the lack of

comprehensive tailor-made training (including of legal translation trainers themselves, as evidenced e.g. by Mayoral Asensio 2005), and take measures in order to overcome such deficiencies in cooperation with jurists. Secondly, as far as trainees are concerned, generalizations according to which law graduates are better candidates for legal translation than translation graduates are rather simplistic. Assuming that legal translation reasonably requires postgraduate specialization, the starting level in each subcompetence to be developed can vary enormously depending on the individual profile. In broad terms, however, those with a (national) legal background can be expected to have a very strong thematic competence (even if often lacking essential comparative legal components), but also important deficiencies in key linguistic, textual and strategic competences; whereas the reverse might be the case for translation graduates. In any event, the ultimate challenge within the interdiscipline would be to produce highly competent legal translators through comprehensive legal translation training rather than presuming expert performance only from a double parallel qualification in translation and law.

Bibliography

Alves, Fabio. 2005. Bridging the Gap Between Declarative and Procedural Knowledge in the Training of Translators: Meta-Reflection Under Scrutiny. *Meta* 50(4) [article only available in electronic form]. http://www.erudit.org/revue/meta/2005/v50/n4/019861ar.pdf.

Bestué Salinas, Carmen. 2008. El método comparativo en la traducción de textos jurídicos. Úsese con precaución. *Sendebar* 19: 199-212.

Biel, Łucja. 2009. Organisation of background knowledge structures in legal language and related translation problems. *Comparative Legilinguistics* 1: 176-189.

De Groot, Gérard-René. 2006. Legal Translation. In: Jan M. Smits. *Elgar Encyclopedia of Comparative Law*. Cheltenham: Edward Elgar Publishing, 423-433.

Delisle, Jean. 1992. Les manuels de traduction: essai de classification. *TTR (traduction, terminologie, rédaction)* 5(1): 17-47.

EMT Expert Group. 2009. *Competences for professional translators, experts in multilingual and multimedia communication*. Brussels: European Commission. http://ec.europa.eu/dgs/translation/programmes/emt/key_documents/emt_competences_translators_en.pdf.

Ferran Larraz, Elena. 2009. La institución desconocida y la intraducibilidad. Paralelismo entre el derecho comparado y la traducción jurídica frente a la intraducibilidad. *Meta* 54(2): 295-308.

Gile, Daniel. 1995. *Basic Concepts and Models for Interpreter and Translator Training*. Amsterdam: John Benjamins.

Hage, Jaap C. 1997. *Reasoning with Rules*. Dordrecht: Kluwer.

Hurtado Albir, Amparo (dir.). 1999. *Enseñar a traducir: metodología en la formación de traductores e intérpretes*. Madrid: Edelsa.

Hurtado Albir, Amparo. 2007. Competence-based Curriculum Design for Training Translators. *The Interpreter and Translator Trainer* 1(2): 163-195.

Kaiser-Cooke, Michèle. 1994. Translatorial expertise – a cross-cultural phenomenon from an inter-disciplinary perspective. In: Mary Snell-Hornby, Franz Pöchhacker and Klaus Kaindl (eds.). *Translation Studies. An Interdiscipline.* Amsterdam: John Benjamins, 135-139.

Kelly, Dorothy. 2002. Un modelo de competencia traductora: Bases para el diseño curricular. *Puentes* 1: 9-20.

Kiraly, Donald. 1995. *Pathways to Translation. Pedagogy and Process*. Kent, Ohio: Kent State University Press.

Mattila, Heikki E. S. 2006. *Comparative Legal Linguistics*. Aldershot: Ashgate.

Mayoral Asensio, Roberto. 2005. ¿Cuánto Derecho debe saber el traductor jurídico? In: Esther Monzó and Anabel Borja (eds.). *La traducción y la interpretación en las relaciones jurídicas internacionales*. Castellón: Universitat Jaume I, 107-112.

Neubert, Albrecht. 1994. Competence in translation: a complex skill, how to study and how to teach it. In: Mary Snell-Hornby, Franz Pöchhacker and Klaus Kaindl (eds.). *Translation Studies. An Interdiscipline.* Amsterdam: John Benjamins, 411-420.

Neubert, Albrecht. 2000. Competence in language, in languages, and in translation. In: Christina Schäffner and Beverly Adab (eds.). *Developing Translation Competence*. Amsterdam: John Benjamins, 3-18.

Nord, Christiane. 1991. *Text Analysis in Translation. Theory, Methodology, and Didactic Application of a Model for Translation-Oriented Text Analysis*. Amsterdam: Rodopi.

PACTE. 2000. Acquiring translation competence: hypotheses and methodological problems of a research project. In: Allison Beeby, Doris Ensinger and Marisa Presas (eds.). *Investigating Translation.* Amsterdam: John Benjamins, 99-106.

PACTE. 2003. Building a Translation Competence Model. In: Fabio Alves (ed.). *Triangulating Translation: Perspectives in Process Oriented Research*. Amsterdam: John Benjamins, 43-66.

PACTE. 2005. Investigating Translation Competence: Conceptual and Methodological Issues. *Meta* 50(2): 609-619.

Prieto Ramos, Fernando. 2009. Interdisciplinariedad y ubicación macrotextual en traducción jurídica. *Translation Journal* 13(4). http://translationjournal.net/journal/50legal.htm.

Prieto Ramos, Fernando. 2011. El traductor como redactor de instrumentos jurídicos: el caso de los tratados internacionales. *Journal of Specialised Translation* 15 (forthcoming).

Pym, Anthony. 2003. Redefining Translation Competence in an Electronic Age. In Defence of a Minimalist Approach. *Meta* 48(4): 481-487.

Rayer, Louise. 1991. The Limburg Combined Course for Lawyers and Translators. In: Catriona Picken (ed.). *ITI Conference 5: Windows on the World: Proceedings*. London: ASLIB, 12-23.

Šarčević, Susan. 1997. *New Approach to Legal Translation*. The Hague: Kluwer Law International.

Schäffner, Christina. 2000. Running before Walking? Designing a Translation Programme at Undergraduate Level. In: Christina Schäffner and Beverly Adab (eds.). *Developing Translation Competence.* Amsterdam: John Benjamins, 143-156.

Way, Catherine. 2002. Traducción y Derecho: iniciativas para desarrollar la colaboración interdisciplinar. *Puentes* 2: 15-26.

Wilss, Wolfram. 1976. Perspectives and limitations of a didactic framework for the teaching of translation. In: Richard Brislin (ed.). *Translation Applications and Research*. New York: Gardner, 117-137.

THE CONCEPT OF NORM IN PROFESSIONAL (LEGAL) TRANSLATION AND INTERPRETING: THE TRAINEE (USER) VIEW

Ewa KOŚCIAŁKOWSKA-OKOŃSKA, PhD
Department of English
Nicolaus Copernicus University, Toruń
Fosa Staromiejska 3
87-100 Toruń
ewako@umk.pl

Abstract: The concept of translation norm has occupied a prominent place in Translation Studies as a terminological challenge for scholars and the reflection of their research fields. The emergence and internalisation of norms is a natural consequence of the socialisation process since norms can be also used as evaluation criteria for certain social (permissible and acceptable) behaviours. However, the operation of norms in translation is hard to be observed: the objects of direct observation are products of the translation process and results of norm-governed translator behaviour. A question might be asked whether norms hinder or rather facilitate the process – a potential answer suggests the dependence of norm application on the translator's experience and knowledge accrued as factors central for successful performance. These factors are manifested in the performance of professional translators and interpreters, therefore the article focuses initially on the concept of professionalism in translation and interpreting. This is followed by a brief introduction of the notion of norms positioned in the context of translating and interpreting legal texts. The article closes with the presentation of the survey conducted among translation and interpreting trainees.

POJĘCIE NORMY W PROFESJONALNYM PRZEKŁADZIE (TEKSTÓW PRAWNICZYCH)

Streszczenie: Pojęcie normy tłumaczeniowej stanowi istotny punkt na mapie przekładoznawstwa, będąc zarówno terminologicznym wyzwaniem dla badaczy, jak i odzwierciedleniem ich zainteresowań. Zjawisko internalizacji norm jest naturalną konsekwencją procesu socjalizacji, ponieważ normy mogą służyć również jako kryteria oceny pewnych społecznie dopuszczalnych. Trudno jednakże zauważyć działanie norm: to, co do nas dociera, to produkty procesu tłumaczeniowego i skutki zachowania tłumacza kierującego się normą. Można zatem zadać pytanie, czy norma jest przeszkodą czy ułatwieniem pracy dla tłumacza – stosowanie norm może być pochodną skumulowanej wiedzy i doświadczenia tłumacza, które to czynniki przejawiają się w pracy tłumaczy-profesjonalistów. Artykuł zatem wstępnie koncentruje się na pojęciu profesjonalizmu w przekładzie. Następnie krótko omawia pojęcie norm w kontekście tłumaczenia tekstów prawnych i prawniczych. W artykule zaprezentowane zostaną ponadto wyniki badania przeprowadzonego na adeptach sztuki przekładu.

Professionalism and the operation of norms

The very concept of professionalism – irrespective of the fact whether it concerns translation or interpreting – embraces a number of issues combining both linguistic and the extralinguistic domains of the translators'/ interpreters' performance. Professionalism seems to be expressed in the education possessed, experience and knowledge accumulated throughout the years of working in the profession as well as effective usage (and taking benefit of) auxiliary devices such as, e.g., CAT tools, dictionaries and glossaries (traditional and online ones) and, obviously, computer technologies. The professional translator/interpreter should be also able to use effectively theoretical background, or even be able to postulate his or her own assumptions that could be verified positively in practice. The knowledge is transferred despite cultural and language barriers; this is enabled owing to experience and motivation for further (successful) performance. However, the linguistic knowledge of the translator is only one domain out of a whole assortment of others that are indispensable for efficient usage of strategies and techniques that aim at creating a good quality – professional translation – and to transfer information included in the source text (Fraser 2000). Professionalism in translation and interpreting is an efficient operation of cognitive skills, owing to which the translator/interpreter is capable of analysing and identifying problems encountered while performing a translation task. It also enables to recognise those domains which require from the translator/interpreter to be broadened and in which further specialisation is necessary, and to accumulate experience which is a must in the work of every translator/interpreter. The individual development assumes in this case a growing trend towards specialisation, increasing knowledge and experience, the ability to collect and accumulate information as well as using the whole body of information, knowledge and experience to be capitalized on in new or novel translation/interpreting situations. Due to the abovementioned cognitive factors the professional translator/interpreter knows which successful coping strategies and techniques can be used while facing such situations.

Attempts aimed at creating the definition of professionalism in translation/ interpreting are problematic: it is difficult to select assessment criteria which are individually varied depending on those items that a given translation user perceives as important for the translation and for its reception. Therefore, it might be postulated that professionalism in translation is manifested as a result of relations existing between the translator/interpreter and translation/interpretation users, of interaction of cultures and contexts, and most of all of effective transfer of information and meanings covered in the source language utterances. One should bear in mind that professionalism, apart from the leading role performed by cognitive factors, does not only denote the linguistic sphere subject to assessment and thus to drawing conclusions on the competence of the translator, but also the contextual and communicative spheres that determine the

translator's and interpreter's efficient performance in a variety of contexts, and social and cultural interactions (cf. Wadensjö 1998).

Professionalism of the translator/ interpreter is, as it has been said above, a multidimensional and relative concept due to a plethora of perspectives and expectations related with its perception. This very issue poses another significant challenge for

translators and interpreters: prior expectations of prospective translation or interpretation users do affect the performance. The users consider translation or interpretation successful on condition the (accurate, precise) meaning of the text or utterance is transferred. This phenomenon is very well manifested in the research, to mention just a few names of scholars such as Bühler (1986), Kurz (1989, 1993), Marrone (1993), Kopczyński (1994), Moser (1995), Mesa (2000), Kadric (2000) or Pöchhacker (2000, 2002). The research distinguished between the evaluation of the interpreter's performance from the interpreters' perspective and from the perspective of interpretation users (listeners). Two questionnaires focusing on user expectations, i.e., the research conducted by Bühler (1986) and Kurz (1989), a questionnaire made by Kopczyński (1994) due to references to the interpreter's role and, finally, the questionnaire prepared by Pöchhacker (2000) were presented elsewhere (Kościałkowska-Okońska 2008), therefore their results shall not become the focus of our considerations. What might be, however, inferred from the research is a premise that the professional interpreter is fully responsible for the overall quality of the text/utterance produced, which is seen in this context as the final product of the translation process, and the quality mentioned is the result of overall translation competence manifested by the interpreter. The final product obviously and naturally is evaluated not only in terms of the language but also in view of the entire extralinguistic sphere. Translation and interpretation users do have varying perceptions of the notion of professionals and its practical implications. With these differences in perception, the establishment of uniform criteria seems to be difficult, if not impossible in general. Moreover, these criteria include standards that address communicative, cognitive, linguistic and extralinguistic skills manifested by the translator/interpreter but also standards of normative character imposed on translators/interpreters by, e,g, professional organisations and associations that refer to, inter alia, professional conducts and ethical standards of translators and interpreters. The very term 'standard' in a plethora of contexts seems to be interchangeably applied with the notion of 'norm'. The concept of norm as such deserves a slightly wider discussion; although it seems hardly possible to discuss the concept that occupies such a prominent place in the whole realm of Translation Studies in a short article, it will be very briefly addressed in view of sensitivity to norms manifested by translators and interpreters.

The concept of norms is strongly connected with the socio-cultural perspective of translation. From the perspective of the social functions that translation is considered to have, norms may be tentatively approached as the translation – or transposition - of

ideas or values that are common for a given society into generally accepted and appropriate instructions of performance. These are to be applied in a given – specific – situation upon facing any valid behavioural constraints. The emergence and acquisition of norms in a way naturally results from the socialisation processes, for norms may be also utilised as assessment criteria for specific social behaviours, obviously on condition that the situation permits such a behavioral variety (see Schaffner 1998). Norms explicate social implications of behaviours and activities and do contribute to the establishment of cultures reflected in social order or institutions. The problem with translation norms lies in their very nature, namely, their socio-cultural features and assumed instability (see also Toury 1995). Norms are culturally and socially specific; they are simply embedded within this specific cultural context, and their interference with other remaining norms is the result of cultural systems being in constant contact. The already mentioned instability of norms derives from their character as they are temporally varied (for instance, in historical terms).

Unfortunately, we are not able to observe the direct operation of norms in translation: what we can really see are the products and results of norm-governed translation behaviours. Translation *per se* assumes its interactive and communicative nature and, to be successful, should receive any environmental feedback. The feedback tends to be norm-oriented, thus translation might be treated as the process of text production that is governed by norms. The feedback reflects norms that can be applied to any type of interrelations between texts translated and their sources. Thus they determine the adequacy of solutions, strategies and procedures employed in text production.

The concept of norms was within the research domain of such scholars as Toury (1980, 1995) and Hermans (1985, 1991, 1996), yet there is one more approach that seems to be of use for our deliberations on norm-governed translation performance, namely, Chesterman's (1993) division of norms into professional and expectancy norms. Professional translation behaviour gives rise to professional norms; a further division of professional norms into accountability norms, relation norms and communication norms is relevant here since these subtypes seem to govern the system of rules that are usually internalised by professional translators.

Norms of accountability address standards of precision and integrity, whereas relation norms focus on the linguistic perspective of translation reality and the need emerging for the translator to construct a relation between the source and target language texts. This relation is a derivative of the translator's understanding of the author's intentions and the readers' expectations which, as it was suggested above, do vary among different groups of recipients. Finally, norms of communication emphasise the role of the translator as a specialist – an expert – in intercultural communication.

On the other hand, expectancy norms are created by expectations of translation recipients and users concerned with the manner in which a given

translation is to operate effectively in the target language. An interesting observation to be made here is that a translator/ an interpreter tries to operate in concord with binding norms that are accepted and expected in a given cultural community and at the same time s/he has to comply with professional norms that are in force within that very community. Norms as an inherent part of our internalised social culture affect the comprehension and processing of the text.

The analysis of the operation and application of norms in interpreting results in a claim that although Toury in his theoretical considerations approached both translation and interpreting, the usefulness of norms in interpreting, in contrast to the same phenomenon in translation, has not been perceived as important from the very beginning (see Schjoldager 2002). Major objections posed concerned a limited number of research corpora: empirical research that is based on a limited scope seems to be an obstacle in analysing the mechanism of norm application (Shlesinger 1989). Other obstacles substantially interfering into the process of creating a corpus material include technical or legal problems (the latter occurring mainly while recording interpreters for research purposes; moreover, interpreters are not always that willing to be recorded, cf. also Shlesinger 1989). Elements that cannot be analysed for the lack of required instruments (cf.Diriker 1999) also affect the process and the final product of interpreting. Particularly in simultaneous interpreting, since interpreters work in real time, it is even more difficult to evaluate whether the interpretation product derives from norms applied and operates effectively during the process, or it rather results from constraints on the information processing (this problem is discussed both by Shlesinger 2000 and Schjoldager 2002). A ground-breaking in this respect postulate would be the suggestion of Schjoldager (2002) of an introduction of a new norm to be binding in interpreting only. This norm would attempt at practising possible options by the interpreter in a situation when a given task becomes increasingly difficult or its performance is even impossible.

Still, a question remains to be answered: what is a norm in translation reality devoid of theoretical determinants? Is it an inhibition for the translator/ interpreter, or rather a strategy adopted a priori that facilitates the success and effectiveness of the process, thus contributing to the success of the translation/ interpreting product? Where is the dividing line between an abstract construct and a practical tool? In order to ascribe an appropriate position to norms, all texts together with all acts of translation (and all items present within them) should be positioned vis-à-vis the context in which they function. The wider variety of translational situations the translators and interpreters face results in the increased flexibility of their translational performance that is appropriate from the social, cultural and normative point of view (conversely, the decreased range of translational situations and possibilities the translators face may result in less effective performance). This tendency may even result in a situation when the social prestige of the translator – whose professional high-quality performance is

common knowledge – is sufficiently high to oppose the pressure of norms without risking any negative consequences for the overall output. Not only may the translator contradict the dominating norms, but s/he may also instigate their modification within the culture in which s/he functions. Norms are relevant for the outcome and therefore they may be treated as internalised behavioural constraints reflecting values and ideas inherent for a given community. Yet, we should bear in mind that the concept of norms is not inhibitive in itself: norms seem to facilitate the manner of translation (as text production) that goes well with standards in force. In this sense norms do affect the process of decision making, however, they do not distort it. On the contrary, they rather seem to validate the decisions already taken that aim at a specific source language text rendition.

It may be hypothesised, subsequent to the above, that professional translators and interpreters have internalised norms in force both in the source and target languages, and for them norms are just one of a number of aspects to be recognised and considered within text processing. Professionals are thus in a way norm-free as they are not limited regarding the possible range of options to choose from, they are more creative in finding and utilizing new meanings (thus being also more productive). As professionals, they can be "trend-setters" in the sense of establishing and determining new norms that may start to operate in a new reality.

Less professional (or non-professional) translators or interpreters are, conversely, norm-bound as in order to translate they have to externalize their norm-related knowledge, expectations and experience, the last being quite frequently absent. Their norm-related knowledge tends to be restricted to the knowledge that any language user of a given society has by simply being aware of the socio-cultural complexity and variability of norms. Norms for them become the filter through which they perceive the translation reality. It must be emphasised that the norm cannot be trained, but it must be internalised so as to operate in an implicit manner in the translator (a professional-to-be). The process of norm internalisation is facilitated through an exposure to a set of environmental factors (e.g., social, behavioural and cultural patterns) that is further enhanced by broadening the scope of extralinguistic knowledge reliant on the accrual of experience.

Translating legal texts

Our deliberations on norms are to be of a more practical usage from the perspective of translating and interpreting legal texts. Obviously, legal texts, being normative in nature *ex definitio* pose specific difficulties for translators and interpreters. As the detailed discussion of the character of legal texts is not possible here for the reasons of space, those problems shall be briefly signalled. The language used in those texts is a specialist

language (cf. Jopek-Bosiacka 2006), with its characteristic features inherent to specialist texts. Following Šarčević (2000) we may claim that legal language is even considered a sub-language that is subject to certain specific semantic, pragmatic and syntactic principles. Another feature typical of those texts is specialist vocabulary, the aim of which is precise and accurate description of the reality encompassed within the normative functioning of legal documents. Terminology that occurs in legal texts tends to be, to a large extent, conceptually ambiguous, or even incoherent (Šarčević, 2000). This is mostly due to the origins of the emergence and evolution of legal systems as we know them today. All legal systems have their own conceptual systems resulting from the existence and operation of institutions in a given state, own culture and history, own social and economic factors, and, finally, legal realia. We may therefore hypothesise that in all these systems legal concepts exist that, owing to the aforementioned systemic differences, may not possibly have their terminological or conceptual correspondents (equivalents) in other languages for one and simple reason: those concepts do not exist either in a certain legal system or in a given culture. The binding – professional, commonsensical to an extent, and not abstract – norm for the translator and interpreter would be then to find an option that would remedy, in the most optimal way available, the (lack of) balance between the two systems and establish a meaningful and adequate linguistic as well as extralinguistic and contextual relation.

In order to verify whether norms may affect in any way professional translator/interpreter performance, a survey was carried out among prospective professionals that aimed at finding answers to nagging questions on the essence of professionalism as it is perceived by trainees. The trainees do not possess professional experience *per se:* they are in the process of development and construal of professional strategies and behaviour. It is of interest how they perceive the role of factors essential for professional performance and whether they recognize the need for development and improvement. The survey and its participants shall be discussed below.

The survey

The group subject to the survey consisted of 38 persons; all of them were trainees of the post-graduate course in legal translation and interpreting at the Nicolaus Copernicus University in Toruń. The course lasts one year and includes over 150 hours. One of the course elements is training in consecutive interpreting (50 hours). The surveyed are mostly graduates of English studies (both on the BA and MA level); only few persons (4 in total) have graduated from other faculties (law or economics and marketing). The survey was done mid-term after students had introductory classes in interpreting followed by several hours of in-class practice. All students attended (obligatorily) one conference during the course; 18 persons participated in a few conferences as

interpretation users (with the maximum number of conferences being 3), thus their conference experience was not extensive.

The attempt of the survey was the construction of a list of features that are considered important by trainees as well as their expectations and impressions concerning professional interpreting and professionalism in translation in general. The trainees were not asked to rate the features, as the aim of the survey was not the statistical occurrence of given features. What was truly important was rather the awareness manifested by trainees of having (or striving at having) specific skills enabling them to perform translation tasks efficiently and in a professional way. Another attempt that trainees were to undertake was to define the notion of norm. In this particular survey trainees cannot be treated as (practicing) interpreters as for almost all of them (i.e., 36 persons), classes in consecutive interpreting were the first time in their life when they had to interpret. Yet, as trainees are active in their own domains of professional activity they can be treated as users (recipients) of interpreting performed by professionals during a conference which trainees might attend. This, in a way, dual interpreter-user perspective might yield inspiring and interesting results.

This short survey consisted of four open questions, to which the survey subjects were to add question-related features. The questions were the following:

1. Who is a professional translator?
2. Which skills are vital for professional performance?
3. What is forbidden („illegal") in professional performance?
4. What is a translation norm?

In response to the first question a list of features required – and desired – from every interpreter was included, namely, professional interpreter should be well prepared and should possess the knowledge of both languages combined with deep cultural knowledge of the two language realities, should use an entire assortment of sources (this also covers consulting experts in a particular field in which interpreters specialise) and improve constantly. A professional is not afraid of seeking help in colleagues and does support others in their striving towards professionalism. Professionals are capable of facing unexpected situations, but they are also aware of expectations that interpreting users have; they also know their own limitations. Owing to the experience accrued during years of working in the profession they are poised and focused, reliable; they do manifest high self-esteem, but they do not patronise others.

Question 2 addresses skills that are vital for professionals such as the ability to face various challenges and situations as well as to learn fast. Other factors mentioned were stress management, divided attention and fluency. These were combined with such skills as data management, media competence understood as the ability to use computer technologies, and interpersonal skills.

Question 3 focused on behaviours manifested by interpreters that can be rated as 'sub-standard' and should be avoided; these include overinterpreting, changing the

content, showing irritation or nervousness, translating everything, simplifying, being biased, gesticulating or speaking silently. Other activities listed as forbidden or negatively evaluated cover unpunctuality, inappropriate dress, giving up while translating and, finally, shouting at the speaker.

The last question was concentrated on an attempt to elicit from the survey subjects a tentative, though individually varied, definition of translation norm. The number of answers received was rather limited and closed within the confines of practically one domain – adequacy – existing between the original and the translation. The survey subjects defined the translation norm as, to quote a few examples, 'reliability of the translation', 'adequate transfer of the original message', 'retaining ideas included in the original', 'knowledge of specialist vocabulary without which a reliable translation is impossible', or 'conveying the real sense of the original text', 'knowledge of both languages', 'creativity', 'broad extralinguistic knowledge' and, finally, 'appropriate behaviour'.

Conclusions

It might be inferred from the above answers that survey subjects seem to follow the outlook on norms postulated by Chesterman. The need for precision and accuracy (as the norm of accountability emphasises these features) is expressed explicitly. Another observable trait is the importance ascribed by the subjects to cognitive skills and features that are to be manifested by interpreters. Even the norm is viewed vis-à-vis cognition by stressing the significance of knowledge or creativity. This might be due to yet another characteristic feature reflected in the survey results: the already mentioned dual perspective of the subjects as – simultaneously – prospective interpreters (therefore striving at reaching the idealised and ideal construct of a professional interpreter) and users of the interpretation, thus adding some evaluative attitude to individual comments and observations. However, problems emerging while trying to define the translation norm seem to reflect another inherent problem of translation: apart from theoretical academia-oriented considerations, the concept of norm seems to remain within the limits of highly refined scholarly debate, of not much practical and practicable nature. Chesterman's postulates seem to have more bearing to the translation and interpreting reality, yet in real life one might ask a question whether these deliberations result in a definition that would be consciously and deliberately used by practising professionals and trainees in their reflecting upon the intricacies and problems typical of any translation or interpreting task.

In view of the specificity of translation and interpreting, professionals operating in these two domains should keep a (healthy) balance between respecting the translation norm and the domain (in case of legal translation, being the main subject of trainees' study) that would be the whole realm of the law (with an obvious reservation

that legal texts are normative in nature, i.e., imposing certain obligations to be fulfilled). If the application of norms (the notion of legal norm itself being beyond the scope of this article) is to become the focus of our considerations in the context of legal translation and interpreting, it has to be borne in mind that translation norms are internalised constraints on the translator/interpreter behaviour. This behaviour is also expressed in the form of texts or utterances produced in a variety of translation and interpreting situations; these constraints reflect common values (including law-related ones) shared and accepted by a given community or society.

Bibliography

Bühler, Hildegund. 1986. „Linguistic (semantic) and extra-linguistic (pragmatic) criteria for the evaluation of conference interpretation and interpreters". In *Multilingua 5, 4:*. 231 - 235.

Chesterman, Andrew. 1993. "From 'is' to 'ought': translation laws, norms and strategies". In *Target* 5/1: 1-20.

Diriker, Ebru. 1999. "Problematizing the discourse on interpreting - A quest for norms in simultaneous interpreting". In *TexTconTexT* 132: 73-90.

Fraser, Janet. 2000, "What Do Real Translators Do? Developing the Use of TAPs from professional Translators". In *Tapping and Mapping the Processes of Translation and Interpreting,* ed. Sonia Tirkkonen-Condit and Riitta Jääskeläinen, 111-119. Amsterdam/Philadelphia: John Benjamins.

Hermans, Theo. 1985. *The Manipulation of Literature: Studies in Literary Translation.* London and Sydney: Croom Helm.

Hermans, Theo. 1991. "Translational Norms and Correct Translations". In *Translation Studies: the State of the Art. Proceedings of the First James s Holmes Symposium on Translation Studie,* ed. Kitty M. van Leuwen-Zwart and Ton Naaijkens, 155-169. Amsterdam-Atlanta: Editions Rodopi B. V.

Hermans, Theo. 1996. "Norms and the Determination of Translation. A Theoretical Framework". In *Translation, Power and Subversion,* ed. R. Alvarez and M.C.A. Vidal, 93-110. Clevedon-Philadelphia-Adelaide: Multilingual Matters Ltd.

Jopek-Bosiacka, Anna. 2006. *Przekład prawny i sądowy*. Warszawa: PWN.

Kadric, Mira., Klaus. Kaindl and Franz Pöchhacker. 2000. *Translationswissenschaft.* Tübingen: Stauffenburg Verlag.

Kopczyński, Andrzej. 1994. "Quality in conference interpreting: Some pragmatic problems". In *Bridging the gap. Empirical Research in simultaneous interpretation,* eds. Sylvie Lambert and Barbara Moser-Mercer, 87-100. Amsterdam: John Benjamins.

Kościałkowska-Okońska, Ewa. 2008. "Kryteria jakości w ewaluacji przekładu ustnego". In *Rocznik Przekładoznawczy 3. Studia nad teorią, praktyką i dydaktyką przekładu,* ed. Ewa Kościałkowska-Okońska and Lech Zieliński, 105-117. Toruń: Wydawnictwo UMK.

Kurz, Ingrid. 1989. "Conference Interpreting: User Expectations". In *Coming of Age: Proceedings of the 30th Annual Conference of the American Translators*

Association, ed. D.L.Hammond,143-148. Medford/New Jersey: Learned Information.

Kurz, Ingrid. 1993. „Conference Interpretation: Expectations of different user groups". In *The Interpreter's Newsletter,5:*13-21. Universita degli Studi di Trieste, SSLM.

Marrone, Stefano. 1993. "Quality: A Shared Objective". In *The Interpreter's Newsletter,* 5: 35-41.

Mesa, Anne-Marie. 2000. "The Cultural Interpreter: An Appreciated Professional. Results of a Study on Interpreting Services: Client, Health Care Worker and Interpreter Points of View". In *The Critical Link 2: Interpreters in the Community,* ed. Roda P. Roberts and Silvana E.Carr, 67-79. Amsterdam/ Philadephia: John Benjamins.

Moser, Peter. 1995. Simultanes Konferenzdolmetschen. Anforderungen und Erwartungen der Benutzer. Endbericht, im Auftrag von AIIC. Wien: SRZ Stadt- und Regionalforschung.

Pöchhacker, Franz. 2000. "The Community Interpreter's Task: Self-Perception and Provider Views". In *The Critical Link 2: Interpreters in the Community,* ed. Roda .P. Roberts and Silvana E.Carr, 49-65. Amsterdam/Philadephia: John Benjamins.

Pöchhacker, Franz and Miriam Schlesinger. 2002. *The Interpreting Studies Reader.* London/New York: Routledge

Šarčević, Susan. 2000. *New approach to legal translations*. The Hague: Kluwer Law International.

Schäffner, Christina. 1999. *Translation and norms.* Clevedon: Multilingual Matters.

Schjoldager, Anne. 2002. "An exploratory study of translational norms in simultaneous interpreting: methodological reflections". In *The Interpreting Studies Reader,* ed. Franz Pöchhacker and Miriam Shlesinger, 300-311. London: Routledge.

Shlesinger, Miriam. 1989. "Extending the theory of translation to interpretation: Norms as a case in Point". In *Target* 1: 1: 111-15.

Shlesinger, Miriam. 2000. "Interpreting as a Cognitive Process: How can we know what really happens?". In *Tapping and mapping the processes of translation and interpreting: outlooks on empirical research,* ed. Sonia Tirkkonen-Condit and Riitta Jääskeläinen, 3-15. Amsterdam: John Benjamins.

Toury, Gideon. 1980. *In Search of a Theory of Translation*. Tel Aviv: The Porter Institute for Poetics and Semiotics.

Toury, Gideon. 1995. *Descriptive Translation Studies and Beyond.* Amsterdam/ Philadelphia: John Benjamins Publishing Company.

Wadensjö, Cecilia. 1998. *Interpreting as Interaction*. London/New York: Longman.

TRANSLATOR TRAINING IN TUNISIA TODAY: MARKET CHALLENGES AND AVAILABLE OPPORTUNITIES

Hammouda SALHI
ISLAIN, Université du 7 Novembre à Carthage
hammouda_s@hotmail.com

Abstract: The heavy Foreign Direct Investment (FDI) in Tunisia which is in progress now will have its impact on the translation industry in the forthcoming years. But while most Tunisian translation teachers and professional translators agree on the urgent need to bridge the gap between the translation classroom and the real world of the translation market (the Academic and Professional Gap (APG)), academic traditions are inhibiting a clear critical focus on this APG. Teachers are still educating students in general skills and academic institutions do not try to frame appropriate strategies to train them to work in specific jobs. Therefore, such traditions are less likely to allow students to be able to succeed when they join this market, and to expect sound career development as they upgrade their skills. Translatorship is after all granted by the market and not by any academic institution. In the face of these challenges, this paper will draw attention to some of the available opportunities which are deemed of paramount importance in any attempt to achieve more professionally-oriented translation training. These opportunities will lead to some concrete and practical suggestions on how to aptly use corpora in the translation classroom, on the one hand, and how to profit from the translation experience inside the United Nations system, on the other.

SZKOLENIE TŁUMACZY W TUNEZJI: WYZWANIA I MOŻLIWOŚCI OBECNE NA RYNKU USŁUG TŁUMACZENIOWYCH

Abstrakt: Duża liczba inwestycji zagranicznych w Tunezji w znaczący sposób wpłynie w najbliższych latach na rynek usług tłumaczeniowych w tym kraju. Jednakże, mimo że większość nauczycieli przekładu oraz zawodowych tłumaczy widzi palącą potrzebę dostosowania zajęć z tłumaczenia do potrzeb rynku, tradycyjne metody akademickie w zakresie nauczania przekładu w wyraźny sposób hamują proces reform w tym zakresie. Brak specjalizacji daje adeptom przekładu niewielkie szanse na odniesienie sukcesu w pracy zawodowej. Niniejszy artykuł stawia sobie za cel zwrócenie uwagi na możliwości zmiany metod szkolenia tłumaczy by adepci przekładu mieli możliwość zdobycia kompetencji, które pozwolą im na profesjonalne wykonywanie zawodu. Sugestie autora dotyczą między innymi wykorzystania korpusów w nauczaniu przekładu oraz korzystania z doświadczeń tłumaczeniowych zdobytych w ramach ONZ.

1. Introduction

With the heavy Foreign Direct Investments (FDIs) in Tunisia which are in progress now, it is expected that even the low end of the language services industry will start to wake up to the multiplicity of forms of contact between people from different linguistic

backgrounds. Translation and interpretation services will be in very strong demand, which will have a direct impact on the nature of the translation profession and the characteristics of the would-be translators. Prospective translators will face enormous challenges due to this forthcoming change. In fact, the translation profession is always in perpetual change and is adapting itself to the requirements of the market. Shifting from an ink-based craft to a technology-based industry, translation has become a fully-fledged market in dynamic interaction with other sectors in the world of business.

These new investments, however, will not only lead to an enormous growth of demand for translators and interpreters but also to more strict norms in recruiting language services providers, including translators of course. Only qualified translators and interpreters with skills in information and communication technologies ICTs will be able to compete internationally and secure a job, especially with the globalization of these services. Therefore, it is of paramount importance at this critical stage of the translation market to assess the translation classroom in order to bring the necessary changes, especially since the gap between the translation classroom and the real world of the translation market (the Academic and Professional Gap (APG)) is increasingly widening and the situation will get worse unless action is taken now.

But while most Tunisian translation teachers and professional translators agree on the urgent need to bridge the APG, academic traditions are inhibiting a clear critical focus on this gap . Teachers are still educating students in general skills and academic institutions are not trying to frame appropriate strategies to train them to work in specific jobs. Therefore, such traditions are less likely to enable students to succeed in joining the market, and upgrade their skills in order to make progress in their career. Translatorship as a certificate is after all granted by the market and not by any academic institution.

In order to ensure that their graduates are competitive in the local and international professional marketplace, Tunisian universities and translation teachers have to play an active role not only in introducing emerging technologies, but also in ensuring that appropriate training is integrated in the translation curriculum. It is generally agreed that a translation student now needs more training and less education. It is a process that is often long and complex and requires the full involvement of teachers, academic institutions and students themselves.

In fact, the above represent the basic critical challenges that the translation industry faces and will have to face in the near future. At the other end of the picture, there exist some available opportunities which are deemed to be vitally important in any attempt to face some of the challenges that still haunt the translation classroom. This study is therefore fully justified in that it seeks to provide solid predictions on the challenges that the business world will pose for the would-be translators by building on some of the statistics available on the size of the investments which are now being implemented in Tunisia. The second aim of this study is to briefly outline the experience of Arabic translation at the United Nations as an opportunity available for

academic institutions. The analysis of these opportunities will lead to some concrete and practical suggestions on how to aptly profit from the translation experience inside the United Nations system, on the one hand, and how to use corpora in the translation classroom, on the other.

2. The tight link between the business sector and the translation industry

Before I go into more detail about the challenges that the market is going to pose for the profession, I think it is useful to focus on the tight link between the translation industry and other business sectors. In fact, the translation-business relation is two-fold. First, the development of new businesses influences an ever-changing reality of the translation profession, which requires almost constant updating. Not only does translation flourish as an industry in periods of economic boom, but also needs to meet the requirements imposed by the business market, mainly in terms of terminology and use of ICTs. Second, because translation has become a fully-fledged market, it has developed its own rules and requirements which are, in most cases, consistent with the general rules and requirements of the wider business market. As globalization takes hold, the size and cost of language handling have made translation more visible as a market which could bring good financial revenue and create a huge market opportunity for providers of products and services in this area. The size and scope of growth for this market are very large in many developed countries and soon it will be the same in Tunisia.

The services of interpreters and translators are required in a number of subject areas. Noteworthy among these is the business sector. When researching for this paper, I came across "What does it take to work in the translation profession in Canada in the 21st century? Exploring a database of job advertisements" in *Meta journal, Vol.* 49(1) 2004. Lynne Bowker analyzed 301 job advertisements for a variety of translation-related positions across Canada. In this study, she found that 105 positions, that is about 35 per cent, are required in the business sector, including administration and marketing. The finance area, subsuming insurance, banking and economics, is ranked second with 88 positions required, that is about 29 per cent.

3. Translation needs big business to be a big business: Towards a brighter future with the new DFIs in Tunisia

In spite of the latest global economic downturn, it is expected that Tunisia's economy will see a boom over the forthcoming years thanks to the sharp increase in the size of projects which are currently being implemented .

3.1. General Statistics

According to the Ministry of Development and International Cooperation, foreign direct investments (FDI's) have reached 2.402 billion dinars (about 1.71 billion US dollar) during the first 11 months of 2008. Such a figure shows an increase of about 40% in comparison with the same period in 2007.

Also, reports of the Ministry indicated that in 2007 European investors were the major providers of foreign direct investments in Tunisia, with some 1.4 billion Tunisian dinars (about one billion US dollar) from the United Kingdom, France, Germany and Italy. Gulf investors, however, will be the first investors in Tunisia as from 2008. Apart from the huge amounts of investments, such a scene will provide favorable prospects for the translation industry as more native speakers of English, French, German, Italian and Arabic will visit Tunisia not only as tourists but also as businessmen, diplomats and high-ranking representatives who will definitely need translators and interpreters.

3.2. The Mediterranean Gateway project: The dawn of a thriving translation Industry in Tunisia

Also, according to the Ministry of Development and International Cooperation, Dubai Holding, which is a holding company that belongs to the Government of Dubai, is investing about 35 billion Tunisian dinars (about 25 US dollar) in the building of a mega-project called the Mediterranean Gateway, over a 830 hectare area south of the Tunis lake. It is estimated that that project alone, will generate 0.5% of additional economic growth until 2014. It is also anticipated to generate a plethora of employment opportunities, including direct and indirect jobs during the construction phase and over 350,000 when completed. It is estimated that Language-related job vacancies will abound over the forthcoming years. The project is also expected to attract 100,000 visitors, both locals and foreigners, every day, leading to further job opportunities for interpreters and language services providers and growth in the translation market.

Farhan Faraidooni, Executive Chairman of Sama Dubai, a member of Dubai Holding, said:

> "Sama Dubai will endeavour to utilize locally available competencies and resources to the maximum extent possible. We are currently seeking talented individuals who will not only contribute to the overall progress of the development, but individually benefit in terms of furthering their own career paths."

Therefore, priority, according to him, will be given to local talented professionals. It is quite logical that translators and interpreters will be on top of the list of the individuals they are seeking since they are key agents in achieving such a progress. But the question, and in effect the challenge, is whether there are enough talented professional language service providers in Tunisia.

This mega-project aims to develop new areas of specialty in the job market and create opportunities for professional training and knowledge transfer by attracting new service sectors to Tunisia. It is true that this will facilitate the arrival of new kinds of companies, services and products to Tunisia, which will create further translation jobs and offer new horizons for the growth of the translation industry, but the question again is whether available, and especially would-be, translators can meet the requirement of specialization in certain very technical and modern fields, such as the IT field. A whole technological city dubbed the 'Digital City' will be constructed to support new media, creative and information-based businesses. Likewise, a 'Technology Quarter' is going to be built to serve as a business park with built-in incentives to attract global leaders in the technology arena.

The Mediterranean Gateway project is not the only mega-project being implemented . Other mega-projects include the 5.8 billion Tunisian dinars (about 4.1 US dollar) Abou Khater "Sports City" project in the northern Tunis lake area and the 11.7 billion Tunisian dinars (about 8.33 US dollar) Al Maabar's "Bled El Ward" tourist and residential complex in Ariana.

Therefore, it is expected that all of these mega-projects, mainly the Mediterranean Gateway, will represent the dawn of a thriving translation market in Tunisia.

3.3. Implications of these data on the translation industry: towards a transition period

As we have seen above, translation is expected to become an economic activity with growing importance as a factor contributing to increased revenue and employment in Tunisia. But unfortunately both the profession and the classroom of translation are still not given their worthy status. In fact they have a long but not respected history in Tunisia. Therefore, it is highly recommended at this particular stage that all concerned parties should work to refute this historical view of denigration to translation as a profession and a subject of study and to translators as a staff.

If we take the above data into account and try to draw a picture of how the translation industry would look like in the near future, we can identify a number of factors and signs which indicate that this industry is now going through a transition period:

- ✓ Non-traditional languages in the world of business such as English, German, Spanish and Italian coming into more contact with the two traditional languages, i.e. Arabic and French, which will lead to the diversification of the global linguistic scene in the business sector.
- ✓ Introduction of new and more complex products, basically IT products, leading to increased quantities of documentation
- ✓ More open trade with European countries, internationalization of some local businesses, globalization of services and the accompanying requirement will require large amounts of documents to be translated in multiple languages.
- ✓ Increased travel to Tunisia, not only in the form of tourism, but also in the form of business trips, diplomatic visits and conferences, which will bear fruit for the interpretation market.
- ✓ Creation of new types of products and the expansion of new technologies, applications and processes, which will particularly affect terminological practices, databases construction and dictionary compilation.
- ✓ Need to constantly update web and electronic documents which will require intense recourse for language service providers, mainly translators.
- ✓ With the increasing implementation of some programs such as clinical trial programs in Tunisia, there will be a need to translate and adapt instruments for use in either Standard Arabic or Tunisian Arabic through what is called the linguistic validation exercise.

Though these are good signs and factors for the future of the translation industry, they represent, at the same time, serious challenges not only to the would-be translators but also to translation teachers and academic institutions.

4. Market challenges

4.1. The Academic and Professional Gap (APG)

Translation training programmes exist in Tunisia not in the form of independent institutions, but in the form of university colleges and institutes (eg. the Higher Institute of Languages of Tunis) or as courses incorporated within English departments of universities (as in the case of the Faculty of Arts and Humanities of Manouba and the Faculty of Arts and Humanities of Sousse; English Departments). Soon an independent postgraduate translation training school will be established by the National Translation Centre, which will offer diplomas in applied translation and specialized courses in various fields of translation. Though the translation programme at the Higher Institute of Languages of Tunis (DNT) appears to be the most advanced in terms of the specialized courses provided, all of the translation courses offered in Tunisian universities lack a clear focus on the future needs of the translation market and no professional approach is being applied.

Much emphasis is put on literary translation which is the least type of translation required by the market. The majority of students still have major and inherent problems in the translating process. They cannot grasp the fact that translating involves more than just replacing a word or a phrase with its equivalent in another language. They are still unable to deal with sentences, ideas and perhaps the author's intentions so as to reflect the same coherence found in the source text to come up with a target text that reads as if it originated in the target language. Though teachers always advice students not to make words their ultimate worry, they face major problems in applying this in reality. Market demands and requirements must necessarily find their way into the translation classroom, otherwise the serious APG will continue to generate "disabled" translators.

4.2. Translation students and Technology

Translation students use little or no technology in their training. Bowker (2004) found that 60.5% of the job advertisements require some computer literacy. Employers who advertise for translation-related positions in Canada seem to be relatively in tune with the skill set required to work as a translator in the 21st century. Computer skills – both general and specialized – are now considered to be an integral part of the profile of the 21st century translator. Tunisian universities, however, are still undermining the importance of computers and the internet in the translation classroom. Access to the Internet and other technological tools is available in many other fields in Tunisia but not in classroom.

In fact, technology should not be taken as an obstacle or a challenge but rather as an opportunity available for translators and especially for translation students. Today, nearly all translation work is done on a computer, and most assignments are received and submitted electronically. This enables translators to work from almost anywhere, and a big proportion of the translation assignments are carried out at home. The Internet provides advanced research capabilities, valuable language resources and access to reliable corpora, specialized dictionaries and glossaries. In some cases, memory tools, which provide comparisons of past translations with current work, help save time and reduce repetition. Therefore if we really want to meet the market needs, ICTs must occupy the right place in translator training (Archer, 2002).

4.3. Other challenges

In addition to the APG and the technological illiteracy of translation students, there do exist some other challenges. The future translation market in Tunisia will keep pace with translation markets in the West, especially with regard to the requirements it will impose on future translators. Higher qualifications and much more experience will be required. In her survey, Bowker (2004) found that 60.5 per cent of the job

advertisements required translators with at least a 4-year degree. The main challenge here in Tunisia is that almost all translation programmes lead to a 3-year diploma. However, it is unfortunate indeed that the only 4-year translation diploma at the Higher Institute of Languages of Tunis is closing this year.

The sharp demand for specialized translators will be another Burdon to be added to the list. In fact the texts included in translation courses are not most of the time sample texts from the translation market, but instead they are either literary or of a general nature. This problem is aggravated by the fact that the uses of technical terms are barely unified across the Arab World. Which terms students should acquire and use will pose a big problem. Therefore, to resort to the experience of Arabic translation at UN Divisions is fully justified as technical terms are strictly unified and standardized there.

The teleworking mode is also another challenge. When joining the translation market, graduate students will face a harsh international competition from non-local translators since the translation market is now open and accessible to each translator from any corner in the world thanks to the web and, more particularly, to the teleworking mode. Therefore, students' skills and competences have to be up to the international standards. In fact, the world of business has gone beyond geopolitical boundaries and so has the translation industry. Any future translator would be required to compete for his market share internationally. This is not an option, but a means for survival.

In fact teleworking can be a challenge and an advantage at the same time for the would-be translators, so it is high time now we seriously worked to make it an advantage and allow them to access remote translation markets. They need tools and strategies now and they will upgrade their own competences to keep pace with the changing rules of the game. When they discover that it is a necessity and a matter of survival, they will be able to invent. Necessity is the mother of invention. But inventing involves building on previous experiences and profiting from available opportunities.

5. Available opportunities

In the face of these very serious challenges that lie ahead, both academic institutions and translation teachers are called upon to seriously think of ways of mitigating their impacts on students. Among the very efficient ways is the one proposed below.

5.1. The way to The school of the United Nations: a good example to follow

Let us have an idea about the mission of the United Nations to understand the role translators play over there. The United Nations aims to maintain international peace and security; to develop friendly relations among nations; to achieve international cooperation in solving economic, social, cultural, and humanitarian problems and in promoting respect for human rights and fundamental freedoms; and to be a center for harmonizing the actions of nations in attaining these common ends. Because translation

plays a pivotal role in achieving these very noble goals, much emphasis has been put on the work of translators inside the United Nations' system. Translators are ranked as professional and specialized staff, and not mere secretarial or ordinary workers.

Therefore, it is very wise to share the translation experience of this universal international organization and try to learn from the high degree of professionalism of its translators and interpreters. In fact, it stands for a very representative sample of a true marketplace. So what are the characteristics of the translation work there?

5.1.1 Characteristics of the translation work at the United Nations

The characteristics of the translation work at the UN include, basically, the following five aspects:

- ✓ **Multilingualism**

Multilingualism is one of the foundations of the United Nations. Documents are produced in the six official languages, which are Arabic, Chinese, English, French, Russian and Spanish. These languages play an important political and practical role in the functioning of the Organization and in achieving the aforementioned goals. The UN uses and operates in these languages in its intergovernmental meetings and documents. The UN Secretariat, however, uses two working languages, English and French. Statements made in an official language at a formal meeting are interpreted simultaneously into the other six official languages of the body concerned by UN interpreters.

It is important to learn from the contact of these languages inside this organization as some of these languages will come into contact with the traditional languages used in business and administration arenas in Tunisia, namely Arabic and French. However, despite the long history of translation and multilingual practice at the UN, only very few academic institutions keep ties with this international Organization with a view to sharing its experience.

- ✓ **Governed by a set of Norms**

According to Toury (1995), translation, generally speaking, is a norm-governed behavior and activity. Over a history of about 60 years now, the translation experience at the United Nations brought about a set of strict translation norms, which led to standardized uses of technical terms and a special style of writing. At the same time, UN translations also share many things with other types of translations and can offer valuable lessons to non-UN translators, translation students and translation teachers.

- ✓ **Well organized**

Translation at the UN is well organized. The Organization has equipped whole divisions and departments with qualified translators, reviewers, revisers and division chiefs. Similarly, a very developed translation procedure is being adopted. It ranges from determining what documents to translate, the actual translation work, the reviewing and revision phases to the final publication.

- ✓ **Developed and up to date style of writing**

The UN has developed its own style of writing that is different from any other style as it sprang from the nature of the texts translated there and from the need to be able to effectively report new and unprecedented incidents, phenomena and inventions. It established the format for each category of documents. Over its history of over 60 years, the style has been generally followed.

- ✓ **Specialized**

The documents translated by UN translators are in most cases of a specialized nature. Increasing specialization and in-depth consideration of technical questions means that new technical terms are constantly being formed and inserted into special databases, glossaries and translation memories. In addition, terminology lists in all languages are kept up to date.

5.1.2 Arabic Translation at the United Nations

5.1.2.1 Major historical events

Dadawi (2005) states that UNESCO was the first international organization to introduce the Arabic language in 1968 as a working language. So it was the first UN agency to establish a whole Division for Arabic translation. In 1973, Arabic became the sixth official language of the UN following a Resolution which was adopted there. Some linguists regarded this Resolution as a victory for Arabic native speakers and particularly for Arabic translators, and historians equated the event with the Arabic revolution led by Mohamed Ali of Egypt.

In 1982, Arabic marked its presence as a one of the languages used at the Security Council and the UN Economic and Social Council and their ad hoc bodies.

5.1.2.2 General characteristics of an Arabic Translator at the UN (P3 or P4)

A typical Arabic Translator of the category of Professional 3 or 4 (P3 or P4) has a very respectful profile and resume. The following are the main characteristics of translators of this category:

- ✓ Mastering three languages
- ✓ Solid writing and analytical skills
- ✓ High standards of accuracy
- ✓ Consistency and faithfulness to the spirit, style and nuances of the original text
- ✓ Good grasp of terminological and reference research techniques
- ✓ Advanced university degree (Master's degree or equivalent) in linguistics, translation or related fields
- ✓ Normally, successful attainment of the United Nations Competitive Translation Examination

- ✓ At least 5-7 years of progressively responsible experience, in translation, of which three preferable should have been within the United Nations
- ✓ Knowledge of a broad range of subjects dealt with by the United Nations (political, social, legal, economic, financial, administrative, scientific and technical)
- ✓ Familiarity with computer software used in the United Nations
- ✓ Facility in using United Nations terminology databases and word-processing programs.

5.2. UN Corpora in the translation classroom

Given its history of about 36 years now, the experience of Arabic translation at the UN has generated a wealth of translated texts into Arabic in all of the below stated subject areas. Once again, I think it is very wise to use these corpora of translated texts, i.e. parallel corpora, in the Arabic translation classroom.

5.2.1. Subject areas covered by UN activities

The United Nations' activities cover a wide range of subject areas. UN translators and interpreters are required to be familiar with these areas. They include, but not restricted to, the following:

- ✓ Scientific subject areas: Sciences and technology, industry, nuclear energy, etc.
- ✓ Economic subject areas: economics, finance, trade, etc.
- ✓ Political and legal subject areas: Politics, international Law, international trade law, human rights, etc.
- ✓ Humanities: culture, world literary works, history, etc.
- ✓ Social subject areas: labor, immigration, population, children, women, refugees, fighting drugs, fighting crimes, etc.
- ✓ Miscellaneous: climate, environment, telecommunications, intellectual property, etc.
- ✓

5.2.2. Advantages of corpora in the translation classroom

According to Zanettin (1998:1) corpora can be a very useful resource for translation students in a classroom situation, especially in "enhancing the understanding of the source language text and the ability to produce fluent target language texts". Analyzing corpora allow learners to establish equivalences between comparable sets of texts, and to have the possibility to make comparisons between the two languages in question, mainly through the acquisition of information about the way in which discourse is laid down (Ibid).

Parallel corpora, for instance, have become an essential resource for work in the workstation of the professional translator, but, very surprisingly, their use are still very limited in the translation classroom across the Arab world, including Tunisia of

course. Translation students need to exploit their full potential to face the above mentioned challenges, mainly the APG. The analysis of source texts against their associated translations can help student make sound decisions on the selection of appropriate equivalent words and phrases. Parallel corpora also provide the advantage of giving good examples of writing style to follow (Zanettin, 1998).

In fact parallel corpora, thanks to their large-scale availability on the web, have brought many benefits to the translation industry and its players. Therefore, in Europe and North America emphasis has been put on the uses of corpora in translator training over the last decade or so. For instance, Pearson (2003) argues that parallel corpora can enhance the professionalism of the students and can equip them with very practical translation strategies.

As they are often working under time pressure, translators will not have the opportunity to hire a third party to ensure translation-related tasks such as reviewing, editing and proofreading. Most of the time they end up by proofreading and judging their own work and, therefore, assuming the entire responsibility themselves. Corpora can, in such a context, play the role of a third party as they allow translators, and of course translation students, to share past experiences of authors and other professional translators. Likewise, parallel corpora might perform the role of a language database against which translators could compare their work, and whose maintenance could in many ways help them enhance the quality of their translated products. Translation students also will find parallel corpora very useful in acquiring established work habits.

5.2.3. The EAPCOLT

For the purpose of my PhD. Research, I am currently constructing a parallel corpus I have given the name of the EAPCOLT, the English-Arabic Parallel Corpus of Legal Texts. The EAPCOLT will have the major aim of enabling a corpus-based investigation of complementary polysemy in translation. Now it counts about 4 million words and includes texts issued by a number of UN bodies such as the General Assembly, the Security Council, UNIDO, UNICEF, FAO, etc. It involves mainly resolutions and annual reports.

Apart from the good style of writing that students can follow, parallel corpora like the EAPCOLT can help them make sound decisions on the translation of, say, some nearly-synonymous words and phrases. For instance, they will find that the English words ‘liability’ and ‘responsibility’ have to be translated by the single Arabic word ‘المسؤولية’, unless ‘liability’ is expressing a financial concept.

Through a search into the EAPCOLT, I found that ‘liability’ has 27 occurrences and ‘responsibility’ has 308 occurrences. The first two example sentences

along with their translations into Arabic show that both words are translated by the same word in Arabic.

- Lebanon indicated that a committee had been established to consider amending the juvenile justice laws, including raising the age of criminal **responsibility**.

✓ أشار لبنان إلى أنه تم إنشاء لجنة للنظر في تعديل قوانين قضاء الأحداث، بما يشمل رفع سن **المسؤولية** الجنائية.

- …namely whether **liability** for commission of a crime as a participant in a joint criminal enterprise….

✓ ... أي معرفة ما إذا كانت **مسؤولية** الشخص عن ارتكاب جريمة كمشارك في عمل إجرامي مشترك ...

However, in a financial context, 'liability' is translated by 'الخصوم', as shown in the below example sentence along with its translation.

- The Bank and Fund are also cooperating on improving debt-management systems in middle-income countries in the context of a broader asset-**liability** management framework.

✓ هناك تعاون بين البنك والصندوق من أجل تحسين نظم إدارة الدين في البلدان متوسطة الدخل في سياق أعم لإدارة الأصول و**الخصوم**

Thanks to the EAPCOLT, I discovered a similar case with the two nearly-synonymous words: 'boundary' (19 occurrences) Vs. 'frontier' (16 occurrences).

- With the assistance of a United Nations **boundary** delimitation expert, the Commission also completed the demarcation of 394 wards for the elections.

✓ وبمساعدة من خبير الأمم المتحدة لتعيين **الحدود**، تمكنت اللجنة أيضا من إنهاء من ترسيم 394 دائرة للانتخابات.

- Chad also accused the Sudanese air force of bombing the towns of Bahai, Tine, Karyare and Bamina along its eastern **frontier**, an accusation denied by the Government of the Sudan.

✓ واتهمت تشاد كذلك القوات الجوية السودانية بقصف بلدات بهاي وتيني وكارياري وباميا على طول **حدودها** الشرقية، وهو الاتهام الذي نفته الحكومة السودانية.

The EAPCOLT can also help students have consistent renderings of nearly-synonymous words, but with different equivalent words and phrases this time.

Let us take some of the commonly used perambulatory phrases along with their systematic and consistent translations into Arabic, in accordance with the norms established inside the UN system.

- Acknowledging إذ يقر Vs Affirming إذ يؤكد
- Aware إذ يدرك Vs Bearing in mind إذ يضع في اعتباره
- ...adopted المتخذ Vs ...approved حظي بالموافقة

It is the same case with some of the commonly used operative phrases as well.

- Accepts يقبل Vs endorses يقر

- Calls upon يهيب ب Vs urges يحث
- Expresses its appreciation يعرب عن تقديره Vs Expresses its thanks يعرب عن شكره

6. Concrete recommendations

Capitalizing on the available opportunities and taking into account the challenges lying ahead, we can suggest some concrete recommendations on how to enhance the translation classroom so as to get competitive and not "disabled" translators:

- For the Ministry of Higher Education:
  - It is called upon to open the doors wide to postgraduate studies in translation
- For Tunisian professional translation firms and agencies:
  - They are called upon to provide information and assistance to have a better knowledge on the nature of the market and identify future needs
- For The National Translation Centre
  - It is called upon to draft A translation Industry Roadmap, a roadmap whose goal is to identify future directions for translation demand and propose actions to meet future challenges, especially those actions involving cooperation with the UN Organization.
- For Translation teachers:
  - They are called upon to do their best to bridge the APG or at least mitigate its impacts on the future generations of translators
- For Translation students:
  - They are called upon to invest some time and effort in collecting their own corpora and learn from this new Nile of knowledge (the internet) as well as from the UN School

7. Concluding remarks

The present paper, despite its focus on estimated data and the paucity of empirical studies on the current Tunisian translation market, could draw a real-like image on future challenges and existing opportunities. Indeed, we need to open the 'gates' wide to translation student, as they are now widely open to foreign businessmen, to be able to excel in the future translation market. So let us clear them the road leading to the UN school.

Acknowledgements
I would like to thank Dr. Sara Laviosa for reading my article and giving me valuable criticism. She really provided me with precious feedback and encouragement.

Bibliography

Archer, J. (2002). Internationalisation, technology and translation. Perspectives. Studies in 2005. Perspectives: Studies in Translatology. Volume 13: 2 Translatology 10. 87-117.

Bowker, L. (2004). "What does it take to work in the translation profession in Canada in the 21st century? Exploring a database of job advertisements" Meta Vol. 49(1)

Didawi, M. (2005). the Translator's Method. The Arabic Cultural Centre, Casablanca, Morocco.

Pearson. K.(2003). Using Parallel Texts in the Translator Training Environment. In F. Zanettin, S. Bernardini and D. Stewart, editors, Corpora in translator education, Manchester: StJerome, pp. 15-24.

Toury, G. (1995) Descriptive Translation Studies and Beyond, Amsterdam: John Benjamins.

Zanettin, F. (1998). "Bilingual comparable corpora and the training of translators." *Meta* 43, 4. 1-14. www.erudit.org/revue/meta/1998/v43/n4/004638ar.pdf

THE TURNEY LETTERS: LINGUISTIC EVIDENCE OF FRAUDULENT AUTHORSHIP

Roger T. BELL, MA PGCE Hon FCIL
Professor of Linguistics (retired)
University of Westminster
12 Jalan Penghulu 38/3
Bandar Mahkota Cheras
43200 Selangor
Malaysia
rogertbell@gmail.com

Abstract: During the 23rd March - 4th April 2007 crisis over the detention of British military personnel by the Iranian authorities, press interest in the UK centred 1) on the "truth" of the Iranian assertion that the British boats had illegally entered Iranian waters and 2) on the authenticity of the statements the captives made on Iranian television and in the letters written by one of them: Faye Turney, the only woman in the group.
It is the purpose of this paper, admittedly after the event, to introduce some linguistic input into the debate on the authenticity of the texts by searching in the letters themselves for evidence of idiosyncratic usages which appear to be non-native and, from those, infer the existence of a *covert author*, distinct from the *overt writer*.
This paper is, therefore, a short forensic linguistic case study which demonstrates the hypothesis that the texts are corrupt, with a non-native, covert author - almost certainly a Farsi speaker – fraudulently claiming to be both the writer and the *originator* of the letters.

LISTY TURNEY: JĘZYKOZNAWCZE DOWODY FAŁSZERSTW

Abstrakt: W okresie kryzysu związanego z zatrzymaniem personelu brytyjskiego przez władze irańskie trwającego w dniach od 23 marca do 4 kwietnia 2007 roku, zainteresowanie brytyjskiej prasy skupiło się na tym czy rzeczywiście Irańczycy miali rację twierdząc, że brytyjskie statki nielegalnie wpłynęły na irańskie wody oraz na autentyczności oświadczeń emitowanych w irańskiej telewizji, a składanych przez osoby zatrzymane oraz w listach sporządzonych przez jedyną kobietę w grupie Faye Turney.
Celem niniejszego artykułu jest przedstawienie dowodów językoznawczych w tej sprawie, w celu wykazania cech idiosynkratycznych autora tekstu, który wydaje się być niemal na pewno osobą niebędącą rodzimym użytkownikiem języka, w którym sporządzono listy, co z kolei sugeruje, że listy napisane zostały przez tzw. jawnego autora, ale pod wpływem autora ukrytego.
Zatem, ten artykuł stanowi analizę przypadku z zakresu językoznawstwa sądowego, który wykazuje, że sporządzenie tekstów zostało wymuszone, przez nierodzimego użytkownika języka, autora ukrtytego, niemal na pewno posługującego się językiem Farsi.

Introduction

One of the most dramatic features of the 23rd March - 4th April 2007 Shatt-al-Arab crisis was the appearance of the naval personnel involved on Iranian television and the publication of letters by one of them – Leading Seaman Faye Turney – to her parents, Members of Parliament, and the British People.

As far as the statements and letters were concerned, the debate in Britain during the crisis focused on whether the detainees had been coerced by threats and/or ill-treatment into speaking and writing as they did. It was quickly assumed that their behaviour could only be explained in terms of duress and the media rapidly adduced evidence in support of the assumption. This took the form of some analysis of NVC and occasional expressions of unease about the language of the letters but, otherwise, commentators make no use whatsoever of the readily available linguistic evidence before them.

That missing linguistic evidence is provided in this paper by forensic linguistic analysis which exposes a substantial number of words and phrases which appear to be non-native and therefore, an indication of joint production in which, in contrast to the normal process of writing, the *author* and *writer* are not the same person.

This study draws on ethnolinguistic and applied linguistic analytical techniques to distinguish the idiosyncratic from the "normal" and to provide a plausible explanation for their form and function.

The motivation for the study was to find linguistic evidence which would give substance to the air of "foreignness" that some journalists and commentators sensed in the texts and, by actually completing the investigation three days *before* 7th April, when information about the treatment of the captives became publicly available, to raise awareness of the significant role forensic linguistics can and should play in situations where the authenticity of texts is at issue.

1. Outline

The organisation of the paper is: §1 Outline, §2 Background (the setting in which the letters were produced), §3 Approach (ethnographic and applied linguistic ways of dealing with idiosyncratic textual data), §4 Data (the three letters, each presented with questionable stretches of the text in *italic* and followed by an individual commentary on each sample), §5 Plausible explanations (issues of duress: native and non-native production), §6 Conclusion (the essential role of the forensic linguist in breaking news concerning the authenticity of texts), §7 References, §8 Notes.

2. Background

On 23rd March 2007, 15 British naval personal (Royal Navy and Royal Marines) were arrested by Iranian Revolutionary Guards in the Shatt-al-Arab waterway on suspicion of illegally entering Iranian territorial waters. They were held by the Iranian authorities until their release on 4th April 2007.

While they were in custody, they participated in live appearances on Iranian television and, in the case of the only woman among them (Leading Seaman Faye Turney), wrote three letters which were put on display and subsequently published locally and internationally.

The British media quickly became focused on establishing the "authenticity" of the texts, a process which hinged on a set of ideological, axiomatic assumptions about the way service personnel are expected to behave in such circumstances. The reasoning can be stated in the form a simple syllogism:

Authentic messages, spoken or written, are plausible examples of expected behaviour.
The actions of this group are not plausible examples of the expected behaviour of service personnel.
Therefore, the messages are not authentic.

Since, as Abercrombie (1968.15) puts it, "we speak with our vocal organs … we converse with our entire bodies", professionals concerned with body language were called in who argued (on the UK media) that there were incontrovertible signs of stress and, indeed, coercion was confirmed (or reaffirmed) by the detainees themselves on their return to the UK after their subsequent debriefing on 7th April.

There was also a consistent undercurrent of discomfort and distrust of the texts in the whole of the media, signalled by the labelling of each of the letters with "scare quotes" (e.g. Faye Turney's first "letter"), and some sporadic questioning of the authenticity of the letters themselves based on extraordinarily naïve intuitive linguistic evidence e.g. "apologising" spelt "apologizing" (i.e. with a "z" rather than an "s") and "Abu Ghraib" misspelled as "Abu Ghrayb".

This is by no means surprising: journalists make a living using language and are, therefore, professionals with a heightened sensitivity to language. Faced by the texts, they felt uneasy; something was not quite right but just what it was they could not put their finger on. What they inevitably lacked (and still lack) is the metalanguage for discussing what they intuitively saw in the texts. Commentators can quickly - in the terms we shall be using in our analysis and discussion - *recognise* idiosyncrasy but are unable (and, no doubt are not motivated) to *describe* and *explain* what is wrong.

Incongruously, what has been missing, all along, is any kind of input from professional linguists, and it is the purpose of this paper to supply that.

By 5th April the captives had been released and flown back to the UK, where they were debriefed and, after more than 24 hours, information about the conditions under which they had been held became progressively available to the public.

However, no specifically linguistic evidence has ever been brought forward to contribute to this discussion and it is probably too late to expect any from the media: the story of what actually happened rapidly grew cold and within a few days was being edged off the stage by the question of the propriety of military personnel "selling" their stories to the press.

3. Approach

The default for the creation of written texts is that there will be an author who organises his or her thoughts into logical propositions which are re-organised as grammatically correct clauses (or sentences) and realised, by a writer, as socially appropriate texts (see Halliday 1978 for an expansion of this model).

The assumption is that the author and writer (or speaker) are the same person. Where they are not, we have instances of either the unmarked case of a typist "animating" the text (the term "animator" is from SKOPOS theory: Schäffner 1998), or the marked cases of "ghost writing" or plagiarism.

Translated texts, and other texts produced by non-native users of a language, are interesting in typically being marked by "non-ordinary" or "idiosyncratic" language which displays varying degrees of deviance ("faults", if we are feeling normative) in breaking linguistic rules or violating communicative conventions.

An ethnographic view of communication as the activation of communicative competence (Hymes 1972) would ask of any stretch of language, whether and to what extent it is 1) *possible* (in terms of the formal rules of the code), 2) *feasible* (in terms of ease of physiological or psychological processing), 3) *acceptable* (in terms of the communicative conventions of the society in which it occurs) and 4) *done* (in terms of its frequency of occurrence).

A more applied linguistic view, formalised as the technique of error analysis (Corder 1973), would label an idiosyncrasy as 1) an *error* (not "possible"), 2) a *mistake*, (either not "acceptable" or not "done"), or 3) a *lapse* (a slip of the pen or tongue)[9].

We would expect texts created by natives to contain the occasional unacceptable expression or rare turn of phrase or slip but not full-blown instances of the

[9] Corder 1973 has a very helpful procedural algorithm (reproduced in Bell 1981. 173) for error analysis which, interestingly, includes back translation as a strategy for "making sense" of idiosyncratic input.

grammatically impossible (other than as a lapse). Non-native texts are likely to provide examples of all of these and a greater density of them.

In short, if we suspect a text of being the creation of a non-native speaker or writer, we are already armed with criteria for categorising what seems strange to us. What we need next is a procedure.

There are three essential steps to take in relation to any suspect stretch of language:

1) *recognition,*
2) *description* and
3) *explanation*

We must, in other words, first *recognise* a stretch of language as an example of an *error*, *mistake* or *lapse,* next describe *what kind* of error, mistake or lapse it is, and, finally, attempt to explain *why* it has occurred.

Naturally, *recognition* is a relatively simple matter but *description* demands the metalinguistic terminology and skills of the professional linguist and *explanation* is, necessarily, a problematic enterprise fraught with uncertainty.

In the textual study which follows, we shall draw on both Hymes and Corder in the attempt to demonstrate the non-native nature of the Turney Letters and reconstruct the scenario in which they were realised.

The issue, it should be remembered, is not who the *writer* was but who the *author* was. There is no dispute that Leading Seaman Turney *wrote* the letters. Copies of the original hand-written texts are readily available and have been published.

Linguistic analysis points very strongly 1) to the existence of a covert author - almost certainly a Farsi speaker - who, in some way, was able to control what went into the letters by providing the content and form of the letters Ms. Turney wrote and 2) to the fact that these were not the messages she wanted to send: they were the words of others put, as it were, into her mouth and falsely presented as her own.

4. Data and analysis

In the analysis that follows, the three letters are reproduced from the versions available from the *Daily Telegraph,* stretches of questionable usage marked in *italic*, each questionable usage provided with a commentary – in square brackets: [ ] - which consists of 1) an alternative formulation[10] which is (in the opinion of the analyst) more plausible as text produced willingly by an educated, adult native speaker of the language, and 2) short notes of a more general and cultural kind which offer some explanation of the formal characteristics of the data itself.

[10] In Error Analysis terms, a "plausible interpretation"

When the full texts of the three letters are analysed for signs of idiosyncratic usage – specifically, non-native traits in the language – it can be demonstrated that there are in the region of 30 questionable occurrences (some 25% of the total number of words in the texts) which provide evidence in relation to disputed authorship.

Letter 1: released on Tuesday 27th March 2007

Dear Mum & Dad,
I am writing to you from Iran where I am being held. I will try to explain to you *the best* what has happened.
We were out in the boats when we were arrested by Iranian forces as we had apparently gone into Iranian waters. I wish we hadn't because then I would be home with you *all right now.*
I'm so sorry we *did* because I know we wouldn't be here now if we hadn't. I want you all to know that I am *well and safe*.

I am being well looked after, I *am fed* three meals a day and *I'm in constant supply of fluids*. The people are *friendly and hospitable, very compassionate and warm*.
I have written a letter to the Iranian people to apologise for us *entering into* their waters.
Please don't worry about me. I'm staying strong. Hopefully it won't be long till I'm home to get ready for Molly's birthday party and with a present from the Iranian people.
Look after everyone for me, especially Adam and Molly, I love you all more than you will ever know.
All my love Faye xxxxxxxxxxxx

Commentary

1. *the best*: the best I can [not possible; ungrammatical but, perhaps, an intentional error; the first of the coded messages]
2. *all right now*: all right, now/all, right now [this is ambiguous but probably not significant]
3. *I'm so sorry we did*: I'm so sorry we did it [the verb needs an object and the lack of one makes the sentence ungrammatical]
4. *well and safe*: safe and well [the order "well and safe", while not ungrammatical, is certainly less common that the suggested alternative i.e. not "done"]
5. *am fed*: am being given/am getting food [perfectly grammatical etc but the use of the passive conceals the agent and focuses on the recipient, signalling the powerless situation she is in and maybe even hinting at force feeding. In addition, the simple present form of the verb, carries with it implications of mechanical regularity]

6. *in constant supply of fluids*: getting plenty to drink ["in constant supply" is just not possible from a native speaker of English and "supply of fluids" has an eerily logistics/medical ring to it; inappropriate register]
7. *…friendly, hospitable, very compassionate and warm* [not done: see comment 1 in §5 on plausible explanations]
8. *entering into*: entering [ungrammatical: in English one "enters into" an agreement but only "enters" a location]
9. *xxxxxxxxxxxx*: 13 kisses [this again may be trivial but 13 kisses could be sending a coded message home: *choosing* to send such an unlucky number may well be highly significant]

Letter 2: released on Thursday evening 28th March 2007

Representative of the House of Commons,
I am writing to inform you of my situation. I am a British service person currently being held in Iran.

I would like *you all* to know of the treatment I have received here. The Iranian people are *kind, considerate, warm, compassionate and very hospitable.*
They have *brought* me no harm but have looked after me well. I have been fed, clothed and well cared for.
Unfortunately during the course of our mission we *entered into* Iranian waters.
Even through our wrongdoing, they have still treated us well and humanely, *which I am and always will be eternally grateful.*

I ask the representatives of the House of Commons, after the Government have promised that this type of incident would not happen again, why have they let this occur, and why has the Government not been questioned over this? "Isn't it time for us to start withdrawing our forces from Iraq and let them determine their own future?
Faye Turney 27/3/07.

Commentary

1. *Representative of the House of Commons*: Representatives…/Members of Parliament. [Either "the Representatives" or "Representatives". What we have is ungrammatical (not possible): the noun is singular (yet "you all" is used later) and the expected definite article is missing. Further, the use of the term reveals considerable ignorance of the British Parliamentary system. Members of Parliament are not "representatives" of the House of Commons but of the people in their constituencies who elected them: not done]

2. *know of*: know about. [The MPs already know "of" her situation i.e. the fact that she has been arrested and is being held by the Iranians: what they don't know is the details: not acceptable]
3. *a British service person*: a member of Her Majesty's Armed Forces/a serving member of the Armed Forces/a member of the Armed Forces currently serving in Iraq or similar [a retired British soldier confirmed the implausibility of the original wording which can be confirmed by checking the phrase in Google. There is only one instance other than the many from these texts: not done]
4. *kind, considerate, warm, compassionate and very hospitable* [not done: see comment 1 in §5 on plausible explanations]
5. *brought*: caused/done. [Harm doesn't get brought to anyone: it gets done to them: ungrammatical]
6. *Even through*: In spite of [ungrammatical]
7. *our wrongdoing*: our having done wrong [not done: "wrongdoing" has a very judgemental ring to it]
8. *which I am and always will be eternally* grateful: which I am and always will be eternally grateful for. [Ungrammatical: a preposition may well be a bad thing to end a sentence with (sic) but we need one here. The alternative "for which I am and always will be eternally grateful" is far too formal]
9. *I ask the representatives of the House of Commons*: [see comment 2 in §5 on plausible explanations]
10. *"Isn't it time for us… future?*: "Isn't it time for us … future?" [The single quotation mark is extraneous and its appearance (whether or not the omission of the closing final quotation mark is an insignificant slip of the pen) is unusual and inconsistent. If the "question" is to be signalled as a spoken question, the quotation would begin with the words *after the Government* and end with *their own future?* However, marking questions in this way may be seen as a further instance of Farsi rather than English rhetorical convention].

Letter 3: released on Friday afternoon 29th March 2007

To British People,
I am writing to you as a *British service person* who has been sent to Iraq, *sacrificed due to the intervening policies of the Bush and Blair governments.*
We were arrested after entering Iranian waters by the Iranian forces. For *this* I am deeply sorry. I understand that this has *caused even more distrust for the people of Iran, and the whole area of the British.*

The Iranian people *treated* me well and have proved themselves to be *caring, compassionate, hospitable, and friendly.*

For this I am *thankful.* I believe that for our countries to move forward, we need to start withdrawing our forces from Iraq, and leave the people of Iraq to start rebuilding their lives.

I have written a letter to the people of Iran apologizing for our actions. *Whereas* we hear and see on the news the way prisoners were treated in Abu Ghrayb and other Iraqi jails by *the British and American personnel,* I have *received total respect and faced no harm.*

It is now *our time* to ask our government to make a change to its oppressive *behavior* towards other people.

Commentary

1. *To British People*: To the British People. [Ungrammatical: the lack of the article, as in comment 1 on Letter 2 above, signals non-native usage]
2. *sacrificed due to*: as a result of [leaving aside the bizarre spectacle of a Leading Seaman casting herself in the role of a "sacrifice" (though her status as a "victim" is hinted at in the first letter: comment 5 above), the "due to" is stylistically inappropriate]
3. *the intervening policies*: the interventionist policies [the term "interventionist" seems an unlikely one from the coxswain of a British naval vessel, especially in the incorrect form "intervening"].
4. *of the Bush and Blair governments*: of the British and American governments [not done: a member of the British armed forces would surely put "British" first and, unless making a UK party-political point, not single out the Prime Minister by name. The whole sentence is pure anti-western political rhetoric].
5. *For this I am deeply sorry*: I am very/extremely sorry for this [not done: not only is "this" ambiguous, referring either to being arrested or to entering Iranian territorial waters, but and more to the point, "deeply sorry" is a less common collocation that those suggested and the syntax, with the fronted prepositional phrase, is marked]
6. *caused even more distrust for the people of Iran, and the whole area of the British*: caused the people of Iran, and the whole area, to be even more distrustful of the British. [There seems to be a missing comma after "area", otherwise the sentence has to mean something like "…and everything to do with the British". The syntax, as it stands, even with the missing comma, is inordinately clumsy: possible but not done]
7. *The Iranian people treated me well*: The Iranian people have treated me well. [Inappropriate: there are two past forms of the verb available: "treated" and "have treated". The first refers to a past event or action with no necessary indication of continuation into the present i.e. "they treated me well so far but

are not doing so now and are unlikely to do so in the future". The second refers to a past event or action but to one which continues into the present i.e. "they treated me well earlier, are still treating me well and I expect them to continue to do so". If the original formulation is taken literally, what is being signalled is that the situation of the captives is worsening].

8. *and have proved themselves to* be *caring, compassionate, hospitable, and friendly*: and have shown themselves to be…[not done: see comment 1 in §5 on plausible explanations]
9. *thankful*: grateful [not done: inappropriate lexical choice]
10. *apologizing*: apologizing/apologizing. [possibly not done: the "z" is an acceptable alternative in UK English but she uses "apologise" in letter 1]
11. *Whereas*: in contrast with [not done: inappropriate register]
12. *received total respect*: been treated with complete respect [not done: the collocations are inappropriate]
13. *It is now our time*: now is the time for us. [not done, perhaps and verging on the unfeasible: if the intention is as proposed in the alternative formulation, the structure is very clumsy and suggests that there was a time for other people to act and it is now the turn of the British People to do so]
14. *behavior*: behaviour [not done: unlike the "z" in 30 above, this is not a legitimate alternative to the American spelling; slip of the pen?]

5. Plausible explanations

Many of the linguistic and cultural clues revealed above strongly suggest that the author - someone with official authority to do so - either told Faye Turney what to write, dictated the words to her, or gave her a prepared text to write out in her own hand.
In addition, this original author is revealed as an individual whose command of English betrays a level of competence well below that of an educated, adult native speaker of the language (far inferior, that is, to Faye Turney's abilities), and shows many signs of an underlying Arabic or Farsi system. Back translation into Farsi (one of Corder's steps in dealing with an unintelligible sentence where the L1 is known) would be very likely to provide compelling support for this assertion.[11]

The rhetoric of Arabic (and Farsi) polemic is governed by a number of characteristics which are rare or even counter-productive in English i.e. not done (see

[11] Perhaps hardly surprisingly, no native speaker of Farsi could be located, at such short notice, to provide more than a small amount of informal back translation of these texts. It is hoped that one will become available and it will then be possible to engage in back translation which ought to provide additional evidence of the fraud.

Hatim and Mason 1997. esp. chs. 9 and 10, and Darwish, A. 2006). Two of these are well represented in the texts:

1) parallelism in the form of the piling up of epithets. In the letters, the Iranian people are described with a minimum of four and a maximum of five adjectives (+ the intensifier "very") from a set of seven. In the conventions of this rhetoric, such repetition strengthens your argument but, in Western rhetoric, flouts Grice's maxim of quantity and is likely to have the reverse effect.

2) the frequent use of the rhetorical question: "after the Government..., why…and why…this? Isn't it time….own future?" In Arabic/Farsi rhetoric, asking the question and assuming that the answer you could give would be accepted by the receiver also strengthens your case.

Even if we only accept a small percentage of the suspect stretches of language and dismiss the majority as slips of the pen (which would need to be native-like slips), the letters demonstrate without doubt that their originator was not a native speaker of English. Many of the ungrammatical features in them can be traced back directly to Farsi and, as such, constitute interference from that language.

Further, there is the ignorance of British institutions and conventions which does not lead to ungrammatical sentences but to ones which are unacceptable in social terms (they just do not fit the British context) or in communicative terms (they are just not done). Either way, someone like Faye Turney could not display such lack of knowledge of the society in which she lives and, one may add, is pursuing a professional career defending.

The linguistic evidence is not and cannot be 100% conclusive but certainly appears to point to joint production involving the overt writer (or animator) and a covert, non-native, user of English acting as author.

Where there is joint production, the two producers must either have shared intentions for the rhetorical value of the text (both intending the same message to be transmitted) or different intentions (each intending a different message).

The evidence seems to point to the second scenario: an author and a writer intending to use the same text to send different messages. For the author, it was presumably important that the wording of the messages should be "normal" and not draw attention to itself. The last thing he would want would be for the language of the texts to raise suspicions about their authenticity. For the writer, who was not in sympathy with these intentions, it was equally important to word the letters in a way which was "non-normal", drew attention to its formal characteristics, and thereby alerted readers to the fact that the message was not genuine.

However, there is no overriding reason for assuming that each of the letters has the same genesis. We can imagine a continuum with extreme and opposed positions at either end (X and Y).

At one end of the scale (X), we would have the situation in which none of the letters were written under duress; all of them represented Faye Turney's genuine, honest thoughts; none were intentionally written in "non-normal" language but expressed in her own natural way; she is both writer and author; there is, therefore, no significance in any linguistic "evidence" of idiosyncrasy - the idiosyncrasies are chance phenomena – or fraud.

At the other end of the scale (Y), we would have the situation in which all the letters were written under duress; none of them represented Faye Turney's genuine, honest thoughts; all were intentionally expressed in "non-normal" language, in a coded way to show that she was writer but not author; linguistic "evidence" of idiosyncrasy is therefore significant - idiosyncrasies are motivated rather than chance phenomena – and points towards fraud.

If we accept this dichotomy, we see a striking difference in style between letters 2 and 3, which fit well at the Y end of the continuum, and letter 1, which stands out as fitting relatively well at the other (X).

Letter 1 contains no *errors,* unless we define *the best, entering into*, *in constant supply of fluids* as errors" rather than "lapses". It does contain several samples which fall under the "not done" category: *well and safe*, *… friendly and hospitable, very compassionate and warm.*

Letter 2 contains at least five *errors,* one of which, even if it had been grammatical, would not be "done". Equally, the whole of the final paragraph would certainly not be "done".

Letter 3 contains at least six *errors* and at least four "not done" utterances.

All texts have a referential function but it begins to look as if, paradoxically, these texts are also, in Jakobson's terms (1960), "poetic", since they (or, more correctly, parts of them) have a poetic function (in the sense of realising linguistic choices which lead to focussing on the "message") as well.

The words of Robert de Beaugrande (1978: 19) come to mind:

> When the writer's message is itself unconventional, [it] demands non-ordinary means of transmission. If ordinary means were used for such a message, the reader might well miss the point and force the message into a conventional framework...the non-ordinary use of language creates the proper circumstances for slower processing and heightened awareness.

In all three instances, Faye Turney was able to use her communicative competence as a educated, adult native speaker of English to 1) create text which was "unconventional" (what she was saying she knew to be untrue: intentionally flouting Grice's quality maxim) and 2) indicate this through "non-ordinary means of transmission" (marked language) in order to make sure that "the reader… [did not] … miss the point and force the message into a conventional framework" (i.e. believe her).

In this way, she provided her readers with "the proper circumstances for slower processing and heightened awareness." In short, by inserting words like "apparently" and the other "non-ordinary" words and phrases in the first letter and, in the second and third, faithfully transcribing the linguistically defective text dictated to her, she was able to signal clearly the incongruity between the words and message they appeared to carry. In this she was continuing an age old technique of secret writing: *steganography*; "hiding in plain sight" (Berloquin, P. 2008).

If I may be permitted a little irony at this point, the Leading Seaman stands out as a model amanuensis or translator in her fidelity to the original author. She scrupulously reproduces all his infelicities and, in that way, manages to totally subvert his intentions, converting texts which he intended to be read literally into texts which carried coded messages with a totally different ideological and communicative value! [12]

With the benefit of hindsight, we now know what actually happened. The contents of letter 1 were "suggested" to her, after which she was left to write in her own way and in her own words. In contrast, letters 2 and 3 were dictated for her to write out and send:

> …she was given pen and paper and told to write the first one herself, "admitting" her guilt and apologising. But she threw in a few of her own phrases to communicate to family and comrades [who] would know she didn't really believe any of it, e.g. ["] allegedly ["] and not referring to her ship by name. The next two however were completely dictated, as they'd realised that left to her own devices she'd not give them what they want[13].

However, as she herself says, she

> …decided to "take a chance" and write her letters in such a way that her family would realise that it was not the "real me". She did that by referring to her ship by its pennant number F99 - a method never used by sailors.
> Last night she told Sir Trevor [Mcdonald in an interview on ITV] that writing the letters made her feel like a traitor, but she had no choice.
>
> Peterkin, T. 2007

6. Conclusion

It is, surely, ludicrous that the media ran around in circles seeking circumstantial evidence of coercion, including that provided by experts in paralanguage, when there was hard, documentary, *prima facie*, linguistic evidence of fraud staring them in the

[12] Copies of the hand-written versions of the letters are also available which contain a large number of underlinings and other seemingly extraneous marks. Further study of these texts might reveal even more instances of intentional coded messages.

[13] Personal communication from Tom Newton Dunn, Defence Editor, the *Sun*, received 12th April 2007 referring to Faye Turney's interview with the *Sun* on 7th April 2007.

face which could have been provided almost immediately each time a letter became available, and in a summative way once the crisis was over[14].

If forensic linguists wish to be taken seriously by the world outside academia, they must seize every opportunity to insist that, for example, good news reporting in circumstances such as these where the language evidence is crucial has to include a professional linguistic contribution. Had it been standard practice for the media to call upon forensic linguists as the letters were released[15], it would have been a relatively simple matter to provide professional insights which made sense of the breaking news as it came in and made a substantial and informed contribution to the debate.

It may well be argued that it takes time to produce an intellectually respectable forensic linguistic analysis and I am more than willing to accept that and engage in appropriate self flagellation. However, I would like to make a comparison between this study and market research. Not only do market researchers conduct vast, long-term surveys and studies and write voluminous reports on them, they also do what they call "quick and dirty" jobs[16].

The first version of this paper was just such a job. If we want to raise public awareness and appreciation of what forensic linguistics can do (and what linguistics, translation and interpreting are all about), we should be willing to undertake quick and dirty jobs like this, in addition to our more measured normal productions.

This paper is version 7. It represents what the writer feels, on reflection, should be written for other linguists, rather than for the press and the general public. It is, in short, still fundamentally version 1 but cleaner and more elegant with (to appropriate a suitably naval phrase), "bells, flags, and whistles" added.

[14] The first draft of this paper was written on the three days between 27th March (the release of the first letter) and 29th March (the release of the third letter), when it formed the basis of part of the discussion on translation and ideology in a PhD class at GSIT. The first version of it written up on 4th April (as it became clear that the captives were to be released) and 5th April (when they were set free and repatriated), just before confirmation of coercion and, therefore, fraudulent attribution of authorship began to emerge from the official debriefing and the press conference which followed it.

[15] and, we might add, pay a very welcome fee.

[16] The technique has a long and honourable history in marketing and operations research dating back at least 35 years to Woolsey & Swanson 1975.

Bibliography

Abercrombie, D. 1968 *Elements of General Phonetics* Edinburgh: Edinburgh University Press

Baker, M. ed. 1998 *Routledge Encyclopedia of Translation Studies*. London and New York: Routledge.

de Beaugrande, R. 1978 *Factors in a Theory of Poetic Translation* Assen: van Gorcum

Bell, R.T. 1981 *An Introduction to Applied Linguistics: approaches and methods in language teaching* London: Batsford Academic and Educational Ltd.

Berloquin, P. 2008. *Hidden Codes & Grand Designs: Secret Languages From Ancient Times To Modern Day*. New York: Sterling

Cole, P and Morgan, J. L. (eds.) 1975 *Syntax and Semantics, vol. 3: Speech Acts* London: Academic Press

Corder, S. P. 1973 *Introducing Applied Linguistics* Harmondsworth: Penguin

Darwish, A. 2006. "Attributing Terror: Evidence on Authorship - A Forensic Translation Analysis of Culturally Divergent Clandestine Coded Messages": *Translation Watch Quarterly: TSI.* Volume 2, Issue 4, pp 41-66.

Grice, H. P. 1975 "Logic and conversation" in Cole, P and Morgan, J. L. (eds.) 1975. 41-58.

Halliday, M. A. K. 1978 *Language as Social Semiotic: the Social Interpretation of Language and Meaning* London: Arnold

Hatim, B & Mason, I. 1997 *The translator as communicator* London: Routledge

Hymes, D. 1972 "On communicative competence" in Pride and Holmes eds. 1972. 269-293

Jakobson, R. 1960 "Closing statement: linguistics and poetics" in Sebeok, T. A. (ed) 1960. 350-377

Olsson, J. 2004 *Forensic linguistics: an introduction to language crime and the law* London: Continuum

Peterkin, T. 2007 Faye whispered,"there's going to be a rape" *Daily Telegraph* 11th April 2007

Pride, J. B. & Holmes, J. eds.1972 *Sociolinguistics: selected readings* Harmondsworth: Penguin

Schäffner, C. 1998. *Skopos theory* in Baker, M. ed. 1998. 235-238.

Sebeok, T. A. (ed.) *Style in Language* Cambridge, Mass: MIT Press

Woolsey, R. E. D. & Swanson, H. S. 1975 *Operations Research for Immediate Application: A Quick and Dirty Manual*. London: HarperCollins

PLAIN LANGUAGE SOLUTIONS TO THE PROBLEMS OF LEGALESE — A CASE STUDY OF WILLS

Emilia BOLESZCZUK
University of Gdańsk
emiliaboleszczuk@wp.pl

Abstract:

Legal English is well-known for its complexity which makes it incomprehensible for lay readers. The answer to the problem of legalese is the plain English movement, aiming at simplification of the language of documents. Despite the fact that the rules for clearer drafting have been extensively discussed, there are still no uniform standards, which is one of the factors that delay the pace of reform. Some types of documents, e.g. wills, are especially resistant to the reform.

The aim of this paper is to present a comparative analysis of legalese and plain English on the example of one type of texts. The material comprises a set of 6 British wills: 3 written in traditional style and 3 in plain English. The analysis takes into account both macrostructure and microstructure of wills, including design and layout, grammatical structures and lexicon.

The analysis reveals that plain language wills are much more readable than their legalese counterparts, as they use better organization, more accessible grammatical structures, and less ambiguous and less archaic terminology. It is argued that it is worthwhile to work on the enhancement of the existing plain language strategies and solutions, so as to develop and popularize plain legal English.

ROZWIĄZANIA PLAIN ENGLISH DLA TYPOWYCH PROBLEMÓW LEGALESE — ANALIZA PORÓWNAWCZA TESTAMENTÓW

Streszczenie

Angielski język prawniczy znany jest ze swojej nieczytelności i wysokiego stopnia skomplikowania, które sprawiają, że jest on praktycznie niezrozumiały dla zwykłego czytelnika. Odpowiedzią na problemy związane z angielskim żargonem prawniczym jest ruch plain English, zmierzający do uproszczenia języka dokumentów oraz języka prawa. Pomimo iż poświęca się dużo uwagi problemowi precyzyjnego formułowania dokumentów wciąż brak jest jednolitych zasad, co stanowi jeden z czynników spowalniających reformę.

Celem niniejszego artykułu jest analiza porównawcza dwóch rodzajów angielskiego dyskursu prawniczego: tradycyjnego żargonu (legalese) oraz nowoczesnego, uproszczonego języka prawniczego (plain English). Materiałem badawczym jest zestaw sześciu brytyjskich testamentów, z których trzy napisano w legalese, a pozostałe trzy w plain English. Analiza skupia się na poszczególnych aspektach dokumentów, takich jak: układ i organizacja tekstu, stosowane struktury gramatyczne i terminologia.

Badanie wykazuje, że testamenty napisane w plain English charakteryzują się dużo większą czytelnością niż ich tradycyjne odpowiedniki; dokumenty te są lepiej sformatowane, stosowane w nich struktury gramatyczne są prostsze i bardziej przystępne; a terminologia — bardziej precyzyjna i nowoczesna. Jednakże stosowane strategie upraszczania języka dokumentów wciąż wymagają ulepszenia i ujednolicenia.

1. Introduction

Legal English is a unique phenomenon which for ages has been a subject of great interest. It is known for its great formality, wordiness, and complexity. The answer to the never-ending complaints about legalese is the plain English movement whose aim is to replace the jargon in legal writing with plain language. In brief, this means creating documents of approachable layout and logical structure written in clear language which in terms of readability, grammar, lexicon, and punctuation would be governed by rules no other than those governing ordinary modern day English (Tiersma 1999; Butt 2006; Garner 2002, et al).

The call for simplification of legal language is hardly new and for the last few centuries many attempts have been made at the reform of it. However, it is impossible to change the age-old linguistic tradition of legal profession overnight, which is why the pace of the reform is quite slow. What also must be taken into account here is the fact that many English-speaking lawyers, to a greater or lesser extent, oppose the plain English movement and would prefer to adhere to the well-known forms, mostly due to the fact that this seems more practical from their point of view (Tiersma 1999: 216).

One of the pillars of the movement is the plain language legislation. In the United Kingdom much work has been done since the 80s by the government in terms of modernising administrative forms; also the simplification of the language of statutes and court documents was undertaken (Butt 2006: 87-92). In the United States the plain English laws were passed in many states which most often aim at simplification of consumer documents (Tiersma 1999: 220). Moreover, a number of American Bar Associations help to promote plain language (Butt 2006: 104). Law societies of some of Australian states have their plain language committees, similar to the Bar Associations in the U.S. (Butt 2006: 93-99). Also in New Zealand parts of legislation are being rewritten in plain English (Williams 2005: 176).

The other pillar of the plain language movement are the organisations for plain English. The British Plain English Campaign, formed in the late 70s, has done a great amount of pioneer work, such as simplification of regulations or consumer contracts (Butt 2006: 80). They also offer their services in editing and award their Crystal Mark to the organisations whose documents comply with the prescribed standards (www.plainenglish.co.uk). The other significant organisation is the international Clarity, whose objective is the extensive promotion of plain English; they publish a journal *Clarity*, run seminars on legal drafting and, like Plain English Campaign, have their accreditation system for plainly written documents.

Admittedly, much progress has already been done — thanks to the activity of the organisations and proponents of plain English, as well as the regulations requiring clear language for certain types of documents, the number of documents and laws drafted in plain language is increasing. Moreover, lawyers are becoming more aware of

the need for change, while their lay clients feel more confident to demand their documents to be clear. On the other hand, the progress of the plain language movement is very uneven — in the United Kingdom there are still lawyers who prefer legalese, not to mention the situation in the far more diversified U.S.. The lack of uniformity of the reform can be observed also in terms of types of documents — some of them occur to be more reluctant to change than the others. Last but not least, the problem lays also in the concept of the plain language itself, which is understood in various ways by different drafters. Broadly speaking, despite the movement in good direction, the reform of legal English still requires much work.

This paper presents a comparative analysis of legalese and plain English on the example of one type of legal text, i.e. will. The aim of the research was to seek for the plain language solutions for the specific problems of traditional legal discourse and to assess the results of the plain English reform. The analysis is made on the example of wills, as they are one of the most conservative types of documents, resistant to change and archaic, which constitute a great challenge for the plain English movement. In spite of occasional efforts at improvement, nowadays we still encounter wills whose language and form resemble those from a few centuries ago (Tiersma 1999, 228). Nowadays legalese wills are still used along with the plain English ones. In the course of the research traditional wills were compared with their plain English counterparts in terms of macrostructure, grammar, and lexicon. Also the varying solutions proposed by plain English drafters were compared.

The case study is based on the set of six wills for the United Kingdom, three of which are written in traditional legal English (I–III), and three in plain English (IV–VI), which are as follows:

I. will from 1861 from Peter Tiersma's website (www.languageandlaw.org),
II. will from 1984 from TEPIS book *Selection of English Documents*,
III. modern sample will found on the Internet (www.compactlaw.co.uk),
IV. sample will from Anthony Parker's *Modern Wills Precedents*,
V. sample will from Mark Adler's book *Clarity for Lawyers*,
VI. sample will proposed by Plain English Campaign (www.plainenglish.co.uk).

For the purposes of this paper the documents are referred to by their numbers.

2. COMPARATIVE ANALYSIS OF LEGALESE AND PLAIN ENGLISH WILLS

2.1. Design and layout

Design and layout are key factors determining the accessibility of documents. Many traditional legal documents consist of excessively long blocks of text with scarce punctuation and no indentation (Crystal 1970, 197), which makes them look quite

inaccessible. The 19th c. will I is the perfect example, whose whole text is one sentence with no commas. The modern will III is paragraphed, but every paragraph is one sentence, e.g. the 'charitable legacies' clause, which is lengthy and complicated.

In traditionally drafted documents capitalisation of complete words is used to make up for the lack of punctuation and to highlight some prominent terms. However, it does not really enhance the readability of the text, moreover, the unjustified or inconsistent use of capitals may cause confusion (Adler 1996, 2; Butt 2006, 160–163). For example, in will II, for unknown reasons, the only capitalised word is *hereby*, while in will III the words denoting actions (*give*, *direct*, etc.) are capitalised. Capitalisation is also overused for rendering defined terms within a document — words such as *will*, *executors*, *testator* or *trustees* often start with capital letter. Moreover, traditional documents used to and still do use Gothic font for the title and sometimes for the initial word of each paragraph. This can be observed in will II and, of course, in will I (in its handwritten version). Both capitals and Gothic characters owe much to the decorative tradition of written texts going back to the Middle Ages (Crystal 1970, 198) — but in the age of computerised text processing they seem somewhat obsolete.

The problems of inaccessible design and layout were avoided or at least reduced in plain English wills. Above all, they make use of lists and numbering, which eliminates long blocks of text and makes it possible to organise information in a logical way. This, as well as the proper punctuation, solves the problem of capitalisation, which is hardly used in those wills — only in will IV the initial words "this will" are fully capitalised. Instead of using capitalisation, prominent elements are highlighted in will V by means of bold and frames, which, along with generous spacing, makes this document perfectly readable.

2.2. Reference

Another feature which differentiates legal language from ordinary English is the scarcity of pronoun reference; instead, the prominent lexical items are repeated many times, which is supposed to enhance precision of the text (Crystal 1970, 202; Tiersma 1999, 71; Butt 2006, 208). However, when repeated, these words are often accompanied by specific modifiers, such as *said* or *aforesaid*. Will I abounds with them, they appear also in wills II and III. Most often they refer to previously mentioned persons ("the *said* Testator"), but they may also modify names of objects ("the *said* oil painting") or even actions ("*said* signing"). *Aforesaid* is the longer form of *said*, but, unlike *said*, it may also appear in the French word order (Tiersma 1999: 89), i.e. after the modified item, as in will I, where it appears several times after the place name ("Harriet Wells of Ipswich *aforesaid*"). These modifiers are probably literal translations from Latin and Law French, in which they used to appear as *dicti* and *le dit*, respectively (Tiersma 1999, 90; DMLU). Loathed by plain English drafters, they indeed are superfluous and archaic, and could as well be replaced with determiners such as *the*, *this* or *that*, or with

reference words such as *above* (DMLU; Tiersma 1999, 91; Butt 2006, 147; Duckworth 1995, 81; Adler 1996, 17–18).

The word *this* is used anaphorically and deictically in legal texts both as a determiner and as a pronoun (Jopek-Bosiacka 2006, 53–54; Tiersma 1999, 91). In its capacity as a determiner it is used in plain English wills instead of the archaic *said*. It often appears before the recurring name of the document itself ("under/ in *this* will"), in which case it could also be replaced with article *the*. The problem appears when this is not the only determiner used for a given word, as in wills I and III, in which it is used along with the possessive pronoun *my* ("of *this my* will"). Such over-defining is not necessary and adds nothing but more words. *This* used as a pronoun can be found most often in wills in the phrase "I declare *this* to be my last will", which use is a little archaic (Jopek-Bosiacka 2006, 53–54); it appears in legalese wills I, II, III, while in the plain language wills other constructions are used, as in will VI: "this is my last will".

Another method of reference to previously mentioned items, without repeating them, is to use the word *same* instead of a pronoun. This can be found in will I, where *the same* substitutes for "the oil painting". Such usage of *same* is regarded as archaic and is advised to be avoided. It may be ambiguous because, unlike proper pronouns, it could refer to both singular and plural; moreover, in some cases it may be difficult to distinguish between the ordinary usage of *the same* and its legalese meaning (Tiersma 1999, 88). It appears only in will I, which is the oldest one, and does not in the remaining documents — which, hopefully, supports Tiersma's theory of its slow extinction (1999, 88).

In plain language wills the repeated items are not modified in any special way, moreover, pronouns are used here more freely. The growing popularity of pronoun reference in legal documents is supposed to enhance their accessibility, but in some cases pronouns may be misleading or appear too informal, thus they should be used carefully (Butt 2006, 208). Sometimes the traditional repetition is a safer solution. But, anyway, the archaic referential modifiers should be shunned.

Another characteristic feature of reference in legal texts is the frequent use of specific pronominal adverbs, such as: *hereby*, *hereinafter*, *thereof*, etc. These forms come from Middle English and nowadays they are not used outside legal texts at all (Tiersma 1999, 93–94). They are used for the sake of economy of reference, (Tiersma 1999, 94); moreover, their archaic character gives the documents the desired "touch of formality" (Crystal 1970, 208) and "legal feel" (Butt 2006, 147). Nonetheless, opponents of legalese criticise them as imprecise and obsolete (Tiersma 1999, 94–95; DMLU). The adverbs of this type appear in the traditional wills analysed here, but they are absent in plain language wills. The term that is present in three traditional wills (I, II, III), and which is used excessively in all legal texts, is *hereby*. Its function is to underscore the performative character of the verb to which it refers (Witczak-Plisiecka 2007, 114). However, removing it from a document does not cause any loss of meaning

(DMLU). "I *hereby* revoke" (II, III) indicates revocation of former wills by this particular document, but since there is not any other way in which this could be performed, *hereby* seems superfluous (Adler 1985: 2). It is not used in plain English wills at all. The analysed documents contain also pronominal adverbs which serve as reference to other parts of the document. However, these words may be confusing — they are not precise enough and sometimes the reader cannot be sure if they refer to a given clause or to the whole document (Tiersma 1999: 95). Moreover, in certain types of texts (e.g. statutes), which are sometimes reordered due to amendments, these words may at some point become totally misleading (DMLU). One of them is *hereinafter* (I, III) which refers to the following part of the text. Garner advises to use more exact reference instead, such as: "later in this will" (DMLU). Another example is the word *herein* (III) which usually means "in this document", but in order to avoid vagueness, the drafter should specify that what he means is the whole text, or some part of it (DMLU). Such adverbs are not used in plain English wills (IV, V, VI) at all; instead, more exact reference is made.

2.3. Shall

A verb which deserves particular attention is *shall*. It is abundant in all types of legal documents and can be regarded as the true symbol of legalese (Butt 2006, 131). Thorough research on the occurrence of *shall* was made by Williams, which reveals that, although its use has been significantly reduced in jurisdictions of Australia and New Zealand, *shall* still appears in the laws of the United States, Canada, and is extremely popular in the United Kingdom, as well as in the English legislation of the European Union (2006, 238–239). It is used out of habit by lawyers who are unable to find coherent substitutes for it among less archaic verbs. Moreover, many drafters cling to *shall* because of its exceptional flexibility (Butt 2006, 132). However, the polysemous character of the word is, at the same time, its most dangerous drawback (Butt 2006, 132). Its most common meanings in legal context are: imposition of duty/ obligation, direction/ recommendation, entitlement, condition, and future action (BLD; DMLU; Butt 2006, 131–132). The borders between those meanings are not always clear cut, which may pose a great difficulty in interpretation of the text, and which may create the ground for litigation. In ordinary English *shall* is used mainly to talk about the future, to ask for instructions or decisions, but sometimes it can also express obligation (Swan 2005, 212–220). Nonetheless, *shall*, outside legal texts, is already very unusual in American English and it is becoming more and more obsolete also in British English (Swan 2005, 312; Williams 2005, 181). It is possible that shortly it will become one of those archaic words restricted to legal texts.

Will I is replete with *shalls,* they appear also in wills II and III, and even in Parker's will IV. To make it worse, *shall* usually carries several different meanings within one document. Table 1 presents the varying uses of shall in the analysed wills:

Tab. 1 Use of *shall* in wills.

Meaning of shall:	**Examples of use:**	**Will No.:**
obligation	"I direct that the last mentioned legacies *shall* be paid [...]"	I
	"I [...] direct that all my debts [...] *shall* be paid [...]"	II
	"I further direct that the receipt [...] *shall* be a sufficient discharge"	III
condition	"In case the said [...] *shall* die in my lifetime [...]"	I
	"if he *shall* predecease me [...]"	III
denial of permission	"it *shall* not be sold without her consent [...]"	IV
direction	"which expression *shall* mean Trustees [...]"	III
future	"then it *shall* form part of my residuary estate [...]"	IV

These are the meanings of *shall* that could be inferred from the context. However, sometimes it may be difficult to interpret *shall* properly without a thorough knowledge of the testator's case and of the author's intention. In the remaining plain English wills (V, VI) various meanings of *shall* are differentiated by using a different verb for each meaning. The notion of obligation is expressed here with *is to* and *are to* ("gifts in a will which [...] *are to* be given to named people [...]"). The *be to* construction is becoming increasingly popular in modern legal texts; it constitutes a gentler form of *must*, which also is acceptable, but in some contexts may be regarded as too strong (Butt 2006, 202–203; Williams 2005, 188; 2006, 244). Condition is rendered more clearly by means of simple conditional sentences ("If my wife has died before I die, I appoint [...]"). In the case of giving permission, in will V *shall* is replaced with *may* ("A professional executor [...] *may* charge his or her usual fees"). Futurity is expressed with modal verb *will, e.g.*: "No executor or trustee *will* be liable for anything done or overlooked [...]". This way of avoiding *shall* in different contexts is similar to what was proposed by Garner (DMLU, 2002) and Butt (2006, 200–203). The other meanings of *shall* mentioned above, but not appearing in the analysed plain English wills, which are entitlement and direction — could be realised by *is entitled to* and *should* respectively (DMLU).

To avoid *shall* seems to be the best strategy. The aim of modern legal writing is to achieve the highest possible level of precision and clarity — this cannot be done if drafters preserve such polysemous words as *shall*.

2.4. Passive voice

Passive voice is overused by legal writers because of its useful indirectness (Butt 2006, 153–154). It comes in handy when the author strategically prefers to obfuscate the agent of the action, or when the text can apply to more than one possible agent, e.g. in statutes (Tiersma 1999, 74–77). The passive voice is always more difficult to follow than the active voice because it reverses the true sentence structure; thus it should be avoided unless absolutely necessary (Garner 2002, 40–42). However, wills are not exactly the type of text in which there should be any strategic need for obscuring the agent and in the analysed documents the passive voice is not used too often. Usually the introductory sentence in wills includes passive construction, which presents the author or the date of the document, as in will III: "This Last Will and Testament *is made* by me Judy Ann Jones [...]". This construction probably results from the author's wish to put the title of the document in the prominent position (which is the position of the subject) of this first sentence — words *last will and testament* are sometimes underscored within the first sentence by means of Gothic font and this is the place where the title is officially introduced (will II, the manuscript of will I). This passive construction does not seem especially troublesome, but if the authors of wills were to avoid passive constructions whenever possible, and, at the same time, keep the title of the document in the subject position, they could formulate it as in will V: "The will of Oliver Showlem"; or will VI: "I am Paul John Brown [...] This is my last will [...]".

2.5. Subjunctive

Subjunctive is a special verb mood which in English is used mainly in dependent clauses, to talk about desirable, possible or imaginary situations (Swan 2005, 567). It was used in older English and is still widely used in some other languages, e.g. in French. In modern English subjunctive is used rarely, hardly ever in spoken dialect, and it is regarded as old-fashioned and extremely formal (Swan 2005, 567–568; Tiersma 1999, 93). Nonetheless, subjunctive is still often used in legal language. Among the analysed wills, the examples of subjunctive can be found in modern will III, in phrases such as: "I REQUEST that my body *be* cremated [...]. Use of subjunctive in legal texts is not particularly onerous — the subjunctive constructions are usually quite comprehensible and, probably, there are more important aspects of legal texts that the plain language movement should focus on. Nonetheless, according to the idea of modern legal drafting presented by some of its proponents, for example Butt, the rules of legal writing should not be different from the rules governing modern English writing in general (2006). Following this reasoning, if drafters wish to keep the language of their documents up to date, they should abandon such obsolete grammatical constructions as the subjunctive. In modern British English it is very unusual and the

ideas that in the past were expressed by means of subjunctive structures are nowadays conveyed using modal verbs such as *should*, and ordinary tenses (Swan 2005, 568). Although subjunctive is an exceptionally elegant device that evokes the style of great works of British literature — in legal texts it should rather be sacrificed for the sake of clarity.

2.6. Nominalization

Another common grammatical feature of legal discourse is nominalization, which means using nouns instead of verbs while speaking of actions (Gotti 2005, 77). Nominalizations reduce the number of strong verbs in the text — the meaning which could be expressed by only a verb is split between an introducing copular verb and a noun phrase (Gotti 2005, 78). Tiersma claims that these structures, just like passive voice, are most often used in order to obscure the agent (1999, 77). In English generally changing the distance between certain lexical items makes it possible to slightly manipulate the meaning — when the strong verb comes right after the agent, the direct connection between them is more visible, whereas expressing the action by a noun and separating the agent from it by means of a copular verb helps to obscure the link between them (Lakoff 1981, 128–132). There are some legitimate reasons for doing this — for example, when there is a need to state something as broadly as possible (Tiersma 1999, 77–78). Gotti claims also that there are cases in which nominalization makes it possible to achieve greater precision, even if using a verb would allow for fewer words (2005, 78). Finally, using nominalization may be regarded by some drafters as the hallmark of the desired formality (Butt 2002, 153) which is supposed to emphasise the specialised character of the text. Nonetheless, the dense text consisting mainly of nominal phrases is not easy to interpret — it demands more effort and is often impossible without specialised knowledge of the certain type of texts (Jopek-Bosiacka 2006, 67). Plain English proponents agree that communication is always more effective when strong verbs are used rather than nominalizations (Butt 2002, 153; Tiersma 1999, 206).

Interestingly enough, nominalization seems to show low frequency in wills. Only in will III we can find some constructions that may be regarded by some readers as unnaturally nominalized, these are the phrases in which *charge* and *discharge* are used as nouns: "the expenses relating to my funeral shall be the first *charge* on my estate". However, this example is quite debatable and is quoted here just because of the lack of any more prominent instances of nominalization in these wills. The almost complete lack of this feature probably may be explained by the fact that generally in wills there is hardly any need to obfuscate the agent of the action — what the testator performs in the will is rarely something that they would like to separate themselves from, not to mention the fact that they are dead at the moment when the will is read by the others. However, the frequent occurrence of nominalization in other types of documents

constitutes yet another challenge for those who would like to make the English specialised discourse more approachable.

2.7. Doublets and triplets

Legal style is well-known for its great verbosity, which is the characteristic feature of most formal registers. Conveying some simple message by using many redundant terms can be compared to wrapping the essence of the message in the thick layer of words — which is the perfect way of obscuring the meaning (Haiman 1983, 781–819). Legal discourse is overloaded with tautological phrases consisting of two, three, or, less often, more synonyms expressing the same concept, which by Garner are called doublets and triplets (DMLU). The reasons for the use of more than one word for one meaning are mainly historical. First, as during Anglo-Saxon period legal acts were performed orally, a Germanic poetical device — alliteration — was used also in legal domain, in order to make words easier to remember (Tiersma 1999, 14). This is probably the source of such rhythmical alliterating phrases as, for example, *rest, residue and remainder* (will I). Second, the historical multilingualism of English law system, especially the great significance of French in the Middle Ages and Renaissance, created the peculiar fashion of translating legal terms by means of coupling together two or more words of Anglo-Saxon, Old French or Latin origins (Tiersma 1999, 31–32; DMLU). This led to coining such phrases as *last will and testament* or *give, devise and bequeath*. Although there is no need for explaining each term in different languages anymore, many doublets and triplets were retained in legal English. They are used because of the tradition, out of habit rather than necessity; some of them have attained the status of the so called ritualistic phrases, which are obviously tautological, but, at the same time, so popular that it is almost impossible to eschew them (DMLU). Moreover, lawyers use them in order to make sure that they cover every possible future circumstance, which, according to some of them, is most easily attained by enumerating all the possible synonyms of one meaning (Butt 2006, 129; Tiersma 1999, 63). Nonetheless, this does not enhance precision of the text, and can be confusing — where a few different terms are used it is logical to expect each of them to carry a distinct meaning. Language users have a tendency to search for differences in meanings even between very close synonyms. This may be especially dangerous in the case of less known doublets and triplets (DMLU). Therefore, most plain English writers advocate using just one word for each concept.

The most obvious example of a doublet in the analysed documents is their title. The traditional documents (I, II, III) are all titled *last will and testament*, which in plain language has been shortened to *will* (IV, V, VI). Later in the text of the documents, irrespective of their main titles, they are usually referred to as *last will* or just *will*. The word *will* comes from Old English and it was formerly used only for disposal of real property (OED; DMLU). Anglo-Saxons disposed of their property by means of

documents that were called *wills*; in Old English the verb *will* used to express desire, rather than futurity, as in modern day English — therefore wills were originally expressions of what a person wished to happen after their death, and the link between the noun and the verb *will* was much more obvious back then (Tiersma 1999, 11). The word *testament* is of Latin origin and it used to be ascribed to disposal of personal property (OED; DMLU). The phrase *last will and testament* has been used for more than 500 years (Duckworth 1995, 47). While Section 1 of the Wills Act 1837 states that "the word '*will*' shall extend to a testament and to a codicil" there seem to be no longer any legal basis for the use of the phrase. Although the word *testament* is not used alone too often anymore (Alcaraz 2002, 139; DMLU), the phrase *last will and testament* is used interchangeably with *will*. This tautological doublet is most often used out of habit; as in many wills (I, II, III) it appears as the title, while later the document is referred to as *will*. The argument for such use may be the fact that *last will and testament* is well known, especially to non-lawyers, and therefore it might be used as a matter of tradition, especially for the title of the document (DMLU). Nonetheless, according to most plain English writers, for the sake of consistency and in order to avoid redundancy, only *will* should be used. As to the adjective *last*, it is redundant, as anyway it cannot substitute for the standard revocation clause (Duckworth 1995, 48). Garner also demonstrates that in some contexts its use may be misleading (DMLU) — which is another argument against *last will and testament*.

We have mentioned above the triplet *rest, residue and remainder*, which appears in will I. The phrase usually refers to what remains after giving gifts and paying debts from the testator's estate (Duckworth 1995, 73). It conjoins three words, each starting with the same letter, which makes it rhythmical and easy to remember. Apparently, this is the only rule here, because all the words are of the same origin. The word *rest* comes from French word *reste*, *residue* comes from French *résidu*, *remainder* is the Old French word — the roots of all three words lie in Latin, and the meaning of each of them includes meanings of the other two (OED; DALF; MW). *Remainder* does not exist in modern French anymore, while *reste* and *résidu* are still used and their meanings are synonymic. In legal English these words used to and still appear in various combinations, or separately (will I; LFD), which clearly implies that they are interchangeable. Yet, the phrase is still often used by drafters of wills, although among documents that are analysed here it can be found only in the 19th c. will I, which probably is a good sign. Authors of other wills propose some equivalents of *rest, residue and remainder.* Author of will II uses the word *remainder* only. This word used on its own in such context can be problematic, because in legal English it has a second meaning connected with the future interest (Duckworth 1995, 74; DMLU; BLD). Wills III and VI use the word *residue,* which seems acceptable, but to some drafters or readers may appear too foreign in form and pronunciation. Will IV uses *rest* which is probably a better choice than *residue.* Other substitutes for *rest, residue and remainder* proposed by plain English drafters often do not include any of those three, but constitute the literal expression of the meaning

by means of ordinary words such as: *all other property*, *the balance of my property* etc. (Duckworth 1995, 74; DMLU).

Another example of triplet typical of wills is *give, devise and bequeath*. These words are supposed to express the testator's wish to transfer the specified gifts to certain beneficiaries. The phrase appears in the full form in will I and in its contracted form (*give and bequeath*) in wills I and II. Words *give* and *bequeath* come from Old English; *devise* came into English from Latin (*dividere*), via Old French (*deviser*) (OED; DALF). *Give* is used in the same sense both in ordinary and legal English, *bequeath* has no meaning outside legal context anymore, *devise* in the sense of giving is used nowadays only in wills and in modern ordinary English it has a new meaning (OED, MW; DALF). Traditionally, *devise* is said to be assigned for the disposal of real property and *bequeath* for the gifts of personal property (Duckworth 1995, 31; DMLU). However, according to Mellinkoff, this custom arose only in 19th c. and was "a subtlety contrary to the legal and linguistic history of the words and never uniform in practice" (1963, 354). Nevertheless, the text of Wills Act 1837 seems to follow this distinction. On the other hand, as the Act establishes the same procedures for disposal of real and personal property, there seems to be no need for marking the difference between them by using different terms (Adler 1996, 17; Duckworth 1995, 32). In general, the two words are often used interchangeably, but in order to avoid any uncertainty, *give* could be used instead of *devise* or *bequeath* — it certainly includes the meanings of those two, and it is perfectly understandable (Adler 1996, 17; Duckworth 1995, 32; DMLU). The plain English wills IV and V use just *give*. Plain English Campaign's will (VI) uses *bequeath* within definitions clause and *give* later in the disposition clause — the use of two terms is confusing, *give* would suffice here.

The general plain language trend is to abandon the use of doublets and triplets and replace them with their one word synonyms. This seems to be a reasonable approach, as precision and conciseness are fundamental for creation of modern, clear documents.

2.8. Foreign vocabulary

The historical multilingualism of English legal system manifests itself not only in the presence of doublets and triplets, but also in the general frequent occurrence of words of foreign origin. Much as there appear some words of Norse or Anglo-Saxon origin, the vast majority of technical terms in legal English derive from French, to which they came from Latin; but also directly from Latin (Crystal 1970, 208–209). Tiersma points at certain areas of law that are characterised by especially great concentration of vocabulary of French origin. One of such areas is the English real property law, which was greatly influenced by feudalist patterns brought to England by the Normans (1999, 31). The French terms belonging to the domain of real property law, which can be also found in the analysed wills, are words such as *property* or *estate* (OED).

In plain English texts there seems to be a general tendency to use shorter and simpler vocabulary. In English language this usually means using words of Anglo-Saxon or Norse origin. The keen supporter of this approach is Garner, who advocates using more familiar, shorter Anglo-Saxon words than those of French and Latin origin (2002, 29). The analysis of the wills reveals that plain English drafters, to a smaller or bigger extent, stick to this rule. An interesting example is the way of referring to death in the wills. Traditional wills (I, III) use the French word *(pre)decease* in reference to the testator's death or the potential death of the appointed executor, trustee or beneficiary. Interestingly, in the 19th c. will I there also appears the more straight-forward word *die*. In plain language wills (IV, V, VI) the same is expressed by means of *die* or *(not) survive*. The word *die* comes from Old Norse and is perfectly understandable. The word *survive* comes from French, but, for some reasons, it was preferred by plain English drafters to the French *decease*. There seems to be a general tendency to avoid too straightforward reference to death and probably *die* is regarded by some drafters as too strong word for a will. The French *decease* is so often used in wills because of its archaic formality and slight obscurity — which makes it possible to handle the delicate subject with more distance than it is in the case of using *die*. Garner mercilessly mocks this tendency: "There is nothing wrong with death, although it has inherently unpleasant connotations. But that is the nature of the subject, and writing decease [...] in legal contexts is only a little less ridiculous than writing *going to meet his Maker*" (DMLU). This implies the open use of *die* instead of its euphemistic equivalents — which would also be consistent with Garner's prescription for avoiding Romance words. Nonetheless, within the analysed wills the word *survive* seems to be the winner. The reason may be the fact that, despite its French origin, *survive* is perfectly understandable; moreover, unlike *decease*, it is still used in modern English outside legal context; and, finally, it creates some distance against the subject of death. The problem of handling the subject of death in wills shows that one of the criteria proposed by Garner (using Germanic words instead of Romance words) cannot be applied irrespective of other circumstances. As we can see, there are cases when not only the origin of the word, but also other factors must be taken into account. Much as there are instances when the obsolete, extremely formal French word could easily be replaced by its more practical Anglo-Saxon equivalent, there is definitely nothing wrong in French or Latin vocabulary as such — as long as it is understandable and up to date.

2.9. Other modifiers

There are also some obsolete and redundant modifiers to be found in the analysed traditional wills. What strikes in the case of will III is the frequent use of adverb *absolutely*, in phrases such as: "I GIVE the following Legacies *absolutely* [...]". The intention of the author was to ensure that the beneficiary becomes an outright owner,

rather than a limited one. It is redundant here, because a gift passes the entire interest, unless stated otherwise (Adler 1985, 2).

Unlike *absolutely*, modifiers such as *whatsoever* and *wheresoever* are not only redundant, but also archaic. The adjective *whatsoever* is the obsolescent form of *whatever*, while the archaic adverb *wheresoever* has its modern equivalent in *wherever* (DMLU; OED; MW). They can be found in wills I and III, as modifiers of words relating to the estate: "my estate both real and personal of *whatsoever* nature and *wheresoever* situated [...]" (III). Probably here also the author's intention was to be as precise as possible. Such over-defining does not seem necessary, and it could be attained by using more modern and shorter terms. Also Garner criticises these words as archaic and legalese and advocates the use of their modern forms or other constructions (DMLU).

2.10. Highlights

In the table below the most prominent elements of legalese and their plain English equivalents are highlighted (Table 2). They are strictly limited to those which were discussed in this chapter, i.e. to grammatical and lexical issues concerning only a few randomly chosen wills, which leads to creation of a unique linguistic profile of those documents.

Tab. 2. Highlights of the plain English solutions used in wills.

LEGALESE	PLAIN ENGLISH
DESIGN & LAYOUT	
solid blocks of text	lists, numbering, tables
scarce punctuation	punctuation as in ordinary English
Gothic fonts	modern fonts
overuse of capitalisation	capitalisation as in ordinary English
GRAMMAR	
lengthy sentences	shorter sentences
passive voice	active voice
subjunctive	modal verbs/ ordinary tenses
nominalization	strong verbs
said/ aforesaid	*the/ this/ that/ above/ ø*
(*the*) *same*	pronoun/ noun
hereby	*ø*
hereinafter	*later in this Will*
herein	*in this document*
shall (obligation)	*must/ be to*
shall (condition)	conditional sentences
shall (future)	*will*
shall (permission, entitlement)	*may*
shall (direction)	*should*

LEXICAL UNITS	
last will and testament	*will*
rest, residue, and remainder	*rest/ all other property/ the balance of my property*
give, devise, and bequeath	*give*
(pre)decease	*die/ survive*
absolutely	*ø*
whatsoever	*ø*
wheresoever	*wherever/ ø*

3. Conclusions

The above analysis reveals that some good progress has been made in modernising wills. The plain English wills analysed here paper demonstrate various attempts at thorough simplification. They are much different from their legalese counterparts; their layout, grammar and lexicon are more reader-friendly than those of traditional documents. In spite of the fact that they differ between one another, these plain English wills constitute a good example, and proof, of the changes in good direction that are happening in legal English.

On the other hand, the general situation is still far from perfect. The plain language documents, including wills, are a rarity. Still very few law firms in the United Kingdom declare to be drafting their documents in plain language and there are virtually no plain language documents in the form of ready-to-use precedents — in contrast to highly popularised legalese forms. Moreover, some of the existing plain English documents differ significantly, which reveals how varied the approaches to the reform are. The discrepancies between plain language policies of different governments and organisations lead to noticeable inconsistencies of the reforms.

There is much that can be done for the improvement of legal English in general. The intensive promotion of plain language should be continued and the standardised plain legal forms should be popularised more extensively. What also might increase the pace of the reforms would be the better cooperation between the plain English organizations. Much can be done also on the micro level — there is a great need for individual lawyers to change their attitudes. Courses on modern drafting should be run at universities for the would-be lawyers in order to form good habits from the very beginning. The increasing number of lawyers and law firms choosing plain language will also make it more popular among lay clients who, once they discover the endless advantages of having their documents drafted in plain English, will start to avoid the services of traditional drafters. Finally, it is significant that not only the English-speaking lawyers participate in the reform. Representatives of other professions also can contribute, such as legal translators, linguists, information designers, and others.

On balance, although the legal English language seems to be moving in the right direction, there is still much work to be done. Ousting legalese and the permanent implementation of plain English is not impossible, although this is going to require much patience from those who fight for it.

Bibliography

Adler, Mark. 1985. Will drafting. *Clarity* 5. 2–3. http://www.clarity-international.net/journals/default.htm

Adler, Mark. 1996. Better drafting (a will extract). *Clarity* 36. 17–18. http://www.adler.demon.co.uk/pub.htm

Adler, Mark. 1998. Before and after. *Clarity* 41. 32–33. http://www.clarity-international.net/journals/default.htm

Alcaraz Varo, Enrique & Brian Hughes. 2002. *Legal translation explained*. Manchester: St. Jerome Publishing.

Butt, Peter J. & Richard Castle. 2006. *Modern legal drafting: A guide to using clearer language.* New York: Cambridge University Press.

Clarity website. http://www.clarity-international.net/ (1 May 2009).

Crystal, David & Derek Davy. 1970. *Investigating English style*. London: Longman.

Duckworth, Mark & Arthur Spyrou (eds.). 1995. *Law words: 30 essays on legal words & phrases*. Sydney: Centre for Plain Legal Language.

Garner, Bryan A. 2002. *The elements of legal style*. New York: Oxford University Press.

Gotti, Maurizio. 2005. *Investigating specialized discourse*. Bern: Peter Lang.

Haiman, John. 1983. Iconic and economic motivation. *Language* 59, No. 4. 781–819.

Jopek-Bosiacka, Anna. 2006. *Przekład prawny i sądowy*. Warszawa: Wydawnictwo Naukowe PWN.

Lakoff, George & Mark Johnson. 1981. *Metaphors we live by*. Chicago: The University of Chicago Press.

Mellinkoff, David. 1963. *The language of the law*. Boston: Little, Brown & Company.

The plain English guide to wills. Plain English Campaign. http://www.plainenglish.co.uk/guides.htm (14 December 2008).

Plain English Campaign website. http://www.plainenglish.co.uk/ (1 May 2009).

Swan, Michael. 2005. *Practical English Usage*. Oxford: Oxford University Press.

Tiersma, Peter M. 1999. *Legal language*. Chicago: The University of Chicago Press.

Tiersma, Peter M. 2006. Some myths about legal language. http://lch.sagepub.com/cgi/content/abstract/2/1/29 (14 December 2008).

Williams, Christopher. 2005. *Tradition and change in legal English: Verbal constructions in prescriptive texts.* Bern: Peter Lang.

Williams, Christopher. 2006. Fuzziness in legal English: what shall we do with shall? In Anne Wagner & Sophie Cacciaguidi-Fahy (eds.), *Legal language and the search for clarity. Practice and tools*, 237–263. Bern: Peter Lang.

Witczak-Plisiecka, Iwona. 2007. *Language, law and speech acts: Pragmatic meaning in English legal texts*. Łódź: Wyższa Szkoła Studiów Międzynarodowych w Łodzi.

Acts:

Administration of Justice Act 1982. The UK Statute Law Database. http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1982/cukpga_19820053_en_1 (10 April 2009).

Wills Act 1837. The UK Statute Law Database. http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1032973 (1 February 2009).

Dictionaries:

BLD. *Black's Law Dictionary*, 8th edn. 2004. St. Paul: West Publishing Company.

DALF. *Dictionnaire de l'ancienne langue française et de tous ses dialectes du IXe au XVe siècle.* 1880. Paris. http://www.lexilogos.com/francais_dictionnaire_ancien.htm#ancien

DMLU. *A dictionary of modern legal usage*, 2nd edn. 1995. New York: Oxford University Press.

LFD. *The Law-French Dictionary Alphabetically Digested*, 2nd edn. 1718. Eliz. Nutt et al. http://books.google.com/books?id=5I8NAAAAQAAJ&hl=pl

MW. *Merriam-Webster's Collegiate Dictionary Online*, 11th edn. 2003. http://www.merriam-webster.com/

OED. *Oxford English Dictionary*, 2nd edn. on CD-ROM. 1992. Oxford: Oxford University Press.

INFORMATION TECHNOLOGY TERMINOLOGY IN CHAPTER XXXIII OF THE POLISH PENAL CODE OF 1997

Filip Radoniewicz, PhD student
Maria Curie-Skłodowska University in Lublin
Faculty of Law and Administration
Institute of Criminal Law
Department of Comparative Criminal Law
ul. Pana Balcera 8/43
20-631 Lublin, Poland
filip.radoniewicz@gmail.com

Abstract: In the introductory part of the article, the distinction between two frequently confused concepts - "data" and "information" was made and their definitions were given, to describe afterwards the basic classifications - "computer data" and "information system". For that purpose international legal statutes were recalled, including the OECD Guidelines for the Security of Information Systems of the 26th of November 1992 and the Council Framework Decision 2005/222/JHA of the 24th of February 2005 on attacks against information systems. In the main part of the article, the author focuses on the information concepts, which are used by the Polish legislator in the Chapter XXXIII of the Penal Code, in which computer crimes are enumerated. Attention is paid to inconsistency in terminology, conceptual overlaps between certain specifications, and lack of definition of the relevant concepts. As the conclusion it is stated that the measures so far undertaken by the legislator, to standardise the terminology, are inadequate. Therefore, further efforts regarding that issue are essential. What is more, introduction of definitions of the most relevant classifications - especially "information system" and "computer data" to the Penal Code is advisable.

TERMINOLOGIA INFORMATYCZNA W PRZEPISACH ROZDZIAŁU XXXIII POLSKIEGO KODEKSU KARNEGO Z 1997 ROKU

Abstrakt: W części wstępnej referatu dokonano rozróżnienia i zdefiniowania dwóch często mylonych ze sobą pojęć – „danych" oraz „informacji", by następnie scharakteryzować podstawowe terminy – „danych komputerowych" i „systemu informatycznego". Odwołano się w tym celu do aktów prawa międzynarodowego, w tym do Wytycznych OECD w sprawie Bezpieczeństwa Systemów Informatycznych z 26 listopada 1992 roku oraz Decyzji Ramowej Rady 222/2005/WSiSW z dnia 24 lutego 2005 roku w sprawie ataków na systemy informatyczne. Główna część referatu poświęcona jest omówieniu pojęć informatycznych, którymi posługuje się polski ustawodawca w rozdziale XXXIII Kodeksu karnego, w którym umieszczono przestępstwa komputerowe. Zwrócona zostaje uwaga na niespójność terminologiczną, nakładanie się zakresów pojęciowych niektórych terminów oraz brak definicji istotnych pojęć. W konkluzji wskazano, iż podjęte dotychczas przez ustawodawcę próby ujednolicenia terminologii okazały się niewystarczające. W związku z tym konieczne są dalsze prace w tym kierunku. Ponadto wskazane.jest wprowadzenie do Kodeksu karnego definicji najważniejszych terminów - przede wszystkim „systemu informatycznego" i „danych komputerowych".

In the Penal Code of 1997 the Polish legislator uses terms of the information technology science provenance. As he actually does not give their definitions it seems indispensable to refer to other statutes. Information technology terms are included mainly in provisions regarding so called "cyber offences"[17] which are enumerated in Chapter XXXIII of the Penal Code titled "Offences against the Protection of Information", in regulations of articles 267 – 296b. Therefore the terminology used in this chapter is the issue of this publication.

First of all the meaning of two essential concepts should be discussed, which are information (computer) data and information system. Simultaneously it is necessary to specify relationship between data and information.

Concepts of "information" and "data" are often regarded as one and the same or synonyms in spite of the differences between them. The Polish Language Dictionary defines the meaning of information as: "a notification of something, an announcement, a message, a clue or an instruction" (Szymczak 1995, 739).

Włodzimierz Wróbel defines "information" on the basis of the colloquial meaning of this word as "a sign, a sound, a record, a code hiding sensitive content" (Wróbel 2006, 1235). Similarly Barbara Kunicka-Michalska intentionally does not differentiate terms of "information" and "data" using them interchangeably (Kunicka-Michalska 2000, 246-247).

The difference between the two concepts in question is not actually noticed by Katarzyna Napierała, according to whom distinguishing between them is almost impossible as: "First of all *information and data* are abstract concepts despite their expression them in tangible, real form (…); secondly, they are also a means of communication, its essential and indispensable elements. As a consequence, the terms of reference of both concepts, in some measure, overlap (Napierała 1997, 13).

In Europe several years ago attention was paid to the importance of differentiating both terms. The first document in which the effort to find a solution was made was the Report of the Dutch Committee on Computer Crime compiled in 1988. The committee was appointed to define some basic concepts necessary to create regulations regarding questions related to automatic information processing (Adamski 2000, 38). According to the document "As data is regarded presentation of facts, notions or orders in the established way, which enables their transmission, interpretation or processing by both human beings and automatic means. A computer program is

[17] Generally there are distinguished "computer offences" (cybercrime in the strict sense), as violations in which information system and computer data are the object of a crime (as examples can be given hacking or breaching integrity of data) and "computer - related offences", in which the object of violation are legal interests whereas computer, information network, data processing systems, electronic devices are used as tools. Computer – related offences are either common offences as fraud, handling stolen goods, forgery or less conventional as money laundering.

a special category of data in the meaning of this definition. (…) Information is an effect caused by data – intentional or experienced by their users."

The definitions of both terms are included in the Recommendation of the OECD concerning Guidelines for the Security of Information (Recommendation, OECD/GD (92) 10):

a) **Data** – a representation of facts, concepts or instructions in a formalised manner suitable for communication, interpretation or processing by human beings or by automatic means;
b) **Information** – the meaning assigned to data by means of conventions applied to that data.

According to the above definitions the significance of the terms "information" and "data" differs from their colloquial meaning. It is nearer to the technical meaning of information which defines "information" as an abstract object, which in coded form (data) can be stored (on data carrier), transmitted (e.g. by voice, electromagnetic wave, electric current), processed during algorithm performance and used to control (e.g. a computer is controlled by program being coded information)" (Kalisiewicz 1997, vol 3, 54); although "data" are objects on which programs operate (Kalisiewicz 1997, vol 2, 15).

Consequently it should be assumed that information has no material quality and what is more is not an item. It is a kind of "abstract object", immaterial. Only in the form of data can be transmitted, processed, stored. Data are information emanations, its self-expressions. Simultaneously data can have many forms, records: literal, sound, digital etc. Therefore they are information carriers (media). It may be assumed that they have material form but are not items. As information is regarded that which can be expounded, decoded from data. For that reason it is possible to possess computer data but be unable to use information contained e.g. because of no acquaintance with the algorithm according to which they are coded. Distinction between terms is important from the legal point of view. Data damaging not always means information damaging, as data acquisition does not have to be information appropriation (compare with: Adamski 2000, 39-40). Computer data have material form but are not items – they are energy impulses (usually electric). Whereas such items as hard discs, floppy discs, CDs and DVDs are data carriers.

Three information attributes are distinguished and protected: availability, integrity and confidentiality (More in: Górski 1994, 283-285).

a) **Availability** is the ability of using information by an authorised person whenever necessary. According to the Recommendation of the Council of the OECD – the characteristic of data, information and information systems being accessible and usable on a timely basis in the required manner (Recommendation, OECD/GD (92) 10). As examples of violations of availability are quoted sabotage, viruses introduction to system, system or network overload of data in excess.

b) **Integrity** according to the OECD definition means the characteristic of data and information being accurate and complete and the preservation of accuracy and completeness (Recommendation, OECD/GD (92) 10). It refers to inviolability of both data and computer systems. In the case of information processed in computer network this means transmitted data is identical to that received. Unauthorised access in order to destroy or modify data or viruses introduction for the purpose of deleting data are among to the most common attacks against integrity.

c) **Confidentiality** assumes access to data only for entitled persons, excluding third parties. It is connected with protection against their being read and copied by unauthorised persons. The OECD Regulation defines confidentiality as: the characteristic of data and information being disclosed only to authorised persons, entities and processes at authorised times and in the authorised manner (*Recommendation,* OECD/GD (92) 10). Forms of infringements of confidentiality are for example unauthorised access to view information, copying data, obtain information during transmission trough the network or eavesdropping.

In the European Community legal definitions of the above mentioned terms may be found in the Regulation (EC) No 460/2004 of the European Parliament and of the Council of the 10th of March 2004 establishing the European Network and Information Security Agency (Official Journal L 77, 13/03/2004 p. 1 – 11).

The first effort to regulate the question of network security in European Community Law was the Council Framework Decision 2005/222/JHA of the 24th of February 2005 on attacks against information systems (Official Journal L 69, 16/03/2005 p. 67 – 71)[18]. Which refers to the term of ”computer data” alike above-mentioned definitions. According to its article 1 they are regarded as ”any representation of facts, information or concepts in a form suitable for processing in an information system, including a program suitable for causing an information system to perform a function”[19]. The definitions result in understanding computer data as information (facts or concepts) emanation, carrier or medium. Information becomes readable for an information system only in the form of computer data. For this purpose it must be ”coded” in binary language – changed into the “0” and “1” sequence and then recorded on a carrier (e.g. CD, DVD or hard disc) or transmitted by network as energy impulses. By this definition as computer data are meant also programs suitable for causing an information system to perform a function: an operating system and applications. In the Penal Code the term of

[18] Poland implemented its regulations with the Act of 24.10.2008 on Amendment to a Law – the Penal Code and Some Other Acts (Journal of Laws 2008 No. 214 entry1344).

[19] The similar definition is included in the Convention on Cybercrime (Convention No. 185 of the Council of Europe on Cybercrime). Poland has signed it but not ratified yet.

"information data" was used, which is identical to the term of "computer data" used in the Framework Decision.

To explain the concept of "information system" it is necessary to refer to the provisions of the Framework Decisions 2005/222 as well. According to it an **information system** means any device or group of inter-connected or related devices, one or more of which, pursuant to a program, performs automatic processing of computer data, as well as computer data stored, processed, retrieved or transmitted by them for the purposes of their operation, use, protection and maintenance[20]. Consequently, in the Framework Decision as an information system is regarded both a single device (e.g. a computer) and group of connected devices, as a network either small (e.g. local area), containing a few computers or a large one, for instance a municipal area. By the expression of "inter-connected or related" the lack of necessity of physical connection (wires) of devices is indicated. Data transmission may occur through another carrier (for example electromagnetic waves). The term of "automatic processing of data" was inter alia defined by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No. 108 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data). According to the definition formulated for the purpose of the Convention, as automatic processing of data are regarded actions as follow: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination if carried out in whole or in part by automated means (article 2 of Convention). Automated means refer to actions implemented partially or completely without the involvement of a human being. In passing, it is worth mentioning, that in the Penal Code amendment of the 24th of October 2008 Act, to article 267 point § 2 the term of an "information system" was added without changing the term of a "computer system" [21] in articles 269a and 269b. In

[20] The Convention on Cybercrime includes the concept of a "computer system". Its definition is similar to an "information system", but the scope of the former system is narrower. "A computer system under the Convention is a device consisting of hardware and software developed for automatic processing of digital data. It may include input, output, and storage facilities. It may stand alone or be connected in a network with other similar devices" (Explanatory Report to Convention on Cybercrime, § 23). Therefore a "computer system" is for example a personal computer or a mobile phone, but not a network. A network under the Convention on Cybercrime is an interconnection between two or more computer systems.

[21] The concept of "computer system" was introduced to the Penal Code with the Act of the 18th of March 2004 on Amendment to a Law – the Penal Code, the Code of Criminal Procedure, and the Code of Petty Offences (Journal of Laws. 2004 no. 69 entry 626), which was connected the adaptation of Polish Law to the Convention on Cybercrime regulations. I think that "computer system" should be replaced by "information system".

my opinion the presence of the latter is only an oversight. It should be replaced by an "information system".

In the regulation of article. 267 § 1 the term of **"telecommunications network"** is used, in regulation of art. 269a though the term seemingly with similar meaning – **"data communications network"** appears**.** For the purpose of regulation and unification of the conceptual system the Act of the 4th of September 2008 on Amendment to a Law in Order to Unify Information Terminology was enacted (Dz. U. 2008 no. 171, entry 1056). In case of the term of „data communications system" being used in one of acts mentioned in its contents it refers to the Act of 17 February 2005 on Implementation of the IT Solutions to Entities Executing Public Assignments Activity (Journal of Laws 2005 no. 64, entry 656). According to the definition included in article 3 point 3 of this act, data communications system means: "group of cooperating computer devices and software providing data processing, storage as well as transmitting and receiving through telecommunications networks through appropriate for the network in question final device in the meaning of the Act of the 16th of July 2004 Telecommunications Law (Journal of Laws 2004 no. 171 entry 1800 with amendments)". The term of "telecommunications network", according to this Act (article 2 point 35) means "transmission systems, commutation or redirecting devices and other resources enabling signals sending, reception or transmission through wires, radio waves, optical waves or other means, using electromagnetic energy, regardless of their kind" (More in: Radoniewicz 2011, in press).

To summarise: as information system should be regarded a device or group of related devices processing data, a telecommunications system though, according to Xawery Konarski, means group of cooperating devices, programs and procedures used in order to process data for any distance (Konarski 2004, 62). Telecommunications system therefore is a structure used for processing data and also their transmission between processing data systems, especially an information system connected to telecommunication network for the purpose of data transmission (Konarski 2004, 62).

According to the above mentioned it should be assumed that "data communications network" (that is a group of data communication systems connected to each other) means a telecommunications network in which both computer data processing and their transmission occur. The structure came into existence in connection with a convergence of extensive computer and telecommunication networks (Konarski 2004, 64). In my opinion "data communications network" is a type of "an information system". If in articles 268a and 269b a "computer system" were replaced by "information system" (as I suggest in the earlier part of this paper), "data communications network" would be unnecessary. I therefore suggest that it should cease to be used.

In the regulation of article 267 § 1 breaching electronic, magnetic or other special protection is mentioned. As protection should be regarded any form of impediment in access to information, the elimination of which requires specialised

knowledge, particular device or a code (Wróbel 2006, 1282-1283). Information may be protected directly – e.g. in cipher or an access protection by a password or, in some measure, indirectly - because of computer system protection (as examples firewalls and users accreditation procedure may be referred to). As "breaching" should be regarded action directed to diminish a protective function; it need not mean its destruction (Kardas 2000, 71-72; Kozłowska-Kalisz 2007, 518; Wróbel 2006, 1283).

Taking into consideration the opinions of doctrinal antagonists and the provisions of the Framework Decision, it was assumed that for a perpetrator to commit an offence of hacking the infringement of a protection is not needed, it is enough when it is omitted (an expression "or evading" after the "breaching" was added in § 1). Such "evading" may consist in:

a) human deception (En. *social engineering* that is socio-technique based for example on pretending to be somebody else to wheedle a password);
b) system deception – among methods based on protection evasion in that way is spoofing of IP, ARP or DNS addresses[22];
c) taking advantage of holes (errors) in operating systems, applications, or protocols[23] (for that purpose programs called *exploits* are used).

Provisions of article 267 § 3 penalise installation or using – for the purpose of acquiring information - tapping, visual detection device or other special software. Usage of the last term as a tool of invigilation[24] means without doubt that computer program is considered as such tool. It could be a program such as a Trojan horse or a "back door" (Adamski 2000, 59; Wróbel 2006, 1287).

In the provision of article 268 § 2 the concept of electronic information carrier was used which should not be questionable[25]. Its content consists all data carriers in

[22] *Spoofing* (*masquerade*), that is addresses deception, means action for the purpose of misleading as to the place of communication dispatch. Most frequent is the deception of IP addresses (a logical address of a computer assigned by network administrator) but possible also is deception of ARP, DNS and www addresses (See: Littlejohn Schinder 2005, 284-286).

[23] It is a group of rules describing communication processes. Protocols are responsible for computer identification in a network. To enable data exchange between computers they must use the same network protocol. Two or more protocols functioning in different network layers become a suite. The most popular presently is a suit of TCP/IP (See for instance: Littlejohn Schinder 2005, 234-268; Mandia and Prosise 2002, 147-155).

[24] In the first version of the amendment of the legal project "the special software". was mentioned. During Parliamentary work though the adjective "special" was rightly removed as it could suggest computer programs created only to commit an offence. Whereas in many cases we deal with "double nature" programs, having many functions but which can also be used by criminals (often even against the will and intentions of their authors).

[25] The Act of the 4th of September 2008 on Amendment to a Law for the Purpose of Information Terminology Standardisation (Journal of Laws 2008 no. 171, entry 1056), which in the provision in question changed the ambiguous expression of "the computer information carrier" to "the

"information sense", such as floppy and hard discs (magnetic carriers), CDs, DVDs (optical carriers), semiconductor memories etc.

The article 269b criminalises preparing, obtaining, selling and making available the computer devices and software tailored to the purposes of committing one or more of the offences described in article 165 § 1 point 4, article 267 § 3, article 268a§ 1 or § 2 in connection with § 1, articles 269 § 2 or 269a and preparing computer passwords, entry codes or other data that makes information stored in a computer system or data communications network available. The meaning of the concepts used in the regulation is beyond doubt. However it is puzzling why the legislator did not take into consideration in this article the provisions of art. 267 § 1 § 2 penalising hacking when he quoted other regulations.

Finally, I would like to raise two other questions. Firstly, I would like to pay attention to the expression "without being authorised", which is used by the legislator in article 267 as it has a wider meaning than is usually considered. It should be interpreted taking into account the sense, which is given to it in the Framework Decision 2005/222. According to its article 1: "without right means access or interference not authorised by the owner, other right holder of the system or part of it, or not permitted under national legislation".

The issues of access to the sources of an information system and ability to interfere in data processing, in most cases, are regulated by provisions of "soft law" – internal networks statutes. Whereas the system administrator decides about rights given to a user. In consequence, the expression "without being authorised", means primarily, lack of rights considered in this way and not contravention of the law in force, which rarely regulates this question. Simultaneously, the European Union's legislator gives member states the opportunity of more precise regulation in this subject.

Secondly, in the provision of article 268a, describing features of criminal offence, the expression was used of significant interference or hindering automatic processing, storing or transmitting information data. It is indubitable that the expression is identical to the significant interference with functioning of a computer system or data communications network used in the above-mentioned article 269a (functioning of a computer system or data communications network means exactly processing, storing or transmitting data). Andrzej Adamski (Adamski 2005, 58-59) and Włodzimierz Wróbel (Wróbel 2006, 1309) rightly remark that the provisions of articles 268a and 269a overlap to a certain extent.

---

information data carrier" at the same time indicates that it should be referred to according to the regulation of article 3 point 1 of the Act of the 17th of February 2005 on Implementation of the IT Solutions to Entities Executing Public Assignments Activity. In this regulation "the information data carrier" means "material or a device used for recording and replaying digital or analog data".

I consider it is clearly visible that there is a certain legal "disorder" in the field of information terminology. Undoubtedly it should be standardised and adapted to the system of concepts used in European Community statutes. Defining basic terms (computer data, information system) is indispensable. It seems advisable to add the above-mentioned concepts to the provision of article 115 of the Penal Code (to the definitions of the most important terms)[26]. The rest of them may be defined in other legal acts like as for instance in case of the "telecommunications network", definition of which is found in the Telecommunications Law. In case of some others we may refer to European Union acts binding Poland directly (as for example Regulation (EC) No 460/2004 of the 10th of March 2004 establishing the European Network and Information Security Agency in which in article 4 the concepts of computer data accessibility, integrity and confidentiality were defined). The condition of the situation in question is obviously standardisation of the terminology (More in: Radoniewicz 2009, 68-69).

Bibliography

Adamski, Andrzej. 2005. Cyberprzestępczość - aspekty prawne i kryminologiczne. *Studia Prawnicze* 4: 51-76.

Adamski, Andrzej. 2000. *Prawo karne komputerowe*. Warszawa: Wydawnictwo C.H. Beck.

Górski, Janusz. 1994. Ocena poufności i bezpieczeństwa systemów informatycznych. In *Prawne aspekty nadużyć popełnianych z wykorzystaniem nowoczesnych technologii przetwarzania informacji. Materiały z konferencji naukowej pod redakcją dr Andrzeja Adamskiego*, ed. A. Adamski, 283-307. Toruń: Wydawnictwo „Dom Organizatora" TNOiK.

Kalisiewicz, Dariusz, ed.1997. *Nowa encyklopedia powszechna PWN. Vol. 2*. Warszawa: Wydawnictwo Naukowe PWN.

Kalisiewicz, Dariusz, ed.1997. *Nowa encyklopedia powszechna PWN. Vol. 3*. Warszawa: Wydawnictwo Naukowe PWN.

Kardas, Piotr. 2000. Prawnokarna ochrona informacji z perspektywy przestępstw komputerowych. Analiza dogmatyczna i strukturalna w świetle obowiązującego stanu prawnego. *Czasopismo Prawa Karnego i Nauk Penalnych* 1: 25-120.

Konarski, Xawery. 2004. *Komentarz do ustawy o świadczeniu usług drogą elektroniczną,* Warszawa: Wydawnictwo Diffin.

Kozłowska-Kalisz, Patrycja. 2007. Rozdział XXXIII. Przestępstwa przeciwko ochronie informacji. In *Kodeks Karny. Praktyczny komentarz,* Marek Mozgawa (ed.), Magdalena Budyn-Kulik, Patrycja Kozłowska-Kalisz, Marek Kulik, 488-509 . Warszawa: Wolters Kluwer Polska.

[26] At least in reference to computer data this is the claim of: Barbara Kunicka-Michalska (Kunicka-Michalska 2005, 581) and Andrzej Marek (Marek 2007, 484).

Kunicka-Michalska, Barbara. 2000. *Przestępstwa przeciwko ochronie informacji i wymiarowi sprawiedliwości. Rozdział XXX i XXXIII Kodeksu karnego. Komentarz*, Warszawa: Wydawnictwo C.H. Beck.

Kunicka-Michalska, Barbara.2005. Rozdział XXXIII. Przestępstwa przeciwko ochronie informacji. In , *Kodeks karny. Część szczególna. Komentarz. Tom II,* Andrzej Wąsek (ed.), Oktawia Górniok, Wiesław Kozielewicz, Emil Pływaczewski, Barbara Kunicka-Michalska, R. Zawłocki, Bogusław Michalski, Jerzy Skorupka*,* 433-614. Warszawa: Wydawnictwo C.H. Beck.

Littlejohn Schinder, Debra. 2005. *Cyberprzestępczość. Jak walczyć z łamaniem prawa w sieci,* Gliwice: Wydawnictwo Helion.

Mandia, Kevin and Chris Prosise. 2002. *Hakerom śmierć!* Warszawa: Wydawnictwo Read Me

Marek, Andrzej.2007. *Kodeks karny. Komentarz*. Warszawa: Wolters Kluwer Polska.

Napierała, Katarzyna. 1997. *Prawne aspekty ochrony danych osobowych przetwarzanych w systemach informatycznych*. Warszawa: Wydawnictwo ABC.

Radoniewicz, Filip. 2009. Postanowienia decyzji ramowej Rady w sprawie ataków na systemy informatyczne a ujęcie cyberprzestępstw w kodeksie karnym. *Ius Novum* 1: 48-69.

Radoniewicz, Filip. 2011. Unification of information terminology in the Polish law – selected issues. *Comparative Legilinguistics (International Journal for Legal Communication)*, in press

Szymczak, Mieczysław, ed. 1995. *Słownik Języka Polskiego*. *Vol. 1.* Warszawa: Wydawnictwo Naukowe PWN.

Wróbel, Włodzimierz. 2006. Rozdział XXXIII. Przestępstwa przeciwko ochronie informacji .In *Kodeks karny*. *Część szczególna. Komentarz do art. 117-277 k.k.,* Andrzej Zoll (ed.), Agnieszka Barczak-Oplustil, Grzegorz Bogdan, Zbigniew Ćwiąkalski, Małgorzata Dąbrowska-Kardas , Piotr Kardas, Jarosław Majewski, Janusz Raglewski, Mateusz Rodzynkiewicz, Maria Szewczyk, Włodzimierz Wróbel, 1234-1314. Kraków: Kantor Wydawniczy Zakamycze.

Convention No. 108 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data, 28 January 1981 http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=108&CM=8&DF=11/08/2009&CL=ENG, Accessed March 15, 2011.

Convention No. 185 of the Council of Europe on Cybercrime, 23 November 2001 http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=185&CM=8&DF=22/08/2009&CL=ENG. Accessed March 15, 2011.

Explanatory Report to Convention No. 185 of the Council of Europe on Cybercrime, http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=185&CM=8&DF=22/08/2009&CL=ENG., Accessed March 15, 2011.

Recommendation of the Council of the OECD concerning Guidelines for Security of Information Systems, OECD/GD (92) 10, Paris, 1992. http://www.oecd.org/document/19/0,3343,en_2649_34255_1815059_1_1_1_37441,00.html . Accessed March 15, 2011.

STORY-TELLING IN JUDICIAL DISCOURSE

Terezie SMEJKALOVÁ, Mgr. Bc.
Institute of Law and Technology, Department of Legal Theory, Masaryk University, Brno, Czech Republic
Jugoslávská 64, 613 00 Brno, Czech Republic
smejkalova@mail.muni.cz

Abstract: Judicial discourse and the style of written judicial decisions has been the subject of numerous analyses. Judicial discourse comprises different elements from formal and structural ones to various modes of argumentation used. Narrative – when approached as a form or a structure – may be helpful in thorough analyses of judicial discourse, in particular the texts of judgements. This paper analyzes one judgement of a Czech court by means of narrative analysis and tackles the issues of narrative differentiation, narrative structure and narrative coherence in relation to judicial decision-making. Furthermore, it addresses the issue of story-telling and its importance within judicial discourse.

NARATIV V DISKURSU SOUDNÍHO ROZHODOVÁNÍ

Abstract in your native language: Diskurs soudního rozhodování je předmětem početných analýz a diskuzí. Soudní diskurs zahrnuje nejrůznější prvky – od těch formálních a strukturálních až po prvky obsahové a argumentační. Pokud budeme k narativu přistupovat jako k určité formě či struktuře, může být jeho rozkrytí velice užitečným krokem při detailních rozborech textu soudních rozhodnutí. Tento článek se zaměřuje na diskusi vhodných kritérií pro analýzu narativu – vyprávění – v rozsudku jednoho z českých soudů. Zabývá se rozlišováním mezi různými druhy narativů, struktury vyprávění a narativní koherencí ve vztahu k soudnímu rozhodování. Dále se také otázky důležitosti vyprávění pro diskurs soudního rozhodování.

Introduction

This paper is a part of the author's larger project discussing legitimacy of judicial decision-making. As some of the factors underlying this notion, language-related issues such as rhetoric and narrative coherence are discussed. This paper addresses the issues of narrativity and narrative coherence in judicial decisions.

It has been claimed that human experience is in fact a narrative experience. For the purpose of this paper, a narrative will be understood as 'a verbal representation of events and facts, with a temporal connection between them' (Almog 2001, 475). Narrative imagination – a story – is said to be the elementary tool of thinking (Turner 2005, 13). As Berger (2009, 262-263) writes, narrative structure and expression shape our perceptions and reasoning processes, often unconsciously; and we consciously use them to frame arguments and agreements. 'Narrative [is] essential, and unavoidable, for

persuasion and understanding' (Berger 2009, 263). It should come as no surprise to approach the judicial decision-making process via the means of narrative, or in other words, story-telling. The physical and discursive space of the court and its decision-making process is all wrapped around a story; it is a particular event or a sequence of events that brings the claimants to the court in the first place. They need to communicate their claim to the judges: the courts access the events only (as MacCormick 2009, 221 claims) or mainly (if we exclude real evidence from the narrative) through narrative. Thus, the judicial process can be readily described as a clash of different narratives: personal accounts (embedded in the claim, defence, witness statements…) and the judge's re-telling of the story for the purpose of the courtroom record;[27] all these individual stories lead into one official final account of this story, the judgement.

As several scholars (see for example Delgado 1988-1989 and similarly White 1996) have pointed out, reality is nothing fixed or given. We tend to construct reality through conversations, through the exchange of narrative accounts. If the narratives were to be considered as forms or structures, it must have been concluded that they can be viewed as 'moral chameleon[s] that can be used to support the worse as well as the better cause' (Brooks 2002, 2); by emphasising certain events and giving them slightly different interpretations, different picture can be made (Delgado1988-1989, 2422). Story-telling in judicial and legal discourse definitely entails a manipulative element: one aspect of the discussed matter is stressed, another dimmed (Almog 2001, 488) and because of this strategy the story told acquires a unique shape.

'Unlike literary stories, the power of legal stores is normative. The narrative in a judgement does not expose the reality or reveal it; rather *it declares that a particular occurrence is reality*... Every judicial narrative is a *claim of knowledge*, and a *claim to absolute authority*' (Almog 2001, 488; first emphasis added).

The recognition of the narratives present in a particular judgement may be helpful in thorough analyses of judicial decisions. This approach of analyzing judicial decisions by means of literary (or linguistic) theories is still more typical of the common law rather than civil law systems. The discourse of judicial decisions in common law countries is far more personalized and literarily oriented than the decisions of civil law based courts (compare Kühn 2001, 8). The long discursive narratives of the common law decisions seem to be a direct antithesis to the short magisterial continental decisions. I am using this stark opposition only to illustrate the apparent reason of the lack of narrative analysis of the continental decisions, not to propose or emphasise that

[27] For the role of the courtroom record in Czech judiciary see below.

the styles of judicial decisions of these two legal systems are that different.[28] I would like to claim that narratives and their elements can be traced (and therefore analyzed) even in terms of continental 'syllogism machines' (Lasser 1997-1998, 695-696) and that the importance of narrative is reflected in court proceedings rules.

The legal language of continental courts can be described as unimaginative. Continental legal discourse has a historically-conditioned tendency towards dry, magisterial style, copying and making use of the language of statutes. Yet, even within this dry, magisterial style, there is an essential core (and requirement) of narrative structure and narrative coherence. The recognition of the narrative form is the first step towards a deeper analysis of narratives in legal discourse and towards the understanding of how different narratives operate in judicial (or legal) life.

This paper analyzes the narrative and its elements in a selected Czech judicial decision. In the first part of this paper, the criteria chosen for the analysis are outlined and explained. In the second part, these criteria are used in the analysis of a text of a criminal judgement.

Differentiation of Narratives

For the purpose of the subsequent analysis, the following differentiation of narratives as proposed by Almog (2001) will be used:

(i) form of narrative
(ii) mode of narrative

In respect to the **form**, Almog differentiates between the
a. internal and external judicial narrative; and
b. between free and bound narratives.

A (a) The narrative form present in judicial decisions has two dimensions: **internal** and **external.** An **internal** narrative depends on the judge's personality and culture grounding: she cannot change her internal narratives by her free choice. An **external** narrative is a final story told in the judgement and, therefore, it is carefully controlled and constructed. This careful construction results in a reasoned support of the chosen result of the trial. As opposed to the internal narrative, the external narrative expressed in the judgement can be further judged, assessed, interpreted and criticized. Furthermore, the external narrative is usually to a certain extent reflected by the rules of trial procedure.

[28] For thorough comparative analysis of various legal systems see e.g. Mitchel Lasser's comparative analyses of the French, US and EU judiciaries.

Ad (b) The differentiation between **free** and **bound** narratives reflects the strictness and punctuality of the rules of procedure: Does the law assert exactly what kinds of facts and in which order they are to be included in the opinion? Does the law contain rules for evaluating the evidence? Is there a strict form and extent into which the judge is supposed to fit in her opinion? There are strong pros and cons in case of both forms of narratives. In general, it has been claimed that 'the law does implicitly, almost pre-consciously, recognize the power of storytelling' and therefore intents 'to formalize the conditions of telling' the stories (Brooks 2002, 6).

In respect to the **modes,** the judicial narrative can be either **blank** or **interpretive**. A **blank** narrative uses 'as minimalist and neutral a description as possible of the facts necessary for understanding the matter' (Almog 2001, 495). An **interpretive** narrative is 'richer and denser description of events, where signs of the various choices and value judgements of its author can be easily discerned' (Almog 2001, 496). The preference in the use of these two modes is typical of the common law and civil law systems distinction. The opinions in common law judgements reject formalism and prefer value and policy arguments (Lasser 1997-1998); the choice of interpretive narratives only supports this preference. Moreover, common law narratives tend to be more literary-like; the rhetoric, the word-choice and the arguments used are often stylized to appeal to personal emotions (the individual internal narratives) of every reader. In some of the civil law countries, the prevailing opinion asserts that the external narrative (i.e. the official opinion of the court) should be preferably blank and uniform, minimalist and neutral in style (Almog 2001, 496). This approach in an almost pure form can be observed in France, especially in the decisions of *Cour de cassation*. The decisions in their entirety usually do not exceed one page and are formulated as a 'single-sentence syllogism, rendered in an incredibly short, impersonal and unsigned collegial form with no concurrences or dissents, little if any factual presentation…' (Lasser 2003, 7-8). This is not to say that *Cour de cassation* decisions are completely free of narrative; the narrative is extremely condensed, trimmed of all the unnecessary circumstances and stating solely those facts that are required by law to be ascertained in order to reach a decision.[29]

Another possible distinction of narratives can be made with respect to the number of judges involved in formulating the opinion and therefore the authors of the narrative: **unified** narrative (one narrative told in the judgement on behalf of all the judges) and **personal** narrative (every judge – or a group of judges – shapes and writes her – their – own relevant story) (compare Almog 2001, 498). In civil law countries, it is more usual to encounter the unified type of narrative. Nevertheless, in decisions of

[29] See for example the decision of *Cour de cassation* Arrêt n° 1908 du 31 mars 2009 (08-88.226).

some of the supreme courts or the constitutional courts where the legal rules allow for concurring or dissenting opinions, a step towards a more personal account of the case may be observed. In common law countries (in case of the US Supreme Court and the UK Supreme Court) the decision taken by a panel of judges is based on individual opinions and individual conclusions of the case. Such individual narratives may be illustrative of the 'chameleon' nature of narratives: although following the same set of temporally consecutive events, the choice of facts to be included in the decision and the choice of particular words and emphases support different resolutions. As an illustration let me repeat the same example as Almog (2001, 484) because of its great predicative ability although similar observations can be made with respect to other judicial decisions as well:[30]

Table 1. McNeely v. State

Judge Cooper	***Judge Mayfield***
The appellant was convicted in a jury trial of possession of a controlled substance and possession of drug paraphernalia. He was sentenced to one year in the county jail and fined 200.00 and was sentenced to six years in the Arkansas department of Correction and fined 5,000.00respectively. On appeal, the appellant agrees that the trial court erred in denying his motion to suppress without conducting and evidentiary hearing on the motion.	The appellant, who has been paralyzed and confined to a wheelchair for ten years as the result of an injury suffered when he broke his neck diving into water to save a friend, is thirty years old; libed with his mother; and smokes a little marijuana to help him live during the day and relax enough to sleep during the night. One day, while he was visiting in the apartment of his girl friend, four police officers burst into the apartment, with weapons drawn, arrested the appleant, and seized the ounce and one-half of marijuana and some drug paraphernalia he had in a bag lying beside his wheelchair.
McNeeley v. State, 925 S.W.2d 177, 178 (1996)	Mayfield dissenting, 178.

The inclusion/exclusion of certain facts changes the final narrative. This particular example shows the distinction between the blank and interpretive narrative. It is reasonable to agree with Almog's claim that even blank narratives are 'a form of interpretation and manipulation' (2001, 496). The omission of certain facts supports the decision taken and helps to fit the story nicely into the legal frame. The inclusion of

[30] The judgement in question is the decision of the Arkansas Court of Appeals McNeely v. State, 925 S. W.2d 177 (1996).

certain other facts helps to support the dissenting opinion by mitigating the appellant's deed by other circumstances. In both cases, the reader is seduced by the narrative: in Judge Cooper's case it is the dry and logical account of the events; in Judge Mayfield's case it is the inclusion of important circumstances.

The purpose of judicial opinion is to reason in favour of the decision taken and to persuade the reader that the result is right. The strategies of how to do that differ depending on the legal system or legal tradition in question. Because the narrative – story – is such a deeply embedded structure of thought, it is natural those opinions that make (better) use of it gain in their persuasive power.

Narrative Coherence – Why narratives matter

Apart from their persuasive power, stories' importance for the judicial decisions is reflected in the notion of narrative coherence. In every trial, it is necessary to establish an account of past events. Therefore, the story told in the judgement has to comply with a certain conception of coherence in order to justify decisions on points of law. As MacCormick (2009, 214-215) writes, the narrative coherence is comparable to the notion of normative coherence which is necessary to justify decisions on points of law. 'Coherence stipulates that the course of events within the story should not merely contradict each other, but should also hang together purposively' (MacCormick 2009, 230). In essence, the problem tackled here is a problem of proof. The process of proof is based on different narratives of witnesses, the account of events constructed by the prosecutor etc. all to reach and support the verdict. The judge aims at assessing the truth – or probable truth – and the narrative coherence provides a test as to this truth contained in individual accounts. For the definition of the notion of coherence it is possible to accept MacCormick's approach saying that coherence means that there are no inexplicable logical inconsistencies between any of its factual elements, and that any inconsistencies to be expected are only due to human memory and perception (2009, 226).

The law formulates different requirements for the 'degree' of coherence needed to be established in the judgement in order to provide justification of the decision taken. These degrees of coherence usually depend on the area of law in question: in criminal disputes, the matter of fact has to be established 'beyond all reasonable doubt,' whereas in civil disputes the facts to be proven 'on the balance of probabilities' are deemed sufficient. Law also contains and makes use of numerous rules of procedure and evidence, rigid structures of legal doctrines and legal documentation – these can be perceived as tools with story-spoiling or story-deconstructing functions (Almog 2001, 473) as well as frames for bound narrative required in the judgement. The legal rules govern legal relevance and admissibility of evidence. Although every account of the events (every story told) is by nature selective, it is tied by a form imposed by law.

Narratives and Rules of Procedure

How are stories/narratives recognized by Czech trial procedure rules?
As has been mentioned, the notion of narrative coherence can be seen as underlining the two legal requirements – standards – of proof. Furthermore, the law recognizes the importance of narratives in trial procedure rules. The Czech Criminal Order explicitely mentions the following:

(i) First of all, the stories told in the course of interrogation (of the accused and witnesses) must be established as complete, free of ambiguities and discrepancies (Czech Criminal Order §92/3).[31]
(ii) The accused and the witnesses are required to tell their stories consistently/coherently. The Czech criminal procedure rules state that 'Obviněnému musí být dána možnost se k obvinění podrobně vyjádřit, zejména souvisle vylíčit skutečnosti, které jsou předmětem obvinění, uvést okolnosti, které obvinění zeslabují nebo vyvracejí…' [the accused must be enabled to comment on his accusation in detail, especially to *coherently* describe all the matters of fact that are subject of trial, to state the circumstances that mitigate or refute the accusation…] (Czech Criminal Order §92/2, 3).
(iii) The law also requires the story-tellers of the trial to offer counterstories, if there are any (see clash of narratives below)

The narratives, in order to be recognized by the court and therefore to gain legal relevance, are restricted by special forms imposed on them by the legal system's rules of procedure. The first step of telling a story in court may fall under the term of 'free' narrative: a person (witness, accused…) is enabled to tell what happened in his or her own words. Only when they end their own account of events is the judge, the prosecutor and the defendant's counsel allowed to pose additional questions. These legal requirements and courtroom practices result in the fact that all the narratives meeting in the space of the judicial discourse are fragmented, disrupted and therefore often incomplete (compare Luyster 2002, 598).

The trial can be described as a 'complex storytelling forum' (Luyster 2002, 598). In the space provided by the trial and its legal procedures, different narratives meet and clash. Some of these clashes are reflected by legal rules.

The most obvious clash of narratives is naturally the clash of the two principal competing ones: the claimant's vs. the defendant's; the prosecutor's vs. the accused's. The Czech legal system recognizes a controlled direct confrontation of the witness's narrative accounts (§ 104a Czech Criminal Order) in order to clarify possible discrepancies. Also the reconstruction of the events (§ 104d Czech Criminal Order) may

[31] Act No. 141/1961 Sb., Criminal Order, as amended.

not only be understood as a means of evidence supporting one of the stories but also as competing narratives of their own right – especially when they prove different events than those claimed in the personal accounts of the disputants.

In the Czech legal system, all the stories told in the course of interrogation have to be written down in the courtroom record / court file. This is either done by the judge herself of by the courtroom recorder. Essentially, the free narrative provided by e.g. the accused is retold by the judge: this retelling usually changes the fluency of the narrative, adjusts some of the grammatical elements (such as corrections of colloquial expressions and suffixes); moreover, the judge partially 'translates' the plain-language testimony into a legal-language account. The judge carefully picks up such facts of the story that are related to the legal norm that is to be applied in the case; as Šejvl (2003, 186) puts it, the judge picks up the words that should be translated into the language of law. At the end of the interrogation, the judge reads out (or dictates) his 'translation' which is then authorized by the interrogated person.[32] It is possible that despite this authorization, slight shifts in the story might occur. Therefore, it may be claimed that the judge's translation is another example of the clash of narratives.

Narrative Analysis

With regard to what has been discussed above, it can be claimed that the legal rules provide a frame for the process of story-telling in court. Every story needs characters and a plot. As to the plot and its organization, the narrative in judgement will be analyzed by two sets of criteria:

(i) Those related to the prototypical Labovian narrative; and
(ii) Burkian five elements of dramatism (this approach encompasses the analysis of characters as well)

Ad (i)

The prototypical Labovian narrative is that of personal experience (Lee-Goldman 2005, 1): the stories of the accused, the victim and the witnesses are all personal experiences related to a set of events in question. As Lee-Goldman emphasises while quoting Labov (1981, 225), the core element of this type of narrative is its temporal organization, 'and in particular the juxtaposition of two events that cannot be reversed while preserving the coherence of the story (a temporal junction).' Furthermore, the Labovian narrative follows a four-point structure:

- Abstract/orientation (who is doing what)

[32] Via the means of the courtroom record /court file, even the real evidence is translated into a language account that has to be coherent with the overall narrative told in the judgement.

- Complicating action
- Resolution
- Coda

Ad (ii)

Kenneth Burke's five key terms of dramatism may be thought of as the five key elements of a narrative. By assessing the emphases placed on them and the relationships among them, a narrative can be analyzed. These elements are: '*Act* (what happened), *Scene* (the background of the act), *Agent* (the kind of person who performed the act), *Agency* (means or instruments used to perform the act) and *Purpose*' (Burke 1945, xv). By shifting emphasis from one to another, the storyteller sets the scene, establishes a time frame to 'tap into listener's understanding and identification with the characters and their plights' (Berger 2009, 268).

In respect to the above mentioned example of the Arkansas Court of Appeal judgement, the shift between Judge Cooper's and Judge Mayfield's narrative is noticeable on several levels:

Scene: the second account adds a scene description, which is lacking in the first one; the appellant's background is added.

Agent: the appellant, though the same person is described in different terms

Agency: while in the first case the appellant was caught in possession of a 'controlled substance', in the second case, it was only 'little marijuana'.

Most importantly there is a change in *Purpose*: while the first opinion simply describes the appellant as a person caught in possession of a drug, the second opinion tells a story of a paralyzed person who needs marijuana in order to sleep.

A Case Study

The above discussed theoretical approaches will be used in the analysis of a Czech judgement. A criminal law case has been chosen, especially because of the personal element present in the narratives but a similar analysis would be possible with civil, administrative or constitutional judicial decisions as well.

With regard to the fact that the following account of events may be considered a narrative of its own right, let me briefly re-tell the case 92 T 86/2009[33] as told by the court. Because of the rules of anonymization in the Czech legal system, cover names for all the protagonists are used.

The accused is a legal counsel who specializes in asylum cases. When providing legal advice to two Mongolian women (sisters Sara and Tala) whose visa

[33] Decision of Městský soud v Brně, 18. 2. 2010; 92 T 86/2009.

documents expired, he offered them an illegal means of help in exchange for approximately 5000 Euro. He offered to provide a man who would officially claim fatherhood of Sara's son (who had no father name filled in his birth certificate) and thus allow the women when asking for a right for permanent residence to claim the advantage of the family unification principle. This man (Peter) was later provided and his name added to the son's birth certificate. For further action, another Peter's signature was needed. It was agreed that a person would meet the two women with the document required bearing Peter's signature. This happened to be the turning point of the story because the sisters thought the document looked unreliable and refused to take it and to pay the money required.

The actual story is more complicated – it was simplified a little but some of the remaining details will be added in due course of the analysis.

The above described events can be read in different ways. From the point of view of the accused (as reported in his account of the events), it is the story of a counsel who helped two women to obtain a right of residence in the Czech Republic and asked for a certain amount of money in return – a lawyer's fee. As to the fatherhood claim, the accused cannot know whether Peter is the father of Sara's son or not.

The events may be also read as a story of the two sisters. Their testimonies contain an account of their arrival to the Czech Republic and other events that preceded the meeting of the accused. They confided in the accused with their story (p. 6 of the judgement) and entrusted him with helping them. Their visa expires and they rely on their counsel who provides advice (and the man to claim the fatherhood of Sara's son). When these actions begin to look suspicious to them, Sara and Tala break their contact with him and apply for asylum.

There is also a story of Peter who claims that he remembers signing blank papers but he has never made any official fatherhood claim. Moreover, he had never met either of the sisters. He only knows that he had intended to help a woman to stay in the Czech Republic.

The judgement contains accounts of the testimonies of other people involved that either confirm or refute these two versions (Peter, the accused's secretaries…) but for the purpose of this paper, they will be left out.

What is being assessed and analyzed here is the *external* narrative as it appears in the text of the written judgement. It must be emphasised that although in the trial individual stories were told by the protagonists themselves, the written judgement has only one story-teller – the judge. The narrative is also *bound* to rather high extent: by the rules of procedure and also by Czech customs of judgement writing. The story – the account of events – is repeated in the judgement several times:

1) In the court's account of the state of events (in the verdict of guilty);
2) In the 'translation' of this state of events into the wording of legal conditions for the particular criminal offence in question (in the verdict of guilty);
3) In the individual accounts of the accused and the witnesses (in the opinion).

As a continental decision, the narrative tends to be predominantly *blank* but signs of *interpretivity* can be traced, especially in evaluative statements. See Examples 1, 2, 3 below.

Example 1. (page 8)

> 'Dále z výslechu je pak zjevné, že některé na otázky svědek neodpovídá hned, nastávalo velmi dlouhé mlčené, kdy na konci svědek uvedl, že byl překvapen tím, k čemu má vypovídat.'
> [It is obvious from the interrogation that the witness does not answer some of the questions right away; there have been long silences; in the end he said he was surprised by the topic of his interrogation.]

Example 2. (page 12)

> '…obhajoba spočívá v tom…'
> [the accused's defence rests in…]

Example 3. (page 13)

> '…soud tyto svědkyně považuje za zcela věrohodné'
> […the court considers these witnesses completely trustworthy]

Labovian narrative

In these two stories, the characters (the main protagonists: the accused, Sara, Tala, Peter) and the plo can be clearly recognized. The Labovian narrative structure as indicated above is easily traced:

Table 2. Labovian narrative structure

	Accused's story	***Sara and Tala's story***
Abstract/orientation	- who is he and what he does	- who they are - arrival to the Czech Republic - for whom they worked
Complicating action	- he meets the two sisters and offers them help in exchange for a counsel's fee	- visa documents expired; their employer informs them that further action must be made by a lawyer's office; they pay and wait; a month later, they realize nothing has been done and that the city authorities issued an order for them to leave; they ask

		for help another lawyer – the accused who offers help; at first they trust him but later realize there may be problems
Resolution	- accused of a criminal offence under § 171d/1 of Act No. 140/1961 Sb.	- they apply for asylum instead
Coda	- found guilty	- what happened afterwards, the trial

Both stories are Labovian narratives in the indicated sense but they differ mainly in the information included. Furthermore, there is a difference in the word choice used in these stories by the court when retelling the stories. This element, however, is neither as significant nor as evident as in the common law judgement example used above. In general, the vocabulary is unified and embraced in legal formulas and expressions. Yet, the story favoured by the court (the story of Sara and Tala) is marked rather inconspicuously by language in the court's various comments and evaluation of proofs. See Example 4 below.

Example 4. (page 14)
'…této výpovědi soud neuvěřil…'
[the court did not believe this testimony]

Burkian elements of dramatism

A further difference between these two competing narratives may be recognized in terms of the relations between their key elements, as recognized by Burke. In the following table (Table 3.) it can be seen that the recurrent point of focus here is the evaluation: the (il)legality of the accused's action. The *Act* is what the court has tried to establish as the near truth: Who did what? Was there a man to claim the fatherhood of Sara's son? Had the accused any knowledge about this? Did he ask for any money in return for his (supposedly illegal) actions? The focus in the *Scene* shifts from the business-like accused who was only ever interested in his job as a legal counsel to the problematic background of the two immigrants who happened to be in a tight situation, without legal work and without valid visa documents. The *Agent* here (the accused) is described in different terms: in one version of the story he is an honest lawyer, using legal means to help immigrants in need, in the other he is a calculating fraud, asking money for illegal actions. The *Agency* differs yet again in the evaluation of the means of help used. The *Purpose* of the accused's actions in Sara and Tala's story is to gain profit illegally, while in the accused's story the profit gained is presented as a justly earned fee for his legal services.

Table 3. Five elements of dramatism (Burke)

	Accused's version	***Sara and Tala's version***
Act	- he has acted within the legal framework	- what happened was an illegal deed
Scene	- straightforward, business-like act	- inclusion of other details questioning the accused's actions
Agent	- the honest lawyer	- the calculating fraud
Agency	- every means he used was legal	- use of suspicious-looking means of help
Purpose	- provision of standard legal services	- illegal ways of obtaining the documents needed

Requirement of narrative coherence reflected in the judgement

Coherence in narrative may be reflected in two perspectives: the temporary junction and the fact consistency. As to the fact consistency, the text of the judgement contains numerous references to the requirement of coherence and consistency as shown in the following examples:

Example 5. (page 5)

> 'K těmto svědeckým výpovědím je je nutné podotknout, že jsou velmi podrobné, netrpí vnitřními ani vnějšími rozpory, navzájem spolu korespondují a jsou dale podporovány dalšími svědeckými výpověďmi a listinnými důkazy…'
> [It must be noted that these testimonies are very detailed, they do not contain internal or external contradictions, are mutually correspondent and are supported by other testimonies and documentary evidence…]

Example 6. (page 13)

> '…je tato jeho obhajoba zcela vyvrácena a ze svého trestného jednání je obžalovaný zcela usvědčován zejména výpověďmi [Sary a Taly], které netrpí žádnými vnitřními ani vnějšími rozpory, vzájemně spolu korespondují a … korespondují i s informacemi, které obě uvedly již v žádosti o udělení mezinárodní ochrany. Jejich výpověď pak navíc koresponduje i s výpověďmi dalších svědků…a s listinnými důkazy.'
> […this accusation has been completely disproved and the accused has been convicted especially because of Sara and Tala's testimonies, which do not contain internal or external contradictions and … are in accordance with further information they have stated in their application for asylum. Furthermore, their testimonies are in accordance with testimonies of other witnesses and documentary evidence…]

Example 7. (page 14)

> '…celá výpověď svědka [Petera]…zcela zapadá [do informací získaných z výpovědí dalších svědků]…'

> […the whole testimony of the witness [Peter]…fits completely in the testimonies given by other witnesses]

The temporary organization (also typical of the Labovian narrative) is indispensable for any judgement: it must be proved beyond all reasonable doubt (in case of a criminal case) that the events have happened in a certain order. At one point of the written judgement, the judge re-tells the story by dividing it into 'nine consecutive steps' (page 13 and following of the judgement):

1. Sara and Tala meet the accused
2. the accused offered his help (family reuniting)
3. the accused asked Sara and Tala to provide the birth certificate of Sara's son and to pay the fee stipulated
4. the accused provides a man to claim fatherhood – Peter
5. Sara signs Peter's fatherhood claim
6. it has never been Peter's intent to become a father of Sara's son
7. the interpreter involved applies for a visa for Sara's son
8. another Peter's signature is needed – Sara meets an unknown woman who is supposed to give her the document
9. Sara and Tala stop trying to get residence permit and apply for asylum

Conclusion

It has been established that even a civil-law court judgement may be analyzed in terms of its narrative structure. Why is it important? As has been pointed out by many scholars, stories are structural units of human thought: the use of narrative (whether blank – as in the French *Cour de cassation* decisions – or interpretive – as in the common law decisions) is a potent means of persuasion. It has also been shown that the notion of narrative coherence is embedded in legal rules of procedure and therefore inherent to any judgement written.

Legitimacy of judicial decision making is a complex notion influenced and based on different social, legal and factual factors. One of the factors influencing the legitimacy of a particular decision is its persuasiveness – and narrative coherence. Moreover, it is not only the people who have their stories; law itself has stories – the cases, statutes, doctrines and principles have stories of their own, stories that do their narrative work beneath the surface of routine law talk (Edwards 2010, 1). The role of narratives (with respect to the prevailingly operating narratives in the society e.g. some of the Lyotard's grand narratives) in law and legal thinking is much more complicated and yet another topic for discussion.

Bibliography

Almog, Shulamit. 2001. As I read, I weep – In Praise of Judicial Narrative. *Oklahoma City University Law Review* Vol. 26, No. 2, 471-501.

Burke, Kenneth. 1945. *A Grammar of Motives*. New York: Prentice-Hall, Inc.

Berger, Linda L. 2009. How Embedded Knowledge Structures Affect Judicial Decision Making: A Rhetorical Analysis of Metaphor, Narrative, and Imagination in Child Custody disputes. *Southern California Interdisciplinary Law Journal* 18: 259- 308. Available at http://ssrn.com/abstract=1231584.

Brooks, Peter. 2002. Narrativity of the Law. *Law and Literature* 14: 1-10.

Delgado, Richard. 1988-1989. Storytelling for Oppositionists and Others: A Plea for Narrative. *Mich. L. Rev. 87*: 2411-2441.

Edwards, Linda H. 2010. Once Upon a Time in Law: Myth, Metaphor, and Authority. *UNLV William S. Boyd School of Law Legal Studies Research Paper No. 10-02*. Available at SSRN: http://ssrn.com/abstract=1462570.

Kühn, Zdeněk. Srovnani stylu soudniho rozhodnuti v České republice, zapadni Evropě a USA, *Soudce* 1/2001, 8.

Lee-Goldman, Russel. 2005. *Aspects of Legal Narrative*. www.icsi.berkeley.edu/~rleegold/ling/narrativeinbriefs.pdf.

Luyster, Deborah B. 2002. English Law Courts and the Novel. *Law and Literature* 14: 595-605.

Lasser, Mitchel de S. O.-l'E. 2003. *Anticipating Three Models of Judicial Control, Debate and Legitimacy: The European Court of Justice, the Cour de cassation and the United States Supreme Court.* Jean Monnet Working Paper 1/03. New York: New York University School of Law.

Lasser, Mitchel de S. O.-l'E. 1997-1998. Lit. Theory put to the Test: A Comparative Literary Analysis of American Judicial Tests and French Judicial Discourse. *Harv. L. Rev.* 111: 689- 770.

MacComick, Neil. 2009. *Rhetoric and the Rule of Law: A Theory of Legal Reasoning*. Oxford: Oxford University Press.

Šejvl, Michal. 2003. Jak udělat spravedlnost slovy. In *Problémy interpretace a argumentace v soudobé právní teorii a právní praxi*, 183-194. Praha: Eurolex Bohemia..

Turner, Mark. 2005. *Literární mysl: o původu myšlení a jazyka* [transl.: Olga Trávníčková]. Brno: Host.

White, James Boyd. 1996. Imagining the Law. In *The Rhetoric of Law*. Ann Arbor: The University of Michigan Press.

SPRACHNORM UND SPRACHVARIETÄTEN ALS MESSKRITERIEN DER PRÄSENTATIONSFUNKTION DER ÄUSSERUNG IM FACHTEXT

Rafał SZUBERT, Dr. phil.
Instytut Filologii Germańskiej
Uniwersytet Wrocławski
pl. Nankiera 15
50-140 Wrocław
rafal.szubert@uni.wroc.pl
r.szubert@ars.home.pl

In diesem Beitrag wird auf die Problematik der Varietät in der Sprachverwendung und ihre Auswirkungen auf die in einer Äußerung (Form) zu transportierenden Bedeutungen eingegangen. Dabei wird die Präsentationsfunktion der Sprache in den Vordergrund gerückt. Ich gehe von der Annahme aus, dass zwischen Sprachstruktur insbesondere im lexikalischen Bereich, ihrer Stabilität sowie den Bedingungen für ihre Aufhebung und deren Folgen, und der sozialen Struktur eine Kovariation besteht. Eine Methode zur Beobachtung dieser Kovariation kann meiner Meinung nach die Analyse von Äußerungen sein, also von kommunikativen Einheiten, die nach ihrem Verständigungszweck und nicht wie die Sätze nach ihrer Korrektheit zu bewerten sind. Unter den Bedeutungsfunktionen der Äußerungen interessiert mich besonders die Präsentationsfunktion und die Frage, welche sprachliche Form sie im Kommunikationsprozess annimmt. In meiner didaktischen Praxis unternahm ich den Versuch, die bestehenden theoretischen Vermutungen mit empirischen Belegen zu untermauern. Diesem Zweck diente das Experiment, das ich während des Übersetzungsunterrichts mit den Germanistikstudenten im Institut für Germanistik an der Universität Wrocław durchführte.

NORMA JĘZYKOWA I WARIANCJA JĘZYKOWA JAKO KRYTERIA FUNKCJI PREZENTACYJNEJ WYPOWIEDZI W TEKŚCIE SPECJALISTYCZNYM

W niniejszym artykule zajmuję się zagadnieniem wariancji w użyciu języka i jego konsekwencjami dla przekazywanego w danej formie znaczenia ze szczególnym uwzględnieniem funkcji prezentacyjnej wypowiedzi. Wychodzę z założenia, że pomiędzy strukturą języka w zakresie leksykalnym, jej stabilnością oraz warunkami jej zaburzenia i jego konsekwencji oraz strukturą społeczną istnieje pewna wzajemna zależność. Metodą pozwalającą na zaobserwowanie tej wzajemnej zależności może być moim zdaniem analiza wypowiedzi, tzn. analiza jednostek komunikacyjnych, które oceniane są pod kątem celu porozumienia, a nie jak zdania pod kątem ich poprawności. Spośród funkcji znaczenia wypowiedzi interesuje mnie szczególnie funkcja prezentacyjna oraz to, jakie formy przyjmuje ona w procesie komunikacji. W pracy dydaktycznej podjąłem próbę podbudowania istniejących założeń teoretycznych materiałem empirycznym. Temu celowi służył eksperyment, który przeprowadziłem ze studentami germanistyki w Instytucie Germanistyki na Uniwersytecie Wrocławskim.

Zur Ontologie der Rechtssprache

Die Rechtssprache ist größtenteils ein konserviertes Erzeugnis, ein 'produit préservative'. Wer behauptet, dass er sich an die festen Ausdrücke der Rechtssprache nicht sorgfältig halten muss, hat offensichtlich Recht, jedoch verstößt er gegen eine grundlegende Regel des Rechtssprachengebrauchs, und zwar gegen die besondere Präzision (Genauigkeit) der Rechtssprache und gegen ihre Ökonomie (vgl. Wimmer 1998, 8). Wer Entgegengesetztes meint, der soll Beispiele aus dem Alltag betrachten, wo man zwei inhaltsgleiche Sätze lediglich schon aufgrund des Gebrauchs verschiedener synonymer Ausdrücke verschiedenen Varietäten eines Sprachsystems zuordnet.
Beispiel:

Der im Kanton Zürich immatrikulierte Autocar verweigerte dem Velofahrer den Vortritt und drängte ihn über das Straßenbord hinaus.

Der im Kanton Zürich angemeldete Bus verweigerte dem Radfahrer die Vorfahrt und drängte ihn über den Straßenrand hinaus.[34]

Die These dieses Beitrags lautet: Wer beim Gebrauch eines für bestimmte Wissensbereiche (Wissenschaften) charakteristischen Wortschatzes das Gebot einer besonderen Aufmerksamkeit bricht, verstößt gegen die Qualität der vermittelten Informationen. Diese Aufmerksamkeit ist sowohl auf die fachsprachliche Kommunikationssituation als auch auf den Fachsprachenunterricht zu beziehen, in dem die jeweilige Fachsprache den Lernenden vermittelt wird. Was bedeutet in diesem Zusammenhang Aufmerksamkeit und wie ist sie zu handhaben? Der fachsprachliche Bereich stellt für den Lehrer eine besondere Herausforderung dar, „wenn es um die Vermittlung und den Erwerb fachbezogener Textrezeptions- und produktionskompetenz im Hinblick auf intra- und interkulturelle bzw. –sprachliche Kommunikation geht" (Göpferich et al. 2004, 31). Im Übersetzungsunterricht ergibt sich diese besondere Herausforderung aus den an den Lernenden (und an seinen Lehrer) gestellten Anforderungen. Gemeint sind in erster Linie „translatorische Teilkompetenzen, Fähigkeiten und Fertigkeiten als Ziele bzw. Teilziele im Rahmen der einzelnen didaktisierten Translationsarten u.a. auch zwecks Bewusstmachung von bestimmten prozessinhärenten Notwendigkeiten […]" (Żmudzki 2008, 1).

Solch ein Teilziel ist beispielsweise die Verwendung der gerichtsadäquaten Terminologie bei der Übersetzung von Texten, die den Ablauf von Zivil- bzw. Strafprozess beinhalten. Die didaktisierten Texte können verschiedenen Lebensbereichen entstammen. Der Übersichtlichkeit halber können diese Lebensbereiche (Wissensgebiete) in zwei Gruppen eingeteilt werden:

[34] Beide Beispiele stammen aus: Haas, W. (1982: 71- 60). Ich zitiere sie hier nach Weber (2009: 20). Zu Zweifeln beim Definieren der Sprachnorm vgl. auch: Vater 2002: 21; Busse 1997, Busse 2006.

(1) Exakte Fachgebiete[35]
(2) Interpretative Fachgebiete3[36]

Die Rechtswissenschaft gehört zur zweiten Gruppe, d.h. zu den interpretativen Fachgebieten. Das hat Implikationen auf die Verwendung der Terminologie, die wiederum mit dem Phänomen der Sprachvariation zusammenhängt. Interessant ist für mich die systematische Kovariation (Vater 2002, 252; Steeger 1980, 248; Nabrings 1981, 122) zwischen Sprachstruktur, insbesondere im lexikalischen Bereich, ihrer Stabilität sowie den Bedingungen für ihre Aufhebung und deren Folgen, und der sozialen Struktur. Falls es solche Kovariation gibt, ist sie auch im Fremdsprachenerwerb und bei der Didaktisierung der zu übersetzenden Texte zu berücksichtigen. In Bezug auf den Wortschatz (lexikalischer Bereich) sind innerhalb dieser zwei Gruppen weitere Eingliederungen vorzunehmen, und zwar:
(a) intrafachlicher Fachsprachwortschatz, d.h. Wörter und Wendungen, die ausschließlich in der betreffenden Fachsprache benutzt werden und in keiner anderen (fachbezogener Fachtextwortschatz im engeren Sinn),
(b) interfachlicher Fachsprachwortschatz, d.h. Wörter und Wendungen, die auch außerhalb der betreffenden Fachsprache benutzt werden (fachbezogener Fachtextwortschatz im weiteren Sinn),
(c) extrafachlicher Fachsprachwortschatz, d.h. Wörter und Wendungen, die ursprünglich einem anderen fachsprachlichen System eigen war und trotzdem in einer bestimmten Fachsprache auftreten (fächerbezogener Fachtextwortschatz),
(d) nichtfachlicher Fachsprachwortschatz, d.h. alle übrigen Wörter und Wendungen (gesamter Fachtextwortschatz) (vgl. Roelcke 2005, 52)[37].

Wortschätze dienen dazu, Sätze (syntaktische Einheiten) (vgl. Engel 1996, 33, 179) zu bilden bzw. Äußerungen (kommunikative Einheiten) zu formulieren. Da Sätze

[35] Zu der ersten Gruppe gehören Naturwissenschaft en und Technik, d.h. Wissensgebiete, im Rahmen derer man das Streben nach allgemeingültigen, nach empirisch beweisbaren Grundsätzen in den Mittelpunkt stellt (vgl. Sandrini 1996: 8).
[36] Zu der zweiten Gruppe werden alle Wissenschaft en/Wissensgebiete gerechnet, die einen heuristischen Ansatz haben, d.h. diejenigen, welche die menschliche Wirklichkeit zu interpretieren bzw. zu regeln haben (vgl. Sandrini 1996: 8).
[37] Zur Herkunft des juristischen Wortschatzes und der juristischen Phraseologie der polnischen Sprache siehe: Zajda 2001. Diese Auflistung weist darauf hin, dass man in der Sprachkommunikation von dieser bunten Palette von Möglichkeiten Gebrauch machen kann. Es wäre aufschlussreich, empirisch zu analysieren, welcher Wortschatz in welchen Varietäten der Sprache dominiert und ob damit auch Bedeutungsunterschiede verbunden sind. Die Ergebnisse können besonders dort wichtig sein, wo Benutzer verschiedener Sprachvarietäten in Kontakt kommen. Und Analysebereiche gibt es viele. Sie reichen von geschlechtsspezifischen Varietäten (Frauen- und Männersprache), über altersspezifische Varietäten (Sexolekte, Generolekte), Berufs- und Fachsprachen, Gruppensprachen, situative Varietäten, Stilniveaus bis hin zu kommunikationsspezifischen Varietäten (vgl. Kniffka 1980; Nabrings 1981).

als grammatische Einheiten nach ihrer Korrektheit zu beurteilen sind, interessieren mich in meinem Beitrag nur Äußerungen, da diese als kommunikative Einheiten nach ihrem Verständigungszweck zu bewerten sind (vgl. Engel 1996, 179).

Zur kommunikativen Funktion der Sprache

Und um das Kommunikative geht es in erster Linie in jedem Kommunikationsprozess. Die Äußerungen haben verschiedene Bedeutungsfunktionen, je nach den Umständen (Zeit, Ort, Person), in denen sie formuliert werden. Unter den Bedeutungsfunktionen sind zu nennen:
(1) Beschreibungsfunktion
(2) Impressive Funktion
(3) Performative Funktion
(4) Expressive Funktion
(5) Präsentationsfunktion (vgl.: Lewandowski et al. 2008, 24).

Zur Präsentationsfunktion der Rechtssprache

Im Weiteren wird näher auf die Präsentationsfunktion der in der Juristen- bzw. Behördenkommunikation realisierten Äußerungen eingegangen. Nach Ansicht der Juristen zeichnet sich die Präsentationsfunktion einer Äußerung durch eine solche Formulierung aus, die durch ihre grammatikalisch-lexikalische Merkmale und/oder lautliche bzw. prosodische Eigenschaften (wie die Artikulationsweise der Laute, der Akzent, die Intonation) uns über die Eigenschaften der Person, welche diese Äußerung formuliert, unmittelbar informiert. Beispielsweise kann durch die Verwendung von sprachlich nicht korrekten Formen (Verstoß gegen die Sprachnorm) der Mangel an Bildung des Sprechenden festgestellt werden (Vgl.: Lewandowski et al. 2008, 24).[38] Dies aber ist im Falle der standardsprachlichen Grammatikregeln sowohl im Polnischen[39] als auch im Deutschen[40] nicht zu verallgemeinern, weil diese Tendenz

[38] Zu den Möglichkeiten der Sanktionierung von Sprachgebrauchsweisen siehe: Busse 1997: 70.
[39] Mit dem „Polnischen" verstehe ich nach Irena Bajerowa (2001: 23) das Allgemeinpolnisch (auch als polski język ogólny [polnische Allgemeinsprache], dialekt kulturalny [Kulturdialekt] und früher auch als język literacki [literarische Sprache] bezeichnet) als ein Verständigungsinstrument, das für alle Polen bestimmt ist: „Die polnische Allgemeinsprache […] ist ein Verständigungsmittel, das für alle Polen bestimmt ist. Das ist die Hauptvarietät, die in allen öffentlichen Situationen, in öffentlichen Institutionen verwendet wird, sie wird also in der Schule unterrichtet und ihre gute Beherrschung ist eine Bedingung einer aktiven Teilnahme an der allgemeinnationalen Kultur. Der allgemeine Charakter dieser
Sprache widersetzt sich sowohl den Mundarten, die ihren lokalen Charakter haben, als auch denjenigen Varietäten, die auf gesellschaftlichen Faktoren beruhen, den sogenannten Soziolekten. Man kann annehmen, dass diese Varietäten am Rande der Allgemeinsprache liegen, denn in

auch regional unterschiedlich ist. In der einen Region hat z.B. der Dialekt einen völlig anderen Stellenwert als in einer anderen bzw. ist die Umgangssprache anders gestrickt.

Zum Beispiel haben die Rheinländer ein gestörtes Dativ-Akkussativ-Verhältnis. Bayern haben es mit den unregelmäßigen Verben nicht ganz leicht (Bayrisch: hob i's mir doch denkt; hob i aa scho g'schriab'n, Hochdeutsch: habe ich mir gedacht; habe ich auch schon geschrieben). Man kennt wohl viele Beispiele von sehr gebildeten Leuten etwa aus dem Rheinland, die unverkennbar dialektgefärbt sprechen und denen durchaus auch mal ein Grammatikfehler rausrutscht. Als Beispiel kann die Sprache vom Kabarettisten Gerhard Polt oder vom Musiker und Sänger Fredl Fesl gelten. Das Polnische ist in dieser Hinsicht, jedenfalls im öffentlichen Bereich, wahrscheinlich doch etwas homogener als das Deutsche. Man könnte jedoch fragen, was unter dem öffentlichen Bereich oder unter den öffentlichen Situationen, in denen die polnische bzw. die deutsche Allgemeinsprache als ein Verständigungsmittel gilt (vgl. Bajerowa 2001, 23) zu verstehen ist. Bezieht sich etwa die Bezeichnung öffentliche Institutionen auf alle Behörden? Ist sie auf Dienststellen, Verwaltungsstellen, öffentliche Betriebe und Gerichte beschränkt oder darf sie auf Ministerien, Rathäuser, Bauämter, Umweltämter, Energieversorger, Schulen und Universitäten, Bibliotheken und Museen erweitert werden?[41]

Auch die Definition von Busse (2006, 314) lässt die deutsche Standardsprache in dieser Hinsicht etwas amorph erscheinen. Man könnte die Frage stellen, ob diese Definitionen möglicherweise alle Phänomene der deutschen oder der polnischen Sprache kennzeichnen, die in einem Wörterbuch mit der Markierung „standarsdspr. (standardsprachlich)"/"pot. (potoczny)" zu kennzeichnen wären (vgl. Kjaer 1991, 115). Mir

---

grammatischer Hinsicht gehören sie dem Allgemeinpolnischen an. Allgemeinpolnisch ist auch der Stamm und die Quelle ihres Wortschatzes. Ein dominierender Teil des Wortschatzes dieser Varietäten bleibt für die überwiegende Mehrheit der Gesellschaft unverständlich“ (Bajerowa 2001: 23, übers.: Rafał Szubert).

[40] Unter dem „Deutschen“ verstehe ich das System der heutigen neuhochdeutschen Standardsprache, wie es Grundlage der Sprachbeschreibung in den gängigen Grammatiken, Wörterbüchern und Schulbüchern ist. Vgl. Busse (2006: 314).

[41] In seinen Vorbemerkungen zur Öffentlichkeit als Raum der Diskurse präzisiert Busse die Antwort auf diese Frage: „Bürgerliche Öffentlichkeit begann, als sie aus der obrigkeitlichen Sphäre der *Hofe* hinaustrat, um in die Öffentlichkeit der *Städte* hinüberzuwechseln, in *Salons* und *Kaffeehäusern* (Habermas 1962: 46); sie hatte also, zunächst im durchaus dinglichen Sinne, *Räume*, in denen sie sich entfalten konnte. Im Laufe ihrer Entwicklung, auf Zeitungen, Zeitschriften, Bücher, später Rundfunk und Fernsehen ausgeweitet, wurde sie selbst zum Raum der Diskussion allgemeiner, d.h. die 'Allgemeinheit' betreffender Probleme, Diskurse, wie sie in der historischen Semantik oder jeglicher Semantik des öffentlichen Sprachgebrauchs untersucht werden, sind ohne diese Öffentlichkeit gar nicht denkbar. Indem Öffentlichkeit einen Raum der Rede entfaltete, entfaltete sie die Rede selbst: sie ist also eigentlich Möglichkeitsbedingung jeder gesamtgesellschaftlichen Kommunikation, und damit auch des unmittelbaren gesamtgesellschaftlichen Wirksamwerdens semantischer Entwicklungen“ (Busse 1996: 347).

scheint, dass dies kein Merkmal der Allgemeinsprache ist, das den Anspruch der allgemeinen Gültigkeit erheben darf. Denn in gängigen Wörterbüchern begegnet man außer diesen Markierungen auch vielen anderen, wie z.B. amtl. (amtlich), Amtsd. (Amtsdeutsch), Amtsspr. (Amtssprache), Bankw. (Bankwesen), Bauw. (Bauwesen), fachspr. (fachsprachlich), Fachspr. (Fachsprache), rechtl. (rechtlich), Rechtsspr. (Rechtssprache).

Adäquatheit vs. Unzulänglichkeit des Ausdrucks

Die Verwendung eines adäquaten, situationsgerechten Wortes bzw. Ausdrucks vom Kommunizierenden kann ebenso Bände über seinen Status sprechen. Dadurch realisiert der Kommunizierende die Maxime der Art und Weise von Grice (1975: 46), die sich darauf bezieht, wie etwas gesagt wird, und die zusammenfassend lautet: „Mach deinen Redebeitrag durchsichtig!“ (vgl. Vater 2002, 191). Die Aspekte dieser Maxime sind: (1) Vermeide Dunkelheit der Ausdrucksweise, (2)

Vermeide Doppeldeutigkeit, (3) Sei kurz und bündig (vermeide Weitschweifigkeit), (4) Halte eine bestimmte Ordnung ein (vgl. Vater 2002, 191). Verstöße gegen diese Maxime können bewusst bzw. unbewusst erfolgen. Ebenso wie die Verstöße gegen die grammatischen Regeln der Sprache können die Verstöße gegen die Maxime der Art und Weise von Grice instrumentalisiert (zielbewusst) sowie auch aufgrund mangelnden Wissens des Sprechenden begangen werden. Instrumentalisiert können sie werden, wenn sie etwa in der Dichtung oder in einer Anekdote verwendet werden, um eine spezielle Wirkung zu erzielen. So wird die Regel (2) Vermeide Doppeldeutigkeit (vgl. Vater 2002, 191) zur Regel ‘Verwende Doppeldeutigkeit’. Die Befolgung dieser Regel führt zur gezielten Mehrdeutigkeit im folgenden Scherz:

„Wie geht es Ihnen Herr Rechtsanwalt?“

„Ich kann nicht klagen.“

„Sie Armer!“ (Daum 2005, 14).

Die Instrumentalisierung kann bestenfalls im Sinne der Skopos-Theorie (vgl. Reiß et al. 1991: 96) eingesetzt werden. Paradoxerweise trägt dann der Verstoß gegen die Maxime der Art und Weise von Grice (Sei kurz und bündig [vermeide Weitschweifigkeit]; vgl. Vater 2002, 191) zur Verständigung zwischen Vertretern von zwei verschiedenen Kommunikationskreisen bei (Vermeide Dunkelheit der Ausdrucksweise, vgl. Vater 2002, 191), z.B. zwischen den Juristen (institutions-spezifische Kommunikation mit den verbindlich-zielgerichteten Formen; vgl.: Rehbein 2000, 118; Ehlich, Rehbein 1986) und den Rechtslaien (homileïscher Diskurs; vgl.: Rehbein 2000, 118; Ehlich, Rehbein 1986), die auf dem Gebiet der vorstrukturierten Handlungsabläufe in der institutionsspezifischen Kommunikation unbewandert sind. In diesem Falle ist Explikation statt Lakonik, d.h. statt Kürze und Bündigkeit geboten.

Beispiel:
Ein Steuerberater rät seinem Klienten – einem Ausländer in Deutschland – in einem Schreiben, er solle Rechtsmittel gegen die Verfügung des Finanzamtes einlegen und fügt diesem Rat die Erläuterung hinzu *Dabei kommt es uns in erster Linie auf den Suspensiveffekt an*. Der Klient spricht zwar leidlich Deutsch, dennoch beauftragt der Steuerberater einen Übersetzer, das Schreiben in die Muttersprache des Klienten zu übersetzen, und zwar so, dass der jede Nuance versteht. Aus diesem Auftrag wird der Übersetzer möglicherweise den Schluss ziehen, den Terminus *Suspensiveffekt*, den auch der „Durchschnittsdeutsche“ in der Regel nicht verstehen würde, nicht mit dem entsprechenden zielsprachlichen Terminus wiederzugeben, sondern zu explizieren. Die Neuvertextung (hier die Rückübersetzung ins Deutsche) wäre dann vielleicht *Dabei kommt es uns in erster Linie darauf an, die Rechtskraft der Verfügung bis zur Entscheidung der Rechtsmittelinstanz zu hemmen*, eine Version, die der Durchschnittsdeutsche wahrscheinlich verstehen würde (Kautz 2002, 50).

Das mangelnde Wissen der Kommunikationsbeteiligten kennzeichnet beispielsweise die Kommunikation der Bürger mit den Institutionen. Die Kommunikationsbeteiligten entstammen dann meistens zwei Welten – der Welt der Fachleute (oft sind das Vertreter der Institutionen, wie Lehrer, Richter, Ärzte und Krankenschwestern)[42], denen die für die Handelnden vorstrukturierten Handlungsabläufe bekannt sind, und der Welt der Laien (oder Klienten, um mit Rehbein zu sprechen; vgl. Rehbein 2000, 116).

Beide Gruppen verfügen über sehr unterschiedliche kommunikative Möglichkeiten und über ein sehr unterschiedliches Wissen. Das Wissen der Fachleute ist als professionalisiertes Wissen meist systematisch durchstrukturiert; es enthält verschiedene Wissenstypen, etwa Einschätzungen, Bilder, Sentenzen, Maximen, Routinewissen usw. Das Klientenwissen hingegen ist oft auf partikuläres Erlebniswissen festgelegt und darauf angewiesen, meist mehr recht als schlecht alltägliche kommunikative Formen den besonderen Zwecken der institutionellen Kommunikation anzupassen (Schüler, Patienten, Angeklagte usw.). Die unterschiedlichen Wissensrepertoires von Agenten und Klienten sind Quelle permanenter kommunikativer Probleme, die durch die partielle Widersprüchlichkeit bzw. Verselbständigung der institutionellen Zwecke gegenüber denen des einzelnen Klienten noch besonders verschärft werden (Rehbein 2000, 116).

Die Handlungsabläufe im Rahmen der Kommunikation mit bzw. in den Institutionen sind durch bestimmte Muster vorstrukturiert. Für den Gerichtssaal gelten institutionsspezifische Muster (besondere sprachliche Handlungen vor Gericht) (Hoffmann 1983). Sie überkreuzen sich mit den außerinstitutionellen alltäglichen Mustern, was unvermeidlich ist, wenn man Agenten und Klienten miteinander

[42] Rehbein (2000: 115) nennt sie Agenten.

konfrontiert, und zwar auf einem Terrain, das für die ersten heimisch und für die anderen doch größtenteils fremd ist.[43]

Kommunikation vor Gericht

In dem hier zu erörternden Kommunikationsabschnitt (Kommunikation vor Gericht) kann das Definieren der Sprachnorm und die Abgrenzung der Sprachverwendung vom nicht akzeptablen Sprachgebrauch transparenter sein als in einem anderen Fall. Denn in erster Linie wird bei der Kommunikation vor Gericht nicht die Verletzung der phonologischen, morphologischen oder syntaktischen Regeln anvisiert, sondern etwas weitaus Komplizierteres, nämlich das Ge- oder Misslingen auf lexikalischer oder semantischer Ebene (Busse 1997, 70).

Experiment im Übersetzungsunterricht

Während des Übersetzungsunterrichtes, der im Rahmen des translatorischen Studiengangs im Institut für Germanistik an der Universität Wroclaw[44] realisiert wird, erklärte ich den Studenten den Ablauf des polnischen Strafprozesses vor Gericht. Im Anschluss daran versuchten die Studenten, einen Text des Strafprozesses vom Polnischen ins Deutsche zu übertragen.[45] Das Ergebnis dieses Unterrichts war eine Beobachtung, die man bei fast allen Studenten machen konnte.[46] Formulierungsprobleme bereiteten ihnen diejenigen Textpassagen, die durch juristische Formulierungen und gerichtsadäquate Ausdrücke gekennzeichnet waren. Die Studenten neigten meist dazu, alltägliche kommunikative Formen den besonderen Zwecken der institutionellen Kommunikation anzupassen. Besonders deutlich war das zu sehen am Beispiel formelhafter Kurztexte wie Handlungsanweisungen und Willensbekundungen, die für den institutionellen Verkehr, auch vor Gericht, charakteristisch sind (vgl. Gläser 2007,

[43] Ein erwünschtes Ergebnis dieser gemeinsamen Einbindung in den Kommunikationsprozess könnte sein, dass beide Gruppen der Handelnden (Aktanten) ihre Kommunikationsregeln kennen lernen und akzeptieren. Das bedürfte jedoch einer konsequenten und intensiven Ausbildung, die schon in der Grundschulphase einzusetzen wäre. Im Rahmen dieser Ausbildung sollte man den Schülern nach dem Prinzip des aufsteigenden Schwierigkeitsgrades die Kenntnis der situationsadäquaten und normgerechten Muster (gerichtsadäquate Sprachdarstellung, Sachlichkeit und Reduktion), die für die Kommunikation vor Gericht gelten, beibringen. Begonnen werden könnte aber zum Beispiel mit nonverbalen Elementen der Kommunikation, z.B. damit, dass es üblich ist, als Zuschauer aufzustehen, wenn (1) der oder die Richter den Gerichtssaal betreten, (2) eine Vereidigung vorgenommen oder (3) das Urteil verkündet wird. Vgl.: Staatsministerium der Justiz (2003).

[44] Der Unterricht fand im Wintersemester 2008/2009 statt.

[45] Unsere Grundlage war der Text des Strafverfahrens aus dem Lehrbuch von Janusz Poznański (2007), den ich zum Zwecke des Unterrichts teilweise modifiziert hatte.

[46] Es waren insgesamt ca. 40 Studenten, die in zwei Gruppen aufgeteilt waren.

497). So einen Kurztext stellt zum Beispiel die Eidesformel dar, die im Gerichtssaal bei der Vernehmung eines Zeugen gilt. Den Text der polnischen Eidesformel („Przysięgam mówić prawdę, całą prawdę i tylko prawdę, tak mi dopomóż Bóg”) übersetzten die Studenten wortwörtlich als „Ich schwöre, die Wahrheit zu sagen, die ganze Wahrheit und nur die Wahrheit, so helfe mir der Gott“. Einen solchen Eid wird auch im deutschen Gerichtssaal vom Richter abgenommen, jedoch ist der Wortlaut der deutschen Eidesformel in der deutschen Strafprozessordnung (§ 66 der StPO) präzise vorgegeben und lautet: „Ich schwöre bei Gott dem Allmächtigen und Allwissenden, dass ich nach bestem Wissen die reine Wahrheit gesagt und nichts verschwiegen habe. Ich schwöre es, so wahr mir Gott helfe.“ Außerdem wird in § 66 der StPO festgelegt, dass der Schwörende bei der Eidesleistung die rechte Hand erheben soll. Diese Eidesformel ist quasi lexikalisiert und stellt ein Gefüge dar, das die Satzgrenze überschreitet und eine Textstruktur bildet. Die Kenntnis der deutschen Eidesformel soll in der Übersetzung vom Polnischen ins Deutsche berücksichtigt werden, es sei denn, dass man statt der einbürgernden bzw. angleichenden Übersetzung eine verfremdende Übersetzung bevorzugt (vgl. Wiesmann 2004, 75). Diese Verfremdung wirkt sich destruktiv für die Präsentationsfunktion der Äußerung aus, denn den Wortlaut der Eidesformel wird dem Zeugen vom Richter für die Beeidigung einer Aussage vom Richter vorgesprochen.

Im Folgenden werden beispielhaft die häufigsten Fälle präsentiert, die korrigierbedürftig sind. In der Arbeit mit den Studenten reagierte ich auf ihre Vorschläge, die ich als von der Sprachnorm abweichend empfand, mit Kopfschütteln, Stirnrunzeln sowie mit Fragen oder Feststellungen („Was haben Sie gemeint?“, „Wie meinen Sie das?“, „Das ist aber falsch“, „So sagt der Staatsanwalt das nicht“[47]), die ich als Sanktionen wirken ließ. Ich tat das in der Überzeugung, dass solche Reaktionen auf den Sprachgebrauch „auf das Regelwissen und damit auf spätere Sprachverwendungen des Betreffenden einwirken können“ (Busse 1997, 72). Die Wirkungen solcher Sanktionen wurden in erster Linie auf die Präsentationsfunktion der Äußerung im konkreten Text bezogen. Meine Absicht war, die Studenten dazu zu veranlassen, dass sie in ihrer Übersetzung doch den Unterschied zwischen dem Sprachgebrauch des Juristen (Rechtsanwalts, Staatsanwalts, Richters) und des Rechtslaien dort, wo nötig, markieren, der sich vor allem in dem lexikalischen Bereich manifestiert.[48] Ausgewählte Resultate des Experiments werden in der folgenden Tabelle angeführt:

[47] Vgl. dazu Busse 1997: 72.

[48] Dabei war es nicht meine Absicht, den Unterschied zwischen Sprachnorm und Sprachgebrauch aufzuzeigen. Wer so ein Vorhaben wagt, begibt sich etwas aufs Glatteis. Busse formuliert das wie folgt: „Bezieht man die Wirkungen solcher Sanktionen auf das Problem der Abgrenzung von Sprache (Sprachnorm) und Sprachgebrauch, dann ergibt sich folgende Lage: Sanktionen auf die Anwendung sprachlicher Elemente und Regeln im Kommunikationsprozess bilden, sofern sie nicht zu einem direkten und offensichtlichen Misslingen des Kommunikationsaktes führen, einen

Ausgangsbezeichnung[49]	**korrekturbedürftiges Translat**[50]	**korrektes Translat**[51]	**Sender**[52]	**Empfänger**
odczytanie aktu oskarżenia	Vorlesung der Anklageschrift	Verlesung der Anklageschrift	StA[53]	ProzBet[54]
Oskarżam Axela Hauga o to,że w dniu 7 stycznia 2004 roku w Warszawie udzielił Czesławowi Cabanowi pomocy w dokonaniu Przestępstwa kradzieży z włamaniem do domu Hannelore i Johannesa Drewitz.	Ich **beschuldige** Axel Haug, er habe Czeslaw Caban bei der Ausführung des Einbruchsdiebstahls in dem Haus von Hannelore und Johannes Drewitz am 7. Januar 2004 in Warschau Hilfe geleistet zu haben (…)	Ich **klage** Axel Haug **an**, am 7. Januar 2004 in Warschau Czesław Caban Beihilfe zum Einbruchsdiebstahl im Haus von Hannelore und Johannes Drewitz geleistet zu haben (…).	StA	ProzBet
Będzie rozpoznawana sprawa przeciwko Axelowi Haugowi. Proszę **osoby wezwane** do wejścia na salę	**Es wird erkannt in der Sache gegen** Axel Haug. Bitte **die vorgeladenen Personen** in den Verhandlungssaal.	Es **wird gegen** Axel Haug **verhandelt**. **Die angerufenen Personen**,	Protführ.[55]	

großen Übergangsbereich, der von einer durch die gesellschaftliche Übereinstimmung gestützten sicheren Einstufung der sanktionierten Verwendungsweisen als ‚falsch' oder ‚richtig' nach Maßgabe einer bekannten und explizit formulierbaren Regel bis zu einer nach Vorlieben und ästhetischen Empfindungen bemessenen Bewertung des ‚Das sagt man nicht so.', ‚Das ist kein gutes Deutsch.' u.ä. reicht. Wo in diesem großen Übergangsbereich die Grenze zwischen ‚zur Sprachnorm gehörig' bzw. ‚der Norm entsprechend' und ‚von der Norm abweichend' (in dem Sinne von ‚Norm', der oben in Abgrenzung zum Begriff Sprachsystem skizziert wurde) genau verläuft , ist wohl eine der am schwierigsten zu beantwortenden Fragen der Linguistik. Es ist schlechthin fraglich, ob eine solche Grenze überhaupt gezogen werden kann" (Busse 1997, 72).

[49] Unter Ausgangsbezeichnung ist diejenige Bezeichnung zu verstehen, die im polnischen Ausgangstext auftritt.

[50] Als korrekturbedürftiges Translat markiere ich diejenige Übersetzungsversion, die ich für nicht adäquat (nicht normgerecht) halte.

[51] Korrektes Translat bedeutet diejenige Übersetzungsversion, die den Sprechenden in seiner Kommunikationsrolle zutreffend markiert.

[52] Die Markierungen Sender und Empfänger dienen dazu, den Beteiligten am Kommunikationsprozess zu kennzeichnen.

[53] StA steht für Staatsanwalt.

[54] ProzBet steht für die Verfahrensbeteiligten, d.h. für Schöffe, Staatsanwalt, Angeklagter, Verteidiger, Protokollführer, Nebenkläger, Zeuge, Sachverständiger und die Zuschauer.

rozpraw.		bitte, treten Sie in den Gerichtssaal ein.		
Otwieram rozprawę przed Sądem Rejonowym dla Miasta Stołecznego Warszawy.	Ich **öffne die Verhandlung/mache die Verhandlung auf** vor dem Amtsgericht für die Hauptstadt Warschau.	Ich **eröffne die Verhandlung** vor dem Amtsgericht der Hauptstadt Warschau.	Vorsitz-Richt[56]	
Co oskarżony chce **powiedzieć w tej sprawie**?	Was möchte der Angeklagte **in dieser Angelegenheit/Sache sagen**?	Was wollen Sie dazu sagen?	Vorsitz-Richt	Angekl. [57]

Als Hilfsmittel konnten die Studenten alle mono- und bilingualen Wörterbücher benutzen. Trotzdem ergab die Übersetzung ein Bild, das zwar vom starken Engagement der Studenten in die zu übersetzende Problematik, zugleich aber von der Unkenntnis der Gerichtsterminologie und –phraseologie zeugt.

Ausblick

In meiner Untersuchung wird die Frage aufgeworfen, auf welche Bezugspunkte man die Wertungen der Sprachnormen fundieren kann. Eine Antwort auf diese Frage ist in der Möglichkeit zu finden, die Äußerungen mit entsprechenden Präsentationsfunktionen der Verfahrensbeteiligten vor Gericht auszustatten. Als Folge davon kann erwartet werden, dass der unscharfe Übergangsbereich im Zusammenhang mit dem von bestimmten Ritualen abweichenden Sprachgebrauch deutlicher markiert wird. Dabei werden vor allem Handlungsabläufe vorausgesetzt, die im Rahmen der Kommunikation mit bzw. in den Institutionen durch bestimmte institutionsspezifische Muster vorstrukturiert sind und die in besonderen sprachlichen Handlungen vor Gericht ihren Ausdruck finden. Es gilt erstens diese institutionsspezifischen Muster von den außerinstitutionellen alltäglichen Mustern zu trennen, zweitens Schranken, die durch den Bedeutungsrahmen der situativen Konventionen markiert sind, mit empirisch belegbarem und nachvollziehbarem Material aufzuweisen.

[55] Protführ. bezeichnet den Protokollführer.
[56] VorsitzRicht steht für den vorsitzenden Richter.
[57] Angekl. steht für den Angeklagten.

Literaturverzeichnis

Bajerowa, Irena. 2001. Język ogólnopolski XX wieku. In: *Współczesny język polski*, Hrsg. Jerzy Bartmiński, 23-48. Lublin: Wydawnictwo Marii Skłodowskiej-Curie.

Busse, Dietrich. 1996. Öffentlichkeit als Raum der Diskurse. Entfaltungsbedingungen von Bedeutungswandel im öffentlichen Sprachgebrauch. In: *Öffentlicher Sprachgebrauch. Praktische, theoretische und historische Perspektiven. Georg Stotzel zum 60. Geburtstag gewidmet,* Hrsg. Karin Böke, Matthias Jung, Martin Wengeler, 347-358. Opladen: Westdeutscher Verlag.

Busse, Dietrich. 1997. Sprachstil – Sprachnorm – Sprachgebrauch. Zu einem prekären Verhältnis. In: *Stil und Stilwandel. Festschrift für Bernhard Sowinski,* Hrsg. Ulla Fix, Gotthard Lerchner, 63-81. Frankfurt am Main: Peter Lang Verlag.

Busse, Dietrich. 2006. Sprachnorm, Sprachvariation, Sprachwandel – Überlegungen zu einigen Problemen der sprachwissenschaftlichen Beschreibung des Deutschen im Verhältnis zu seinen Erscheinungsformen. *Deutsche Sprache* 4/2006: 314-333.

Daum, Ulrich. 2005. *Gerichts- und Behördenterminologie*. Berlin: Verlag des Bundesverbandes der Dolmetscher und Übersetzer.

Ehlich, Konrad, Rehbein Jochen. 1986. *Muster und Institution*. Tübingen: Narr.

Engel, Ulrich. 1996. *Deutsche Grammatik*. Heidelberg: Julius Groos.

Gläser, Rosemarie. 2007. Fachphraseologie. In: Ein internationales Handbuch der zeitgenössischen Forschung. An International Handbook of Contemporary Research, Hrsg. Harald Burger, Dmitrij Dobrovolskij, Peter Kühn, Neal R. Norrick, 482-505. Berlin: Walter de Gruyter.

Göpferich, Susanne und Engberg, Jan. 2004. *Qualität fachsprachlicher Kommunikation*. Tübingen: Narr.

Grice, H. Paul. 1975. Logic and Conversation. In: *Syntax and Semantics 3: Speech Acts*, Hrsg. Peter Cole, Jerry L. Morgan, 41-58. New York: Academic Press.

Haas, Walter. 1982. Die deutschsprachige Schweiz. In: *Die viersprachige Schweiz*, Hrsg. Robert Schläpfer, 71-60. Zürich: Benzinger Verlag.

Habermas, Jürgen. 1962. *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*. Neuwied/Berlin: Luchterhand.

Hoffmann, Ludger. 1983. *Kommunikation vor Gericht.* Tübingen: Narr.

Kautz, Ulrich 2002. *Handbuch Didaktik des Übersetzens und Dolmetschens*. München: Iudicium Verlag.

Kjaer, Marie-Lise. 1991. Phraseologische Wortverbindungen in der Rechtssprache? In: *Europhras 90. Akten der internationalen Tagung zur germanistischen Phraseologieforschung Aske/Schweden. 12-15. Juni 1990*, Hrsg. Christine Palm, 115-122. Stockholm: Almqvist & Wiksell.

Kniffka, Hannes 1980. *Soziolinguistik und empirische Textanalyse*. Tübingen: Niemeyer Verlag.

Lewandowski, Sławomir, Machińska, Hanna, Malinowski, Andrzej, Petzel, Jacek. 2008. *Logika dla prawników*. Warszawa: LexisNexis.

Nabrings, Kirsten. 1981. Sprachliche Varietäten. *Tubinger Beiträge zur Linguistik* 147: 122-130.

Poznański, Janusz 2007. *Tłumacz w postępowaniu karnym*. Warszawa: Wydawnictwo Translegis.

Rehbein, Jochen. 2000. Ausgewählte Aspekte der Pragmatik. In *Sprachwissenschaft. Ein Reader*, Hrsg. Ludger Hoffmann, 106-131. Berlin/New York: De Gruyter.

Reiß, Katharina, Vermeer, Hans J. 1991. *Grundlegung einer allgemeinen Translationstheorie*. Tübingen: Niemeyer Verlag.

Roelcke, Thorsten. 2005. Fachsprachen. Berlin: Schmidt Erich Verlag.

Sandrini, Peter. 1996. *Terminologiearbeit im Recht. Deskriptiver begriffsorientierter Ansatz vom Standpunkt des Übersetzers.* Wien: Internat. Network for Terminology.

Schmidt-König, Christine. 2005. *Die Problematik der Übersetzung juristischer Terminologie. Eine systematische Darstellung am Beispiel der deutschen und französischen Rechtssprache*. Münster: Lit Verlag.

Staatsministerium der Justiz. 2003. *Ein Schulbesuch bei Gericht.* Freistaat Sachsen. Dresden.

Steeger, Hugo. 1980. *Soziolinguistik.* In: *Lexikon der Germanistischen Linguistik*, Hrsg. Hans Peter Althaus, Helmut Henne, Herbert Ernst Wiegand (Hg.), 245-254. Tübingen: Niemeyer Verlag.

Vater, Heinz. 2002. *Einführung in die Sprachwissenschaft*. München: Wilhelm Fink Verlag.

Weber, J. Peter. 2009. *Kampf der Sprachen. Die Europäische Union vor der sprachlichen Zerreißprobe*. Hamburg: Krämer.

Wiesmann, Eva. 2004. *Rechtsübersetzung und Hilfsmittel zur Translation.* Tübingen: Günter Narr Verlag.

Wimmer, Rainer. 1998. Zur juristischen Fachsprache aus linguistischer Sicht. *Sprache und Literatur* 81: 8-23.

Zajda, Aleksander. 2001. *Studia z historii polskiego słownictwa prawniczego i frazeologii.* Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.

Żmudzki, Jerzy. 2008. Translationsdidaktik in den polnischen Germanistikinstituten. Realität und Anspruch. In: *Translatorik in Forschung und Lehre der Germanistik*, Hrsg. Franciszek Grucza, Hans-Jörg Schwenk, Magdalena Olpińska, 71-97. Warszawa: Euro-Edukacja.

THE PRINCIPLE OF DETERMINACY OF LEGAL RULES AS AN ELEMENT OF THE PRINCIPLE OF COMPETENT LEGISLATION

Marzena MYŚLIŃSKA, Master of Arts in Law
Assistant at the Department of Theory and Philosophy of Law
Faculty of Law and Administration
Maria Curie-Skłodowska University in Lublin
Plac Marii Curie-Skłodowskiej 5
20-031 Lublin, Poland
marzenamyslinska@wp.pl

Abstract: The Constitutional Tribunal and legal science derived the principle of competent legislation from among numerous principles stemming from the concept of a democratic legal state (article 2 of the Constitution of 1997). This principle consists of a range of detailed elements, the normative content of which constitutes the principle of the citizen's confidence in the state and the law established by it, legal certainty and legality. The major components of this principle are as follows: the principle lex retro non agit, the principle vacatio legis, the principle of the protection of acquired rights, the principle of determinacy of legal rules. Additionally, the following principles have been distinguished: the principle pacta sunt servanta, the prohibition of changes in the tax law during a tax year, the requirement to protect the interests in progress as well as the requirement to specify the guidelines concerning the content of a regulation. The subject of this article consists of the analysis of the principle, which directly relates to the linguistic aspect of law - the principle of determinacy of legal rules. To be an effective means of communication between a legislator and those subject to established norms, legal language must be subject to certain requirements, which stem from the described principle. The essence of the principle of determinacy of legislation consists in the obligation to create laws with correct, precise and clear content. Due to the limited space of this study, I will confine myself to the problem of substantiating the binding force of the discussed principle, its content, exemplification of its violation by a legislator, factors affecting the level of determinacy in a particular case as well as the scope of unconstitutionality of legal rules that do not comply with the established requirements.

NAKAZ OKREŚLONOŚCI PRZEPISÓW PRAWNYCH JAKO ELEMENT ZASADY PRZYZWOITEJ LEGISLACJI

Abstrakt: Wśród wielu zasad wywodzonych z koncepcji demokratycznego państwa prawnego (art. 2 Konstytucji z 1997 r.) Trybunał Konstytucyjny i nauka prawa wyprowadziły zasadę przyzwoitej legislacji. Zasada ta składa się z szeregu szczegółowych elementów, których treścią normatywną jest realizacja zasady zaufania obywateli do państwa i stanowionego przez nie prawa, pewności prawa oraz zasady legalizmu. Głównymi składowymi zasady są: zasada lex retro non agit, zasada vacatio legis, zasada ochrony praw nabytych oraz zasada określoności przepisów prawnych. Dodatkowo wyodrębniono: zasadę pacta sunt servanta, zakaz dokonywania zmian

w prawie podatkowym w trakcie roku podatkowego, nakaz ochrony interesów w toku oraz nakaz określania wytycznych dotyczących treści rozporządzenia. Przedmiotem artykułu jest analiza zasady odnoszącej się bezpośrednio do językowego aspektu prawa – zasady określoności - przepisów prawnych. Język prawny, aby był skutecznym środkiem porozumiewania ustawodawcy z adresatami stanowionych norm prawnych musi podlegać określonym wymogom, których źródłem jest opisywana zasada. Istota zasady określoności przepisów prawnych wyraża się w obowiązku tworzenia przepisów, których treść powinna być poprawna, precyzyjna i jasna. Z uwagi na okrojone ramy niniejszego opracowania ograniczam się do omówienia problemu uzasadnienia obowiązywania omawianej zasady, jej treści, egzemplifikacji naruszeń przez prawodawcę, czynników rzutujących na poziom określoności w konkretnym przypadku oraz zakresu niekonstytucyjności przepisów niespełniających stawianych wymagań.

In legal theory, the process of legislating is considered as an organised set of actions, accomplished in established forms, the course of which is substantially defined by binding legal standards. The beginning of this process constitutes "making an intention by a given entity to make a change in social life by means of legal norms," and the subsequent stages constitute preparation and consideration of the draft of a legislative act and making it effective (Wronkowska and Ziembiński 2001,128). Legislation is an organised and deliberate process, guided by specified legal principles.[58] The principles of legislation shall mean directives with a large degree of generality directed to entities creating law, which specify how legislators should settle particular problems arising during legislation and guide the process of making the law so that these problems might be properly resolved[59] (Michalska and Wronkowska 1983, 55). It should be stressed that these principles do not directly indicate the features of the law, but how to enact it so

[58] The concept of legal principles has not been unequivocally specified yet. One of the divisions developed in the doctrine (to which I will refer further in this study) is the division into principles of the directival and descriptive meaning. This dichotomy relates to expressions of such nature distinguished in science. Directival expressions specify an order or ban to behave in a particular way in certain circumstances, they are justified ethically (they are compulsory, because they are established by the entity that wields authority over those subject to the order or ban) or axiologically (the code of conduct is binding because it is preferred or negated due to certain values). Alternatively, descriptive expression is represented by means of statements of a logical definitative sense. Accordingly, legal principles in a directival sense include norms of conduct, which have thetic or axiomatic justification of its validity. Norms included in these principles are considered to be norms of a given system, they are to some extent superior to other norms. Among the directival principles one may distinguish the principles of a legal system construction (II degree) and substantive principles concerning particular legal institutions, rights and obligations of the subject of law etc (I degree). These principles are legally valid. Legal principles of descriptive meaning (beyond directival sense) have educational purposes and they are intended to form the description of a legal system, indicating functional relations between norms as well as presenting the social role of a given norm, institution or branch of law (more: Wronkowska et al.1974, 28-72.)

[59] The issues concerning legislation are described in details in i.a. (Bafia 1980; Bałaban et. al, 1986; Wróblewski 1989).

that it may comply with certain requirements concerning its content and form (Bafia 1980, 86-94). Among the entirety of legislative principles one may distinguish those that are based on the text of a normative act (so-called principles – legal criteria) and those without any normative character (so-called principles – postulates in legal doctrine)[60].

The distinctive feature of the concept of legislative principles developed in the Polish legal science is its broad understanding. They embrace the principles of editing legal texts, aiming at implementation of the rationality postulate of a legislator, and, at the same time, legal certainty and legal safety (which will be described broadly hereinafter), the principles intended to stabilise of the political system as well as those concerning the legislative procedure (Zalasiński 2008, s.28).

According to the classification of legislative principles performed by A. Michalska and S. Wronkowska, one of these groups constitutes the principles, which stipulate the optimal text formulation of normative acts (more: Zalasiński 2008, 55-69). According to the formulated recommendation, the text of the act should be unequivocal, concise and perspicuous to its readers. The complement to this group of principles constitutes the postulate demanding the comprehensive regulation of the domains of social life, avoidance of casuistry as well as direct repealing of hitherto valid regulations by a new statute. It should be mentioned that since the Constitutional Tribunal commenced jurisdictional activity, many of the legislative directives formulated hitherto in the doctrine have obtained the status of constitutional legal principles[61], which, with

[60] According to the concept of legislation developed in the doctrine, this division concerns the principles understood in a directive way. Jerzy Wróblewski is an author of the concept of division of legal principles (more: Wróblewski 1959, 255-260). The principles – legal norms, which are based on a legal text, are of fundamental importance for teaching and practising law. In order to portray the scope of the subjectoptimally, it should be mentioned that there are different stances on the doctrine concerning the validity of legal principles. J. Wróblewski distinguished valid principles of a legal system (based on legal norms or interpreted by means of inferential conclusions) as well as non-valid postulates of a legal system (not based on legal texts). According to the evolutional predominant stance, the validity of principles may stem from the system of uniform axiomatic or praxeomatic substantiation for the principles of a given group of norms. (more: Wronkowska et al. 1974, *55-64)*

[61] The essence of a constitutional principle of law amounts to understanding it as a directival statement, being a legal norm, included directly in the constitution or resulting from it, which significant meaning consists in determining the direction of the interpretation of all the norms of the legal system. (More: Zalasiński 2004, 22-29; Zalasiński 1997, 58-76) The superior role of constitutional principles in respect of other norms of the legal system results not only from the fact that they are included in the act of the highest validity in the hierarchy of legal sources (which implies the prevention of their repeal by the norms of a lower range and for the non-contradiction of these norms with them), but also from the fact that they determine the formal legislative basis (because they indicate competence to establish norms) and they determine the

the jurisdiction of the Constitutional Court developed with time, have made a great impact on the form of the principle of competent legislation.

One of the results of the implementation of the Act of 29.12.1989 on the change of the Constitution of the People's Republic of Poland[62], formally including the concept of the legal state of the Polish legal system[63], was the introduction of values related to this concept (mainly owing to the jurisdictional activity of the Constitutional Tribunal). One of these values, which directly affect the principle of competent legislation, is the principle of the citizen's confidence in the state and the law established by it as well as legal certainty[64]. The Constitutional Tribunal has repeatedly stressed the significance of competent legislation in numerous judgments stating that in a democratic legally based state it is one of the fundamental principles determining the relationship between the state and citizens (the judgment of the Constitutional Tribunal with file reference number P 3/00, OTK ZU No. 5/2000). The aforementioned principle is based on the value of legal certainty (Zieliński 1996, 43-58), which in the jurisdiction is defined as a set of elements features aiming at providing the individual with legal safety. Furthermore, the most fundamental objective of legal safety is to provide citizens with the possibility of deciding upon their own conduct on the basis of knowledge of the actions of state authorities and the legal consequences of these actions (Zieliński 1996, 43-58). Legal certainty so understood is, according to the Tribunal, the basis and guarantee of the citizens' confidence in the state and the law established by it (judgment with file reference number P 14/03 OTK ZU Nr 7/A/2004 item. 62). The state has a number of obligations resulting from this principle. The main responsibilities are as follows: formulating the law so that it does not restrict the liberties of citizens, an obligation to grant rights to individuals and simultaneously to guarantee the possibility of fulfilling them, an obligation to make the law coherent and comprehensible for citizens and not to enact legal rules retroactively - in compliance with the principle *lex*

---

substantive direction of legisation (they indicate the objectives which are to be fulfilled as a result of legislation). (More: Wronkowska et al. 1974, 64-65).

[62] Dz. U. 1989, Nr 75, poz. 444.

[63] *Rechtsstaat* was the model concept of a legally based state; it was developed in the German legal doctrine and consisted of: the principle of the division of power; the principle of fundamental rights protection, the principle of subjecting the legislative power to the Constitution and the judicial and executive powers to the statutes; the principle of legal protection when actions of public authorities are against the law as well as the principle of legal safety. The Constitutional Tribunal interpreted the principles in relation to the achievements accomplished in this field by the German juridical doctrine. (More: Spyra 2003, 55-56, and the literature quoted here).

[64] These principles before making amendments to the Constitution by the aforementioned Act were connected to the article 8 sec.1 of the Constitution (by the principle of substantive lawfulness). Then it was recognised by the Constitutional Tribunal as the directive directly resulting from the principle of astate based on law. This stance established itself after the Constitution of 1997 came into force (More: Zalasiński 2008, 35-41)

retro non agit (judgment with file reference number K 27/01 OTK ZU No. 7/2001, item 209, quoted in: Potrzeszcz 2007, 217).

It should be stressed that the confidence of citizens in the state and the law established by it as well as legal certainty (including the assurance of legal safety to the individuals) is of great significance for the implementation of human rights. The predictability of the individual's own actions and legal consequences constitutes the realisation of liberty whereas respect of the legal order towards the individual as a rational and autonomous being means respect for the individual's dignity (more: Potrzeszcz 2007, 217-256).

Among many elements constituting the principle of the citizen's confidence in the state and the law established by it and legal certainty, which stems from the concept of a democratic legal law (which the Constitution of 1997 included as article 2[65]), legal science and the Constitutional Tribunal introduced the principle of competent legislation[66]. This principle consists of a number of detailed elements, the normative content of which is the implementation of the principle of legalism. The component directives of the principle constitute the system of guidelines directed to the legislator, specifying how the law may be changed. The principle of competent legislation consists of four main elements: the principle *lex retro non agit*[67], the principle *vacatio legis*[68], the principle of the protection of acquired rights (more: Zalasiński 2008, 106 and subsequent), as well as the principle of the determinacy of legal rules. The additional principles, which add more details to the aforementioned, are as follows: the principle *pacta sunt servanta,* the prohibition on making changes in the tax law during a tax year, the injunction to protect the interests in progress, the order to specify the guidelines concerning the content of a regulation[69].

The subject of this article is the analysis of the principle related to the linguistic aspect of law – the principle of determinacy of legal rules. Legal language is perceived as a means of communication between the legislator and the subjects of established norms. In order to become an effective tool, this means must be subject to certain

---

[65] The article 2 of the Constitution of 1997 reads: "The Republic of Poland is a democratic legal state implementing the principles of social justice".

[66] I.a. the judgments with file reference number 24/00 OTK ZU Nr 3/2001, item 51; K 13/01 OTK ZU No. 4/2001 item 81; U 1/01 OTK ZU No. 8/2001, item 247. The principle of proper legislation, including the principle of the determinacy of legal rules belongs to the so-called formal content of the principles of a legal state (more: Morawska 2003, 221-229).

[67] The essence of the principle manifests itself in the prohibition of evaluation of the facts, which occured during the validity of superceded statutes (more: Lang 1962, 234).

[68] The term *vacatio legis* In juriprudence is defined as the period between publishing the law (or enacting it – in the case of statutes not requiring publication) to the time of its implementation (more: Seidler et al. 2001, 180; Myślińska 2009, 6 – 9).

[69] The last of the established injunction was discussed i.a. in: Salitra 2003, 49-52.

requirements, which stem from the principle of the determinacy of legal rules (Wronkowska 2006, 684). Its essence amounts to the obligation of enacting laws, which have correct, precise and clear content. The quality, which differentiates the principle of determinacy from other principles – elements, of the principle of decent legislation – is its absolute nature[70]. Due to the limited scope of this study, I will restrict myself to the selected issues, namely to the problem of substantiating the effective validity of the discussed principle, its content, exemplification of its violation by the legislator, factors affecting the level of determinacy in a particular instance as well as the scope of unconstitutionality of legal rules that do not comply with the established requirements.

Formulating the content of the principle of determinacy of legal rules in the initial period (prior to the jurisdictional activity by the Constitutional Tribunal) remained the domain of legal doctrine. The injunction of sufficient clarity of a legal text had two meanings at this time: material and formal. The material meaning consisted in forming the legal system ensuring comprehensibility and transparency for the subjects - citizens. On the other hand, the formal meaning consisted of formulating the legal rules, which enabled establishment of unequivocal legal norms. According to such an understanding of the injunction, the content of a legal rule shall be precise, coherent and with no internal contradictions[i] (Zalasiński 2008, 183).

The other directive constituting the discussed principle, the term "legal determinacy," was adopted in Poland from the German legal doctrine, where it was treated as an element of the concept of a law based state - *Rechtsstaa*t. In accordance with its narrow definition, the content of a legal rule should be precise to such an extent that a legal norm could be established from it. Broad understanding of the postulate, which predominated in the German legal doctrine, imposed on the legislator an obligation to make legal rules transparent and comprehensible for individuals[71]. With the adoption of the concept of a law based state to the Polish legal order, the hitherto predominating term "clarity"' was replaced with the term of narrower scope – "determinacy" of legal rules, which essentially amounted to the injunction requiring law that is comprehensible for the citizens (Zalasiński 2008, 185).

Constitutional adoption of the discussed principle was a complex process. It originated from the concept of a state based on law, which was consolidated in the Polish legal order, the evolution of the constitutional system as well as the jurisdiction of the Constitutional Tribunal[72]. It should be stressed that this process has not yet been completed. Both in the doctrine and the jurisdiction of the Polish Constitutional Court

[70] Some exceptions to the rest of the aforementioned principles might be allowed.

[71] Broad understanding of the order predominates currently in the jurisdiction of the Constitutional Tribunal.

[72] The determinacy principle of legal rules was not acknowledged as a legal principle until the beginning of the 1990s.

there are unequivocal stances for the discussed principle and for limits of its content. Before the official adoption of the concept of a law based state, the Constitutional Tribunal established the requirement to create clear, comprehensible and precise legal rules from the principle of the citizens' confidence in the state and the law established by it[ii] (I.a. the judgment TK K 7/89, OTK 1989/1/8.). After its introduction, the Constitutional Court started to perceive the order as a norm of making the legal rules of criminal law, which was based on the principle of determinacy of prohibited acts under penalty (*nullum crimen, nulla poena sine lege)* as well as the prohibition of retroactive validity of the statute introducing or increasing criminal responsibility (*lex severior retro non agit*)[iii]. These principles, similarly to the principle of excessive interference as well as the principle of citizens' confidence in the state and legal certainty, were realised in article 1 of the Constitution of the People's Republic of Poland, amended by the Act of the 29th of December 1989 quoted above. The established regulation was acknowledged with time as the constitutional basis for the principle of determinacy of legal rules.

After implementing the fundamental law, which is currently in force, as a result of incorporating the basis of principles previously derived from article 1 in its other regulations, some discrepancies concerning the constitutional source of the determinacy of legal rules appeared in the jurisdiction of the Constitutional Tribunal. The Constitutional Tribunal based it on the principle of proportionality specified in article 31 sec. 3 of the Constitution[73], the principle of legal safety (article 2) as well as the principle *nullum crimen sine lege* (article 42). According to the currently predominating stance (although it is not unequivocal) the grounds for the principle of determinacy of legal rules constitute the principle of a law based state described in article 2 of the Constitution, more precisely – the principle of citizens' confidence in the thus resulting state[iv] (I.a. judgment TK 24/00 (OTK 2001/3/51); SK 70/06 (OTK 2007/9A/103); more: Spyra 2003, 53.

According to T. Zalasiński (the view expressed with T. Spyra) the sense of the remaining principles, which derived from the article 2 of the Constitution, constitutes an additional substantiation of the validity of the discussed principle in relation to the specific, ensuing state of affairs[v] (Zalasiński 2008, 192). The content of the principle of the determinacy of legal rules from the beginning of the judicial activity of the Constitutional Tribunal has not been unequivocally determined to this day. Firstly, it embraced only repressive legal principles (especially those of criminal law), which

[73] The Constitutional Tribunal currently emphasises that the principle of determinacy should be related to the article 31 sec. 3 of the Constitution especially when a regulation formulated by the legislator concerns the protection of constitutional rights and liberties of man and citizen, i.a. in the judgment K 19/99 (OTK 2001/2/ 30).

interfere directly with the rights and liberties of an individual[74]. The control of requirements imposed by the legislator, which stem from the determinacy principle, amounted then to the study of stipulations included in the legal rule in respect of violating the principle of proportionality and statutory exclusion. With time, the determinacy principle encompassed all the legal rules, and its content was extended by the legal clarity postulate. It was emphasised that any legal text not only should have precise content, but it should also be comprehensible to its subject recipients[vi] (Zalasiński 2008, 195).

At the current stage of development, the determinacy principle of legal rules is defined by the three following features: correctness (in semantic respect – the use of proper words, including correct use of so-called under specified expressions and blanket clauses), precision (unequivocalness of meaning) and clarity (related to its comprehensibility to the subject recipients), (Zalasiński 2008, 198). The essence of the discussed principle in its current form was expressed by the Constitutional Tribunal in the judgment with file reference number K 24/00, which states "each regulation shall be formed correctly in linguistic and logical aspects." Further in the judgment, the Court explained that the clarity of a regulation shall mean "an injunction to form regulations that are transparent and comprehensible for its subject recipients, which may expect from a rational legislator legal norms which raise no doubts in respect of imposed obligations and granted rights. The precision of a regulation, related to the clarity, should be manifested in the exactness of imposed obligations and granted rights so that their content is clear and enables their enforcement"[vii] (judgment with file reference number OTK 2001/3/51; quoted in: Zalasiński 2008, 198).

The study of the constitutionality of a regulation in respect of its compliance with the determinacy principle of legal rules (and thus with the principle of competent legislation resulting from the article 2) starts with examining the level of its correctness. It includes the correctness of the rules of spelling, formal logic, and the rules of the proper form of legal texts included in the annex to the regulation of the Council of Ministers of the 20th of July 2002 – The Principles of Legislative Technique[75]. The next stage is the analysis of a regulation in respect of its precision and clarity. The study of precision consists in examining if it is sufficiently unequivocal to prevent too broad and discretionary application of a legal norm included in it (it is related to its flexibility)[76],

[74] Due to such a form of the principle, it was called "the principle of determinacy of criminal legal rules" In the first half of the 19th century (More: Zalasiński 2008, 187).
[75] Journal of Laws of 2002, No.100 entry 908.
[76] To find more information about flexibility of a legal text see in: Wronkowska and Zieliński 1993, 103- 114. The authors regard adequacy as the most fundamental and, at the same time, necessary quality of a legal text. Adequacy ensures the appropriate level of flexibility and precision (unequivocalness) of a text. Flexibility of a text serves two fundamental functions. The

(Zalasiński 2008, 201). The clarity of a regulation is connected with the material aspect of the determinacy principle of legal rules discussed above. Its essence amounts to the study of the regulation's content with regard to the comprehensibility of included legal norms for the recipients. It should be stressed that a legal text should be sufficiently comprehensible so that "an average citizen," who does not know any professional methods of analysis of the language of normative acts, could interpret properly the legal norms included in it[viii] (Morawska 2002, 370).

The doctrine stipulates that each assessment of the constitutionality of a regulation (edited not in conformity with the principle of determinacy of legal rules and thus with the principle of competent legislation) should be made taking into consideration the developed guidance on legal considerations. The presence of discrepancies in the judicature in relation to the same case may suggest the indeterminacy of the applied regulation and thus it might be deemed unconstitutional. In the case of uniformity of the jurisdiction the Constitutional Tribunal should in turn check if this state ensures the sufficient level of legal certainty (especially if interpretation of the law enables the recipient to have an adequate knowledge of his/her legal situation). T. Spyra emphasises the fact that "the assessment of legal certainty must be of a comprehensive nature and it must embrace a number of additional factors, such as: the actual level of the availability of jurisdiction or professional legal help in the society"[77]. Additionally, one must determine the degree of the legislator's fault in introducing a given set of legal rules to the system. The legislator's mistake may be manifested, for instance, in referring to a concept or regulation that does not exist. A gross error of a legislator, which violates the determinacy principle, is a factor suggesting the unconstitutionality of a normative act including a flawed regulation. Furthermore, the Tribunal should each time examine the effects of its removal from the legal system. Moreover, the refusal to state unconstitutionality due to the negative effects of the rejection of a legal rule from the legal system may occur only exceptionally[ix] (Spyra 2003, 74).

---

first one consists in the necessity of prediction and taking into account by the legislator of the changeability of a regulated situation at the moment of the text creation. The other function consists of the necessity of the edition of a legal text in such a way that expressions could encompass ensuing situations in the future. Underspecified expressions and blanket clauses ensure the flexibility of a legal text. The use of underspecified expressions is possible only when it is efficient – which each time requires indicating the subject, that decides upon the use of fuzziness and defining the criteria of determining the limits of this fuzziness. The additional means to ensure the flexibility of a legal text is determining in this text the limits of freedom of the decision made by the legislator, for instance by determining limits of jurisdiction in particular cases;

[77] When constitutionality verification is performed after a short period of the law being valid, its indeterminacy does not signify the possibility of deeming it unconstitutional. In such a case, the potential possibility of decreasing the legal uncertainty by jurisdiction is unimportant (Spyra 2003, 73).

Taking into account the so far considerable judicial achievements of the Constitutional Tribunal concerning the principle of competent legislation, one may distinguish some flaws in legal acts, which lead to the violation of the determinacy principle of legal rules. One of the most frequent flaws is the use of unclear terms by the legislator, which are legally indeterminate and their interpretation brings divergent results. Inaccurate, unclear and highly indeterminate edition of a legal rule, which excludes the possibility of determining the precise content of the legal norm included in it, evokes uncertainty among its subject recipients in respect of granted rights and imposed obligations[78] (judgment with file reference number SK 42/05). The defectiveness of a legal act may lead to the violation of the determinacy principle as well as the lack of adequate terminological precision[79]. The problem is caused mainly by the violation of the directive included in §10 of the annex to the regulation of the Prime Minister of the 20th of June 2002 concerning the Principles of Legislative Technique, according to which "identical terms are used for identical concepts, and various concepts may not be named with identical terms"[80].[81] Such a state of affairs may lead to conditions violating the individual's rights. The additional consequence of the lack of terminological precision may be the preclusion from applying regulations with

[78] source: http://www.trybunal.gov.pl/index2.htm

[79] The issue of unequivocalness and precision of words in a legal text more: Malinowski 2006, 18 – 42. On the other hand, Sławomira Wronkowska and Maciej Zieliński stress that a text is terminologically precise when it is without any syntactic and lexical ambiguities. This ambiguity of expressions is considered as an editorial error irrespective of the type of language in which it occurs (the same mistake may be ambiguous in respect of ethnic language, but unambiguous in respect of legal language). Lexical ambiguity may be avoided by introducing some legal definitions into a legal text or by placing ambiguous words in context so that ambiguity may be avoided. Definitions included in legal texts – so called legal definitions – may occur in different forms (these are, for instance, equational classical and non-classical definitions, partial definitions (more: Wronkowska and Zieliński 1993, *115 – 138)*. By placing legal definitions of some ambiguous expressions, a legislator explicitly specifies how it should be understood within a legal act, in which the definition was included and within executive deeds to the act, in which it was placed. The broader scope of the use of legal definitions relates to the situation, when they are placed in acts of a fundamental nature for a given domain of social relations, for instance in codes. In such cases definition determines a proper understanding of an ambiguous expression in the act belonging to the same domain of social relations (Choduń 2007, 128).

[80] Dz. U. z 2002, Nr 100, poz. 908

[81] The issue of the lack of precision of the terms used by a legislator was examined by the Tribunal e.g. in the judgment with file reference number K 14/03 (OTK 2004/1A/1), in which it stated the unconstitutionality of the Act of the 23rd of January 2003 on general insurance in National Health Fund (Journal of Laws of 2003, No. 45 entry 391 with later amendments). According to the Tribunal, a legislator formed the institution "in the form which precludes its reliable and efficient work" due to the lack of precision of regulations. " (Quoted in: Salitra, *Zasady przyzwoitej legislacji w* 2003*, 47)*.

such terms[82], especially, when "the regulation allows for too much freedom (or even arbitrariness) of interpretation for the bodies applying this regulation. In effect, it leads to the situation when the bodies applying the law are forced to stand in for the legislator, who regulated the issues necessary for the settlement in an unclear and incomprehensible way." The Constitutional Tribunal emphasised the fact that leaving too much freedom for the bodies applying the law may not lead to arbitrariness in defining the objective and subjective scope of the content of regulations (i.a. judgments with file reference numbers K28/02, K 4/06 and K 44/07)[83]. It must be explained that the determinacy principle resulting from the constitutional principle of a legal state does not mean that the legislator may not use under specified terms. The legislator is required to meet one condition in this respect, namely designations must be precisely determined. According to the Tribunal, the sense of under specified terms in a given situation cannot be arbitrarily determined, their use demands the presence of special procedural guarantees, which would ensure the transparency and easy assessment of the practice of providing some vague terms with actual content (I.a. judgments with file reference numbers SK 30/05 and K 4/06,)[84].

The next example of a flaw occurring in normative acts, which result in the violation of the determinacy principle of legal rules is incorrect or excessive number of references within one legal act (or the whole legal system). Multiple references placed in legal acts constitute another frequent phenomenon - a regulation has numerous inexact references included by a legislator (Działocha and Zalasiński 2006, 11)[85]. The Tribunal emphasised the fact that formulating legal definitions, which contain successive references, especially when defining the prohibited act, is inadmissible. The logical mistake of explaining the unknown by the unknown (*ignotum per ignotum*[86]) violates the principle of legally based state (i.a. judgments with file reference numbers: K 41/02 and K 14/03)[87].

The frequent cause of the violation of the objective principle is also making amendments to legal acts by change/addition of legal rules "which do not comply with other legal rules of a given legal act," and also by making amendments frequently and

---

[82] I.a. judgments with file reference numbers K 44/02 (OTK 2003/5A/44), K 19/99 (OTK 2001/2/30). (Quoted in: Salitra 2003, 47).
[83] source: http://www.trybunal.gov.pl/index2.htm.
[84] source: http://www.trybunal.gov.pl/index2.htm.
[85] The issue of multiple references was examined by the Constitutional Tribunal i.a. in the judgment with file reference number K 20/03 (OTK 2004/7A/63) concerning regulation of the Act of the 23rd of November 2002 on the amendment to the Act on local government of a commune and amendments to some other acts (Journal of LawsDz. U. z 2002, Nr 214 poz.1806).
[86] This mistake consists of explaining (defining) of the meaning of a defined expression by means of an expression which is incomprehensible to the recipient of the definition, more: Nawrot 2007, 88-89).
[87] source: http://www.trybunal.gov.pl/index2.htm.

without uniformity. Introduction of any changes violating the legislative techniques certainly has a negative impact on the level of legal clarity and transparency. In effect, the regulations of material law become distorted and the institutions of formal law do not operate properly (Działocha and Zalasiński 2006, 13). In the judgment with file reference number K 53/02 (OTK 2003/8A/83)[88], the judges of the Tribunal expressed their disapproval of "the way of indicating successive changes in the content of regulations by the sequence of legislative actions uncoordinated with one another, which results in gross ambiguities and requires taking excessively complicated interpretative measures" (OTK 2003/8A/83).

The legislative correctness denotes also establishing legal rules consistently and logically, taking into account system-wide principles and axiomatic norms. Contradiction of the determinacy principle of legal rules will result in establishing in the legal system those regulations, which will make inconsistent law that cannot be explained in accordance with other legal rules. Purpose and correctness of enforcing regulations do not justify making law incidental and chaotic way. Such arbitrariness of enforcing the regulations constitutes a violation of the principle of correct legislation (judgment with file reference number P 28/07)[89].

The directives of editing the legal rules, which result from the principle of correct legislation and concern the amendments to regulations, should be strictly adhered to, especially in the case of amendments to a code. The Tribunal has emphasised the fact that a legislator should refrain from making amendments in codes in an indirect way. It may result in a seemingly unchanged text being, in fact, substantially modified as far as its content is concerned by provisions of detailed acts. Avoidance of this problem is even more essential when an amendment concerns the norms of a fundamental nature, which regulate the main areas of particular legal institutions of a given branch of law (judgment with file reference number K 5/07)[90].

It should be stressed that depending on the subject of a given regulation, diversity in the levels of clarity, precision and correctness of legal laws is admissible. It mainly concerns the necessity of introducing specialist terminology (e.g. IT or medical terminologies) to the language of legal texts. In such a situation, the precision of a legal text may be ensured at the expense of its clarity (more: Zalasiński 2008, 213). According to T. Spyra, the higher the level of complexity of the regulated social relations, the lower the demand for determinacy should be, as he rightly stated (Spyra 2003, 68). Concluding the deliberations concerning the monitoring of the constitutionality of regulations due to the violation of the determinacy rule, attention

[88] The Tribunal states in the judgment the unconstitutionality of the Act of the 23rd of November 2002 on the amendment to the Act on harbours and marine ports.
[89]Source: http://www.trybunal.gov.pl/index2.htm.
[90]Source: : http://www.trybunal.gov.pl/index2.htm.

should be paid to the currently prevailing position, according to which a regulation may be deemed unconstitutional due to violation any of the aforementioned features (especially limiting clarity or its precision) only when these "infringements" cannot be removed by means of the basic methods of the interpretation of the law (especially that performed by courts in the process of making law), (more: Zalasiński 2008, 212-214).

In the jurisdiction of the Constitutional Tribunal it has been stressed many times that the determinacy principle becomes especially important in relation to legal rules which directly relate to the legal status of an individual (Judgments with file reference numbers K 28/02 (OTK 2003/2A/13), K 37/02 (OTK 2003/9A/96), K 45/02 (OTK 2004/4A/30). To assess the compliance of a regulation with the principle of competent legislation, the Tribunal explains that each regulation, which makes laws and imposes obligations on citizens, should unequivocally indicate the subject recipient and circumstances to which it applies. The method of formulating the regulation should ensure uniform interpretation and application. The scope of its application should include the situations, which unequivocally indicate the purpose of the establishment of the regulation limiting the exercise of constitutional liberties and rights by a rational legislator (I.a. judgments with file reference numbers K 33/00 (OTK ZU 2001/7/ 217), K 47/04 and K 36/06) [91].

The strictness of adherence to the determinacy principle of legal rules is dependent on the branch of law and the range of its subject recipients. The highest level of discipline in the legislator's adherence to the objective principle is applied the regulations of a repressive nature (of criminal law), fiscal law, customs law, the regulations determining the scope of power of public authorities as well as those regulations that the subject recipients of which naturally have a limited ability to understand the legal content (Salitra 2003, 48) Regulations, which apply to the last category of people are mainly those concerning national insurance. The Constitutional Tribunal emphasised in the judgment with file reference number U 11/97 that the recipients of this branch of law are mainly elderly people, with limited possibilities in life, for whom the retirement and disability benefits are often the only source of income. That is why the violation of the discussed order constitutes "the determination of their rights in an unclear manner, with numerous and vague references, which prevents them from understanding the content of valid laws in this field and, at the same time, they exclude to a large extent control over the national insurance bodies" (judgment with file reference number: U 11/97 (OTK ZU 1997/5-6/67), quoted in: Salitra 2003, 48).

With reference to repressive regulations, the precision and determinacy norms concerning regulations must be obeyed in the most restrictive manner in the branch of criminal law *sensu stricte*, especially those laws, which affect directly the fundamental liberties and rights guaranteed by the fundamental law (judgment with file reference

[91] Source: http://www.trybunal.gov.pl/index2.htm.

number P 50/07) [92]. According to the Tribunal, more freedom should be given to the regulations concerning offences, but the highest degree of freedom should be given in the branch of disciplinary law. The norm of criminal law in compliance with the determinacy principle should indicate in a consistent and unequivocal manner the subject recipient of a ban, features of a prohibited act and the type of penalty sanction for committing a breach of the prohibition. The Tribunal stressed many times that "the material elements of a criminal act must be defined in the law in a complete, precise and unequivocal manner" (judgments with file reference numbers K 2/02 (OTK 2003/1A/4), SK 13/05 (OTK 2005/8A/91), SK 42/05 (OTK 2006/10A/148), quoted in: Zalasiński 2008, 199). The rule of determining the content of the regulations of criminal law in a precise and accurate manner is especially important in the face of the valid article 42, sec. 1 of the Constitution of the Republic of Poland, according to which only a person, who perpetrated a prohibited act under penalty by the law valid at the date of its perpetration is subject to criminal responsibility. Nevertheless, this principle does not exclude the possibility of punishment for an act, which constitutes a crime in accordance with the regulations of international law (judgments with file reference numbers SK 13/05 and P 50/07). The regulation states that the recipient of the norm of criminal law should know whether of his/her conduct and in which circumstances is subject to criminal responsibility. As far as the regulations of tax law are concerned, the Tribunal stated that they must ensure the highest responsibility and predictability in the decisions taken by the fiscal authorities (i.a. judgments with file reference numbers P 13/02 (OTK 2002/7A/90), K 7/05 (OTK 2006/8A/107), quoted in: Zalasiński 2008, 199). Based on the tax law, the discussed order is even more important in the face of the valid article 84 of the Constitution. The established regulation stipulates that everybody is obliged to bear burdens and public benefits including the taxes stipulated in the act. The normative content of this act stipulates that the legislator has an obligation to establish the tax regulation in such a way that the legal norms determining the obligatory conduct of a taxpayer are precise and do not raise any doubts. Additionally, the obligation of the legislator is specified the article 217 of the Constitution, which imposes on the legislator the duty of determining in the act the essential elements of a tax obligation, which should be understood as the necessity of being extremely precise while determining the subject and object of taxation and tax rates (judgment with file reference number SK 39/06)[93].

A lower level of determinacy might be allowed in the normative acts including the regulation concerning private law, but within this scope a higher level of determinacy should characterise the regulations concerning the statue of limitations,

[92] Source: http://www.trybunal.gov.pl/index2.htm.
[93] Source: http://www.trybunal.gov.pl/index2.htm.

expirations, indemnification liability, sanction of nullity as well as limitations of the freedom of contract (more: Spyra 2003, 13).

The determinacy principle of legal rules constitutes the directive directed to the legislator, imposing on him the obligation to make law in compliance with "the canon of legislative works" binding in a legally based state. Currently in Poland the regulation of the Prime Minister of the 20th of June 2002 concerning "the Principles of Legislative Technique" is of such nature[94].[95] The annex to this act includes a set of directives of a technical nature (and also partly of a didactic nature) specifying the ways in which the drafts of normative acts, especially laws and ordinances, should be edited in terms of logic and language[96]. The necessity of the legislator's adherence to directives included in the regulation was aptly expressed by D. Salitra[97], according to whom "the consistent application of these rules by all entities which enact law (…) ensures a considerable degree of uniformity of formulating the normative acts, and this in turn facilitates the interpretation of legal texts and contributes to the development of the state of legal certainty and legal safety of citizens" (Salitra 2003, 47). Due to the fact that the act is a part of the system of legal sources, the edition of a legal rule contrary to the directives included in the discussed annex to the regulation may lead to the legislative incorrectness of the normative act in which it was included. In consequence, this incorrectness may lead to the lack of precision and clarity of regulations, and in effect to the violation of the determinacy principle of legal rules. Such a situation may result in the violation of the principle of competent legislation and the regulation may be deemed to be against the principle of a legally based state specified in article 2 of the Constitution and removed from the legal system (Wronkowska 1990, 7).

To sum up the deliberations concerning the determinacy principle of legal rules it should be stressed once again that its content does not have any limited scope and it is still being developed. The latest jurisdiction of the Constitutional Tribunal indicates the extension of understanding of the principle beyond the procedural aspect of making laws. It results in establishing the postulate, which stipulates that the determinacy principle of legal rules may constitute the basis for the constitutional control of purpose and rationality of the legislator's actions (judgments with the file reference numbers K 14/03 (OTK2004/1A/1), K 28/02 (OTK 2003/2A/13), quoted in: Zalasiński 2008, *208-209)*.

---

[94] Dz. U. 2003, Nr. 100, poz. 908

[95] An interesting discussion on the impact of the violation of directives included in the Principles of Legislative Technique on the constitutionality of a legal act was caused by the article by Wojtczak 2005, 97 and subsequent. More discussion i.a..: Wronkowska 2005, 89 and subsequent; Wierczyński 2005, 89 and subsequent; Zalasiński 2005, 94 and subsequent.; Bąkowski 2006, 92 and subsequent. Quoted in: *Zalasiński 2008*, *204.*

[96] The detailed description of the directives included in the enacted regulation: Wronkowska and Zieliński 2004, .

[97] Referring to Wronkowska 2000, 81; Wronkowska – Jaśkiewicz 2000, 11.

The judgment no. K 28/02 is an example here, and the Constitutional Tribunal emphasised in it that the principles of proper legislation, apart from the requirement for clear, precise and correct formulation of regulations, include also "the fundamental, in respect of the legislative process, stage of formulating the objectives which are to be achieved by the establishment of a particular legal norm. They constitute the basis for evaluating if the ultimately formulated legal rules properly specify a given norm and if they will be useful for the accomplishment of the intended objective" (quoted in: Działocha and Zalasiński 2006, 13). In the judgment P 6/04 (OTK 2003/2A/13) it is stipulated that if the assumption of the legislator's rationality constitutes a point of departure, especially the rationality of particular legal norms, then the rationality of the established law should be deemed to be "a component of competent legislation." Here it should be stressed that broader understanding of the principle of competent legislation does not meet with full approval in the doctrine. The Tribunal is subjected to criticism for the extension of its authority to control the constitutionality of the legislator's actions for rationality and purpose (which is not confirmed in the Constitution) as well as for the negative consequences of treating the objective principle as a blanket clause referring to "the principles of competency" (Działocha and Zalasiński 2006, 14).

Bibliography

Bafia, Jerzy. 1980. *Zasady tworzenia prawa.* Warszawa: Państwowe Wydawnictwo Naukowe.

Bałaban Andrzej, Dubel Lech, Leszczyński Leszek. 1986. *Zasady tworzenia prawa,* Lublin: UMCS.

Bąkowski, Tomasz. 2006. Zasady techniki prawodawczej a prawotwórstwo organów jednostek samorządu terytorialnego. *Państwo i Prawo* 1.

Choduń, Agnieszka. 2007. *Słownictwo tekstów aktów prawnych w zasobie leksykalnym współczesnej polszczyzny.* Warszawa: Wydawnictwo Trio.

Działocha Kazimierz, Zalasiński Tomasz. 2006. Zasada prawidłowej legislacji jako podstawa kontroli konstytucyjności prawa. *Przegląd Legislacyjny 3*.

Lang, Wiesław. 1962. *Obowiązywanie prawa.* Warszawa: Państwowe Wydawnictwo Naulowe.

Malinowski, Lech. 2006. *Redagowanie tekstu prawnego. Wybrane wskazania logiczno-językowe.* Warszawa: LexisNexis.

Morawska, Ewa. 2002. *Klauzula państwa prawnego w Konstytucji RP na tle orzecznictwa Trybunału Konstytucyjnego.* Toruń: Wydawnictwo Naukowe PWN

Michalska, Anna and Wronkowska, Sławomira. 1983. *Zasady tworzenia prawa,* Poznań: Uniwersytet im. Adama Mickiewicza.

Myślińska Marzena. 2009. *Zasada odpowiedniego vacatio legis jako element prawidłowej legislacji.* In: Zbiór tez i opinii IV Międzynarodowej Naukowo-praktycznej Konferencji Młodych Naukowców: „Życie prawne: stan współczesny a perspektywy rozwoju". Łuck

Nawrot, Oktawian. 2007. *Wprowadzenie do logiki dla prawników*. Kraków: Wolters Kluwer Polska.

Potrzeszcz, Jadwiga. 2007. *Idea państwa prawnego w orzecznictwie Trybunału Konstytucyjnego*. Lublin: Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego im. Jana Pawła II.

Salitra, Dariusz. 2003. Zasady przyzwoitej legislacji w orzecznictwie Trybunału Konstytucyjnego. *Przegląd Sejmowy 4(57).*

Seidler Grzegorz Leopold, Groszyk Henryk, Malarczyk Jan, Pieniążek Antoni. 2001. *Wstęp do nauki o państwie i prawie.* Lublin: UMCS.

Spyra, Tomasz. 2003. Zasada określoności regulacji prawnej na tle orzecznictwa Trybunału Konstytucyjnego i niemieckiego sądu konstytucyjnego. *Transformacje Prawa Prywatnego 3*: 53-75.

Wierczyński, Grzegorz. 2005. Zasady techniki prawodawczej (uwagi polemiczne). *Państwo i Prawo* 4.

Wojtczak, Sylwia. 2005. Zasady techniki prawodawczej – luka w prawie? *Państwo i Prawo* 1.

Wronkowska, Sławomira. 1990. Technika prawodawcza. *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 1.

Wronkowska, Sławomira. 2000. W sprawie postępowania legislacyjnego w przepisach Regulaminu Sejmu Rzeczypospolitej Polskiej. *Przegląd Sejmowy* 2.

Wronkowska, Sławomira. 2005. Zasady techniki prawodawczej – czy rzeczywiście luka w prawie?. *Państwo i Prawo* 2.

Wronkowska, Sławomira. 2006. *Zasady przyzwoitej legislacji w orzecznictwie Trybunału Konstytucyjnego.* In Księga XX-lecia orzecznictwa Trybunału Konstytucyjnego. Zubik, Marek (ed.). Warszawa: Biuro Trybunału Konstytucyjnego.

Wronkowska – Jaśkiewicz, Sławomira. 2000. Zagadnienia procesu legislacyjnego, *Przegląd Legislacyjny* 1.

Wronkowska, Sławomira, Zieliński Maciej. 1993. *Problemy i zasady redagowania tekstów prawnych.* Warszawa: Urząd Rady Ministrów.

Wronkowska, Sławomira. 2006. Zieliński Maciej, *Zasady techniki prawodawczej. Komentarz*. Warszawa: Wydawnictwo Sejmowe.

Wronkowska, Sławomira, Zieliński Maciej, Ziembiński Zygmunt. 1974. *Zasady prawa. Zagadnienia podstawowe.* Warszawa: Wydawnictwa Prawnicze.

Wronkowska Sławomira, Ziembiński Zygmunt. 2001. *Zarys teorii prawa.* Poznań: Ars boni et aequi.

Wróblewski, Jerzy. 1989. *Zasady tworzenia prawa.* Warszawa: Państwowe Wydawnictwo Naukowe.

Wróblewski, Jerzy. 1959. *Zagadnienia teorii wykładni prawa ludowego.* Warszawa.

Zalasińsk, Tomasz. 2004. *W sprawie pojęcia konstytucyjnej zasady prawa.* Państwo i Prawo 8.

Zalasiński, Tomasz. 1997. *Konstytucyjne zasady prawa.* In Charakter i struktura norm Konstytucji. Janusz Trzciński (ed.). Warszawa: Wydawnictwo Sejmowe.

Zalasiński, Tomasz. 2005. Uwagi w sprawie Zasad techniki prawodawczej (w związku z art. S. Wojtczak)*, Państwo i Prawo* 6.

Zieliński, Adam. 1996. *Pewność prawa.* In *Jakość prawa,* Kołakowska-Przełomiec, Helena (ed.). Warszawa: Dom Wydawniczy ABC.